JUN 18 1982

Department of the Treasury

Office of the General Counsel

to: Dick Hauser

room: _____ date: 6/17/82

Fyi
Senior Service

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

JUN 18 1982

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.

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* 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 6-26-78)*

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

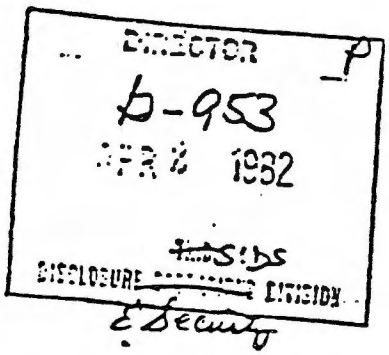
examination of the issue, public hearings and by amendment of section 6103. (A copy of the relevant floor debates from July 15, 1981, and a copy of the relevant portions of House Report No. 97-71, Part III, are attached at Tabs F and G respectively.)

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."

Internal Revenue Service

memorandum

TAB A



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 chairmen 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

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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

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[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 3750 (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.".

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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	Poglietta	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 futhre 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:

Wallison 6/17/82

Taper.

Names being supplied by SS / 350,000 names

IRS will do 3 matchings

Soc Sec. will not know who did matching

Another batch / IRS will select 200 from 600 names.

won't know until then.

SS procedures not +

names and addresses will be sent back to Sel. Service for prosecution

Soc Sec - will furnish names

Dispute as to whether 200 names is IRS's only obligation. — no more names.

W-2 forms in possession of Soc Sec. - still 6103 info.

THE WHITE HOUSE
WASHINGTON

Dick-

For placement in the Selective Service/social security number file -

Thanks
David

FACILITATION OF SELECTIVE SERVICE REGISTRATION AND OF MILITARY RECRUITING

SEC. 916. (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) 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. Information furnished to the Director by the Secretary under this subsection shall be used only for the purpose of the enforcement of this Act.".

Director of Selective Service

(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 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.".

REPORTS ON UNIT COSTS OF MAJOR DEFENSE SYSTEMS

SEC. 917. (a)(1) The program manager (as designated by the Secretary concerned) for each major defense system included in the Selected Acquisition Report dated March 31, 1981, and submitted to the Congress pursuant to section 811 of the Department of Defense Appropriation Authorization Act, 1976 (Public Law 94-106; 10 U.S.C. 139 note), shall submit to the Secretary concerned, within seven days after the end of each quarter of fiscal year 1982, a written report on the major defense system included in such selected acquisition report for which such manager has responsibility. The program manager shall include in each such report—

(A) the total program acquisition unit cost for such major defense system as of the last day of such quarter; and

(B) in the case of a major defense system for which procurement funds are authorized to be appropriated by this Act, the current procurement unit cost for such major defense system as of the last day of such quarter.

(2) If at any time during any quarter of fiscal year 1982, the program manager of a major defense system referred to in paragraph (1) has reasonable cause to believe that (A) the total program acquisition unit cost, or (B) in the case of a major defense system for which procurement funds are authorized to be appropriated by this Act, the current procurement unit cost has exceeded the applicable percentage increase specified in subsection (b), such manager shall

Prohibition against doing business with certain contractors (Sec. 914)

The Senate bill contained a provision (sec. 921) that would prohibit the Department of Defense from soliciting a bid from, awarding a contract to, extending an existing contract with, or approving, when approval is required, the award of a subcontract to a contractor that has been debarred or suspended by another Federal agency.

The prohibition as contained in the Senate bill would apply when the Department of Defense has knowledge of such debarment or suspension. The prohibition would not apply when the debarment has expired or has been terminated or the suspension has expired. In addition, the prohibition would not apply when the Department of Defense determines there is a compelling reason to conduct business with a debarred or suspended contractor and transmits a notice to the General Services Administration describing such a determination. The provision provides further that such notices will be maintained by the General Services Administration in a file available for public inspection.

The conferees agreed that the authority and duty to file notices under this provision should rest with the service Secretary concerned.

The House amendment contained no similar provision.

The House recedes with an amendment.

Civil Reserve Air Fleet (Sec. 915)

The House amendment contained a provision that would amend Chapter 931 of title 10, United States Code, to authorize the Secretary of the Air Force to modify existing and newly manufactured civil aircraft to configurations capable of carrying outsize and bulk military cargo, and provide financial incentives for civilian participation in the Civil Reserve Air Fleet program.

The Senate bill contained no similar provision.

The Senate recedes.

