12000

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D. C. 20548

110836

110836

FOR RELEASE ON DELIVERY
Expected at 8:45 A. M.
Thursday, November 8, 1979

STATEMENT OF
RONALD F. LAUVE
ASSOCIATE DIRECTOR, HUMAN RESOURCES DIVISION

BEFORE THE
SUBCOMMITTEE ON SPECIAL INVESTIGATIONS
HOUSE COMMITTEE ON VETERANS' AFFAIRS

HSE03907

ON

H.R. 5268, A BILL TO AUTHORIZE THE VETERANS ADMINISTRATION TO LITIGATE DEBTS

Mr. Chairman and Members of the Subcommittee, we are pleased to be here today to discuss proposed legislation (H.R. 5268) which would amend title 38, United States Code. This bill contains provisions to authorize the Veterans Administration (VA) to use its own legal counsel to pursue civil remedies in any court of competent jurisdiction for the collection of overpayments of educational assistance made to eligible veterans and dependents and for the collection of education loans which have been defaulted, including those debts which are currently being referred to the Department of Justice for litigation.

AGC00016

The collection of debts due the Government is of growing concern to our office and has been the subject of several reviews by the General Accounting Office. Debts owed the

007758
110836

Federal Government grew from $118 billion as of September 30, 1977, to $140 billion as of September 30, 1978. This represents an increase of almost 20 percent during one fiscal year. If the present trend continues a significant amount will be written off as uncollectible or collection action will be terminated.

Many of the debts owed to VA resulted from overpayments of educational assistance benefits. For example, as of September 1, 1979, VA's current uncollected educational assistance overpayments to veterans totaled over $420 million. Based on past experience, VA's administrative collection efforts on many of these debts will be unsuccessful and collection action will be terminated. VA has already terminated collection action on 641,950 educational assistance overpayment accounts totaling $183 million. These figures do not include defaulted VA education loans nor educational assistance overpayments to dependents.

VA's current debt collection process involves sending up to three computer generated collection letters to debtors. These letters give the debtor the opportunity to apply for a waiver or compromise or to pay the debt on a repayment plan.

Many debtors do not respond to VA's collection letters and further VA collection action depends on the amount of the debt. For example, if a debt is $600 or more and VA determines the debtor has assets to repay, the account will be referred

to the Department of Justice for further collection action and possible litigation. Accounts that are under $600 or $600 or over but the debtor is unemployed, has insufficient income, or cannot be located are "terminated". When accounts are terminated, administrative collection action stops. Such debts may be collected through offsets against future benefits if the debtors later apply for and receive additional educational or compensation and pension benefits.

We have found evidence which indicates that some veterans know the dollar limit for referral to Justice for further collection action. With this knowledge debtors may pay their debt until the balance is below the dollar limit for referral and then stop making payments. Under current VA procedures the account will then be terminated.

Some examples of accounts reduced below the dollar limit for referral and subsequently terminated follow:

--In 1977 when the dollar limit for referral was $500, a veteran with an overpayment of $567 was sent three demand letters by VA. The third demand letter stated that his account would be referred to GAO 1/ if payment was not received. The veteran made a

---

1/ At that time, delinquent accounts were first referred to GAO and then to Justice. Current procedures require that VA refer delinquent accounts directly to Justice.

single payment of $100 which reduced the account balance below the $500 referral limit. The account was subsequently terminated by VA without further administrative collection action.

--Another veteran had an overpayment of $540 in mid-1976. Two cash payments of $25 each were received reducing the debt to $490 or $10 below the referral limit of $500. The debt was terminated by VA in September 1977 after three collection letters were sent.

--A third veteran had an overpayment of $813 in 1975. Three payments totaling $300 were received reducing the debt to $513. Subsequently, in September 1977 the account was terminated when the dollar limit for referral was $600.

We believe these examples indicate that veterans either have knowledge of the dollar limit or learn, based on VA's collection actions, that if a debt is reduced below a certain level, administrative collection action is terminated and the account will not be referred to Justice for litigation. During hearings conducted before the House Committee on Veterans' Affairs on July 31, 1979, VA's General Counsel acknowledged that there is evidence to suggest that many veterans who owe VA amounts less than the referral limit to Justice ignore their payment obligations, knowing that court action against them is not available. In other testimony

before the Senate Committee on Veterans' Affairs, VA officials testified that knowledge of the dollar referral limit is "fairly widespread".

There is little incentive for debtors to pay their obligations to VA once collection action has been terminated because (1) they will not receive additional requests for payments, (2) the debt will not be pursued through litigation, (3) no interest will be charged on the debt, and (4) their failure to pay the debt will not be made a part of their credit history maintained by commercial credit bureaus.

