

# IMPROVEMENT OF PROCEDURES IN CLAIMS SETTLEMENT AND GOVERNMENT LITIGATION

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## HEARING BEFORE SUBCOMMITTEE NO. 2 OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

H.R. 13650

TO AMEND THE FEDERAL TORT CLAIMS ACT TO AUTHORIZE INCREASED AGENCY CONSIDERATION OF TORT CLAIMS AGAINST THE GOVERNMENT, AND FOR OTHER PURPOSES

H.R. 13651

TO AVOID UNNECESSARY LITIGATION BY PROVIDING FOR THE COLLECTION OF CLAIMS OF THE UNITED STATES, AND FOR OTHER PURPOSES

H.R. 13652

TO ESTABLISH A STATUTE OF LIMITATIONS FOR CERTAIN ACTIONS BROUGHT BY THE GOVERNMENT

H.R. 14182

TO PROVIDE FOR JUDGMENTS FOR COSTS AGAINST THE UNITED STATES

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APRIL 6, 1966

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Serial No. 15

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Printed for the use of the Committee on the Judiciary

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U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1966

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# IMPROVEMENT OF PROCEDURES IN CLAIMS SETTLEMENT AND GOVERNMENT LITIGATION

WEDNESDAY, APRIL 6, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
SUBCOMMITTEE No. 2,  
Washington, D.C.

The subcommittee met, pursuant to notice, and at the call of the Chair, at 10:05 a.m., in room 2226, Rayburn Building, Hon. Robert T. Ashmore presiding.

Present: Messrs. Ashmore, Hungate, Grider, and Smith.

Also present: William Shattuck, Esq., and John Dean, Esq.

Mr. ASHMORE. The committee will come to order. We have four bills down for hearing this morning, and all of these are as a result of executive communications. The bills are H.R. 13650, H.R. 13651, H.R. 13652, and H.R. 14182.

(H.R. 13650, H.R. 13651, H.R. 13652, and H.R. 14182 follow:)

[H.R. 13650, 89th Cong., 2d sess.]

A BILL To amend the Federal Tort Claims Act to authorize increased agency consideration of tort claims against the Government, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* (a) That the first paragraph of section 2762 of title 28, United States Code, is amended to read as follows:

"The head of each Federal agency or his designee may consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred: *Provided*, That any award, compromise, or settlement in excess of \$50,000 shall be effected only with the prior written approval of the Attorney General or his designee."

(b) The second paragraph of section 2672 of title 28, United States Code, is amended to read as follows:

"Subject to the provisions of this title relating to civil actions on tort claims against the United States, any such award, compromise, settlement, or determination shall be final and conclusive on all officers of the Government, except when procured by means of fraud."

(c) The third paragraph of section 2672 of title 28, United States Code, is amended to read as follows:

"Payment of any award, compromise, or settlement in an amount in excess of \$2,500 made pursuant to this section or made by the Attorney General pursuant to section 2677 of this title shall be paid in a manner similar to judgments and compromises in like causes and appropriations of funds available for the payment of such judgments and compromises are hereby made available for the payment of awards, compromises, or settlements under this chapter."

SEC. 2. (a) Subsection (a) of section 2675 of title 28, United States Code, is amended to read as follows:

"(a) An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Govern-

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ment while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section."

(b) Subsection (b) of section 2675 of title 28, United States Code, is amended by deleting the first sentence thereof.

SEC. 3. Section 2677 of title 28, United States Code, is amended to read as follows:

"The Attorney General or his designee may arbitrate, compromise, or settle any claim cognizable under section 1346(b) of this title, after the commencement of an action thereon."

SEC. 4. The first paragraph of section 2678 of title 28, United States Code, is amended to read as follows:

"The court rendering a judgment for the plaintiff pursuant to section 1346(b) of this title, or the head of the Federal agency acting pursuant to section 2672, or the Attorney General acting pursuant to section 2677 of this title, making an award, compromise, or settlement, may, as a part of such judgment, award, compromise, or settlement, determine and allow reasonable attorney fees, which, if the recovery is \$500 or more, may be up to but shall not exceed either 20 per centum of the amount recovered under section 2672 of this title or the amount contracted between the parties nor may not exceed 25 per centum of the amount recovered under section 1346(b) of this title, to be paid out of but not in addition to the amount of judgment, award, compromise, or settlement recovered, to the attorneys representing the claimant."

SEC. 5. Subsection (b) of section 2679 of title 28, United States Code, is amended to read as follows:

"(b) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property or personal injury or death, resulting from the operation by any employee of the Government of any motor vehicle while acting within the scope of his office or employment, shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim."

SEC. 6. Section 1302 of the Act of July 27, 1956, as amended (70 Stat. 694, 75 Stat. 416; 31 U.S.C. 724a), is further amended (1) by inserting a comma and the word "awards," after the word "judgments" and before the word "and"; (2) by deleting the word "or" after the number "2414" and inserting in lieu thereof a comma; and (3) by inserting after the number "2517" the phrase "2672, or 2677".

SEC. 7. Subsection (b) of section 2401 of title 28, United States Code, is amended to read as follows:

"(b) a tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented."

SEC. 8. The first sentence of section 2671 of title 28, United States Code, is amended to read as follows: "As used in this chapter and sections 1346(b) and 2401 (b) of this title, the term 'Federal agency' includes the executive departments, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States."

SEC. 9. (a) The section heading of section 2672 of title 28, United States Code, is amended to read as follows:

### "§ 2672. Administrative adjustment of claims"

(b) The analysis of chapter 171 of title 28, United States Code, immediately preceding section 2671 of such title, is amended by deleting the item

"2672. Administrative adjustment of claims of \$2,500 or less."

and inserting in lieu thereof:

"2672. Administrative adjustment of claims."

SEC. 10. This Act shall apply to claims accruing six months or more after the date of its enactment.

[H. R. 13651, 89th Cong., 2d sess.]

A BILL To avoid unnecessary litigation by providing for the collection of claims of the United States, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Federal Claims Collection Act of 1966".

SEC. 2. In this Act—

(a) "agency" means any department, office, commission, board, service, Government corporation, instrumentality, or other establishment or body in either the executive or legislative branch of the Federal Government;

(b) "head of an agency" includes, where applicable, commission, board, or other group of individuals having the decisionmaking responsibility for the agency.

SEC. 3. (a) The head of an agency or his designee, pursuant to regulations prescribed by him and in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General, shall attempt collection of all claims of the United States for money or property arising out of the activities of, or referred to, his agency.

(b) With respect to such claims of the United States that have not been referred to another agency, including the General Accounting Office, for further collection action and that do not exceed \$20,000, exclusive of interest, the head of an agency pursuant to regulations prescribed by him and in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General, may (1) compromise any such claim, or (2) cause collection action on any such claim to be terminated or suspended where it appears that no person liable on the claim has the present or prospective financial ability to pay any significant sum thereon or that the cost of collecting the claim is likely to exceed the amount of recovery. The Comptroller General or his designee shall have the foregoing authority with respect to claims referred to the General Accounting Office by another agency for further collection action. The head of an agency or his designee shall not exercise the foregoing authority with respect to a claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or a claim based in whole or in part on conduct in violation of the anti-trust laws; nor shall the head of an agency, other than the Comptroller General of the United States, have authority to compromise a claim that arises from an exception made by the General Accounting Office in the account of an accountable officer.

(c) A compromise effected pursuant to authority conferred by subsection (b) of this section shall be final and conclusive on the debtor and on all officials, agencies, and courts of the United States, except if procured by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact. No accountable officer shall be liable for any amount paid or for the value of property lost, damaged, or destroyed, where the recovery of such amount or value may not be had because of a compromise with a person primarily responsible under subsection (b).

SEC. 4. Nothing in this Act shall increase or diminish the existing authority of the head of an agency to litigate claims, or diminish his existing authority to settle, compromise, or close claims.

SEC. 5. This Act shall become effective on the one hundred and eightieth day following the date of its enactment.

[H. R. 13652, 89th Cong., 2d sess.]

A BILL To establish a statute of limitations for certain actions brought by the Government

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That title 28 of the United States Code is amended by adding thereto the following two new sections:

**"§ 2415. Time for commencing actions brought by the United States**

"(a) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within

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six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later: *Provided*, That in the event of later partial payment or written acknowledgement of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment.

“(b) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues: *Provided*, That an action to recover damages resulting from a trespass on lands of the United States, including trust or restricted Indian lands; an action to recover damages resulting from fire to such lands; an action to recover for diversion of money paid under a grant program; and an action for conversion of property of the United States may be brought within six years after the right of action accrues.

“(c) Nothing herein shall be deemed to limit the time for bringing an action to establish the title to, or right of possession of, real or personal property.

“(d) Subject to the provisions of section 2416 of this title and except as otherwise provided by Congress, every action for the recovery of money erroneously paid to or on behalf of any civilian employee of any agency of the United States or to or on behalf of any member or dependent of any member of the uniformed services of the United States, incident to the employment or services of such employee or member, shall be barred unless the complaint is filed within six years after the right of action accrues.

“(e) In the event that any action to which this section applies is timely brought and is thereafter dismissed without prejudice, the action may be recommended within one year after such dismissal, regardless of whether the action would otherwise then be barred by this action. In any action so recommended the defendant shall not be barred from interposing any claim which would not have been barred in the original action.

“(f) The provisions of this section shall not prevent the assertion, in an action against the United States or an officer or agency thereof, of any claim of the United States or an officer or agency thereof against an opposing party, a co-party, or a third party that arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. A claim of the United States or an officer or agency thereof that does not arise out of the transaction or occurrence that is the subject matter of the opposing party's claim may, if time-barred, be asserted only by way of offset and may allowed in an amount not to exceed the amount of the opposing party's recovery.

“(g) Any right of action subject to the provisions of this section which accrued prior to the date of enactment of this Act shall, for purposes of this section, be deemed to have accrued on the date of enactment of this Act.

“(h) Nothing in this Act shall apply to actions brought under the Internal Revenue Code or incidental to the collection of taxes imposed by the United States.

#### “§ 2416. Time for commencing actions brought by the United States—Exclusions

“For the purpose of computing the limitations periods established in section 2415, there shall be excluded all periods during which—

“(a) the defendant or the res is outside the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico; or

“(b) the defendant is exempt from legal process because of infancy, mental incompetence, diplomatic immunity, or for any other reason; or

“(c) facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act in the circumstances; or

“(d) the United States is in a state of war declared pursuant to article I, section 8, of the Constitution of the United States.”

SEC. 2. The table of sections at the head of chapter 161 of title 28 of the United States Code is amended by adding at the end thereof the following items:

“2415. Time for commencing actions brought by the United States.

“2416. Time for commencing actions brought by the United States—Exclusions.”

[H. R. 14182, 89th Cong., 2d sess.]

A BILL To provide for judgments for costs against the United States

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 2412 of title 28 of the United States Code is amended to read as follows:

"Except as other specifically provided by statute, a judgment for costs, as enumerated in section 1920 of this title but not including the fees and expenses of attorneys or expert witnesses, may be awarded to the prevailing party in any action brought by or against the United States or any agency or official of the United States acting in his official capacity, in any court having jurisdiction of such action. - A judgment for costs when taxed against the Government shall, in an amount established by statute or court rule or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by him in the litigation. Payment of a judgment for costs shall be as provided in section 2414 of this title for the payment of judgments against the United States."

SEC. 2. Section 2520(d) of title 28 of the United States Code is hereby repealed.

SEC. 3. These amendments shall apply only to judgments entered in actions filed subsequent to the date of enactment of this Act. These amendments shall not authorize the reopening or modification of judgments entered prior to the enactment of this Act.

Mr. ASHMORE. Mr. John W. Douglas, Assistant Attorney General, from the Department of Justice, is here to testify on all of them.

Mr. Douglas, I believe you can just take over and refer to these as you prefer, all as a group—or as contained in your statement? Do you have a statement?

