GAO

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General Accounting Office
Washington, D.C. 20548

Comptroller General
of the United States

B-223129

August 6, 1986

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

Dear Mr. Chairman:

We appreciate the opportunity to comment on H.R. 4659. The proposed legislation, entitled the "Omnibus Debt Collection and Credit Management Act of 1986," is intended to improve the government's processes for managing debt collection.

In the past we have been critical of agencies' debt collection efforts and have issued many reports in this area. We are currently reviewing debt collection efforts at several agencies. Our reports emphasize the need for improvements which the proposed legislation is intended to accomplish and many of our recommendations parallel provisions of H.R. 4659.

Two of our recently issued comprehensive reports on debt collection were to Representative John R. Kasich on the amount of debts owed the federal government (GAO/AFMD-86-13FS, December 3, 1985) and to Senator Dennis DeConcini on federal agencies efforts to implement the Debt Collection Act of 1982 (GAO/AFMD-86-39, May 23, 1986). Also, our May 13, 1986, testimony before the Senate Committee on Governmental Affairs on S.2230, "The Federal Management Reorganization and Cost Control Act of 1986," which includes provisions similar to H.R. 4659, stressed the need to address debt collection much more aggressively than has been done in the past.

Because of the magnitude of the problems and the amount of funds involved, we strongly support legislative action in this area. Our specific comments, which are intended primarily to clarify provisions of the bill, are enclosed for your consideration. We hope that these comments will be helpful to your committee in acting on this bill. If you have any questions about the comments, please call John F. Simonette, Associate Director, on (202) 275-9490.

Sincerely yours,

Charles A. Bowsher

Charles A. Bowsher
Comptroller General
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Enclosure

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Comments on H.R 4659, the
"Omnibus Debt Collection and
Credit Management Act of 1986"

1. The bill would create a new Under Secretary of the Treasury for Debt Collection and Credit Management. Section 102 of the bill states that, among other things, the Under Secretary would be charged with supervising the development within each federal agency of efficient debt collection and credit management systems, approving comprehensive debt collection and credit management plans for each agency, and reviewing the implementation of those plans, as well as the agency's compliance with relevant federal law.

Under current federal law, the Comptroller General and the Attorney General of the United States are responsible for setting standards that govern the collection of debts owed the United States. (See 31 U.S.C. 3526(a), 3702, 3711 (1982), and the Federal Claims Collection Standards, 4 C.F.R. ch. II (1985).) We presume, based on section 102(3) of the bill, that the Under Secretary's responsibilities are intended to ensure compliance not only with the applicable statutes, but also with the regulations, rulings, and guidance issued by GAO and the Department of Justice in the areas of debt collection policies and procedures. The Under Secretary's authority appears to be intended to complement, rather than supplant, the authority of GAO and Justice. We suggest that the committee modify the bill to make this relationship clearer.

2. Section 103 of the bill provides that federal agencies are to prepare comprehensive debt collection and credit management plans. Among other things, those plans are to establish "pre-screening procedures" to identify applicants who owe delinquent or defaulted debts to any agency or program of the federal government. The bill further provides that "as a condition of any extension of credit", agencies must conduct for each applicant "a credit analysis and ability to pay determination to assess [the] applicant's credit worthiness and financial responsibility" and to "refer to private credit sources any applicant likely to qualify for credit from those sources (except as otherwise required by law)".

We believe that this provision is intended to require agencies to deny loans (or other kinds of credit) to otherwise qualified applicants, either because they are found not to be credit worthy or financially responsible or because the agency believes that they would qualify for private sector financing. In this same vein, we note that section 209 of the bill, which would create a new section (31 U.S.C. 3703), would prohibit

agencies from "directly or indirectly" making available to any person any funds of the United States, if the agency has reason to believe that the person owes a delinquent debt to the United States and has not made arrangements satisfactory to the United States for repaying such debt.

