

## Testimony

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**“Examining the Social Security Administration’s Representative Payee Program”**  
**Social Security Subcommittee**  
**Committee on Ways and Means**  
**United States House of Representatives**

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Good morning. Thank you for the opportunity to testify before the Social Security Subcommittee for the House Ways and Means Committee.

My name is Lindsay Nichols, and I am a senior attorney with Americans for Responsible Solutions Foundation and the Law Center to Prevent Gun Violence.

Americans for Responsible Solutions is the gun violence prevention organization started by former Congresswomen Gabrielle Giffords and her husband, former astronaut Captain Mark Kelly in 2013.

Americans for Responsible Solutions joined forces with the Law Center to Prevent Gun Violence last year in an effort to ensure that policymakers have the best information about approaches to reducing gun violence in this country.

I am here to testify regarding to the rule that was finalized by the Social Security Administration (SSA) this past December regarding reporting to the firearms background check system.

I am here to speak to the way that system works and to the recently finalized rule. The topic of today’s hearing – SSA’s process of determining capability – relates to that rule and is one of two criteria required before SSA reports names. I am glad to hear how SSA has improved the way it makes that determination.

The Social Security Administration created this rule to implement the reporting requirements of the NICS Improvement Amendment Act of 2007.

The NIAA requires federal agencies such as the SSA to report records of people prohibited from

possessing firearms to the National Instant Criminal Background Check System, known as NICS, upon request of the Attorney General. This is the system that gun dealers must access to conduct background checks on gun purchasers under the Brady Act. Under this rule SSA will provide records of certain Social Security recipients who are already presumptively prohibited by federal law from purchasing or possessing guns.

A longstanding federal law says that people who have been adjudicated a mental defective are presumptively prohibited from purchasing or possessing firearms. That term, “adjudicated a mental defective,” is a holdover from the 1960s, but it remains on the books. People who receive Social Security disability benefits based on certain findings and have had a representative appointed to receive disability benefits on their behalf fall clearly within the scope of this presumptive prohibition.

Prior to this rule, records identifying these people were missing from the gun background check system (from NICS).

Without these records, these people are able to pass a background check and obtain firearms, even though they are legally prohibited from doing so.

Ten years ago, the nation experienced what happens when records are missing from NICS at Virginia Tech. In that shooting a man who was dangerously mentally ill, and had been ordered by a court to seek treatment for mental illness, shot and killed 32 people before committing suicide on the Virginia Tech campus. The shooter had passed background checks to obtain the firearms he used in the shooting because the background check system had no record of him. This tragedy exposed the loopholes in reporting of information to the background check system.

This horrible event, and the realization that it could so easily have been prevented spurred Congress to move forward with the most important piece of federal gun legislation over the past decade. The NICS Improvement Amendment Act of 2007, or NIAA, was intended to ensure that states and federal agencies report people who are ineligible to purchase or possess firearms to the NICS background check system.

The NIAA, which Congress passed unanimously and President George W. Bush signed, was a bipartisan compromise bill. Groups like the Brady Campaign and the NRA came together to create a strong law. Not only did it encourage, and in the case of federal agencies, require records to be sent to NICS, but this piece of legislation also required these agencies to create

programs so that an individual who is reported to the background check system on the basis of a mental disorder can petition for eligibility to possess a gun. For many years prior to the NIAA, many people who were reported to the background check system had no way to regain their gun eligibility.

The NIAA set certain standard and procedural requirements for those programs. The standard that these programs must use is that a person can become eligible to possess a gun, despite a mental health adjudication, if the lawful authority finds that “the circumstances regarding the disability, and the applicant’s record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.”

The NIAA also provides that if a federal agency denies a petition for gun eligibility, that denial can be appealed to a court.

The NIAA also require federal agencies that report people who have been adjudicated as a mental defective to provide both oral and written notice to the person at the commencement of the adjudication process. This notice must include information about the agency’s program for the person to regain eligibility to possess a gun.

The NIAA also prohibits the reporting of any person based solely on a medical finding of disability, without an opportunity for a hearing by lawful authority.

In addition, a person who is found to no longer suffer from the mental health condition, or has otherwise been found to be rehabilitated may no longer be listed in NICS.

So the NIAA requires federal agencies to ensure that these protections are in place. But they must also do the reporting in accordance with the NIAA. The NIAA imposed these legal obligations on federal agencies like the Social Security Administration.

The Social Security Administration’s rule sets out a process for the Administration to fulfill these requirements, including detailed and robust appeal rights.

It follows the terms of the NIAA very closely.

It only applies to a narrow group of people who have been determined by the Social Security Administration to lack the capacity, on the basis of a mental disorder, to manage their affairs, specifically their benefit payments. The Social Security Administration has limited this rule to

be prospective only. It has also limited it to people who have filed a claim based on disability and have been found to meet a “listings level” of disability, meaning that the mental impairment is severe enough to prevent an individual from doing any gainful activity, AND it has limited to people who have been appointed a representative payee, meaning that their mental impairment prevents them from managing their benefit payments. A pre-existing Social Security Administration regulation also provides that a person has an opportunity to request a hearing before SSA appoints a representative payee.

