


MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania Governor's Office

Subject: Interest Penalties for Late Payments	Number: 305.7 Amended
Date: March 10, 2014	By Direction of:  Charles B. Zogby, Secretary of the Budget
Contact Agency: Office of the Budget, Office of Comptroller Operations, Bureau of Payable Services, Telephone 717.425.6538	

This directive establishes policy, responsibilities, and procedures for the payment of interest penalties on late payments, pursuant to *Section 1507 of The Fiscal Code*. This amendment eliminates content not specifically focused on the payment of interest penalties, adds to definitions, and clarifies responsibilities and procedures for the Office of the Budget and other agencies. Marginal dots are excluded due to major changes.

- 1. PURPOSE.** To establish policy, responsibilities, and procedures for the payment of interest penalties on late payments, pursuant to *Section 1507 of The Fiscal Code*.
- 2. SCOPE.** This directive applies to all departments, boards, commissions, and councils (hereinafter referred to as "agencies") under the Governor's jurisdiction and other agencies subject to *Section 1507 of The Fiscal Code*.
- 3. OBJECTIVE.** To provide direction for the payment of interest penalties on late payments to qualified small business concerns.
- 4. DEFINITIONS.**
 - a. Late Payment.** For the purpose of this directive, late payment refers to any payment to a qualified small business concern for property or services rendered and for which the payment date occurs more than 15 days after the required payment date.
 - b. Payment Date.** The date of a check, the date of a scheduled electronic funds transfer, or the date of a wire transfer.

- c. **Qualified Small Business Concern.** Any independently owned and operated for-profit business concern employing 100 or fewer employees and not a subsidiary or affiliate of a corporation otherwise not qualified.
- d. **Required Payment Date.** The date on which payment is due under the terms of a contract; 30 days after receipt of a proper invoice if a date on which payment is due is not specified in the contract; or the net payment date stated on the invoice, if later than the aforementioned dates.

5. POLICY.

- a. Pursuant to *Section 1507 of The Fiscal Code (72 P.S. §1507)* and *Title 4 of the Pennsylvania Code, Chapter 2, Subchapter B*, commonwealth agencies shall pay an interest penalty to a qualified small business concern upon notification of a late payment. In the case of contractors under the Public Works Contract Regulation Law, applicable retainage amounts may be withheld from contractors' payment requests.
- b. Interest shall be computed at the rate determined by the Secretary of Revenue as provided in *Sections 806 and 806.1 of The Fiscal Code (72 P.S. §§806 and 806.1)*.
- c. Interest shall be paid by a separate payment within 30 days of the payment date. The amount of an interest penalty that remains unpaid at the end of each successive 30-day period will become the principal amount upon which subsequent interest shall accrue.

6. RESPONSIBILITIES.

a. **Agencies** shall:

- (1) Forward inquiries regarding possible late payments to qualified small business concerns to the Office of the Budget, Office of Comptroller Operations, Bureau of Payable Services (BPS).
- (2) Assist BPS, as needed, in determining the amount of interest due on late payments.
- (3) Generate invoices for the payment of interest penalties.
- (4) Review occurrences of late payments and take corrective action, as needed, to prevent or reduce the risk of additional late payments.

b. **Office of the Budget, Office of Comptroller Operations, Bureau of Payable Services** shall:

- (1) Assess notifications from agencies and qualified small business concerns of possible late payments, including a review of each invoice and accounting transactions related to the invoice, and determine if such payments meet the definition of late payments.

- (2) Notify agencies of the outcome of any assessment of possible interest penalties; consult the agency, as needed, regarding the amount of interest due on late payments and provide to the agency the information required to generate an invoice for the payment of interest penalties.
- (3) Notify qualified small business concerns when an assessment results in a determination that a payment does not meet the definition of a late payment.

