

United States Senate

WASHINGTON, DC 20510

August 6, 2026

The Honorable Robert Cekada
Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue NE
Washington, DC 20226

RE: RIN 1140-AB04, Revising Definitions of “Adjudicated as a Mental Defective” and “Committed to a Mental Institution”

Dear Director Cekada:

We submit this comment in opposition to the Bureau of Alcohol, Tobacco, Firearms and Explosives’ (“ATF”) proposed rule entitled, “Revising Definitions of ‘Adjudicated as a Mental Defective’ and ‘Committed to a Mental Institution’” (RIN 1140-AB04).¹ With these proposed revisions, ATF is rewriting the regulations that have been used and relied on for decades to help keep firearms out of the hands of individuals who are not allowed to have them for mental health reasons under 18 U.S.C. § 922(g)(4). ATF’s stated justification for this change is narrow, citing mainly the Department of Veterans Affairs (VA) past practice of reporting certain veterans to the National Instant Criminal Background Check System (NICS), but ATF’s proposed rule is much broader.² It is also based on an insufficient process — failing to account for the significant costs implementation of this proposed rule will incur.³ In addition, ATF admits the potential risks that will come with these revisions include “potential mass casualty events.”⁴ For all of these reasons, ATF should withdraw this rule.

Since the enactment of the Gun Control Act of 1968 (“GCA”), it has been unlawful for a person who has been “adjudicated as a mental defective” or “committed to a mental institution” to possess or receive firearms.⁵ The GCA, including this prohibition, was enacted to enhance public safety.⁶ Three decades later, in 1993, Congress enacted the Brady Handgun Violence Prevention Act (“Brady Act”) to strengthen the GCA’s fundamental public safety enhancements.⁷ To do so, the Brady Act created NICS and established a federal background check requirement.⁸ To that

¹ Revising Definitions of “Adjudicated as a Mental Defective” and “Committed to a Mental Institution,” 91 Fed. Reg. 25,166 (proposed May 8, 2026) (to be codified at 27 C.F.R. pt. 478).

² *Id.* at 25,169.

³ *Id.* at 25,182–83.

⁴ *Id.* at 25,181–82.

⁵ 18 U.S.C. § 922(g)(4).

⁶ Olivia B. Waxman, *How the Gun Control Act of 1968 Changed America’s Approach to Firearms—And What People Get Wrong About That History*, Time (Dec. 12, 2023), <https://time.com/5429002/gun-control-act-history-1968/>.

⁷ Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

⁸ *Id.*; 18 U.S.C. § 922(t).

end, for three decades, Federal Firearms Licensees (FFLs) that sell and transfer firearms have been required to run background checks on nearly all firearm transactions.⁹ Congress’s intent: keep firearms out of the hands of those who, by law, are not allowed to have them.

To implement NICS, there became a need to define the GCA’s core terms, including those that are the subjects of this proposed rule: “adjudicated as a mental defective” and “committed to a mental institution.” In 1997, ATF finalized a rule that did just that, and those definitions have been used and relied on since to ensure that NICS serves its purpose as Congress intended.¹⁰

Now, ATF seeks to revise these longstanding definitions over “[r]ecent controversies concerning veterans and social security recipients.”¹¹ But these purported controversies are, in fact, not controversies at all. Congress, as a matter of law, has addressed them such that they are an inadequate justification in the first instance. However, even if these so-called “controversies” justified ATF’s proposal, the revisions that ATF seeks to make sweep far broader than the issues cited.

ATF contends that veterans and social security recipients “who have been disarmed because they were determined to require assistance managing their benefits” demonstrate the overbreadth of the current regulation.¹² This contention takes issue with ATF’s current definition for the term “adjudicated as a mental defective,” which, in the relevant part, means “[a] determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease . . . [l]acks the mental capacity to contract or manage his own affairs.”¹³

ATF’s claims misrepresent the situation, and these purported issues have already been resolved by Congress. First, since NICS became operational in 1998 until March 2024, the VA had reported veterans (and other VA beneficiaries) determined to be “mentally incompetent” to NICS because the VA’s definition of “mental incompetency,” i.e., “one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs,” satisfies ATF’s definition of “adjudicated as a mental defective.”¹⁴ The operative language in the VA’s regulations and the reason why “mentally incompetent” persons were reported to NICS was “because of injury or disease,” referring to serious mental health disorders including, among others, schizophrenia and bipolar disorder. The VA’s “mental incompetency” determinations and the VA’s reporting to NICS had strong due process protections built in — consistent with basic principles of due process and with additional protections enacted in the NICS Improvement Amendments Act of 2007 and the 21st Century Cures Act.¹⁵

⁹ 18 U.S.C. § 922(t).

