tion which was a foreign personal holding company (as defined in section 552) for any taxable year shall file a return with respect to such taxable year setting forth—

"(1) the shareholder information required by subsection (b),

"(2) the income information required by subsection (c), and

"(3) such other information with respect to such corporation as the Secretary shall by forms or regulations prescribe as necessary for carrying out the purposes of this title.

"(b) SHAREHOLDER INFORMATION.—The shareholder information required by this subsection with respect to any taxable year shall be—

"(1) the name and address of each person who at any time during such taxable year held any share in the corporation,

"(2) a description of each class of shares and the total number of shares of such class outstanding at the close of the taxable year,

"(3) the number of shares of each class held by each person, and

"(4) any changes in the holdings of shares during the taxable year.

For purposes of paragraphs (1), (3), and (4), the term 'share' includes any security convertible into a share in the corporation and any option granted by the corporation with respect to any share in the corporation.

"(c) INCOME INFORMATION.—The income information required by this subsection for any taxable year shall be the gross income, deductions, credits, taxable income, and undistributed foreign personal holding company income of the corporation for the taxable year.

"(d) TIME AND MANNER FOR FURNISHING INFORMATION.—The information required under subsection (a) shall be furnished at such time and in such manner as the Secretary shall by forms and regulations prescribe.

"(e) DEFINITION AND SPECIAL RULES.—

"(1) 10-PERCENT SHAREHOLDER.—For purposes of this section, the term '10-percent shareholder' means any individual who owns directly or indirectly (within the meaning of section 554) 10 percent or more in value of the outstanding stock of a foreign corporation.

"(2) TIME FOR MAKING DETERMINATIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the determination of whether any person is an officer, director, or 10-percent shareholder with respect to any foreign corporation shall be made as of the date on which the return is required to be filed.

"(B) SPECIAL RULE.—If after the application of subparagraph (A) no person is required to file a return under subsection (a) with respect to any foreign corporation for any taxable year, the determination of whether any person is an officer, director, or 10-percent shareholder with respect to such foreign corporation shall be made on the last day of such taxable year on which there was such a person who was a United States citizen or resident.

"(3) 2 OR MORE PERSONS REQUIRED TO FURNISH INFORMATION WITH RESPECT TO SAME FOREIGN CORPORATION.—If, but for this paragraph, 2 or more persons would be required to furnish information under subsection (a) with respect to the same foreign corporation for the same taxable year, the Secretary may by regulations provide that such information shall be required only from 1 person."

(b) APPLICATION OF PENALTY.—

(1) Subsection (a) of section 6679 is amended by striking out "section 6046" and inserting in lieu thereof "section 6035 or 6046".

(2) The section heading for section 6679 is amended to read as follows:

"SEC. 6679. FAILURE TO FILE RETURNS OR SUPPLY INFORMATION UNDER SECTION 6035 OR 6046."

(3) The item relating to section 6679 in the table of sections for subchapter B of chapter 68 is amended to read as follows:

"Sec. 6679. Failure to file returns or supply information under section 6035 or 6046."

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of foreign corporations beginning after the date of the enactment of this Act.

SEC. 341. AUTHORITY TO DELAY DATE FOR FILING CERTAIN RETURNS RELATING TO FOREIGN CORPORATIONS AND FOREIGN TRUSTS.

(a) FOREIGN CORPORATIONS.—Subsection (d) of section 6046 (relating to time for filing returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock) is amended by inserting before the period at the end thereof the following: "(or on or before such later day as the Secretary may by forms or regulations prescribe)".

(b) FOREIGN TRUSTS.—Subsection (a) of section 6048 (relating to returns as to certain foreign trusts) is amended by inserting "(or on or before such later day as the Secretary may by regulations prescribe)" after "the 90th day".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns filed after the date of the enactment of this Act.

SEC. 342. WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS.

Not later than 2 years after the date of the enactment of this Act, the Secretary of the Treasury or his delegate shall prescribe regulations establishing certification procedures, refund procedures, or other procedures which ensure that any benefit of any treaty relating to withholding of tax under sections 1441 and 1442 of the Internal Revenue Code of 1954 is available only to persons entitled to such benefit.

SEC. 343. TECHNICAL AMENDMENT RELATING TO PENALTY UNDER SECTION 905(c).

(a) GENERAL RULE.—Subsection (c) of section 905 (relating to adjustments on payment of accrued taxes) is amended by striking out the last sentence.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall have the same effect as if the last sentence of section 905(c) had never been enacted.

SUBTITLE G—MODIFICATION OF INTEREST PROVISIONS

SEC. 344. INTEREST COMPOUNDED DAILY.

(a) IN GENERAL.—Subchapter C of chapter 67 (relating to determination of rate of interest) is amended by adding at the end thereof the following new section:

"SEC. 6622. INTEREST COMPOUNDED DAILY.

"(a) GENERAL RULE.—In computing the amount of any interest required to be paid under this title or sections 1961(c)(1) or 2411 of title 28, United States Code, by the Secretary or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily.

"(b) EXCEPTION FOR PENALTY FOR FAILURE TO FILE ESTIMATED TAX.—Subsection (a) shall not apply for purposes of computing the amount of any addition to tax under section 6654 or 6655."

(b) CONFORMING AMENDMENTS.—

(1) Section 6601(e) (relating to applicable rules) is amended by striking out paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) The table of sections for subchapter C of chapter 67 is amended by inserting after section 6621 the following new item:

"Sec. 6622. Interest compounded daily."

(3)(A) The heading for subchapter C of chapter 67 is amended by inserting "; Compounding of Interest" after "Rate".

(B) The item relating to subchapter C in the table of subchapters for chapter 67 is amended by inserting "; compounding of interest" after "rate".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to interest accruing after December 31, 1982.

SEC. 345. DETERMINATION OF RATE OF INTEREST TO BE MADE SEMIANNUALLY.

(a) IN GENERAL.—Subsection (b) of section 6621 (relating to determination of rate of interest) is amended to read as follows:

"(b) ADJUSTMENT OF INTEREST RATE.—

"(1) ESTABLISHMENT OF ADJUSTED RATE.—If the adjusted prime rate charged by banks (rounded to the nearest full percent)—

"(A) during the 6-month period ending on September 30 of any calendar year, or

"(B) during the 6-month period ending on March 31 of any calendar year,

differs from the interest rate in effect under this section on either such date, respectively, then the Secretary shall establish, within 15 days after the close of the applicable 6-month period, an adjusted rate of interest equal to such adjusted prime rate.

"(2) EFFECTIVE DATE OF ADJUSTMENT.—Any adjusted rate of interest established under paragraph (1) shall become effective—

"(A) on January 1 of the succeeding year in the case of an adjustment attributable to paragraph (1)(A), and

"(B) on July 1 of the same year in the case of an adjustment attributable to paragraph(1)(B)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to adjustments taking effect on January 1, 1983.

SEC. 346. RESTRICTIONS ON PAYMENT OF INTEREST FOR CERTAIN PERIODS.

(a) INTEREST WITH RESPECT TO DELINQUENT RETURNS.—Section 6611(b) (relating to period for which interest on refunds is paid) is amended by adding at the end thereof the following new paragraph:

"(3) LATE RETURNS.—Notwithstanding paragraph (1) or (2) in the case of a return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), no interest shall be allowed or paid for any day before the date on which the return is filed."

(b) NO INTEREST IF RETURN NOT IN PROCESSIBLE FORM.—Section 6611 (relating to interest on overpayments) is amended by redesignating subsection (i) as subsection (j) and by adding after subsection (h) the following new subsection:

"(i) NO INTEREST UNTIL RETURN IN PROCESSIBLE FORM.—

"(1) For purposes of subsections (b)(3), (e) and (h), a return shall not be treated as filed until it is filed in processible form.

"(2) For purposes of paragraph (1), a return is in a processible form if—

"(A) such return is filed on a permitted form, and

"(B) such return contains—

"(i) the taxpayer's name, address, and identifying number and the required signature, and

"(ii) sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return."

(c) MODIFICATION OF INTEREST IN THE CASE OF CARRYBACKS.—

(1) OVERPAYMENTS.—

(A) Paragraph (1) of section 6611(f) (relating to refund of income tax caused by carryback or adjustment for unused deductions) is amended by striking out "the close of the taxable year" and inserting in lieu thereof "the filing date for the taxable year".

(B) Subparagraph (A) of section 6611(f)(2) is amended by striking out "the close of" each place it appears and inserting in lieu thereof "the filing date for".

(C) Subsection (f) of section 6611 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) SPECIAL RULES FOR PARAGRAPHS (1) AND (2).—

"(A) FILING DATE.—For purposes of this subsection, the term 'filing date' means the last date prescribed for filing the return of tax imposed by subtitle A for the taxable year (determined without regard to extensions).

"(B) COORDINATION WITH SUBSECTION (e).—

"(i) IN GENERAL.—FOR PURPOSES OF SUBSECTION (e)—

"(I) any overpayment described in paragraph (1) or (2) shall be treated as an overpayment for the loss year, and

"(II) such subsection shall be applied with respect to such overpayment by treating the return for the loss year as not filed before claim for such overpayment is filed.

"(ii) LOSS YEAR.—For purposes of this subparagraph, the term 'loss year' means—

"(I) in the case of a carryback of a net operating loss or net capital loss, the taxable year in which such loss arises, and

"(II) in the case of a credit carryback, the taxable year in which such credit carryback arises (or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, a capital loss carryback, or other credit carryback from a subsequent taxable year, such subsequent taxable year)."

(D) Subsection (g) of section 6611 is amended by striking out "the close of the taxable year" and inserting in lieu thereof "the filing date (as defined in subsection (f)(3)) for the taxable year".

(2) UNDERPAYMENTS.—

(A) Paragraph (1) of section 6601(d) (relating to income tax reduced by carryback for adjustment for certain unused deductions) is amended by striking out "the last day of the taxable year" and inserting in lieu thereof "the filing date for the taxable year".

(B) Subparagraph (A) of section 6601(d)(2) is amended by striking out "the last day of the" each place it appears and inserting in lieu thereof "the filing date for".

(C) Subsection (d) of section 6601 is amended by adding at the end thereof the following new paragraph:

"(4) FILING DATE.—For purposes of this subsection, the term 'filing date' has the meaning given to such term by section 6611(f)(3)(A)."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a) and (b) shall apply to returns filed after the 30th day after the date of the enactment of this Act.

(2) SUBSECTION (c).—The amendments made by subsection (c) shall apply to interest accruing after the 30th day after the date of the enactment of this Act.

SUBTITLE H—TAXPAYER SAFEGUARD AMENDMENTS

SEC. 347. INCREASE IN CERTAIN EXEMPTIONS FROM LEVY.

(a) GENERAL RULE.—

(1) FUEL, PROVISIONS, FURNITURE, AND PERSONAL EFFECTS.—Paragraph (2) of section 6334(a) (relating to property exempt from levy) is amended by striking out "$500" and inserting in lieu thereof "$1,500".

(2) BOOKS AND TOOLS OF A TRADE, BUSINESS, OR PROFESSION.—Paragraph (3) of section 6334(a) is amended by striking out "$250" and inserting in lieu thereof "$1,000".

(3) WAGES, SALARY, OR OTHER INCOME.—Paragraph (1) of section 6334(d) (relating to exempt amount of wages, salary, or other income) is amended—

(A) by striking out "$50" and inserting in lieu thereof "$75", and

(B) by striking out "$15" and inserting in lieu thereof "$25".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to levies made after December 31, 1982.

SEC. 348. REQUIRED RELEASE OF LIEN.

(a) GENERAL RULE.—So much of subsection (a) of section 6325 (relating to release of lien) as precedes paragraph (1) thereof is amended to read as follows:

"(a) RELEASE OF LIEN.—Subject to such regulations as the Secretary may prescribe, the Secretary shall issue a certificate of release of any lien imposed with respect to any internal revenue tax not later than 30 days after the day on which—".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to liens—

(1) which are filed after December 31, 1982,

(2) which are satisfied after December 31, 1982, or

(3) with respect to which the taxpayer after December 31, 1982, requests the Secretary of the Treasury or his delegate to issue a certificate of release on the grounds that the liability was satisfied or legally unenforceable.

SEC. 349. REQUIREMENT OF TIMELY NOTICE OF LEVY.

(a) GENERAL RULE.—Section 6331 (relating to levy and distraint) is amended by redesignating subsection (e) as subsection (f) and by striking out subsection (d) and inserting in lieu thereof the following new subsections:

"(d) REQUIREMENT OF NOTICE BEFORE LEVY.—

"(1) IN GENERAL.—Levy may be made under subsection (a) upon the salary or wages or other property of any person with respect to any unpaid tax only after the Secretary has notified such person in writing of his intention to make such levy.

"(2) 10-DAY REQUIREMENT.—The notice required under paragraph (1) shall be—

"(A) given in person,

"(B) left at the dwelling or usual place of business of such person, or

"(C) sent by certified or registered mail to such person's last known address,

no less than 10 days before the day of the levy.

"(3) JEOPARDY.—Paragraph (1) shall not apply to a levy if the Secretary has made a finding under the last sentence of subsection (a) that the collection of tax is in jeopardy.

"(e) CONTINUING LEVY ON SALARY AND WAGES.—

"(1) EFFECT OF LEVY.—The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until the liability out of which such levy arose is satisfied or becomes unenforceable by reason of lapse of time.

"(2) RELEASE AND NOTICE OF RELEASE.—With respect to a levy described in paragraph (1), the Secretary shall promptly release the levy when the liability out of which such levy arose is satisfied or becomes unenforceable by reason of lapse of time, and shall promptly notify the person upon whom such levy was made that such levy has been released."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to levies made after December 31, 1982.

SEC. 349A. EXTENSION OF PERIOD FOR REDEMPTION OF REAL PROPERTY.

(a) GENERAL RULE.—Paragraph (1) of section 6337(b) (relating to period for redemption of real estate after sale) is amended by striking out "120 days" and inserting in lieu thereof "180 days".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to property sold after the date of the enactment of this Act.

SEC. 350. AMOUNT OF DAMAGES IN CASE OF WRONGFUL LEVY.

(a) GENERAL RULE.—Subparagraph (C) of section 7426(b)(2) (relating to amount of damages) is amended to read as follows:

"(C) if such property was sold, grant a judgment for an amount not exceeding the greater of—

"(i) the amount received by the United States from the sale of such property, or

"(ii) the fair market value of such property immediately before the levy."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to levies made after December 31, 1982.

SUBTITLE I—OTHER PROVISIONS

SEC. 351. DISALLOWANCE OF DEDUCTIONS RELATING TO NARCOTICS TRAFFICKING.

(a) IN GENERAL.—Part IX of subchapter B of chapter 1 (relating to items not deductible) is amended by adding at the end thereof the following new section:

"SEC. 280E. EXPENDITURES IN CONNECTION WITH THE ILLEGAL SALE OF DRUGS.

"No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted."

(b) CONFORMING AMENDMENT.—The table of sections for part IX of subchapter B of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Sec. 280E. Expenditures in connection with the illegal sale of drugs."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act in taxable years ending after such date.

SEC. 352. SENSE OF CONGRESS WITH RESPECT TO PROVIDING OF ADDITIONAL FUNDS TO INTERNAL REVENUE SERVICE.

It is the sense of the Congress that there be appropriated for the use of the Internal Revenue Service to provide additional staff—

(1) for fiscal year 1983, the amounts proposed in the President's budget for fiscal year 1983, and

(2) such amounts in excess of the amount requested for such purpose in the President's proposed budgets as may be necessary to provide sufficient improved enforcement to increase revenues by $1 billion in fiscal year 1984 and $2 billion in fiscal year 1985.

SEC. 353. REPORT ON FORMS.

Not later than June 30, 1983, the Secretary of the Treasury or his delegate shall study and report to the Congress methods of modifying the design of the forms used by the Internal Revenue Service to achieve greater accuracy in the reporting of income and the matching of information reports and returns with the returns of tax imposed by

chapter 1 of the Internal Revenue Code of 1954.

SEC. 354. EXEMPTION OF VETERANS' ORGANIZATIONS.

(a) IN GENERAL.—Paragraph (19) of section 501(c) (relating to exemption of veterans' organizations) is amended—

(1) by striking out "war veterans" the first place it appears and inserting in lieu thereof "past or present members of the Armed Forces of the United States", and

(2) by amending subparagraph (B) to read as follows:

"(B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, or widowers of past or present members of the Armed Forces of the United States or of cadets, and".

(b) ASSOCIATION ORGANIZED BEFORE 1880.—Subsection (c) of section 501 (relating to exempt organizations) is amended by adding at the end thereof the following new paragraph:

"(23) any association organized before 1880 more than 25 percent of the members of which are present or past members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents."

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 355. AMENDMENT TO COMMUNICATIONS ACT OF 1934.

Title III of the Communications Act of 1934 is amended by inserting immediately after section 330 therein the following new section:

"VERY HIGH FREQUENCY STATIONS

"SEC. 331. It shall be the policy of the Federal Communications Commission to allocate channels for very high frequency commercial television broadcasting in a manner which ensures that not less than one such channel shall be allocated to each State, if technically feasible. In any case in which licensee of a very high frequency commercial television broadcast station notifies the Commission to the effect that such licensee will agree to the reallocation of its channel to a community within a State in which there is allocated no very high frequency commercial television broadcast channel at the time such notification, the Commission shall, notwithstanding any other provision of law, order such reallocation and issue a license to such licensee for that purpose pursuant to such notification for a term of not to exceed 5 years as provided in section 307(d) of the Communications Act of 1934.".

SEC. 356. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) IN GENERAL.— Subsection (i) of section 6103 (relating to disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration) is amended by redesignating paragraph (6) as paragraph (7) and by striking out paragraphs (1), (2), (3), (4), and (5) and inserting in lieu thereof the following:

"(1) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR USE IN CRIMINAL INVESTIGATIONS.—

"(A) IN GENERAL.—Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under subparagraph (B), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal agency who are personally and directly engaged in—

"(i) preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is or may be a party,

"(ii) any investigation which may result in such a proceeding, or

"(iii) any Federal grand jury proceeding pertaining to enforcement of such a criminal statute to which the United States or such agency is or may be a party,

solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.