Some of the concepts put forth in these sections of the bill represent sound credit management practices and should be used by agencies where appropriate. However, these provisions (sections 103 and 209) will in some cases implicitly conflict with the purposes and provisions of many statutes that set the criteria and terms under which applicants receive "credit." For example, under 20 U.S.C. 1070 and 1077, the Department of Education is directed to insure loans made to students in accordance with eligibility and contractual requirements specified in the statutes. These statutes do not include a requirement for assessing credit worthiness prior to insuring loans. The courts have consistently indicated that they do not favor repeal of pre-existing statutes by implication. If the committee wishes to make these kinds of changes in current law, we believe that it should amend each of the particular statutes which set the criteria and terms under which federal "credit" may be granted, rather than attempt an across-the-board modification or implied repeal of many specific program statutes. (We note that the term "credit" has not been defined in the bill. If the committee desires to use this term, we suggest that the bill be amended to include a definition of it in order to clarify its meaning and scope.)

3. Sections 201 and 203 of the bill would amend the law to require federal agencies to refer delinquent debts to debt collection contractors and "consumer" reporting agencies, in the event that the debt is not collected by the federal agency within specified periods of time. Based on the collection problems we have identified in our reports, we favor the increased use of debt collection contractors and reporting agencies to collect debts owed the United States. At the same time, however, we believe that, when they collect debts, the agencies need to be able to exercise some degree of discretion and flexibility on a case-by-case basis. We, therefore, favor amending these provisions of the bill to authorize agencies to exercise appropriate discretion in carrying out these requirements so that the best interests of the United States may be protected.

The deadlines specified in these sections of the bill also would affect the Government's ability to use the collection tools that were addressed in the Debt Collection Act of 1982. For example, under the 1982 act, before an agency may file an adverse credit report about a delinquent debt, the agency is required to provide the debtor with 60 days advance notice and an opportunity for administrative review of the agency's

decision concerning the amount and existence of the debt. Other provisions of the Debt Collection Act of 1982 require similar notice and opportunity to be heard before an agency may take the debt collection action discussed in the act. Agencies would find it difficult to complete the procedural requirements of the 1982 act within the deadlines proposed by this bill.

Finally, with regard to the use of credit bureaus, we recommend that the bill be amended to refer to either "credit bureaus" or "credit reporting agencies," rather than "consumer reporting agencies." This suggestion is intended to avoid the possibility that this provision might be misconstrued to mean that agencies should not report debts owed by "commercial" debtors as opposed to debts owed by individuals or "consumers."

4. Section 202 of the bill would require agencies to sell all delinquent "debts" owed the United States that have not been collected within 1 year from the date on which they were referred to debt collection contractors. However, we note that the caption of this section refers to the "Sale of Delinquent Loan Portfolios." The bill leaves no discretion to the agencies regarding the decisions of whether or when to sell those "debts," which could include, for example, overpayments made to welfare or social security beneficiaries. We believe, based on the caption, that this section was intended to apply only to the sale of delinquent loan accounts and not to all types of "debt" owed to the United States. If these provisions are intended to apply only to the sale of delinquent loan accounts, we believe the text of this provision should be amended to refer to "loans" rather than "debts."

We believe that there are also opportunities for agencies to sell nondelinquent loans. However, our previous work has shown that agencies have not widely used this practice. We, therefore, believe that the bill would be strengthened if it also required agencies to (1) review all loans, both delinquent and nondelinquent, to determine the extent to which it would be in the government's best interests to sell these loans and (2) sell such loans when it is deemed to be advantageous to the government.

This provision of the bill does not take into account the agencies' authority to compromise, suspend, and terminate collection, as authorized by the Federal Claims Collection Act of 1966. The deadlines and referral requirements of the bill would affect the government's ability to take advantage of these useful tools in resolving debt collection problems. Therefore, we believe the bill should be amended to preserve appropriate discretion not to sell delinquent accounts when an agency can demonstrate that it would not be in the government's best interests.

5. Section 204 requires the Internal Revenue Service (IRS) to disclose taxpayer mailing address information to help agencies locate delinquent debtors. It does this by changing the word "may" in Section 6103(m)(2)(A) of the Internal Revenue Code, which permits such disclosure, to "shall." We do not object to this provision. However, we have found that IRS will not disclose addresses of debtors to agencies unless they agree to use the information only to collect debts pursuant to the Federal Claims Collection Act. IRS has denied some agencies access to debtor addresses from tax records because the agencies cite legislation other than the Federal Claims Collection Act as their collection authority. We believe that agencies could obtain greater access to IRS address information under existing legislation if the bill amended the Internal Revenue Code to make clear the right of federal agencies to obtain and redisclose IRS address information while also pursuing debt collection activities under authorities other than the Federal Claims Collection Act.