Selective Service System Enforcement (Sec. 916)

The House amendment contained a provision (sec. 904) that would authorize the President to require registrants to submit social security numbers at the time of registration and to require the Secretary of Health and Human Services to furnish to the Director of Selective Service the names, dates of birth, addresses and social security numbers of individuals required to register. The information made available to Selective Service under this provision would be used only for purposes of enforcement of the Military Selective Service Act. The provision would also require the Director of Selective Service, upon request of the Secretary of Defense or the Secretary of Transportation, to provide the Secretary concerned with names and addresses of registrants for purposes of recruiting.

The Senate bill contained no similar provision.

The Senate recedes.

Unit-Cost reports (Sec. 917)

The Senate bill contained a provision (sec. 922) that would require the Secretary of the applicable service, and possibly the Sec-

title 20

to Congress and the General Accounting Office.

§ 401.220 Other laws.

When the FOIA does not apply, we may not disclose any personal information unless both the Privacy Act and § 1106 of the Social Security Act permit the disclosure. Sections 401.305 through 401.340 discuss how we apply the various provisions of the Privacy Act that permit disclosure. Section 1106 of the Social Security Act requiries the Secretary of HHS to set out in regulations what disclosures may be made; therefore, any disclosure permitted by this regulation is permitted by § 1106.

Subpart C—Individual Disclosures

§ 401.300 General principles.

When no law specifically requiring or prohibiting disclosure (see § 401.205 and § 401.210) applies to a question of whether to disclose information, we follow the FOIA principles to resolve that question. We do this to insure uniform treatment in all situations. The FOIA principle which most often applies to SSA disclosure questions is whether the disclosure would result in a "clearly unwarranted invasion of personal privacy." To decide whether a disclosure would be a clearly unwarranted invasion of personal privacy we consider—

(a) The sensitivity of the information (e.g., whether individuals would suffer harm or embarrassment as a result of the disclosure);

(b) The public interest in the disclosure;

(c) The rights and expectations of individuals to have their personal information kept confidential; and

(d) The public's interest in maintaining general standards of confidentiality of personal information; and

(e) Those factors discussed in § 401.120. We feel that there is a strong public interest in sharing information with other agencies with programs having the same or similar purposes, so we generally share information with those agencies. However, since there is usually little or no public interest in disclosing information for disputes between two private parties or for other private or commercial purposes; we generally do not share information for these purposes.

§ 401.305 Within HHS.

The Privacy Act allows an agency to share information inside the agency when necessary for the agency to carry out its duties. For purposes of this provision, HHS considers itself one "agency." SSA, as a part of HHS, discloses information to another HHS component when SSA determines that the other component has a legitimate need for the information and no other law prohibits it.

§ 401.310 Compatible purposes.

(a) *General.* The Privacy Act allows us to disclose information, without the consent of the individual, to any other party for "routine uses."

(b) *"Routine use."* This means the disclosure of a record outside HHS for a purpose which is "compatible" with the purpose for which the record was collected. We publish notices of systems of records in the FEDERAL REGISTER which contain a list of all "routine use" disclosures.

(c) *Determining compatibility.* We disclose information for "routine uses" where necessary to carry out SSA's programs. It is also our policy to disclose information for use in other programs which have the same purposes as SSA programs if the information concerns eligibility, benefit amounts, or other matters of benefit status in a social security program and is relevant to determining the same matters in the other program. For example, we disclose information to the Railroad Retirement Board for pension and unemployment compensation programs, to the Veterans Administration for its benefit program, to worker's compensation programs, to State general assistance programs, and to other income maintenance programs at all levels of government; we also disclose for health-maintenance programs like Medicare and Medicaid, and in appropriate cases, for epidemiological and similar research.

80-053 O—81——2

tion of report in camera. Soucie v. David, 1971, 448 F.2d 1067, 145 U.S.App.D.C. 144.

Judgment refusing to compel Commissioner of Food and Drugs to disclose records referred to in proposal to bar carbon tetrachloride from interstate commerce as a hazardous substance was required to be reversed and cause remanded for further consideration where court inspected disputed records in camera and did not detail nature of documents but only stated that records were internal records based on medical records secured in confidential capacity, bolstered by reference to published reports and made no reference whatsoever to exemptions enumerated in this section Ackerly v. Ley, 1969, 420 F.2d 1336, 137 U.S.App.D.C. 133.

