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Brady Fee/NICS [National Instant Criminal Background Check System] [3]

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Brady Event Q & A

Q. What is Treasury/ATF's role in phase two of Brady law implementation?

A. Treasury/ATF will be issuing regulations to implement the requirements of the Brady law. These regulations will require licensees to contact NICS prior to making a transfer of a firearm to an unlicensed individual. The regulations also set forth the types of State permits that will be acceptable alternatives to a NICS check at the time of transfer. ATF will be revising its Form 4473 to incorporate the requirements of permanent Brady. ATF will also inspect licensed firearms dealers to ensure that they comply with Brady. Finally, ATF will investigate criminal violations of the Brady law.

Q. How does that differ from Treasury/ATF's role in phase one of Brady law implementation?

A. Our role in phase two is similar to our role in phase one, i.e., enforcing compliance with the Brady law.

Q. What remains to be done to implement phase two of the Brady law?

A. Final regulations to implement phase two of the Brady law will be issued by ATF in the fall. Licensees will receive a packet of information advising them how to comply with the requirements of phase two. This will include new forms. We will continue to meet with the FBI and the States to coordinate implementation of the new law.

Q. What is different about phase two of the Brady law?

A. The permanent provisions of the Brady law will apply to all firearms, not just handguns. There will be no five-day waiting period mandated by law; instead, firearms licensees will contact the National Instant Criminal Background Check System (NICS) for an instant records check. The NICS will have three business days to complete the records check. Furthermore, while Chief Law Enforcement Officers under the interim provisions of the Brady law generally had access only to criminal records, more information will be available under NICS (for example, dishonorable discharges from the Armed Forces, and records of people who have renounced their United States citizenship).

Q. Did phase one of the Brady law include a "waiting period?"

A. Phase one of the Brady law imposed a national five-day waiting period on the transfer of handguns, unless the licensee heard earlier from the CLEO that the purchaser was not prohibited from buying firearms. Licensees in States subject to one of the alternate records check provisions of the Brady law (e.g., permits, "instant checks") were not subject to the waiting period requirements of interim Brady.

Q. Does phase two as currently enacted provide for a "waiting period?"

A. Phase two of the Brady law requires that licensees contact the NICS for an instant background check; however, the licensee may have to wait up to three business days for the check to be conducted.

Q. What does the Schumer-Durbin bill provide that you are endorsing today?

A. The bill would extend the period of time for the FBI to complete a background check from three to five days. The legislation would also impose a three-day waiting period on the transfer of handguns, subject to certain exceptions. The bill would also require licensees to contact the Chief Law Enforcement Officer of the purchaser's place of residence prior to transferring the firearm.

Q. How many states currently have waiting periods under state law? What is the range of these periods? (State by state if available).

A. At least eight States require some type of waiting period. For example, Maryland has a 7-day waiting period for handguns and assault weapons; Illinois requires a 24-hour wait for long guns and a 72-hour wait for handguns; Washington has a 5-day waiting period for handguns; California requires a 10-day waiting period for all firearms; Florida has a 3-day waiting period for handguns; Alabama has a 48-hour waiting period for pistols; Tennessee has a 15-day waiting period for handguns; and Indiana requires a 7-day waiting period for handguns.

Q. How big an impact do you think background checks on long gun purchasers will have?

A. Long guns are the source of a significant number of trace requests by law enforcement officials, requests that are made when a firearm is associated with a crime or suspected of being associated with a crime. Out of a total of 330,297 trace requests received by ATF's National Tracing Center since 1996, 101,442 of them were for long guns, including rifles and shotguns. Two firearms on the top ten most frequently traced firearms list are long guns, the Norinco 762 rifle and the Mossberg 12 gauge shotgun. We expect that where crimes are involved, at least some of the crimes will be with guns purchased by prohibited persons. Therefore, we think this is a positive measure that will be helpful in denying criminals access to firearms.

Q. Why should there be background checks on owners who are redeeming their own firearms from pawn?

A. Phase one of Brady included a statutory exemption for any licensee returning a handgun to the person from whom it was received. This exemption included the redemption of handguns from pawn. Phase two of Brady does not include such an exemption; accordingly, these transfers are subject to the requirement for a NICS check. When a prohibited person does attempt to redeem a firearm from pawn, law enforcement officials have an opportunity to prevent further possession by a prohibited person. Furthermore, through a survey of gun stores and pawnshops that ATF is presently conducting, we are learning that prohibited persons are in fact taking advantage of the exemption in the 1994 law, and redeeming firearms from pawn despite their prohibited status. In fact, persons redeeming firarms from pawn are much more likely to be prohibited than persons purchasing firearms from dealers.

Office of the Attorney General
Washington, D.C. 20530

July 28, 1998

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL

THROUGH: THE ASSOCIATE ATTORNEY GENERAL

FROM: Kent Markus
Deputy Chief of Staff

Nick Gess
Director

Charles Simon
Deputy Director
Office of Intergovernmental Affairs

SUBJECT: Improving Record Accessibility.

PURPOSE: To provide the Attorney General with (1) a status report on Department efforts to improve record accessibility for purposes of national criminal history background checks, including Brady Act background checks, and (2) recommendations for Attorney General action.

TIMETABLE: The permanent Brady Act provisions become effective on November 30, 1998. The actions we propose in this memorandum will help maximize the efficacy of national background checks, including Brady background checks.

SYNOPSIS: The Department has made good progress in improving record accessibility for purposes of national criminal history background checks, including Brady Act background checks. Between 1993/1994 and 1997/1998, the percent of *all* records available through the FBI's Interstate Identification Index (III) increased from 50% to

59%. In the same time period, the percentage of records *accessible through III* which are complete with dispositions increased from 52% to 59%. In addition, BJS has calculated that, on average, 42 million (or 73 %) of the total number of criminal history records would be accessible if a handgun purchase background check were performed today pursuant to the permanent provisions of the Brady Act. Notwithstanding recent improvements, we propose additional steps which the Attorney General could take in order to improve, generally, the efficacy and integrity of state criminal history record systems and the National Instant Criminal Background Check System.

DISCUSSION:

This memorandum responds to your request for a report on the accessibility of criminal history records for purposes of federal computerized searches. This memorandum also provides a progress report on efforts being made to improve the efficacy of such searches, including for purposes of the National Instant Criminal Background Check System (NICS). We will focus primarily on state criminal history records, which are recognized as the most significant element of criminal history background checks. We will also propose certain additional steps which the Attorney General could take in order to improve, generally, the efficacy and integrity of state criminal history record systems and the NICS.

I. Records and their Accessibility

There are 57 million state and federal criminal history records in the United States today.[1] Fifty-four million of the

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[1] This figure includes each individual record in each state (as well as federal and foreign records) as of the end of 1997. As many convicted criminals have records in more than one state and/or more than one record in any given state, we may safely assume that the number of individuals with criminal records is

total number are state records. The remaining three million are federal and foreign records.[2]

A. <u>Accessible Records</u>

The FBI-maintained Interstate Identification Index (III), described in more detail below, indexes 31 million of the state records and all three million of the federal and foreign records. In sum, 34 million (or 59%) of the 57 million state and federal criminal history records are included in, or referenced by, III.[3] Twenty million (or 59%) of the III-accessible records include disposition information.[4]

Viewed over time, these numbers tell a better story than is suggested at first blush. Virtually all newly-created state criminal history records since 1993/1994 (together with dispositions) have been, or will shortly be, made accessible

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somewhat less than 57 million.

[2] These figures do not include (1) 5.3 million FBI-maintained, non-automated records of individuals born on or after January 1, 1929, but before January 1, 1956, and (2) 5.7 million such records of individuals born before January 1, 1929. Although not included in publicly-disclosed totals, the 5.3 million records (offender d.o.b. 1929-1956) *will be* accessed by a NICS check. The 5.7 million records (offender d.o.b. pre-1929) will not be accessed by a NICS check; because these offenders are, today, at least 79 years old, this memorandum treats their records as if they had been purged by the FBI.

[3] All figures cited in this memorandum relating to numbers of records are estimates based on data (1) collected in a recent BJS-sponsored survey of criminal history record systems or (2) provided by the FBI.

[4] The 20 million records which both are III-accessible <u>and</u> include disposition information represent 36% of the <u>total</u> records.

through III.[5] In addition, a number of the records created in the years immediately prior to 1993/1994 have been made accessible through III. As a result of these efforts, between 1993/1994 and 1997/1998, (1) the *number* of records available through III has increased by nine million[6], (2) the *percent* of all records available through III has increased from 50% to 59%, and (3) the percent of III-accessible records which are complete *with dispositions* has increased from 52% to 59%.

B. Non-Accessible Records

We know that approximately one-third of non-III records (seven million out of 23 million) are not automated (paper only), created prior to the implementation of automatic recordkeeping systems by the states. These are necessarily older records which, in many cases, will correspond with individuals who no longer pose the sort of threat against which a background check is designed to protect.

The remaining 16 million non-III records are also almost all older records (more than 5 years old) which also fall into one or both of the following categories: (1) records of less serious crimes (mostly misdemeanors) and (2) records which do not meet III's technical standards. Because these records are older and often less serious, they too will frequently correspond with relatively low-risk individuals.

We know that almost all of the non-III records are older because (as noted above) virtually all newly-created records since 1993/1994 are III-accessible. We know that prior to the establishment of III, when the FBI's exclusive means for tracking national criminal history information was through receipt of copies of actual records from submitting states, the FBI would

[5] A very limited number of records of non-III states may not have been acceptable to the FBI because of technical deficiencies.

[6] III-accessible records increased from 25 million to 34 million, or 36%, between 1993/1994 and 1997/1998.

not accept certain limited categories of misdemeanor records. We know that a substantial number of non-III records do not comply with III's technical standards, frequently because of a missing or illegible fingerprint.

Finally, we know that III-states have prioritized for national search capability those records which are most relevant to criminal history background checks, because (1) states have told us so in response to our queries and (2) states were encouraged to do so by the terms of criminal history record improvement grants which they have received in recent years.

C. Improving Accessibility

There are two principal ways to increase the percentage of total records which are III-accessible. First, add some or all of the 23 million non-III records to III. (There are a number of reasons, detailed in Section IV below, why this is not an attractive option.) Second, even without adding the non-III records to III, the percentage of total records which are III-accessible will consistently increase in coming years, as virtually all newly-created records continue to be added to III.

In addition, as states purge their state indices of older records which are not III-accessible (thereby reducing the total number of records), the percentage of total records which are III-accessible will further increase.[7] There are compelling reasons to conduct such purges: in many cases, older records will correspond with individuals who are no longer living or, if living, no longer pose the sort of threat against which a background check is designed to protect. By eliminating these records, the review of remaining records becomes more efficient, both substantively and economically.

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[7] Indiana conducted a recent purge, which eliminated approximately 350,000 records from its master name index (and from the national total).

II. The Interstate Identification Index

The FBI-maintained Interstate Identification Index (III) is an ongoing state/federal criminal history record system. The III contains federal – and certain state – felony and misdemeanor arrest and conviction records, as well as index *pointers* to many further state records maintained by III-member states. States that belong to the III take responsibility for: (1) managing those of their records which are indexed in the III[8] and (2) providing this information to authorized users. In addition, in order to qualify for III-membership, states must agree to comply with certain technical and operational standards. For example, III-member states must agree to have a single source of fingerprint submissions. Eleven states have not yet become members of III.

The Department urges III-membership because direct state responsibility for recordkeeping ensures that state information is as current and accurate as possible. Notwithstanding the FBI's emphasis on state stewardship of records, the III does contain a substantial amount of criminal history information of non-III member states. The FBI collects this information from the non-III member states, updates the information to the extent it receives notification from such states, and provides the information to authorized users.[9]

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[8] Not all records of III-member states are indexed in the III; for the most part, these unlisted records can be accounted for as follows. Prior to states' III-membership, certain records were simply not submitted to the FBI or were submitted to, and rejected by, the FBI. The most common reasons for both failure to submit and rejection were: (1) the underlying crime did not qualify, as noted above, or (2) the record did not comply as to form (frequently because of a missing or illegible fingerprint).

[9] The FBI also serves this function with respect to certain records of III-member states which are actually maintained by the FBI (rather than being indexed by III). In large part, these records were submitted to the FBI by current III-member states before they became III-members.

