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Government Printing Office - Interest on Late Payments

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While section 310 of Title 44, U.S. Code, requires agencies to pay the Government Printing Office (GPO) promptly, there is no statutory authority for GPO to directly charge other federal agencies interest for payments that GPO considers to be "late".

DECISION

The Government Printing Office (GPO) has requested an advance decision on whether it may charge federal agencies interest on their payment of printing fees that it considers to be late. GPO advises that, as of December 30, 1994, the Department of Defense, including the Navy and the Defense Printing Service, owe GPO a total of $33,079,000. GPO advises that of this amount, $13,262,000 is 60 days late. GPO notes that federal law requires agencies to pay GPO promptly for printing or supplies. 44 U.S.C. Sec. 310.

A report prepared by GPO's Office of Inspector General concluded that the Defense Department, Navy, and the Defense Printing Service "allegedly violated" section 310 as well as the Prompt Pay Act, 31 U.S.C. Sec. 3901. "Administrative Report of Investigation Concerning the United States Navy, the Defense Printing Service, the Department of Defense," at A-1 (signed report, but undated). The report noted, however, that the Inspector General's review of these two laws "revealed that there were no sanctions written that would allow the GPO to impose penalties on federal agencies who were delinquent with paying their printing fees." Id. at B-3. GPO, citing a 1981 decision of the Comptroller General, suggests that the Debt Collection Act, 31 U.S.C. Sec. 3701, might authorize it to assess interest against these agencies. For the reasons explained below, we conclude that neither section 310 nor the Debt Collection Act authorize GPO to directly assess interest on payments it considers late; the Prompt Pay Act is inapplicable.

GPO offers printing and related services and supplies to other federal agencies, subject to reimbursement "for the cost of all services and supplies furnished . . . at rates which include charges for overhead and related expenses, depreciation of plant and building appurtenances . . . and equipment, and accrued leave." 44 U.S.C. Sec. 309(b)(1). Section 310 requires agencies ordering from GPO to "pay promptly by check to the Public Printer upon his written request." 44 U.S.C. Sec. 310. Neither section 310 nor its legislative history define "promptly," nor do they address what remedies might be available to GPO when an ordering agency fails to pay promptly. As a general rule, interest is not recoverable against the United States in the absence of an express statutory

provision. 70 Comp.Gen. 664, 666 (1991). Neither section 309, in defining the fee GPO may charge for its services, nor section 310 authorize GPO to assess an agency interest for failure of that agency to pay promptly.

The Debt Collection Act provides, generally, for the assessment of interest, penalties and administrative costs on debts owed the federal government. 31 U.S.C. Secs. 3701-3719. That act specifies, however, that interagency claims are not subject to remedies otherwise available for the collection of such debts. 31 U.S.C. Secs. 3716 (administrative offset), 3717 (interest and penalties). The implementing regulations, the Federal Claims Collection Standards, specifically exclude interagency claims (claims by federal agencies against other federal agencies) from its coverage. 4 C.F.R. Secs. 101.1, 101.3 (c). In addition, the definition of "debt" excludes amounts owed by one federal agency to another. 4 C.F.R. Sec. 101.2 (a).

GPO noted that we have found that it is authorized under the Debt Collection Act to charge the District of Columbia interest on late payments. B-201003, Sept. 29, 1981. That conclusion, however, was based on the determination that, unlike the agencies here, the District is a separate legal entity from the federal government, and consequently, the provisions of the Debt Collection Act authorizing the assessment of interest are applicable.

The Prompt Pay Act is also not applicable here. The Prompt Pay Act requires agencies to pay interest on debts owed "business concerns" when the agency fails to pay within a specified period of time. 31 U.S.C. Sec. 3901. The act defines "business concern" as "a person carrying on a trade or business; and a nonprofit entity operating as a contractor." There is no indication in either the statute or its legislative history that the term "business concern" encompasses a federal agency.

While section 310 of Title 44, U.S. Code, does require agencies to pay GPO promptly, there appear to be no penalties for not doing so. Since we have found no authority for GPO to charge interest to other federal agencies, we suggest that GPO attempt to resolve the late payments through negotiation. If negotiation proves unsuccessful, GPO might consider seeking legislative authority to assess a late payment penalty.