Order requiring clerk of local Selective Service Board to disclose to plaintiff registrants specific requested information, including home address of each Board member, would be vacated and cause remanded for further litigation, where district court did not grant or deny defendant clerk's motion to dismiss, including specific request for time within which to answer complaint if motion should be denied, but instead on its own motion, entered final order granting relief sought in complaint. Martin v. Neuschel, C.A. Pa.1968, 396 F.2d 759.

Where court of appeals had suggested that government agency prepare index showing relationship between claimed exemptions under this section and documents sought, where the cost of doing so would have been approximately $96,000 and would have involved over 10,250 man hours, production by government agency of nine representative samples of the reports with identifying details deleted, and with the reason for the claimed exemption, together with stipulation between the parties that judicial decision based on the nine representative samples would be considered applicable to all of the documents sought constituted substantial compliance with court of appeals' mandate. Vaughn v. Rosen, D.C.D.C.1974, 383 F.Supp. 1049, affirmed 523 F.2d 1136, 173 U.S.App.D.C. 187.

§ 552a. Records maintained on individuals

(a) **Definitions.**—For purposes of this section—

(1) the term "agency" means agency as defined in section 552(e) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13; and

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(b) **Conditions of disclosure.**—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency requirements.—Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may re-

racy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

(f) Agency rules.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

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(g)(1) Civil remedies.—W

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matters under the provisions

(2)(A) In any suit brou
(g)(1)(A) of this section, th
the individual's record in a
other way as the court may
determine the matter de novo

June 3, 1982

MEMORANDUM FOR THE HONORABLE RICHARD S. SCHWEIKER
SECRETARY OF HEALTH AND HUMAN SERVICES

This memorandum will confirm our earlier telephone conversation in which I communicated to you the President's request, made pursuant to Section 12 of the Military Selective Service Act (50 U.S.C. App. 462, as amended by Section 916 of Pub. L. 97-86)("the Act"), that you furnish to the Director of the Selective Service System, from records available to you as Secretary, the name, date of birth, social security account number, and address of individuals who are members of any group of individuals required to present themselves for and submit to registration under Section 3 of the Act.

As you are well aware, the information which you furnish to the Director pursuant to this request shall be used only for the purpose of enforcing draft registration pursuant to the provisions of the Military Selective Service Act.

FOR THE PRESIDENT:

EDWIN MEESE III
COUNSELLOR TO THE PRESIDENT

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-12130 Filed 5-4-82; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Transportation and Public Utilities Service

[E-82-14]

Delegation of Authority to the Secretary of Energy

1. *Purpose.* This delegation authorizes the Secretary of Energy to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Idaho Public Utilities Commission involving electric rates, Docket Nos. U-1009-120 and U-1009-124.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in the Administrator of General Services by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Energy to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Idaho Public Utilities Commission involving the application of the Utah Power and Light Company for an increase in its electric rates in Docket Nos. U-1009-120 and U-1009-124.

b. The Secretary of Energy may redelegate this authority to any officer, official, or employee of the Department of Energy.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration (GSA), and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

d. The Department of Energy shall add GSA to its service list in this case so the GSA will receive copies of testimony, briefs, and other Department of Energy filings.

Dated: April 23, 1982.

Allan W. Beres,

Commissioner, Transportation and Public Utilities Service.

[FR Doc. 82-12171 Filed 5-5-82; 8:45 am]

Billing Code 6820-AM-M

National Archives and Records Service

Advisory Committee on Preservation; Meetings

Notice is hereby given that the Executive Committee and the Ad Hoc Charter Subcommittee of the National Archives and Records Service Advisory Committee on Preservation will meet on May 17, 1982 from 10:00 a.m. to 4:00 p.m., and May 18 from 9:00 a.m. to noon in Room 105, National Archives Building, Washington, D.C. At this time plans will be made for a meeting of the National Archives and Records Service Advisory Committee on Preservation to be held June 14, 1982 from 10:00 a.m. to 4:00 p.m., and June 15 from 9:00 a.m. to noon in Room 105, National Archives Building, Washington, D.C. This meeting will be devoted to developing work plans for the various subcommittees.

The meetings will be open to the public. For further information call Alan Calmes, 202-523-3159.

Dated: May 3, 1982.

Robert M. Warner,

Archivist of the United States.

[FR Doc. 82-12300 Filed 5-4-82; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Privacy Act of 1974; Report of New Routine Use

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New Routine Use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to establish a new routine use of information in the system of records 09-60-0058—Master Files of Social Security Number (SSN) Holders, HHS/SSA/OEER. The proposed routine use will permit us to disclose information to the Selective Service System to enforce draft registration pursuant to provisions of the Military Selective Service Act.

