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debt
collection

Section by Section Analysis

The Federal Debt Collection Procedures Act of 1990 (the Act), 28 U.S.C. §§ 3001 - 3308, created for the first time a comprehensive statutory scheme for judicially enforcing the collection of debts owed to the United States. Prior to its enactment, the United States was required to use procedures under State law to collect these debts. Rule 69, Federal Rules of Civil Procedure. These laws vary greatly from State to State and this caused an unevenness in the enforcement of Federal judgments. The uniform provisions of the Act have increased the efficiency and the success of Federal debt collection efforts while making the process fairer to both the taxpayers and the debtors.

The bill seeks to further the Act's goal of uniformity by ensuring that all enforcement remedies and procedures apply equally in all judicial districts. The United States must treat all of its citizens equally, whether they are students who need loans for tuition, entrepreneurs who cannot obtain business loans from local banks or doctors who participate in the Medicare program. The amendments fill the gaps in the Act so that those who benefit from the Federal largesse are required to pay back their obligations under a uniform Federal system.

The United States must also enforce sentences imposing fines, restitution and special assessments on criminal defendants who are convicted of violating Federal laws. Over 90% of the money collected on fines and special assessments is distributed from the Crime Victims Fund to the States to provide assistance to victims of violent crime. The United States also acts on behalf of victims of crime to enforce the restitution owed to them. These involuntary debts are among the hardest of all debts to collect, but their enforcement is important to an effective criminal justice system. The bill amends the Act to improve the enforcement procedures for these criminal debts[1], and it also amends the procedures available under other provisions of law to enforce collection of these debts. See, Title II of the bill. Victims of crime will be the beneficiaries of these amendments, directly in the case of restitution or indirectly through the State and local assistance programs supported by the Crime Victims Fund.

This legislation does not affect State law remedies in any way, nor does it affect State court procedures or private sector debtors. The focus of the bill is the debtor-creditor relationship between the United States and the debtors who do not honor their Federal debts. Rule 69, Federal Rules of Civil Procedure, provides enforcement procedures for non-Federal litigants in the Federal courts.

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[1] Under the Mandatory Victim Restitution Act's amendments to 18 U.S.C. § 3613, the Federal Debt Collection Procedures Act now provides the primary enforcement procedures for collecting criminal judgments. Antiterrorism and Effective Death Penalty Act, Public Law 104-132, Title II, § 207(c)(3), April 24, 1996, 110 Stat. 1238.

The bill enhances the Act to assist the United States in the effort to recover the increasing number of debts and billions of dollars owed to it.

TITLE I - DEBT COLLECTION IMPROVEMENTS

Section 101

The bill makes a technical amendment to 28 U.S.C. § 3001(a).

Section 102

The bill amends the definition of "debt" in 28 U.S.C. § 3002(3) for technical reasons and for clarity. In particular, the amendment clarifies that the definition of debt includes amounts, such as restitution orders in criminal proceedings, that the United States is authorized by statute to collect for its citizens.

Section 103

The bill amends 28 U.S.C. § 3002(7) by striking out "substantial". As the Act does not define "substantial", it creates an ambiguity that does not exist under comparable State law.

Section 104

This technical amendment to the definition of "judgment" in 28 U.S.C. § 3002(8) clarifies that a criminal proceeding is not based on a claim for a debt, but may result in the imposition of a fine, restitution order or other monetary penalty. In addition, the amendment makes clear that the definition includes a judgment for the benefit of a citizen if the United States is authorized by law to enforce the judgment.

Section 105

This technical amendment to the definition of "person" in 28 U.S.C. § 3002(10) adds the United States to ensure that provisions such as 28 U.S.C. § 3009 apply to the United States.

Section 106

The bill amends 28 U.S.C. § 3004(b)(2) to eliminate mandatory transfers of actions and proceedings from one judicial district to another. The amendment provides the court with the same discretion it has for other types of actions and proceedings when transfer of venue to another judicial district is authorized by law, including transfers for the convenience of the debtor and transfers in the interests of justice.

Section 107

This technical amendment to 28 U.S.C. § 3004(c) clarifies that the United States may not dispose of the debtor's property without first meeting the requirements for service of process. In addition, the bill adds "writ" to the types of process enumerated to be consistent with other provisions of the Act.

Section 108

The United States marshal is currently authorized to hire third parties to safeguard property that has been seized pursuant to the Act. The United States marshal must also perform such duties as transportation of property, obtaining title reports and appraisals, arranging for sales of property and arranging pre-sale displays of personal property. Because the United States marshal often requires greater assistance than the Act currently authorizes, the bill amends the scope of 28 U.S.C. § 3009 to permit the United States marshal to contract with others to perform these or similar services. The United States marshal may only contract for services or delegate duties that do not require a law enforcement presence. Under the amendment to 28 U.S.C. § 3002(10), Federal agencies are included as persons that may provide these services.

Section 109

State law determines the debtor's interest in co-owned property under the Act. This technical amendment to 28 U.S.C. § 3010(a) provides a clearer, more concise statement of the intent of this provision.

Section 110

The bill amends 28 U.S.C. § 3011(a) of the Act to clarify that the United States is entitled to a surcharge if it is required to sue the debtor to collect a debt. The surcharge is intended to compensate the United States for the costs of litigation, and is in lieu of attorney's fees. The bill also clarifies that the United States is only entitled to one surcharge on each debt under the Act.

Section 111

The bill amends 28 U.S.C. § 3014 to create uniform Federal exemptions when the United States seeks to collect a civil debt. The bill exempts the same types of property that are exempted under comparable State law. This amendment creates fairness throughout Federal lending programs by ensuring uniform application of the Act's remedies to enforce Federal debts. The bill specifically incorporates the existing exemption under Federal law for earnings.

Section 112

The bill amends 28 U.S.C. § 3014(b) to clarify that the court must make a determination on the validity of a claimed exemption. The bill also clarifies the court's authority, when appropriate, to modify the requirement that property be held while claims of exemption are pending. For example, ordering the immediate sale of perishable property under section 3007 may be necessary to protect the value of the debtor's interest in the property. In addition, the bill makes clear that, as under the Act, each debtor liable on a debt may claim his or her own exemptions.

Section 113

The bill amends 28 U.S.C. § 3015(a) to clarify that the United States may obtain financial information about the debtor from the debtor or any other person without first proceeding against the debtor's property. Financial information may be obtained by any method authorized by the Federal Rules of Civil Procedure or by a procedure commonly referred to as a "judgment debtor exam". As under State law, judgment debtor examinations are initiated with a subpoena to appear before the court with all records, books, and other documents and to answer questions under oath.

Section 114

The bill adds a new subsection (b) to 28 U.S.C. § 3015 to provide a specific exemption from the Right to Financial Privacy Act to allow the United States to obtain financial records that private sector creditors can routinely obtain under State law. This amendment also eliminates problems encountered by banks and other financial institutions in complying with both the Act and the Right to Financial Privacy Act.

Section 115

The amendment to 28 U.S.C. § 3015(c), as redesignated by the bill, provides a clearer statement of authority for the United States to obtain financial information at any time after the complaint is filed when the debt exceeds $50,000.

The bill also adds a new subsection (d) to section 3015 of the Act primarily to enhance the enforced collection of criminal debts. This new provision permits the Court, after a verdict, plea agreement or decision in favor of the United States, to authorize the United States to obtain the debtor's financial information and to issue a restraining notice. The ability to examine the defendants immediately after a decision or verdict when coupled with a restraining notice will deter defendants from fraudulently hiding their assets.

Section 116

The bill adds a new subsection (e) to 28 U.S.C. § 3015 to permit an attorney for the

Government to disclose information concerning the debtor's financial condition obtained through a grand jury investigation to another attorney for the Government for the limited purpose of collecting a debt owed to the United States. The inability of one Government attorney to disclose to another the nature and location of the defendant's assets because the knowledge has been obtained through the grand jury process impedes collection from debtors who hide or fraudulently transfer their assets.

Section 117

The bill adds a new subsection (f) to 28 U.S.C. § 3015 to authorize a civil investigative demand prior to the institution of a civil action. This investigative tool is needed to make effective use of 28 U.S.C. § 3012 and to investigate claims arising from fraudulent conduct. Such a procedure is available in other civil contexts.

Section 118

The bill defines and uses the term "attorney for the government" to limit the scope of subsections 3015(e) and (f). The authority in these subsections is restricted to the United States Attorneys and other Department of Justice attorneys. The provisions of the Act can normally be invoked by a broader range of attorneys, including private counsel authorized to represent the United States under 31 U.S.C. § 3718(b).

Section 119

This technical amendment to 28 U.S.C. § 3101(a) clarifies that the application for a prejudgment remedy need not be under oath, since the application must be accompanied by an affidavit. Generally, counsel for the United States will rely on others who have personal knowledge or access to the appropriate records to execute the mandatory affidavit.

Section 120

These technical and other amendments to 28 U.S.C. § 3101(d) provide a more concise notice form which accurately states the rights of those receiving the notice. The form also incorporates the types of exempt property the debtor is able to claim. These are the exemptions provided for in Section 111 of this bill which amends 28 U.S.C. § 3014(a). As the bill creates new, uniform federal exemptions, they do not need review by the chief judges in the district courts for consistency with State law, and this requirement is deleted. The provision for change of venue is also deleted as this can be accomplished pursuant to other provisions of title 28, United States Code.

Section 121

This technical amendment to 28 U.S.C. § 3101(e) clarifies the clerk of the court's authority to perform the ministerial act of issuing a prejudgment writ and other necessary process.

Section 122

The amendments to 28 U.S.C. § 3102(a) and (b) delete the word "substantial" for the same reasons previously stated in the comments to section 103. The bill makes other technical amendments and deletes inappropriate requirements for preserving certain types of property of the debtor prior to judgment. The deleted requirements unnecessarily restrict the availability of attachment by limiting the definition of debt under the Act.

Section 123

The bill amends 28 U.S.C. § 3103(a) by deleting the word "substantial" for the same reasons stated in the comments to section 103.

Section 124

The bill amends 28 U.S.C. § 3104(a) by deleting the word "substantial" for the same reasons stated in the comments to section 103. The amendment also deletes a sentence on co-owned property for consistency with the amendment made by section 108 of the bill.

Section 125

This technical amendment to 28 U.S.C. § 3104(b)(2) deletes "date the writ is issued" as a required element in the application for a prejudgment writ of garnishment. Because the application must be executed prior to the issuance of the writ, the date the writ is issued can not be determined at the time the application is made.

Section 126

The bill makes technical amendments to 28 U.S.C. § 3105(b) and deletes inappropriate requirements for preserving property of the debtor prior to judgment. The deleted requirements unnecessarily restrict the availability of sequestration by limiting the definition of debt under the Act.

Section 127

The bill amends 28 U.S.C. § 3201 to clarify that the term "judgment" includes a judgment imposed in a criminal proceeding. The bill also adopts a provision from the Federal statute authorizing liens for criminal judgments that preserves the priority of Federal liens filed under the Act. In addition, the bill expands the types of Federal benefits that a judgment debtor is ineligible to receive while a criminal or civil debt to the United States remains unsatisfied.

Section 128

The bill amends 28 U.S.C. §3202(b) to provide a more concise form of notice for postjudgment earnings garnishment for enforcement of civil and criminal judgments. The new form of notice incorporates the types of exempt property the debtor may claim, notice of the right to request a hearing and the request form itself. The amendment also deletes "actions" in the first sentence because none are authorized under subchapter C.

Section 129

The bill deletes 28 U.S.C. § 3202(c) as it is inconsistent with the general service provisions for the Act. The amendment also deletes a sentence on co-owned property for consistency with the amendment made by section 109 of the bill.

The bill adds a new 28 U.S.C. § 3202(c) to provide a more concise form of notice for remedies other than wage garnishment in a civil case. This provision does not apply to wage garnishment because a more specific notice is contained in subsection (b). The new form of notice incorporates the types of exempt property the debtor may claim, notice of the right to request a hearing and the request form itself.

Section 130

The bill adds a new 28 U.S.C. §3202(d)) to provide a more concise form of notice for remedies other than wage garnishment in a criminal case. This provision does not apply to wage garnishment because a more specific notice is contained in subsection (b). The new form of notice incorporates the exemptions provided by 18 U.S.C. § 3613 for criminal judgment enforcement, notice of the right to request a hearing and the request form itself.

Section 131

The bill adds a new subsection (e) to 28 U.S.C. § 3202 to make technical and other changes to the hearing procedures for postjudgment remedies. Section 3205(c) of the act provides that the garnishee has 10 days to file its answer, and the debtor and the United States have 10 days to file their objections to the answer. These time limits conflict with the time specified for requesting a hearing under 28 U.S.C. § 3202(d). Both sections have been amended to grant the debtor 10 days to object to the writ of garnishment after receiving the garnishee's answer. In all other cases, the debtor must object to the writ or order within 20 days of receiving the statutory notice.

Section 132

The bill amends 28 U.S.C. § 3203(a) to delete the word "substantial" for the same reasons stated in the comments to section 103. The amendment also deletes a sentence on co-owned property for consistency with the amendment made by section 109 of the bill.

Section 133

This technical amendment to 28 U.S.C. § 3203(c)(1) clarifies that the clerk of the court issues a postjudgment writ of execution. The issuance of the writ is a ministerial act properly performed by the clerk of the court. The court will maintain supervision at critical points.

Section 134

This technical amendment to paragraph (i) of 28 U.S.C. § 3203(c)(2)(B) clarifies that any of the debtor's property may be seized and used for satisfaction of the judgment debt, subject, of course, to the applicable exemptions. The amendment also eliminates the confusing limitation on the value of the property that may be seized and sold. The limitation conflicts with section 3203(h) which clearly contemplates that an execution sale will generate a surplus recovery on occasion. The sale of a single asset that is sufficiently valuable to satisfy the debt and costs of the sale is the most efficient and least intrusive method of satisfying the judgment. Without amendment, the Act can be read to prohibit this common practice.

Section 135

This technical amendment to of 28 U.S.C. § 3203(c)(2)(B) (ii) clarifies that if particular property is to be subject to the writ of execution, then the writ should describe the property so the marshal will be able to identify the property, levy upon it and deliver possession to the United States.

Section 136

This technical amendment to 28 U.S.C. § 3203(c)(2)(B)(iii) clarifies that the section applies to a judgment for the delivery of identifiable personal property. If the marshal cannot find the particular personal property sought, paragraph (iii) allows the marshal to levy upon and sell any of the debtor's property to realize the same value as the property originally sought under the writ. The bill also amends this section to delete the word "substantial" and is made for the same reasons set forth in the comments to section 103.

Section 137

This technical amendment to 28 U.S.C. § 3203(d)(2) of the Act clarifies that the Federal district court does not assume the functions of a State probate court when a debtor dies after the issuance of the writ of execution.

Section 138

This technical amendment to 28 U.S.C. § 3203(f)(1)(C) clarifies that the clerk of the court issues a postjudgment writ of execution and is made for the same reasons set forth in the comments to section 133. The word "property" has also been deleted because it is redundant.

Section 139

This amendment to 28 U.S.C. § 3203(g)(1)(A)(i) makes several technical changes and deletes the 90-day period during which property levied upon can not be sold. The Act provides the judgment debtor with time to request a hearing. In addition, the property to be sold must be advertised in a newspaper for at least three weeks. These provisions allow the debtor an adequate period of time to seek relief from the court.

Section 140

This amendment makes several technical changes and deletes the waiting period for the sale of personal property in 28 U.S.C. § 3203(g)(1)(B)(ii). The amendment is made for the same reasons stated in the comments to section 139. The bill also deletes the word "substantial" for the same reasons set forth in the comment to section 103.

Section 141

The bill makes a technical amendment to the service provisions of 28 U.S.C. § 3204 to conform it with the amendments to Rule 4.1, Federal Rules of Civil Procedure. The bill also amends this section of the Act to permit the court to issue an installment payment order in addition to an order of garnishment. A wage garnishment is limited to 25% of the disposable earnings paid by the debtor's employer. Debtors may have other sources of income that are not subject to wage garnishment. This amendment increases the court's discretion to fashion an appropriate remedy.

Section 142

This technical amendment to 28 U.S.C. § 3205(a) clarifies that the "clerk of the court" issues a postjudgment writ of garnishment and is made for the same reasons set forth in the comments to section 133. The amendment also deletes a sentence on co-owned property for consistency with the amendment made by section 109 of the bill.

The phrase "attach to debtor's property" has been substituted for the word "continuing" to clarify that a lien remains in place until the garnishment is terminated. The bill also amends 28 U.S.C. § 3205(a) of the Act to delete the word "substantial" for the same reasons stated in the comments to section 103.

Section 143

The bill amends section 3205(b) by adding fiduciaries and personal representatives as the proper garnishees if property is held or controlled by them. The bill also reorganizes and consolidates the requirements for issuance of the writ by moving them from subsection (b) to subsection (c).

Section 144

The bill amends 28 U.S.C. § 3205(c)(1) to eliminate some of the burdensome paper work associated with the writ of garnishment by including in the writ itself information required by the garnishee to properly respond to the writ and the penalties for failure to comply with the writ. The amendment also clarifies that the clerk of the court issues a postjudgment writ of garnishment, and is made for the same reasons set forth in the comments to section 133. In addition, the amendment limits the thirty day waiting period in 28 U.S.C. § 3205(b)(1) to garnishment of the judgment debtor's earnings.

Section 145

The bill amends 28 U.S.C. § 3205(c)(2) to incorporate all the directions to the garnishee in the writ. The garnishee must respond to the writ by withholding any property of the debtor and paying it to the United States, and by filing an answer and serving the answer on the debtor and the United States.

Section 146

The bill amends 28 U.S.C. § 3205(c)(3) to provide that a writ of garnishment may be served on the garnishee and the judgment debtor by first class mail or in any manner provided under section 3004. The amendment eliminates the delay often associated with other methods of service and reduces the burden placed on the United States marshals service by the Act. First class mail is the most efficient and economical method for notifying both the judgment debtor and the garnishee.

The bill also deletes provisions from this subsection that are now included in subsection (c)(1).

Section 147

The bill amends section 3205(c) of the Act by deleting paragraph (4). The notice to the garnishee and all the requirements for the answer are now contained in the writ and are set forth in paragraph (c)(1), making paragraph (c)(4) unnecessary.

Section 148

This amendment to 28 U.S.C. § 3205(c)(5) of the Act conforms this provision to the time limits set forth in 28 U.S.C. § 3202(e).

Section 149

The bill amends section 3205(c)(6) of the Act to provide a clearer standard for the court when imposing a penalty against the garnishee for failure to comply with the writ. In the usual case of failure to comply, neither the United States nor the court has adequate information to determine the amount that should have been withheld. The amendment preserves the court's discretion while providing guidance on the maximum penalty to be imposed.

Section 150

The bill amends 28 U.S.C. § 3205(c)(7) to ensure that any issues raised at the hearing are resolved in a timely manner .

Section 151

The bill amends 28 U.S.C. § 3205(c)(9)(B) to enlarge the time allowed for providing an accounting to the debtor on all property the United States receives under the writ of garnishment. The amendment increases the period for the accounting from ten days to twenty days to ensure that the accounting is accurate and complete.

Section 152

The bill amends 28 U.S.C. § 3205(c)(10)(B) of the Act to delete the word "substantial" for the reasons set forth in the comments to section 102.

Section 153

This technical amendment to the Act conforms the numbering of 28 U.S.C. § 3205(c) to the changes made by sections 139 through 148 of the bill.

Section 154

The bill adds a new section 3206 to the Act to provide a new enforcement procedure, the restraining notice. This notice may be issued by the clerk of the court or by counsel for the United States. This provision requires a judgment debtor or third party served with the restraining notice to preserve the nonexempt assets of the debtor while the judgment remains unsatisfied. The notice does not restrain the debtor from using property to support dependents or operate a business. This provision of the bill also authorizes service of the restraining order on third parties electronically. Most businesses, and in particular financial institutions such as banks, prefer this form of service because it significantly reduces the cost of compliance with the order.

Section 155

The bill adds section 3207 to the Act to make it clear that the United States may enlist the aid of the court in the enforcement of its judgments. This remedy fills the void created when other remedies do not apply to the debtor's situation. For example, when the debtor has placed property outside the jurisdiction of the United States by transferring funds to an offshore bank, the United States cannot reach the property under the Act. Under the amendment, the court can fashion an appropriate remedy such as an order directing the debtor to wire transfer the funds to the Federal Reserve Bank of New York.

Section 156

These technical and other amendments to 28 U.S.C. § 3301 correct the numbering of the subsections, and conform paragraph 2(B) to reflect the Federal exempt property rights provided by the Mandatory Victim Restitution Act and by the bill. Property that is exempt is not considered an asset of the debtor under Subchapter D of the Act (Fraudulent Transfers Involving Debts).

New paragraph 3301(4) defines "court" to include the United States Tax Court for purposes of this subchapter of the Act. This amendment clarifies that the Act applies to fraudulent transfer litigation in the United States Tax Court.

Section 157

The bill amends 28 U.S.C. § 3306(b) by adding new paragraph (4) which sets forth an additional statute of limitations for fraudulent transfer actions brought to enforce criminal debts. No debt arises in a criminal proceeding until the time of sentence, and the United States cannot seek to set aside a fraudulent transfer prior to creation of the debt. This amendment to the statute of limitations assists with the enforcement of restitution and fines.

The bill adds paragraph (5) to this section to provide that an action for a fraudulent transfer relating to a tax claim may be commenced as long as the underlying tax is still collectible. The Internal Revenue Service generally is not permitted to enforce collection of a tax until after an assessment is made, but various procedural requirements may result in years of delay before an assessment can be made. The amendment, allows the Internal Revenue Service to pursue valid tax debts when the taxpayer conceals assets.

TITLE II - AMENDMENTS TO OTHER PROVISIONS OF LAW

Section 201.

This technical amendment conforms the restitution enforcement provisions in the Child Support Recovery Act of 1994 (18 U.S.C. § 228) with those authorized for other types of restitution under the Mandatory Victim Restitution Act.

Section 202.

This amendment to 18 U.S.C. § 2327(a) brings sentencing in telemarketing fraud cases under the mandatory restitution provisions amended by the bill.

Section 203.

The Mandatory Victim Restitution Act doubled special assessments (mandatory criminal monetary penalties) for all felony offenders, and for individuals convicted of misdemeanors. This amendment to 18 U.S.C. § 3013(a)(1)(B) doubles special assessments imposed on non-individuals for misdemeanors.

Section 204.

This amendment to 18 U.S.C. § 3553(e) allows the court to consider an individual offender's cooperation with the Government when allocating the liability for restitution among multiple offenders.

Section 205

This technical amendment adds a cross-reference to restitution imposed under the Child Support Recovery Act of 1994 (18 U.S.C. § 228) to the other forms of restitution that are expressly cross-referenced in 18 U.S.C. § 3563(a). The phrase "and ordered execution of" is deleted as the usage is obsolete.

Section 206

This amendment to 18 U.S.C. § 3572(d) provides that the liability to pay a criminal monetary penalty in full arises at the time the debtor is sentenced, unless the court expressly provides for deferred payment or payment in installments. The provisions of the Mandatory Victim Restitution Act presuppose that courts will regularly set payment schedules. This conflicts with the concept that criminal debts are to be enforced in the same manner as civil judgments. Payment terms are not normally included in civil judgments, and including them in criminal judgments limits the effective use of civil enforcement remedies.

Section 207

Pursuant to section 18 U.S.C. § 3572(g), the court must impose certain conditions, such as posting a bond, to ensure payment of a fine when it stays a debtor's sentence during the appeal process or for some other reason. The bill authorizes the court to impose these same kinds of conditions in appropriate circumstances when staying an order of restitution.

Section 208

The amendments to section 18 U.S.C. § 3611 provide that payment of fines, restitution, special assessments and bail bond forfeitures shall be made in accordance with procedures established by the Director of the Administrative Office of United States Courts. This change is necessary because of the elimination of the National Fine Center.

Section 209

The amendments to 18 U.S.C. § 3612 expressly authorize the government to establish installment payment plans for debtors who can only pay their criminal monetary penalties over time. This section of the bill also includes a number of technical amendments to !8 U.S.C. § 3612. These include conforming 18 U.S.C. § 3612 with 18 U.S.C. § 3611, as amended, and by adding "any other person designated by the Director of the Administrative Office of United States Courts" to subsection (a) for the same reasons set forth in Section 208 above.

Several amendments clarify that all of the provisions in 18 U.S.C. § 3612 apply to restitution orders. Other provisions eliminate ambiguities on the order of payment for the different types of criminal impositions as well as the interest and penalties associated with these impositions. In addition, late payment penalties have been moved from this section to 18 U.S.C. § 3613A, as amended.

Section 210

The bill makes technical amendments to 18 U.S.C. § 3613(a) to clarify that all provisions applicable to fines are also available to enforce restitution orders.

Section 211

The bill amends 18 U.S.C. § 3613(b) to provide that liability to pay a fine and liability under an order of restitution both expire twenty years after the date of judgment. The liability to pay a fine also terminates at the death of the individual fined, if earlier than 20 years from the date of judgment, but an order to pay restitution survives the death of the debtor. This distinction is appropriate because the obligation to pay a fine is a punishment imposed on the individual that rightly ceases at the death of that individual. Restitution, on the other hand, is ordered to compensate a victim for losses caused by the debtor. In the event that the debtor's estate is comprised of assets that rightly belong to the victim, the debtor's heirs should not benefit from the debtor's misconduct.

Section 212

These technical amendments add a cross-reference to restitution imposed under the Child Support Recovery Act of 1994 (18 U.S.C. § 228) to the other forms of restitution that are expressly cross-referenced in 18 U.S.C. § 3613(c), and clarify that the lien created by 18 U.S.C. § 3613(c) applies to both fines and orders of restitution.

Section 213

This section amends 18 U.S.C. § 3613(e) to clarify that orders of restitution, like criminal fines, are not dischargeable in Federal bankruptcy proceedings. Additionally, when debtors choose to file bankruptcy proceedings, the amendment preserves liens that are filed under 18 U.S.C. § 3613(d) to enforce restitution orders.

Section 214

This section amends 18 U.S.C. § 3613A to improve the enforcement of criminal monetary penalties. First, subsection (a) allows the Government to seek accelerated payment of criminal monetary penalties if the court ordered deferred payment or payment in installments, and it is later determined the debtor has the ability to pay a greater amount. Subsection (b) revises the delinquency and default penalty provisions contained in 18 U.S.C. §§ 3572(h)-(i) and 3612(g). The mandatory delinquency and default penalties become discretionary penalties that may now be imposed when the court determines that a penalty is appropriate based on the willfulness of the default and the debtor's ability to pay the penalty. This subsection also clarifies other sanctions a court may impose when the debtor defaults on a fine or restitution order. Finally, subsection (c) makes it clear that a hearing under this section may be held in a manner that furthers judicial economy and prevents the unnecessary relocation of incarcerated debtors whose participation may be required.

Section 215

This amendment strikes the last sentence in 18 U.S.C. § 3663(a)(1)(A) for consistency with the amendments made by Sections 216 and 218 of the bill.

Section 216

The amendment to 18 U.S.C. § 3663(a)(3) (mandatory restitution) requires the court to order restitution as set forth by the parties to a plea agreement. In the past, courts have sometimes frustrated, to the detriment of victims, agreements to pay restitution that were voluntarily entered into by the debtor. The amendment ensures that this will not occur in the future by providing clear and consistent requirements that courts order restitution as agreed to in plea agreements.

Section 217

This amendment to 18 U.S.C. § 3663A(c)(4) incorporates by reference all Federal forfeiture laws thereby clarifying that community restitution may not interfere with a forfeiture proceeding commenced under any provision of Federal law.

Section 218

This amendment to 18 U.S.C. § 3663A(a)(3) (discretionary restitution) requires the court to order restitution as set forth by the parties to a plea agreement. In the past, courts have sometimes frustrated, to the detriment of victims, agreements to pay restitution that were voluntarily entered into by the debtor. The amendment ensures that this will not occur in the future by providing clear and consistent requirements that courts order restitution as agreed to in plea agreements.