"(B) APPLICATION FOR ORDER.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, any United States attorney, any special prosecutor appointed under section 593 of title 28, United States Code, or any attorney in charge of a criminal division organized crime strike force established pursuant to section 510 of title 28, United States Code, may authorize an application to a Federal district court judge or magistrate for the order referred to in subparagraph (A). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that—

"(i) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed,

"(ii) there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act, and

"(iii) the return or return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning such act, and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

"(2) DISCLOSURE OF RETURN INFORMATION OTHER THAN TAXPAYER RETURN INFORMATION FOR USE IN CRIMINAL INVESTIGATIONS.—

"(A) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a request which meets the requirements of subparagraph (B) from the head of any Federal agency or the Inspector General thereof, or, in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, any United States attorney, any special prosecutor appointed under section 593 of title 28, United States Code, or any attorney in charge of a criminal division organized crime strike force established pursuant to section 510 of title 28, United States Code, the Secretary shall disclose return information (other than taxpayer return information) to officers and employees of such agency who are personally and directly engaged in—

"(i) preparation for any judicial or administrative proceeding described in paragraph (1)(A)(i),

"(ii) any investigation which may result in such a proceeding, or

"(iii) any grand jury proceeding described in paragraph (1)(A)(iii),

solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.

"(B) REQUIREMENTS.—A request meets the requirements of this subparagraph if the request is in writing and sets forth—

"(i) the name and address of the taxpayer with respect to whom the requested return information relates;

"(ii) the taxable period or periods to which such return information relates;

"(iii) the statutory authority under which the proceeding or investigation described in subparagraph (A) is being conducted; and

"(iv) the specific reason or reasons why such disclosure is, or may be, relevant to such proceeding or investigation.

"(C) TAXPAYER IDENTITY.—For purposes of this paragraph, a taxpayer's identity shall not be treated as taxpayer return information.

"(3) DISCLOSURE OF RETURN INFORMATION TO APPRISE APPROPRIATE OFFICIALS OF CRIMINAL ACTIVITIES OR EMERGENCY CIRCUMSTANCES.—

"(A) POSSIBLE VIOLATIONS OF FEDERAL CRIMINAL LAW.—

"(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may disclose in writing return information (other than taxpayer return information) which may constitute evidence of a violation of any Federal criminal law (not involving tax administration) to the extent necessary to apprise the head of the appropriate Federal agency charged with the responsibility of enforcing such law. The head of such agency may disclose such return information to officers and employees of such agency to the extent necessary to enforce such law.

"(ii) TAXPAYER IDENTITY.—If there is return information (other than taxpayer return information) which may constitute evidence of a violation by any taxpayer of any Federal criminal law (not involving tax administration), such taxpayer's identity may also be disclosed under clause (i).

"(B) EMERGENCY CIRCUMSTANCES.—

"(i) DANGER OF DEATH OR PHYSICAL INJURY.—Under circumstances involving an imminent danger of death or physical injury to any individual, the Secretary may disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal or State law enforcement agency of such circumstances.

"(ii) FLIGHT FROM FEDERAL PROSECUTION.—Under circumstances involving the imminent flight of any individual from Federal prosecution, the Secretary may disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal law enforcement agency of such circumstances.

"(4) USE OF CERTAIN DISCLOSED RETURNS AND RETURN INFORMATION IN JUDICIAL OR ADMINISTRATIVE PROCEEDINGS.—

"(A) RETURNS AND TAXPAYER RETURN INFORMATION.—Except as provided in subparagraph (c), any return or taxpayer return information obtained under paragraph (1) may be disclosed in any judicial or administrative proceeding pertaining to enforcement of a specifically designated Federal criminal statute or related civil forfeiture (not involving tax administration) to which the United States or a Federal agency is a party—

"(i) if the court finds that such return or taxpayer return information is probative of a matter in issue relevant in establishing the commissison of a crime or the guilt or liability of a party, or

"(ii) to the extent required by order of the court pursuant to section 3500 of title 18, United States Code, or rule 16 the Federal Rules of Criminal Procedure.

"(B) RETURN INFORMATION (OTHER THAN TAXPAYER RETURN INFORMATION).—Except as provided in subparagraph (C), any return information (other than taxpayer return information) obtained under paragraph (1), (2), or (3)(A) may be disclosed in any judicial or administrative proceeding pertaining to

enforcement of a specifically designated Federal criminal statute or related civil forfeiture (not involving tax administration) to which the United States or a Federal agency is a party.

"(C) CONFIDENTIAL INFORMANT; IMPAIRMENT OF INVESTIGATIONS.—No return or return information shall be admitted into evidence under subparagraph (A)(i) or (B) if the Secretary determines and notifies the Attorney General or his delegate or the head of the Federal agency that such admission would identify a confidential informant or seriously impair a civil or criminal tax investigation.

"(D) CONSIDERATION OF CONFIDENTIALITY POLICY.—In ruling upon the admissibility of returns or return information, and in the issuance of an order under subparagraph (A)(ii), the court shall give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title.

"(E) REVERSIBLE ERROR.—The admission into evidence of any return or return information contrary to the provisions of this paragraph shall not, as such, constitute reversible error upon appeal of a judgment in the proceeding.

"(5) DISCLOSURE TO LOCATE FUGITIVES FROM JUSTICE.—

"(A) IN GENERAL.—Except as provided in paragraph (6), the return of an individual or return information with respect to such individual shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under subparagraph (B), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal agency exclusively for use in locating such individual.

"(B) APPLICATION FOR ORDER.—Any person described in paragraph (1)(B) may authorize an application to a Federal district court judge or magistrate for an order referred to in subparagraph (A). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that—

"(i) a Federal arrest warrant relating to the commission of a Federal felony offense has been issued for an individual who is a fugitive from justice,

"(ii) the return of such individual or return information with respect to such individual is sought exclusively for use in locating such individual, and

"(iii) there is reasonable cause to believe that such return or return information may be relevant in determining the location of such individual.

"(6) CONFIDENTIAL INFORMANTS; IMPAIRMENT OF INVESTIGATIONS.—The Secretary shall not disclose any return or return information under paragraph (1), (2), (3)(A), (5), or (7) if the Secretary determines (and, in the case of a request for disclosure pursuant to a court order described in paragraph (1)(B) or (5)(B), certifies to the court) that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (p) of section 6103 (relating to procedure and recordkeeping) is amended—

(A) by striking out "(6)(A)(ii)" in paragraph (3)(A) and inserting in lieu thereof "(7)(A)(ii)",

(B) by striking out "(d)" in paragraph (3)(C)(i) and inserting in lieu thereof "(d), (i)(3)(B)(i),",

(C) by striking out "such requests" in paragraph (3)(C)(i)(II) and inserting in lieu thereof "such requests or otherwise",

(D) by striking out "(i)(1), (2), or (5)" each place it appears in paragraph (4) and inserting in lieu thereof "(i)(1), (2), (3), or (5)",

(E) by striking out "(d)" each place it appears in paragraph (4) and inserting in lieu thereof "(d), (i)(3)(B)(i),", and

(F) by striking out "subsection (i)(6)(A)(ii)" in paragraph (6)(B)(i) and inserting in lieu thereof "subsection (i)(7)(A)(ii)".

(2) Paragraph (2) of section 7213(a) (relating to unauthorized disclosure of information) is amended by striking out "(d)" and inserting in lieu thereof "(d), (i)(3)(B)(i),".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the day after the date of the enactment of this Act.

SEC. 357. CIVIL DAMAGES AGAINST UNITED STATES FOR UNAUTHORIZED DISCLOSURES BY AN EMPLOYEE.

(a) IN GENERAL.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by redesignating section 7431 as section 7432 and inserting after section 7430 the following new section:

"SEC. 7430. CIVIL DAMAGES FOR UNAUTHORIZEDD DISCLOSURE OF RETURNS AND RETURN INFORMATION.

"(a) IN GENERAL.—

"(1) DISCLOSURE BY EMPLOYEE OF UNITED STATES.—If any officer or employee of the United States knowingly, or by reason of negligence, discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

"(2) DISCLOSURE BY A PERSON WHO IS NOT AN EMPLOYEE OF UNITED STATES.—If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against such person in a district court of the United States.

"(b) NO LIABILITY FOR GOOD FAITH BUT ERRONEOUS INTERPRETATION.—No liability shall arise under this section with respect to any disclosure which results from a good faith, but erroneous, interpretation of section 6103.

"(c) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

"(1) the greater of—

"(A) $1,000 for each act of unauthorized disclosure of a return or return information with respect to which such defendant is found liable, or

"(B) the sum of—

"(i) the actual damages sustained by the plaintiff as a result of such unauthorized disclosure, plus

"(ii) in the case of a willful disclosure or a disclosure which is the result of gross negligence, punitive damages, plus

"(2) the costs of the action.

"(d) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized disclosure.

"(e) RETURN; RETURN INFORMATION.—For purposes of this section, the terms 'return' and 'return information' have the respective meanings given such terms in section 6103(b).".

(b) CONFORMING AMENDMENTS.—

(1) Section 7217 (relating to civil damages for unauthorized disclosure of returns and return information) is hereby repealed.

(2) The table of sections for part I of subchapter A of chapter 75 is amended by striking out the item relating to section 7217.

(3) The table of sections for subchapter B of chapter 76 is amended by striking out the item relating to section 7431 and inserting in lieu thereof the following:

"Sec. 7431. Civil damages for unauthorized disclosure of returns and return information.

"Sec. 7432. Cross references."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to disclosures made after the date of enactment of this Act.

SEC. 358. DISCLOSURE FOR USE IN CERTAIN AUDITS BY GENERAL ACCOUNTING OFFICE.

(a) IN GENERAL.—Paragraph (7) of section 6103(i) (relating to disclosure to Comptroller General), as redesignated by section 396(a), is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) AUDITS OF OTHER AGENCIES.—

"(i) IN GENERAL.—Nothing in this section shall prohibit any return or return information obtained under this title by any Federal agency (other than an agency referred to in subparagraph (A)) for use in any program or activity from being open to inspection by, or disclosure to, officers and employees of the General Accounting Office if such inspection or disclosure is—

"(I) for purposes of, and to the extent necessary in, making an audit authorized by law of such program or activity, and

"(II) pursuant to a written request by the Comptroller General of the United States to the head of such Federal agency.

"(ii) INFORMATION FROM SECRETARY.—If the Comptroller General of the United States determines that the returns or return information available under clause (i) are not sufficient for purposes of making an audit of any program or activity of a Federal agency (other than an agency referred to in subparagraph (A)), upon written request by the Comptroller General to the Secretary, returns and return information (of the type authorized by subsection (l) or (m) to be made available to the Federal agency for use in such program or activity) shall be open to inspection by, or disclosure to, officers and employees of the General Accounting Office for the purpose of, and to the extent necessary in, making such audit.

"(iii) REQUIREMENT OF NOTIFICATION UPON COMPLETION OF AUDIT.—Within 90 days after the completion of an audit with respect to which returns or return information were opened to inspection or disclosed under clause (i) or (ii), the Comptroller General of the United States shall notify in writing the Joint Committee on Taxation of such completion. Such notice shall include—

"(I) a description of the use of the returns and return information by the Federal agency involved,

"(II) such recommendations with respect to the use of returns and return information by such Federal agency as the Comptroller General deems appropriate, and

"(III) a statement on the impact of any such recommendations on confidentiality of returns and return information and the administration of this title.

"(iv) CERTAIN RESTRICTIONS MADE APPLICABLE.—The restrictions contained in subparagraph (A) on the disclosure of any returns or return information open to inspection or disclosed under such subparagraph shall also apply to returns and return informa-

tion open to inspection or disclosed under this subparagraph."

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 6103(i)(7) of such Code (as redesignated by this Act) is amended by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraph (C)".

(2) Subparagraph (C) of section 6103(i)(7) of such Code (as redesignated by this Act) is amended by striking out "subparagraph (A)" and inserting in lieu thereof "subparagraph (A) or (B)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the day after the date of the enactment of this Act.

TITLE IV—TAX TREATMENT OF PARTNERSHIP ITEMS

SEC. 401. SHORT TITLE.

This title may be cited as the "Tax Treatment of Partnership Items Act of 1982".

SEC. 402. TAX TREATMENT OF PARTNERSHIP ITEMS.

(a) GENERAL RULE.—Chapter 63 (relating to assessment) is amended by adding at the end thereof the following new subchapter:

"Subchapter C—Tax Treatment of Partnership Items

"SEC. 6221. TAX TREATMENT DETERMINED AT PARTNERSHIP LEVEL.

"Except as otherwise provided in this subchapter, the tax treatment of any partnership item shall be determined at the partnership level.

"SEC. 6222. PARTNER'S RETURN MUST BE CONSISTENT WITH PARTNERSHIP RETURN OR SECRETARY NOTIFIED OF INCONSISTENCY.

"(a) IN GENERAL.—A partner shall, on the partner's return, treat a partnership item in a manner which is consistent with the treatment of such partnership item on the partnership return.

"(b) NOTIFICATION OF INCONSISTENT TREATMENT.—

"(1) IN GENERAL.—In the case of any partnership item, if—

"(A)(i) the partnership has filed a return but the partner's treatment on his return is (or may be) inconsistent with the treatment of the item on the partnership return, or

"(ii) the partnership has not filed a return, and

"(B) the partner files with the Secretary a statement identifying the inconsistency,

subsection (a) shall not apply to such item.

"(2) PARTNER RECEIVING INCORRECT INFORMATION.—A partner shall be treated as having complied with subparagraph (B) of paragraph (1) with respect to a partnership item if the partner—

"(A) demonstrates to the satisfaction of the Secretary that the treatment of the partnership item on the partner's return is consistent with the treatment of the item on the schedule furnished to the partner by the partnership, and

"(B) elects to have this paragraph apply with respect to that item.

"(c) EFFECT OF FAILURE TO NOTIFY.—In any case—

"(1) described in paragraph (1)(A)(i) of subsection (b), and

"(2) in which the partner does not comply with paragraph (1)(B) of subsection (b),

section 6225 shall not apply to any part of a deficiency attributable to any computational adjustment required to make the treatment of the items by such partner consistent with the treatment of the items on the partnership return.

"(d) ADDITION TO TAX FOR FAILURE TO COMPLY WITH SECTION.—

"For addition to tax in the case of a partner's intentional or negligent disregard of requirements of this section, see section 6653(a).

"SEC. 6223. NOTICE TO PARTNERS OF PROCEEDINGS.

"(a) SECRETARY MUST GIVE PARTNERS NOTICE OF BEGINNING AND COMPLETION OF ADMINISTRATIVE PROCEEDINGS.—The Secretary shall mail to each partner whose name and address is furnished to the Secretary notice of—

"(1) the beginning of an administrative proceeding at the partnership level with respect to a partnership item, and

"(2) the final partnership administrative adjustment resulting from any such proceeding.

A partner shall not be entitled to any notice under this subsection unless the Secretary has received (at least 30 days before it is mailed to the tax matters partner) sufficient information to enable the Secretary to determine that such partner is entitled to such notice and to provide such notice to such partner.

"(b) SPECIAL RULES FOR PARTNERSHIP WITH MORE THAN 100 PARTNERS.—

"(1) PARTNER WITH LESS THAN 1 PERCENT INTEREST.—Except as provided in paragraph (2), subsection (a) shall not apply to a partner if—

"(A) the partnership has more than 100 partners, and

"(B) the partner has a less than 1 percent interest in the profits of the partnership.

"(2) SECRETARY MUST GIVE NOTICE TO NOTICE GROUP.—If a group of partners in the aggregate having a 5 percent or more interest in the profits of a partnership so request and designate one of their members to receive the notice, the member so designated shall be treated as a partner to whom subsection (a) applies.

"(c) INFORMATION BASE FOR SECRETARY'S NOTICES, ETC.—For purposes of this subchapter—

"(1) INFORMATION ON PARTNERSHIP RETURN.—Except as provided in paragraphs (2) and (3), the Secretary shall use the names, addresses, and profits interests shown on the partnership return.

"(2) USE OF ADDITIONAL INFORMATION.—The Secretary shall use additional information furnished to him by the tax matters partner or any other person in accordance with regulations prescribed by the Secretary.

"(3) SPECIAL RULE WITH RESPECT TO INDIRECT PARTNERS.—If any information furnished to the Secretary under paragraph (1) or (2)—

"(A) shows that a person has a profits interest in the partnership by reason of ownership of an interest through 1 or more pass-thru partners, and

"(B) contains the name, address, and profits interest of such person,

then the Secretary shall use the name, address, and profits interest of such person with respect to such partnership interest (in lieu of the names, addresses, and profits interests of the pass-thru partners).

"(d) PERIOD FOR MAILING NOTICE.—

"(1) NOTICE OF BEGINNING OF PROCEEDINGS.—The Secretary shall mail the notice specified in paragraph (1) of subsection (a) to each partner entitled to such notice not later than the 120th day before the day on which the notice specified in paragraph (2) of subsection (a) is mailed to the tax matters partner.

"(2) NOTICE OF FINAL PARTNERSHIP ADMINISTRATIVE ADJUSTMENT.—The Secretary shall mail the notice specified in paragraph (2) of subsection (a) to each partner entitled to such notice not later than the 60th day after the day on which the notice specified in such paragraph (2) was mailed to the tax matters partner.

"(e) EFFECT OF SECRETARY'S FAILURE TO PROVIDE NOTICE.—

"(1) APPLICATION OF SUBSECTION.—

"(A) IN GENERAL.—This subsection applies where the Secretary has failed to mail any notice specified in subsection (a) to a partner entitled to such notice within the period specified in subsection (d).

"(B) SPECIAL RULES FOR PARTNERSHIPS WITH MORE THAN 100 PARTNERS.—For purposes of subparagraph (A), any partner described in paragraph (1) of subsection (b) shall be treated as entitled to notice specified in subsection (a). The Secretary may provide such notice—

"(i) except as provided in clause (ii), by mailing notice to the tax matters partner, or

"(ii) in the case of a member of a notice group which qualifies under paragraph (2) of subsection (b), by mailing notice to the partner designated for such purpose by the group.

