

Pension Benefit Guaranty Corporation

76-48

April 12, 1976

REFERENCE:

[*1] 4007(b) Payment of Premiums. Penalties and Interest

OPINION:

This is in response to your letter of February 16, 1976 requesting that the Pension Benefit Guaranty Corporation (hereinafter referred to as the "PBGC") waive the interest and penalty charges in connection with the late premium payment for the * * * Employees' Pension Plan, for the plan year ending February 28, 1976.

Section 4007(b) of the Employee Retirement Income Security Act of 1974 (the "Act") and this Corporation's premium payment regulation adopted thereunder (Part 2602, Chapter XXVI, Title 29, Code of Federal Regulations), do not permit this Corporation to waive the imposition of interest charges upon untimely premium filings. Penalty charges, on the other hand, may be waived either upon a showing of substantial hardship arising from the timely payment of the premium and a showing that the premium will be paid within 60 days after the due date or upon any other timely request and demonstration of good cause.

Section 4007(a) of the Act provides that premiums for the first plan year commencing after the date of enactment of the Act are due within 30 days of commencement of such plan year. The Form PBGC-1 Package, which [*2] you used in connection with your earlier premium payment, specifically states on page 3 that "for the first plan year commencing after the date of enactment, you should file your premium declaration within 30 days after such plan year commences." The package contained more than one Premium Payment Declaration Form, and therefore a form was available for use in connection with your 1975 payment.

We certainly sympathize with your problem in trying to comply with all the ERISA requirements. However, there has been no demonstration of good cause in this case as the statute requires, and thus, a waiver of the penalty provided for by the Act is inappropriate. This matter will therefore be referred to our Division of Accounting. We are willing to discuss this matter with you further if there is additional information that you have not submitted which you believe is relevant to our decision.

Henry Rose
General Counsel