We invite public comments on this proposal.

DATES: The proposed routine use will become effective as proposed without further notice on June 4, 1982, unless we receive comments on or before that date which would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this proposal by writing to the Privacy Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at 3-F-1 Operations Building, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Swanenburg, Chief, Records Utilization and Services Branch, Office of Enumeration and Earnings Records, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone (Area Code 301) 594-3489.

SUPPLEMENTARY INFORMATION: The Selective Service System is attempting to identify and locate individuals who are required to register for the draft, but have not done so. Section 12 of the Military Selective Service Act (50 U.S.C. App. 462, as amended by section 916 of Public Law 97-86) provides that the President may require the Secretary of HHS to furnish to the Director of Selective Service the name, SSN, date of birth and address of individuals required to register for the draft. In accordance with this provision, we are proposing a routine use statement which would permit the disclosure of information as follows:

To the Selective Service System for the purpose of enforcing draft registration pursuant to the provisions of the Military Selective Service Act (50 U.S.C. App. 462, as amended by section 916 of Pub. L. 97-86).

Basically, we will disclose information to Selective Service which pertains to males within a specific age group as determined by Selective Service. Selective Service will match the records against their records and Department of Defense records to determine which individuals are required to register, but have not done so. Of course, we will disclose information only at the request of the President.

We are proposing the routine use in accordance with provisions of the Privacy Act and our disclosure regulation (20 CFR Part 401). Section 401.310 of the regulation permits us to disclose information as a routine use when the information will be used for a purpose which is compatible with the purpose for which we collected the information. It is our policy to consider disclosures which are required by statute as disclosures for compatible purposes. Since the Military Selective Service Act requires disclosure at the request of the President, the above routine use is appropriate.

Since we are proposing the routine use in accordance with all requirements of the Privacy Act, we do not anticipate that disclosure under it would result in any clearly unwarranted adverse effects on the privacy rights of individuals. The notice below contains the proposed routine use statement discussed above.

Dated: April 29, 1982.

John A. Svahn,

Commissioner of Social Security.

09-60-0058

SYSTEM NAME:

Master Files of Social Security Number Holders, HHS/SSA/OEER.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Systems, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have obtained Social Security Numbers.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains all of the information received on original applications for Social Security Numbers and any changes in the information on the applications that are submitted by the Social Security Number holder. Cross-reference may be noted where multiple numbers have been issued to the same individual; and indication that benefit claim has been made under this social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 205(c)(2) of the Social Security Act.

PURPOSE(S):

Information in this is used for the following purposes:

(a) By SSA components for various title II, XVI and XVIII claims purposes including usage of the social security number itself as a case control number and a secondary beneficiary cross-reference control number for enforcement purposes and use of the Social Security Number record data for verification of claimant identity factors and for other claims purposes related to establishing benefit entitlement;

(b) By SSA as a basic control for retained earnings information;

(c) By SSA as a basic control and data source to prevent issuance of multiple Social Security Numbers;

(d) As the means to identify incorrectly reported names or Social Security Numbers on earnings reports;

(e) For resolution of earnings discrepancy cases;

(f) For statistical studies;

(g) By the Department of Health and Human Services Audit Agency for auditing benefit payments under Social Security programs;

(h) By the HHS Office of Child Support Enforcement for locating deserting parents;

(i) By National Institute of Occupational Safety and Health for epidemiological research studies required by the Occupational Health and Safety Act of 1974;

(j) By the SSA Office of Refugee Resettlement for administering Cuban refugee assistance payments; and

(k) by the HHS Health Care Finance Administration for administering title XVIII claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. Employers are notified of the Social Security Number of an employee in order to complete their records for reporting FICA to the Social Security Administration pursuant to the Federal Insurance Contributions Act and Section 218 of the Social Security Act.

2. To State welfare agencies, upon written request, of the Social Security Numbers of AFDC applicants or recipients.

3. To the Department of Justice (Federal Bureau of Investigation and United States Attorneys) for investigating and prosecuting violations of the Social Security Act.

4. To the Department of Justice (Immigration and Naturalization Service) for the identification and location of aliens.

5. To the Department of Justice (Federal Bureau of Investigation) and the Department of Treasury (United States Secret Service) for national security matters and in connection with threats on the life of the President or other dignitaries.

6. To the Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the railroad Unemployment Insurance Act.

7. To the Energy Research and Development Administration for their study of the long-term effects of low-level radiation exposure.

8. To the Treasury Department for tax administration as defined in 26 U.S.C. 6103 of the Internal Revenue Code and for investigating alleged theft, forgery, or unlawful negotiation of social security checks.

