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ATF Rulemaking Comments
Mail Stop 6N-518, Office of Regulatory Affairs
Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Ave. NE
Washington, DC 20226

Re: Docket No. ATF-2026-0337; RIN 1140-AB04
Comment on Proposed Rule on “Revising Definition of ‘Adjudicated as a Mental Defective’ and ‘Committed to a Mental Institution’”

To Whom It May Concern:

Everytown for Gun Safety Support Fund¹ (“Everytown”) submits this comment in response to the notice of proposed rulemaking (“NPRM” or “proposed rule”) issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) that would amend the regulatory definitions of “adjudicated as a mental defective” and “committed to a mental institution” in 27 C.F.R. § 478.11. ATF characterizes this proposed rule as responding primarily to discrete concerns about “mental incompetency” determinations by the Department of Veterans Affairs (“VA”) and past VA reporting to the National Instant Criminal Background Check System (“NICS”).² But ATF’s NPRM sweeps much more broadly and would fundamentally rewrite the criteria for when a mental health adjudication or commitment falls within the scope of 18 U.S.C. § 922(g)(4), the statute that prohibits gun possession by individuals for mental health reasons.³ Under ATF’s proposed rule, many people who are currently considered to be prohibited under federal law for mental health reasons would no longer be, meaning those individuals would become able to pass a background check and buy firearms. Most notably, ATF’s proposal would change current law so that when a court determines that a person poses a danger to themselves or others for mental health reasons, that determination would no longer be sufficient to prohibit the person from gun possession under federal law.

¹ Everytown for Gun Safety Support Fund is the education, research and litigation arm of Everytown for Gun Safety, the largest gun violence prevention organization in the country with nearly 11 million supporters and more than 700,000 donors. The Everytown Support Fund seeks to improve our understanding of the causes of gun violence and help to reduce it by conducting groundbreaking original research, developing evidence-based policies, communicating this knowledge to the American public, and advancing gun safety and gun violence prevention in communities and the courts.

² 91 Fed. Reg. 25168.

³ The proposed rule would also affect the application of 18 U.S.C. § 922(d)(4), which makes it unlawful for a person to sell a firearm to a person knowing or having reasonable cause to believe that the person has been adjudicated as a mental defective or has been committed to any mental institution at 16 years of age or older. For purposes of this comment, discussions of § 922(g)(4) generally apply to § 922(d)(4) as well.

The potential risks and costs created by ATF's proposed changes are serious, and the NPRM provides a grossly inadequate assessment of those risks and costs. For example, ATF acknowledges that because some of the individuals who would no longer be prohibited under the proposed rule have been determined to "pose a danger to themselves or others," the rule would create "an increase in public safety risk" that may rise "up to and including potential mass casualty events."⁴ Yet ATF's NPRM does not even attempt to quantify this risk, instead saying it "may be minimal, or may be considerably greater."⁵ Further, there are currently over 8.2 million records that have been submitted to NICS involving individuals who qualify for section 922(g)(4)'s prohibition on firearm possession under longstanding regulatory definitions that were promulgated in 1997.⁶ Because federal law requires states and other providers of NICS records to "immediately correct any record determined to be invalid or incorrect," the proposed rule could impose potentially staggering costs and burdens on states and other providers of NICS records who would have to review millions of mental health adjudication and commitment records to see if they align with the proposed rule's new requirements.⁷ In this NPRM, ATF has not attempted to even estimate the costs and burdens that its proposed changes would place on those stakeholders, instead stating without any basis or justification that ATF does not believe that the cost would be substantial and inviting commenters to perform a cost analysis for the agency.⁸

The breadth of the proposed rule's reforms far exceed the relatively discrete scope of the concerns ATF claims the NPRM was designed to address. The main issue cited as a justification for ATF's proposed rulemaking — concern about the VA "mental incompetency" determination process — has already been addressed by Congress multiple times in recent years through legislation. In addressing concerns about the VA's process, Congress has not directed ATF to rewrite the definitions implementing section 922(g)(4), and Congress certainly has not instructed ATF to narrow the mental health prohibitor to allow those found to pose a danger to themselves or others to possess or buy guns. In fact, in the context of the VA, Congress has done just the opposite: explicitly allowing the reporting of VA mental health records to NICS where the subjects of such records have been found to be dangerous. With this NPRM, ATF appears to be pursuing a sweeping revision of the application of the federal mental health prohibitor on its own volition, without having gathered essential data in advance and without having consulted with mental health experts, the medical community, state officials, courts and adjudicatory bodies, law enforcement, and other stakeholders who would be affected by the proposed rule's risks and costs.

In short, ATF's proposed rule would make far-reaching changes to the way federal law regulates firearm possession by those with mental health adjudication or commitments, with minimal examination of the potentially enormous costs and public safety impacts these changes would have. This issue is too important to get wrong, when already 73 people in the United States die by firearm suicide every day. The current system that has been relied upon for decades must not be upended by an inadequately justified rule issued through a cursory and deficient rulemaking process. We urge ATF to withdraw this NPRM and instead engage in a more serious and credible process of data collection, analysis, and consultation with

⁴ 91 Fed. Reg. 25181-2.

⁵ 91 Fed. Reg. 25182.

⁶ 91 Fed. Reg. 25180.

⁷ 28 C.F.R. § 25.5(b).

⁸ 91 Fed. Reg. 25182.

experts and stakeholders about the intersection of firearms and mental health.

I. Overview of relevant data and background on the section 922(g)(4) prohibitor and its regulatory definitions.

A. High U.S. rates of firearm death, injury, and suicide have been exacerbated by the prevalence of firearms and their accessibility to individuals with mental health conditions.

Every year, nearly 47,000 people in the United States are killed by gunfire and nearly 97,000 more are shot and wounded.⁹ Approximately 27,000 firearm deaths each year are suicides, or 73 people each day,¹⁰ and approximately 55 percent of suicides in the United States involve a gun.¹¹ The firearm death rate in the United States is 13 times that of other high-income countries,¹² and the firearm suicide rate is nearly 12 times that of other high-income countries.¹³

The high rate of suicide in the United States has been particularly acute among military veterans. In 2023 alone, there were 6,398 veterans who died by suicide, an average of more than 17 per day.¹⁴ More than 73 percent of those suicide deaths involved firearms.¹⁵ The problem is not getting better: the U.S. firearm suicide rate has increased overall in recent years,¹⁶ reaching the highest level in over two decades.¹⁷ And veterans in particular have experienced an even sharper spike. Since 2001, the veteran firearm suicide rate has increased by 67 percent compared to a 35 percent rise among non-veteran adults.¹⁸ Reducing the high numbers of firearm deaths,

⁹ Everytown Research analysis of Centers for Disease Control and Prevention, National Center for Health Statistics. WONDER Online Database, Provisional Mortality Statistics, Multiple Cause of Death (accessed December 16, 2025), 2020–2024, and Healthcare Cost and Utilization Project (HCUP) nonfatal firearm injury data, 2020. Everytown For Gun Safety Support Fund, “EveryStat: United States,” <https://everystat.org/>.

¹⁰ Everytown Research analysis of Centers for Disease Control and Prevention, National Center for Health Statistics. WONDER Online Database, Provisional Mortality Statistics, Multiple Cause of Death (accessed December 16, 2025). Average: 2020 to 2024.

¹¹ Everytown Research analysis of Centers for Disease Control and Prevention, National Center for Health Statistics. WONDER Online Database, Provisional Mortality Statistics, Multiple Cause of Death (accessed December 16, 2025). Average: 2020 to 2024.

¹² Everytown analysis of gun deaths by country (2015 to 2019), GunPolicy.org (accessed January 7, 2022).

¹³ *Id.*

¹⁴ Department of Veterans Affairs, “2025 National Veteran Suicide Prevention Annual Report, Part 2 of 2: Report Findings” (March 2026), at p. 4, available at https://www.mentalhealth.va.gov/docs/data-sheets/2025/2025_Annual_Report_Part_2_508.pdf.

¹⁵ *Id.* at p. 6.