III. The Brady Act and Record Accessibility

The efficacy of all national criminal history background checks depends on our continuing efforts to improve record accessibility. Of particular relevance, given the political climate and the imminence of the launch of the NICS, are Brady Act background checks. The Brady Act's permanent provisions require establishment of the NICS system by November 30, 1998.

A. The Brady Act's Permanent Provisions

Permanent Brady prohibits a gun dealer (with certain exceptions[10]) from selling a firearm until the dealer has contacted the NICS and either the sale has been approved or three business days have passed without an indication from the NICS that the prospective purchaser is prohibited from possessing a firearm. Once contacted, the NICS is expected to determine immediately whether the prospective firearm purchaser falls within one of the categories of persons prohibited from possessing a firearm under federal law or falls within a state law prohibition.

The federal categories are: (1) convicted felons; (2) fugitives from justice; (3) unlawful drug users; (4) adjudicated "mental defectives"; (5) illegal aliens; (6) military dishonorable dischargees; (7) persons who have renounced their citizenship; (8) persons subject to certain domestic violence restraining orders; and (9) persons convicted of misdemeanor crimes of domestic violence.

B. Tools Available to Establish the NICS

The FBI's Criminal Justice Information Services Division (CJIS) maintains and operates the FBI's National Crime Information Center (NCIC) and is in charge of establishing and operating the NICS. The NICS will access various files for

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[10] An important exception is that a gun dealer may sell a gun to a prospective purchaser who holds a state gun permit that meets certain requirements.

information on persons prohibited from possessing a firearm: (1) the III, (2) the NCIC Hot Files, which contain records of wanted persons, persons subject to domestic violence restraining orders, deported felons and foreign fugitives, and (3) the new NICS Index, which will contain information on the remaining categories of prohibited persons.

The check of criminal history records (specifically, state records) will be the most significant element of a Brady background check. The Brady Act, however, provides no authority for the Attorney General to require states to submit data.[11] Therefore, vast amounts of pertinent state data will be included in the national system only to the extent that states voluntarily provide it.

To encourage state participation and to improve availability of state records, Congress authorized over $200 million, primarily under the Brady Act, for the improvement of state criminal history records. BJS is actively using these funds to help states improve criminal history record systems.[12] One key goal is to ensure that the records contain information as to the final disposition of the case, i.e., whether the arrest resulted in a conviction. This final disposition information is critical to the NICS because, unless disposition information is contained

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[11] The Attorney General does have the authority to "secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate" federal law. Brady further requires federal agencies to furnish the requested information "notwithstanding any other law." This process is described in greater detail below.

[12] BJS' National Criminal History Improvement Program (NCHIP) has already distributed approximately $162 million directly to the states for improvements under the Brady Act and other authorizations. An additional $48 million was appropriated for NCHIP, and is expected to be distributed, in FY 1998.

in the NICS records, background checks cannot be done "instantly."[13]

C. Completeness of a Brady Background Check

Since the check of criminal history records will be the most significant element of a Brady background check, we begin there. As described below, the number of state criminal history records which will be accessed in a Brady background check depends on whether the gun dealer contacts a state "point of contact" (POC)[14] or the FBI to initiate a Brady background check.

Where the gun dealer contacts a state POC, the state POC will first access the state's independent criminal history data base and then, if the state search reveals no disqualifying information, the NICS. The NICS provides access, through III, to tens of millions of criminal history records from all 50 states and the District of Columbia. Meanwhile, each state's independent data base – a master name index – will reference virtually one hundred percent of the records in that state. A master name index contains references not only for those of the state's records which have been accepted by the FBI in III, but for the state's automated records (and even state manual records) which are not part of III, as well.[15]

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[13] Note, however, that Brady does provide for up to 3 days for a background check; in almost all circumstances, this will provide enough time for an analyst to locate disposition information, even if it is not in the NICS record.

[14] The FBI currently believes that approximately 29 states will serve as partial or full POCs, although this figure will almost certainly drop substantially if Congress mandates, as currently threatened, that the FBI or state POCs not (1) charge gun dealers a fee for conducting a background check and/or (2) retain records of approvals of firearm purchases for audit purposes.

[15] As explained in note 8, above, not all records of III-member states are indexed in the III.

By contrast, where the gun dealer contacts the FBI directly, the FBI will access – through NICS – only those state criminal history records available through III. Records which are maintained exclusively by states will not be available through III. This is perhaps the most important reason to encourage states to serve as POCs.

1. *Checking the Numbers – Criminal History Records*

What does all of this mean in numeric terms? Thirty-one million of the state records are automated, fingerprint-based and included in III. So, too, are three million federal and foreign records. Therefore, the FBI would access 34 million (or 59%) of the total 57 million records if it conducted a NICS check today.[16] (20 million of the records in III, or 59% of such records, include dispositions.)

Twenty-three million state records (or 41% of the total number of records) are not included in III and, therefore, would not be accessed by the FBI if it conducted a NICS check today. However, because 29 states are expected to serve as full or partial POCs for handgun sales, and will therefore have access to their own non-III state records (through their master name index searches) *in addition to* NICS, BJS has calculated that, on average, 42 million (or 73 %) of the total number of criminal history records would be accessible if a Brady background check were performed in connection with a proposed handgun purchase.[17] Note that, as described in Section I above, most of the records which are today accessible only through a state POC (that is, not

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[16] As disclosed in note 2, although not included in publicly-disclosed totals, an additional 5.3 million FBI-maintained, non-automated records (offender d.o.b. 1929-1956) *will be* accessed by a NICS check. Another 5.7 million such records (offender d.o.b. pre-1929) will not be accessed by a NICS check; this memorandum treats these records as if they had been purged by the FBI.

[17] This average would vary somewhat for long gun purchases, since long guns – unlike handguns – may be purchased outside of a purchaser's state of residence.

accessible through III) reflect older and, frequently, less serious crimes.[18]

It is important to emphasize that at its inception, the NICS, even without direct access to a substantial number of records, will be able to function effectively. The interim provisions of the Brady Act – without the NICS, with the current incomplete criminal history records, and with virtually no information concerning other prohibited categories – prevented 242,000 convicted felons and other prohibited persons from purchasing handguns between the effective date of the Brady Act and the end of 1997. And the NICS' functionality will continue to improve as the FBI adds data to the system on each of the prohibited categories.

2. *Checking the Numbers – Other Prohibited Categories*

In addition to its focus on criminal history records, the FBI is pursuing efforts to improve record completeness with respect to other prohibited categories. The FBI has been gathering data on the other prohibited categories and expects to stock the new NICS Index next Monday (August 3, 1998). The FBI has entered into Memoranda of Understanding – governing transmission of information to the NICS Index – with each of the agencies listed below.

The FBI expects to receive information on August 3, 1998, regarding: (1) dishonorable dischargees from the Department of Defense and the Coast Guard (2,500 records; complete listing), (2) "mental defectives" from the Department of Veteran Affairs (200,000 records; will seek state data after November 30, 1998)[19], (3) illegal aliens from the Immigration and

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[18] Many of the less serious crimes would not be relevant to a Brady check, since – with limited exceptions – only felonies are disqualifiers.

[19] A recent BJS survey suggested that, under interim Brady, 15 states have been checking state databases which provide information on "mental defectives."

Naturalization Service (110,000 deportable alien records; expect to learn from INS in early August whether and when records on overstayed visas will be available), and (4) persons who have renounced their citizenship from the Department of State (700 active records; expecting 8,300 older records as well, as soon as the Department of State can make them available).[20]

For its NCIC Hot Files, the FBI is also obtaining information on (1) wanted persons (463,000 records entered primarily by state and local law enforcement; complete listing), (2) protection orders (47,000 records entered by approximately 15 states beginning one year ago, with all states expected to participate in the future)[21], (3) deported felons (9,000 records entered by the INS beginning two years ago; INS working to automate and complete up to an additional 160,000 records), (4) Secret Service protective orders (40 records; complete listing) and (5) foreign fugitives (900 records entered by Canadian and Interpol authorities; comprehensive listing).

IV. Options

Beyond the work already being done, there are several steps the Department might take to improve the general efficacy and integrity of state criminal history record systems and the NICS.[22] Still, there are few – if any – practical and efficient

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[20] You have decided previously not to seek drug treatment and positive drug test records from the Departments of Defense and Veterans' Affairs for inclusion in the NICS. However, the FBI expects to pursue state data on controlled substance abusers after November 30, 1998. In addition, the III already contains disqualifying drug felony and misdemeanor information.

[21] A significant number of additional states are expected to begin entering protection order records in the summer of 1999, when NCIC 2000 becomes operational.

[22] We are still working to develop recommended actions for the Attorney General to improve the efficacy of Brady background checks covering prohibited categories *other* than felonies.

steps to increase *immediately* the number or percentage of criminal history records accessible by the NICS. Listed below are certain options, with corresponding "pros", "cons" and recommendations.

A. Fund the Automation and III-conversion of Non-III Records

The Department could require that future year NCHIP or similar grants be used to fund the automation and III-conversion of the 23 million non-III records.

Pros: This step would insure substantially more complete coverage (not only for NICS, but for all national criminal background check purposes) of state and federal criminal history records.

Cons: As explained above, many of the 23 million records not currently accessible by the III represent older crimes. Seven million of these records are paper. Many are either not fingerprint-based or have illegible fingerprints. Many are likely to be misdemeanors which are not disqualifiers under Brady. It is therefore inefficient to expend resources on the III-conversion of records which will yield relatively little public safety benefit. As they have been in recent years, resources are more efficiently applied to insuring III-accessibility of (1) all newly-created records[23], (2) recently-created records

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Deferring this second step is driven by our desire to focus initially on state criminal history records, which are recognized as the most significant element of Brady background checks.

[23] The nine million records added to III between 1993/1994 and 1997/1998 represent more than 25% of the total number of records in III.

(within 5 years prior to the start date) and (3) dispositions of all III-records.

Recommendation: Against.

B. Induce More States to Serve as POCs for Brady Checks

The Attorney General could reinforce – through letters and/or phone calls – Director Freeh's message to states on the importance of serving as a POC. (Local SACs are personally delivering to all governors letters to this effect from Director Freeh. A sample of this letter is attached hereto.)

Pros: If each state were to serve as a POC for handgun and long gun sales, virtually one hundred percent of the records in that state, as well as all of the III, would be accessible in a Brady background check. In addition, state POCs are better equipped to interpret their own records and their own laws than is the FBI.

Cons: Increased state POC participation will increase the number of records accessed in a Brady background check, but will not improve the overall condition of state criminal history records.

Recommendation: For.

C-1. Create an Actual (or Effective) National Master Name Index

The FBI currently has the ability to query the master name index of every state, but does not plan to do so for the NICS. For purposes of the NICS, the FBI could access state master name indices in one of two ways. First, the FBI could request that each state provide to the FBI a copy of its master name index, in order to create a comprehensive National Master Name Index (made up of all the state versions) as a new file to be searched by the NICS if all other NICS searches yielded no disqualifying information. Second, the NICS could electronically query each separate state master name index, if all other NICS searches yielded no disqualifying information.

Pros: Creation of a National Master Name Index, or separate querying of each state version, would insure virtually complete NICS coverage of state and federal criminal history records. Such a search would include nearly all of the 23 million records which are non-III, but are referenced in individual state master name indices.

Cons: There are several reasons to oppose this proposal:

1. As explained above, many of the 23 million records not currently accessed by the NICS represent older crimes. Seven million of these records are paper. Many are either not fingerprint-based or have illegible fingerprints. Many are likely to be misdemeanors which are not disqualifiers under Brady. It is therefore inefficient to expend resources on creation of an index which will yield relatively little public safety benefit.[24]

2. Many states which have agreed to provide POCs (and some which may be considering it) will likely object strenuously to bearing the burden of analyzing the results of a NICS National

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[24] Inclusion of these additional records in the NICS would increase the "hit rate", causing a greater number of sales to be delayed. In many cases, these delays would be unwarranted. On average, they would also likely be longer than is currently expected because review of underlying non-automated records will be a labor intensive process.

Master Name Index search.[25] Indeed, certain states may opt not to provide a POC if this burden is imposed. (State POCs currently have the obligation to analyze search results only of their own master name index and, if necessary, the NICS – without the National Master Name Index feature.)

3. Inclusion in the NICS of state records which have no positive identification (such as fingerprints) would damage the credibility of federal criminal history background checks and represent a departure from the Department's longstanding policy.

