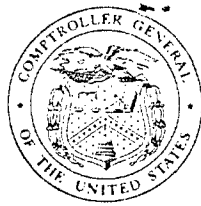


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DECISION

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

FILE: B-197679 DATE: March 31, 1980

MATTER OF: Collection Of Interest On Veterans
Administration Benefit Overpayments

DIGEST:

1. Distinction between contractual debts and those arising from overpayments of noncontractual benefits is not relevant in determining whether it is proper to charge interest on debts due the Government, pursuant to Federal Claims Collection Standards. Thus, absent a statute or other rule to the contrary, Veterans Administration (VA) has authority to charge interest on equitable theory that creditor is entitled to compensation for detention of his money without regard to manner in which obligation arose.

2. Federal Claims Collection Standards do not mandate procedural requirements to be followed by agencies in charging interest on delinquent debts. Therefore VA is free to adopt such procedural refinements as it deems appropriate. For example, where debtor could demonstrate that original debt notification was never received, imposition of interest for time between original notification and later set-off against other amounts due debtor by Government would appear to be inequitable. Consequently, it might be desirable to provide by regulation for a second notification.

By letter of January 29, 1980, the General Counsel of the Veterans Administration (VA) requested our advice on implementing section 102.11 of the Federal Claims Collection Standards. That section was recently revised to provide in part:

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"In the absence of a different rule prescribed by statute, contract, or regulation, interest should be charged on delinquent debts and debts being paid in installments in conformity with the Treasury Fiscal Requirements

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B-197679

Manual * * *." 4 C.F.R. §102.11, as amended,
44 Fed. Reg. 22701, 22702 (April 17, 1979).

The General Counsel raises questions concerning VA's author-
ity to charge interest on debts arising out of direct benefit
or entitlement programs, including the unauthorized provision
of medical care, and concerning the due process protection
that will be necessary before instituting a policy of charg-
ing interest.

The VA General Counsel refers to a January 3, 1977
GAO memorandum from our General Counsel to the Director
of our Financial and General Management Studies Division,
B-137762.21-0.M., containing our legal analysis of the
authority for Federal agencies to charge interest on
delinquent accounts. In that memorandum we stated the
following:

"While there is no general statutory
provision authorizing agencies to assess
interest on delinquent accounts, such a
right has been recognized by the courts
as a measure of damages for delay in pay-
ment of an obligation. * * *"

Consequently, we concluded that agencies may charge interest
on overdue accounts as long as the rate of interest is not
so high as to constitute a penalty and is assessed only
after notice of the debt is given and the debt itself is
liquidated.

The VA General Counsel recognizes that the authorities
cited in the GAO memorandum clearly support a willingness
by courts, in the absence of a statutory or judicial mandate,
to assess interest in situations where the transaction giving
rise to the overpayment is contractual. He points out, that
this is so even where the terms of a contract contain no
specific obligation to repay the debt with interest. However,
he questions whether these authorities also support charging
interest in the situation where the debt did not arise out
of a contractual relationship.

We believe that VA has the authority to charge interest on debts arising from direct benefit programs and that the authorities cited in the memorandum provide support for this position.

In our opinion, the distinction between contractual debts and those arising from overpayments of benefits is not relevant in determining whether it is proper to charge interest on delinquent debts owed the Government. Interest on delinquent debts has traditionally been allowed in the absence of a statute on the equitable theory that a creditor is entitled to compensation for the detention of his money without regard to the manner in which the obligation arose. The standards ordinarily applied are that the amount be liquidated and notice of the debt and the obligation to repay the debt with interest be communicated to the debtor. See Restatement of The Law of Restitution, §63 and §156, Comment b. This rationale has been applied to debts owed the Government arising from noncontractual subsidy overpayments. Thus, in Wilson & Co. v. Reconstruction Finance Corporation, 194 F.2d 1016 (Emer. Ct. App. 1952), the court held that it was within the power of the Government to impose and collect interest. A series of cases that also involved the authority of the Reconstruction Finance Corporation to charge interest on the recovery of subsidy overpayments relied on the Wilson decision. See United States v. Bass, 215 F.2d 9 (8th Cir. 1954); H.P. Coffee Company v. Reconstruction Finance Corporation, 215 F.2d 818 (Emer. Ct. App. 1954); Riverview Packing Co. Inc. v. Reconstruction Finance Corporation, 207 F.2d 361 (3rd Cir. 1953); Reconstruction Finance Corporation v. Service Pipe Line Co., 206 F.2d 814 (10th Cir. 1953).