9. To a congressional office in response to an inquiry from the congressional office made at the request of that individual.

10. to the Department of State for administering the Social Security Act in foreign countries.

11. To the American Institute on Taiwan for administering the Social Security Act on Taiwan.

12. To the Veterans Administration, Regional Office Philippines, for administering the Social Security Act in the Philippines.

13. To the Department of Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands.

14. To the Department of Labor for administering provisions of title IV of the Federal Coal Mine Health and Safety Act and for studies of the effectiveness of training programs to combat poverty.

15. To the Veterans Administration for validation of the Social Security Numbers of compensation/pensioners in order to provide the release of accurate pension/compensation data by the Veterans Administration to the Social Security Administration for social security program purposes.

16. To the Veterans Administration of information requested for purposes of determining eligibility for or amount of VA benefits, or verifying other information with respect thereto.

17. To Federal agencies who use the Social Security number as a numerical identifier in their recordkeeping systems, for the purpose of validating Social Security Numbers.

18. To the Department of Justice in the event of litigation where the defendant is:

(a) the Department of Health and Human Services (HHS), any component of HHS or any employee of HHS in his or her official capacity;

(b) the United States where HHS determines that the claim, if successful, is likely to directly affect the operations of HHS or any of its components; or

(c) any HHS employee in his or her individual capacity where the Justice Department has agreed to represent such employee;

HHS may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

19. State Audit agencies for auditing State supplementation payments and medicaid eligibility considerations.

Since we are proposing the routine use in accordance with all requirements of the Privacy Act, we do not anticipate that disclosure under it would result in any clearly unwarranted adverse effects on the privacy rights of individuals. The notice below contains the proposed routine use statement discussed above.

Dated: April 29, 1982.

John A. Svahn,

Commissioner of Social Security.

09-60-0058

SYSTEM NAME:

Master Files of Social Security Number Holders, HHS/SSA/OEER.

SECURITY CLASSIFICATION:

None.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

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PURPOSE(S):

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(a) By SSA components for various title II, XVI and XVIII claims purposes including usage of the social security number itself as a case control number and a secondary beneficiary cross-reference control number for enforcement purposes and use of the Social Security Number record data for verification of claimant identity factors and for other claims purposes related to establishing benefit entitlement;

(b) By SSA as a basic control for retained earnings information;

(c) By SSA as a basic control and data source to prevent issuance of multiple Social Security Numbers;

(d) As the means to identify incorrectly reported names or Social Security Numbers on earnings reports;

(e) For resolution of earnings discrepancy cases;

(f) For statistical studies;

(g) By the Department of Health and Human Services Audit Agency for auditing benefit payments under Social Security programs;

(h) By the HHS Office of Child Support Enforcement for locating deserting parents;

(i) By National Institute of Occupational Safety and Health for epidemiological research studies required by the Occupational Health and Safety Act of 1974;

(j) By the SSA Office of Refugee Resettlement for administering Cuban refugee assistance payments; and

(k) by the HHS Health Care Finance Administration for administering title XVIII claims.

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3. To the Department of Justice (Federal Bureau of Investigation and United States Attorneys) for investigating and prosecuting violations of the Social Security Act.

4. To the Department of Justice (Immigration and Naturalization Service) for the identification and location of aliens.

5. To the Department of Justice (Federal Bureau of Investigation) and the Department of Treasury (United States Secret Service) for national security matters and in connection with threats on the life of the President or other dignitaries.

6. To the Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the railroad Unemployment Insurance Act.

7. To the Energy Research and Development Administration for their study of the long-term effects of low-level radiation exposure.

8. To the Treasury Department for tax administration as defined in 26 U.S.C. 6103 of the Internal Revenue Code and for investigating alleged theft, forgery, or unlawful negotiation of social security checks.

9. To a congressional office in response to an inquiry from the congressional office made at the request of that individual.

10. to the Department of State for administering the Social Security Act in foreign countries.

11. To the American Institute on Taiwan for administering the Social Security Act on Taiwan.

12. To the Veterans Administration, Regional Office Philippines, for administering the Social Security Act in the Philippines.

13. To the Department of Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands.

14. To the Department of Labor for administering provisions of title IV of the Federal Coal Mine Health and Safety Act and for studies of the effectiveness of training programs to combat poverty.

15. To the Veterans Administration for validation of the Social Security Numbers of compensation/pensioners in order to provide the release of accurate pension/compensation data by the Veterans Administration to the Social Security Administration for social security program purposes.