6. Section 20 of the bill would authorize agencies to obtain litigation services from private sector attorneys. This provision is similar in many respects to the provisions of H.R.979, S.209, and several other bills that are presently pending before the Congress. We have previously endorsed this type of legislation. (See B-212528, September 23, 1985; B-212528.2, September 23, 1985; and B-221099, February 18, 1986. Copies of those comments are being separately provided to your staff.) We continue to favor enactment of legislation of this type, subject to the recommendations and refinements proposed in our previous comments on those bills.

7. Section 206 of the bill would require each "executive agency" to establish litigation units within each agency to collect delinquent debts owed the United States. Government agencies, while more familiar with the nature and origin of the debts owed the United States, presumably would not have sufficient resources skilled in litigation that could be devoted to litigate claims, without adversely affecting the agencies' abilities to carry out other legal responsibilities or augmenting existing resources. For this reason, we favor the approach put forward in section 205 of this bill (which would authorize agencies to utilize private sector attorneys in litigating debts owed the United States) because it would take advantage of the large pool of expertise and resources represented by attorneys in the private sector.

8. Section 207 of the bill appears to be intended to supercede state laws that create statutes of limitation which might otherwise interfere with the federal government's ability to file suits to collect debts. The bill would accomplish this by amending 31 U.S.C. 3712. If the committee wishes to supercede state statutes of limitation, we suggest that, rather than amend

31 U.S.C. 3712, the bill be modified to amend 28 U.S.C. 2415. That section contains the general statutes of limitation applicable to suits brought by the United States.

9. Section 208 of the bill would amend the Federal Claims Collection Act of 1966 to include a definition of the term "debt." The Debt Collection Act of 1982 inserted in the 1966 act a definition for the term "claim." The definition to be inserted by the bill is substantially the same as that already included for "claim." When GAO and Justice promulgated the Federal Claims Collection Standards to implement the 1982 Act, questions were raised concerning distinctions that might be drawn between the terms "debt" and "claim." GAO and Justice determined that no useful purpose would be served by distinguishing between the two terms, and ruled in section 101.2(a) of the Federal Claims Collection Standards that the two terms should be construed as synonymous and interchangeable. We, therefore, believe that the definition of "debt" is unnecessary in this bill and should be deleted.

10. Section 209 of the bill would create a new provision of law, 31 U.S.C. 3704, which would provide that "no court shall have jurisdiction to grant any temporary restraining order or injunction against the collection of any debt [owed to the United States] * * *." We are not presently aware of any evidence suggesting that unnecessary delay in collecting the government's debts results from actions by the courts. For this reason, we are not convinced that it would be appropriate to prohibit the courts from granting such equitable relief.

11. Section 211 would require the Comptroller General to periodically audit executive and legislative agencies' implementation of the amendments provided by the bill. It would require further that the Comptroller General provide an annual report to the Congress on the status of the debts owed to the United States.

In lieu of the proposed annual report by the Comptroller General, we believe that it would be more appropriate for the Under Secretary, which the bill provides for in section 102, to make this type of report, which could contain information on the status of debts owed to the government as well as progress in improving debt collection and credit management. Such reports could be based on the agency reports made to the Under Secretary under sections 102 and 103 of the bill, Financial Integrity Act reports and agency financial statements audited by inspectors general or other appropriate organizations.

In our opinion the requirement for GAO audits is unnecessary. We already have ample authority to make such audits. Under the Budget and Accounting Act of 1921, as amended (31 U.S.C. 712), the Comptroller General is required to

investigate all matters relating to the receipt, disbursement, and use of public funds. The Accounting and Auditing Act of 1950, as amended (31 U.S.C. 3523), requires GAO to audit the financial transactions of each agency, except as otherwise specifically provided by law. Under section 204 of the Legislative Reorganization Act of 1970, as amended (31 U.S.C. 717), the Congress or a committee may direct the Comptroller General to review and evaluate the results of a program or activity the government carries out under existing law. In our opinion, this existing legislation gives our Office adequate authority to make the audits that would be required by section 211.