Section 219

This amendment to 18 U.S.C. § 3663A(c)(3) provides the court with a variety of options when the number of victims or the complexity of the victims' losses may prolong or overly complicate the sentencing process. At a minimum, the court must order restitution to known victims whose losses can be identified at the time of sentencing. Additionally, this amendment provides the court with guidance on how to proceed with the sentencing in a case that has numerous unidentified victims or unknown amounts of losses. Finally, a court may create a reserve fund for restitution to victims when the aggregate loss is known or agreed to by the parties in a plea agreement, but all victims cannot be identified at the time of sentencing. After all identified victims are made whole, any surplus funds remaining in the reserve fund will be deposited in the Crime Victims Fund.

Section 220

The amendments in this section improve the sentencing procedures for restitution. The amendment to 18 U.S.C. § 3664(d)(1) deletes ambiguous language on the timing of requests for information on victims' losses, and provides prosecutors and probation officers with flexibility in making arrangements concerning the timing of such requests.

The amendment to 18 U.S.C. § 3664(d)(5) allows the court to defer sentencing as necessary to permit a determination of the victim's losses. Imposing sentence without a final determination on the victim's losses can influence other aspects of the sentence (beyond restitution), including the applicable guideline range for determining the length of imprisonment, and the propriety and amount of a fine.

Similarly, when a victim seeks modification of a restitution order based upon later-discovered losses, it is unclear whether these losses require the modification of a previously imposed fine or term of imprisonment. The amendment to 18 U.S.C. §

3664(d)(5) resolves this uncertainty by providing that the modification of a restitution order based on later-discovered losses does not affect any other aspect of the sentence.

Section 221

This amendment to 18 U.S.C. § 3664(f) provides that the liability for payment of restitution in full arises at the time the debtor is sentenced, unless the court expressly provides for deferred payment or payment in installments. The provisions of the Mandatory Victim Restitution Act presuppose that courts will regularly set payment schedules. This conflicts with the concept that criminal debts are to be enforced in the same manner as civil judgments. Payment terms are not normally included in civil judgments, and including them in criminal judgments limits the effective use of civil enforcement remedies.

Section 222

This amendment to 18 U.S.C. § 3664(h) makes each debtor potentially liable for the full amount of each victim's losses. This allows the United States and the victim to seek immediate payment from the debtor with the "deepest pockets". If the debtor is compelled to pay the victim more than the debtor believes is fair, the debtor's only recourse is to seek reimbursement from his or her co-defendants. The adoption of this basic principle of tort liability streamlines the enforcement process and promotes prompter recovery of the victim's full losses.

Section 223

This amendment to 18 U.S.C. § 3664(I) clarifies the authority of the court to prioritize payment of restitution when the debtor's criminal activities harm some victims more than others.

Section 224

These technical amendments to 18 U.S.C. § 3664(j) clarify and restate existing law.

Section 225

This amendment to 18 U.S.C. § 3664(m)(1) restores the express authorization in prior law for victims to enforce restitution orders entered in their favor. This authorization supplements the provision in the Mandatory Victim Restitution Act that created a procedure for establishing a judicial lien in favor of victims of crime. See 18 U.S.C. § 3664(m)(1)(B)

Section 226

The amendment to 18 U.S.C. § 3664(n) makes a technical change that substitutes the term "property" for "substantial resources". "Property" is defined in the law governing the enforcement of restitution orders and fines, see 28 U.S.C. § 3002(12), and this change will enhance enforcement of this provision of the Mandatory Victim Restitution Act. The amendment also eliminates the limitation that the debtor be incarcerated at the time property becomes available to pay restitution or a fine as a court should always be able to enforce the terms of its judgments.

Section 227

This technical amendment to 18 U.S.C. § 3664(o) corrects a cross-reference in the Mandatory Victim Restitution Act.

Section 228

This technical amendment adds a cross-reference to restitution imposed under the Child Support Recovery Act of 1994 (18 U.S.C. § 228) to the other forms of restitution that are expressly cross-referenced in 18 U.S.C. § 3664(p).

Section 229

The bill adds a new subsection (q) to 18 U.S.C. § 3664 to clarify that the United States may on its own motion dismiss a forfeiture action and make the seized property available for payment of a restitution order. The Government retains custody of the property until the court authorizes its release to the victim, or authorizes another disposition of the property.

The bill adds a new subsection (r) to 18 U.S.C. § 3664 to permit the Government to assist victims in enforcing restitution orders by disclosing certain information about the debtor that might otherwise be protected from disclosure by the Privacy Act (5 U.S.C. § 552(a).

The bill adds a new subsection (s) to 18 U.S.C. § 3664 to permit the Government to apply to the court for remission of part or all of a restitution order or modification of a payment schedule because of a change in circumstances. A debtor's death, disability or deportation may make it clear that the debtor will never be able to pay the full amount of the restitution ordered. In addition, if a victim wishes to reach a settlement agreement with a debtor to obtain closure, and the Government concurs that this will not adversely affect other victims or the interests of justice, remission of the restitution order is appropriate.

Section 230.

This provision makes the purely procedural enforcement remedies authorized by the Mandatory Victim Restitution Act retroactive.

Section 231.

This amendment to 28 U.S.C. § 604(a)(18) repeals what was widely regarded as a mandate for a National Fine Center. The new wording requires the Director of the Administrative Office of the United States Courts to maintain oversight of the management of criminal debt information.

Section 232

The amendment to 28 U.S.C. § 1920 clarifies that fees incurred for serving process may be recovered when someone other than the United States marshal provides this service.

Section 233

The amendment to 28 U.S.C. § 1961 provides that the Federal postjudgment interest rate applies to a judgment registered pursuant to new section 1965 as of the date the judgment is registered. The amendment promotes uniformity of enforcement, and reduces the processing and tracking burdens placed on the United States Attorneys' offices which otherwise must research the laws on interest for the various States, and adapt their automated tracking systems to accommodate the differences in the State laws.

Section 234

New section 1965 is added to title 28, United States Code, to provide a procedure for the registration of State court judgments that are assigned to the United States for enforced collection. Under some guarantee programs, such as student loans, lenders and intermediaries may be required to obtain a judgment against the debtor in State court before the debt can be assigned to the United States. A certified copy of the judgment and the assignment must be filed to ensure that the court has clear authority to issue process on behalf of the United States.

Section 235.

This amendment to 42 U.S.C. § 10601(b) clarifies that any interest collected on fines deposited in the Crime Victims Fund shall also be deposited in the Crime Victims Fund.

Section 236

The amendments to 42 U.S.C. § 10601(d) complete the termination of the National Fine Center by eliminating mandatory annual funding transfers to the judicial branch from the Crime Victims Fund for the operation of a National Fine Center, and by requiring the return of unspent funds from the National Fine Center. The amendment permits the Director of the Crime Victims Fund to use the funds returned to the Crime Victims Fund for the benefit of crime victims in the Federal criminal justice system.

105th Congress
1st Session

H.R. ___
[S. ___]

IN THE HOUSE OF REPRESENTATIVES
[IN THE SENATE]

M. ______ introduced the following bill; which was referred to the committee on ______

A BILL

To amend title 28, United States Code, to improve Federal debt collection procedures.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Federal Debt Collection Procedures Improvements Act of 1997".

TITLE I - DEBT COLLECTION IMPROVEMENTS

Sec. 101.

Section 3001(a) of title 28, United States Code, is amended by striking "the chapter" and inserting in lieu thereof "this chapter".

Sec. 102.

Section 3002(3) of title 28, United States Code, is amended:

(1) in subparagraph (A) by inserting "contract," before "direct";

(2) in subparagraph (A) by striking "or" after the semicolon;

(3) in subparagraph (B) by striking ", but that is not owing under the terms of a

contract originally entered into by only persons other than the United States; and includes" and inserting in lieu thereof ";";

(4) by designating "any amount owing to the United States for the benefit of an Indian tribe or individual Indian" as subparagraph (C);

(5) by striking ", but excludes any amount to which the United States is entitled under section 3011(a)." and inserting in lieu thereof "; and"; and

(6) by adding at the end the following: "(D) any amount the United States is authorized by statute to collect for the benefit of any person.".

Sec. 103.

Section 3002(7) of title 28, United States Code, is amended by striking "substantial".

Sec. 104.

Section 3002(8) of title 28, United States Code, is amended to read as follows:

"'Judgment' means a judgment, order, or decree for the recovery of money or property entered in favor of the United States by a court in a civil or criminal proceeding, and includes a judgment, order, or decree for money or property that the United States is authorized by statute to collect for the benefit of any person.".

Sec. 105.

Section 3002(10) of title 28, United States Code, is amended by inserting "the United States," after "private entity, including".

Sec. 106.

Section 3004(b) of title 28, United States code, is amended:

(1) by striking "(1) Except as provided in paragraph (2)—";

(2) by striking paragraph (2); and

(3) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively.

Sec. 107.

Section 3004(c) of title 28, United States Code, is amended:

(1) by striking "not later than the time a prejudgment or postjudgment remedy is put into effect" and inserting in lieu thereof "prior to the time of final disposition of the property by the United States"; and

(2) by striking "for such remedy, the order granting such remedy," and inserting in lieu thereof ", the writ or order".

Sec. 108.

Section 3009 of title 28, United States Code, is amended to read as follows:

"The United States marshal may designate another person to perform duties other than law enforcement functions on behalf of the United States marshal under this chapter, and the United States marshal is authorized to enter into personal services and other contracts for this purpose."

Sec. 109.

Section 3010(a) of title 28, United States Code, is amended by striking the first sentence and inserting in lieu thereof "The interest of a debtor in any co-owned property shall be determined by the law of the State where the property is located.".

Sec. 110.

Section 3011 of title 28, United States Code, is amended:

(1) in subsection (a) to read as follows:

"(a) **Surcharge authorized.** In any action in which the United States asserts a claim for a debt, and subject to subsection (b), the United states is entitled to recover a surcharge of 10 percent of the total amount of the debt, to cover the cost of processing and handling the litigation on the claim for such debt and enforcement under this chapter."

(2) by striking "or" at the end of subsection (b)(1);

(3) by striking the period at the end of subsection (b)(2) and inserting in lieu thereof "; or" and adding at the end the following:

"(3) the United States has previously been awarded a surcharge on the debt.".

Sec. 111.

Section 3014(a) of title 28, United States Code, is amended to read as follows:

"**(a) Election of Exempt Property.**—(1) In a proceeding under this chapter, an individual debtor may elect to exempt the following property:

(A) A debtor's aggregate interest, not to exceed *$15,000* in value, in real property or personal property that the debtor uses as a residence, in a cooperative that owns property that the debtor uses as a residence, or in a burial plot for the debtor.

(B) A debtor's interest in one motor vehicle, not to exceed *$2,400* in value.

(C) A debtor's interest, not to exceed *$8,000* in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor.

(D) A debtor's aggregate interest, not to exceed *$1,000* in value, in jewelry held primarily for the personal, family, or household use of the debtor.

(E) A debtor's aggregate interest in any property, other than earnings, not to exceed in value *$800*.

(F) A debtor's aggregate interest, not to exceed *$1,500* in value, in any implements, professional books, or tools of the trade of the debtor.

(G) Professionally prescribed health aids for the debtor.

(H) A debtor's right to receive -

(i) a social security benefit, unemployment compensation, or a local public assistance benefit;

(ii) a veteran's benefit;

(iii) a disability, illness, or unemployment benefit;

(iv) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependents of the debtor;

(I) A debtor's right to receive, or property that is traceable to—

(i) an award under a crime victim's reparation law;

(ii) a payment on account of personal bodily injury, not to exceed *$15,000*, not including pain and suffering or compensation for actual pecuniary loss, of the debtor;

(J) A debtor's right to receive earnings to the extent allowed by section 303 of the Consumer Credit Protection Act (15 U.S.C. § 1673), as amended from time to time."

(2) This subsection shall not apply to proceedings commenced under this chapter pursuant to section 3613 of title 18, United States Code.".

Sec. 112.

Section 3014 of title 28, United States Code, is amended:

(1) in subsection (b)(2) by striking "Unless it is reasonably evident that the exemption applies, the" and inserting in lieu thereof "The".

(2) by amending subsection (b)(3) to read as follows:

"Unless the court orders otherwise, assertion of an exemption shall prevent the United States from selling or otherwise disposing of the property for which such exemption is claimed until the court determines whether the debtor has a nonexempt interest in such property.";

(3) by amending subsection (c) to read as follows:

"(c) **Multiple debtors.**——Debtors jointly liable on a debt may each claim the exemptions allowed by subsection (a).".

Sec. 113.

Section 3015(a) of title 28, United States Code, is amended to read as follows:

"**(a) In general.**—Except as provided in subsection (c), the United States may obtain discovery from any person regarding the financial condition of the debtor—

(1) in the manner in which discovery is authorized by the Federal Rules of Civil Procedure; or

(2) pursuant to a subpoena commanding the person to appear before the court with all records, books and other documents and to answer questions under oath."

Sec. 114.

Section 3015(b) of title 28, United States Code, is amended:

(1) by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following:

"(b) **Financial Records Subject to Discovery.**–No provision of chapter 35 of title 12 shall apply when financial records are sought by the United States under this section."

Sec. 115.

Newly redesignated section 3015(c) of title 28, United States Code, is amended:

(1) by striking "with respect to an action or proceeding under subchapter B" and inserting in lieu thereof "prior to entry of judgment";

(2) by striking "involved" and inserting in lieu thereof "claimed"; and

(3) by adding at the end the following:

"**(d) Enforcement before judgment entered.**—Upon motion by the United States in any civil or criminal action in which a verdict or decision has been rendered in favor of the United States, or a plea has been accepted by the court, the court may, prior to entry of judgment and not withstanding subsection (c)—

(1) authorize discovery; or

(2) issue a restraining notice with the same effect as if a restraining notice had been served after judgment."

Sec. 116.

Section 3015 of title 28, United States Code, is amended by adding at the end of section

3015(d) the following:

"(e) **Grand jury information.**—A person who is privy to grand jury information concerning the financial condition of a debtor, received in the course of duty as an attorney for the government, or disclosed under rule 6(e)(3)(A)(ii) of the Federal Rules of Criminal Procedure, may disclose that information to an attorney for the government for use in enforcing the collection of a debt.

Sec. 117.

Section 3015 of title 28, United States Code, is amended by inserting after section 3015(e) the following:

"(f) **Civil investigative authority.**—

(1) **Investigative demand.**–Whenever the United States has a claim for a debt that requires additional investigation prior to the institution of a civil proceeding thereon, an attorney for the government may issue a subpoena for a civil investigative demand requiring any person to produce documentary material for inspection and copying or reproduction, to answer in writing written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of material, answers, or testimony.

(2) **Protections.**—(A) No subpoena issued pursuant to this subsection shall require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony, if such material, answers or testimony would be protected from disclosure—

(i) under the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States in aid of a grand jury investigation; or

(ii) would be exempt from discovery under the Federal Rules of Civil Procedure in an action pending in a court as defined in this chapter; and

(B) No demand for the production of documents shall be issued on fewer than twenty days notice.

(3) **Enforcement.**——If any person fails to comply with a demand issued pursuant to this subsection within the time set forth therein, an attorney for the government may file in the district court for any judicial district in which such person resides, is found or transacts business, and serve upon such person a petition for a court order for the enforcement of this subsection."

Sec. 118.

Section 3015 of title 28, United States Code, is amended by adding at the end the following:

"**(g) Definition.**—For purposes of this section, 'attorney for the government' has the same meaning as in Rule 54(c), Federal Rules of Criminal Procedure."

Sec. 119.

Section 3101(a) of title 28, United States Code, is amended in paragraph (1) by striking "under oath".

Sec. 120.

(1) Subsection 3101(d) of title 28, United States Code, is amended by striking "(d) Notice" and all that follows through "other sources of information." and inserting in lieu thereof:

"**(d) Notice.**—On filing an application by the United States as provided in this section, counsel for the United States shall prepare, and the clerk of the court shall issue, a notice for service on the debtor against whom the prejudgment remedy is sought and any other person whom the United States reasonably believes, after exercising due diligence, has possession, custody, or control of property affected by such remedy. Three copies of the notice shall be served on each such person.

The notice shall be in substantially the following form:

NOTICE

You are hereby notified that your property is being taken by the United States which says that you owe a debt in the amount of $ and has filed a lawsuit to collect this debt. The United States is taking your property because it says

[Insert one or more of the specific grounds in Section 3101(b).]

In addition, you are hereby notified that there are certain exemptions under Federal law that you may be entitled to claim to prevent the United States from taking your property. To claim an exemption, indicate below the property you believe to be exempt. The court may require you to prove why you are entitled to each exemption you claim.

_______(1) A debtor's aggregate interest, not to exceed *$15,000* in value, in real property or personal property that the debtor uses as a residence, in a cooperative that owns property that the debtor uses as a residence, or in a burial plot for the debtor.

_______(2) A debtor's interest in one motor vehicle, not to exceed *$2,400* in value.

_______(3) A debtor's interest, not to exceed *$8,000* in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor.

_______(4) A debtor's aggregate interest, not to exceed *$1,000* in value, in jewelry held primarily for the personal, family, or household use of the debtor.

_______(5) A debtor's aggregate interest in any property, other than earnings, not to exceed in value *$800.*

_______(6) A debtor's aggregate interest, not to exceed *$1,500* in value, in any implements, professional books, or tools of the trade of the debtor.

_______(7) Professionally prescribed health aids for the debtor.

_______(8) A debtor's right to receive -

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veteran's benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

_______(9) A debtor's right to receive, or property that is traceable to -

(A) an award under a crime victim's reparation law;

(B) a payment on account of personal bodily injury, not to exceed $15,000, not including pain and suffering or compensation for actual pecuniary loss, of the debtor;

_______(10) Pension benefits that are not alienable under ERISA.

You have the right to request a hearing. At the hearing you may explain to the judge why you think you do not owe the money to the Government, why you disagree with the reason the Government says it must take your property at this time, or why you believe the property the Government has taken is exempt. If you want such a hearing, you must promptly notify the clerk of court and a hearing will be given to you within five working days after the clerk of the court receives your request, if you ask for it to take place that quickly, or as soon there after as possible. You must sign and date this form in the space provided and mail or take it to the clerk of the court at the following address:[insert address for the court]. You must also send a copy of your request to counsel for the United States at [address], so the United States will know you want a hearing.

You should consult a lawyer if you have any questions about your rights or need this procedure explained further.

(2) Subsection 3101(d)(2) is amended by striking (2) and inserting in lieu thereof "**(e) Hearing.**–"

Sec. 121.

(1) Subsection 3101(e) is renumbered (f).

(2) Newly renumbered subsection (f) is amended by inserting "clerk of the" before "court shall issue".

Sec. 122.

Section 3102 of title 28, United States Code, is amended:

(1) in subsection (a)(1) by striking "substantial";

(2) in subsection (b) by striking "substantial";

(3) in subsection (b) by inserting a period after "claim for a debt" and striking all that follows through the end of the subsection;

(4) in subsection (d)(1) by striking the final sentence;

(5) in subsection (d)(5) by striking "(1)"; and

(6) in subsection (d)(5) by striking "writ and" and all that follows through the end of the subsection and inserting in lieu thereof "notice of levy pursuant to section 3004.".

Sec. 123.

Section 3103(a) of title 28, United States Code, is amended by striking "substantial".

Sec. 124.

Section 3104(a) of title 28, United States Code, is amended:

(1) by striking "substantial" in the first sentence; and

(2) by striking the second sentence.

Sec. 125.

Section 3104(b) of title 28, United States Code, is amended:

(1) in paragraph (1)(A) by striking "and";

(2) in paragraph (1)(B) by striking the period and inserting in lieu thereof "; and" and adding at the end the following:

"(C) service shall be made pursuant to section 3004.";

(3) in paragraph (2) by striking "—(A)"; and

(4) in paragraph (2) by striking "; and (B) the date the writ is issued".

Sec. 126.

Section 3105 of title 28, United States Code, is amended:

(1) in subsection (a) by striking "substantial";

(2) in subsection (b) by striking "substantial";

(3) in subsection (b) by inserting a period after "claim for a debt" and striking all that follows through the end of the subsection;

(4) in subsection (d)(2) by striking "(1)";

(5) in subsection (d)(2) by striking "writ and" and all that follows through the end of the subsection and inserting in lieu thereof "notice of sequestration pursuant to section 3004.";

(6) in subsection (e) by striking "with" and inserting in lieu thereof "into the registry of"; and

(7) in subsection (f)(1) striking "of the execution" and inserting in lieu thereof "the writ is executed".

Sec. 127.

Section 3201 of title 28, United States Code, is amended:

(1) in subsection (a) by striking "in a civil action";

(2) in subsection (a) by adding at the end of the first sentence the following: "A notice of lien that is registered, recorded, docketed or indexed in accordance with the rules and requirements relating to judgments of the courts of the State where the notice of lien is registered, recorded, docketed or indexed shall be considered for all purposes as the filing prescribed by this subsection.";

(3) in subsection (e) by striking "A debtor who has a judgment lien against the debtor's property for a debt to the United States" and inserting in lieu thereof "On the filing of a lien by the United States, a debtor"; and

(4) in subsection (e) by inserting "contract, professional or commercial license," before "grant" and by inserting "contracts, licenses," after "responsible for such".

Sec. 128.

Section 3202(b) of title 28, United States Code, is amended to read as follows:

"**(b) Notice for earnings garnishment.**–On the commencement by the United States of a proceeding under this subchapter to garnish earnings to enforce a civil or criminal judgment, counsel for the United States shall prepare and shall serve a notice on the debtor and the garnishee employer in substantially the following form:

NOTICE OF EARNINGS GARNISHMENT

You are hereby notified that your earnings are being garnished by the United States to enforce a judgment against you, Court Docket number , in the amount of $. Federal law limits the amount of your earnings that can be garnished to pay your debt to the lesser of:

25 percent of your disposable earnings for each pay period, or

the amount by which your disposable earnings in a pay period exceed thirty times the Federal minimum hourly wage in effect at the time your earnings become due.

Under the Consumer Credit Protection Act (15 U.S.C. § 1673), "disposable earnings" means the earnings that remain after deduction of amounts required by law to be withheld, such as Federal income tax, Social Security taxes, and State and local taxes. You do not need to take any action to claim the exemption from garnishment, but if you believe the wrong amount is being withheld from your earnings, you may file a claim and request a hearing. If you want such a hearing, you must request it within 10 days after your employer serves an answer to the writ of garnishment. You will be given a hearing within five working days after the clerk of the court receives your request, if you ask for it to take place that quickly, or as soon after as is possible. You must sign and date this form in the space provided below and mail or take it to the clerk of the court at the following address:[insert address for the court]. You must also send a copy of your request to counsel for the United States at [address], so the United States will know you want a hearing.

Federal law prohibits an employer from discharging any employee because his or her earnings have been garnished for any one indebtedness. 15 U.S.C. § 1674.

You should consult a lawyer if you have any questions about your rights or need this procedure explained further."

Sec. 129.

Section 3202(c) of title 28, United States Code, is amended to read as follows:

"**(c) Notice of proceedings, other than earnings garnishment, to enforce a civil judgment.**—On the commencement by the United States of a proceeding under this subchapter to obtain a remedy, other than garnishment of earnings, to enforce a civil judgment, counsel for the United States shall prepare and shall serve a notice on the debtor and other interested persons under the Act in substantially the following form:

NOTICE OF ENFORCEMENT PROCEEDINGS FOR A CIVIL JUDGMENT

[OTHER THAN EARNINGS GARNISHMENT]

You are hereby notified that your property is being taken by the United States to enforce a judgment against you, Court Docket number , in the amount of $. There are certain exemptions under Federal law that you may be entitled to claim to prevent the United States from taking your property. To claim an exemption indicate below the property you believe to be exempt. The court may require you to prove why you are entitled to each exemption you claim.

_______(1) A debtor's aggregate interest, not to exceed *$15,000* in value, in real property or personal property that the debtor uses as a residence, in a cooperative that owns property that the debtor uses as a residence, or in a burial plot for the debtor.

_______(2) A debtor's interest in one motor vehicle, not to exceed *$2,400* in value.

_______(3) A debtor's interest, not to exceed *$8,000* in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor.

_______(4) A debtor's aggregate interest, not to exceed *$1,000* in value, in jewelry held primarily for the personal, family, or household use of the debtor.

_______(5) A debtor's aggregate interest in any property, other than earnings, not to exceed in value *$800.*

_______(6) A debtor's aggregate interest, not to exceed *$1,500* in value, in any implements, professional books, or tools of the trade of the debtor.

_______(7) Professionally prescribed health aids for the debtor.

_______(8) A debtor's right to receive -

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veteran's benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

_______(9) A debtor's right to receive, or property that is traceable to -

(A) an award under a crime victim's reparation law;

(B) a payment on account of personal bodily injury, not to exceed $15,000, not including pain and suffering or compensation for actual pecuniary loss, of the debtor;

______(10) Pension benefits that are not alienable under ERISA.

You have the right to request a hearing. If you want such a hearing, you must request it within 20 days of the date you are served with this notice. You will be given a hearing within five working days after the clerk of the court receives your request, if you ask for it to take place that quickly, or as soon after as is possible. You must sign and date this form in the space provided and mail or take it to the clerk of the court at the following address:[insert address for the court]. You must also send a copy of your request to counsel for the United States at [address], so the United States will know you want a hearing.

You should consult a lawyer if you have any questions about your rights or need this procedure explained further."

Sec. 130.

Section 3202(d) of title 28, United States Code, is amended to read as follows:

"**(d) Notice of proceedings, other than earnings garnishment to enforce a criminal judgment.**—On the commencement by the United States of a proceeding under this subchapter to obtain a remedy, other than garnishment of earnings, to enforce a criminal judgment, counsel for the United States shall prepare and shall serve a notice on the debtor and other interested persons under the Act in substantially the following form:

NOTICE OF ENFORCEMENT PROCEEDINGS FOR A CRIMINAL JUDGMENT

[OTHER THAN EARNINGS GARNISHMENT]

You are hereby notified that your property is being taken by the United States to enforce a judgment against you, Court Docket number , in the amount of $. There are certain exemptions under Federal law that you may be entitled to claim to prevent the United States from taking your property. To claim an exemption indicate below the property you believe to be exempt. The court may require you to prove why you are entitled to each exemption you claim.

_____(1) Necessary wearing apparel and school books.

_____(2) Fuel provisions, furniture, and personal effects up to $1,650.

_____(3) Books and tools of a trade, business or profession up to $1,250.

_____(4) Unemployment benefits.

_____(5) Undelivered mail.

_____(6) Certain railroad retirement and armed forces annuity and pension payments.

_____(7) Worker's compensation.

_____(8) Judgments for support of minor children.

_____(9) Certain service-connected disability payments.

_____(10) Assistance under the Job Training Partnership Act.

The exemptions listed above apply pursuant to 18 U.S.C. § 3613(a), but may not apply in child support and alimony cases. 42 U.S.C. § 659.

You have the right to request a hearing. If you want such a hearing, you must request it with 20 days of receipt of this notice. You will be given a hearing within five working days after the clerk of the court receives your request, if you ask for it to take place that quickly, or as soon after as is possible. You must sign and date this form in the space provided and mail or take it to the clerk of the court at the following address:[insert address for the court]. You must also send a copy of your request to counsel for the United States at [address], so the United States will know you want a hearing.

You should consult a lawyer if you have any questions about your rights or need this procedure explained further."

Sec. 131.

Section 3202(e) of title 28, United States Code, is amended to read as follows:

"(e) **Hearing.**—(1) The judgment debtor may move to quash the writ or order granting such remedy by requesting a hearing—

(A) within 20 days after receiving the notice described in section 3202(b); or

(B) if for garnishment, within 10 days after receipt of the answer described in section 3205(c).

(2) The issues at such hearing shall be limited to—

(A) the probable validity of any claim of exemption by the judgment debtor; and

(B) compliance with any statutory requirement for the issuance of the postjudgment remedy granted.

(3) If the debtor requests a hearing, the court shall hold a hearing on such motion as soon as practicable, or if so requested by the judgment debtor, within 5 days after receiving the request or as soon thereafter as possible.".

Sec. 132.

Section 3203(a) of title 28, United States Code, is amended:

(1) by striking "substantial"; and

(2) by striking the third sentence.

Sec. 133.

Section 3203(c)(1) of title 28, United States Code, is amended by inserting "clerk of the" before "court".

Sec. 134.

Section 3203(c)(2)(B)(i) of title 28, United States Code, is amended:

(1) by inserting "any" before "property in which";

(2) by striking "substantial"; and

(3) by striking ", but not to exceed property reasonably equivalent in value to the aggregate amount of the judgment, costs, and interest".

Sec. 135.

