



Social Security Administration Rule: Prohibiting Records for Severe Mental Illness

- ❑ **Bottom Line: The Social Security Administration (SSA) rule finalized on December 19, 2016¹, commits the SSA to submit records to the gun background check system for social security recipients prohibited from possessing guns due to severe mental illness. It is a critical process for enforcing the law that bars prohibited people from passing background checks and purchasing firearms.**
 - **The rule details a process for identifying only those beneficiaries prohibited from having guns under *existing* federal law**—by virtue of being found to “lack[] the mental capacity to contract or manage [their] own affairs” as a result of mental illness.²
- ❑ Prior to the new SSA rulemaking, the agency had no process for submitting records of prohibited people to the National Instant Criminal Background Check System (NICS). NICS has therefore been missing records for those prohibited individuals.
 - NICS is only as good as the records it contains. With those records missing from the system, these individuals are able to pass a background check and complete a purchase even though they are legally prohibited from purchasing guns under longstanding federal law.
- ❑ The SSA regulation closes this gap by committing the agency to begin submitting prohibiting records into the gun background check system.
 - The NICS Improvement Amendments Act of 2007 requires federal agencies to send prohibiting records into NICS. This rule seeks to bring SSA in line with that requirement.
- ❑ **The rule commits SSA to submit information about beneficiaries on a prospective basis only if they have:**
 - filed a claim based on disability;
 - been found to be disabled based on a finding that they meet the requirements of one of the SSA’s Mental Disorders Listing of Impairments³;
 - been found to be impaired so severely that they are unable to work at all; *and*
 - been found, as a result of mental illness, to lack the capacity to manage their own affairs and had a representative appointed to receive disability benefits on their behalf.
- ❑ The process entitles Social Security beneficiaries to advance notice of the prohibition prior to being assigned a representative payee as well as the opportunity to appeal that determination to an administrative law judge and to a federal district court.
- ❑ **The rule does not impact any beneficiaries who are not already prohibited under law, and does not impact people based on disability findings that have been made prior to the rule taking effect.**

¹ 81 Fed. Reg. 91702-91715 (Dec. 19, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-12-19/pdf/2016-30407.pdf>

² 27 CFR 478.11, “adjudicated as a mental defective”

³ For more on the SSA’s disability evaluation criteria, see <http://bit.ly/1YTwdog>