

DATE: 03-11-91

CITATION: VAOPGCPREC 06-91  
Vet. Aff. Op. Gen. Couns. Prec. 06-91

**TEXT:**

**SUBJECT:** Gratuitous Benefits, P.L. 86-146.

(This opinion, previously issued as Opinion of the General Counsel 28-60, dated September 13, 1960, 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.)

**Text:**

1. Reference is made to your memorandum of MARCH 30, 1960 which reads as follows:

"1. Your opinion is requested on the following questions which have arisen in connection with the implementation of Public Law 86-146:

"a. Series E saving bonds have been purchased from funds in Personal Funds of Patients Accounts at the request of the patient or his next of kin, or at the discretion of Manager, and held for the patient. Upon the death of such a patient, is the disposition of these bonds governed by the provisions of PL 86-146?

"b. If the answer to question 'a,' is in the affirmative, does the Manager have the authority to redeem such bonds for deposit in PFOP? If not, what disposition should we make of such bonds?

"c. If bonds are redeemed by the Manager prior to the death of a patient and the proceeds deposited in PFOP to be used for the patient's needs, should the proceeds be considered gratuitous if they can be identified as such or nongratuitous funds? Are the proceeds when so deposited considered to have been deposited by the VA through the Manager in this instance is acting as Trustee for the patient? In your reply to this question, we should be advised as to the proper disposition to be given to the interest in the proceeds from the bonds.

"d. Upon admission a patient may have several compensation or pension checks which he has not cashed. If after a reasonable length of time, the patient refuses to cooperate and endorse the checks for deposit in PFOP, it is our practice to return such checks to the Disbursing Office and request

the Adjudication Division of the regional office concerned to reissue the checks to the Manager. Would such funds be considered gratuitous benefits under PL 86-146, in view of the fact that they would have been excluded if the patient had endorsed the checks for deposit?"

2. The questions raised in subparagraphs a. and b. of your submission were answered in the opinion of this office of June 29, 1960, Op.G.C. 27-60, addressed to the Controller, Subject-Disposition of U.S. Bonds Purchased from Funds of an Incompetent Veteran. It was stated therein that Section 3202(d) of Title 38, U.S.C., as amended by PL 86-146, contemplates only gratuitous benefits under the laws administered by the VA remaining on deposit in a PFOP account at the time of the death of a veteran as being subject to the application of PL 86-146 and that such an account is only a depository for money, including checks for collection. It was for these reasons that it was concluded, in pertinent part, as follows:

"... U.S. Savings Bonds which were purchased by a Manager with money withdrawn from a PFOP account of an incompetent or insane veteran and which are in the form of U.S. Savings Bonds at the time of the death of a veteran subsequent to November 30, 1959 can not be considered on deposit in a PFOP account within the meaning of Public Law 86-146 and Instruction I to that Act. Such U.S. Savings Bonds must be considered 'effects' within the meaning of VA Regulation 4800(A) and are for disposition under VA Regulation 4802 or 4805, whichever is applicable."

3. The three questions raised in subparagraph c. of your submission have not been previously considered by this office. Therefore, a discussion of the basic provisions of the applicable law and the regulatory and manual provisions pertinent thereto seems indicated.

4. PL 86-146 amended section 3202(d) of Title 38, U.S.C., by adding at the end thereof the following:

"In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Veterans' Administration deposited before or after the date of enactment of this sentence in the personal funds of patients trust fund on account of such veteran shall not be paid to the personal representative of such veteran, but shall be paid to the following persons living at the time of settlement, and in the order named: The surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts. If any balance remains, such balance shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such balance as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses."

5. Paragraph 3 of Instruction I to PL 86-146 provides in pertinent part as follows:

"a. Section 3202(d). All gratuitous benefits deposited by the VA either prior or subsequent to December 1, 1959, into a PFOP (Personal Funds of Patients) account of a veteran rated or adjudged mentally incompetent or insane will be paid upon his death in the following order of preference to persons living at time of settlement. Funds not deposited by the VA but deposited by the veteran or others to the veteran's account will be excluded from application of this law ..." (Underscoring supplied.)