4. Neither the proposed National Master Name Index nor a 50-state querying capacity could be established by November 30, 1998. Although the current NICS system would be compatible with a 50-state master name index query, time and resources would be necessary to prepare a new inquiry format. In addition, such a 50-state query would result in 50 separate electronic responses arriving in different time frames (ranging from a few seconds to, perhaps, an hour). Creation of a new National Master Name Index would involve even more technical complexity. The FBI would need to assume maintenance responsibilities for millions of new records, including the responsibility to

[25] Analyzing the results of a NICS National Master Name Index search will be particularly burdensome, because state master name indices – unlike the III – can contain multiple separate references for a single individual, all of which would require review before a state POC analyst (or, for that matter, an FBI analyst) could determine whether a prospective purchaser was prohibited from purchasing a gun.

periodically audit the records and synchronize them with updates received from the states.

Recommendation: Against.

C-2. Create an Actual (or Effective) National Master Name Index of Computerized Criminal History Records Only and Base Denials Only on Fingerprint-based Records

This is a more limited version of Option C-1. The basic structure would be the same: the FBI could create a new National Master Name Index, or could electronically query each separate state master name index, if all other NICS searches yielded no disqualifying information. The new feature would require that analysts, whether at the FBI or at a state POC, only be authorized to issue a denial if the record on which such denial was based: (1) was computerized and (2) indicated that it was fingerprint-based.

Pros: This structure would insure NICS coverage of 16 million (out of a total of 23 million) records which are not III-accessible. On average, these 16 million computerized, non-III records are likely to be the newer, and therefore more relevant, non-III records. That the search would only apply to computerized records would limit the burden both on the home state of a record which comes up in a National Master Name index search and, to a more limited extent, the POC or NICS analyst who must review the search results. That only those of the 16 million records which have positive identification could be the basis for a denial insures that the credibility of federal criminal history background checks would not be compromised.

Cons: This option would not meaningfully reduce the burden on the POC or NICS analyst who would need to review the expanded search results; therefore, POC objections would likely remain vigorous. Not only would the "hit rate" under this proposal be much higher than is currently envisioned — based on the addition of 16 million new records — but the POC or FBI analyst would still have to deal with multiple separate references for many individuals. In addition, this option would not reduce the issues of logistical and technical complexity associated with implementation.

Recommendation: FBI — Against.
IGA, OPD, BJS — Attorney General to direct interested components to evaluate feasibility.

D. Induce More States to Join III

In order to induce states to join III, the 1997 and 1998 NCHIP program announcements require that non-III states focus funds on activities necessary to participate in III. The Attorney General could send letters and/or make calls to the 11 non-III states stressing the importance of III participation. (Draft of letter attached.)

Pros: III membership is the best way to achieve accurate state record availability for the NICS. Records from non-III states are currently maintained and provided to authorized users by the FBI. Inevitably, however, these records are not as accurate as those maintained at the state level by a III member, since states are less likely to provide the FBI with dispositions than they are to update records which the states themselves maintain. In addition, because states must agree to comply with certain technical and operational standards in order to qualify for III-membership, there is an increased likelihood that III-member states will maintain their records carefully. Finally, joining III is a necessary first step towards full participation in key criminal history initiatives – such as IAFIS – which depend on an efficient and decentralized national criminal history record system.

Cons: III membership does not have an immediate, meaningful effect on the absolute number of records accessible through a NICS check, because the records of non-III states are currently maintained by the FBI; as described above, however, these records are less likely to include disposition information.

Recommendation: For.

RECOMMENDATION: That the Attorney General take the actions detailed in Section IV (B), (C-2) and (D).

APPROVE: ____________________

DISAPPROVE: ____________________

OTHER: ____________________

<u>Concurring components</u>:
- OPD, IGA, BJS
- FBI (only concurs with respect to Section IV (B) and (D))

<u>Nonconcurring components</u>:
FBI (recommends against Section IV (C-2))

Attachments (2): Freeh Letter
Draft Letter from Attorney General

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

Anecdotes

The Brady Law is preventing *violent felons* from purchasing handguns -- violent criminals do try to buy handguns from gun stores.

In October 1995, a convicted murderer tried to buy three handguns in Dekalb County, Georgia. Before the Brady Act, he had purchased at least eight other guns without being challenged. (ATF)

In April 1994, a person under indictment for felony cocaine charges, who had a previous conviction in Kansas for a "terroristic threat" offense was stopped from purchasing a handgun by a Brady check in Lexington, Kentucky. (ATF)

The Brady Law is preventing *illegal gun traffickers* from buying handguns to supply crime guns to the streets of our cities.

In April 1995, a convicted heroin dealer and fugitive trying to buy a gun in Blair County, Pennsylvania. Prior to Brady, he had purchased at least seven other guns without challenge and traded them to support his crack cocaine addiction.

In Boston, Massachusetts, a suspect arrested and indicted on gun trafficking charges informed ATF that the Brady Law prompted him to cease his illegal conduct. The suspect had flooded Boston with illegally sold handguns originally purchased in the Atlanta area between December 1993 and February 1994.

The Brady Law is preventing *persons under restraining orders for domestic harassment and stalking* from purchasing handguns.

In February 1996, for example, a Brady check helped the Wichita County Sheriff stop a handgun sale to a man who had battered and threatened to kill his ex-wife and children. He was under a restraining order.

In March 1994, the Brady Law prevented an accused stalker in Prairie Village, Kansas from purchasing a handgun. The prospective purchaser, who was under a restraining order, had also represented his state of residence as Missouri, not Kansas, on the Brady form.

THE BRADY LAW

The Brady Law is the cornerstone of law enforcement's efforts to stop peopl who plainly should not have access to handguns from obtaining them.

The law provides for a 5 day waiting period on a federal firearms licensee's transfer of a handgun to a prospective purchaser, during which a criminal records check is made.

The Brady Law permits states to use alternate criminal records checks sy items, as long as they meet the minimum standard established by the Brady Act.

The law prevents handgun purchases by eight types of persons: (1) person under felony indictment; (2) convicted felons; (3) fugitives from justice; (4) persons adjt dicated mentally defective persons or committed to a mental institution; (5) illegal aliens; (6) persons dishonorably discharged; (7) persons who have renounced thei U.S. citizenship; (8) persons under a restraining order related to domestic hara sment.

(Transfers of handguns to juveniles, except under limited circumstances o parental supervision, are prohibited under the Youth Handgun Safety Act, part of the Violent Crime Control Act of 1994. Federal firearms licensees are prohibited froi n selling handguns to a persons under 21.)

The Brady Law has stopped *more than 60,000 felons, fugitives and other p ohibited purchasers* from buying handguns over the counter during the last two ye ars.

This statement was made by Secretary Rubin and Attorney General R no on the second anniversary of the implementation of the Brady Law, February 28, 19 6. It includes all eight categories of prohibited purchasers.

ATF estimated the total number of handgun purchasers in Brady state by using the number of queries to the FBI database that is used by law enforcemen t when doing background checks connected with firearms transactions (Interstate Ic entification Index, III). There were 27 states covered by Brady in February 1994, and 2 Brady states as of December 1995.

3/1/94 through 12/31/94: an estimated 1,489,852 Brady State purchase attempts
1/1/95 through 12/31/95: an estimated 1,656,755 Brady State purchase attempts

ATF in conjunction with other law enforcement agencies has develo ied estimates of the national denial rate: 2.5% for 1994, and 1.5% for 1995.

3/1/94 - 12/31/94: 2.5% x 1,489,852 = 37,246 estimated pur hase denials
1/1/95 12/31/95: 1.5% x 1,656,755 = 24,851 estimated pur hase denials

TOTAL estimated purchase denials since Brady implementation: 2,097

The Brady law stops felons from buying handguns. The Brady Bill has already stopped *44,000 convicted felons* from buying guns.

President Clinton referred to this figure in the State of the Union address.

To estimate the number of Brady denials based on a felony conviction, ATF extrapolated from the results of the One Year Progress Report: Brady Handgun Violence Prevention Act prepared by ATF and the Department of the Treasury. The survey provided the results of a survey of 30 law enforcement jurisdictions from around the country, and found that of the total number of purchase denials, 71.3% were denials based on a felony conviction. That rate was applied to the total estimated purchase denials since Brady implementation to estimate the number of felons prevented by Brady checks from buying a handgun from a federal firearms licensee.
71.3% x 62,097 = 44,274 felons denied legal access to handguns by Brady checks

The denial rate estimates developed by ATF represent the consensus of State officials involved in implementing Brady around the country.

They are within range of or conservative relative to denials rates found in a variety of surveys:

-- March 1994, ATF, 16 jurisdictions/9 states: *5.3% denial rate.*
-- February 1995, ATF, 30 jurisdictions/27 states: *3.5% denial rate.*
-- February 1995, CBS News, nationwide: *2% denial rate.*
-- February 1995, International Association of Chiefs of Police (IACP) and Handgun Control, Inc., 115 jurisdictions/27states: *3.34% denial rate.*
-- January 1996, Handgun Control, Inc., 22 jurisdictions/15 states: *3.17% denial rate.*
-- January 1996, GAO, 20 jurisdictions/13 states, *4.3% denial rate*

NOTE: *None of these surveys are considered statistically valid; thus none of the aggregate denial rates are accepted as a definitive national denial rate*

The ATF national denial rate estimate is consistent with data contained in a survey of state officials to be released in spring 1996 by the Department of Justice's Bureau of Justice Statistics (BJS). The Survey of State Procedures Related to Firearms Sales was designed to describe the process and procedures in reviewing firearms purchase applications followed in each of the states. However, some states volunteered information concerning numbers of applications and denial rates.

-- April (?) 1996, BJS, 7 states: *1.4% average denial rate.*

Q. Why aren't there more prosecutions of applicants who falsify their Brady forms?

A. The purpose of the Brady Act is to prevent certain categories of persons from obtaining firearms from licensed dealers. That over 60,000 prohibited persons have attempted to purchase handguns over the counter and have been denied shows the undeniable importance of Brady as a crime prevention tool.

Q. How do you know Brady is stopping dangerous felons from purchasing handguns if you are not prosecuting them when they try?

A. The Brady Law is also resulting in prosecution and incarceration of dangerous criminals that are apprehended as a result of Brady checks.

The Brady law does not require state chief law enforcement officers carrying out the Brady law to report purchase denials to state or federal law enforcement authorities. Federal prosecutions only occur when state law enforcement officials with access to Brady check information voluntarily refer that information to appropriate federal law enforcement authorities.

> In August 1995, a Brady check in Great Falls, Montana helped ATF and local authorities arrest a convicted 5-time felon wanted in two states after he attempted to buy two handguns. He now faces federal charges including falsifying the Brady check form.
>
> A convicted murderer apprehended by ATF and local authorities in October 1995 as he tried to buy three handguns in Dekalb County, Georgia, has since been *convicted of violating federal firearms laws and has been sentenced to 37 months confinement and 3 years supervised release, in addition to a $750 special assessment.*
>
> A convicted heroin dealer and fugitive trying to buy a gun in Blair County, Pennsylvania, apprehended by ATF and local authorities in April 1995 as a result of a Brady check is now serving two years in prison on various charges.

We know that there have been many cases in which Brady checks have revealed outstanding warrants for serious felonies. In these instances, the defendant may be apprehended and prosecuted on the outstanding charge, but the fact that the individual was found through a Brady check may not be reflected in the case file or the Department of Justice prosecutions database.

Q. **If a person is not prosecuted for falsifying a Brady form what is to stop them from going out and getting a handgun illegally?**

A. **Brady checks are one aspect of law enforcement's efforts to stop criminals from obtaining handguns. The Brady Act stops access to handguns by felons and other prohibited persons through lawful commercial channels. ATF and prosecutors are building on the impact of the Brady Act by stepping up enforcement efforts against suppliers in the black market in firearms: *illegal gun dealers, illegal gun traffickers, and straw purchasers* who buy for felons, juveniles, and other dangerous persons.**

Illegal gun sellers:

On February 6, 1996, the license of a North Dakota Federal firearms licensee was revoked for willful violations of the Gun Control Act, including transferring hand guns after receiving notice from the chief law enforcement officer that the firearms should not be transferred because of Brady Law prohibitions.