#### STATEMENT OF JOHN W. DOUGLAS, ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF JUSTICE

Mr. DOUGLAS. Yes, I do, Mr. Chairman.

Mr. ASHMORE. You may use your judgment about that.

Mr. DOUGLAS. Mr. Chairman, we distributed to the subcommittee staff detailed statements in support of each of the four bills before this subcommittee, and I would like to request that they be included at the appropriate place in the committee hearings.

Mr. ASHMORE. Fine.

Mr. DOUGLAS. I have a single statement dealing with the main points in the four bills, which with your permission I would like to read.

Mr. ASHMORE. Yes.

Mr. DOUGLAS. Mr. Chairman and members of the subcommittee I appear today in support of the four bills now before this subcommittee. The Justice Department urges their enactment to enhance the fair and efficient handling by the Government of its civil litigation.

Each of these bills, which have been introduced by Congressman Celler in the House of Representatives, and Senator Ervin in the Senate, would terminate a practice which is either inequitable or cumbersome. In each case more rational procedures would be established. Taken as a whole, the bills would assure more balanced treatment of litigants, reduce unnecessary litigation and court congestion, speed up meritorious settlements, and cut down on unproductive paperwork while at the same time protecting vital governmental interests.

H. R. 13652 would impose, for the first time, a general statute of limitations on contract and tort suits brought by the Government. Private suits against the Government are already subject to such limitations.

H.R. 14182 would allow courts, for the first time, to assess costs against the Government in substantially all civil cases where it is the losing party. Private litigants who now lose suits to the Government are already subject to the assessment of such costs.

H.R. 13650 would permit, for the first time, administrative settlements of all tort claims against the United States and would raise allowable attorney fees to a level more nearly in line with that prevailing in private litigation. Heretofore, all tort claims in excess of \$2,500 have had to be filed in court.

H.R. 13651 would authorize all agencies, for the first time, to compromise affirmative monetary claims of the Government below \$20,000. This authority would be exercised in conformity with standards to be prescribed jointly by the Attorney General and the Comptroller General.

H.R. 13652, application of statute of limitations to contract and tort suits brought by the Government.

(The statement on H.R. 13652 follows:)

STATEMENT OF JOHN W. DOUGLAS, ASSISTANT ATTORNEY GENERAL, ON H.R. 13652

Mr. Chairman and members of the subcommittee, I appear today in support of H.R. 13652 which has been introduced by Chairman Celler. This bill would impose, for the first time, general statutes of limitation in contract and tort suits brought by the Government.

The Civil Division of the Department of Justice is responsible for the assertion in court of the bulk of the non-tax civil claims of the Government.

In the assertion of these claims by the Government, there is, as you know, no general statute of limitations against the Government. This reflects an ancient principle favoring the immunity of the sovereign from suit. In contrast, suits by private citizens against the Government are subject to statutes of limitations.

Congress has, however, passed several specific statutes putting time bars on the assertion of particular types of claims by the Government. For example, suits involving the making of a false claim against the Government must be brought within six years, 31 U.S.C. 235. Suits for the enforcement of civil fines, penalties, and forfeitures must be brought within five years, 28 U.S.C. 2462. And there is a two-year statute for FHA to sue for the recovery of an overpayment on a guarantee of a home improvement loan, 12 U.S.C. 1703(g). These, however, are exceptions to the general rule.

#### I. REASONS FOR GENERAL STATUTES OF LIMITATION APPLICABLE TO GOVERNMENT ACTIONS

There are a number of considerations which support the imposition of general time limitations upon the assertion of contract and tort claims by the Government.

First, time limitations against the Government would tend to equalize the position of litigants in Federal courts, whether the case be one by or against the Government or between private parties. There are large numbers of Government claims which arise out of activities closely resembling commercial activities. Many claims asserted by the Government are almost indistinguishable from claims made by private individuals against the Government. The equality of treatment contemplated by this bill seems required by modern standards of fairness and equity.

Second, the effective and fair conduct of Government litigation requires that lawsuits be instituted and trials held in reasonably prompt fashion. Only in that way can litigants be given substantial assurance that the necessary witnesses, documents, and other evidence are still available and that memories are still fresh. Experience tends to justify the thesis that stale claims are usually neither effective claims nor just claims.

Third, the passage of time increases the costs of keeping records and detecting and collecting on old claims to the point that those costs may exceed any probable recovery. As time passes, collection problems invariably increase. Debtors may have died, disappeared, or gone bankrupt. Barring such stale claims from the courts should encourage the agencies to refer their claims to the Department of Justice for collection promptly.

Fourth, whatever the traditional rights of the sovereign may have been, the mere assertion of a stale Government claim often encounters judicial hostility. In such a case, sympathy for the defendant is not at all unusual. Even if the Government has a technically valid claim, an occasional result of this hostility on the part of the courts is the distortion of the substantive law. Such distortion constitutes a bad precedent when it comes to the assertion of other, fresher, Government claims.

Finally, the policy of repose supports the bills proposed here. As a general proposition, potential defendants are entitled eventually to put to one side thoughts of possible suits against them. At some point, and with some exceptions, by-gones should be by-gones. This thesis underlies the statutes of limitations applicable to private parties. It should apply with equal force to suits brought by the Government.

In our view, these considerations justify the establishment of general statutes of limitations on certain broad types of claims of the Government. The bill would impose six years in contract suits, three years for torts, and six years for actions on overpayments to military and civilian personnel.

## II. COVERAGE OF THE BILL

### A. 6-year statute for contract actions

The six-year limitation would apply to all types of contracts, express or implied in law or in fact. [This wording is intended to include quasi-contracts involving unjust enrichment wherein the debtor receives money from the Government to which he is not entitled, regardless of whether the payment is made pursuant to agreement or as a gratuity.]

In all contract matters, an action would be barred unless the action were brought by the United States, or by an appropriate official, within six years after the right of action accrues or within one year after the final decision in a mandatory administrative proceeding, whichever is later. The tolling of time for mandatory administrative proceedings—such as the mandatory submission of claims by the Government for administrative action under the “disputes” clause of a Government contract—was made necessary by the great number and variety of such statutory proceedings and by the time ordinarily consumed in each of them.

Whenever under a contract a partial payment is made or there is a written acknowledgment of the debt owed to the Government, the six-year period will start running all over again. This provision accords with practice in many states. It has the desirable feature of keeping the debt alive but avoiding the necessity of a lawsuit in a situation where the principle of repose is not applicable because the debtor has acknowledged both his continuing debt and his willingness to work it off.

### B. Three-year period for tort action

Tort actions must be brought by the Government within three years after the right of action accrues.

Four exceptions are made to this general rule. In each excepted area six years are fixed as the time limitation. These exceptions are (1) actions to recover damages resulting from trespass on Government lands, including trust or restricted Indian lands; (2) actions to recover damages resulting from fires on such lands; (3) actions to recover for diversions or unauthorized uses of money paid under a grant program; and (4) actions to recover Government property or damages for the conversion of such property. A common characteristic of these tort actions is the difficulty in discovering the identity and conduct of the alleged tortfeasor. Experience in these specific areas of tort indicates the desirability of the longer time period to be accorded such suits.

Having set a time bar for bringing actions for trespass on Government property, the bill then makes it clear that nobody can acquire title to Government property by adverse possession or other analogous legal process. There is no time limit within which the Government may bring actions to establish the title to, or right of possession of, real or personal property of the United States.

### C. Six-year period for overpayments

The third general limitation that we have proposed is a six-year time period for bringing actions to recover money erroneously paid to or on half of civilian of military personnel incident to the employment or service of such person. It is not entirely settled that compensation for such service fits into the legal category of a contract. To remove doubt, we have given this important class of claims separate and specific treatment. It should also be noted that the discovery of these

overpayments usually occurs only in the process of auditing agency account books. Whatever the nature of the claim, it seems reasonable to give the Government the six-year time period for discovering and acting upon these claims

#### *D. Offsets and counterclaims*

The bill will not affect the authority of each agency to offset, on its own books and without resort to the courts, any claim it may have against a person to whom it is about to make a payment based on the same or an unrelated transaction. For example, under 31 U.S.C. 71a, 237, a claimant has ten full years to present to the General Accounting Office a claim against the United States. We do not intend any diminution of that agency's authority to offset against a claim so presented any debt, however old, such claimant owes to the United States.

Further, if the Government is sued there is no time bar to the assertion by the Government of claims arising out of the same transaction upon which it is being sued. The only change we are proposing in existing law is with respect to claims which would be time barred under the present proposal in an independent action and which do not arise out of the same transaction upon which the United States is being sued. Under the bill, these latter claims may be asserted only to offset the opposing party's claim in an amount not to exceed such party's recovery.

#### *E. Date of accrual*

Any claim covered by the bill which accrued prior to the enactment date shall be deemed to have accrued upon the date of enactment.

#### *F. Exclusions*

It was previously noted that the intent of this bill was to establish statutes of limitation for certain general causes of action. The most important exclusions from the bill are specified. First, nothing in the Act shall apply to actions brought under the Internal Revenue Code or incidental to the collection of taxes imposed by the United States. The immensely important problems of tax collection should be dealt with as part of the self-contained tax system and are likely to be too intricate to be handled by a general statute of this type.

Second, the bill does not affect existing statutes of limitation. There are a number of such statutes on the books. Not all of them are consistent with the limitations proposed here. But in view of their specialized nature, it would seem better that they be dealt with at a subsequent time on an individual basis, if indeed such action should be deemed desirable. Certain broad categories of claims are also left untouched, such as actions to recover civil fines, penalties, and forfeitures; these are covered, as we have noted, by an existing statute, 28 U.S.C. 2462.

Suits for injunctions and other extraordinary relief are not covered by this bill nor by any existing statute. A time bar seems irrelevant to the very concept of an injunction in which prompt action is essential to prevent irreparable harm or to forestall a significant change in position. It is a question of seeking the injunction at once or not at all. Further, the Government uses the injunction as a tool to protect and defend Government activities and programs. It does not seem sensible to diminish the power of such an instrument available to the sovereign.

### III. BASIS FOR SIX-YEAR AND THREE-YEAR PERIODS

The time periods set forth in the bill generally reflect the periods already applicable in analogous suits by private litigants against the Government.

The six years for contracts is the same as that for litigants who sue the Government in contract in the Court of Claims and in the District Courts under the Tucker Act. This period is also a common one in State courts. The three years allowed in tort actions corresponds to the three years that will be available to tort litigants against the Government under our proposed amendment to the Federal Tort Claims Act. Under that amendment, the claimant would have two years to file with the agency, the agency would be allowed six months to consider the claim, and then the claimant, after a final denial by the agency, would be given six months to file suit. State practice in tort suits varies generally between one and three years. We chose the longer period primarily because of the problems of communications both within and between Government agencies.

In view of all these considerations, we think that even if the Government gets a longer period of time in some instances than private litigants, nevertheless, this bill will mark a long step towards equalizing the position of all parties in an important aspect of Federal litigation.

## IV. MISCELLANEOUS

In addition to making the limitation periods generally similar to those operating against private litigants, we have also excluded from the time counted periods of time which are generally excluded in State practice. Among such excluded time periods are those in which the defendant or the res is not available for service of process by virtue of being out of the country or is not amenable to process because of some legal immunity such as mental incompetence or diplomatic immunity.

A further exclusion of time is for any period in which facts material to the right of action were not known or reasonably could not be known to an official of the United States charged with the responsibility to act upon any such right of action. This exclusion recognizes the size and complexity of the Government and the limited number of officials who would have any duty to act in such circumstances. It also reserves the Government's right of action in those situations, for example, where there is a breach of warranty arising from latent defects in an object which do not become apparent for many years after the purchase.

The fourth exclusion of time is for the period of officially-declared war. In a time of war, manpower is inevitably diverted in Government from housekeeping and auditing duties to more important work in connection with the prosecution of the war itself. This is also a period in which a great many claims arise. We do not believe it wise that the sovereign penalize itself at such a time.