¹⁰ Definitions for the Categories of Persons Prohibited From Receiving Firearms, 62 Fed. Reg. 34,634 (June 27, 1997) (codified at 27 C.F.R. pt. 178); *see also* 91 Fed. Reg. at 25,167.

¹¹ 91 Fed. Reg. at 25,169.

¹² *Id.*

¹³ 27 C.F.R. § 478.11.

¹⁴ 38 C.F.R. § 3.353(a); *see* 91 Fed. Reg. at 25,168 (discussing ATF’s reliance on the VA’s definition of mental incompetency in the 1997 rule).

¹⁵ NICS Improvement Amendments Act of 2007, Pub. L. No. 110-180, 122 Stat. 2559 (2008); 21st Century Cures Act, Pub. L. No. 114-255, 130 Stat. 1033 (2016).

In March 2024, however, Congress enacted an appropriations rider, which has since been renewed, that prohibits the VA from using funds to report these individuals to NICS “without . . . an order or finding from a judge, magistrate, or other judicial authority of competent jurisdiction that the beneficiary is a danger to themselves or others.”¹⁶ In effect, this rider stopped nearly all reporting from the VA to NICS. Moreover, in February 2026, the VA announced that it would no longer report Fiduciary Program participants to NICS at all, and that it was working with the FBI to remove past VA-initiated NICS entries so that no veteran remains flagged based solely on a fiduciary determination.¹⁷

Second, in 2016, the Social Security Administration (“SSA”) began to engage in rulemaking to, like the VA, provide records to NICS about SSA beneficiaries determined to be mentally incompetent.¹⁸ However, no such records were ever reported to NICS pursuant to the SSA rule because Congress passed a joint resolution of disapproval under the Congressional Review Act that President Trump, in his first term, then signed into law.¹⁹

To that end, what ATF suggests are “controversies” in an effort to justify its current rulemaking have been resolved and are therefore moot. Even if these so-called “controversies” were sufficient justification for the revisions ATF now seeks to make, ATF’s revisions go far beyond revising the “[l]acks the mental capacity to contract or manage his own affairs” prong of the current regulation. The proposed rule would strike it in full. But that is not all the proposed rule would do: it would rewrite the entire definition of “adjudicated as a mental defective” altogether — and the definition of “committed to a mental institution,” too.²⁰ These additional changes far exceed ATF’s stated justification.

Though we are concerned with ATF’s new proposed definitions, we write to draw attention to one specific revision: ATF seeks to remove the current regulation’s consideration of an individual who “is a danger to himself or to others” from the current “adjudicated as a mental defective” definition.²¹ While we recognize that ATF is proposing to shift consideration of “dangerousness” to its revised “committed to a mental institution” definition, that is not the same nor sufficient on its own.²² As ATF knows, adjudications and commitments are distinct legal processes such that considering “dangerousness” in the context of commitments is not a substitute for considering it in the context of adjudications.

This particular revision is inconsistent with the intent and purpose of the GCA and the Brady Act. It is even inconsistent with the congressional action, discussed above, taken to resolve the

¹⁶ Consolidated Appropriations Act, 2024, Pub. L. No. 118-42, § 413 (Mar. 9, 2024); Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2026, Pub. L. No. 119-37, § 413, 139 Stat. 496, 625–26 (Nov. 12, 2025).

¹⁷ Press Release, U.S. Dep’t of Veterans Affs., *VA Undoes Decades-Old Wrong and Protects Veterans’ Second Amendment Rights* (Feb. 17, 2026), <https://news.va.gov/press-room/va-undoes-decades-old-wrong-and-protects-veterans-second-amendment-rights/>.

¹⁸ Removal of Regulations Governing the Reporting of Certain Federal Beneficiaries, 81 Fed. Reg. 91,702 (Dec. 19, 2016).

¹⁹ Pub. L. No. 115-8, 131 Stat. 9 (Feb. 28, 2017) (disapproving 81 Fed. Reg. 66,138 (Sept. 26, 2016)); *see also* 91 Fed. Reg. at 25,170–71.