On April 8, 1996, a federal grand jury convicted Chalmette Jewelry, Inc., and two individuals for violations of federal firearms laws, including sales of firearms to convicted felons, persons under indictment, and persons under the age of 21. The two individuals face up to 75 years' imprisonment and $2,000,000 in fines each. (ATF special agents also perfected criminal cases against 28 of these prohibited individuals and straw purchasers.) Chalmette Jewelry, Inc. averaged over 6,000 firearms sales per year, and was the largest firearms dealer in New Orleans, Louisiana.

Illegal gun traffickers:

In March 2, 1995, two individuals in Ohio pled guilty to several violations of federal firearms laws. They and others had conspired to and trafficked over 500 firearms to Michigan, New York, Boston, and New Jersey. The case began with 26 guns recovered in Detroit in connection with crimes of violence or narcotics violations; ATF traced these guns back to the traffickers.

On March 6, 1996, the tenth of twelve defendants was sentenced to 46 months in custody for participation in a conspiracy to illegally traffick firearms from Phoenix, Arizona, to California. The defendants illegally trafficked approximately 500 firearms before ATF special agents successfully intercepted 102 firearms destined for Los Angeles. California authorities have recovered an additional 100 of the trafficked firearms. The majority of

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these firearms were recovered in gang related investigations, including homicide, armed robbery, drive-by shootings, narcotics and weapons related offenses.

Straw purchasers:

On January 4, 1996, ATF special agents arrested an individual for illegally straw purchasing a 9 mm pistol from a federal firearms licensee in Danville, Virginia. The firearm was straw purchased for a juvenile. Approximately 2 hours after the firearm was purchased, the juvenile and others (not the straw purchaser) robbed a grocery store in Danville, Virginia; the store manager was murdered with the straw purchased pistol. The juvenile was prosecuted in State court as an adult and received life imprisonment. The straw purchaser is being prosecuted in federal court.

Q. Has this figure been challenged?

A. The denial rate figures are within range of or conservative relative to denials rates found in a variety of surveys.

-- March 1994, ATF, 16 jurisdictions/9 states. *5.3% denial rate.*
-- February 1995, ATF, 30 jurisdictions/27 states: *3.5% denial rate.*
-- February 1995, CBS News, nationwide: *2% denial rate.*
-- **February 1995, International Association of Chiefs of Police (IACP) and Handgun Control, Inc., 115 jurisdictions/27states: *3.34% denial rate.***
-- January 1996, Handgun Control, Inc., 22 jurisdictions/15 states: *3.17% denial rate.*
-- January 1996, GAO, 20 jurisdictions/12 states, *4.3% denial rate*

-- The Department of Justice's Bureau of Justice Statistics (BJS) has conducted a Survey of State Procedures Related to Firearms Sales to describe the process and procedures in reviewing firearms purchase applications followed in each of the states. Some states volunteered information concerning numbers of applications and denial rates.

May 1996, BJS, 7 states: *1.4% average denial rate.*

State level actual rejection rate data is presently available for only 7 Brady states: Alaska, Arkansas, Montana, Nevada, Ohio, Oklahoma, Wyoming. In some cases, the denial rates are higher (Oklahoma, 2.7%) and in some cases lower (Montana, .8%) than the national denial rate estimate. *As stated above, the average denial rate derived from the states that provided empirical data is 1.4%, very close to ATF's 1995 national denial rate estimate of 1.5%.*

Q. **How many *felons, fugitives and other prohibited purchasers* has the Brady Law stopped from buying handguns over the counter during the last two years?**

A. **As of February 28, the Brady Law had stopped *more than 60,000 felons, fugitives and other prohibited purchasers* from buying handguns over the counter during the last two years.** This includes all eight categories of prohibited purchasers.

Q. **How did you arrive at this number?**

A. ATF asked leading Brady law enforcement officials around the country what their denial rates were. The group estimated that the rate was 2.5% for 1994, and 1.5% for 1995. ATF applied this rate to the number of queries state officials made to the FBI's Interstate Identification Index, which is used for background checks related to firearms transactions.

There were 27 states covered by Brady in February 1994, and 25 Brady states as of December 1995.

3/1/94 through 12/31/94: an estimated 1,489,852 Brady State purchase attempts
1/1/95 through 12/31/95: an estimated 1,656,755 Brady State purchase attempts

3/1/94 - 12/31/94: 2.5% x 1,489,852 = 37,246 estimated purchase denials
1/1/95 - 12/31/95: 1.5% x 1,656,755 = 24,851 estimated purchase denials

TOTAL estimated purchase denials since Brady implementation: 62,097

LIST OF STATES SUBJECT TO THE FEDERAL FIVE DAY WAITING PERIOD OR STATES HAVING ALTERNATIVE SYSTEMS AS DEFINED IN THE LAW

As of 03-05-97

STATES WHICH MUST COMPLY WITH THE FEDERAL 5-DAY WAITING PERIOD

24 (25)

Alabama
Alaska **
Arizona **
Arkansas
Kansas
Kentucky
Louisiana **
Maine
Mississippi **
Montana **
Nevada
New Mexico
North Dakota **
Ohio
Oklahoma **
Pennsylvania **
[Puerto Rico]
Rhode Island
South Carolina
South Dakota **
Texas **
Vermont
West Virginia
Wyoming

** In these States, the Federal 5-day waiting period does not apply to transfers of handguns to persons holding valid permits/licenses to carry handguns issued within 5 years of the proposed purchase.

STATES WHICH MEET ONE OF THE ALTERNATIVES TO THE FEDERAL 5-DAY WAITING PERIOD

20 (18)

California	--	Permit or other approval-type system
Connecticut	--	Permit or other approval-type system
Delaware	--	"Instant check"
Florida	--	"Instant check"
[Guam]	--	Permit or other approval-type system
Hawaii	--	Permit or other approval-type system
Illinois	--	Permit and "instant check"
Indiana	--	Permit or other approval-type system
Iowa	--	Permit or other approval-type system
Maryland	--	Permit or other approval-type system
Massachusetts	--	Permit or other approval-type system
Michigan	--	Permit or other approval-type system
Missouri	--	Permit or other approval-type system
Nebraska	--	Permit or other approval-type system
New Jersey	--	Permit or other approval-type system
New York	--	Permit or other approval-type system
Oregon	--	Permit/Instant Check
Virginia	--	"Instant check"
[Virgin Islands]	--	Permit or other approval-type system
Wisconsin	--	"Instant check"

STATES ORIGINALLY SUBJECT TO THE FEDERAL 5-DAY WAITING PERIOD THAT NOW HAVE SYSTEMS THAT MEET THE ALTERNATE REQUIREMENTS

9

Colorado	Beginning 03-01-94	--	"Instant check"
Georgia	Beginning 01-01-96	--	"Instant check"
Idaho	Beginning 06-27-94	--	"Instant check"/ permit (permit 5-15-95)
Minnesota	Beginning 08-01-94	--	Permit or other approval-type system
New Hampshire	Beginning 01-01-95	--	"Instant check"
North Carolina	Beginning 12-01-95	--	Permit or other approval-type system
Tennessee	Beginning 05-10-94	--	Permit or other approval-type system
Utah	Beginning 03-01-94	--	"Instant check"
Washington	Beginning 06-06-96	--	Permit or other approval-type system

53

Note: Louisiana status was incorrect on previous list.

Date: 08/05/98 Time: 07:58
Shoot down misuse of Brady Act

If this were an answer on ''Jeopardy!,'' the correct $500 question would be: ''What onerous and possibly unlawful restrictions are the Clinton administration trying to impose on law-abiding gun owners?''

The Brady Act is set to expire at the end of November. When the bill was originally passed in 1993, it was known by all parties involved in its creation that the five-day waiting period to purchase a handgun would be replaced by a National Instant Criminal Background Check System (or NICS) in five years.

No one on either side of the gun issue can reasonably argue that the instant check is not a good idea. For years, many states have been successfully operating their own versions of what the national program should be like once it's up and running. A person goes into a gun dealer's to purchase a firearm, and the dealer can get an immediate answer as to whether that individual is prohibited from buying one.

It's a great law enforcement tool. Although the overwhelming majority of people who buy firearms have every legal right to do so, there are those rare occasions when a felon or some other prohibited person attempts to buy a gun through a licensed dealer. The instant check is a law that can work to keep guns out of the hands of people who shouldn't have them.

One feature of the law that apparently escaped many gun owners at the time the Brady Act passed is that the instant check will apply not only to handguns but also to long guns beginning Nov. 30. Although it may come as a surprise to some sportsmen when they go to Wal-Mart for that new deer rifle this fall, the two to three minutes that 80 percent of the instant checks will take is not much of an imposition _ especially if it ensures that a gun stays out of the wrong hands.

But as it is with too much legislation, the devil is in the details. The way that the FBI and the federal Bureau of Alcohol, Tobacco and Firearms are interpreting provisions of the Brady Act is stepping dangerously close to unlawful.

Nowhere in the law does it state that the FBI has the right to tax lawful firearms buyers for the NICS check. Yet a fee _ ranging from $13 to $30, depending on who's doing the talking _ is being proposed for each transaction. Perhaps I'm reading the wrong Constitution, but I can't find where the FBI has the authority to assess or retain taxes on American citizens.

A recent telephone call from a Second Amendment advocate underscored another concern of legal gun dealers nationwide. In a local seminar sponsored by the FBI and BATF to explain the instant check system, licensees were told that the background check _ and the accompanying fee _ will be necessary for folks who take their guns in for repair work and (heaven forbid) expect to get them back, or for people who have used a gun as collateral at pawnshops and go in to retrieve their property.

This is lunacy. The Brady Act says that a background check is required for the transfer of a gun. Any sane mind would understand that this means a change of ownership from a dealer to an individual, not just a temporary exchange of custody. Nowhere does it say that a gun owner who takes a firearm to a gunsmith for rebluing, or one who may send a defective piece back to the manufacturer for repair, should have to undergo a background check to retrieve his or her property.

Fortunately for gun owners, rational minds prevailed in the Senate last week. Sen. Bob Smith of New Hampshire offered legislation that would prohibit taxing lawful gun buyers for background checks once the NICS goes online. It passed, 69-31. Smith also offered and received approval of an amendment that will prohibit the feds from retaining information on gun owners whose purchases have been approved. It's sad that such legislation was even necessary, since existing law _ both the Brady Act and the 1986 Firearms Owners' Protection Act _ specifically prohibits any gun ownership records from being kept in a facility owned, managed or controlled by the U.S. government.

But the House of Representatives will get a crack at similar legislation when Georgia Rep. Bob Barr's No Gun Tax Act of 1998 comes up for a vote. Noted anti-gunner Charles Schumer of New York is loaded for bear in his desire to see it defeated.

Nobody, not even the most strident member of the National Rifle Association, wants a firearm to get into the wrong hands. That's why the instant check is a good law. Unfortunately, it's being twisted into a convoluted form that unlawfully taxes and harasses Americans who have every right to privacy and gun ownership.

But then, maybe that's the whole idea.

(Jill ''J.R.'' Labbe is a senior editorial writer and columnist for the Fort Worth Star-Telegram. Her e-mail address is jrlabbe(at)star-telegram.com.)

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By J.R. Labbe
Knight Ridder Newspapers

Firearms (ATF), Department of the Treasury, has been conducting NICS training seminars for the FFLs over the past year, providing a forum through which the FFLs could provide feedback about the system.

Scope of the Review

This options paper focuses specifically on the issue of retention of records of transactions relating to firearm transfer approvals in the NICS. It provides a general overview of the NICS and examines a range of records retention period options, their advantages, disadvantages, and impacts, to help determine what, if any, retention period is appropriate. This options paper does not address the legitimacy or the accuracy of the proposed fee for use of the NICS, nor is it intended to address any technical issues relating to NICS.

Background

The Brady Handgun Violence Prevention Act of 1994, Public Law 103-159, amended Section 922 of Title 18, United States Code, and contains an Interim Provision and a Permanent Provision. The Interim Provision, in effect from February 28, 1994, until November 29, 1998, generally requires the Chief Law Enforcement Officer (CLEO) in the place of residence of the prospective purchaser of a handgun to make a reasonable effort to determine within five (5) business days whether the transfer would violate Federal, state, or local law.

The Permanent Provision requires the Attorney General to establish, by November 30, 1998, a National Instant Criminal Background Check System (NICS). The Permanent Provision requires that FFLs not transfer a firearm to any unlicensed person without first contacting the NICS to determine whether the transfer would violate Section 922 (g) or (n) of Title 18, United States Code, or State law.

