

Date: July 12, 1995

VAOPGCPREC 19-95

From: General Counsel (022)

Subj: Time Limitations on Claims Resulting from Nonnegotiation  
of Benefit Checks by the Payee

To: Assistant Director for Finance (20A3B)

**QUESTION PRESENTED:**

To what extent does the six-year limitation period imposed by 31 U.S.C. § 3702(b) apply to claims resulting from nonnegotiation by the payee of checks drawn on veterans' benefit appropriations? <sup>1</sup>

**COMMENTS:**

1. This issue arises in the context of a request from a veteran's surviving spouse receiving dependency and indemnity compensation that the Department of Veterans Affairs (VA) reissue 194 uncashed benefit checks, all more than six years old. Apparently, the surviving spouse received these checks in due course and stored them, having no immediate need for the funds represented by the checks.

2. Pursuant to sections 1002 and 1003 of the Competitive Equality Banking Act of 1987 (CEBA), Pub. L. No. 100-86, 101 Stat. 552, 658, checks issued by the Department of the Treasury on or after October 1, 1989, <sup>2</sup> are negotiable for only one year, and those checks which have not been paid at the conclusion of the one-year period are to be canceled by

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<sup>1</sup> The Department of Veterans Affairs (VA) appropriation accounts identified in the request for opinion are 36X0102 (compensation and pension), 36X0137 (readjustment benefits), and 36X4023-25 and 36X4125-30 (loan guaranty).

<sup>2</sup> By notice published on February 8, 1988, the Secretary of the Treasury designated October 1, 1989, as the effective date for the amendments made by sections 1002 and 1003 of the CEBA. 53 Fed. Reg. 3584 (1988).

the Secretary of the Treasury. The CEBA also provided for cancellation of unpaid Treasury checks issued prior to  
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October 1, 1989. Pub. L. No. 100-86, § 1003, 101 Stat. at 658 (1987). The CEBA included a saving clause, now codified at 31 U.S.C. § 3702(c)(2), which states, as amended, that nothing in the provision pertaining to cancellation of stale checks "affects the underlying obligation of the United States, or any agency thereof, for which a Treasury check was issued." <sup>3</sup>

3. Paragraph 2.a. of Veterans Benefits Administration (VBA) Circular 20-92-12 (May 4, 1992) states that "VA has the underlying obligation to settle all claims submitted by beneficiaries for checks issued prior to October 1, 1989, that were canceled by Treasury." According to paragraph 2.c., claims for checks dated on or after October 1, 1989, which have been canceled "must be processed by VA, since the CEBA legislation does not affect the payee's entitlement to a check." This circular is consistent with VAOPGCADV 45-90 (O.G.C. Adv. 45-90), which held that VA remains obligated on the underlying obligation to a payee whose check is canceled pursuant to the CEBA due to late presentation. The General Counsel's advisory opinion also stated that when a check is paid over a forged or unauthorized endorsement and a claim on such check is presented more than one year after the date of issuance of the check, VA is responsible for the underlying claim. The opinion, however, did not consider the applicability of the so-called Barring Act, ch. 788, 54 Stat. 1061 (1940), now codified, as amended, at 31 U.S.C. § 3702(b).

4. Section 3702(b) provides that a claim against the Government presented to the Comptroller General under section 3702 for settlement which is not received by the Comp-

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<sup>3</sup> As originally enacted, sections 1002 and 1003 of the CEBA contained similar saving clauses applicable, respectively, to the provisions limiting negotiability of checks to one year and directing the Secretary of the Treasury to cancel Treasury checks issued prior to October 1, 1989.

troller General within six years after the claim accrues is barred.<sup>4</sup> The Barring Act, from which section 3702(b)

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derived, was intended to relieve the Government of the need to retain and review old records for the purpose of settling old claims. H.R. Rep. No. 1541, 76th Cong., 3d Sess. 2 (1940); see also *In re Capt. Elias W. Covington, USA (Retired)*, Op. Comp. Gen. B-244827 (Sept. 9, 1992). The term "claim" for purposes of that statute has been interpreted to include an original claim for money not received, i.e., a claim on the underlying obligation liquidated by a Treasury check. *In re Baker & Ford Co.*, Op. Comp. Gen. B-173348 (Feb. 27, 1979). Section 31.5(a) of title 4, Code of Federal Regulations, which implements section 3702, provides that "[a]ll claims against the United States Government, except as otherwise provided by law, are subject to the 6-year statute of limitations."