Section 3203(c)(2)(B)(ii) of title 28, United States Code, is amended:

(1) by inserting "particular" before "personal property";

(2) by inserting "particular" before "real property"; and

(3) by striking "particularly".

Sec. 136.

Section 3203(c)(2)(B)(iii) of title 28, United States Code, is amended:

(1) by inserting "particular" before "personal property"; and

(2) by striking "substantial".

Sec. 137.

Section 3203(d)(2) of title 28, United States Code, is amended by striking "by the court for the district" through "enforced".

Sec. 138.

Section 3203(f)(1) of title 28, United States Code, is amended:

(1) in subparagraph (A) by striking "property" after "return"; and

(2) in subparagraph (C) by inserting in the second sentence "clerk of the" before "court shall issue".

Sec. 139.

Section 3203(g)(1)(A)(i) of title 28, United States Code, is amended:

(1) in subclause (I) by striking "Except as provided in clause (ii), real" and inserting in lieu thereof "Real";

(2) in subclause (I) by striking ", after the expiration of the 90 - day period beginning on the date of levy under subsection (d)";

(3) by striking subclause (II) and redesignating subclause (III) as subclause (II); and

(4) by redesignating subclause (IV) as subclause (III).

Sec. 140.

Section 3203(g)(1)(B) of title 28, United States Code, is amended:

(1) in clause (i) by striking "is" after "location";

(2) by striking clause (ii) and redesignating clause (iii) as (ii);

(3) by redesignating clause (iv) as (iii); and

(4) in newly redesignated clause (iii) by striking "a substantial" and inserting in lieu

thereof "an".

Sec. 141.

Section 3204 of title 28, United States Code, is amended:

(1) in subsection (a) by striking "summons" and inserting in lieu thereof "writ";

(2) in subsection (c)(1) by inserting "source of income of the" before "judgment debtor"; and

(3) in subsection (c)(1) by striking "whom" and inserting in lieu thereof "which".

Sec. 142.

Section 3205(a) of title 28, United States Code, is amended:

(1) by striking "substantial";

(2) by striking the second sentence;

(3) in the third sentence by striking "A court" and inserting in lieu thereof "The clerk of the court"; and

(4) in the fourth sentence by striking "be continuing" and all that follows through the end of the sentence and inserting in lieu thereof "shall create a lien against all of the debtor's property subject to garnishment. The lien shall arise upon service of the writ of garnishment on the garnishee and shall terminate as provided by subsection (c)(9)."

Sec. 143.

Section 3205(b) of title 28, United States Code, is amended:

(1) by striking subsection (b)(1);

(2) by adding at the end of subsection (b)(2) the following:

"(D) If the property is held or controlled by a personal representative or fiduciary, the personal representative or fiduciary shall be the garnishee."; and

(3) by redesignating subsection (b)(2) as subsection (b).

Sec. 144.

Section 3205(c)(1) of title 28, United States Code, is amended to read as follows:

"(1) **Issuance and form of writ.**——The clerk of the court shall issue a writ of garnishment and the writ shall include——

(A) the judgment debtor's name, social security number (if known), and the last known address of the judgment debtor;

(B) the name and address of the garnishee;

(C) the amount of the judgment and the balance due on the judgment;

(D) for garnishment of the debtor's earnings, a statement that more than 30 days have elapsed since demand on the debtor for payment of the debt was made and the judgment debtor has not paid the amount due;

(E) a statement that if the garnishee fails to answer the writ or to withhold property or earnings in accordance with the writ, the court may hold the garnishee liable for an amount up to and including the balance due on the judgment plus reasonable attorney's fees;

(F) the name and address of counsel for the United States."

Sec. 145.

Section 3205(c)(2) of title 28, United States Code, is amended to read as follows:

"**(2) Directions to the garnishee.**—The writ shall direct the garnishee to—

(A) withhold and immediately remit to the Government, or the clerk of the court pursuant to 18 U.S.C. § 3611, any property in which the judgment debtor has a nonexempt interest, and for which the garnishee is or may be indebted to the judgment debtor;

(B) file a written answer within 10 days of service of the writ with the court issuing the writ, and serve a copy of the answer on the judgment debtor and counsel for the United States;

(C) state under oath in its answer—

(i) whether the garnishee has custody, control or possession of property or earnings of the debtor;

(ii) a description of such property or earnings and the value of the debtor's interest in the property or earnings;

(iii) a description of any previous garnishment on such property or earnings, and the extent to which any property or earnings remain that are not subject to such garnishment; and

(iv) the amount of property or earnings the garnishee anticipates owing to the debtor in the future, and whether the period for payment will be weekly or another specified period."

Sec. 146.

Section 3205(c)(3) of title 28, United States Code, is amended:

(1) by inserting "by first class mail or pursuant to section 3004" after "garnishment"; and

(2) by striking "The writ shall" and all that follows through "objections".

Sec. 147.

Section 3205(c) of title 28, United States Code, is amended by striking paragraph (4).

Sec. 148.

Section 3205(c)(5) of title 28, United States Code, is amended by striking "20" and inserting in lieu thereof "10".

Sec. 149.

Section 3205(c)(6) of title 28, United States Code, is amended by striking "the value of the judgment debtor's nonexempt interest in such property (including nonexempt disposable earnings)" and inserting in lieu thereof "an amount not to exceed the balance due on the judgment".

Sec. 150.

Section 3205(c)(7) of title 28, United States Code, is amended to read as follows:

"(7) **Disposition order.**——If a hearing is requested timely, the court shall enter a disposition order within 5 days after the hearing or as soon thereafter as practicable."

Sec. 151.

Section 3205(c)(9)(B) of title 28, United States Code, is amended by striking "10" in the first sentence and inserting in lieu thereof "20".

Sec. 152.

Section 3205(c)(10)(B) of title 28, United States Code, is amended by striking "substantial".

Sec. 153.

Section 3205(c) of title 28, United States Code, is amended by redesignating paragraphs 5,6,7,8,9 and 10 as paragraphs 4,5,6,7,8 and 9 respectively.

Sec. 154.

Section 3206 of title 28, United States Code, is redesignated as section 3208, and the following is inserted after section 3205:

"§ 3206 **Restraining notice**

(a) **Issuance; on whom served; form.**—A restraining notice may be issued by the clerk of the court or counsel for the United States as an officer of the court, and shall be served pursuant to section 3004 or by registered or certified mail, return receipt requested. The United States may serve a restraining notice upon any person, except that a restraining notice served on the employer of a judgment debtor shall not apply to earnings due or to become due to the judgment debtor. The restraining notice shall specify—

(1) all parties to the action;

(2) the social security number of the judgment debtor, if known;

(3) the date the judgment was entered;

(4) the court in which it was entered; and

(5) the amount of the judgment and the amount due.

The restraining notice shall set forth the requirements of subsection (b) below and shall state that disobedience is punishable as a contempt of court.

(b) **Effect of restraint; prohibition of transfer; duration.**—(1) A judgment debtor who is served with a restraining notice shall not sell, assign, transfer or hypothecate any nonexempt property, except as may be reasonably necessary for the maintenance or support of the debtor or a dependent of the debtor and if the debtor is engaged in business, as may be reasonably necessary for the payment of expenditures for the continuation, preservation and operation of such business.

(2) A person other than the judgment debtor who is served with a restraining notice shall not—

(A) repay any obligation to the judgment debtor;

(B) return any nonexempt property to the judgment debtor; or

(C) sell, assign, transfer or hypothecate any property—

(i) specifically described in the restraining notice;

(ii) that the other person knows to be owned by the judgment debtor; or

(iii) in which the other person could have reason to believe by the exercise of due diligence that the judgment debtor has an ownership interest.

(3) The restraining notice shall remain in effect for one year from the date the notice is served, or until the judgment is satisfied, or the restraining notice is vacated by order of the court, whichever occurs first.

(c) **Answer to restraining notice.**–A person other than a judgment debtor who is served with a restraining notice, and who has or may have custody, control or possession of property of the debtor (other than earnings), shall–

(1) serve a written answer to the restraining notice on the debtor and counsel for the United States within 10 days of service of the restraining notice; and

(2) set forth in the answer a description of such property, and the value of the debtor's interest in such property.

(d) **Notice to judgment debtor.**—If a restraining notice is served on a person other than the judgment debtor, counsel for the United States shall mail a copy of the restraining notice to the judgment debtor by first class mail.

(e) **Restraining notice in electronic media.**—Notwithstanding the provisions of section 552a of title 5, United States Code, the United States may serve a restraining notice in the form of electronic media upon a person other than the debtor who consents to accept service in this form. A restraining notice in such form shall contain all of the information required under subsection (a) other than the signature of the issuing clerk of court or counsel for the United States, and the information provided by the United States may be used solely for the purposes authorized by this chapter.

Sec. 155.

(a) Subchapter C of title 176 of title 28, United States Code, is amended by adding at the end the following:

"§ 3207. **Orders in aid of execution**

(a) In general.—The United States is entitled to aid from the court by injunction or other appropriate order to reach nonexempt property of the judgment debtor that cannot readily be seized by ordinary legal process under this subchapter.

(b) Authority to issue order.—The court may order the property, together with all documents or records related to the property, that is in or subject to the possession or control of the judgment debtor or another person, to be turned over to the United States for sale or other appropriate disposition."

(b) The table of sections is amended by striking "3206. Discharges" and inserting in lieu thereof:

"3206. Restraining notice.

3207. Orders in aid of execution.

3208. Discharge."

Sec. 156.

Section 3301 of title 28, United States Code, is amended:

(1) in paragraph (2)(B) by striking the phrase "generally exempt under nonbankruptcy law" and substituting in lieu thereof "exempt under applicable Federal law";

(2) by inserting a new paragraph (4) as follows:

"'Court' means any court created by the Congress of the United States, including the United States Tax Court."

(3) by redesignating paragraph (4) "Creditor" as paragraph (5);

(4) by redesignating paragraph (5) "Insider" as paragraph (6);

(5) by redesignating the paragraph beginning "Lien means" as paragraph (7);

(6) by redesignating the paragraph beginning "Relative means" as paragraph (8);

(7) by redesignating the paragraph beginning "Transfer means" as paragraph (9);

(8) by redesignating the paragraph beginning "Valid lien means" as paragraph (10); and

(9) in newly redesignated paragraph (10) by inserting "a" before "legal".

Sec. 157.

Section 3306(b) of title 28, United States Code, is amended:

(1) in paragraph (2) by striking "or" at the end;

(2) in paragraph (3) by striking the period at the end and inserting in lieu thereof ";"

(3) by adding at the end the following:

"(4) under any section within 6 years of the date of judgment in a criminal proceeding; or

(5) for a tax claim under any section within the limitations period provided for collection of the tax claim under the Internal Revenue Code of 1986, as amended from time to time."

TITLE II - AMENDMENTS TO OTHER PROVISIONS OF LAW

Sec. 201.

Section 228(c) of title 18, United States Code, is amended:

(1) by striking "under section 3663"; and

(2) by adding at the end the following: "An order of restitution under this subsection shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.".

Sec. 202.

Section 2327(a) of title 18, United States Code, is amended by striking "Notwithstanding section 3663 or 3663A, and in", and inserting in lieu thereof "In".

Sec. 203.

Section 3013(a)(1)(B) of title 18, United States Code, is amended:

(1) in clause (i), by striking "$25" and inserting in lieu thereof "$50";

(2) in clause (ii), by striking "$50" and inserting in lieu thereof "$100"; and

(3) in clause (iii), by striking "$125" and inserting in lieu thereof "$250".

Sec. 204.

Section 3553(e) of title 18, United States Code, is amended by inserting ", or involving liability for restitution below that otherwise required by section 3664(h)," after "minimum sentence".

Sec. 205.

Section 3563(a) of title 18, United States Code, is amended:

(1) in (6)(A) by inserting "228," before "2248";

(2) in the first sentence of the paragraph following (7) by striking "and ordered execution of".

Sec. 206.

Section 3572(d) of title 18, United States Code, is amended:

(1) in paragraph (1), by amending the first sentence to read as follows: "A person sentenced to pay a fine or other monetary penalty, including restitution, shall be immediately liable for payment of the full amount specified in the sentence, unless in the interests of justice, the court provides for deferred payment or payment in installments.";

(2) in paragraph (2), by striking "permits other than immediate payment" and inserting in lieu thereof "provides for deferred payment or payment in installments".

Sec. 207.

Section 3572 of title 18, United States Code, is amended:

(1) in subsection (g):

(A) by inserting "or restitution" after "**Security for stayed fine**";

(B) by inserting "(1)" before "If a sentence imposing a fine";

(C) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C) respectively;

(D) by adding at the end the following: "(2) If a sentence imposing restitution is stayed, the court may issue such orders as may be reasonably necessary to ensure compliance upon disposition of the appeal, including imposing any of the conditions set forth in subparagraphs (A)-(C) above. In issuing such an order, the court shall consider the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate."; and

(2) by striking subsections (h) and (i).

Sec. 208.

(a) Section 3611 of title 18, United States Code, is amended to read as follows:

"§ 3611. Payment of fines, restitution, and certain forfeitures

"A person who is sentenced to pay a fine, assessment, or restitution or who forfeits a bail bond or collateral shall pay the fine, assessment, restitution, or forfeited bail bond or collateral, including any interest or penalty, as specified by the Director of the Administrative Office of the United States Courts. The Director may specify that payment be made to the clerk of the court or to an officer, employee, or agent of the United States who consents to receive such payment.".

(b) The table of sections for subchapter B of chapter 229 of title 18, United States Code, is amended by deleting "3611. Payment of a fine." and inserting in lieu thereof "3611. Payment of fines, restitution, and certain forfeitures."

Sec. 209.

Section 3612 of title 18, United States Code, is amended:

(1) in subsection (a) by striking each occurrence of "604(a)(18) of title 28" and inserting in lieu thereof "3611";

(2) in subsection (a) by inserting in the first sentence "and any other person designated by the Director of the Administrative Office of the United States Courts" after

"Attorney General";

(3) in subsection (c):

(A) by inserting after the first sentence the following:

"The Government may require the defendant to pay a fine or restitution order in installments, consistent with any provision regarding the timing of payment in the sentence."; and

(B) by striking the third sentence;

(4) by amending subsection (d) to read as follows:

"(d) **Delinquency.**--Payment of a fine or restitution order is delinquent if payment is not made within 30 days of the date it became due. The person designated under section 3611 or the Attorney General shall inform the defendant of the delinquency, and of the court's authority to remedy any default by the defendant under section 3613A(b).

(5) by striking subsection (e);

(6) in subsection (f):

(A) by inserting "or restitution" after each occurrence of "fine";

(B) in paragraph (1) by inserting ", including any judgment providing for deferred payment or payment in installments" after "judgment".

(7) by striking subparagraph (g);

(8) in subsection (h) by striking "under this section" and inserting in lieu thereof "imposed under this subchapter";

(9) in subsection (i) by striking all that follows after "**Application of payments.—**" and inserting in lieu thereof the following:

"Payments received from a defendant shall be applied so that each of the following obligations is paid in full in the following sequence—

(1) A penalty assessment imposed under section 3013;

(2) Restitution with interest, if any, to all victims;

(3) All fines imposed by the sentence, including any interest;

(4) Late payment penalties; and

(5) Costs."; and

(10) by redesignating subparagraphs (f),(h) and (i) as subparagraphs (e), (f) and (g) respectively.

Sec. 210.

Section 3613(a) of title 18, United States Code, is amended:

(1) by inserting "or restitution" after each occurrence of "fine"; and

(2) by inserting "or subject to restitution" after "fined".

Sec. 211.

Section 3613(b) of title 18, United States Code, is amended by striking subsection (b) and inserting the following:

"**(b) Termination of liability.**—The liability to pay a fine shall terminate the later of 20 years from the entry of judgment or upon death of the individual fined. The liability to pay restitution shall terminate 20 years from the entry of judgment.".

Sec. 212.

Section 3613(c) of title 18, United States Code, is amended:

(1) by inserting "228," before "2248"; and

(2) by inserting "or liable for restitution" after each occurrence of "fined".

Sec. 213.

Section 3613(e) of title 18, United States Code, is amended by inserting "or restitution" after "fine".

Sec. 214.

Section 3613A of title 18, United States Code, is amended to read as follows:

"**§ 3613A.–Orders in aid of enforcement.**

(a) **Acceleration of payment.**–The Government may request the court to issue an order modifying a payment schedule or requiring immediate payment in full or in part of any fine or restitution amount owed, upon a showing of the defendant's ability to pay or for other good cause.

(b) **Motions to compel.**—The Government may request the court to compel compliance with a sentence to pay a fine or restitution if the defendant is in default.

(1) **Default.**–A defendant is in default if payment on a fine or restitution order is not made 90 days or more after the payment became due.

(2) **Effect of Default.**–Upon any default by the defendant, the court may–

(A) revoke or modify the conditions of probation or supervised release pursuant to section 3565;

(B) resentence a defendant pursuant to section 3614;

(C) enter or adjust a payment schedule;

(D) impose a late payment penalty of up to 25% of the amount owed; or

(E) hold the defendant in contempt of court.

(3) **Factors to be Considered.**–The court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the fine or restitution order, and any other circumstances that may have a bearing on the defendant's ability or failure to comply with the order of a fine or restitution.

(c) **Hearing.**—If a hearing is held pursuant to this section to enforce a fine or restitution order, the hearing may be conducted by telephone, video conference, or other communications technology when a defendant is confined to jail, prison, or other correctional facility, and the defendant's participation is required."

Sec. 215.

Section 3663(a)(1)(A) of title 18, United States Code, is amended by striking the final sentence.

Sec. 216.

Section 3663(a)(3) of title 18, United States Code, is amended to read as follows:

"(3) The court shall also order restitution in any criminal case to any person, including a person other than the victim of the offense, to the extent agreed to by the parties in a plea agreement."

Sec. 217.

Section 3663(c)(4) of title 18, United States Code, is amended by striking "or under the Controlled Substances Act (21 U.S.C. 801 et seq.)" and inserting ", under the Controlled Substances Act (21 U.S.C. 801 et seq.), or under any other provision of law".

Sec. 218.

Section 3663A(a)(3) of title 18, United States Code, is amended to read as follows:

"(3) The court shall also order restitution in any criminal case to any person, including a person other than the victim of the offense, to the extent agreed to by the parties in a plea agreement."

Sec. 219.

Section 3663A(c)(3) of title 18, United States Code, is amended to read as follows:

"(3) In the case of an offense described in paragraph (1)(A)(ii), the court shall order restitution to all victims whose identities and losses can be shown by the Government at the time of sentencing. If the court finds, from facts on the record, that the identities of all victims or the amount of each victim's loss is not known to the Government and is unlikely to be known at the time set for sentencing, the court may—

(A) limit the order of restitution to the identified amounts of the losses to the identified victims; or

(B) issue an order postponing sentencing for 90 days and requiring the Government to publish in a newspaper of general circulation in the judicial district or in a newspaper with nationwide circulation a notice that states—

(i) the name of, and other identifying information about, the defendant;

(ii) the offense for which the defendant was convicted;

(iii) the terms and conditions for submitting a claim for a loss incurred as the result of the offense for which the defendant has been convicted;

(iv) a date certain for submitting a claim that shall be at least 30 days prior to sentencing;

(v) that the court may allow or disallow any claim for a loss, including any losses of victims independently identified under section 3664; and

(vi) that any person required to submit a claim who fails to submit a claim timely or whose claim once submitted is disallowed by the court shall have no right to restitution, but may pursue any other legal remedy including a civil action; or

(C) order restitution to the identified victims in the amounts of each victim's loss and specify the amount of a reserve fund to be included in the restitution ordered by the sentence sufficient to compensate victims or victims' losses that are unidentified at the time of sentencing. A determination on distributions from the reserve fund shall be made under the procedures set forth in subparagraph B, or under such other procedures reasonably calculated to identify victims and victims' losses as the court may approve. Should the reserve fund be insufficient to satisfy the identified victims' losses, the amount available shall be distributed to the victims pro rata. In the event that an amount remains in the reserve fund after all identified victims' claims have been paid, the remaining reserve funds shall be disbursed to the Crime Victims Fund."

Sec. 220.

Section 3664(d) of title 18, United States Code, is amended:

(1) in paragraph (1), by striking "but not later than 60 days prior to the date initially set for sentencing,";

(2) in the first sentence of paragraph 5, by striking "shall set" and all that follows through "sentencing", and inserting in lieu thereof "may defer sentencing as necessary to permit a final determination of the victim's losses"; and

(3) in paragraph 5 by inserting at the end the following: "The amendment of a restitution order based on later-discovered losses shall not affect any other aspect of the

sentence.".

Sec. 221.

Section 3664(f) of title 18, United States Code, is amended:

(1) in paragraph (2) by striking "(2) Upon" and all that follows through "consideration of" and inserting in lieu thereof the following:

"(2) A defendant shall be immediately liable for payment of the full amount of the restitution ordered unless the court pursuant to section 3572 provides for deferred payment or payment in installments. In providing for deferred payment or payment in installments, the court shall consider—";

(2) in paragraph (3) by striking "(A) A restitution order" and inserting in lieu thereof "(A) A restitution order that specifies the manner of payment"; and

(3) by striking paragraph (3)(B).

Sec. 222.

Section 3664(h) of title 18, United States Code, is amended to read as follows:

"If the court finds that more than one defendant has contributed to the loss of a victim, the court shall hold all such defendants jointly and severally liable for payment of the full amount of restitution owed to such victim.".

Sec. 223.

Section 3664(i) of title 18, United States Code, is amended by striking the first sentence and inserting the following:

"If the court finds that more than one victim has sustained a loss requiring restitution by a defendant, the court may specify priorities in payment to the victims in light of their economic circumstances and the type and amount of their respective losses.".

Sec. 224.

Section 3664(j) of title 18, United States Code, is amended:

(1) in paragraph (1) by striking "of victims required by the order" through "compensation." and inserting in lieu thereof "be paid to the victims named in the order before any such provider of compensation is reimbursed."; and

(2) in paragraph (2) by inserting "required to be" before "paid.".

Sec. 225.

Section 3664(m)(1) of title 18, United States Code, is amended to read as follows:

(A) An order of restitution may be enforced–

"(i) by the United States, in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title; and

"(ii) by a victim named in the order to receive restitution, in the same manner as a judgment in a civil action.".

Sec. 226.

Section 3664(n) of title 18, United States Code, is amended to read as follows:

"Subject to section 3613 of chapter 229, if a person obligated to provide restitution or pay a fine receives property, other than earnings, from any source, including inheritance, settlement, or other judgment, such person shall be required to apply the value of such property to any restitution or fine still owed, provided that this section shall not impair the authority vested in the Attorney General to administer the Federal prison system pursuant to section 4001 of chapter 301.

Sec. 227.

Section 3664(o)(1)(c) is amended by striking "(3)" and inserting in lieu thereof "(5)".

Sec. 228.

Section 3664(p) of title 18, United States Code, is amended by inserting "228," before "2248".

Sec. 229.

Section 3664 of title 18, United States Code, is amended by adding at the end the following new subsections:

"(q) **Dismissal of forfeiture proceeding.**—A defendant may not use any property criminally or civilly forfeited to the United States or subject to a pending criminal or civil forfeiture action to make restitution, provided that the Government may dismiss a criminal or civil forfeiture action at any time to allow property to be used to make restitution under this title. The custodian of the property at the time the forfeiture action is dismissed shall retain such property and shall not release the property except pursuant to court order. Any protective order entered or warrant of seizure executed pursuant to sections 413(e)-(f) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C.§ 853(e) or (f)), shall remain in effect pending such order of the court.

"(r) **Disclosure to victim.**—Notwithstanding section 552a of title 5, United States Code, the Government may disclose to a victim who is owed restitution the following information about a defendant sentenced to pay such restitution:

(1) Place of residence or domicile;

(2) Place of employment;

(3) Date of birth;

(4) Date and place of death;

(5) Country of citizenship;

(6) Deportation date and destination; and

(7) Such information about property as may be available.

(s) **Modification or remission.**—The Government may petition the court at any time to modify or remit a restitution order or schedule of payments as appropriate in view of a change in the economic circumstances of the defendant, or other relevant change. A petition under this subsection shall be filed in the court in which sentence was originally imposed, unless the court transfers jurisdiction to another court. This subsection shall apply to all restitution orders irrespective of the date of imposition.

Sec. 230.

Section 211 of the Mandatory Victims Restitution Act of 1996, Public Law 104-132, is amended to read as follows:

"SEC. 211. EFFECTIVE DATES.

"(a) IN GENERAL. -- Except as provided in subsection (b), the amendments made by this subtitle shall, to the extent constitutionally permissible, be effective for proceedings in cases in which the defendant is sentenced on or after the date of enactment of this Act.

"(b) COLLECTION AND ENFORCEMENT. -- The amendments made by paragraphs (1) and (3) of subsection (c) of section 207 shall apply to any case commenced on, before, or after the date of enactment of this Act.".

Sec. 231.

Section 604(a)(18) of title 28, United States Code, is amended to read as follows:

"(18) Establish policy and procedures to meet the requirements of sections 3611 and 3612 of title 18.".

Sec. 232. Section 1920(1) of title 28, United States Code, is amended to read as follows:

"Fees of the clerk, marshal and process servers;".

Sec. 233.

Section 1961 of title 28, United States Code, is amended:

(1) by adding in the first sentence "or registered by the United States" after recovered, and

(2) by adding in the third sentence "or registration" after "entry".

Sec. 234.

Chapter 125 of title 28, United States Code, is amended by adding at the end the following:

"**§ 1965. Registration of judgments assigned to the United States**

A judgment of a State court in any action for the recovery of money or property that has been assigned to the United States as authorized by Federal law may be registered in any district court by filing a certified copy of the judgment and the assignment to the United States. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.".

Sec. 235.

Section 10601(b) of title 42, United States Code, is amended in paragraph (1) by inserting "(and the interest thereon)" after "all fines".

Sec. 236.

Effective September 30, 1996 section 1402(d) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d), is amended:

(1) by striking paragraph (1) and redesignating paragraphs (2), (3) and (4) as paragraphs (1), (2) and (3) respectively;

(2) in redesignated paragraph (1), by striking "the next" and inserting "The first"; and

(3) by adding at the end the following:

"(h) Any sum made available to the judicial branch under this section that has not been expended as of February 1, 1997 shall be deposited in the Crime Victims Fund and may be used by the Director for the benefit of crime victims in the federal criminal justice system.

TITLE III - EFFECTIVE DATE

Sec. 301

The amendments made by title I and title II shall apply to actions and proceedings commenced on, before or after the enactment of this Act.

THIS IS A DRAFT DOCUMENT PREPARED BY THE DEPARTMENT OF JUSTICE SOLELY TO FACILITATE DISCUSSION OF THE DEPARTMENT'S DRAFT BILL

CHAPTER 176 -- FEDERAL DEBT COLLECTION PROCEDURE

Subchapter

SUBCHAPTER A -- DEFINITIONS AND GENERAL PROVISIONS

Sec.

§ 3001. Applicability of chapter [SEC. 101]

(a) In general. Except as provided in subsection (b), ~~the~~ **this** chapter provides the exclusive civil procedures for the United States——

"(1) to recover a judgment on a debt; or

"(2) to obtain, before judgment on a claim for a debt, a remedy in connection with such claim.

(b) Limitation.——To the extent that another Federal law specifies procedures for recovering on a claim or a judgment for a debt arising under such law, those procedures shall apply to such claim or judgment to the extent those procedures are inconsistent with this chapter.

(c) Amounts owing other than debts.——This chapter shall not apply with respect to an amount owing that is not a debt or to a claim for an amount owing that is not a debt.

§ 3002. Definitions

As used in this chapter:

(1) "Counsel for the United States" means—

(A) a United States attorney, an assistant United States attorney designated to act on behalf of the United States attorney, or an attorney with the United States Department of Justice or with a Federal agency who has litigation authority; and

(B) any private attorney authorized by contract made in accordance with section 3718 of title 31 to conduct litigation for collection of debts on behalf of the United States.

(2) "Court" means any court created by the Congress of the United States, excluding the United States Tax Court.

