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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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B-202175

MAR 13 1981

The Honorable Jack Brooks
Chairman, Committee on Government
Operations
House of Representatives

Dear Mr. Chairman:

By letter of February 2, 1981, you requested our views on H.R. 1243, 97th Congress, 1st Session--"A bill to amend title 5 of the United States Code to increase the efficiency of Government-wide efforts to collect debts owed the United States, to require the Office of Management and Budget to establish regulations for reporting on debts owed the United States, and to provide additional procedures for the collection of debts of the United States".

House bill 1243 is similar to Senate bill 3160 that was introduced by Senator Percy in the 96th Congress. We testified on November 19 and 20, 1980, before the Senate Committee on Governmental Affairs in support of that proposed legislation. We continue to support the purposes of that legislation as repeated and expanded on in H.R. 1243.

House bill 1243 would remove an obstacle to the Government's use of the commercial practice of reporting an individual's delinquent financial obligations to credit bureaus. The bill also provides for making agencies more accountable for their collection activities.

Reporting Delinquent Debts to Credit Bureaus

As a result of our comparison and analysis of the debt collection practices of the public and private sectors, 1/ we initiated an April 1979 revision to the Federal Claims Collection Standards 2/ to require that agencies establish procedures for reporting delinquent debts to commercial credit bureaus. These Government-wide regulations are issued

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1/"The Government Can Be More Productive in Collecting Its Debts by Following Commercial Practices," (FGMSD-78-59, Feb. 23, 1979.)

2/4 CFR 101-105

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jointly by the Comptroller General and the Attorney General under authority of the Federal Claims Collection Act of 1966. 1/

The new provision for reporting debts to credit bureaus has not been implemented primarily because a legal issue arose over whether participating credit bureaus, which are governed by the Fair Credit Reporting Act, 2/ must also comply with the Privacy Act of 1974. 3/ Specifically, the Department of Justice has taken the position that a credit bureau that enters into an agreement with a Government agency under which the credit bureau would retain information disclosed by the agency would be maintaining a subsystem of records subject to the Privacy Act.

A spokesman for the credit bureau industry stated that the industry will not participate with the Government in this effort of recording debts if doing so makes the bureaus subject to the Privacy Act. Aside from the fact that the industry is already heavily regulated, he expressed the view that modifying bureau systems for recording disclosures and debtor counter-arguments in a manner that would meet Privacy Act requirements would not be cost effective.

Recently, legislation was enacted that will exempt credit bureaus from the Privacy Act for certain VA 4/ and Department of Education 5/ debts. We supported that legislation; however, we would have preferred legislation providing such exemptions for all Government agencies, as is provided by House bill 1243.

In conjunction with a review of VA collection activities undertaken at the request of Senator Proxmire, we demonstrated the feasibility of reporting Federal debts to a credit bureau. Our analysis shows that making the delinquent status of debts a matter of record with a credit bureau provides incentive for payment because prospective grantors of new credit are likely to consider credit history before extending credit. A few examples follow.

1/31 U.S.C. 951

2/15 U.S.C. 1681

3/ 5 U.S.C. 552a

4/Public Law 96-466 October 17, 1980

5/Public Law 96-374 October 3, 1980

Example 1

In October 1980 we received full payment of a debt that we had reported to the credit bureau over a year earlier. We contacted the credit bureau and determined that only a few days before the payment was made, the debtor's credit history had been checked in connection with an application for an automobile loan.

Example 2

After repeated unsuccessful attempts by VA and GAO since September 1976 to collect a debt, it was reported to the credit bureau in May 1979. In December 1979, the debtor contacted us regarding repayment arrangements because his credit record was preventing him from obtaining a loan. A lump sum payment in full settlement was received within a few weeks.

Example 3

A debt was reported to the credit bureau in May 1979, after repeated unsuccessful collection attempts by VA and GAO beginning in October 1976. The debtor called our Office in March 1980 and arranged immediate payment. Subsequent examination of a credit report on this debtor showed that in March 1980 a credit union had requested information on the debtor's credit history.

Example 4

A debt was reported to the credit bureau in May 1979 after repeated unsuccessful collection efforts beginning in May 1976. In October 1979, apparently due to problems in arranging real estate financing, the debtor sent us an uncashed educational benefit check that he had received in March 1976 and requested clarification of the remainder of the debt. His questions were subsequently resolved and he is making monthly payments on the unpaid balance.

