

EXECUTIVE SESSION

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FRIDAY, AUGUST 5, 1977 ♦

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United States Senate,  
Committee on Finance,  
Washington, D.C.

The Committee met, pursuant to notice, at 10:10 a.m. in room 2221, Dirksen Senate Office Building, Hon. Russell B. Long (Chairman of the Committee) presiding.

Present: Senators Long, Nelson, Bentsen, Hathaway, Moynihan, Curtis, Dole, Roth, Packwood, Laxalt and Danforth.

The Chairman. I would suggest that we would come to order.

All right, Mr. Stern; where are we?

Mr. Stern. When you left off yesterday, there was one other minor tax bill that you had to deal with, H.R. 5675, related to tax on loan accounts.

Mr. McConaghy can explain that.

Mr. McConaghy. Presently, employers make deposits of withholding of income taxes and Social Security in financial institutions that are eligible depositories. Now, those depositories have free use of the money before they turn it over to the Treasury Department.

The bill would allow the Treasury Department to earn

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1 interest on the excess cash that is held in the deposits in  
2 the tax and loan accounts. It also extends the category of  
3 eligible depositories to savings and loan associations.

4 There is a conforming amendment that amends the Internal  
5 Revenue Code to allow taxpayers to make deposits in the  
6 eligible depositories, the new ones, savings and loans, and  
7 have those amounts that are deposited credited against the  
8 tax liabilities for Social Security and withholding taxes.  
9 It is really a conforming amendment to the basic bill, but  
10 makes savings and loans an eligible depository.

11 Senator Curtis. Have we ever had any hearings on this?

12 Mr. McConaghy. No.

13 Senator Curtis. Do the interested industries know about  
14 it?

15 Mr. McConaghy. Yes, they do.

16 Senator Curtis. Have there been any bills pending on it?

17 Mr. McConaghy. It was jointly referred to Banking and  
18 to Finance.

19 Senator Curtis. Have they had hearings?

20 Mr. McConaghy. Yes, on the basics of the bill, making  
21 savings and loans eligible depositories.

22 Senator Curtis. What do you propose in reference to the  
23 financial institutions paying interest that is different from  
24 how it is handled now?

25 Mr. McConaghy. There is really nothing -- how it is



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handled now?

Senator Curtis. Yes.

Mr. McConaghy. Right now, the depositories have free use of the money. The change would be that it would be optional, but under the system, if the depositories wanted to retain the money over night for a short period, they would have to pay interest, in effect, at the Federal rate, and the government, on the other hand, would pay for the services performed by the financial institutions.

Senator Curtis. That might be the thing to do, because I learned something a few years ago I did not know, that is about this investment overnight and 24 hours and what not, of sizable sums of money that financial institutions have.

Did the Banking Committee hold a hearing on this?

Mr. McConaghy. Yes.

Senator Curtis. So the banks and savings and loans know that it is coming?

Mr. McConaghy. Yes.

The Chairman. You say that is a conforming amendment to what we have already?

Mr. McConaghy. Yes.

The Chairman. If there is no objection, that will be agreed to.

Mr. Stern. Mr. Chairman, you have a small number of items still outstanding on H.R. 7200, the public assistance



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amendments.

The first of these is --

The Chairman. There is one thing that Senator Curtis wanted to talk about, and he was not here.

Mr. Stern. That is correct. There are a few things left in this pamphlet. The first thing relates to protective and vendor payments.

The Chairman. What page are you on?

Mr. Stern. Page 26 of the staff document, entitled Public Assistance and Social Security Amendments.

There are several different provisions here. They all relate to protective and vendor payments. One allows for a joint check to landlords and recipients to pay for rent and there is an increase from 10 to 20 percent in the percentage of recipients who can have protective payments or vendor payments on their behalf.

Finally, there is a retroactive provision in the case of states who exceeded the 10 percent. The staff does not have any suggestions for a change. We simply recommend approving the House bill.

Senator Hathaway. Can you give us a justification for raising it from 10 to 20 percent? I hate to see it go up because one, it puts the vendor in the position where he does not have to provide services and he can get direct payment, so that the tenant, for example, does not have as much



1 bargaining power with the landlord, if the landlord is going  
2 to get the payments directly from the government; and two, we  
3 want to make these recipients more responsible people and be  
4 able to manage their own funds. This goes in the other  
5 direction.

6 Mr. Stern. This does not actually allow a vendor payment  
7 to be made directly to the landlord. It is a joint check.

8 Senator Hathaway. I thought that was in addition -- I  
9 think that is in addition to the 20 percent, is it not?

10 Mr. Stern. All right, I am sorry.

11 I think the rationale was that New York State already was  
12 above the 10 percent.

13 Senator Moynihan. It is.

14 Senator Hathaway. That does not mean that it is justifiably  
15 above it. Sometimes they say everybody in public housing  
16 must make a vendor payment. I think that is unfair to the  
17 people in public housing.

18 Maybe there is a greater percentage of them who are not  
19 responsible people than there are other categories, but to  
20 blanket them out that way seems to me to be going in the wrong  
21 direction.

22 The Chairman. Congressman Rangel came up here and testi-  
23 fied -- I am sure there are two sides to that argument -- he  
24 came up here and testified that in order to help these people  
25 and to get decent housing for them, you need to be able to give



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the property owner some assurance that he was going to be paid, and in order,-- in other words, these poor people who were having difficulty getting housing because the landlord was having difficulty getting paid and did not want to do business with him. Therefore, if he was reasonably assured that he would be paid, he would be willing to rent perhaps at a more reasonable price than he would if he were not sure of being paid at all.

If he is in error about that, I would say that that would be a very hazardous political thing to do, because he represents an area where, if he is wrong about it, he could be made to pay a very severe price, such as political death.

Senator Moynihan?

Senator Moynihan. Mr. Chairman, nobody wants to do this, but the people who are directly involved, Congressman Rangel and Congressman Bingham, say it is now the only course that they can see to go forward, with no pressure in it, with having slowly come to the judgment that there is no alternative.

Mr. Stern. I would like to correct what I said before. This joint payment procedure is in addition to the 20 percent.

Senator Hathaway. In addition to it?

Mr. Stern. That is right.

Senator Hathaway. That exacerbates the situation. They are protected then, because if he does not want to endorse the check, the landlord has to clean up the apartment, or keep



1 the rats out, or whatever he is doing wrong. But in the  
2 other case, what recourse does the tenant have? Can he with-  
3 hold payment from the landlord, if you do not clean up the  
4 apartment, you do not get a check this month?

5 Probably they would not want to be in that position.  
6 That is the problem.

7 The Chairman. The tenant has the option of not endorsing  
8 the check.

9 Senator Hathaway. That is in addition -- that joint check  
10 business is in addition to the 20 percent. In other words, in  
11 20 percent of the cases, the government can send the check  
12 directly to the landlord only. In other cases, in their  
13 discretion, if they feel the person has an inability to manage  
14 their funds, then they make a joint check, right?

15 Mr. Stern. That is right.

16 Senator Moynihan. Voluntary.

17 The Chairman. Setting a limit on the number of persons  
18 that the state could make such a vendor payment would be  
19 increased to 20 percent.

20 Senator Hathaway. That is in addition.

21 The Chairman. It says in the cases in which the state  
22 agency would determine, in the form of joint checks; second,  
23 to limit the number of recipients that any states can make,  
24 such protective and vendor payment would be increased to  
25 20 percent. Is that 20 percent in addition to before? Is that



1 saying you could not do it except in 20 percent of the case-  
2 load?

3 Mr. Stern. The joint checks on utility services or  
4 living accommodations can be on top of the 20 percent limitation  
5 for all the protective and vendor payments.

6 The Chairman. But you are putting a 20 percent limita-  
7 tion then, not with regard to that 20 percent, though. Does  
8 that mean 20 percent of the clients, or 20 percent of the  
9 money that the clients get?

10 Mr. Stern. 20 percent of the other recipients. I guess  
11 that would make it one-sixth of the total, because the number  
12 on whose behalf protective or vendor payments will be made  
13 cannot be more than 20 percent of the other recipients, so  
14 it would be one-sixth of the total recipients.

15 Senator Hathaway. I would think, Mr. Chairman, if we  
16 want to go along with the 20 percent, we make the joint check  
17 provision applicable in that case as well, so that when they  
18 do determine they are going to make a vendor payment, it has  
19 to be a joint check. That gives the tenant some control.

20 The Chairman. As I understand it, you are talking about  
21 two types of situations. Let us see if we understand what  
22 we are talking about. I might be in error about this; I might  
23 be offbase.

24 If I understand what you are talking about, you have  
25 a lot of people who are on these rolls who just are not





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1 competent. In other words, with regard to people like that,  
2 someone should manage their money for them.

3 Mr. Stern. That is what the 20 percent is really for.  
4 I do not think you would want to mix the two groups.

5 The Chairman. There is no shame about it. Some people  
6 are just born that way. They are just not competent.

7 So, if the person is not mentally -- that is what you  
8 are usually talking about, a person who is not mentally compe-  
9 tent to handle their affairs, then in a case like that, you  
10 would make a payment to somebody who is competent. It can be  
11 a relative or use some responsible person who would know how  
12 to handle the money for them and help them take care of their  
13 needs.

14 That is what you are talking about, with regard to the  
15 vendor payments.

16 Then you have this other problem, that that should be  
17 increased up to 20 percent. I would assume that that may have  
18 to do with some of these cases where people are not looking  
19 after their children, on dope, something like that, and you  
20 have to make payments to some person to be sure that the  
21 little children get the food and the benefits you are trying  
22 to pay to them.

23 All right. Those are the people who are incompetent for  
24 whatever reason, alcoholism, drug abuse, or just mentally  
25 incompetent, something like that, all right. Then you look at




1 the second type situation. That is the case where people are  
2 mentally competent, all right, but they are just the kind where  
3 you have difficulty collecting money from. They are not,  
4 financially responsible, but mentally competent, not financially  
5 responsible.

6 I see some people who parade around every day, just like  
7 all the rest of us here, but if you want to collect money from  
8 them, you just have to chase them down and throw them on the  
9 ground and take it away from them. They just are not willing  
10 to pay.

11 I have done business with some people like that. I call  
12 them friends, but I would not lend them any money again. For  
13 this kind of people, the person who rents the property to them  
14 wants the check made out so they cannot cash it without his  
15 signature and vice versa. If you fix it that he cannot cash  
16 the check without the signature on it, you have a pretty good  
17 idea he will get his money. If you want to vote on the 20  
18 percent, we can vote on that. It is probably both of them are  
19 pretty well taken care of. The staff thinks that is a pretty  
20 good idea.

21 Does the Department go along with it?



22 Ms. Ataway. Senator, we have already testified that we  
23 would accept a raising of the limit from 10 to 20 percent, but  
24 we are concerned about the possibility that these vendor  
25 payments, or third-party checks be used in some sense

1 coercively. We would like to be sure that the recipients are  
2 protected against that as well.

