



United States
General Accounting Office
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Office of the General Counsel

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March 31, 1989

Thomas P. Stack
Chief, Credit and Cash Management Branch
Office of Management & Budget
Executive Office of the President
Washington, DC 20503

Dear Mr. Stack:

This is in response to your February 15, 1989, request for a decision concerning a proposed revision to Circular A-125, which implements the Prompt Payment Act of 1982, as amended (the PPA). The proposed revision would require agencies to make payments on Friday if the payment falls due on Saturday and permit payments on the next business day if a payment falls due on a Sunday or holiday. Given your agency's responsibility for establishing rules covering the PPA, we are responding with our comments and observations rather than a decision.

Our research on this issue indicates that the proposed revision does not reflect generally prevailing time computation practices. Since the PPA itself does not require the adoption of a different rule, we think it is preferable to conform prompt payment time computations to the prevailing practices of the public and private sectors. We believe that this approach would avoid unnecessary confusion and mistakes, and would assure greater equity between the government and its vendors. Accordingly, as explained in greater detail below, it is our view that if OMB chooses to address this issue in Circular A-125, it should state that whenever a prompt payment-related deadline falls on a Saturday, Sunday, or legal holiday, payment may be made without adverse legal consequence on the next day that is not a Saturday, Sunday, or legal holiday.

Background

The Prompt Payment Act of 1982, 31 U.S.C. §§ 3901-3906 (1982), as amended by the Prompt Payment Act Amendments of 1988, Pub. L. No. 100-496, 102 Stat. 2455 (1988) (the PPA), generally provides that agencies which fail to pay for goods and services within 30 days after payment becomes due must pay an "interest penalty" to the contractors from whom those goods and services were acquired. 31 U.S.C. § 3902, as amended, § 2 and 3, 102 Stat. at 2455-57. The act also

requires the payment of interest penalties whenever an agency takes a prompt payment discount after the discount period has expired. 31 U.S.C. § 3903, as amended, § 8, 102 Stat. at 2460. Neither the language nor the history of the PPA or its amendments address what impact, if any, results from the expiration of a prompt payment deadline on a Saturday, Sunday, or legal holiday.

OMB is authorized by the PPA to issue government-wide regulations to implement the act. 31 U.S.C. § 3903. Generally speaking, so long as those regulations have been properly promulgated and their contents are not arbitrary and capricious, they will be entitled to considerable deference, both administratively and before the courts. See, e.g., Chrysler Corp. v. Brown, 441 U.S. 281 (1979); Batterton v. Francis, 432 U.S. 416, 425-26 (1977); 53 Comp. Gen. 364 (1973). At present, however, OMB's prompt payment regulations (found in Circular A-125, 52 Fed. Reg. 21926 (1987)) do not address the impact, if any, of prompt payment deadlines falling on a Saturday, Sunday, or legal holiday.

Discussion

We have previously held that deadlines which expire on Sundays and legal holidays should be extended to the next day that is not a Sunday or legal holiday. 65 Comp. Gen 53 (1985). While the decisions of the Comptroller General have not considered this question with respect to Saturdays,^{1/} we see no basis upon which to distinguish between Saturdays, Sundays, and legal holidays, given current government and business work practices. The common and critical factor for all three situations is that most state and federal government offices, as well as many

^{1/} The expiration of prompt payment discount deadlines on Saturdays was discussed in two unpublished, internal memorandums issued by GAO's General Counsel. In B-109319-O.M., July 16, 1952, our Claims Division was advised to disallow a claim against the United States for the refund of a prompt payment discount because payment had been made on the next working day (Monday) after the discount due date (Saturday). A subsequent memorandum opinion, B-118656-O.M., Nov. 23, 1966, questioned the legal basis for the decision in the prior case, and advised our auditors to delete from a draft management letter language criticizing administration officials for failing to take advantage of prompt payment discounts when payment was made on the Monday (i.e., the first working day) after the expiration on Saturday of prompt payment discount deadlines. For the reasons discussed in this letter, we do not view the 1966 opinion as reflecting the modern rule.

private businesses, are not normally open on any of these three days. This was not always the case. Prior to the "advent of the five-day week,"^{2/} Saturdays were commonly regarded as "half holidays"--the first part of which was considered to be a normal workday. Deadlines which fell on Saturdays were given full effect. Sundays and holidays, on the other hand, were treated as non-work days. When a deadline fell on one of the latter two, it was extended to the next day that was not a Sunday or holiday.^{3/}

The modern practice may be seen in the rules governing time computations in the federal courts. As a general rule, when dealing with the problem of deadlines occurring on Saturdays, Sundays, and holidays, most federal courts^{4/} refer to the principles embodied in Rule 6(a) of the Federal Rules of Civil Procedure.^{5/} That rule provides:

^{2/} Cf. Wirtz v. Local Union 169, International Hod Carriers, 246 F. Supp. 741, 750-51 (D. Nev. 1965).