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In summary, our experience in reporting delinquent debts has reinforced our belief that it is an effective tool for strengthening Government collection programs. This tool would be especially useful in the Government's efforts to collect debts for which, due to their size, it is not practical to take legal action. Enactment of House bill 1243 would remove the present obstacle to implementing credit reporting programs throughout the Government.

There is, however, one provision of this section of the bill that we would suggest you delete. Section 2(c)(1)(B) provides that the initial notice to a person responsible for a claim include the name and address of the consumer reporting agency that the Government agency intends to notify.

We question the desirability and feasibility of requiring by statute that Government agencies provide an individual with the name and address of the specific consumer reporting agency or agencies (there are some 1800 in the United States) to which the Government agency plans to disclose the data. To insure nationwide coverage it may be necessary to develop a reporting system that would provide that this information be made available to multiple consumer reporting agencies.

The implementation of this provision of the bill would not only create an unnecessary administrative burden on the Government agency, but it would be of little value to the individual; in fact, it could cause confusion if the individual checks with the consumer reporting agency before the adverse data is recorded in his or her file. From a practical standpoint, the adverse effect of the reporting does not occur until the individual is denied a benefit based, in whole or in part, on a credit report containing the adverse information. As required by the Fair Credit Reporting Act (15 U.S.C. 1618 et. seq. (1970)), in communicating such denial of a benefit the individual must be informed of the name and address of the consumer reporting agency from which the report was obtained, thereby meeting the intent of Section 2(c)(1)(B) of House bill 1243.

There is also one technical amendment that we would suggest that you make in Sec. 2(c) of the bill to insure that all Federal agencies can report delinquent debtors to credit bureaus. Not all claims of the United States are collected pursuant to the Federal Claims Collection Act. Some agencies, for example, the Internal Revenue Service and the Small Business Administration, have their own statutory authority for settlement of their debts. Therefore, we suggest that on page 3, line 5, you insert after "952(a)" the phrase "or other statutory authority".

Obtaining Better Information on Agencies Debt Collection Activities

When we reviewed the debt collection programs of several agencies it became apparent that the information available on their activities was not adequate to meet the needs of the Congress or executive branch management. In February 1979, we

sent a letter to the Secretary of the Treasury suggesting that his department expand agency reporting requirements to include amounts of accounts and loans receivable past due, aging schedules of delinquent accounts, and amounts written off during specified periods. In addition, we urged Treasury, in cooperation with OMB, to take an active role in monitoring, analyzing, and following up to ensure that agencies are doing as much as they can to collect amounts owed. At the same time, we wrote to the Director of OMB, suggesting a close cooperative effort with Treasury to assure that the Government has an aggressive and effective debt collection program.

Treasury issued special reporting requirements in August 1979 for the financial reports for the end of September 1979. However, differing agency policies, procedures, and accounting systems resulted in problems in complying with these requirements and the information reported was not complete and accurate.

Our recent review of the management and accounting for multifamily mortgages held by the Department of Housing and Urban Development provides a good example of the importance of adequate debt collection information. At the time of our review, HUD held 2,000 multifamily mortgages with an unpaid principal balance of $3.7 billion. Summary accounting information needed to evaluate HUD's collection efforts was not available. As part of our review, we determined that delinquencies amounted to over $500 million. This previously unknown figure was developed by working manually with each of the 2,000 accounts. The $500 million figure showed the severity of the collection problems at HUD and should have been readily available along with other detailed information to evaluate collection efforts.

The need for the Government to improve its debt collection reporting systems received considerable attention during a Government-wide study made by OMB's Debt Collection Project staff. We understand that, as a result, revised reporting requirements are being planned for the year ending September 30, 1981.

From our discussions with the Project staff, it appears that the objectives of these efforts are quite similar to the intent of the reporting provisions in House bill 1243. Although this may be the case, the legislation would provide further assurance that the information needed by the Congress and executive branch management will be produced and that agencies will be more accountable for their collection activities.

Additional Legislative Actions Needed

In addition to the issues addressed by House bill 1243, we believe that legislation is needed to:

--provide authority to collect general debts owed the Government by offset from a Federal employee's salary,

--recognize that the 6-year statute of limitations does not prohibit the offset of debts owed to the Government, and

--remove the restriction on redisclosure of a debtor's address that has been obtained from the Internal Revenue Service.