3 The instance that Senator Hathaway brought up is a good  
4 example. As with many things, it is a two-way street. We  
5 will sometimes find irresponsible landlords or building owners  
6 who have been reluctant to keep their buildings in good shape.  
7 They put political pressure on the welfare office to see to  
8 it that the checks get made directly to them and cut out the  
9 welfare recipient altogether, particularly in public housing.

10 25 to 30 percent of the recipients in public housing are  
11 elderly or disabled. It works a special hardship on those  
12 people, many of whom are very responsible and pay their rent  
13 and so forth. We would like to make sure that the rights of  
14 the recipient are protected.

15 The Chairman. It seems to me if you have it where you  
16 say you are making the check out to the tenant as well as the  
17 landlord and they both have to endorse the check in order  
18 for it to be any good, it seems to me that that being the  
19 case, the tenant has the leverage he needs to make the land-  
20 lord repair the property.

21 Senator Hathaway. That is fine if you can do it across  
22 the board. The way it is here, in the first 20 percent, they  
23 do not have to, but they can pay their check directly.

24 The Chairman. Why do we not say --

25 Senator Hathaway. With vendor payments in general --

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1 The Chairman. Why do we not say, with the additional 10  
2 percent we are talking about, you make all the checks out  
3 jointly to the vendor and the recipient?

4 Senator Hathaway. That is satisfactory.

5 The Chairman. Is that all right?

6 Mr. Stern. The only thing is that I think increasing  
7 from 10 to 20 percent was for the first group that the Chairman  
8 talked about, which would include people who are incompetent,  
9 not financially incompetent, but for other reasons.

10 Senator Hathaway. Accepting the testimony of Charlie  
11 Rangel which is probably right, that may be true in the city  
12 of New York, but we do not have any testimony outside of the  
13 city of New York.

14 The Chairman. Why do we not go from 10 to 15 percent.  
15 Then with regard to an additional 5 percent, they cannot make  
16 vendor payments, but in those cases they can make it out  
17 jointly to the vendor and the beneficiary?

18 How about that?

19 Senator Hathaway. That is fine.

20 Mr. Stern. You do have this third category on the joint  
21 checks where there is not a question of competency, also.

22 Senator Hathaway. That runs up to 50 percent.

23 Mr. Stern. 50 percent of the payment rather than the  
24 number of people. There are basically four categories: the  
25 same three categories, 15 percent as under present law, another



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1 5 percent where there are joint checks, and then on top of  
2 that, the landlord.

3 The Chairman. Joint checks to the landlords. Without  
4 objection, agreed.

5 Mr. Stern. The next item relates to how you want to  
6 treat Puerto Rico, the Virgin Islands, and Guam.

7 The Chairman. Just let me say this about the Puerto Rican  
8 situation, and I would like for Senator Moynihan to hear this.

9 Ordinarily, I would be very much opposed to extending the  
10 SSI to Puerto Rico. I would be willing to give them some  
11 more money, but opposed to extending SSI.

12 But on the other hand, I think I would be willing to track  
13 the Administration's welfare recommendation with regard to  
14 Puerto Rico than what would be more generous than what they  
15 are talking about here, with the understanding that we are  
16 pursuing the Administration's welfare recommendations on Puerto  
17 Rico and see how it works.

18 As I say, that would be even more generous than extending  
19 the SSI. It gives them the cash out on Food Stamps and track  
20 what the basic recommendations are, and see how it works.

21 Then, we could see -- it might be great. If it does not  
22 work out too well, we can see that too. Now, you would have one  
23 great advantage in doing that. That would be, in Puerto Rico  
24 you do not have quite the same residency problem. It is an  
25 island, and people who come in who would be otherwise the kind



1 of people seeking the benefit of it, and tend to overload the  
2 program, would not be eligible because they are not American  
3 citizens. I am not seeking to decide that now. I think that  
4 should be considered, just saying, all right, the Administra-  
5 tion's recommendation is supposed to be down tomorrow. Let us  
6 just modify the plan with regard to Puerto Rico, which would  
7 mean they would have an even better proposition in terms of  
8 the money they would get than they have now.

9 If we can find somebody to cushion the cost of it, we  
10 could have some experience in seeing how it works.

11 Senator Moynihan. Mr. Chairman, I know that this is  
12 a difficult subject for everybody here, and let me first say  
13 that the most important fact is that the President of the  
14 United States tomorrow is going to propose one of the most  
15 important pieces of social legislation since the New Deal of  
16 Franklin D. Roosevelt.

17 It is a magnificent plan, Mr. Chairman, I have the  
18 essentials, I have gone over it, as most of us have here. It  
19 is a magnificent plan and it brings Puerto Rico a level of  
20 social benefit which is the highest and most widespread of  
21 any policy in the world.

22 If you will think of the two-dimensional element, how  
23 high are the payments, and how widely are they received in the  
24 population, if you think of those two elements, the two  
25 dimensions, Puerto Rico will be receiving more constructive



1 support than any other place in the world, and that is a  
2 great thing, a great thing for Puerto Rico, too.

3 And I recognize that the Administration has asked us not  
4 to move on this matter in this bill. The Administration has  
5 said, no, we do not want you to do this. We have this other  
6 major bill coming up. It is, and I recognize in that context  
7 there are not a majority of votes in this Committee to move  
8 ahead now.

9 At the same time, I think it is important that some of  
10 us make explicit our conviction -- I know Senator Dole has  
11 this conviction -- that the Puerto Ricans -- and Senator  
12 Matsunaga has this, I think we all have it. But it particularly  
13 concerns some of us here, that if Puerto Ricans are American  
14 citizens, they should have a full sharing of any entitlements  
15 that American citizens have.

16 Senator Dole put it very clearly, that they are entitled  
17 to any of these benefits when they are away from the state,  
18 as it were, but it is only at home that they do not get it.

19 We are going to be dealing with illegal aliens now who  
20 will be given status. We have the absurd situations where  
21 American citizens cannot get something that illegal aliens  
22 now.

23 So, Mr. Chairman, I am going to vote to go ahead today on  
24 this. I expect Senator Dole may wish to as well. I think the  
25 outcome will be uncertain, I recognize that. If we do not

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1 get this here, we will get it in the President's program, and  
2 it is another good reason to pass that program.

3 I hope that everyone who speaks on behalf of Puerto Rico  
4 today, including my distinguished and cherished friend  
5 opposite, will remember that he is speaking on behalf of  
6 supporting the President's program come Saturday.

7 The Chairman. My thought is that if we are going to do  
8 the SSI to Puerto Rico, we ought to take the other major  
9 portions of the President's recommendation and put those in  
10 effect today, too, in Puerto Rico.

11 The reason I say that, because we learn something from it.  
12 We have a chance to see how well it works, and I think they  
13 could concentrate-- I am sure they would concentrate -- a lot  
14 of their talent to make it work the way that they would like  
15 to make it work, and we would have a chance to observe exactly  
16 how well it does work.

17 It might be everything that the doctor ordered, or again,  
18 it may not. We can find out from experience. You would find  
19 some people in New York on their way back to Puerto Rico when  
20 they saw they had a higher level of benefits in Puerto Rico  
21 than they do now.

22 But to me, that would serve a purpose. Frankly, it would  
23 cost more to do it that way, but I would feel more comfortable  
24 doing it that way, because I would feel that we are going to  
25 learn something, we are going to have a chance to see how the



1 idea works.

2 That, I think, would have more to recommend it than to  
3 just extend the SSI down there. Just putting SSI down there  
4 by itself is not going to prove anything. If you take the  
5 cash out of Food Stamps and you have the same type of eligibil-  
6 ity requirements for work and for training and for benefits  
7 and the program calls for otherwise, the population, 2.3  
8 million -- if the program could be made to work, I think they  
9 could make it work there. If it could not be made to work,  
10 then at least you would see what your problems are.

11 That, to me, would have a lot more appeal than just put-  
12 ting the SSI in effect in Puerto Rico.

13 Senator Dole?

14 Senator Dole. Mr. Chairman, I am sorry I have been  
15 absent for the debate. We are still in conference after five  
16 days on the farm legislation.

17 I just wanted to indicate, as Senator Moynihan already  
18 has, my support. I am certain that every reason that you can  
19 think of has been discussed. I happened to be here the day  
20 we had the testimony and I was impressed with the witnesses.  
21 I do not think there is any quarrel. I am sure the Chairman  
22 wants to do this too, if it is at all possible.

23 Having had the opportunity to visit Puerto Rico a few  
24 times, having had an opportunity in the Food Stamp program to  
25 address some of the real problems in Puerto Rico and knowing,

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1 of course, that there have been some -- maybe not abuses is  
2 the correct word, but some concern about the Food Stamp program  
3 participation in Puerto Rico, and what might be imperfections  
4 in the program, but we are dealing with, as the Chairman  
5 notes, the aged, blind and disabled.

6 I remember somebody testifying at the time of need  
7 the Puerto Ricans, I think the testimony I heard, Puerto Rico  
8 rank 14th in number of men and women who have been in uniform  
9 in this nation when we needed help. We are talking about  
10 people who would not pay taxes in any event, the blind, aged  
11 and disabled, whether they live in New York, Kansas or Puerto  
12 Rico. That argument is not valid from that standpoint.

13 If we are going to wait for the President's program -- I  
14 do not say this because of my interests and your interests --  
15 we would not put in the Conference Report yesterday a sugar  
16 program. The President had another program that we thought  
17 that we could not wait for. There are great needs all over  
18 this country as far as producers are concerned.

19 As I just expressed my support, knowing of the concerns  
20 the Chairman has and knowing the validity, but I do not know  
21 what we would hurt by doing it now.

22 The Chairman. Let me just tell the Senator how I look  
23 at it.

24 If you are going to extend the SSI to Puerto Rico, that  
25 will take time for all these people who will be applying to

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1 come in. That is a big program in states with low income,  
2 so it will take time for all the people who have a right to  
3 apply and come in and get themselves made eligible.

4 Now, the President's recommendation -- I think everybody  
5 knows this. The President's recommendation would include a  
6 cash-out of Food Stamps, paying cash. It will provide certain  
7 welfare people who are now AFDC clients, who are not expected  
8 to work and those who are not expected to work would get a  
9 higher level of benefits than if they are expected to work.

10 Those who are expected to work, they would get benefits  
11 that would compare to what the Food Stamp cash out would amount  
12 to. I do not see any reason why, once you have that before  
13 you, why we could not simply provide that.

14 Puerto Rico would be entitled to benefits. It would  
15 just be a broader program from the Federal point of view. It  
16 would be a more generous program than Puerto Rico has today  
17 in more respects than just SSI. It would be a more generous  
18 family program than Puerto Rico has.

19 As I say, we have been talking about piloting something  
20 out, and here is a chance to see how it would work. I, for  
21 one, would like to see how things work before we just go  
22 all the way with it.

23 That is why, from my point of view, if you put SSI in  
24 Puerto Rico and the cash out of Food Stamps, I do not see  
25 anything wrong with that.



