Mr. Speaker, I will insert at this point in the Record the text of an analysis prepared by staff of the major amendments added to the House bill in the other body:

ANALYSIS OF HOUSE AND SENATE COMPROMISE AMENDMENTS TO THE FEDERAL PRIVACY ACT

The establishment of a Privacy Protection Study Commission. Only the Senate bill provided for an oversight and study commission to assist in the implementation of the act and to explore areas concerned with individual privacy which have not been included in the provisions of this legislation. The compromise measure will establish a Privacy Protection Study Commission of seven members instead of the five provided in the Senate bill. Three of these members will be appointed by the President, two by the President of the Senate, and two by the Speaker of the House of Representatives.

It is intended that this commission, which will serve for a period of two years, will be solely a study commission. In that capacity it is hoped the commission can assist the Executive Branch and the Congress in their examination of Federal government activities and their impact on privacy as well as representatives of State and local governments and the private sector who are attempting to deal with this important problem.

The scope of the commission's study authority is outlined specifically within the legislation. In section 5(c)(2)(B), the commission is directed to examine certain issues which are not included in the compromise between the House and Senate bill, such as a requirement that a person maintaining mailing lists remove an individual's name upon request; the question of prohibiting the transfer of individually identifiable data from the Internal Revenue Service to other agencies and to State governments; a question of whether the Federal government should be liable for general damages occurring from a willful or intentional violation of the provisions of new section 552a(g)(1)(C) or (D) which this act creates; and the extent to which requirements for security and confidentiality of records maintained under this act should be applied to a person other than an agency.

The commission shall from time to time and in an annual report, report to the Congress and to the President on its activities, and it shall submit a final report of its findings two years from the date the members of the commission are appointed.

In addition, the commission is authorized to provide necessary technical assistance and prepare model legislation upon request for State and local governments interested in adopting privacy legislation. Strict standards and penalties are placed upon commission members and employees with regard to the handling and unlawful distribution of information about individuals which it receives in the course of carrying out its functions.

While the provisions of the rest of this act do not go into effect until 270 days from the date of enactment, the commission is authorized to go into effect immediately upon the appointment of its members in order that some of its work may be available to the Congress and the Executive Branch by the time the remainder of the legislation becomes effective.

ROUTINE USE

The House bill contains a provision not provided for in the Senate measure exempting certain disclosures of information from the requirement to obtain prior consent from the subject when the disclosure would be for a "routine use". The compromise would define "routine use" to mean; "with respect to the disclosure of a record, the use of such records for a purpose which is compatible with the purpose for which it was collected."

Where the Senate bill would have placed tight restrictions upon the transfer of personal information between or outside Federal agencies, the House bill, under the routine use provision, would permit an agency to describe its routine uses in the Federal Register and then disseminate the information without the consent of the individual or without applying the standards of accuracy, relevancy, timeliness or completeness so long as no determination was being made about the subject.

The compromise definition should serve as a caution to agencies to think out in advance what uses it will make of information. This act is not intended to impose

undue burdens on the transfer of information to the Treasury Department to complete payroll checks, the receipt of information by the Social Security Administration to complete quarterly posting of accounts, or other such housekeeping measures and necessarily frequent interagency or intra-agency transfers of information. It is, however, intended to discourage the unnecessary exchange of information to other persons or to agencies who may not be as sensitive to the collecting agency's reasons for using and interpreting the material.

INFORMATION ON POLITICAL ACTIVITIES

The House bill tells agencies that they may not maintain a record concerning the political or religious beliefs or activities of any individual unless maintenance of the record would be authorized expressly by statute or by the individual about whom the record is maintained. The House bill goes on to provide that this subsection is not deemed to prohibit the maintenance of any record or activity which is pertinent to and within the scope of a duly authorized law enforcement activity.

The Senate bill constitutes a prohibition against agency programs established for the purpose of collecting or maintaining information about how individuals exercise First Amendment rights unless the agency head specifically determines that the program is required for the administration of a statute.