(3) "Debt" means—

(A) an amount that is owing to the United States on account of a
contract, direct loan, or loan insured or guaranteed, by the United States; [SEC. 102]
~~or~~

(B) an amount that is owing to the United States on account of a fee, duty, lease, rent, service, sale of real or personal property, overpayment, fine, assessment, penalty, restitution, damages, interest, tax, bail bond forfeiture, reimbursement, recovery of a cost incurred by the
United States, or other source of indebtedness to the United States~~, but~~ [SEC. 102]
~~that is not owing under the terms of a contract originally entered into by~~
~~only persons other than the United States; and includes~~;

(C) any amount owing to the United States for the benefit of an [SEC. 102]
Indian tribe or individual Indian~~, but excludes any amount to which the~~
~~United States is entitled under section 3011(a).~~; and

(D) any amount the United States is authorized by statute to collect for the benefit of any person.

(4) "Debtor" means a person who is liable for a debt or against whom there is a claim for a debt.

(5) "Disposable earnings' means that part of earnings remaining after all deductions required by law have been withheld.

(6) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(7) "Garnishee" means a person (other than the debtor) who has, or is
reasonably thought to have, possession, custody, or control of any property in [SEC. 103]
which the debtor has a ~~substantial~~ nonexempt interest,

including any obligation due the debtor or to become due the debtor, and against whom a garnishment under section 3104 or 3205 is issued by a court.

(8) "Judgment" means a judgment, order, or decree **for the recovery of** [SEC. 104]
money or property entered in favor of the United States ~~in~~ **by** a court ~~and arising from~~ **in** a civil or criminal proceeding ~~regarding a debt~~ **, and includes a judgment, order, or decree for money or property that the United States is authorized by statute to collect for the benefit of any person."**

(9) "Nonexempt disposable earnings" means 25 percent of disposable earnings, subject to section 303 of the Consumer Credit Protection Act.

(10) "Person" includes a natural person (including an individual Indian), a corporation, a partnership, an unincorporated association, a trust, or an estate, or any other public or private entity, including **the United States,** a State or local [SEC. 105]
government or an Indian tribe.

(11) "Prejudgment remedy" means the remedy of attachment, receivership, garnishment, or sequestration authorized by this chapter to be granted before judgment on the merits of a claim for a debt.

(12) "Property" includes any present or future interest, whether legal or equitable, in real, personal (including choses in action), or mixed property, tangible or intangible, vested or contingent, wherever located and however held (including community property and property held in trust (including spendthrift and pension trusts)), but excludes——

(A) property held in trust by the United States for the benefit of an Indian tribe or individual Indian; and

(B) Indian lands subject to restrictions against alienation imposed by the United States.

(13) "Security agreement" means an agreement that creates or provides for a lien.

(14) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, or any territory or possession of the United States.

(15) "United States" means——

(A) a Federal corporation;

(B) an agency, department, commission, board, or other entity of the United States; or

(C) an instrumentality of the United States.

(16) "United States marshal" means a United States marshal, a deputy marshal, or an official of the United States Marshals Service designated under section 564.

§ 3003. Rules of construction

(a) Terms.——For purposes of this chapter——

(1) the terms "includes" and "including" are not limiting;

(2) the term "or" is not exclusive; and

(3) the singular includes the plural.

(b) Effect on Rights of the United States.——This chapter shall not be construed to curtail or limit the right of the United States under any other Federal law or any State law——

(1) to collect taxes or to collect any other amount collectible in the same manner as a tax;

(2) to collect any fine, penalty, assessment, restitution, or forfeiture arising in a criminal case;

(3) to appoint or seek the appointment of a receiver; or

(4) to enforce a security agreement.

(c) Effect on other laws.——This chapter shall not be construed to supersede or modify the operation of——

(1) title 11;

(2) admiralty law;

(3) section 3713 of title 31;

(4) section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673);

(5) a statute of limitation applicable to a criminal proceeding;

(6) the common law or statutory rights to set-off or recoupment;

(7) any Federal law authorizing, or any inherent authority of a court to provide, injunctive relief;

(8) the authority of a court——

(A) to impose a sanction under the Federal Rules of Civil Procedure;

(B) to appoint a receiver to effectuate its order; or

(C) to exercise the power of contempt under any Federal law;

(9) any law authorizing the United States to obtain partition, or to recover possession, of property in which the United States holds title; or

(10) any provision of any other chapter of this title, except to the extent such provision is inconsistent with this chapter.

(d) Preemption. This chapter shall preempt State law to the extent such law is inconsistent with a provision of this chapter.

(e) Effect on rights of the United States under foreign and international law.—— This chapter shall not be construed to curtail or limit the rights of the United States under foreign law, under a treaty or an international agreement, or otherwise under international law.

(f) Applicability of federal rules of civil procedure.—Except as provided otherwise in this chapter, the Federal Rules of Civil Procedure shall apply with respect to actions and proceedings under this chapter.

§ 3004. Service of process; enforcement; notice

(a) Manner of service.—A complaint, notice, writ, or other process required to be served in an action or proceeding under this chapter shall be served in accordance with the Federal Rules of Civil Procedure unless otherwise provided in this chapter.

(b) Nationwide enforcement.~~—(1) Except as provided in paragraph (2)—~~ [SEC. 106]

~~(A)~~ (1) any writ, order, judgment, or other process, including a summons and complaint, filed under this chapter may be served in any State; and

~~(B)~~ (2) such writ, order, or judgment may be enforced by the court issuing the writ, order, or process, regardless of where the person is served with the writ, order, or process.

~~(2) If the debtor so requests, within 20 days after receiving the notice~~ [SEC. 106]
~~described in section 3101(d) or 3202(b), the action or proceeding in which the writ, order, or judgment was issued shall be transferred to the district court for the district in which the debtor resides.~~

(c) Notice and other process.—At such time as counsel for the United States considers appropriate, but ~~not later than the time a prejudgment or postjudgment~~ [SEC. 107]
~~remedy is put into effect~~ **prior to the time of final disposition of the property by the United States** under this chapter, counsel for the United States shall exercise reasonable diligence to serve on the debtor and any person who the United States believes, after exercising due diligence, has possession, custody, or control of the property, a copy of the application ~~for such remedy, the order granting such remedy,~~ **, the writ or order** [SEC. 107]
and the notice required by section 3101(d) or 3202(b).

§ 3005. Application of chapter to judgments

This chapter shall not apply with respect to a judgment on a debt if such judgment is entered more than 10 years before the effective date of this chapter.

§ 3006. Affidavit requirements

Any affidavit required of the United States by this chapter may madeinformation and belief, if reliable and reasonably necessary, establishing with particularity, to the court's satisfaction, facts supporting the claim of the United States.

§ 3007. Perishable personal property

(a) Authority to sell.—If at any time during any action or proceeding under this chapter, the court determines on its own initiative or upon motion of any party, that any seized or detained personal property is likely to perish, waste, or be destroyed, or otherwise substantially depreciate in value during the pendency of the proceeding, the court shall order a commercially reasonable sale of such property.

(b) Deposit of sale proceeds.——Within 5 days after such sale, the proceeds shall be deposited with the clerk of the court, accompanied by a statement in writing and signed by the United States marshal, to be filed in the action or proceeding, stating the time and place of sale, the name of the purchaser, the amount received, and an itemized account of expenses.

(c) Presumption.——For purposes of liability on the part of the United States, there shall be a presumption that the price paid at as sale under subsection (a) is the fair market value of the property or portion.

§ 3008. Proceedings before United States magistrates

A district court of the United States may assign its duties in proceedings under this chapter to a United States magistrate to the extent not inconsistent with the Constitution and laws of the United States.

§ 3009. United States marshals' authority to designate keeper [SEC. 108]

~~Whenever a United States marshal is authorized to seize property pursuant to this chapter, the United States marshal may designate another person or Federal agency to hold for safekeeping such property seized.~~

<u>The United States marshal may designate another person to perform duties other than law enforcement functions on behalf of the United States marshal under this chapter, and the United States marshal is authorized to enter into personal services and other contracts for this purpose.</u>

§ 3010. Co-owned property [SEC. 109]

(a) Limitation.—~~The remedies available to the United States under this chapter may be enforced against property which is co-owned by a debtor and any other person only to the extent allowed by the law of the State where the property is located.~~ **<u>The interest of a debtor in any co-owned property shall be determined by the law of the State where the property is located.</u>** This section shall not be construed to limit any right or interest of a debtor or co-owner in a retirement system for Federal military or civilian personnel established by the United States or any agency thereof or in a qualified retirement arrangement.

(b) Definitions.——For purposes of subsection (a)——

(1) the term "retirement system for Federal military or civilian personnel" means a pension or annuity system for Federal military or civil personnel of more than one agency, or for some or all of such personnel of a single agency, established by statute or by regulation pursuant to statutory authority; and

(2) the term "qualified retirement arrangement" means a plan qualified under section 401(a), 403(a), or 409 of the Internal Revenue Code of 1986 or a plan that is subject to the requirements of section 205 of the Employee Retirement Income Security Act of 1974.

§ 3011. Assessment of surcharge on a debt [SEC. 110]

(a) Surcharge authorized.——In ~~an action or proceeding under subchapter B or C~~ **any action in which the United States asserts a claim for a debt,** and subject to subsection (b), the United States is entitled to recover a surcharge of 10 percent of the **total** amount of the debt ~~in connection with the recovery of the debt,~~ to cover the cost of processing and handling the litigation ~~and enforcement under this chapter of the claim for such debt~~ **on the claim for such debt and enforcement under this chapter**.

(b) Limitation.——Subsection (a) shall not apply if——

(1) the United States receives an attorney's fee in connection with the enforcement of the claim; ~~or~~

(2) the law pursuant to which the action on the claim is based provides any other amount to cover such costs~~.~~ **; or**

(3) the United States has previously been awarded surcharge on the debt.

§ 3012. Joinder of additional defendant

The United States or the debtor may join as an additional defendant in an action or proceeding under this chapter any person reasonably believed to owe money (including money owed on account of a requirement to provide goods or services pursuant to a loan or loan guarantee extended under Federal law) to the debtor arising out of the transaction or occurrence giving rise to a debt.

§ 3013. Modification or protective order; supervision of enforcement

The court may at any time on its own initiative or the motion of any interested person, and after such notice as it may require, make an order denying, limiting, conditioning, regulating, extending, or modifying the use of any enforcement procedure under this chapter.

§ 3014. Exempt property [SEC. 111]

(a) Election to exempt property. ~~An individual debtor may, in an action or proceeding under this chapter, elect to exempt property listed in either paragraph (1) or, in the alternative, paragraph (2). If such action or proceeding is against debtors who are husband and wife, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2). If the debtors cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1). Such property is either——~~

~~(1) property that is specified in section 522(d) of title 11, as amended from time to time; or~~

~~(2)(A) any property that is exempt under Federal law, other than paragraph (1), or State or local law that is applicable on the date of the filing of the application for a remedy under this chapter at the place in which the debtor's domicile has been located for 180 days immediately preceding the date of the filing of such application, or for a longer portion of such 180-day period than in any other place; and~~

~~(B) any interest in property in which the debtor had, immediately before the filing of such application, an interest as a tenant by the entirety or joint tenant, or an interest in a community estate, to the extent that such interest is exempt from process under applicable nonbankruptcy law.~~ [SEC. 111]

(1) In a proceeding under this chapter an individual debtor may elect to exempt the following property:

(A) A debtor's aggregate interest, not to exceed *$15,000* in value, in real property or personal property that the debtor uses as a residence, in a cooperative that owns property that the debtor uses as a residence, or in a burial plot for the debtor.

(B) A debtor's interest in one motor vehicle, not to exceed *$2,400* in value.

(C) A debtor's interest not to exceed *$8,000* in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor.

(D) A debtor's aggregate interest, not to exceed *$1,000* in value, in jewelry held primarily for the personal, family, or household use of the debtor.

(E) A debtor's aggregate interest in any property, other than earnings, not to exceed in value *$800*.

(F) A debtor's aggregate interest, not to exceed *$1,500* in value, in [SEC. 111] any implements, professional books, or tools, of the trade of the debtor.

(G) Professionally prescribed health aids for the debtor.

(H) A debtor's right to receive -

(i) a social security benefit, unemployment compensation, or a local public assistance benefit;

(ii) a veteran's benefit;

(iii) a disability, illness, or unemployment benefit;

(iv) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(I) A debtor's right to receive, or property that is traceable to -

(i) an award under a crime victim's reparation law;

(ii) a payment on account of personal bodily injury, not to exceed *$15,000*, not including pain and suffering or compensation for actual pecuniary loss, of the debtor;

(J) A debtor's right to receive earnings to the extent allowed by section 303 of the Consumer Credit Protection Act (15 U.S.C. § 1673), as amended from time to time.

(2) This subsection shall not apply to proceedings commenced under this chapter pursuant to section 3613 of title 18, United States Code.

(b) Effect on assertion and manner of determination.——

(1) Statement.——A court may order the debtor to file a statement with regard to any claimed exemption. A copy of such statement shall be served on counsel for the United States. Such statement shall be under oath and shall describe each item of property for which exemption is claimed, the value and the basis for such valuation, and the nature of the debtor's ownership interest.

(2) Hearing.——The United States or the debtor, byapplication to the court in which an action or proceeding under this chapter is pending, may request a hearing on the applicability of any exemption claimed by the debtor. The court shall determine the extent (if any) to which the exemption applies. ~~Unless it is~~ [SEC. 112] ~~reasonably evident that the exemption applies~~. The debtor shall bear the burden of persuasion.

(3) Stay of disposition.——**Unless the court orders otherwise**, assertion of an exemption shall prevent the United States from selling or otherwise disposing [SEC. 112] of the property for which such exemption is claimed until the court determines whether the debtor has a ~~substantial~~ nonexempt interest in such property. ~~The United States may not take possession of, dispose of, sell, or otherwise interfere with the debtor's normal use and enjoyment of an interest in property the United States knows or has reason to know is exempt.~~

(c) ~~**Debtors in joint cases.** Subject to the limitation in subsection (a), this section shall apply separately with respect to each debtor in a joint case~~. **Multiple debtors.**——Debtors jointly liable on a debt may each claim the exemptions allowed by subsection (a)."

§ 3015. Discovery as to debtor's financial condition [SEC. 113]

(a) In general.——Except as provided in subsection ~~(b)~~ (c), ~~in an action or proceeding under subchapter B or C,~~ the United States may ~~have discovery~~ **obtain discovery from any person** regarding the financial condition of the debtor——

(1) in the manner in which discovery is authorized by the Federal Rules of Civil Procedure; or ~~in an action on a claim for a debt.~~

(2) pursuant to a subpoena commanding the person to appear before [SEC. 113] **the court with all records, books and other documents and to answer questions under oath.**

(b) No provision of chapter 35 of title 12 shall apply when financial records [SEC. 114] **are sought by the United States under this section.**

~~(b)~~ **(c) Limitation.**——Subsection (a) shall not apply ~~with respect to an action~~ [SEC. 115] ~~or proceeding under subchapter B~~ **prior to entry of judgment** unless there is a reasonable likelihood that the debt ~~involved~~ **claimed** exceeds $50,000.

(d) Enforcement before judgment entered.——**Upon motion by the United**

States [SEC. 115]
in any action in which a verdict or decision has been rendered in favor of the United States, the court may, prior to entry of judgment and not withstanding subsection (c)—

(1) authorize discovery, or

(2) issue a restraining notice with the same effect as if a restraining notice had been served after judgment.

(e) Grand jury information.——A person who is privy to grand jury information [SEC. 116]
concerning the financial condition of a debtor, received in the course of duty as an attorney for the government, or disclosed under rule 6(e)(3)(A)(ii) of the Federal Rules of Criminal Procedure, may disclose that information to an attorney for the government for use in enforcing the collection of a debt.

(f) Civil investigative authority.—— [SEC. 117]

(1) Investigative demand.——Whenever the United States has a claim for a debt that requires additional investigation prior to the institution of a civil proceeding thereon, an attorney for the government may issue a subpoena for a civil investigative demand requiring any person to produce documentary material for inspection and copying or reproduction, to answer in writing written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of material, answers or testimony.

(2) Protections.——(A) No subpoena issued pursuant to this subsection shall require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony, if such material, answers or testimony would be protected from disclosure——

(i) under the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States in aid of a grand jury investigation, or

(ii) would be exempt from discovery under the Federal Rules of Civil Procedure in an action pending in a court as defined in this chapter; and

(B) No demand for the production of documents shall be issued on fewer than twenty days notice;

(3) Enforcement.——If any person fails to comply with a demand issued pursuant to this subsection within the time set forth therein, an attorney for the government may file in the district court for any judicial district in which such person resides, is found or transacts business, and serve upon such person a petition for a court order for the enforcement of this subsection.

(g) Definition.——For purposes of this section, "attorney for the government" [SEC. 118]
has the same meaning as in Rule 54(c), Federal Rules of Criminal Procedure.

SUBCHAPTER B-PREJUDGMENT REMEDIES

§ 3101. Prejudgment remedies [SEC. 119]

(a) Application.——(1) The United States may, in a proceeding in conjunction with the complaint or at any time after the filing of a civil action on a claim for a debt, make application ~~under oath~~ to a court to issue any prejudgment remedy.

(2) Such application shall be filed with the court and shall set forth the factual and legal basis for each prejudgment remedy sought.

(3) Such application shall——

(A) state that the debtor against whom the prejudgment remedy is sought shall be afforded an opportunity for a hearing; and

(B) set forth with particularity that all statutory requirements under this chapter for the issuance of the prejudgment remedy sought have been satisfied.

(b) Grounds.——Subject to section 3102, 3103, 3104, or 3105, a prejudgment remedy may be granted by any court if the United States shows reasonable cause to believe that the debtor——

A) is about to leave the jurisdiction of the United States with the effect of hindering, delaying, or defrauding the United States in its effort to recover a debt;

(B) has or is about to assign, dispose, remove, conceal, ill treat, waste, or destroy property with the effect of hindering, delaying, or defrauding the United States;

(C) has or is about to convert the debtor's property into money, securities, or evidence of debt in a manner prejudicial to the United States with the effect of hindering, delaying, or defrauding the United States; or

(D) has evaded service of process by concealing himself or has temporarily withdrawn from the jurisdiction of the United States with the effect of hindering, delaying, or defrauding the United States; or

(2) a prejudgment remedy is required to obtain jurisdiction within the United States and the prejudgment remedy sought will result in obtaining such jurisdiction.

(c) Affidavit.——(1) The application under subsection (a) shall include an affidavit establishing with particularity to the court's satisfaction facts supporting the probable validity of the claim for a debt and the right of the United States to recover what is demanded in the application.

(2) The affidavit shall state——

(A) specifically the amount of the debt claimed by the United States and any interest or costs attributable to such debt;

(B) one or more of the grounds specified in subsection (b); and

(C) the requirements of section 3102(b), 3103(a), 3104(a), or 3105(b), as the case may be.

(3) No bond is required of the United States.

~~**(d) Notice and hearing.** (1) On filing an application by the United States as provided in this section, the counsel for the United States shall prepare, and the clerk shall issue, a notice for service on the debtor against whom the prejudgment remedy is sought and on any other person whom the United States reasonably believes, after exercising due diligence, has possession, custody, or control of property affected by such remedy. Three copies of the notice shall be served on each such person. The form and content of such~~
~~notice shall be approved jointly by a majority of the chief judges of the Federal~~ [SEC. 120]
~~districts in the State in which the court is located and shall be in substantially the following form.~~

~~"NOTICE~~

~~"You are hereby notified that this [property] is being taken by the~~ [SEC. 120]
~~United States Government ("the Government"), which says that [name of debtor] owes it a debt of $ [amount] for [reason for debt] and has filed a lawsuit to collect this debt. The Government says it must take this property at this time because [recite the pertinent ground or grounds from section 3101(b)]. The Government wants to make sure [name of debtor] will pay if the court determines that this money is owed.~~

~~"In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the Government if [name of debtor] can show that the exemptions apply. Below is a summary of the major exemptions~~
~~which apply in most situations in the State of [State where property is located]~~ [SEC. 120]

~~"[A statement summarizing in plain and understandable English the election available with respect to such State under section 3014 and the types of property that may be exempted under each of the alternatives specified in paragraphs (1) and (2) of section 3014(a), and a statement that different property may be so exempted with respect to the State in which the debtor resides.]~~

~~"If you are [name of debtor] and you disagree with the reason the Government gives for taking your property now, or if you think you do not owe the money to the Government that it says you do, or if you think the property the Government is taking qualifies under one of the above exemptions, you have a right to ask the court to return your property to you.~~

~~"If you want a hearing, you must promptly notify the court.~~

~~You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government at [address], so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.~~

~~"At the hearing you may explain to the judge why you think you do not owe the money to the Government, why you disagree with the reason the Government says it must take your property at this time, or why you believe the property the Government has taken is exempt or belongs to someone else. You may make any or all of these explanations as you see fit.~~

~~"If you think you live outside the Federal judicial district in which the~~ [SEC. 120]
~~court is located, you may request, not later than 20 days after you receive this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. You must also send a copy of your request to the Government at [address], so the Government will know you want the proceeding to be transferred.~~

~~"Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information."~~(d) Notice.——On filing an application by the United States as provided in this section, counsel for the United States shall prepare, and the clerk of the court shall issue, a notice for service on the debtor against whom the prejudgment remedy is sought and any other person whom the United States reasonably believes, after exercising due diligence, has possession, custody, or control of property affected by such remedy. Three copies of the notice shall be served on each such person.

The notice shall be in substantially the following form:

NOTICE

You are hereby notified that your property is being taken by the United States which says that you owe a debt in the amount of $ and has filed a lawsuit to collect this debt. The United States is taking your property because it says

[Insert one or more of the specific grounds in Section 3101(b).]

In addition, you are hereby notified that there are certain exemptions under Federal law that you may be entitled to claim to prevent the United States from taking your property. To claim an exemption, indicate below the property you believe to be exempt. The court may require you to prove why you are entitled to each exemption you claim.

(1) A debtor's aggregate interest, not to exceed *$15,000* in

value, in real property or personal property that the debtor uses as a residence, in a cooperative that owns property that the debtor uses as a residence, or in a burial plot for the debtor.

(2) A debtor's interest in one motor vehicle, not to exceed *$2,400* in value.

(3) A debtor's interest, not to exceed *$8,000* in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor.

(4) A debtor's aggregate interest, not to exceed *$1,000* in value, in jewelry held primarily for the personal, family, or household use of the debtor.

(5) A debtor's aggregate interest in any property, other than earnings, not to exceed in value *$800*.

(6) A debtor's aggregate interest, not to exceed *$1,500* in value, in any implements, professional books, or tools of the trade of the debtor.

(7) Professionally prescribed health aids for the debtor.

(8) A debtor's right to receive -

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veteran's benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profit sharing annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, provided that such plan qualifies under section 401(a), 403(a) or 408 of the Internal Revenue Code of 1986(check IRS cites).

(9) A debtor's right to receive, or property that is traceable to -

(A) an award under a crime victim's reparation law;

(B) a payment on account of personal bodily injury, not to exceed $15,000, not including pain and suffering or compensation for actual pecuniary loss, of the debtor;

(10) A debtor's right to receive earnings to the extent allowed by section 303 of the Consumer Credit Protection Act (15 U.S.C. § 1673), as amended from time to time.

You have the right to request a hearing. At the hearing you may explain to the judge why you think you do not owe the money to the government, why you disagree with the reason the government says it must take your property at this time, or why you believe the property the government has taken is exempt. If you want such a hearing, you must promptly notify the clerk of court and a hearing will be given to you within five working days after the clerk of the court receives your request, if you ask for it to take place that quickly, or as soon there after as possible. You must sign and date this form in the space provided and mail or take it to the clerk of the court at the following address:[insert address for the court]. You must also send a copy of your request to counsel for the United States at [address], so the United States will know you want a hearing.

You should consult a lawyer if you have any questions about your rights or need this procedure explained further.

~~(2)~~ (e) **Hearing.**—By requesting, at any time before judgment on the claim for a debt, the court to hold a hearing, the debtor may move to quash the order granting such remedy. The court shall hold a hearing on such motion as soon as practicable, or, if requested by the debtor, within 5 days after receiving the request for a hearing or as soon thereafter as possible. The issues at such hearing shall be limited to—

(A) the probable validity of the claim for the debt for which such remedy was granted and of any defense or claim of exemption asserted by such person;

(B) compliance with any statutory requirement for the issuance of the prejudgment remedy granted;

(C) The existence of any ground set forth in subsection (b); and

(D) the inadequacy of alternative remedies (if any) to protect the interests of the United States.

(e~~f~~) Issuance.—On the court's determination that the requirements of subsections (a), (b), and (c) have been met, the **clerk of the** court shall issue all process [SEC. 121] sufficient to put into effect the prejudgment remedy sought.

§ 3102. Attachment

(a) Property subject to attachment.—(1) Any property in the possession, [SEC. 122] custody, or control of the debtor and in which the debtor has a ~~substantial~~ nonexempt interest, except earnings, may be attached pursuant to a writ of attachment in an action or proceeding against a debtor on a claim for a debt and may be held as security to satisfy such judgment, and interest and costs, as the United States may recover on such claim.

(2) The value of property attached shall not exceed the amount by which the sum of the amount of the debt claimed by the United States and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any—

(A) property securing the debt; and

(B) property garnished or in receivership, or income sequestered, under this subchapter.

(b) Availability of attachment.—If the requirements of section 3101 are satisfied, a court shall issue a writ authorizing the United States to attach property in which the debtor has a ~~substantial~~ nonexempt interest, as security for such judgment [SEC. 122] (and interest and costs) as the United States may recover on a claim for a debt.—

~~(1) in an action on a contract, express or implied, against the debtor for~~ [SEC. 122]

~~payment of money, only if the United States shows reasonable cause to believe — that —~~

~~(A) the contract is not fully secured by real or personal property; or~~

~~(B) the value of the original security is substantially diminished, without any act of the United States or the person to whom the security was given, below the amount of the debt;~~

~~(2) in an action against the debtor for damages in tort;~~

~~(3) if the debtor resides outside the jurisdiction of the United States; or~~

~~(4) in an action to recover a fine, penalty, or tax.~~

(c) Issuance of writ, contents.——(1) Subject to subsections (a) and (b), a writ of attachment shall be issued by the court directing the United States marshal of the district where property described in subsection (a) is located to attach the property.

(2) Several writs of attachment may be issued at the same time, or in succession, and sent to different judicial districts until sufficient property is attached.

(3) The writ of attachment shall contain——

(A) the date of the issuance of the writ;

(B) the identity of the court, the docket number of the action, and the identity of the cause of action;

(C) the name and last known address of the debtor;

(D) the amount to be secured by the attachment; and

(E) a reasonable description of the property to be attached.

(d) Levy of attachment.———(1) The United States marshal receiving the writ shall
proceed without delay to levy upon the property specified for attachment if found within [SEC. 122]
the district. ~~The marshal may not sell property unless ordered by the court.~~

(2) In performing the levy, the United States marshal may enter any property owned, occupied, or controlled by the debtor, except that the marshal may not enter a residence or other building unless the writ expressly authorizes the marshal to do so or upon specific order of the court.

(3) Levy on real property is made by entering the property and posting the writ and notice of levy in a conspicuous place upon the property.

(4) Levy on personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing in the notice of levy the property by quantity and with sufficient

detail to identify the property levied on.

(5) The United States marshal shall file a copy of the notice of levy in the same manner as provided for judgments in section 3201(a)~~(1)~~. The United States marshal shall serve a copy of the ~~writ and notice of levy on –~~ [SEC. 122]

~~(A) the debtor against whom the writ is issued; and~~

~~(B) the person who has possession of the property subject to the writ; in the same manner that a summons is served in a civil action and make the return thereof.~~ <u>notice of levy pursuant to section 3004.</u>

(e) Return of the writ; duties of the marshal; further return –(1) A United States marshal executing a writ of attachment shall return the writ with the marshal's action endorsed thereon or attached thereto and signed by the marshal, to the court from which it was issued; within 5 days after the date of the levy.

(2) The return shall describe the property attached with sufficient certainty to identify it and shall state the location where it was attached, the date and time it was attached, and the disposition made of the property. If no property was attached, the return shall so state.

(3) If the property levied on is claimed, replevied under subsection (j)(2) or sold under section 3007 after the return, the United States marshal shall immediately make a further return to the clerk of the court showing the disposition of the property.

(4) If personal property is replevied, the United States marshal shall deliver the replevin bond to the clerk of the court to be filed in the action.

(f) Levy of attachment as lien on property; satisfaction of lien.——(1) A levy on property under a writ of attachment under this section creates a lien in favor of the United States on the property or, in the case of perishable property sold under section 3007, on the proceeds of the sale.

