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SEP 27 1979

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Department of Justice
Washington, D.C. 20530

Postfile
DL 602952

Dear Mr. Simms: *[Questions and Answers Concerning]*

AGC 00012
Your September 4, 1979 letter requested our views on two questions presented to your Department during testimony on S. 1518, a bill which would amend 38 U.S.C. § 53361 to permit the Veterans Administration (VA) to disclose information concerning individuals indebted to VA for debt collection purposes. The questions and our responses to them are as follows:

1. Would the exclusion from S. 1518 of the current provision exempting records disclosed by the VA under the bill from the Privacy Act, 5 U.S.C. § 552a, affect the VA's debt collection objectives?
Specifically:
 - a. Would the VA's disclosure of information to a consumer reporting agency for the purposes specified in S. 1518 constitute "a contract for the operation by or on behalf of the agency of a system of records," 5 U.S.C. § 552a(m), requiring the Privacy Act to be applied to that system?
 - b. What different requirements would apply to consumer reporting agencies if the Privacy Act did or did not apply?

S. 1518 would enable VA to enter into contracts with consumer reporting agencies to disclose information such as names and addresses to such agencies in order to locate debtors, obtain credit reports and, where the debtor fails to respond to administrative collection efforts, to report the existence and the amount of debts owed to the consumer reporting agencies. Under these contracts, VA would provide certain information from its own system of records to consumer reporting agencies in order to aid it in collecting delinquent debts. However, VA would not require the consumer reporting agency to operate a system of records

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on behalf of VA as required for subsection (n) of the Privacy Act to be applicable. Rather, VA would contract to provide information and to receive information from a system of records previously established by the contractor for its own purposes. The fact that some information from VA's systems of records would be entered into the contractor's system would not in our view, cause the contractor's system to become a VA system. Subsection (n) was not intended to cover private sector systems. Rather it is applicable to systems that are substitutions for Federal systems--systems that put for the contract, would be operated by the Federal agency.

In cases where the Privacy Act applies to systems of records established or maintained by contractors, the same procedural and substantive restrictions that apply to the agency's records would apply to those of the contractor. In any case, the interests of individuals affected by VA's reporting will be protected by the Fair Credit Reporting Act. In addition, VA will have to satisfy certain procedural safeguards under the Privacy Act in connection with information provided to the contractor.

2. What is the legal basis, either under 5 U.S.C. § 552a or 38 U.S.C. § 3301, or both, for GAO's actions in disclosing to consumer reporting agencies the information that the VA provided to the GAO during the course of the GAO pilot study on VA debt collection efforts regarding veterans and the debts they owe to the VA?

The Federal Claims Collection Act, 31 U.S.C. § 951, provides GAO with a legal basis for using information on VA debtors in conjunction with consumer reporting agencies. In addition, GAO's use of VA information for these purposes is designed to test the feasibility of certain debt collection practices, and therefore represents an application of our statutory audit authority.

GAO is conducting two tests on the feasibility of using commercial practices to collect debts owed VA. One test, being performed by our Human Resources Division, consists of a review of a sample of educational assistance overpayment accounts where collection action had been terminated by VA. The second test, which is being performed by our Claims Division, is using a sample of debts previously forwarded by VA to GAO for further collection action pursuant to the Federal Claims Collection Standards.

In the first test, GAO has provided names of debtors supplied by VA to a consumer reporting agency in an effort to obtain current address and credit information from the agency's files. It is contemplated that further collection action will be undertaken in those cases where current address information is obtained. Specifically, this test consisted of using a computer terminal to transmit names and addresses to the master computer of a consumer reporting agency. The computer then supplied us with pertinent locator and credit information stored in its data bank. In any subsequent inquiry about one of these individuals, the master computer will report that GAO made an inquiry and the date on which it was made. However, the individual will not be identified as either a VA claimant or debtor. Neither 38 U.S.C. §3301, which provides for disclosure to other Government agencies by VA in appropriate circumstances, nor the Privacy Act, which applies only to executive branch agencies, preclude GAO's use of the names and addresses of VA debtors in this way. Since 38 U.S.C. §3301 does not apply to the use of information by agencies other than VA, both our Office and VA considered this use of VA information to be appropriate.

The second phase of our audit effort involves testing the effectiveness of reporting debt information to consumer reporting agencies. As stated above, the debts being used in this test are ones that VA previously forwarded to GAO for further collection action pursuant to the Federal Claims Collection Standards. Information on some of these debts is being provided to consumer reporting agencies for the dual purpose of obtaining current information and informing other creditors of the existence and amount of the debt through the facilities of the reporting agency. However, as in the test involving debts previously terminated by VA, the debts were properly referred to GAO by VA under 38 U.S.C. §3301(b)(3) and may properly be referred to consumer reporting agencies by GAO without running afoul of the Privacy Act. Even though the Privacy Act does not apply to GAO, in an effort to assure fairness the GAO Claims Division is making every effort to confirm the accuracy of the information referred to consumer reporting agencies. This includes notifying VA debtors in order to give them the opportunity to contest the amount or existence of the debt prior to referral.

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We appreciate the opportunity to explain our position
in this important matter.

Sincerely yours,

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Milton J. Socolar
General Counsel