The compromise broadens the House provisions application to all First Amendment rights and directs the prohibition against the maintenance, use, collection, or dissemination of records. However, as in the House bill, it does permit the maintenance of those records which are expressly authorized by statute or by the individual subject, or are pertinent to or within the scope of an authorized law enforcement activity.

CONFIDENTIAL SOURCES OF INFORMATION

The compromise provision for the maintenance of information received from confidential sources represents an acceptance of the House language after receiving an assurance that in no instance would that language deprive an individual from knowing of the existence of any information maintained in a record about him which was received from a "confidential source." The agencies would not be able to claim that disclosure of even a small part of a particular item would reveal the identity of a confidential source. The confidential information would at the very least have to be characterized in some general way. The fact of the item's existence and a general characterization of that item would have to be made known to the individual in every case.

Furthermore, the acceptance of this section in no way precludes an individual from knowing the substance and source of confidential information, should that information be used to deny him a promotion in a government job or access to classified information or some other right, benefit or privilege for which he was entitled, otherwise if he should consequently bring legal action against the government and should base any part of its legal case on that information.

Finally, it is important to note that the House provision would require that all future promises of confidentiality to sources of information be expressed and not implied promises. Under the authority to prepare guidelines for the administration of this act it is expected that the Office of Management and Budget will work closely with agencies to insure that Federal investigators make sparing use of the ability to make express promises of confidentiality.

STANDARDS APPLIED TO DISSEMINATION OUTSIDE THE GOVERNMENT

H.R. 16373 requires that all records which are used by an agency in making any determination about an individual be maintained with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in the determination. S. 3418 goes much further and requires that agencies apply these standards at any time that access is granted to the file, material is added to or taken from the file, or at any time it is used to make a determination affecting the subject of the file.

The difference between these two measures represents a difference in philosophy regarding the handling of personal information. The Senate measure is designed to complement the requirement that agencies maintain only information which is relevant and necessary to accomplish a statutory purpose. The standard of

relevancy should be that statutory basis for an information program which is now set forth in (e)(1) of the compromise measure. By adopting this section, the Senate hoped to encourage a periodic review of personal information contained in Federal records as those records were used or disseminated for any purpose.

The House provision would have applied these important standards for maintenance of information in records at any time a determination is made about an individual. The House bill goes on to permit additional "routine uses" of information which may not rise to the threshold of an "agency determination" without requiring that the information be upgraded to meet these standards.

The compromise amendment would adopt the section of the House bill applying the standards of accuracy, relevance, timeliness and completeness at the time of a determination. It would add the additional requirement, however, that prior to the dissemination of any record about an individual to any person other than another agency, the sending agency shall make a reasonable effort to assure that the record is accurate, complete, timely, and relevant. This proviso was included because Federal agencies would be governed by a requirement to clean up their records before a determination is made and limited by a requirement to publish each routine use of information in the Federal Register, but the use of information by persons outside the Federal government would not be governed by this act. Therefore, agencies are directed to be far more careful about the dissemination of personal information to persons not governed by the enforcement provisions of this bill.

THE FREEDOM OF INFORMATION ACT AND PRIVACY

One difficult task in drafting Federal privacy legislation was that of determining the proper balance between the public's right to know about the conduct of their government and their equally important right to have information which is personal to them maintained with the greatest degree of confidence by Federal agencies. The House bill made no specific provision for Freedom of Information Act requests of material which might contain information protected by the Privacy Act. Instead, in the committee report on the bill, it recognized that:

"This legislation would have an effect on subsection (b)(6) of the Freedom of Information Act (5 U.S.C., Section 552) which states that the provisions regarding disclosure of information to the public shall not apply to material 'the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.' H.R. 16373 would make all individually identifiable information in government files exempt from public disclosure. Such disclosure could be made available to the public only pursuant to rules published by agencies in the Federal Register permitting the transfer of particlar data to persons other than the individuals to whom they pertain."

