

**Department of  
Veterans Affairs**

# Memorandum

Date: May 2, 2000

VAOPGCPREC 5-2000

From: General Counsel (022)

Subj: Constitutionality of Retroactive Application of Proposed  
Legislation To Limit Time to Claim Insurance Proceeds

To: Under Secretary for Benefits (20)

QUESTION PRESENTED:

If Congress enacted legislation allowing the Department of Veterans Affairs (VA) to pay proceeds of National Service Life Insurance (NSLI) policies to alternate beneficiaries if the primary beneficiary does not claim such proceeds within a specified time limit, would the retroactive application of such legislation to existing NSLI contracts violate the Fifth Amendment of the Constitution?

DISCUSSION:

1. Currently, if a beneficiary of an NSLI policy does not file a claim for the proceeds of the policy, because the beneficiary either cannot be located or refuses to claim the proceeds, the amount payable remains with VA indefinitely. There is no statutory authority for VA to pay the proceeds to a contingent beneficiary or any other person in those circumstances. In contrast, statutes governing other Government insurance programs provide that, if the beneficiary does not claim the proceeds within a specified period, the Government may pay the proceeds to a contingent beneficiary or other persons determined to be equitably entitled to the proceeds. See 5 U.S.C. § 8705(b) and (c) (Federal Employees' Group Life Insurance); 38 U.S.C. § 1970(b) and (c) (Servicemen's Group Life Insurance). You have requested our opinion as to whether, if Congress established a similar provision with respect to payment of NSLI proceeds, such a provision could be applied retroactively without violating the constitutional rights of individuals eligible to claim proceeds under existing insurance contracts.

2. The constitutionality of any legislation would depend upon

the specific terms of the statute enacted by Congress. As a general matter, however, we believe that retroactive application of a statute limiting the time to claim proceeds of NSLI policies would likely be constitutional if the statute provided a reasonable grace period to beneficiaries who are currently eligible to claim insurance proceeds but have not yet done so.

3. An individual's rights under a Government insurance contract are "property" protected by the Fifth Amendment to the Constitution. See *Lynch v. United States*, 292 U.S. 571, 577 (1934). The Fifth Amendment protects such property interests in two ways. First, what is generally known as the "Due Process Clause" of the Fifth Amendment states that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." Second, what is generally known as the "Takings Clause" of the Fifth Amendment adds: "nor shall private property be taken for public use, without just compensation." It should be noted that the Federal Government is not bound by the provision in Article I, section 10, of the Constitution that "[n]o state shall . . . pass any . . . Law impairing the Obligation of Contracts," which the Supreme Court has characterized as imposing a greater restriction upon impairment of contract rights than the Fifth Amendment. See *Pension Benefit Guaranty Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 732-33 and n.9 (1984).

4. In *Lynch*, the Supreme Court considered the constitutionality of a statute abrogating all Government obligations under War Risk Insurance contracts for the express purpose of producing economic savings to the Government. The Court concluded that "the due process clause prohibits the United States from annulling [existing War Risk Insurance contracts], unless, indeed, the action taken falls within the federal police power or some other paramount power." *Lynch*, 292 U.S. at 579. Although the Court referred to the "due process clause", its determination was apparently based upon the Takings Clause of the Fifth Amendment. The Court stated that "[t]he Fifth Amendment commands that property not be taken without making just compensation," but did not discuss the provisions of the Fifth Amendment prohibiting deprivation of property without due process. *Lynch*, 292 U.S. at 579. Further, the Court noted that the statute at issue in that case "abrogated outstanding contracts . . . without making compensation to the beneficiaries." *Id.* Accordingly, it appears that the holding in *Lynch* was based on what is now commonly known as the Takings Clause of the Fifth Amendment,

rather than the provisions regarding due process.