5. Prior to passage of the CEBA, the Barring Act had no practical effect with regard to claims based on uncashed Treasury checks which had been issued to satisfy obligations of the Government. Checks drawn on the United States Treasury generally could "be paid at any time." 31 U.S.C.A. § 3328(a)(1) (1983). Also, claims based on unpaid Treasury checks were exempted from the Barring Act by 31 U.S.C. § 3328(c), which states that "[a] limitation imposed on a claim against the United States Government under section 3702 of this title does not apply to an unpaid check drawn on the Treasury or a designated depository." As a result, unpaid Treasury checks could be cashed at any time,

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<sup>4</sup> Sections 31.4 and 31.5 of title 4, Code of Federal Regulations, were amended in 1989 to provide that a claim should be filed with the administrative department or agency out of whose activities the claim arose, rather than with the Comptroller General and that a claim so filed will be considered timely for purposes of the six-year limitation period. 54 Fed. Reg. 51,868 (1989).

even if a claim on the underlying obligation was barred by the Barring Act's six-year statute of limitations.<sup>5</sup>

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6. The CEBA, however, established a time limit on the negotiability of Government checks. As noted, under the CEBA, Treasury checks issued on or after October 1, 1989, are negotiable for only one year, and all unpaid Treasury checks issued prior to October 1, 1989, have been canceled. Section 1004(b) of the CEBA, 101 Stat. at 659, amended section 3702(c) to require that "[a]ny claim on account of a Treasury check shall be barred unless it is presented to the agency that authorized the issuance of such check within 1 year after the date of issuance of the check or the effective date of this subsection, whichever is later."

7. In *In re Payment of Unpaid Treasury Checks More Than 6 Years Old*, Op. Comp. Gen. B-244431.2 2-4 (Sept. 13, 1994), the Comptroller General held that the obligation underlying a Treasury check which has become nonnegotiable pursuant to the CEBA is subject to the six-year limitation imposed by 31 U.S.C. § 3702(b)(1). See also Op. Comp. Gen. B-244431

(Oct. 8, 1991) (the conclusions of which were affirmed by Op. Comp. Gen. B-244431.2). The Comptroller General further concluded that the CEBA saving clause, 31 U.S.C. § 3702(c)(2), merely provides that the CEBA has no effect on the underlying obligation, *i.e.*, that the CEBA does not terminate, preserve, or resurrect the obligation underlying a Treasury check. Op. Comp. Gen. B-244431.2 at 4; see also 70 Comp. Gen. 416, 418 n.2 (1991) (The CEBA saving clause preserves a claim for payment but does not resurrect a claim that is otherwise unenforceable.). "The preservation or termination of an underlying obligation subject to section 3702(b) continues to be controlled by whether a claim

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<sup>5</sup> However, prior to the CEBA, 31 U.S.C.A. § 3702(c) (1983) required that a claim on a Treasury check which appeared from the records of the Comptroller General or the Secretary of the Treasury to have been paid must have been presented within six years after the check was issued.

has been received by the Comptroller General or the appropriate agency within 6 years of the date of accrual of the claim." Op. Comp. Gen. B-244431.2 at 4. The Comptroller General rejected the argument that, because the CEBA did not amend 31 U.S.C. § 3328(c), the obligation underlying a Treasury check is enforceable in perpetuity, and therefore the check may be reissued in perpetuity. Op. Comp. Gen. B-244431.2 at 4-5. The Comptroller General pointed out that section 3328(c) says only that a limitation imposed on a claim against the United States under section 3702 does not apply to an unpaid check and that the statutory provision does not say that a limitation imposed on a claim against

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the United States does not apply to the obligation underlying a check. Op. Comp. Gen. B-244431.2 at 5.