"(2) PROCEEDINGS FINISHED.—In any case to which this subsection applies, if at the time the Secretary mails the partner notice of the proceeding—

"(A) the period within which a petition for review of a final partnership administrative adjustment under section 6226 may be filed has expired and no such petition has been filed, or

"(B) the decision of a court in an action begun by such a petition has become final,

the partner may elect to have such adjustment, such decision, or a settlement agreement described in paragraph (2) of section 6224(c) with respect to the partnership taxable year to which the adjustment relates apply to such partner. If the partner does not make an election under the preceding sentence, the partnership items of the partner for the partnership taxable year to which the proceeding relates shall be treated as nonpartnership items.

"(3) PROCEEDINGS STILL GOING ON.—In any case to which this subsection applies, if paragraph (2) does not apply, the partner shall be a party to the proceeding unless such partner elects—

"(A) to have a settlement agreement described in paragraph (2) of section 6224(c) with respect to the partnership taxable year to which the proceeding relates apply to the partner, or

"(B) to have the partnership items of the partner for the partnership taxable year to which the proceeding relates treated as nonpartnership items.

THE WHITE HOUSE

WASHINGTON
August 6, 1982

MEMORANDUM FOR CRAIG L. FULLER

FROM: FRED F. FIELDING

SUBJECT: IRS Disclosures of Address Information to Selective Service System in Aid of Criminal Prosecutions

Recently the Internal Revenue Service, at the request of the Selective Service System, forwarded warning letters to non-registrants who had filed tax returns. If these non-registrants fail to respond, it is contemplated that the addresses of the non-registrants will be turned over to the Department of Justice and Selective Service System to aid in possible criminal prosecutions.

This office has conducted a preliminary review of the legal issues raised by Internal Revenue Service disclosure of taxpayer information to the Selective Service System to aid in the prosecution of non-registrants. For the reasons stated below, we urge that futher action on the Administration's proposal to permit such disclosure be postponed pending a thorough review of the legal and policy issues presented.

Our recommendation to commit the proposal to further study is based on the following considerations:

° The Internal Revenue Code prohibits the IRS from disclosing tax return information to facilitate non-tax criminal investigations by other Federal agencies except under limited conditions. While the relevant Code section [6103(i)(2)] can be read literally to permit disclosure of current address information to agencies filing written requests with the IRS, we are concerned that this literal interpretation of § 6103(i)(2) conflicts with the Justice Department's legislative proposal to amend § 6103(i)(1) to permit disclosure of current addresses of fugitives from Justice. There would appear to be no need for such a change if Justice could, under § 6103(i)(2), simply write to IRS to obtain current addresses of fugitives or other subjects of non-tax criminal investigations, including non-registrants.

° An examination of 26 U.S.C. § 6103 as a whole suggests that where Congress intends for Federal agencies to receive taxpayer address information, it specifically provides for such disclosures [e.g., for child support purposes, 26 U.S.C. § 6103(i)(6), and for persons who have defaulted on student loans, 26 U.S.C. § 6103(m)(4)]. When Congress passed the Department of Defense Authorization Act of 1982, Pub. L. 97-86, it authorized HHS to furnish Social Security information to Selective Service, but deleted language authorizing the IRS to furnish Selective Service with more current addresses than are available in Social Security records.

° Given the absence of explicit authority for IRS disclosure of non-registrants' addresses, such disclosure will certainly be challenged by the affected individuals as an illegal invasion of their privacy. Opponents of draft registration have demonstrated a sophisticated understanding of Federal privacy laws, and have already forced Congress to amend certain registration provisions that the courts had deemed violative of the Privacy Act of 1974. Any or all of the estimated 550,000 non-registrants could challenge the IRS' disclosures under 26 U.S.C. § 7217, which establishes a minimium damage award of $1,000 per plaintiff in class actions proving unauthorized disclosures. Although § 7217(b) states that no liability arises with respect to good faith but erroneous interpretations of 26 U.S.C. § 6103, a court decision against the Government in any § 7217 action could, in light of the potential class of persons involved, result in a substantial damage award.

° The benefits from IRS disclosure of non-registrants' addresses are not readily apparent. Selective Service has already received from HHS the names and current addresses of more non-registrants than it is capable of prosecuting.

For the foregoing reasons, we urge postponement of action requiring IRS disclosure of taxpayer addresses for prosecution purposes pending further legal analysis and consideration of the policy issues presented.

Approve _____

Disapprove _____

Comment _____

File w/
IRS / Sel. Serv
Info

8/6/82 — R Wallison

Turnage

Turnage → Roscoe (aide of Wallison) → Sec
expressing doubts about legality.

(Aug 11)

Went along because of WH interest in program.

Cong. Rosenthal
IRS selective service.
Next week — hearings.

(*) Waste of IRS resources

Until WH has ordered go ahead w/ program that will violate "civil liberties" of americans

Just like Bob Jones.

meetings
what went on

Staff Thurber — Treasury directed IRS to cooperate.

No one in Treasury ordered IRS to participate in Stage I

Aware of Stage II

Did anyone from WH direct IRS to cooperate.

Mentioned RAA discussion w/ R.W. and advised RAA of what was contemplated.

(*) "WH involvement" — IRS reporting on ongoing, or to what was going on

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

ROBERT WOLMAN, ET AL.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, ET AL.,

Defendants.

Civil Action No. 80-1746

MEMORANDUM

In a Memorandum decision dated November 24, 1980, this Court held that the Selective Service's practice of requiring draft registrants to supply their Social Security numbers violated the Privacy Act, Pub. L. No. 93-579, § 7, 88 Stat. 1986, 1909 (codified at 5 U.S.C. § 552a (note) (1976)). 501 F. Supp. 310 (D.D.C. 1980). After an appeal had been taken, Public Law 97-86 was enacted, amending the Military Selective Service Act, 50 U.S.C. App. § 453, as of December 1, 1981. Believing that this enactment had shifted "[t]he focus of the inquiry," the Court of Appeals remanded the case to this Court for further consideration in light of Public Law 97-86. Taking diametrically opposed views of the effect of this enactment, plaintiffs have now moved to confirm the Court's original ruling while defendants have filed a motion to dismiss and vacate judgment.

Section 7 of the Privacy Act provides that the Federal Government shall not deny any "right, benefit, or privilege" because an individual refuses to disclose his Social Security number, except where "disclosure . . . is required by Federal statute." 5 U.S.C. § 552a (note) (1976). It was the absence of such a statute which was the primary basis of the Court's earlier ruling. Public Law 97-86 was enacted to provide the necessary statutory authority to require submission of Social Security numbers by draft registrants. It reads, in pertinent part:

> (b) Regulations prescribed pursuant to subsection (a) of this section may require that persons presenting themselves for and submitting to registration under this section provide, as part of such registration, such identifying information (including date of birth, address, and social security account number) as such regulations may prescribe.

50 U.S.C. App. § 453(b). Congress may have acted in response to the following statement in the Court's earlier decision:

> The failure of Congress to provide the necessary authority quite possibly results from a legislative error. It is clear from the congressional hearings preceding reinstitution of registration that Congress was aware that Social Security numbers would be requested in the registration form. If, in fact, there was an inadvertent omission, this can be immediately corrected by the Congress before the next registration in January.

501 F. Supp. at 311. In any event, the legislative history of Public Law 97-86 clearly demonstrates that Congress acted for the specific purpose of overturning the effect of the Court's ruling. See H.R. Rep. No. 97-71 Part I, 97th Cong., 1st Sess. 160-61 (1981) (hereinafter cited as "H.R. Rep."); S. Rep. No. 97-58, 97th Cong., 1st Sess. 150 (1981) (hereinafter cited as "S. Rep."); 127 Cong. Rec. H 4421 (July 16, 1981) (daily ed.).

In contending that the Court should reaffirm its prior decision in spite of Public Law 97-86 plaintiffs make two arguments:

(1) Plaintiffs contend that Congress in Public Law 97-86 simply permitted Selective Service in its discretion to issue new regulations requiring registrants to furnish their Social Security numbers and that in the absence of any such new regulation no registrant (past or present) can be required to supply his Social Security number.

(2) Plaintiffs further contend that individuals who were allowed to register without providing their Social Security numbers have already presented themselves for and submitted to registration and therefore cannot now be required to supply the number.

Selective Service regulations in effect since July, 1980, have required registrants to submit their Social Security numbers. 45 Fed. Reg. 48,130 (1980) (codified at 32 C.F.R. § 1615.4(a) (1981)). While this Court enjoined Selective Service from obtaining these numbers by reason of the failure to comply with the Privacy Act, the Court's Order was immediately stayed by the United States Court of Appeals and except for a brief period of approximately a month registrants have been required to submit Social Security numbers. Those registering without providing the number have been forcefully reminded by Selective Service of their obligation to do so. See Exhibits A & B to Plaintiffs' Opposition to Defendants' Motions (1) to Dismiss and to Vacate Judgment and (2) to Decertify the Class.

Neither the language of the statute nor the legislative history provides any definitive guidance on the issues presented. Plaintiffs contend that in providing that "regulations prescribed pursuant to subsection (a) . . . may require" (emphasis added), Congress intended that new regulations would need to be promulgated. But the language is equally susceptible to the interpretation that Congress simply meant to confirm the Selective Service's earlier discretionary decision to promulgate regulations requiring submission of Selective Service numbers. Similarly, although Congress probably contemplated that Social Security numbers would be submitted as part of the registration process in applying the statute to those "presenting themselves for and submitting to registration," it would strain the legislative language to conclude that those who for whatever reasons have evaded the requirement to submit the number at a particular moment in time should thereafter be completely immune from the requirement. With respect to the legislative history, there are indications that at least

some Congressmen thought the statute granted the Selective Service merely discretionary authority to promulgate regulations. See 127 Cong. Rec. H 4423, H 4426 (July 16, 1981) (daily ed.) (statements of Representative Mitchell and Representative Montgomery). But even assuming this to be true, it does not resolve the question whether Congress intended that the prior regulations should take effect on the effective date of the Act or whether it contemplated that new regulations would be required.

In the absence of any more specific direction the Court must turn to the circumstance which lead to this enactment as well as common sense. Both Houses of Congress regarded correcting the legislative gap noted in this Court's earlier ruling as an essential measure to ensure an "effective and efficient program for identifying those who do not register." H.R. Rep. at 161; see also S. Rep. at 150. Indeed, one report states:

> A recent court decision, currently in the appellate process, has left the Selective Service enforcement program in doubt. The committee believes this situation is detrimental to the national security and believes the Selective Service System requires the authority to conduct an effective program.

S. Rep. at 150. One other measure of the urgency with which Congress viewed the delay in enforcement caused by the Court's ruling is that Congress overcame efforts in both Houses to delete this provision from Public Law 97-86 so that the issue of requiring registrants to supply their Social Security numbers could be considered at a later time. See 127 Cong. Rec. S 4971 (May 13, 1981) (daily ed.); 127 Cong. Rec. H 4420-29 (July 16, 1981) (daily ed.); H. Conf. Rep. No. 97-311, 97th Cong., 1st Sess. 129 (1981).

Against this background it would obviously fly in the face of congressional intent to hold that effective

enforcement efforts must await the promulgation of new regulations, repeating word-for-word those promulgated in 1980. Similarly, it would be inconsistent with the intent of Congress to hold that there are two classes of registrants: first, the group who refused up to the date of the enactment to give their Social Security numbers, and, second, a group of later registrants who might be required to do so. Partial coverage of the pool of draft registrants would obviously impair effective efforts to enforce registration requirements through the Social Security identifier.

Congress is a pragmatic body. The tendency to scrutinize legislative language in a pedantic manner to the exclusion of reason and in ignorance of the circumstances that generated the congressional action is one that should not be encouraged. The entire legislative history in this instance fails to recognize any substantive concern in the Congress for the issues which plaintiffs now so vigorously urge. To the extent that it sheds light on the issues presented, the legislative history reflects Congress' desire to proceed with full and adequate registration forthwith. Accordingly, defendants' motion to dismiss and vacate judgment will be granted, there being no further basis for holding that the Selective Service regulations requiring registrants to submit Social Security numbers are in violation of the Privacy Act.

An appropriate Order is filed herewith.

Richard A. Enslen
UNITED STATES DISTRICT JUDGE

July 8, 1982.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

ROBERT WOLMAN, ET AL., Plaintiffs, v. UNITED STATES OF AMERICA, ET AL., Defendants.	)	Civil Action No. 80-1746

FILED

JUL 8 1982

JAMES F. DAVEY, Clerk

ORDER

For the reasons stated in the Court's Memorandum filed herewith, it is hereby

ORDERED that defendants' motion to dismiss and vacate judgment is granted and the Court's Order of November 24, 1980, is vacated and the case is dismissed; and it is further

ORDERED that plaintiffs' motion to confirm judgment is denied; and it is further

ORDERED that defendants' motion to decertify class is denied as moot.

Edward A. Tamm
UNITED STATES DISTRICT JUDGE

July 8, 1982.

AUG 5 1982

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 5, 1982

FOR: RICHARD A HAUSER

FROM: DAVID B. WALLER

SUBJECT: IRS Disclosures of Address Information to Selective Service System

The attached memorandum (Tab 1) to Craig Fuller, prepared for Fred's signature, urges postponement of further action on the Administration's proposal to have the IRS furnish current addresses of non-registrants to the Selective Service System. The memorandum expresses our concern that IRS disclosure of current address information to aid in the prosecution of non-registrants raises many difficult legal issues, some of which are in need of in-depth consideration.

This approach is consistent with the memoranda (Tab 2) prepared by Peter Wallison, General Counsel, Department of the Treasury, and the Deputy Chief Counsel at IRS stating their agreement that the IRS lacks authority to furnish addresses to Selective Service.

The changes you and I discussed in the first draft of this memorandum have been made.

THE WHITE HOUSE

WASHINGTON

August 5, 1982

MEMORANDUM FOR CRAIG L. FULLER

FROM: FRED F. FIELDING

SUBJECT: IRS Disclosures of Address Information to Selective Service System in Aid of Criminal Prosecutions

Recently the Internal Revenue Service, at the request of the Selective Service System, forwarded warning letters to non-registrants who had filed tax returns. If these non-registrants fail to respond, it is contemplated that the addresses of the non-registrants will be turned over to the Department of Justice and Selective Service System to aid in possible criminal prosecutions.

This office has conducted a preliminary review of the legal issues raised by Internal Revenue Service disclosure of taxpayer information to the Selective Sevice System to aid in the prosecution of non-registrants. For the reasons stated below, we urge that futher action on the Administration's proposal to permit such disclosure be postponed pending a thorough review of the legal and policy issues presented.

Our recommendation to commit the proposal to further study is based on the following considerations:

° The Internal Revenue Code prohibits the IRS from disclosing tax return information to facilitate non-tax criminal investigations by other Federal agencies except under limited conditions. If the information is highly personal, the IRS can disclose it to another Federal agency only by court order. 26 U.S.C. § 6103(i)(1). If the information is rather general, the IRS can disclose it upon written request from the head of a Federal agency. 26 U.S.C. § 6103(i)(2). The request must set forth, inter alia, the name and address of the taxpayer to whom such information relates. The Deputy Chief Counsel of the IRS has observed that while the apparent purpose of § 6103(i)(2) is to provide the requesting agency with information other than the taxpayer's current address, the section can be read literally to permit disclosure of current address information to agencies filing written requests (presumably including names and most recent known addresses). Our

concern is that this literal interpretation of § 6103(i)(2) conflicts with the Justice Department's proposal to amend § 6103(i)(1) to facilitate court orders permitting disclosure of current addresses of fugitives from justice. It would seem that there would be no need for such a change if Justice could, under § 6103(i)(2), simply write to IRS and request the current addresses of fugitives or other subjects of non-tax criminal investigations, including non-registrants.

° An examination of 26 U.S.C. § 6103 as a whole suggests that where Congress intends for Federal agencies to receive taxpayer address information, it specifically provides for such disclosures [e.g., for child support purposes, 26 U.S.C. § 6103(i)(6), and for persons who have defaulted on student loans, 26 U.S.C. § 6103(m)(4)]. When Congress passed the Department of Defense Authorization Act of 1982, Pub. L. 97-86, it authorized HHS to furnish Social Security information to Selective Service, but deleted language authorizing the IRS to furnish Selective Service with more current addresses than are available in Social Security records.

° Given the absence of explicit authority for IRS disclosure of non-registrants' addresses, such disclosure will certainly be challenged by the affected individuals as an illegal invasion of their privacy. Opponents of draft registration have demonstrated a sophisticated understanding of Federal privacy laws, and have already forced Congress to amend certain registration provisions that the courts had deemed violative of the Privacy Act of 1974. Any or all of the estimated 550,000 non-registrants could challenge the IRS' disclosures under 26 U.S.C. § 7217, which establishes a minimium damage award of $1,000 per plaintiff in class actions proving unauthorized disclosures. Although § 7217(b) states that no liability arises with respect to good faith but erroneous interpretations of 26 U.S.C. § 6103, a court decision against the Government in any § 7217 action could, in light of the potential class of persons involved, result in a substantial damage award.

° The benefits from IRS disclosure of non-registrants' addresses are not readily apparent. If Selective Service seeks current addresses to facilitate prosecution of a large number of non-registrants, it will have a huge inventory of prosecutions based solely on accurate current addresses available from HHS.

For the foregoing reasons, we urge postponement of action requiring IRS disclosure of taxpayer addresses for prosecution purposes pending further legal analysis and consideration of the policy issues presented.

Approve _____

Disapprove _____

Comment _____

THE WHITE HOUSE

WASHINGTON

August 5, 1982

MEMORANDUM FOR CRAIG L. FULLER

FROM: FRED F. FIELDING

SUBJECT: IRS Disclosures of Address Information to Selective Service System in Aid of Criminal Prosecutions

Recently the Internal Revenue Service, at the request of the Selective Service System, forwarded warning letters to non-registrants who had filed tax returns. If these non-registrants fail to respond, it is contemplated that the addresses of the non-registrants will be turned over to the Department of Justice and Selective Service System to aid in possible criminal prosecutions.