5. The proposed legislation discussed in your opinion request would differ from the statute at issue in *Lynch* in two respects which, we believe, would be significant for purposes of the Takings Clause. First, the statute in *Lynch* would have allowed the Government to retain for its own use money otherwise payable pursuant to contract. In contrast, the legislative proposal discussed in your opinion request would not permit the Government to retain the insurance proceeds for its own use, but, rather, would merely allow VA to pay the insurance proceeds to a different beneficiary of the insured. This arrangement may suggest that the proposed legislation would not constitute a taking of property "for public use" within the meaning of the Fifth Amendment, because the proceeds would continue to be paid to the beneficiaries or heirs of the insured, in furtherance of the insured's contract rights and investment in the policy.

6. Second, unlike the statute in *Lynch*, the legislative proposal discussed in your opinion request would not necessarily abrogate existing contract rights, but would merely impose a time limit on the exercise of such rights. In *United States v. Locke*, 471 U.S. 84 (1985), the Supreme Court held that a statute requiring holders of existing mining claims to record their claims within a specified period in order to retain their claims was not a taking of property rights. The Court stated that "[r]egulation of property rights does not 'take' private property when an individual's reasonable investment-backed expectations can continue to be realized as long as he complies with reasonable regulatory restrictions the legislature has imposed." *Locke*, 471 U.S. at 107. Insofar as the proposed legislation would preserve a beneficiary's right to receive insurance proceeds by claiming them within a reasonable time period, we do not believe the statute would impose an unconstitutional taking. We note, however, that your opinion request does not indicate whether the legislation would provide a grace period for individuals who are currently eligible to claim proceeds under existing contracts but have not yet done so. We believe that providing such a grace period would significantly decrease any prospect that the legislation could be viewed as imposing an unconstitutional taking. Moreover, as explained below, we believe that such a grace period may be necessary to satisfy the Due Process Clause of the Fifth Amendment, to which we now turn.

7. The Due Process Clause generally requires that legislation impairing property rights must be supported by a legitimate legislative purpose and that the legislation must effect that purpose through rational means. See *Pension Benefit Guaranty Corp.*, 467 U.S. at 729. The Supreme Court has stated that "[i]t is by now well established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976). The Supreme Court has further explained:

[T]he strong deference accorded legislation in the field of national economic policy is no less applicable when that legislation is applied retroactively. Provided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches.

*Pension Benefit Guaranty Corp.*, 467 U.S. at 729.

8. We believe that the legislative proposal discussed in your opinion request would be supported by a legitimate legislative purpose. The opinion request states that VA is currently precluded from paying any proceeds under approximately 4,000 insurance policies because the primary beneficiary either cannot be located or has not claimed the proceeds, and that similar obstacles to payment arise with respect to approximately 200 additional contracts each year. The purpose of the proposed legislation would be to enable VA to release the proceeds to an alternate beneficiary or other person equitably entitled to the proceeds when payment cannot reasonably be made to the primary beneficiary, rather than retaining indefinitely proceeds which may never be claimed by the primary beneficiary. Such legislation would more precisely effect the purpose of the insurance contract, by ensuring that the benefit of the insured's investment is realized by an appropriate beneficiary, than the current requirement that VA retain such proceeds indefinitely if the primary beneficiary does not claim them. We believe that a purpose to permit VA to make payment to an alternate beneficiary after reasonable efforts to effect payment to the primary beneficiary would be a legitimate legislative purpose.

9. We believe also that there would be a legitimate legislative purpose for applying this payment scheme retroactively to existing policies where proceeds are currently payable due to the insured's death. Based on the facts stated in your opinion request, it appears that many of the cases where proceeds are currently payable but have not been claimed may involve deaths which occurred several years ago. The fact that the proceeds have already gone unclaimed for several years suggests a significant possibility that the primary beneficiary may never claim the proceeds. Accordingly, these cases present the most significant risk that the proceeds will never be paid to any party unless VA is given the authority to make payment to someone other than the primary beneficiary. The retroactive application of the statute would, therefore, be reasonably designed to ensure that the insured and his or her beneficiaries and heirs, rather than the Government, obtain the benefit of the insured's investment in the insurance policy.

