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FEDERAL DEBT MANAGEMENT—ARE AGENCIES USING COLLECTION TOOLS EFFECTIVELY?

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT EFFICIENCY AND FINANCIAL MANAGEMENT

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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CONTENTS

	Page
Hearing held on June 17, 2003	1
Statement of:	
Gregg, Richard L., Commissioner, Financial Management Service, Department of Treasury; William H. Campbell, Assistant Secretary for Management, Department of Veterans Affairs; Theresa S. Shaw, Chief Operating Officer, Federal Student Aid, Department of Education; and Deanne Loonin, staff attorney, National Consumer Law Center	6
Letters, statements, etc., submitted for the record by:	
Campbell, William H., Assistant Secretary for Management, Department of Veterans Affairs, prepared statement of	22
Gregg, Richard L., Commissioner, Financial Management Service, Department of Treasury, prepared statement of	9
Loonin, Deanne, staff attorney, National Consumer Law Center, prepared statement of	42
Platts, Hon. Todd Russell, a Representative in Congress from the State of Pennsylvania, prepared statement of	3
Shaw, Theresa S., Chief Operating Officer, Federal Student Aid, Department of Education:	
Followup questions and responses	73
Prepared statement of	33

FEDERAL DEBT MANAGEMENT—ARE AGENCIES USING COLLECTION TOOLS EFFECTIVELY?

TUESDAY, JUNE 17, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT EFFICIENCY AND FINANCIAL MANAGEMENT,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:03 p.m., in room 2154, Rayburn House Office Building, Hon. Todd R. Platts (chairman of the subcommittee) presiding.

Present: Representatives Platts, Blackburn, Towns and Maloney.

Staff present: Mike Hettinger, staff director; Dan Daly, counsel; Larry Brady, Kara Galles, and Tabetha Mueller, professional staff members; Amy Laudeman, clerk; and Mark Stephenson, minority professional staff member.

Mr. PLATTS. A quorum being present, the Subcommittee on Government Efficiency and Financial Management will come to order.

We are going to try to get in a couple of brief statements and get as many of your opening statements before we have a series of three votes on the floor. We will see if we are able to squeeze in most of the statements, break and then come back to questions after those three votes.

A priority of this subcommittee is the responsibility to ensure that Federal agencies are managing their finances wisely. An important part of a solid, financial management effort is the collection of debts owed to the Federal Government. This subcommittee, under the leadership of former chairman, Steve Horn, and my colleague and current member of the subcommittee, Representative Carolyn Maloney, developed legislation that was enacted as the Debt Collection Improvement Act of 1996, a law that made sweeping reforms to the way the Federal Government manages debt. Since that time, the subcommittee has held numerous hearings focusing on implementation of the act.

Today's hearing will look at the debt collection successes and challenges at the Veterans Administration and the Department of Education's Office of Federal Student Aid. We will also hear from the Treasury Department's Financial Management Service for a look at governmentwide progress in implementing the Debt Collection Improvement Act and from a consumer law advocate regarding debt collection efforts under the act.

I am very pleased to note that both the Veterans Administration and the Department of Education have done much to improve debt collection efforts and our witnesses today will testify that the departments are giving debt management a high priority in their strategic planning and that such focus has paid off for American taxpayers.

In terms of all Federal agencies, implementation of the Debt Collection Improvement Act is also improving. Federal agencies are now referring almost all of their eligible debts to the Financial Management Service whose collection results continue to improve each year. FMS has collected about $15 billion in delinquent debt through its Offset Program and more than $100 million through its contracts with private collection agencies. During fiscal year 2002 alone, collections by private contractors amounted to $43 million. This represents a 6-percent increase over fiscal year 2001.

While we have had many successes, at the same time more may need to be done before the Debt Collection Improvement Act will realize its full potential and we will examine some of these issues and how we can go forward from here as well.

Today, the subcommittee is delighted to hear from Mr. Richard Gregg, Commissioner of the Financial Management Service, Department of Treasury; the Honorable William H. Campbell, Assistant Secretary for Management and Chief Financial Officer, Department of Veterans Affairs; Ms. Theresa S. Shaw, Chief Operating Officer, Federal Student Aid, Department of Education; and Ms. Deanne Loonin, staff attorney, National Consumer Law Center in Boston, MA.

I want to thank each of your for being here today and I certainly look forward to your testimonies to complement your written statements you have provided.

[The prepared statement of Hon. Todd Russell Platts follows:]

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Opening Statement
Congressman Todd R. Platts
June 17, 2003

A priority of this Subcommittee is the responsibility to ensure that Federal agencies are managing their finances wisely. An important part of solid financial management effort is the collection of debts owed to the government. This Subcommittee, under the leadership of former Chairman Steve Horn and my colleague and current Member of this Subcommittee, Representative Carolyn Maloney (D-NY-14), developed legislation that was enacted as the Debt Collection Improvement Act of 1996, a law that made sweeping reforms to the way the Federal government manages debt. Since that time, the Subcommittee has held numerous hearings focusing on the implementation of the Act.

Today's hearing will look at debt collection successes and challenges at the Veterans Administration and the Department of Education's Office of Federal Student Aid. We'll also hear from the Treasury Department's Financial Management Service for a look at government-wide progress in implementing the Debt Collection Improvement Act.

I am very pleased to note that both the Veterans Administration and the Department of Education have done much to improve debt collection. Our witnesses will testify that their departments are giving debt management a high priority in their strategic planning, and that such focus has paid off.

In terms of all Federal agencies, implementation of the Debt Collection Improvement Act is also improving. Federal agencies are now referring almost all their eligible debts to the Financial Management Service, whose collection results continue to improve each year. FMS has collected about $15 billion dollars in delinquent debt through its offset program and $100 million dollars through its contracts with private collection agencies. During fiscal year 2002 alone, collections by private contractors amounted to $43 million dollars. This represents more than a 60 percent increase over fiscal year 2001.

At the same time, more may need to be done before the Debt Collection Improvement Act will realize its full potential, and we will examine those issues as well.

Today, the Subcommittee will hear from Mr. Richard Gregg, Commissioner of the Financial Management Service at the Department of Treasury; The Honorable William Campbell, Assistant Secretary for Management and Chief Financial Officer at the Department of Veterans Affairs; Ms. Theresa Shaw, Chief Operating Officer of Federal Student Aid at the Department of Education; and Ms. Deanne Loonin, Staff Attorney at the National Consumer Law Center in Boston, Massachusetts. Thank you for being here, today. I look forward to your testimonies.

Mr. PLATTS. I will now yield to the ranking member, the gentleman from New York, Mr. Towns, for the purpose of an opening statement.

Mr. TOWNS. Thank you, Mr. Chairman.

Billions of dollars of non-tax debt are owed to the Federal Government. In 1996, recognizing that our current collection laws were inadequate, this subcommittee passed the Debt Collection Improvement Act which established new tools and expanded existing tools to improve collection practices.

I would like to commend the chairman for continuing the subcommittee's active role in the area of Federal debt collection. I should also mention the leadership and dedication of my colleague from New York, Carolyn Maloney, who has also been involved in this issue from day one.

As a result of efforts of many in this room today, the Federal Government is beginning to realize the benefit of a more centralized debt collection system. In the last few years, the Federal Government's centralized debt collection activities at the Financial Management Service have begun to work more efficiently. Increased management attention by program agencies and improved use of debt collection tools by the Department of Treasury have resulted in advancement in Federal debt collection.

Since enactment of the Debt Collection Improvement Act, $15 billion in delinquent, non-tax debt has been collected; $2.8 billion last year alone. There has been improvement in the Government's collection efforts and I commend the Treasury and the agencies for their work. However, there seems to be room for improvement.

I want to thank the chairman for agreeing to our request for a witness from the National Consumer Law Center for today. As part of our oversight responsibility, this subcommittee is meeting to discuss Federal agency implementation and compliance with DCIA. It is my hope that as a result of this hearing, we will be closer to meeting our goal of having an efficient, effective and fair Federal debt collection system.

On that note, Mr. Chairman, I yield back my time and I am anxious and eager to hear from the witnesses.

Mr. PLATTS. Thank you, Mr. Towns.

If I could ask each of our witnesses and anyone who will be advising them as part of their testimony here today, to stand and we will administer the oath before we get to your opening statements.

[Witnesses affirmed.]

Mr. PLATTS. Thank you. The clerk will note that all witnesses affirmed the oath.

I would like now to proceed directly to testimony. Mr. Gregg, we will begin with you, followed by Mr. Campbell, Ms. Shaw and finally, Ms. Loonin. The subcommittee appreciates the substantive written testimonies each of you has provided and respectfully ask that each of you keep your oral testimonies to approximately 5 minutes. Given that we are going to try to get all these in before we break and get into questions after our floor votes, trying to watch that 5 minute clock would be very helpful.

Mr. Gregg, we will begin with you.

STATEMENT OF RICHARD L. GREGG, COMMISSIONER, FINANCIAL MANAGEMENT SERVICE, DEPARTMENT OF TREASURY; WILLIAM H. CAMPBELL, ASSISTANT SECRETARY FOR MANAGEMENT, DEPARTMENT OF VETERANS AFFAIRS; THERESA S. SHAW, CHIEF OPERATING OFFICER, FEDERAL STUDENT AID, DEPARTMENT OF EDUCATION; AND DEANNE LOONIN, STAFF ATTORNEY, NATIONAL CONSUMER LAW CENTER

Mr. GREGG. Mr. Chairman and members of the subcommittee, thank you for inviting me to testify today to provide an update on the Financial Management Service's implementation of the Debt Collection Improvement Act. I would also like to congratulate you, Chairman Platts, on your appointment as chairman of the subcommittee.

This subcommittee's longstanding support has been central to helping Treasury to implement a remarkably successful, governmentwide debt collection program. This program has focused management attention across government agencies in making debt collection a priority, significantly increased the collection of delinquent debt and greatly improved the Government's ability to accurately report on outstanding delinquent debt.

FMS collects various types of delinquent debt through two major programs. I would like to briefly provide an overview of them. First, the Treasury Offset Program compares the name and taxpayer identification numbers of debtors with those of recipients of Federal payments. If there is a match, the payment is reduced or offset to satisfy the debt. Using this same methodology, FMS also levies Federal payments to collect delinquent Federal income taxes for the IRS.

The second major program is Cross Servicing under which Federal agencies refer delinquent debt to FMS for collection by means of a variety of tools.

I am pleased to report that the Treasury debt collection program is, in my view, fully mature. Moreover, it has developed into an integral component of sound, effective financial management at the Federal level. As a result of the debt collection program, FMS has collected billions of dollars of debt, much of which would not have been collected otherwise.

Since enactment of DCIA, FMS has collected about $17.6 billion in delinquent debt, sharply increasing collections through numerous program enhancements and working with agencies to overcome the obstacles for participation. For example, we have worked hard to have agencies refer eligible debt in a timely manner. For the Treasury Offset Program and cross servicing, currently about 91 percent of the debt identified as eligible has been referred. Every year since fiscal year 1999, FMS has collected over $2.6 billion in delinquent debt. In fiscal year 2002 alone, Treasury collected over $2.8 billion including $1.47 billion in past due child support, $1.2 billion in Federal non-tax debt, and $180 million in State and Federal tax debts.

I would now like to give the subcommittee a progress report on some of Treasury's well established collection initiatives as well as some new efforts.

The offset of Social Security benefit payments continues smoothly. For fiscal year 2002, FMS collected about $55 million in Federal

non-tax debts and we have collected over $36 million thus far in 2003. I would also note that the administration proposes to amend the DCIA to offset additional SSA payments to improve collection of delinquent child support debt. The House version of the Welfare Reform legislation includes a similar provision and we are working with the Senate to also have a provision in there. About $55 million over 5 years and $113 million over 10 years in child support collections are at stake.

We have also made excellent progress in collecting tax debt. For fiscal year 2002, about $60 million in delinquent Federal income tax was collected, primarily as a result of the Social Security benefit levy which accounts for $43 million of the total. In fiscal year 2003, we have already collected $61 million including $50.5 million in Social Security levies.

State governments have also benefited from our debt collection program. The FMS implemented the program to collect delinquent State tax in 2000. In fiscal year 2002, $119 million was collected and in 2003, we have already collected $136 million for the States. Currently, 30 or the 41 States that collect income tax and the District of Columbia, are participating.

FMS issued regulations providing guidance to agencies on garnishing private sector wages to collect agency debt. FMS views administrative wage garnishment as a powerful and important collection tool within enormous potential. So that agencies can take full advantage of FMS' centralized processes and established safeguards, we continue to strongly encourage them to use administrative wage garnishment through FMS. We appreciate the subcommittee's support in this effort.

In the past 5 years, private collection agencies have collected over $156 million. The present contract with five private collection agencies went into effect October 1, 2001 and we have seen continued improvements. In fiscal year 2002, PCAs collected $43 million and have already collected $45.6 million in 2003.

We have also been careful to make sure that compliance reviews are performed onsite at each PCA on an annual basis to assure, among other things, adherence to laws and regulations. As a result, we have seen no substantiated cases of abusive tactics under our contracts.

Looking ahead, we have several significant improvements underway. In 2001, FMS began phasing in the program to collect delinquent debts through offset of Federal salary payments, the centralized process, and we have collected $1.9 million in fiscal year 2002 and $1.1 million thus far in fiscal year 2003.

We have also been working with the Department of Education on referral of student loan debts for collection through centralized salary offset. In our view, this step would complement Education's successful collection efforts through their own PCAs. We believe their participation would greatly boost the salary offset program and will continue to work with them on this effort.

Another new element of our debt collection program is the offset of non-Treasury disbursed payments under which debts in the FMS debtor data base will be compared to non-Treasury disbursed vendor payments. When there is a match, participating disbursing agencies will offset the payment. Non-Treasury disbursed vendor

payments will also be levied to collect Federal tax debt. The Department of Defense is already participating in this initiative and we are working with the Postal Service and USDA's Commodity Credit Corp. to take in their vendor payments.

Ensuring that delinquent debtors are barred from obtaining Federal loans is a high priority for FMS and the agencies. We have developed a system we call debt check to allow lending agencies to access information from the FMS delinquent debtor data base so that government loans are not made to previously identified delinquent debtors. This has already been implemented in the Small Business Administration and we continue to roll it out.

Another program, FED Debt, scheduled for implementation in 2005, is a web-based system that will replace the current cross servicing computer system and enhance the effectiveness of that program by providing increased flexibility, automating a number of processes currently handled manually, and improving system access for customers and service partners.

In summary, Treasury's debt program is one that is both robust and effective and has consistently met or exceeded its performance measures. Nonetheless, we continue to work to enhance the program. In addition to maximizing our statutory authority, we believe that the need for congressional oversight is critical. We also believe that agencies and the Inspectors General can enhance the program as well.

Be assured that the debt collection program will remain a high priority for the Department of Treasury. I would be happy to answer any questions you and other members of the subcommittee may have.

[The prepared statement of Mr. Gregg follows:]

DEPARTMENT OF THE TREASURY
WASHINGTON

Testimony of
Commissioner Richard L. Gregg
Financial Management Service – U.S. Department of the Treasury
before the
Subcommittee on Government Efficiency and Financial Management
House Committee on Government Reform
June 17, 2003
Federal Debt Management – Are Agencies Using Collection Tools Effectively

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to testify today to provide an update on the Financial Management Service's (FMS) implementation of the Debt Collection Improvement Act of 1996 (DCIA).

In particular, I would like to thank you, Chairman Platts, for this opportunity. I would also like to congratulate you on your appointment as Chairman of the Subcommittee on Government Efficiency and Financial Management. Treasury worked very closely with the previous Chairman, Representative Stephen Horn, and I personally look forward to working with you and the other members of the Subcommittee as we continue to improve our debt collection initiatives.

As I have said before, this Subcommittee's long-standing support has been central in helping the Treasury Department to implement a remarkably successful government-wide debt collection program. This program has focused management attention across government agencies in making debt collection a priority. As a result, Treasury's debt collection program has significantly increased the collection of delinquent debt and has greatly improved the government's ability to accurately report outstanding delinquent debt.

The DCIA centralized the collection of delinquent nontax debt owed to the federal government and gave Treasury significant responsibilities in this area. Essentially, FMS

serves as the government's central administrative debt collection agency. Debt collection is a central part of FMS' mission. In addition, improved financial performance is a governmentwide initiative under the President's Management Agenda, and debt collection is key to its success.

FMS collects delinquent debt through two major programs. First, the Treasury Offset Program compares the names and taxpayer identifying numbers (TINs) of debtors in a delinquent database maintained by FMS with the names and TINs of recipients of federal payments that are being disbursed by FMS. If there is a match, the federal payment is reduced, or "offset," to satisfy the overdue debt using this same methodology. Through its Treasury Offset Program, FMS offsets federal payments to collect delinquent non-tax debt owed to federal agencies as well as delinquent child support and income tax obligations on behalf of states, pursuant to the DCIA and other governing federal laws. FMS also levies federal payments to collect delinquent federal income taxes for the Internal Revenue Service.

The second major program is Cross-Servicing, under which federal agencies refer delinquent debt to FMS for collection by means of a variety of tools, including offset, demand letters to debtors, repayment arrangements, administrative wage garnishment, referrals to the Department of Justice, credit bureau reporting, and use of private collection agencies.