¹⁶ See Paige Tetens, “Those Who Serve: Addressing Firearm Suicide among Military Veterans,” Everytown report, last updated June 12, 2026, available at <https://everytownresearch.org/report/those-who-serve/>, citing Everytown Research analysis of Centers for Disease Control and Prevention, National Center for Health Statistics, WONDER Online Database, Underlying Cause of Death. A percentage change was developed using 2015 and 2024 age-adjusted rates for all ages.

¹⁷ *Id.*, citing Everytown Research analysis of Centers for Disease Control and Prevention, National Center for Health Statistics. WONDER Online Database, Underlying Cause of Death. Based on age-adjusted firearm suicide rates for all ages, 2001–2023.

¹⁸ *Id.*, citing Everytown Research analysis of U.S. Department of Veterans Affairs, Office of Mental Health and Suicide Prevention, “2001–2023 State Data Appendix,” March 2026, available at https://www.mentalhealth.va.gov/suicide_prevention/data.asp. Veteran and non-veteran firearm suicide crude rates were calculated using population estimates provided by the VA in the “2001–2023 National Suicide Data Appendix.” Percent change: 2001 vs. 2023. The rate increased from 15.4 veteran firearm suicides per 100,000 people in 2001 to 25.8 per 100,000 in 2023—a 67

injuries, and suicides in the United States is therefore a public safety imperative.

While the United States has the highest level of gun deaths, injuries and suicides among high-income countries, the U.S. population has similar incidences of mental health conditions as the populations in those other countries.¹⁹ Researchers who have analyzed why the United States has higher firearm death rates, including suicide rates, than similar high-income countries but not higher rates of mental health conditions point to the prevalence and accessibility of firearms in the United States to explain the difference.²⁰ Targeted measures to reduce the prevalence and accessibility of firearms for those facing mental health challenges can help reduce firearms deaths and suicides, and accordingly Congress and a majority of states have passed laws prohibiting access to firearms from certain people with serious mental health conditions.²¹

Such targeted interventions have included measures to reduce firearm access by veterans with mental health challenges. Though there are multiple contributing factors and events that lead to a suicide death, there is a strong association between veteran suicide and mental health conditions. According to the VA's 2024 National Veteran Suicide Prevention Annual Report, around 40 percent of veterans who died by suicide in 2022 had received health care through the Veterans Health Administration (VHA) in 2022 or 2021,²² and of that population, 60.2 percent—1,548 veterans—had been diagnosed by the VHA with mental health or substance use disorders.²³ In other words, VA statistics show that at least 24 percent (1,548 out of 6,407) of the veterans who died by suicide in 2022 had recently used VHA facilities and had been diagnosed by the VHA with a mental health or substance use disorder.²⁴ Such evidence showing an association between veteran suicide deaths (the majority of which are committed by firearm) and veterans who have been diagnosed with mental health conditions demonstrates why, for decades, federal law took steps to reduce firearm access to those determined by the VA to have been diagnosed with serious mental health conditions and who had been determined to be incapable of managing their affairs because of their diagnosed mental health condition.

B. Background on Section 922(g)(4).

In 1968, Congress enacted the Gun Control Act (“GCA”), which, among other things, established a prohibition on firearm possession for any person “who has been adjudicated as a mental defective or who has been committed to a mental institution.” This prohibition, codified

percent increase. The non-veteran adult firearm suicide rate increased from 6.7 per 100,000 in 2001 to 9.0 per 100,000 in 2023—a 35 percent increase.

¹⁹ Bleyer A, Siegel SE, Estrada J, Thomas CR Jr., “Fallacy of attributing the U.S. firearm mortality epidemic to mental health,” *PLoS ONE* 19(8): e0290138 (2024), available at <https://doi.org/10.1371/journal.pone.0290138>.

²⁰ *Id.*

²¹ See Everytown Research & Policy, “Which states prohibit certain people with serious mental illness from having firearms?”, available at <https://everytownresearch.org/rankings/law/mental-health-prohibitor/> (citing 29 state laws).

²² Department of Veterans Affairs, “2024 National Veteran Suicide Prevention Annual Report, Part 2 of 2: Report Findings” (Dec. 2024), at p. 23, Figure 16, available at https://www.mentalhealth.va.gov/docs/data-sheets/2024/2024-Annual-Report-Part-2-of-2_508.pdf. As noted in Footnote 12 of the report, “Recent Veteran VHA Users were defined as Veterans who received inpatient or outpatient health care (in person or via telehealth) at a VHA facility in the year of interest or the prior year (here, in 2022 or in 2021). Health care received from non-VHA facilities, including such care that was funded by VA (i.e., Community Care) was not included.”

²³ *Id.* at p. 32 and p. 33, Table 6.

²⁴ These statistics do not include any potential mental health diagnoses among the 60 percent of veterans who died by suicide in 2022 and who had not recently used VHA services prior to their death. To that end, the statistics likely understate the annual number of suicides of veterans who had been diagnosed with mental health conditions.

at 18 U.S.C. § 922(g)(4), was intended to apply broadly.

As ATF has previously noted, the legislative history of the GCA “makes it clear that Congress would broadly apply the prohibition against the ownership of firearms by ‘mentally unstable’ or ‘irresponsible persons.’”²⁵ The Supreme Court extensively reviewed the GCA’s legislative history in *Huddleston v. U.S.*, 415 U.S. 814 (1974), stating that the “principal purpose of the federal gun control legislation...was to curb crime by keeping ‘firearms out of the hands of those not legally entitled to possess them, because of age, criminal background, or incompetency.’”²⁶ The Court in *Huddleston* pointed to legislative history showing Congress’ view that “no one can dispute the need to prevent drug addicts, mental incompetents, persons with a history of mental disturbances, and persons convicted of certain offenses, from buying, owning or possessing firearms.”²⁷ Two years later, in *Barrett v. U.S.*, 423 U.S. 212 (1976), the Supreme Court further recognized that “[t]he very structure of the Gun Control Act demonstrates that Congress...sought broadly to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous. These persons are comprehensively barred by the Act from acquiring firearms by any means.”²⁸

In 1993, 25 years after the GCA was enacted, Congress enacted the Brady Handgun Violence Prevention Act (“Brady Act”). The Brady Act created NICS, through which federal firearms licensees (“FFLs”) would conduct background checks to determine whether their customers are lawfully allowed to possess firearms. Congress, in the Brady Act, directed that NICS become operational in 1998.

The establishment of NICS created a need for regulatory clarification of the GCA’s prohibitors in order to determine what kind of records in the NICS databases would qualify to render a person prohibited.²⁹ Relevant here, it became apparent that there was a need to clarify section 922(g)(4)’s two key terms — “adjudicated as a mental defective” and “committed to a mental institution” — in anticipation of NICS becoming operational in 1998. ATF issued an NPRM in 1996 and a final rule in 1997 that provided regulatory definitions for these terms.³⁰ Under the rule established in 1997, the term “adjudicated as a mental defective” 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: (1) is a danger to himself or others; or (2) lacks the mental capacity to contract or manage his own affairs.³¹

The definition additionally includes “a finding of insanity by a court in a criminal case” and “those persons found incompetent to stand trial or found not guilty by reason of lack of mental

²⁵ 61 Fed. Reg. 47097 (ATF NPRM regarding Definitions for the Categories of Persons Prohibited from Receiving Firearms, Sept. 6, 1996), citing 114 Cong. Rec. 21780, 21791, 21832, and 22270 (1968).

²⁶ *Huddleston v. U.S.*, 415 U.S. 814, 824 (1974) (internal citation omitted).

²⁷ *Id.* at 828.

²⁸ *Barrett v. U.S.*, 423 U.S. 212, 218 (1976).

²⁹ See 61 Fed. Reg. 47096 (“In order to establish NICS in such a way that it incorporates the information needed for all the categories of prohibited persons mentioned above, records systems from both Federal and State agencies must be included in the national system....To ensure that the information provided to the national system is accurate, the categories of prohibited persons must be clearly defined in the regulations.”).

³⁰ 61 Fed. Reg. 47095; 62 Fed. Reg. 34634.

³¹ 27 C.F.R. § 478.11.

responsibility” pursuant to the Uniform Code of Military Justice.³²

The 1997 rule also provided a regulatory definition for the term “committed to a mental institution.” Under the 1997 rule, that term means:

A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.³³

These regulatory definitions have been in place for nearly 30 years. During that time, these definitions have provided clear guidance for stakeholders, including states, courts and adjudicators, the mental health and medical communities, FBI NICS analysts, and the general public, as to what types of mental health proceedings and records establish that an individual falls within section 922(g)(4)’s prohibition.

