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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-219781

DATE: Sept. 3, 1985 per E. Beale

MATTER OF: Need for Regulations Under 31 U.S.C. § 3716

DIGEST: Agencies are entitled to a reasonable time in which to promulgate regulations to implement the administrative offset authority of section 10 of the Debt Collection Act of 1982, 31 U.S.C. § 3716. During the interim period, agencies should provide debtors with the rights specified in section 10 or their substantial equivalent. If agency provides these rights, offset under section 10 is not precluded solely because of absence of final agency regulations.

The Acting General Counsel of the United States Department of Education (USDE) has requested our opinion concerning whether Government agencies may take administrative offset under section 10 of the Debt Collection Act of 1982, 31 U.S.C. § 3716 (1982), before they have issued their final regulations to implement that act. For the reasons given below, we conclude that agencies are entitled to a reasonable period of time in which to promulgate the regulations required by section 10 of the act, and that so long as a debtor is afforded the substantial equivalent of the procedural rights conferred by section 10, an agency may take administrative offset prior to finalizing these regulations.

BACKGROUND

According to USDE, repeated attempts to collect a debt which arose under the Federal Insured Student Loan Program, 20 U.S.C. §§ 1071 et seq. (1982), have proven unsuccessful.^{1/} However, USDE has now learned that its debtor has entered into a number of "large procurement contracts" with the Department of Defense (DOD). It appears that, under these DOD contracts, the debtor is regularly receiving payments that exceed the amount of its debt to USDE. USDE proposes to have DOD collect the debt pursuant to section 10 of the Debt Collection Act of

^{1/} The amount of the debt and the identify of the debtor were not specified, and are not relevant for purposes of our decision.

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1982 (DCA), 31 U.S.C. § 3716(a) by taking offset against the DOD contract payments.^{2/}

USDE notes that section 10 appears to require agencies to promulgate regulations before taking offset. 31 U.S.C. § 3716(b). Section 10 also requires agencies to afford debtors certain procedural rights before taking offset. 31 U.S.C. § 3716(c). Neither USDE nor DOD have promulgated final regulations to implement section 10. USDE says that both agencies are diligently working to do so. However, USDE observes that the development of regulations to implement the Debt Collection Act of 1982 has proved to be a complex and time-consuming task. USDE recognizes that section 10 may be read strictly and literally to prohibit offset under it prior to the issuance of final regulations. Nevertheless, USDE argues that, so long as an agency accords its debtors the prescribed procedural protections and is diligently working to promulgate the required regulations, the agency should be allowed to take offset before those regulations have been finalized.

DISCUSSION

The Debt Collection Act of 1982 amended the Federal Claims Collection Act of 1966. Both acts have been codified in title 31 of the U.S. Code, chapter 37. According to its legislative history, the DCA was intended to "put some teeth into Federal [debt] collection efforts" by giving "the Government the tools it needs to collect these debts, while safeguarding the legitimate rights of privacy and due process of debtors." 128 Cong. Rec. S12328 (daily ed. Sept. 27, 1982) (statement of Sen. Percy). Section 10 of the DCA provides that agencies may collect claims owed to the United States by means of administrative offset, after the debtor has been accorded certain procedural rights. 31 U.S.C. § 3716(a). Section 10 also provides that:

^{2/} USDE seeks to use section 10 because the statutes and regulations which govern the Federal Insured Student Loan Program do not address the use of offset against payments made by other agencies of the Government to collect debts arising under this program. See 20 U.S.C. §§ 1071 et seq.; 34 C.F.R. pt. 682 (1984). Cf. 34 C.F.R. § 682.711(c) (authorizing USDE to take offset against "any benefits or claims due the lender [from USDE].") In addition, we have been informally advised by USDE that the relevant contractual agreements neither permit nor prohibit offset actions. Cf. B-214679, Apr. 29, 1985, 64 Comp. Gen. ____.

"Before collecting a claim by administrative offset under * * * this section, the head of an executive or legislative agency must prescribe regulations on collecting by administrative offset based on--

"(1) the best interests of the United States Government;

"(2) the likelihood of collecting a claim by administrative offset; and

"(3) for collecting a claim by administrative offset after the 6-year period for bringing a civil action on a claim under section 2415 of title 28 has expired, the cost effectiveness of leaving a claim unresolved for more than 6 years."
31 U.S.C. § 3716(b).

In addition to this requirement for regulations, the Federal Claims Collection Act of 1966 (which section 10 amended) provides that agency regulations concerning debt collection, including those pursuant to section 10, must be consistent with the Federal Claims Collection Standards (FCCS), 4 C.F.R. ch. II, which are joint regulations issued by GAO and the Department of Justice under the 1966 act. 31 U.S.C. § 3711(e) (1982). Agency regulations to implement section 10 could not be finalized until the joint regulations had been revised to reflect the 1982 act. Those revisions were published on March 9, 1984, with an effective date of April 9, 1984. 49 Fed. Reg. 8889 (1984).

Under a strict, literal interpretation of section 10, no agency of the Government could use administrative offset to collect debts until it has published the final regulations required by section 10. This interpretation, in our opinion, is an unduly technical reading of the law, and produces a result which is inconsistent with the stated purposes of the act.

It is fundamental that statutes are to be construed so as to give effect to the intent of the legislature. E.g., United States v. American Trucking Ass'ns, 310 U.S. 534 (1940); 2A Sutherland, Statutes and Statutory Construction, § 45.05 (Sands ed. 1973); 55 Comp. Gen. 307, 317 (1975). It is also fundamental that statutory constructions which produce absurd or unreasonable results should be avoided when they are at

variance with the purpose and policy of the legislation as a whole. E.g., Perry v. Commerce Loan Co., 383 U.S. 392 (1966); 2A Sutherland, supra, §§ 45.12, 47.38; 61 Comp. Gen. 461, 468 (1982). In our opinion, the administrative turmoil and financial losses that might result from the summary suspension of all offset activities pending promulgation of individual agency regulations could not have been intended by the Congress.

The DCA made many sweeping, complicated changes in the Government's basic claims collection authority, including its longstanding common law authority to take administrative offset. Those changes reflected congressional balancing of conflicting policies and purposes, including the desire to substantially improve and accelerate the collection process, yet simultaneously protect the legitimate privacy and due process rights of debtors. S. Rep. No. 378, 97th Cong., 2d Sess. 32 (1978). The Congress was alarmed at the "substantial losses" being suffered in the Government's claims collection programs. E.g., S. Rep. No. 378, supra, at 2-4. Indeed, the legislative history states that the "major purpose of this legislation is to facilitate substantially improved collection procedures in the federal government." S. Rep. No. 378, supra, at 1. At the same time, however, it does not appear that Congress expected the sweeping changes made by the act to take place overnight. See 128 Cong. Rec. H8052-53 (daily ed. Sept. 30, 1982) (remarks of Reps. Kindness and Conable); 128 Cong. Rec. S12334 (daily ed. Sept. 27, 1982) (remarks of Sen. Sasser). We find it difficult to believe that the Congress intended to further exacerbate the "substantial losses" being suffered in the Government's claims collection programs by requiring collection to halt until lengthy, complicated regulations could be formulated, proposed, and finalized-- first by GAO and the Justice Department (since the statute requires individual agency regulations to be consistent with these joint standards), and then by each agency.

It seems far more likely that Congress expected the agencies to develop implementing regulations as quickly as reasonably possible. During the interim period prior to the finalization of those regulations, the Congress must have intended that the agencies proceed with collection under their common law authority but adding the substantive and procedural protections for debtors added by the new amendments. In this regard, we refer to the Energy Action Educational Foundation litigation which reflects the judicial view of the effect of delayed regulations in similar circumstances.

That litigation concerned the 1978 amendments to the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 et seq., which required the Department of the Interior to promulgate regulations reforming the way in which Interior awarded leases for the exploration and development of oil and natural gas deposits on the outer continental shelf (OCS). After the act passed, Interior continued to award leases for oil and gas exploration under an awards process which reflected some, but not all, of the reforms mandated by Congress. In addition, Interior had not yet promulgated the regulations required by the act. A lawsuit was instituted to enjoin Interior from awarding any further leases until it promulgated the required regulations.

The district court ruled that Interior's 9-month delay in promulgating the regulations necessary to implement the statutorily mandated reforms "although lengthy, is not arbitrary and capricious in light of the complexity and sensitivity involved in preparation of such regulations." Energy Action Educational Foundation v. Andrus, 479 F. Supp. 62, 63 (D.D.C. 1979). Therefore, the court denied the request for a preliminary injunction. The lower court's decision was affirmed by the D.C. Circuit Court of Appeals. Energy Action Educational Foundation v. Andrus, 631 F.2d 751 (D.C. Cir. 1979). A concurring opinion stated:

"* * * [The Government's] immediate responsibility is to promulgate the necessary regulations as rapidly as possible in order to implement Congress' reform goals.

* * * * *

"* * * At this point, on this record, the delay is not clearly unreasonable, but the more sales of leases which are held without promulgation of the new regulations which are necessary before the congressionally-mandated program of reform can get under way, the more unreasonable the delay appears. * * *" 631 F.2d at 762 (Wald, J., concurring) (footnote omitted).

A year later, this matter again came before the appeals court, but this time with a slightly different result. Energy Action Educational Foundation v. Andrus, 654 F.2d 735 (D.C. Cir. 1980), rev'd on other grounds, sub nom. Watt v. Energy Action Educational Foundation, 454 U.S. 151, 160 n.11 (1981). The issue before the court was summarized as follows:

"Having found in the language and history of the Act a Congressional imperative to promulgate regulations, as a necessary prelude to [implementation of the reforms mandated by the Act], the critical question is when does such an obligation become due." 654 F.2d at 754.

The court agreed with Interior that "Congress did not intend to hold up all OCS leasing and development until all the regulations are promulgated. To do so would be to undervalue the stated statutory objectives of expediting development of the OCS and mitigating this nation's energy problems." 654 F.2d at 755 n.96. Nevertheless, the court found that:

"* * * given the absence of significant progress * * * the day has arrived when the [Government's] continued delay [of over 2 years] is unreasonable and frustrates the essential purposes of [the act]." 654 F.2d at 737.

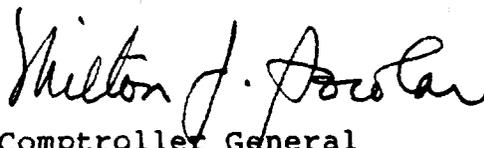
We think these cases support the proposition that agencies are entitled to a reasonable period of time in which to promulgate regulations required by statute. The statute is violated when the delay results in frustration of the statute's "essential purposes." We are in no way suggesting that agencies may continue to use offset without regard to section 10 for an indefinite period. What we are saying is that, if an agency provides the protections required by section 10, and if it is making reasonable progress toward the issuance of its regulations, then we think the "essential purposes" of section 10 are being satisfied and that the agency may continue to exercise administrative offset during the interim period prior to the finalization of those regulations.

Procedural rights of debtors, including notice and an opportunity for administrative review, are specified in 31 U.S.C. § 3716(a). As noted earlier, regulations are required by 31 U.S.C. § 3716(b), and are to be based on the best interests of the United States, the likelihood of collecting claims by administrative offset, and the cost effectiveness of leaving claims unresolved for more than 6 years. The regulations appear designed to assure consideration of these three factors, rather than advancing the rights specified in subsection (a). Presumably, the regulations will also address the subsection (a) procedural rights, and thus might be said to help in protecting those rights by assuring uniformity and certainty of procedure. Nevertheless, those rights derive from the statute itself. Lack of regulations

would not excuse failure to provide them. Therefore, agencies should provide those rights or their substantial equivalent without awaiting the finalization of regulations.

CONCLUSION

Based on the foregoing analysis, we conclude that the Government is entitled to a reasonable period of time in which to promulgate regulations to implement section 10 and that, so long as debtors are accorded the substantial equivalent of the procedural rights specified in 31 U.S.C. § 3716(a), agencies are not precluded from taking administrative offset under section 10 prior to finalization of their regulations. Accordingly, USDE is authorized to pursue its offset remedy in accordance with 31 U.S.C. § 3716 and 4 C.F.R. § 102.3.



Acting Comptroller General
of the United States