

**DATE:** 07-18-90

**CITATION:** VAOPGCPREC 84-90  
Vet. Aff. Op. Gen. Couns. Prec. 84-90

**TEXT:**

**Subject:** Statute of Limitation on Education Loan

(This, opinion, previously issued as General Counsel Opinion 5-81, dated August 6, 1981, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

**QUESTION PRESENTED**

When does the statute of limitations start to run on education loans?

**COMMENTS:**

Since the passage of Pub.L. No. 96-466, this question is particularly pertinent, as education loan cases are now being referred to District Counsels for collection. Cases in which the statute of limitations has run or is about to expire will not be referred.

The promissory note signed by the veteran for the education loan provides that repayment of the loan, with interest, shall begin 9 months after termination of school attendance on at least a half-time basis. Notification of repayment which includes a choice of repayment options is forwarded to the borrower 7 1/2 months after the termination date of training. A second and final notification of repayment, FL 4-322, is forwarded on the date the loan is due. This form states that the first payment along with the borrower's selected repayment plan is due within 30 days or the loan will be placed in default.

DVB Circular 20-78-44 states that:

a. Default of a loan occurs when:

(1) The borrower does not provide a repayment schedule and/or remit the first installment payment in response to ... FL 4-322. The loan will be placed in default 30 days after the date of the second request.

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b. Once the loan has been declared in default, it will be considered the same as an overpayment and recovered accordingly ...

The Federal law controlling the statute of limitations in these cases is contained in 28 U.S.C. § 2415(a). This section provides that except as otherwise provided by Congress "every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues ..."

A promissory note is a contract. Bills and notes in their various forms are contracts and the fundamental rules governing contract law are applicable to the determination of the legal questions which arise over such instruments. The general rule for contracts is that the statute runs as soon as the cause of action arises upon it. There are certain exceptions to the general rule but none appear to apply here.

The ... test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion ... It may be stated as a general proposition, ... that a cause of action accrues the moment the right to commence an action comes into existence. Thus, a right of action accrues whenever such a breach of duty or contract has occurred, or such a wrong has been sustained, as will give a right to bring and sustain a suit. 51 Am. Jur.2d Limitations of Actions § 107 (1970).

**HELD:**

The cause of action in the case of a defaulted education loan accrues on the date of default. DVB Circular 20-78-44 places the date of default at 30 days after the date of the second request to the borrower. Therefore, the statute of limitations begins to run 30 days after the date of FL 4-322 to the veteran. It should be noted that a payment on the loan after the default date tolls the statute and starts it running again.

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