It is important to emphasize that a benefit overpayment which is not repaid when due and with respect to which waiver is not granted should not be classified as a statutory "benefit." Rather, it is a debt owed the Government to which judicially approved, equitable rules to prevent the unjust enrichment of the debtor at the expense of the creditor should apply.

Similarly, we find no support for the proposition that interest must be "judicially mandated," by which we understand the General Counsel's argument to be that the

equitable amount due as interest for failure to timely repay a debt can only be initiated by a court and cannot be established in the first instance by administrative action.

On the question of whether interest must be judicially mandated, a series of cases involving overpayments of noncontractual subsidies and amounts owed the Government as a result of contract renegotiation proceedings endorsed the administrative imposition of interest. United States v. Philmac Mfg. Co., 192 F.2d 517 (3 Cir. 1951), a renegotiation case, had the following to say on this point at page 519:

"That interest may be recovered on money due the Government even in unilaterally determined liability is well recognized. Likewise, it has seemed pretty clear to courts handling cases arising under the Renegotiation statutes that one of the objectives to be attained was prompt collection from those who owed the Government money."

Wilson & Co. v. Reconstruction Finance Corporation, 194 F.2d 1016 (Emer. Ct. of Appeals, 1952), applied the rationale in the Philmac case to a situation where interest was imposed on non-contractual subsidy overpayments by administrative order rather than by regulation, as follows, at 1022:

"That [the Philmac] situation is closely akin to the one before us. In one, overpayments upon contracts were in question; in the other, overpayments on subsidies. But in both instances, in the first by regulation, in the second by a declared policy, known to complainant and previously acceded to by it, the question was as to the power of the governmental agency to impose and collect interest."

While an agency determination of the amount of interest to be charged on delinquent debts is not binding on the courts absent a statute, judicial precedents clearly establish the right to charge interest in such situations.

On the issue of imposing interest on debts collected by set-off against other amounts due the debtor by the Government, the VA General Counsel questions the propriety of charging interest without providing the debtor an opportunity to address the issue of his fault in failing to repay the amount due in a timely manner. Section 8020.20b of the Department of Treasury Cash Management Regulations, revised by Transmittal Letter 267 (May 7, 1979), provides as follows concerning the charging of interest on amounts owed the Government which are not covered by contracts or other formal arrangements:

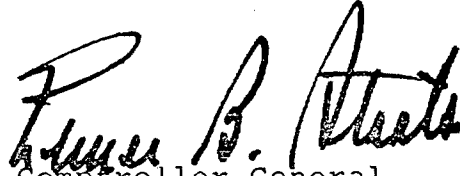
"Initial notifications of amounts due the Government, not covered by contracts, agreements, or other formal payment arrangements, will inform the debtor of the basis for the indebtedness, the date by which payment is to be made (due date), and the requirements concerning additional charges for payments received after the due date."

Similarly, Section 102.2 of the Claims Collection Standards, 4 C.F.R. 102.2, requires written demands upon debtors which are to include applicable interest requirements and which provide for an opportunity for the debtor to contest the debt. Also, 38 U.S.C. 3102 authorizes the Administrator of VA to waive recovery of benefit overpayments where recovery would be against equity and good conscience.

Once a debtor has had an opportunity to contest the validity of the underlying debt, or request its waiver, it is difficult to postulate a situation where he would have a defense to the charging of interest based on his delay in repaying the amount owed. In situations where a debtor could demonstrate that the original debt notification was never received, the imposition of interest for the time between the original notification and the later set-off of the amount due would appear to be inequitable. Accordingly, provision by regulation for a second notification, before set-off, of the existence of the debt and the amount of interest accrued since the original due date, with an opportunity to contest the debt or the imposition of interest, might be desirable.

B-197679

In any event, the Claims Collection Standards do not mandate procedural requirements to be followed in assessing and collecting interest on delinquent debts. Thus VA is free to establish such procedural refinement as it deems appropriate in implementing section 102.11.


Comptroller General
of the United States