16. To the Veterans Administration of information requested for purposes of determining eligibility for or amount of VA benefits, or verifying other information with respect thereto.

17. To Federal agencies who use the Social Security number as a numerical identifier in their recordkeeping systems, for the purpose of validating Social Security Numbers.

18. To the Department of Justice in the event of litigation where the defendant is:

(a) the Department of Health and Human Services (HHS), any component of HHS or any employee of HHS in his or her official capacity;

(b) the United States where HHS determines that the claim, if successful, is likely to directly affect the operations of HHS or any of its components; or

(c) any HHS employee in his or her individual capacity where the Justice Department has agreed to represent such employee;

HHS may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

19. State Audit agencies for auditing State supplementation payments and medicaid eligibility considerations.

3 JUN 1982

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WASHINGTON OFFICE

600 Pennsylvania Ave., SE
Suite 301
Washington, DC 20003
(202) 544 1681

John Shattuck
DIRECTOR

Jerry J. Berman
David E. Landau
Wade J. Henderson
LEGISLATIVE COUNSEL

Laura Murphy
LEGISLATIVE REPRESENTATIVE

Hilda Thomson
ADMINISTRATIVE DIRECTOR

National Headquarters
132 West 43 Street
New York, NY 10036
(212) 944 9800

Norman Dorsen
PRESIDENT

Ira Glasser
EXECUTIVE DIRECTOR

June 2, 1982

Hon. Richard S.Schweiker, Secretary
Health and Human Services
200 Independence Ave. S.W. Room 615F
Washington, D.C. 20201

Dear Mr. Secretary:

According to a notice filed in 47 Federal Register 19468, Wednesday May 5, 1982, the Social Security Administration is prepared to furnish the Director of the Selective Service System with the name, social security account number, date of birth and address of individuals required to register for the draft when and if the President so authorizes. The authority for the exchange of this information is cited as Section 12 of the Military Selective Service Act (50 U.S.C. App. 462, as amended by Section 916 of Pub. L. 97-86). That statute provides, in part,

> "*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." 50 U.S.C. App. 462(e)(I).

It is our understanding that this exchange of information *will occur on Friday June 4, 1982.* As correctly stated by the Social Security Administration in the Federal Register notice, under the express language of the statute the information disclosure may occur only at the request of the President. The attached letter from the Selective Service System indicates that no such formal request has been made by the President as required by the statute. The assertion by the Director of the Selective Service System that he was authorized "personally" to proceed is not sufficient to

they rely on letter from Director of Sel. Serv.

this was done.

meet the requirements of Pub. L. 97-86, which states that the President must request the Secretary of Health and Human services to furnish the information.

We would like to know whether you are in possession of a formal written request by the President for this information exchange. Should this document not exist, it is our judgment that the information exchange scheduled to occur on June 4 will violate the Privacy Act of 1974 (5 U.S.C. 552a), which prohibits government agencies from disclosing records to other government agencies without the consent of the subjects of those records and provides for substantial civil penalties for improper disclosure of information. (5 U.S.C. 552a (3)(g).

Thank you in advance for your immediate attention to this matter.

Sincerely yours,

David Landau
Counsel

cc: John A. Svahn, Commissioner, Social Security Administration
Thomas K. Turnage, Director, Selective Service System

Selective Service System

National Headquarters / Washington, D.C. 20435

May 18, 1982

Mr. Thomas P. Alder
Dupont Circle Building, Suite 610
1346 Connecticut Avenue, N. W.
Washington, D.C. 20036

Dear Mr. Alder:

We have received your FOIA request dated May 12, 1982 requesting "copies of all documents granting, describing, or recording this express authority" (i.e., to implement the registration enforcement program).

There is no document in which express authority was given to implement the registration enforcement program. *Authority was given to the Director, personally.*

In the circumstances, the request cannot be fulfilled.

Sincerely,

Clarence E. Boston

Clarence E. Boston
Records Division

elective Service System
tional Headquarters / Washington, D.C. 20435

Mr. Thomas P. Alder
Dupont Circle Building, Suite 610
1346 Connecticut Avenue, N.W.
Washington, D.C. 20036

AUG 11 1982

THE WHITE HOUSE
WASHINGTON

Date 8/11/82

FOR: Dick Hauser

FROM: **DAVID B. WALLER**

File IRS Sel Service

ACTION

X For your information

_____ For your review and comment

_____ As we discussed

_____ For your files

_____ Please see me

_____ Return to me after your review

COMMENT

In connection w/ our Selective Service - Social Security - IRS matter.