This office has conducted a preliminary review of the legal issues raised by Internal Revenue Service disclosure of taxpayer information to the Selective Sevice System to aid in the prosecution of non-registrants. For the reasons stated below, we urge that futher action on the Administration's proposal to permit such disclosure be postponed pending a thorough review of the legal and policy issues presented.

Our recommendation to commit the proposal to further study is based on the following considerations:

° The Internal Revenue Code prohibits the IRS from disclosing tax return information to facilitate non-tax criminal investigaitons by other Federal agencies except under limited conditions. If the information is highly personal, the IRS can disclose it to another Federal agency only by court order. 26 U.S.C. § 6103(i)(1). If the information is rather general, the IRS can disclose it upon written request from the head of a Federal agency. 26 U.S.C. § 6103(i)(2). The request must set forth, inter alia, the name and address of the taxpayer to whom such information relates. The Deputy Chief Counsel of the IRS has observed that while the apparent purpose of § 6103(i)(2) is to provide the requesting agency with information other than the taxpayer's current address, the section can be read literally to permit disclosure of current address information to agencies filing written requests (presumably including names and most recent known addresses). Our

concern is that this literal interpretation of § 6103(i)(2) conflicts with the Justice Department's proposal to amend § 6103(i)(1) to facilitate court orders permitting disclosure of current addresses of fugitives from justice. It would seem that there would be no need for such a change if Justice could, under § 6103(i)(2), simply write to IRS and request the current addresses of fugitives or other subjects of non-tax criminal investigations, including non-registrants.

° An examination of 26 U.S.C. § 6103 as a whole suggests that where Congress intends for Federal agencies to receive taxpayer address information, it specifically provides for such disclosures [e.g., for child support purposes, 26 U.S.C. § 6103(i)(6), and for persons who have defaulted on student loans, 26 U.S.C. § 6103(m)(4)]. When Congress passed the Department of Defense Authorization Act of 1982, Pub. L. 97-86, it authorized HHS to furnish Social Security information to Selective Service, but deleted language authorizing the IRS to furnish Selective Service with more current addresses than are available in Social Security records.

° Given the absence of explicit authority for IRS disclosure of non-registrants' addresses, such disclosure will certainly be challenged by the affected individuals as an illegal invasion of their privacy. Opponents of draft registration have demonstrated a sophisticated understanding of Federal privacy laws, and have already forced Congress to amend certain registration provisions that the courts had deemed violative of the Privacy Act of 1974. Any or all of the estimated 550,000 non-registrants could challenge the IRS' disclosures under 26 U.S.C. § 7217, which establishes a minimium damage award of $1,000 per plaintiff in class actions proving unauthorized disclosures. Although § 7217(b) states that no liability arises with respect to good faith but erroneous interpretations of 26 U.S.C. § 6103, a court decision against the Government in any § 7217 action could, in light of the potential class of persons involved, result in a substantial damage award.

° The benefits from IRS disclosure of non-registrants' addresses are not readily apparent. If Selective Service seeks current addresses to facilitate prosecution of a large number of non-registrants, it will have a huge inventory of prosecutions based solely on accurate current addresses available from HHS.

For the foregoing reasons, we urge postponement of action requiring IRS disclosure of taxpayer addresses for prosecution purposes pending further legal analysis and consideration of the policy issues presented.

Approve _____

Disapprove _____

Comment _____

FFF:DBW/kl
FFFielding
DBWaller
Subj.
Chron.

THE WHITE HOUSE

WASHINGTON

August 5, 1982

MEMORANDUM FOR CRAIG L. FULLER

FROM: FRED F. FIELDING

SUBJECT: IRS Disclosures of Address Information to Selective Service System in Aid of Criminal Prosecutions

Recently the Internal Revenue Service, at the request of the Selective Service System, forwarded warning letters to non-registrants who had filed tax returns. If these non-registrants fail to respond, it is contemplated that the addresses of the non-registrants will be turned over to the Department of Justice and Selective Service System to aid in possible criminal prosecutions.

This office has conducted a preliminary review of the legal issues raised by Internal Revenue Service disclosure of taxpayer information to the Selective Sevice System to aid in the prosecution of non-registrants. For the reasons stated below, we urge that futher action on the Administration's proposal to permit such disclosure be postponed pending a thorough review of the legal and policy issues presented.

Our recommendation to commit the proposal to further study is based on the following considerations:

° The Internal Revenue Code prohibits the IRS from disclosing tax return information to facilitate non-tax criminal investigaitons by other Federal agencies except under limited conditions. If the information is highly personal, the IRS can disclose it to another Federal agency only by court order. 26 U.S.C. § 6103(i)(1). If the information is rather general, the IRS can disclose it upon written request from the head of a Federal agency. 26 U.S.C. § 6103(i)(2). The request must set forth, inter alia, the name and address of the taxpayer to whom such information relates. The Deputy Chief Counsel of the IRS has observed that while the apparent purpose of § 6103(i)(2) is to provide the requesting agency with information other than the taxpayer's current address, the section can be read literally to permit disclosure of current address information to agencies filing written requests (presumably including names and most recent known addresses). Our

concern is that this literal interpretation of § 6103(i)(2) conflicts with the Justice Department's proposal to amend § 6103(i)(1) to facilitate court orders permitting disclosure of current addresses of fugitives from justice. It would seem that there would be no need for such a change if Justice could, under § 6103(i)(2), simply write to IRS and request the current addresses of fugitives or other subjects of non-tax criminal investigations, including non-registrants.

° An examination of 26 U.S.C. § 6103 as a whole suggests that where Congress intends for Federal agencies to receive taxpayer address information, it specifically provides for such disclosures [e.g., for child support purposes, 26 U.S.C. § 6103(i)(6), and for persons who have defaulted on student loans, 26 U.S.C. § 6103(m)(4)]. When Congress passed the Department of Defense Authorization Act of 1982, Pub. L. 97-86, it authorized HHS to furnish Social Security information to Selective Service, but deleted language authorizing the IRS to furnish Selective Service with more current addresses than are available in Social Security records.

° Given the absence of explicit authority for IRS disclosure of non-registrants' addresses, such disclosure will certainly be challenged by the affected individuals as an illegal invasion of their privacy. Opponents of draft registration have demonstrated a sophisticated understanding of Federal privacy laws, and have already forced Congress to amend certain registration provisions that the courts had deemed violative of the Privacy Act of 1974. Any or all of the estimated 550,000 non-registrants could challenge the IRS' disclosures under 26 U.S.C. § 7217, which establishes a minimium damage award of $1,000 per plaintiff in class actions proving unauthorized disclosures. Although § 7217(b) states that no liability arises with respect to good faith but erroneous interpretations of 26 U.S.C. § 6103, a court decision against the Government in any § 7217 action could, in light of the potential class of persons involved, result in a substantial damage award.

° The benefits from IRS disclosure of non-registrants' addresses are not readily apparent. If Selective Service seeks current addresses to facilitate prosecution of a large number of non-registrants, it will have a huge inventory of prosecutions based solely on accurate current addresses available from HHS.

For the foregoing reasons, we urge postponement of action requiring IRS disclosure of taxpayer addresses for prosecution purposes pending further legal analysis and consideration of the policy issues presented.

Approve _____

Disapprove _____

Comment _____

FFF:DBW/kl
FFFielding
DBWaller
Subj.
Chron.

THE WHITE HOUSE

WASHINGTON

August 5, 1982

MEMORANDUM FOR CRAIG L. FULLER

FROM: FRED F. FIELDING

SUBJECT: IRS Disclosures of Address Information to Selective Service System in Aid of Criminal Prosecutions

Recently the Internal Revenue Service, at the request of the Selective Service System, forwarded warning letters to non-registrants who had filed tax returns. If these non-registrants fail to respond, it is contemplated that the addresses of the non-registrants will be turned over to the Department of Justice and Selective Service System to aid in possible criminal prosecutions.

This office has conducted a preliminary review of the legal issues raised by Internal Revenue Service disclosure of taxpayer information to the Selective Sevice System to aid in the prosecution of non-registrants. For the reasons stated below, we urge that futher action on the Administration's proposal to permit such disclosure be postponed pending a thorough review of the legal and policy issues presented.

Our recommendation to commit the proposal to further study is based on the following considerations:

° The Internal Revenue Code prohibits the IRS from disclosing tax return information to facilitate non-tax criminal investigaitons by other Federal agencies except under limited conditions. If the information is highly personal, the IRS can disclose it to another Federal agency only by court order. 26 U.S.C. § 6103(i)(1). If the information is rather general, the IRS can disclose it upon written request from the head of a Federal agency. 26 U.S.C. § 6103(i)(2). The request must set forth, inter alia, the name and address of the taxpayer to whom such information relates. The Deputy Chief Counsel of the IRS has observed that while the apparent purpose of § 6103(i)(2) is to provide the requesting agency with information other than the taxpayer's current address, the section can be read literally to permit disclosure of current address information to agencies filing written requests (presumably including names and most recent known addresses). Our

For the foregoing reasons, we urge postponement of action requiring IRS disclosure of taxpayer addresses for prosecution purposes pending further legal analysis and consideration of the policy issues presented.

Approve _____

Disapprove _____

Comment _____

FFF:DBW/kl
FFFielding
DBWaller
Subj.
Chron.

THE WHITE HOUSE

WASHINGTON

August 5, 1982

MEMORANDUM FOR CRAIG L. FULLER

FROM: FRED F. FIELDING

SUBJECT: IRS Disclosures of Address Information to Selective Service System in Aid of Criminal Prosecutions

Recently the Internal Revenue Service, at the request of the Selective Service System, forwarded warning letters to non-registrants who had filed tax returns. If these non-registrants fail to respond, it is contemplated that the addresses of the non-registrants will be turned over to the Department of Justice and Selective Service System to aid in possible criminal prosecutions.

This office has conducted a preliminary review of the legal issues raised by Internal Revenue Service disclosure of taxpayer information to the Selective Sevice System to aid in the prosecution of non-registrants. For the reasons stated below, we urge that futher action on the Administration's proposal to permit such disclosure be postponed pending a thorough review of the legal and policy issues presented.

Our recommendation to commit the proposal to further study is based on the following considerations:

° The Internal Revenue Code prohibits the IRS from disclosing tax return information to facilitate non-tax criminal investigaitons by other Federal agencies except under limited conditions. If the information is highly personal, the IRS can disclose it to another Federal agency only by court order. 26 U.S.C. § 6103(i)(1). If the information is rather general, the IRS can disclose it upon written request from the head of a Federal agency. 26 U.S.C. § 6103(i)(2). The request must set forth, inter alia, the name and address of the taxpayer to whom such information relates. The Deputy Chief Counsel of the IRS has observed that while the apparent purpose of § 6103(i)(2) is to provide the requesting agency with information other than the taxpayer's current address, the section can be read literally to permit disclosure of current address information to agencies filing written requests (presumably including names and most recent known addresses). Our

concern is that this literal interpretation of § 6103(i)(2) conflicts with the Justice Department's proposal to amend § 6103(i)(1) to facilitate court orders permitting disclosure of current addresses of fugitives from justice. It would seem that there would be no need for such a change if Justice could, under § 6103(i)(2), simply write to IRS and request the current addresses of fugitives or other subjects of non-tax criminal investigations, including non-registrants.

° An examination of 26 U.S.C. § 6103 as a whole suggests that where Congress intends for Federal agencies to receive taxpayer address information, it specifically provides for such disclosures [e.g., for child support purposes, 26 U.S.C. § 6103(i)(6), and for persons who have defaulted on student loans, 26 U.S.C. § 6103(m)(4)]. When Congress passed the Department of Defense Authorization Act of 1982, Pub. L. 97-86, it authorized HHS to furnish Social Security information to Selective Service, but deleted language authorizing the IRS to furnish Selective Service with more current addresses than are available in Social Security records.

° Given the absence of explicit authority for IRS disclosure of non-registrants' addresses, such disclosure will certainly be challenged by the affected individuals as an illegal invasion of their privacy. Opponents of draft registration have demonstrated a sophisticated understanding of Federal privacy laws, and have already forced Congress to amend certain registration provisions that the courts had deemed violative of the Privacy Act of 1974. Any or all of the estimated 550,000 non-registrants could challenge the IRS' disclosures under 26 U.S.C. § 7217, which establishes a minimium damage award of $1,000 per plaintiff in class actions proving unauthorized disclosures. Although § 7217(b) states that no liability arises with respect to good faith but erroneous interpretations of 26 U.S.C. § 6103, a court decision against the Government in any § 7217 action could, in light of the potential class of persons involved, result in a substantial damage award.

° The benefits from IRS disclosure of non-registrants' addresses are not readily apparent. If Selective Service seeks current addresses to facilitate prosecution of a large number of non-registrants, it will have a huge inventory of prosecutions based solely on accurate current addresses available from HHS.

For the foregoing reasons, we urge postponement of action requiring IRS disclosure of taxpayer addresses for prosecution purposes pending further legal analysis and consideration of the policy issues presented.

Approve _____

Disapprove _____

Comment _____

FFF:DBW/kl
FFFielding
DBWaller
Subj.
Chron.

JUN 18 1982

Department of the Treasury

Office of the General Counsel

to: Dick Hauser

room: _____ date: 6/17/82

General Counsel
Peter J. Wallison
room 3000
phone 566-2093

INFORMATION

Date: May 17, 1982

MEMORANDUM FOR: SECRETARY REGAN
THRU: Deputy Secretary McNamar

From: Peter J. Wallison
General Counsel

Subject: Disclosure to the Selective Service System

Confirming our discussion this morning, this memorandum outlines my views on whether the Internal Revenue Service may disclose certain address information from its Individual Master File to the Selective Service System. For reasons which are set out below, I believe that IRS should not in this instance disclose such information if the purpose of such disclosure is to aid in the prosecution of non- registrants. However, to the extent that Selective Service desires only to notify non-registrants of their obligations, the IRS may on a reimbursable basis undertake such notification for the Selective Service.

Attached is a copy of a memorandum dated April 2, 1982, from the Deputy Chief Counsel of IRS which sets out the facts, relevant statutory provisions, and a legal analysis of this matter. The Deputy Chief Counsel concluded that while section 6103(i)(2) can be read literally to permit the disclosure of current address data to the Justice Department to locate and prosecute individuals for failing to register under the Selective Service Act, the more defensible legal position, based on an overall reading of section 6103 and its legislative history, is that the disclosures cannot be made. The IRS memorandum also noted the possibility of a substantial damage award being made against the Government in a class action law suit if a court were to rule that the disclosures were contrary to law.

I am in substantial agreement with the analysis set out in the Deputy Chief Counsel's memorandum. In coming to this conclusion, I am relying also on two other considerations -- not addressed in the IRS memorandum -- which I believe tilt the balance toward nondisclosure. These are discussed in detail in the attached memorandum, and are summarized below.

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Ex. Sec.
Surname						
Initials / Date	/	/	/	/	/	/

OS F 10-01.11 (2-80) which replaces OS 3129 which may be used until stock is depleted

First, the Administration, through the Department of Justice, is currently seeking to amend section 6103(i)(1) to permit IRS disclosure, pursuant to court order, of the current addresses of fugitives from justice. There would appear to be no reason to seek such an amendment if Justice could, under current law (section 6103(i)(2)), simply write to the IRS and request the current addresses of fugitives. As you know, the Selective Service proposal contemplates obtaining address information by just such a written request under section 6103(i)(2).

Second, in enacting Public Law 97-86 (the Department of Defense Authorization Act of 1982) Congress considered the very program which is now being proposed by the Selective Service System -- that is, to require registrants to provide their Social Security numbers, to require HHS to provide Selective Service with the name, date of birth, Social Security number and address of those required to register, and to require IRS to furnish the current addresses for any names supplied to IRS by the Selective Service.

Although (as detailed in the attached memorandum) the legislative history of Public Law 97-86 on this point is far from clear, the fact is that ultimately Congress approved the furnishing of social security data by HHS but eliminated the furnishing of address information by the IRS. This action, despite the ambiguities with which it was taken, seriously undermines any legal argument which might be made to support disclosure; it also indicates (as was strongly suggested in the comments by the House Ways and Means Committee) that disclosure would likely be viewed as a challenge to Congressional prerogatives.*

The costs of IRS disclosure also seem high. Congress is likely to raise strong institutional objections, and will be strongly supported by various civil libertarian groups. A potentially costly and burdensome class action law suit is likely to be filed on behalf of those whose addresses were disclosed, and the publicity generated by the event will inevitably have some effect on the public's willingness to disclose information voluntarily to the IRS.

---

* To be sure, as the attached memorandum indicates, the legislative history contains some support for disclosure -- most notably a statement by the Senate Armed Services Committee, in its Report on the bill, that disclosure would be lawful. However, this is a statement by a Committee which is not expert in the tax laws and there is no indication that advice on this subject was sought or received from the Senate Finance Committee. House Ways and Means, as noted above, expressed an apparently contrary view.

The benefits from such disclosure are not as readily apparent. If the Selective Service System is seeking current addresses in order to prosecute a number of non-registrants, it will have a huge inventory of prosecutions if it merely proceeds with the tens of thousands of accurate current addresses which it will obtain from HHS.

For these reasons, if the purpose of the Selective Service in soliciting names and addresses from the IRS is prosecution, I recommend against disclosure. However, it may be that the intent of the Selective Service is simply to notify non-registrants personally of their responsibility to register. If so, the IRS already has in place procedures (copy attached) which would permit such notification for other federal agencies on a reimbursable basis. I see no reason why Selective Service cannot simply prepare appropriate communications to non-registrants and request that the IRS use its facilities to address and mail the envelopes. IRS would then not be making any arguably illegal disclosure, and non-registrants would be receiving notification of their responsibilities.

Attachments

P-1-184 *(Approved 7-18-75)*

News media representatives not to accompany Service employees on any assignment

Reporters or news photographers shall not be authorized to accompany Service employees on an investigative, enforcement or other similar assignment.