FMS has also developed a system that will enable credit agencies to identify delinquent debtors who apply for federal loans and loan guarantees. I will elaborate on this program later on in my testimony.

Mr. Chairman, I am very pleased to report Treasury's debt collection program has become a fully mature one. It has developed into an integral component of federal

financial management – an important tool supporting sound and effective financial management at the federal level. As a result of the debt program, FMS has collected billions of dollars of debt, much of which would not be collected otherwise.

The debt program has had a tangible impact on agency fiscal operations, the economical stewardship of taxpayer dollars, the integrity of important federal programs, such as student loan and benefit payment programs, and efforts to collect delinquent child support debt. It is important to note that the Chief Financial Officers' Council has developed broad financial management performance metrics, one of which focuses on debt collection performance. In addition, there needs to be increased attention by the agencies and their auditors to ensure that receivable balances that agencies report on the Treasury Report on Receivables Due from the Public (a report summarizing the status of loans and accounts receivable managed by federal agencies) tie directly to their financial statements. To this end, FMS has provided instruction to agencies on how to reconcile their receivable balances to their financial statements, and we have incorporated this specific guidance in this regard in the governmentwide accounting instructional materials that we send to agencies.

Program Accomplishments:

Referrals from Agencies and Total Collections

Since enactment of the DCIA, FMS has collected about $17.6 billion in delinquent debt. Since FMS was given responsibility for centralized collection of debt, we have sharply increased collections through program changes, adding numerous payment streams and categories of debt to the offset program, and have actively worked with agencies to overcome obstacles to participating in the Treasury Offset and Cross-

Servicing programs. In every year since FY1999, FMS has collected over $2.6 billion in delinquent debt.

In FY02 alone, using all of its collection tools, Treasury collected over $2.8 billion in delinquent debt, including $1.47 billion in past due child support; $1.2 billion in federal non-tax debt; and almost $180 million in state and federal tax debts. FY02 total collections exceeded the amount collected in FY01 by $144 million.

And FMS is on track to match last year's collections performance benchmarks. In FY03, to-date, we have collected $2.57 billion in delinquent debt, including $1.3 billion in past due child support; $1.08 billion in federal non-tax debts; and $197 million in state and federal tax debts.

The $86 million collected through the Cross-Servicing Program in FY02, which represented a 51 percent increase over FY01 cross-servicing collections, was attributable to improvements in referrals from agencies - such as the Department of Health and Human Services (Medicare Secondary Payer debts), the Department of Veterans Affairs, the Department of Agriculture - and the successful implementation of private collection agency contracts. Already in FY03, over $91 million has been collected with four months still to go in the fiscal year.

As of May 31, the Treasury Offset Program database contains $30.8 billion in federal non-tax debts, $70.9 billion in child support debts, $4 billion in state income tax debts, and $77 billion in federal tax debts.

Treasury has also worked hard to have agencies refer eligible debt in a timely manner. FMS has made important enhancements to the Treasury Report on Receivables Due from the Public, which enable us to more thoroughly monitor and evaluate agency referral and collection performance by generating computerized five-year trend analysis

reports. To keep debt collection in the forefront of agencies financial management objectives, in the last year and a half, approximately 2,000 agency participants attended FMS workshops, conferences, symposia, and seminars on debt collection throughout the country. FMS also regularly conducts meetings with agency Chief Financial Officers (CFO) and finance offices on debt referral and other debt collection developments.

As you can see, the steps we have taken have produced outstanding results. For both the Treasury Offset Program and cross-servicing, currently 91 percent of debt identified as eligible has been referred. To put this in perspective, at the end of FY99, agencies had referred to Treasury only 43 percent of their eligible delinquent cross-servicing debt. During the first four years of the program – 1997 through 2000 – agencies referred roughly $4.3 billion for cross-servicing. In just two years since then, agencies have referred an additional $6 billion.

Mr. Chairman, I would now like to give the Subcommittee a progress report on some of Treasury's well-established collection initiatives as well as some new efforts.

Benefit Payment Offset

With the cooperation of the Social Security Administration (SSA), the offset of Social Security benefit payments, an extraordinarily complex undertaking that we started in 2001, continues to go smoothly. In fact, for FY02, FMS collected approximately $55 million in federal non-tax debts through this program. So far in FY03, we have collected over $36 million.

The Administration proposes to amend the DCIA to authorize offset of additional SSA payments to improve collection of delinquent child support debt. Enacting this provision would enable us to aggressively target the collection of funds intended for the care of our nation's children, and would result in additional child support collections

estimated at $55 million over five years and $113 million over ten years. It is also worth noting that the House version of the welfare reform legislation includes a similar provision. FMS and the Department of Health and Human Services have also been working with the Senate in an effort to include such a provision in the Senate version of the bill.

Continuous Federal Tax Levy

We have also made excellent progress in collecting tax debt. With the good support of the IRS, implementation of the continuous federal tax levy initiative, which began in July 2000, is progressing smoothly. Of all the federal payments being levied, Social Security benefit payments account for most of the levies. For FY02, a total of approximately $60 million in delinquent federal income tax was collected, primarily as a result of the SSA benefit levy, which accounts for $43 million of the total. Thus far in the current fiscal year, we have collected $61 million. Of that amount, $50.5 million (83 percent of the total) has been collected through the levy of SSA payments.

State Income Tax Debt Collection

State governments have also benefited from our debt collection program. FMS implemented the program to collect delinquent state tax debt in 2000. For FY02, $119 million was collected. In FY03, we have already collected $136 million. Currently, 30 of 41 states that collect state income tax and the District of Columbia are participating. Several additional states are expected to begin by the end of this calendar year. FMS is actively encouraging the remaining states to participate.

Administrative Wage Garnishment

FMS issued regulations providing guidance to federal program agencies for garnishing private sector wages to collect agency debts. FMS views Administrative

Wage Garnishment (AWG) as a powerful collection tool with enormous potential. AWG was implemented in July, 2001. To date, cumulative collections under AWG total $317,000, including $298,000 coming in this fiscal year alone.

So that agencies can take full advantage of FMS' centralized processes and established safeguards, we continue to strongly encourage them to use administrative wage garnishment through Treasury's Cross-Servicing Program. We appreciate the Subcommittee's support in encouraging agencies to participate fully.

Some agencies are already using this debt collection tool through FMS, including the Department of Housing and Urban Development, which started in the AWG program in September 2002 and now already accounts for 82 percent of the dollars collected under AWG. HHS and the Department of Education have published regulations and several others are preparing to publish regulations that will allow them to participate. FMS is also working closely with the Department of Defense and the Department of Agriculture to help facilitate their participation.

Contract for the Services of Private Collection Agencies

Since 1998, FMS has contracted for the services of private collection agencies (PCAs). The present contract with five private collection agencies went into effect October 1, 2001, and we have seen solid improvements in performance and service. The goal of the PCA contract is to complement FMS' efforts to collect and resolve delinquent non-tax debt. The PCA contract is a performance-based competitive initiative -- PCAs compete against each other under the contract and those PCAs who collect and resolve more debt gain a larger share of the PCA debt portfolio.

Over the past five years, PCAs have collected over $156 million, attesting to the importance of these partnerships. For FY02, PCAs collected $43 million, up from $27

million for FY01. PCAs administratively resolved $82 million in FY02, up from $41 million in FY01. PCAs have already collected $45.6 million in FY03, easily surpassing FY02 collections. So far, FY03 resolutions total $55 million, and we expect to match the FY02 level of resolutions.

Since May of last year, PCAs have averaged over $5 million in collections each month. In fact, this May, the PCAs achieved their highest monthly collection total at $7.6 million.

On an annual basis, compliance reviews are performed on-site at each PCA under contract. Data for this review is accumulated throughout the year. During the on-site review, a team from FMS examines the contractor's site security, personnel security, adherence to laws and regulations, collection techniques, and overall compliance with the terms of the contract. The findings of the review are forwarded to the PCA for action or correction. FMS also maintains regular contact with the PCAs and we have daily access to their collection systems. There have been no substantiated cases of PCAs using abusive or bullying tactics with debtors under our contracts.

Building on the Foundation – Strengthening a Mature Program

Centralized Federal Salary Offset/Levy

Looking ahead, we have several significant improvements underway. In 2001, FMS began phasing in the program to collect delinquent debts through the offset of federal salary payments. In addition to collecting federal non-tax debt, we have also begun to collect tax debt by levying federal salaries. We collected a total of $1.9 million for FY02 and $1.1 million so far in FY03.

Salary payments processed by the U.S. Department of the Agriculture's National Finance Center and the Department of the Interior, both of which process payroll for

numerous federal agencies, as well as those processed by the U.S. Postal Service and the Department of Defense are currently being offset through the Treasury Offset Program. The General Services Administration (GSA) has committed to implement salary offset in the near future. When GSA implements centralized salary offset, all payroll providers selected as part of the E-Payroll initiative will be in the program.

In order to offset salary payments, creditor agencies must make their debts eligible. The Department of Veterans Affairs has just recently activated their debts, and we have also been working closely with the Department of Education to activate student loan debts for collection through centralized salary offset. In our view, this program would complement Education's very successful collection efforts they undertake through the use of private collection agencies and AWG. Because of the dollar amounts associated with the student loan debts, Education's participation would greatly boost the success of the salary offset program. We will continue to work with that department in an effort to bring them into the program.

Offset of Non-Treasury Disbursed Vendor Payments

I am pleased to tell you that another new element of our debt collection program has also been initiated – the offset of non-Treasury disbursed payments. The practice of offsetting vendor payments disbursed by Treasury has been in place since 1997. Under this new initiative, we will collect debts owed by vendors by offsetting the payments disbursed by officials other than Treasury. Debts in the FMS debtor database will be compared to non-Treasury disbursed vendor payments. When there is a match, participating disbursing agencies will offset the payment. Non-Treasury disbursed vendor payments will also be levied to collect federal tax debt.

The Department of Defense is already participating in this initiative, and FMS is currently working with the Postal Service and the USDA's Commodity Credit Corporation regarding offset of their vendor payments. We believe this initiative holds great promise and will significantly enhance debt collection.

Delinquent Debtor Database Information Sharing

As I noted in my introduction, Mr. Chairman, ensuring that delinquent debtors are barred from obtaining federal loans and loan guarantees is a high priority for both FMS and for those federal agencies with loan authority. FMS has developed a system we call "Debt Check" that will allow lending agencies to access information from the FMS delinquent debtor database so that government loans are not made to previously identified delinquent debtors. The web-based system is designed to complement existing sources of information available to agencies – to provide an additional tool to bar delinquent debtors from obtaining federal loan assistance. Debt Check has already been implemented with the Small Business Administration, and planning is underway for additional agencies to participate in the near future. FMS is working closely with the Department of Agriculture's Farm Services Agency, for example.

FedDebt

FedDebt is a Web-based system that will replace the current debt program cross-servicing computer system. FedDebt will enhance the effectiveness of the Cross-Servicing Program – providing increased flexibility, automating a number of processes that are currently handled manually, and improving system access for customers and service partners. Specifically, the program will include on-line access for creditor agencies and private collection agencies, increased automation of processes such as collection files, and enhanced communication and coordination between private

collection agencies and Treasury. It will also provide increased flexibility to incorporate new debt collection tools. The target implementation date for the system is 2005.

Conclusion

Mr. Chairman, in summary, Treasury's debt program is one that is both robust and effective, one that has consistently met or exceeded its performance measures. Nonetheless, we are continually working to enhance the program and increase collections.

In addition to maximizing the statutory authority FMS possesses to collect delinquent debts, we believe that congressional oversight of the debt collection program has been and will continue to be critical to our success. We applaud this Subcommittee for the role it has played in that regard. We also believe that agency leadership and agency Inspectors General can enhance oversight at the agency level in order to ensure that debts are being referred on a more timely basis and that debt collection in general is a higher priority. In fact, we recently learned that in their annual report, the agency Inspectors General announced that they plan to increase their focus on financial management. We view this as a very positive sign, and we encourage the Subcommittee to support this endeavor.

Mr. Chairman, you may be assured that debt collection will remain a high priority for Treasury. This concludes my remarks. I would be happy to answer any questions you or the members of the Subcommittee might have.

Mr. PLATTS. Thank you.

We will continue and see if we can get in at least two if not all three statements before I have to run over to vote.

Mr. Campbell.

Mr. CAMPBELL. Mr. Chairman and members of the subcommittee, it is my pleasure to appear before you regarding the Department of Veterans Affairs' implementation of the Debt Collection Improvement Act [DCIA], of 1996. My staff has worked with all VA elements as well as the Department of Treasury's Financial Management Service to take the necessary steps to ensure our full compliance with the law's requirements.

In our previous appearances before the subcommittee, we testified about our progress in referring eligible debt to the Treasury Offset Program [TOP], and for cross servicing. In recent years, we have consistently referred well in excess of 90 percent of eligible debt to the TOP and cross servicing programs. VA has made extensive efforts to reduce the creation of debts and to collect those that have been established.

At the end of fiscal year 1996, the year in which the DCIA was enacted, VA had $4.2 billion in total receivables with $2.4 billion delinquent. When we last testified before the subcommittee in 2001, VA had $3.8 billion in total receivables at the end of fiscal year 2000, with $1.4 billion delinquent. As of March 31, 2003, VA had $3.5 billion in total receivables with $1.2 billion delinquent. The trend continues to improve.

Of the $1.2 billion in delinquent debt at the end of the second quarter of this fiscal year, $328 million was attributable to the direct home loan mortgages held by VA; $312 million to compensation and pension overpayments; $106 million to defaulted guaranteed home loans; $46 million to readjustment benefit overpayments; and $318 million to charges for medical care and services owed to VA's Medical Care Collection Fund [MCCF].

The majority of the $318 million for medical care is comprised of claims filed with third-party health insurers. These claims are not referable to Treasury for cross servicing or administrative offset because they are not sum-certain amounts owed. The Veterans Health Administration has developed a revenue improvement plan to improve the MCCF program. The plan concentrates on improving patient intake, medical documentation, medical coding, billing and collection of accounts receivable.

At the end of the second quarter of fiscal year 2003, VA had referred $284.4 million or 97 percent of the $292.6 million in delinquent debt eligible for TOP. VA began participating also in the Tax Refund Offset Program in 1985. The Department collected $343 million from 1985 through 1999 when the Tax Refund Offset Program became part of TOP. VA has collected $110 million from TOP over the last 3 calendar years and so far this year, through May, TOP has collected $40 million for the Department of Veterans Affairs.

In implementing the cross-servicing requirements of DCIA, at the end of the second quarter of this fiscal year, VA referred $171.4 million or 95 percent of the $180.6 million in delinquent debt eligible for the cross-servicing program. The eligible debt remaining at the end of the second quarter of fiscal year 2003 is made up of debt

from a few smaller benefit programs and miscellaneous veterans health debt such as vendor debt, employee debt and non-Federal sharing agreement debt. We continue to work toward referring most of this remaining debt for cross servicing throughout the fiscal year.

We have some other collection tools. Each year VA sells approximately 15,000 to 25,000 properties that we acquire due to foreclosure of our guaranteed loans. In fiscal year 2002, VA sold a total of 16,000 properties for $967 million. VA has also amended its regulations to comply with the revised Federal Claims Collection Standards [FCCS] and they will be published in the Federal Register soon. The amended regulations include a new regulation to authorize VA's use of the administrative wage garnishment as well as a regulation barring delinquent debtors from obtaining certain benefits while a debt is outstanding.

We also have a debt management center in St. Paul, MN. VA has had an automated collection system since 1975 and the Debt Management Center has operated this system since its creation in 1991. The Debt Management Center utilizes every collection tool available to Federal agencies such as automated payment processing and collection systems; benefits and salary offset; credit bureau reporting; and private collection agency referrals, compromises in litigation and writeoffs.

The DMC developed a fully automated set of procedures for identifying and referring all eligible debts to the TOP and cross-servicing programs. In addition, we run a Financial Services Center in Austin, TX. The FSC reviews VA vendor payments daily to systematically identify, prevent and recover improper payments made to commercial vendors. In fiscal year 2002, the FSC recovered more than $2.2 million, a 44 percent increase from the preceding year when they collected $1.6 million.

In a 2001 fiscal year report, the General Accounting Office recognized the FSC's efforts to recover excess expenditures as a good example of effective government financial management. VA has also fully centralized its permanent change of station travel payment processing at the Financial Services Center. This consolidation will greatly increase efficiency, reduce improper payments and improve internal controls and accountability over VA travel funds.

Mr. Chairman, this concludes my statement. I certainly appreciate the opportunity to discuss the progress we have made in implementing DCIA. We still have a way to go and will continue to work hard. I would be pleased to answer any questions the subcommittee may have.

[The prepared statement of Mr. Campbell follows:]

STATEMENT BY
THE HONORABLE WILLIAM H. CAMPBELL
ASSISTANT SECRETARY FOR MANAGEMENT AND
CHIEF FINANCIAL OFFICER
DEPARTMENT OF VETERANS AFFAIRS

BEFORE THE
SUBCOMMITTEE ON GOVERNMENT EFFICIENCY AND FINANCIAL MANAGEMENT
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

June 17, 2003

INTRODUCTION

Mr. Chairman, and members of the Subcommittee, it is my pleasure to testify on behalf of the Department of Veterans Affairs (VA) concerning our implementation of the strategies for debt collection found in the Debt Collection Improvement Act (DCIA) of 1996. VA is doing well, but will continue to make every effort to improve our debt collection.