6. Paragraph 8 of the said Instruction I also provides:

"a. Section 3202(d). The limitations imposed on payment of funds from gratuitous benefits under laws administered by the VA on deposit in PFOP accounts are effective as to deaths after November 30, 1959. The limitations apply to all funds described in paragraph 3a on deposit at the time of the veteran's death whether accrued before or after the effective date of the act." (Underscoring supplied.)

7. Interim Issue (CONTR-169), dated January 13, 1960, providing necessary instructions for the fiscal implementation of PL 86-146, provides in paragraph D.3 in pertinent part:

"a. Immediately upon death of a veteran who has been adjudged or rated incompetent, the balance in the Personal Funds of Patients account will be analyzed to determine the source thereof, i.e., funds derived from gratuitous benefits deposited by the VA under laws administered by the VA or from other sources. For this purpose gratuitous benefits are defined as all benefit payments under laws administered by the VA except insurance payments (Servicemen's Indemnity benefits are not insurance payments)." (Underscoring supplied.)

8. Manual provisions permit Managers to make cash or check withdrawals from PFOP accounts for the purchase of U.S. Savings Bonds for incompetent or insane veterans in VA hospitals. In this connection, the provisions of paragraph 3.11c(2)(c) of VA Manual, MP-4 (DM & S Supplement, Part I) provide:

"Issuance and Record of Delivery. In each case the bonds will be registered in the name of the patient for whom purchased; neither co- owner nor beneficiary will be named on the bonds."

9. It appears from a reading of PL 86-146 that the three questions presented in subparagraph c. of your memorandum are not specifically answered by the

language of the act. A review of the legislative history of the act (H.R. Report No. 303 and S. Report No. 344) also fails to show that the questions under consideration were specifically considered by the Congress. The language of both reports clearly shows, however, the principle purpose of the law. In the House Report, it is stated on page 1 as follows:

"The reported bill is designed to prevent gratuitous benefits for incompetent veterans receiving care at public expense from accumulating in excessive amounts and passing upon the death of the veteran to relatives having no claim against the Government on account of the veteran's military service. This purpose is accomplished in two ways. First, ...

\* \* \*

"The second feature of the bill provides that amounts held today for incompetent veterans in the 'personal funds of patients' accounts of the Veterans' Administration derived from gratuities deposited therein by the Veterans' Administration shall, upon the death of the veteran leaving no wife, child, or dependent parent, be retained by the United States." (Underscoring supplied.)

10. The first inquiry made in subparagraph c. of your submission raises a basic question whether all amounts on deposit in PFOP at the time of a veteran's death, derived from VA gratuitous benefits, are subject to the provisions of the said Section 3202(d), regardless of the circumstances of the deposit and of transactions intervening original payment of the benefits and final deposit. The amendment of the Section by PL 86-146 uses the language "all gratuitous benefits under laws administered by the Veterans Administration deposited ... in the personal funds of patients trust funds...."

However, there will be observed in the foregoing House Report excerpt, an intent that the application of the proposed provisions of Section 3202(d) should be limited to deposits made by the VA in PFOP accounts. Paragraph D.3.a. of Interim Issue (CONTR-169), supra, uses the language "funds derived from gratuitous benefits deposited by the VA." Paragraph 3a of Instruction I to the Public Law also uses language which is consistent with the indicated intent, "All gratuitous benefits deposited by the VA .." and further provides, that, "Funds not deposited by the VA but deposited by the veteran or others to the veteran's account will be excluded from application of this law."