II. ATF proposes to make sweeping changes to the regulatory definitions that determine when a person has been “adjudicated as a mental defective” or “committed to a mental institution” for purposes of section 922(g)(4)’s prohibition on firearm possession that would apply not just prospectively, but also retroactively to millions of past adjudications and commitments.

With this NPRM, ATF now seeks to comprehensively rewrite the regulatory definitions of section 922(g)(4)’s terms in ways that would “raise the threshold for which persons are adjudicated as mentally deficient or are formally and involuntarily committed to a mental institution.”³⁴ This Part summarizes the proposed rule’s changes.

A. Changes to the definition of “adjudicated as a mental defective.”

The proposed rule would essentially rewrite the regulatory definition of “adjudicated as a mental defective,” fundamentally altering each of the criteria that makes up the current definition. Under the proposed rule:

- A determination by a court or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to self or others would no longer be sufficient grounds for considering the person “adjudicated as a mental defective.”
- A determination by a court or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, lacks the mental capacity to contract or manage his own affairs would no longer be sufficient grounds for considering the person “adjudicated as a mental defective.”
- A finding of insanity by a court in a criminal case would no longer be sufficient grounds

³² *Id.*

³³ *Id.*

³⁴ 91 Fed. Reg. 25181.

for considering the person subject to the finding to be “adjudicated as a mental defective.”

- A finding of not guilty by reason of lack of mental responsibility pursuant to the Uniform Code of Military Justice (“UCMJ”) would no longer be sufficient grounds for considering the person subject to the finding to be “adjudicated as a mental defective.”
- A finding that a person is incompetent to stand trial would no longer be sufficient grounds for considering the person “adjudicated as a mental defective” unless it was also found that there is no reasonable possibility of the person restoring competence.

The only determinations or findings by a court or other lawful authority that would qualify under the definition of “adjudicated as a mental defective” involve certain situations where a guardian has been appointed or where the person has been found by a court to be incompetent to stand trial with no reasonable possibility of restoring competence.

The universe of guardian appointments that would qualify to make a person “adjudicated as a mental defective” would be further limited because the proposed rule tethers such appointments to a narrow definition of “intellectual disability.”

Additionally, the proposed rule includes a new definition of “adjudication” that establishes eight procedural requirements that would narrow even further the determinations by courts or other lawful authorities that qualify as “adjudicated as a mental defective.” While the 1997 rule did not impose specific procedural requirements that must be met for a determination made by a court or other lawful authority to qualify as a section 922(g)(4) adjudication, the proposed rule mandates that the determination process must include all of the following elements:

1. a hearing before an unbiased adjudicator (not just an opportunity for a hearing);
2. the opportunity to hear opposing evidence;
3. the opportunity to present evidence;
4. the opportunity to confront adverse witnesses;
5. permission to be represented by counsel;
6. an appointed counsel or guardian ad litem when there are reasonable grounds to believe that the person lacks sufficient mental competency to represent themselves or act in their own defense;
7. adequate notice of the hearing; and
8. in a civil proceeding, a burden of proof based on at least clear and convincing evidence.

Under the proposed rule, if any one of these procedural requirements was not part of the determination process used by the court or other lawful authority, the determination no longer

qualifies as a section 922(g)(4) adjudication.³⁵

B. Changes to the definition of “committed to a mental institution.”

The proposed rule would also alter the definition of “committed to a mental institution.” Most notably, under the proposed rule:

- A person who has been found by a court or lawful authority to be a danger to themselves or others, who has been found insane by a court in a criminal case, or who has been found not guilty by reason of lack of mental responsibility pursuant to the UCMJ would not be subject to section 922(g)(4)’s prohibition unless the person was also committed to a mental institution as a result of the determination, in which case the person would fall under section 922(g)(4)’s regulatory definition of “committed to a mental institution..
- A commitment for “mental illness” would no longer clearly qualify for the definition of “committed to a mental institution,” as the proposed rule no longer explicitly includes the current rule’s reference to commitments “for...mental illness.”
- As opposed to the current rule, where any formal involuntary commitment of a person to a mental institution by a court or other lawful authority qualifies under the definition, under the proposed rule the commitment would have to “result[] from” one of a list of types of findings or determinations.

C. The proposed rule’s changes apply retroactively to millions of past adjudications and commitments.

The proposed rule’s changes to the application of section 922(g)(4) sweep broadly. Under the proposed rule, none of the current regulatory definition’s criteria for when a person is considered “adjudicated as a mental defective” under section 922(g)(4) — i.e., because the person was the subject of a determination of danger to self or others, a determination of lack of mental capacity to contract or manage affairs, a finding of insanity by a court in a criminal case, a finding of incompetency to stand trial, or a finding of not guilty by reason of lack of mental responsibility under the UCMJ — would be sufficient by itself to meet the standard for “adjudicated as a mental defective” because of the additional substantive and procedural elements that the proposed rule requires. The proposed rule essentially strikes the current regulatory definition and replaces it with a much narrower one while adding strict procedural requirements that would, in effect, narrow it even more.

Further, the changes that the proposed rule would make to section 922(g)(4)’s regulatory definitions do not just apply prospectively, but would apply retroactively to past adjudications and commitments. In other words, the proposed rule’s changes would impact all persons who are currently considered prohibited from firearm possession under section 922(g)(4) because they were the subject of previous mental health adjudications or commitments. This is a significant

³⁵ ATF does not explain its rationale for mandating each of the individual requirements, nor does ATF explain why it views each and every one of these procedural requirements as so essential that its absence disqualifies a determination from being a (g)(4) determination. In fact, ATF notes that “there is little case law to explain what process is necessary for a person to be ‘adjudicated as a mental defective’ without a subsequent commitment,” and ATF appears to have crafted a list of its own drawn from ATF’s view of what is covered by “the plain meaning of the word ‘adjudication.’” 91 Fed. Reg. 25177.

population; ATF says in the NPRM that as of December 2025 the NICS Indices included 8,213,415 records that were categorized as falling under the (g)(4) prohibition.³⁶ Because federal law requires states and entities that submit records to NICS to “immediately correct any record determined to be invalid or incorrect,”³⁷ if the proposed rule were to be finalized, each past adjudication contained in NICS would need to be reviewed and researched to see if it still qualifies as “adjudicated as a mental defective” under the new substantive elements and procedural requirements contained in the proposed rule’s definition. Many commitment proceedings would likely also need to be reviewed to see if they met the criteria established in the proposed rule’s new definition of “committed to a mental institution.” If any past adjudication or commitment did not meet the proposed rule’s new criteria or requirements, it would no longer render the person prohibited under section 922(g)(4) and the state or agency that submitted the person’s records to NICS would be obligated by federal law to remove the relevant records.³⁸ Such persons would no longer be prohibited from firearm possession under section 922(g)(4) and would be able to pass a NICS background check and buy guns from FFLs.

As discussed in Part III below, the potential costs and burdens that the proposed rule creates with respect to reviewing past adjudications and commitments and removing records from NICS are likely quite significant, as is the proposed rule’s potential impact on public safety. Yet the proposed rule is unacceptably deficient in its analysis of those potential costs, burdens, and public safety impacts.

III. The process ATF used in creating the proposed rule was legally deficient, and ATF’s primary justification for the proposed rule does not fit the sweeping nature of the changes proposed.

This Part discusses both the deficient process that ATF used to make its proposed changes to section 922(g)(4)’s longstanding regulatory definitions and how ATF’s primary claimed justification for these changes does not align with the sweeping changes proposed.

A. ATF has not conducted the cost-benefit analysis or data collection necessary to form a credible basis for fundamentally transforming the administration of section 922(g)(4).