The VA Chief Financial Officer's (CFO) staff has worked with VA's three administrations—the Veterans Benefits Administration (VBA), Veterans Health Administration (VHA), and National Cemetery Administration (NCA), as well as other VA elements to take the steps necessary to ensure our compliance with the requirements of the DCIA. VA personnel continue to work closely with Department of the Treasury's Financial Management Service (FMS) to implement the provisions of the DCIA. As discussed later, our excellent

relationship with the Treasury FMS staff has been a key element in our implementation of the DCIA.

In our previous appearances before this Subcommittee, we testified about our progress in referring eligible debt to the Treasury Offset Program (TOP) and for cross-servicing. In recent years, we have consistently referred well in excess of 90% of eligible debt to the TOP and cross-servicing programs.

SUMMARY OF VA DEBT COLLECTION STATUS

VA has made extensive efforts to reduce the establishment of debts and to collect those that have been established. For example, VA matches records with the Social Security Administration (SSA) and the Internal Revenue Service (IRS) to verify the income of VA benefit recipients. VA also matches records with the Bureau of Prisons to insure VA does not make benefit payments to incarcerated veterans. At the end of FY 1996, the year in which the DCIA was enacted, VA had $4.2 billion in total receivables, with $2.4 billion delinquent. When we last testified before this Subcommittee in 2001, VA had $3.8 billion in total receivables, with $1.4 billion delinquent, at the end of FY 2000. As of March 31, 2003, VA had $3.5 billion in total receivables, with $1.2 billion delinquent.

Of the $1.2 billion in delinquent debt at the end of the second quarter of FY 2003, $328 million was attributable to Direct Home Loan mortgages held by VA; $313 million to Compensation & Pension overpayments, $106 million to defaulted

guaranteed home loans, $46 million to Readjustment Benefit (education benefit) overpayments, and $318 million to charges for the provision of medical care and services owed to VA's Medical Care Collection Fund.

The majority of the $318 million for medical care is comprised of claims filed with third-party health insurers. These claims are not referable to Treasury for cross-servicing or administrative offset because they are not sum-certain amounts owed. Rather, the existence and amount of such third-party liability, if any, for the charges billed is determined pursuant to an administrative process that frequently involves extensive negotiations and appeals. This process requires determinations concerning the health plan coverage applicable in the individual case, to include resolution of both medical and legal issues, comparable to the process performed by private sector health care providers.

In FY 2001, however, VHA analyzed the collections process and developed a Revenue Improvement Plan (RIP) for improving the Medical Care Collection Fund (MCCF) program. The plan concentrates on improving patient intake, medical documentation, coding, billing and collection of accounts receivable.

Within the past year, the VHA Chief Business Officer (CBO) has expanded the scope of the 2001 Revenue Improvement Plan by incorporating additional immediate, mid-range, and long-term improvements encompassing the broad range of business processes that impact VA revenue activities. The strategies being pursued include the establishment of health-care industry-based

performance and operational metrics, technology enhancements and integration of proven business approaches, including the establishment of centralized revenue operation centers.

IMPLEMENTATION OF ADMINISTRATIVE OFFSET REQUIREMENT

At the end of the second quarter of FY 2003, VA referred $284.4 million, or 97%, of the $292.6 million in delinquent debt eligible for TOP.

VA began participating in the Tax Refund Offset Program in 1985. The Department collected $343 million from 1985 through 1999, when the Tax Refund Offset Program became part of the TOP Program. VA changed to the TOP file format in 2000 and has collected $110 million from TOP over the last three calendar years. TOP has collected $40 million for VA from January through May of this year. In addition, VA performed inter-agency matches over the last 10 years in order to offset VA debts from the pay of Federal employees or annuity payments of Federal retirees.

In February of 2001, VHA began referring debts, through our Debt Management Center (DMC), to TOP. The types of debt included in these referrals are 1st party medical debts, ex-employee debts, and vendor/contractor debts. At the end of the second quarter of 2003, VHA had referred $156 million and collected $75 million through TOP. In the third quarter of FY 2002, the Veterans Benefits Administration (VBA) also began referring debts from small dollar Veteran's

Benefits programs to TOP through the DMC. At the end of the second quarter FY 2003, VBA had referred $1.3 million through TOP.

IMPLEMENTATION OF CROSS-SERVICING REQUIREMENT

At the end of the second quarter of FY 2003, VA referred $171.4 million, or 95%, of the $180.6 million in delinquent debt eligible for the cross-servicing program.

In our last appearance before this Subcommittee in October of 2001, we reported that the referral of our debts to Treasury for cross-servicing took longer than originally anticipated. VA implemented cross-servicing in the 4th quarter of FY 2000. We worked very closely with Treasury for an extended period prior to implementation to successfully resolve differences in automated processes needed to update each other's databases. While working with Treasury on this project, VA continued to refer our debts to TOP.

The eligible debt remaining at the end of the 2nd quarter of FY 2003 is made up of debt from a few smaller benefit programs and miscellaneous VHA debt, such as vendor debt, employee debt, and non-federal sharing agreement debt. We continue to work toward referring most of this remaining debt for cross-servicing during FY 2003.

OTHER COLLECTION TOOLS

Each year, VA sells approximately 15,000 – 25,000 properties that we acquire due to foreclosure of our guaranteed loans. In FY 2002, VA sold a total of 16,000 properties for $967 million. About 9,000 of these home sales were made using vendee financing. Vendee loans, also referred to as direct loans, are established when VA acquires a property upon the foreclosure of a VA guaranteed loan, subsequently sells the property, and finances the purchase of this property. VA normally sells vendee loans three times each year. These loans are sold as mortgage-backed securities. However, in January 2003, the Secretary of Veterans Affairs directed that VA terminate vendee financing. VA has plans to sell all outstanding vendee loans established prior to January 2003 by the end of this fiscal year. Ultimately, this will reduce our debt portfolio.

VA has amended its regulations to comply with the revised Federal Claims Collection Standards (FCCS) and they will be published in the Federal Register. The amended regulations will include a new regulation to authorize VA's use of administrative wage garnishment, without prior judicial action, of up to 15% of any disposable non-Federal pay of an indebted individual. We will use this new debt collection tool in conjunction with the Treasury cross-servicing program. Our regulation package also includes a regulation barring delinquent debtors from obtaining certain benefits while a debt is outstanding.

VA DEBT MANAGEMENT CENTER

VA has had an automated collection system in place since 1975. Since 1991, VA has operated the Debt Management Center (DMC) in St. Paul, Minnesota, which controls and maintains this automated collection system. The DMC utilizes every collection tool available to Federal agencies in an operation that emphasizes the collection of debt. It also remains a highly efficient and effective operation that executes all requirements of a cross-servicing center. The DMC has for many years used automated payment processing and collections systems; benefit and salary offset; credit bureau reporting and private collection agency referrals; compromises and litigation; and write-offs. The DMC developed fully automated procedures for identifying and referring all eligible debts to the TOP and cross-servicing programs.

The DMC currently accepts credit card payments by telephone and is working to allow for credit card payments through its Web site. Debtors making credit card payments have paid $1.1 million through April of this year. This is a 16% increase over FY 2002 and a 56% increase over FY 2001.

VA FINANCIAL SERVICES CENTER

The VA Financial Services Center (FSC), located in Austin, Texas, reviews VA vendor payments daily to systematically identify, prevent and recover improper

payments made to commercial vendors. In FY 2002, the FSC recovered more than $2.2 million, a 44% increase over FY 2001 recoveries of $1.6 million. The FSC's FY 2003 year-to-date performance through May is 79% above FY 2002 levels and recoveries should reach $3 million. In a FY 2001 report, the General Accounting Office recognized the FSC's efforts to recover excess expenditures as a good example of effective government financial management.

VA has also fully centralized its permanent change of station (PCS) travel payment processing at the FSC. This initiative consolidates all aspects of PCS travel payments, including travel authority and voucher preparation, bills of collection processing, and liaison for relocation-and-move management services. This consolidation will increase efficiency, reduce improper payments, and improve internal controls and accountability for VA travel funds.

Mr. Chairman, this concludes my statement. I certainly appreciate the opportunity to discuss VA's progress in implementing the DCIA and our continuing efforts to improve debt collection. I will be pleased to answer any questions the Subcommittee may have.

Mr. PLATTS. Thank you, Mr. Campbell.

We are going to try to get in one more. Ms. Shaw and Ms. Loonin, we will save you for after the break.

Ms. SHAW. Mr. Chairman and members of the subcommittee, I am pleased to be here today to discuss with you the implementation of and compliance with the Debt Collection Improvement Act of 1996 by the Department of Education with special emphasis on my area of responsibility, the Office of Federal Student Aid.

I especially would like to thank you, Chairman Platts, for this opportunity and look forward to working with you and the other members of the subcommittee as we continue to look for ways to improve the Federal Government's debt collection tools.

I also must congratulate you, Chairman Platts, as it is my understanding that you recently made your last payments on your student loans. I am pleased that you were able to avail yourself of these programs and to recognize firsthand their importance.

Mr. PLATTS. I am waiting for verification of that in writing so I can celebrate at that point.

Ms. SHAW. I am the Chief Operating Officer for Federal Student Aid and FSA is the organizational unit within the Department of Education with the operational responsibility for the collection of defaulted student loans and to a great extent the implementation of the Debt Collection Improvement Act.

For many years now, the Department of Education has been the primary source of federally supported student loans. Students have received over $500 billion in loans since the enactment of the Higher Education Act of 1965 and our current outstanding loan portfolio including direct and guaranteed loans was approximately $280 billion at the end of fiscal year 2002. Student loans are inherently risky, largely due to the statutory design and purpose of the programs themselves, each year providing loans to millions of borrowers who may not be credit worthy. Though the vast majority of borrowers repay their loans, some borrowers default on their loans and thus one of our challenges at FSA is to collect on these defaulted student loans.

The Department has undertaken a broad range of activities over the past two decades to continue improving our debt collection efforts. The use of private collection agencies, Treasury offset and administrative wage garnishment, Federal salary offset, credit bureau reporting, and the requirement of taxpayer identification numbers have been in place at the Department of Education for many years.

We are pleased to report that since the passage of the Debt Collection Improvement Act, FSA has recovered over $8 billion in defaulted student loans which is an increase of nearly 38 percent since September 2001 and includes $2.6 billion in consolidated and rehabilitated loans. Before I focus on our successes with our private collection agency contracts, I want to highlight a few of our accomplishments that conform to the major provisions of the Debt Collection Improvement Act.

Treasury offsets on student loan debts referred by the Department have totaled $5.4 billion since 1996. We began using administrative wage garnishment under Higher Education Act authority 8 years ago and working with Congress, we were granted the authority to receive important information on employment from the Na-

tional Directory of New Hires. This new authority has really been effective allowing us to collect more than $500 million since our first National Directory of New Hires match in June 2001.

The decision to contract for services by private collection agencies has been one of our most successful management decisions. Today, FSA is the largest debt collection outsourcer in the Federal Government. We have approximately $14 billion in defaulted student loans currently under management with 20 contractors. Over the past 7 years, private collection agencies have generated over $1.2 billion in collections, excluding consolidations and rehabilitated loans.

FSA collection contracts rely on a contingent fee method of compensating collection agencies, meaning the collection agencies are paid only for the results achieved. Our most recent contracts have several performance-based evaluation measures, making the contracts models for performance-based contracting in the Federal Government. The private collection agencies are evaluated and rated according to the overall service they perform, as well as their ability to collect defaulted student loan debt. The collection agencies that perform best across all these categories receive additional incentives, both monetary rewards and new account placements.

The Department of Education has established ground rules for healthy competition as well as the guidelines and requirements for protecting the rights of defaulted student loan borrowers, including the ability to immediately terminate collectors who violate the Fair Debt Collection Practices Act. To help assure borrowers' rights are protected and that complaints are appropriately addressed, we have an added safety net provided by the Student Aid Ombudsman who reports directly to me. The use of private agencies has allowed education to dramatically reduce costs. In fiscal year 1993, the contractors were paid roughly 33 cents for every dollar collected. After new contracts were competed and awarded in fiscal year 1997, the costs were reduced to 23 cents per dollar collected. Our costs are now down to only 16 cents per dollar collected and are expected to be reduced even further during our next competition and award process which is scheduled for late in fiscal year 2004.

I believe the steps we have taken in compliance the Debt Collection Improvement Act have made a significant contribution to the recovery of debt and in recognition of our success on May 11, 2001, the Department of the Treasury granted the Department of Education a permanent waiver to allow it to service its own defaulted student loans. I am very pleased to announce that fiscal year 2003 is proving to be another successful collection year for the Department of Education.

However, at FSA we are not resting on our debt collection accomplishments. We know that FSA's default prevention activities are equally important and arguably more so as collecting on loans that have defaulted. Outreach efforts like our student loan repayment symposium and national default prevention days where we share best practices to reduce defaults, and our debt management partnership with the National Council of Higher Education Loan Programs demonstrate that we place a high value on default prevention. These and other efforts have helped us to reduce student loan

cohort default rates to below 6 percent for each of the last 2 years, the lowest rates ever.

As you know, one of the Department's top priorities is to remove the General Accounting Office high risk designation from the Federal student aid programs. We are almost there are we are confident we will get there. Our continuous improvements in default management and prevention activities including our focus on debt collection improvement are key indicators to our successful attainment of that goal.

I want to thank you for the opportunity to discuss the significant progress the Department has made in improving debt collection. We look forward to continued congressional support as we work to make further improvements in this area.

I would be pleased to answer any questions you all may have.

[The prepared statement of Ms. Shaw follows:]

Testimony of

Theresa S. Shaw

Chief Operating Officer
Federal Student Aid
U.S. Department of Education

To the Subcommittee on Government Efficiency and Financial Management
House Committee on Government Reform
Hearing on The Debt Collection Improvement Act of 1996: How Well Is It Working?

June 17, 2003

I am pleased to be here today to discuss with you the implementation of, and compliance with, the Debt Collection Improvement Act of 1996 (DCIA) by the Department of Education, with special emphasis on my area of responsibility, the Office of Federal Student Aid (FSA). I am the Chief Operating Officer for FSA. FSA is the organizational unit within the Department of Education with the operational responsibility for the collection of defaulted student loans and, to a great extent, the implementation of the DCIA. FSA provides specialized debt management services for the defaulted student loan portfolio held by the Department of Education.

The Department has undertaken a broad range of activities over the past two decades to continue improving our debt collection efforts, and we are committed to expanding and refining our efforts in the future. The enactment of DCIA made the most sweeping changes for Federal debt collection management since the Debt Collection Act of 1982. This legislation provided Federal collection officials with some new collection tools, and it also imposed upon these officials some new requirements.

Five years ago, FSA was created as the Federal Government's first performance-based organization (PBO). Under the PBO, we refined our debt collection efforts. We improved our contracts with collection agencies and are in the process of fully implementing the administrative wage garnishment provisions of the DCIA. We also enhanced collaborative efforts with postsecondary schools, guaranty agencies, and lenders to reduce the likelihood of default by borrowers in both the guaranteed and direct student loan programs.

Secretary Paige found that there were serious management problems when he arrived at the Department of Education in January 2001. The Department had not received a clean audit opinion in years, and there was not an expectation of one in the near future. He made it one of his top priorities to identify and correct all of the management problems that were preventing the Department from operating at peak performance. When I came on board in October 2002, I immediately focused on the FSA Annual Plan for Fiscal Year (FY) 2003 and worked with FSA senior leadership to develop a plan that addressed the

important legislative mandates of the PBO, as well as these key management problems. We recognized that our Default Management and Prevention Strategies, which included increasing default collections, were an important component of our plan, and the tools provided under DCIA were key to our meeting our collection goals in this area. I am pleased to say that as a result of FSA's and the Department's focused efforts, in January 2003 the Department received a clean opinion on its financial statements for the first time since 1997. In addition, we have ensured that the management processes and procedures are in place, or planned, to sustain this important objective.

Our Challenge

For many years now, the Department of Education has been the primary source of federally supported student loans. The William D. Ford Federal Direct Loan (Direct Loans) and Family Federal Education Loan (FFEL) programs, the two primary loan programs administered by the Department, have enabled millions of students to afford to go to college. Through these programs, students have received over $500 billion in loans since the enactment of the Higher Education Act of 1965 (HEA). The vast majority of student loan borrowers have repaid or are currently repaying their loans, and the outstanding loan portfolio, including direct and guaranteed loans, was approximately $280 billion at the end of FY 2002. However, some borrowers default on their loans. The Department is determined to prevent defaults, and if they occur, to see defaulters fulfill their obligations to repay their loans.