We are providing proposed language for the needed legislation. (See enclosure.)

Collection From Federal Employees

Under present legislation, the salary of a Federal employee may not be withheld to satisfy general debts owed the Government. An employee's salary may be withheld only to satisfy an erroneous payment the agency made to the employee, or for travel or moving expense advances paid to the employee.

Consequently many Federal employee debts are referred to the Office of Personnel Management for future offset from annuities or from lump sum withdrawals of retirement contributions. By the time the Government attempts to collect these debts through offset, the claims are often stale, the facts are forgotten, and court action is barred.

We recommend that the Congress amend 5 U.S.C. 5514 to provide authority to collect general debts owed the Government by offset from a Federal employee's salary.

In regard to this type of offset as well as other offset authorities already provided for in law, we are presently working with the Department of Justice to revise the Federal Claims Collections Standards in order to assure that claimant agencies provide due process protections to employees or retirees before initiating offset actions. Such revisions would include instructions that the agencies should extend an opportunity for a pre-offset oral hearing in cases where creditability and veracity are issues in determining the validity of the debt.

Clarification of the Statute of Limitations

Also, the Government's ability to collect debts by offset against payments due employees or others to whom monies are owed is affected by the Justice Department's views on the effect of the statute of limitations. In September 1978, Justice advised the Office of Personnel Management that the 6-year statute of limitations 1/ prevents the Government from collecting debts over 6 years old by means of offset.

Later, we issued a decision (B-189154) that was in direct disagreement with Justice's opinion and in November 1979, Justice reaffirmed its original position.

Because many debts are now or will be over 6 years old before offset becomes possible, we recommend that the statute of limitations be amended to explicitly recognize that the 6-year limitation does not prohibit the offset of debts owed the Government.

We also believe that the record surrounding this proposed legislation should make it clear that the 6-year limitation applies only to the right to bring suit, and that any lawful administrative efforts to collect debts is unaffected by this limitation. Our opinion on this matter is stated in 58 Comp. Gen. 501, as follows:

> "The general rule is that statutes of limitations applicable to suits for debts or money demands bar or run only against the remedy (the right to bring suit) to which they apply and do not discharge the debt or extinguish, or even impair, the right or obligation, either in law or in fact, and the creditor may avail himself of every other lawful means of realizing on the debt or obligation. See Mascot Oil Co. v. United States, 42 F.2d 309 (Ct. Cl. 1930), affirmed 282 U.S. 434; and 33 Comp. Gen. 66 (1953). See also Ready-Mix Concrete Co. v. United States, 130 F. Supp. 390 (Ct. Cl. 1955).

Using IRS locator assistance

Legislation is needed to remove a restriction on redisclosure of a debtor's address that has been obtained from

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1/28 U.S.C. 2415.

the Internal Revenue Service. A provision of the Tax Reform Act of 1976 1/ specifically authorizes the Director of IRS to furnish locator assistance to agencies for debt collection purposes. We had sought this provision because experience shows that the locator assistance available from IRS is far more effective and less costly (currently only 11 cents for each address) than any alternative locator technique.

The usefulness of the IRS address information has been greatly restricted, however, because the Tax Reform Act precludes redisclosure of an address obtained from IRS to credit bureaus or other contractors who are assisting in the collection effort. This is a problem, for example, in complying with the requirement of the Federal Claims Collection Standards that debts sent to Justice for collection be accompanied by reasonably current credit data. The purpose of the requirement, which is usually met by obtaining a commercial credit report, is to avoid fruitless legal action against debtors who cannot pay.

This problem indirectly affects House bill 1243 because unless this restriction is lifted, agencies will not be able to report debtors whose addresses were obtained from IRS to commercial credit bureaus to affect the debtors' credit standings.

In a recent statement by Senator Sasser before the "Oversight of the Internal Revenue Service" Subcommittee of the Senate Finance Committee, he pointed out that "the present IRS restriction on redisclosure of essential IRS address information has the effect of precluding Federal agencies from fully carrying out their collection responsibilities".

We urge your consideration of these additional legislative changes and trust that all of the foregoing will be of assistance to you.