In accordance with the Brady Act, the NICS, shall allow FFLs to contact the system by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate section 922 (g) or (n) of Title 18, United States Code, or State law. To implement the NICS, the Brady Act authorizes the development of hardware and software systems to link state criminal history check systems into a national system. It also authorizes the Attorney General to obtain official information from any Federal Department or agency on persons for whom receipt of a firearm would be in violation of the law.

Persons prohibited from receiving a firearm under Section 922 of

U.S.C. Title 18 include any person who:

(1) Is under indictment for or has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of or addicted to any controlled substance;

(4) Has been adjudicated as a mental defective or committed to a mental institution;

(5) Is an alien illegally or unlawfully in the United States;

(6) Has been discharged from the Armed Forces under dishonorable conditions;

(7) Having been a citizen of the United States, has renounced U.S. citizenship;

(8) Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner; or

(9) Has been convicted in any court of a misdemeanor crime of domestic violence.

NICS Overview

The NICS will be a national system that will check available records on persons who are disqualified from receiving firearms. Since 1994, the FBI, as directed by the Attorney General, has coordinated the NICS development effort with the Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury, and state and local law enforcement agencies. The NICS is a computerized background check system designed to respond within a matter of seconds on most background check inquiries so FFLs will have an immediate answer to most inquiries. Depending on the willingness of their state governments to act as a liaison for the NICS, FFLs will contact either the FBI's NICS Operations Center, or a designated state point of contact (POC) to initiate background checks on individuals purchasing firearms.

Three main databases will be accessed by the NICS for background check information: (1) the National Crime Information Center (NCIC), which contains records on all fugitives, as well as the U.S. Secret Service Protective File, and the Deported Felon File; (2) the Interstate Identification Index (III) which contains automated criminal history records; and (3) a newly created NICS Index, which contains records on individuals who fall within categories 3 through 7 of the prohibited persons described earlier. The NICS Index will be populated by records provided by Federal agencies to the FBI; and records provided voluntarily by states on persons who have been denied the purchase of a firearm or who are known to be disqualified from possessing a firearm under Federal law. The NICS Index fields will contain an individual's name; sex; race; complete date of birth; state of residence; and possibly a unique identifying number, such as a Social Security Number (but NICS will not require a SSN be provided), a military number, or a number assigned by Federal, state, or local law enforcement authorities.

The NICS Audit Log will be a chronological record of system activities that will enable the reconstruction and examination of a sequence of events and/or changes in an event related to the NICS. Records retained in the Audit Log on each transaction will include: the name; date of birth; state of residence, and other identifying information about the purchaser; the type of transaction; date and time of the inquiry; the line number of the inquiry; the Originating Agency Identifier (ORI); FFL; and information found by the NICS search. The Audit Log will not contain a record of the actual sale or the specific type of firearm that is sold.

NICS Background Checks

A NICS background check will consist of a search using name, sex, race, date of birth, state of residence, and other identifying information provided by a purchaser for records in the NICS Index, NCIC, and III. Depending on the state in which the FFL is conducting business, the FFL will have the following three methods of performing firearm transfer background checks:

(1) In states where the state government has agreed to serve as a point of contact (POC) for the system, FFLs will contact the NICS through their state POC for all firearm transfer NICS checks. The state POC will receive inquiries from FFLs, conduct NICS background checks, check available state and local record systems, and make a determination as to whether any matching records provide reason to believe that the prospective purchaser is disqualified from possessing a firearm under Federal or state law.

(2) In states where the state government has declined to serve as a POC, FFLs will initiate a NICS background check by contacting the FBI's NICS Operations Center in West Virginia for all firearm transfers. The FBI will make the NICS check and determine whether or not the transfer would violate state or federal law. The FBI will charge FFLs a fee for each background check.

(3) Finally, in states where the state government has agreed to

serve as a POC for handgun purchases but not for long gun purchases, FFLs will contact the NICS through the designated state point of contact for handgun transfers. The FFLs will have to contact the NICS Operations Center for long gun transfers. The FBI may charge FFLs a fee for the long gun checks.

Each state government will decide whether the FFLs in its state will call a state point of contact or the FBI's NICS Operations Center to find out whether a firearm transfer will be allowed by the NICS.

Under any method used for conducting a NICS background check, only limited information will be provided to an FFL who has contacted the NICS concerning a prospective firearm purchaser. If a matching record is found by the NICS which provides reasonable cause to believe that the prospective purchaser is disqualified from possessing a firearm under Federal or state law, the FFL will be notified only that the application is "denied," with none of the underlying information provided. If additional record analysis is required by the NICS analysts, the response will read "delayed." If no disqualifying record is located by the NICS, the FFL will be told to "proceed." A unique identification number, or NICS Transaction Number (NTN), will be provided to the FFL for each response received from the NICS, and this number shall be recorded on the firearms transaction form by the FFL.

State POCs

In states where the state government has agreed to serve as a POC for the NICS, FFLs will contact their state POC for firearm transfer checks. The FBI will only perform background checks for FFLs located in states that do not have a POC. The state POC will initiate an electronic NICS background check; check state and local record systems for disqualifying records; determine whether the prospective purchaser is the subject of any matching records and whether the records contain information indicating that the transfer would violate Federal or state law; and provide a response back to the FFL. All other aspects of the background check process will remain the same as the NICS check made by the NICS Operations Center -- the difference will be that the state POC, instead of the FBI, will be processing the check and analyzing any matching records in order to make a determination.

The FBI NICS Operations Center

The FBI will operate a national NICS Operations Center to perform NICS background checks for FFLs in those states without POCs. FFLs will contact the NICS Operations Center either by telephone, or by means of an electronic device such as a personal computer and modem. Either means of contact will result in a NICS check with an almost instant response to the gun dealer. The NICS response will consist of a notice to the FFL that the transfer may "proceed," or is "delayed" pending further review of a matching record(s). No other information will be revealed to the FFL at the time of the inquiry. If no disqualifying record is found in the NICS, the FFL will be advised that the transfer may proceed and will be given a NTN. The FFL must record the NTN on the ATF Firearm Transaction Form (Form 4473), and retain the form for auditing purposes.

If the FBI determines that disqualifying information exists on the prospective purchaser, the FBI will recontact the FFL by telephone and advise the FFL that the transfer may not proceed and will be given an NTN to record on the ATF Form 4473 and must retain the form for auditing purposes. In all cases if there is a record, if additional information is required to determine whether a record would prohibit a person from purchasing a firearm, e.g., a final disposition is missing, the operator will provide the FFL with a NTN, and inform the FFL that the transaction is "delayed" and that more time is needed to review the response. The NICS will record that the transfer has been delayed. The FFL must record the NTN on the ATF Form 4473 and retain the form for auditing purposes. If subsequent research indicates the transfer would not violate state or federal law, the FFL will be notified that the transfer may proceed. If no further information is received by the FBI within three business days, and there is reason to believe that receipt of the firearm by the prospective purchaser would violate federal or state law, the FBI will notify the FFL that the transfer may not proceed.

Currently, the FBI plans to charge a user fee to FFLs for NICS checks performed by the NICS Operations Center. No fee will be charged for checks made by state POCs.

Privacy and Security of NICS Information

The privacy and security of the information in the NICS is paramount. In fact, Section 103 (h) of the Brady Act instructs the Attorney General to prescribe regulations to ensure the privacy and security of the information of the system. The Brady Act does not specify when records of NICS checks must be destroyed; therefore, the Department has interpreted the Act as requiring the destruction of NICS records within a reasonable time period for auditing purposes. Further, the Attorney General has explicit authority to issue regulations concerning the audits. A task force of experienced state, local and Federal law enforcement agencies familiar with the functions of information systems suggested 18 months as a reasonable time period to perform adequate audits and ensure system security, and the Department agreed.

The Attorney General published a Notice of Proposed Rule Making in the Federal Register on June 4, 1998, which includes guidelines for the proper and official use of system information. The guidelines also include a proposed 18-month period of retention for all system transactions to allow sufficient time for system auditing, security, and follow-up action on reports of system misuse.

Data stored in the NICS and related systems are documented criminal justice data, and access to that information is restricted to agencies authorized by the FBI according to Federal Statute. Historically, extensive measures have been taken to ensure the security and integrity of these systems and ensure proper agency use. State and local law enforcement agencies will be required to identify themselves before obtaining access to the NICS through the use of an Originating Agency Identifier (ORI) code assigned by the FBI. This is similar to the way NCIC is accessed. The Control Terminal Agency (CTA) in each state, typically the state police or department of public safety, will be responsible keeping a list of agencies authorized in the state to serve as a POC for the NICS and for ensuring that authorized agencies cannot access the system. FBI personnel with access to the system will also be individually identified and authenticated by the NICS.

In addition, electronic connections of all users of the NICS will be authenticated to prevent unauthorized access to the system, and all users will be provided with security guidelines detailing their security roles and responsibilities.

As currently planned, information about an inquiry resulting in an allowed transfer will be destroyed after 18 months. The NICS audit log will not be used to establish a federal firearms registry; information about the inquiry resulting in an allowed transfer will be kept only for a limited period of time to support this purpose (18 months being proposed). In fact, no national firearms registry can be created by the audit log, because it will not contain a record of the actual sale or the type of the firearm that is sold.

Individuals who are denied the purchase of a firearm may request that the FBI provide the reasons for the denial. The regulations will address the process for filing an appeal. The FBI shall provide such reasons to the individual, in writing, within five (5) business days after receipt of the request.

Records Maintenance

An automated Audit Log of all transactions that pass through the NICS will be maintained by the FBI. Records of firearm transfer approvals in the Audit Log will be maintained for a period of 18 months. The Audit Log will be used to analyze system performance and data integrity, conduct system audits, support the appeals process, and ensure security. After the retention period, information contained in the Audit Log related to the individual and the transfer will be destroyed. Only the NICS Transaction Number (NTN), a unique number assigned to each valid background check inquiry received by NICS, and the date on which the NTN was assigned, will be retained beyond eighteen months. The FBI will retain a log of all transactions related to firearm transfer denials for 10 years, after which time these records will be transferred to a Federal Records Center for retention.

The FBI maintains other inquiry-response systems such as NCIC, which have similar records retention periods, so limited record retention is not a new thing for them. Retaining records of NICS transactions approvals for 18 months will allow the FBI to effectively manage the data and ensure the security of the NICS. Some benefits of this prudent records management and security process include:

* the ability to ensure the integrity and data accuracy of the system;

* the ability to perform audits of the use of the system by FFLs and POCs, to ensure that they are performing the background checks in accordance with the Brady Law. Audits will also help to identify if the system is being used to perform unauthorized checks of individuals unrelated to gun transfers;

* the ability to investigate and prove cases of misuse, such as allegations of FFLs using the system to run checks of people other than actual gun purchasers, or using personal information that does not match the corresponding ATF For 4473;

* the ability to use the data in resolving billing disputes with FFLs who do not get access to the NICS via a designated State law enforcement Point of Contact (POC); and

* the ability to perform internal quality control reviews of the decisions of the officers and analysts who process the NICS background checks.

These factors are discussed in more detail below.

Ensuring System Integrity and Data Accuracy

A reasonable data retention period is needed in order to ensure that the system is working properly and that the data in the system and the responses provided by the system are accurate. Without having an adequate amount and retention of data, system malfunctions, data inaccuracies, and keying errors, would be difficult, if not impossible to detect and correct. For example, because NICS actually links and uses information from multiple systems, errors such as keying errors, or false positive identifications of legitimate firearms purchasers might occur causing an individual who should be approved for a firearms purchase to be disqualified due to a technical error. In addition, if an individual who has been denied a firearms transfer wishes to challenge the accuracy of the record upon which the denial is based, or wishes to assert that his or her rights to possess a firearm have been restored, he or she may do so by filing an application to the denying agency. Having data retained in the NICS Audit Log will allow expeditious identification and resolution of such cases.

Conducting System Audits

The FFLs are only permitted to conduct NICS checks relating to the transfer of a firearm. NICS may not be used for other purposes such as conducting checks of other than persons purchasing firearms. The FBI will conduct periodic system audits to determine whether the FFLs are using the NICS properly and to ensure that the system is not being used to perform unauthorized checks of individuals unrelated to gun transfers. For example, an FFL may not use the system to check on a prospective employee's background, or check on his or her neighbor.