Our challenge in FSA is to collect defaulted student loans. This challenge is considerable because student loans are inherently risky due to the characteristics of the borrower population and the design of the programs themselves. Student loans are available to borrowers who might otherwise not be able to obtain credit in the private sector to ensure their access to higher education. Thus credit-worthiness is not normally a prerequisite for eligibility for a student loan, although credit checks are required in the case of parent borrowers, and those who are in default on previous student loans are not eligible for additional loans. Because the loans are unsecured, the government and private lenders are left with no collateral to collect against in the event of default. Student loan borrowers frequently relocate after leaving school, which often makes it difficult to contact them for the purpose of servicing and collecting loans. All of these factors combine to make student loan collections uniquely challenging.

Our Response

Institutional and Administrative Debt

The Department also collects on liabilities other than those owed by individuals who have defaulted on education loan or grant overpayment obligations. To collect these other debts, referred to as institutional and administrative debts, the Department uses processes outside of the systems established for student aid debts. The Department was

one of the first to participate in the Department of the Treasury's Cross-Servicing Program and has been transferring delinquent institutional and administrative debts to Treasury since October of 1996. Currently, the Department has forwarded approximately 95 percent of all institutional and administrative debts eligible for cross servicing to Treasury.

Administrative Wage Garnishment

The Department is moving forward with its efforts to implement the administrative wage garnishment authority provided in the DCIA to collect institutional and administrative debt owed by individuals. Final regulations regarding the Department's administrative wage garnishment process became effective on March 21, 2003. We are now in the final stages of implementing administrative wage garnishment for institutional and administrative debt through the Department of the Treasury's Cross-Servicing Program.

Debt Owed by Individuals (Defaulted Student Loans)

The Department has undertaken many initiatives to improve collections on defaulted loans. Those actions, including the implementation of the DCIA, have resulted in the continuous improvement of the Department's effectiveness in collecting defaulted student loans. In recognition of our past and continuing success, on May 11, 2001, the Department of the Treasury granted the Department a permanent waiver to allow it to service its own defaulted student loans.

From the late 1970's through the 1990's, the Department implemented a number of the debt collection tools that were subsequently required of all agencies by the DCIA. The use of private collection agencies, Treasury offset and administrative wage garnishment, Federal salary offset, credit bureau reporting and the requirement of taxpayer identification numbers have been in place at the Department of Education for many years. I will highlight some of our accomplishments that conform to the major provisions of the DCIA. Since passage of the DCIA, FSA has recovered over ***$8 billion*** in defaulted student loans.

Private Collection Agencies

Since 1979, FSA has continued to expand its relationships with collection agencies to maximize the recovery of defaulted student loans. The decision to contract for services by private collection agencies has been one of our most successful management decisions. We presently have 20 private collection agencies under contract. Our most recent contracts have several performance-based evaluation measures, making the contracts models for performance-based contracting in the Federal Government. The private collection agencies are evaluated and rated according to the overall service they perform, as well as their ability to collect defaulted student loan debt. The collection agencies that perform best across all of these categories receive additional incentives--both monetary rewards and new account placements.

Today, FSA is the largest debt collection outsourcer in the Federal Government -- we have approximately $14 billion in defaulted student loans currently under management with twenty contractors, including two small businesses through set-aside contract awards. Over the past seven years, private collection agencies have generated over ***$1.2 billion*** in collections. More than ninety percent of these collections represent borrowers making regular monthly payments on their defaulted student loans, or borrowers satisfying their obligations in full. FSA collection contracts rely on a contingent fee method of compensating collection agencies—meaning that the collection agencies are paid only for results achieved.

We have worked hard to establish a culture of performance and accountability with collection agencies over the years. The Department of Education has established the ground rules for healthy competition, as well as the guidelines and requirements for protecting the rights of defaulted student loan borrowers, and we have placed incentives in the areas where we want to focus the efforts of the collection agencies. Private collection agencies prepare the litigation referrals, which are critical to DOJ's ability to secure judgments and recoveries on defaulted loans. DOJ remittances to the Department of Education have totaled more than ***$200 million*** during the same period of time. FSA also realizes significant collections from accounts that are managed by the Department. FSA internal collections total ***$518 million*** since 1996. The Department of Education continues to be focused on enabling defaulted borrowers to repay their loans, and offers a variety of different loan repayment options. Loan rehabilitation, loan consolidation, and income sensitive/contingent repayment plans are options that are available to defaulted student loan borrowers and are less punitive than traditional collection activities. In addition, FSA private collection agencies have been instrumental in assisting student loan borrowers to refinance over ***$2.8 billion*** dollars in defaulted indebtedness over the past seven fiscal years.

The use of private agencies has also allowed Education to dramatically reduce costs. In FY 1993, the contractors were paid roughly 33 cents for every dollar collected. After new contracts were competed and awarded in FY 1997, the costs were reduced to 23 cents per dollar collected. In our existing contracts, our costs are now down to only 16 cents per dollar, and are expected to be reduced even further during our next competition and award process, which is scheduled for late in FY 2004. These cost reductions are the result of improved debt collection tools, better contract management, and the competitive nature of the contracts. The result is that while yearly collections from private agencies have increased by over 130% since FY 1997, related collection costs during the same period have been reduced by over 30% (and over 50% since FY 1993).

Treasury Offset

The Department began referring eligible debts, those we previously tried to collect using all other available tools, to the IRS in 1986. For Treasury's 2003 offset year, the Department referred over ***$17 billion*** in defaulted student loan debts, including debts owed on Federally-reinsured loans held by State and non-profit loan guarantors, and institutional receivables to Treasury for offset. For the first eight months of fiscal year 2003, the Department offsets are nearly ***$705 million***. Treasury offsets on student loan

debts referred by the Department, including Federally-reinsured debts held by guaranty agencies, have totaled ***$5.4 billion*** since 1996.

Administrative Wage Garnishment

"Administrative" wage garnishment has become an effective tool in improving our collections on student loans. We began using this tool under HEA authority eight years ago, and there are approximately 72,000 defaulted loans now in garnishment. This year we are in the process of implementing the similar garnishment authority provided to Federal agencies under the DCIA, which allows the withholding of up to 15% of the debtor's disposable pay, rather than the 10% now allowed under the HEA.

In order to maximize the effectiveness of wage garnishment, we worked with Congress on legislation that gave the Department the authority to receive important information on borrower employment from the National Directory of New Hires. Access to this data allowed us to locate more borrowers and ultimately generate significantly greater collections through the use of voluntary payment options and enforced actions.

Federal Salary Offset

The Department matches defaulted student loan records with Federal employment records to identify and collect by Federal salary offset from Federal employees who are in default on their loans. We have found these matching activities to be quite effective and have collected ***$46 million*** since FY 1996 from Federal employees. In addition, the Department was the first Executive Branch agency to work with the IRS to match delinquent and defaulted student loan records with IRS addresses. The Department began matching activities over 19 years ago.

Credit Bureau Reporting

Another of our long-standing initiatives to improve collections is the reporting of delinquent student loans to credit bureaus. The Department began this activity 21 years ago. After all due process procedures have been observed, and a borrower has been given sixty days to respond to the Department's notification of its intention to report the delinquency, FSA reports the debt to the appropriate credit bureaus on a monthly basis. We believe credit reporting has been an important factor in both reducing the student loan default rate and increasing the amounts we have collected on defaulted student loans.

Taxpayer Identification Numbers

The Department has also required all student loan borrowers to provide taxpayer identification numbers for at least 20 years. Without this safeguard, our success in collecting on delinquent and defaulted student loans would have been significantly hampered.

Conclusion

I believe the steps we have taken in compliance with the DCIA have made a significant contribution to the recovery of institutional and administrative debt and debt owed by individuals. We continually evaluate state-of-the-art collection techniques to ensure we are optimizing collections. In addition to realizing a record year for combined recoveries on debts owed by individuals, we will see collections by private collection agencies higher this year than in any previous year. I am very pleased to announce that FY 2003 is proving to be another very successful collection year for the Department of Education.

However, at FSA, we are not resting on our debt collection accomplishments. We know that default prevention is at least equal in importance to debt collection. The Secretary's Default Initiative, supported by amendments to the HEA, has continued to help us reduce student loan cohort default rates to below six percent for each of the last two years – the lowest levels ever. Outreach efforts like our Student Loan Repayment Symposium, National Default Prevention Days, and debt management partnership with the National Council of Higher Education Loan Programs indicate that we place a high value on default prevention. Looking to the future, our debt management strategy must be one that emphasizes mitigating risk through portfolio management and appropriate use of tools for default prevention, along with the full implementation of DCIA to improve collections.

I want to thank you for the opportunity to discuss the significant progress the Department has made in improving debt collection. We look forward to continued congressional support as we work to make further improvements in this area. I will be pleased to answer any questions you may have about the debt management program.

Mr. PLATTS. Thank you, Ms. Shaw.

I do need to run over to vote, so we are going to stand in recess until about 2:50 p.m., and we will continue then with Ms. Loonin's testimony.

Thank you.

[Recess.]

Mr. PLATTS. Ms. Loonin, if you would go forward with your testimony, that would be great.

Ms. LOONIN. Thank you for inviting the National Consumer Law Center to testify today. The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low income people. I am here today to help bring the consumer's perspective into this evaluation of the DCIA.

First, I want to be clear that we support and respect the Government's right to collect its debts and understand the importance of this, but the DCIA and other collection programs, although today's topic is the DCIA, should not be considered successful if measured only by dollars collected. There are constitutional and statutory limits to the Government's debt collection powers and unfortunately in the rush to collect more and more, these limits are often ignored or not treated seriously enough.

I would like to highlight just a few of the issues from my written testimony and then take any questions. I am focusing also on the Department of Education experience for a number of reasons, mainly because they are the agency we have tracked the closest and also because they have the longest track record and even before the DCIA was passed had implemented a number of the collection tools the DCIA provides.

First, with respect to private debt collectors, the experience of contracting out to private debt collectors through the Department of Education is not the unequivocal success story that is portrayed. We applaud any efforts the Department is making or has made to ensure that consumers are protected from collection abuses but it hasn't been enough. I am particularly interested in hearing more about the termination of agencies that Ms. Shaw referred to of those that have violated the Fair Debt Collection Practices Act.

Even though well intentioned debt collection agencies are usually not equipped or informed to address consumer questions about the complex student loan repayment, deferment, forbearance, cancellation options, there are a number of unique and easily misunderstood remedies involved with student loans. As a result, in many cases, consumers are deprived of important options to which they are entitled and in some cases might actually lead to repayment as opposed to continued default.

As an example, particularly this year and last year, I received calls, primarily from legal services advocates across the country and most work on elder hotlines so their calls are going to be almost exclusively from low income elders. They have told me their clients who have student loan debts, usually for very old debts, have been contacted by private debt collectors who told them they could collect or offset from their SSI payments. I can explain to those few attorneys that get to me that this is wrong, that Department of Treasury regulations specifically exempt SSI payments but it is only a handful that get to the legal services advocate and get

to me and who then get to sort of communicate that back. That is an example of frankly wrong information we have heard in the last couple of years.

I have had similar problems in the past with private debt collection agencies taking on the responsibility of explaining repayment options or even trying to set reasonable and affordable repayment options. Maybe the debt collection agent knew he was wrong, maybe just mistaken. In either case, the result in that case is frightening elders whose SSI benefits are specifically exempted and who were specifically intended to be protected from offset.

I have mentioned more extensively in my written testimony and won't go into detail here, the problems with due process protections, but this is an area where we have particularly grave concerns. All of the programs we have talked about here under the DCIA, the administrative wage garnishment, tax refund intercept, administrative benefits offset, all have statutory due process protections written into the statute. The agencies are required to write regulations which they have done. The problem in general is with enforcement of those regulations and frankly whether they meet the constitutional due process protections.

Again, the problem is that the consumer's contact is often with the private debt collection agent. To try to get a free hearing or set up and organize that kind of hearing through a private debt collection agent who is trying to carry through what is an inherently government function is where a lot of problems lie. Unfortunately, in many cases, there ends up being nothing fair about what is supposed to be a fair hearing.

Particularly with those sorts of inherent government functions like fair hearings, that would also include explaining and counseling student loan borrowers on the various repayment, cancellation, deferment, forbearance options, those sorts of things we believe should not be in the hands of private debt collectors who are not trained or experienced to understand those.

The one other program I wanted to mention briefly today is specifically the Social Security benefits offsets. This really is probably the most extraordinary part of the Debt Collection Improvement Act or at least the most unprecedented part in the sense that it allows Federal agencies to offset from Federal benefits programs such as Social Security which have traditionally been off limits to the creditors whether private or government creditors. We understand the DCIA does specifically abrogate the Social Security anti-assignment provisions but Congress placed some heightened protections in this case which we are afraid are not being followed through.

In particular, the DCIA statute in administrative offset that sets a 10-year limit for Federal benefits offsets, the Department of Education has taken the position that the 10-year limit does not apply to student loan collections and in addition, as I mentioned before, collections have threatened to take benefits considered to be exempt, SSI benefits. The other protection Congress specifically provided is the $9,000 that is exempt.

For all the other collection tools under the DCIA, the Department of Education has the luxury of no statute of limitations. We understand that. We may not necessarily agree with it, but we un-

derstand that is what there is but in this particular case, because Social Security benefits have to do with the most vulnerable members of society, there is a 10-year limit and we believe that 10-year limit should be respected.

We certainly support the Government's right to collect, as I said at the beginning, but not at the expense of important consumer rights. We want to ensure that when this evaluation of the DCIA occurs, we are not looking at only dollars, that the agencies also be required to give information about how they comply with some consumer protections such as due process requirements and not just how they train people but for example, how many hearings are offered, what are the results of those hearings, how many request them, who are actually the judges in those hearings. This is the kind of information we think if taken in complement with the information about the dollars collected, could show what could be a truly successful program.

Thank you.

[The prepared statement of Ms. Loonin follows:]

Testimony before the

GOVERNMENT REFORM COMMITTEE

SUBCOMMITTEE ON GOVERNMENT EFFICIENCY AND FINANCIAL MANAGEMENT

regarding

"The Debt Collection Improvement Act"

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Mr. Chairman and Members of the Subcommittee, the National Consumer Law Center thanks you for inviting us to testify today regarding the Debt Collection Improvement Act (DCIA). We offer our testimony here on behalf of our low-income clients. The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states that represent low-income and elderly individuals on consumer issues.[1]

Balancing Government Collection Powers and Consumer Protections

We support the governmental interest in collecting overdue debts. Congress acknowledged this important interest when it passed the DCIA in 1996. Collecting money, however, is not the only issue to consider when evaluating the DCIA. The government's unique and powerful collection powers were never meant to be unlimited. The collection programs associated with the DCIA must be measured not only in dollars, but also based on how well the agencies respect the rights of the consumers involved in the process.

The government's collection powers must be carefully balanced with consumer protections. This is critical for many reasons. First, many consumers have valid defenses to collection, including in the case of student loans, the right to cancel debts completely

[1] In addition, NCLC publishes and annually supplements sixteen practice treaties which describe the law currently applicable to all types of consumer transactions, including Fair Debt Collection (4th ed. 2000 and Supp.) and Student Loan Law (2d. ed. 2002).

in limited circumstances. These consumers have a constitutional right to due process—to raise defenses in a neutral forum before a neutral arbiter. Sadly, these rights are routinely denied or provided in the most haphazard and ineffective ways imaginable. As a result, too many elderly and disabled consumers are losing the money they need to survive because of debts they may not have to pay or may not owe.

Some consumers, despite their best efforts and intentions, are simply unable to repay their debts. There is a cost to pursuing these most vulnerable members of society—both in human and financial terms. In human terms, a consumer who became disabled later in life may now find she simply can't continue to pay back the student loan she took out thirty or forty years ago. Offsetting a portion of her Social Security may mean the difference between getting all the food or prescription drugs she needs that month—or not. In financial terms, the cost of trying to collect from those who simply don't have much is often greater than the meager amounts, if any, which ultimately come back to the government.

Balancing the government's interest in collecting its debts with consumer protections is not easy. Fortunately, the Constitution of the United States provides a general guide to due process protections. More specifically, Congress provided some guideposts when it passed the DCIA in 1996. For example, the administrative offset section of the DCIA provides that agencies may offset debts only after giving written notice of the type and amount of the claim, the intention of the head of the agency to collect the claim by administrative offset, an explanation of debtor's rights, an opportunity to inspect and copy the records of the agency related to the claim, an

opportunity for a review, and an opportunity to make a written agreement with the head of the agency to repay the amount of the claim.[2] Unfortunately, congressionally mandated consumer protections such as these are rarely carried out in a meaningful way by government agencies or their collection agents.

I would like to briefly comment on ways in which these minimum protections have in many cases been ignored. I will follow with recommendations to strengthen consumer protections. My testimony focuses on the Department of Education and collection of student loan debts. I focus my comments in this area because we have most closely followed these developments.

Use of Private Debt Collectors

Some have said that the Department of Education's privatization of collections is a success story and should be a model for other agencies such as the IRS. I'm sorry to tell you that from the consumer perspective, this is not true. Private collectors of student loans have deliberately deceived consumers by misrepresenting themselves as the Department of Education. They've overcharged consumers for collection fees, used misleading telegrams to trick borrowers, browbeaten borrowers into unaffordable payment plans, threatened them with actions that collectors can't take, and pressured consumers to borrow from relatives.