(2) Such lien shall be ranked ahead of any other security interests perfected after the later of the time of levy and the time a copy of the notice of levy is filed under subsection (d)(5).

(3) Such lien shall arise from the time of levy and shall continue until a judgment in the action is obtained or denied, or the action is otherwise dismissed. The death of the debtor whose property is attached does not terminate the attachment lien. Upon issuance of a judgment in the action and registration under this chapter, the judgment lien so created relates back to the time of levy.

(g) Reduction or dissolution of attachment.——(1) If an excessive or unreasonable attachment is made, the debtor may submit a motion to the court for a reduction of the amount of the attachment or its dissolution. Notice of such motion shall be served on the United States.

(2) The court shall order a part of the property to be

released, if after a hearing the court finds that the amount of the attachment is excessive or unreasonable or if the attachment is for an amount larger than the sum of the liquidated or ascertainable amount of the debt and the amount of interest and costs likely to be taxed.

(3) The court shall dissolve the attachment if the amount of the debt is unliquidated and unascertainable by calculation.

(4) If any property claimed to be exempt is levied on, the debtor may, at any time after such levy, request that the court vacate such levy. If it appears to the court that the property so levied upon is exempt, the court shall order the levy vacated and the property returned to the debtor.

(h) Replevin of attached property by debtor; bond.——If attached property is not sold before judgment, the debtor may replevy such property or any part thereof by giving a bond approved by counsel for the United States or the court and payable to the United States in double the reasonable value of the property to be replevied or double the value of the claim, whichever is less.

(i) Preservation of personal property under attachment.——If personal property in custody of the United States marshal under a writ of attachment is not replevied, claimed, or sold, the court may make such order for its preservation or use as appears to be in the interest of the parties.

(j) Judgment and disposition of attached property.——

(1) Judgment for the United States.——On entry of judgment for the United States, the court shall order the proceeds of personal property sold pursuant to section 3007 to be applied to the satisfaction of the judgment, and shall order the sale of any remaining personal property and any real property levied on to the extent necessary to satisfy the judgment.

(2) Judgment for the United states when personal property replevied.————With respect to personal property under attachment that is replevied, the judgment which may be entered shall be against the debtor against whom the writ of attachment is issued and also against the sureties on the debtor's replevin bond for the value of the property.

(3) Restoration of property and exoneration of the bond. —If the attachment is vacated or if the judgment on the claim for the debt is for the person against whom the writ attachment is issued, the court shall order the property, or proceeds of perishable property sold under section 3007, restored to the debtor and shall exonerate any replevin bond.

§ 3103. Receivership [SEC. 123]

(a) Appointment of a receiver.——If the requirements of section 3101 are satisfied, a court may appoint a receiver for property in which the debtor has a ~~substantial~~ nonexempt interest if the United States shows reasonable cause to believe that there is a substantial danger that the property will be removed from the jurisdiction of the court, lost, concealed, materially injured or damaged, or mismanaged.

(b) Powers of receiver.——(1) The appointing court may authorize a receiver——

(A) to take possession of real and personal property and sue for, collect, and sell obligations upon such conditions and for such purposes as the court shall direct; and

(B) to administer, collect, improve, lease, repair or sell pursuant to section 3007 such real and personal property as the court shall direct.

A receiver appointed to manage residential or commercial property shall have demonstrable expertise in the management of these types of property.

(2) Unless expressly authorized by order of the court, a receiver shall have no power to employ attorneys, accountants, appraisers, auctioneers, or other professional persons.

(c) Duration of receivership.——A receivership shall not continue past the entry of judgment, or the conclusion of an appeal of such judgment, unless the court orders it continued under section 3203(e) or unless the court otherwise directs its continuation.

(d) Accounts; requirement to report.——A receiver shall keep written accounts itemizing receipts and expenditures, describing the property and naming the depository of receivership funds. The receiver's accounts shall be open to inspection by any person having an apparent interest in the property. The receiver shall file reports at regular intervals as directed by the court and shall serve the debtor and the United States with a copy thereof.

(e) Modification of powers; removal.——On motion of the receiver or on its own initiative, the court which appointed the receiver may remove the receiver or modify the receiver's powers at any time.

(f) Priority.——If more than one court appoints a receiver for particular property, the receiver first qualifying under law shall be entitled to take possession, control, or custody of the property.

(g) Compensation of receivers.——(1) A receiver is entitled to such commissions, not exceeding 5 percent of the sums received and disbursed by him, as the court allows unless the court otherwise directs.

(2) If, at the termination of a receivership, there are no funds in the hands of a receiver, the court may fix the compensation of the receiver in accordance with the services rendered and may direct the party who moved for the appointment of the receiver to pay such compensation in addition to the necessary expenditures incurred by the receiver which remain unpaid.

(3) At the termination of a receivership, the receiver shall file a final accounting of the receipts and disbursements and apply for compensation setting forth the amount sought and the services rendered by the receiver.

§ 3104. Garnishment

(a) In general.——If the requirements of section 3101 are satisfied, a court may issue a writ of garnishment against property (excluding earnings) in which the debtor has a ~~substantial~~ nonexempt interest and which is in the possession, custody or control of a person other than the debtor in order to satisfy a claim for a debt. ~~Co-owned property~~ [SEC. 124] ~~shall be subject to garnishment to the same extent as co-owned property is subject to garnishment under the law of the State in which such property is located.~~ A court may issue simultaneous separate writs of garnishment to several garnishees. A writ of garnishment issued under this subsection shall be continuing and shall terminate only as provided in section 3205(c)(10).

(b) Writ.——(1) Subsections (b)(2) and (c) of section 3205 shall apply with respect to garnishment under this section, except that for purposes of this section——

(A) earnings of the debtor shall not be subject to garnishment; ~~and~~

(B) a reference in such subsections to a judgment debtor shall be deemed [SEC. 125] to be a reference to a debtor~~.~~<u>; and</u>

<u>**(C) service shall be made pursuant to section 3004.**</u>

(2) The United States shall include in its application for a writ of garnishment——

~~(A)~~ the amount of the claim asserted by the United States for a debt~~; and~~

~~(B) the date the writ is issued~~. [SEC. 125]

(c) Limitation.——The value of property garnished shall not exceed the amount by which the sum of the amount of the debt claimed by the United States and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any——

(1) property securing the debt; and

(2) property attached or in receivership, or income sequestered, under this subchapter.

§ 3105. Sequestration [SEC. 126]

(a) Property subject to sequestration.——(1) Any income from property in which the debtor has a ~~substantial~~ nonexempt interest may be sequestered pursuant to a writ of sequestration in an action or proceeding against a debtor on a claim for a debt and may be held as security to satisfy such judgment, and interest and costs, as the United States may recover on such claim.

(2) The amount of income sequestered shall not exceed the amount by which the sum of the amount of the debt claimed by the United States and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any——

"(A) property securing the debt; and

"(B) property attached, garnished, or in receivership under this subchapter.

(b) Availability of sequestration.——If the requirements of section 3101 are satisfied, a court shall issue a writ authorizing the United States to sequester income from property in which the debtor has a ~~substantial~~ nonexempt interest, as security for such judgment (and interest and costs) as the United States may [SEC. 126] recover on a claim for a debt.——

~~(1) in an action on a contract, expressed or implied, against the debtor for payment of money, only if the United States shows reasonable cause to believe that—~~

~~(A) the contract is not fully secured by real or personal property; or~~

~~(B) the value of the original security is substantially diminished, without any act of the United States or the person to whom the security was given, below the amount of the debt;~~

~~(2) in an action against the debtor for damages in tort;~~

~~(3) if the debtor resides outside the jurisdiction of the United States; or~~

~~(4) in an action to recover a fine, penalty, or tax.~~

(c) Issuance of writ; contents.——(1) Subject to subsections (a) and (b), a writ of sequestration shall be issued by the court directing the United States marshal of the district where income described in subsection (a) is located to sequester the income.

(2) Several writs of sequestration may be issued at the same time, or in succession, and sent to different judicial districts until sufficient income is sequestered.

(3) The writ of sequestration shall contain——

(A) the date of the issuance of the writ;

(B) the identity of the court, the docket number of the action, and the identity of the cause of action;

(C) the name and last known address of the debtor;

(D) the amount to be secured by the sequestration; and

(E) a reasonable description of the income to be sequestered.

(d) Execution of writ.———(1) The United States marshal receiving the writ shall proceed without delay to execute the writ.

(2) The United States marshal shall file a copy of the notice of sequestration in the same manner as provided for judgments in section 3201(a)~~(1)~~. The United States marshal shall serve a copy of the ~~writ and notice of sequestration on—~~

~~(A) the debtor against whom the writ is issued; and~~

~~(B) the person who has possession of the income subject to the writ;~~ [SEC. 126]

~~in the same manner that a summons is served in a civil action and make the return thereof.~~ **notice of sequestration pursuant to section 3004.**

(e) Deposit of sequestered income.———A person who has possession of the income subject to a writ of sequestration shall deposit such income ~~with~~ **into the** [SEC. 126] **registry of** the clerk of the court, accompanied by a statement in writing stating the person's name, the name of the debtor, the amount of such income, the property from which such income is produced, and the period during which such income is produced.

(f) Return of writ; duties of marshal; further return.——(1) A United States marshal executing a writ of sequestration shall return the writ with the marshal's action endorsed thereon or attached thereto and signed by the marshal, to the court from [SEC. 126] which it was issued, within 5 days after the date ~~of the~~ ~~execution~~ **the writ is executed**.

(2) The return shall describe the income sequestered with sufficient certainty to identify it and shall state the location where it was sequestered, and the date and time it was sequestered. If no income was sequestered, the return shall so state.

(3) If sequestered income is claimed after the return, the United States marshal shall immediately make a further return to the clerk of the court showing the disposition of the income.

(g) Reduction or dissolution of sequestration.——(1) If an excessive or unreasonable sequestration is made, the debtor may submit a motion to the court for a reduction of the amount of the sequestration or its dissolution. Notice of such motion shall be served on the United States.

(2) The court shall order a part of the income to be released, if after a hearing the court finds that the amount of the sequestration is excessive or unreasonable or if the sequestration is for an amount larger than the sum of the liquidated or ascertainable amount of the debt and the amount of interest and costs likely to be taxed.

(3) The court shall dissolve the sequestration if the amount of the debt is unliquidated and unascertainable by calculation.

(h) Preservation of income under sequester.——If personal property in custody of the United States marshal under a writ of sequestration is not claimed, the court may make such order for its preservation or use as appears to be in the interest of the parties.

(i) Judgment and disposition of sequestered income.——

(1) Judgment for the United States.——On entry of judgment for the United States, the court shall order the sequestered income to be applied to the satisfaction of the judgment.

(2) Restoration of income.——If the sequestration is vacated or if the judgment on the claim for the debt is for the person against whom the writ of sequestration is issued, the court shall order the income restored to the debtor.

SUBCHAPTER C-POSTJUDGMENT REMEDIES

§ 3201. Judgment liens [SEC. 127]

(a) Creation.——A judgment ~~in a civil action~~ shall create a lien on all real property of a judgment debtor on filing a certified copy of the abstract of the judgment in the manner in which a notice of tax lien would be filed under paragraphs (1) and (2) of section 6323(f) of the Internal Revenue Code of 1986. **A notice of lien that is registered, recorded, docketed or indexed in accordance with the rules and requirements relating to judgments of the courts of the State where the notice of lien is registered, recorded, docketed or indexed shall be considered for all purposes as the filing prescribed by this subsection.**

(b) Priority of lien.——A lien created under subsection (a) shall have priority over any other lien or encumbrance which is perfected later in time.

(c) Duration of lien; renewal.——(1) Except as provided in paragraph (2), a lien created under subsection (a) is effective, unless satisfied, for a period of 20 years.

(2) Such lien may be renewed for one additional period of 20 years upon filing a notice of renewal in the same manner as the judgment is filed and shall relate back to the date the judgment is filed if——

(A) the notice of renewal is filed before the expiration of the 20-year period to prevent the expiration of the lien; and

(B) the court approves the renewal of such lien under this paragraph.

(d) Release of judgment lien.——A judgment lien shall be released on the filing of a satisfaction of judgment or release of lien in the same manner as the judgment is filed to obtain the lien.

(e) Effect of lien on eligibility for federal grants, loans, or programs.~~——A debtor~~ [SEC. 127]
~~who has a judgment lien against the debtor's property for a debt to the United States~~**Upon the filing of a lien by the United States, a debtor** shall not be eligible to receive any **contract, professional or commercial license,** grant or loan which is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as a beneficiary, until the judgment is paid in full or otherwise satisfied. The agency of the United States that is responsible for

such **contracts, licenses,** grants and loans may promulgate regulations to allow for the waiver of this restriction on eligibility for such grants, loans, and funds.

(f) Sale of property subject to judgment lien.—(1) On proper application to a court, the court may order the United States to sell, in accordance with sections 2001 and 2002, any real property subject to a judgment lien in effect under this section.

(2) This subsection shall not preclude the United States from using an execution sale pursuant to section 3203(g) to sell real property subject to a judgment lien.

§ 3202. Enforcement of judgments [SEC. 128]

(a) Enforcement remedies.—A judgment may be enforced by any of the remedies set forth in this subchapter. A court may issue other writs pursuant to section 1651 of title 28, United States Code, as necessary to support such remedies, subject to rule 81(b) of the Federal Rules of Civil Procedure.

~~**(b) Notice.**—On the commencement by the United States of an action or a proceeding under this subchapter to obtain a remedy, the counsel for the United States shall prepare, and clerk of the court shall issue, a notice in substantially the following form:~~

~~"NOTICE~~

~~"You are hereby notified that this [property] is being taken by the United States Government, which has a court judgment in [case docket number and jurisdiction of court] of $ [amount] for [reason of debt].~~

~~"In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the United States Government if [name of judgment debtor] can show that the exemptions apply. Below is a summary of the major exemptions which apply in most situations in the State of [State where property is located]:~~ [SEC. 128]

~~"[A statement summarizing in plain and understandable English the election available with respect to such State under section 3014 and the types of property that may be exempted under each of the alternatives specified in paragraphs (1) and (2) of section 3014(a) and a statement that different property may be so exempted with respect to the State in which the debtor resides.]~~

~~"If you are [name of judgment debtor], you have a right to ask the court to return your property to you if you think the property the Government is taking qualifies under one of the above exemptions [For a default judgment:] or if you think you do not owe the money to the United States Government that it says you do.~~

~~"If you want a hearing, you must notify the court within 20 days after you~~ [SEC. 128]
~~receive this notice. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the~~

~~court clerk. You must also send a copy of your request to the Government at [address], so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.~~

~~"At the hearing you may explain to the judge why you believe the property the~~ [SEC. 128] ~~Government has taken is exempt [For a default judgment:] or why you think you do not owe the money to the Government. [For a writ of execution:] If you do not request a hearing within 20 days of receiving this notice, your [property] may be sold at public auction and the payment used toward the money you owe the Government.~~

~~"If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after you receive this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. You must also send a copy of y our request to the Government at [address], so the Government will know you want the proceeding to be transferred.~~

~~"Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information.~~~~'~~"(b) Notice for earnings garnishment.——On the commencement by the United States of a proceeding under this subchapter to garnish earnings to enforce a civil or criminal judgment, counsel for the United States shall prepare and shall serve a notice on the debtor and the garnishee employer in substantially the following form:

NOTICE OF EARNINGS GARNISHMENT

You are hereby notified that your earnings are being garnished by the United States to enforce a judgment against you, Court Docket number ____, in the amount of $ ____. Federal law limits the amount of your earnings that can be garnished to pay your debt to the lesser of:

25 percent of your disposable earnings for each pay period, or

the amount by which your disposable earnings in a pay period exceed thirty times the Federal minimum hourly wage in effect at the time your earnings become due.

Under the Consumer Credit Protection Act (15 U.S.C. § 1673), "disposable earnings" means the earnings that remain after deduction of amounts required by law to be withheld, such as Federal income tax, Social Security taxes, and State and local taxes. You do not need to take any action to claim the exemption from garnishment, but if you believe the wrong amount is being withheld from your earnings, you may file a claim and request a hearing. If you want such a hearing, you must request it within 10 days after your employer serves its answer. You will be given a hearing within five working days after the clerk of the court receives your request, if you ask for it to take place that quickly, or as soon after as is possible. You must sign and date this form in the space provided below and mail or take it to the clerk of the court at the following address:[insert address for the court]. You must also send a copy of your request to counsel for the United States at [address], so the United States will know you want a hearing.

Federal law prohibits an employer from discharging any employee because his or her earnings have been garnished for any one indebtedness. 15 U.S.C. § 1674.

You should consult a lawyer if you have any questions about your rights or need this procedure explained further.

~~(c) Service. A copy of the notice and a copy of the application for granting a~~ [SEC. 129]
~~remedy under this subchapter shall be served by counsel for the United States on the judgment debtor against whom such remedy is sought and on each person whom the United States, after diligent inquiry, has reasonable cause to believe has an interest in property to which the remedy is directed.~~ (c) Notice of proceedings, other than earnings garnishment, to enforce a civil judgment.—On the commencement by the United States of a proceeding under this subchapter to obtain a remedy, other than garnishment of earnings, to enforce a civil judgment, counsel for the United States shall prepare and shall serve a notice on the debtor and other interested persons under the Act in substantially the following form:

NOTICE OF ENFORCEMENT PROCEEDINGS FOR A CIVIL JUDGMENT
[OTHER THAN EARNINGS GARNISHMENT]

You are hereby notified that your property is being taken by the United States to enforce a judgment against you, Court Docket number ______, in the amount of $______. There are certain exemptions under Federal law that you may be entitled to claim to prevent the United States from taking your property. To claim an exemption indicate below the property you believe to be exempt. The court may require you to prove why you are entitled to each exemption you claim.

(1) A debtor's aggregate interest, not to exceed *$15,000* in value, in real property or personal property that the debtor uses as a residence, in a cooperative that owns property that the debtor uses as a residence, or in a burial plot for the debtor.

(2) A debtor's interest in one motor vehicle, not to exceed *$2,400* in value.

(3) A debtor's interest not to exceed *$8,000* in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor.

(4) A debtor's aggregate interest, not to exceed *$1,000* in value, in jewelry held primarily for the personal, family, or household use of the debtor.

(5) A debtor's aggregate interest in any property, other than

earnings, not to exceed in value *$800.*

(6) A debtor's aggregate interest, not to exceed *$1,500* in value, in any implements, professional books, or tools of the trade of the debtor.

(7) Professionally prescribed health aids for the debtor.

(8) A debtor's right to receive -

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veteran's benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(9) A debtor's right to receive, or property that is traceable to -

(A) an award under a crime victim's reparation law;

(B) a payment on account of personal bodily injury, not to exceed $15,000, not including pain and suffering or compensation for actual pecuniary loss, of the debtor;

(10) Pension benefits that are not alienable under ERISA

You have the right to request a hearing. If you want such a hearing, you must request it within 20 days of the date you are served with this notice. You will be given a hearing within five working days after the clerk of the court receives your request, if you ask for it to take place that quickly, or as soon after as is possible. You must sign and date this form in the space provided and mail or take it to the clerk of the court at the following address:[insert address for the court]. You must also send a copy of your request to counsel for the United States at [address], so the United States will know you want a hearing.

You should consult a lawyer if you have any questions about your rights, or need this procedure explained further."

~~(d) Hearing.— By requesting, within 20 days after receiving the notice described2~~ [SEC. 130]
~~in section 3202(b), the court to hold a hearing, the judgment debtor may move to quash the order granting such remedy. The court that issued such order shall hold a hearing on such motion as soon as practicable, or, if so requested by the judgment debtor, within 5 days after receiving the request or as soon thereafter as possible. The issues at such hearing shall be limited—~~

~~(1) to the probable validity of any claim of exemption by the judgment debtor;~~

~~(2) to compliance with any statutory requirement for the issuance of the postjudgment remedy granted; and~~

~~(3) if the judgment is by default and only to the extent that the Constitution or another law of the United States provides a right to a hearing on the issue, to—~~

~~(A) the probable validity of the claim for the debt which is merged in the judgment; and~~

~~(B) the existence of good cause for setting aside such judgment.~~

~~This subparagraph shall not be construed to afford the~~

~~judgment debtor the right to more than one such hearing except to the extent that the Constitution or another law of the United States provides a right to more than one such hearing.~~"

(d) Notice of proceedings, other than earnings garnishment to enforce a criminal judgment.——On the commencement by the United States of a proceeding under this subchapter to obtain a remedy, other than garnishment of earnings, to enforce a criminal judgment, counsel for the United States shall prepare and shall serve a notice on the debtor and other interested persons under the Act in substantially the following form:

NOTICE OF ENFORCEMENT PROCEEDINGS FOR A CRIMINAL JUDGMENT
[OTHER THAN EARNINGS GARNISHMENT]

You are hereby notified that your property is being taken by the United States to enforce a judgment against you, Court Docket number ________, in the amount of $ ________. There are certain exemptions under Federal law that you may be entitled to claim to prevent the United States from taking your property. To claim an exemption indicate below the property you believe to be exempt. The court may require you to prove why you are entitled to each exemption you claim.

_____ 1. Necessary wearing apparel and school books.
_____ 2. Fuel provisions, furniture, and personal effects up to $1,650.
_____ 3. Books and tools of a trade, business or profession up to $1,250.
_____ 4. Unemployment benefits.
_____ 5. Undelivered mail.
_____ 6. Certain railroad retirement and armed forces annuity and pension payments.
_____ 7. Workmen's compensation.
_____ 8. Judgments for support of minor children.
_____ 9. Certain service-connected disability payments.
_____ 10. Assistance under Job Training Partnership Act.

The exemptions listed above apply pursuant to 18 U.S.C. § 3613(a), but may not apply in child support and alimony cases (42 U.S.C. § 659).

You have the right to request a hearing. If you want such a hearing, you must request it with 20 days of receipt of this notice. You will be given a hearing within five working days after the clerk of the court receives your request, if you ask for it to take place that quickly, or as soon after as is possible. You must sign and date this form in the space provided and mail or take it to the clerk of the court at the following address:[insert address for the court]. You must also send a copy of your request to counsel for the United States at [address], so the United States will know you want a hearing.

You should consult a lawyer if you have any questions about your rights or need this procedure explained further."

~~(e) Sale of property. The property of a judgment debtor which is subject to sale to satisfy the judgment may be sold by judicial sale, pursuant to sections 2001, 2002, and 2004 or by execution sale pursuant to section 3203(g). If a hearing is~~

~~requested pursuant to subsection (d), property with respect to which the request relates shall not be sold before such hearing.~~

(e) Hearing.—(1) The judgment debtor may move to quash the writ or order granting such remedy by requesting a hearing—

(A) within 20 days after receiving the notice described in section 3202(b); or

(B) if for garnishment, within 10 days after receipt of the answer described in section 3205(c).

(2) The issues at such hearing shall be limited to—

(A) the probable validity of any claim of exemption by the judgment debtor; and

(B) compliance with any statutory requirement for the issuance of the postjudgment remedy granted.

(3) If the debtor requests a hearing, the court shall hold a hearing on such motion as soon as practicable, or if so requested by the judgment debtor, within 5 days after receiving the request or as soon thereafter as possible.

§ 3203. Execution [SEC. 132]

(a) Property subject to execution.—All property in which the judgment debtor has a ~~substantial~~ nonexempt interest shall be subject to levy pursuant to a writ of execution. The debtor's earnings shall not be subject to execution while in the possession, custody, or control of the debtor's employer. ~~Co-owned property shall be subject to execution to the extent such property is subject to execution under the law of the State in which it is located.~~

(b) Creation of execution lien.—A lien shall be created in favor of the United States on all property levied on under a writ of execution and shall date from the time of the levy. Such lien shall have priority over all subsequent liens and shall be for the aggregate amount of the judgment, costs, and interest. The execution lien on any real property as to which the United States has a judgment lien shall relate back to the judgment lien date.

(c) Writ of execution.—

(1) Issuance.—On written application of counsel for the United States, the **clerk of the** court may issue a writ of execution. Multiple writs may issue [SEC. 133] simultaneously, and successive writs may issue before the return date of a writ previously issued.

(2) Form of writ.—

(A) General contents.—A writ of execution shall specify the date that the judgment is entered, the court in which it is entered, the amount of the judgment if for money, the amount of the costs, the amount of interest due, the sum due as of the date the writ is issued, the rate of postjudgment interest, the name of the judgment debtor, and the judgment debtor's last known address.

(B) Additional contents.—(i) Except as provided in clauses (ii) and (iii), the writ shall direct the United States marshal to satisfy the judgment

by levying on and selling **any** property in which the judgment debtor has a [SEC. 134]
~~substantial~~ nonexempt interest~~, but not to exceed property reasonably equivalent in value to the aggregate amount of the judgment, costs, and interest~~.

(ii) A writ of execution issued on a judgment for the delivery to the United States of the possession of **particular** [SEC. 135]
personal property or for the delivery of the possession of **particular** real property, shall ~~particularly~~ describe the property, and shall require the marshal to deliver the possession of the property to the United States.

(iii) A writ of execution on a judgment for the recovery of **particular** personal property or its value shall direct the marshal, [SEC. 136]
in case a delivery of the specific property cannot be had, to levy and collect such value out of any property in which the judgment debtor has a ~~substantial~~ nonexempt interest.

(d) Levy of execution.—

(1) In general.—Levy on property pursuant to a writ of execution issued under this section shall be made in the same manner as levy on property is made pursuant to a writ of attachment issued under section 3102(d).

(2) Death of judgment debtor.—The death of the judgment debtor after a writ of execution is issued stays the execution proceedings, but any lien acquired [SEC. 137]
by levy of the writ shall be recognized and enforced ~~by the court for the district in which the estate of the deceased is located. The execution lien may be enforced~~—

(A) against the executor, administrator, or personal representative of the estate of the deceased; or

(B) if there be none, against the deceased's property coming to the heirs or devises or at their option against cash in their possession, but only to the extent of the value of the property coming to them.

(3) Records of the United States marshal.—**(A)** A United States marshal receiving a writ of execution shall endorse thereon the exact hour and date of receipt.

(B) The United States marshal shall make a written record of every levy, specify the property on which levy is made, the date on which levy is made, and the marshal's costs, expenses, and fees.

(C) The United States marshal shall make a written return to the court on each writ of execution stating concisely what is done pursuant to the writ and shall deliver a copy to counsel for the United States who requests the writ. The writ shall be returned not more than——

(i) 90 days after the date of issuance if levy is not made; or

(ii) 10 days after the date of sale of property on which levy is made.

(e) Appointment of receiver.——Pending the levy of execution, the court may appoint a receiver to manage property described in such writ if there is a substantial danger that the property will be removed from the jurisdiction of the court, lost, materially injured or damaged, or mismanaged.

(f) Replevy; redemption.——

(1) Before execution sale.——(A) Before execution sale, the United States marshal may return ~~property~~ to the judgment debtor any personal property [SEC. 138] taken in execution, on——

(i) satisfaction of the judgment, interest, and costs, and any costs incurred in connection with scheduling the sale; or

(ii) receipt from the judgment debtor of a bond——

(I) payable to the United States, with 2 or more good and sufficient sureties to be approved by the marshal, conditioned on the delivery of the property to the marshal at the time and place named in the bond to be sold under subsection (g); or

(II) for the payment to the marshal of a fair value thereof which shall be stated in the bond.

(B) A judgment debtor who sells or disposes of property replevied under subparagraph (A) shall pay the United States marshal the stipulated value of such property.

(C) If the judgment debtor fails to deliver such property to the United States marshal pursuant to the terms of the delivery described in subparagraph (A)(ii)(I) and fails to pay the United States marshal the stipulated value of such property, the United States marshal shall endorse the bond "forfeited" and return it to the court from which the writ of execution issued. If the judgment is not fully satisfied, the **clerk of the** court shall issue a writ of execution against the **[SEC. 138]** judgment debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, on which execution no delivery bond shall be taken, which instruction shall be endorsed on the writ.

(2) After execution sale.——The judgment debtor shall not be entitled to redeem the property after the execution sale.

(g) Execution sale.——

(1) General procedures.——An execution sale under this section shall be conducted in a commercially reasonable manner —

(A) Sale of real property.——

(i) In general.——(I) ~~Except as provided in clause (ii),~~

~~real~~ Real [SEC. 139]
property, or any interest therein, shall be sold~~, after the expiration of the 90 day period beginning on the date of levy under subsection (d)~~, for cash at public auction at the courthouse of the county, parish, or city in which the greater part of the property is located or on the premises or some parcel thereof.

