

Memorandum

September 20, 1984

TO : Director, AFMD

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FROM : Acting General Counsel - Harry R. Van Cleve

*Harry R. Van Cleve*2-19-85
per.
S.F.

SUBJECT: Electronic Certification - B-216035-O.M.

By memorandum dated August 7, 1984, Senior Group Director, AFMD, John J. Cronin, Jr., requested our opinion concerning the Department of the Treasury's (Treasury) proposed use of electronic methods of certifying payments. This request results from a Treasury inquiry as to GAO's views, and also is incident to an ongoing review by your staff of controls on overpayments made under the Treasury Financial Communications System. For the reasons discussed below, we find no conceptual legal problems with the proposed plan.

Current GAO and Treasury regulations require that vouchers presented to Treasury for payment bear a certifying officer's signature. However, we are told that GAO and Treasury Inspector General reviews show that this is an inefficient practice which does not afford a high degree of assurance of proper certification.

Electronic certification would eliminate the need to physically transport the completed voucher (SF 1166 or a similar form) containing the signature of the certifying officer to Treasury for verification prior to issuing payment. The certification and payment schedule would be electronically transmitted from an agency to Treasury, and would be verified by electronic means.

In these circumstances you ask the following questions:

"Does a specific legal requirement exist requiring a written signature or will another method be acceptable as long as the payment is certified?"

"What are the legal requirements for alternative documentary evidence, in lieu of a written certifying officer's signature, to satisfy a legal certification?"

"Will the system described in Attachment I provide adequate evidence that the payment has

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been certified and therefore satisfy the legal requirements?"

As explained below, the current practice of requiring a handwritten signature to accompany a certification typed or printed on paper is not the only legal method of certification. A symbol, unique to a certifying officer, in his sole control or custody, and capable of verification, may be adopted as a means to attest to the authenticity of a certificate. The system described in Attachment I, with the addition of a document to be kept at the certifying officer's agency, should be legally sufficient to provide for the certification of agency vouchers to Treasury by electronic means, as well as afford increased safeguards against certification by unauthorized persons.

The certification of vouchers is mandated by 31 U.S.C. § 3325 which states in pertinent part that:

"(a) A disbursing official in the executive branch of the United States Government shall--

"(1) disburse money only as provided by a voucher certified by--

"(A) the head of the executive agency concerned; or

"(B) an officer or employee of the executive agency having written authorization from the head of the agency to certify vouchers;

"(2) examine a voucher if necessary to decide if it is--

"(A) in proper form;

"(B) certified and approved; and

"(C) computed correctly on the facts certified; and

"(3) except for the correctness of computations on a voucher, be held accountable for carrying out clauses (1) and (2) of this subsection."

Additionally, 31 U.S.C. § 3528 provides that--

"(a) a certifying official certifying a voucher is responsible for--

"(1) information stated in the certificate, voucher, and supporting records;

"(2) the computation of a certified voucher under this section and section 3325 of this title;

"(3) the legality of a proposed payment under the appropriation or fund involved;
* * *."

Included with the request was a copy of an opinion from the Legal Counsel of Treasury's Bureau of Government Financial Operations, dated October 17, 1983. It concluded that electronic certification of vouchers, while requiring a change in present regulations requiring manual signatures, could be implemented without a statutory change. We agree.

Sections 3325 and 3528 of Title 31, U.S. Code, had their origins in sections 1 and 2 of the Act of December 29, 1941, ch. 641, 55 Stat. 875. This Act was passed in response to recommendations of the Comptroller General which principally dealt with the clarification of the responsibilities of certifying and disbursing officers. H.R. Rep. No. 1263, 77th Cong., 1st Sess. 4 (1941). The legislative record shows no consideration as to the form certifications would take, nor was "certify" defined.

The essence of a certification is the assurance or representation that, "some act has or has not been done, or some event occurred, or some legal formality has been complied with." Black's Law Dictionary 205 (5th ed. 1979). See also, McCaffrey v. United States, 372 F.2d 482, 484 (1967).

While 31 U.S.C. § 3325 requires that an agency head's delegation of authority to certify vouchers must be in writing, there is no similar statutory requirement that the certification itself be in writing. In any event, it appears clear that there is no specific legal requirement that the text of the certificate be limited in form to writing on paper ("hard copy").