10. As your opinion request suggests, courts may more closely scrutinize the purpose of legislation when the Government itself is a party to the contracts that may be affected by the legislation. Inasmuch as the Government is a party to the NSLI contracts which would be affected by the proposed legislation, it might be suggested that the proposed legislation is merely an improper attempt to unilaterally alter the government's contractual obligations. As a general rule, the terms of a Government contract will not be interpreted to preclude the Government from enacting legislation of general applicability or to exempt the other contracting party from the effects of such legislation. See *United States v. Winstar Corp.*, 518 U.S. 839, 878 (1996); *Bowen v. Public Agencies Opposed to Social Security Entrapment*, 477 U.S. 41, 52 (1986). At the same time, the Government cannot use its legislative authority for the mere purpose of avoiding its contractual obligations. See *Lynch*, 292 U.S. at 579. The Supreme Court has indicated that, when acts of Congress may affect the Government's contractual obligations, it is necessary to determine whether the legislative act in issue was issued for a legitimate sovereign purpose or was issued for the primary purpose of avoiding the government's contractual obligations. See *Winstar*, 518 U.S. at 2464-65; *Yankee Atomic Electric Company v. United States*, 112 F.3d 1569, 1575 (Fed. Cir. 1997).

11. We believe it is unlikely that the proposed legislation

could be viewed as an improper attempt to avoid Government liability for its contract obligations. As noted above, the proposed legislation would not relieve VA of its duty to pay the insurance proceeds, but would merely permit VA to make payment to someone other than the primary beneficiary. Accordingly, the legislation would not serve the Government's own self-interest but, conversely, would further the interests of the insured and his or her beneficiaries and heirs. In view of this purpose to facilitate payment of insurance proceeds in a greater number of cases, we do not believe that the legislation could be viewed as involving an improper purpose to relieve the Government of its contract obligations.

12. As noted above, the Due Process Clause requires not only a legitimate legislative purpose, but also that the legislation adopt reasonable means to accomplish the purpose. The Supreme Court has upheld a number of statutes which had the effect of extinguishing existing property rights derived from contract or some other source. See *Locke*, 471 U.S. at 104-09 (upholding Federal Statute requiring holders of unpatented mining claims to file annual statements of intent to hold those claims in order to preserve their pre-existing rights); *Pension Benefit Guaranty Corp.*, 467 U.S. at 728-34 (upholding Federal statute retroactively imposing penalty for termination of pension plans insured by Federal Government); *Texaco, Inc. v. Short*, 454 U.S. 516 (1982) (upholding state statute extinguishing rights under existing mineral leases unless owner files claim within two-year grace period from date of statute's enactment); *City of El Paso v. Simmons*, 379 U.S. 497 (1965) (upholding retroactive application of state statute imposing five-year time limit on exercise of right to redeem forfeited land under pre-existing public sale contracts). The Court's decisions in some such cases suggest that a significant, and perhaps decisive, procedural feature of the statutes was that they provided a grace period under which individuals could preserve their preexisting rights through a specific procedure imposing a reasonable and minimal burden on such individuals.

13. In *United States v. Locke*, 471 U.S. 84 (1985), the Court upheld, against a due process challenge, a Federal Statute requiring holders of unpatented mining claims to file annual notice of intent to hold those claims in order to preserve their pre-existing rights. The Court stated:

In altering substantive rights through enactment of rules of general applicability, a legislature

generally provides constitutionally adequate process simply by enacting the statute, publishing it, and to the extent the statute regulates private conduct, affording those within the statute's reach a reasonable opportunity both to familiarize themselves with the general requirements imposed and to comply with those requirements.