ATF’s proposed rule would rewrite the criteria for when a mental health adjudication or commitment falls within the scope of section 922(g)(4), and in doing so would upend the way that federal law determines whether individuals are prohibited from buying and possessing guns under this provision. The potential risks and costs created by ATF’s proposed changes are serious. For example, ATF notes in the NPRM that the proposed rule’s new standards and criteria would create, out of the population of persons who are currently prohibited by (g)(4), a “subset of possibly dangerous persons [who] would no longer necessarily be prohibited possessors.”³⁹ ATF acknowledges that because the proposed rule would allow firearm possession by some number of individuals who “pose a danger to themselves or others,” the proposed rule would create “an increase in public safety risk” that may rise “up to and including potential mass

³⁶ 91 Fed. Reg. 25180.

³⁷ 28 C.F.R. § 25.5(b).

³⁸ *Id.*

³⁹ 91 Fed. Reg. 25181.

casualty events.”⁴⁰ Further, the proposed rule could impose potentially staggering costs and burdens on states and other providers of NICS records who would have to review and possibly remove records for millions of people and would also potentially have to alter their mental health adjudication and commitment proceedings and NICS record submission processes going forward to align with the proposed rule’s new substantive and procedural requirements.

In order to avert the possibility that rulemakings might lead to severe costs, such as increased risk of mass casualty events and massive burdens on states, Executive Order 12866 requires agencies proposing significant regulatory actions to conduct cost-benefit analyses that make credible efforts to quantify costs and benefits to the extent feasible and then to pursue regulatory approaches that maximize benefits while minimizing costs.⁴¹ ATF notes that the Office of Management and Budget has determined that this proposed rule would be a “significant regulatory action” under Executive Order 12866 and thus provides a discussion of benefits and costs in the NPRM.⁴² However, the NPRM’s cost-benefit analysis is deficient in several key respects and does not adequately serve to support the conclusion that the likely benefits of ATF’s proposed rule exceed the likely costs.

1. ATF’s cost-benefit analysis does not quantify, or even attempt to estimate, the proposed rule’s acknowledged costs to public safety.

Even though ATF acknowledges in the NPRM that the proposed rule’s costs, including the public safety risk that certain persons who have been found by courts or other lawful authorities to be dangerous would now be able to buy and possess firearms, “may be considerably greater” than minimal and may rise to a level “up to and including potential mass casualty events,” ATF makes no meaningful effort in the NPRM to quantify those costs and risks.⁴³ Having done no analysis in advance of the NPRM on the likely public safety impacts of this proposed rule, ATF instead uses the NPRM to invite public comment on the topic.⁴⁴ ATF expresses hope that state laws and processes will help backfill any gaps that enable dangerous persons to become armed, stating that the extent of the proposed rule’s public safety risk depends upon “the strength of state and federal processes regarding guardianship and involuntary commitment.”⁴⁵ But ATF also issued its NPRM without conducting any review or analysis of those state laws and processes or their strength to begin with.

ATF’s failure in this NPRM to quantify or even estimate the costs and risks of its proposed rule (and to instead solicit information on those costs and risks for the first time in the NPRM) is a serious deficiency in the agency’s action. Because ATF identified that the proposed rule increases public safety risks, ATF’s obligation under Executive Order 12866 is to attempt to quantify them — or, at minimum, to explain why quantification was not feasible and provide a

⁴⁰ 91 Fed. Reg. 25181-2.

⁴¹ Executive Order 12866, Sept. 30, 1993, *available at* <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>.

⁴² 91 Fed. Reg. 25179.

⁴³ 91 Fed. Reg. 25182.

⁴⁴ *See* 91 Fed. Reg. 25174 (“ATF is soliciting comments on both legal and policy questions... With respect to policy, ATF is particularly interested in whether this reorganization of the rule would have any adverse impact on public safety.”); 91 Fed. Reg. 25185 (“ATF seeks comment on... Whether the reorganization proposed in this rule would have any adverse impact on public safety.”).

⁴⁵ 91 Fed. Reg. 25182.

qualitative assessment.⁴⁶ But ATF has not adequately done so. ATF cannot simultaneously acknowledge that the proposed rule creates public safety risks and then decline to assign or even attempt to estimate any quantitative cost to those risks in a cost-benefit analysis.

2. The costs and burdens that the proposed rule places on states, mental health and public health systems, courts and adjudicatory bodies, and other stakeholders may be enormous, but ATF does not quantify them or propose ways to minimize them.

The NPRM identifies numerous costs that states, mental health and public health systems, courts and adjudicatory bodies, law enforcement, and other stakeholders would likely bear under the proposed rule. These include:

- Costs of determining whether any mental health record that was submitted to NICS still qualifies under section 922(g)(4). States and other agencies and court systems are required to identify and submit records of prohibited persons to NICS, and current law also requires states and entities that submit records to NICS to “immediately correct any record determined to be invalid or incorrect.”⁴⁷ ATF acknowledges in the NPRM that “[t]o comply with this proposed rule, states may need to review their previous NICS Indices entries because records previously submitted to NICS may not include language establishing that a person has a qualifying intellectual disability or mental health issue warranting guardianship, or that they otherwise meet the section 922(g)(4) criteria under ATF’s proposed revised definition.”⁴⁸ This will likely require states to incur costs collecting additional information and context regarding records submitted to NICS to see if “facts exist that would satisfy the section 922(g)(4) regulatory definitions as revised.”⁴⁹ ATF does not quantify or attempt to quantify those costs to states in the NPRM.
- Costs of reviewing state proceedings to confirm that their procedural steps meet the new procedural requirements established by the proposed rule and potentially revising state proceedings to align with the new requirements going forward.⁵⁰
- Costs of reviewing for compliance with the proposed rule any records that are appealed through a qualified state relief program.⁵¹
- Costs of training and paying employees and adjudicators and maintaining systems to

⁴⁶ See Executive Order 12866, *supra* note 25, at Sec. 6(a)(3)(C) (“For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action...the agency shall provide... (ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs.”); *id.* at Sec. 1(a) (“Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider.”).

⁴⁷ 28 C.F.R. § 25.5(b).

⁴⁸ 91 Fed. Reg. 25182.

⁴⁹ *Id.*

⁵⁰ 91 Fed. Reg. 25183.

⁵¹ 91 Fed. Reg. 25182.

accomplish each of these tasks.⁵²

ATF does not analyze these costs in detail, instead stating, without any basis or justification, that it “does not believe that this one-time cost that states and other sources may incur would be substantial” and describes these costs as a “sunk cost.”⁵³

At the same time, ATF also concedes that it “does not currently have sufficient information to understand the scope of how each state or other source may deal with extra work that would result.”⁵⁴ As written, the NPRM suggests that ATF performed no data collection or analysis in advance of publishing this proposed rule on the foreseeable costs and burdens it would impose on state agencies and other stakeholders. Instead, ATF seeks to use the NPRM to solicit public comment on the topic, requesting a slew of information from states and other sources on state processes, available resources, and “any other changes” the state or other source of adjudication or commitment information would need to make as a result of the rule “and the costs they might incur as a result.”⁵⁵ Throughout the NPRM, ATF requests voluminous information from commentators, including “details and supporting data or bases, so that ATF can understand the anticipated impact of this proposed rule.”⁵⁶ This means that the cost-benefit analysis ATF included in its NPRM lacked critical information that ATF did not obtain (or apparently even attempt to obtain) prior to conducting the analysis, raising questions about the accuracy and propriety of ATF’s characterization of these costs as not “substantial” and “sunk.” This lack of necessary data compromises ATF’s purported cost-benefit analysis, undermining ATF’s conclusion that the proposed rule’s benefits outweigh and justify the costs.

ATF’s failure to gather sufficient data and details about expected costs and burdens to states and other stakeholders prior to drafting this NPRM is untenable. An agency does not have the option of ignoring its obligation to provide quantifiable estimates of costs and benefits in an NPRM, especially when the agency’s reason for failing to provide this information is because the agency apparently has not bothered to collect any data or perform any analysis.

3. The identified quantifiable benefits of the proposed rule are small and do not outweigh what a credible cost-benefit analysis would show in terms of foreseeable costs.