Under current procedures, Treasury receives a voucher which includes a statement of certification which is signed by

an authorized certifying officer. The signature serves as a guarantee of the authenticity of the certificate. In B-104590, September 12, 1951, this Office approved of the use of a signature machine on vouchers and other documents requiring certification provided it met the requirements and received the approval of Treasury. In that decision we stated as follows:

"While certifications of the nature here involved ordinarily are accomplished by handwritten signatures, the obvious burden that would result by requiring same affords a basis for the adoption of an alternate means, if otherwise proper. In this regard the courts have held that a signature consists of the writing of one's name and of the intention that it authenticate the instrument, and, therefore, any symbol adopted as one's signature when affixed with his knowledge and consent is a binding and legal signature. The use of a stamp has been held by the courts to be a good signature when the statute requires an instrument to be signed. 13 Comp. Dec. 749; 1 Op. Atty. Gen. 670."

In B-194970, July 3, 1979, which dealt with a stamped signature on purchase orders, we noted that the use of a facsimile device is not prohibited per se in any regulations, directives, or decisions of this Office. We also referred to 33 Comp. Gen. 297 (1954) in which we said that, "since in effect, the signer of the invoice has adopted and recognized the rubber stamp signature as his signature, it does not appear that such signature of such official would afford any less protection to the interests of the United States than would his handwritten signature."

From the foregoing it appears that an appropriate symbol may be adopted by a certifying officer as his signature for the purpose of voucher certification. Accordingly, in response to your first question, we are of the opinion that the current practice of requiring a handwritten signature to accompany a certification typed or printed on paper is not the only legal method of certification.

As indicated above, the certifying officer's responsibility for certifying the legality and correctness of vouchers may be accomplished by the use of an appropriate symbol adopted by the officer. This symbol should be unique, within his sole control or custody, and capable of verification by the

disbursing officer. In answer to the second question, a symbol with these characteristics would be sufficient to attest to the authenticity of a certificate, and therefore would be legally acceptable.

The last question deals with the suitability of a proposed electronic certification system, described in Attachment I of the request. Under it, electronic signals would be sent by an agency in encrypted format over public telephone lines to Treasury, where computers, after verifying the transmissions, would process the payments and issue checks. This would eliminate the need for the shipment of a SF 1166 voucher certification or other similar form from an agency to Treasury, the manual comparison of the signatures with those on signature cards, and then putting the payment information into Treasury computers. We are told that under the described system there would be greater assurance that the payments were sent by the specified agency and certified by the stated official than under the present system which depends upon sight verification of signatures.

At the heart of the system is an encryption device which is used to safeguard payment information and to authenticate the certification. An encryption key unique for the agency and certifying officer is provided by Treasury. The first part of the key is put into the encryption device by an individual in the agency, other than the certifying officer. The second part is only for use by a particular certifying officer. Both parts are required before a payment can be transmitted to and processed by Treasury. We are informed that the certifying officer's key would consist of two elements: First, an identification code and second, a password assigned to him by Treasury. When the complete correct key is used, the information transmitted to Treasury would include a message authentication code generated by the key. Upon its receipt, subject to other validation procedures, Treasury will complete payment processing.

Under this system the certifying officer would have a unique identification; his identification code plus a password assigned to him by Treasury. These, along with the agency part of the encryption key, would generate message codes which would be accepted by Treasury as indication of the authenticity of the certifying officer's approval of the proposed payments. Under this type of system, the certifying officer would have the duty to safeguard access to his identification code and assigned password and to prevent their unauthorized use. Failure to do so, would subject him to liability for loss in much the same way as if he had pre-signed blank

certifications which were then used by others for improper purposes.

We would suggest that under the proposed system, a document similar to voucher and payments form SF 1166 should be maintained at the agency's office. It should contain all of the information transmitted to the Treasury by electronic means, including a statement which might read as follows:

"Pursuant to authority vested in me, on (date) I transmitted or caused to be transmitted to the Department of the Treasury, by electronic means, my certification that the items listed herein are correct and proper for payment from the appropriation(s) designated herein or on supporting vouchers. In doing so I used my personal encryption key as my adopted signature."

This statement would be dated and signed by the certifying officer.

The purpose for doing this would be to preserve a record of the transaction, at the agency. We understand that an agency might not maintain in its computer the text of the data transmitted to Treasury. The document would be easily available for audit and for comparison with the certification and payment information received by Treasury, and thus it could serve as a basis for assessing a certifying officer's liability for loss.

Therefore, in answer to the last question, the described electronic certification system together with a document similar to that which we have proposed, should be legally sufficient to provide for the certification of the payments to be made by the Department of the Treasury, as well as afford increased safeguards against certification by unauthorized persons.

CERTIFYING OFFICERS

Certifications
Signature
Electronic

CERTIFICATIONS

Electronic
Propriety

VOUCHERS AND INVOICES

Certifications
Electronics
Propriety

END