~~(II) The court may order the sale of any real property after the expiration of the 30 day period beginning on the date of levy under subsection (d) if the court determines that such property is likely to perish, waste, be destroyed, or otherwise substantially depreciate in value during the 90 day period beginning on the date of levy.~~

~~(III)~~ (II) The time and place of sale of real property, or any interest therein, under execution shall be advertised by the United States marshal, by publication of notice, once a week for at least 3 weeks prior to the sale, in at least one newspaper of general circulation in the county or parish where the property is located. The first publication shall appear not less than 25 days preceding the day of sale. The notice shall contain a statement of the authority by which the sale is to be made, the time of levy, the time and place of sale, and a brief description of the property to be sold, sufficient to identify the property (such as street address for urban property and the survey identification and location for rural property), but it shall not be necessary for the notice to contain field notes. Such property shall be open for inspection and appraisal, subject to the judgment debtor's reasonable objections, for a reasonable period before the day of sale.

~~(IV)~~ (III) The United States marshal shall serve written notice of public sale by personal delivery, or certified or registered mail, to each person whom the marshal has reasonable cause to believe, after a title search is conducted by the United States, has an interest in property under execution, including lienholders, co-owners, and tenants, at least 25 days before the day of sale to the last known address of each such person.

(ii) Sale of city lots.——If the real property consists of several lots, tracts or parcels in a city or town, each lot, tract, or parcel shall be offered for sale separately, unless not susceptible to separate sale because of the character of improvements.

(iii) Sale of rural property.——If the real property is not located in a city or town, the judgment debtor may —

(I) divide the property into lots of not less than 50 acres or in such greater or lesser amounts as ordered by the court;

(II) furnish a survey of such prepared by a registered surveyor; and

(III) designate the order in which those lots shall be sold.

When a sufficient number of lots are sold to satisfy the amount of the execution and costs of sale, the marshal shall stop the sale.

(B) Sale of personal property.——(i) Personal property levied on shall be offered for sale on the premises where it is located at the time of levy, at the courthouse of the county, parish or city wherein it is located, or at another location ~~is~~ ordered by the court. Personal property susceptible of [SEC. 140] being exhibited shall not be sold unless it is present and subject to the view of those attending the sale unless——

(I) the property consists of shares of stock in corporations;

(II) by reason of the nature of the property, it is impractical to exhibit it; or

(III) the debtor's interest in the property does not include the right to the exclusive possession. [SEC. 140]

~~(ii)(I)Except as provided in subclause (II), personal property, or any interest therein, shall be sold after the expiration of the 30 day period beginning on the date of levy under subsection (d).~~

~~(II) The court may order the sale of any personal property before the expiration of such 30-day period if the court determines that such property is likely to perish, waste, be destroyed, or otherwise substantially depreciate in value during such 30 day period.~~

~~(iii)~~<u>(ii)</u>Notice of the time and place of the sale of personal property shall be given by the United States marshal by posting notice thereof for not less than 10 days successively immediately before the day of sale at the courthouse of any county, parish, or city, and at the place where the sale is to be made.

~~(iv)~~<u>(iii)</u>The United States marshal shall serve written notice of public sale by personal delivery, or registered or certified mail at their last known addresses, on the judgment debtor and other persons who the marshal has reasonable cause to believe, after diligent inquiry, have ~~a substantial~~ **<u>an</u>** [SEC. 140] interest in the property.

(2) Postponement of sale.——The United States marshal may postpone an execution sale from time to time by continuing the required posting or publication of notice until the date to which the sale is postponed, and appending, at the foot of each such notice of a current copy of the following:

"The above sale is postponed until the ___day of _____ , 19__, at ___o'clock _.M.,_____, United States Marshal for the

District of , by_______, Deputy, dated_____
_____".

(3) **Sale procedures.**——

(A) **Bidding requirements.**——A bidder at an execution sale of property, may be required by the United States marshal to make a cash deposit of as much as 20 percent of the sale price proposed before the bid is accepted.

(B) **Resale of property.**——If the terms of the sale are not complied with by the successful bidder, the United States marshal shall proceed to sell the property again on the same day if there is sufficient time. If there is insufficient time, the marshal shall schedule and notice a subsequent sale of the property as provided in paragraphs (1) and (2).

(4) **Rights and liabilities of purchasers.**——

(A) **Transfer of title after sale.**——

(i) If property is sold under this subsection and the successful bidder complies with the terms of the sale, the United States marshal shall execute and deliver all documents necessary to transfer to the successful bidder, without warranty, all the rights, titles, interests and claims of the judgment debtor in the property.

(ii) if the successful bidder dies before execution and delivery of the documents needed to transfer ownership, the United States marshal shall execute and deliver them to the successful bidder's estate. Such delivery to the estate shall have the same effect as if accomplished during the lifetime of the purchaser.

(B) **Purchaser considered innocent purchaser without notice.**—— The purchaser of property sold under execution shall be deemed an innocent purchaser without notice if the purchaser would have been considered an innocent purchaser without notice had the sale been made voluntarily and in person by the judgment debtor.

(C) **Liability of successful bidder who fails to comply.**——A successful bidder at an execution sale who fails to comply with the terms of the sale shall forfeit to the United States the cash deposit or, at the election of the United States, shall be liable to the United States, on a subsequent sale of the property, for all net losses incurred by the United States as a result of such failure.

(h) **Disposition of proceeds; further levy.**——

(1) **Distribution of sale proceeds.**——(A) The United States marshal shall first deliver to the judgment debtor such amounts to which the judgment debtor is entitled from the sale of partially exempt property.

(B) The United States marshal shall next deduct from the proceeds of an execution sale of property an amount equal to the reasonable expenses incurred in making the levy of execution and in keeping and maintaining the property.

(C) Except as provided in subparagraph (D), the United States marshal shall deliver the balance of the proceeds to the counsel for the United States as soon as practicable.

(D) If more proceeds are received from the execution sale than is necessary to satisfy the executions held by the United States marshal, the marshal shall pay the surplus to the judgment debtor.

(2) Further levy if execution not satisfied.——If the proceeds of the execution sale of the property levied on are insufficient to satisfy the execution, the United States marshal shall proceed on the same writ of execution to levy other property of the judgment debtor.

§ 3204. Installment payment order

(a) Authority to issue order.——Subject to subsection (c), if it is shown that the judgment debtor——

(1) is receiving or will receive substantial nonexempt disposable earnings from self employment that are not subject to garnishment; or

(2) is diverting or concealing substantial earnings from any source, or property received in lieu of earnings; then upon motion of the United States and notice to the judgment debtor, the court may, if appropriate, order that the judgment debtor make specified installment payments to the United States.

Notice of the motion shall be served on the judgment debtor in the same manner as a ~~summons~~ writ or by registered or certified mail, return receipt requested. [SEC. 141]

In fixing the amount of the payments, the court shall take into consideration after a hearing, the income, resources, and reasonable requirements of the judgment debtor and the judgment debtor's dependents, any other payments to be made in satisfaction of judgments against the judgment debtor, and the amount due on the judgment in favor of the United States.

(b) Modification of order.——On motion of the United States or the judgment debtor, and upon a showing that the judgment debtor's financial circumstances have changed or that assets not previously disclosed by the judgment debtor have been discovered, the court may modify the amount of payments, alter their frequency, or require full payment.

(c) Limitation.——(1) An order may not be issued under subsection (a), and if so issued shall have no force or effect, against a source of income of the judgment debtor [SEC. 141] with respect to ~~whom~~ which there is in effect a writ of garnishment of earnings issued under this chapter and based on the same debt.

(2) An order may not be issued under subsection (a) with respect to any earnings of the debtor except nonexempt disposable earnings.

§ 3205. Garnishment [SEC. 142]

(a) In general.——A court may issue a writ of garnishment against property (including nonexempt disposable earnings) in which the debtor has a ~~substantial~~ nonexempt interest and which is in the possession, custody, or control of a person other than the debtor, in order to satisfy the judgment against the debtor. ~~Co-owned property shall be subject to garnishment to the same extent as co-owned property is subject to garnishment under the law of the State in which such property is located.~~ **The clerk of the** court may issue simultaneous separate writs of garnishment to several garnishees. A writ of garnishment issued under this subsection shall be ~~continuing~~**attach to debtor's property** and shall terminate only as provided in subsection (c)(10).

~~(b) Writ.——~~

~~(1) General requirements.——The United States shall include in its application for a writ of garnishment——~~

~~(A) the judgment debtor's name, social security number (if known), and last known address;~~

~~(B) the nature and amount of the debt owed and the facts that not less than 30 days has elapsed since demand on the debtor for payment of~~ [SEC. 143]
~~the debt was made and the judgment debtor has not paid the amount due; and;~~

~~(C) that the garnishee is believed to have possession of property (including nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest.~~

~~(2~~**b) Proper garnishee for particular property.**——

(A) If the property consists of a right to or share in the stock of an association or corporation, or interests or profits therein, for which a certificate of stock or other negotiable instrument is not outstanding, the corporation, or the president or treasurer of the association shall be the garnishee.

(B) If the property consists of an interest in a partnership interest, any partner other than the debtor shall be the garnishee on behalf of the partnership.

(C) If the property or a debt is evidenced by a negotiable instrument for the payment of money, a negotiable document of title or a certificate of stock of an association or corporation, the instrument, document, or certificate shall be treated as property capable of delivery and the person holding it shall be the garnishee, except that——

(i) subject to clause (ii), in the case of a security which is transferable in the manner set forth in State law, the entity that carries on its books an account in the name of the debtor in which is reflected such security shall be the garnishee; and

(ii) notwithstanding clause (i), the pledgee shall be the garnishee if such security is pledged.

(D) If the property is held or controlled by a personal [SEC. 143]
representative or fiduciary, the personal representative or fiduciary shall be the garnishee.

(c) Procedures applicable to writ.—

(1) ~~Court determination.~~ ~~If the clerk of the court determines that the~~ [SEC. 144]
~~requirements of this section are satisfied, the clerk of the court shall issue an appropriate writ of garnishment.~~ Issuance and form of writ.—The Clerk of the court shall issue a writ of garnishment and the writ shall include—

(A) the judgment debtor's name, social security number (if known), and the last known address of the judgment debtor;

(B) the name and address of the garnishee;

(C) the amount of the judgment and the balance due on the judgment;

(D) for garnishment of the debtor's earnings, a statement that more than 30 days have elapsed since demand on the debtor for payment of the debt was made and the judgment debtor has not paid the amount due;

(E) a statement that if the garnishee fails to answer the writ or to withhold property or earnings in accordance with the writ, the court may hold the garnishee liable for an amount up to and including the balance due on the judgment plus reasonable attorney's fees;

(F) the name and address of counsel for the United States.

~~(2) Form of writ. The writ shall state—~~

~~(A) The nature and amount of the debt, and any cost and interest~~ [SEC. 145]
~~owed with respect to the debt.~~

~~(B) The name and address of the garnishee.~~

~~(C) The name and address of counsel for the United States.~~

~~(D) The last known address of the judgment debtor.~~

~~(E) That the garnishee shall answer the writ within 10 days of service of the writ.~~

~~(F) That the garnishee shall withhold and retain any property in which the debtor has a substantial nonexempt interest and for which the garnishee is or may become indebted to the judgment debtor pending further order of the~~
~~court.~~ (2) Directions to the garnishee.—The writ shall direct the garnishee [SEC. 145]
to—

(A) withhold and immediately remit to the government, or the clerk of the court pursuant to 18 U.S.C. § 3611, any property in which the judgment debtor has a nonexempt interest, and for which the garnishee is or may be indebted to the judgment debtor;

(B) file a written answer, within 10 days of service of the writ, with the court issuing the writ and serve a copy of the answer on the judgment debtor and counsel for the United States;

(C) state under oath in its answer:

(i) whether the garnishee has custody, control or possession of property or earnings of the debtor;

(ii) a description of such property or earnings and the value of the debtor's interest in the property or earnings;

(iii) a description of any previous garnishments on such property or earnings, and the extent to which any property or earnings remain that are not subject to such garnishments; and

(iv) the amount of property or earnings the garnishee anticipates owing to the debtor in the future, and whether the period for payment will be weekly or another specified period.

(3) **Service of writ.**—The United States shall serve the garnishee and the judgment debtor with a copy of the writ of garnishment **by first class mail or pursuant to** [SEC. 146] **section 3004** and shall certify to the court that this service was made. ~~The writ shall be accompanied by—~~

~~(A) an instruction explaining the requirement that the garnishee submit a written answer to the writ; and~~

~~(B) instructions to the judgment debtor for objecting to the answer of the garnishee and for obtaining a hearing on the objections.~~

~~(4) **Answer of the garnishee.** In its written answer to the writ of~~ [SEC. 147] ~~garnishment, the garnishee shall state under oath—~~

~~(A) whether the garnishee has custody, control or possession of such property;~~

~~(B) a description of such property and the value of such interest;~~

~~(C) a description of any previous garnishments to which such property is subject and the extent to which any remaining property is not exempt; and~~

~~(D) the amount of the debt the garnishee anticipates owing to the judgment debtor in the future and whether the period for payment will be weekly or another specified period.~~

~~The garnishee shall file the original answer with the court issuing the writ and serve a copy on the debtor and counsel for the United States.~~

(~~5~~4) **Objections to answer.**—Within ~~20~~ **10** days after receipt of the answer, [SEC. 148] the judgment debtor or the United States may file a written objection to the answer and request a hearing. The party objecting shall state the grounds for the objection and bear the burden of proving such grounds. A copy of the objection and request for a hearing shall be served on the garnishee and all other parties. The court shall hold a hearing within 10 days after the date of the request is received by the court, or as soon thereafter as practicable, and give notice of the hearing date to all the parties.

(~~6~~5) Garnishee's failure to answer or pay.——If a garnishee fails to answer the writ of garnishment or to withhold property in accordance with the writ, the United States may petition the court for an order requiring the garnishee to appear before the court to answer the writ and to so withhold property before the appearance date. If the garnishee fails to appear, or appears and fails to show good cause why the garnishee failed to comply with the writ, the court shall enter
judgment against the garnishee for ~~the the value of the judgment debtor's~~ [SEC. 149]
~~nonexempt interest in such property (including nonexempt disposible earnings)~~ **an amount not to exceed the balance due on the judgment**. The court may award a reasonable attorney's fee to the United States and against the garnishee if the writ is not answered within the time specified therein and a petition requiring the garnishee to appear is filed as provided in this section.

(~~7~~6) Disposition order.~~—After the garnishee files an answer and if no~~ [SEC. 150]
~~hearing is requested within the required time period, the court shall promptly enter an order directing the garnishee as to the disposition of the judgment debtor's nonexempt interest in such property. If a hearing is timely requested, the order shall be entered within 5 days after the hearing, or as soon thereafter as practicable.~~**If a hearing pursuant to subsection 3203(e) or subsection (5) is requested timely by the debtor or the United States, the court shall enter a disposition order within 5 days after the hearing or as soon thereafter as practicable**.

(~~8~~7) Priorities.——Judicial orders and garnishments for the support of a person shall have priority over a writ of garnishment issued under this section. As to any other writ of garnishment or levy, a garnishment issued under this section shall have priority over writs which are issued later in time.

(~~9~~8) Accounting.——(A) While a writ of garnishment is in effect under this section, the United States shall given an annual accounting on the garnishment to the judgment debtor and the garnishee.

(B) Within ~~10~~ **20** days after the garnishment terminates, the United [SEC. 151]
States shall give a cumulative written accounting to the judgment debtor and garnishee of all property it receives under a writ of garnishment. Within 10 days after such accounting is received, the judgment debtor or garnishee may file a written objection to the accounting and a request for hearing. The party objecting shall state grounds for the objection. The court shall hold a hearing on the objection within 10 days after the court receives the request for a

hearing, or as soon thereafter as is practicable.

(~~10~~9) **Termination of garnishment.**——A garnishment under this chapter is terminated only by——

(A) a court order quashing the writ of garnishment;

(B) exhaustion of property in the possession, custody, or control of the garnishee in which the debtor has a ~~substantial~~ nonexempt interest [SEC. 152] (including nonexempt disposable earnings), unless the garnishee reinstates or reemploys the judgment debtor within 90 days after the judgment debtor's dismissal or resignation; or

(C) satisfaction of the debt with respect to which the writ is issued.

§ 3206. Restraining notice [SEC. 154]

(a) Issuance; on whom served; form.—A restraining notice may be issued by the clerk of the court or counsel for the United States as an officer of the court, and shall be served pursuant to section 3004 or by registered or certified mail, return receipt requested. The United States may serve a restraining notice upon any person, except that a restraining notice served on the employer of a judgment debtor shall not apply to earnings due or to become due to the judgment debtor. The restraining notice shall specify —

(1) all parties to the action;

(2) the social security number of the judgment debtor, if known;

(3) the date the judgment was entered;

(4) the court in which it was entered; and

(5) the amount of the judgment and the amount due.

The restraining notice shall set forth the requirements of subsection (b) below and shall state that disobedience is punishable as a contempt of court.

(b) Effect of restraint; prohibition of transfer; duration. —(1) A judgment debtor who is served with a restraining notice shall not sell, assign, transfer or hypothecate any nonexempt property, except as may be reasonably necessary for the maintenance or support of the debtor or a dependent of the debtor and if the debtor is engaged in business, as may be reasonably necessary for the payment of expenditures for the continuation, preservation and operation of such business.

(2) A person other than the judgment debtor who is served with a restraining notice shall not——

(A) repay any obligation to the judgment debtor;

(B) return any nonexempt property to the judgment debtor; or

(C) sell, assign, transfer or hypothecate any property —

(i) specifically described in the restraining notice;

(ii) that the other person knows to be owned by the judgment debtor; or

(iii) in which the other person could have reason to believe by the exercise of due diligence that the judgment debtor has an ownership interest.

(3) The restraining notice shall remain in effect for one year from the date the notice is served, or until the judgment is satisfied, or the restraining notice is vacated by order of the court, whichever occurs first.

(c) Answer to restraining notice.—A person other than a judgment debtor who is served with a restraining notice, and who has or may have custody, control or possession of property of the debtor (other than earnings), shall—

(1) serve a written answer to the restraining notice on the debtor and counsel for the United States within 10 days of service of the restraining notice; and

(2) set forth in the answer a description of such property, and the value of the debtor's interest in such property

(d) Notice to judgment debtor.—If a restraining notice is served on a person other than the judgment debtor, counsel for the United States shall mail a copy of the restraining notice to the judgment debtor by first class mail.

(e) Restraining notice in electronic media.—Notwithstanding the provisions of 5 U.S.C. § 552a, the United States may serve a restraining notice in the form of electronic media upon a person other than the debtor who consents to accept service in this form. A restraining notice in such form shall contain all of the information required under subsection (a) other than the signature of the issuing clerk of court or counsel for the United States, and the information provided may be used solely for the purposes authorized by this section.

§ 3207. Orders in aid of execution [SEC. 155]

(a) In general.—The United States is entitled to aid from the court by injunction or other appropriate order to reach nonexempt property of the judgment debtor that cannot readily be seized by ordinary legal process under this subchapter.

(b) Authority to issue order.—The court may order the property, together with all documents or records related to the property, that is in or subject to the possession or control of the judgment debtor or another person, to be turned over to the United States for sale or other appropriate disposition.

§ 32068. Discharge [SEC. 155]

A person who pursuant to an execution or order issued under this chapter by a court pays or delivers to the United States, a United States marshal, or a receiver, money or other personal property in which a judgment debtor has or will have an interest, or so pays a debt such person owes the judgment debtor, is discharged from such debt to the judgment debtor to the extent of the payment or delivery.

SUBCHAPTER D-FRAUDULENT TRANSFERS INVOLVING DEBTS

Sec.

§ 3301. Definitions

As used in this subchapter:

(1) "Affiliate" means—

(A) a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities—

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(B) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than the person who holds securities—

(i) as a fiduciary or agent without sole power to vote the securities; or

(ii) solely to secure a debt, if the person has not in fact exercised the power to vote;

(C) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(D) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but does not include—

(A) property to the extent it is encumbered by a valid lien;

(B) property to the extent it is ~~generally exempt under~~ [SEC. 156]
~~nonbankruptcy law~~ **exempt under applicable Federal law**; or

(C) an interest in real property held in tenancy by the entirety, or as part of a community estate, to extent such interest is not subject to process by the United States holding a claim against only one tenant or co-owner.

(3) "Claim" means a right to a payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) "Court" means any court created by the Congress of the United States, including the United States Tax Court.

~~(4)~~(5) "Creditor" means a person who has a claim.

~~(5)~~(6) "Insider" includes—

(A) if the debtor is an individual—

(i) a relative of the debtor or of a general partner of the debtor;

(ii) a partnership in which the debtor is a general partner;

(iii) a general partner in a partnership descried in clause (ii); or

(iv) a corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation—

(i) a director of the debtor;

(ii) an officer of the debtor;

(iii) a person in control of the debtor;

(iv) a partnership in which the debtor is a general partner;

(v) a general partner in a partnership described in clause (iv); or

(vi) a relative of a general partner, director, officer, or person in control of the debtor.

(C) if the debtor is a partnership—

(i) a general partner in the debtor;

(ii) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(iii) another partnership in which the debtor is a general partner;

(iv) a general partner in a partnership described in clause (iii); or

(v) a person in control of the debtor.

(D) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(E) a managing agent of the debtor.

~~(4)~~ (7)"Lien" means a charge against or an interest in property to secure [SEC. 156] payment of a debt and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common law lien, or a statutory lien.

~~(5)~~ (8)"Relative" means an individual related, by consanguinity or adoption, within the third degree as determined by the common law, a spouse, or an individual so related to a spouse within the third degree as so determined.

~~(6)~~ (9)"Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

"~~(7)~~ (10)"Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained in alegal or equitable proceeding.

§ 3302. Insolvency

(a) In general.—Except as provided in subsection (c), a debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(b) Presumption.—A debtor who is generally not paying debts as they become due is presumed to be insolvent.

(c) **Calculation.**—A partnership is insolvent under subsection (a) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of—

(1) all of the partnership's assets; and

(2) the sum of the excess of the value of each general partner's non-partnership assets over the partner's non-partnership debts.

(d) **Assets.**—For purposes of this section, assets do not include property that is transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this subchapter.

(e) **Debts.**—For purposes of this section, debts do not include an obligation to the extent such obligation is secured by a valid lien on property of the debtor not included as an asset.

§ 3303. Value for transfer or obligation

(a) **Transaction.**—Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) **Reasonably equivalent value.**—For the purposes of sections 3304 and 3307, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of such interest upon default under a mortgage, deed of trust, or security agreement.

(c) **Present value.**—A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

§ 3304. Transfer fraudulent as to a debt to the United States

(a) **Debt arising before transfer.**— Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States which arises before the transfer is made or the obligation is incurred if—

(1)(A) the debtor makes the transfer or incurs the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and

(B) the debtor is insolvent at that time or the debtor becomes insolvent as a result of the transfer or obligation; or

(2)(A) the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time; and

(B) the insider had reasonable cause to believe that the debtor was insolvent.

(b) **Transfers without regard to date of judgment.**—(1) Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States, whether such debt arises before or after the transfer is made or the obligation is incurred, if the debtor makes the transfer or incurs the obligation—

(A) with actual intent to hinder, delay, or defraud a creditor; or

(B) without receiving a reasonably equivalent value in exchange for the transfer or obligation if the debtor—

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) In determining actual intent under paragraph (1), consideration may be given, among other factors, to whether—

(A) the transfer or obligation was to an insider;

(B) the debtor retained possession or control of the property transferred after the transfer;

(C) the transfer or obligation was disclosed or concealed;

(D) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(E) the transfer was of substantially all the debtor's assets;

(F) the debtor absconded;

(G) the debtor removed or concealed assets;

(H) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(I) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(J) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(K) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

§ 3305. When transfer is made or obligation is incurred

For the purposes of this subchapter—

(1) A transfer is made—

(A) with respect to an asset that is real property (other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset), when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(B) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire, otherwise than under this subchapter, a judicial lien that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as approved in paragraph (1) and the transfer is not so perfected before the commencement of an action or proceeding for relief under this subchapter, the transfer is deemed made immediately before the commencement of the action or proceeding.

(3) If applicable law does not permit the transfer to be perfected as provided in paragraph (1), the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred—

(A) if oral, when it becomes effective between the parties; or

(B) if evidenced by a writing executed by the obligor, when such writing is delivered to or for the benefit of the obligee.

§ 3306. Remedies of the United States

(a) **In general.**—In an action or proceeding under this subchapter for relief against a transfer or obligation, the United States, subject to section 3307 and to applicable principles of equity and in accordance with the Federal Rules of Civil Procedure, may obtain—

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the debt to the United States;

(2) a remedy under this chapter against the asset transferred or other property of the transferee; ~~or~~

(3) any other relief the circumstances may require.

(b) **Limitation.**—A claim for relief with respect to a fraudulent transfer or obligation under this subchapter is extinguished unless action is brought—

(1) under section 3304(b)(1)(A) within 6 years after the transfer was made or the obligation was incurred or, if later, within 2 years after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) under subsection (a)(1) or (b)(1)(B) of section 3304 within 6 years after the transfer was made or the obligation was incurred; ~~or~~

(3) under section 3304(a)(2) within 2 years after the transfer was made or the obligation was incurred~~.~~**;**

(4) under any section within 6 years of the date of judgment in a criminal proceeding; or [SEC. 157]

(5) for a tax claim under any section within the limitations period provided for collection of the tax claim under the Internal Revenue Code of 1986.

§ 3307. Defenses, liability, and protection of transferee

(a) **Good faith transfer.**—A transfer or obligation is not voidable under section 3304(b) with respect to a person who took in good faith and for a reasonably equivalent value or against any transferee or obligee subsequent to such person.

(b) **Limitation.**—Except as provided in subsection (d), to the extent a transfer is voidable in an action or proceeding by the United States under section 3306(a)(1), the United States may recover judgment for the value of the asset transferred, but not to exceed the judgment on a debt. The judgment may be entered against—

(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

(2) any subsequent transferee, other than a good-faith transferee who took for value or any subsequent transferee of such good-faith transferee.

(c) **Value.**—For purposes of subsection (b), the value of the asset is the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) **Rights of good faith transferees and obligees.**—Notwithstanding voidability of a transfer or an obligation under this subchapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to—

(1) a lien on or a right to retain any interest in the asset transferred;

(2) enforcement of any obligation incurred; or

(3) a reduction in the amount of the liability on the judgment.

(e) **Exceptions.**——A transfer is not voidable under section 3304(a) or section 3304(b)(2) if the transfer results from—

(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) enforcement of a security interest in compliance with article 9 of the Uniform Commercial Code or its equivalent in effect in the State where the property is located.

(f) **Limitation of voidability.**—A transfer is not voidable under section 3304(a)(2) -

(1) to the extent the insider gives new value to or for the benefit of the debtor after the transfer is made unless the new value is secured by a valid lien;

(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured both present value given for that purpose and an antecedent debt of the debtor.

§ 3308. Supplementary provision

Except as provided in this subchapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause shall apply to actions and proceedings under this subchapter."

TITLE II-AMENDMENTS TO OTHER PROVISIONS OF LAW

Amendments to Title 18, United Staes Code

§ 228. Failure to pay legal child support obligations

(a) Offense.—Whoever willfully fails to pay a past due support obligation with respect to a child who resides in another State shall be punished as provided in subsection (b).

(b) Punishment.—The punishment for an offense under this section is--

(1) in the case of a first offense under this section, a fine under this title, imprisonment for not more than 6 months, or both; and

(2) in any other case, a fine under this title, imprisonment for not more than 2 years, or both.

(c) Restitution.—Upon a conviction under this section, the court shall order restitution ~~under section 3663~~ in an amount equal to the past due support obligation as it exists at the time of sentencing. **An order of restitution under this subsection shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.** [SEC. 201]

(d) Definitions.—As used in this section--

(1) the term "past due support obligation" means any amount--

(A) determined under a court order or an order of an administrative process pursuant to the law of a State to be due from a person for the support and maintenance of a child or of a child and the parent with whom the child is living; and

(B) that has remained unpaid for a period longer than one year, or is greater than $5,000; and

(2) the term "State" includes the District of Columbia, and any other possession or territory of the United States.