8. This opinion was consistent with advice previously provided by the General Accounting Office (GAO) to VA's Deputy Assistant Secretary for Financial Management in Op. Comp. Gen. B-243536 (Sept. 7, 1993). In that opinion, the GAO pointed out that, although a claim on an obligation underlying a Treasury check which has been canceled by the CEBA is preserved by statute, the saving statute does not

"`resur-

rect claims that are otherwise unenforceable.'" Op. Comp. Gen. B-243536 at 2, 3, quoting, among other sources, 70 Comp. Gen. at 418 n.2. The opinion concluded that "a claim against the government on the obligation underlying a [pre-October 1, 1989,] check presented to the GAO or the agency whose activities gave rise to the claim more than six years after the claim accrues is explicitly barred." *Id.*

at 3. The opinion further indicated that the six-year statute of limitations also applies to claims on fraudulently endorsed checks.

9. Congress has cited with seeming approval the Comptroller General's conclusion that, where a check has been canceled pursuant to the CEBA, a claim on the underlying obligation is unenforceable, under 31 U.S.C. § 3702(b), if not presented within six years of when the claim accrued. In 1992, the House of Representatives considered a private bill for the relief for Anna C. Massari, who, due to mental

illness, failed to negotiate 60 paychecks which she received from the Department of the Navy in 1952 and 1953 and which had been canceled pursuant to the CEBA. The House report on the private bill referred to the October 8, 1991, Comptroller General opinion, *i.e.*, Op. Comp. Gen. B-244431, as concluding that "while the Government has an underlying obligation for the checks, claims against the United States Government on obligations six years after the claim accrues are unenforceable under the provisions of 31 U.S.C.

§ 3702(b)." H.R. Rep. No. 1003, 102d Cong., 2d Sess.

(1992). The House committee apparently concluded, on the basis of that opinion, that private relief was necessary, and Congress enacted a bill which exempted Ms. Massari's claim from the six-year statute of limitations of section 3702(b). Priv. L.

No. 102-17, reprinted in 138 Cong. Rec. H11265-04 (1992).

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10. We do not believe that there is an exemption from the six-year statute of limitations of 31 U.S.C. § 3702(b)(1) applicable to obligations for which checks were drawn on VBA appropriation accounts. We note initially that section 3702(b) has been strictly enforced by the Comptroller General.<sup>6</sup> See 64 Comp. Gen. 155, 158 (1984). Section 3702(a) of title 31, United States Code, authorizes the Comptroller General to "settle **all** claims . . . against the United States Government," except as otherwise provided. (Emphasis added). The six-year limitation period of section 3702(b) applies generally to such claims with limited exceptions. Also, section 31.5(a) of title 4, Code of Federal Regulations, explicitly states that **all** claims against the United States Government are subject to the six-year statute of limitations, except as otherwise provided by law. The only exceptions recognized in section 3702(b) are: where an exception is specified in chapter 37 of title 31, United States Code, or another law; as to a

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<sup>6</sup> The Comptroller General has held that, even when the claimant was unaware that he or she had a claim against the Government, the Barring Act precludes consideration of any portion of the claim arising more than six years before the claim was presented. *In re Betty J. Porter*, Op. Comp. Gen. B-254399 (Dec. 22, 1993).

claim by a state, the District of Columbia, or a United States territory or possession; and, in the event that the claim of a member of the armed forces accrues during war or within 5 years before a war begins. 31 U.S.C. § 3702(b)(1)(A) and (B) and (b)(2). We can find no basis in chapter 37 of title 31, United States Code, in title 38, United States Code, or in any other provision of law, for an exemption from the six-year statute of limitations for claims involving veterans' benefit appropriations.