7. PROCEDURES.

- a. **Qualified Small Business Concern.** Notify the agency or BPS of the possible late payment, in writing or by telephone.
- b. **Agency.** Forward inquiries from qualified small business concerns to BPS for review.
- c. **Office of the Budget, Office of Comptroller Operations, Bureau of Payable Services.**
 - (1) Receive notification of a possible late payment from the affected qualified small business concern or the paying agency.
 - (2) Review the details of the payment for accuracy and propriety, including accounting transactions related to the invoice and the payment date, and determine if the payment was issued late in accordance with *Title 4* of the *Pennsylvania Code, Chapter 2, Subchapter B*.
 - (a) If the payment was issued late, calculate the interest penalty using the rate determined by the Secretary of Revenue and provide to the agency the amount and any other information required to generate an invoice for the interest penalty.
 - (b) If the payment was not issued late, notify the agency and qualified small business concern of the determination.
- d. **Agency.** Generate an invoice in accordance with the Agency Non-PO Invoice Processing Procedure Manual to pay the interest penalty to the qualified small business concern.

This directive replaces, in its entirety, *Management Directive 305.7*, dated May 11, 2009.

Enclosure 1 – Title 4. Administration, Part I. Governor’s Office,
Chapter 2. Offices of Administration and the
Budget, Subchapter B. Interest Penalties for Late Payment

TITLE 4. ADMINISTRATION

PART I. GOVERNOR'S OFFICE

CHAPTER 2. OFFICES OF ADMINISTRATION AND THE BUDGET

Subchapter B. INTEREST PENALTIES FOR LATE PAYMENTS

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§2.31. Purpose.

The act provides for the payment of interest penalties to qualified small business concerns when payments for property or services provided to Commonwealth agencies are not made by required payment dates. This subchapter prescribes eligibility requirements, payment dates, responsibilities of Commonwealth agencies, and method of payment.

§2.32. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Act - The Act of December 13, 1982 (*P.L. 1155, No. 266*) (*72 P.S. §1507*).

Business concern - Any person (sole proprietorship, partnership, corporation) engaged in a trade or business and operating as a contractor with Commonwealth agencies and nonprofit entities operating as contractors with Commonwealth agencies.

Commonwealth agency - An executive or independent agency and the Auditor General, the Board of Claims, the State Treasurer, and the Public Utility Commission.

Executive agency - The Governor and the departments, boards, commissions, authorities, and other officers and agencies of the Commonwealth government; the term excludes a court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies, and an independent agency.

Independent agency - The Department of the Attorney General, the Fish [and Boat] Commission, the Game Commission, the Historical and Museum Commission, the State Civil Service Commission, the Turnpike Commission, the Milk Marketing Board, the Liquor Control Board, the Human Relations Commission, the Labor Relations Board, the Securities Commission, the State Tax Equalization Board, the Higher Education Assistance Agency, the Crime Commission [Commission on Crime and Delinquency], and the State Ethics Commission.

Payment date - A payment shall be considered made on:

- (i) The date of the check;
- (ii) The date of scheduled electronic funds transfer; or
- (iii) The date of wire transfer.

Payment office or finance center - The location to which a Commonwealth agency directs an invoice to be submitted, as stipulated on the contract or purchase document.

Proper invoice - A billing from a vendor for property or services accepted by a Commonwealth agency that contains or is accompanied by such substantiating documentation and in such form and number as may be required by the Commonwealth agency.

Qualified small business concern - An independently owned and operated for-profit business concern employing 100 or fewer employees and not a subsidiary or affiliate of a corporation otherwise not qualified.

Receipt of Invoice - The later of:

- (i) The date on which the agency's designated payment office or finance center actually receives a proper invoice; or
- (ii) The date on which the Commonwealth agency accepts the property or service concerned.

Required payment date -

- (i) The date on which payment is due under the terms of a contract;
- (ii) Thirty days after receipt of a proper invoice if a date on which payment is due is not specified in the contract; or

- (iii) The net payment date stated on the invoice if later than the dates established in accordance with subparagraphs (i) and (ii).

§2.33. Effective date.

This subchapter applies to contracts entered into for the acquisition of property or services on or after June 11, 1983.

§2.34. Applicability to Commonwealth agencies.

Commonwealth agencies are subject to this subchapter.

§2.35. Policy governing payments of interest penalties.