P-1-185 *(Approved 7-29-80)*

Information on tax returns is confidential in nature; identity of investigative subjects generally not disclosed.

Consistent with the statutory prohibitions against disclosing the contents of tax returns, claims, and related documents, the Service will not make public (except, for example, as such items become matters of public record through normal judicial processes or as may be necessary in connection with investigative inquiries) the identity of persons or organizations being investigated or examined, or the status of any investigation or examination or of collection proceedings undertaken by the Service.

Limited disclosure of return information warranted in certain situations, especially where taxpayer has made information available to the mass media

Limited disclosure of return information with respect to specific taxpayers, to the extent necessary to correct a misstatement of fact published or disclosed, may be warranted where it is determined that such a correction of the record is necessary for tax administration purposes. Such determination will be made by the Commissioner or his or her delegate. Before such disclosure can be made, approval must be secured from the Joint Committee on Taxation. (See section 6103(k)(3) of the Code.) Thus, disclosure of investigative, examination, determination, or collection status may be warranted where failure to disclose will leave the impression the Service is not doing its job, is giving unwarranted special treatment to taxpayers, or is acting in an arbitrary or unreasonable manner. Consideration of such disclosure is particularly appropriate when it has also become apparent that the taxpayer has made information available to the press or other mass media.

Taxpayer's presence considered implied consent for disclosure.

In any face-to-face discussions with Service personnel, at which a taxpayer is accompanied by a third party, the Service will consider the taxpayer's presence as implied consent to discuss the taxpayer's confidential tax matters in the presence of the third party. A written authorization from the taxpayer, consenting to or requesting such disclosure, will not be required.

P-1-186 *(Approved 6-27-77)*

Publicity in connection with seizures to enforce collection of tax

In the event inquiry is received as to whether property has been seized from a specifically named person, the question will be answered provided notice of tax lien has been filed and a seizure warning notice or notice of sale has been posted. However, such information will not be volunteered.

Requests for lists of persons from whom property has been seized

The Service also will comply with requests for lists of persons from whom property has been seized, provided a notice of tax lien has been filed and a seizure warning notice or notice of sale has been posted, and provided the office can comply with the request without doing an unreasonable amount of extra recordkeeping. Small offices of the Service should not have very much difficulty in compiling lists of their own seizures. Although it is recognized that large offices cannot be expected to institute special procedures solely for the purpose of answering inquiries by local newspapers, the official receiving the inquiry should inform the newspaper of the seizures of which he or she has personal knowledge on which a notice of tax lien has been filed and a seizure warning notice or notice of sale has been posted.

Lien filing information to be disclosed

Questions as to whether a notice of tax lien has been filed against a particular taxpayer will be answered. If a notice of lien has been filed pursuant to section 6323(f) of the Code, the amount of the outstanding obligation secured by said lien may be disclosed to any person who furnishes satisfactory written evidence that he or she has a right in the property subject to such lien or intends to obtain a right in such property. (See section 6103(k)(2) of the Code.)

P-1-187 *(Approved 6-26-79)*

Forwarding letters for private individuals, Federal agencies, and state and local government agencies without disclosure of address

A taxpayer's address is confidential tax information and can be disclosed only as authorized by the Internal Revenue Code. To be of assistance to private persons and Federal, state, and local government agencies in locating an individual, the Service may agree to forward a letter to such individual at the latest address available in Service records if his/her social security number is furnished by the requester without disclosing the address to the requester. Letters will be forwarded under the following conditions provided such service will not have an adverse affect on Service operations.

Request from private individuals

In circumstances where a humane purpose may be served or in extreme emergency situations, the Service may agree to forward a letter. Following are some humane or emergency situations in which Service may provide assistance:

(1) A person is seeking to find a missing person to convey a message of an urgent or compelling nature, e.g., the individual would be notified of the serious illness, imminent death, or death of a close relative.

(2) The health or well being of a number of persons is involved, such as where persons are being sought for medical study to detect and treat medical defects.

Situations where a family member is attempting to trace his/her family tree, or where an individual is the beneficiary of an estate, do not constitute humane or emergency situations warranting the Service's assistance. In addition, the Service will not forward letters which serve to seek reparation for obligations due the requester.

Service personnel may screen communications submitted for forwarding to ensure that the contents are consistent with the purpose for which we are providing assistance.

Any person to whom a letter is forwarded will be advised that his/her address has not been disclosed; and that the Service has no interest in the matter other than forwarding the letter on behalf of the requester.

Requests from Federal agencies

31 U.S.C. 686 authorizes a Federal agency to perform services within its capabilities for another Federal agency on a reimbursable basis. Consistent with the statute, the Service may agree to forward letters for another Federal agency under an advanced written agreement providing for reimbursement. This service will not be provided if it would disrupt our tax administration functions.

Request from state and local governments

The Service is authorized to provide reimbursable services to State and local government units under the authority of the Intergovernmental Cooperation Act of 1968, and Office of Management and Budget Circular No. A-97. Upon advance approval by the Office of Management and Budget, the Service will forward letters for a state or local government unit unless such service would disrupt our tax administration functions. Reimbursement from state and local agencies may be waived under conditions specified in OMB Circular No. A-25.

Authority to provide service to Federal, state, and local government agencies and departments on reimbursable basis

The Director, Disclosure Operations Division and the Director, Tax Systems Division are authorized to enter into contractual agreements with Federal, state and local government officials for reimbursable services under the terms of this policy.

Notification to addressee that address has not been released to Federal, state or local government officials

Any person to whom a letter is forwarded will be advised that his/her address has not been disclosed, and that the Service has no interest in the matter other than forwarding the letter on behalf of the requester.

Disposition of letters received for mail-out will not be disclosed

To divulge the disposition of a letter submitted for forwarding would indicate whether the taxpayer filed a return. This information, i.e., fact of filing, constitutes return information subject to the disclosure restrictions of the Code; therefore, the Service will not confirm whether a letter to a specific individual has or has not been mailed.

Any communications which cannot be forwarded or are returned by the postal services as undeliverable will be destroyed. The requester will not be notified.

P-1-188 *(Approved 9-15-70)*

Furnishing name, address, EIN, and Code references from EOMF and EPMF

Consistent with Section 6104 of the Code authorizing the public to inspect certain exempt organization documents, listings of names, addresses, Employer Identification Numbers, and applicable code exemption references of organizations exempt under section 501 may be furnished from the Exempt Organization Master File and the Employee Plans Master File to any requester when it has been determined by the Assistant Commissioner (Data Services) that the listings can be furnished without substantial interference with or disruption of Service operations. Listings of organizations denied exemption, or exempt under Section 521 (farmers' cooperatives) may not be furnished to the general public.

(b) Health and well being of a number of persons involved such as persons being sought for medical study to detect and treat medical defects.

(4) Situations which *do not* qualify as humane purposes are:

(a) A family member attempting to trace his/her family tree.

(b) Attempting to contact the beneficiary of an estate.

(5) It is Service policy not to forward letters which serve to seek reparation for obligation due the requester. (See policy statement P-1-187.)

(6) Questions regarding whether or not a purpose not falling within the above should be forwarded to the National Office through the Regional Disclosure Officer.

(7) The following procedure has been established:

(a) If a social security number is furnished, we will search our records to determine if we have an address. If no SSN is furnished, the requester will be notified that we cannot make a search of the Master File without an SSN.

(b) Service personnel will screen communications submitted for forwarding to ensure that the contents are consistent with the purpose for which we are providing assistance.

(c) If an address is found, forward the letter from the requester to the address, advise the recipient that we have not divulged his/her address, and explain why we are forwarding the letter. The recipient will also be advised that the decision of whether to respond to the letter is entirely up to him/her, and that the forwarding of the letter is the final action the IRS will take in this matter.

(d) If an address cannot be found or the communication is returned by the postal services as undeliverable, the letters will be destroyed. The requester will not be notified of this action.

(8) Requests from private individuals requesting letter forwarding for humane reasons should be processed by the Disclosure Officer of the district wherein the correspondent resides. Any requests received in the National Office will be referred to the district for an appropriate response. Those requests received in the service centers should be processed by the Disclosure Officer at the service center. The Disclosure Officer in the district or the service center will obtain address information from the National Computer Center (NCC) when necessary using established procedures.

(9) Congressional inquiries seeking address assistance on behalf of constituents should be responded to in a manner similar to those of the private individual. Such inquiries received in the National Office will be appropriately responded to by the Director, Disclosure Operations Division and will not be forwarded to District Disclosure Officers.

(11)(15)0 *(10-23-81)* 1272

Forwarding Letters for Federal Agencies, and State and Local Government Agencies Without Disclosure of Address

(1) Policy Statement P-1-197 permits the Service to forward letters on behalf of Federal, State, and local agencies, providing tax administration functions are not disrupted. The forwarding of letters for Federal, State, and local agencies is not restricted to the humane reasons referred to in (11)(14)0.

(2) Under P-1-187, the Director, Disclosure Operations Division, and the Director, Tax Systems Division, are authorized to enter into contractual agreements with Federal, State, and local government officials for reimbursable letter forwarding services.

(3) Requests for letter forwarding from the headquarters offices of other Federal agencies, and all requests involving 100 letters or more will be referred to the Director, Disclosure Operations Division for reply. The Director, Disclosure Operations Division, will request assistance from the Director, Tax Systems Division, when 100 letters or more are to be forwarded. Such requests will be made through a Request for Data Services (RDS).

(4) Requests involving 99 or fewer letters to be forwarded on behalf of field offices of other Federal agencies, and State and local agencies, will be processed by district or service center personnel in accordance with the procedures in text (11)(14)0:(7) and (8). No charge will be made for forwarding 99 or fewer letters.

(5) So that the Service's costs can be kept at a minimum, letter forwarding requests from Federal, State, and local agencies must meet the following requirements:

(a) Each letter must include a paragraph advising the recipient that his/her address has not been disclosed and that the Internal Revenue Service has no interest in the matter aside from forwarding the letter. (This eliminates the need for Service personnel to prepare cover letters.)

(b) The letters must not be addressed to specific individuals, but should be general in nature so that they do not have to be matched to specific envelopes.

(c) The requester should provide a list of the social security numbers and names of the individuals to whom the letters are to be forwarded. This list should be in sequential order, by social security number.

(Next page is 1272-135)

DEPARTMENT OF THE TREASURY
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20220

TO: Peter J. Wallison
General Counsel

MAY 11 1982

FROM: John J. Kelleher JJK

SUBJECT: Disclosure to the Selective Service System

This is in response to your request for an analysis of whether the Internal Revenue Service may disclose certain address information from its Individual Master File to the Selective Service System in connection with the Selective Service's program to identify and locate possible non-registrants under the Military Selective Service Act.

The Deputy Chief Counsel of the IRS in a memorandum dated April 2, 1982, (copy attached at Tab A) to the Commissioner set out the facts and relevant statutory provisions concerning this matter and, following a comprehensive legal analysis, concluded that although support can be found to justify such disclosures, the more defensible legal position is that the disclosures cannot be made. The Deputy Chief Counsel noted that the literal language of the amended 6103(i)(2) can be read to permit disclosure of current address information for the administration of nontax federal criminal laws, and that such an interpretation has, in fact, been adopted by the IRS so as to permit the disclosure of address information in other, more limited, situations. However, he pointed out that one prerequisite for a proper request under section 6103(i)(2) is that the requester provide the name and address of the taxpayer about whom it wishes to obtain information. This requirement presumes that the purpose of the section is to provide the requester with information other than the taxpayer's current address.

In addition, the IRS memorandum states that in the past when Congress intended for other agencies to receive address information, it specifically provided for such disclosures (e.g., for child support purposes (6103(l)(6)) and for individuals who have defaulted on student loans (6103(m)(4))). And, more importantly, the legislative history of the 1978 change to section 6103(i)(2) does not reveal any indication that Congress intended to open up a new source of information (address information) to Justice or other agencies.

Finally, the IRS memorandum points out that pursuant to the civil damages provision of section 7217, the Government could be subjected to substantial damages (a minimum of $1,000 to each

plaintiff entitled to recover with respect to each instance of unauthorized disclosure) if the courts do not agree with the Government's position. Section 7217(b) does provide, however, as IRS points out, that no liability arises with respect to a good faith but erroneous interpretation of section 6103. Reliance upon an opinion from counsel would not necessarily, by itself, establish such a defense.

The IRS memorandum concludes, as noted above, that although support can be found to justify IRS disclosure of address information in this instance, the more defensible legal position is that the disclosures cannot be made. It is clear from the analysis that there is no easy, clear-cut answer to the question of whether such disclosures are permissible. There are, however, two additional factors which appear to be relevant to the consideration of the question and which were not mentioned in the IRS memorandum. The first factor would seem to tilt the balance toward nondisclosure while the second would appear to provide support for either interpretation.

The first factor involves the current efforts being made to amend section 6103. As you know, Senator Roth has introduced a bill (S. 1891), strongly supported by the Administration, which would make a number of significant changes in section 6103. One of those changes would permit Justice Department officials to seek a court order under section 6103(i)(1) to allow disclosure of certain tax information if Justice shows that an arrest warrant has been issued for an individual who is a fugitive from Justice, the information is sought exclusively for use in locating such individual, and there is reasonable cause to believe that the information may be relevant to determining the location of the individual.

It would seem that there would be no need for such a change if Justice could, under current law (section 6103(i)(2)), simply write to IRS and request the current addresses of fugitives from Justice. And if, as could be argued, the change is suggested only to clarify current law, then it implies that the addresses of fugitives may currently be obtained only pursuant to court order (under section 6103(i)(1)) and not pursuant to written request from the head of an agency (section 6103(i)(2)). The Selective Service proposal, as you know, contemplates obtaining the address information by written request pursuant to section 6103(i)(2).

The second factor to consider in deciding whether IRS may disclose the address information involves recent Congressional action taken to amend the Military Selective Service Act. In Wolman v. United States of America, Selective Service System, 501 F.Supp. 310 (D.D.C. 1980), the district court for the District of Columbia ruled that there was no legal authority in the Selective Service System to require registrants to furnish their individual Social Security numbers as a condition of valid registration. Legislation was thereafter introduced and passed in Congress

which permits such use of the Social Security numbers (Pub.L. No. 97-86, §916, 95 Stat. 1129 (1981)). The legislative history of Public Law 97-86 is instructive concerning the question of whether IRS may disclose current addresses of non-registrants.

Public Law 97-86, the Department of Defense Authorization Act of 1982, involved primarily the appropriations for fiscal year 1982 for the Armed Forces. It also contained amendments to the Military Selective Service Act. The Senate bill (S. 815) was passed in lieu of the House bill (H.R. 3519) after much of the Senate bill's language was amended to contain much of the text of H.R. 3519. The Selective Service changes which were enacted, as will be explained more fully below, came from the House bill.

S. 815, as originally introduced, contained provisions which would allow the Director of the Selective Service System to require registrants to provide their Social Security numbers (legislatively overruling the Wolman decision) and, more importantly for the current discussion, would allow the Director access to information in the records of any other department or agency of the federal government pertaining to the names, ages and addresses of persons required to register. Both provisions were dropped from S. 815 on May 13, 1981, following a floor amendment by Senators Jepsen and Exon. The floor debates (copy of the debates attached at Tab B) indicate that several Senators raised the question of the suitability of these provisions regarding the Selective Service and access to Social Security records appearing in S. 815, and felt that such matters should be considered as an independent matter.

Of significance for the current question is the following paragraph from Senate Report Number 97-58 (page 150) (copy attached at Tab C), from the Armed Services Committee, which accompanied S. 815:

> In the view of the Selective Service System, it is essential that the list of registrants be matched by Social Security number with Social Security records by year of birth for the purpose of identifying those who apparently violated the Military Selective Service Act. The next step would involve obtaining the current addresses of non-registrants from the Internal Revenue Service (IRS) because the addresses contained in the Social Security file are generally not current. The acquisition of current addresses from IRS files is currently authorized by the U.S. Code which, in 26 U.S.C. and 6103(i)(2), explicitly states that a taxpayer's name and address are not treated as taxpayer return information when an agency head requests them for use in an administrative or judicial proceeding. In fact, many government agencies utilize this IRS information for several purposes and the IRS utilizes the Social Security file for income tax enforcement.

Thus, at least in the view of the Senate Armed Services Committee, the IRS is authorized under current law (section 6103(i)(2)) to provide the current addresses of non-registrants.

H.R. 3519 was introduced May 12, 1981 (a copy of the relevant portions of H.R. 3519 is attached at Tab D). H.R. 3519 had three main provisions to facilitate Selective Service registration:

1. Registrants could be required to provide their Social Security number.

2. The President was given authority to require the Secretary of Health and Human Services to furnish to the Director of the Selective Service, from records available to the Secretary of HHS, the name, date of birth, Social Security number and address of those required to register.

3. In order to enforce the Selective Service Act and to ensure the registration of all persons required to register, the President was given the authority to require the Secretary of the Treasury to furnish to the Director of the Selective Service, from records available to the Secretary, the address of any individual whose name is furnished to the Secretary by the Director.

The first two provisions passed the Congress (following a conference where the Senate receded to the House on these provisions) and are part of Public Law 97-86. It is pursuant to this authority that the President has directed the Secretary of HHS to furnish the Selective Service System with the Social Security account number data that can be used to identify possible non-registrants. However, the third provision, permitting the President to require the Secretary of the Treasury to furnish the Director of the Selective Service with the addresses of individuals for the purpose of enforcing the registration requirements, was dropped from H.R. 3519 pursuant to an amendment offered by Congressman Nichols on July 15, 1981, and is therefore not a part of Public Law 97-86. The House Armed Services Committee favored allowing the IRS to provide current adresses and stated, in House Report Number 97-71, Part I (page 161) (copy attached at Tab E), which accompanied H.R. 3519, that it considered it "an appropriate purpose for the government to use identifying information within its control for the purposes of enforcing the registration requirement." However, the House Ways and Means Committee succeeded on the floor in getting the House to drop the third provision. The floor debates, and House Report Number 97-71, Part 3, from the Committee on Government Operations, to which H.R. 3519 was also referred, indicate that Congress did not necessarily believe it to be inappropriate for the Selective Service System to have access to current addresses within the control of the Government to enforce the registration requirement, but that such authority should only be given after a formal Administration request for a legislative remedy, separate

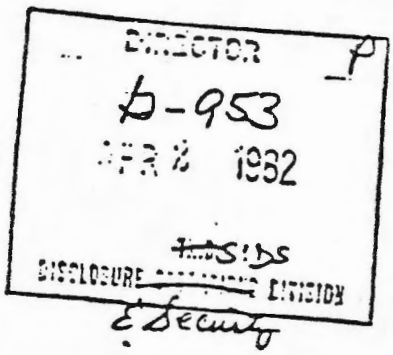
examination of the issue, public hearings and by amendment of section 6103. (A copy of the relevant floor debates from July 15, 1981, and a copy of the relevant portions of House Report No. 97-71, Part III, are attached at Tabs F and G respectively.)