^{3/} See, e.g., 74 Am. Jur. 2d Time, §§ 17-19.5 (1974 & 1987 Supp.).

^{4/} E.g., Jones & Laughlin Steel Corp. v. Gridiron Steel Co., 382 U.S. 32 (1965). See also Vappi & Co., Postal Service Board of Contract Appeals No. 924, Dec. 30, 1980, reprinted in 81-1 B.C.A. ¶ 15,080 at 74,596 (CCH 1981); Peninsula Marine, Army Corp of Engineers Board of Contract Appeals No. 3129, Feb. 12, 1971, reprinted in 75-1 B.C.A. ¶ 11,130 at 52,942 (CCH 1975).

^{5/} The Federal Rules of Civil Procedure establish the procedures followed by United States district courts in all civil suits, whether cognizable as cases at law, in equity, or in admiralty, but do not govern the procedures followed in criminal cases, nor do they govern the procedures followed by other federal courts. Cf. Fed. R. Civ. Proc. 1, 28 U.S.C.A. (1988 Supp.).

However, most cases tried under federal law in federal courts are subject to the same basic principle, as codified in other applicable federal rules. See, e.g., Fed. R. Crim. Proc. 45(a), 18 U.S.C.A. (1988 Supp.); Fed. R. App. Proc. 26(a), 28 U.S.C.A. (1988 Supp.); U.S. Ct. R. 6(a), 28 U.S.C.A. (1988 Supp.); U.S. Ct. Int. Trade R. 6(a), 28 U.S.C.A. (1988 Supp.); Fed. Bankr. R. 9006(a), 11 U.S.C.A. (1988 Supp.). But, cf. U.S. Sup. Ct. R. 29, 28 U.S.C.A. (1988 Supp.) (rule limited to Sundays and

(continued...)

"In computing any period of time prescribed or allowed by these rules, . . . or by any applicable statute . . . [t]he last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, . . . in which event the period runs until the end of the next day which is not one of the aforementioned days."
Fed. R. Civ. Proc. 6(a), 28 U.S.C.A. (1988 Supp.)
(emphasis added).6/

As suggested by its reference to "any applicable statute," the rule seems to contemplate its application as a general rule of statutory construction.7/ Generally speaking, this rule allows any party, whether private or public, the benefit of some additional time in which to do an act (such as file a paper or make a payment) when the deadline involved expires on a Saturday, Sunday, or holiday. The

5/(...continued)
holidays; does not mention Saturdays).

Our review of the Code of Federal Regulations shows that many federal agencies have also adopted a similar rule for their administrative proceedings. Using the JURIS computerized legal research system, we were able to identify over 100 agency regulations which parallel Rule 6(a). E.g., 5 C.F.R. § 831.107 (1988) (OPM); 17 C.F.R. § 12.5 (1988) (CFRC); 26 C.F.R. § 1.6655-7T(a)(1) (1988) (IRS); 49 C.F.R. § 821.1 (1987) (NTSB).

6/ Prior to 1963, this rule did not mention Saturdays. See Fed. R. Civ. Proc. 6(a), 28 U.S.C.A. (1988 Supp.) (note of Advisory Committee on Rules regarding the 1963 amendment).