1 Senator Dole. I think that might meet objection in the  
2 Agriculture Committee. I think it is coming, as you suggested,  
3 it is going to be recommended. We have been debating that  
4 some in the conference. Certain areas want to cash out. It  
5 has not met with great favor in the conference.

6 Senator Bentsen. Mr. Chairman, if this program has the  
7 far-reaching impact that the Senator from New York is speaking  
8 of, I strongly favor pilot plan approaches to these things,  
9 and this may be the place where it should be done.

10 But I think it should be structured as close to what the  
11 Administration is proposing as we possibly can, so that it will  
12 be a true test, and if it works, fine. We have the proof of  
13 it.

14 If it does not work, we also have the proof of that. There  
15 is no ducking the issue, and we can decide whether we want to  
16 be supportive thereafter or not.

17 I would go along with the Chairman. If we really try to  
18 pattern this after the Administration's program, I have some  
19 deep concern about the Administration's program. I am waiting  
20 to be convinced -- I may be.

21 If it was a success in Puerto Rico that would be very  
22 clear evidence that we ought to be supportive of it to the  
23 entire nation or to the contrary.

24 The Chairman. We are not going to pass this bill today.  
25 This is the first time that this suggestion has been made.



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1 Therefore, I would hope that the Committee would not insist  
2 on voting on this this morning. I would hope that we would  
3 think about this, keep it in abeyance.

4 As I have indicated before, what the President is going  
5 to be proposing tomorrow is a very far-reaching, sweeping  
6 recommendation, and I just think that before we get into  
7 something that makes such a drastic change beyond what we  
8 have, we ought to have some experience on a broad enough basis  
9 that we would be in a position to judge its good points and  
10 its weak points, because you might want to make some changes  
11 before it goes fully into effect.

12 The program is not going to become effective immediately.  
13 I think even the Administration's recommendation will be some-  
14 thing that will gradually phase in over a period of years.  
15 I would think if you do what we are talking about here, what  
16 I have been suggesting, you would have a lot of experience, at  
17 least in one area, where you can look at it without all the  
18 problems of some other area overwhelming it.

19 If you want Louisiana and Mississippi, and you try a  
20 very liberal program, as the President's program will be  
21 compared to what they have in those states, and you have the  
22 prospect of a lot of people moving in to get the benefit of  
23 it and be entitled to it because of the Supreme Court's  
24 decisions on residency requirements, you would not have that.

25 If you did it in Puerto Rico, you might have some people



1 from New York going to Puerto Rico, but you would not have  
2 the thing of a lot of people who have never lived there at all  
3 moving in because they found it had a very attractive welfare  
4 program.

5 The people in the surrounding areas are not American  
6 citizens.

7 Let us go on to the next one.

8 Mr. Stern. The next item is on page 28 of the pamphlet.

9 As part of the Talmadge amendment that you approved  
10 earlier, there was a reference to error rate. We had not  
11 specified what they are.

12 On page 28, there is a table in the middle of the page.  
13 Senator Moynihan has suggested a somewhat different incentive,  
14 that the maximum incentive ought to be reached at 2 percent  
15 rather than 0 percent, so the suggestion is that the error  
16 rate -- what we are talking about is a permanent incentive for  
17 states to reduce their error rates.

18 If it is between 3.5 percent and 4.0 percent, you would  
19 give a 10 percent incentive; between 3.0 and 3.5 percent, you  
20 would give a 20 percent incentive, and so on down until it was  
21 2 percent or below. That is where you would give the 50 percent  
22 incentive.

23 The Chairman. What page is that on?

24 Mr. Stern. The table is on page 28. What we are suggesting  
25 is a modification of that table. When the matter was discussed.



1 earlier, no specific decision was made, but Senator Moynihan  
2 made the comment that a 2 percent error rate or below would  
3 be about as much as you could hope to achieve, and the  
4 maximum incentive should be there.

5 The Chairman. Would you explain that?

6 If the error rate is 3.0 to 5.0 percent?

7 Mr. Stern. You deem certain savings. In effect, you  
8 assume there would be a 4 percent error rate. How much Federal  
9 money would you have to spend if there were a 4 percent error  
10 rate?

11 In fact, there is a lower error rate than that, therefore  
12 you are saving money. And what you do then, you calculate  
13 a percentage of the Federal money that you deem to have been  
14 saved, and you let the state have that as an incentive for  
15 cutting their error rate below 4 percent.

16 The Chairman. I see.

17 Mr. Stern. What had originally been suggested was scaling  
18 down to 50 percent when your error rate is very close to 0  
19 percent, and the suggestion was made by Senator Moynihan --

20 The Chairman. Out of the money you would save the  
21 Federal government, you would retain that share?

22 Mr. Stern. That is correct.

23 The Chairman. That is a good idea.

24 Mr. Stern. It would go 10 percent for every half percent  
25 until you reached the 50 percent or below.



1 The Chairman. If there is no objection, then, we will  
2 agree to this.

3 Mr. Stern. The last item in H.R. 7200 was Senator  
4 Curtis' suggestion relating to access to Federal information.

5 Our recommendation would be, number one, that in the  
6 Committee Report, you highlight the fact that states do have  
7 the capacity now, as far as jurisdiction of state laws is  
8 concerned, to require, as a condition of eligibility, that  
9 people cooperate and consent to the release of whatever infor-  
10 mation is necessary for verifying what they tell the agency  
11 about their income.

12 In addition, we have two things which we would suggest.  
13 First, to give access to earnings information under the control  
14 of the Social Security Administration which was, I believe, the  
15 major item that was requested in the testimony.

16 Another thing which has come to our attention is an  
17 unemployment bill that you passed in the last Congress, you  
18 directed the unemployment officers when they requested for  
19 information for child support or AFDC purposes to give  
20 certain information where the person is receiving unemployment  
21 compensation, how much, the current home address, and whether  
22 the person has refused an offer of employment.

23 And we would suggest that you just add on to that earnings  
24 information that they would have, too.

25 Those would be the two major areas, through the Social





1 Security information and through the unemployment office.

2 Senator Curtis. Mr. Chairman, may I be heard?

3 The Chairman. The Senator from Nebraska.

4 Senator Curtis. What is suggested is to have the applicants  
5 sign a waiver. It is nothing new; the states have that  
6 authority to do it now. It is all right; it is fine, it is  
7 not enough; access to Social Security wage base, and so on.  
8 That is not current.

9 The employer paid the tax at the end of the quarter.  
10 Another quarter goes by, remitting it in time. It is digested,  
11 and when it is published, it is nine months old.

12 We are paying them sums of Federal money.

13 What I propose, and I think, what is needed, is to have  
14 the law state that notwithstanding any other law, states could  
15 have access to employment security records, public payrolls,  
16 private payrolls with the employers' consent and cooperation,  
17 birth and death records, state and local income records and  
18 school records.

19 The provision that they could just go to any one of those  
20 places without waiting nine months for some digest to be  
21 published and check on a dozen or one individual or how many  
22 they have got.

23 I am sure that it would be very effective. The issue  
24 is do our privacy statutes prevent this from being done? I  
25 think that you have to have a balance between the interests of



1 the government and the taxpayers and everybody else, and I  
2 would like to see the states, in reference to welfare applicants  
3 to have access to all these things.

4 They are public records. The state is not going to  
5 publish them, but we will give them a tool with which they  
6 can better administer welfare law, because every dollar we  
7 save that does not go to an unworthy applicant we are able to  
8 do a better job with the unfortunate people who, through no  
9 fault of their own, have no place to turn to for the necessi-  
10 ties of life except the welfare department.

11 That is the proposition. What is suggested is all right,  
12 but it is not as effective, particularly as far as the Social  
13 Security wage base data published. It is too old.

14 Senator Hathaway. What are the purposes of the school  
15 records?

16 Senator Curtis. There are a number of questions raised  
17 about the number of dependents claims.

18 Mr. Swoap. Senator Curtis and Senator Hathaway, basically  
19 the purpose of access to school records would be to determine,  
20 number one, if the number of children claimed is accurate.  
21 Number two, if they are enrolled in school.

22 Often, when a child gets older the amount of the benefit  
23 between the ages of 18 and 21 is related to whether or not  
24 they are, in fact, enrolled in school. The question is as  
25 to the continued eligibility of the child. At a younger age,

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1 it would simply be the existence of the children at home.

2 Senator Hathaway. You do not need a whole school record  
3 or anything. You can just call up the school and say, is so  
4 and so enrolled in this school.

5 Mr. Swoap. That is right. The amendment would be drafted  
6 to limit it to the data necessary to verify either eligibility  
7 or benefits.

8 Senator Hathaway. Like income tax, you are just going to  
9 ask for gross income? There is a lot of other information on  
10 an income tax return that we do not deem should be let out to  
11 the public.

12 Mr. Swoap: Yes.

13 In addition to gross income, there again would be the  
14 question of number of dependents claimed. In other words, if  
15 you have a stepfather family where the stepfather may have  
16 claimed the children in the family for purposes of an income  
17 tax deduction, and if he has, then of course that should show  
18 up in the welfare computation, the fact that he is supporting  
19 the children.

20 The Chairman. Senator Moynihan?

21 Senator Moynihan. Mr. Chairman, of course, our Subcom-  
22 mittee held hearings and the proposal was put before us that  
23 the Social Security information be made available to states  
24 and welfare agencies. It seemed to us, just those of us who  
25 were at the hearing, that this was a prudent idea and a



1 symmetrical idea. This bill that we are working on today will  
2 amend the Social Security Act.

3 The Social Security Act is a social insurance program  
4 which the people pay into and take out, and it is entirely  
5 symmetrical that one part of the system created should know  
6 what another part of the system does.

7 But, Mr. Chairman, I would be very reluctant to see us  
8 go forward with expanding access into other areas of informa-  
9 tion altogether having no relation to Social Security without  
10 careful consideration.

11 I want a month of hearings. I would like to hear what  
12 the constitutional lawyers think. I would like to hear what  
13 administrators think. I do not think we have heard the admin-  
14 istrators asking for this other information -- I do not say  
15 that there are not many who would use it.

16 Senator Curtis is trying to respond to their interests.  
17 This is a large decision to make on a narrow base of informa-  
18 tion, particularly with our concern with privacy in this  
19 country. We are just going in a direction which, it seems to  
20 me, opposite of what we do.

21 I think that the proposition that Social Security earnings  
22 information should be available to welfare departments, yes.  
23 It is entirely symmetrical and proper. I think the staff has  
24 reached that agreement, that judgment.

25 But I think that I would be loathe to see us go beyond

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1 anything, at this point. It may be that in a year's time we  
2 will know and be persuaded otherwise, but I am not now.

3 Senator Curtis. May I ask Mr. Galvin if he has any  
4 comment on this?

5 The Chairman. Let us go along with this for just a moment.  
6 We have, whether we like it or not -- I do not think anybody  
7 likes it -- we do have cases, and a lot of them, where people  
8 are in a position to help themselves and they are not doing it,  
9 or as far as we know, they are not doing it.

10 It always seems the case it is where the father is living  
11 right at home there with the mother, so we are paying a welfare  
12 check. He has a job and is well able to support that family,  
13 but that is not what they are telling us.