In contrast to the foreseeably large risks, costs, and burdens that the proposed rule would impose on states, mental health and public health systems, courts and other adjudicators, and law enforcement, and the general public, ATF describes the benefits of the proposed rule as largely qualitative benefits focused on a small population. ATF states that the proposed rule’s “qualitative benefits” would go “primarily to current and future firearm owners who would otherwise be prohibited under 18 U.S.C. 922(g)(4) and (d)(4)...on the basis that they ‘[l]ack the

⁵² *Id.* ATF also acknowledges that their rule does not include a requirement that persons previously found to be dangerous have a mental health evaluation to determine if they can safely handle firearms before they become no longer prohibited under the proposed rule’s criteria, and acknowledges that states may feel compelled to set up such an evaluation process, which would be another significant cost on states that choose to establish one. 91 Fed. Reg. 25181.

⁵³ 91 Fed. Reg. 25182.

⁵⁴ *Id.*

⁵⁵ 91 Fed. Reg. 25183.

⁵⁶ *Id.*

mental capacity to contract or manage [their] own affairs.”⁵⁷

ATF admits that it “does not have data on the entire subset of persons who fall into this group,”⁵⁸ but in an effort to estimate these “qualitative benefits,” ATF points to the nearly 75,000 veterans and other VA beneficiaries with active records the VA had submitted to NICS as of December 31, 2025, under section 922(g)(4) pursuant to current regulations. ATF claims that these individuals would receive three qualitative benefits: (i) “prevent[ing] persons from losing their Second Amendment rights,” (ii) “[enabling] the VA to fully assess whether a veteran requires a fiduciary to assist with financial matters without fear of negatively impacting a veteran’s Second Amendment rights,” and (iii) “[obviating] the collateral processes,” such as applying for relief from disability under 18 U.S.C. § 925(c) or a qualified state relief program, “those persons encounter if they are deemed to be prohibited.”⁵⁹ However, the extent of these qualitative benefits is likely substantially diminished by the fact that in 2026, all records that the VA had submitted to NICS have reportedly already been removed by the Trump Administration.⁶⁰ Further, ATF has re-started the process of awarding relief from disability for under 18 U.S.C. § 925(c) for prohibited persons and has issued an NPRM to formalize a relief process, providing yet further opportunity for individuals who can “establish to the Attorney General’s satisfaction that the [individual] will not be likely to act in a manner dangerous to public safety” to remove their federal prohibition on possessing firearms.⁶¹ The availability of section 925(c) relief again reduces the potential qualitative benefits that this NPRM brings.

ATF also identified a potential quantitative benefit of \$318,200 in costs saved for this population in the first year of the proposed rule, with those savings coming from this population of individuals not having to apply for relief from disabilities under 18 U.S.C. § 925(c) under the proposed rule.⁶² This \$318,200 sum of identified quantifiable benefits under the proposed rule pales in comparison to the foreseeable costs and burdens that the proposed rule would impose as well as the foreseeable public safety risks.⁶³

Notably, ATF does not identify any other benefits that will result from the other sweeping changes made in this NPRM. The proposed changes will significantly narrow the scope of the (g)(4) prohibitor and drastically change the way this aspect of federal law has been applied for decades. Yet other than the qualitative benefits identified above that ATF says the proposed rule would provide to “current and future firearm owners who would otherwise be prohibited under

⁵⁷ 91 Fed. Reg. 25180.

⁵⁸ *Id.*

⁵⁹ 91 Fed. Reg. 25180-1.

⁶⁰ See Department of Veterans Affairs press release, “VA undoes decades-old wrong and protects Veterans’ Second Amendment rights,” Feb. 17, 2026, available at <https://news.va.gov/press-room/va-undoes-decades-old-wrong-and-protects-veterans-second-amendment-rights/> (stating that “the department is working with the FBI to remove all past VA reporting from NICS.”).

⁶¹ 90 Fed. Reg. 34394, 34402; 18 U.S.C. § 925(c).

⁶² 91 Fed. Reg. 25181.

⁶³ Moreover, in the NPRM, ATF alludes to the specific and troubling risk that the proposed rule, by removing VA beneficiaries who had been determined mentally incompetent by the VA from the (g)(4) prohibitor’s coverage, might obtain firearms and then use them in suicide attempts. ATF acknowledges in a footnote that “[m]ore than 70 percent of suicides by veterans use a firearm” and that the proposed rule, by narrowing the (g)(4) prohibition and “allowing automatic restoration of firearms” for VA beneficiaries “could have a negative impact on this group and other similarly at-risk groups,” but ATF makes no effort to quantify this potential increased risk of suicide by firearm. 91 Fed. Reg. 25182, fn 42.

section 922(g)(4)...on the basis that they “[l]ack the mental capacity to contract or manage [their] own affairs,”” ATF does not describe any benefits — either qualitative or quantitative — that are anticipated to result from those expansive changes.⁶⁴ Making such sweeping changes to the regulations without pointing to any benefits that justify such changes is another serious deficiency in this NPRM. ATF could have easily addressed the VA concerns raised by the “[l]ack the mental capacity to contract or manage [their] own affairs” element of the current regulation by simply modifying that provision or its application to VA determinations. But this NPRM goes far beyond that without any supporting justification or identification of benefits that are anticipated to result.

4. ATF failed to collect basic data before crafting and issuing this proposed rule, and the lack of such data renders ATF’s cost-benefit analysis woefully inadequate and incomplete.

Not only has ATF failed to conduct a thorough cost-benefit analysis that quantifies or credibly estimates the costs and risks that the proposed rule would impose on public safety and key stakeholders like states and court systems, but ATF has not even gathered basic data essential for understanding the likely impact of its proposed regulatory changes and for conducting a reasonable cost-benefit analysis of those changes. Such data collection should have been done prior to crafting a proposed rule, yet in the NPRM ATF makes clear that it has not gathered basic data about: (1) the population of individuals currently subject to the (g)(4) prohibitor and the types of adjudications or commitments they experienced; (2) the size and mental health histories of the population of people who would no longer fall under section 922(g)(4)’s coverage if the proposed rule were adopted; (3) the procedures that states and other jurisdictions currently use for adjudications, commitments, and determinations of dangerousness in mental health proceedings; (4) the processes, resources, and costs that states and other jurisdictions currently employ in handling mental health proceedings and how the proposed rule would affect them; and (5) how many people who have been found to be dangerous would end up outside section 922(g)(4)’s coverage under the proposed rule.

In fact, ATF regularly admits in the NPRM that it lacks such data and/or requests that the public provide this essential data through submitted comments. For example:

- ATF’s proposed rule would upend the entire implementation and operation of the (g)(4) prohibitor in order to restore firearms access to some portion of the persons currently listed in NICS as prohibited under section 922(g)(4) as well as to future persons, yet ATF does not know basic information about the size and characteristics of the population that the proposed rule was designed to benefit. ATF states that it “does not have a valid set of data for precisely assessing the number of individuals who would be affected by the changes in the proposed rule” and that it “welcomes public comment on additional data sources or proxies to further estimate the affected population of individuals, veterans or otherwise.”⁶⁵ Because ATF failed to gather this basic data about the relevant population before drafting this NPRM, it leaves ATF uncertain about whether its proposed reforms are appropriately tailored to that population. ATF notes that because of “the scarcity of the data,” its proposed reform “runs the risk of overcorrecting” and “allowing relief to a

⁶⁴ 91 Fed. Reg. 25180.

⁶⁵ *Id.*

greater segment of the affective population than warranted.”⁶⁶ To compensate for this data gap, ATF is forced to invite comment on “[w]hether the reorganization proposed in this rule would permit other mentally unstable persons to acquire firearms who could not do so today.”⁶⁷

- ATF’s proposed rule would disqualify adjudication and commitment proceedings from inclusion under section 922(g)(4) unless those proceedings meet the proposed rule’s new substantive and procedural requirements, but ATF has not researched the current landscape of adjudication and commitment proceedings in states and other jurisdictions, nor has ATF considered the extent to which those current proceedings align with or differ from the proposed rule’s requirements. ATF repeatedly solicits data from commenters on what states and other jurisdictions are currently doing to generate NICS records, asking, for example, for basic information about “identities of the NICS Indices sources, such as whether they are state agencies, local governments, federal agencies, etc.,” “the scale and scope of these sources’ record submissions to NICS, especially section 922(g)(4) records,” “[w]hether the state or other source currently utilizes any automated systems to review records, how those systems or processes work, and how they would need to change,” and “[w]hether the state or other source anticipates that their records submissions—including their processes for submitting records—would have to change as a result of implementing this proposed rule, and, if so, in what ways or for what types of tasks.”⁶⁸

ATF also requests basic information about state mental health proceedings, including “[w]hether any jurisdictions permit competency or capacity determinations to be made without hearings, including at the election of the individual involved,” “whether any jurisdictions permit potentially incompetent persons to face guardianship or other legal proceedings without either appointing counsel or a guardian ad litem,” and “[w]hether there are jurisdictions where individuals may be found not guilty by reason of insanity or found in a proceeding to be a danger to themselves or others without being committed to a mental institution as proposed by the definition.”⁶⁹

This last information request is particularly problematic. One of the most significant changes in the proposed rule is its exclusion of persons found to be a danger to themselves or others from section 922(g)(4)’s coverage unless they were also committed to a mental institution. However, ATF apparently did not even look to see whether states and jurisdictions currently require or typically see commitments take place after such findings of dangerousness.

