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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Department of the Air Force--Claims on Checks
Subject to Limited Payability Provisions of
Competitive Equality Banking Act of 1987

File: B-239249

Date: April 15, 1991

DIGEST

1. An agency may, in issuing replacement checks for pre-effective date checks canceled under the provisions of Public Law 100-86, charge the original appropriation that supported the obligation to the extent funds remain available.
2. Availability of funds is subject to the new account closing procedures enacted in the National Defense Authorization Act, Fiscal Year 1991. Pub. L. No. 101-510.

DECISION

This is in response to a request for an advance decision from the Department of the Air Force (Department) on the proper funding for payment of valid claims presented on checks issued prior to October 1, 1989 and thus subject to cancellation under the provisions of Public Law 100-86, § 1003, 101 Stat. 658 (1987).

BACKGROUND

The Competitive Equality Banking Act of 1987, Public Law 100-86, § 1006, 101 Stat. 659 (1987), amended 31 U.S.C. § 3328 and created a new section 3334 to establish time limits on the payability of government checks. The new section 3334 provides that:

"(b) **Checks issued before effective date.**--(1) Not later than 18 months after the effective date of this section, the Secretary shall identify and cancel all Treasury checks issued before such effective date that have not been paid in accordance with section 3328 of this title.

"(2) The proceeds from checks cancelled pursuant to paragraph (1) shall be applied to eliminate the balances in accounts that represent uncollectible accounts receivable and other costs associated with the payment of checks and check claims by the Department of the Treasury on behalf of all payment

certifying agencies. Any remaining proceeds shall be deposited to the miscellaneous receipts of the Treasury.

(c) **No effect on underlying obligation.**--Nothing in this section shall be construed to affect the underlying obligation of the United States, or any agency thereof, for which a Treasury check, was issued."

The Department is concerned about how to properly fund claims for payment of the underlying obligation to potential payees of pre-effective date canceled checks. The Department suggests that since the 1987 Act entitles Treasury to the proceeds from cancellation of pre-effective date checks, the underlying obligation to the payee can be legally satisfied by charging the original appropriation.

The Treasury's implementing regulations provide that after October 1, 1990, Treasury will no longer settle claims on unnegotiated checks issued prior to the effective date of the Act.^{1/} Treasury Financial Manual, Bulletin No. 90-03. The regulation also states that if such claims are presented to the agency responsible for the underlying obligation after October 1, 1990, "[d]ecisions as to the payee's entitlement and the source of funds for settlement are the agency's responsibility." *Id.* Treasury officials have told us, informally, that they have been advising all agencies that their interpretation of the Act requires agencies to seek supplemental appropriations to pay any claims on pre-effective date canceled checks submitted for payment. We conclude that the original appropriation may be charged to the extent funds are available. The availability of funds is subject to the new account closing provisions contained in the National Defense Authorization Act, Fiscal Year 1991, Pub. L. 101-510, §§ 1405, 1406, 104 Stat. 1675 (1990).

ANALYSIS

Based on our examination of the statute and its history, we conclude that an agency may, in issuing a replacement check for canceled pre-effective date checks, charge the original

^{1/} According to section 1006 of the Act, the amendments made by the Act were to become effective 6 months after the date of enactment or on such later date as the Secretary of the Treasury prescribed by regulation. On February 8, 1988, the Treasury set October 1, 1989 as the effective date. 53 Fed. Reg. 10366.

appropriation that supported the obligation to the extent funds remain available in that appropriation.

First, the statutory language is unequivocal in stating that the underlying obligation of the United States for which a Treasury check was issued remains unaffected, 31 U.S.C. § 3334(c); see also H.R. Rep. No. 261, 100th Cong., 1st Sess. 188 (1987); 132 Cong. Rec. E300-301 (daily ed. Feb. 6, 1986) (statement by Rep. Wylie introducing original limited payability bill). Thus, the obligation of the government to pay and the entitlement of the payees remains unchanged.

Second, although the specific moneys backing the checks are, by law, diverted for another use, only those moneys are shifted. The underlying obligations for which the checks were issued remain valid.^{2/} Thus, should claims be submitted under those obligations, the original appropriations charged may be used to support the replacement checks.^{3/} Of course, in the event that the original appropriation contains insufficient funds to cover check claims presented, an agency would have no choice but to seek an appropriation to liquidate the underlying obligation.