It does not apply to retirees and it does not apply in cases where an individual simply needs a little help managing their funds.

In accordance with the NIAA the new rule provides that the person will also receive oral and written notice of the proposed adjudication in advance. This notice will inform the person about the effect these determinations might have on his or her ability to legally possess a gun. It will also inform the person of the process for regaining his or her gun eligibility should the SSA decide to appoint a representative payee.

The new rule provides that if a person is determined to no longer need a representative payee to manage these benefits, the SSA will notify NICS so that the information identifying the person can be removed from NICS.

The new rule also creates a process for a person to regain his or her eligibility to possess a gun despite the listings level finding and the appointment of a representative payee. This process uses the standards set forth in the NIAA, and provides that if the Administration denies a petition for gun eligibility, the person can appeal that denial to a court.

This rule fulfills the SSA’s obligations under the NIAA. It enforces the law as it is currently on the books.

It is also good policy.

America has lost too many lives to gun violence. Mass shootings – from Virginia Tech to Aurora to Tucson to Sandy Hook to Orlando – have joined the constant drumbeat of individual gun deaths across the country. These experiences have led many people to the inexorable conclusion that we need to do more to keep guns out of the wrong hands.

Despite the media’s emphasis on mass shootings and violent crime, the most frequent

occurrence that demonstrates the link between mental illness and gun violence is suicide. Suicides account for more than half of all gun deaths each year, and about half of suicides are performed with a gun. In 2014, 15,719 people between the ages of 18 and 65 in the U.S. shot themselves to death in incidents ruled to be suicides. Suicides devastate the families, friends, and communities of the people who are lost.

The sad truth is that many gun suicides are preventable. About 90% of people who die by suicide had a diagnosable mental illness. The evidence shows that suicides and suicide attempts often occur during a time of crisis, and that many suicides are impulsive acts: about 90% of people who live through a suicide attempt do not ultimately die by suicide. Suicide attempts with a gun are much more likely to be fatal than suicide attempts by other methods. More than 90% of all suicide attempts with a firearm, if serious enough to require hospital treatment, result in death.

In addition, every year more than 500 people are killed in unintentional shootings in the U.S. Many, if not most, of these shootings could have been prevented if firearms had been properly handled and stored. So it is extremely important to ensure that gun owners have the mental, emotional, and behavioral capacity to properly store and handle firearms. If a person fails to properly lock up his or her firearms, even just once, a child or other unauthorized person may obtain access to those firearms and tragedy may result.

The new SSA rule is a modest step to reducing the number of these kinds of shootings. While some people who are severely impaired by mental illness or other mental conditions are able to handle the responsibilities of gun ownership without undue risk to themselves or to public safety, others are not. We recognize that people in this category do not generally pose an increased risk of violence towards others. However, the concern that a person will act violently towards others is not the only governmental interest at stake here. The risks of suicide or unintentional shootings must also be taken into account.

Responsible gun ownership requires a certain degree of skill and meticulousness. Unfortunately, our current federal system of gun regulation does not require individuals to undergo training or testing to evaluate their knowledge of basic gun safety practices before they have access to guns. The only significant vetting requirement for gun purchasers in federal law is a background check if the gun seller is a licensed dealer.

Consequently, the new rule makes sense. It will only impact a person if he or she has been determined to be so severely impaired by a mental condition that he or she is unable to

manage his or her own benefits, in which case, he or she is already prohibited from purchasing or possessing guns. The new rule will simply prevent this person from passing a gun purchaser background check only until after an evaluation of their specific capacity to take on the responsibilities of gun ownership.

This rule creates a process that gives the SSA an opportunity to evaluate the person's individual capacity to properly store, handle, and use firearms more carefully at this time. The SSA will only conduct this evaluation if a person requests it, thereby conserving agency resources. Not everyone is interested in owning or possessing a firearm.

Finally, it is important to remember that information in the gun purchaser background check system is kept confidential. The only information SSA will provide to NICS is name, date of birth, gender, and Social Security number – not medical information. This information will be entered only into the NICS Index, a part of the background check system that is used only when a person seeks access to firearms. NICS only provides gun sellers a response of “Approved” or “Denied”, without information about why a person's access to guns has been denied. Community members will not learn of a person's disability through this rule.

There is therefore insufficient evidence to believe that providing a person's identifying information to NICS in any way increases the stigmatization or inaccurate stereotyping of people with mental illness. Its main effect will be preventing suicides and unintentional shootings. This rule is simply the procedural implementation of what is already the law. It only applies to people currently ineligible to possess firearms, and it provides them with a method to regain their gun eligibility in accordance with the NIAA.

Thank you for the opportunity to present this information.