

UNITED STATES GOVERNMENT

RAILROAD RETIREMENT BOARD

Memorandum

TO : Chief Financial Officer

FROM : Deputy General Counsel

SUBJECT: Uncashed Checks

L - 88 - 42

MAY 06 1988

This is in response to your memorandum of March 4, 1988, wherein you inquire as to whether this agency may make use of the procedures which are provided for crediting of the amounts of unnegotiated checks as set forth in Title X of Public Law 100-86 (101 Stat. 552, 657 (1987)).

As you know, in 1983 section 417 of Public Law 98-76 (97 Stat. 411, 437) amended section 15 of the Railroad Retirement Act (RRA) (45 U.S.C. § 231n) by adding a new subsection (i) to deal with uncashed checks. That subsection provides that the amount of benefits payable under the Act represented by checks which remain uncashed for more than six months after issuance are to be credited (including interest thereon) by the Department of Treasury to the respective accounts administered by the agency, "to the extent provided in advance in appropriation Acts". If a previously credited check is presented for payment beyond the six-month period, Treasury is to honor the check and then debit the appropriate accounts. When the Railroad Retirement Board's accounts are credited (increased) because of an uncashed check, an account in the general fund is debited (decreased). This latter account is funded by an appropriation which represents the amount of uncashed checks for a given year, based upon estimates provided by the agency. Thus, the amounts to be credited to the agency under Public Law 98-76 are limited by appropriation.

Section 1003 of Public Law 100-86, the Competitive Equality Banking Act of 1987 (101 Stat. 552,658), amended Chapter 33 of Title 31 of the United States Code, dealing with the responsibilities of the Department of the Treasury in regard to "Depositing, Keeping, and Paying Money", to provide that the Secretary of the Treasury shall provide monthly to each agency that authorizes the issuance of Treasury checks a list of those checks issued for such agency after the effective date thereof (October 1, 1989) that have not been paid and have become more than 12 months old during the preceding month. Such checks shall be cancelled, and the proceeds thereof are to be returned to the agency concerned and credited to the appropriation or fund account initially charged for the payment.

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Public Law 100-86 differs in some respects from Public Law 98-76. First, it applies to all Treasury checks authorized by an agency, and not just to benefit payments authorized under the RRA. Thus, as far as this agency is concerned it would apply to checks representing benefits payable under the Railroad Unemployment Insurance Act, checks representing payment to vendors and checks representing payment for salaries of employees. Second, under Public Law 100-86, once a check remains uncashed for 12 months it is cancelled and thus becomes non-negotiable, i.e., banks will not cash it, whereas under Public Law 98-76 the uncashed check remains negotiable. In addition, Public Law 100-86 does not provide for interest on the proceeds represented by the amount of uncashed checks credited to the agency's accounts.

Clearly, to the extent that section 15(i) of the RRA does not cover the uncashed checks in question, section 3334 of title 31 of the United States Code, as added by Public Law 100-86, would provide the mechanism by which monies attributable to uncashed checks would be returned to the accounts initially charged for the checks. In addition, checks issued under the RRA which remain uncashed for 12 months will be cancelled pursuant to 31 U.S.C. § 3334(b).

However, with respect to uncashed RRA benefit checks we have two statutes dealing with the same matter. Public Law 98-76 deals specifically and exclusively with checks representing benefit payments under the RRA. Public Law 100-86 deals with them as part of a program encompassing all Treasury checks. The generally accepted rules of statutory construction provide that where there exist a general statute and a specific statute dealing with the identical subject matter, the two statutes must be harmonized if at all possible. To the extent that this is impossible, the specific statute will control and be considered an exception to the general statute, absent a clear expression of intent by the legislature that the general statute is controlling. This maxim holds even if the general statute is passed later than the specific statute. See, generally, 82 C.J.S. 369.