14 In New York there have been objections to people coming  
15 around to check and they have it down to a point now where  
16 you cannot even go by to see who is living there unless --  
17 they do not permit home visits at all, I think, in New York.  
18 Here in Washington you may go by and make a home visit, but you  
19 have to have an appointment, make an appointment in advance.

20 If that type of rip-off is going on you can be sure,  
21 if you have the appointment to go visit the family at 3:00  
22 o'clock on Tuesday afternoon, if they have a man living right  
23 there in the home who is supporting that family, he sure is not  
24 going to be home at the hour you arrived to talk to him.

25 It is not to their advantage for you to know that

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1 information.

2 The rule of evidence is that if you have information  
3 which -- this is the ordinary rule of evidence in civil cases --  
4 if you have information which is relevant to your position and  
5 you refuse, or decline to make it available, that you must  
6 assume that that information, that if those facts were known  
7 they would be adverse to your claim.

8 So you are talking here about someone who claims the  
9 benefit that is entitled to it. If he has the information that  
10 either proves that he is eligible, or proves that he is not  
11 eligible, he has no right to withhold that unless he wants it  
12 to be assumed that that would prove him not eligible, or tend  
13 to prove he is noneligible.

14 Much of what the Senator is talking about here is infor-  
15 mation that the state actually possesses, and to me it is  
16 sort of ridiculous. That part of it, to me, gets pretty much  
17 down to the fight that we have had with the Internal Revenue  
18 Service over the year where they did not want to tell us about  
19 the whereabouts of these parents or these fathers who should  
20 be supporting their children. We finally won that battle.  
21 It was a long, hard fight.

22 That is pretty ridiculous to me, for the Internal Revenue  
23 Service to want to take the attitude that they are not a part  
24 of this Federal government, just as the Social Security people  
25 are. And then later on we have a situation where here are the

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1 people in the same Department, all in the Department of Health,  
2 Education and Welfare; the Social Security people wanting to  
3 take the view that, under the right of privacy that they should  
4 not be giving us the Social Security number of a father.

5 When they knew his Social Security number and we needed  
6 that Social Security number, and we needed that number,  
7 so, the Internal Revenue Service, having defeated them, they  
8 knew where he was and the Social Security knew what the  
9 number was, and Social Security holding out for several months  
10 trying to contend that they should protect the man's right of  
11 privacy and not give us the Social Security number even though  
12 they well knew it.

13 There you have them right there in the same Department with  
14 the welfare people, trying to contend that the right of  
15 privacy gave these people the right to have all the benefits  
16 of this government, but without letting themselves be known  
17 when there was a duty that they owed to another citizen.

18 I do not see how you can contend that people do not have  
19 the right to know that one state agency does not have the  
20 right to know the information that the other state agency  
21 holds, if it is relevant. It seems to me that that is all you  
22 are seeking to get here.

23 Senator Curtis. I have changed my amendment from the time  
24 it was introduced. It was introduced as requiring; now, it  
25 authorizes the states to get this information.

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Mr. Stern. I would think that under state law a state can already have access to state information.

Senator Curtis. No, because of the Federal Privacy Act. Other states can deny this.

The Chairman. I would think that if some other state agency has it or some instrumentality of the state and that it is relevant to the claim that they ought to be required to give it.

Senator Packwood. Mr. Chairman?

The Chairman. Yes.

Senator Packwood. I have a generic fear of government information and information being bandied about. I just feel uncomfortable for some reason about this amendment today and I do not like to jump into it.

If I had to vote, I would vote no just because of my uneasiness about access.

The Chairman. We went through all of this.

Senator Moynihan?

Senator Moynihan. Staff has a statement which I think is relevant to what you said, and I think Senator Curtis would be interested to know. It says, with respect to information of this kind, to the extent that such information is generally protected by confidentiality requirements, states may, under existing law, require applicants for assistance to consent to the release of such information as is necessary for verification





1 purposes to the state welfare agency. They may require your  
2 cooperation, say please. I think it would be very useful if  
3 this Committee called this to the attention of the states and  
4 would say they can require this kind of cooperation as a  
5 condition of providing payment and the Federal government will  
6 cooperate by making Social Security information available.

7 Beyond that, I would share Senator Packwood's view.

8 I do not know where I am going in this thing.

9 Senator Curtis. I would like to have Dave respond.

10 Mr. Swoap. Senator Moynihan, the problem that remains  
11 however, apart from the approach that you just urged, is the  
12 fact that if the recipient does not disclose the existence of  
13 the employment in the first instance on his application, there  
14 is no way to determine it. What the Curtis amendment is  
15 seeking to do is provide an independent means of determining  
16 the existence of employment that the applicant or recipient may  
17 not reveal in his application, plus there would be no way to  
18 follow it up.

19 Senator Curtis. Could we hear from Mr. Galvin?

20 Mr. Galvin. What Mr. Swoap has said is very applicable to  
21 this situation we discussed yesterday, but did not make a final  
22 agreement on, although I thought at the time there was about  
23 certain income records. At the present time, 24 states have  
24 access to employment security records. About 20 states have  
25 access to drivers permit records. At least 10 states have



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1 access -- I am talking about the child support and the AFDC  
2 agencies only -- have access to the state and local adminis-  
3 tration records on the taxes, and school records, roughly 30  
4 or over 30 have access to those records, so it is not a new  
5 concept to allow access. It has been allowed for a number of  
6 years within the states.

7 However, when the Privacy Act was adopted, certain states  
8 adopted a privacy act that was basically similar but even more  
9 stringent. In those states, there is no possibility of access  
10 without having some overriding authorization. In relation to  
11 the Social Security records and wages, there has never been  
12 access to that since Social Security has never been allowed.  
13 You are dealing with basically any worker in the country on  
14 that.

15 With the problems that are in AFDC and the number of  
16 fathers and parents who had to be located in child support,  
17 you have over a half a billion dollars in errors, and the last  
18 survey showed about \$850 million in errors. Most of those  
19 errors are in earning records. Somebody is working in the  
20 family who is on AFDC and they are not eligible.

21 The second greatest error is the father is living in the  
22 home and is employed.

23 The states are trying to clean up. You want them to clean  
24 up, but it is going to be extremely difficult to clean up  
25 unless you give them some implement that they can do it with.

1 I am not talking about total access at all. I am talking  
2 about specific items that could be secured. This is what we  
3 did when we amended the Social Security provision. We made it  
4 that you could release certain types of information, but  
5 only certain information, and that is the way any bill of this  
6 nature should be drafted.

7 The Chairman. It seems to me that you are either going  
8 to have to check these things out, or else you are going to  
9 have to have a different type of program. It was my privilege  
10 to meet with the people who represent the eastern part of the  
11 United States, the eastern half of America, including Louisiana,  
12 who work in the child support area just over this last week-  
13 end; I attended their convention.

14 During the course of meeting with these people, what they  
15 told me, it was informal but in the best judgment of these  
16 people working in this area that on this AFDC caseload, their  
17 impression is somewhere between 50 and 75 percent of these  
18 people on the rolls have available to them a father who could  
19 be making a contribution if he is not.

20 In some areas, they are getting precious little support  
21 from the governor and from the state legislature and others.  
22 In other areas, they are getting a lot of support.

23 These people would do the job if they were given the  
24 support and it was made clear that they were supposed to do it.  
25 If we are going to let people just go up there and put themselves



1 on the welfare rolls and they are not eligible at all, then  
2 it is going to be more and a more of a prevalent thing. We  
3 might just as well go on ahead and modify the program like  
4 George McGovern wanted to do, everyone gets \$1,000. We start  
5 from there.

6 Then, of course, the cost of that -- at least some of us  
7 would be getting our own money back -- the cost of that would  
8 be \$225 billion, which is a lot more than we are spending  
9 right now. At least it has something to say for it, just as  
10 George McGovern had something to say for it: everybody gets  
11 something and they are all being treated alike.

12 But the alternative is to say, well, where there is a high  
13 degree of error, we certainly ought to be asking these people  
14 to go check and I do not think you are going very far beyond  
15 what you have.

16 If I were operating one of these programs in a state, I  
17 would require that every applicant sign a form when he applies,  
18 when he comes, for the information, providing all employers  
19 and state agencies make available this information if they  
20 have it. That is what Senator Moynihan read to us.

21 If you had that, I would think you would have no problem  
22 getting all of this information. If you did not have it in  
23 these various states, I would think you would have little  
24 choice but to go ahead, perhaps seek what you have here, or  
25 call all your clients and tell them if you want to be continued

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1 on the program, you have to sign it.

2 Mr. Stern. Mr. Chairman, the reason we would suggest that  
3 you not write that in the law, the states do have that  
4 authority now. You may cloud up the statutory authority for  
5 them to do it if you put an amendment which who knows what or  
6 what might not happen to the bill.

7 Senator Curtis. Here is what I would like to point out.  
8 Suppose we have the applicant sign the form and the custodian  
9 of the school records. says his consent does not protect me.

10 What we are saying here, notwithstanding any other law,  
11 in other words, we mean the Privacy Act. So to have the  
12 applicant sign the consent does not mean that all the schools,  
13 employment security records, public payrolls, birth and death  
14 records and income tax records would be released. They would  
15 say, I would know he has no objection to it, but I have to  
16 live under the Privacy Act.

17 The Privacy Act is a statute. This would be a subsequent  
18 statute, notwithstanding any other law, you could have access.  
19 That is why we need it.

20 Mr. Stern. The two major areas that the Federal Privacy  
21 Act, I believe, would prevent states from having access to,  
22 because they are Federal programs, one is the Social Security  
23 Administration records; one is the employment security records  
24 we were talking about before.

25 If you do include those two, I think you know exactly what

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1 you are allowing access to and note in the Committee Report  
 2 that states do have the authority to ask people to waive  
 3 confidentiality requirements as far as they are personally  
 4 concerned. I do not think that there is anything in the Pri-  
 5 vacy Act that prevents the states from having access to state  
 6 records.

7 Senator Roth. Is there any way that we can establish  
 8 whether that is correct or not?

9 Senator Curtis. The state agencies are covered by the  
 10 Privacy Act, are they not? We have a Federal Privacy Act;  
 11 many of the states have privacy acts. We are saying notwith-  
 12 standing, you can have access for the purpose of checking on  
 13 welfare cases.

14 Let us remove from the theoretical debate and say here  
 15 is a person who is generally poor, needs help and worthy, has  
 16 told the truth, how is this going to hurt him?

17 Now it seems to be considered around this table that there  
 18 are some abuses and loopholes and leaks and unworthy people  
 19 on welfare rolls. This would give the administrators a weapon  
 20 to deal with those people. It should be confined to relevant  
 21 information for the purpose of determining the eligibility,  
 22 and other forms of income.

23 As was said awhile ago, the mere consent of the  
 24 applicant does not inform the administrators where to look.

25 Senator Hathaway. You are leaving it up to the Secretary

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1 as to what this relevant information is going to be. I think  
2 it is a bad idea -- not that I do not trust the Secretary, but  
3 this is so important an area where you are going to invade the  
4 privacy of the individual, you are going to try to override  
5 all poverty law.