§ 2327. Mandatory restitution

(a) In general.—~~Notwithstanding section 3663 or 3663A, and in~~In addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter. [SEC. 202]

§ 3013. Special assessment on convicted persons

(a) The court shall assess on any person convicted of an offense against the United States—

(1) in the case of an infraction or a misdemeanor—

(A) if the defendant is an individual—

(i) the amount of $5 in the case of an infraction or a class C misdemeanor;

(ii) the amount of $10 in the case of a class B misdemeanor; and

(iii) the amount of $25 in the case of a class A misdemeanor; and

(B) if the defendant is a person other than an individual— [SEC. 203]

(i) the amount of $~~25~~50 in the case of an infraction or a class C misdemeanor;

(ii) the amount of $~~50~~100 in the case of a class B misdemeanor; and

(iii) the amount of $~~125~~250 in the case of a class A misdemeanor;

(2) in the case of a felony—

(A) the amount of ~~not less than~~ $100 if the defendant is an individual; and

(B) the amount of ~~not less than~~ $400 if the defendant is a person other than an individual.

(b) Such amount so assessed shall be collected in the manner that fines are collected in criminal cases.

(c) The obligation to pay an assessment ceases five years after the date of the judgment. This subsection shall apply to all assessments irrespective of the date of imposition.

(d) For the purposes of this section, an offense under section 13 of this title is an offense against the United States.

§ 3553.

(e) **Limited authority to impose a sentence below a statutory minimum.** Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence **,or involving liability for restitution below that otherwise required by section 3664(h),** so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code. [SEC. 204]

§ 3563. Conditions of probation

(a) Mandatory conditions.—The court shall provide, as an explicit condition of a sentence of probation--

(1) for a felony, a misdemeanor, or an infraction, that the defendant not commit another Federal, State, or local crime during the term of probation;

(2) for a felony, that the defendant also abide by at least one condition set forth in subsection (b)(2), (b)(3), or (b)(13), unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the other conditions set forth under subsection (b);

(3) for a felony, a misdemeanor, or an infraction, that the defendant not unlawfully possess a controlled substance;

(4) for a domestic violence crime as defined in section 3561(b) by a defendant convicted of such an offense for the first time that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant;

(5) for a felony, a misdemeanor, or an infraction, that the defendant refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days

of release on probation and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable sentencing information indicates a low risk of future substance abuse by the defendant;

(6) that the defendant–

(A) make restitution in accordance with sections 228, 2248, 2259, 2264, 2327, 3663, 3663A, and 3664; and [SEC. 205]

(B) pay the assessment imposed in accordance with section 3013; and

(7) that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

If the court has imposed ~~and ordered execution of~~ a fine and placed the defendant on probation, payment of the fine or adherence to the court-established installment schedule shall be a condition of the probation. The results of a drug test administered in accordance with paragraph (4) shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A defendant who tests positive may be detained pending verification of a positive drug test result. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3565(b), when considering any action against a defendant who fails a drug test administered in accordance with paragraph (4). [SEC. 205]

(b) Discretionary conditions.–The court may provide, as further conditions of a sentence of probation, to the extent that such conditions are reasonably related to the factors set forth in section 3553(a)(1) and (a)(2) and to the extent that such conditions involve only such deprivations of liberty or property as are reasonably necessary for the purposes indicated in section
3553(a)(2), that the defendant--

(1) support his dependents and meet other family responsibilities;

(2) make restitution to a victim of the offense under section 3556 (but not subject to the limitation of section 3663(a) or 3663A(c)(1)(A));

(3) give to the victims of the offense the notice ordered pursuant to the provisions of section 3555;

(4) work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip him for suitable employment;

(5) refrain, in the case of an individual, from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the offense, or engage in such a specified occupation, business, or profession only to a stated degree or under stated circumstances;

(6) refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons;

(7) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

(8) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(9) undergo available medical, psychiatric, or psychological treatment, including treatment for drug or alcohol dependency, as specified by the court, and remain in a specified institution if required for that purpose;

(10) remain in the custody of the Bureau of Prisons during nights, weekends, or other intervals of time, totaling no more than the lesser of one year or the term of imprisonment authorized for the offense, during the first year of the term of probation;

(11) reside at, or participate in the program of, a community corrections facility (including a facility maintained or under contract to the Bureau of Prisons) for all or part of the term of probation;

(12) work in community service as directed by the court;

(13) reside in a specified place or area, or refrain from residing in a specified place or area;

(14) remain within the jurisdiction of the court, unless granted permission to leave by the court or a probation officer;

(15) report to a probation officer as directed by the court or the probation officer;

(16) permit a probation officer to visit him at his home or elsewhere as specified by the court;

(17) answer inquiries by a probation officer and notify the probation officer promptly of any change in address or employment;

(18) notify the probation officer promptly if arrested or questioned by a law enforcement officer;

(19) remain at his place of residence during nonworking hours and, if the court finds it appropriate, that compliance with this condition be monitored by telephonic or electronic signaling devices, except that a condition under this paragraph may be imposed only as an alternative to incarceration;

(20) comply with the terms of any court order or order of an administrative process pursuant to the law of a State, the District of Columbia, or any other possession or territory of the United States, requiring payments by the defendant for the support and maintenance of a child or of a child and the parent with whom the child is living; or

(21) satisfy such other conditions as the court may impose.

[(22) Redesignated (21)]

(c) Modifications of conditions.—The court may modify, reduce, or enlarge theconditions of a sentence of probation at any time prior to the expiration or termination of the term of probation, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the conditions of probation.

(d) Written statement of conditions.–The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the sentence is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

§ 3572. Imposition of a sentence of fine and related matters

(a) Factors to be considered.–In determining whether to impose a fine, and the amount, time for payment, and method of payment of a fine, the court shall consider, in addition to the factors set forth in section 3553(a)–

(1) the defendant's income, earning capacity, and financial resources;

(2) the burden that the fine will impose upon the defendant, any person who is financially dependent on the defendant, or any other person (including a government) that would be responsible for the welfare of any person financially dependent on the defendant, relative to the burden that alternative punishments would impose;

(3) any pecuniary loss inflicted upon others as a result of the offense;

(4) whether restitution is ordered or made and the amount of such restitution;

(5) the need to deprive the defendant of illegally obtained gains from the offense;

(6) the expected costs to the government of any imprisonment, supervised release, or probation component of the sentence;

(7) whether the defendant can pass on to consumers or other persons the expense of the fine; and

(8) if the defendant is an organization, the size of the organization and any measure taken by the organization to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense.

(b) Fine not to impair ability to make restitution.–If, as a result of a conviction, the defendant has the obligation to make restitution to a victim of the offense, other than the United States, the court shall impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution.

(c) Effect of finality of judgment.–Notwithstanding the fact that a sentence to pay a fine can subsequently be--

(1) modified or remitted under section 3573;

(2) corrected under rule 35 of the Federal Rules of Criminal Procedure and section 3742; or

(3) appealed and modified under section 3742;

a judgment that includes such a sentence is a final judgment for all other purposes.

(d) Time, method of payment, and related items.–(1) A person sentenced to pay a fine or other monetary penalty, including restitution, shall ~~make such payment immediately,~~ **be immediately liable for payment of the full amount specified in the sentence** unless in the interest of justice, the court provides for ~~payment on a date certain or in installments. If the court provides for payment in installments, the installments shall be in equal monthly payments over the period provided by the court, unless the court establishes another schedule~~ **deferred payment or payment in installments**. [SEC.206]

(2) If the judgment, or, in the case of a restitution order, the order, ~~permits other than immediate payment~~ **provides for deferred payment or payment in installments**,

the length of time over which scheduled payments will be made shall be set by the court, but shall be the shortest time in which full payment can reasonably be made.

(3) A judgment for a fine which permits payments in installments shall include a requirement that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine. Upon receipt of such notice the court may, on its own motion or the motion of any party, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

(e) Alternative sentence precluded.–At the time a defendant is sentenced to pay a fine, the court may not impose an alternative sentence to be carried out if the fine is not paid.

(f) Responsibility for payment of monetary obligation relating to organization.–If a sentence includes a fine, special assessment, restitution, or other monetary obligation (including interest) with respect to an organization, each individual authorized to make disbursements for the organization has a duty to pay the obligation from assets of the organization. If such an obligation is imposed on a director, officer, shareholder, employee, or agent of an organization, payments may not be made, directly or indirectly, from assets of the organization, unless the court finds that such payment is expressly permissible under applicable State law.

(g) Security for stayed fine or restitution.–(1)If a sentence imposing a fine is stayed [SEC. 207] the court shall, absent exceptional circumstances (as determined by the court)–

(~~1~~A) require the defendant to deposit, in the registry of the district court, any amount of the fine that is due;

(~~2~~B) require the defendant to provide a bond or other security to ensure payment of the fine; or

(~~3~~C) restrain the defendant from transferring or dissipating assets.

(2) If a sentence imposing restitution is stayed the court may issue such orders as may be reasonably necessary to ensure compliance upon disposition of the appeal, including imposing any of the conditions set forth in subparagraphs (A)-(C) above. In issuing such an order, the court shall considerthe financial resources of the defendant, the financial needs and earning ability of the defendnat and the defendant's dependants, and such other factors as the court deems appropriate.

~~**(h) Delinquency.** A fine or payment of restitution is delinquent if a payment is more than 30 days late.~~

~~**(i) Default.** A fine or payment of restitution is in default if a payment is delinquent for more than 90 days. Notwithstanding any installment schedule, when a fine or payment of restitution is in default, the entire amount of the fine or restitution is due within 30 days after notification of the default, subject to the provisions of section 3613A.~~

[(j) Redesignated (i)]

~~**§ 3611. Payment of a fine or restitution**~~

~~A person who is sentenced to pay a fine, assessment, or restitution, shall pay the fine,~~[SEC. 208] ~~assessment, or restitution (including any interest or penalty), as specified by the Director of the Administrative Office of the United States Courts. Such Director may specify that such payment be made to the clerk of the court or in the manner provided for under section 604(a)(18) of title 28, United States Code.~~

<u>§ 3611. Payment of fines, restitution, and certain forfeitures</u> [SEC. 208]

<u>**"A person who is sentenced to pay a fine, assessment, or restitution or who forfeits a bail bond or collateral shall pay the fine, assessment, restitution, or forfeited bail bond or collateral, including any interest or penalty, as specified by the Director of the Administrative Office of the United States Courts. The Director may specify that payment be made to the clerk of the court or to an officer, employee, or agent of the United States who consents to receive such payment."**</u>

§ 3612. Collection of unpaid fine or restitution

(a) Notification of receipt and related matters.–The clerk or the person designated [SEC. 209] under section ~~604(a)(18) of title 28~~<u>3611</u> shall notify the Attorney General<u>**and any other person designated by the Director of the Administrative Office of the United States Courts**</u> of each receipt of a payment with respect to which a certification is made under subsection (b), together with other appropriate information relating to such payment. The notification shall be provided--

(1) in such manner as may be agreed upon by the Attorney General and the Director of the Administrative Office of the United States Courts; and

(2) within 15 days after the receipt or at such other time as may be determined jointly by the Attorney General and the Director of the Administrative Office of the United States Courts.

If the fifteenth day under paragraph (2) is a Saturday, Sunday, or legal public holiday, the [SEC. 209] clerk or the person designated under section ~~604(a)(18) of title 28~~<u>3611</u>, shall provide notification

not later than the next day that is not a Saturday, Sunday, or legal public holiday.

(b) Information to be included in judgment; judgment to be transmitted to Attorney General.–(1) A judgment or order imposing, modifying, or remitting a fine or restitution order of more than $100 shall include–

(A) the name, social security account number, mailing address, and residence address of the defendant;

(B) the docket number of the case;

(C) the original amount of the fine or restitution order and the amount that is due and unpaid;

(D) the schedule of payments (if other than immediate payment is permitted under section 3572(d));

(E) a description of any modification or remission;

(F) if other than immediate payment is permitted, a requirement that, until the fine or restitution order is paid in full, the defendant notify the Attorney General of any change in the mailing address or residence address of the defendant not later than thirty days after the change occurs; and

(G) in the case of a restitution order, information sufficient to identify each victim to whom restitution is owed. It shall be the responsibility of each victim to notify the Attorney General, or the appropriate entity of the court, by means of a form to be provided by the Attorney General or the court, of any change in the victim's mailing address while restitution is still owed the victim. The confidentiality of any information relating to a victim shall be maintained.

(2) Not later than ten days after entry of the judgment or order, the court shall transmit a certified copy of the judgment or order to the Attorney General.

(c) Responsibility for collection.—The Attorney General shall be responsible for collection of an unpaid fine or restitution concerning which a certification has been issued as provided in
subsection (b). **The Government may require the defendant to pay a fine or restitution in installments consistent with any provision regarding timing of payments in the sentence.** [SEC. 209] An order of restitution, pursuant to section 3556, does not create any right of action against the United States by the person to whom restitution is ordered to be paid. ~~Any money received from a defendant shall be disbursed so that each of the following obligations is paid in full in the following sequence:~~

~~(1) A penalty assessment under section 3013 of title 18, United States Code.~~

~~(2) Restitution of all victims.~~

~~(3) All other fines, penalties, costs, and other payments required under the sentence.~~

(d) ~~**Notification of delinquency.** Within ten working days after a fine or restitution is determined to be delinquent as provided in section 3572(h), the Attorney General shall notify the person whose fine or restitution is delinquent, to inform the person of the delinquency.~~ [SEC. 209] **Delinquency. Payment of a fine or restitution order is delinquent if payment is not made within 30 days of the date it became due. The person designated under section 3611 or the Attorney General shall inform the defendant of the delinquency, and of the court's authority to remedy any default by the defendant under section 3613A(b).**

~~(e) **Notification of default.** Within ten working days after a fine or restitution is determined to be in default as provided in section 3572(i), the Attorney General shall notify the person defaulting to inform the person that the fine or restitution is in default and the entire unpaid balance, including interest and penalties, is due within thirty days.~~

(fe) Interest on fines and restitution.–

(1) **In general.**—The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine **or restitution** is paid in full before the fifteenth day after the date of the judgment**, including any judgment providing for deferred payment or payment in installments**. If that day is a Saturday, Sunday, or legal public holiday, the defendant shall be liable for interest beginning with the next day that is not a Saturday, Sunday, or legal public holiday.

(2) **Computation.**–Interest on a fine **or restitution** shall be computed–

(A) daily (from the first day on which the defendant is liable for interest under paragraph (1)); and

(B) at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled before the first day on which the defendant is liable for interest under paragraph (1).

(3) **Modification of interest by court.**–If the court determines that the defendant does not have the ability to pay interest under this subsection, the court may--

(A) waive the requirement for interest;

(B) limit the total of interest payable to a specific dollar amount; or

(C) limit the length of the period during which interest accrues.

~~(g) **Penalty for delinquent fine.** If a fine or restitution becomes delinquent, the defendant shall pay, as a penalty, an amount equal to 10 percent of the principal amount that is delinquent. If a fine or restitution becomes in default, the defendant shall pay, as a penalty, an additional amount equal to 15 percent of the principal amount that is in default.~~

(~~h~~f) Waiver of interest or penalty by Attorney General.–The Attorney General may waive all or part of any interest or penalty ~~under this section~~**imposed under this subchapter** or any interest or penalty relating to a fine imposed under any prior law if, as determined by the Attorney General, reasonable efforts to collect the interest or penalty are not likely to be effective.

(~~i~~g) Application of payments.–~~Payments relating to fines and restitution shall be applied in the following order: (1) to principal; (2) to costs; (3) to interest;and (4) to penalties.~~**Payments received from a defendant shall be applied so that each of the following obligations is paid in full in the following sequence:** [SEC. 209]

(1) a penalty assessment under section 3013;

(2) restitution to all victims, including any interest; and

(3) fines, including any interest;

(4) penalties; and

(5) costs.

§ 3613. Civil remedies for satisfaction of an unpaid fine

(a) Enforcement.–The United States may enforce a judgment imposing a fine **or restitution** in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law. Notwithstanding any other Federal law (including section 207 of the Social Security Act), a judgment imposing a fine **or restitution** may be enforced against all property or rights to property of the person fined **or subject to restitution**, except that– [SEC. 210]

(1) property exempt from levy for taxes pursuant to section 6334(a)(1), (2), (3), (4), (5), (6), (7), (8), (10), and (12) of the Internal Revenue Code of 1986 shall be exempt from enforcement of the judgment under Federal law;

(2) section 3014 of chapter 176 of title 28 shall not apply to enforcement under Federal law; and (3) the provisions of section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673) shall apply to enforcement of the judgment under Federal law or State law.

~~**(b) Termination of liability.** The liability to pay a fine shall terminate the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the person fined, or upon the death of the individual fined.~~ [SEC. 211]

"(b) Termination of liability.–The liability to pay a fine shall terminate the later of 20 years from the entry of judgment or upon death of the individual fined. The liability to pay restitution shall terminate 20 years from the entry of judgment."

(c) Lien.–A fine imposed pursuant to the provisions of subchapter C of chapter 227 of this title, or an order of restitution made pursuant to sections 228, 2248, 2259, 2264, 2327, 3663, 3663A, or 3664 of this title, is a lien in favor of the United States on all property and rights to property of the person fined **or liable for restitution** as if the liability of the person fined **or liable for restitution** were a liability for a tax assessed under the Internal Revenue Code of 1986. The lien arises on the entry of judgment and continues for 20 years or until the liability is satisfied, remitted, set aside, or is terminated under subsection (b).

(d) Effect of filing notice of lien.–Upon filing of a notice of lien in the manner in which a notice of tax lien would be filed under section 6323(f)(1) and (2) of the Internal Revenue Code of 1986, the lien shall be valid against any purchaser, holder of a security interest, mechanic's lienor or judgment lien creditor, except with respect to properties or transactions specified in subsection (b), (c), or (d) of section 6323 of the Internal Revenue Code of 1986 for which a notice of tax lien properly filed on the same date would not be valid. The notice of lien shall be considered a notice of lien for taxes payable to the United States for the purpose of any State or local law providing for the filing of a notice of a tax lien. A notice of lien that is registered, recorded, docketed, or indexed in accordance with the rules and requirements relating to judgments of the courts of the State where the notice of lien is registered, recorded, docketed, or indexed shall be considered for all purposes as the filing prescribed by this section. The provisions of section 3201(e) of chapter 176 of title 28 shall apply to liens filed as prescribed by this section.

(e) Discharge of debt inapplicable.–No discharge of debts in a proceeding pursuant to any chapter of title 11, United States Code, shall discharge liability to pay a fine or restitution pursuant to this section, and a lien filed as prescribed by this section shall not be voided in a bankruptcy proceeding.

(f) Applicability to order of restitution.–In accordance with section 3664(m)(1)(A) of this title, all provisions of this section are available to the United States for the enforcement of an order of restitution.

§ 3613A.–Orders in aid of enforcement. [SEC. 214]

(a) Acceleration of payment.–The Government may request the court to issue an order modifying a payment schedule or requiring immediate payment in full or in part of any fine or restitution amount owed, upon a showing of the defendant's ability to pay or for other good cause.

(b) Motions to compel.—The Government may request the court to compel compliance with a sentence to pay a fine or restitution if the defendant is in default.

(1) Default.–A defendant is in default if payment on a fine or restitution order is not made 90 days or more after the payment became due.

(2) Effect of Default.–Upon any default by the defendant, the court may–

(A) revoke or modify the conditions of probation or supervised release pursuant to section 3565;

(B) resentence a defendant pursuant to section 3614;

(C) enter or adjust a payment schedule;

(D) impose a late payment penalty of up to 25% of the amount owed; or

(E) hold the defendant in contempt of court.

(3) Factors to be Considered.—The court shall consider the defendant's

employment status, earning ability, financial resources, the willfulness in failing to comply with the fine or restitution order, and any other circumstances that may have a bearing on the defendant's ability or failure to comply with the order of a fine or restitution.

(c) Hearing.—If a hearing is held pursuant to this section to enforce a fine or restitution order, the hearing may be conducted by telephone, video conference, or other communications technology when a defendant is confined to jail, prison, or other correctional facility, and the defendant's participation is required.

§ 3663. Order of restitution

(a)(1)(A) The court, when sentencing a defendant convicted of an offense under this title, section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863) (but in no case shall a participant in an offense under such sections be considered a victim of such offense under this section), or section 46312, 46502, or 46504 of title 49, other than an offense described in section 3663A(c), may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of such offense, or if the victim is deceased, to the victim's estate. ~~The court may also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.~~ [SEC. 215]

(B)(i) The court, in determining whether to order restitution under this section, shall consider--

(I) the amount of the loss sustained by each victim as a result of the offense; and

(II) the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

(ii) To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.

(2) For the purposes of this section, the term "victim" means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

(3) The court ~~may~~shall also order restitution in any criminal case to any person, including a person other than the victim of the offense, to the extent agreed to by the parties in a plea agreement. [SEC. 216]

(b) The order may require that such defendant—

(1) in the case of an offense resulting in damage to or loss or destruction of

property of a victim of the offense--

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impractical, or inadequate, pay an amount equal to the greater of--

(i) the value of the property on the date of the damage, loss, or destruction, or

(ii) the value of the property on the date of sentencing, less the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim including an offense under chapter 109A or chapter 110--

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services;

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and

(5) in any case, if the victim (or if the victim is deceased, the victim's estate) consents, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate.

(c)(1) Notwithstanding any other provision of law (but subject to the provisions of subsections (a)(1)(B) (i)(II) and (ii), when sentencing a defendant convicted of an offense described in section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863), in which there is no identifiable victim, the court may order that the defendant make restitution in accordance with this subsection.

(2)(A) An order of restitution under this subsection shall be based on the amount of public harm caused by the offense, as determined by the court in accordance with guidelines promulgated by the United States Sentencing Commission.

(B) In no case shall the amount of restitution ordered under this subsection exceed the amount of the fine ordered for the offense charged in the case.

(3) Restitution under this subsection shall be distributed as follows:

(A) 65 percent of the total amount of restitution shall be paid to the State entity designated to administer crime victim assistance in the State in which the crime occurred.

(B) 35 percent of the total amount of restitution shall be paid to the State entity designated to receive Federal substance abuse block grant funds.

(4) The court shall not make an award under this subsection if it appears likely that
such award would interfere with a forfeiture under chapter 46 of this title ~~or under the Controlled Substances Act (21 U.S.C. 801 et seq.)~~**, under the Controlled Substances Act (21 U.S.C. 801 et seq.), or under any other provision of law**. [SEC. 217]

(5) Notwithstanding section 3612(c) or any other provision of law, a penalty assessment under section 3013 or a fine under subchapter C of chapter 227 shall take precedence over an order of restitution under this subsection.

(6) Requests for community restitution under this subsection may be considered in all plea agreements negotiated by the United States.

(7)(A) The United States Sentencing Commission shall promulgate guidelines to assist courts in determining the amount of restitution that may be ordered under this subsection.

(B) No restitution shall be ordered under this subsection until such time as the Sentencing Commission promulgates guidelines pursuant to this paragraph.

(d) An order of restitution made pursuant to this section shall be issued and enforced in accordance with section 3664.

[(e) to (i) Repealed. Pub.L. 104-132, Title II, s 205(a)(2), Apr. 24, 1996, 110 Stat. 1230]

§ 3663A. Mandatory restitution to victims of certain crimes

(a)(1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to, or in the case of a misdemeanor, in addition to or in lieu of, any other penalty authorized by law, that the defendant make restitution to the victim of the offense or, if the victim is deceased, to the victim's estate.

(2) For the purposes of this section, the term "victim" means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

(3) ~~The court shall also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.~~**The court shall also order restitution in any criminal case to any person, including a person other than the victim of the offense, to the extent agreed to by the parties in a plea agreement**." [SEC. 218]

(b) The order of restitution shall require that such defendant--

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense--

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impracticable, or inadequate, pay an amount equal to--

(i) the greater of--

(I) the value of the property on the date of the damage, loss, or destruction; or

(II) the value of the property on the date of sentencing, less

(ii) the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim--

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

(c)(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense--

(A) that is--

(i) a crime of violence, as defined in section 16;

(ii) an offense against property under this title, including any offense committed by fraud or deceit; or

(iii) an offense described in section 1365 (relating to tampering with consumer products); and

(B) in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.

(2) In the case of a plea agreement that does not result in a conviction for an offense described in paragraph (1), this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement.

~~(3) This section shall not apply in the case of an offense described in~~ [SEC. 219] ~~paragraph (1)(A)(ii) if the court finds, from facts on the record, that--~~

~~(A) the number of identifiable victims is so large as to make restitution impracticable; or~~

~~(B) determining complex issues of fact related to the cause or amount of~~

~~the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.~~(3) In the case of an offense described in paragraph (1)(A)(ii), the court shall order restitution to all victims whose identities and losses can be shown by the Government at the time of sentencing. If the court finds, from facts on the record, that the identities of all victims or the amount of each victim's loss is not known to the Government and is unlikely to be known at the time set for sentencing, the court may– [SEC.219]

(A) limit the order of restitution to the identified amounts of the losses to the identified victims; or

(B) issue an order postponing sentencing for 90 days and requiring the Government to publish in a newspaper of general circulation in the judicial district or in a newspaper with nationwide circulation a notice that states–

(i) the name of, and other identifying information about, the defendant;

(ii) the offense for which the defendant was convicted;

(iii) the terms and conditions for submitting a claim for a loss incurred as the result of the offense for which the defendant has been convicted;

(iv) a date certain for submitting a claim that shall be at least 30 days prior to sentencing;

(v) that the court may allow or disallow any claim for a loss, including any losses of victims independently identified under section 3664; and

(vi) that any person required to submit a claim who fails to submit a claim timely or whose claim once submitted is disallowed by the court shall have no right to restitution, but may pursue any other legal remedy including a civil action; or

(C) order restitution to the identified victims in the amounts of each victim's loss and specify the amount of a reserve fund to be included in the restitution ordered by the sentence sufficient to compensate victims or victims' losses that are unidentified at the time of sentencing. A determination on distributions from the reserve fund shall be made under the procedures set forth in subparagraph B, or under such other procedures reasonably calculated to identify victims and victims' losses as the court may approve. Should the reserve fund be insufficient to satisfy the identified victims' losses, the amount available shall be distributed to the victims pro rata. In the event that an amount remains in the reserve fund after all identified victims' claims have been paid, the remaining reserve funds shall be disbursed to the Crime Victims Fund.

(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664.

§ 3664. Procedure for issuance and enforcement of order of restitution

(a) For orders of restitution under this title, the court shall order the probation officer to obtain and include in its presentence report, or in a separate report, as the court may direct, information sufficient for the court to exercise its discretion in fashioning a restitution order. The report shall include, to the extent practicable, a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant. If the number or identity of victims cannot be reasonably ascertained, or other circumstances exist that make this requirement clearly impracticable, the probation officer shall so inform the court.

(b) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

(c) The provisions of this chapter, chapter 227, and Rule 32(c) of the Federal Rules of Criminal Procedure shall be the only rules applicable to proceedings under this section.

(d)(1) Upon the request of the probation officer, ~~but not later than 60 days prior to~~ **[SEC. 220]**
~~the date initially set for sentencing,~~ the attorney for the Government, after consulting, to the extent practicable, with all identified victims, shall promptly provide the probation officer with a listing of the amounts subject to restitution.

(2) The probation officer shall, prior to submitting the presentence report under subsection (a), to the extent practicable--

(A) provide notice to all identified victims of--

(i) the offense or offenses of which the defendant was convicted;

(ii) the amounts subject to restitution submitted to the probation officer;

(iii) the opportunity of the victim to submit information to the probation officer concerning the amount of the victim's losses;

(iv) the scheduled date, time, and place of the sentencing hearing;

(v) the availability of a lien in favor of the victim pursuant to subsection (m)(1)(B); and

(vi) the opportunity of the victim to file with the probation officer a separate affidavit relating to the amount of the victim's losses subject to restitution; and

(B) provide the victim with an affidavit form to submit pursuant to subparagraph (A)(vi).

(3) Each defendant shall prepare and file with the probation officer an affidavit fully describing the financial resources of the defendant, including a complete listing of all assets owned or controlled by the defendant as of the date on which the defendant was arrested, the financial needs and earning ability of the defendant and the defendant's dependents, and such other information that the court requires relating to such other factors as the court deems appropriate.

