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**DECISION**



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

**FILE:** B-212976

**DATE:** June 6, 1984

**MATTER OF:** Assessment of interest by or against  
Federal agencies on past due debts

**DIGEST:** Under the Department of Agriculture's payment policy guidance, a debt owed to the Department by Government contractors and others is not considered to be paid until the check is actually received by the Department. A trade association with whom the Department does business insists that the payment policy should be changed on equitable grounds because under the Prompt Payment Act, when the Government is the debtor, a payment is considered made as of the date on the payment check tendered. Agriculture's payment policy when it is the creditor is consistent with the Treasury Fiscal Requirements Manual, which reflects prevailing commercial practice. There is no reason to change the policy nor does GAO consider it inequitable.

The Assistant Secretary for Administration of the Department of Agriculture has requested our decision concerning an alleged inequity in the Government's policies with regard to late payment charges for past due amounts owed to the United States, as compared with the requirements of the Prompt Payment Act, Pub. L. No. 97-177, May 21, 1982, for late payment charges on past due amounts owed by the United States.

According to Agriculture, a trade association which represents grazing permittees contends that late payment charges should be assessed in the same manner, whether the United States is debtor or creditor. The inequity arises, according to the trade association, because Treasury regulations require Government agencies to include in contracts for goods or services sold to an organization outside the U.S. Government the following minimum payment terms and provisions:

"Specify when the payment will be due.

"Require that payment be received [by the Government] no later than the due date.

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"Provide that charges be applied, accrued, and collected for payments received [by the Government] after the due date in the form of interest, penalty, and administrative charges." 1 TRFM § 6-8020.10 (TL No. 320) (Emphasis added).

On the other hand, the Prompt Payment Act provides that "a payment [owed by the Government] is deemed to be made on the date a check for the payment is dated." 31 U.S.C. § 3901(a)(5).

The trade association thus believes that private business concerns alone are being held financially responsible for "mail time," both when receiving payments from and when making payments to the Government. The association has urged USDA to amend its payment requirements to allow its members to consider a debt to USDA to be paid as of the date on the checks they mail. USDA asks whether it is required to make this accommodation. The answer is no.

We see nothing inequitable in whatever differences there may be between the two payment policies, nor are we aware of any legal requirement that they be interpreted in exactly the same way.

The Treasury regulations reflect prevailing private sector practices; namely, unless otherwise provided by contract, a debt is not considered to be paid until the date on which payment is received by the creditor. See 61 Comp. Gen. 166, 168-69 (1981), citing The Foster Co. v. United States, 128 Ct. Cl. 291 (1954); B-107826, July 29, 1954.

The Prompt Payment Act, on the other hand, reflects a congressional determination that the statutory requirement for the Government to pay "interest penalties" should be:

"\* \* \* as easy to administer as possible. Therefore, recognizing that brief delays may follow the date a government check is dated for payment or leaves the government's payment office, the Committee decided that the government's obligation to make payment would nonetheless be considered fulfilled as of the date the government's check is dated for payment. Only in this way is it possible for the government to assess its interest penalties before a check is issued. \* \* \*"

S. Rep. No. 302, 97th Cong., 1st Sess. 11 (1981).

However, this does not mean that the Government was authorized by the Prompt Payment Act to routinely date and mail its payment checks to contractors on the day the payment is due, which would result in late payments in every case because of normal mail delivery delays. The legislative history shows that the Congress:

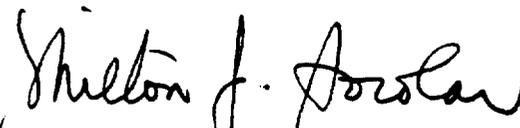
"\* \* \* intends that this Act be administered in such a way as to provide for payment on the date payment is due. In accord with general business practice where payment is made by mail, the Committee anticipates that checks will be dated for payment and mailed five days before the date payment is due. However, in the event a check is dated for payment on the date payment is actually due, no interest would be payable even though the check might not reach a contractor until three or five days later. In the event a check is dated for payment a day late, one day's interest would be charged against the government, and so forth. The Committee will be carefully assessing agency performance under the Act. Agencies should not expect to make a practice of using this provision of the Act to sanction late payments. Every effort should be made to see to it that payment is made [on or before the date that it is due]."

S. Rep. No. 302, supra, at 11.

Thus, it is clear that when properly implemented, the Prompt Payment Act contemplates that agencies will take every reasonable step to assure that payments owed by the Government are normally delivered to contractors on or before the date they are due. While interest penalties will accrue against the Government under the Prompt Payment Act only if the check is not dated before the date due, as a practical matter, contractors will not normally be inconvenienced by "mail time" on debts owed by the United States. It should also be noted that in instances when application of the normal payment policy would cause undue hardship, the parties are free to provide for a deviation as one of the contract terms.

Accordingly, we find that there is no legal requirement that late payment charges be assessed in an identical manner whether the Government is a creditor or a debtor. Moreover, the late payment charge policies being followed by Agriculture

are consistent with the requirements of the law, and there is no requirement to change them at the request of a trade association.

*for*   
Comptroller General  
of the United States