A final problem is the choice of law governing such issues as when a claim accrues. Although it is true that these issues often present novel questions of fact, the general practice concerning these matters is settled and is not generally regarded as in need of change. Substantive issues arising in tort cases involving the Government will usually be governed by the law of the State where the accident occurred. This bill preserves this principle.

Procedural issues in such cases will be governed by the law of the forum. Government contract cases will follow the Federal law that has evolved in these types of cases. There seems to be no good reason for disturbing these arrangements.

In conclusion, we believe numerous benefits will flow from enactment of this measure. State court claims of the Government will be barred. There should be increased efficiency in the processing of claims by the Government, reduced costs in testing and collecting such claims, and greater equity for litigants with the Government.

Mr. DOUGLAS. This bill would eliminate a built-in advantage which the Government now enjoys over private litigants in contract and tort cases.

In some areas, of course, there are compelling public interests which justify preferred treatment for the Government. For example, no one would dispute seriously the Government's right to withhold from public disclosure military secrets affecting the national safety even if such withholding prejudiced efforts at discovery of the private litigant. But not every Government advantage is sacrosanct.

One advantage which we believe the Government, in all fairness, should yield lies in the statute-of-limitations area.

Actions brought by private individuals against the Government are, of course, subject to time bars. We raise that defense whenever available, and without embarrassment, to protect the Government's legitimate interests.

However, there is no limitation generally applicable to civil suits brought by the Government. At present with a few exceptions, the Government can sue no matter how much time has elapsed since the cause of action arose.

H.R. 13652 would impose, for the first time, general statutes of limitation in contract and tort suits brought by the Government. There are four reasons for this proposal:

First, time limitations against the Government would tend to equalize the position of litigants in Federal courts, whether the case

be brought by or against the Government. Considerations of fairness and equity call for this change.

Second, the effective and fair conduct of Government litigation requires that lawsuits be instituted promptly. Only in this way can all parties be given substantial assurance that the necessary witnesses, documents, and other evidence are still available and that memories are still relatively fresh.

Third, the bill will encourage prompt handling of Government claims, thereby reducing the costs of keeping records and supervising the claims and reducing the number of stale claims referred to the Department of Justice. In addition, expeditious handling will make less likely the frustration of collection efforts by the death, disappearance, or bankruptcy of debtors.

Finally, except in unusual cases, potential defendants are entitled eventually to stop worrying about the possibility of suits against them. This thesis underlies the statutes of limitations applicable to private parties in private litigation. It should also apply, and with equal force, to suits brought by the Government.

The time periods set forth in the bill are generally in line with the periods already applicable in analogous suits brought by private litigants against the Government:

A 6-year limitation would be imposed on the assertion of Government claims arising out of express or implied contracts or quasi-contracts;

A 6-year limitation would be established for actions to recover money erroneously paid to military or civilian personnel of the Government;

The limitation on tort actions would be 3 years. But a 6-year period would apply to damage actions for trespass or fire on Government lands and to actions based on diversions or unauthorized uses of Government money or property.

The bill does not change any existing statutes of limitations. It does not apply to internal revenue laws; these laws present special and intricate problems of both a policy and practical nature, which should not be dealt with by a general statute.

We believe this bill offers several distinct benefits:

Greater equity would be afforded for litigants with the Government. Stale court claims of the Government would be barred. The efficiency of processing claims by the Government would be increased.

Mr. SMITH. Mr. Chairman, could I break in right there.

Mr. ASHMORE. Yes.

Mr. SMITH. Mr. Douglas, is it the opinion of the Department that these limitations proposed are long enough in view of sometimes the massive bureaucracy of government—any government—and the time sometimes required for these things to rise to the surface?

Mr. DOUGLAS. Yes. We think so, Congressman. We have some exclusions in section 2426 of H.R. 13652 which I think protects the Government on that score.

For example, 2416(c) states that in computing the time you will not take into account facts material to the right of action, which are not known and reasonably could not be known by an official of the United States charged with responsibility to act in the circumstances.

Similarly, in (d) we have excluded time which might occur in the course of a formal declaration of war by the Congress.

I think, however, that the statutes of limitations that we have set forth are reasonable and can be observed by us. We have leaned over backwards in the case of some problems dealing with public land, which otherwise would be subject to 3-year limitation. This 6-year limitation is spelled out for 2415(b) for trespass on lands of United States, action to recover damages resulting from fire to such lands, action for conversion of property.

Now, those ordinarily would be considered torts and therefore subject to the 3-year limitation; but, in order to take care of the problem you have raised, we have made 6 years the limitation period with respect to those matters.

Mr. SMITH. Thank you very much.

H.R. 14182, allowance of costs against the Government.

(The statement on H.R. 14182 follows:)

STATEMENT OF JOHN W. DOUGLAS, ASSISTANT ATTORNEY GENERAL, ON H.R. 14182

Mr. Chairman and members of the subcommittee, I appear today in support of H.R. 14182 which would authorize the granting of costs on judgments against the Government in civil cases. The Civil Division of the Department of Justice is responsible for the handling in court of most of the non-tax civil litigation of the Government.

In the payment of costs on judgments handed down by the courts, there now is an iniquitable situation existing in litigation involving the Government. When the Government sues on a claim and wins, it can collect full costs. When the Government sues and loses, only in rare instances may costs be assessed against it. When the Government is sued but wins, it can collect full costs. Finally, if the Government is sued and loses, it may be forced to pay costs only if a specific statute authorized an award of costs in such a case.

The proposal before this Subcommittee is intended to correct the unfairness of this situation and to put the Government on a parity with those private litigants who may sue or be used by the Government.

The general principle governing the payment of costs by the Government in litigation is stated in 28 U.S.C. 2412. That statute provides that the United States shall be liable for fees and costs only when such liability is expressly allowed by the Congress. However, Congress has so provided in only a very few instances. These statutes include the Tort Claims Act, 28 U.S.C. 2412(c), Suits in Admiralty Act, 46 U.S.C. 743, and, by implication, the Public Vessels Act, 46 U.S.C. 782. The Civil Rights Act of 1964 provides in three of the titles that the United States shall be liable for costs the same as a private person.

These few laws constitute the exception rather than the rule. Most other statutes authorizing suits by or against the Government are silent on the subject of costs and, accordingly, costs may not be awarded to a prevailing private litigant.

In contrast, H.R. 14182 changes this principle by providing that in any action brought by or against the United States or any agency or official of the United States acting in his official capacity costs may be awarded by the Court to the prevailing party.

The kinds of costs that may be awarded by this amendment of 28 U.S.C. 2412 are enumerated in the existing provisions of 28 U.S.C. 1920. Specifically excepted from this enumeration by the bill are fees and expenses for expert witnesses as well as all attorneys' fees. The payment of attorneys' fees raises many issues in various types of litigation that should be considered, if at all, in separate legislation. These costs include fees of the clerk and marshal, necessary transcripts, printing, and docket fees. These costs, now specified in Section 1920 could be included in the costs awarded to the prevailing party.

The amounts of costs that could be awarded are fixed in various sources of authority. Some are set by statute, 28 U.S.C. 1921 (marshal's fees), 28 U.S.C. 1923 (docket fees and costs of briefs), or 28 U.S.C. 1821 (witness fees); others by rules of court, such as 28 U.S.C. 1911, and still others by a schedule of the Judicial Conference, 28 U.S.C. 1913.

The bill provides that these costs may be awarded. It does not require that costs be taxed for or against the Government. The bill would simply make it

possible for a court to award costs, when deemed just, to whichever side prevails in the case before it.

I recommend your favorable consideration of this bill.

Mr. DOUGLAS. Another existing disparity of treatment between private litigants and the United States concerns court costs, such as docketing and transcript fees. Individually, these costs are often minor in nature but in some cases they add up to considerable sums.

Presently, only in rare cases can costs be awarded against the United States even if it is the losing party. On the other hand, costs may be awarded against the private litigant in any case where that litigant loses to the United States.

This anomaly stems from the general rule, found in 28 U.S.C. 2412(a), that costs are not taxable against the United States except where specifically authorized by statute. There are relatively few statutes conferring such authority.

H.R. 14182 would amend 28 U.S.C. 2412 to provide that costs may be awarded to the prevailing party, regardless of whether the action is brought by or against the United States. Allowable costs would include, among other items, docketing fees, transcript fees, marshal and clerk fees but would exclude fees and expenses of either attorneys or expert witnesses.

The purpose of this bill is to eliminate an advantage which derives from the ancient principle favoring immunity of the sovereign from suit. We see no valid basis for the retention of this particular advantage today.

H.R. 13650, expansion of agency authority to settle tort claims against the United States.

(The statement on H.R. 13650 follows:)

STATEMENT OF JOHN W. DOUGLAS, ASSISTANT ATTORNEY GENERAL, ON H.R. 13650

Mr. Chairman and members of the subcommittee, the Civil Division of the Department of Justice is responsible for the cases brought against the Government under the Federal Tort Claims Act.

You will recall that under this Act, passed in 1946, a person injured through the negligent or wrongful act of a Government employee acting in the scope of his employment may file a suit for damages sustained from that injury. For claims under \$2,500, he has the alternative of filing suit or filing a claim with the agency whose employee allegedly caused the injury. He *must* file suit on claims over \$2,500.

There have been thousands of suits filed under this Act. The Government has compiled a commendable record in defending against these suits but, nonetheless, each year the Government pays out millions of dollars to plaintiffs in these cases. In Fiscal 1965, for example, we settled 731 tort cases after suit had been instituted, paying \$6,000,000 on claims of almost \$24,000,000. We also had 169 judgments awarded against the Government for \$4,000,000 on claims of almost \$24,000,000. It is thus evident that of the meritorious claims filed against the Government under the Tort Act, 80% are settled prior to trial.

These figures point to the desirability of procedures which would permit early settlement of tort claims. Furthermore, such procedures should be available both before and after filing a lawsuit. A settlement without litigation is more satisfactory to the defendant and the claimant alike.

These generalizations are amply supported by available evidence on private tort litigation. A recent study indicated that each year in New York City an average of 193,000 claimants seek compensation for bodily injuries.<sup>1</sup> Of this number 39,000 settle or abandon their claims without consulting counsel, 77,000 settle or abandon their claims after consulting counsel but without instituting suit. The remaining 77,000 sue. Of this latter class of cases, 7,000 reach trial, of which 2,500 go all the way to verdict. The study thus indicates that in

<sup>1</sup> The statistical material here discussed is contained in Rosenberg and Sovern, *Delay and the Dynamics of Personal Injury Litigation*, 59 Col. L. Rev. 1115 (1959).

private practice where pre-litigation settlements are allowed, only 40% of claimants for personal injuries file suit and of these cases, less than 10% reach trial and only 3% go to verdict.

These statistics point strongly to the desirability of providing settlement procedures which are not conditioned upon the filing of a lawsuit, as the Tort Claims Act presently requires if the claim exceeds \$2,500.

The possibility of an early settlement without a lawsuit is advantageous to both parties. The claimant with a meritorious claim may not need to engage a lawyer or to incur litigation expenses. And, even with a lawyer, a prompt settlement with the peace of mind and immediate payment which it entails is of real value.

There are also advantages to the Government. For one thing, settlements tend to be less expensive than judgments. Of the 731 settlements entered into by the Department in Fiscal 1965, the average settlement was just under 7% of the claim. On the other hand, in the 169 judgments against the Government, the average award was slightly more than 17% of the claim.

Since the present statutory scheme forces all tort claims over \$2,500 to become tort suits with a corresponding increase in cost, we should recognize that our present arrangements lead to many cases being considerably older upon termination than is true in private practice. Furthermore, the longer a claim remains pending the more expensive its supervision becomes. Processing, recordkeeping and reviewing all entail expenditures of time and effort.

Finally, one of the primary objectives of this bill is to reduce unnecessary congestion in the courts. Each year between 1,500 and 2,000 *new* tort cases are filed in court against the Government. There is little likelihood that there will be any real decrease in the numbers of this type of claim. An alternative should be found to help relieve this burden on the already crowded dockets of the courts.