Some of the abuses in the student loan context have specifically arisen because of the fact a federal government program is involved. Student loan borrowers have many important rights, such as discharges, deferments, different payment options, and

[2] 31 U.S.C. §3716(a)(1).

exemptions, creating a complex scheme for collections. Yet many private collectors do not have enough knowledge about these schemes. As a result, consumers are routinely deprived of important options to which they are legally entitled. Even worse, some private collectors misrepresent these rights or steer consumers into options more profitable for the collector. For example, collectors have been known to strong-arm student loan borrowers into agreeing to payment plans that the borrowers could not afford and did not want, despite the consumer's rights under the Higher Education Act to a reasonable and affordable payment plan.[3] Collectors have threatened to offset federal benefits for SSI recipients, even though SSI benefits are protected. They steer consumers into loan refinancing options that may not be appropriate for the consumers. Some collectors aggressively threaten wage garnishments, failing to inform or misrepresenting the rights of consumers to hearings and exemptions. Others charge collection fees that exceed the amounts authorized by Department of Education regulations.[4]

Student loan debt collection contacts, particularly by private collectors and guarantors, involve a startling amount of deceptive, unfair and illegal conduct. There are many explanations for this high level of abuse, including:

- The fact that millions of student loan obligations are handled on a "wholesale" basis, with little or no attention paid to the circumstances of individual borrowers.
- Remedies available to collect on student loans are both unique and easily misunderstood and collectors often misrepresent the exact nature of these remedies when they send collection letters.

[3] See, e.g., Arroyo v. Solomon and Solomon, 2001 WL 1590520 (W.D.N.Y. 2001).
[4] See, e.g., Padilla v. Payco General American Credits, 161 F. Supp. 2d 264 (S.D.N.Y. 2001).

- The complexity of the student loan program leads to confusion about who is collecting on a debt and makes it easy for a collector to misrepresent itself as the government.[5]
- Private collection agencies are delegated complex responsibilities such as determining the monthly payments for reasonable and affordable payment plans. These collection agencies also help determine if borrowers have defenses to collection procedures, even though the collection agencies' financial incentive is not to offer reasonable and affordable plans or to acknowledge defenses.

Trampling of Due Process Rights

Student loan borrowers have a constitutional right to due process, including the right to fair hearing before an independent and neutral arbiter. The Department of Education rarely affords borrowers the opportunity to exercise these rights in a meaningful way. Even those rights that exist in the regulations rarely exist in practice. The typical student loan debtor will usually get a notice of government collection action. Getting more information, however, can be a monumental task. Getting through by phone to the Department of Education (or Treasury) and speaking to a live person is a difficult process at best. In all too many cases, the contact is with a collection agent who knows nothing about borrower rights and is most interested in getting the borrower to pay as soon as possible.

In those cases where a hearing does occur, it is usually held before an employee of the collection agency or possibly an employee with the Department of Education collection department. These are hardly neutral forums. The reality is that the minimum standards for procedural due process established in landmark Supreme Court cases such

[5] See, e.g., Brider v. Nationwide Credit, 1998 WL 729747 (N.D. Ill. 1998) (denying motion to dismiss of collector whose collection letter had large bold heading "U.S. Department of Education.").

as Goldberg v. Kelly[6] simply do not exist for student loan borrowers facing wage garnishment, benefit offset, or tax intercept.

In general, only the savviest of consumers can figure out how to pore through the Department of Education web site and perhaps figure out how to challenge a particular collection process. Everyone else ends up mired in a process that is inconsistent and difficult to navigate. The consumer will certainly have trouble trying to learn the full range of rights and defenses by reading the form collection notices sent by the Departments of Education and Treasury. At worst, these notices focus on options that are most advantageous for the debt collectors-such as loan consolidation-rather than providing information about all available defenses and repayment options.

Social Security and Federal Benefits Offsets

The DCIA allows federal agencies to offset certain federal benefits, including Social Security. This is an extraordinary power because Social Security payments have generally been considered off limits from the reach of creditors, including government creditors. As the 10th Circuit stated in Tom v. First American Credit Union, "Social Security funds were never intended to serve as collateral for cars or homes in the first place; they were intended to provide the elderly with a means of subsistence."[7]

The federal benefits provisions of the DCIA are unprecedented. In acknowledgment of these extraordinary powers, Congress provided heightened

[6] 397 U.S. 254, 90 S. Ct.1011, 25 L.Ed. 2d 287 (1970).
Mar 23, 1970
[7] 151 F. 3d 1289, 1293 (10th Cir. 1998).

protections for consumers facing offsets. In addition to the due process requirements noted above, Congress exempted the first $9,000 of benefits and later, by regulation, specifically exempted SSI. Congress also limited the offset of federal benefits by prohibiting collection for debts older than ten years.[8]

Unfortunately, and with devastating results, these consumer protections have been largely ignored. The Department of Education continues to refer very old debts to the Department of Treasury, including debts for student loans that are twenty or even thirty years old. To date, the agencies have also failed to set up a user-friendly system for consumers to request full or partial hardship waivers. It is far too difficult for consumers facing offset to find out more about their rights, including the right of many SSDI recipients to cancel their student loans completely through a disability discharge.

The result? Take the example of Glenn Edgmon, an elderly disabled man living in a small town in Oklahoma. Mr. Edgmon was one of the plaintiffs in a lawsuit the National Consumer Law Center (NCLC), along with Public Citizen and Oakland-Livingston Legal Aid, filed against the Departments of Education and Treasury. Mr. Edgmon received one student loan back in the mid-1970's. He fully intended to complete his college education, but had to leave school to support his family. Shortly thereafter he became severely disabled. Mr. Edgmon lived for a time in his car. Eventually, he was confined to a wheelchair and began receiving SSDI payments. Now over 65, he receives Social Security retirement benefits of about $827 per month, just above the poverty level. His benefits provide the minimum he needs to survive. The

[8] 31 U.S.C. §3716(e)(1).

original loan of about $2500 from the 1970's is now a debt obligation of over $4,000--an obligation that Mr. Edgmon unfortunately is not able to pay.

Mr. Edgmon, like many other disabled borrowers, should have been able to cancel his loan completely through a permanent and total disability discharge. For years, he didn't know about this right and no one ever told him about it. When he finally learned of the disability discharge from a legal services attorney and sent in an application, the Department of Education denied the application because Mr. Edgmon failed to fill in the doctor's license number. In the meantime, the Department sent the debt to Treasury and Treasury began offsetting about $77 per month from Mr. Edgmon's sorely needed benefits.

Mr. Edgmon was fortunate. He was able to get help from Legal Aid of Oklahoma as well as NCLC and Public Citizen. He successfully challenged the government's right to use administrative offset for debts older than ten years.[9] He was also finally granted his disability discharge. He was fortunate because most borrowers in his situation have no idea that they might be eligible for a cancellation and no idea that the DCIA limits administrative offset for older debts.

To be clear, Congress set limits on all of the powers established by the DCIA, but they set the bar particularly high for federal benefits offsets. This is because the benefit offset program affects some of the neediest and most vulnerable members of our society. The Department of Education could still pursue Mr. Edgmon for the nearly thirty year old student loan debt if he some day makes a miraculous recovery and is able to get a job

[9] See Guillermety v. Secretary of Education, 241 F. Supp. 2d 727 (E.D. Mich. 2002).

(they could garnish his wages and/or intercept his tax refund). The agency could even sue him if they felt there was something to collect. But as long as he continues to survive solely on Social Security, he should be protected. The Department's continued insistence that it can collect for loans older than ten years is simply wrong.

Consumers Must be Protected

Just as the government's right to collect debts should be enforced, borrowers' rights to minimal protections must also be enforced. The DCIA's success should not be measured in dollars alone.

We call on Congress and the Departments collecting under DICA powers to ensure that consumer rights are protected. Among other changes:

- Congress should require the agencies to report not only on dollars collected, but also on how they are complying with the notice and hearing provisions of the DCIA.
- All agencies must develop and enforce regulations that meet constitutional and statutory due process standards. At a minimum, collection notices should inform consumers that they might have defenses to payment of the debt, that they have a right to set up reasonable and affordable payment plans, and the right to request a hearing.
- Each agency must set up fair hearing procedures that are truly fair. Consumers must be given the opportunity to choose from a list of neutral arbiters, easy access to records and reports related to their case, and ability to present testimony by phone if the closest agency forum is inconvenient. Agencies must require hearing officers to tape proceedings and to make transcripts available when requested by borrowers. These minimal due process standards have been routine for many years at most government agencies.
- The Department of Education should cease offsetting Social Security benefits to collect old student loans. ("Old" debts are defined as debts that have been outstanding for more than ten years).
- The $9,000 annual exemption for federal benefits offsets should be raised each year based on cost of living increases.
- The agencies must not delegate inherently government functions, such as conducting fair hearings, to third party debt collectors. Private debt collectors are

not trained to understand and stay up to date on the latest agency rules and regulations. They are trained to collect money. If a borrower informs a collector that he believes he has a defense to the debt, that the amount is wrong, or that he wants to request a hardship waiver, the file should be immediately sent back to the agency.

- Allow private collectors to charge only for collection fees that are both bona fide and reasonable.

Conclusion

Based upon over 30 years of experience on behalf of consumers in debt collection matters, we at NCLC have grave concerns about the implementation of the DCIA. The experience in the student loan context is not the shining success many claim it to be, but a legacy of many borrowers being harassed, deprived of their lawful rights and options, and misled. Consumers must be informed of all of their rights and options in dealing with debts owed to federal agencies. If these rights are not enforced, the DCIA cannot truly be called a success regardless of how many dollars are collected.

Thank you for the opportunity to testify today.

Mr. PLATTS. Thank you, Ms. Loonin, and thank you to each of our witnesses today for your testimonies and your patience as we had our interruption for the floor votes. I think we are in good shape for at least an hour or maybe 2 hours before the next votes, so we shouldn't have any other interruptions of our hearing today.

We are going to move to questions. I believe Dan Osendorf is going to join us at the table from the Department of Veterans Affairs, the Debt Management Center. Mr. Osendorf, I need to administer the oath to you as well.

[Witness sworn.]

Mr. PLATTS. Let the record reflect the witness answered in the affirmative and we will proceed. We generally do about 5 minutes each but at this point with just the ranking member and myself, we will be pretty liberal in that requirement.

I am going to start with you, Mr. Gregg, with your 5½ years at FMS, your familiarity with the tremendous progress from the 1996 act to where we are today. If you could highlight what you think would be the greatest key to the success of today versus the past, the change that has occurred and more importantly, what is the greatest challenge from doing even more in the future if it is what we need to look at for the challenges we need to help from a legislative standpoint or internally?

Mr. GREGG. We have come a long way. When DCIA was passed, we struggled for a number of years to get our own act together and I think the agency struggled in a twofold way, one was to get the systems in place to do what they had to do as we weren't prepared, and second and probably more importantly, was to get the commitment from fairly high in the organizations to change the way of doing business. I think it is worth noting the examples of Education, VA, and Agriculture, of people making a difference to implement the program because agencies rightly so felt these were their programs and the idea of turning them over to FMS at some levels wasn't the thing they wanted to do. So beyond the system problems, there was some purely predictable resistance.

I think in the last couple of years, we have seen that shift and the agencies as you heard from both Education and VA are referring virtually all of their eligible debt and working with us to grow the program.

Looking ahead, I would highlight the need for continued emphasis of the importance of this. One of the things that goes beyond the numbers in what we have collected is the improvement in the information that we are seeing and is being reported to Congress. That has been kind of hidden but I think through this whole process, the focus on making sure the numbers are right and providing better financial controls within the agency is still something we are working for but have made great strides.

Looking ahead trying to make sure we pull this very complex program together in a way that provides good information to the agencies, provides the right kind of protection for the debtors and doing that with systems and with management focus is the kind of challenge I see, while at the same time agencies are struggling with everything else on their plate. I think that is the balance we all face, trying to do this on top of everything else we have to manage.

Mr. PLATTS. I would like to recognize Mrs. Maloney who played a critical role in the 1996 act who has joined us as well. We are delighted to have you here with us today.

To followup, not necessarily wanting to put you on the spot but to get as frank an answer as far as highlighting VA, Education and Agriculture, what agencies or departments still have the farthest to go in getting up to speed and having the leadership embrace this effort as part of their comprehensive financial management effort?

Mr. GREGG. I would have had a fairly long list a couple of years ago. The area we need to focus on I think, and this runs through a number of agencies, is getting the administrative wage garnishment in place. If we do that in a handful of large agencies, we are going to cover a good portion of the potential. The potential for centralized salary offset I think is also something that runs across the gamut.

One of the most recent areas we have focused on is the non-Treasury disbursed payments. We have a ways to go yet with the Department of Defense and the Postal Service and others who make their own payments. That is something that we are working with them on but we need to make sure for example, vendor payments are being offset. That is an area where we will keep pushing.

Mr. PLATTS. That was going to be one of my specific followups, DOD and Postal Service. Could you tell us where you are today and how close we are to getting a good process in place regarding those non-Treasury disbursements?

Mr. GREGG. We actually began offsetting some portion of Department of Defense vendor payments a number of months ago. I think we are actually quite close to being there with the Postal Service. That is something where we have made progress. I think we only have one of a number of the Department of Defense facilities that is participating now and we want to continue to make sure we have all those.

Mr. PLATTS. One more for you, Mr. Gregg and I will recognize the ranking member.

With your efforts governmentwide and the efforts going on, my understanding is perhaps you would like to see more of the actual tax debt. My understanding is most of the tax debt referred to you by the IRS is very old which the IRS has pretty much given up on as opposed to more current tax debt. Your assessment of how your office would be able to maybe better address even the more recent tax debt than the IRS, if you would like to share comments on that?

Mr. GREGG. It was difficult to get the tax levy program in place. It was difficult for a number of reasons. One of them was the letter that has to go out before any tax levy occurs, when they are going to refer it to us. That is a fairly manual process. Basically, we stand ready to take on as much as they are prepared to give us. They are aware of that and in some cases, I think it is a system limitation more than the intent because I know the former Commissioner and the present Commissioner were very committed to working with us in this program.

Mr. PLATTS. I appreciate in that case your efforts with IRS but with DOD and with other agencies on the non-Treasury disburse-

ments to keep leading the charge of pushing the envelope with these agencies. It really amazes me when, especially in the DOD example, we are making payments to people that owe the Federal Government money, yet we are paying them, that we are not correlating those two better. It sounds like we are heading in the right direction with some of these larger ones like DOD to stop that practice out of simple fairness to all American taxpayers who are paying their fair share.

Before I recognize the ranking member, I would like to also recognize our vice chair, the gentlelady from Tennessee, Ms. Blackburn. We appreciate your joining us.

I recognize the ranking member for the purpose of questions.

Mr. TOWNS. Thank you, Mr. Chairman.

I actually want to direct this question to you, Mr. Gregg, and also to you, Ms. Shaw. You both testified that contracts which your agencies have with private collection agencies are performance-based. First of all, I want to know what is a performance-based contract?

Ms. SHAW. A performance-based contract really includes incentives for the contractor to perform against the requirements spelled out in the contract and those contractors are only remunerated out of that performance, a percentage of those collections are incented to perform in not only meeting the objectives but to exceed the objectives laid out for them.

Mr. GREGG. We have a number of things in place. First of all, it was a competitive process in which we selected the five private collection agencies we have. In addition to that, we have incentives for them based on quarterly reviews—by those reviews, depending on which ones do the best, agencies may get a slightly larger referral than the previous quarter. That is the sort of thing that we have built into our contract.

Mr. TOWNS. Do they include a measure of whether the private collection agencies are respecting the legitimate rights and protections of the client?

Mr. GREGG. I wouldn't necessarily classify that as a performance measure per se in the terms of dollars and cents, but one of the things we have done is to make sure, first of all, they understand what the requirements are. We have done that through not only extensive training at the time the contracts were awarded, but on an ongoing basis, the reviews we do to make sure that they are following procedure.

We also have the opportunity to listen in on conversations to get notes they take and we are a relatively small organization. The most important thing is that myself and the people sitting behind me consider this our business, not something we have handed off to somebody else, and we don't view that any differently than a phone call that one of our employees makes. It is our responsibility to make sure that people are treated right; yes, we try to collect the debt, but it is our responsibility and that is a clear expectation we have of the PCAs.

Mr. TOWNS. Are these new or old loans and would the amount determine whether you would actually get an agency to collect? Would it be a new loan or an old loan?

Mr. GREGG. In our cases, it is more old than new. Basically, we get a few that are within 90 days delinquent, but quite a bit of our debt is 2, 3 and 4 years old.

Mr. TOWNS. Does the size of the loan have anything to do with whether you give it to a collection agency or not?

Mr. GREGG. No, sir.

Mr. TOWNS. How about you, Ms. Shaw?

Ms. SHAW. No, in response to the last question. The size of the loan is not the determinant for forwarding it to a collection agency.

I would like to respond to the question you had with respect to treating consumers fairly. First and foremost, the Department wants to ensure that all borrowers are treated fairly, even if they are defaulted and throughout that collection process. We have a number of things at the Department we do to help ensure that.

First of all, all of our collection agency contracts are monitored and managed by Federal agency employees. As I noted before, we have the ability to terminate collectors who violate the Fair Debt Collection Practices Act.