It also cannot be overlooked that paragraph 8a of the said Instruction I, in referring to the funds subject to the provisions of Section 3202(d), uses the language "... on deposit at the time of the veteran's death ..." A literal interpretation of the language used in Section 3202(d) might be said to limit the applicability of that Section to those gratuitous benefits under the laws administered by the VA which were deposited in a veteran's PFOP account by means of an institutional award (See VA Regulation 1852) and which subsequently remained in such account at all times up to the death of the veteran.

11. It is believed, however, that such a strict construction of the cited language of the act would not be consistent with the principal purpose of the legislation. The main intent of the Congress was to prevent the accumulation of large estates from gratuitous benefits paid under the laws administered by the VA in the case of incompetent veterans being furnished care and maintenance by the United States or any political subdivision thereof, where there are no near relatives (wife, child or dependent parent) to inherit the estate. Consequently, in the situation where a Manager has purchased U.S. Savings bonds on behalf of a veteran from money withdrawn from a PFOP account (such money being identifiable as having been derived from gratuitous benefits under the laws administered by the VA and initially deposited in PFOP by the VA), and where the Manager redeems the bonds during the lifetime of the veteran to augment the patient's income or to supply his needs in accordance with the provisions of paragraph 3.08a of VA Manual MP-4, cited *supra*, it is our view that it would be a proper interpretation of the provisions of PL 86-146 to conclude that at the death of the mentally incompetent or insane veteran subsequent to November 30, 1959, any balance in the PFOP account of the funds obtained by the redemption of the bonds, excluding the interest earned, is subject to disposition in accordance with the provisions of Section 3202(d) of Title 38, U.S.C., as amended by PL 86-146, provided, of course, the other requirements of the law are met. To so conclude would not prevent the balance of the funds obtained by the redemption of the bonds from passing upon the death of the veteran to his surviving wife, child or dependent parent, but would, of course, require the funds to be deposited to the credit of the applicable current appropriation (subject to reimbursement of persons who bore the expenses of last sickness or burial) where the veteran was not survived by any such near relatives. This latter result would clearly be consistent with the principal purpose of the legislation, since it would preclude money accumulated from VA gratuitous benefits from "passing upon the death of the veteran to relatives having no claim against the Government on account of the veteran's military service."

12. There are other reasons in support of the indicated conclusion that the language of Section 3202(d) should not be limited in its application to those gratuitous VA benefits deposited in a PFOP account by means of an institutional award which remain in such account at all times up to the death of the veteran. In H.F. Report No. 303, *supra*, in explanation of the bill, the Committee stated on page 3 in pertinent part as follows:

"... The first section of the bill relates to funds held in the 'personal funds of patients' accounts for incompetent institutionalized veterans. These are funds derived primarily from payments made by the Veterans' Administration, and are held by managers of Veterans' Administration neuropsychiatric hospitals in which the veteran is a patient. Where an incompetent veteran is a patient in a

State hospital, such funds are held by the manager of the local Veterans' Administration regional office.

"Final control over these funds remains in the Veterans' Administration.

Therefore, the committee feels that it is appropriate that, in the event of an incompetent veteran's death, the same general rules should govern the payments of these funds derived from veterans benefits as govern the payment of other accrued veterans benefits where a veteran dies ..."  
(Underscoring supplied.)