6 I do not think anyone knows what they all are. We have  
7 alcoholism and drug treatment. I do not think any of us are  
8 familiar with all of this.

9 If you do that in one fell swope and give it to the  
10 Secretary to determine what parts of the information can be  
11 revealed, it does not seem to me to be the right thing to do.  
12 You are invading a person's privacy.

13 If we are going to do that, we ought to spell out in  
14 considerable detail in the statute itself exactly what we are  
15 going to allow to be released.

16 I agree with Senator Moynihan and Senator Packwood;  
17 certainly we could wait until we had hearings on this very  
18 important matter before we proceeded with it.

19 Senator Curtis. Mr. Swoap or Mr. Galvin?

20 Mr. Swoap. Senator Hathaway, I think it would be possible  
21 in the statute itself to include language, as we have in the  
22 child support section, relative to the parent locator service  
23 and the employment security language limiting the kind of  
24 data included in the records to the data which was essential  
25 to determine eligibility for benefits.



1 You might even get more fine than that. It would certainly  
 2 be possible in the statute to spell out as you have done  
 3 previously the kinds of data, the kinds of discrete data that  
 4 you were seeking to access.

5 The Chairman. Here is the kind of thing, it seems to  
 6 me that really the amendment calls for, I would think that  
 7 all states would find that it is to their advantage, if they  
 8 find it necessary to ask any applicant for welfare assistance  
 9 authorize a disclosure of any information that has to do with  
 10 him held by any state or local government, or even by the  
 11 employer. If you want to know whether that person's name  
 12 is listed among these employees, or that child is in that  
 13 school or one of the children are in that school, and you  
 14 go up there -- I assume you go there trying to find this  
 15 information, just doing your duty as an employee of the govern-  
 16 ment and say we have this request from this individual and  
 17 we would like to know if you have any information about this  
 18 person.

19 Someone sees it and says, well, we have this Privacy Act  
 20 to contend with. I do not know whether that protects me or  
 21 not. As far as I know, we do not have any information on that.

22 What you want is the right to say, well, could I take a  
 23 look at that list? I would like to see the enrollment list  
 24 and see if I see one of the names that I am looking for on that  
 25 enrollment list. If you are entitled to have the information,

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1 I do not know why a person should not be entitled to take a  
 2 look at that and see if it is there. He is not seeking to  
 3 invade the privacy of any person and find out the information  
 4 he is entitled to and find whether that name is on that list.  
 5 In the last analysis, he is entitled to take a look at that  
 6 list and see if it is there, if you are sending him out to get  
 7 the information.

8 Mr. Stern. The basic difference is whether you are looking  
 9 for specific information on one individual or whether you are  
 10 fishing for information on the basis of an entire list of  
 11 employees or children in a school and so on. That was our  
 12 apprehension. That is giving access to a lot of information for  
 13 the sake of finding out about one particular person as opposed  
 14 to going to the school with a particular case in mind and  
 15 asking how many children are enrolled of that particular  
 16 mother.

17 You have to have a balance between a general bias, not  
 18 making that kind of information generally available, or running  
 19 a program.

20 The place where we draw the line in our suggestion is  
 21 in general you ought to have a specific individual in mind that  
 22 you are asking questions about, but besides that, you would  
 23 have access to Social Security information and employment  
 24 security information.

25 The Chairman. Here is where I find myself at issue with

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1 you. Suppose you are looking for someone. The last name  
2 is "Glunk", let us say. You are looking for someone to see  
3 if this person is registered there.

4 If you can take a look at that roll and see if that person's  
5 name is on there, it might be the person's name is not on there.  
6 It may not be Jane Glunk but a Janice Glunk; not a Bill Glunk,  
7 but Buddy Glunk; not as John Williams, but as T. John Williams.

8 When you are looking for specific information -- and I  
9 think it might be in this particular place -- I do not know  
10 why you should be barred when you are talking about one state  
11 agency doing business with another state agency, why you  
12 should be barred from looking at the roll.

13 Mr. Swoap. A very similar analogy exists with drivers  
14 licenses, because if another address shows up on the record  
15 of the applicant or the recipient, that is at least an indica-  
16 tion that they may be maintaining another address, not  
17 conclusive, but an indication, a possibility, that the worker  
18 should proceed to check it out.

19 The Chairman. When I was in the Navy, the standard way  
20 about proving a desertion case was to take the muster roll of  
21 a base. A person is supposed to be somewhere. You show that  
22 he left on a certain date and you look at the muster roll 45  
23 days later. If he is gone for more than 45 days, he is  
24 presumed to have deserted.

25 If you take the muster roll of the base and his name is



1 not on the muster roll, if, you follow the logic, you have  
2 invaded the privacy of 15,000 other people at the base because  
3 you have looked at that muster roll. But the best evidence  
4 of whether the man was on the base or not, and you take the  
5 muster and everybody answers the name and he does not answer  
6 to his name, to deny information of that sort to the person  
7 who has the responsibility of just trying to protect the  
8 public -- that is all that the poor soul is trying to do..  
9 you can just send your money down a rat hole and send them out  
10 to try to protect the public and handcuff him and blind them  
11 before he goes out there, you know he will not find anything.

12 Senator Packwood. Mr. Chairman, I have got to go to an  
13 11:30 meeting. What you just said, and what Senator Curtis  
14 said, compels me the other way. The muster roll is the  
15 military; we do abridge people's rights in the military after  
16 we have gotten them into the military.

17 When Carl said, if a person is perfectly honest, a decent  
18 working person, they should not have any reason to hide their  
19 records reminds me of the argument that law-abiding citizens  
20 should not worry about self-incrimination. All we are trying  
21 to do is help the public prosecutor to gather this informa-  
22 tion.

23 The idea frightens me.

24 I am going to go to the meeting. If you are going to  
25 vote on this, I want to come back. I have Senator Danforth's



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1 proxy, who is opposed to going ahead on this. I will come  
2 back to vote.

3 The Chairman. Fine.

4 Senator Curtis. I have a matter of Mr. Hayakawa; we can  
5 move ahead on this. It involves processed foods and vegetables.

6 The European Economic Community issued regulations that  
7 will restrict certain of our agricultural exports. The U.S.  
8 Trade Negotiators objected to the new European regulations of  
9 March, 1976.

10 Consultations failed and the U.S. filed a formal complaint  
11 under Article XXIII of GATT.

12 All I am asking for is not an imposition of a quota or  
13 tariff or anything else, but a sense of the Senate resolution,  
14 because the other side violated. We protested, we filed a  
15 formal report and there it stands.

16 The resolution states that December 2nd, the President should  
17 express to the European Economic Community the concern regard-  
18 ing these regulations. He should also seek to accelerate  
19 consideration of the U.S. complaint.

20 Three, if the regulations are not withdrawn, we intend  
21 to exercise our rights under GATT to take action.

22 Four, the President should seek agreement that similar  
23 restrictions will not be imposed in the future.

24 The Chairman. What can you tell us about that, Mr. Rowney?

25 Mr. Rowney. Senator Curtis has summarized the case. The



1 French have had quantitative restrictions on some agricultural  
2 products for some years, specifically dried prunes. They are  
3 changing this into an overall, folding this into a Community-  
4 wide program of import licenses on a series of ten agricultural  
5 products.

6 This sense of the Senate resolution would express the  
7 sense that the President should take actions to have these  
8 restrictions removed as he has been doing in the past.

9 The Administration has notified us that they do not object  
10 to the resolution as it is now drafted.

11 The Chairman. What?

12 Mr. Rowny. The Administration does not object to the  
13 resolution.

14 The Chairman. All in favor, say aye.

15 (A chorus of ayes.)

16 Senator Curtis. I might say the resolution yesterday,  
17 it had walnuts in, but not in the action we took. I am  
18 withdrawing walnuts in a letter to Ambassador Strauss.

19 Senator Bentsen. Mr. Chairman, I would like to now --

20 Senator Nelson. Are you going to ERISA?

21 Senator Bentsen. Yes.

22 Senator Nelson. Would you mind if I raised another  
23 question that maybe we could settle in one minute?

24 Senator Bentsen. Sure.

25 Senator Nelson. Yesterday on the telephone tax question,



1 the state does not levy a tax on the Federal telephones, I,  
2 would like to offer as a substitute to the bill we had before  
3 what the Treasury approved by letter two years ago, July  
4 1974. It has three more words in it, otherwise, it is  
5 identical.

6 It says, "the amount on which the tax imposed by Section  
7 4251 shall not accrue, if separately stated, any tax on the  
8 amount paid for such service imposed by states or a political  
9 subdivision or the District of Columbia."

10 I have a letter here from the Treasury written in '74  
11 saying that they have no objection to this bill. Mr. Chabot  
12 is here and then add, also the effective date.

13 The Chairman. If the Treasury is for it, if you have  
14 Treasury's support for that position -- do you think that is  
15 all right?

16 Mr. Chabot. Yes, sir, it deals with the two points that  
17 I mentioned yesterday.

18 The Chairman. All in favor, say aye.

19 (A chorus of ayes.)

20 The Chairman. Opposed, no.

21 (No response)

22 The Chairman. The ayes have it.

23 Mr. Stern. Mr. Chairman, we recommend that as an amend-  
24 ment to H.R. 3373, one of the bills we ordered reported  
25 yesterday.



1 The Chairman. Without objection, agreed.

2 Senator Bentsen?

3 Senator Bentsen. Mr. Chairman, I would like to bring up  
4 S. 901 which Senator Nelson is a cosponsor, and Senators  
5 Hathaway and Gravel, Matsunaga and Curtis, and we have taken  
6 a good part of the Paperwork Commission's work on ERISA as  
7 done by Senator Nelson and Senator McIntyre and attached it  
8 to this piece of legislation in addition to our own hearings,  
9 that the information we have shows that over 30 percent of  
10 the pension plans for small business have gone out of existence  
11 since the creation of ERISA and the actual fact is probably  
12 substantially more than that.

13 Plans have gone out of existence, but Treasury has not  
14 heard about it yet.

15 We have asked for the Administration -- and had asked the  
16 previous Administration, to provide us with their proposals  
17 in a way of simplification. We have not as yet received  
18 those in the way of firm proposals. There is still some  
19 argument going on over turf, and the question concerns us  
20 very much on duplicate jurisdiction.

21 We had some testimony before our Committee that to comply  
22 with ERISA for a small pension plan would cost more than the  
23 contribution per employee, so it made no sense at all to con-  
24 tinue, and with a small business pension plan, that means that  
25 thousands of employees will not have the security of a pension

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1 plan on their retirement.

2 What we are trying to do is save what is left and try  
3 to cut out some of the red tape and over-regulation that we  
4 have seen.

5 S. 901 provides a very careful allocation of pension  
6 jurisdiction between the Labor Department and the Treasury  
7 in line with the original Senate version of ERISA, which passed  
8 the Senate in 1973 by a vote of 93 to 0. Under 901, the  
9 Internal Revenue Service will be given exclusive jurisdiction  
10 over the areas of vesting, funding and participation.