The legislative history of Public Law 97-86 set out above makes it clear that Congress within the last year considered the question of whether IRS should provide to the Selective Service the current addresses on non-registrants under the Military Selective Service Act. It could be argued that since both the House and Senate bills had provisions authorizing such action, and since, for whatever reasons, both houses dropped those provisions, Congress has indicated its disapproval of such IRS action. However, it could also be argued that the legislative history is murky and the reasons for the Congressional action are not clear, and that the only really clear statement concerning the authority of IRS to disclose addresses under current law is that contained in Senate Armed Services Committee Report Number 97-58 -- that is, that "the acquisition of current addresses from IRS files is currently authorized by the U.S. Code which, in 26 U.S.C. and 6103(i)(2), explicitly states that a taxpayer's name and address are not treated as taxpayer return information when an agency head requests them for use in an administrative or judicial proceeding."

TAB A

Internal Revenue Service

memorandum



date: 8 APR 1982

to: Roscoe L. Egger Jr.
Commissioner

[Signed] JOEL GERBER

from: Joel Gerber
Deputy Chief Counsel CC

subject: Disclosure to the Selective Service System

The purpose of this memorandum is to advise you on whether the Service is permitted to disclose certain address information from the Individual Master File to the Selective Service System. After careful consideration, it is my opinion that although support can be found to justify such disclosures, the more defensible legal position is that the disclosures cannot be made.

FACTS

On January 7, 1982, President Reagan announced his decision to continue the military registration program promulgated under the Military Selective Service Act. The program requires that all men born on or since January 1, 1960 register with the United States Post Office within 30 days of their eighteenth birthday. Upon conviction for noncompliance with the program, a non-registrant may be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both. 50 U.S.C. App. §462.

In order to implement the registration program, the President has directed the Secretary of Health and Human Services to furnish the Selective Service System with Social Security Account Number data that can be used to identify possible non-registrants. This data will be matched with the Selective Service registration files in order to identify violators. It is our understanding that the Selective Service, acting through the Department of Justice, may then submit a request to the Service pursuant to I.R.C. § 6103(i)(2) in order to obtain taxpayer address information in a further effort to locate and prosecute violators of the program.

RELEVANT STATUTORY PROVISIONS

Section 6103(i) was added to the Internal Revenue Code by the Tax Reform Act of 1976 in order to limit the circumstances under which other Federal agencies could obtain tax information for use in nontax cases. Prior to that time, attorneys of the Department of Justice could have virtually unrestricted access to IRS files where necessary in the performance of their official duties. 26 C.F.R. § 301.6103(a)-1(f) and (g) (1976). Under

present law, the Department of Justice may obtain tax data only for nontax criminal cases, and then only after it follows specifically enumerated procedural requirements set forth in the statute. These procedures specify that information obtained from the taxpayer or the taxpayer's representative may be disclosed only after the grant of an ex parte order from a Federal district court judge. Information obtained from sources other than the taxpayer or the taxpayer's representative may be disclosed only upon a written request that specifies the name and address of the taxpayer, the kind of tax involved, the taxable period involved, and the reason why inspection is desired.

In 1978, the Congress reviewed the procedures which regulated the circumstances in which the Service could disclose information under section 6103(i)(2). At that time, it recognized that if the Service was to respond to a written request for information which was not furnished by or on behalf of the taxpayer, it could not, as a practical matter, transmit the information without providing the name and address of the requested individual. Since the ultimate source of the name and address would have been the taxpayer's return, a technical argument existed that the Service could not provide the information without an ex parte court order. This would, of course, have completely negated the purpose and operation of the written request provision. As a result, section 6103(i)(2) was amended so that if the Service received a proper written request, it could disclose name and address information under the same circumstances that it could disclose other information which was not received from or on behalf of the taxpayer. Pub. L. No. 95-600, § 701 (b)(b)(3), 92 Stat. 2922 (1978), 1978-3 C.B. 156 (Vol. 1); S. Rep. No. 95-745, 95th Cong., 2nd Sess. 61, 63 (1978); H. Rep. No. 95-700, 95th Cong., 1st Sess. 53, 55 (1977).

ANALYSIS

Upon review, it is my opinion that the literal language of the amended section 6103(i)(2) can be read to permit the disclosure of current address information for the administration of nontax Federal criminal laws. As presently written, the statute places an affirmative obligation on the Service to transmit return information (other than taxpayer return information) upon receipt of a proper written request. The statute also specifically states that "the name and address of the taxpayer shall not be treated as taxpayer return information." Should the Department of Justice file a request pursuant to section 6103(i)(2), an argument can be made that the Service can disclose current address information for the purpose of locating and prosecuting violators of the Selective Service Act. I have been advised that such an interpretation has, in fact, been adopted by the Service so as to permit the disclosure of address information in other, more limited, situations.

However, it is also my view the statute can be read to support a different and much more restrictive result. For example, one prerequisite for a proper request under section 6103(i)(2) is that the Department of Justice provide the name and address of the taxpayer with respect to whom it wishes to obtain information. This requirement presumes that the purpose of section 6103(i)(2) was to provide the Department of Justice with information other than the taxpayer's current address. This view is supported by an examination of section 6103 as a whole, for such an examination suggests that when Congress

intended for other agencies to receive address information, it specifically provided for such disclosures. See sections 6103(l)(6) and (m). The most compelling argument in favor of nondisclosure of address information is the rationale for the adoption of the change to section 6103(i)(2) in 1978. Prior to this amendment, there was no question that the Service could not provide address data from the Individual Master File to the Department of Justice for nontax criminal purposes simply upon written request. Instead, the Department of Justice could receive such data only after obtaining an ex parte order pursuant to section 6103(i)(1). The legislative history for the 1978 change does not reveal any indication that Congress intended to open up a new source of information to the Department of Justice. The amendment was designed simply to correct a potential technical defect in the statute which could be read to prevent the Service from effectively transmitting identifiable information pursuant to a proper request.

I would note that if the Service concludes it can disclose current address information to the Selective Service System, such action will certainly be challenged by the affected individuals as an unwarranted, and possibly illegal, invasion of their individual privacy. Those opposed to draft registration have demonstrated a sophisticated understanding of Federal privacy laws, and have already forced Congress to amend the registration provisions because such provisions were being carried out in violation of the Privacy Act of 1974. Pub. L. No. 97-86, § 916, 95 Stat. 1129 (1981), overruling Wolman v. United States of America, Selective Service System, 501 F. Supp. 310 (D.D.C. 1980). The Selective Service System estimates that there are approximately 550,000 individuals in the non-registrant category. Any or all of these individuals could challenge the Service's participation in the registration program under the civil damage provisions of section 7217 by claiming that the resulting disclosures were not permitted by section 6103. Section 7217 provides for actual and punitive damages for unauthorized disclosures, and also establishes a minimum damage award of $1000 for such disclosures. Although section 7217(b) states that no liability arises with respect to a good faith but erroneous interpretation of section 6103, a court ruling against the Government in any section 7217 action could, in light of the potential class of individuals involved, result in a substantial damage award.

CONCLUSION

Section 6103(i)(2) can be literally read to permit the disclosure of current address data to the Department of Justice to locate and prosecute individuals for failing to register under the Selective Service Act. However, such an interpretation is vulnerable to attack, since an overall reading of section 6103 and its legislative history would favor the opposite result. Although either interpretation can be supported, the Government would be subject to substantial damages in this case if the courts do not uphold a literal reading of the statute.

TAB B

Mr. STENNIS. I thank the Senator. This is the amendment that we were talking about. Does it have a number?

Mr. COHEN. If the Senator will yield, it is an unprinted amendment to this bill and it is entitled Prohibition Against Doing Business with Certain Offerers or Contractors.

Mr. STENNIS. That is the one that Senator LEVIN is a cosponsor of?

Mr. COHEN. That is correct, and Senator PRYOR.

Mr. STENNIS. We have been over that, Mr. President. Senator PRYOR is on that amendment, too. I think in its present form, we can take the amendment, and I so recommend.

Mr. PRYOR. Mr. President, I appreciate the statement of the Senator from Mississippi.

If the Senator will yield to me for one moment, I would like to commend the Senator from Maine for bringing this matter to the attention of the Senate. I applaud him for his effort in this area.

I also commend the distinguished Senator from Michigan (Mr. LEVIN) for his initiative in this matter. Senator COHEN and Senator LEVIN have explored this issue as chairman and ranking minority member of the Subcommittee on Oversight of Government Management of the Governmental Affairs Committee on which I serve. They have been in the forefront of congressional efforts to protect the American taxpayer from wasteful, unnecessary Government spending. In the last Congress they worked vigorously to eliminate the fourth quarter spending problems that have plagued the Federal procurement system, not for the last few years but for the last few decades. Today they are proposing legislation in an area of procurement and management which can only be characterized as the primary means the Government has to protect itself from irresponsible and dishonest contractors. I am proud to join them in this effort.

During the last Congress, I had an opportunity to carefully review the Government's procurement of consultant services as well as work with Senator LAWTON CHILES in an investigation of Federal agency purchases of office equipment and supplies. I am convinced that the Federal Government has not lived up to its responsibilities to the taxpayers. Federal contract expenditures, which now exceed $100 billion are not merely issues for Federal agency managers to handle—the Congress must take action if we are to bring the Federal Government under control.

I believe that proper and well thought-out procurement procedures can go far in making sure that most firms the Government chooses to contract with are reputable and capable. Nevertheless, there must also exist an effective means to prevent the further award of contracts where this process has failed or where the contractor has not lived up to his obligations. It is important to have such remedies available to the Government because my investigation and those of Senators CHILES, COHEN, and LEVIN last year have shown that unacceptable contracting practices are more widespread than any of us might have imagined.

Today, more and more firms apparently consider the Government to be easy pickings for overbillings, fraudulent substitution, misperformance, or even nonperformance. While no system can totally prevent such activities, it is appalling that the Government literally ties its own hands through inaction, inconsistent treatment by different agencies, and lack of communication. These problems were fully explored in hearings earlier this year by the Oversight of Government Management Subcommittee. We found that despite suspension of companies by a Federal agency, the Department of Defense continued to award contracts and spend taxpayer dollars by doing business with those same companies. This must end.

I am pleased that this amendment is before the Senate and I urge its adoption.

Mr. STENNIS. Mr. President, I add that it appears to me to be a good amendment and I commend the Senators for it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP 99) was agreed to.

Mr. STENNIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. TOWER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 100

Mr. TOWER. Mr. President, Senator JEPSEN has an amendment.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. JEPSEN. Mr. President, I send an amendment to the desk and ask that it be immediately considered.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Iowa (Mr. JEPSEN) for himself and Mr. EXON, proposes an unprinted amendment numbered 100.

Beginning on page 65, line 8, strike out all through line 5, page 66, and renumber the following sections accordingly.

Mr. JEPSEN. Mr. President, I yield to the distinguished Senator from Nebraska (Mr. EXON).

Mr. EXON. Mr. President, I thank my friend from Iowa. I have joined Senator JEPSEN in this amendment. We have discussed this and feel that the subject of this amendment might more appropriately be placed in some other legislation at another time. Therefore, to allow the bill to move along, I have agreed to the amendment that Senator JEPSEN just offered.

Mr. TOWER. Mr. President, I am prepared to accept this amendment. The reason that I am prepared to accept it is that some Senators have raised the question of the suitability of this provision regarding the selective service and access to social security records appearing in this bill. I think, out of deference to Senators who feel that this should perhaps be considered as an independent issue, this is the proper course for us to take. Therefore, I am prepared to accept the amendment offered by the Senator from Iowa and the Senator from Nebraska.

Mr. STENNIS. Mr. President, may I ask what was said about the proposition that this proposal belong more properly on some other bill? I thought I caught that.

Mr. TOWER. Mr. President, it is my view that it could be an independent bill, or could be part of another bill dealing with similar matters; that is, personnel matters.

Mr. EXON. If I could be recognized or someone will yield to me, Mr. President, I should be glad to respond to the Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, after discussion with members of the Committee on Armed Services, it was our feeling that to move this bill along, the subject of the amendment could well be handled in a separate bill or in some other manner. That was the recommendation of the chairman of the committee. We decided to go along with him.

Mr. STENNIS. I thank the Senators for working on the matter. That is entirely agreeable to me. That language to which the Senator from Oregon objected comes out of the bill onto this amendment. I have no objection to the amendment.

Mr. TOWER. Mr. President, before we act on the amendment, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TOWER. Mr. President, I ask unanimous consent that the order for the quorum cal be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATFIELD. Mr. President, I understand that the distinguished majority leader, Senator BAKER, has already honored my request to thank those who participated in the negotiations regarding my original amendment. I would like to take this opportunity to reiterate my gratitude for the fairness and flexibility which was demonstrated by my good friends Senators BAKER, JEPSEN, EXON, and TOWER. It is precisely this kind of cooperative spirit which enables the U.S. Senate to travel through the stormy waters of political disagreement and emerge with its structural integrity. Few governments are worthy of comparison; far fewer can even claim that civility and tolerance have a place in their system.

The amendment to withdraw language requiring that draft registrants submit their social security numbers and to give the Selective Service virtually unlimited access to other Government data banks may seem insignificant upon initial examination. I submit that it is such seemingly small steps which threaten the erosion of basic liberties the most. We tend to engage in extended debate and discussion when the issues require constitutional modifica-

tion or the creation of a new act. Yet we take a rather casual view of giving this director or that person a special exception. This is why I indicated that inclusion of this language would compel me to offer many amendments and to engage in extended discussion. I am pleased that my colleagues, including those who disagree with my position, have agreed to allow this matter to have the discussion and proper attention that it deserves.

Mr. TOWER. Mr. President, what is the pending question?

The PRESIDING OFFICER. The amendment of the Senator from Iowa, which is cosponsored by the Senator from Nebraska.

Mr. TOWER. Vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 100) was agreed to.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. TOWER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I have been authorized to express the appreciation of the distinguished Senator from Oregon (Mr. HATFIELD) for the action just taken in striking this section of the bill. This was a section that was of special concern to the Senator from Oregon and has been for a long, long time. Extensive negotiations were undertaken during the course of this day, and they resulted in the action just taken by the Senate, which has now been reconsidered and tabled. The effect of that is to make that decision of the Senate permanent and irrevocable on this measure.

Mr. President, the Senator from Oregon could not be present on the floor because he is presently in the Energy Committee, engaged in the offering of an amendment to a bill now pending in that committee. I talked with him on the telephone, and he asked me to make these remarks on his behalf, expressing his thanks to the Senator from Iowa Mr. JEPSEN), to the Senator from Nebraska (Mr. EXON), to the minority manager of the bill, the ranking minority member of the committee, Senator STENNIS, and to the distinguished chairman of the committee, Senator TOWER. Without that action, it would not have been possible to move to attempt to find a time certain to dispose of this measure.

Mr. President, I express my personal appreciation to all Senators, but I especially give my appreciation to the Senator from Oregon for permitting us to proceed in this way in his absence, while he was necessarily in the Energy Committee attending to other details.

Mr. STENNIS. Mr. President, if the Senator will yield, I thank the Senator for handling this matter in our major committee and in our hearings. He had this matter very much on his mind.

Mr. BAKER. Mr. President, I see that the distinguished minority leader is in the Chamber. The action that was just taken removes the section of the bill which created difficulty for the Senator from Oregon, as I have just explained. He now has indicated that he has no objection to the unanimous-consent request to proceed to establish a time certain to dispose of this bill on final passage tomorrow.

Mr. President, so far as I know, that is the last remaining clearance on this side, and I ask the distinguished chairman of the committee whether he has any other requirements or requests.

I inquire of the minority leader whether he would be agreeable to a time certain, to vote at 5 p.m.

Mr. President, the Senator from Texas (Mr. TOWER) indicates to me that he has no further clearance requirements.

I ask the distinguished minority leader if he is in a position now to hear the unanimous-consent request that I wish to make in that respect.

Mr. President, I now ask unanimous consent that the Senate vote on final passage of this bill tomorrow, no later than 5 p.m.,

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, that request was cleared earlier on this side of the aisle, and I know of no change on the part of any Senator's viewpoint in that respect. Therefore, there is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, I thank all Senators, and I especially thank those who have worked diligently in the course of the last 2 hours to arrive at this agreement and in taking the actions necessary to make the agreement possible. It is evidence of diligence and a concern for the general business of the Senate which reflects credit on every Member.

I thank the Senator from Nebraska, the Senator from Iowa, the chairman, the ranking minority member of the committee, and all others who were involved in these negotiations.

Mr. President, according to the list I have available to me, there still are some 15 amendments to be dealt with which have been made known to the leadership on both sides.

I announced earlier that we are going to be in late tonight, but now that we have a time certain to vote on this measure, tomorrow at 5, I put Senators on notice that if they do not come to the floor and offer their amendments within the next half hour or so, I see no point in the Senate remaining in session late. I do not want to cut anybody off. We have waited around most of the afternoon for Senators to present their amendments.

I hope that those who hear me in the Chamber and those who may hear these remarks in their offices, on the communication system, will notify their Members that it is urgent that they come to the floor and offer their amendments; because if those amendments are not offered within a reasonable time, by 6:15 or 6:30, and if we are not going to get other amendments and make good progress, I do not intend to ask the Senate to remain in session late.