The committee report went on to express a desire that agencies continue to make certain individually identifiable records open to the public because such disclosure would be in the public interest.

The Senate bill provided that nothing in the act shall be construed to permit the withholding of any personal information which is otherwise required to be disclosed by law or any regulation thereunder. This section was intended as specific recognition of the need to permit disclosure under the Freedom of Information Act.

The compromise amendment would add an additional condition of disclosure to the House bill which prohibits disclosure without written request of an individual unless disclosure of the record would be pursuant to Section 552 of the Freedom of Information Act. This compromise is designed to preserve the status quo as interpreted by the courts regarding the disclosure of personal information under that section.

A related amendment taken from the Senate bill would prohibit any agency from relying upon any exemption contained in Section 552 to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

CIVIL REMEDIES

Under the House bill an individual would be permitted to seek an injunction against an agency only to produce his record upon a failure of an agency to comply with his request. An individual would be able to sue for damages only if an agency failed to maintain a record about him with such accuracy, rele-

vance, timeliness and completeness as would be necessary to assure fairness and a determination about him, and consequently an adverse determination was made. A suit for damages would also be in order against an agency if it fails to comply with any other provision of this act in such a way to have an adverse effect on the individual.

Under the Senate bill injunctive relief would be available to an individual to enforce any right granted to him. And an individual would be permitted to sue for damages for any action or omission of an officer or employee of the government who violates a provision of the act.

The standard for recovery of damages under the House bill was a determination by a court that the agency acted in a manner which was willful, arbitrary, or capricious. The Senate bill would have permitted recovery against an agency on a finding that the agency had erred in handling his records.

These amendments represent a compromise between the two positions. They permit an individual to seek injunctive relief to correct or amend a record maintained by an agency. In a suit for damages, the amendment reflects a belief that a finding of willful, arbitrary, or capricious action is too harsh a standard of proof for an individual to exercise the rights granted by this legislation. Thus the standard for recovery of damages was reduced to "willful or intentional" action by an agency. On a continuum between negligence and the very high standard of willful, arbitrary, or capricious conduct, this standard is viewed as only somewhat greater than gross negligence.

Both the House and Senate bills provided for an individual to recover reasonable attorney fees and costs of litigation. The compromise amendments adopt the standard of the House bill permitting the court to award attorney fees and reasonable costs to an individual where a complainant has substantially prevailed in an injunctive action, and requiring such award in actions in which complainants receive damages.

ACCESS AND CHALLENGE TO RECORDS

The House bill would apply a standard of promptness to agency considerations of requests for access to records and requests to challenge or correct those records. In addition, it allows the individual to request a review of a refusal to correct a record by the agency official named in its public notice of information systems.

The Senate bill requires the agency to make a determination with respect to an individual's request for a record change within 60 days of the request and to permit him a hearing within 30 days of a request for one, with extension for good cause permitted. The individual would have the option of a formal or informal hearing procedure within the agency upon a refusal of a request to correct or amend a record. The compromise amendment would require the agency to respond within 10 working days to acknowledge an individual's request to amend a record. Following acknowledgement, the agency must promptly correct the information which the individual believes is not accurate, relevant, timely or complete or inform the individual of its refusal.

If the individual disagrees with the refusal of the agency to amend his record, the agency shall conduct a review of that refusal within 30 working days, provided that an extension may be obtained for good cause. We expect that agency heads will either conduct such reviews themselves, or assign officers of the rank of deputy assistant secretary or above.

The House bill would not have permitted a Federal District Court to review *de novo* an agency's refusal to amend a record. The compromise adopts the Senate provision which would require a *de novo* review of such refusal and to order a correction where merited. Finally, the compromise requires that in any disclosure of information subject to disagreement that the agency includes with the disclosure a notation of any dispute over the information or a copy of any statement submitted by the individual stating his reasons for disagreement with the information.

