



DISABILITY LAW CENTER

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January 25, 2017

Senator Lisa Murkowski
510 L Street, Suite 600
Anchorage, Alaska 99501

Senator Dan Sullivan
510 L Street, Suite 750
Anchorage, Alaska 99501

Congressman Don Young
4241 B Street, Suite 203
Anchorage, Alaska 99503

Re: Social Security "Implementation of the NICS Improvement Amendments Act of 2007"

Dear Senators Murkowski and Sullivan, and Congressman Young:

This past summer, our office commented on Social Security's proposal to report certain beneficiaries to the federal firearms database. A copy of these comments is attached. Despite those comments, and many others, the agency went ahead with its proposal. 81 Fed. Reg. 91702 (December 19, 2016). According to press reports today, you will soon have before you a joint resolution disapproving these new regulations. This is to urge you carefully to consider, and, if appropriate, pass this joint resolution.

This is not a situation where Congress would be asserting its political will over an agency that carefully analyzed the comments on its proposed regulations and responded to those comments in a thoughtful way. Instead, in its responses to comments, Social Security:

- Simply failed to take into account that its disability determination process does not purport to decide whether someone is a "mental defective," that Social Security is not the kind of "court, board, commission, or other lawful authority" that makes such findings, and that written decisions saying that someone qualifies for benefits typically do not mention whether the person meets or equals the mental Listings, thus omitting information necessary for people to decide whether to appeal. 81 Fed. Reg. at 91703.
- Relied, repeatedly, for its legal analysis on a DOJ Guidance that has not been published anywhere, let alone published in the Federal Register. 81 Fed. Reg. at 91703, 91704, 91706.
- Responded to the suggestion that people might not apply for disability benefits they deserved because they would be reported to the database by saying that the reason they were on the

database would be kept private, so they would not be "stigmatized" or "embarrassed." 81 Fed. Reg. at 91707. It isn't a matter of stigmas or embarrassments. It's a matter of wanting to own a firearm and being discouraged from applying for benefits because you know that if you get benefits you may lose your property.

- Agreed that the process can assign someone a representative payee even though the person is competent, 81 Fed. Reg. at 91709-10, but did not see that this fact ought to keep that person from going onto the federal firearms database; and
- Completely failed to analyze whether putting someone on the database restricts Alaskan subsistence activities as protected by ANILCA.

This is agency decisionmaking that is, for want of a better word, wrong. It deserves to be analyzed and rejected under the Congressional Review Act.

Thank you very much.

Mark Regan
Legal Director

Enclosure