13. As you will note, the Committee has used the term "derived" from veterans' benefits in the explanation of the bill. The word "derive" has as a few of its ordinary meanings the following: "To receive, as from a source or origin," "to take origin" and "to flow from." See Webster's New International Dictionary, Second Edition Unabridged. It is believed that the Committee used the term with its ordinary or usual meaning in describing the funds to which the first section of the bill relates. The Committee recognized that final control over these funds remains in the VA, not only in the case of an incompetent veteran in a VA institution but also in the case of such a veteran in a non-VA institution. In connection therewith, VA Regulation 1852, which provides for institutional awards to VA and non-VA institutions, states that in an institutional award of pension, compensation or retirement pay to a non-VA institution, there may be paid an amount not in excess of \$30 a month to the Chief Officer of the institution, except where the veteran has no wife, child or dependent parent. It is further provided that all sums, otherwise payable in excess of the institutional award, apportionments or awards to fiduciaries, will be deposited in PFOP. It, therefore, will be seen that in some cases where a veteran is in a non-VA institution, the amount of the institutional award will be less than the total amount of the gratuitous benefit which he is otherwise entitled to receive and that such balance must be deposited in his PFOP account. This balance is paid to the VA Manager who deposits the money in the PFOP account, such payment to the Manager, of course, not being an institutional award. Under these circumstances, it is believed proper to conclude that the Congress did not intend to limit the application of the provisions of Section 3202(d) to those gratuitous VA benefits placed in a PFOP account solely by means of an institutional award, but to include any money identifiable as having its source or origin in VA gratuitous benefits which is in PFOP at the time of a veteran's death, irrespective of the transactions intervening original deposit in PFOP by the VA and the final deposit in PFOP. To conclude otherwise would not appear to be in full accord with the principal purpose of the act, for it would result in inapplicability of the provisions of Section 3202(d) to the discussed situation only because the particular veteran happened to have been in a non-VA institution. The above-expressed conclusion appears to be further supported by the use of the language in paragraph 3a of Instruction I, namely, "Funds not deposited by the VA but deposited by the veteran or others to the veteran's account will be

excluded from application of this law," since this language indicates an intent to exclude from the application of the law only those funds deposited by the veteran or others (as distinguished from the VA) in the PFOP account.

14. Accordingly, in the light of the language and legislative history of Public Law 86-146, and the text of cited implementing issues, it is our view, responsive to the first question in subparagraph c. of your submission, that proceeds from the redemption of bonds remaining in PFOP at the time of a veteran's death are subject to disposition pursuant to the provisions of 38 U.S.C. § 3202(d), as amended by Public Law 86-146, if the bonds were purchased with funds from PFOP which had their source in VA benefits and which were originally deposited in PFOP by the VA (but not necessarily in the form of an institutional award).

15. The second question in subparagraph c. relates to the nature of the redeposit in PFOP, by the Manager, of the proceeds from bonds under the described circumstances. We do not consider this question as having any bearing on the ultimate matter of applicability of the provisions of Public Law 86-146, inasmuch as the conclusion stated above regarding that point is predicated on the theory that amounts derived from gratuitous benefits and originally deposited in PFOP by the VA do not lose their identity as to source and nature of deposit, for Public Law 86-146 purposes, where withdrawn from PFOP and used to purchase bonds, if they are returned to PFOP and remain on deposit therein at the time of veteran's death. It is the nature of the original deposit which controls, as to funds on deposit at death, rather than the manner in which the funds were finally returned to PFOP.

16. The third question in subparagraph c. of your memorandum is as to the applicability of the provisions of Section 3202(d) to the interest earned on U.S. Savings Bonds purchased by a Manager on behalf of a veteran from gratuitous VA benefits in a PFOP account where the bonds are redeemed during the veteran's lifetime. It must be accepted as a fact that such interest is not a gratuitous benefit under the laws administered by the VA within the meaning of the language in Section 3202(d), as defined in paragraph D.3.a. of Interim Issue (CONTR-169), quoted supra. The portions of H.R. Report No. 303 quoted in paragraphs 9 and 12 of this memorandum show that the Committee used the term "derived" from veterans' benefits to describe the funds to which Section 3202(d) relates and, as stated in paragraph 13 hereof, the Congress appears to have used that phrase with its usual or ordinary meaning. It would, therefore, appear to be a proper construction that the term was intended to mean the source or origin of the particular thing under consideration (gratuitous VA benefits here), and hence, not an increased value of the gratuitous benefits but only their value at the original source. Accordingly, it is the opinion of this office that such interest should not be considered to be subject to disposition in accordance with the provisions of Section 3202(d) of Title 38, U.S.C., as amended.

