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.

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 ETA^SM^ 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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