Committees having jurisdiction may ask us to perform desired reviews and, under section 204 of the Legislative Reorganization Act of 1970, as amended (31 U.S.C. 717), we will perform such requested reviews. We believe such an arrangement, in lieu of a specific legislative requirement, would be mutually advantageous because it would permit us, through discussions with the committees, to reach agreement regarding the scope and report timing for our audit efforts and thus, to concentrate on the matters of greatest concern to the committees. Accordingly, we suggest that the requirement for GAO audits of, and reports on, agencies implementation efforts be deleted from the bill. Because of its magnitude and importance, we assure you that debt collection will receive our continuing review and emphasis.

12. Section 301 of the bill appears to permit additional funds collected as a consequence of this bill to be returned to the programs from which the debts arose, or to be used to offset reductions in funding that occur as a result of the present efforts to balance the federal budget. We agree that agencies need additional incentive to improve debt collection and credit management.

At the same time, we believe that the provisions of section 301(2) and (3) of the bill raise complex issues, such as the impact on program participants and the extent to which programs should be subject to this type of restriction, which must be resolved before these provisions are enacted. Also, consideration must be given to the impact on congressionally established program limitations if funds resulting from collecting delinquent debts are allowed to be returned to program operations.

The committee may want to also consider other options as well. One option is to provide managerial incentives by holding agency managers more strictly accountable for attaining debt collection objectives and targets. This might be accomplished through merit pay performance ratings and bonuses and substantial cash awards to agency managers who significantly contribute to improved debt collection practices. In addition,

agency managers could be required to evaluate credit management and debt collection operations and systems annually, to identify areas where their programs could be strengthened, and to initiate actions to correct problems. The results of these evaluations could be included in reports to the Congress that would be required under section 102(6).

Also, the committee may want to consider amending section 301(2) to allow agencies to use a portion of collections in excess of targets for improving debt collection operations and systems. One means of accomplishing this would be to establish a fund, administered by the Department of the Treasury, which would receive a portion of agencies' collections in excess of their goals. The funds accumulated in this manner could be made available to agencies for their use in improving credit management and debt collection operations and systems. A variation of this option might be to penalize agencies that do not meet debt collection targets by charging agency appropriations a specified amount or a portion of the amount of anticipated collections that are not recovered.

Section 301(3) provides that "direct" and "guaranteed" loan programs must obtain 10 percent of their "budget authority" from amounts recovered through debt collection activities. We note that the bill does not mention "insured" loans, and it is unclear whether this provision relates to all collections, or only the collection of delinquent debts. Another source of ambiguity in this provision stems from the use of the term "budget authority." That term is defined in 2 U.S.C. 622 to exclude guaranteed or insured loans. For this reason, its use seems inappropriate in this section.

More importantly, the overall purpose and intended impact of section 301(3) are not clear because the provision is susceptible to several different interpretations. For example, it is unclear whether failure to obtain 10 percent of budget authority from debt collection would result in a reduction in funding level for the programs involved. If this is the case, then consideration must be given to the impact on programs receiving reduced funding levels, if the 10 percent is not met, and whether the Congress wants to apply this principle to all direct and guaranteed loan programs.

Section 301(4) would require each federal agency to submit, along with its annual appropriations request, a report on the status of implementing the bill's provisions. We believe this requirement could be strengthened by adding that agencies also must disclose, on a program-by-program basis, such data as the amount of their receivables, age of delinquent debts, and amounts written off as uncollectible. They could also be required to set out their goals, both monetary and programmatic, for improving collections and reducing delinquencies and

write-offs. The committee may wish to consider how this reporting requirement should relate to the debt collection reporting requirements imposed by the Debt Collection Act of 1982, 31 U.S.C. 3719.

Finally, section 301 states that it is the "intention and commitment of the Congress to promote the rapid and efficient implementation of the Act" through certain actions by Congress and the agencies, as specified in subsections (1) through (4). The language used suggests more of a general statement of policy to guide the agencies than the creation of new legal authority and requirements to govern the agencies. We believe that this problem could be solved by eliminating the "intention and commitment" language and presenting each of the specific provisions of section 301 as separate legislative requirements.