ACCOUNTING FOR DISCLOSURES

The House bill requires an agency to inform any person or another a about a correction or notation of dispute regarding a record that has bee closed to that person or agency within two years before making the corr or notation. It would not apply if no accounting of the disclosure had required. No such limitation was placed upon accounting for disclosures i

Senate bill and the compromise measure would require any person or agency receiving the record at any time before a notation or dispute is made to be notified if an accounting of the disclosures were made.

The House bill requires an agency to maintain an accounting for disclosures for only five years. The Senate bill places no limitation on the length of time for maintaining such disclosures. The compromise amendment would require maintaining of the disclosure for five years or the life of the record, whichever is longer.

ON OF INFO ON COLLEC
IRD ARTY MATION

The Senate bill requires Federal agencies to maintain only such information about an individual as is relevant and necessary to accomplish a statutory purpose of the agency. The House bill did not address this issue. The compromise amendment modifies the Senate provision to permit the collection of information which would be required to accomplish not only a purpose set out by a statute but also a purpose outlined by a Presidential Executive Order.

The provision is included to limit the collection of extraneous information by Federal agencies. It requires that a conscious decision be made that the information is required to meet the lawful needs of an agency. Agencies should formulate as precisely as possible the policy objectives to be served by a data gathering activity before it is undertaken. It is hoped that multiple requests for information will be reduced and that agencies will collect no more sensitive personal information than is necessary.

The Senate bill also requires agencies to collect information to the greatest extent practicable directly from the subject when that information could result in an adverse determination about an individual's rights and benefits and privileges under a Federal program. The House bill had no provision, but the compromise amendment accepts the Senate language. This section is designed to discourage the collection of personal information from third party sources and therefore to encourage the accuracy of Federal data gathering. It supports the principle that an individual should to the greatest extent possible, be in control of information about him which is given to the government. This may not be practical in all cases for financial or logistical reasons or because of other statutory requirements. However, it is a principle designed to insure fairness in information collection which should be instituted wherever possible.

ARCHIVAL RECORDS

The House bill provides that records accepted by the Administrator of General Services for temporary storage and servicing shall be considered for purposes of this act, to be maintained by the agency which deposits the records. Records transferred to the National Archives after the effective date of this Act for purposes of historical preservation are considered to be maintained by the Archives and are subject only to limited provisions of the Act. Records transferred to the National Archives before the effective date of this Act are not subject to the provisions of this Act.

The Senate bill provides that records accepted by the Administrator of General Services for temporary storage and servicing shall be considered, for purposes of this Act, to be maintained by the agency which deposits the records. All records transferred to the National Archives for purposes of historical preservation are considered to be maintained by the Archives and are subject only to those provisions of this Act requiring annual public notice of the existence and character of the information systems maintained by the Archives, establishment of appropriate safeguards to insure the security and integrity of preserved personal information, and promulgation and implementation of rules to insure the effective enforcement of those safeguards.

The compromise amendment subjects records transferred to the National Archives for historical preservation prior to the effective date of the act to a modified requirement for annual public notice. It is intended that the notice provision not be applied separately and specifically to each of the many thousands of separate systems of records transferred to the Archives prior to the effective date of this Act, but rather that a more general description be provided which pertains to meaningful groupings of record systems. However, record systems transferred

to the Archives after the effective date of this Act are individually subject to the specific notice provisions. This coverage is intended to support and encourage improvements in the organization and cataloging of records maintained by the Archives.

MORATORIUM ON THE USE OF THE SOCIAL SECURITY ACCOUNT NUMBER

The House bill provides that a Federal agency, or a State or local government acting in compliance with Federal law or a federally assisted program, is prohibited from denying to individuals rights, benefits or privileges by reason of refusal to disclose the social security account number. Any such governmental agency is further prohibited from utilizing the social security account number for purposes apart from verification of individual identity except where another purpose is specifically authorized by law. Exempt from these prohibitions are systems of records in existence and operating prior to January 1, 1975. Exemption is further granted where disclosure of a social security account number is required by Federal law.