- The proposed rule would impose massive obligations on states, but ATF has not gathered basic information on the current costs states and other jurisdictions incur to operate adjudication and commitment proceedings and to maintain and submit records to NICS, let alone analyzed the costs that would be incurred to change those proceedings and re-review records of those who had information submitted to NICS because they fell

⁶⁶ 91 Fed. Reg. 25182.

⁶⁷ 91 Fed. Reg. 25185.

⁶⁸ 91 Fed. Reg. 25183.

⁶⁹ 91 Fed. Reg. 25185, 25178.

under section 922(g)(4)'s coverage prior to the proposed rule. ATF concedes that it “does not currently have sufficient information to understand the scope of how each state or other source may deal with extra work that would result” from this proposed rule, and asks for extensive public comment and information from states about how the rule would affect them.⁷⁰ For example, ATF requests data from commenters on what a state “anticipates the additional monthly or yearly cost in time or other expenses would be to come into compliance with the proposed rule, and for how long, with supporting data or bases for the estimate,” “[w]hether a state source receives federal grants for its NICS submission processes and records, whether those grants would include the transitional costs to implement this rule, and if not, the extent of the anticipated shortfall,” and “[a]ny other changes the state or other source would need to make to their records systems or processes and the costs they might incur as a result, with details and supporting data or bases, so that ATF can understand the anticipated impact of this proposed rule.”⁷¹

While the rulemaking process certainly allows for agencies to seek information through public comments to help refine regulatory proposals, the information that ATF seeks in this NPRM is basic data that is necessary for a credible and complete cost-benefit analysis of the proposed rule. Baseline information about the relevant population, current adjudication and commitment processes, and state resources and costs should have been obtained before ATF chose among the regulatory options it considered, and the NPRM's cost-benefit analysis is clearly deficient without this information having been incorporated into it. ATF should have done such data collection, analysis and consultation with key stakeholders in advance of drafting and issuing this NPRM, rather than using an NPRM as the first step in gathering this basic information.

In short, significant agency rulemakings must come with a credible cost-benefit analysis that first synthesizes data and quantifies costs, such as increased public safety risks and operational burdens, and then seeks to minimize those costs and ensure that they are outweighed by the proposed rule's benefits. ATF's required cost-benefit analysis falls far short of this basic requirement.

B. The sweeping changes that ATF proposes in this rulemaking go far beyond addressing the VA controversies that ATF cites as its main justification for taking regulatory action.

ATF claims that its proposed rule originated out of concerns over “[r]ecent controversies concerning veterans and social security recipients” and that the rulemaking arose because of a review that ATF conducted “[a]s a result of congressional restrictions placed on the VA's use of appropriated funds to report its incompetency determinations to NICS pursuant to 18 U.S.C. 922(g)(4).”⁷² Specifically, ATF characterizes this NPRM as being precipitated by problems with the regulatory definition of “adjudicated as a mental defective” as applied to VA and Social Security Administration (“SSA”) determinations of “mental incompetency,” stating that:

Recent controversies concerning veterans and social security recipients who have

⁷⁰ 91 Fed. Reg. 25182-3.

⁷¹ 91 Fed. Reg. 25183.

⁷² 91 Fed. Reg. 25169, 25168.

been disarmed because they were determined to require assistance managing their benefits demonstrate the overbreadth of the current regulatory definition of “adjudicated as a mental defective.” The disarming of large numbers of veterans and social security recipients shows that the current regulation both encompasses too many people and fails to identify adequate procedural protections necessary for adjudication.⁷³

Indeed, ATF’s discussion of the benefits of the proposed rule, as noted above in Part III.A.3, focuses exclusively on benefits that would accrue to the population of VA beneficiaries “currently prohibited from possessing firearms under the baseline criterion of those ‘lack[ing] the mental capacity to contract or manage [their] own affairs.’”⁷⁴

However, ATF’s invocation of such “controversies” neither aligns with nor justifies the revisions ATF pursues in its proposed rule. The revisions in this NPRM are not limited to addressing the VA’s or any other particular agency’s implementation of the (g)(4) prohibitor. Rather, the proposed rule fundamentally reinterprets the key terms of the statute itself (beyond the current regulatory definition that contemplates a person’s “mental capacity to contract or manage his own affairs”), with impacts that extend far beyond the population of VA beneficiaries that ATF focuses on in its NPRM. Furthermore, ATF’s characterization of these precipitating “recent controversies” is misleading and, in several key respects, factually inaccurate.

In fact, ATF’s primary claimed rationale for its broad regulatory rewrite of the mental health prohibitor — namely, to address “recent controversies” with VA and SSA determinations — appears almost pretextual, particularly in light of the fact that Congress has already taken legislative action to address the concerns raised with these agencies’ processes. If ATF was truly focused upon ensuring that “veterans deemed incompetent to manage their financial affairs and assigned a fiduciary” are not considered adjudicated as a mental defective “absent any further assessment or finding as to whether they are danger to themselves or others,”⁷⁵ ATF could have promulgated a much different proposed rule that would have fully addressed that concern without upending the rest of the way federal law has treated the intersection of mental health and firearms access for decades.

1. ATF’s purported concerns about the VA are misleading.

Throughout the NPRM, ATF misleadingly claims that veterans have been “losing the right to bear arms based solely on a determination that they lack the mental capacity to contract or manage their own affairs,”⁷⁶ which in ATF’s view shows the “overbreadth of the current regulatory definition of ‘adjudicated as a mental defective.’”⁷⁷ For example, ATF claims that “the VA ultimately makes determinations only with respect to whether veterans are competent to manage the financial benefits they have earned,”⁷⁸ and that “ATF believes that the existing definition of ‘adjudicated as a mental defective’ is unnecessarily broad because it has been

⁷³ 91 Fed. Reg. 25169.

⁷⁴ 91 Fed. Reg. 25180, 25185.

⁷⁵ 91 Fed. Reg. 25179.

⁷⁶ *Id.*

⁷⁷ 91 Fed. Reg. 25169.

⁷⁸ *Id.*

interpreted to restrict Second Amendment rights based on solely on [sic] a determination that a person lacks the ability to manage certain personal or financial affairs.”⁷⁹

These claims mischaracterize the VA “mental incompetency” process, which never required submission of records to NICS solely because a beneficiary needed assistance managing benefits. The VA standard provides that a “mentally incompetent” veteran or other VA beneficiary “is one who because of injury or disease lacks the mental capacity to contract or manage his or her own affairs, including disbursement of funds without limitation.”⁸⁰ The operative “because of injury or disease” language in VA regulations requires that the individual has to be diagnosed with a mental health disorder, such as schizophrenia, dementia, or bipolar disorder, that renders them unable to manage their affairs for the VA to report the determination to NICS.⁸¹ ATF’s NPRM minimizes the essential threshold that the “because of injury or disease” element plays in the VA’s process, and makes it appear that the VA is only focused upon assessing a person’s capability to manage financial affairs. ATF’s resulting claim that the VA process demonstrates the overbreadth of 27 C.F.R. § 478.11’s regulatory definition of “adjudicated as a mental defective” is thus predicated on a misleading characterization of the actual VA standard for determining “mental incompetency.”