- (a) Each Commonwealth agency which acquires property or services from a qualified small business concern but which does not make payment for each such complete delivered item of property or service by the required payment date will pay an interest penalty to the qualified small business concern as prescribed in this subchapter.
- (b) An interest penalty will be paid for the period beginning on the day after the required payment date and ending on the payment date, except that no interest penalty will be paid if the payment date is on or before the 15th day after the required payment date.
- (c) Interest will be computed at the rate determined by the Secretary of Revenue as provided in *Sections 806 and 806.1 of The Fiscal Code (72 P.S. §§806 and 806.1)*.
- (d) Interest will be paid by a separate payment within 30 days of the payment date. The amount of an interest penalty that remains unpaid at the end of each successive 30-day period will become the principal amount upon which subsequent interest penalties shall accrue.

For example:

Day 1 - receipt of a proper invoice

Day 30 - required payment date

Day 45 - end of grace period, no interest due

Day 50 - payment date; interest due from Day 31 through Day 50

Day 80 - final due date for payment of interest penalty

Day 81 - additional interest begins on interest payment due.

§2.36. Eligibility requirements.

- (a) A qualified small business concern, to be eligible under this subchapter, shall include the following on the face of every invoice presented to the Commonwealth: "*(name of vendor)* is a qualified small business concern as defined in 4 Pa. Code 2.32."
- (b) Invoices, and any inquiries related thereto, of a qualified small business concern shall be directed to the payment office or finance center designated on the contract or purchasing document. If no payment office or finance center is designated, a proper invoice shall be submitted to the organization within the Commonwealth agency that accepts delivery of the property or service.

§2.37. Responsibilities of Commonwealth Agencies.

- (a) Commonwealth agencies will specify a payment office or finance center on every contract or purchasing document.
- (b) Separate required payment dates will be specified by Commonwealth agencies for contracts under which property or services are to be provided in a series of partial executions or deliveries to the extent that such contracts provide for separate payments of such partial executions or deliveries.
- (c) Prior to the date upon which payment without an interest penalty is due, the Commonwealth agency will notify a qualified small business concern of any defect in property or services or impropriety in an invoice that would prevent the running of the time periods specified in §2.35 (relating to policy governing payments of interest penalties). The notification will include a statement that all differences must be resolved prior to acceptance by the Commonwealth. Upon written or telephonic notification to the qualified small business concern, the running of the time periods specified in §2.35 will stop.

§2.38. Exclusions.

- (a) This subchapter does not apply to public contracts subject to the *act of November 26, 1978 (P.L. 1309, No. 317) (73 P.S. §§1621 - 1631)*, referred to as the *Public Works Contract Regulation Law*.
- (b) Interest penalties will not accrue on invoices remaining unpaid because the Commonwealth is setting off obligations receivable from a qualified small business concern.
- (c) Accrual of an interest penalty will cease automatically 6 months from the date of the original invoice unless the qualified small business concern has notified the payment office or finance center, in writing, that the invoice was not paid by the required payment date.

- (d) Interest penalties will not be paid if the total accrued amount is less than \$1.00.
- (e) This subchapter will not be construed to require interest penalties on a payment which is not made by the required payment date because of a dispute between a Commonwealth agency and a qualified small business concern over the amount of the payment or other allegations concerning compliance with a contract. Claims concerning any such dispute and any interest which may be payable with respect to the period while the dispute is being resolved may be filed with the Board of Claims, following the exhaustion of other appropriate administrative or contractual remedies, if the claim meets the jurisdictional requirements, other than those relating to amounts, of the Board of Claims. Interest penalties awarded by the Board, if any, will be computed as shown in §2.35(b) (relating to policy governing payments of interest penalties).

§2.39. Method of payment.

- (a) Commonwealth agencies will pay any interest penalties required by the act and this subchapter out of funds made available for the administration or operation of the program for which the penalty was incurred or from general administrative funds of the agency.
- (b) Nothing in this subchapter will be construed to require payment of interest penalties from Federal funds if such payment is prohibited by Federal statute or regulation.

§2.40. Reports required of agencies.

Reports will be as required by the Secretary of the Budget through the Directives Management System.