The Senate bill provides that a Federal agency, or a State or local government, is prohibited from denying to individuals rights, benefits or privileges by reason of refusal to disclose the social security account number. Persons engaged in the business of commercial transactions or activities are prohibited from discriminating against any individual in the course of such activities by reason of refusal to disclose the social security account number. Exempt from these prohibitions are systems of records in existence and operating prior to January 1, 1975. Also exempt are disclosures of the social security account number required by Federal law. This section further provides that any Federal, State or local government agency or any person who requests an individual to disclose his social security number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, what uses will be made of it, and what rules of confidentiality will govern it.

The compromise amendment changes the House language by broadening the coverage of State and local governments so as to prohibit any new activity by such a government that would condition a right, benefit or privilege upon an individual's disclosure of his social security account number.

To clarify the intent of the Senate and House, the grandfather clause of this section was re-stated to exempt only those governmental uses of the social security account number continuing from before January 1, 1975, pursuant to a prior law or regulation that, for purposes of verifying identity, required individuals to disclose their social security account number as a condition for exercising a right, benefit, or privilege. Thus, for illustration, after January 1, 1975, it will be unlawful to commence operation of a State or local government procedure that requires individuals to disclose their social security account numbers in order to register a motor vehicle, obtain a driver's license or other permit, or exercise the right to vote in an election. The House section was amended to include the Senate provision for informing an individual requested to disclose his social security account number of the nature, authority and purpose of the request. This provision is intended to permit an individual to make an informed decision whether or not to disclose the social security account number, and it is intended to bring recognition to, and discourage, unnecessary or improper uses of that number.

RULEMAKING PROCEDURES FOR MAKING EXEMPTIONS

To obtain an exemption from certain provisions of this Act under the House bill, agencies entitled to those exemptions would be required to public notice of the proposed exemptions in the *Federal Register* pursuant to Section 553 of the Administrative Procedures Act permitting comments to be submitted in writing for inclusion in the *Register* with such exemptions.

The Senate bill applied a much more stringent standard and would have required agencies to hold adjudicatory hearings as provided in APA Sections 556 and 557. The compromise agreements would no longer require full adjudicatory proceeding by any agency seeking an exemption permitted under the act. However, agencies would still be required to publish notice of a proposed rulemaking in the Federal Register and could not waive the 30 day period for such publication. In addition it is specifically provided in this act that agencies obtaining such exemptions state the reasons why the system of records is to be exempted.

Under the Senate bill the Privacy Protection Commission was directed to develop model guidelines and conduct certain oversight of the implementation of this Act to Federal agencies. Since the compromise amendment would change the scope of authority of the commission, it was felt there remained a need for an agency within the government to develop guidelines and regulations for agencies to use in implementing the provisions of the Act and to provide continuing assistance to and oversight of the implementation of the provisions of this Act by the agencies.

This function has been assigned to the Office of Management and Budget.

S ON NEW YSTEMS

Under the Senate bill the Privacy Protection Commission was to have a central role in evaluating proposals to establish or alter new systems of information in the Federal government. If the commission had determined that such a proposal was not in compliance with the standards established by the Senate bill the agency which prepared the report could not proceed to establish or modify an information system for 60 days in order to give the Congress and the President an opportunity to review that report and the commission's recommendations.

The compromise amendment would require that agencies provide adequate advance notice to the Congress and to the Office of Management and Budget of any proposal to establish or alter a system of records in order to permit an evaluation of the privacy impact of that proposal. In addition to the privacy impact, consideration should be given to the effect the proposal may have on our Federal system and on the separation of powers among the three branches of government. These concerns are expressed in connection with recent proposals by the General Services Administration and Department of Agriculture to establish a giant data facility for the storing and sharing of information between those and perhaps other departments. The language in the Senate report on pages 64–66 reflects the concern attached to the inclusion of this language in S.3418.

