



National Council on Disability

An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

January 24, 2017

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Paul Ryan
Speaker of the House
United States House of Representatives
H-232, The Capitol
Washington, DC 20515

Dear Majority Leader McConnell and Speaker Ryan:

I write on behalf of the National Council on Disability (NCD) regarding the final rule the Social Security Administration (SSA) released on December 19th, 2016, implementing provisions of the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007, 81 FR 91702. In accordance with our mandate to advise the President, Congress, and other federal agencies regarding policies, programs, practices, and procedures that affect people with disabilities, NCD submitted comments to SSA on the proposed rule on June 30th, 2016.¹ In our comments, we cautioned against implementation of the proposed rule because:

[t]here is, simply put, no nexus between the inability to manage money and the ability to safely and responsibly own, possess or use a firearm. This arbitrary linkage not only unnecessarily and unreasonably deprives individuals with disabilities of a constitutional right, it increases the stigma for those who, due to their disabilities, may need a representative payee[.]

Despite our objections and that of many other individuals and organizations received by SSA regarding the proposed rule, the final rule released in late December was largely unchanged. Because of the importance of the constitutional right at stake and the very real stigma that this rule legitimizes,

¹ Our comments on the rule are available at <http://www.ncd.gov/publications/2016/ncd-letter-ssa-regarding-proposed-rule-nics-improvements-act>

NCD recommends that Congress consider utilizing the Congressional Review Act (CRA) to repeal this rule.

NCD is a nonpartisan, independent federal agency with no stated position with respect to gun-ownership or gun-control other than our long-held position that restrictions on gun possession or ownership based on psychiatric or intellectual disability must be based on a verifiable concern as to whether the individual poses a heightened risk of danger to themselves or others if they are in possession of a weapon. Additionally, it is critically important that any restriction on gun possession or ownership on this basis is imposed only after the individual has been afforded due process and given an opportunity to respond to allegations that they are not able to safely possess or own a firearm due to his or her disability. NCD believes that SSA's final rule falls far short of meeting these criteria.

Additionally, as NCD also cautioned SSA in our comments on the proposed rule, we have concerns regarding the ability of SSA to fairly and effectively implement this rule—assuming it would be possible to do so—given the long-standing issues SSA already has regarding long delays in adjudication and difficulty in providing consistent, prompt service to beneficiaries with respect to its core mission. This rule creates an entirely new function for an agency that has long noted that it has not been given sufficient resources to do the important work it is already charged with doing. With all due respect to SSA, our federal partner, this rule is simply a bridge too far. In fact, it is conceivable that attempts to implement this rule may strain the already scarce administrative resources available to the agency, further impairing its ability to carry out its core mission.

The CRA is a powerful mechanism for controlling regulatory overreach, and NCD urges its use advisedly and cautiously. In this particular case, the potential for real harm to the constitutional rights of people with psychiatric and intellectual disabilities is grave as is the potential to undermine the essential mission of an agency that millions of people with and without disabilities rely upon to meet their basic needs. Therefore, in this instance, NCD feels that utilizing the CRA to repeal the final rule is not only warranted, but necessary.

Regards,

A handwritten signature in black ink, appearing to read "Clyde E. Terry".

Clyde E. Terry
Chair

CC: The Honorable Nancy Pelosi
The Honorable Charles Schumer