



Legal Opinion L-2006-04  
February 10, 2006

U.S. Railroad Retirement Board Phone: (312) 751-7139  
844 North Rush Street TTY: (312) 751-4701  
Chicago Illinois, 60611-2092 Web: <http://www.rrb.gov>

TO: John M. Walter  
Chief of Accounting, Treasury, and  
Financial Systems  
Bureau of Fiscal Operations

FROM: Steven A. Bartholow  
General Counsel

SUBJECT: Calculation of Interest on Late Payments  
Prompt Payment Act

This is in reply to your inquiry of January 23, 2006, through a member of my staff, requesting my opinion as to whether you may in all cases use the vendor's invoice date as the date of receipt for calculation of interest due to vendors under the Prompt Payment Act (31 U.S.C. §§ 3901-3907) when the Board fails to make timely payment. For the reasons set forth below, it is my opinion that you may use the invoice date only if no date of actual receipt is annotated by your office.

You advise that currently, the agency's purchase orders specify that invoices are to be mailed to the Bureau of Fiscal Operations (BFO). The invoice is stamped with the date received by BFO, and forwarded to the office of the Board which made the purchase for approval. Where the invoice is sent directly from the vendor to the purchasing office rather than to BFO, the purchasing office is to approve the invoice for payment as appropriate, and then forward the invoice to BFO. For various reasons, current handling procedures have resulted in confusion as to when payment is due, and consequently when interest must be paid if the agency has not paid the vendor by the due date. You propose to modify the agency's procedures regarding handling of invoices to use the vendor's date on the invoice in all cases as the date from which to determine whether payment is issued timely under the Prompt Payment Act, regardless of the date the invoice is actually received or approved.

As you know, the Prompt Payment Act requires an agency to pay a vendor for property or service received by the agency no later than the "required payment date". See 31 U.S.C. 3902(a). Failure to make timely payment triggers an interest penalty payment to the vendor. Id. Section 3903(a)(1) requires that the Office of Management and Budget (OMB) prescribe regulations to implement section 3902 by defining the "required payment date" as (A) "the date payment is due under the contract for the item of property or service provided; or (B) 30 days after a proper invoice for the amount due is received if a specific payment date is not established by contract". Pursuant to section 3901(a)(4), the agency is deemed to "receive an invoice":

- (A) on the later of—
- (i) the date on which the place or person designated by the agency to first receive such invoice actually receives a proper invoice; or
  - (ii) on the 7<sup>th</sup> day after the date on which, in accordance with the terms of the contract, the property is actually delivered or performance of the services is actually completed, as the case may be, unless—
    - (I) the agency has actually accepted such property or services before such 7<sup>th</sup> day; or
    - (II) the contract (except in the case of a contract for the procurement of a brand-name commercial item for authorized resale) specifies a longer acceptance period, as determined by the contracting officer to be



**Legal Opinion L-2006-04**  
**February 10, 2006**

U.S. Railroad Retirement Board Phone: (312) 751-7139  
844 North Rush Street TTY: (312) 751-4701  
Chicago Illinois, 60611-2092 Web: <http://www.rrb.gov>

- required to afford the agency a practicable opportunity to inspect and test the property furnished or evaluate the services performed; or
- (B) on the date of the invoice, if the agency has failed to annotate the invoice with the date of receipt at the time of actual receipt by the place or person designated by the agency to first receive such invoice.

(Emphasis supplied).

OMB has promulgated the regulation required by section 3903 at 5 CFR Part 1315. Section 1315.4(b)(1)(i) clarifies that for purposes of section 3901(a)(4)(A)(i) quoted above, a mailed invoice is received "if the agency annotates the invoice with the date of receipt at the time of receipt."

Your proposal is to deem all invoices received on the date of the vendor's invoice under section 3901(a)(4)(B). By its plain language, subparagraph (a)(4)(B) is operable only where no date of receipt is recorded on the invoice, in which case the invoice date becomes the mandatory "date of receipt". In my opinion, if your office does not annotate the date of invoice receipt, your proposal to use the vendor's date of invoice as date of receipt is consistent with the definition of "date of receipt" under section 3901 of the Prompt Payment Act.

I trust the foregoing will be of assistance to you.