Investigating System Misuse

There are over 60,000 non-law enforcement FFLs nationwide that will be authorized to conduct NICS checks on prospective firearms purchases. Unlike NCIC and III which are law enforcement specific systems used only by authorized law enforcement personnel, the NICS will authorize over 60,000 FFLs nationwide to have background checks performed on individuals. Having an audit log will allow the FBI to investigate allegations of system misuse against FFLs or others who have used the system for illegal reasons. Without some form of records retention, there would be nothing to prevent FFLs or others authorized to initiate NICS checks from using the system to check anyone's background.

Resolving Billing Disputes

Having an audit log will allow the FBI to go back and check 18 months worth of NICS system inquiries in cases where FFLs claim they did not request the checks for which they were billed. The identifying information contained in the audit log about the customers who were checked could be compared to the dealer's records for the NICS checks for which they are billed. This will also provide additional security against criminals using the identities of innocent citizens to purchase guns, and other cases of system misuse, because it would allow the FBI to contact the individuals who were checked when necessary to help in the investigation of any wrong doing.

Quality Control

The decision to allow the purchase of a firearm based on a NICS check will not necessarily be totally automated. Background checks made through the NICS will consolidate matching records from NCIC, III, and the NICS Index. In cases where the checks are performed by state POCs, the POC will evaluate any records that return matching the prospective purchaser to determine whether that individual is the subject of the matching records and whether the records provide reason to believe that the prospective purchaser is ineligible to purchase a firearm under state or Federal law. In states where FFLs contact the FBI NICS Operation Center directly for checks, an FBI analyst will make these determinations. In either scenario, having an audit log of the records in the NICS will provide the FBI with the ability to review employee decisions and evaluate how well these eligibility decisions are being made.

Without the ability to go back and conduct routine quality control reviews of these decisions, there would be no way to ensure the accuracy of decisions made by officers and analysts who inform gun dealers to proceed with or deny a firearms transfer.

Options for Records Retention

This section discusses a range of time frame options for retention of NICS records for audit and system security purposes.

Option 1 - Retain Records of Transactions of Firearm Transfer Approvals in a NICS Audit Log for 24-Hours

Under this option, all records of approved firearms transfers would be deleted from NICS within 24-hours. Only the NICS transaction number (NTN) and the date of the transaction will be retained beyond 24-hours.

This option stems from the gun advocates' interpretation of the Brady Act which mandates that the Federal Government destroy all records in the NICS system that relate to approved transfers of firearms. The gun advocates and certain members of Congress interpret this as meaning files must be destroyed immediately. However, the Brady Act does not dictate <u>when</u> the records must be destroyed, and the Department's interpretation allows for maintaining the records for a reasonable period of time to ensure the security of the system.

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Publications

Related sites

Criminal Record Systems Improvement & Policy

National Criminal History Improvement Program
Criminal Records Policy Program

National Criminal History Improvement Program (NCHIP)

Program summary & announcements | State-by-State summary

Program summary

The National Criminal History Improvement Program (NCHIP) is an umbrella program designed to assist States in meeting evolving Federal and State requirements concerning criminal history and related records such as protective orders and sexual offender registry records. The goal of the NCHIP program is to ensure that accurate records are available for use in law enforcement, including sex offender registry requirements, and to permit States to identify ineligible firearm purchasers, persons ineligible to hold positions involving children, the elderly, or the disabled, and persons subject to protective orders or wanted, arrested, or convicted of stalking and/or domestic violence.

Under the program, direct funding and technical assistance is provided to improve the quality, timeliness and immediate accessibility of criminal history and related records. Funds and technical assistance are also provided to support the interface between States and the national record systems, including the FBI operated National Instant Criminal Background Check System (NICS) established pursuant to the permanent provision of the Brady Handgun Violence Prevention Act, the National Sex Offender Registry (NSOR), and the National Protective Order File which facilitates compliance with Federal full faith and credit requirements. Funds are also awarded for collection of data on presale firearm background checks.

The NCHIP program is closely coordinated with the **Edward Byrne Memorial Grant Program** which requires that States must use at least 5% of their awards for the improvement of criminal justice records.

The NCHIP Program was initiated in 1995 and, to date, includes the following components:

> **NCHIP Core Program**: The NCHIP core program was initiated in FY 1995 and awards have been made annually in Fiscal Year 1995, 1996, and 1997. Additional awards are planned in 1998.
>
> Under the core NCHIP program, funds are awarded to assist States and eligible territories in automating and upgrading the completeness and accuracy of criminal history records. Criminal history records are records supported by fingerprint identification which show an arrest and any subsequent dispositions, such as a conviction or acquittal. Funds may also be used to support participation in the FBI's Interstate Identification Index which facilitates the interstate exchange of criminal history records for law enforcement and related purposes, such as presale firearm checks. Since its inception, the program has expanded to include allowable funding to cover costs associated with collection and flagging of records of persons convicted of stalking and domestic violence, including persons subject to, and/or convicted of, violations of protective orders. Special emphasis has been placed in FY 1998 on ensuring that States can participate in the National Instant Criminal Background Check

System (NICS) which consistent with the Brady Act will become operational in November 1998.

Awards under the NCHIP program are made only to the single agency designated by the Governor to administer the funds in the jurisdiction. As of the end of Fiscal Year 1997, an award had been made to every State under this program. Over $160 Million has been awarded in direct grants to States during FY 1995, 1996 and 1997. The appropriation for FY 1998 is $45 Million.

National Criminal History Improvement Program: Fiscal Year 1998 Program Announcement, 5/98. NCJ 171127

National Criminal History Improvement Program: Fiscal Year 1997 Program Announcement, 6/97. NCJ 165589

National Criminal History Improvement Program: Fiscal Year 1996 Program Announcement, 5/96. NCJ 161135

National Criminal History Improvement Program: Program Announcement, 12/94. NCJ 151173

Advanced State Award Program (ASAP): The Advanced State Award Program (ASAP) is an adjunct of the core NCHIP program under which States which had already established highly developed criminal record systems and were members of the Interstate Identification Index were eligible to receive funds to review problems and develop policies and techniques to access noncriminal history record data as required under the Brady Handgun Violence Prevention Act. Awards were only made in FY 1995. Nineteen States received these awards.

Advanced State Award Program, 11/95. NCJ 157795

National Sex Offender Registry Assistance Program (NSOR-AP): The NSOR-AP program, initiated in FY 1998, provides funds to States to assist in developing and enhancing sex offender registries which identify and contain current address information on convicted sex offenders who are released from supervision. Funds may also be used assist States to participate in both the interim and permanent FBI National Sex Offender Registry systems. Awards will be made only to the agency designated by the Governor to administer the program. All States and eligible territories were eligible to apply for NSOR-AP awards. The deadline for submission of a 1998 application was April 1998.

National Sex Offender Registry Assistance Program (NSOR-AP): Fiscal Year 1998 Program Announcement, 3/98. NCJ 169273

Firearm Inquiry Statistics Program (FIST): The Firearm Inquiry Statistics (FIST) program was designed to collect annual data describing the number of inquiries made in connection with presale firearm checks and the number and basis for rejection of such inquiries. The initial data was released for calendar year 1996. Data for calendar year 1997 will be released in Summer 1998. Under the interim presale firearm check system established under the Brady Act, data is collected from a sample of the Chief Law Enforcement Officers (CLEO's) charged with conducting such checks. Once the National Instant Criminal Background Check System (NICS) becomes operational under the permanent provisions of the Brady Act in November 1998, data collection procedures will be adjusted to reflect the differing presale check procedures under this system.

National Technical Assistance and Evaluation program: Under this component of the NCHIP program, BJS has funded a grant to SEARCH Group, Inc. to provide onsite and telephone assistance to States which have received funds to assist in upgrading record systems. To date over 30 onsite visits have been made. Requests for such assistance must be originated by the agency receiving BJS funding, although the assistance may be provided to an alternate agency designated by the grant recipient.

BJS made an award to Queues Enforth Development (QED) to conduct an ongoing comprehensive evaluation of the NCHIP, CHRI, and Byrne 5% Set-aside programs. The evaluation is designed to assess the impact of the NCHIP, CHRI, and Byrne 5% Set-aside programs in individual States, particularly regarding the accuracy, completeness, and timeliness of criminal history record information in central repositories.

To the beginning of NCHIP

State-by-State summary

- **Funding**
- **Activities**
- **Contacts**
  - **-- NCHIP agency addresses**

To the beginning of NCHIP

Criminal Records Policy Program

This program supports surveys, studies, conferences, and technical assistance on issues relating to criminal justice records. Primary emphasis is on accuracy and completeness of records, limitations on dissemination, commingling of juvenile and adult records, data auditing techniques, and the interstate exchange of records. Under this program, the 50-State Survey of Criminal History Information Systems is conducted, providing information on the technology, policy and legislative status of criminal history records.

Criminal records policy publications

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Publications

Records improvement | Criminal records policy

To see a full abstract of a publication and to download electronic versions of the publication, click on the title.

Records improvement

Presale Handgun Checks, 1997, 6/98. Provides a national estimate of the number of presale background checks conducted in connection with proposed firearm purchases, the number and percent of rejections, and the basis for the rejections. NCJ 171130

Presale Handgun Checks, 1996, 9/97. NCJ 165704
Presale Firearm Checks, 2/97. NCJ 162787

Survey of State Procedures Related to Firearm Sales, 1996, 9/97. Describes procedures followed in all 50 States in connection with presale firearm checks. NCJ-163918

Survey of State Procedures Related to Firearm Sales, 5/96. NCJ-160763

Survey of State Criminal History Information Systems, 1995, 5/97. Describes as of yearend 1995 the status of State criminal history records systems. NCJ 163918

- **Survey of Criminal History Information Systems, 1993, with Supplementary Information on Presale Firearm Checks, 1994**, 1/95. NCJ 148951
- **Survey of Criminal History Information Systems, 1992**, 11/93. NCJ 143500

Domestic and Sexual Violence Data Collection: A Report to Congress under Violence Against Women Act, 7/96. Reports how States and the Federal government collect data on the incidence of sexual and domestic violence offenses. NCJ 161405

Increasing the Utility of the Criminal History Record: Report of the National Task Force, 12/95. This report describes deliberations of a multi-agency task force to develop a uniform RAP sheet format and identifies and discusses issues concerning inclusion and presentation of RAP sheet data. NCJ 156922

Criminal records policy

National Conference on Sex Offender Registries, 5/98. Contains presentations and materials on issues related to criminal record data quality, identification, domestic violence, and sex offenders by Federal, State, and local governmental representatives, administrators, and researchers. NCJ 168965

Compendium of State Privacy and Security Legislation: 1997 Overview, 5/98. Overview of State legislation governing the privacy, security, maintenance, and dissemination of criminal history records. NCJ 168964

- **Compendium of State Privacy and Security Legislation: 1994 Overview**, 1/1/95. NCJ 151262

National Conference of Juvenile Justice Records: Appropriate Criminal and Noncriminal Justice Uses -- Proceedings of a BJS/SEARCH Conference, 5/97. Contains the presentations of speakers at the May 1996 conference on collection and use of juvenile records sponsored by BJS and SEARCH. NCJ 164269

Privacy and Juvenile Justice Records: A Mid-Decade Status, 5/97. A comprehensive and broad overview of the status of juvenile justice records and information systems as of 1995, as well as an analysis of related information and privacy issues. NCJ 161255

National Conference on Criminal History Records: Brady and Beyond -- Proceedings of a BJS/SEARCH Group Conference, 1/95. Includes presentations made by the speakers at the National Conference on Criminal History Records in Washington, D.C., in February 1994. NCJ 151263

Use and Management of Criminal History Record Information: A Comprehensive Report, 11/93. Contains a comprehensive description of all aspects of the Federal and State criminal history record information (CHRI) systems. NCJ 143501

Directory of Automated Criminal Justice Information Systems, 1993, 9/93. Serves as a resource guide for criminal justice agencies selecting an automated information management system by indexing systems now in place. Vol. I, NCJ 142645 & Vol. II, NCJ 142646

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Related sites

- **National Privacy and Crime Prevention Compact** at the Office of Legislative Affairs, U.S. Department of Justice -- a proposed compact between the States (previously known as "III Compact") to facilitate interstate access to criminal records for noncriminal justice purposes.
- **Federal Bureau of Investigation**
- **Bureau of Alcohol, Tobacco and Firearms** (See Brady law)
- **Search**, The National Consortium for Justice Information and Statistics

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Page last revised on *June 21, 1998*

TESTIMONY OF

GROVER G. NORQUIST

PRESIDENT, AMERICANS FOR TAX REFORM

ON H.R. 3949

THE "NO GUN TAX ACT OF 1998"

HOUSE JUDICIARY COMMITTEE

SUBCOMMITTEE ON CRIME

JUNE 11, 1998

Mr. Chairman, members of the subcommittee, thank you for the opportunity to testify today in support on H.R. 3949, the "No Gun Tax Act of 1998." My name is Grover Norquist, I am the President of Americans for Tax Reform.