Accordingly, we are proposing to amend the Tort Claims Act to authorize the head of each Federal Agency to settle or compromise any tort claim presented to him which arises out of the negligent or wrongful act of an employee of that agency who was acting within the scope of his employment at the time of the act. This authority of the agency head will be exclusive for settlements up to \$50,000. Above that amount, the settlement must have the prior written approval of the Attorney General or his designee as well as of the agency head.

Under the bill a claimant must file his claim with the agency within two years after the claim accrues. The agency shall have six months to consider the claim prior to granting or denying it. At the end of this six month period, if the agency does not act, the claimant may at his option elect to regard this inaction as a final denial and proceed to file suit.

It is recognized that there will be some difficult tort claims that cannot be processed and evaluated in the six months period given to the agency. The great bulk of them, however, should be ready for decision within this period. For those claims that are not ready for decision, we expect that in some instances the agency will have convinced the claimant that it is sincerely seeking to reach a fair decision. Under such circumstances, the claimant might well wish not to break off negotiations and file suit. Thus, even though this six months period may prove insufficient in some instances, we do not believe that this period ought to be enlarged to attempt to insure time for final decision on all claims.

The bill will not assign novel tasks to the agencies. At present, they investigate all accidents involving their employees, prepare litigation reports on all tort cases, suggest Government defenses to claims, and, at the request of the Department of Justice, comment on all settlement offers presented to the Department. The views of the affected agency have always been taken into account by the Department in accepting or rejecting an offer of settlement.

Our experience has been that the tort claims against the Government have arisen primarily in a few agencies that have extensive dealings with the public or whose operations require the use of a large number of motor vehicles. For example, as of the end of October 1965, 81% of the tort suits then pending against the Government arose out of the activities of only five agencies—Defense, Post Office, FAA, Interior, and the VA.

The concentration of this type of claim has led to the development in the agencies of substantial expertise in the problems involved in tort litigation. The Post Office, probably because of its use of more than 80,000 vehicles, has had to pass upon a very large number of tort claims. In 1965, the Post Office processed over 5,000 claims in the dollar range of \$100 to \$2,500 and allowed 3,800 of them. Postal officials in the field allowed another estimated 5,200 claims for less than \$100. In addition, the Post Office employees assisted the Justice Department in connection with the handling of about 900 cases in Federal courts,

cases which involved claims against the Government of over \$36,000,000 and which involved alleged torts of postal employees. The point is that the Post Office and other agencies are now actually performing investigating and evaluating work on a large volume of tort claims against the Government.

The procedure set forth in this bill will not become effective until six months after the enactment date. We believe that in this period of time the agencies can develop procedures and instruct personnel for these new responsibilities. The Civil Division of the Department of Justice will be available for advice and assistance to any agency desiring it and will furnish suggestions as to how the claims procedures should be handled.

The authority to settle claims for up to \$50,000 and, above that amount, with the prior written approval of the Attorney General, seems sensible. There is no intrinsic difference between a \$25,000 and a \$50,000 settlement of a personal injury claim. And, if a satisfactory arrangement cannot be reached in the matter, the claimant can simply do as he does today—file suit.

Agency settlement of substantial numbers of tort claims would enable the Civil Division to give greater attention to those cases which involve difficult legal and damage questions in such areas as medical malpractice, drug and other products liability, and aviation accidents. These areas of litigation are expanding at a steady pace.

The more informal agency procedures should make it easier for many claimants to file claims and secure relief without the assistance of an attorney. But the more important tort claims will, as in the past, continue to require an attorney acting on behalf of the claimant. To assure competent representation and reasonable compensation in these matters, the proposed bill authorized increases in the attorneys' fees allowable under successful prosecution of these claims: 20% of the agency award and 25% of a court award or settlement after the filing of a complaint in court.

We have raised the allowable fee in agency proceedings from the present 10% to 20% in order to encourage attorneys to take these claims, to recognize the increased work that will be required in many of the larger claims, and to bring the fees more nearly in line with those prevailing in private practice. Finally, allowable fees for claims involving litigation have similarly been raised from 20% to 25%.

In conclusion, I strongly urge your favorable consideration of this bill.

Mr. DOUGLAS. This bill would permit tort claims against the Government to be settled at the administrative level without insisting on the filing of a lawsuit. It would also increase allowable attorney fees to a level more nearly in line with that in private litigation.

As members of this committee are aware, the Federal Tort Claims Act makes the United States liable for the negligent or wrongful act of a Government employee acting within the scope of his employment. Under the act, anyone with a claim exceeding \$2,500 must file suit. Lesser claims can be filed with the agency whose employee is alleged to have caused the injury.

H.R. 13650 would call for the filing of claims, regardless of amount, with the appropriate agency for possible settlement. Settlements below \$50,000 could be made by the agency itself. Settlements above \$50,000 would require the prior approval of the Attorney General as well as of the agency. Claimants could go to court if the agency denied their claims or if the agency failed to dispose of the claim within 6 months.

Mr. Chairman, with your permission, I would like to digress a moment from the prepared statement to mention one matter. Senator Ervin has introduced the four bills which are before this committee in the Senate. Prior to the time he introduced those bills late last week, he indicated that he favored a limitation of \$25,000 on the exclusive authority of the agencies to settle tort claims against the United States.

After careful thought, we informed the Senator that that was agreeable with us. And while either figure would be acceptable, on

further review I rather think that the \$25,000 figure is preferable. I say that for these reasons.

The \$25,000 figure would permit agency authority to settle cases by itself in 90 percent of the cases which are now settled by the Justice Department after suit. In addition, \$25,000 embraces 75 percent of the judgments which are eventually rendered if settlement is out of the question in court suits. So that a \$25,000 figure would leave the agencies with substantial authority. Further, there is some justification in fixing a \$25,000 figure in that wrongful death actions in 13 States limit recovery for wrongful death alone to something in the neighborhood of \$25,000 and \$30,000.

So that I think that, too, provides a rational dividing line. In addition, it is our view after careful study, that \$25,000 figure would take care of most of the damage actions except where there is a loss of future earnings or of speculative damages.

In the area above \$25,000 I think a case could be made out for the proposition that there is a certain degree of litigation expertise which should come into play and therefore should have the concurrence of the Department of Justice.

Mr. ASHMORE. Also might be a little more palatable to some members who do not desire to give the other departments and agencies too much authority in matters of this kind; \$25,000 is quite a bit less than \$50,000.

Mr. DOUGLAS. Yes, it is, Mr. Chairman. I leave that judgment to you. I think that is realistic.

Mr. ASHMORE. I believe that the \$25,000 would be a more reasonable amount.

Mr. DOUGLAS. Evidence relating to tort litigation indicates the need for procedures which would facilitate settlement in advance of lawsuits.

About 80 percent of the meritorious claims brought against the Government in court are settled without trial.

A recent study showed that in New York City only 40 percent of bodily injury claims are taken to court at all; only 3 percent go all the way to a court verdict.

These figures suggest strongly that it is unwise to require that tort claims against the Government be filed in the courts before an appropriate settlement can be attempted.

H.R. 13650 would provide a speedier and cheaper procedure, and one with advantages to the claimant, the Government, and the courts.

The claimant with a meritorious claim would be in a position to get a prompt settlement and immediate payment. He could do so without the bother and cost of litigation.

Early settlements would enable the Government to reduce administrative costs and efforts; early settlements also usually entail less money than later ones. Still another advantage would be the possibility that many of the hundreds of claims without merit would not be taken to court after careful agency review and denial.

Additionally, enactment of this bill would furnish some relief to overburdened court dockets. Each year, between 1,500 and 2,000 new tort cases are filed in courts against the Government.

At present the agencies already perform much of the investigation and evaluation involved in appraising all tort claims against the Government. They also do all of the processing of tort claims under \$2,500.

The bill also seeks to widen the access by claimants to competent counsel by authorizing increases in allowable attorneys' fees. Fees would be increased from the present maximum 10 percent to 20 percent of an agency award; after the case is taken to court maximum fees would be raised from the present 20 percent to 25 percent. These increases would bring maximum attorney fees to a level more nearly in line with—although still below—that prevailing in private tort litigation.

Finally, we invite the committee's attention to the bill's requirement that claims must be presented to the agency before suit can be filed in courts. In our view, the maximum 6-month waiting period which this would entail is not excessive. In addition, experience indicates that it would permit settlement of more tort claims at the agency level than would be possible if the filing of administrative claims were merely optional.

Mr. SMITH. Could I break in here?

Mr. ASHMORE. Yes.

Mr. SMITH. Mr. Douglas, does the Department feel that these possible settlements could be effected by the agency with their present personnel or would it require setting up a new claim department, claim division in each agency?

Mr. DOUGLAS. It is our view, Congressman Smith, that they could handle it with their existing personnel. I cannot, I suppose, bind them to their budget requests; but the fact is that 81 percent of the tort claims that we handle in court center around five large agencies. They are agencies that handle vehicles of some kind—Post Office, Defense Department, VA, Interior, and FAA, which has the airplanes.

They all have large litigation staffs. Some of them have far more attorneys than we do in the Civil Division.

Secondly, they do much of the investigative work and evaluative work now. When we get a case to be filed in court, the first thing we do is to request a litigation report from the agency affected. Not until that comes in do we decide what our strategy will be.

We submit every settlement offer that we receive to the agency for their comments. While we are not bound by their comments, we do pay attention to them. So that the bill really would not curtail any real expansion of the duties they already undertake. And I rather think that, in terms of morale, it might help the morale of the agency staffs, because they will be handling these claims in many instances from start to finish, instead of having to turn them over to somebody else at subsequent stages. I think it would also cut down on paperwork.

Mr. SMITH. At the present time then it is a practice of the Department of Justice to work with the counsel and legal staff of the department involved?

Mr. DOUGLAS. Yes.

Mr. SMITH. Even in litigation and in the settlement process and everything?

Mr. DOUGLAS. Yes.

Mr. SMITH. So that in effect the Department of Justice feels that the other departments involved would still be able to consult with Justice—the Government would still be having good legal advice?

Mr. DOUGLAS. Yes; I think that is absolutely right, Congressman.

Mr. SMITH. Thank you.

Mr. DOUGLAS. We would also propose, Congressman Smith, to submit to the various agencies general guidelines, standards and suggestions for the handling of this program if Congress should enact it.

Mr. ASHMORE. I believe in our discussion of some of these matters, Mr. Douglas, the other day we were particularly concerned about some of the agencies or Departments that might not be equipped with legal personnel to handle these claims. It was my impression that the Department of Justice was going to study this question a little further to decide whether or not to change the language so that it would make it essential that a lawyer properly qualified to settle claims and represent the interest of the Government would be responsible for all such claims and settlements before any final settlement was made.

Mr. DOUGLAS. Yes, Mr. Chairman. We have thought about that, and we have not been able to come up with any specific cases where we had a reference from an agency where there was not a lawyer. There probably are some in the very small agencies, but we have not come up with any specific examples.

Quite frankly, I would be reluctant to have an ironclad requirement written into the statute that the supervision of these claims had to be made by an attorney because we know, for example, that claims adjusters with private insurance companies, claims adjusters—I think—with the Post Office Department—some of them do a fine job and are not qualified attorneys.

I think the postal inspectors today take some of the very small claims and handle them. I would prefer if the committee were concerned about this, Mr. Chairman, to have a provision similar to that which we have proposed in the Federal claims collection bill whereby the settlement authority set out there would be exercised in conformity with standards promulgated by the Attorney General.

Mr. ASHMORE. Let the Attorney General set up the guidelines and the rules and regulations for all agencies and departments to follow?

Mr. DOUGLAS. I would prefer that to having an ironclad rule that only persons who could deal with the claim would be a qualified attorney.

We certainly would not want to preclude individuals with investigative experience without attorney qualifications from at least looking into the claims.

Mr. ASHMORE. I could see where the Post Office Department, for example, would have personnel qualified to do this because, as you say, these people have years' experience, most of them, in matters of that kind; but I was not so sure about some of the other agencies or departments that may not be quite so well experienced in handling matters of that kind.