Mr. TOWNS. When you say monitor, what do you really mean?

Ms. SHAW. We review on a regular basis, weekly, monthly, quarterly, the performance of the contractors, not only in terms of collecting the debt but actually how they do it. We have toll free 800 numbers that we provide for complaints to be lodged if there are perceived inappropriate collection activities going on and we monitor that information. In fact, in fiscal year 2002, over 1.1 million calls came into that 800 number; 99 percent of those calls were answered; the average hold time on those calls was 12.5 seconds. So we do respond to the calls that come in to that 800 number.

We also have our Federal Student Aid ombudsman who reports directly to me. We track the calls that come into the ombudsman office that are on a variety of things but in particular, we look at servicing complaints and collection practices complaints. Since 2000, of the total complaints in 2000, 20 percent of those complaints were about servicing concerns and/or collection practices concerns. So far in 2003, through June 13, that number has been reduced to 9 percent of calls and we are tracking pretty much for that number to hold for the year. That demonstrates our focus and our concern on ensuring that consumers are treated fairly and that we respond when we do find out there is an issue.

Mr. TOWNS. If that is the case, would you terminate the contract if you find out that they are using unscrupulous techniques to get people to respond?

Ms. SHAW. I think our first level of activity would be to deal with an individual collector through that contract agency and if there is an individual collector that is not behaving appropriately and in compliance with everything they need to comply with, that collector we would certainly not want collecting on any of the Department of Education loans.

If it is a broader issue, certainly the collection agency we would not want the agency itself to be collecting loans for the Department of Education.

Mr. TOWNS. Mr. Chairman, my time has expired. We will have another round?

Mr. PLATTS. Yes. Thank you, Mr. Towns.

I will recognize Members in the order of appearance, Mrs. Maloney, recognized for the purpose of questions.

Mrs. MALONEY. Thank the chairman for having this oversight hearing and ranking member Towns.

As the author of the Debt Collection Improvement Act of 1996, I am greatly interested in the topic and this common sense bill that centralized the Federal debt collection in the Department of Treasury and gave all Federal agencies the tools needed to collect billions of dollars of delinquent and non-tax debt.

The panelists today really pointed out that in many ways, it has improved collection. It has collected roughly $15 billion in delinquent debt and in fiscal year 2002, Treasury collected more than $2.8 billion in delinquent debt, including $1.4 billion in past child support which is very important and $1.2 billion in Federal non-tax debt.

There are always ways to do a better job and my question is, is there anything that needs to be modernized in the bill, that needs to be brought up to date, do we need more consideration for time for student loans? I just open it up for the panelists to discuss the bill, discuss the changes in debt collection procedures, if they are working or if there are ways you think it should be improved?

Mr. GREGG. One suggestion we have and we have worked with the administration and legislation has been proposed, is to include the opportunity to offset Social Security payments for delinquent child support. I think that is something that at least we think would be an improvement to the program.

Mrs. MALONEY. Do you see that it is widespread? That people are getting Social Security checks, yet not taking any effort to help their children?

Mr. GREGG. The estimate we have is that, it is not huge numbers but we think we could probably collect at least $50 million over a 5-year period if that was added. That may be conservative but we have done some tests and we think it is probably at least that.

Mr. CAMPBELL. Congresswoman Maloney, the Department of Veterans Affairs doesn't see at this time any structural changes that need to be made in the act. Most of the things we need to do are internal.

Ms. SHAW. I would have to say the same thing. At this time, we don't see any imperative structural changes. We are getting ready at the Department of Education to implement administrative wage garnishment to take the maximum of 15 percent as opposed to 10 percent under the Higher Education Act. We are on track to have those changes implemented by October 2003.

While it is clear that we can move from the 10 percent to the 15 percent, we anticipate perhaps some legal challenges to that. If there are any clarifying words that might be added that could be helpful as we anticipate those legal challenges perhaps manifesting as we move forward.

Ms. LOONIN. In general, most of the things I have talked about are regulatory or enforcement issues, but one thing in the statute with the Social Security exemption is it is set at $9,000 and is not indexed to the cost of living. We believe that is a big concern. We think there should be some provision in the statute to increase that based on cost of living.

Mrs. MALONEY. Thank you. I have no further questions.

Mr. PLATTS. We will come back to Ms. Blackburn when she returns.

Mr. Gregg, if you could touch on an issue. When I look at the numbers between the cross servicing versus the Treasury offset and the success and the overwhelming majority of the money is from the offset versus cross servicing. In Ms. Shaw's testimony she looks at the past 7 years where through private collection agencies about $1.2 billion in overdue student loans was collected versus about $5.4 billion when we use Treasury offset.

The GAO in assessing the success of the effort has raised the issue whether the cross servicing approach has a cost benefit to the taxpayer. If you could address that? My understanding is there was a request for review of cross servicing and is that ongoing? If so, what results if any are available at this point?

Mr. GREGG. We have a little different perspective than GAO provided. Normally we pay pretty close attention. We kind of disagreed with them philosophically on what we understood they wanted us to do. One part of that cross servicing examination as I understood it was to look at how long we should keep debts before we referred them to PCAs, the private collection agencies. Our view, and I think the intent of this subcommittee at the time the legislation was passed, was to turn them over to the PCAs quickly and that is what we do. We keep them for 30 days and if we get collection, fine; if we don't, we turn them over to those who are really expert in the field for collection. That was one of the differences we had.

I am concerned that if we tried to say let us keep these debts for ourselves and turn these over to the private collection agencies, over time that could undermine our ability to really have good competition because we might be accused, and probably rightly so, of cherry picking the debt. There is a bit of a fundamental philosophical difference.

We have not and we don't have underway a review of that. I think it is very cost effective. It is one thing to look at the numbers and the numbers have grown tremendously over the years. We went from $1.2 million collected in fiscal year 1997 and we will collect over $120 million this year in cross servicing. For that part of the program, I don't think we spend more than $10 million in administrative costs for a $120 million return. Even that doesn't fully capture the value of getting those debts in and helping the agencies make sure that the debts are in order, and the process of the private collection agencies determining that certain debt is not collectible. These factors show up on the collection side but it helps continue to improve the agency's recordkeeping and decisionmaking on whether or not to write-off the debt. So there is a lot of value that is greater than even fairly significant growth which is now $120 million.

Mr. PLATTS. Ms. Shaw, I think your testimony was that in your use of private collection agencies, that cost is down to about 16 percent or will be this year.

Ms. SHAW. Sixteen cents per dollar collected.

Mr. PLATTS. Correct. Am I stating correctly that is kind of your total cost for dollar collected is about 16 cents for every dollar?

Ms. SHAW. Yes.

Mr. PLATTS. Mr. Gregg, would you find that would be fairly accurate across the Government as to where we are getting to in the efficiency of using PCAs?

Mr. GREGG. I think we are following Education and they have a greater volume, so they may get an advantage. We are paying 23 percent to the PCAs and whether we can improve on that, I don't know. Especially when the program started and I think it is still the case, we have a lot of debt that is very old and a lot that is referred to us and we send on to PCAs which is not collectible, so there is a cost to having that mix of debt in your data base.

Mr. PLATTS. I assume there is a minimum requirement of what a PCA has to do to try to collect it when you give them a whole slew of debt to go after, that they can't just cherry pick within what you give them, that they have to make a certain minimum effort on each debt that they are afforded so they are really going after everything?

Mr. GREGG. Yes, and I think the incentives we have built in like Education has, really makes it to their advantage to try to collect. I think sometimes they get surprised. I know some debts that were very sizable that were quite old and you look at it and say there is no way that is going to be collected, but in fact they were. So you never quite know, just because of the composition or the size whether or not you are really going to be able to collect it.

Mr. PLATTS. This might go to both you and Ms. Shaw, Mr. Gregg, in reference to one of the concerns about excessive fees being charged to the debtor. I assume the collection agency was not allowed to impose any fees beyond what they are getting from the Department or whatever agency. Is that correct?

Ms. SHAW. For the Department of Education, that is correct. Actually, the Department sets the fees and it is limited the promissory note and those amounts allowable under the Higher Education Act. We set the fees and they cannot tack on anything else.

I would also like to add we have built into our contracts disincentives for the contractors to cherry pick loans in reference to your last statement. We have achieved the 16 cents per dollar collected through very, very vigorous competition among those competing for the contracts to do collections for us. We are looking forward to even reducing the collection costs in the next competition that is coming up in fiscal year 2004.

Mr. PLATTS. In your contracts with the PCAs, I would think if it is clear you set the fees, where there would be instances of violations of that, is there strict enforcement or is it still discretionary? What, if any, consequences are imposed on the PCA for trying to charge additional fees to the debtor?

Ms. SHAW. The contracts we have with the collection agencies do not allow for them to collect anything other than what we set forth. We do monitor for that and if there are fees in addition, they are not getting them.

Mr. PLATTS. My question is, if an agency was engaged in inappropriate conduct as referenced by Ms. Loonin, is there something in your contract that spells out a financial penalty or some specific recourse to have that financial disincentive from them even thinking about that practice?

Ms. SHAW. With respect to penalties, I will have to check on that and report back to the subcommittee in writing, if you don't mind.

Mr. PLATTS. If you could, that would be great.

Mr. Towns, did you have further questions?

Mr. TOWNS. Thank you, Mr. Chairman.

Ms. Loonin, you mentioned several times that borrowers may sometimes have legitimate defenses to collection procedures. What are some of those legitimate defenses?

Ms. LOONIN. Again, I am confined to the student loan context because that is what I know the best. For student loans in particular, there are a number of cancellation programs, there is a total and permanent disability cancellation, there are a number of cancellation programs tied to some of the abuses, particularly vocational schools that primarily happened in the past, there is a closed school cancellation, false certification cancellation, and unpaid refund cancellation. I mention those because they are defenses in the sense that they are the most extreme in the sense that if someone is qualified for it, then the debt or loan obligation is completely canceled. Any moneys collected voluntarily or involuntarily are supposed to be returned and the person is reeligible, except for the disability context, for student assistance again.

Mr. TOWNS. You also testified that debt older than 10 years is not permitted to be offset against Federal benefits such as Social Security. Wouldn't that logically exempt almost all student loan debt? Ms. Shaw and Mr. Gregg, are your agencies complying with this requirement?

Mr GREGG. I am sorry, I missed that question.

Mr. TOWNS. Ms. Loonin testified that debt older than 10 years is not permitted to be offset against Federal benefits such as Social Security. Wouldn't that logically exempt almost all student loan debt?

Ms. SHAW. It has been the Department's position that there is no statute of limitation on the collection of student loan debt. In direct response to your question, repayment of student loans does often extend beyond that 10 years, in particular with respect to loans that have been consolidated that had longer repayment terms and loans that have been granted extended repayment terms. So yes, if a loan was extended in repayment terms beyond 10 years and there was not a statute of limitations, those loans would be automatically exempted just by their term alone.

Mr. TOWNS. I am going to hear Mr. Gregg and come back to you because I think this is interesting.

Mr. GREGG. There has been a recent lawsuit and I think there is an appeal pending. Our view is that the 10-years would not apply and it is fairly complicated. I think there are three statutes involved but if in fact there needs to be clarification, then perhaps I could amend my earlier statement and add one more to say that assuming that is the intent to allow us to offset student loan debts referred to us for offset that are older than 10 years and perhaps that ought to be clarified.

Mr. TOWNS. Ms. Loonin.

Ms. LOONIN. A couple of things. This issue is I think confined to the Department of Education because I believe they are the only agency where the statute of limitations has been eliminated. My

understanding is that other agencies would comply with the 10-year limit because they don't have the same provision the Higher Education Act has that eliminated the statute of limitations.

It is a statutory construction argument essentially. It is that the antiassignment provisions of the Social Security Act back in the 1930's specifically say if you are going to abrogate this protection, this antiassignment protection, you have to explicitly refer to it.

The Debt Collection Improvement Act does explicitly refer to it and it also sets a 10-year limit. The elimination of the statute of limitations in the Higher Education Act does not explicitly refer to the antiassignment provisions of the Social Security Act. In the court decision that agreed with us on this, in that case it is the 10-year limit and the Debt Collection Improvement Act that governs.

As far as whether this means a lot of loans wouldn't be able to be collected, it is true this is just for Federal benefits offsets, it is the only program where there would be this 10-year limit. There would be some student loans that couldn't be collected, there also would be some that could if someone became disabled, for example and has SSDI within the 10-year period of repayment and doesn't qualify for disability discharge or doesn't know about it, they could continue to try to collect against those people.

Once the 10-years is up, then the Department wouldn't be able to use the benefits offsets but if there was anything else, any other collection tool available to them they thought they could use to collect from this person, they could because there is no statute of limitations for all the other ones. I think that is just Congress' recognition of the heightened protection they wanted to give to Federal benefits recipients.

Mr. TOWNS. Mr. Gregg, you testified that HHS and Education had recently published regulations that will allow them to participate in the administrative wage garnishment. How many agencies currently allow FMS to garnish wages to collect the debts? Of the close to 8 billion referred to FMS for cross servicing, how much as been collected using this tool? What protections are in place to protect low income individuals from perhaps overzealous collection? For example, would the wages of a single mother of two whose income is below the poverty level be garnished?

Mr. GREGG. I think there is only a handful of agencies right now that have fully implemented the administrative garnishment under FMS procedures. That continues to grow but that has taken longer than we would have liked. I think so far we have collected only $300,000.

There are protections, and this is true whether it is administrative wage garnishment or any other debt. All of the creditor agencies have a responsibility to look at special cases and many of them have cases where they don't refer debts to us because of hardship. That is their responsibility and they do that.

For administrative wage garnishment, one of the processes in place is that if someone requests a hearing, they have to have a hearing and processes are set up to hear whether or not the debt is legitimate and there are hardship cases as well. I think built into all these processes are a lot of protections. I think that is true whether it is administrative wage garnishment or any of the other offset programs.

In your example, if they came into the agency and would have been granted a hardship, I don't know, but that is something that certainly all agencies have and I know they take that seriously.

Mr. TOWNS. Thank you, Mr. Chairman.

Mr. PLATTS. Ms. Blackburn.

Ms. BLACKBURN. Thank you, Mr. Chairman. Thank you to all of you for being here. I feel like I have been up and down and in and out of this hearing but I appreciated the fact most of you submitted your testimony in advance and gave us a chance to prepare for this. Those of us tremendously interested in the efficiencies of government and in proper reforms of government are definitely interested in what you do and what you have to say.

Mr. Campbell and Mr. Osendorf, I wanted to congratulate you on moving your debt collections from 75 percent to 97 percent. I think that is something that is noteworthy and deserves to be pointed out.

Ms. Loonin, if I could being with you. Going to your testimony and talking about the student loan debt collections which it always amazes me that these can go on for decades without payment. I have read through and I apologize that I arrived late and did not hear all your testimony.

Would you talk a bit about the deceptive, unfair and illegal conduct that you reference on page 5 in the testimony and the complexity of the student loan payment as you see it or the program in collecting the debt and people not understanding who they pay this to. Are you referencing the program that handled by the banks, by the consumer banks or are you referencing student loans that are handled by the Department? Where do you find the greatest confusion and misunderstanding?

Ms. LOONIN. It occurs in both programs, with private debt collectors as well as some cases where it could be the guarantee agency doing the collecting or even the department. To be honest, I haven't done a comparison study of these so it would be more anecdotal I suppose.

The abuses seem to be greater not with the direct loan program but with the FFEL, the program where the banks are guaranteeing loans in other words, but I haven't done any sort of comparison study of that.

Ms. BLACKBURN. I would be interested in knowing that if at some point you had someone who could place some energy on that. I think as we look at loan programs in other agencies, knowing that and the insight you could provide there would be helpful indeed. I think as we look at reforms, having the opportunity to look at lessons learned serves us well.

Ms. LOONIN. We can certainly try to track that with all the advocates we work with as well and put something together.

Ms. BLACKBURN. That would be great.

Also if you would speak a bit about the allowance, the DCIA allowing Federal agencies to offset certain Federal benefits in regard to Social Security?

Ms. LOONIN. Is there anything specific?

Ms. BLACKBURN. Talk with me a bit about in your testimony you reference that being an extraordinary power. Of course it is and the fairness issue there, do you think that is a good precedent, do

you think that is the right thing to do, attaching the Social Security payments or not, or how do you see that playing out long term?

Ms. LOONIN. I think it seems to me it is here to stay and if anything, it is probably getting broader in terms of what can be taken from Social Security. My personal opinion on that is probably that in some cases that might be acceptable. My problem really is focusing on the lowest income people and the most vulnerable people. Perhaps for Social Security retirement recipients who are getting higher benefits or higher payments, there might be some role for the program there but my concern is there has been sort of a steady erosion of what used to be pretty much an absolute principle that Social Security benefits could not be offset by private or public creditors.

Ms. BLACKBURN. Mr. Chairman, may I ask another question?

Ms. Shaw, the Department of Education has more than $20 billion in debts more than 180 days over due and I think $556 million listed as currently not collectible. My question for you is why has the Department been negligent in following the requirements of DCIA for debt referrals that are 180 days past due?

Ms. SHAW. I am sorry, I missed the middle part of the question.