(4) After reviewing the report of the probation officer, the court may require additional documentation or hear testimony. The privacy of any records filed, or testimony heard, pursuant to this section shall be maintained to the greatest extent possible, and such records may be filed or testimony heard in camera.

(5) If the victim's losses are not ascertainable by the date that is 10 days prior to

sentencing, the attorney for the Government or the probation officer shall so inform the court, and the court ~~shall set a date for the final determination of the victim's losses,~~ [SEC. 220] ~~not to exceed 90 days after sentencing.~~**may defer sentencing as necessary to permit a final determination of the victim's losses.** If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.**The amendment of a restitution order based on later- discovered losses shall not affect any other aspect of the sentence.**

(6) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate judge or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.

(e) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant's dependents, shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

(f)(1)(A) In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant.

(B) In no case shall the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source be considered in determining the amount of restitution.

(2) ~~Upon determination of the amount of restitution owed to each victim, the~~ [SEC. 221] ~~court shall, pursuant to section 3572, specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid, in consideration of--~~**A defendant shall be immediately liable for payment of the full amount of the restitution ordered unless the court pursuant to section 3572 provides for deferred payment or payment in installments. In providing for payment in installments, the court shall consider—**

(A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled;

(B) projected earnings and other income of the defendant; and

(C) any financial obligations of the defendant; including obligations to dependents.

(3)~~(A) A restitution order~~**A restitution order that specifies the manner of payment** may direct the defendant to make a single, lump-sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments.

~~(B) A restitution order may direct the defendant to make nominal periodic payments if the court finds from facts on the record that the economic~~

~~circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments.~~

(4) An in-kind payment described in paragraph (3) may be in the form of--

(A) return of property;

(B) replacement of property; or

(C) if the victim agrees, services rendered to the victim or a person or organization other than the victim.

(g)(1) No victim shall be required to participate in any phase of a restitution order.

(2) A victim may at any time assign the victim's interest in restitution payments to the Crime Victims Fund in the Treasury without in any way impairing the obligation of the defendant to make such payments.

(h) ~~If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable shall hold all such defendants jointly and severally liable for payment of the full amount of restitution. or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant.~~**If the court finds that more than one defendant has contributed to the loss of any victim, the court shall hold all such defendants jointly and severally liable for payment of the full amount of restitution owed to such victim.**

(i) ~~If the court finds that more than 1 victim has sustained a loss requiring restitution by a defendant, the court may specify priorities in payment to the victim's in light of their economic circumstances and the type and amount of their respective losses.provide for a different payment schedule for each victim based on the type and amount of each victim's loss and accounting for the economic circumstances of each victim.~~ **If the court finds that more than one victim has sustained a loss requiring restitution by a defendnat, the court may specify priorities in payment to the victims in light of their economic circumstances and the type of their respective losses.** In any case in which the United States is a victim, the court shall ensure that all other victims receive full restitution before the United States receives any restitution.**"If the court finds that more than one victim has sustained a loss requiring restitution by a defendant, the court may specify priorities in payment to the victims in light of their economic circumstances and the type and amount of their respective losses."**

(j)(1) If a victim has received compensation from insurance or any other source with respect to a loss, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution ~~of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.~~**be paid to the victims named in the order before any such provider of compensation is reimbursed.**

(2) Any amount **required to be** paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in--

(A) any Federal civil proceeding; and

(B) any State civil proceeding, to the extent provided by the law of the State.

(k) A restitution order shall provide that the defendant shall notify the court and the

Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution. The court may also accept notification of a material change in the defendant's economic circumstances from the United States or from the victim. The Attorney General shall certify to the court that the victim or victims owed restitution by the defendant have been notified of the change in circumstances. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

(l) A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim.

(m)(1)(A)~~(i) An order of restitution may be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title; or~~

~~(ii) by all other available and reasonable means.~~

"(A) An order of restitution may be enforced--

(i) by the United States, in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title; and

(ii) by a victim named in the order to receive restitution, in the same manner as a judgment in a civil action."

(B) At the request of a victim named in a restitution order, the clerk of the court shall issue an abstract of judgment certifying that a judgment has been entered in favor of such victim in the amount specified in the restitution order. Upon registering, recording, docketing, or indexing such abstract in accordance with the rules and requirements relating to judgments of the court of the State where the district court is located, the abstract of judgment shall be a lien on the property of the defendant located in such State in the same manner and to the same extent and under the same conditions as a judgment of a court of general jurisdiction in that State.

(2) An order of in-kind restitution in the form of services shall be enforced by the probation officer.

(n) ~~If a person obligated to provide restitution, or pay a fine, receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution or fine still owed.~~ **Subject to section 3613 of chapter 229, if a person obligated to provide restitution, or pay a fine, receives property, other than earnings, from any source, including inheritance, settlement , or other judgment, such person shall be required to apply the value of such property to any restitution or fine still owed, provided that this section shall not impair the authority vested in the Attorney General to administer the Federal prison system pursuant to section 4001 of chapter 301.**

(o) A sentence that imposes an order of restitution is a final judgment notwithstanding the fact that--

(1) such a sentence can subsequently be--

(A) corrected under Rule 35 of the Federal Rules of Criminal Procedure and section 3742 of chapter 235 of this title;

(B) appealed and modified under section 3742;

(C) amended under section 3664(d)~~(3)~~(5); or

(D) adjusted under section 3664(k), 3572, or 3613A; or

(2) the defendant may be resentenced under section 3565 or 3614.

(p) Nothing in this section or sections 228, 2248, 2259, 2264, 2327, 3663, and 3663A and arising out of the application of such sections, shall be construed to create a cause of action not otherwise authorized in favor of any person against the United States or any officer or employee of the United States.

(q) Dismissal of forfeiture proceeding.–A defendant may not use any property criminally or civilly forfeited to the United States or subject to a pending criminal or civil forfeiture action to make restitution, provided, that the Government may dismiss a criminal or civil forfeiture action at any time to allow property to be used to make restitution under this title. The custodian of the property at the time the forfeiture action is dismissed shall retain such property and shall not release the property except pursuant to court order. Any protective order entered or warrant of seizure executed pursuant to sections 413(e)-(f) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C.§ 853(e) or (f)), shall remain in effect pending such order of the court.

(r) Disclosure to victim.–Notwithstanding section 552a of title 5, United States Code, the Government may disclose to a victim who is owed restitution the following information about a defendant sentenced to pay such restitution:

(1) Place of residence or domicile;

(2) Place of employment;

(3) Date of birth;

(4) Date and place of death;

(5) Country of citizenship;

(6) Deportation date and destination; and

(7) Such information about property as may be available.

(s) Modification or remission.—The Government may petition the court at any time to modify or remit a restitution order or schedule of payments as appropriate in view of a change in the economic circumstances of the defendant, or other relevant change. A petition under this subsection shall be filed in the court in which sentence was originally imposed, unless the court transfers jurisdiction to another court. This subsection shall apply to all restitution orders irrespective of the date of imposition.

Amendments to Title 28, United States Code

§ 604. Duties of Director generally

(a) The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, shall:

* * *

(18) ~~Establish procedures and mechanisms within the judicial branch for processing fines, restitution, forfeitures of bail bonds or collateral, and assessments;~~**Establish policy and procedures to meet the requirements of sections 3611 and 3612 of title 18.**

§ 1920. Taxation of costs

A judge or clerk of any court of the United States may tax as costs the following:
(1) Fees of the clerk and marshal **and process servers**;
(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
(3) Fees and disbursements for printing and witnesses;
(4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
(5) Docket fees under section 1923 of this title;
(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.
A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

§ 1961. Interest [SEC. 233]

(a) Interest shall be allowed on any money judgment in a civil case recovered **or registered by the United States** in a district court. Execution therefor may be levied by the marshal, in any case where, by the law of the State in which such court is held, execution may be levied for interest on judgments recovered in the courts of the State. Such interest shall be calculated from the date of the entry **or registration** of the judgment, at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment. The Director of the Administrative Office of the United States Courts shall distribute notice of that rate and any changes in it to all Federal judges.

(b) Interest shall be computed daily to the date of payment except as provided in section 2516(b) of this title and section 1304(b) of title 31, and shall be compounded annually.

(c)(1) This section shall not apply in any judgment of any court with respect to any internal revenue tax case. Interest shall be allowed in such cases at the underpayment rate or overpayment rate (whichever is appropriate) established under section 6621 of the Internal Revenue Code of 1986.

(2) Except as otherwise provided in paragraph (1) of this subsection, interest shall be allowed on all final judgments against the United States in the United States Court of Appeals for the Federal circuit, at the rate provided in subsection (a) and as provided in subsection (b).

(3) Interest shall be allowed, computed, and paid on judgments of the United States Court of Federal Claims only as provided in paragraph (1) of this subsection or in any other provision of law.

(4) This section shall not be construed to affect the interest on any judgment of any court not specified in this section.

[SEC. 234]

"**§ 1965. Registration of judgments assigned to the United States**

A judgment of a State court in any action for the recovery of money or property that has been assigned to the United States as authorized by Federal law may be registered in any district court by filing a certified copy of the judgment and the assignment to the United States. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner."

Amendments to Title 42

§ 10601. Crime Victims Fund

(a) Establishment

There is created in the Treasury a separate account to be known as the Crime Victims Fund (hereinafter in this chapter referred to as the "Fund").

(b) Fines deposited in Fund; penalties; forfeited appearance bonds
Except as limited by subsection (c) of this section, there shall be deposited in the Fund--
(1) all fines **(and the interest thereon)** that are collected from persons convicted of offenses against the United States except-- **[SEC. 235]**
(A) fines available for use by the Secretary of the Treasury pursuant to--
(i) section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)); and
(ii) section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)); and
(B) fines to be paid into--
(i) the railroad unemployment insurance account pursuant to the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.);
(ii) the Postal Service Fund pursuant to sections 2601(a)(2) and 2003 of Title 39 and for the purposes set forth in section 404(a)(8) of Title 39;
(iii) the navigable waters revolving fund pursuant to section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321); and
(iv) county public school funds pursuant to section 3613 of Title 18;
(2) penalty assessments collected under section 3013 of Title 18;
(3) the proceeds of forfeited appearance bonds, bail bonds, and collateral collected under section 3146 of Title 18; and
(4) any money ordered to be paid into the Fund under section 3671(c)(2) of Title 18.

(c) Retention of sums in Fund; availability for expenditure without fiscal year limitation
Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this chapter for grants under this chapter without fiscal year limitation.

(d) Availability for judicial branch administrative costs; grant program percentages
The Fund shall be available as follows:
~~(1) The first $6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first $3,000,000 in each fiscal year thereafter shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of Title 18.~~
(~~2~~1) ~~the next~~ **The first** $10,000,000 deposited in the Fund shall be available for grants under section 10603a of this title.
(~~3~~2) Of the remaining amount deposited in the Fund in a particular fiscal year--
(A) 48.5 percent shall be available for grants under section 10602 of this title;
(B) 48.5 percent shall be available for grants under section 10603(a) of this title; and

(C) 3 percent shall be available for grants under section 10603(c) of this title.

(43)(A) If the sums available in the Fund are sufficient to fully provide grants to the States pursuant to section 10602(a)(1) of this title, the Director may retain any portion of the Fund that was deposited during a fiscal year that was in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as an emergency reserve. Such reserve shall not exceed $50,000,000.

(B) The emergency reserve referred to in subparagraph (A) may be used for supplemental grants under section 10603b of this title and to supplement the funds available to provide grants to States for compensation and assistance in accordance with sections 10602 and 10603 of this title in years in which supplemental grants are needed.

(e) Amounts awarded and unspent

Any amount awarded as part of a grant under this chapter that remains unspent at the end of a fiscal year in which the grant is made may be expended for the purpose for which the grant is made at any time during the 2 succeeding fiscal years, at the end of which period, any remaining unobligated sums in excess of $500,000 shall be returned to the Treasury. Any remaining unobligated sums in an amount less than $500,000 shall be returned to the Fund.

(f) "Offenses against the United States" as excluding

As used in this section, the term "offenses against the United States" does not include--

(1) a criminal violation of the Uniform Code of Military Justice (10 U.S.C. 801 et seq.);

(2) an offense against the laws of the District of Columbia; and

(3) an offense triable by an Indian tribal court or Court of Indian Offenses.

(g) Grants for Indian tribes; child abuse cases

(1) The Attorney General, acting through the Director, shall use 15 percent of the funds available under subsection (d)(2) of this section to make grants for the purpose of assisting Native American Indian tribes in developing, establishing, and operating programs designed to improve--

(A) the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim; and

(B) the investigation and prosecution of cases of child abuse, particularly child sexual abuse.

(2) As used in this subsection, the term "tribe" has the meaning given that term in section 450b(b) of Title 25.

(h) Any sum made available to the judicial branch under this section that has not been expended as of February 1, 1997 shall be deposited in the Crime Victims Fund and may be used by the Director for the benefit of crime victims in the federal criminal justice system. [SEC. 236]

EW

Tom -
Where is OMB on this?
It would make a nice
offset for some new
crime initiative?
- BR

MEMORANDUM

TO: BRUCE REED, ELENA KAGAN

FROM: THOMAS ~~FREEDMAN~~, MARY L. SMITH

RE: DOJ DEBT COLLECTION

DATE: NOVEMBER 21, 1997

SUMMARY

There is approximately $6 billion in uncollected federal criminal debt. A project that would have created a national database to oversee the collection has been terminated because it was behind schedule and plagued with problems. Only $2 billion of the $6 billion can reasonably be collected.

DOJ currently has two projects ongoing to address some of these issues. First, DOJ expects to award a contract in January 1998 to develop software to collect only federal **civil** debt. However, the software is being developed to include data fields for criminal debt, so that criminal debt collection can be implemented in the future This software would be installed at the Executive Office of the U.S. Attorney, the U.S. Attorneys' Offices, Main Justice, and any DOJ field office. Second, DOJ has proposed legislation to address some of the problems the Government has in enforcing and collecting primarily federal criminal debt.

BACKGROUND

The National Fine Center was authorized by the Criminal Fine Improvements Act of 1987, Pl. 100-185, 101 Stat. 1279. The Criminal Fine Improvements Act of 1987 contemplated that the director of the Administrative Office of the U.S. Courts (AOUSC) would establish a single national center within the judicial branch for processing fines, restitution, and special assessments.

There is a great need for a collection service for criminal fines because many fines are not recovered. For instance, as of early 1992, DOJ estimated that the total amount of unpaid criminal debt exceeded $1.6 billion. By late 1996, the amount of unpaid criminal debt had ballooned to nearly $6 billion.

Once the criminal debts were collected, the National Fine Center, via the Treasury, was to make payments to either the victims (e.g. federal agencies, private corporations, banks, or individuals) or to the Crime Victims Fund. The Crime Victims Fund was established by the Victims of Crime Act, P.L. 98-473, 98 Stat. 2170. Virtually, all criminal fines, special assessments, and bail bond forfeitures are deposited into this fund, which is administered by the Office for Victims of Crime in the Department of Justice. Ninety percent of the Crime Victims

Fund is distributed to states for compensation programs such as rape crisis centers and child abuse centers that provide financial assistance to victims and survivors of victims of criminal violence.

The National Fine Center was closed on November 15, 1996. Debt collection will revert to the decentralized system employed by each federal judicial district in the country, which, in many districts, involve catalog cards or ledger books.

Part of the reason that the amount of uncollected debt is so high is that "vanity fines" stay on the books. Vanity fines are fines with no realistic expectation that they will be collected. In fact, Kathleen Hegerty at the Department of Justice estimates that two-thirds of the current $6 billion in criminal debt is uncollectible, or, in other words, approximately only $2 billion can reasonably be collected. In fact, one of the recommendations of a May 1995 GAO report was to establish procedures for determining the collectibility of criminal debt accounts.

Despite the uncollectibility of much of the accrued criminal debt, there is still potentially a surplus, given a few criminal defendants with large fines and penalties that do have the ability to pay such as ADM and Daiwa, the Korean bank .

II. THE PROPOSED DOJ LEGISLATION

DOJ has drafted a bill that would improve the ability of Government attorneys to collect the approximately $6 billion of debt owed to the United States. This legislation would require no additional cost to implement. As an initial rough estimate, DOJ expects that this legislation will improve collection of approximately $200 million of the outstanding debt.

The bill is already drafted but needs some final vetting by DOJ.

Title I of the draft bill amends the Federal Debt Collection Procedures Act of 1990 (the "Act") . Title II of the bill, in large part, amends Title 18 of the United States Code. The provisions in Title II are largely the same as the restitution provisions in a draft bill that DOJ proposes to transmit on victims' rights.

- **Surcharge.** The bill amends § 3011(a) of the Act to clarify that the United States is entitled to recover a surcharge anytime it is required to bring a legal action to collect a debt. The surcharge provision is intended to compensate the United States for the cost of litigation and is in lieu of attorney's fees.

- **Discovery.** The bill makes it clear that discovery is not limited to cases in which the United States has sought a prejudgment or postjudgment remedy.

- **Assists in determining a debtor's ability to pay a judgment through disclosure of grand jury financial information and better access to other financial information at the time of conviction and after judgment is entered.**

- **Disclosure of grand jury information regarding financial condition.** This section of the bill will modify a Supreme Court decision that did not permit a criminal government attorney (the attorney in the grand jury proceeding) to disclose financial information to the civil government attorney (the attorney responsible for enforcing the fine or restitution imposed by the court in a criminal case).

- **Investigative power.** The bill permits investigation prior to the institution of a civil action by authorizing a civil investigative demand. Such a procedure is available in other civil contexts, like antitrust and FTC investigations.

- **Provides nationwide standards for property that civil debtors can protect from seizure.**

  - **Uniform federal law exempting property.** This bill creates a uniform federal exemption law that applies to all federal debts collected under the Act. Previously, exemptions for certain property was determined by looking to state law.

- **Eliminates limitation on value of property that may be used to satisfy a debt.** Section 131 of the bill clarifies that any of the debtor's property may be seized and used for satisfaction of the judgment debt, subject to the applicable exemptions. The amendment eliminates a confusing limitation on the value of the property that may be seized and sold. The limitation currently conflicts with § 3203(h) which clearly contemplates that an execution sale will yield a surplus on occasion.

- **Installment payment order.** The bill increases the discretion of the court to fashion an appropriate remedy by permitting the court to issue an installment payment order notwithstanding that the debtor's wages are subject to an order of garnishment. A wage garnishment is limited to 25% of the disposable earnings paid by the debtor's employer. However, a debtor's salary may be only a small fraction of the debtor's total income. Furthermore, a debtor may manipulate actual salary by negotiating to receive less salary and more benefits such as living expenses.

- **Eliminates impediments to seizure of wages and bank accounts while preserving the debtor's extensive due process rights.**

  - **Waiting period for garnishment.** The bill amends § 3205(b)(1) of the Act so that the 30-day waiting period applies only to garnishment of the judgment debtor's earnings rather than other assets such as bank accounts. The amendment is necessary to prevent the fraudulent transfer of non-wage assets during a previously afforded 30-day window of opportunity.

- **Garnishment notice by mail.** The bill permits the service of a writ of garnishment by first class mail or in any manner provided under § 3004. The amendment eliminates the delay often associated with other methods of service and reduces the burden on the United States marshals.

- **Authorizes injunctive relief to prevent the dissipation of the debtor's assets while a debt to the United States remains unpaid.**

  - **Restraining notice.** The bill adds a new enforcement procedure, the restraining notice. This provision would require a judgment debtor to preserve his nonexempt assets while the judgment remains unsatisfied. The restraining notice does not restrain the transfer or disposition of any property necessary for the support of the debtor or the debtor's dependents, or property necessary to operate the debtor's business. Service of the restraining notice freezes the debtor's property to prevent its transfer or dissipation.

- **Clarifies the court's authority to prevent the debtor from evading, hindering, or delaying debt collection efforts by the United States.**

  - **Court may aid in enforcement of judgments.** The bill makes clear that the United States may enlist the aid of the court in the enforcement of its judgments. For instance, if the debtor has placed property outside the jurisdiction of the United States by transferring funds to an offshore bank, this amendment will permit the court to issue an order directing the debtor to wire transfer the funds to the Federal Reserve Bank of New York. Similar turnover powers are authorized in the Bankruptcy Code.

  - **Enhancement of enforced collection of criminal debts.** Without this amendment, the United States cannot invoke any procedures under the Act until the defendant has been sentenced to pay a financial penalty. The new provision permits the court, after a verdict, plea agreement, or decision in favor of the United States, to order the examination of any party and to issue a restraining notice with the same effect as if the restraining notice had been issued after judgment. The ability to examine the defendant immediately after an adverse decision, coupled with a restraining notice, will assist in preventing fraudulent transfers.

- **Extends the time for undoing collusive transfers of property when made to avoid paying criminal fines and restitution. (Makes the property available to pay the debt.)**

  - **Statutes of limitation for fraudulent transfer actions.** Under current law, the United States is often time-barred in seeking to set aside a fraudulent transfer because the United States could not implement an action until a debt was actually created at the time of sentencing. Even when the right to set aside the transfer is not time-barred, there are other enforcement difficulties like the jurisdiction of the enforcement transferring to the probation service during any period of probation. The bill amends the statute of limitations to mitigate these impediments to the enforcement of restitution and fines.

- **Eliminates impediments to the enforcement of criminal monetary penalties, and strengthens the rights of victims of crime.**

  - **Enforcement of criminal monetary penalties.** The bill improves the enforcement of criminal monetary penalties. The bill allows the Government to seek accelerated payment of criminal monetary penalties if the court ordered deferred payment or payment in installments, and it is later determined that the debtor has the ability to pay a greater amount.

- **Clarifies that the United States may enforce victim restitution rights under the Federal Debt Collection Procedures Act.**

  - **Restitution enforcement.** The bill conforms the restitution enforcement provisions in the Child Support Recovery Act of 1994 with those authorized for other types of restitution under the Mandatory Victim Restitution Act.

  - **Restitution not dischargeable in bankruptcy.** The bill clarifies that orders of restitution, like criminal fines, are not dischargeable in federal bankruptcy proceedings.

  - **Restitution as part of plea agreement.** The bill requires the court to order restitution as agreed to by the parties in the plea agreement. In the past, despite any agreement that the debtor has made in the plea, the court has not included this restitution as part of its order.

  - **Restitution with large number of victims.** The bill provides the court with a variety of options when the number of victims or the complexity of the victims' losses may prolong or overly complicate the sentencing process. The bill permits, among other options, the court tp create a reserve fund for restitution to victims when the aggregate loss is known or agreed to by the parties in the plea agreement, but all victims cannot be identified at the time of sentencing. After all identified victims are made whole, any surplus funds remaining in the reserve fund will be deposited in the Crime Victims Fund.

  - **Joint and severable liability for restitution.** The bill adopts the principle of joint and severable liability with respect to restitution among co-defendants, making each debtor potentially liable for the full amount of each victim's loss. The adoption of this basic principle of tort liability streamlines the enforcement process and promotes prompter recovery of the victim's full losses.

  - **Disclosure of information to enforce restitution.** The bill permits the Government to assist victims in enforcing restitution orders by disclosing certain information about the debtor that might otherwise by protected from disclosure by the Privacy Act, 5 U.S.C. § 552(a).

- **Eliminates the need to sue student loan debtors twice before enforcing collection.**

- **Assists in stopping federal payments and privileges (such as small business loans, hunting licenses) to debtors with outstanding federal civil and criminal judgments.**

- **Sections Related to the Elimination of the National Fine Center.**

  - The bill provides that the payment of fines, restitution, special assessments, and bail bond forfeitures shall be made in accordance with procedures established by the Director of the Administrative Office of the United States Courts. This change is necessary because of the elimination of the National Fine Center.

  - The bill repeals what was widely regarded as a mandate for a National Fine Center. The new wording requires the Director of the Administrative Office of the United States Courts to maintain oversight of the management of criminal debt information.

  - The bill completes the termination of the National Fine Center by eliminating mandatory annual funding transfers to the judicial branch from the Crime Victims Fund for the operation of a National Fine Center, and by requiring the return of unspent funds from the National Fine Center. The amendment permits the Director of the Crime Victims Fund to use the funds returned to the Crime Victims Fund for the benefit of crime victims in the federal criminal justice system.

DOJ debt collection EW

MEMORANDUM

TO: BRUCE REED, ELENA KAGAN

FROM: THOMAS FREEDMAN, MARY L. SMITH

RE: DOJ DEBT COLLECTION

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  - The bill completes the termination of the National Fine Center by eliminating mandatory annual funding transfers to the judicial branch from the Crime Victims Fund for the operation of a National Fine Center, and by requiring the return of unspent funds from the National Fine Center. The amendment permits the Director of the Crime Victims Fund to use the funds returned to the Crime Victims Fund for the benefit of crime victims in the federal criminal justice system.

MEMORANDUM

TO: TOM FREEDMAN

FROM: MARY L. SMITH

RE: NATIONAL FINE CENTER AND DOJ DEBT COLLECTION

DATE: JULY 22, 1997

SUMMARY

There is approximately $6 billion in uncollected federal criminal debt. A project that would have created a national database to oversee the collection has been terminated because it was behind schedule and plagued with problems. Only $2 billion of the $6 billion can reasonably be collected. We will continue pursuing this project as this problem was listed by the House Government Reform and Oversight Committee as among the "worst examples of government waste." DOJ has proposed legislation to address some of the problems the Government has in enforcing and collecting federal debt.

PRELIMINARY RECOMMENDATION

- Attempt to revamp the national database project so that it is feasible. (Apparently, DOJ is currently in the process of drafting a request for proposals (RFP)).
- Create an accounting standard for designating uncollectible debt in instances such as the inability of the debtor to pay.

BACKGROUND

The National Fine Center was authorized by the Criminal Fine Improvements Act of 1987, Pl. 100-185, 101 Stat. 1279. The Criminal Fine Improvements Act of 1987 contemplated that the director of the Administrative Office of the U.S. Courts (AOUSC) would establish a single national center within the judicial branch for processing fines, restitution, and special assessments.

There is a great need for a collection service for criminal fines because many fines are being collected. For instance, as of early 1992, DOJ estimated that the total amount of unpaid criminal debt exceeded $1.6 billion. By late 1996, the amount of unpaid criminal debt had ballooned to nearly $6 billion.

Once the criminal debts were collected, the National Fine Center, via the Treasury, was to make payments to either the victims (e.g. federal agencies, private corporations, banks, or individuals) or to the Crime Victims Fund. The Crime Victims Fund was established by the Victims of Crime Act, P.L. 98-473, 98 Stat. 2170. Virtually, all criminal fines, special assessments, and bail bond forfeitures are deposited into this fund, which is administered by the Office for Victims of Crime in the Department of Justice. Ninety percent of the Crime Victims Fund is distributed to states for compensation programs such as rape crisis centers and child abuse centers that provide financial assistance to victims and survivors of victims of criminal violence.

The National Fine Center was closed on November 15, 1996. Debt collection will revert to the decentralized system employed by each federal judicial district in the country, which, in many districts, involve catalog cards or ledger books.

Part of the reason that the amount of uncollected debt is so high is that "vanity fines" stay on the books. Vanity fines are fines with no realistic expectation that they will be collected. In fact, Kathleen Hegerty at the Department of Justice estimates that two-thirds of the current $6 billion in criminal debt is uncollectible, or, in other words, approximately only $2 billion can reasonably be collected. In fact, one of the recommendations of a May 1995 GAO report was to establish procedures for determining the collectibility of criminal debt accounts.

There is often sufficient information available at the time of sentencing to determine the offender's ability to pay. For example, in the 1993 bombing of the World Trade Center, each of the four defendants was assessed $250,000 in fines in addition to jail time. Although the probability of collecting this $1 million is low, DOJ records these debts as being fully collectible.

Despite the uncollectibility of much of the accrued criminal debt, there is still potentially a surplus, given a few criminal defendants with large fines and penalties that do have the ability to pay such as ADM and Daiwa, the Korean bank .

II. THE PROPOSED DOJ LEGISLATION

DOJ has drafted a bill that would improve the ability of Government attorneys to collect the approximately $60 billion of debt owed to the United States. Title I of the draft bill amends the Federal Debt Collection Procedures Act of 1990 (the "Act") . Title II of the bill, in large part, amends Title 18 of the United States Code. The provisions in Title II are largely the same as the restitution provisions in a draft bill that DOJ proposes to transmit on victims' rights.

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~~National Tire~~
~~Center and Debt~~
Debt Collection

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