Moreover, ATF overreaches when it claims that the VA process “fails to identify adequate procedural protections necessary for adjudication” and cites this claimed failure as justification for adding many new procedural requirements for any adjudication to qualify under the “adjudicated as a mental defective” regulation.⁸² For example, because the VA process allows for a “mental incompetency” determination to be made by a VA in-house rating professional and because veterans and other VA beneficiaries rarely exercise their right under the VA process to request a hearing before a final determination is entered, ATF claims that the VA process lacks “a judge or other independent arbiter” and “adversarial proceedings” sufficient to constitute an adjudication.⁸³ But ATF’s objection to the type of “lawful authority” that the VA empowered to make these determinations in no way demonstrates the need for wholesale revisions to the regulatory definition of “adjudicated as a mental defective” as the proposed rule would do — and then some. Rather, that concern could be addressed by establishing that a VA rating professional does not qualify as a “lawful authority” qualified to make determinations and directing the VA to use a judge or other independent arbiter instead.

Furthermore, ATF’s claim that a lack of adversarial proceedings “creates problems” with the VA determination process is undermined by the fact that the VA process provides strong due process protections.⁸⁴ Those protections include notice;⁸⁵ the opportunity to request a hearing;⁸⁶ the opportunity to present evidence and witnesses;⁸⁷ the right to have legal representation;⁸⁸ high standards of proof, including that the medical evidence must be clear and convincing and leave

⁷⁹ 91 Fed. Reg. 25183.

⁸⁰ 38 C.F.R. § 3.353(a) (emphasis added).

⁸¹ See 38 C.F.R. § 4.130.

⁸² 91 Fed. Reg. 25169.

⁸³ 91 Fed. Reg. 25170.

⁸⁴ *Id.*

⁸⁵ 38 U.S.C. §5501A(1).

⁸⁶ 38 U.S.C. §5501A(2).

⁸⁷ 38 U.S.C. §5501A(3)-(4).

⁸⁸ 38 U.S.C. §5501A(4).

no doubt as to the individual's incompetency;⁸⁹ a presumption in favor of competency;⁹⁰ and, avenues to appeal "mental incompetency" determinations and to petition to restore access to guns through both the VA and the courts.⁹¹

Congress, both in the NICS Improvement Amendments Act of 2007⁹² and the 21st Century Cures Act of 2016,⁹³ reviewed the due process protections that apply both pre- and post-deprivation of rights in the VA determination process and took steps on a bipartisan basis to strengthen and codify those protections. What Congress did not do then — just as it has not done now — is call for the wholesale reinterpretation and rewriting of section 922(g)(4)'s key terms.

2. ATF's purported concerns about the SSA are factually inaccurate.

Additionally, ATF's claim that "social security recipients...have been disarmed because they were determined to require assistance managing their benefits" is simply false.⁹⁴ In 2016, the SSA engaged in rulemaking that planned to begin providing NICS with information "on a prospective basis" about beneficiaries who were determined by the SSA to be incompetent.⁹⁵ But, as ATF acknowledges, the SSA's rulemaking never actually led to the submission of records to NICS because Congress passed and President Trump signed into law a joint resolution of disapproval under Congressional Review Act that blocked the rule and, in turn, prohibited the SSA from implementing any similar rule in the future.⁹⁶ Even ATF's NPRM concedes that "there is only one active entry in the NICS indices for an individual that is adjudicated mental defective from the SSA," which shows that ATF was not accurate in stating that "large numbers" of social security recipients have been disarmed under the current system.⁹⁷ Further, there has been no "recent controversy" within at least the past decade concerning social security recipients and incompetency determinations, and it is disingenuous for ATF to claim that the Congressionally halted SSA effort demonstrates a need to comprehensively rewrite the regulatory definition of "adjudicated as a mental defective."

3. ATF's purported concerns about the VA and the SSA have already been addressed by Congress through legislative action, and Congress did not direct ATF to broadly reinterpret section 922(g)(4)'s statutory terms.

ATF's characterization of the VA and SSA "mental incompetency" determination processes as "controversies" that "show[] that the current regulation both encompasses too many people and fails to identify adequate procedural protections necessary for adjudication" ignores the fact that Congress has already taken action to address perceived flaws with the VA and SSA processes.⁹⁸ Those Congressional actions gave clear direction to ATF what it should and should not do to reflect Congress' interpretation of section 922(g)(4).

⁸⁹ 38 C.F.R. §3.353(c).

⁹⁰ 38 C.F.R. §3.353(d).

⁹¹ 38 CFR § 3.103; 38 U.S.C. § 7252.

⁹² P.L. 110-180.

⁹³ P.L. 114-255.

⁹⁴ 91 Fed. Reg. 25169.

⁹⁵ 91 Fed. Reg. 25170-1.

⁹⁶ *Id.*

⁹⁷ 91 Fed. Reg. 25171, 25169. Indeed, ATF appears to have been inaccurate in citing "recipients" plural, as only one social security recipient is currently the subject of an active entry in NICS.

⁹⁸ 91 Fed. Reg. 25169.

First, as noted above, Congress enacted a joint Congressional Review Act resolution blocking the SSA rule from taking effect in 2017 and barring any substantially similar rule from being issued. Thus, there is no active controversy over the SSA's handling of incompetency determinations.

Also, Congress has repeatedly passed legislation directing the VA to modify how its “mental incompetency” determination process intersects with the (g)(4) prohibitor. In the NICS Improvements Amendments Act of 2007, Congress required the VA and all other Federal agencies that adjudicate the mental health of individuals to: (1) remove from and not add records to NICS of persons whose adjudication has been set aside or expunged, persons who have been fully released or discharged from required treatment, and persons who have been found to no longer suffer from the mental health condition; (2) establish a program to allow such individuals to apply for relief from Federal firearms disabilities resulting from such adjudications; and (3) provide notice to any such individuals of the effect of a mental health adjudication on their ability to purchase or transport a firearm and their right to apply for relief from disabilities.⁹⁹ Then, in 2016, with the 21st Century Cures Act, Congress codified the VA's due process protections, including notice, the right to request a hearing, the right to present evidence, and the right to be represented by counsel.¹⁰⁰

More recently, in 2024, Congress enacted a restriction on the use of VA funds to report records on individuals determined to be “mentally incompetent” to NICS “without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such person is a danger to himself or herself or others” in the Consolidated Appropriations Act, 2024.¹⁰¹ Congress renewed this restriction in subsequent appropriations laws.¹⁰² As a result, the VA stopped all weekly reporting to NICS in March 2024.¹⁰³ Relevant here, Congress did not foreclose VA reporting to NICS on veterans and other VA beneficiaries determined to be “mentally incompetent.” Instead, Congress imposed a new condition on reporting, i.e., that there must be a judicial order or finding of dangerousness, which reaffirmed that Congress supports sharing of VA “mental incompetency” determinations with NICS when the determinations are accompanied by a finding of dangerousness. Despite having legislatively modified the VA mental incompetency process multiple times in recent years, at no point did Congress amend or alter the meaning of the term “adjudicated as a mental defective” or direct the VA or ATF to change their regulations.

It is also worth noting that in 2026, the VA reportedly removed from NICS all mental health records that it had reported prior to March 2024 based on a determination that such records should not have been submitted under the 1997 rule as it currently stands.¹⁰⁴ This

⁹⁹ Section 101 of P.L. 110-180, codified at 18 U.S.C. § 922 note.

¹⁰⁰ Section 14017 of P.L. 114-255, codified at 38 U.S.C. §5501A.

¹⁰¹ Section 413 of P.L. 118-42.

¹⁰² See, e.g., Section 413 of P.L. 119-37, the Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026.

¹⁰³ See Letter from Sec. McDonough to Chairman Bost, House Committee on Veterans' Affairs (Mar. 15, 2024), available at https://veterans.house.gov/uploadedfiles/va_response_to_cmb_nics_ltr_3_2024.pdf.