Ms. BLACKBURN. Why have you been negligent in following the requirements of DCIA for debt referrals more than 180 days past due and why would you consider the $556 million to be not collectible?

Ms. SHAW. If you don't mind, I would like to get a detailed written response to that question and forward it to the subcommittee.

Ms. BLACKBURN. That would be fine if you would like to do that. When we look at these numbers and we see there is that amount of money considered to be not collectible, it is important for us to ask those questions because the taxpayers ask us.

Ms. SHAW. Absolutely. I understand the nature of the question and the reason for the question. I just want to be as accurate and precise in my response as I possibly can.

Ms. BLACKBURN. Include this in your response. If you are using private collection agencies and the fee they are pulling to collect those debts, if you would list those for us, and also if you are using wage garnishment to collect those debts.

Ms. SHAW. I will include all that in the written response.

Ms. BLACKBURN. Thank you, Mr. Chairman.

Mr. PLATTS. Ms. Loonin, in your testimony in looking at the issue of if we are being fair, if you can give us more detailed examples as opposed to the kind of anecdotal understanding of what has happened. The more detail you can provide, we certainly welcome that and share it with the Department of Education or whoever so they can do a good job of having oversight over their private collection agencies if abuses are occurring.

One you reference specifically and I asked about earlier and I found the cite, about charging collection fees that exceed what is allowed by the contract, you have a footnote cite to a specific case, Padilla v. Payco General American Credits, a 2001 Federal court case. Could you give a little background on what happened there, what was the court's decision?

Ms. LOONIN. This is like a law school question.

Mr. PLATTS. What I am trying to do is find out exactly was there a finding by the court that there was excessive payment made? Was that the court's decision? It seems to be what you are saying here. If that is the case, I want to ask Education either today or in followup what consequences occurred because of that.

Ms. LOONIN. I need to take another look at that decision. It is not a final decision. I believe it was at an earlier preliminary phase, either a motion to dismiss or an earlier phase of litigation. This was raised in the context of a Fair Debt Collection Practices Act violation. That was the issue. I apologize, I can't recall exactly off the top of my head but I have the case here.

Mr. PLATTS. If you could followup in writing to the subcommittee on the specifics and if there was a finding by the Southern District of New York that there was a violation of law because I would like to followup with the Department, if that is the case, what happened in response to that collection agency for violating Federal law.

I would also maybe caution that the way it reads here is there was a violation. I am assuming that is correct.

Ms. LOONIN. I apologize. I can't recall exactly but I will definitely get back on that. There have been some other cases specifically related to collection fee issues that I could provide as well. One in particular was a settlement agreement that was not a final decision but where the Department did acknowledge there were fees being charged above the rate in the promissory notes and did move for a long time to correct the problem after the lawsuit, so it wasn't an actual final decision. I can provide some of that information as well.

Mr. PLATTS. That would be great and we would be glad to followup with the Department on those examples. My point is anecdotal references are helpful in the sense of raising awareness this may be going on, but we really can't provide an oversight role if we don't have specifics, so I would welcome those. As one as referenced after 12 years having made my last student loan payment, my wife beat me to the punch about a year and a half ago with her last graduate school payment, as one who took on the responsibility and fulfilled mine, I want others to do the same in fairness to everyone. In doing that, we want to make sure we are doing it in a fair and responsible way.

That goes to maybe a broader question as far as the safeguards in place. Where we use private collection agencies, is there some verbatim language we give the PCAs that they must include, like you referenced the 800 number, and I assume that is included in something that a PCA sends out that they give to the debtor that includes an 800 number? Is there language that the Department of Education or FMS that you approve saying in every statement you send out to collect or in every phone conversation you must read to say you have certain rights and protections and if you believe they are being violated, is that type language required to be included?

Ms. SHAW. The Department of Education reviews all correspondence our collection agencies send out on our behalf. We make sure it is complete, accurate and clear with respect to the language used and the rights borrowers may have.

Mr. PLATTS. That 800 number is included in there? There is an ease of accessing the system if they believe their rights have been violated?

Ms. SHAW. If not on every single communication, on several of the communications depending on the timing of the communication and so on.

Mr. GREGG. It is similar. When we get the debts for cross servicing, we send out the first letter and provide information to the debtor on their rights and what would be the next steps. They have our 1–800 number in that letter when it goes out. We get a lot of calls. I think we got 2.8 million last year in our Birmingham Debt Collection Center. Most of the calls are inquiring am I going to be offset this year? People know they have the debt, it is communicated to them and I guess the ones who get no, you are not, are happy and the others are not. A large percentage of our calls are those kind.

Mr. PLATTS. Do you keep something similar, Ms. Shaw? You referenced in your call center, 12.5 seconds on hold was the average per call?

Ms. SHAW. Yes.

Mr. PLATTS. That is a remarkable standard, 12.5 seconds, in the sense of the volume of calls you are handling. Is it something similar as far as the efficiency of your system?

Mr. GREGG. We have a very sophisticated call center that tracks all that. We are very close to that if we are not at 12.5. During the tax payment season, we bring in people that we have hired for a period of time because we get peak volumes. We bring them in and they are trained so they come back year after year. It is a very sophisticated system.

Mr. PLATTS. Mr. Gregg, a different area as far as your office's efforts with the Federal salary offset and while the wage garnishment is for non-Federal employees, internally we do it differently. Could you give me an overview of what percentage we use in your best estimate of agencies, departments are on board and participating in that program today?

Mr. GREGG. We have most of the centralized paying agencies now participating. I think all of them except for GSA, which is going to be coming in by the end of this year. VA is currently not participating but they are going to be serviced by the Department of Interior under the consolidated payroll processing, and that is fine. There is no reason for them to switch and then get out of that business. So most of our payroll agencies are now participating. We have to continue to get the debts referred to them from all the other agencies.

Mr. PLATTS. That is only a small number of agencies, paying agencies, right?

Mr. GREGG. I think there are five.

Mr. PLATTS. Right. There is a large number that are not. Of those that are not, it is the same instance if somebody is getting paid by the Federal taxpayer for their work but owe the Federal Government money, it seems like a pretty straightforward transaction to say, we need you to pay up.

Mr. GREGG. I think I need to get back to you with a formal answer on that. For example, I think Education is still working on

a consolidation. It is kind of complex because some of them do the offsets internally, but we are looking for a more efficient process through the consolidated salary offset, so I can provide you a more coherent, written answer.

Mr. PLATTS. If you could give us kind of a detailed breakout of what agencies are because if we are going to private sector employees for wage garnishment, yet we are not doing it to our own employees, we are not setting a very good example ourselves.

I want to expand on that a bit more with Education as well but Ms. Blackburn I believe you need to run off for a committee and had a question?

Ms. BLACKBURN. That is correct. I need to run down the hall. If it is OK, I just have one more question.

Secretary Campbell, I wanted to direct this to you. Knowing that you all had seen an improvement in your debt collection practices, I wanted to see if you could very quickly highlight three steps you feel made a big difference and what your recommendation would be to the other agencies that are looking to make these improvements if you were to say this, this and this were the lessons learned and the process that should be followed?

Mr. CAMPBELL. Centralization because that helps to develop a skilled work force and the skilled work force is the key. Automation because you have to have the systems. One of the regrettable things for 3½ years, we were unable to help our friends at FMS because our systems wouldn't talk to theirs. It took a tremendous amount of effort. As I said, it would be centralization so that you get a skilled work force that is used to doing debt collection, the skilled work force itself, the care and feeding of that work force and the automation that goes with it. Because of the vast number of transactions, you couldn't possibly do this in a manual or semi-manual method.

Ms. BLACKBURN. Mr. Osendorf, do you have anything you would add to that?

Mr. OSENDORF. To make it three, I would say centralization, automation, standardization. Once you get it all in one place and you automate it, everybody is treated the same from the debt collection standpoint, everybody gets the same notices, everybody is treated exactly the same through the process.

Ms. BLACKBURN. Thank you. It reminds me of the old thing that simple usually works but doing the simple thing is generally hard.

Thank you very much.

Mr. PLATTS. I am going to pick up on the Federal salary offset. Mr. Campbell, you wanted to add something on that?

Mr. CAMPBELL. Yes, sir. I don't mean to say anything against what Commissioner Gregg said but I think he was in error about what VA does. We have been offsetting our own employees' salary since 1987. Under the Consolidated E-Payroll Project we will be going to the Defense Finance and Accounting Service and not Interior.

Mr. PLATTS. Ms. Shaw, how about Department of Education employees' current status?

Ms. SHAW. We also have been offsetting for years and Commissioner Gregg made reference to the process for consolidation and actually the Department of Education looks forward to working

with Commissioner Gregg's team to make that happen. We are right in the middle of a major competition for common services for borrowers that kind of brings together our direct loan servicing, the origination of direct loans, consolidation loans and part of our collection process, and again, we are right in the middle of that competition, so as soon as that competition is over and the contracts are awarded, which we hope will be by the end of this fiscal year, we will begin to work to move toward that centralized process.

Mr. PLATTS. As far as setting that example, today if somebody works at the Department of Education who is in default of a student loan say in the Student Loan Office, their salary would be offset by the Department of Education?

Ms. SHAW. Yes, sir.

Mr. PLATTS. I want to make sure we are leading by example.

I recognize Mr. Towns.

Mr. TOWNS. Thank you, Mr. Chairman.

Ms. Shaw, in fiscal year 2001, a new program was started to help recruit and retain Federal workers by paying their student loans. Under the program, workers can receive up to $6,000 per year if they commit to 3 years of agency service. According to a recent article in the Government Executive Magazine, the new program hasn't been used too much and the Department of Education has yet to use it at all. Why haven't you been able to implement it in your department?

Ms. SHAW. As the new Chief Operating Officer at Federal Student Aid, this issue was recently brought to my attention. I intend to investigate that and try to understand if there are barriers, how do we remove them. I have a few folks on my staff as a matter of fact who are interested in availing themselves of that program. I would like to make that happen for them if there are no barriers at the Department of Education.

I don't have an answer to the question for you today as to whether there are barriers or it just hasn't made its way to the top of anybody's list to actually implement and operationalize but it is on my list to do and I would be happy to provide a written response to you.

Mr. TOWNS. Thank you. I look forward to it.

Mr. GREGG. Congressman Towns, if I might interject, I think that is really a great program. We have been using it at FMS for about a year now. I think as we try to compete for new employees with the private sector, I think it is a great tool. One of the barriers is that you have to find the money because it was passed, so the tradeoff is you may not hire four people but only three and provide some student loan aid but that is something that is kind of the nature of the beast and we recognize that. It is a great program and I think provides a great opportunity for us to compete better with the private sector.

Mr. TOWNS. Mr. Campbell, you mentioned the vendee program. What is that?

Mr. CAMPBELL. The Vendee Loan Program, we have numerous VA mortgage loans. When the mortgageholder defaults, we end up taking back the property, we then sell these vendee loans to the market. Three times a year we go to New York and sell these vendee loans. The Secretary of Transportation back in January of this

year decided that we would no longer have that program, so the delinquencies from the Vendee Loan Program should disappear in the very near future.

Mr. TOWNS. Mr. Campbell, in October 2001, the Vietnam Veterans of America submitted testimony to this subcommittee regarding what seemed to be abusive practices by the VA in collecting debts from veterans. Basically, they said the VA often attempted to collect debts related to co-payments for medical care from veterans while the veterans were simultaneously making claims through the Veterans Benefit Administration for a service-connected illness, a process which can take a long time, in fact years in some instances. Are you aware of this problem and what are you doing to address it?

Mr. CAMPBELL. No, sir, I was not aware of the problem until you just mentioned it and I will look into it. Unfortunately, medical co-payments, first party payments, are generally collected individually at each medical center. We have over 160 medical centers, so this is the first it has been brought to my attention. As soon as I get back, I will talk to Dr. Roswell, the Under Secretary for Health, to see if this is a pervasive problem.

Mr. TOWNS. Thank you. You will get back to us with the information?

Mr. CAMPBELL. Yes, sir.

Mr. TOWNS. On that note, I yield back, Mr. Chairman.

Mr. PLATTS. Thank you, Mr. Towns.

I want to look at the issue of use of information technology. A number of you mentioned the best way to address bad debt is to make sure we are not making bad loans in the first instance and those who had that bad track record. I know there is a greater effort, and Mr. Gregg, you referenced the debt check system you are putting in place and having more information available to other agencies.

One of the administrative challenges appears to be is when an agency refers to FMS for collection in the Treasury Offset Program, that is only going to stay there 10 years because of the statutory 10-year limit with the exception of student loans in your system. So somebody maybe looking for a loan 12 years from now, that may not show up because you are not able to collect it. First, is that an accurate understanding on my part and if so, is there an effort to try to somehow in the Treasury Offset Program to have the debt still be there, even though it can't be collected, it still would be a bar from future debt being taken by that debtor?

Mr. GREGG. Our view is that we ought to have the debt check program contain the debts that we are actively working. We run into some risk if we go beyond that. First of all, we don't have that rolled out all the way so I am a bit reluctant to go beyond that. Plus, there are some other sources of information. Agencies have the opportunity to check with credit bureaus and the opportunity to check with the HUD system, the CAIVRS system, so I think the combination of the debt check, there will be a lot of debts in there, and the CAIVRS and the Credit Bureau reporting will provide a lot of information to those lending agencies.

With the debt check program, right now we only have SBA there and it is kind of one at a time but our next enhancement will allow

agencies to come in with a bulk file, however many they want to check and run that against our program which will be much more efficient.

Mr. PLATTS. Realizing you are still in the early stages of this debt check system, that in the long term you look at somehow still identifying debts that have been referred to you and basically you own even though you no longer will go after them because of statutory limitation they are still identified as being debts not fulfilled, not collected, so that long term, not necessarily in these current years, but 15 years from now if that system is still in place, rather than having to recreate a new system where after 10 years you are done with them, so then they go to somebody else, start over and have to create new systems, it seems you could maintain them. It means your data base continues to grow.

Mr. GREGG. That is something we can take a look at. We struggled so much in the early years of this program, I have been pretty reluctant and we have had a lot going on. It is one of those things where I hate to turn someone loose on that with so many other things that are more immediate. There could be a way we could do that where we could separate the active debts we are working from those that are no longer active. We can take a look at that some time in the future.

Mr. PLATTS. Ms. Shaw, as far as student barred from getting loans, they are not defaulted on any past loans. That is the law but it does happen that some students slip through. Could you give us your best guess of why that happens, what is the shortfall in our system of checks and balances that someone in default isn't being made eligible for a new loan?

Ms. SHAW. Certainly the Department uses best efforts to make sure that people don't slip through but we do have the National Student Loan Data System and in that system is a repository of all defaulted student loan borrowers. During the application process for a student, that system that processes Federal student aid applications communicates and does data checks against this National Student Loan Data System to see if there are any prior defaulted loans and if there are, that applicant may not receive Federal aid until that default is cleared up.

Perhaps people can slip through due to timing of reporting to that National Student Loan Data System by guarantee agencies and the timing of when they report to the system, sort of a crossing in the night kind of effect. If an application comes in the day before the defaulted data is reported, it might as you say sneak through. It will get caught later but we absolutely try to prevent that.

Mr. PLATTS. The current law as far as someone applying for a student loan does not bar an applicant from a student loan if they have a SBA loan they are in default of or other Federal loans other than student loans? That doesn't currently bar them from a student loan, correct?

Ms. SHAW. I believe that to be true. Yes, that is correct.

Mr. PLATTS. Is there a position in the Department whether there should be consideration given that if you are looking to borrow money from the Federal taxpayers for a student loan that you are in good stead in the Federal Government in any other area as well?

Ms. SHAW. I am not aware of a current position by the Department but I can go back and check and see if there is one and report back to the subcommittee. If there is not a current position, perhaps I can put it on the radar scope.

Mr. PLATTS. I appreciate that. It is a balance because education is something we want to encourage all to pursue and sometimes people are down and out on their luck and education is a chance to get back on their feet but in trying to promote personal responsibility, if you owe the taxpayers money and yet you want to turn to them for financial assistance, in some way identifying there is some outstanding liabilities that need to be taken care of, maybe it is something we need to look at so we don't just look at student loan defaults but others as well.

Mr. Gregg, using technology and as you get to Debt Check and things and it addresses how we contact debtors, is there an effort to consolidate if there is more than one debt owned, type of debt by single individual that we are trying to consolidate so that we are not contracting to two or three different PCAs so that individual debtor is being contacted in various manners, different parties as opposed to by one?

Mr. GREGG. That is fairly complicated and it is one of the features we will have in our Fed Debt Program that is going to be implemented in 2005 because that has been raised; it is not something we can do with our current system but it is being built into the system that we are in the process of building right now.

Mr. PLATTS. I appreciate your patience. I think we covered all the areas I had hoped to and with the other Members as well. I would appreciate those who are going to followup to do so and expand on the information.

I want to thank all of you for being here today and offering your testimony. Clearly when you look at the numbers, we have made tremendous strides and Ms. McCarthy's efforts and my predecessor, Chairman Horn, in their efforts with the 1996 act have paid great dividends for American taxpayers. We want to be conscious of the consumer protection issues raised. It sounds like we are doing our best with our notice to consumers of their rights and protections they are entitled to. Where there is a failing in that area, I am glad to inquire of whatever department it is to see what repercussions then flow to the culpable party and we hold someone who is violating Federal law in whatever sense accountable.

