



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

Ms. Finley  
SSA  
14538

B-198458

August 6, 1980

Mr. Max Cleland  
Administrator  
Veterans Administration

Dear Mr. Cleland:

This is in response to a request from Guy H. McMichael, General Counsel of VA, for our advice concerning the applicability of the statute of limitations contained in 28 U.S.C. §2415 to administrative debt collection practices. That statute imposes a 6-year limitation on civil actions brought by the Government for money damages or to recover money erroneously paid to a Federal employee or member of the uniformed services. 28 U.S.C. §2415(a) and (d).

Mr. McMichael refers to the conflicting views of the Department of Justice and our Office on the effect of this statute on the administrative collection of United States claims. By memorandum dated September 29, 1978, Mr. John M. Harmon, Assistant Attorney General, Office of Legal Counsel, sent the Office of Personnel Management ((OPM), formerly the Civil Service Commission) its opinion on the issue of whether OPM could deduct, or administratively offset, against retirement or annuity payments, debts which could not be pursued in court because of the statute of limitations. The Assistant Attorney General concluded that the 6-year limitation extends to OPM's authority to administratively offset these claims. We took a contrary position in 58 Comp. Gen. 501 (1979). In that decision our Office concluded that, based on our review of court decisions, prior Comptroller General decisions and the legislative history of the statute of limitations, 28 U.S.C. §2415 has no application to administrative setoff.

You expressed concern about the possible effect of this statute on the administrative debt collection activities described below and requested our views on the applicability of §2415 to these activities.

1. Reporting delinquent debts to credit bureaus. VA anticipates that Congress will enact legislation permitting VA to report delinquent debts to consumer reporting agencies. VA states the

011603

purpose of reporting these delinquent debts is to affect the veterans' credit and ultimately compel repayment of the debt. VA questions whether §2415 precludes reporting time-barred debts.

2. Repayment Program. VA is in the process of identifying Federal employees with delinquent indebtedness to VA in accordance with OMB guidelines for computer match programs. Once they are identified and VA is granted the necessary approval for the project, VA anticipates establishing a program in which the employing agency will accomplish repayment through counseling, consensual payroll deductions and employee disciplinary measures.
3. VA currently follows a procedure of withholding approval of VA home loan guaranty applications for veterans with delinquent education overpayments until satisfactory arrangements are made for repayment of the delinquent debt. VA states that the purpose of this policy is to obtain repayment of prior debts owed to the VA by withholding loan approval. At present, VA takes into consideration these delinquent debts regardless of whether VA is precluded by §2415 from bringing a civil action to recover these debts.

In our opinion, 28 U.S.C. §2415 has no application to these administrative debt collection activities. In 58 Comp. Gen. 501, we stated the following:

"The general rule is that statutes of limitations applicable to suits for debts or money demands bar or run only against the remedy (the right to bring suit) to which they apply and do not discharge the debt or extinguish, or even impair, the right or obligation, either in law or in fact, and the creditor may avail himself of every other lawful means of realizing on the debt or obligation. See Mascot Oil Co. v. United States, 42 F.2d 309 (Ct. Cl. 1930), affirmed 282 U.S. 434; and 33 Comp. Gen. 66 (1953). See also Ready-Mix Concrete Co. v. United States, 130 F. Supp. 390 (Ct. Cl. 1955).

"As shown above, the inherent right of administrative setoff by the Government was recognized by the courts and our Office long before the enactment of the statute of limitations contained in 28 U.S.C. §2415. \* \* \*"

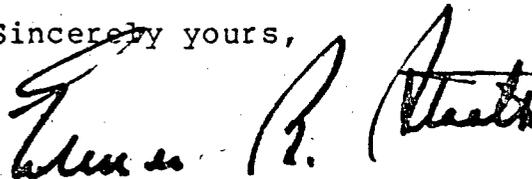
We concluded that §2415 in no way impinges upon this right to offset.

Since we believe that the 6-year limitation applies only to the right to bring suit, any other efforts to collect those debts is unaffected by this limitation. Consequently, we believe that VA may use any lawful administrative action in an effort to achieve repayment of time-barred debts.

We do not interpret the Department of Justice's position on §2415 as necessarily extending to an agency's administrative collection efforts. Of course, the issue of the applicability of the 6-year limitation would be less significant in the case of debts owed VA by individuals currently employed by the Federal government if government agencies had clear authority to offset general debts against current salary. We will be forwarding to Congress in the near future a legislative proposal to permit the collection of general debts against current salary. Assistant Attorney General Harmon has expressed his support in this endeavor.

Finally, we would like to make the following points on the first two VA efforts described above. Although, in our view, §2415 does not affect the VA proposal to report delinquent debts to consumer credit agencies, the Fair Credit Reporting Act, 15 U.S.C. §1681a et. seq., imposes certain limitations on the use of delinquent debt information that may affect this proposal. Section 1681c(a)(4) of that Act prohibits consumer reporting agencies from including in consumer reports delinquent account information "that antedates the report by more than seven years." Our second point concerns VA's proposal to take disciplinary action as one of the measures to be used in the repayment program described above. In this regard, although frequent or persistent failure to pay debts can be grounds for dismissal from Federal employment, failure to pay a single debt is not. White v. Bloomberg, 345 F. Supp. 133 (1972); McGuire v. United States, 145 Ct. Cl. 17 (1959).

Sincerely yours,



Comptroller General  
of the United States



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

B-198458

August 6, 1980

The Hon. Ronald M. Mottl  
Chairman, Subcommittee on  
Special Investigations  
Committee on Veterans' Affairs  
United States House of Representatives

Dear Mr. Chairman:

During testimony before your Subcommittee on the Veterans Administration debt collection efforts you expressed interest in our response to the question of the applicability of the 6-year statute of limitations to administrative debt collection procedures.

Enclosed is a copy of our response concluding that the Government's right to administratively collect its debts is not subject to the statute of limitations. In addition, we are enclosing a copy of our decision concerning the effect of that statute on administrative setoff.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Thomas R. Stebbins".

Comptroller General  
of the United States

Enclosures