I urge all Senators who have amendments remaining to come to the floor and offer them at this time.

Mr. TOWER. Mr. President, I hope we can at least clear up a couple of more amendments tonight. Could we try to get a couple of amendments before we quit?

Mr. BAKER. We are not going to set a time for quitting. I still hope we can stay in session late. But I am not going to keep the Senate in session late just to have quorum calls until the next speaker arrives.

Members will have a problem tomorrow if they do not offer their amendments tonight, because with 15 amendments still on the list, if we go out at 6:15 or 6:30, there is going to be pandemonium tomorrow when Senators try to offer their amendments.

I hope Senators will come to the floor now, or as soon as reasonably possible, and offer those amendments, because it is very difficult to expect the Senate to wait around for that.

I observe that the minority leader is smiling, and all I can say is that all I know about trying to make the Senate perform I have learned from him. [Laughter.]

Mr. STENNIS. Mr. President, while the leaders are here and the managers of the bill are here, they can be very persuasive about these amendments.

There is an amendment by the Senator from New Mexico (Mr. SCHMITT), relating to the MX, in which there is a great deal of interest. It would take some time to argue, but there is a great deal of interest in it, and I think it would go to a rollcall vote if it were called up.

Senator NUNN has an amendment that I do not believe will be complicated, although the language has been difficult to put together, and it is going to have some appeal.

I am bold enough to suggest that if those two amendments are set for tomorrow morning, it will assure that those who have to leave later in the afternoon will be here to vote on those two amendments, which I consider the major amendments.

Mr. TOWER. Mr. President, I will talk to Senator SCHMITT and see if we can get him to act on his amendment at the earliest possible time.

There is also another amendment by Senator WALLOP which is of some significance.

The PRESIDING OFFICER. If Senators will kindly use those microphones, those not in the Chamber cannot hear.

Mr. TOWER. I am hopeful we can dispose of Senator WALLOP's amendment this evening.

Mr. BAKER. Mr. President, I report to the distinguished chairman and ranking minority member that in the course of my frustration this afternoon in trying to get amendments offered I talked, I believe, to every Member on this side whose name appears on the list, and let me make this report if I may.

The distinguished Senator from Wyoming (Mr. WALLOP) is probably going to be in a position to offer his amendment yet this afternoon. I have urged him to

civilian law enforcement officials to accompany such operations to facilitate information sharing also is contemplated.

(2) to make available to such officials (generally on a loan or access basis) equipment or facilities, where such availability will not adversely affect U.S. military preparedness. The sale, donation or other outright transfer of such equipment to civilian law enforcement agencies shall be in accordance with existing statutes covering such transfers.

(3) to authorize assignment of members of the Armed Forces to train civilian law enforcement officials in the operation of loaned equipment and provide relevant expert advice, where such training and advice do not adversely affect U.S. military preparedness.

The Secretary of Defense would be authorized, not required, to provide this aid. And the Department of Defense could obtain reimbursement for any assistance provided when the Secretary determined such reimbursement was appropriate.

The committee's recommendation would neither enhance nor increase the authority of the military to gather or obtain intelligence information. The provision merely clarifies and reaffirms present law and codifies those decisions (concerning indirect assistance by the military) which permit the military to disseminate information (such as the movement of ships and planes likely to be transporting narcotics) to civilian law enforcement officials which it receives in the routine course of military business.

There have been a number of express exceptions to the Posse Comitatus Act.[3] So there is ample precedent for a provision which merely clarifies and reaffirms the authority of the Secretary of Defense under that statute. The Department of Defense and Department of Justice support the committee proposal.

The committee believes its recommendation will protect federal personnel from potentially disparate court opinions by clarifying and reaffirming the existing authority of the Secretary of Defense. At the same time, the committee's proposal will preserve the traditional and proper separation between military missions and civilian law enforcement activities.

Sec. 916. Enforcement of Selective Service System Registration

Last year, the Congress voted to resume male registration under the Military Selective Service Act to enhance the mobilization capability of the United States. This step was and remains essential, especially in light of the current and projected shortages of trained military manpower that would be available in the event of a national emergency.

The results of Selective Service registration to date are encouraging and the committee applauds this effort. However, the committee also recognizes that the continuing registration now in place will not be

---

[3] *See, e.g.*, 10 U.S.C. Sections 331–334 (1976) (Suppression of insurrections and other unlawful combinations under specified circumstances); 16 U.S.C. Section 23, 78 (1976) (Protection of federal parks); U.S.C. Sections 112, 1116 (1976) (Protection of foreign officials, official guests, and other internationally protected persons); *id.* Section 351 (Crimes against members of Congress); 22 U.S.C. Sections 408, 461–462 (1976) (Enforcement of neutrality laws); 25 U.S.C. Section 180 (1976) (Removal of persons engaged in unlawful activities on lands belonging to Indian tribes); 42 U.S.C. Section 97 (1976) (Execution of quarantine and health laws); *id.* Section 1989 (Execution of warrants relating to enforcement of certain civil rights laws); *id.* Section 3756 (Loan of services, equipment, personnel, and facilities to the Law Enforcement Assistance Administration); 43 U.S.C. Section 1065 (1976) (Removal of unlawful enclosures from public lands); 48 U.S.C. Section 1418 (1976) (Protection of the discoveries of a guano island); 50 U.S.C. Section 220 (1976) (Enforcement of the customs laws).

able to achieve a long-term record of success unless a legally viable and effective enforcement mechanism is in place. A recent court decision, currently in the appellate process, has left the Selective Service enforcement process in doubt. The committee believes this situation is detrimental to the national security and believes the Selective Service System requires the authority to conduct an effective compliance program.

Past compliance programs cannot be applied under the current system because local draft boards have not been activated, and therefore cannot actively enforce compliance during a peacetime registration. According to the Selective Service, therefore, the most efficient and effective program for the identification of non-registrants involves a comparison between the list of actual registrants with a list or lists of those who would appear to be subject to the legal requirement to register. According to the Director of Selective Service, the most comprehensive list of potential registrants is the Social Security file.

In the view of the Selective Service System, it is essential that the list of registrants be matched by Social Security number with Social Security records by year of birth for the purpose of identifying those who apparently violated the Military Selective Service Act. The next step would involve obtaining the current addresses of non-registrants from the Internal Revenue Service (IRS) because the addresses contained in the Social Security file are generally not current. The acquisition of current addresses from IRS files is currently authorized by the U.S. Code which, in 26 U.S.C. and 6103(i)(2), explicitly states that a taxpayer's name and address are not treated as taxpayer return information when an agency head requests them for use in an administrative or judicial proceeding. In fact, many government agencies utilize this IRS information for several purposes and the IRS utilizes the Social Security file for income tax enforcement.

Once the names and current addresses of non-registrants are ascertained, the Director of Selective Service would then contact those non-registrants and apprise them of their status. Should the individual involved then fail to register as required following this initial notice, the Director of Selective Service will then forward the case to the Attorney General and request that appropriate legal proceedings be initiated.

The U.S. District Court for the District of Columbia ruled on November 24, 1980, that the Selective Service System was not entitled to require registrants to provide Social Security Account Numbers because of the Privacy Act of 1974. If sustained, this ruling would seriously compromise a program to identify those who have violated the Military Selective Service Act. However, the Court noted, "The Court is well aware of the impact of this decision. There is an obvious need for verification of identity by Social Security number in this instance." Although this decision is being appealed and a stay has been granted to allow the Selective Service System to continue gathering Social Security numbers during the appellate process, the committee feels that it is essential to remove any ambiguity in this regard immediately and state in law the necessary provision to promote an effective compliance program.

The committee intends that this new authority will be used to enforce requirements for individuals to present themselves for face-to-

face registration. In past years, there have been suggestions that individuals could be registered by matching computer lists or other methods not requiring a face-to-face registration. There is no authority in the committee amendment for the routine registration of individuals from a list or lists of those subject to registration.

The committee notes that, because of the aforementioned judicial stay allowing continued collection of Social Security numbers, the Selective Service System has the authority at this time to conduct their registration enforcement program. The agency has not done so to date and the committee notes this inaction with displeasure and urges the process to begin without further delay.

The committee concurs with the Director of Selective Service in the belief that a failure to register is not a victimless crime in that the registration pool is reduced on a one-to-one basis by those who do not register. The outgrowth of a failure to register would be that the person who obeyed the law would increase his probability of being drafted in time of national emergency while the non-registrant would be without obligation by virtue of having broken the law. A failure to register is a criminal offense punishable by a fine of up to $10,000 or imprisonment for up to 5 years or both.

It is the committee's judgment that the registration program is essential to the national security and that a vigorous enforcement process is mandatory for its continued success.

Requirement for Reduction in the Number of General and Flag Officers

Section 811 of the Department of Defense Authorization Act of 1978 (Public Law 94–79) directed a reduction in general/flag officer strength by 6 percent to a level of 1,073 officers by the end of fiscal year 1980. In addition, a report concerning the impact of these reductions was solicited. The Department of Defense reduced its fiscal year 1980 planned strength in these communities by 2 percent in fiscal year 1978 and submitted a report to the committee requesting relief from further reductions based on its assessment of existing requirements and the validity of its requirements determination process. The Department of Defense Authorization Act of 1981 granted a one year extension to achieve the 6 percent reduction. The committee requested a report by the Secretary of Defense by March 1, 1981, on the reallocation of 24 flag and general officer positions, as well as legislative recommendations designed to repeal all minimum grades for flag officers in current law, to initiate a program requiring the Secretary of Defense, to review 25 percent of all flag and general officer positions annually, and to certify to Congress on the continued need for these positions.

To date the Secretary of Defense has not submitted this legislative proposal nor the methodology to review 25 percent of all flag and general officer positions annually. The Department of Defense advised the committee that it has reviewed 114 positions this past year and reallocated 17 positions.

The committee believes that comprehensive legislation and congressional oversight is the best means of controlling the strength and management of flag and general officer positions. Upon submission of this proposed legislation together with a detailed explanation of its application, the committee will consider appropriate action on the mandated reductions of flag and general officers.

TAB I

Union Calendar No. 98

97TH CONGRESS
1ST SESSION

H. R. 3519

[Report No. 97-71, Parts I, II, and III]

To authorize appropriations for fiscal year 1982 for the Armed Forces for procurement, for research, development, test, and evaluation, and for operation and maintenance, to prescribe personnel strengths for such fiscal year for the Armed Forces and for civilian employees of the Department of Defense, to authorize appropriations for such fiscal year for civil defense, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 1981

Mr. PRICE (for himself and Mr. DICKINSON) introduced the following bill; which was referred to the Committee on Armed Services

MAY 19, 1981

Reported and referred to the Committee on the Judiciary and to the Committee on Government Operations for a period ending not later than June 9, 1981, for consideration of such provisions of said bill as fall within the jurisdictions of those committees under clause 1(m), and clause 1(j)(2) (relating to Federal procurement), rule X, respectively

JUNE 9, 1981

Referral to the Committees on Government Operations and the Judiciary extended for a period ending not later than June 12, 1981

JUNE 12, 1981

Reported with an amendment from the Committee on the Judiciary

[Omit the part in boldface brackets and insert the part printed in boldface roman]

JUNE 12, 1981

Reported from the Committee on Government Operations, with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To authorize appropriations for fiscal year 1982 for the Armed Forces for procurement, for research, development, test, and evaluation, and for operation and maintenance, to prescribe personnel strengths for such fiscal year for the Armed Forces and for civilian employees of the Department of Defense, to authorize appropriations for such fiscal year for civil defense, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Department of Defense Authorization Act, 1982".

TITLE I—PROCUREMENT

AUTHORIZATION OF APPROPRIATIONS

SEC. 101. Funds are hereby authorized to be appropriated for fiscal year 1982 for the use of the Armed Forces of the United States for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons in amounts as follows:

~~(b) Section 2306(f)(1) of such title is amended by striking out "$100,000" each place it appears and inserting in lieu thereof "$500,000".~~

~~(c) Section 2311 of such title is amended by striking out "$100,000" and inserting in lieu thereof "$5,000,000".~~

FACILITATION OF SELECTIVE SERVICE REGISTRATION AND OF MILITARY RECRUITING

SEC. ~~904.~~ *902.* (a) Section 3 of the Military Selective Service Act (50 U.S.C. App. 453) is amended—

(1) by inserting "(a)" after "SEC. 3."; and

(2) by adding at the end thereof the following new subsection:

"(b) Regulations prescribed pursuant to subsection (a) may require that persons presenting themselves for and submitting to registration under this section provide, as part of such registration, such identifying information (including date of birth, address, and social security account number) as such regulations may prescribe.".

(b) Section 12 of such Act (50 U.S.C. App. 462) is amended by adding at the end thereof the following new subsection:

"(e)(1) The President may require the Secretary of Health and Human Services to furnish to the Director, from records available to the Secretary, the following information with respect to individuals who are members of any group of

individuals required by a proclamation of the President under section 3 to present themselves for and submit to registration under such section: name, date of birth, social security account number, and address.

"(2) In order to enforce the provisions of this Act and to ensure registration of all persons required to present themselves for and submit to registration under section 3, the President may require the Secretary of the Treasury to furnish to the Director, from records available to the Secretary, the address of any individual whose name is furnished to the Secretary by the Director. Information furnished to the Director by the Secretary under this section shall be used only for the purpose of the enforcement of this Act.".

(c) Section 15 of such Act (50 U.S.C. App. 465) is amended by adding at the end thereof the following new subsection:

"(e) In order to assist the Armed Forces in recruiting individuals for voluntary service in the Armed Forces, the Director of Selective Service shall, upon the request of the Secretary of Defense or the Secretary of Transportation, furnish to the Secretary the names and addresses of individuals registered under this Act. Names and addresses furnished pursuant to the preceding sentence may be used by the Secretary of Defense or Secretary of Transportation only for recruiting purposes.".

House Report
No. 97-71, Part I

as is now provided in section 138, title 10, United States Code, for major procurement, research and development, and operation and maintenance appropriations.

This recommendation is a reflection of the committee's growing concern over the readiness of U.S. forces and is a logical extension of the decision last year to authorize operation and maintenance requests. The commitee concluded that a comprehensive review of the readiness posture of our armed forces is not complete without a detailed examination of the ammunition and other procurement programs which greatly influence readiness and sustainability of forces.

The committee believes that annual authorization is a most effective means of exercising its oversight responsibilities and, therefore, recommends that the authorization process be expanded to include appropriations for ammunition and other procurement.

Section 903—Increases in Dollar Thresholds for Certain Defense Contract Regulations

Section 903(a) would amend sections 2304(a)(3) and 2304(g) of title 10, United States Code, to raise the current ceiling for use of the simplified small purchase procedures from $10,000 to $25,000. The statutory ceiling of $10,000 was established in August 1974 (Public Law 93–356). The increase to $25,000 would adjust the ceiling to account for the effect of inflation in the national economy since 1974.

Section 903(b) would amend section 2306(f)(1) of title 10 to increase the certification threshold for the Truth in Negotiations Act (Public Law 87–653) from $100,000 to $500,000. The current threshold requires contractors to certify their cost and pricing data for certain negotiated contracts and subcontracts exceeding $100,000 and has been in effect since the Truth in Negotiations Act became law in 1962. The increase is consistent with the inflationary trend that has occurred since 1962.

Section 903(c) would amend section 2311 of title 10 which currently limits to the service Secretary the power to authorize negotiation of contracts involving more than $100,000 for experimental, developmental or research work or for making or furnishing property for experiment, test, development, or research. This $100,000 level established in 1962 would be increased to $5 million by section 903. Increasing the threshold to $5 million would reduce paperwork by 88 percent while reducing the total value of contracts covered by only 20 percent.

The committee supports these increases because they will provide administrative relief and should thereby result in substantial cost savings.

Section 904—Facilitation of Selective Service Registration

On November 24, 1980, the United States District Court for the District of Columbia ruled that the Selective Service System could not require that registrants provide their social security identification number as part of the registration process. The ruling was based on the Privacy Act (Public Law 93–579) which demands specific statutory authority before a government agency may require such information. The Court stated, "Citizens have a duty to serve in the Armed

Forces and a correlative right to register unimpeded by invasion of their privacy unless statutorily authorized."

Without access to social security numbers, the Selective Service registration requirement will be largely unenforceable. If the registration requirement cannot be enforced, the Selective Service System will unfairly burden those who do comply in the event of a national emergency. For this reason, the committee recommends a provision specifically authorizing the President to require a registrant to submit his social security number, as well as permitting the President to have the Social Security Administration and the Internal Revenue Service provide information in their control relevant to enforcing the registration requirement. The information the President may require the Secretary of Health and Human Services to provide from social security records is limited to name, date of birth, social security account number and address. The information the President may require the Secretary of the Treasury to provide from Internal Revenue Service records is limited only to the addresses of individuals whose names are furnished by the Director of Selective Service. The information provided is only to be used for purposes of enforcement.

Access to social security numbers provides the most efficient and effective program for identifying those who do not register. The most comprehensive list of potential registrants is in the social security file. The Selective Service will be able to match the list of registrants against the social security records of those in the eligible age group. Upon determining those individuals with social security numbers that have not registered, the mailing addresses of non-registrants could be obtained from recent tax returns.

The committee considers it an appropriate purpose for the government to use identifying information within its control for purposes of enforcing the registration requirement.

The recommended language also contains a provision that would authorize the Director of Selective Service to provide the Department of Defense with information drawn from registration forms for purposes of recruiting. Currently, military recruiting organizations are forced to purchase commercial lists of high school seniors and other individuals of appropriate age in an effort to assist the recruiting function.

Some information relevant to recruiting is now made available to military recruiting organizations from the Selective Service System. The information is forwarded to the Department of Defense only if the registrant indicates his desire for military recruiting information on the registration form itself. In the initial registration period in July 1980, only 15 percent of registrants sought such information.

At a time when the Nation is spending $1.3 billion for military recruiting, it is appropriate to use the information available through registration to assist the recruiting program.