Do you feel that you could set up regulations that would make it safe and secure from the Government's viewpoint for somebody to settle these claims even though they were not a lawyer?

Mr. DOUGLAS. I think that could be done. I think the fact is that most of the agencies' settlements are pretty well controlled in the General Counsel's office.

I am just wondering about the advisability of an ironclad rule; but I think if this problem is of concern to the committee, I think the preferable way for handling it would be under guidelines prescribed by the Attorney General.

Mr. HUNGATE. Mr. Chairman, I would like to ask, what is the purpose of the section that requires the claim be presented to the agency before suit can be filed?

Mr. DOUGLAS. Well, Congressman Hungate, the purpose of that is to permit the agencies to review it at the onset and have a crack at settling it without necessity of court suit. It is only a 6-month waiting period, so that we are not taking away from the private litigant—

Mr. HUNGATE. Well, at the present time if someone came in the office the day after the accident, a suit could be filed. This probably would not happen.

Mr. DOUGLAS. That is right.

Mr. HUNGATE. If we had a circuit that could try them within 6 months, then a case could be tried in that length of time.

Mr. DOUGLAS. That is true.

Mr. HUNGATE. And that is our goal to try them within 6 months—

Mr. DOUGLAS. That is true.

Mr. HUNGATE. Our goal would be to try them quickly; and if you had sort of an injury that faded with time, they might want to try them quickly.

Mr. DOUGLAS. That is possible.

Mr. HUNGATE. Facial configurations.

Mr. DOUGLAS. That is possible but in such a case it might be fairer to wait awhile to see whether the disfiguration disappeared or not.

Mr. HUNGATE. Now, this 6-month waiting period runs from the time the claim is presented to the agency; is that correct?

Mr. DOUGLAS. Yes.

Mr. HUNGATE. So that if the client delays and comes in the office, more likely as it would be 6 to 8 months afterward, then it would be 8 months plus 6 before there could be a suit filed.

Mr. DOUGLAS. That is right. That is the maximum period.

Mr. HUNGATE. Yes. Now, what about the statute of limitations? Will this have any effect on the statute of limitations?

Mr. DOUGLAS. The statute of limitations is set out in the bill. It actually expands the time within which a suit could be filed in court. At the present time there is a 2-year statute of limitations, and this bill permits 2 years to file with the agency plus 6 months after the agency acts or refuses to act.

Mr. HUNGATE. In other words, the statute of limitations is extended or would be extended by this 6-month period?

Mr. DOUGLAS. That is right.

Mr. HUNGATE. But the thinking behind this, I still do not understand. It is to require someone who now has a right to go to court directly first to deal with administrative agency.

Mr. DOUGLAS. That is right. There are two points on that. First, we have some experience with some agencies, which have authority to settle claims, such as the Navy. Congress gave authority to the Navy to settle claims up to a million dollars not so long ago. That was an optional requirement. Claimants do not have to go to the agency. What developed was that very few people bothered to go to the agency at all. They went into court.

Mr. HUNGATE. Pardon me right there. Now, as I understand it, the person representing the agency would not be required to be a lawyer in these negotiations. We are talking about the settlement

investigations on behalf of the agencies. I understood we said we would not set up a requirement that they would have to be lawyers.

Mr. DOUGLAS. The bill does not require it. As I say, it may be if there were actual negotiations of some kind that the regulations we are talking about should include that. I would imagine that the attorneys would just do the job for the agency.

It is hard to conceive how you could have effective negotiations without an attorney.

Mr. HUNGATE. The present amount that can be handled, is it \$2,500?

Mr. DOUGLAS. Yes, that is right.

Mr. HUNGATE. I wonder what percentage of the claims that covers now or how many are settled in that limit?

Mr. DOUGLAS. Congressman Hungate, I do not have those specific figures. I can only say that the Post Office settles 10,000 claims a year under that provision.

Mr. HUNGATE. Within that limit?

Mr. DOUGLAS. Yes.

Mr. HUNGATE. What I was wondering, the jump from \$2,500 to \$20,000 or \$25,000 as was suggested seemed like quite a large jump.

Mr. DOUGLAS. Yes, it is.

Mr. HUNGATE. I wonder how that was bracketed, instead of doubling it to \$5,000 or quadrupling it to \$10,000?

Mr. DOUGLAS. Well, our thought was that we wanted to give the agencies substantial authority. There has been no suggestion of abuse in their exercise of existing authority. The \$25,000 figure, as I have indicated, seems supported by the wrongful death statutes and by our analysis of the issues that go above that figure.

Could I refer to your previous question?

Mr. HUNGATE. Yes.

Mr. DOUGLAS. A number of States and municipalities which permit suits against the State or the municipality require the filing of claims with the State or the agency in advance of the lawsuit. That is true in the District of Columbia. I do not know what the situation is in Missouri.

Mr. HUNGATE. It is true in Missouri.

Mr. DOUGLAS. Well, I think one thought is that the sovereign is waiving its immunity in connection with tort claims, and that it is not unreasonable to say that for 6 months the agency should have a crack at them.

Now I would think that in most cases where the claimant is determined to push his claim and the agency believes there is no liability, the decision would come much more quickly. The 6-month period is the outside maximum.

Mr. ASHMORE. Wouldn't it encourage claimants to settle without bringing a lawsuit, thinking they have to go hire a lawyer and get involved in litigation and draw it out for a long period of time?

Mr. DOUGLAS. That is true. That is our hope that it would encourage people to come in on an informal basis.

Mr. ASHMORE. It is—well, the objective is for it to work to the advantage of the claimant?

Mr. DOUGLAS. We think to the advantage of the claimant and the Government.

Mr. HUNGATE. I think it is the advantage of the claimant to have an attorney.—That is where we disagree.

Mr. ASHMORE. He can have an attorney. There is no question about that.

Mr. HUNGATE. He should deal during that 6 months with the claim adjuster, who does not necessarily have to be another lawyer before he can file a suit.

Mr. ASHMORE. Well, unless we provide otherwise, Mr. Douglas thinks that would probably be going a little too far.

However, let's don't forget that some 95 percent of the claims come under these five agencies.

Mr. DOUGLAS. Eighty percent.

Mr. ASHMORE. They are all staffed?

Mr. DOUGLAS. They are all staffed.

Mr. GRIDER. Mr. Chairman, at the present time if a claimant has a large tort claim against the Federal Government and he is contemplating bringing suit, he has to give notice, does he not?

Mr. DOUGLAS. No.

Mr. GRIDER. No notice at all?

Mr. DOUGLAS. No notice at all.

Mr. GRIDER. Now, under this bill if it passed, and assume for the purpose of this question that it passed at the level of \$50,000, if a claimant had a tort claim, he would be subject to the requirements of section 2(a), the 6-month provision. Let us say he had a claim for \$40,000, a tort claim. He could not file suit—

Mr. DOUGLAS. Not immediately.

Mr. GRIDER. But he jacked it up to \$60,000. Would this make any difference?

Mr. DOUGLAS. No; all claims would have to be submitted to the agency. That points up a difficulty in the present setup because we know from experience that settlements are made at a small percentage of the total request in the complaint.

As a matter of fact, I think our figures show that settlements in advance of trial are about 6 percent of the requested amounts, so that if we put a limit above which people could sue in court without going to the agency, we would find exactly the consequence you have talked about.

Mr. GRIDER. Now, suppose he has got a tort claim for \$2,500. There is no question at all that he was parked and the mail truck ran into his car and bent the fender. If this is passed, the man cannot get his money for 6 months?

Mr. DOUGLAS. Oh, no, he would file his claim with the agency, and the agency could pay him immediately.

Mr. GRIDER. Pay him immediately?

Mr. DOUGLAS. Yes.

Mr. GRIDER. Now, if he files a claim for \$60,000, assuming that the bill is passed for \$50,000, the agency can still negotiate with him and try to settle it at 50 or below?

Mr. DOUGLAS. Yes, that is right.

Mr. GRIDER. All right. Thank you.

Mr. SHATTUCK. Might I ask a question?

Mr. ASHMORE. Yes.

Mr. SHATTUCK. On this point of negotiation for a claims settlement, Mr. Douglas, wouldn't it be true that, if an issue of law were involved, the interest of the Government would require a consultation by and between attorneys?

Mr. DOUGLAS. Yes; I think that is fair.

Mr. ASHMORE. That is a good point.

Mr. HUNGATE. But the difficulty frequently is in the layman realizing that a point of law is involved.

Mr. ASHMORE. Well, that is true; but there is nothing here to prevent the laymen from having a lawyer at any time.

Mr. HUNGATE. I am talking about a staff adjuster. I understand 90 percent of these claims involve about five large agencies. We wouldn't impose a burden as to the remaining 10 percent if they were all—

Mr. DOUGLAS. I am not sure I follow your figures.

Mr. HUNGATE. I understood that 90 percent of these were handled with departments that were well staffed with general counsel.

Mr. DOUGLAS. Eighty percent.

Mr. HUNGATE. Eighty; I beg your pardon.

Mr. DOUGLAS. And I assume a great many of the remaining ones are with agencies that have lawyers. The 80-percent figure referred to tort claims involving five agencies.

Mr. SHATTUCK. Even in those instances where the man attempting to effect settlement might not be a lawyer, if he came upon a question of liability, a question of whether under the particular circumstances the Government is liable or is not liable, he of course would be well advised to seek counsel, that is legal advice, within his own agency; and I think the regulations could require it.

Mr. DOUGLAS. I cannot imagine any official of the Government not following the course you suggest.

Mr. ASHMORE. You could put that in your guidelines and rules and require him to do so.

Mr. DOUGLAS. Yes, sir, we could do that, which I think would be appropriate.

Mr. GRIDER. This provision for attorneys' fees puzzles me a little bit. This is entirely within the discretion of the head of the agency making the settlement. Even though the client had a contract with his attorney to pay him 25 percent—this is on page 4—even though the attorney had a contract and had done—and had performed outstanding service for his client, the head of the agency could under this provision nullify any attorneys fee at all.

Mr. DOUGLAS. Well, the two things on that, Congressman—the present practice is 10 percent or less.

Mr. GRIDER. Yes. It is that way now.

Mr. DOUGLAS. So we are increasing the limit to 20 percent. As a practical matter, I do not know of any instance where the attorney has got less than the maximum. That is certainly true in virtually all of the cases in court; and I am quite sure it is true of cases settled at the agency level.

Mr. GRIDER. Well, since 10 percent was manifestly an absolute minimum for payment for services, it seems to me that more likely would go 10 percent; but if you get up now where you give 25 percent, and if you are dealing with some man who is not familiar with the problems of the practice of law, he might well say, well, we are going to give you 10 percent and the lawyer will say, now look, I am entitled to more than that, and his client will say, now I think that is a great award. And you are going to get in a squabble here that could be pretty embarrassing. How would the Department feel

about a provision that is not to exceed 20 percent or the amount specific in the contract—

Mr. HUNGATE. Not to exceed 25.

Mr. GRIDER. Not to exceed 25.

Mr. DOUGLAS. You mean have a maximum?

Mr. GRIDER. Where if it was a written contract it would be mandatory on the agency.

Mr. DOUGLAS. I think what we would have then would be a maximum of 25 percent because the attorney would enter into that kind of a contract with his client. The agency would then be stuck with the contract and could not do anything about it.

I feel that while the figures we are suggesting here are below that in private practice—where fees are 33½ usually, and sometimes 40—that nevertheless they would be a worthwhile step.

There is another point to be made I think also, and that is, when the United States is sued and the United States loses, there is no problem of collection. The money is there. Now, on the other hand, if you win a suit in private practice, there is sometimes a collection question. We felt that this was an element in justifying the differential between the higher fees in private practice and the 20 and 25 percent figures we are talking about in this bill.

Mr. GRIDER. No, I certainly cannot agree with that. When you sue the Federal Government, you are taking on a tough, ruthless, determined opponent with all the resources of the Federal Government at his hand.

