

Pension Benefit Guaranty Corporation

76-6

January 12, 1976

REFERENCE:

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

OPINION:

This is in response to your letter of November 24, 1975 in which, on behalf of certain of your clients listed on the attachments to your letter, you requested this Corporation to waive until December 30, 1975 the interest and penalty charges which will be imposed upon your clients because of your inability to meet the premium payment filing requirements.

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.

It is not clear from your letter whether your firm actually is the "plan administrator" within the meaning of Section 3(16) of the Act for each of the plans listed on the attachments [*2] to your letter. Since the payment of premiums is the obligation of a plan administrator, requests for waivers must be made by such plan administrators. In addition, each request would have to be evaluated individually, and cannot be considered in the context of a general request such as yours.

Please note that the interest and penalty charges imposed by Section 4007 and by the premium regulation begin to accrue only after the due date for the payment of premiums. Premiums are due no later than 30 days after the beginning of the plan year. In addition, penalty charges are assessed on a graduated basis with penalties increasing commensurate with the lateness of the filings.

I certainly sympathize with your problems in trying to help your clients comply with all the ERISA requirements. Fortunately the interest charges and late payment penalties, since they are graduated, usually do not amount to a large sum if premiums are paid even a month or two after they are due. For example, a plan with 100 participants that paid its premium a month late would owe only \$5.00 in late payment charges and less than a dollar of interest charges. The schedule of late payment charges was specifically [*3] designed to minimize the cost impact on plans because we realized that some plans may have trouble making timely payments during the first few years after enactment.

Charles Skopic
Deputy Executive Director