As President of Americans for Tax Reform, everyday I see the government taking people's money to use for things that the people wouldn't use it for themselves, given the choice. We have taxes on the money people earn, the money people spend, the money people invest, and even a death tax on money people inherit. Now under the guise of a "user fee," the FBI is proposing to tax people for trying to exercise their Second Amendment right to buy a gun.

Now, there may be a place for user fees when you are actually charging people for something they use. That was the case with the 1991 appropriation rider that the FBI is using as their authority for this. In 1991, The FBI was given the ability to charge user fees for criminal background checks for employment; in other words, employers are paying a fee to run background checks on potential employees. For a fee, the employer makes sure he isn't hiring a criminal, the employee gets a job, and the taxpayer doesn't foot the bill. Everyone is happy.

The gun tax is different. In this case, the FBI is saying that a law-abiding person who wants to buy a gun should have to pay a fee to prove that he is not a criminal. But the gun buyer doesn't get any benefit form that; by keeping criminals from buying guns in gun stores, the system benefits everyone, but the law-abiding gun buyer wasn't going to commit any crimes anyway and he didn't need to pay a fee to find that out.

In fact, the benefits of this system are reduced by the fact that when you tax something, you get less of it; as the FBI imposes a fee, they'll predictably drive people who don't want to pay the fee out of the gun stores and into the private gun market where there aren't any fees.

So what's the real motivation here? First of all, since the money the FBI would collect would stay with the FBI, it's another case of a government agency trying to set up its own little petty cash account to fund itself without being accountable to the Congress or the American people.

Worse yet, since there isn't any authority to charge a fee anyway, there also isn't a cap on the fee; so the FBI would be free to raise the gun tax any time they felt like it. That would certainly suit the people in the anti-gun movement who want to make it so expensive to own a gun that ordinary people won't bother, and of course the effect of that would be more people killed or injured by criminals because they couldn't defend themselves, and an easier job for the anti-gun groups who currently have a hard time banning guns just because so many Americans own them.

The second part of Congressman Bar's bill is at least as important as the gun tax. The bill would ban the FBI from keeping records on approved gun sales. This really shouldn't be necessary since both the Firearms Owners' Protection Act, and the Brady Act itself, ban the government from using gun sales records to create a gun registration system. In fact, the Brady Act that set up the instant check system says that the system will "destroy all records of the system" with respect to information on the gun buyer.

The FBI says they are only going to keep records on approved sales for 18 months "for security reasons." But the law doesn't say anything about a time limit or "security reasons," it says to "destroy all records." H.R. 3949 limits record retention to 24 hours, but in reality there is no justification for retaining records even 24 minutes. It is a sad commentary on this Administration's attitude toward the law that we have to be here, talking about passing new laws to make them enforce the laws that they themselves supported. But if you have to be redundant to protect gun owner's privacy, so be it.

Why is it so important to protect gun owners' privacy against gun registration? Because all over the world, from Cuba in the 1950s to the Baltic states in this decade, and not to mention New York City, oppressive governments have used gun registration systems to ban guns that law-abiding people have owned.

This is not to mention the abuses of confidential personal information that have already taken place. Certainly if this registration scheme goes into effect, no gun owner will want to forget the misuse of FBI files by the White House to check up on their political opponents.

Mr. Chairman, American gun owners are law-abiding taxpayers who deserve protection against greedy government, against intrusions on their privacy, and against people who want to take their guns away. I urge the Subcommittee to move quickly to pass H.R. 3949 to stop the gun tax. Thank you.

Judiciary Homepage

Chairman McCollum's Opening Statement

Hearing on Implementation of the National Instant-Check System

Good morning. This hearing of the Crime Subcommittee shall come to order. This morning we are here to discuss the implementation of the national instant-check system for background checks of firearms purchasers.

When the Brady Act was passed in the 103rd Congress, I was an outspoken proponent of the creation of a national criminal instant-check system - or NICS - which the legislation gave the Attorney General sixty months to establish. It was the next step in a process started with an amendment I offered to the 1988 Anti-Drug Abuse Act requiring the Attorney General to establish a point-of-purchase background check system. I have consistently believed that the best way to balance the rights of gun-owners with the need for public safety is to have an electronic system in place whereby a purchaser can know within minutes if he or she is able to lawfully obtain a firearm.

As we are all aware, those sixty months have nearly expired, and the instant-check system is to be operational by November of this year. The FBI, tasked by the Attorney General to create and run the system, recently published in the Federal Register their proposed regulations for implementation of the system. It is that proposed implementation plan which we are here to fully explore today.

Of course, as with any new program, Congress could neither anticipate nor plan for every aspect of its creation. The FBI has been diligently working on the specifics, and I know there are many FBI employees who have dedicated the last several years of their careers to getting the national instant-check system up and running. I

appreciate that continued commitment.

Also, as with any new program, there is a significant expense involved. One of the questions we must explore today is, what happened to the money already appropriated for NICS? Congress has appropriated hundreds of millions of dollars in recent years and should have a complete accounting of those expenditures. Also, what further expenses are anticipated, and how should they be funded?

In addition, we need to consider the quality of state criminal history records -- the foundation of NICS. Are there some state records which the Federal Government does not have, such as those relating to mental disability or drug addition? That is a very significant public policy issue. We certainly do not want to undermine the overall purpose of instant-check by allowing criminals to lawfully gain access to firearms because the most useful and extensive records are not checked.

However, while I am concerned about the FBI's proposal to impose a fee and retain records of background checks for 18 months, I do not want this program to collapse under its own weight before it even gets off the ground. As John Heywood so famously noted, "Rome was not built in one day." We must find the clearest way to implement NICS, while still allowing room for it to improve and grow.

Like most Members, my top priority is to see to it that instant check is fully operational by this November. I look forward to hearing from all of our witnesses today as we continue towards a national instant-check system for firearms purchases.

Judiciary Homepage

President Clinton: Defending and Strengthening the Brady Law
August 6, 1998

At a Rose Garden event today, President Clinton will: (1) challenge Congress to make permanent the Brady waiting period of up to five days before the purchase of a handgun; and (2) oppose Congressional efforts to undermine final implementation of the Brady Law.

Making Permanent the Brady Waiting Period for Handgun Sales

- Preserving a critical law enforcement tool. The Brady Law establishes a five-day waiting period before a handgun can be sold, but this provision sunsets when the National Instant Criminal Background Check System (NICS) takes effect on November 30, 1998. While NICS will allow access to a fuller set of records than is now available -- and stop even more ineligible purchasers from buying firearms -- a permanent waiting period will enhance local law enforcement's ability to be the last, best line of defense against illegal handgun purchases. This waiting period will allow law enforcement officers to check additional, non-computerized records, and will provide cooling-off time for handgun purchases.

- Calling on Congress to beat the deadline. President Clinton will challenge Congress to extend the Brady waiting period for handguns before it expires on November 30th. He will support legislation introduced by Representative Schumer and Senator Durbin and applying to all states to which the Brady Law now applies that will: (1) require a minimum 3-day waiting period for all handgun purchases; (2) add up to an additional two days to the waiting period if law enforcement officers need more time to clarify arrest records; and (3) require gun dealers to notify local law enforcement officials of all proposed handgun purchases, as they must now but under current law need not once the NICS goes into effect.

Defending the Brady Law

- Proof positive that Brady works. Since taking effect in 1994, the Brady Law has prevented an estimated 242,000 felons, fugitives, mentally unstable persons, and other prohibited purchasers from buying handguns. In 1997 alone, 69,000 handgun purchases were blocked as a result of Brady background checks.

- Expanding Brady's reach. Under the Brady Law, the National Instant Criminal Background Check System (NICS) will take effect on November 30, 1998. NICS will allow access to a fuller set of records than is now available, and law enforcement officials will use it to conduct checks of all prospective gun purchases -- not just handgun purchasers. After nearly 5 years of working with law enforcement to develop the NICS, the Justice and Treasury Departments plan to propose a regulation to finalize its implementation next week.

- Fighting efforts to undermine Brady. A recent amendment to the Senate Commerce- Justice-State appropriations bill would undermine implementation of the NICS. Among other things, the amendment would prohibit the FBI from charging gun dealers a fee for background checks, even though the FBI currently charges school districts, day care providers, and many others for similar background checks. Without the resources generated by such a user fee, the FBI either will have to forego processing millions of background checks, or will have to transfer resources from other crime fighting efforts. The Administration strongly opposes this anti-Brady amendment.

President Clinton: Defending and Strengthening the Brady Law
August 6, 1998

At a Rose Garden event, today President Clinton will: (1) issue a veto threat on spending legislation which would effectively gut the Brady Law; and (2) challenge Congress to pass legislation to permanently set a Brady waiting period before handguns can be purchased.

Defending the Brady Law

- Keeping guns out of the hands of criminals with Brady. Since taking effect in 1994, the Brady Law has prevented more than 240,000 felons, fugitives, and mentally ill people from buying handguns. In 1997 alone, the Justice Department estimates that 69,000 prohibited handgun purchases were blocked as a result of Brady background checks.

- Fighting efforts to undermine the Brady Law. Under the Brady Law, the National Instant Criminal Background Check System (NICS) will take effect in November 1998--requiring the FBI to take over from state and local law enforcement agencies nearly 7 million requests for gun buyer background checks conducted annually at an estimated cost of $100 million per year. However, an amendment offered by Senator Smith to the Senate FY 99 Commerce, Justice, State appropriations bill *denies the FBI the funding it needs to conduct background checks on prospective gun purchasers.*

- Threatening a veto to maintain public safety. Moreover, the Smith amendment explicitly prohibits the FBI from collecting a fee for Brady background checks, which they already charge for checks for day care workers and bus drivers. The Smith amendment further undermines Brady by requiring the FBI to immediately destroy certain records, making it impossible to catch fraudulent submissions to the system. The President's veto threat will send a strong message to Congress that efforts to attack the Brady Law -- and jeopardize the safety of the public and law enforcement -- will not be tolerated.

Making Permanent the Brady Waiting Period for Handgun Sales

- Extending the Brady waiting period. Currently, the Brady Law gives local law enforcement 5 days to approve the sale of a handgun -- but the provision is set to expire when the NICS takes effect on November 30. This 5-day waiting period allows for a vital "cooling off" period prior to a handgun sale, as well as additional time for local law enforcement officials to check local records to ensure that the prospective handgun buyer is not otherwise prohibited under the law.

- Calling on Congress to act. President Clinton will announce his support to permanently extend the waiting period. Legislation introduced by Senator Durbin and Representative Schumer requires a 3 to 5-day waiting period prior to the purchase of a handgun, with certain exceptions. The legislation also requires notification to the chief law enforcement officer where the buyer resides to help ensure that local police can check local records to determine whether the purchaser is prohibited from owning a firearm.

President Clinton: Defending and Strengthening the Brady Law
August 6, 1998

At a Rose Garden event today, President Clinton will: (1) challenge Congress to make permanent the Brady waiting period of up to 5 days before the purchase of a handgun; and (2) oppose Congressional efforts to undermine final implementation of the Brady Law.

Making Permanent the Brady Waiting Period for Handgun Sales

- Preserving a critical law enforcement tool. The Brady Law gives local law enforcement 5 days to block the sale of a handgun to an ineligible purchaser, but this provision sunsets when the National Instant Criminal Background Check System (NICS) takes effect on November 30, 1998. While NICS will allow access to even more important records -- and stop even more ineligible purchasers from buying firearms -- a permanent waiting period will preserve local law enforcement's ability to be the last, best line of defense against illegal handgun purchases.