During our current review of the collectibility of educational assistance overpayments terminated by VA which we are conducting at the request of Senator William Proxmire, Chairman, Subcommittee on HUD-Independent Agencies, Senate Committee on Appropriations, we obtained information from a commercial credit bureau on debtors with terminated educational assistance overpayment accounts. From a sample of 1,200 accounts we were able to obtain commercial credit reports for 915. Our analysis of the reports showed that at least 56 percent of the veterans had what we considered good credit ratings, 57 percent had subsequently been extended credit by private-sector creditors which exceeded the amount of their outstanding overpayments, and 81 percent were employed including 6 percent with the Federal Government.

Following are some examples of veterans who appear to have good credit ratings but who owed a debt to the Government for which collection efforts have been terminated:

--VA terminated collection efforts on an overpayment of about $1,208 in July 1977 because the VA investigative credit report indicated the veteran was unemployed. However, the commercial credit bureau report we obtained in January 1979 showed that the veteran was employed and had been extended credit of $1,300 for purchasing household goods.

--A veteran's overpayment account of $1,190 was terminated in December 1977 because the veteran allegedly had insufficient income for the account to be referred to GAO and subsequently to Justice. However, the credit bureau report we obtained showed that he was employed and had obtained an unsecured bank loan for $1,100 in August 1978.

--Another overpayment account of $685 was terminated in June 1978 because the veteran was unemployed. His credit bureau report showed he had satisfactorily paid two auto loans--one for $6,400, and another for $1,600. In December 1978, a major bank reported the veteran had a credit card with a $700 line of credit.

--Another veteran's account of $276 was terminated in October 1978 because the debtor had ignored VA's

demand letters and the account balance was below the limit for referral to Justice. The commercial credit bureau report we obtained showed that earlier in 1978 he had secured an auto loan for $8,700. The report also indicated the veteran was a Federal employee.

--A veteran's overpayment account of $999 was terminated in June 1978 because VA could not determine his ability to pay through an investigative credit report and VA regional office inquiries. The credit bureau report that we obtained showed he was employed at a California Naval Shipyard and he had obtained an installment sales contract loan of $14,700 about 6 months before his account was terminated by VA.

--A final example is a veteran whose overpayment account of $639 was terminated in July 1977, apparently because of inability to pay--that is, VA's investigative credit report showed he had income of only $400 a month. Howeyer, the commercial credit bureau report we obtained showed the veteran had obtained real estate loans of $67,000 and $170,000 in 1977 and 1978 respectively.

Based on these and many other examples noted during our review, we believe most veterans with terminated educational assistance overpayment accounts have the ability to repay the overpayment but are simply unwilling to do so. They

have little incentive to repay primarily because their financial status and credit records remain unaffected by the delinquent debt. However, if the veterans' delinquent debts were entered on credit bureau reports, the veterans' credit worthiness as viewed by potential private-sector creditors would be affected and they would have an incentive to pay their debts to VA.

We have concluded that incentives are needed to prompt individuals to repay their VA debts. As discussed, one incentive would be to report delinquent VA debts to commercial credit bureaus and therefore affect veterans' credit ratings. We live in a credit society and most individuals recognize that a good credit rating is invaluable and they are sensitive to having an adverse credit rating.

Revisions to the Federal Claims Collection Standards, dated April 17, 1979, require agencies to develop and implement procedures for reporting delinquent debts to commercial credit bureaus. Because VA does not believe it has the authority to do this, VA has proposed that 38 U.S.C. 3301 be amended to allow it to report debtor information to commercial credit bureaus and to use them to locate debtors. We believe this is a step in the right direction.

While we believe that reporting delinquent debts to commercial credit bureaus will be successful in collecting many delinquent or defaulted accounts, we recognize that

certain individuals will continue to ignore their VA debts. Accordingly, we believe legal action should be taken to collect debts that cannot be collected through VA's normal collection procedures including referral to credit bureaus.

While Justice is currently responsible for litigating debts not collected through VA's administrative collection efforts, only debts of $600 or more which appear to have potential for recovery through litigation are referred to Justice. The $600 limit for referral to Justice appears to have been established primarily because (1) it was not considered cost effective to litigate certain debts under $600, and (2) the dollar limit would help restrict the volume of debts which would be referred to Justice for litigation.

During fiscal year 1979 VA referred 33,643 cases totalling $39.1 million to Justice for collection action. During this same period Justice disposed of 8,715 accounts totaling $11.5 million through litigation, negotiation of voluntary repayment plans, compromise settlements, waivers, and other means. These statistics suggest that the present system for litigating VA debts is not effective, and that the backlog of VA accounts referred to Justice will grow if the present system continues.

Notwithstanding Justice's apparent difficulty in handling the large volume of VA's delinquent and defaulted accounts of $600 or more, our current review showed a

need to litigate many of VA's delinquent and defaulted accounts under $600. As already discussed, knowledge of the $600 limit for referral to Justice may be "fairly widespread" and there is evidence that at least some veterans may be taking advantage of this limit to avoid repayment of their educational assistance overpayments. Moreover, our analysis shows that about 94 percent of VA's terminated educational assistance overpayment accounts are under the current $600 referral limit. Also, as already noted, our analysis of a random sample of these accounts showed that most of these veterans apparently have the ability to repay their debts but are simply unwilling to do so.