Mr. DOUGLAS. I would agree with 50 percent of that statement—tough and determined.

Mr. GRIDER. Well, that is true. You have got to be.

Mr. DOUGLAS. Congressman Grider, my point was a little different. My point was that if you get a judgment against the United States and the United States is found liable for say \$25,000, you know that your client is going to get that \$25,000. But if you sue some motorist who bumps into you on Pennsylvania Avenue, you cannot be altogether sure that you are going to collect all the money, and therefore you have got the problem of collection after judgment, which is not present here.

Mr. GRIDER. That is true, which in my view does not halfway compensate for the formidable problems of suing the government.

Mr. DOUGLAS. Well, we are flattered, as I say, but—

Mr. ASHMORE. Well, at the same time if this bill—the statute—would pass, it would give the lawyer quite an advantage over what he has now.

Mr. DOUGLAS. It would be a substantial advantage. I think the basic problem with the present limitations are that they are so unrealistic that the claimants just do not have access to the competent counsel which might otherwise be available. So we have tried to increase it, which we felt was a first sensible step. Then, we could see what happened after some years of experience.

Mr. ASHMORE. You may proceed.

H.R. 13651, agency settlement of affirmative monetary claims of the Government below \$20,000.

(The statement on H.R. 13651 follows:)

STATEMENT OF JOHN W. DOUGLAS, ASSISTANT ATTORNEY GENERAL, ON H. R. 13651

Mr. Chairman and members of the subcommittee, the Civil Division of the Department of Justice is responsible for the assertion in court by the Government of the great bulk of the non-tax civil claims of the United States.

The numbers of these claims such as overpayments to military and civilian personnel, are immense. If an agency having one of these claims cannot collect the amount it believes to be due the Government, the present law seriously restricts its authority to do much more than forward the claim to the General Accounting Office for its collection efforts. Very few of the agencies have any authority to compromise a claim—that is, to accept less than the stated amount of the claim in full settlement—even if to do so would be fully justified by the inability of the debtor to pay more or by the risks inherent in litigation. Nor can they terminate or suspend the Government's efforts to collect the claim, even where it is clear that no person liable on the claim has any present or prospective ability to pay anything on it or that the costs of collection will exceed a y probable recovery.

Most agencies which do have some compromise authority usually have it only with respect to limited types of claims or in a rather small amount. For example, the Administrator of Veterans Affairs can compromise only claims arising under the Veterans Administration's loan guaranty program, 38 U.S.C. 1820(a)(4). Only a few agencies like the Small Business Administration have unrestricted pre-litigation collection and compromise authority, 15 U.S.C. 634(b)(2).

Where the agency's compromise authority is inadequate or its collection efforts prove fruitless, the agency refers the claim for collection to either the General Accounting Office or the Department of Justice. The Comptroller General also has only limited authority to compromise. The general authority given to GAO to settle and adjust all claims by or against the United States (31 U.S.C. 71) was long ago construed by that Office to give it *no* authority to compromise claims. This limitation obviously does not permit the GAO to exercise any great range of collection activities. It does quite well with those powers it does have and is receiving installment payments on thousands of claims upon which it has made demand.

But all these limitations of authority have the inevitable effect of forcing the referral to the Justice Department for collection of thousands of claims that could, with a little flexibility in authority, have been compromised by the agency while the claim was fresh, before substantial interest began to accumulate, and at a time when the debtor could pay. We believe that agency collection effort before referral will reveal that in numerous cases the debtor, at no time, could have paid the debt. It is not good business to send a worthless debt through this collection process and into court simply because no agency has the statutory authority to withhold it from this process. It is also contrary to normal procedures in private business where referral of a debt to a lawyer for court action is a last resort to be done only when a solvent debtor is recalcitrant.

Accordingly, this proposal confers authority upon the agencies to reduce the flow of claims of the Government into the courts. Section 1 of the bill is a direction of each agency head or his designee to undertake collection of all claims of the United States arising out of the activities of his agency or which are referred to his agency. Section 2 gives the agency heads or their designees the authority need to be effective in their efforts. With respect to a claim still within the jurisdiction of his agency which does not exceed \$20,000 exclusive of interest, each agency head may compromise such a claim or he may terminate or suspend collection action on such a claim in those instances where it appears that no person liable has any present or prospective ability to pay any significant sum on the claim or that the cost of collecting on the claim would exceed the likely recovery from collection efforts.

The procedures under which each agency will carry out its collection responsibilities and its authority to compromise and to terminate or suspend collection efforts are to be stated in regulations issued by the agency head in conformity with such standards as may be promulgated jointly by the Comptroller General and the Attorney General. The Comptroller General's experience in collections and that of the Attorney General in both collections and compromises make the joint efforts of these officials appropriate for the setting of these standards. The six months' delay in effectiveness provided by section 10 should permit the development of these standards and regulations prior to the time the bill, if enacted, goes into effect.

Section 4 of the proposed bill makes it clear that this new authority shall not increase or diminish any existing authority of an agency head to litigate claims

and that it shall not diminish any existing authority to settle, compromise, or write off claims. It will, by implication, have the effect of increasing all agency authority to compromise claims up to \$20,000. Of course, the provisions of the bill are not intended in any way to condition or limit the power of the agency to refer a claim to the Department of Justice or of that Department to litigate the claim.

A number of restrictions on this new authority have been written into the bill. One of the more important of these is that an agency head may terminate or suspend collection efforts *only* if (1) no person liable has or is likely to have funds sufficient to make any substantial payment or (2) the cost of collection action is likely to exceed any recovery. If the debt cannot be collected by agency action for other reasons, the agency would refer the debt, as it does today, to either the GAO or the Department of Justice.

An agency head may not exercise the authority with respect to any claim in which there is an indication of fraud or the presentation of a false claim. This provision reflects the current practice. If an agency head has a claim that he would presently refer to the Justice Department because it is tainted with fraud, under this bill he would continue to do so; he could not exercise his new authority to settle or compromise such a claim.

Similarly, the proposed authority does not extend to any claim based in whole or in part on conduct in violation of the antitrust laws. And where GAO has made an exception in the account of an accountable officer, only GAO may act upon the claim. This limitation is reasonable because such accounts have usually been referred to the GAO for auditing; it seems appropriate that that Office alone should have the authority to settle such debts as it may note in the course of such auditing.

We are confident that the agencies will exercise the authority conferred by this bill in a responsible manner.

First, the agencies are already familiar with the types of claims with which this bill is concerned. Under existing practice, preliminary factual and legal research on these claims is often performed by the staffs of these agencies.

Second, in those limited situations where compromise authority already has been granted by Congress—in some instances for very large amounts, as in 10 U.S.C. 7623, authorizing the Secretary of the Navy to settle or compromise certain types of claims up to one million dollars—there has been no indication that the authority has ever been abused.

Third, elementary efficiency in operation appears to suggest the propriety of granting agency heads this authority to deal effectively with these smaller claims arising out of agency activities. In contrast to this relatively limited authority to compromise claims that we are proposing here, contracting officers in these same agencies have authority to commit the Government to spend very large sums of money.

Finally, the authority being proposed has the agreement of the General Accounting Office. In addition, under the bill the Comptroller General jointly with the Attorney General will set the overall standards for agency collection efforts and for compromise and termination or suspension of collection efforts. These safeguards should keep the exercise of compromise authority within proper bounds.

The \$20,000 figure—the maximum figure for the exercise of the proposed authority—seemed to us a reasonable dividing line with which to start this new program. Within this figure would be included the great bulk of those claims which ought to be disposed of without court action. Until we have some experience with the administration of this bill, we believe that the larger claims of the Government (over \$20,000) probably should be dealt with under existing laws and procedures.

In summary, the granting of this authority to the agency heads would have many favorable consequences: equitable settlements could be made more promptly, unnecessary litigation could be reduced, and court congestion would be eased.

I recommend your favorable consideration of this bill.

Mr. DOUGLAS. Even more imposing than the volume of claims against the Government is the volume of affirmative, monetary claims asserted by the Government. These claims, which include, each year, for example, tens of thousands of salary overpayments to Government personnel, arise from the great variety of governmental activities. Under present law, most of the agencies in which these claims develop

are severely limited in their authority to process them efficiently. If the agencies cannot collect the full amount they believe due, they cannot, at present, compromise the debt—that is, accept less than the stated amount of the debt. As a consequence, most agencies can do little more than forward the claim to the General Accounting Office and the Department of Justice. And GAO itself has construed its authority as excluding the right to effect compromise settlements.

As a result, thousands of claims are referred each year to the Department of Justice for suit. Yet, with a little additional flexibility in agency authority, these same claims could have been compromised at an equitable figure while the claim was fresh and before a lot of additional paperwork, and man-hours was piled up.

In a manner of instances these claims cannot be paid by the debtors and cannot reasonably be expected to be paid by the debtors. We, at the Department of Justice, believe that agency collection efforts would have established that many claims never could have been paid. Yet, these claims now go through the collection process and into the courts simply because the agency involved lacks authority to cut short this impractical and costly procedure.

H.R. 13651 would provide authority for the agencies to reduce this flow of Government claims into the courts. It would authorize agencies to compromise or suspend collection action on any claim of \$20,000 or less. Many claims in this category could and should be disposed of without court action. Nine of every 10 are resisted not on legal grounds but rather and solely because of alleged inability to pay.

The bill, which has been agreed to by the General Accounting Office, includes a number of safeguards in the exercise of the new authority proposed for agencies.

First, agency regulations on collection and compromise procedures would be laid down by the agency head in conformity with standards promulgated jointly by the Attorney General and the Comptroller General.

Second, an agency could cease collection efforts only if the debtor does not have, and has no reasonable likelihood of having, funds for any substantial payment or if the cost of collection action is likely to exceed any recovery.

Third, agency compromise authority could not be used in any claims where there is an indication of fraud or misrepresentation or which arise out of antitrust violations.

Finally, since the agencies already do much of the necessary investigation and evaluation under present procedures, the bill would not be saddling the agencies with wholly novel tasks.

In sum, this bill would permit speedier disposition, under adequate safeguards, of Government claims below \$20,000 with beneficial effects to the Government, the debtors, and the courts.

In the Justice Department's view, these four bills now before the committee will serve a broad public interest and should be enacted.

Mr. ASHMORE. Mr. Douglas, I want to commend you and the Department of Justice for the objective that you have here in these bills. I think that they certainly show a desire to be equitable, fair and just in dealing with the public and claimants, and at the same time with adequate protection for the Government.

Any questions, gentlemen?

Mr. HUNGATE. I wonder how the figure \$20,000 was reached? Do we have any figure available to us now?

Mr. DOUGLAS. There is no magic in that figure; but there are at present approximately 25 percent of our cases in court above \$10,000; and we felt that a \$10,000 limitation would unduly restrict the authority of the agencies to settle these claims.

Some of the agencies which have settlement authority have such authority for field offices substantially in excess of what we are proposing here.

For example, SBA, Small Business Administration, which has unlimited settlement authority delegates, we understand, \$100,000 settlement authority to the field offices.

So we think—as I say, there is no great magic in it, but it did seem unwise to cut it off at a lower figure—

Mr. HUNGATE. What you are saying is those agencies that now have such authority have it to a far greater range in some instances than what you now seek?

Mr. DOUGLAS. Yes, in some instances.

Mr. GRIDER. Here again, this would apply to tort claims?

Mr. DOUGLAS. No, this would be affirmative monetary claims of the Government rather than claims against the Government. It would include tort claims of the United States, Congressman Grider.

Mr. GRIDER. Suppose a motorist ran into the post office and knocked down a column.

Mr. DOUGLAS. It would include that kind of a claim.

Mr. GRIDER. Well, if the agency wanted to get rid of this in a hurry, they could reduce their claim below \$20,000. Does this mean that the settlement has to be below \$20,000 or does it mean the total claim has—

Mr. DOUGLAS. The total claim has to be below \$20,000. I do not believe, Congressman, that it is a real problem. I do not see how an agency in the assertion of a claim would purposely reduce it below \$20,000 in order to increase their authority. Most of these claims deal with overpayments to military personnel and civilian personnel, and where the amounts are determined by GAO or the military.