We have had an informative meeting and I look forward to working with Mr. Towns and the whole committee to continue to oversee the advance in the debt collection area on behalf of American taxpayers as we try to find a way to do right by citizens whether it be a new prescription drug benefit, education funding or whatever it may be, ensuring those who owe dollars to the Federal Government and thus to the taxpayers are fulfilling their obligations allows us to do more for those in need and those we are seeking to assist.

I appreciate each of your for your efforts within the government and outside the government making sure the government is acting in a responsible fashion as well.

The record will remain open for 2 weeks for additional information to be submitted and this meeting stands adjourned.

[Whereupon, at 4:17 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Additional information submitted for the hearing record follows:]

**RESPONSE OF THE
DEPARTMENT OF VETERANS AFFAIRS
TO REPRESENTATIVE TOWNS CONCERNING THE WRITTEN STATEMENT
OF THE
VIETNAM VETERANS OF AMERICA, INC.**

The Vietnam Veterans of America, Inc., (VVA) state that the Department of Veterans Affairs (VA) frequently uses garnishment of benefit payments to collect delinquent copayments and other overdue charges from veterans while a veteran's claim is pending before VA.

In accordance with federal law (31 U.S.C. 3711) and the Federal Claims Collection Standards (31 CFR part 901), VA and other federal agencies must aggressively collect all debts arising out of their activities. However, debts with a balance of less than $25 are not referred to the Department of the Treasury for administrative offset or other collection action.

VA provides notice to those indebted to the Department as a result of participation in a VA medical treatment, benefit payment, or home loan program before any collection action is taken. This notice provides basic due process and informs the person of the exact amount of the debt, the specific reasons for the debt, the right to dispute the existence or amount of the debt, or the right to request waiver of collection of the debt. The notice also informs the person that collection of the debt will be made by offset from current or future benefit payments unless the debt is paid in full or a repayment plan is established, or a dispute or waiver request is filed within 30 days of the notice of indebtedness. If a dispute or waiver request is filed within 30 days, offset of the debt from benefit payments will not commence until an initial decision has been reached on the dispute or waiver request. If the initial decision on the dispute or waiver request is adverse to the veteran, VA will commence offset even if the person subsequently files an appeal of the adverse decision to our Board of Veterans' Appeals (BVA). Any amounts collected through offset will be refunded in the event the adverse decision is reversed by BVA.

Some veterans do file claims for additional benefits while VA is in the process of attempting to collect a debt from them. These claims may or may not have a relationship to the debt. We continue to follow the procedure described above to ensure veterans have the opportunity to prevent offset of benefit payments while an initial dispute or waiver request concerning the debt is considered. As with the reversal of an adverse decision on a dispute or waiver request, we will also promptly refund any moneys collected in the event a veteran's claim is successful, and we subsequently eliminate the debt.

From: Teresa Shaw
Education

Information for the Official Record From Chairman Platts

Question regarding collection contract penalties:

We have management controls, including financial disincentives, to prevent the violations that Ms. Loonin alleges to have occurred.

First, we provide the collection agencies with information on the dollar amount for every loan assigned to them, including principal, interest, collection agency fees and other collection costs. We use two controls to ensure that collection agencies collect no more than the provided amount.

- Collection agencies are not permitted to process borrower payments. Borrower payments are directed to a lockbox that is managed by a separate contractor.
- We maintain the official record of borrower payments in our Debt Management and Collection System and the collection agencies are required to use this data, which the Department controls, when asking the borrowers to make payments on their defaulted loans.

Second, we assign a Federal employee to monitor each collection agency contractor. That person is responsible for the resolution of complaints against the assigned collection agency. Our staff have direct access to the collection agency managers, and work closely with the collection agency to resolve current complaints and prevent future complaints. This practice allows our staff member to quickly recognize common themes among the complaints against their assigned agency. In the past, there have been particular collectors who generated the majority of complaints against an agency. There have also been practices at agencies that required groups of collectors to be retrained. We have been able to identify and resolve the problems with particular collector or agency practices because of our daily interactions with the student borrowers and the collection agency personnel.

We should point out that most borrower complaints are not generally allegations that the Fair Debt Collection Practices Act or some other law was violated. Rather most of the complaints we receive relate to the borrowers' customer service expectations. We believe that the most effective method to ensure appropriate collection techniques is to impact commissions. We have the ability to impact both the individual collector, and if necessary, the collection agency as whole. Where we believe complaints against an individual collector are credible, we warn the agency and direct that they counsel their employee. We then give the employee an opportunity to correct his behavior. We can and have directed a collection agency to remove a collector from our contract. That same person is not allowed to work on any of our collection contracts, even if they change employers.

Because collection agencies expend a great deal of effort in locating student loan borrowers, the loss of a located account is another way we can deal with a complaint, and impact the individual collector and the collection agency. If we believe that a borrower's complaint is credible, we can and do recall the account from the collection agency. The collection agency looses their investment in locating the borrower, as well as the potential commissions they may have earned from that account. If the borrower's payment generated a commission for the agency, we have the authority to take the commission back from the agency. It is our practice that neither an individual collector nor the collection agency profit from practices that generate complaints.

The current collection agency contracts have a provision that allows the Department to impose a point reduction in an agency's performance score if that agency fails to resolve complaints that have been brought to its attention. The performance scores determine the volume of accounts that we place with collection agencies (and therefore potential revenue), their incentive bonuses, as well our evaluation of their performance for potential clients. Each four months, collection agencies are evaluated on their performance. Those performance measures include their dollar recoveries, accounts serviced and accounts resolved, and points are awarded to agency relative to the top performer in each category. Our collection agency contracts are very competitive, and a reduction in their performance evaluation can result in a significant drop in their relative ranking, which could be extremely costly in lost business and possibly lost incentive bonuses.

Finally, the most punitive action we can take against a collection agency is to terminate the contract, to bar the agency from future contracts and take necessary legal actions. A previous collection agency contractor was found to have been in violation of the Title IV of the HEA, criminal statutes and the terms of their contract. Specific individuals were prosecuted and found guilty. The collection agency was required to reimburse the Department for improper commissions and barred from receiving any Department of Education collection contracts.

As you can see, the collection contracts specifically contain financial disincentives from assuring that an agency does not engage in inappropriate conducts as referenced by Ms. Loonin, and we encourage her to inform us specifically if she ever becomes aware of any instances of inappropriate conduct. As you can see, we have the tools to remove contractors and will work with the appropriate officials to prosecute them as appropriate if they are found to be in violation of the laws.

Information for the Official Record from Vice-Chair, Representative Blackburn

Question regarding delinquent debt referrals to Treasury:

As Mr. Gregg and I have testified, the Department of Education has a stellar record implementing the Debt Collection Improvement Act (DCIA). The Department has served as a model for other Federal agencies to emulate in implementing the DCIA and has not been negligent in following its requirements. It was our demonstrated effectiveness at collecting student loan debt that led the Department of Treasury to grant the Department of Education a permanent waiver from the referral requirements of the DCIA and allow it to collect on its own delinquent student debts and not refer debts to Treasury for collection.

Also, let me say that the numbers reported by Treasury need to be put into perspective, with an understanding of the rules governing our programs and the form (Treasury Report of Receivables) that Treasury used to report the statistics. First of all, the $20 billion in debts more than 180 days past due and the $556 million classified as currently uncollectible need to be compared to the over $500 billion that has been lent to student loan borrowers since the inception of the student loan programs. I believe this comparison is appropriate, because there is no statute of limitations on student loans.

Also, the amounts reported consist of a mixture of loans from our guaranty and direct loan programs. The laws and regulations governing the guarantee program require us to have agreements with guaranty agencies providing them with the first right to collect for on delinquent loans that they guaranteed under the rules of the program. They are allowed to try to collect delinquent debt for several years before the loans are assigned to the Department for collection. However, it is important to note that during the time period that the guaranty agencies are collecting on the loans, many of the initiatives and tools under DCIA are actually being used. For example, most importantly, information on non-current loans that the guaranty agency is trying to collect on, are provided regularly to Treasury for offset. In addition, the guaranty agencies have been very successful in collecting through wage garnishment and rehabilitation, and they have been an important part of the Department's process to collect on the defaulted student loans.

Regarding the Treasury report itself, the definition of "Currently Not Collectible" for use on the *Treasury Report on Receivable* is contained in several areas of the instructions to the report. "Currently Not Collectible" is defined as "...receivables that have been written-off (removed from agency accounting records) and not closed-out (reported to the IRS on form 1099-C)." Another part of the instructions also describes these as "debts greater than 2 years old where collection continues and the debt is not closed out." The form further notes an

exception in that "The Department of Education Student Loan Program, or other programs with similar authority, should report debts that are delinquent over 10 years." It is important to note that the definitions further describe this as a representation of "all written off debt from the current and preceding fiscal years, on which the agency is continuing to pursue collection action." Thus, I assure you that even though an amount may be reported as "Currently Not Collectible" in the reports to Treasury, the Department is continuing to use its authority to collect on these older defaulted accounts.

Question regarding private collection fees & wage garnishments:

Under the seventeen 1997 contracts, fees on regular collections and administrative wage garnishments ranged from 19.90% to 23.00%. Administrative resolution fees were $50.00. These are fees paid for processing death, disability, bankruptcy and other borrower entitlement actions that do not result in collections. Litigation fees were $120.00. Rates for consolidations ranged from 10.50% to 12.00%.

Under the current contracts, started in FY2000 and awarded to 12 agencies, the Department simplified the fee structure. Fees on regular collections, including administrative wage garnishments, are 20%, direct loan consolidations 10%, FFEL loan consolidations 12%, FFEL and Direct loan rehabilitations 15%. Also, administrative resolutions fees are $100.00 and litigation fees are $60.00.

Information for the Official Record from Ranking Member Towns

Question on Department use of the Federal Student Loan Repayment Program:

The Federal Student Loan Repayment Program for recruiting and retention of Federal workers is of great interest to Department. FSA's Human Resources and the Department's Office of Management have received numerous inquiries on the program since it was announced. Recently, the Office of Management sent out a reminder to all Department managers urging the use of this program for recruiting and retention of employees. As our managers become more familiar with this recruiting and retention tool, and begin budgeting for its use, we believe this program will become a valuable tool for attracting and retaining valuable employees.

Information for the Official Record from Chairman Platts

Question on barring students/parents loans if in default on other Federal debt:

Several provisions of Title IV of the Higher Education Act (HEA) establish the eligibility requirements for receipt of federal student assistance under that title.

Among these provisions is a restriction on the receipt of aid for any person who is in default (a condition beyond simply being delinquent) on a Title IV, HEA loan. However, these requirements do not prohibit an individual who is delinquent or in default on other Federal debts from receiving federal student aid.

We have been studying this issue and have found that implementing such a process, where we process in excess of 12 million applicants for student aid a year - up to 600,000 in one week at peak processing time – requiring a 24 hour turn around – is difficult at best. However, we are committed to addressing this issue and have prioritized it and will continue to work to meet the intent of DCIA while continuing to provide service to students and parents that are in need of funds to access education. Our initial test match of a sample of applicants with an outside database of those owing Federal debts (HUD's CAIVRS database) disclosed that of the few applicants that did match, most were matches of our own student loan defaulters. We are currently in discussions with Treasury about requirements using Debt Check, which may allow us to implement a workable process. As we work through this issue, we will also consider other alternatives.

The Department will continue to carefully consider the costs and benefits of implementing a process to determine whether student aid applicants are delinquent on other Federal debt. In doing so, the Department will take into account the potential budget savings, whether the restriction would likely result in reducing delinquencies and increasing recoveries on other federal debts, and whether the individuals affected by such a provision pose an increased risk of defaulting on the Title IV, HEA loan.

House Subcommittee on Government Efficiency and Financial Management June 17 Hearing "Federal Debt Management – Are Agencies Using Collection Tools Effectively?: Additional Information for the Official Record on the Federal Salary Offset Program

Almost all federal agencies that have delinquent debt already participate in the Centralized Salary Offset Program. The Department of Education and the Social Security Administration (SSA) are the two major federal agencies that have not authorized the Financial Management Service (FMS) to collect federal non-tax debt through the Centralized Salary Offset Program. FMS is currently working with Education to remove any barriers that prevent the collection of Student Loan debt through this program. FMS is also working with SSA to identify debts that are eligible for Salary Offset. Prior to their participation, SSA must also issue the necessary regulations.

July 7, 2003

Supplemental Testimony:

GOVERNMENT REFORM COMMITTEE

SUBCOMMITTEE ON GOVERNMENT EFFICIENCY AND FINANCIAL MANAGEMENT

regarding

"The Debt Collection Improvement Act"

July 1, 2003

Testimony submitted by:

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I. Introduction

Mr. Chairman and Members of the Subcommittee, thank you again for inviting me to testify on June 17 regarding the Debt Collection Improvement Act. At that time, I agreed to get back to the Committee about a few issues that I was unable to address at the hearing.

II. Illegal Debt Collection Activity

Chairman Platts asked specifically about a case, *Padilla v. Payco General American Credits*, 161 F. Supp. 2d 264 (S.D.N.Y. 2001) that I cited in my written testimony. This case was brought by a student loan borrower against a private debt collection agency collecting debts on behalf of the Department of Education.

In response to Chairman Platt's question, the federal District Court in this case found that the collection agency charged excessive collection fees. The court granted the borrower's motion for summary judgment on this issue, finding that the agency attempted to collect over $2,000 in collection fees above the statutory limit. The court ruled this was a violation of the federal Fair Debt Collection Practices Act.

As further evidence of illegal behavior by debt collectors acting on behalf of the Department, I point you to another case, *Peter v. GC Services L.P.,* 310 F. 3d 344 (5th Cir. 2002). The Fifth Circuit in this case found that the envelope in which the debt collection letter arrived, which contained the name and address of the United States Department of Education, as well as a "penalty for private use" message, violated the Fair Debt Collection Practices Act. In response to the collection agency's arguments that the

violation was benign, the court stated that the "Defendants' impersonation of the Department of Education is certainly not benign." The court noted that in enacting the FDCPA, Congress was especially concerned about agencies "impersonating public officials."

III. Limited Remedies for Borrowers

It is important to note that the borrowers in the cases cited above used the federal FDCPA as a vehicle for private relief because courts have found that there is no private right of action for borrowers to bring cases based on violations of the Higher Education Act (HEA). These cases can be both complicated and time-consuming. As a result, there are few reported cases in the area of student loan collections. However, this does not mean that there are only a few problems. As I previously testified, our office continues to receive frequent complaints from advocates about abusive and illegal student loan collection behavior.

Borrowers that do not have the resources to bring a lawsuit may seek relief instead by complaining to the Department. The Department has not provided sufficient information regarding how it responds to these complaints. For example, Ms. Shaw, Chief Operating Officer of the Department of Education's Federal Student Aid Division, testified that agencies that violate the FDCPA could lose their contracts with the Department. However, she did not specify whether the Department has ever exercised

this power. To name just one example, at least one of the agencies cited above that violated the federal FDCPA continues to receive contracts from the Department.[1]

IV. Excessive Collection Fees

In response to questioning at the hearing, I also mentioned a case in which a class of borrowers sued the Department of Education for assessing up to 43% collection fees against certain student loan borrowers whose loans specified 25% collection fees. *Gibbons v. Riley,* Clearinghouse No. 50, 432 (E.D.N.Y. 1995). In the settlement agreement, the Department acknowledged errors in assessing collection fees and also admitted that it had no method for easily distinguishing those with the 25% collection fees provision from other borrowers. We understand that since about 2001, the Department has been working to resolve this problem and has been sending out notices to borrowers who may have been overcharged. I do not know if the Department has completed this process.

V. Data on Student Loan Complaints

Both Chairman Platts and Vice-Chair, Representative Blackburn asked me whether I could provide additional information about problems with Department of Education collection activity. In response to Representative Blackburn's question about whether there are more problems with the FFEL or Direct Loan programs, I answered that I had not specifically tracked problems by type of loan.

[1] GC Services is still listed on the Department of Education web site as a contractor collection agency.

I do not have this data available at this time. However, it is my intention to organize and collect this data and submit it to both the Committee and to Ms. Shaw and others at the Department as soon as possible. In addition, NCLC submitted a Freedom of Information Act request on June 9, 2003 requesting information about the Department's evaluation of discharge applications as well as information about collection hearings. We plan to follow up this FOIA request with additional requests.

I would also like to point out that Ms. Shaw testified that the Department of Education Ombudsman office regularly tracks this information. Overall, the Department has much greater access to this information than we do and should be much better equipped to organize the data and make it available to the Committee and to the public.

Ms. Shaw indicated to me at the end of the hearing that she would like to hear from me about these problems. Since the hearings, I have spoken with Department staff about a couple of problems and have been impressed with their willingness to work with me and with other advocates to resolve problems. I appreciate their prompt response. I hope that the Department's increased responsiveness will extend to increased openness about the complaints and problems they receive about student loan collection.

Although the Department has greater access to information about collection complaints, I again commit that our program will work to collect and organize the information we receive and provide it to both the Committee and the Department

Thank you for the opportunity to provide this supplemental testimony.

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