The legislative history surrounding Public Law 98-76 contains no reference to section 417 thereof, and the legislative history of Public Law 100-86 does not exhibit an intent to repeal section 15(i) of the RRA. Indeed, no reference is made therein to the earlier enactment. Rather, the legislative history of Public Law 100-86 indicates that the purpose of section 1002 thereof merely was to place a one-year limit on the negotiability of a Treasury check. See 1987 U.S. Code and Ad. News 489,657. Apparently, the

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Department of the Treasury also concurs in this conclusion. Consequently, Public Law 98-76 must control unless it can be read in harmony with Public Law 100-86.

As noted above, section 15(i) of the RRA provides, in pertinent part, that:

"(2) The Secretary of the Treasury shall, on a monthly basis, credit each account established in the Treasury for the payment of benefits under this Act for the proportionate amount of benefit checks (including interest thereon) drawn on each such Account more than six months previously credited to such Account, to the extent provided in advance in appropriation acts."

Section 3334(a)(2) of title 31 of the United States Code, as added by Public Law 100-86, provides that checks be cancelled "and the proceeds thereof returned to the agency concerned...." To the extent that moneys are appropriated under section 15(i) for credit to the railroad retirement accounts, the Secretary is required to utilize such funds to restore to the accounts the moneys attributable to uncashed checks more than six months old plus interest thereon. In my opinion, if the Secretary has credited the railroad retirement accounts, as required under section 15(i), with moneys attributable to a given uncashed check, then there are no "proceeds" with respect to that check to be returned to the Railroad Retirement Board pursuant to 31 U.S.C. § 3334(a)(2). However, since the required transfers under section 15(i) are conditional on moneys being appropriated in advance, there would be no transfers in a given fiscal year with respect to the amount attributable to a given check or checks if there were no appropriation for that year or to the extent that the amount appropriated for such year had already been expended. In such a situation, it would be my opinion that if at the time these uncashed checks are cancelled pursuant to 31 U.S.C. § 3334(a)(2) no moneys had been credited to the railroad retirement accounts pursuant to section 15(i), the Secretary of the Treasury would be required by section 3334(a)(2) to return the proceeds of the checks to the appropriate railroad retirement accounts. Where the proceeds of uncashed checks have been returned to the accounts pursuant to section 3334(a)(2), credits of such amounts could not be made pursuant to section 15(i) of the RRA; however, interest with respect to those payments would be transferrable to the accounts under section 15(i) from future appropriations. Cf. L-87-151.

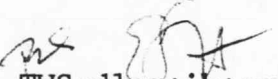
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While section 15(i) of the RRA overrides section 3334 of title 31 of the United States Code to the extent that they may be in conflict, it would appear to be possible, consistent with section 15(i), to accomodate the Treasury Department and put transfers to the railroad retirement accounts on a twelve-month, rather than a six-month basis. It would appear that this could be accomplished in one of two ways, assuming in both cases that the railroad retirement accounts would not be disadvantaged financially by the change. The first method would be to have the transfers under section 15(i) done on a twelve-month basis. Section 15(i)(2) provides for monthly transfers of moneys attributable to unpaid checks drawn on the accounts more than six months in the past. The amount transferred includes interest prior to transfer. Section 15(i) would authorize the transfer of moneys attributable to checks which are uncashed after 12 months since such checks are more than 6 months old. Cf. L-87-151. Accordingly, it would seem that if the appropriation is sufficient to cover the principal attributable to checks not cashed for 12 months plus the interest (computed in the same manner as if the funds had been deposited in the railroad retirement accounts) that would accrue from the date of issuance until the date of transfer, Treasury could put the transfers under section 15(i) to the railroad retirement accounts on a 12-month basis.

The other method by which the twelve-month cycle could be accomplished is, it seems to me, through the appropriation process. Since the transfers to the railroad retirement account under section 15(i) are limited by the amount appropriated in advance, the appropriation could be worded and funded in such a way as to appropriate the interest on uncashed checks, but not the principal. The principal could then be transferred to the accounts under 31 U.S.C. § 3334 at the time the checks are cancelled. The amount appropriated for interest and transferred would, in order for the railroad retirement accounts to avoid losses, have to cover the entire period from the date of issuance until the date of return and be computed in the same manner as if the funds had been deposited in the railroad retirement accounts for the entire period.



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