The recently passed National Defense Authorization Act for fiscal year 1991 (Authorization Act) provides new procedures for closing expired accounts. Pub. L. No. 101-510, § 1405, 104 Stat. 1485, 1675 (1990). These account closure provisions affect the availability of obligated and unobligated balances to support replacement checks liquidating the old obligations in fixed accounts.^{4/}

^{2/} We note that the provision which states that the underlying obligation of the United States remains unaffected preserves a claim for payment but does not resurrect claims that are otherwise unenforceable.

^{3/} In your letter you express concern that issuing a replacement check might be considered double payment of an obligation. Since the original check was cancelled by operation of law, and the issuance of a replacement check is required (assuming the original obligation is still enforceable), certifying and disbursing officers are not making double payment. To avoid the appearance of double payment, it should be noted in the accounts that the first check was cancelled and issuance of the second check was required by Public Law 100-86.

^{4/} Fixed accounts are appropriation or fund accounts with balances that are available for a definite period of time.

In brief, the Authorization Act contains rules for closing all appropriation accounts (for both defense and civilian agencies) after certain time periods. What follows is a brief discussion summarizing the new rules regarding the availability of fiscal year accounts for payment of all pre-effective date (October 1, 1989) check claims.

For fiscal years 1989 and 1990, obligated and unobligated account balances are carried in expired accounts for 5 fiscal years until September 30, 1994 and 1995, respectively. Payment of old balances that are canceled after the 5-year period may be paid from current appropriations made for the same general purpose subject to a limitation of 1 percent of the annual appropriation for the account prescribed by 31 U.S.C. § 1553(b)(2). Specifically:

--For annual accounts, the limitation is 1 percent of the annual appropriation for the account, not total budgetary resources.

--For multiple year accounts, the limitation of 1 percent applies to all the appropriations that have not yet expired for obligational purposes.

Thus, if a valid check issued in fiscal year 1989 is presented for payment it may be charged to the fiscal year 1989 appropriation expired account up until September 30, 1994 to the extent funds are available in that account. Thereafter, the claim may be paid from a current appropriation available for that same purpose up to the 1 percent limitation.

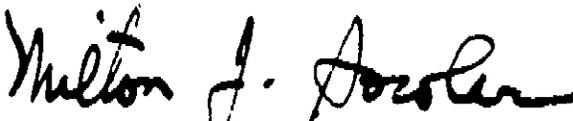
For checks issued in fiscal year 1988 and earlier, the complicated transition rules for the new account closing procedures apply. In this regard, OMB Circular No. A-34, Part XI as added by OMB Bulletin No. 91-07, January 17, 1991, gives specific guidance on pre-1988 account availability. In summary, however, we note that amounts transferred to "M" accounts before September 30, 1990 remain available for obligation adjustment disbursement until September 30, 1993. Thereafter, all obligated balances in "M" accounts are canceled. Payments on claims that come due after September 30, 1993 may be made from unexpired/current appropriations available for the same purpose so long as no more than 1 percent of the unexpired appropriation or the unexpired balance of the original appropriation, whichever is less, is used to pay canceled balances.

Any balances in the "M" accounts that were more than 5 years old (accounts that expired at the end of fiscal year 1983 and prior) were canceled and withdrawn on March 6, 1991 under the transition provision of the new account closing procedures. Any obligated balances that have been in the "M" account for

more than 5 years must be canceled at the end of September 30 of each following year. This applies to accounts that expired at the end of fiscal years 1984 through 1988. For example, for accounts that expired at the end of fiscal years 1984 and 1985, obligated balances must be canceled at the end of September 30, 1991, and September 30, 1992, respectively. Any obligations related to these canceled balances may be paid from unexpired/current appropriations, subject to the limitations stated above.

All unobligated balances in the merged surplus authority were canceled on December 5, 1990. Thus, all unobligated balances that expired at the end of fiscal year 1988 or prior fiscal years no longer exist and cannot be considered as available funds.

Again, OMB Circular No. A-34, Part XI, as added by OMB Bulletin No. 91-07, should be consulted for detailed guidance on account closure. We note that older obligations, related to canceled accounts that cannot be paid with current unexpired appropriations because the above mentioned limitations have been exceeded, would require specific legislative authority (i.e., reappropriations or supplemental appropriations) from the Congress.

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