11. We therefore conclude that the six-year statute of limitations found at 31 U.S.C. § 3702(b) generally is applicable to claims for unpaid veterans' benefits resulting from nonnegotiation of benefit checks, regardless of whether such claims may be payable from veterans' benefit appropriations.

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Accordingly, the proceeds of the 194 uncashed checks representing dependency and indemnity compensation which have been canceled pursuant to the CEBA, referenced in the request for opinion, are not payable unless a claim for them was made within six years after the claim accrued, as required by 31 U.S.C. § 3702(b). Otherwise, the claimant's recourse would appear to be to pursue private relief from Congress. See Op. Comp. Gen. B-243536 at 2.

12. The request for opinion also inquires about claims based on checks which have been lost, stolen, cashed on a forged endorsement, or never received. As discussed above, the six-year limitation period of section 3702(b) applies generally to all claims against the Government which the Comptroller General is authorized to settle, with limited exceptions. See also 4 C.F.R. § 31.5(a). No exception is provided in section 3702(b) for claims based upon checks which have been lost, stolen, cashed on a forged endorsement, or never received. In addition, in Op. Comp. Gen. B-243536, the GAO advised VA's Deputy Assistant Secretary for Financial Management that a claim based on an obligation underlying a check paid on a fraudulent endorsement must be presented within six years after the claim accrues or else the claim is barred. This advice is consistent with current statutes and with prior practice in the handling of such claims. We note in this regard that, prior to the CEBA, section 3702(c) required that a claim on

a Treasury check which appeared from the records of the Comptroller General or the Secretary of the Treasury to have been paid must have been presented within six years after the check was issued. See 31 U.S.C.A. § 3702(c) (1983). We therefore conclude that the six-year limitation period found at 31 U.S.C. § 3702(b) applies to claims based upon checks which have been lost, stolen, cashed on a forged endorsement, or never received.

13. One further situation bears discussion. Upon the death of a payee who has received but not negotiated a veterans' benefit check, VA is authorized, pursuant to 38 U.S.C. § 5122, to make payment of the amount represented by the check as long as there is an eligible surviving spouse, child, or dependent parent, or person who bore the expense of the payee's last sickness and burial, as specified in <Page 8>

38 U.S.C. § 5121(a). See VAOPGCPREC 22-92 (O.G.C. Prec. 22-92). As specified in section 5122, any sum not paid in that manner may be distributed to the estate of the payee after settlement by the GAO, provided that the amount to be distributed will not escheat. Section 5122 also states that the amount represented by such check or any amount recovered as a result of improper negotiation of the check is payable without regard to 38 U.S.C. § 5121(c), which requires applications for accrued benefits to be filed within one year after the date of death. VA regulations which implement section 5122 state that there is "no time limit for filing a claim to obtain the proceeds" of a check issued to a payee who died prior to negotiating the check. 38 C.F.R. § 3.1003(a)(1). Thus, a question arises as to whether section 5122, as implemented by 38 C.F.R. § 3.1003(a)(1), renders 31 U.S.C. § 3702(b) inapplicable to a claim based on a check received by the payee but not negotiated prior to the payee's death.

14. Prior to 1953, VA assisted claimants in making application for the proceeds of veterans' benefit checks not cashed by deceased payees and in securing necessary supporting data; however, claims on such checks were paid by the GAO. S. Rep. No. 227, 83d Cong., 1st Sess. (1953), reprinted in 1953 U.S.C.C.A.N. 1665, 1666. The Act of May 29, 1953, ch. 84, 67 Stat. 39, made VA solely responsible for processing and payment of these claims in cases where

there is an eligible beneficiary or beneficiaries in one to the specified classes. The purpose of this statute was to simplify procedures and avoid duplication by providing for processing and payment of claims by a single agency, *i.e.*, VA. S. Rep. No. 227, 83d Cong., *reprinted in* 1953 U.S.C.C.A.N. at 1665-67. Section 5122, thus, provides, under laws administered by VA, not the GAO, eligibility for the proceeds of certain uncashed VA benefit checks for specific classes of individuals enumerated in 38 U.S.C. § 5121(a).