¹⁰⁴ See Department of Veterans Affairs press release, “VA undoes decades-old wrong and protects Veterans’ Second Amendment rights,” Feb. 17, 2026, available at <https://news.va.gov/press-room/va-undoes-decades-old-wrong-and-protects-veterans-second-amendment-rights/> (stating that “the department is working with the FBI to remove all past VA reporting from NICS.”). This shows that the process of reviewing NICS

removal of past adjudications from NICS, plus the current and ongoing prohibition on using funds to submit new VA adjudication records to NICS, diminishes the qualitative benefits for VA beneficiaries that ATF identifies as justifying its proposed rule. Particularly in light of Congress’s legislative actions reforming the VA’s processes, there is no credible justification for ATF to comprehensively rewrite section 922(g)(4)’s regulatory definitions, and certainly no justification for ATF to propose reforms extending beyond the ATF’s stated objections to the “lacks capacity” criteria of the definition of “adjudicated as a mental defective.”

* * *

In short, ATF’s rationale for this NPRM and the sweeping revisions it would make is not only insufficient, but cannot withstand even minimal scrutiny. ATF’s characterizations of the VA’s and SSA’s “mental incompetency” processes and “recent controversies” surrounding them are not accurate, and even if they were, the NPRM’s proposed changes do not fit the alleged concerns. Furthermore, Congress has not asked for these revisions and recent Congressional action suggests just the opposite. While ATF states in its NPRM that it considered regulatory options that were narrower than this proposed rule and specifically responsive to concerns about the VA, ATF instead went down a path of proposing broad and fundamental regulatory changes without sufficient justification.

IV. The proposed rule’s change to the treatment of dangerousness determinations under section 922(g)(4) departs dramatically from longstanding practice and Congressional intent.

Perhaps the most prominent change the proposed rule would make to “raise the threshold for which persons are adjudicated as mentally deficient or are formally and involuntarily committed to a mental institution” is the proposed rule’s change to the treatment of dangerousness determinations.¹⁰⁵ For decades, ATF regulations have provided that a person has been “adjudicated as a mental defective” if a determination has been made by a court, board, commission or other lawful authority that the person, as a result of marked subnormal intelligence or mental illness, incompetency, condition, or disease, “is a danger to himself or others.” However, under the proposed rule, such a determination of dangerousness would no longer by itself establish that the person is “adjudicated as a mental defective.” The proposed rule would render such dangerousness determinations entirely irrelevant under section 922(g)(4)’s “adjudicated as a mental defective” prong, and dangerousness determinations would no longer be prohibiting unless a commitment resulted from the determination.

ATF’s proposal to effectively write “dangerousness” out of the regulatory definition of “adjudicated as a mental defective” is alarming for several reasons.

records to assess whether they still comply under section 922(g)(4) and removing records that are determined not to comply can and does occur under the current rule, albeit at a much smaller scale than what the proposed rule would require. Notably, though, the VA removed these records despite urging from Veterans of Foreign Wars (“VFW”) not to provide “automatic and unconditional NICS removal” without “safeguards to reasonably ensure [these individuals] are not a danger to self or others prior to removal from NICS.” See Statement of Patrick Murray, Veterans of Foreign Wars of the United States, before the House Committee on Veterans’ Affairs (Feb. 25, 2025) at p. 4, available at <https://docs.house.gov/meetings/VR/VR00/20250225/117899/HHRG-119-VR00-Wstate-MurrayP-20250225.pdf>.

¹⁰⁵ 91 Fed. Reg. 25181.

- First, as discussed above in Section I, doing so contravenes the GCA’s structure and intent as articulated by the Supreme Court in *Huddleston* and *Barrett*, which made clear that the GCA sought to broadly keep firearms away from persons with a history of mental disturbances and persons classified as dangerous.¹⁰⁶
- Second, as discussed above, Congress recently made clear that dangerousness is an important and necessary factor when determining whether a person can be prohibited under section 922(g)(4)’s “adjudicated as a mental defective” prong. Section 413 of the Consolidated Appropriations Act, 2024, contained a restriction on the VA’s use of funds to report certain records on certain individuals to NICS “without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such person is a danger to himself or herself or others.”¹⁰⁷ This provision has been renewed in subsequent appropriations laws. These statutory provisions demonstrate that Congress views a finding of dangerousness as a clear justification for making sure NICS has records on prohibited individuals — in this case, veterans and other VA beneficiaries. ATF’s proposal to strike dangerousness determinations from section 922(g)(4)’s “adjudicated as a mental defective” prong is, therefore, inconsistent with Congress’ most recent action in this space.
- Third, in this NPRM, ATF criticizes the VA and SSA for employing “mental incompetency” determination processes that “provide no insight into whether persons should be considered a danger to themselves or others based on their intellectual capacity.”¹⁰⁸ ATF specifically criticizes how under the VA process “veterans deemed incompetent to manage their financial affairs and assigned a fiduciary have been considered ‘adjudicated as a mental defective’ under the existing interpretation of that phrase, absent any further assessment or finding as to whether they are a danger to themselves or others.”¹⁰⁹ These statements show ATF’s apparent acknowledgement that determinations that a person is dangerous should be a relevant consideration under section 922(g)(4)’s “adjudicated as a mental defective” prong, but, nevertheless, ATF is seeking to remove “dangerousness” from this part of the equation altogether.

ATF’s proposed shift in 922(g)(4)’s treatment of individuals determined to be dangerous contradicts the GCA’s intent and design, countermands Congress’s recent legislative enactments, and is inconsistent even with ATF’s own critique of VA proceedings. It is also entirely unnecessary for ATF to eliminate the dangerousness prong of the regulatory definition of “adjudicated as a mental defective” to address the VA concerns that ATF cites as its primary justification for this rulemaking, as those concerns focus on the “lacks capacity” prong of that definition. And ATF concedes that its proposed change to the treatment of dangerousness determinations carries public safety risks. ATF states in the NPRM that “under ATF’s proposed

¹⁰⁶ The *Huddleston* Court pointed to legislative history showing Congress’ view that “no one can dispute the need to prevent...mental incompetents, persons with a history of mental disturbances ...from buying, owning or possessing firearms” *Huddleston v. U.S.*, 415 U.S. 814, 828 (1974). The *Barrett* Court recognized that “[t]he very structure of the Gun Control Act demonstrates that Congress...sought broadly to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous. These persons are comprehensively barred by the Act from acquiring firearms by any means.” *Barrett v. U.S.*, 423 U.S. 212, 218 (1976).

¹⁰⁷ Consolidated Appropriations Act, 2024 (P.L. 118-42), Section 413.

¹⁰⁸ 91 Fed. Reg. 25171.

¹⁰⁹ 91 Fed. Reg. 25179 (emphasis added).

realignment of certain elements of the current definition of ‘adjudicated as a mental defective,’ a finding that a person poses a danger to themselves or others is not independently sufficient to prevent them from possessing firearms” and that “[a]s a result, some portion of these dangerous persons, although adjudicated or committed, would no longer be prohibited.”¹¹⁰ ATF acknowledges that this would create “an increase in public safety risk” that may rise “up to and including potential mass casualty events.”¹¹¹ Finally, ATF provides no cost-benefit analysis showing that the benefits of this proposed change to the regulatory definition’s treatment of dangerousness determinations outweigh these significant costs and risks.

V. Conclusion

It is clear that this proposed rule is not ready for finalization. The laws governing the intersection of firearms and mental health are too important to get wrong, and a proposed rulemaking on this issue should be built on a foundation of data analysis and insights gained from consultation with experts and key state stakeholders, rather than the NPRM being the starting point for such a process. This proposed rule sweeps broadly in ways that are inconsistent with the GCA’s intent and Congress’ recent legislative enactments, and the NPRM lacks a credible cost-benefit analysis and cannot show that expected benefits of the proposed rule outweigh likely costs. Those likely costs, which include reviewing millions of records past adjudications and commitments to see if they comply with the proposed rule’s criteria and increased risks to public safety up to and including “mass casualty events,” are potentially enormous and have not been reasonably evaluated. And ATF admits that the proposed rule would allow people who have been determined by a court or lawful authority to be dangerous to acquire and possess guns.

For the reasons discussed in this comment letter, ATF should withdraw this proposed rule and should not proceed with a new NPRM without first gathering data and meeting with mental health experts, public health officials, states, law enforcement, and other stakeholders to build consensus.

Thank you for your consideration of this comment.

Sincerely,

/s/ Justin Wagner

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¹¹⁰ 91 Fed. Reg. 25181.

¹¹¹ 91 Fed. Reg. 25181-2.