17. With regard to your last question, subparagraph d., this office is of the opinion that the funds represented by the unendorsed compensation or pension checks, the amount of which is subsequently paid to the Manager by issuance of new checks and deposited by the Manager in the veteran's PFOP account (See VA Regulation 1852 and VA Manual M-I, Part I, paragraph 8.14c), should be considered "gratuitous benefits deposited by the VA ... into a PFOP ... account" within the meaning of that language in Instruction I to PL 86-146 and, therefore, subject to the provisions of Section 3202(d) of Title 38, U.S.C., as amended..Such a transaction is equivalent to an original institutional award and is, accordingly, clearly within the language and intent of PL 86-146 and the implementing issues.

18. In view of the broad statement made in conjunction with your last question, namely, "that they would have been excluded if the patient had endorsed the checks for deposit," it is believed appropriate to point out what was said in the opinion of this office dated June 10, 1960 in XC XXXXXXXXXXXX (not distributed). Two pension checks in the total amount of \$538.12 were sent to the veteran at his home address. Subsequent to his admission on October 26, 1959 to a VA hospital, the unendorsed checks were brought to the hospital by a relative and the veteran endorsed them in November 1959. He died on January 4, 1960. It was stated in that opinion as follows:

"The veteran endorsed the two pension checks in the total amount of \$538.12 and the checks were thereafter deposited in his PFOP account in November 1959. It is recognized that the veteran was not rated incompetent at the time of his endorsements of the checks but by the rating made on December 3, 1959, was held to be incompetent from October 26, 1959. Under these circumstances, the question arises whether the two pension checks were 'deposited' by the VA or by the veteran or others to the veteran's account within the meaning of that language in Instruction I of PL 86-146. This obviously contemplates benefits properly placed into said fund. It, therefore, becomes necessary to consider whether these pension checks were properly deposited in the PFOP account by the veteran. This depends upon whether the veteran possessed sufficient mental capacity when he endorsed the two pension checks to understand the nature of his act. The fact that the veteran was not actually rated incompetent at the time of the deposits in the PFOP account, the fact that such endorsements were made in accordance with the provisions of VA Manual M-I, Part I, paragraph 8.14, and the further fact that two VA hospital employees witnessed the veteran's endorsement by mark of each check, indicate that the veteran had sufficient mental capacity to understand the nature of his endorsements at the times thereof. It is the view of this office that in the absence of affirmative evidence presented to the VA, which would clearly show that the veteran lacked the requisite mental capacity at the times of the endorsements, the endorsements of the veteran should be considered valid. Accordingly, in the absence of such affirmative evidence, it

is concluded that the two pension checks were properly deposited in the PFOP account by the veteran or other--not by the VA--to the veteran's account, within the meaning of that language in Instruction I of PL 86-146."

19. Consequently, you are advised, with respect to your quoted statement as to exclusion of amounts from applicability of PL 86-146 where the pertinent checks were endorsed by the veteran, that such amounts should not be excluded in a case where the veteran was mentally incompetent at the time of the endorsement.

**HELD:**

Amounts derived from gratuitous benefits which were originally deposited in PFOP by VA do not lose their identify as to source and nature of deposit, for PL 86-146 purposes, where withdrawn from PFOP and used to purchase bonds, if they are returned to PFOP and remain on deposit at the time of veteran's death. The interest should not be considered to be subject to disposition in accordance with the provisions of section 3202(d) OF TITLE 38, U.S.C., as amended.

Funds represented by unendorsed compensation or pension checks, the amount of which is subsequently paid to the Manager by issuance of new checks and deposited by the Manager in the veteran's PFOP account should be considered "gratuitous benefits deposited by the VA ... into a PFOP ... account" within the meaning of that language in Instruction I to PL 86-146 and, therefore, subject to the provisions of Section 3202(d) of Title 38, U.S.C. Such a transaction is equivalent to an original institutional award and is, accordingly, clearly within the language and intent of PL 86-146 and the implementing issues.

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