11 Incidentally, I think that this should also be amended  
12 to take care of ESOP and see that that comes under the IRS'  
13 jurisdiction. But the Labor Department would be given exclu-  
14 sive jurisdiction over the areas of fiduciary responsibility  
15 and prohibited transactions.

16 The Pension Benefit Guarantee Corporation, which is  
17 within the Labor Department, would continue to implement the  
18 permanent insurance program today. Most of the vesting,  
19 funding and participation requirements under ERISA are already  
20 administered by the IRS and thus, the IRS is clearly the most  
21 appropriate agency to have exclusive jurisdiction over these  
22 particular standards.

23 Similarly, because the Labor Department has been the  
24 primary enforcement agency for prohibited transactions and  
25 fiduciary responsibility under ERISA, the Labor Department may





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have exclusive jurisdiction over that portion of the law.

One of the other things, Mr. Chairman, that we call for is a single annual report. The Secretary of the Treasury and the Secretary of Labor would be directed to formulate to the maximum extent feasible a single annual report with a single filing date, which should be filed every year with the IRS by pension plan.

My understanding is that the Departments have now been moving towards that. I think our hearings on this legislation has helped prod them in that direction, and that is a step in the right direction. I think we need the additional prodding of this legislation passing this Committee to see that they finally did divide up jurisdiction and that we take some of the load of reporting off the small businessman so that these small pension plans would survive, those which are still left.

There are different types of forms, but we provided for different types of pension plans. However, pension plans would generally be required to file only one report.

We would remove the laundry list of reporting requirements in ERISA. We have a six-page detailed list of reporting requirements, some of them not at all necessary, for a variety of plans. The way we take care of that, we give the Secretaries of Treasury and Labor the discretion to require only such information as is needed to protect the rights of pension plan participants and beneficiaries.



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It was recommended by many pension experts, Former Commissioner Alexander, in testifying before us, The summary plan description. We followed the procedures recommended by the Commission on Federal Paperwork to eliminate the requirement that a five-year summary plan description be filed with the Department of Labor.

The Federal Paperwork Commission said that they would have to submit a plan every five years. It requires the administrator of the plan to file with the Secretary of Labor a copy of the summary plan description at the same time to participants and beneficiaries.

They now have to receive a copy of the complete plan description and any amendments thereto. They have to do that anyway, so it is totally duplicating the effort to file the copies of the five-year summary plan descriptions to the agencies.

DOL personnel told us they did not use such filings. The cost of storage could be avoided. That would save them storage costs of more than \$1 million. It would bring about a savings to business of approximately \$1.8 million in 1981, and \$180,000 thereafter.

These are the principal provisions, Mr. Chairman, of this piece of legislation, which has had extensive hearings and a substantial number of witnesses testifying to it.

The Chairman. That sounds good to me. I would like to

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ask about the part --

Senator Curtis. Which one is this?

Senator Bentsen. 901.

The Chairman. I would like to ask, in the early part of your statement, you mentioned the ESOP plans. Would you tell us the extent to which the ESOP situation will be changed?

Mr. Lieber. At present, we have a system where the Department of Labor and the Internal Revenue Service write regulations under special ESOP provisions and the self-dealing rules in prohibitive transactions. Under the approach the Senator is suggesting those regulations and the special provisions will be written only by the Treasury.

Senator Curtis. Is that not a good idea?

Mr. Lieber. I do not see any reason not to.

Senator Curtis. I am for it.

The Chairman. That is all that you have in here as far as ESOP is concerned?

Mr. Lieber. Yes.

I would add, the regulations that we had so much trouble with last year were those self-dealing regulations which were issued as proposed regs. We had extensive commentary on them and the statements of managers and the agencies, I understand, are working on revising those regs. I expect them up very soon.

The Chairman. The self-dealing regulations would be



1 confined to the Treasury?

2 Mr. Lieber. Under this approach.

3 The Chairman. All in favor of the Bentsen bill say aye?

4 (A chorus of ayes.)

5 The Chairman. Opposed, no.

6 (No response)

7 The Chairman. The ayes have it.

8 Senator Bentsen. Mr. Chairman, I have another one. It  
9 would be somewhat more controversial, I think, and that is  
10 S. 285. That is one on which we have held hearings this year  
11 and we had hearings the year before.

12 The Chairman. The one dealing with the Morgan Guaranty?

13 Senator Bentsen. Yes.

14 The Chairman. May I say this about that matter?

15 I believe Senator Moynihan is going to have a difference  
16 of opinion with you about that, is that correct?

17 Senator Moynihan. That is predictable, and that is  
18 correct.

19 The Chairman. Here is what I am thinking about. The  
20 Morgan people came to me and they told me their point of view  
21 about the Bentsen bill, which is fine, which was the Bentsen  
22 bill was not a very good bill and should stay in Committee.  
23 Then Senator Bentsen told me about the bill and it sounded  
24 entirely different when Senator Bentsen told me.

25 Senator Curtis. Which one did you talk to last?

1 The Chairman. I am going to be like one of these  
2 politicians who I have criticized from time to time: I will  
3 tend to agree with the last one I talked to.

4 I would like this matter debated here in this Committee  
5 when we have pretty full attendance. I do not see any point  
6 in going back and forth over the same ground.

7 I would like to have, in other words, a lot more Senators  
8 here than we have here now. I would like for them to hear both  
9 sides of it and make up their minds.

10 If we do it now, then we are going to have to reopen the  
11 issue and debate it all over again, if it is a divided vote,  
12 as I would suspect it would be.

13 I would like to suggest that we postpone this one and  
14 discuss it when we have pretty full attendance, if that is  
15 all right.

16 Senator Bentsen. Let me say, Mr. Chairman, that Morgan  
17 Guaranty, which is a very powerful and very influential bank,  
18 has done an extensive job of lobbying --

19 The Chairman. They have a right.

20 Senator Bentsen. I understand that. I am not arguing  
21 that point at all.

22 They have done an extensive job of lobbying and the  
23 members of this Committee, because of their many conflicting  
24 assignments, have not been able to attend all of the hearings  
25 that we have held on this piece of legislation. So, as you

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1 . stated, some of them have heard the one point of view and  
2 I would like very much to have a reasonably full attendance  
3 at the time that this is discussed so that they can hear the  
4 other point of view.

5 I would be very pleased to agree with you, with the under-  
6 standing, I am sure, from you that we will have an early  
7 opportunity to accomplish this.

8 The Chairman. Yes.


9 Senator Roth. Mr. Chairman, as one who has no position,  
10 either, on the matter, I have not attended the hearings, are  
11 there pretty adequate hearings on both sides of this question?  
12 Is there something we should read.

13 Senator Bentsen. Oh, yes. Morgan has testified and they  
14 testified more than once.

15 Senator Roth. How about the other side?

16 Senator Bentsen. I think we have developed a very good  
17 case. I would like for you to study the hearings and  
18 reports and I think that that would be very helpful to all  
19 members of this Committee, if they would do that.

20 I would be very delighted to speak to my friend from  
21 New York who has not heard, perhaps, my point of view.



22 Senator Moynihan. Mr. Chairman, may I thank the Chairman  
23 for his thought, and Senator Bentsen and Senator Roth for their  
24 sharing. I agree with it completely. It is a large issue of  
25 public policy, subtle ones as well as plain ones. They should

1 be debated and heard by the whole committee.

2 May I make the one point, Mr. Chairman? This is a matter  
3 that involved a whole series of financial institutions and  
4 the interest of a great many corporations, and not just one  
5 bank, not just one bank.

6 Senator Bentsen. I would agree with that. I am just  
7 referring to the fact that the extensive lobbying has been  
8 primarily done by one bank, but it does apply to a number of  
9 financial institutions.

10 The Chairman. My impression is that the best lobbyists  
11 of them all are the Senators themselves. Of course, Senator  
12 Bentsen has been doing a little lobbying because he thinks he  
13 is right about this matter. I would suggest, from my point of  
14 view, have been pretty well lobbied by both sides.

15 I sided with Senator Bentsen, because he thought he was  
16 right about this matter, and then the other side thinks they  
17 are right. I am sure it would be a good, fair debate. We  
18 ought to have a full attendance when we do it, otherwise, I  
19 think we will have to go back through the whole thing all over  
20 again.

21 Senator Nelson. Let me ask a question. Are each of  
22 these pension bills -- you have two and I have one -- are they  
23 all ultimately referred to Labor also, is that correct? Each  
24 one of them?

25 Senator Bentsen. We have a joint jurisdiction with Labor

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1 certainly on the simplification one. I do not know what  
2 will be the ultimate parliamentary disposition.

3 Senator Nelson. I raise this one because I have 1745  
4 which is on the agenda, too. I was going to say, I am willing  
5 to address it today although, as I say, I would be perfectly  
6 prepared, if you are going to schedule Senator Bentsen's bill  
7 at a subsequent date to schedule 1745 on the same day.

8 The Chairman. Fine.

9 Mr. Stern. You have reported out S. 901. You favorably  
10 reported that.

11 Senator Bentsen. Oh, yes.

12 The Chairman. Why do we not report out the Bentsen bill  
13 as a separate number -- let's report it out as a separate  
14 number and send it over to the Labor Committee so that they  
15 can have the bill and make their suggestions.

16 Senator Bentsen. That is fine.

17 The Chairman. Senator Laxalt?

18 Senator Laxalt. Mr. Chairman and members of the Committee,  
19 I would like, for a few moments, to discuss S. 143, Section 51,  
20 that relates to the confidentiality of medical records.

21 At the present time we have in the proposed bill the Ways  
22 and Means Committee version of the House bill.

23 The Chairman. All of those who want to leave the room,  
24 please leave the room in a hurry.

25 All right, let us hear about this matter.





1 Senator Laxalt. May I proceed??

2 The Chairman. Go ahead.

3 Senator Laxalt. The Ways and Means bill or version would  
4 prohibit the PSRO's or employees or agents of the Federal  
5 government from inspecting individually identifiable medical  
6 records unless the patient consents in writing. But if the  
7 medical service is paid by Medicare and Medicaid, then the  
8 PSRO's would not need the patient's consent.

9 The staff is recommending here that we adopt the more  
10 liberal Commerce Committee provision, which protects the PSRO  
11 records from governmental inspection, but places no further  
12 restrictions on the PSRO's themselves.

13 Basically what we are talking about, if I understand the  
14 recommendation, the PSRO, as an agent of the government, would  
15 have the right to inspect private medical records without  
16 permission of the private person.

17 On the House side -- I am not fully into this. I do not  
18 propose for a moment to be an expert in the field, but I think  
19 when we get to the point where, as a matter of policy here,  
20 we are going to permit any government agency to inspect the  
21 private medical record without the written authorization of  
22 that person, we are treading on some very dangerous water.

23 Apparently, on the House side it was indicated, if we  
24 adopt this version and restrict the PSRO's in this fashion,  
25 and not permit this type of inspection, that we would seriously



1 impede the conduct of various research programs. I do not  
2 know if that is the case or not.