471 U.S. at 108 (emphasis added). In *Texaco, Inc. v. Short*, 454 U.S. 516 (1982), the court upheld, against a challenge under both the Due Process Clause of the Fourteenth Amendment and the Contracts Clause of Article I, section 10, a state statute imposing similar time-limited recordation requirements as a condition of retaining existing rights under mineral leases. The Court, quoting its prior decision in *Wilson v. Iseminger*, 185 U.S. 55, 62-63 (1902), stated:

"It may be properly conceded that all statutes of limitation must proceed on the idea that the party has full opportunity afforded to him to try his right in the courts. A statute could not bar the existing rights of claimants without affording this opportunity; if it should attempt to do so, it would not be a statute of limitations but an unlawful attempt to extinguish rights arbitrarily, whatever may be the purpose of its provisions."

454 U.S. at 527, note 21 (emphasis added).

14. We recommend that any legislation to impose a time limit on the exercise of the right to claim proceeds under NSLI contracts include a grace period in which currently-eligible beneficiaries may exercise their right to claim such proceeds. Assuming that the proposed legislation would provide such a grace period to persons currently eligible to claim proceeds, we believe that the legislation would likely satisfy due process requirements.

15. In evaluating the reasonableness of statutory procedures, courts generally look to three factors -- "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v.*

*Eldridge*, 424 U.S. 319, 335 (1976). The proposed legislation would generally further the private interest of the insured and his or her beneficiaries and heirs, by providing that the benefit of the policy is realized through payment to a beneficiary, rather than allowing the government to retain the proceeds. There would be some risk that the primary beneficiary will be deprived of benefits in cases where he or she does not become aware of the right to claim proceeds until the statutory period has expired and the proceeds have been released to another person. However, assuming that VA would continue to make reasonable efforts to locate the primary beneficiary and inform him or her of the need to claim the proceeds within the prescribed period, this risk would be minimized. Moreover, the risk of deprivation to such persons may be justified by the countervailing concern that requiring VA to retain the proceeds indefinitely would deprive the insured and his or her beneficiaries or heirs of the value of the insured's investment in the insurance policy. Finally, apart from providing a reasonable grace period and making reasonable attempts to locate the primary beneficiary, we do not believe any "additional procedures" to protect the interests of primary beneficiaries would be justified. Congress could, theoretically, require VA to seek reimbursement of amounts paid to an alternate beneficiary if the primary beneficiary subsequently claims the proceeds. However, the adjudicatory and collection actions necessary to such proceedings would impose a significant burden on VA and, moreover, may impose a significant and arguably unreasonable liability upon the individual to whom VA paid the proceeds.

16. The Supreme Court has held that requiring individuals to act within a reasonable time period to preserve their preexisting rights "imposes the most minimal of burdens on claimants." *Locke*, 471 U.S. at 106; see also *Short*, 454 U.S. at 531 ("a mineral owner may safeguard any contractual obligations or rights by filing a statement of claim in the county recorder's office. Such a minimal 'burden' on contractual obligations is not beyond the scope of permissible state action."). The Court has further stated that "[i]t is ... well settled that the question whether a statutory grace period provides an adequate opportunity for citizens to become familiar with a new law is a matter on which the Court shows the greatest deference to the judgment of . . . legislatures." *Short*, 454 U.S. at 532. Accordingly, we believe that, if the proposed legislation provides a reasonable grace period under which persons currently eligible to claim NSLI proceeds may preserve their rights by filing a claim with VA, the



retroactive application of the statute would satisfy the requirements of the Due Process Clause of the Constitution.

HELD:

If legislation imposing a time limit for claiming proceeds of a National Service Life Insurance policy provided a reasonable grace period in which individuals who are currently eligible to claim such proceeds may do so following the statute's enactment, we believe that the retroactive application of such legislation would likely satisfy the requirements of the Fifth Amendment to the Constitution. If the legislation failed to provide such a grace period, there would be a greater risk that the retroactive application of the legislation could be construed to violate the constitutional rights of individuals whose existing right to claim insurance proceeds would be extinguished.

Leigh A. Bradley