7/ In Union National Bank v. Lamb, 337 U.S. 38 (1949), the Supreme Court applied an earlier version of Rule 6(a) to extend a statutory deadline for petitioning the Court for certiorari which fell on a Sunday. The Court explained that Rule 6(a) "provides the method for computation of time prescribed or allowed not only by the rules or by order of court but by 'any applicable statute.'" Id. at 40-41. In reaching this conclusion, the Court found significant the facts that Rule 6(a) "had the concurrence of Congress, and . . . no contrary policy is expressed in the statute governing [the case then before the Court]." Id. (citations omitted). See also Peninsula Marine, Army Corp of Engineers Board of Contract Appeals No. 3129, Feb. 12, 1971, reprinted in 75-1 B.C.A. ¶ 11,130 at 52,942 (CCH 1975), quoting Wirtz, 246 F. Supp. at 750-51; In Re Gotham Provision Co., 669 F.2d 1000, 1014 (5th Cir. 1982).

major exception to this rule arises when the deadline at issue represents a "jurisdictional bar" to the bringing of a court action.^{8/} However, the deadline at issue here (i.e., the last day on which payments may be made without incurring interest penalties under the PPA) clearly does not involve jurisdictional bars. Consequently, given the opportunity to rule on this issue, most federal courts would treat Saturdays, Sundays, and legal holidays alike, and authorize deferral of the deadline to the end of the next day that was not a Saturday, Sunday, or holiday.^{9/}

The boards of contract appeals have generally chosen to adopt the same rule.^{10/} This fact is particularly relevant since, under the PPA, disputed claims for interest penalties are required to be submitted to the boards pursuant to the procedures established by the Contract Disputes Act, 41 U.S.C. ch. 9 (1982). 31 U.S.C. § 3906(a). Thus, if OMB's prompt payment regulations remained silent on this issue, it seems more likely than not that the boards would, when required to address this issue, eventually settle the question by extending to the next work day those PPA deadlines which expire on Saturdays, Sundays, and legal holidays.

^{8/} Cf., e.g., Zipes v. TWA, 455 U.S. 385, 392-98 (1982); Hart v. United States, 817 F.2d 78, 80 (9th Cir. 1987); Milam v. United States, 674 F.2d 860 (11th Cir. 1982); But compare In re Butcher v. First National Bank of Louisiana, 829 F.2d 596 (6th Cir. 1987).

^{9/} For another indication of the modern trend in time computation practices, see section 8 of the Model Statutory Construction Act of 1975 (formerly the Uniform Statutory Construction Act of 1965), which suggests that time periods ending on Saturdays be treated the same as those ending on Sundays and holidays, and extended to the end of the next day that is not one of those three. 14 U.L.A. 520 (1980) and 14 U.L.A. 352 (1988 Supp.).

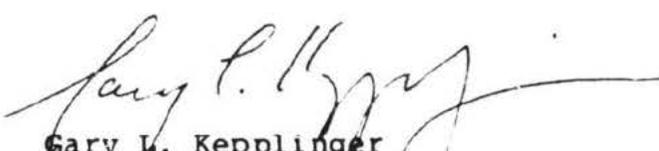
^{10/} See, e.g., Vappi & Co., Postal Service Board of Contract Appeals No. 924, Dec. 30, 1980, reprinted in 81-1 B.C.A. ¶ 15,080 at 74,595 (CCH 1981); Western Adhesives, General Services Board of Contract Appeals No. 6868, Dec. 16, 1982, reprinted in 83-1 B.C.A. ¶ 16,182 (CCH 1983).

Conclusions

The modern, prevailing practice is to defer deadlines which expire on Saturdays, Sundays, and legal holidays to the next work day,^{11/} and the PPA does not require the adoption of a different rule. In our view, adoption of the prevailing rule would avoid the unnecessary mistakes and confusion that would inevitably arise if the government were required to compute time one way when it is the payee, and another way when it is the payor. Moreover, OMB's Circular A-125 only governs payments by the government. It cannot affect the time computation rules followed when private companies make payments to the government which are themselves subject to contractual, regulatory, or statutory due dates. (For example, delinquent debts owed to the United States must be paid within 30 days in order to avoid interest assessments under 31 U.S.C. § 3717 (1982).) Adoption of the prevailing rule for payments within the scope of the PPA would, we expect, result in equity between the government and its vendors by computing time similarly for both when payment falls due on one of these days.

For these reasons, if OMB decides to include a time computation rule in Circular A-125, we suggest that it provide that whenever a prompt payment-related deadline falls on a Saturday, Sunday, or legal holiday, payment may be made without adverse legal consequence on the next day that is not a Saturday, Sunday, or legal holiday.

Sincerely yours,



Gary L. Kepplinger
Associate General Counsel

^{11/} See Armstrong v. Tisch, 835 F.2d 1139, 1140 (5th Cir. 1988) ("This rubric [Rule 6(a)] has universal acceptance.").