Military
Law
Reporter

Dupont Circle Building, Suite 610
1346 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 296-7590

A Project of the Public Law Education Institute

May 12, 1982

Mr. Clarence E. Boston
Records Manager
Selective Service System
Washington, DC 20435

Freedom of Information Act Request

Dear Mr. Boston:

I want to thank you for your prompt reply to my request of April 30, and to restate one item of that request.

In the first paragraph of the Director's March 31, 1982, "Memorandum for the Commissioner, SSA," and again in the April 1, 1982, "Memorandum for the Commissioner, IRS," the Director states that "[o]n March 26, 1982, this agency was given express authority to proceed with the implementation of a registration enforcement program...." By this letter, I am writing to request, pursuant to 5 U.S.C. §552, copies of all documents granting, describing, or recording this express authority.

As MLR is a public-service not-for-profit undertaking of a §501(c)(3) public foundation, I would like to further request that search and copying fees be waived as provided in 5 U.S.C. §552(a)(4). In view of the time value now associated with this follow-up request, I would also ask to receive a reply within 10 days.

Sincerely yours,

Thomas P. Alder

Thomas P. Alder,
President
PLEI

TPA:wjs

THE WHITE HOUSE

WASHINGTON

October 21, 1982

MEMORANDUM FOR EDWIN MEESE III
COUNSELLOR TO THE PRESIDENT

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Disclosure of IRS Form W-2

During General Turnage's status report on September 29, 1982, concerning Selective Service enforcement, you asked whether a taxpayer's Form W-2 may be disclosed by the IRS for use in the enforcement program. The General Counsel of the Treasury, Peter J. Wallison, has concluded that the Form W-2 submitted to the IRS by a taxpayer would appear to fall within the definition of "return" in 26 U.S.C. 6103(b)(1), and, therefore, could not be disclosed without a court order. Mr. Wallison's memorandum is attached.

Attachment

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

OCT 20 1982

MEMORANDUM

TO: HONORABLE RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT
THE WHITE HOUSE

FROM: Peter J. Wallison
General Counsel

RE: Disclosure of Form W-2

A question has arisen as to whether a taxpayer's Form W-2 may be disclosed by the IRS upon the written request of the head of a federal agency under 26 USC 6103(i)(2). As you know, this subsection of 26 USC 6103 permits disclosure by the IRS, upon written request of the head of a federal agency, of "return information (other than taxpayer return information)." A tax return itself, under 26 USC 6103(i)(1), may not be disclosed other then pursuant to court order.

Our review of this question indicates that the Form W-2 submitted to the IRS by a taxpayer appears to fall within the definition of "return" in 26 USC 6103(b)(1), and thus I do not believe that such a disclosure would be permitted without a court order.

26 USC 6103(b)(1) defines the term "return" as "any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed." The copy of the Form W-2, which is required by regulation to be attached to the taxpayer's Form 1040 or 1040A, appears to be an "information return" filed with the Secretary and seems clearly to be an "attachment" which is "supplemental to or part of the return." Accordingly, the Form W-2 filed with the IRS may not be disclosed in this instance without court order. 1/

1/ "Returns" may be disclosed pursuant to other parts of 26 USC 6103 which are not pertinent to the present discussion. For example, returns may be made available to the GAO for audit purposes upon the written request of the Comptroller General under section 6103(i)(7).

Wider Use of IRS Records Sought, Riling Rights Groups, Tax Experts

By Eileen Alt Powell
Staff Reporter of The Wall Street Journal

WASHINGTON—The Reagan administration increasingly is looking to the Internal Revenue Service for more than tax collection—and that worries civil libertarians and some tax experts.

The Selective Service is going to tap the voluminous IRS files for the addresses of 19-year-old men who haven't registered for the draft. The Social Security Administration wants access to the interest and dividend reports of elderly and disabled federal welfare recipients. The Office of Management and Budget is pushing for increased authority to share IRS address lists with private collection agencies hired to help collect federal debts. And, in the recent tax bill, the Justice Department won easier access to IRS tax records for use in nontax criminal cases.

Administration officials argue that these steps are needed to help control federal spending and to show that the government is using all available resources to enforce federal laws. But others see the moves as chipping away at the privacy protections enacted by Congress in the wake of the Watergate scandal, when Nixon White House officials obtained tax information on political "enemies."

Harmful to 'Voluntary Reporting'

"Debt collection, criminal prosecutions—these are legitimate areas of government inquiry," says John Shattuck, national legislative director of the American Civil Liberties Union. But in their effort to facilitate investigative procedures, "we think they're short-circuiting privacy."

