

DRAFT

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NICS Comments

Social Security Administration
3100 West High Rise Building
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RE: Notice of Proposed Rulemaking, "Implementation of the NICS Improvement Amendments Act of 2007, (published May 5, 2016; 81 FR 27059; Docket No. SSA-2016-0011)

We offer the following comments in response to the Notice of Proposed Rulemaking (NPRM) concerning "Implementation of the NICS Improvements Act of 2007 (NIAA)" published on May 5, 2016 (81 FR 27059, Docket No. SSA-2016-0011).

While there is a critical need to address gun violence in the United States, this proposal is not an effective means of doing that. The proposed rule is based on a fundamentally flawed premise: that there is a connection between an elevated risk of engaging in gun violence and having a representative payee to manage one's Social Security benefits due to an impairment that meets or equals a Social Security Administration (SSA) "mental impairment" listing. As one prominent psychiatrist and expert on gun violence has stated, "Reactive attempts to reduce gun violence by focusing on people with mental illness represent an intervention with no supportive evidence of practical efficacy."¹

Our comments highlight four areas of concern.

First, there is no statutory basis for the proposed rule. The National Instant Criminal Background Check System (NICS) statute authorizes the reporting of an individual to the Federal Bureau of Investigation NICS database on the basis of a determination that the person "lacks the capacity to contract or manage his own affairs" as a result of "marked subnormal intelligence, or mental illness, incompetency condition or disease."² The appointment of a representative payee simply does not meet this standard. It indicates only that the individual needs help managing benefits received from SSA.

Second, the proposed rule would put in place an ineffective strategy to address gun violence, devoid of any evidentiary basis, targeting individuals with representative

¹ Michael S. Rosenwald, *Most mass shooters aren't mentally ill. So why push better treatment as the answer?*, Washington Post, May 18, 2016, https://www.washingtonpost.com/local/most-mass-shooters-arent-mentally-ill-so-why-push-better-treatment-as-the-answer/2016/05/17/70034918-1308-11e6-8967-7ac733c56f12_story.html?postshare=5211463529178043&tid=ss_fb (quoting Liza Gold, editor of *Gun Violence and Mental Illness* (2016)).

² 18 U.S.C. § 922(g); 27 C.F.R. § 478.11.

payees and listing-level mental impairments as potential perpetrators of gun violence. In doing so, it would also create a false sense that meaningful action has been taken to address gun violence and detract from potential prevention efforts targeting actual risks for gun violence. As two past presidents of the American Psychiatric Association have said of this proposal:

We are concerned about the president selectively targeting people with mental illness in his package of executive actions while ignoring other risk groups because they discriminate against this historically stigmatized population. . . . By allowing ourselves to focus on a group that accounts for only a tiny proportion of societal violence, we forego policy options that are likely to be much more protective. Any country's bandwidth for consideration of new policies is limited; if our leaders are distracted by mental illness, they will never get to consider the root cause of the problem.³

Third, the proposed rule would perpetuate the prevalent false association of mental disabilities with violence and undermine the groundbreaking work that the Obama Administration has done to promote community integration and employment of people with disabilities. The proposed rule could dissuade people with mental impairments from seeking appropriate treatment or services, or from applying for financial and medical assistance programs.

Finally, the proposed rule would create enormous new burdens on SSA without providing any additional resources. Implementation of the proposed rule would divert scarce resources away from the core work of the SSA at a time when the agency is struggling to overcome record backlogs and prospective beneficiaries are waiting for months and years for determinations of their benefits eligibility. Moreover, SSA lacks the expertise to make the determinations about safety that it would be called upon to make as part of the relief process established by the proposed rule.

For these reason, we urge SSA to withdraw the proposed rule.

³ Paul Appelbaum & Jeffrey Lieberman, *Gun Violence: Is Obama Right to Cite Mental Illness?*, Newsweek, Jan. 17, 2016, <http://www.newsweek.com/gun-violence-obama-mental-illness-416414>.