We believe that while it may not be feasible to litigate all debts under $600, it may be cost effective to litigate many of these cases if private-sector litigation techniques were used. If a sufficient number of debts under $600 were litigated, it would serve to alert veterans that they may no longer ignore their debts to VA with impunity.

In recognition of this problem Chairman Proxmire asked us to look into and test the feasibility of VA attorneys using generally accepted private-sector litigation techniques to obtain judgements in State, local, and small claims courts against delinquent or defaulted debtors with debts under $600. The reason for limiting the test to debts under $600 was to avoid impacting on the existing system for referring debts of $600 or more to Justice.

In March 1979, we talked with Justice officials about the possibility of a delegating to VA's General Counsel the authority to use VA attorneys to litigate and obtain default judgments on cases under $600 on a pilot basis in selected cities. In a letter dated March 20, 1979, Justice granted VA the authority to proceed with the pilot project.

Based on the understanding that Justice was willing to delegate to VA the necessary litigation authority to proceed with the test, the Congress appropriated $742,000 and authorized 30 staff positions for VA to conduct the pilot project. The Office of Management and Budget also concurred in this undertaking. VA is currently in the process of implementing the pilot project at 10 of its regional offices. As directed in Senate Report No. 96-258 which accompanied VA's fiscal year 1980 appropriation legislation, the project is being carried out in conjunction with the General Accounting Office.

Although the project appears to be off to a good start, a question has been raised as to whether the March 20, 1979, delegation letter from Justice to VA is sufficiently comprehensive to give VA the responsibility and latitude to adequately test and utilize the various private-sector debt litigation practices currently in use in jurisdictions around the Nation. In an effort to resolve this problem, representatives from VA's Office of General Counsel recently met with Justice

officials to obtain a more definitive and clear-cut delegation of litigation authority. Based on this meeting, Justice sent VA a second delegation letter dated October 3, 1979.

Based on our analysis of the second delegation letter, there still appears to be some misunderstanding on the part of Justice as to the nature and basic objective of the pilot project. The letter states:

> "We welcome your assistance in helping us deal with the large backlog of educational assistance overpayment claims which are being referred to this Department for litigation. It is our understanding that this pilot program will be instituted only in districts where the concurrence of the local United States Attorney has been obtained. The United States Attorneys will be responsible for maintaining overall supervisory responsibility for the cases in their districts. We also understand that you will select to litigate cases under $600 in which the ability to pay is clearly established* * *."

Based on this language, it appears Justice is of the opinion that at least a part of the pilot project would involve VA attorneys assisting Justice in working on the backlog of cases of $600 or more already referred to Justice. Also, according to the letter VA's choice of test cities would be limited to those districts in which the local United States Attorney was agreeable, and the local United States Attorney

would have overall supervisory responsibility for the pilot project cases.

The Justice Department's understanding of the nature and objective of this pilot project as set forth in the second letter is not consistent with the project as envisioned by Chairman Proxmire and subsequently funded by the Congress. The purpose of the test is not simply to make VA attorneys available to assist Justice with its backlog of cases of $600 or more, nor is it a question of whether Federal resources should be focused on cases over or under $600.

Rather, the main thrust of the pilot project is to look into the relative merits, from a management accountability standpoint, of giving VA full responsibility including litigation authority, for the collection of debts; and to test the feasibility of using generally accepted litigation techniques employed by private-sector attorneys who specialize in debt collection cases, including pursuing such cases in State, municipal, and small claims courts.

Assuming that the questions which have been raised concerning the nature and extent of Justice's delegation of litigation authority can be resolved satisfactorily, we are confident that the results of the pilot test will be favorable and will demonstrate that VA can effectively litigate and collect many delinquent and defaulted debts under $600. If the test is successful, debts of $600 or more could also be litigated by VA, either by additional

delegation from Justice, or by a statutory change such as that contemplated by H.R. 5268.

We believe that giving VA complete responsibility for the collection of debts, including a major litigation role, would not only result in more timely recovery action but would also result in better management of programs to prevent overpayments and reduce loan defaults, cause VA to intensify its prelitigation debt collection efforts, and ultimately reduce the magnitude of VA's debt collection problems. In short, by giving VA full responsibility for the collection of debts, better management accountability will result.

One last factor which we would like to address, and which tends to reduce veterans' incentive to repay their VA debts in a timely manner, is that VA does not charge interest on outstanding debts. In order to give veterans an additional incentive to pay their VA debts, VA should charge interest in accordance with present requirements of the Federal Claims Collection Standards published by GAO and Justice (4 CFR 102.11) which states that interest should be charged on delinquent debts and debts being paid in installments in conformity with the Treasury Fiscal Requirements Manual.

- - - - -

This concludes our statement. We will be happy to respond to any questions you or other Members of the Subcommittee may have.