The acceptance of the compromise amendment does not question the motivation or need for improving the Federal government's data gathering and handling capabilities. It does express a concern, however, that the office charged with central management and oversight of Federal activities and the Congress have an opportunity to examine the impact of new or altered data systems on our citizens, the provisions for confidentiality and security in those systems and the extent to which the creation of the system will alter or change interagency or intergovernmental relationships related to information programs.

GOVERNMENT CONTRACTORS

The Senate bill would have extended its provisions outside the Federal government only to those contractors, grantees or participants in agreements with the Federal government, where the purpose of the contract, grant or agreement was to establish or alter an information system. It addressed a concern over the policy governing the sharing of Federal criminal history information with State and local government law enforcement agencies and for the amount of money which has been spent through the Law Enforcement Assistance Administration for the purchase of State and local government criminal information systems.

The compromise amendment would not permit Federal law enforcement agencies to determine to what extent their information systems would be covered by the Act and to what extent they will extend that coverage to those with which they share that information or resources.

DEFINITION OF RECORD

The definition of the term "Record" as provided in the House bill has been expanded to assure the intent that a record can include as little as one descriptive item about an individual and that such records may incorporate but not be limited to information about an individual's education, financial transactions, medical history, criminal or employment records, and that they may contain his name, or the identifying number, symbol, or other identifying marks, particularly assigned to the individual, such as a finger or voice print or a photograph. The

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information" as used in the Senate b...

Mr. MOORHEAD of Pennsylvania. ...wil not ak... he ...me to xplain each of hese amendments because many of nem are merely technical or conforming in nature. All of them are clearly germane to the original House bill ... will, however, mention the most important of hem—

First, the bil provides for a seven-member Privacy P...tection Study Commission, authorizing a 2-year study of various aspects of individual ... vacy affecting areas of the private se...or nd State and local gov...mental units. In my judgment, Mr. Speake...s ...a study—without du...y affecting the operational aspects of the Privacy Act of 1974—will be most helpful in understanding the complexities of individual privacy in non-Federal activities and in he consideration of additional legislation affecting privacy in he future.

Second, I would like to mention another amendment in the Senate bill that deals with mailing lists. Language included in the legislation would prohibit the sale or rental of mailing lists, names and addresses, by Federal agencies maintaining them. The philosophy behind this amendment is that the Federal Government is not in the mailing list business, and it should not be Federal policy to make a profit from the routine business of government, particularly when the release of such lists has been authorized under the Freedom of Information Act. In other words, such lists cannot be withheld by an agency, unless it determines that the release would constitute "a clearly unwarranted invasion of privacy" under section 552(b)(6) of title 5, United States Code.

Thus, the language of the bill before us does not ban the release of such lists where either sale or rental is not involved. Our subcommittee on Foreign Operations and Government Information held extensive hearings on Federal agency mail list policies during the last Congress. Such policy varies from agency to agency, and the Federal courts have interpreted in several cases the language of the Freedom of Information Act relating to withholding of matters constituting a "clearly unwarranted invasion of privacy." This measure now before us would preserve the current practices and interpretations of this part of the Freedom of Information Act, as they deal with Federal agency mailing lists.

Finally, the bill, as amended, assigns to the Office of Management and Budget the responsibility of developing guidelines and regulations for all Federal Agencies in the enforcement and administration of the Privacy Act.

Mr. Speaker, I will not discuss the other Senate amendments in any detail since a description of them has been placed in the Record previously. However, on the major areas of operational parts of the bill—such as access, accounting, disclosure, agency rules and requirements, and exemptions—the bill generally follows the House version. Some strengthening language has, however, been incorporated from the Senate measure.

Mr. Speaker, I now yield to the gentleman from Illinois (Mr. Erlenborn) who has made such a significant series of contributions at every stage in the development of this meaningful privacy legislation.