Mr. GRIDER. Now, the way it seems to me, these things generally come to us on over payments to military personnel and civilians—the poor guy has been overpaid a couple thousand bucks, and they are getting ready to take it out of his salary.

Mr. ASHMORE. This would eliminate a lot of the cases that we have of that nature.

Mr. DOUGLAS. That is right.

Mr. GRIDER. ~~You have still got the power to withhold his salary.~~

Mr. DOUGLAS. I think the position of the Defense Department now is that they do not have authority to compromise a claim of the United States.

Mr. GRIDER. They do have authority to withhold salary.

Mr. ASHMORE. Yes, but not to compromise.

Mr. DOUGLAS. Not to compromise. With this authority they would be able to take a more realistic look. They would not have to take the hard line that says, "You owe us \$3,000 for overpayments 4 years ago; you have got to pay; we have no authority to settle the case."

Mr. ASHMORE. At the present time when they tell him that he either has to pay or come to Congress and ask us—this committee really—to relieve him of that liability.

Mr. DOUGLAS. That is correct.

Mr. ASHMORE. Whereas, if they pass this bill, they can negotiate between the Department and the debtor and settle a lot of these, we hope, and keep these cases from having to be determined by us.

Mr. GRIDER. I thought, Mr. Chairman, that the military had the authority—let's say some poor boatswain's mate has been overpaid a thousand bucks. The paymaster just starts taking about 50 bucks a month out of his paycheck without even letting him know. That is what I meant when I said ruthless.

Mr. DOUGLAS. I do not know about that. I am glad you left the Justice Department out.

Without quarreling with your statement at all, what this bill would do would permit the Defense Department today to go to the boatswain's mate and say, "Well, now, you owe us \$3,000 according to this record. We know you do not have the money to pay it, and we are willing to settle for 25 cents on the dollar. Will you accept it?"

At present they have no alternative but to try and collect the full amount because they do not have compromise authority; so that this enables them to compromise where they did not have authority to compromise before.

Mr. GRIDER. Well now, does it really, in the case I cited of the boatswain's mate?

Mr. DOUGLAS. Yes.

Mr. GRIDER. They know they can get the money back. There is no question of that; and before this can go into effect, they have to believe that the matter ought to be compromised. If they know the guy is obligated for 4 more years' service and is drawing 300 bucks a month, all they have got to do is hold out a hundred a month; and as I understand it, they can do that today just by telling him they are going to do it. Am I wrong about that?

Mr. DOUGLAS. Well, they are entitled to set off claims of course against payments to military personnel. Of course most of the claims, I think, as this committee is aware of, are from people who have left the service, and for them there is no problem of this kind of set off.

Mr. SHATTUCK. There is authority, Mr. Douglas, in the military law for the relief of enlisted men in some instances; so that in Mr. Grider's case I believe the boatswain's mate might have some recourse to this statute. But in any event we get to the basic question of whether under the circumstances the interest of the Government and rights of the individual, these two considerations, justify compromise.

Mr. DOUGLAS. Well, of course you would have to look at each case; but I would suppose that in a case that Congressman Grider is talking about they would look at the man's resources, his assets, and they would not take just a hardnose position that you have got to pay everything in your remaining enlistment.

They would treat him as though he were somebody outside the service, it seems to me. They would say, if we were to sue you, what could we expect to recover and what could we expect you to pay, and they would take into account whether the man had some kind of defense.

For example, in some of these cases the Government itself has at some point or other condoned the payment—perhaps it has said that...

payment was perfectly all right to pay. That would create questions of estoppel, which would justify the assignment of some litigation risk in pushing that case into court, so I think there might be some latitude for compromise.

Mr. ASHMORE. And the debtor would still have the right to refuse to compromise and say, well, I will have my Congressman introduce a bill to relieve me of this. He does not have to negotiate.

Mr. DOUGLAS. He could always come to Congress. But I think this bill would be a big step forward in overpayment field, which is a troublesome one.

Mr. ASHMORE. Any further questions?

Mr. GRIDER. No, sir.

Mr. ASHMORE. Well, gentlemen, do you have any other witnesses, Mr. Douglas, or anyone else in the Department?

Mr. DOUGLAS. No, we do not have anybody else.

Mr. ASHMORE. Any further statements?

Mr. DOUGLAS. I would like to mention one minor thing in the cost bill.

As you know, H.R. 14182 was designed to permit payment of costs by the United States in civil actions where the United States loses, just as is true where private parties lose cases. It was not intended to deal with criminal cases. I think that is clear from the letters of communication and everything else.

To clarify the point, we probably should include the word "civil" between the word "every" on page 1, line 8 and the word "action" on line 9.

Mr. ASHMORE. It occurs to me that this is something that should have been done long ago.

Mr. DOUGLAS. Well—you are talking about the correction or the bill?

Mr. ASHMORE. No, the change proposed in the bill itself.

Mr. DOUGLAS. The correction also should have been done long ago.

Mr. ASHMORE. Mr. Douglas, we appreciate your coming.

Mr. DOUGLAS. Thank you, Mr. Chairman.

Mr. ASHMORE. The executive communications from the Department of Justice dated March 10, 1966, and March 28, 1966, which recommend the enactment of the provisions embodied in these bills will be made a part of the record. We stand adjourned.

OFFICE OF THE ATTORNEY GENERAL,  
Washington, D.C., March 10, 1966.

The SPEAKER,  
House of Representatives,  
Washington, D.C.

DEAR MR. SPEAKER: Enclosed for your consideration and appropriate reference are three legislative proposals: (1) to amend the Federal Tort Claims Act to authorize increased agency consideration of tort claims against the Government, and for other purposes; (2) to establish a statute of limitations for certain actions brought by the Government; and (3) to avoid unnecessary litigation by providing for the collection of claims of the United States, and for other purposes.

These proposals are designed to improve the disposition of monetary claims by and against the Government—claims which now comprise the bulk of civil litigation involving the Government. The proposals should ease court congestion, avoid unnecessary litigation, speed up settlements, and reduce the number of stale claims. Such results would, of course, not only benefit private litigants but be beneficial to the courts, the agencies, and the Department of Justice.

## I. AMENDMENT TO TORT CLAIMS ACT

The first of these proposals would amend the Federal Tort Claims Act. That act, with limited exceptions, makes the United States liable for the negligence, wrongful act, or omission, of a Government employee while he is acting within the scope of his office or employment, under circumstances in which a private person would be liable under the law of the place where the act or omission occurred. A person who has a substantial claim arising under the act must bring an action in a Federal district court (28 U.S.C. 1346(b)). He can seek administrative settlement of his claim only if the claim is for less than \$2,500 (28 U.S.C. 2672).

Our experience under the Federal Tort Claims Act has demonstrated that of all awards allowed in cases filed under the act, 80 percent are made prior to trial. Since tort claims against the Government tend to arise in a few agencies, these agencies have considerable experience in settling such claims. We therefore propose that a procedure be instituted under which all claims would be presented to the appropriate agencies for consideration and possible settlement before court action could be instituted. A claim would first be considered by the agency whose employee's activity allegedly caused the damage and which possesses the greatest information concerning that activity. As a result, it is expected that meritorious claims would be settled more quickly, without the need for expensive and time-consuming litigation or even for filing suit.

In order to provide the agencies with sufficient authority to settle a broad range of claims, the proposal would give them authority to consider and settle any claim under the Tort Claims Act, irrespective of amount. Settlement and awards in excess of \$50,000 would require the prior approval of the Attorney General.

Finally, in order to encourage claimants and their attorneys to make use of this new administrative procedure, the attorney's fees allowable under the act would be raised from the present 10 percent of the administrative award and 20 percent of the settlement of judgment after filing suit to 20 and 25 percent, respectively.

## II. STATUTES OF LIMITATIONS AGAINST CERTAIN GOVERNMENT ACTIONS

The second proposal would establish statutes of limitations for certain types of actions brought by the Government. The general rule is that there is no limitation of time against the Government for bringing an action unless it is specifically authorized by statute. There are a few exceptions to this rule. For example, a civil suit brought by the Government on a false claim must be filed within 6 years; suits for penalties or forfeitures under the customs laws must be brought within 5 years; 2 years is the limit within which the Federal Housing Administration must sue to recover an overpayment on a guarantee of a home improvement loan. There are, however, no time bars against the great majority of Government claims.

More time limitations appear desirable for a number of reasons. Application of statutes of limitation in tort and contract actions would make the position of the Government more nearly equal to that of private litigants. A corollary to this objective is the desirability of encouraging trials at a sufficiently early time so that necessary witnesses and documents are available and memories are still fresh.

Another reason for proposing limitations is to reduce the costs of keeping records and detecting and collecting on Government claims—costs that after a period of years may exceed any return by way of actual collections. Further consequences to be expected from this measure are the encouragement of the agencies to refer their claims promptly to the Department of Justice for collection; the avoidance of judicial hostility to old claims asserted by the Government; and the minimizing of collection problems arising with respect to debtors who have died, disappeared, or gone bankrupt.

Accordingly, it is proposed that statutes of limitations be applied to important general areas where none are now in effect. The proposal would impose a 6-year limitation on the assertion of Government claims for money arising out of an express or implied contract or a quasi-contract. This time bar corresponds to the 6-year limitation on those who sue the Government on similar claims under the Tucker Act.

Suits in tort are to be brought within 3 years, except those based on trespass to Government lands and those brought for the recovery of damages resulting from fire on such lands, and actions for conversion of Government property for which the limitation period will be 6 years.

A 6-year limitation would be imposed upon suits by the Government to recover erroneous overpayments of wages and other benefits made to military and civilian employees of the Government.

## 30 IMPROVEMENT OF PROCEDURES IN CLAIMS SETTLEMENT

### III. EXPANSION OF AGENCY AUTHORITY TO SETTLE GOVERNMENT MONETARY CLAIMS

The third proposal seeks to ease court congestion and improve and accelerate the disposition of Government claims.

Each year, tens of thousands of Government claims arise out of the great variety of Government activities. Many of the agencies in which these claims arise have limited and inadequate authority to take effective collection action with respect to such claims. With few exceptions, the agencies have no authority to negotiate a compromise when the amount of the indebtedness, or even the fact of the indebtedness, is in dispute or where there is a question as to the debtor's financial capacity to pay.

Because of this lack of agency authority, many claims are referred routinely to the General Accounting Office and the Department of Justice for collection when they could be disposed of more satisfactorily at the agency level. The proposed legislation should permit more effective collection efforts by the agencies.

It would impose upon Government agencies the obligation to seek to collect debts due the United States as a result of their activities, and would afford them the flexibility to compromise claims when compromise is warranted or to suspend collection action on claims when they are found to be uncollectible by virtue of there being no assets available for payment. Agencies would not, however, be authorized to compromise or terminate a collection activity on a claim which exceeds a principal amount of \$20,000. Neither could they act upon claims as to which there are indications of fraud or misrepresentation, or which arise out of antitrust violations.

Efforts at collection and compromise would be considered by the agency under regulations prescribed by the agency head and in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General.

It is clear that the legislation will not increase or diminish the existing authority of the head of any agency to litigate claims nor will it diminish existing authority to settle, compromise, or close claims.

In conclusion, the enactment of these three proposals would have most beneficial consequences. Uncollectible claims of the Government could be disposed of by agency action without resort to litigation, tort claims against the Government could be settled without the necessity for filing suit, and claims of the Government will have to be brought, and, in fact, may only be brought, while they are still relatively fresh. The removal from the courts of litigation which is essentially unnecessary, should enable the courts and the Department of Justice to devote more time to other pressing matters and should permit claims of the United States to be satisfied more expeditiously.

In order to achieve these desirable objectives, I recommend the introduction and prompt enactment of these proposals.

The Bureau of the Budget has advised that there is no objection to the enactment of this legislation from the standpoint of the administration's program.