15. Section 3702(b) of title 31, United States Code, applies to claims presented under section 3702. Section 3702(a) provides that the Comptroller General settles all claims against the United States, except as provided by another law. Section 30.1(a) of title 4, Code of Federal Regulations, states that the regulations implementing  
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31 U.S.C. § 3702 do not apply to "claims which are under the exclusive jurisdiction of administrative agencies pursuant to specific statutory authority." In our view, the terms of 38 U.S.C. § 5122 and the legislative history of that statute make clear that claims under section 5122 are under the exclusive jurisdiction of VA to the extent they pertain to persons within the classes specified in 38 U.S.C. § 5121(a). *See also* 38 U.S.C. § 511(a) (making final and conclusive decisions of the Secretary of Veterans Affairs under laws affecting the provision of benefits by the Secretary to veterans or their dependents or survivors). Thus, they fall outside the scope of regulations implementing 31 U.S.C. § 3702. For the same reason, they fall outside the scope of section 3702 itself, which, as noted, does not apply where otherwise provided by another law.

16. Instead of being governed by 31 U.S.C. § 3702 and its implementing regulations, claims by persons within the specified classes under 38 U.S.C. § 5122 are governed by the provisions of that statute and its implementing regulations at 38 C.F.R. § 3.1003. To be valid, a regulation must be consistent with the statute which it implements. *See United States v. Larionoff*, 431 U.S. 864, 873 (1977). As explained above, section 5122 authorizes VA to pay the amount represented by certain checks as long as there is an

eligible surviving spouse, child, dependent parent, or person bearing the expense of the payee's last sickness and burial. The statute specifies no time limit for filing claims with VA based upon uncashed checks and specifically provides that the generally applicable time limit for filing accrued benefit claims in 38 U.S.C. § 5121(c) does not apply. In this situation, we consider the broad language of 38 C.F.R.

§ 3.1003(a)(1) with regard to the absence of a time limit for filing a claim for the proceeds of an uncashed check to be consistent with governing statutory provisions.

17. Based on the foregoing, we conclude that, in the case of a claim for the proceeds of a check received by a payee and not cashed prior to the payee's death, the six-year limitation of section 3702(b) only applies where section 5122 requires that the claim be submitted to the GAO for settlement, *i.e.*, where no eligible beneficiary of a class specified in section 5121(a) exists.

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**HELD:**

The proceeds of uncashed veterans' benefit checks which have been canceled pursuant to the Competitive Equality Banking Act of 1987 (CEBA), Pub. L. No. 100-86, 101 Stat. 552, are not payable unless a claim for them is made within six years after the claim accrues, as required by the Bar- ring Act, ch. 788, 54 Stat. 1061 (1940) (codified, as amended, at 31 U.S.C. § 3702(b)), regardless of whether the benefit checks were drawn on veterans' benefit appropriations. Claims based on checks which have been lost, stolen, paid on a forged endorsement, or were never received, and which have been canceled under the CEBA, must also be presented within the six-year period specified by section 3702(b). Section 3702(b) is not applicable, however, to a claim made to VA under 38 U.S.C. § 5122 by a payee's surviving spouse, child, dependent parent, or person who bore the expense of the payee's last sickness and burial, as specified in 38 U.S.C. 5121(a), for payment of sums represented by a check received by the payee but not negotiated before the payee's death. Instead, 38 C.F.R. § 3.1003(a)(1), which states that there is "no time limit for filing a claim to obtain the proceeds" of a check issued to a payee who died

prior to negotiating the check, is controlling for claims made under section 5122.

Mary Lou Keener