Jerome Kurtz, a former IRS commissioner, worries that increased disclosure "is potentially harmful to voluntary reporting" of income and tax liabilities. Taxpayers' willingness to volunteer information to the IRS could be reduced if tax records aren't completely confidential, he says. If so, the disclosure could create more financial problems than it solves.

A decline in compliance of one-half of 1% in a tax system that collects $700 billion a year, Mr. Kurtz says, would "produce greater losses" than would likely be gained "in all the government's debt-collection programs."

Donald Alexander, another former IRS commissioner, agrees. "If people don't trust the IRS to preserve the privacy of information, they will be more reluctant to report income and its source," he says. "The IRS relies on people reporting accurately and completely because it can only audit about 2% of returns."

IRS Commissioner Roscoe Egger Jr. believes that taxpayers' privacy rights must be balanced against the need for government efficiency. "While I generally don't favor IRS participation in a wide array of nontax programs, neither can I argue strongly against the use of tax information to prevent potential fraud or abuse, both of which ultimately cost the honest taxpayers even more than they are already paying," Mr. Egger recently told a House subcommittee.

Until the mid-1970s, tax returns were considered "public" documents, though they were disclosed only rarely and under presidential orders or presidentially approved regulations. But abuses during the Nixon administration prompted Congress to pass stringent privacy provisions as part of the 1976 Tax Reform Act.

The Reagan administration isn't seeking access to actual tax returns but to such "incidental" information as current taxpayer addresses. The efforts involve several issues.

Even a one-half of 1% decline in voluntary reporting of income would produce greater losses than would likely be gained "in all the government's debt-collection programs," a former IRS commissioner says.

Draft registration. In what may be a precedent-setting activity, the IRS has agreed to assist the Selective Service in locating and forwarding warning letters to about 250,000 young men who have failed to register for the draft. The IRS has engaged in "letter forwarding" programs before, but none has been of this magnitude or had the apparent potential to lead to criminal prosecution.

The Selective Service, which is paying $68,600 for IRS assistance, initially sought IRS address lists. But Mr. Egger said he was "concerned about whether or not they could or should be permitted access to such taxpayer data." Still, Mr. Egger told Congress, the IRS has agreed to turn over 200 addresses "selected on a random basis" of men who don't respond to the letters and could face prosecution.

David Landau, legislative counsel for the ACLU, contends that the activity is illegal, and he adds, "We have no doubt that when this program becomes operational, other government agencies will similarly seek to use IRS data."

Supplemental security income. The Social Security Administration wants access to IRS forms on which banks and other financial institutions report interest and dividend payments.

The Social Security agency has mailed to more than 4.5 million elderly and disabled Americans form letters seeking permission to review the IRS documents to verify the recipients' eligibility for supplemental security income, a federal welfare program. The letter says that "if you do not sign the form, your SSI checks may be affected." The agency is under pressure from the Reagan administration to reduce "error" rates in the program and eliminate ineligible participants.

The National Senior Citizens Law Center, a public-interest law group, is challenging the action. Bruce Fried, a law center attorney, argues that "instead of going to Congress to get permission, the Social Security people are trying to do it on their own by holding an economic gun to the heads of SSI recipients." The law center's requests for an injunction have been denied by the federal court and the U.S. Court of Appeals here, but further legal action is pending.

Debt collection. The White House has asked Congress to allow the use of some IRS records to help collect more than $30 billion in delinquent federal loans and to police future loan applicants. The House approved such legislation 402-to-3, and there is wide support in the Senate for a companion measure.

The legislation would allow federal agencies to acquire the addresses of debtors from the IRS and pass them on, with federal supervision and some privacy restrictions, to private debt-collection agencies and credit bureaus. Credit applicants would be required to furnish "taxpayer identification numbers," which for individuals are Social Security numbers, so that the IRS can determine if any back taxes are owed. The General Accounting Office, Congress's investigating arm, has urged the Senate to add a provision that would allow the IRS to withhold debt payments from tax refunds.

Sen. Charles Percy, who introduced the legislation in the Senate, argues that these and other steps are necessary to give the government "a fighting chance" at collecting sour loans. "It's time to start running the business end of government like a business," the Illinois Republican says.

Some IRS disclosures for collecting federal college loans already are allowed. But opponents worry about greatly expanding access to IRS records for such purposes. "It will turn the IRS into a lending library," says an IRS official who declines to be identified.