Sincerely,

NICHOLAS DEB. KATZENBACH,  
*Attorney General.*

(The draft of legislation referred to in the executive communication and introduced as H.R. 13650 is as follows:)

A BILL To amend the Federal Tort Claims Act to authorize increased agency consideration of tort claims against the Government, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* (a) That the first paragraph of section 2672 of title 28, United States Code, is amended to read as follows:

"The head of each Federal agency or his designee may consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred: *Provided*, That any award, compromise, or settlement in excess of \$50,000 shall be effected only with the prior written approval of the Attorney General or his designee."

(b) The second paragraph of section 2672 of title 28, United States Code, is amended to read as follows:

"Subject to the provisions of this title relating to civil actions on tort claims against the United States, any such award, compromise, settlement, or determination shall be final and conclusive on all officers of the Government, except when procured by means of fraud."

(c) The third paragraph of section 2672 of title 28, United States Code, is amended to read as follows:

"Payment of any award, compromise, or settlement in an amount in excess of \$2500 made pursuant to this section or made by the Attorney General pursuant to section 2677 of this title shall be paid in a manner similar to judgments and compromises in like causes and appropriations or funds available for the payment of such judgments and compromises are hereby made available for the payment of awards, compromises, or settlements under this chapter."

SEC. 2. (a) Subsection (a) of section 2675 of title 28, United States Code, is amended to read as follows:

"(a) An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section."

(b) Subsection (b) of section 2675 of title 28, United States Code, is amended by deleting the first sentence thereof.

SEC. 3. Section 2677 of title 28, United States Code, is amended to read as follows:

"The Attorney General or his designee may arbitrate, compromise or settle any claim cognizable under Section 1346(b) of this title, after the commencement of an action thereon."

SEC. 4. The first paragraph of section 2678 of title 28, United States Code, is amended to read as follows:

"The court rendering a judgment for the plaintiff pursuant to section 1346(b) of this title, or the head of the Federal agency acting pursuant to section 2672, or the Attorney General acting pursuant to section 2677 of this title, making an award, compromise, or settlement, may, as a part of such judgment, award, compromise, or settlement, determine and allow reasonable attorney fees, which, if the recovery is \$500 or more, may be up to but shall not exceed either 20 per centum of the amount recovered under section 2672 of this title or the amount contracted between the parties nor may not exceed 25 per centum of the amount recovered under section 1346(b) of this title, to be paid out of but not in addition to the amount of judgment, award, compromise, or settlement recovered, to the attorneys representing the claimant."

SEC. 5. Subsection (b) of section 2679 of title 28, United States Code, is amended to read as follows:

"(b) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property or personal injury or death, resulting from the operation by any employee of the Government of any motor vehicle while acting within the scope of his office or employment, shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim."

SEC. 6. Section 1302 of the Act of July 27, 1956, as amended (70 Stat. 694; 75 Stat. 416; 31 U.S.C. 724a), is further amended (1) by inserting a comma and the word "awards," after the word "judgments" and before the word "and"; (2) by deleting the word "or" after the number "2414" and inserting in lieu thereof a comma; and (3) by inserting after the number "2517" the phrase ", 2672, or 2677".

SEC. 7. Subsection (b) of section 2401 of title 28, United States Code, is amended to read as follows:

"(b) a tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues, or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented."

SEC. 8. The first sentence of section 2671 of title 28, United States Code, is amended to read as follows:

"As used in this chapter and sections 1346(b) and 2401(b) of this title, the term 'Federal Agency' includes the executive departments, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States but does not include any contractor within the United States."

SEC. 9. (a) The section heading of section 2672 of title 28, United States Code, is amended to read as follows:

**"§ 2672. Administrative adjustment of claims."**

(b) The analysis of chapter 171 of title 28, United States Code, immediately preceding section 2671 of such title, is amended by deleting the item "2672. Administrative adjustment of claims of \$2,500 or less," and inserting in lieu thereof: "2672. Administrative adjustment of claims."

SEC. 10. This Act shall apply to claims accruing six months or more after the date of its enactment.

(The draft of suggested legislation referred to in the communication and introduced as H.R. 13651 is as follows:)

A BILL To avoid unnecessary litigation by providing for the collection of claims of the United States, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Federal Claims Collection Act of 1966."

SEC. 2. In this Act—

(a) "agency" means any department, office, commission, board, service, Government corporation, instrumentality, or other establishment or body in either the Executive or Legislative Branch of the Federal Government;

(b) "head of an agency" includes, where applicable, commission, board, or other group of individuals having the decision-making responsibility for the agency.

SEC. 3. (a) The head of an agency or his designee, pursuant to regulations prescribed by him and in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General, shall attempt collection of all claims of the United States for money or property arising out of the activities of, or referred to, his agency.

(b) With respect to such claims of the United States that have not been referred to another agency, including the General Accounting Office, for further collection action and that do not exceed \$20,000, exclusive of interest, the head of an agency pursuant to regulations prescribed by him and in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General, may (1) compromise any such claim, or (2) cause collection action on any such claim to be terminated or suspended where it appears that no person liable on the claim has the present or prospective financial ability to pay any significant sum thereon or that the cost of collecting the claim is likely to exceed the amount of recovery. The Comptroller General or his designee shall have the foregoing authority with respect to claims referred to the General Accounting Office by another agency for further collection action. The head of an agency or his designee shall not exercise the foregoing authority with respect to a claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or a claim based in whole or in part on conduct in violation of the antitrust laws; nor shall the head of an agency, other than the Comptroller General of the United States, have authority to compromise a claim that arises from an exception made by the General Accounting Office in the account of an accountable officer.

(c) A compromise effected pursuant to authority conferred by subsection (b) of this section shall be final and conclusive on the debtor and on all officials, agencies, and courts of the United States, except if procured by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact. No accountable officer shall be liable for any amount paid or for the value of property lost, damaged, or destroyed, where the recovery of such amount or value may not be had because of a compromise with a person primarily responsible under subsection (b).

SEC. 4. Nothing in this Act shall increase or diminish the existing authority of the head of an agency to litigate claims, or diminish his existing authority to settle, compromise, or close claims.

SEC. 5. This Act shall become effective on the 180th day following the date of its enactment.

(The draft of proposed legislation referred to in the communication and introduced as H.R. 13652 is as follows:)

! A BILL To establish a statute of limitations for certain actions brought by the Government

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That Title 28 of the United States Code is amended by adding thereto the following two new sections:

**§ 2415. Time for commencing actions brought by the United States**

(a) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later. *Provided*, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment.

(b) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues: *Provided*: That an action to recover damages resulting from a trespass on lands of the United States, including trust or restricted Indian lands; an action to recover damages resulting from fire to such lands; an action to recover for diversion of money paid under a grant program; and an action for conversion of property of the United States may be brought within six years after the right of action accrues.

(c) Nothing herein shall be deemed to limit the time for bringing an action to establish the title to, or right of possession of, real or personal property.

(d) Subject to the provisions of section 2416 of this title and except as otherwise provided by Congress, every action for the recovery of money erroneously paid to or on behalf of any civilian employee of any agency of the United States or to or on behalf of any member or dependent of any member of the uniformed services of the United States, incident to the employment or services of such employee or member, shall be barred unless the complaint is filed within six years after the right of action accrues.

(e) In the event that any action to which this section applies is timely brought and is thereafter dismissed without prejudice, the action may be recommenced within one year after such dismissal, regardless of whether the action would otherwise then be barred by this section. In any action so recommenced the defendant shall not be barred from interposing any claim which would not have been barred in the original action.

(f) The provisions of this section shall not prevent the assertion, in an action against the United States or an officer or agency thereof, of any claim of the United States or an officer or agency thereof against an opposing party, a co-party, or a third party that arises out of the transaction of occurrence that is the subject matter of the opposing party's claim. A claim of the United States or an officer or agency thereof that does not arise out of the transaction or occurrence that is the subject matter of the opposing party's claim may, if time-barred, be asserted only by way of offset and may be allowed in an amount not to exceed the amount of the opposing party's recovery.

(g) Any right of action subject to the provisions of this section which accrued prior to the date of enactment of this Act shall, for purposes of this section, be deemed to have accrued on the date of enactment of this Act.

(h) Nothing in this Act shall apply to actions brought under the Internal Revenue Code or incidental to the collection of taxes imposed by the United States.

### § 2416. Time for commencing actions brought by the United States— Exclusions

For the purpose of computing the limitations periods established in section 2415, there shall be excluded all periods during which—

(a) the defendant or the res is outside the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico; or

(b) the defendant is exempt from legal process because of infancy, mental incompetence, diplomatic immunity, or for any other reason; or

(c) facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act in the circumstances; or

(d) the United States is in a state of war declared pursuant to Article I, Section 8, of the Constitution of the United States.

SEC. 2. The table of sections at the head of chapter 161 of title 28 of the United States Code is amended by adding at the end thereof the following items:

2415. Time for commencing actions brought by the United States.

2416. Time for commencing actions brought by the United States—exclusions.

OFFICE OF THE ATTORNEY GENERAL,  
*Washington, D.C., March 28, 1966.*

THE SPEAKER,  
*House of Representatives,*  
*Washington, D.C.*

DEAR MR. SPEAKER: There is attached for your consideration and appropriate reference a draft bill to provide for judgments for costs against the United States.

There is a substantial inequity in the present law covering the granting of costs in litigation involving the United States. When the United States sues on a claim and wins, it may be awarded costs; when the United States sues and loses, costs may not be awarded against it. When the United States is sued and wins, it may be awarded costs; when the United States is sued and loses, costs may not be awarded against it. Only in rare cases does the law provide for costs to be assessed against the United States when it is the losing party in civil litigation.

The basic general statute pertaining to costs in litigation involving the United States is section 2412(a) of title 28 of the United States Code. That statute provides that the United States shall be liable for costs only when such liability is expressly provided for by act of Congress. Subsections (b) and (c) of section 2412, the Suits in Admiralty Act (46 U.S.C. 743) and the Public Vessels Act (46 U.S.C. 782) are some of the relatively few statutes in which costs against the United States have been expressly provided for by act of Congress. Most other statutes authorizing suit against the United States are silent on the subject of costs and, accordingly, costs may not be awarded against the United States in such cases.

The attached legislative proposal is intended to correct this disparity of treatment between private litigants and the United States. It will amend section 2412 of title 28 to provide that, except as otherwise specifically provided by statute, costs as set out in section 1920 of title 28 may be awarded to the prevailing party in actions brought by or against the United States or any agency or official acting in his official capacity. The amount of costs that may be awarded shall be in accordance with the amounts established by statute or by court rule or order. The bill makes it clear that the fees and expenses of attorneys and expert witnesses may not be taxed against the United States.

In order to achieve this desirable objective, I urge the early and favorable consideration of the proposal.

The Bureau of the Budget advises that there is no objection to the submission of this recommendation from the standpoint of the administration's program.

Sincerely,

NICHOLAS DEB. KATZENBACH,  
*Attorney General.*

## IMPROVEMENT OF PROCEDURES IN CLAIMS SETTLEMENT 35

A BILL To provide for judgments for costs against the United States

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 2412 of title 28 of the United States Code is amended to read as follows:

"Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in section 1920 of this title but not including the fees and expenses of attorneys or expert witnesses, may be awarded to the prevailing party in any action brought by or against the United States or any agency or official of the United States acting in his official capacity, in any court having jurisdiction of such action. A judgment for costs when taxed against the Government shall, in an amount established by statute or court rule or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by him in the litigation. Payment of a judgment for costs shall be as provided in section 2414 of this title for the payment of judgments against the United States."

SEC. 2. Section 2520(d) of title 28 of the United States Code is hereby repealed.

SEC. 3. These amendments shall apply only to judgments entered in actions filed subsequent to the date of enactment of this Act. These amendments shall not authorize the reopening or modification of judgments entered prior to the enactment of this Act.

(Whereupon, at 11:06 a.m. the committee was adjourned.)