The Arc of the United States
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December 16, 1997

Cynthia L. Johnson
Director, Cash Management Policy and Planning Division
Financial Management Service
U.S. Department of the Treasury
Room 420
401 14th Street, SW
Washington, DC 20227

Dear Ms. Johnson:

On behalf of The Arc of the United States, the International Association of Psychosocial Rehabilitation Services, the National Alliance for the Mentally Ill, and the National Mental Health Association, we appreciate this opportunity to comment on the proposed regulations regarding federal agency payment of funds by electronic funds transfer (*Federal Register*, September 16, 1997). Our organizations represent the interests of the over three million people with mental retardation or other mental disorders who receive benefits through the federal Supplemental Security Income (SSI) program or the Old Age, Survivors, and Disability Insurance (OASDI) program and who will be affected by the regulations adopted to implement the law regarding electronic funds transfers.

We agree with the proposal to make eligibility for waiving the use of electronic funds transfers a matter of self-certification. This will help to simplify the entire process for individuals and agencies alike. However, we disagree with Treasury's decision to limit the potential waivers that were included in the legislative history. As stated in the preamble to the proposed regulations, the legislative history mentions geographical, physical, mental, educational, and language barriers; yet the proposed rules indicate that Treasury is only willing to allow waivers for geographical or physical barriers. We object to the exclusion of "mental barriers" as a basis for a waiver of the requirement to receive payment through electronic funds transfers, particularly as it affects the use of the electronic transfer accounts (ETA). The justification for this decision is given as follows:

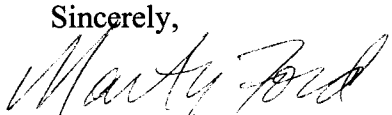
> With regard specifically to mental disabilities, Treasury notes that, as mentioned above in the discussion on "authorized payment agent," some agencies have already provided in their regulations for recipients who are mentally incapable of managing their payments. ... For example, ... SSA's regulations provide for the appointment of a representative payee. ...

There are several problems with the justification. First, it assumes that all people who may have "mental barriers" to the use of ETAs will have mental impairments severe enough to make them "incapable of managing their payments." On the contrary, we can envision people who are capable of, and who are currently successful in, handling their affairs through cashing a check and paying bills by cash, but who, at the same time, would be unable to read and/or follow the instructions of an ATM machine in order to access their ETA payments. Further, the Social Security Administration does not require that all people with mental retardation or other mental impairments have a representative payee. This determination is made on an individualized basis, subject to the person's own capacity. In fact, people with mental retardation or other mental impairments constitute 58 percent of all people receiving SSI benefits, yet only about 35 percent of SSI recipients have representative payees. We believe that it would be bad public policy to force, through the back door of ETA access, that all people experiencing difficulty due to mental impairments must relinquish their rights to handle their own financial affairs.

Finally, off-hand suggestions have been made during discussions on this issue that, since the waiver is implemented through self-certification, people with mental impairments can simply self-certify under the physical or geographical barriers waiver. Treasury must not rely on this approach: it places people in the position of committing a fraudulent act in order to conduct their ordinary affairs and it sets up the program for future criticism based on rampant fraud and abuse.

Therefore, for all the reasons noted above, we urge Treasury to include a waiver category for people who experience barriers to accessing ETAs due to mental impairment. If you have any questions on these comments, please contact me at 202/785-3388.

Sincerely,



Marty Ford
Assistant Director

ON BEHALF OF:

The Arc of the United States
International Association of Psychosocial Rehabilitation Services
National Alliance for the Mentally Ill
National Mental Health Association