Section 905—Determination of Charges for Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) Payments

Section 905 would amend section 1079(h) of title 10, United States Code, to eliminate the requirement for the use of customary charges in determining reimbursement schedules for physicians.

78-247 0 - 81 - 11

TAB F

Bürgener	Hammerschmidt	Nelson
Butler	Hance	Nichols
Byron	Hansen (ID)	O'Brien
Campbell	Hansen (UT)	Panetta
Carman	Hartnett	Parris
Carney	Hatcher	Pashayan
Chappell	Heckler	Pepper
Chappie	Hefner	Perkins
Cheney	Heftel	Petri
Clausen	Hendon	Price
Clinger	Hertel	Pritchard
Coats	Hiler	Quillen
Coelho	Hillis	Rahall
Coleman	Holland	Railsback
Collins (TX)	Holt	Regula
Conable	Hopkins	Reuss
Conte	Howard	Rhodes
Corcoran	Hubbard	Ritter
Coughlin	Huckaby	Roberts (KS)
Courter	Hunter	Roberts (SD)
Coyne, James	Hutto	Robinson
Craig	Hyde	Roemer
Crane, Daniel	Ireland	Rogers
Daniel, Dan	Jeffords	Roth
Daniel, R. W.	Jeffries	Roukema
Dannemeyer	Jenkins	Rousselot
Daschle	Johnston	Rudd
Davis	Jones (OK)	Santini
de la Garza	Jones (TN)	Sawyer
Deckard	Kazen	Scheuer
DeNardis	Kemp	Schulze
Derwinski	Kindness	Schumer
Dickinson	Kramer	Sensenbrenner
Dicks	Lagomarsino	Shamansky
Dixon	Lantos	Sharp
Dorgan	Latta	Shelby
Dougherty	Leach	Shumway
Dowdy	Leath	Shuster
Downey	LeBoutillier	Siljander
Dreier	Lee	Simon
Duncan	Lehman	Skeen
Dunn	Lent	Skelton
Dwyer	Levitas	Smith (AL)
Dyson	Lewis	Smith (NE)
Eckart	Livingston	Smith (NJ)
Edwards (AL)	Loeffler	Smith (OR)
Edwards (OK)	Long (LA)	Snowe
Emerson	Lott	Snyder
Emery	Lowery (CA)	Solarz
English	Lujan	Solomon
Ertel	Luken	Spence
Evans (DE)	Lungren	St Germain
Evans (GA)	Madigan	Stangeland
Evans (IA)	Marks	Stanton
Fary	Marlenee	Staton
Fazio	Marriott	Stenholm
Fenwick	Martin (IL)	Stratton
Fiedler	Martin (NC)	Stump
Fields	Martin (NY)	Swift
Findley	Matsui	Tauke
Fish	Mavroules	Tauzin
Flippo	Mazzoli	Taylor
Fountain	McClory	Thomas
Frank	McCloskey	Trible
Frenzel	McCollum	Volkmer
Frost	McCurdy	Walker
Fuqua	McDade	Wampler
Gaydos	McDonald	Watkins
Gejdenson	McEwen	Weber (MN)
Gephardt	McGrath	Weber (OH)
Gibbons	McHugh	White
Gilman	McKinney	Whitehurst
Gingrich	Mica	Whitley
Ginn	Michel	Whittaker
Glickman	Miller (OH)	Williams (OH)
Goldwater	Mineta	Wilson
Gonzalez	Minish	Winn
Gore	Mitchell (NY)	Wolf
Gradison	Moakley	Wortley
Gramm	Molinari	Wright
Green	Mollohan	Wylie
Gregg	Montgomery	Yates
Grisham	Moorhead	Yatron
Guarini	Morrison	Young (AK)
Gunderson	Murtha	Young (FL)
Hagedorn	Myers	Young (MO)
Hall (OH)	Natcher	Zablocki
Hall, Ralph	Neal	Zeferetti
Hamilton	Nelligan	

NOT VOTING—15

Alexander	Derrick	Goodling
Bevill	Donnelly	Jones (NC)
Bonior	Dornan	Napier
Cotter	Dymally	Porter
Crane, Philip	Foglietta	Savage

□ 1510

Messrs. VOLKMER, HEFNER, FIELDS, STENHOLM, and LEHMAN changed their votes from "aye" to "no."

Mr. ROSE changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PARLIAMENTARY INQUIRY

Mr. DICKINSON. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. DICKINSON. As a matter of parliamentary inquiry, I would like to know whether or not title IX has been considered as read and open to amendment at any point, and if that is the last title of the bill, as I understand it?

The CHAIRMAN. The gentleman is correct.

Mr. DICKINSON. That being the case, if I might have the attention of the Members, I would like to ask, in view of the hour and the length of debate, and there are still some amendments pending, I would like to ask unanimous consent that all of the debate on this bill and amendments thereto conclude at 7 o'clock tonight.

Mr. GLICKMAN. I object.

The CHAIRMAN. Objection is heard.

□ 1620

AMENDMENT OFFERED BY MR. NICHOLS

Mr. NICHOLS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. NICHOLS: Page 30, line 22, strike out "(1)".

Page 31, strike out line 5 and all that follows through "the Director." on line 11.

Page 31, line 12, strike out "section" and insert in lieu thereof "subsection".

Mr. NICHOLS. Mr. Chairman, my amendment would strike the language in section 904 that would authorize the President to require the Secretary of the Treasury to furnish addresses within the control of the Internal Revenue Service to the Director of Selective Service for purposes of enforcing the registration requirements.

I have been contacted by the Ways and Means Committee and advised they would be very concerned by authority in the law, outside of section 6013 of the Internal Revenue Code, providing access to taxpayer information within the control of the Internal Revenue Service.

Mr. Chairman, as a matter of courtesy to the committee that is charged with legislative jurisdiction over this important area, I am offering this amendment. I do so although I strongly believe that it is appropriate for the Selective Service System to have access to current addresses within the control of the Government to enforce the registration requirement. It is my understanding that the Ways and Means Committee will consider this matter as separate legislation in the very near future. In this connection, I would yield to the gentleman from New York (Mr. DOWNEY) a member of the Ways and Means Committee, for a statement to that effect.

Mr. DOWNEY. I would like to thank the gentleman from Alabama for offering this amendment to strike the language in section 904 of H.R. 3519 dealing with access to information within the control of the Internal Revenue Service.

As the gentleman recalls, the Congress amended the Internal Revenue Code in 1976 to consolidate all statutory authority for access to taxpayer information in one section of the code—section 6103 of title 26. That same legislation also established both civil and criminal penalties for unauthorized disclosure of such information. Unauthorized disclosure is defined as disclosures other than those contained in section 6103. Although the authority contained in section 904 of this bill would be a later expression of congressional intent, there would be some concern about the liability of Internal Revenue Service employees under these apparently conflicting sections.

Also, Mr. Chairman, the Ways and Means Committee, as a matter of policy, would like very much to prevent having authority for such disclosures spread throughout the code.

On behalf of the Ways and Means Committee, I appreciate the gentleman's cooperation in this matter and will be happy to insure that legislation on this subject will receive prompt consideration by our committee. I can state to the gentleman from Alabama that the committee's primary concern arises not from a substantive disagreement on such access, but rather from a difficulty with such authority being contained in a title of the code other than title 26.

Mr. NICHOLS. I yield to the ranking minority member of the subcommittee, Mr. MITCHELL of New York.

Mr. MITCHELL of New York. Mr. Chairman, I want to express my support for the gentleman from Alabama's amendment. The Committee on Ways and Means has raised a valid concern. I would also like to reiterate a strong belief that it is an appropriate action for the Selective Service System to have access to the information in the Government's control such as current addresses in order to permit an effective enforcement process of the legal requirement to register.

Mr. WEISS. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from New York.

Mr. WEISS. For the purpose of clarification, is the gentleman striking the entire section, what is now 902, on pages 30 and 31, or only that part which applies to the Director of Internal Revenue, the Secretary of the Treasury?

Mr. NICHOLS. In response to the gentleman, let me say we are not striking the entire section.

We are striking on page 31, if the gentleman is following the debate here, lines 5 through 11.

Mr. WEISS. Lines 5 through 11.

Mr. NICHOLS. Yes.

Mr. WEISS. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Alabama (Mr. NICHOLS).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. BRINKLEY

Mr. BRINKLEY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BRINKLEY: At the end of the bill, add the following new section:

MILITARY BASE REUSE STUDIES AND COMMUNITY PLANNING ASSISTANCE

SEC. 918. (a)(1) Chapter 141 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 2391. Military base reuse studies and community planning assistance

"(a) Whenever the Secretary of Defense or the Secretary of the military department conerned publicly announces that a military installation is a candidate for closure or that a final decision has been made to close a military installation and the Secretary of Defense determines, because of the location, facilities, or other particular characteristics of the installation, that the installation may be suitable for some specific Federal, State, or local use potentially beneficial to the Nation, the Secretary of Defense may conduct such studies, including the preparation of an environmental impact statement in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), in connection with such installation and such potential use as may be necessary to provide information sufficient to make sound conclusions and recommendations regarding the possible use of the installation.

"(b)(1) The Secretary of Defense may make grants, conclude cooperative agreements, and supplement funds made available under Federal programs administered by agencies other than the Department of Defense in order to assist State and local governments and regional organizations composed of State and local governments, in planning community adjustments required (A) by the proposed or actual establishment, realignment, or closure of a military installation, or (B) by the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, if the Secretary of Defense determines that the action is likely to impose a significant impact on the affected community.

"(2) In the case of the establishment or expansion of a military installation, assistance may be made under paragraph (1) only if (A) community impact assistance or special impact assistance is not otherwise available, and (B) the establishment or expansion involves the assignment to the installation of more than 2,500 military and civilian Department of Defense personnel or more military and civilian Department of Defense personnel than the number equal to ten percent of the number of persons employed in counties or independent municipalities within fifteen miles of the installation, whichever is lesser.

"(3) In the case of the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, assistance may be made under paragraph (1) only if the cancellation, termination, or failure to proceed involves the loss of 2,500 or more full-time Department of Defense and contractor employee positions in the locality of the affected community.

"(4) Funds provided to State and local governments and regional organizations under this section may be used as part or all of any required non-Federal contribution to a Federal grant-in-aid program for the purposes stated in paragraph (1).

"(5) Not more than $2,000,000 in assistance may be provided under this subsection in any fiscal year.

"(c) The Secretary of Defense shall submit a report not later than December 1 of each year to the Committees on Armed Services of the Senate and House of Representatives concerning the operation of this section during the preceding fiscal year. Each such report shall show each State, unit of local government, and regional organization that received a grant under this section during such fiscal years and the total amount granted under this section during such year to each such State, unit of local government, and regional organization.

"(d) In this section, the term 'military installation' includes any camp, post, station, base, yard, or other facility under the jurisdiction of the Department of Defense that is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guamn.

"(e) The authority of the Secretary of Defense to make grants under this section in any fiscal year is subject to the availability of appropriations for that purpose.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"2391. Military base reuse studies and community planning assistance.".

(b) Section 610 of the Military Construction Authorization Act, 1977 (Public Law 94-431; 90 Stat. 1349), is repealed.

(c) The first report under subsection (c) of section 2391 of title 10, United States Code, as added by subsection (a), shall be submitted not later than December 1, 1981.

Mr. BRINKLEY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Georgia?

There was no objection.

Mr. BRINKLEY. Mr. Chairman, basically this is the Lagomarsino bill, and I appreciate his leadership in this regard. It is H.R. 3950, which is incorporated in the amendment which is before the House for consideration right now.

The Department of Defense has an obligation to assist communities in meeting the problems caused by major defense program changes. Such changes can cause extensive disruption involving local labor force, related and supporting businesses, and public services. These effects are particularly noticeable in small communities up to 5,000 population, but remain significant through those with a population of 200,000.

Yet communities of this size are just the ones the least likely to have the requisite economic infrastucture, public services, and managerial capability to accommodate major change.

One important management tool normally lacking in smaller communities is planning capability. In the past, affected communities have been heavily dependent on outside funding to provide for planning resources.

Previously, DOD and the domestic agencies have been able to provide community planning assistance in areas affected by base reuse planning, realinement, or closure actions. Often, a small amount of planning funds has enabled a community to organize its own efforts to provide public facilities or seek other domestic agency assistance.

Current authority derives from the 1977 Military Construction Authorization Act which authorizes the expenditure of military construction funds for base reuse planning purposes after a final closure decision has been made, but not during the candidate realinement period.

This amendment, requested by DOD, and recommended by the interagency Report on Community Impact Assistance submitted by the President on March 23, 1981, extends the community planning assistance authority to include situations involving large new bases, serious base realinements, or failure to proceed with approved major weapons systems programs involving 2,500 or more direct civilian jobs, or 10 percent of the total local work force. Resources would be made available from currently authorized funds in the operations and maintenance, defense agencies account for the Office of Economic Adjustments, Office of the Secretary of Defense. Each affected community could receive between $50,000 and $70,000 depending on its requirements. If experience over the past several years is any guide, about 10 planning assistance actions could be expected annually. Therefore, absent unforeseen turbulence in existing base structure or major procurements, the total annual cost of this program would remain below $1 million. However, to insure that the future costs and scope of this program are not allowed to significantly increase without appropriate legislative review and specific statutory authority, my amendment places a $2 million ceiling on annual expenditures.

Again, I want to emphasize that planning assistance would be provided from currently budgeted resources. This amendment does not create new job slots or demand for additional O. & M. funds.

In short, DOD seeks to have authority to assist affected communities plan for either a major influx of personnel or loss of jobs.

Mr. Chairman, this authority is badly needed to ease the impact of disruptions that take place below the size of programs like M-X or Trident. To the communities involved, however,

ment, and disposal of Federal property, and intergovernmental relations.

Although the terms of referral of H.R. 3519 to the Committee limit its formal consideration to procurement matters, the Committee wishes to express its concerns over the treatment of the above three issues as they relate to the Committee's jurisdictional responsibilities.

a. Privacy provisions

Language in Section 904 and 908 of H.R. 3519, as reported by the committee of original jurisdiction, appears to amend provisions of the Privacy Act of 1974 (5 U.S.C. 552a), over which the Committee on Government Operations has legislative jurisdiction.

Section 904 of the bill would require Selective Service registrants to provide their social security account number. This may be in direct contravention of Section 7 of the Privacy Act of 1974, which forbids any Federal agency from denying "to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number." This section would also render moot pending litigation (*Wolman v. United States*) (D.C. Circuit Court of Appeals No. 80-2516) in which the Court of Appeals is awaiting argument on the application of the restriction to draft registration.

Section 904 also would give the President the authority to require the Social Security Administration to provide the Selective Service Director with names, dates of birth, addresses, and social security numbers with respect to certain individuals. This section additionally would authorize the President to require that Internal Revenue Service records be made available to the Selective Service for the purpose of establishing the current address of any individual whose name is furnished to the Secretary of the Treasury by the Director of the Selective Service.

The provision goes even further and directs the Director of the Selective Service to share information on Selective Service registrants, including that received from the Social Security Administration and the IRS, with the Secretary of Defense and the Secretary of Transportation for purposes of recruiting individuals for voluntary service in the Armed Forces.

The Committee's concern over this provision centers around its potential for creation of a computer data bank linking numerous Federal and state information systems. The social security numbers are the needed keys to allow Selective Service to interconnect with those other systems. The Privacy Act was meant to place a moratorium on the use of social security numbers as vehicles for compiling data in such large systems until specific congressional policy was established.

In addition, there is no evidence that the Selective Service System either seeks or needs this authority at this time. In testimony before the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice on May 22, 1980, Selective Service Director Bernard Rostker assured the subcommittee that Selective Service had "no plans at the present time to use data for any purpose from other Government agencies." "However," Dr. Rostker continued, "we reserve the right at some future date to come to the Congress for an amendment to the Privacy Act which would give us access to that data. And as you are aware, we could not in fact gain access to that information without the explicit approval of the Congress."

There may be good reasons to provide such approval, but the Selective Service has not formally requested this authority. Other than a reference to the Selective Service System witness in hearings this year before the Committee on Armed Services to concern over the question, there has been no formal Administration request for legislative remedy. There were no public hearings on the question, and no separate examination of the issue.

Section 908 of the bill as reported by the committee of original jurisdiction contains the following language:

> The Secretary of Defense may provide to *Federal*, *State*, and *local* civilian law enforcement officials *any* information collected during the normal course of military operations that may be relevant to a violation of any Federal or State law. [Italics added.]

This section appears to go substantially beyond current provisions of law, such as Section (b)(7) of the Privacy Act of 1974 which restricts such uncontested disclosures for law enforcement purposes to those where the head of a Federal law enforcement agency "has made a written request to the agency which maintains the record specifying the particular portions desired and the law enforcement activity for which the record is sought."

b. Property provisions

In addition to the Privacy Act considerations in Section 908 which are discussed above, this section of the bill as reported by the committee of original jurisdiction contains language which bears on the Committee's jurisdiction over the administration of Federal property. Section 908, which would add to Title 10 of the U.S. Code a new Chapter 18 entitled "Military Cooperation with Civilian Law Enforcement Officials," provides that—

> The Secretary of Defense may make available any equipment, base facility, or research facility of the armed forces to any Federal, State, or local civilian law enforcement official if the making of such equipment or facility available will not adversely affect the military preparedness of the United States.

This provision would have a substantial impact on the Federal Property and Administrative Services Act of 1949 and on related programs requiring further Federal utilization of excess property and disposal of surplus property. In addition, the Committee believes that existing law already provides ample authority to render assistance of the type apparently contemplated by the above provision.

(1) Section 2667 of Title 10, U.S. Code, authorizes the Secretary of a military department to least real or personal property that is not currently needed for public use but has not been declared excess property. The Secretary must determine only that the lease will promote the national defense or be in the public interest. Although money rentals are provided for, the section as currently interpreted does not require actual monetary payments if consideration can be realized through other advantages to the Government.

(2) An opinion by the Department of Justice to the Deputy General Counsel, Office of Economic Opportunity, dated May 15, 1968, declares: