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31 CFR 208.4 Waivers

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Disclaimer:

- ▶ The following presentation is a common-use understanding of the appropriate application of 31 CFR 208.4 waivers for electronic payments. It is not a legal interpretation or the official regulation.
- ▶ The examples provided are not all inclusive, nor are they guaranteed waivers as the payments market evolves.
- ▶ 31 CFR 208.4 is meant to provide guidelines. Agencies are responsible for determining if a waiver applies to their payment activity and should seek an internal legal opinion when in doubt.
- ▶ 31 CFR 208.4 can be found at <http://www.gpo.gov/fdsys/granule/CFR-2010-title31-vol2/CFR-2010-title31-vol2-sec208-4/content-detail.html>

Waiver 1: Benefit Payments Made to Individuals

- ▶ For benefit payments to individuals where electronic payment would
 - Impose hardship caused by a physical or mental disability.
 - Impose hardship caused by geographic, language, or literacy barrier.
 - Imposed financial hardship.
- ▶ For individuals that do not have a bank account eligible for EFT and are eligible for an ETASM account.
- ▶ Benefit payments are nondiscretionary payments (Social Security, SSI, VA Pension, OPM Retirement) made by the Federal Government and do not include optional incentives such as transit stipends.

Waiver 2: Infrastructural Limitations (Foreign Countries)

- ▶ Political: A variety of scenarios from ongoing political overthrow of a country to an established concern of fraudulent business between banks and the government that could affect the security of a foreign bank account.
- ▶ Financial: Any area that does not have a reliably developed banking industry and/or a majority of merchants that do not accept electronic payments.
- ▶ Communication: Persistently absent/unreliable internet and telephone infrastructures that would significantly degrade electronic payment capability.
- ▶ Syria, Iraq, and Haiti would be appropriate for waivers based upon limitations in one or all of these categories.

Waiver 3: Stateside Disaster Area

- ▶ Fires, flooding, tornadoes, earthquakes, etc.
- ▶ Should be used when the disaster area results in a lack of a financial or communication infrastructure necessary to conduct electronic funds transfers.
- ▶ Hurricane's Katrina and Sandy are recent examples in which waiver 3 was appropriately exercised.

Waiver 4: Military Operations and Combat Zones

- ▶ Military Operations are typically short term, small scale actions: Raids on Somali Pirates.
- ▶ War/National Emergency are typically long term, large scale actions: OEF/OIF/OND.
- ▶ Only applies to the personnel directly engaged in, or supporting the operation in the area the operation is taking place in.

Waiver 5: Threat Prevention

- ▶ National Security may be compromised by EFT data.
 - An individual conducting covert operations receiving electronic payments from the US government that could potentially be tracked.
- ▶ Life or physical safety of the individual receiving US EFT payments or their associates.
 - Foreign nationals assisting in US operations, e.g., interpreters.
 - Individuals that must travel hostile terrain to a supporting bank.
- ▶ Law enforcement action may be compromised.
 - Stateside or foreign actions in which covert or discrete payments are necessary for law enforcement activities.

Waiver 6: Non-recurring Payments to Limited Vendors

- ▶ One time or rare payment to a vendor.
 - Vendor's receiving multiple payments or regular payments must be able to receive electronic payments at a capable financial institution.

AND;

- ▶ The cost of making the payment via EFT exceeds the cost of making the payment by check.
 - The current cost of producing a Treasury check is \$1.06. FedACH \$.04. Fedwire \$.55. International rates vary.

Waiver 7: Unusual Circumstances

- ▶ Payment for goods and services if:
 - Unusual: Nonrecurring and unforeseen. *And;*
 - Compelling Urgency: Extraordinary and convincing need to act without delay to protect a legitimate government interest. *And;*
 - Serious injury to the government if payment were made by EFT: The government faces an imminent loss of money or property, or the disruption of a Federal program or activity.

OR;

- ▶ Payment for goods and services if:
 - Sole Source Vendor: According to the standards in the FAR. *And;*
 - Serious injury to the government if payment were made by EFT.

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