3 I do know that the House version on Ways and Means only  
4 relates to the identifiable documents, which means that those  
5 particular documents with the names stricken, would be avail-  
6 able.

7 I do know that there are plenty of records available for  
8 research purposes of public patients, and I do know in addition  
9 that there is nothing to preclude in a given case, as in the  
10 practice of institutions like Mayo, to ask a given patient  
11 to sign a consent, so that brings up more records.

12 Senator Curtis. Would you yield for a question?

13 Senator Laxalt. Surely.

14 Senator Curtis. It is the general practice -- in fact,  
15 I think it is the universal practice -- for insurance companies  
16 on their claims to have the patient sign a consent to examine  
17 the records. Is it your intention that where the patient does  
18 sign the consent that that would include the right to have  
19 those records inspected by PSRO's?

20 Senator Laxalt. If that is the nature of the consent.  
21 I gather that there are a lot of policies and consent forms  
22 that would permit that kind of inspection, but would open up  
23 a whole additional area.

24 Senator Curtis. I will put my question another way,  
25 because this has caused concern and opposition to your proposal.



1 Is there anything in your proposal that would prevent  
2 insurance companies from obtaining a waiver of their insured  
3 and have it include the right to turn over to the PSRO?

4 Senator Laxalt. None whatsoever.

5 Mr. Constantine. We are not so sure of that. If you  
6 are talking about the Crane amendment --

7 Senator Laxalt. Yes.

8 Mr. Constantine. The Crane amendment has a rather  
9 elaborate specification of what must be required. It specifies  
10 what the patient must consent to specifically in each case,  
11 and only for a specific purpose.

12 If I might add, after Ways and Means voted on that, Senator,  
13 Interstate and Foreign Commerce, the Subcommittee on Health of  
14 Mr. Rogers, held a hearing on the matter and received very  
15 strong opposition to the approach of the Ways and Means approach  
16 from the Department of Defense, the NIH, Mayo Clinic, the  
17 Association of American Medical Colleges.

18 Basically we do have copies of the letter that Congress-  
19 man Rogers sent to the members of the Committee summarizing the  
20 problems which would be created, both in terms of impairing  
21 cancer research, significant impairment of cancer research,  
22 ability to deal with epidemics, venereal disease, to go ahead --  
23 very serious problems.

24 Dr. Gordon of NIH, who testified, is here today. He  
25 can explain the problems better than we can.



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Senator Laxalt. My position is basically this. I am not disposed in the consideration of this proposal to get into the merits. With what I have seen in the last couple of days, we are dealing with some very complex, highly sensitive, extremely important matters.

The only point that I make is that I am trying to make here today, is that this Committee and the Senate should not act precipitously in this very sensitive area.

I do not know whether or not this will impede research; I do not know. I do know on the House side the private sector was not heard from.

I personally think that we should stay with the House version, stay with the Ways and Means version, stay on the safe side. If we are going to open this up, let's hold some hearings over here. Let's see whether or not the assertions in connection with the impeding of research are valid and see whether or not the private sector out there feels that there is this kind of need to have the additional inspection.

The Chairman. Could we just hear a statement -- if Dr. Gordon is here, could we just have him explain what the problem is, as he understands it?

Mr. Constantine. If I understand the amendment the Committee tentatively adopted, the Privacy Commission just reported, the amendment that we recommended came from the Health Subcommittee, it required the Secretary to submit draft



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legislation within 90 days of that report. The Commission on Privacy which submitted its report last week with draft legislation to protect confidentiality, that is the amendment that has been tentatively approved.

Mr. Gordon. I think the Department's position is, whereas individual privacy of medical records is an extremely important objective, there are also public health and social requirements that also must be served. It frequently can only be served by releasing, under proper safeguards, information that is both medical and personally identifiable.

I think that I can give you a good example of the type of work that requires this release and which would be virtually impossible by the language of the Crane amendment.

There is a search on right now -- this is a newsworthy item; it has been in the newspapers. It is possible that you are somewhat familiar with the sort of work that goes on now. There is a search on for three or four million treatment who, as children, received x-ray treatment for enlarged tonsils or acne of the face or a number of benign conditions back in the 1930's and '40's when physicians did not realize what the hazards associated with x-ray treatment are.

More recently, studies were done that made it clear that there was about a 7 percent risk of the development of thyroid cancer later in life, a gland in the neck accidentally irradiated at the same time. 7 percent of 3 or 4 million people is

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1 on the order of 200,000 to 300,000 people have the risk of  
2 developing thyroid cancer. Since this cancer can be diagnosed  
3 early and treated effectively if caught early, those lives  
4 really can be saved by an adequate intervention.

5 How is this information developed? It was developed by  
6 going into hospital records and identifying several thousand  
7 individuals who had received this x-ray treatment as children.

8 Senator Curtis. May I ask a question?

9 The search for these people, these children who might have  
10 thyroid cancer, that had nothing to do with searching records,  
11 did it? It is a public appeal for them to come forward?

12 Mr. Gordon. No, sir. The public appeal had to be based  
13 on a scientific demonstration that such x-ray treatment did,  
14 in fact, increase the risk of thyroid cancer.

15 Senator Curtis. Locating your 7 percent, at no point  
16 have you gone through a lot of people's records to find that  
17 out, have you?

18 Mr. Gordon. No, sir. That is not the case. It was  
19 necessary to go through a sizable sample, not the 3 or 4  
20 million, but several thousand records, to develop the  
21 information that made it possible to make that assessment of  
22 7 percent.

23 Senator Bentsen. I had it done to me. What are my  
24 chances -- I did.

25 Mr. Gordon. As far as I know, that 7 percent is the best



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1 existing estimate. If you are one of the people who received  
2 such x-rays in childhood you should have your thyroid gland  
3 checked.

4 Senator Bentsen. I would rather approach it from the  
5 other side. You say I have a 93 percent chance?

6 Mr. Gordon. You are an optimist whose bottle is 93  
7 percent full.

8 Senator Laxalt. Would any of this information be availa-  
9 ble to you through state sources?

10 Mr. Gordon. This information could have been developed,  
11 and in fact, some of the research was done by private research  
12 foundations without Federal funds or participation. The  
13 Department of Health, Education and Welfare supports,  
14 carries out or supports, about two-thirds of the total medical  
15 research around the country.

16 So a highly restrictive provision like the Crane amendment  
17 would probably roughly reduce by two-thirds the probability of  
18 the development of future information of this sort.

19 I would like to emphasize that this study is a prototype  
20 for many that we anticipate doing over the next decade in  
21 searching for environmental causes of cancer, recognizing them  
22 and getting them out of the environment sothat we can  
23 protect people now healthy against the development of cancer.

24 I think it is also very important to emphasize that the  
25 Privacy Protection Study Commission which has labored for two

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1 full years to bring forth a very complete and elaborate report  
2 has issued this report a few weeks ago, and the Department of  
3 HEW is currently in the midst of a very rapid program to try  
4 to translate their recommendations into legislative proposals  
5 which we think can show that privacy will be protected and  
6 the release of such information for necessary research and  
7 public health functions will be carried out with safeguards  
8 in such a way that the individuals whose information is  
9 examined will not suffer.

10 Senator Laxalt. That is my point here. I think we do  
11 have some work going on in HEW as a result of this study.  
12 We will have proposed legislation, and for us to act at this  
13 point in such a precipitous fashion I think is almost foolhardy.  
14 I think we have plenty of time to get into this and there are  
15 adequate safeguards in this situation already.

16 I would strongly recommend to my colleagues on this  
17 Committee that we stay with the restricted version, if you  
18 will, of the Ways and Means amendment. I think it should be  
19 restricted at this point. We are getting into a very, very  
20 sensitive area.

21 The thought to me of any agency of the government to get  
22 at medical and psychiatric records, private records, without  
23 the permission of the person involved, to me it is deplorable.  
24 I think it would require, at least in my own judgment, a set of  
25 extraordinary circumstances in terms of the public interest to

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1 justify that intervention.

2 Senator Curtis. Is this comparable to what we have done  
3 in the area of tax returns and bank accounts and Social  
4 Security numbers, Mr. Laxalt?

5 Senator Laxalt. I am sorry?

6 Senator Curtis. Is this not comparable to what we have  
7 done in protecting the privacy of bank accounts and tax  
8 returns?

9 Senator Laxalt. Yes, I think the same principle applies.

10 The Chairman. I would like Dr. Gordon to explain, do you  
11 understand the difference between what we have in the Senate  
12 bill and what is in the House bill with regard to this? From  
13 your point of view, could you explain that?

14 Do you understand the difference between the two?

15 Mr. Gordon. What I am familiar with is two separate House  
16 Committee recommendations in the same bill. There is one that  
17 takes the position that HEW favors; the other is in direct  
18 opposition.

19 The Rogers version is the one which goes along with our  
20 recommendations. Instead of adopting any restrictive provision  
21 at this time, it recommends within 90 days the Department  
22 provide the Congress with a legislative proposal based upon  
23 the privacy protection studies of the Commission reports.  
24 That is the Senate version.

25 Mr. Constantine. That is the amendment we recommended.



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1 Senator Nelson. That seems the logical approach, rather  
2 than adopting the Crane amendment, to wait 90 days for the  
3 recommendation.

4 There are some -- you touched on it -- there are some  
5 very -- NIOSH is involved in the question. You take people  
6 who are exposed, as you well know, to vinylchlorides 20 years  
7 ago and now they have to go to the tax department to find out  
8 where is that person because the period it may show up may be  
9 20 or 30 years. They cannot do it without some access.

10 Mr. Gordon. I think that is a very important point.

11 Many of these health problems that we are concerned about,  
12 and cancer in particular, have a very long, latent period.  
13 Things that occurred 20 or 30 years ago are highly relevant  
14 to health products now. Records collected 20 or 30 years ago,  
15 of course, did not contain, because there was not any real  
16 concern at that time, any signed release from the patient. In  
17 fact, these concerns could not have had a signed release because  
18 they had not been developed scientifically at that time.

19 We had no idea about the potential toxicity of vinyl  
20 chloride.

21 The Chairman. This is sufficiently controversial between  
22 the two contending positions, but I would suggest that we not  
23 do anything in this area until we have a quorum present to  
24 hear it. I would like for more Senators to be here and hear  
25 it.

1           Meanwhile, we could arrange a hearing when we get back  
2 in September, before we act on this, have a hearing, have both  
3 sides lay it out.

4           So I would suggest that we simply not have anything in the  
5 bill about this matter. The House has a provision on it that  
6 Senator Laxalt likes.

7           Senator Laxalt. The result of this would be deleting the  
8 House version, the Ways and Means version. That would be a  
9 total loss to what we believe in here.

10           In the absence of a restrictive provision, there is going  
11 to be the access on the part of the PSRO's. That is what we  
12 object to here. We have the same underlying principles that  
13 we had in the tax reform act.

14           Mr. Constantine. Senator, under the House provision --  
15 in other words, what we are recommending would not change  
16 present law. What we recommend here is that you take the  
17 Interstate and Foreign Commerce's Subcommittee on Health,  
18 the Rogers Subcommittee recommendation, that the Department  
19 report legislative proposals within 90 days, which would have  
20 been from last month, of the receipt of the Privacy Commission's  
21 Report.

22           In other words, there is nothing in the House bill that  
23 expands present access. The PSRO's, to the extent that they  
24 are undertaking review, undertake review just the same as  
25 the carriers or intermediaries. Any claim form is considered

1 a medical record in definition under the House bill.

2 Doctors doing a review, plus the additional review that the  
3 SRO's would do of a medical record, just as the insurer  
4 reviews the medical needs, Blue Shield or private insurers  
5 that contract with them.

6 There is no expansion of existing review responsibility.

7 Senator Curtis. May I ask a question?

8 On what bill did Congressman Crane put his amendment?

9 Mr. Constantine. The Ways and Means amendment. There are  
10 two amendments in S. 143. It is the one matter of dispute  
11 between the two committees for jurisdiction.

12 Senator Curtis. Is S. 143 before us now?

13 Mr. Constantine. Yes, sir.

14 Senator Curtis. Here is what I would like to suggest.  
15 I do not want to take this 90 days and see what they do. On  
16 the other hand, I am of the opinion that this ought to be  
17 discussed by a few more people here. I would not want to see  
18 this legislation go on by and we reject the House bill. We  
19 cannot consider this before the recess now, anyway. Is there  
20 any reason why we could not just hold this thing up and get  
21 a greater number here and decide that issue before 147 is  
22 reported out?

23 Mr. Constantine. No, sir. The only difficulty is this,  
24 Senator. I do not think Senator Laxalt or you want to avoid  
25 resolving this issue except in the context where you have the



1 bill where you can work it out on. There are just a  
2 couple of minor matters, last minute matters, to be resolved  
3 in S. 143 before you can order the bill reported.

4 The only reason for bringing 143 at this time was to  
5 expedite the work of the Committee so that you could get on  
6 to the energy stuff after the recess. If there is some way of  
7 carrying this over so that Senator Laxalt and your concerns  
8 can be taken care of --

9 Senator Laxalt. We can do it. Just carry forward the  
10 Crane language.

11 Senator Nelson. May I say something on that, Mr.  
12 Chairman?

13 The Chairman. Here is where we stand at this point.  
14 If we are not in unanimous agreement on the matter, all one  
15 person has to do is insist on a quorum being present and we  
16 will not be able to act on it this morning anyway.

17 What we suggest we do -- in fact, here is what we are going  
18 to do, whether you like it or not. We are going to discuss  
19 this matter when we have as many people as we can get here and  
20 hear both sides of this position. Then we will decide.

21 We cannot do it right now. That is what Carl Curtis was  
22 suggesting.

23 Senator Bentsen. I was under no illusions about that point  
24 when I agreed with you to delay consideration of my other bill.  
25 I understood that. Now I would like to ask to intervene

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1 on the unanimous agreement position, and that is the under-  
2 standing that, in reporting out 901 that we incorporate several  
3 technical staff modifications which I have studied and that  
4 we delete the provisions on declaratory judgments, and as we  
5 agreed, the bill will be redrafted, and put ESOP under IRS,  
6 if there is no objection.

7 The Chairman. Without objection.

8 Senator Moynihan?

9 Senator Moynihan. I think there is a matter that will  
10 have unanimous agreement here.

11 Yesterday, Mr. Chairman, we discussed the question with  
12 respect to the PSRO's, S. 143, the question of those states  
13 which would want to have demonstration projects for on site  
14 review as a sort of alternate arrangement with respect to cost-  
15 savings in Medicaid.

16 Mr. Constantine of the staff has been very generous with  
17 his time and patient with the complexities of the matter. We  
18 have before you a proposal which is entirely agreeable to this  
19 Senator, I believe.

20 Senator Nelson is interested to see if this arrangement  
21 could go forward, and Senator Danforth states also that he  
22 is.

23 Mr. Constantine. Mr. Chairman, the Administration, just  
24 for the record, is opposed. We would suggest that the  
25 demonstrations be limited to states which now have that kind of



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1 on site review operation as opposed to setting up a duplicative --  
 2 that is where the state sends its teams in where the doctors  
 3 now have teams operating; and secondly that it be a further  
 4 modification, just as the Secretary may terminate a PSRO on  
 5 30 days' notice when it is not conforming at the complaint of  
 6 a state, the Secretary may terminate a state demonstration  
 7 within 30 days where the state is not doing the job.

8 The Chairman. Without objection, agreed.

9 Senator Moynihan. Thank you, Mr. Chairman.

10 Senator Curtis. Mr. Chairman, may I submit Senator  
 11 Doles' statement on Puerto Rico?

12 The Chairman. Without objection, agreed.

13 Senator Dole. Mr. Chairman, I was necessarily absent  
 14 yesterday because of my participation in the Conference on the  
 15 Farm Bill, but the interesting discussion that took place  
 16 here concerning Title II of H.R. 7200 has been reported to  
 17 me.

18 I wish to speak on behalf of the provision in the House  
 19 bill, which would extend the benefits of the SSI program, on  
 20 a limited basis, to Puerto Rico, the Virgin Islands and Guam  
 21 and to attempt to clear the record of some of the questions  
 22 raised.

23 Currently, Puerto Rico labors under the old Aid to the  
 24 Aged, Blind and Disabled program which no longer applies to  
 25 the 50 states and the District of Columbia. It has been



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1 superseded by SSI which is a more efficient means of aiding  
2 these people. Functioning under AABD Program, Puerto Rico  
3 spends only about \$4 million per year for its aged, blind and  
4 disabled which it derives from its participation in the AFDC  
5 program.

6 But by using that \$4 million for AABD it needlessly takes  
7 essential money from the AFDC program which we have also  
8 limited by requiring a 50/50 mandatory participation require-  
9 ment for Puerto Rico. Under the current AABD program, the  
10 individual payment is about \$17 per month. This amount must  
11 be compared to \$177 a month received by individuals on the  
12 mainland under SSI.

13 That is simply neither a fair, nor a livable, amount.

14 The House measure would still limit the participation  
15 of Puerto Rico in SSI by tying payments to a formula so that  
16 each eligible Puerto Rican would receive only \$102 a month  
17 and not the full \$177 received on the mainland.

18 SSI deals only with the aged, blind and disabled -- people  
19 who even in the United States mainland would not have to work  
20 nor pay Federal taxes. Therefore, we cannot exclude these  
21 American citizens from participating in this program because,  
22 as Puerto Ricans, they do not pay taxes -- they would not pay  
23 taxes under any circumstances even on the mainland, nor do  
24 their counterparts in the mainland pay taxes since they are  
25 indigents with little or no income.





1 Furthermore, those Puerto Ricans eligible for SSI might  
2 have paid their normal Social Security taxes if they had been  
3 able to work either on the mainland or in Puerto Rico.  
4 Payment of taxes is not the issue here.

5 We never tell Puerto Ricans that they cannot serve in  
6 our Armed Forces and die and be disabled for this nation.  
7 In fact, I heard testimony on this measure a few weeks ago  
8 that Puerto Rico ranks 14th in terms of the number of men and  
9 women who have been in uniform for this nation in this century.  
10 That is a fantastic figure and yet we will deny the weakest  
11 elements of the Puerto Rican society their fair and just  
12 coverage under this program.

13 The initial extension of SSI coverage to Puerto Rico  
14 would encompass about 135,000 eligible recipients out of  
15 a total population of 3 million. That is a ratio of participa-  
16 tion to total population of about 4 percent which compares  
17 almost precisely to the mainland SSI participation ratio of  
18 about 4 percent.

19 By extending SSI to Puerto Rico, we are not opening the  
20 floodgates of participation to those who should otherwise  
21 be able to work. We are addressing the needs of a fixed,  
22 unfortunate segment of the population and, perhaps too, we  
23 are providing a real incentive for those covered categories  
24 of participants to remain in Puerto Rico rather than having  
25 to migrate to the mainland for the benefits of a program

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1 for which they should be covered in Puerto Rico. The  
2 beneficiaries of this program will have to meet certain  
3 qualifications and the Social Security Administration will  
4 have to pass upon each case to determine eligibility.

5 The total cost of this expanded coverage would be about  
6 \$136 million for these territories. This money is provided  
7 in the first concurrent budget resolution.

8 It is not an overwhelming amount when you think that the  
9 current recipients in Puerto Rico receive a mere \$17 a month  
10 average and we would be raising that figure to a fair and  
11 livable \$102 a month. It is time to extend SSI coverage to  
12 all Americans.

13 Mr. Constantine. Senator Hathaway, who could not be  
14 here, asked us to raise a minor amendment on something that  
15 has been previously agreed to, on the financing of state  
16 Medicaid anti-fraud and anti-abuse teams. At present it must  
17 be a unit which is combined, the division of the Attorney  
18 General. Basically, what he wants is to authorize a  
19 distinct unit from the operating agency, state Medicaid opera-  
20 ting agency which has a close coordinating relationship with  
21 the state Attorney General.

22 We think that should be eligible also. We have no problem  
23 with that.

24 Mr. Stern. There is one thing that we forgot to mention.  
25 There is no statutory authority for HEW to relieve states of

1 Medicaid payments that are incorrect because of the Federal  
2 government's error in determining eligibility, and we recommend  
3 that you would write that into the statute.

4 The Chairman. Without objection, agreed.

5 Senator Nelson. May I raise a question, Mr. Chairman?

6 The Secretary of HEW wrote a letter referring to S. 143  
7 which was sent to the Chairman and other members, asking us --  
8 in that amendment, we dealt with the administrative and  
9 policy-making responsibility for health care and financing  
10 programs.

11 We are strongly opposed to the amendment and urge that  
12 the Committee reconsider its adoption. I do not expect that  
13 to happen here. I am wondering if this matter could be held,  
14 that we report the bill -- I think the Secretary makes a very  
15 compelling case against that provision. We will be able to  
16 pick it up in September for consideration.

17 The Chairman. We will reconsider, we will reconsider  
18 the position. The bill has been reported; we will agree to  
19 reconsider our position on it.

20 Mr. Stern. You have not ordered the bill reported yet,  
21 Mr. Chairman.

22 The Chairman. The bill has already been reported, but  
23 we will reconsider our position with regard to that subject  
24 matter, and if we are going to change our view on it --

25 Senator Curtis. Which bill is that?

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Mr. Constantine. S. 143, Senator,

Senator Curtis. I thought that was the one that Laxalt was talking about?

Mr. Constantine. As I understand it, the Committee has ordered the bill reported but it will not be reported until those two items are taken up, the one Senator Laxalt raised and Senator Nelson's concern.

The Chairman. We will not put it on the calendar.

Senator Curtis. The bill is still before the Committee and these people have their day in court?

Mr. Constantine. That is right.

The Chairman. The Committee stands in recess.

(Thereupon, at 12:10 p.m. the Committee recessed, to reconvene at the call of the Chair.)

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