Sincerely yours,

M[illegible] SCOGLIN

Acting Comptroller General
of the United States

Enclosure

1/26 U.S.C. 6103(m)(2).

PROPOSED AMENDMENT TO 5 U.S.C. §5514(a)
TO PERMIT OFFSET OF GENERAL GOVERNMENT DEBTS
FROM CURRENT SALARIES OF FEDERAL EMPLOYEES

Section 5514(a) of title 5, United States Code, is amended to read as follows:

"(a) When the head of an agency concerned or his designee determines or is advised that an employee, a member of the armed forces, or a Reserve of the armed forces, is indebted to the United States because of a payment made by the agency or any other agency to or on behalf of the individual arising out of any transaction, the amount of the indebtedness may be collected in monthly installments, or at officially established regular pay period intervals, by deduction in reasonable amounts from the current pay account of the individual. The deductions may be made only from basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay. Collection shall be made over a period not greater than the anticipated period of active duty or employment, as the case may may be. The amount deducted for any period may not exceed two-thirds of the pay from which the deduction is made, unless the deduction of a greater amount is necessary to make the collection within the period of anticipated active duty or employment. If the individual retires or resigns, or if his employment or period of active duty otherwise ends, before collection of the amount of the indebtedness is completed, deduction shall be made from later payments of any nature due the individual from the agency concerned. Collections made shall be in conformity with the standards promulgated pursuant to the Federal Claims Collection Act of 1966."

Section 5514(a) as amended (new language underlined; deleted language bracketed):

"(a) When the head of an agency concerned or his designee determines <u>or is advised</u> that an employee, a member of the armed forces, or a Reserve of the armed forces, is indebted to the United States because of a[n erroneous] payment made by the agency <u>or any other agency</u> to or on behalf of the individual <u>arising out of any transaction</u>, the amount of the indebtedness may be collected in monthly installments, or at officially established regular pay period intervals, by deduction in reasonable amounts from the current pay account of the individual. The deductions may be made only from basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not

entitled to basic pay, other authorized pay. Collection shall be made over a period not greater than the anticipated period of active duty or employment, as the case may be. The amount deducted for any period may not exceed two-thirds of the pay from which the deduction is made, unless the deduction of a greater amount is necessary to make the collection within the period of anticipated active duty or employment. If the individual retires or resigns, or if his employment or period of active duty otherwise ends, before collection of the amount of the indebtedness is completed, deduction shall be made from later payments of any nature due the individual from the agency concerned. Collections made shall be in conformity with the standards promulgated pursuant to the Federal Claims Collection Act of 1966."

ENCLOSURE I

PROPOSED AMENDMENT TO 28 U.S.C. §2415
TO MAKE CLEAR THAT STATUTE OF LIMITATIONS
DOES NOT BAR ADMINISTRATIVE OFFSET OF CLAIMS

Section 2415 of title 28, United States Code, is amended by adding the following new subsection (i):

> "(i) The provisions of this section shall not prevent the United States or an officer or agency thereof from collecting by means of administrative offset any claim of the United States or an officer or agency thereof from money payable to or held on behalf of an individual."

PROPOSED AMENDMENT TO 26 U.S.C. §6103(m)
TO PERMIT REDISCLOSURE OF MAILING ADDRESSES

Section 6103(m)(2) of Title 26, United States Code, is amended to read as follows:

> "(2) Upon written request the Secretary may disclose the mailing address of a taxpayer to officers and employees of an agency personally and directly engaged in carrying out collection activities relating to such taxpayer in accordance with the Federal Claims Collection Act of 1966 or other statutory authority. Any mailing address disclosed in accordance with the preceeding sentence shall no longer be considered 'return information' as defined in subsection (b)(2) of this section."

Section 6103(m)(2) of Title 26 United States Code, is as amended (new language underlined; deleted language bracketed):

> "(2) Upon written request, the Secretary may disclose the mailing address of a taxpayer to officers and employees of an agency personally and directly engaged in [, and solely for their use in, preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding) pertaining to the] carrying out collection [or compromise of a Federal claim against such taxpayer] activities relating to such taxpayer in accordance with [the provisions of section (3) of] the Federal Claims Collection Act of 1966 or other statutory authority. Any mailing address disclosed in accordance with the preceeding sentence shall no longer be considered 'return information' as defined in subsection (b)(2) of this section."