²⁰ 91 Fed. Reg. at 25,186–87 (proposed 27 C.F.R. § 478.11).

²¹ *Id.*

²² *Id.* at 25,173–75.

so-called “controversies” related to veterans. As noted above, the appropriations rider that Congress enacted in March 2024, which is still in effect, limits VA reporting to NICS, but it does not foreclose it.²³ In fact, the plain language of the rider is clear: under certain circumstances, i.e., where “a judge, magistrate, or other judicial authority of competent jurisdiction” has found that the person in question is a danger to himself or herself or others, Congress believes that reporting to NICS is allowable.²⁴ However, ATF’s proposed rule ignores this — striking “dangerousness” from the “adjudication” equation with not even the semblance of an alternative.

We further write to express our concerns that ATF’s rulemaking process is wholly insufficient. ATF failed to engage in a thorough and comprehensive cost-benefit analysis — claiming, instead, that the proposed rule would confer some unquantifiable amount of “qualitative benefits” on an undefined population of individuals.²⁵ If true, even these amorphous “qualitative benefits” are no match for the proposed rule’s potential risks, which ATF describes as “possibly dangerous persons [who] would no longer necessarily be prohibited possessors.”²⁶ ATF also articulates that, as a result, the proposed rule could create “an increase in public safety risk” that could include “mass casualty events.”²⁷

In addition, ATF fails to consider or contemplate the resource costs that will fall to the states to address ATF’s proposed revisions. Though ATF acknowledges that “states may need to review their previous NICS Indices entries because records previously submitted to NICS may not include language establishing” that the persons to whom these records relate meet ATF’s new criteria, ATF does not even try to calculate the costs to states associated with such in-depth reviews.²⁸ ATF even admits these failures, stating that it “does not currently have sufficient information to understand the scope of how each state or other source” — referring to other entities and stakeholders involved in adjudications and commitments — “may deal with extra work that would result.”²⁹ Moreover, ATF failed to collect basic data that would help illuminate these costs and the proposed rule’s risks to public safety — rendering the foundation of this proposal unstable and untenable.

Lastly, ATF did not sufficiently consider tailored alternatives for the issues it is purportedly seeking to address.³⁰ The primary concern articulated in this rulemaking is the VA’s fiduciary determinations resulting in improper NICS inclusions under the mental defective prohibitor. Yet ATF has proffered the most expansive policy revision, sweeping past the VA process, even past federal agency determinations, to how the prohibitor foundationally functions at the federal and state levels. ATF has offered scant support and justification for why a more narrowly tailored rulemaking focused on the issue of mental adjudications about the management of federal benefits is insufficient. The overbreadth of ATF’s choices reflects a faulty and arbitrary administrative process and a degree of policymaking that is reserved for the legislative branch.

²³ Consolidated Appropriations Act, 2024, Pub. L. No. 118-42, § 413 (Mar. 9, 2024).

²⁴ *Id.*

²⁵ 91 Fed. Reg. at 25,180–81.

²⁶ *Id.* at 25,181.

²⁷ *Id.* at 25,181–82.

²⁸ *Id.* at 25,182.

²⁹ *Id.* at 25,183.

³⁰ *Id.* at 25,183–84 (discussing ATF’s six considered regulatory alternatives).

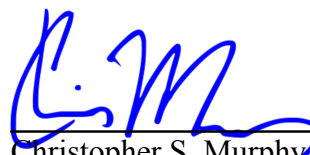
To upend longstanding federal gun violence prevention regulations in a manner that contravenes commonsense federal firearms laws like the GCA and the Brady Act based on an inadequate justification and incomplete cost-benefit analysis warrants withdrawal on its own. That, in ATF's own words, the proposed rule could lead to "mass casualty events" is only further evidence that ATF should not engage in this rulemaking.³¹ It is unconscionable that ATF, whose mission is to protect the public from violent gun crime, would even begin to consider regulatory changes that could result in such deadly outcomes. For the reasons detailed in this comment, ATF should withdraw this proposed rule.

Thank you for your consideration of this comment.

Sincerely,



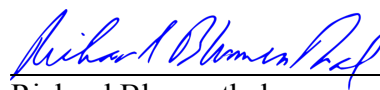
Richard J. Durbin
United States Senator



Christopher S. Murphy
United States Senator



Adam B. Schiff
United States Senator



Richard Blumenthal
United States Senator

³¹ *Id.* at 25,181–82.