- Calling on Congress to beat the deadline. President Clinton will challenge Congress to extend the Brady waiting period for handguns before it expires on November 30th. He will support legislation introduced by Representative Schumer and Senator Durbin that, in states without permit or background check systems, will: (1) require a minimum 3-day waiting period for all handgun purchases; (2) allow a maximum 5-day wait for law enforcement to clarify arrest records; and (3) require gun dealers to continue to notify local law enforcement officials of all proposed handgun purchases.

Defending the Brady Law

- Proof positive that Brady works. Since taking effect in 1994, the Brady Law has prevented an estimated 242,000 felons, fugitives, mentally unstable persons and other prohibited purchasers from buying handguns. In 1997 alone, 69,000 prohibited handgun purchases were blocked as a result of Brady background checks.

- Expanding Brady's reach. Under the Brady Law, the National Instant Criminal Background Check System (NICS) will take effect on November 30, 1998. NICS will require the FBI and designated state law enforcement officials to conduct computerized checks of all prospective gun purchasers -- not just handguns -- and make even more important records available to law enforcement. After nearly 5 years of working with law enforcement to develop the NICS, the Justice and Treasury Departments plan to propose a regulation to finalize its implementation next week.

- Fighting efforts to undermine Brady. A recent amendment to the Senate Commerce, Justice, State appropriations bill undermines implementation of the NICS. Among other things, the amendment prohibits the FBI from charging gun dealers the same fee it currently charges school districts, day care providers and others for similar background checks. Without these resources, the FBI will either not be able to process millions of background checks, or it will have to redeploy hundreds of personnel from other crime fighting efforts. The Administration strongly opposes this anti-Brady amendment.

Firearms (ATF), Department of the Treasury, has been conducting NICS training seminars for the FFLs over the past year, providing a forum through which the FFLs could provide feedback about the system.

Scope of the Review

This options paper focuses specifically on the issue of retention of records of transactions relating to firearm transfer approvals in the NICS. It provides a general overview of the NICS and examines a range of records retention period options, their advantages, disadvantages, and impacts, to help determine what, if any, retention period is appropriate. This options paper does not address the legitimacy or the accuracy of the proposed fee for use of the NICS, nor is it intended to address any technical issues relating to NICS.

Background

The Brady Handgun Violence Prevention Act of 1994, Public Law 103-159, amended Section 922 of Title 18, United States Code, and contains an Interim Provision and a Permanent Provision. The Interim Provision, in effect from February 28, 1994, until November 29, 1998, generally requires the Chief Law Enforcement Officer (CLEO) in the place of residence of the prospective purchaser of a handgun to make a reasonable effort to determine within five (5) business days whether the transfer would violate Federal, state, or local law.

The Permanent Provision requires the Attorney General to establish, by November 30, 1998, a National Instant Criminal Background Check System (NICS). The Permanent Provision requires that FFLs not transfer a firearm to any unlicensed person without first contacting the NICS to determine whether the transfer would violate Section 922 (g) or (n) of Title 18, United States Code, or State law.

In accordance with the Brady Act, the NICS, shall allow FFLs to contact the system by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate section 922 (g) or (n) of Title 18, United States Code, or State law. To implement the NICS, the Brady Act authorizes the development of hardware and software systems to link state criminal history check systems into a national system. It also authorizes the Attorney General to obtain official information from any Federal Department or agency on persons for whom receipt of a firearm would be in violation of the law.

Persons prohibited from receiving a firearm under Section 922 of

U.S.C. Title 18 include any person who:

(1) Is under indictment for or has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of or addicted to any controlled substance;

(4) Has been adjudicated as a mental defective or committed to a mental institution;

(5) Is an alien illegally or unlawfully in the United States;

(6) Has been discharged from the Armed Forces under dishonorable conditions;

(7) Having been a citizen of the United States, has renounced U.S. citizenship;

(8) Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner; or

(9) Has been convicted in any court of a misdemeanor crime of domestic violence.

NICS Overview

The NICS will be a national system that will check available records on persons who are disqualified from receiving firearms. Since 1994, the FBI, as directed by the Attorney General, has coordinated the NICS development effort with the Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury, and state and local law enforcement agencies. The NICS is a computerized background check system designed to respond within a matter of seconds on most background check inquiries so FFLs will have an immediate answer to most inquiries. Depending on the willingness of their state governments to act as a liaison for the NICS, FFLs will contact either the FBI's NICS Operations Center, or a designated state point of contact (POC) to initiate background checks on individuals purchasing firearms.

Three main databases will be accessed by the NICS for background check information: (1) the National Crime Information Center (NCIC), which contains records on all fugitives, as well as the U.S. Secret Service Protective File, and the Deported Felon File; (2) the Interstate Identification Index (III) which contains automated criminal history records; and (3) a newly created NICS Index, which contains records on individuals who fall within categories 3 through 7 of the prohibited persons described earlier. The NICS Index will be populated by records provided by Federal agencies to the FBI; and records provided voluntarily by states on persons who have been denied the purchase of a firearm or who are known to be disqualified from possessing a firearm under Federal law. The NICS Index fields will contain an individual's name; sex; race; complete date of birth; state of residence; and possibly a unique identifying number, such as a Social Security Number (but NICS will not require a SSN be provided), a military number, or a number assigned by Federal, state, or local law enforcement authorities.

The NICS Audit Log will be a chronological record of system activities that will enable the reconstruction and examination of a sequence of events and/or changes in an event related to the NICS. Records retained in the Audit Log on each transaction will include: the name; date of birth; state of residence, and other identifying information about the purchaser; the type of transaction; date and time of the inquiry; the line number of the inquiry; the Originating Agency Identifier (ORI); FFL; and information found by the NICS search. The Audit Log will not contain a record of the actual sale or the specific type of firearm that is sold.

NICS Background Checks

A NICS background check will consist of a search using name, sex, race, date of birth, state of residence, and other identifying information provided by a purchaser for records in the NICS Index, NCIC, and III. Depending on the state in which the FFL is conducting business, the FFL will have the following three methods of performing firearm transfer background checks:

(1) In states where the state government has agreed to serve as a point of contact (POC) for the system, FFLs will contact the NICS through their state POC for all firearm transfer NICS checks. The state POC will receive inquiries from FFLs, conduct NICS background checks, check available state and local record systems, and make a determination as to whether any matching records provide reason to believe that the prospective purchaser is disqualified from possessing a firearm under Federal or state law.

(2) In states where the state government has declined to serve as a POC, FFLs will initiate a NICS background check by contacting the FBI's NICS Operations Center in West Virginia for all firearm transfers. The FBI will make the NICS check and determine whether or not the transfer would violate state or federal law. The FBI will charge FFLs a fee for each background check.

(3) Finally, in states where the state government has agreed to

serve as a POC for handgun purchases but not for long gun purchases, FFLs will contact the NICS through the designated state point of contact for handgun transfers. The FFLs will have to contact the NICS Operations Center for long gun transfers. The FBI may charge FFLs a fee for the long gun checks.

Each state government will decide whether the FFLs in its state will call a state point of contact or the FBI's NICS Operations Center to find out whether a firearm transfer will be allowed by the NICS.

Under any method used for conducting a NICS background check, only limited information will be provided to an FFL who has contacted the NICS concerning a prospective firearm purchaser. If a matching record is found by the NICS which provides reasonable cause to believe that the prospective purchaser is disqualified from possessing a firearm under Federal or state law, the FFL will be notified only that the application is "denied," with none of the underlying information provided. If additional record analysis is required by the NICS analysts, the response will read "delayed." If no disqualifying record is located by the NICS, the FFL will be told to "proceed." A unique identification number, or NICS Transaction Number (NTN), will be provided to the FFL for each response received from the NICS, and this number shall be recorded on the firearms transaction form by the FFL.

State POCs

In states where the state government has agreed to serve as a POC for the NICS, FFLs will contact their state POC for firearm transfer checks. The FBI will only perform background checks for FFLs located in states that do not have a POC. The state POC will initiate an electronic NICS background check; check state and local record systems for disqualifying records; determine whether the prospective purchaser is the subject of any matching records and whether the records contain information indicating that the transfer would violate Federal or state law; and provide a response back to the FFL. All other aspects of the background check process will remain the same as the NICS check made by the NICS Operations Center -- the difference will be that the state POC, instead of the FBI, will be processing the check and analyzing any matching records in order to make a determination.

The FBI NICS Operations Center

The FBI will operate a national NICS Operations Center to perform NICS background checks for FFLs in those states without POCs. FFLs will contact the NICS Operations Center either by telephone, or by means of an electronic device such as a personal computer and modem. Either means of contact will result in a NICS check with an almost instant response to the gun dealer. The NICS response will consist of a notice to the FFL that the transfer may "proceed," or is "delayed" pending further review of a matching record(s). No other information will be revealed to the FFL at the time of the inquiry. If no disqualifying record is found in the NICS, the FFL will be advised that the transfer may proceed and will be given a NTN. The FFL must record the NTN on the ATF Firearm Transaction Form (Form 4473), and retain the form for auditing purposes.

If the FBI determines that disqualifying information exists on the prospective purchaser, the FBI will recontact the FFL by telephone and advise the FFL that the transfer may not proceed and will be given an NTN to record on the ATF Form 4473 and must retain the form for auditing purposes. In all cases if there is a record, if additional information is required to determine whether a record would prohibit a person from purchasing a firearm, e.g., a final disposition is missing, the operator will provide the FFL with a NTN, and inform the FFL that the transaction is "delayed" and that more time is needed to review the response. The NICS will record that the transfer has been delayed. The FFL must record the NTN on the ATF Form 4473 and retain the form for auditing purposes. If subsequent research indicates the transfer would not violate state or federal law, the FFL will be notified that the transfer may proceed. If no further information is received by the FBI within three business days, and there is reason to believe that receipt of the firearm by the prospective purchaser would violate federal or state law, the FBI will notify the FFL that the transfer may not proceed.

Currently, the FBI plans to charge a user fee to FFLs for NICS checks performed by the NICS Operations Center. No fee will be charged for checks made by state POCs.

Privacy and Security of NICS Information

The privacy and security of the information in the NICS is paramount. In fact, Section 103 (h) of the Brady Act instructs the Attorney General to prescribe regulations to ensure the privacy and security of the information of the system. The Brady Act does not specify when records of NICS checks must be destroyed; therefore, the Department has interpreted the Act as requiring the destruction of NICS records within a reasonable time period for auditing purposes. Further, the Attorney General has explicit authority to issue regulations concerning the audits. A task force of experienced state, local and Federal law enforcement agencies familiar with the functions of information systems suggested 18 months as a reasonable time period to perform adequate audits and ensure system security, and the Department agreed.

The Attorney General published a Notice of Proposed Rule Making in the Federal Register on June 4, 1998, which includes guidelines for the proper and official use of system information. The guidelines also include a proposed 18-month period of retention for all system transactions to allow sufficient time for system auditing, security, and follow-up action on reports of system misuse.

Data stored in the NICS and related systems are documented criminal justice data, and access to that information is restricted to agencies authorized by the FBI according to Federal Statute. Historically, extensive measures have been taken to ensure the security and integrity of these systems and ensure proper agency use. State and local law enforcement agencies will be required to identify themselves before obtaining access to the NICS through the use of an Originating Agency Identifier (ORI) code assigned by the FBI. This is similar to the way NCIC is accessed. The Control Terminal Agency (CTA) in each state, typically the state police or department of public safety, will be responsible keeping a list of agencies authorized in the state to serve as a POC for the NICS and for ensuring that authorized agencies cannot access the system. FBI personnel with access to the system will also be individually identified and authenticated by the NICS.

In addition, electronic connections of all users of the NICS will be authenticated to prevent unauthorized access to the system, and all users will be provided with security guidelines detailing their security roles and responsibilities.

As currently planned, information about an inquiry resulting in an allowed transfer will be destroyed after 18 months. The NICS audit log will not be used to establish a federal firearms registry; information about the inquiry resulting in an allowed transfer will be kept only for a limited period of time to support this purpose (18 months being proposed). In fact, no national firearms registry can be created by the audit log, because it will not contain a record of the actual sale or the type of the firearm that is sold.

Individuals who are denied the purchase of a firearm may request that the FBI provide the reasons for the denial. The regulations will address the process for filing an appeal. The FBI shall provide such reasons to the individual, in writing, within five (5) business days after receipt of the request.

Records Maintenance

An automated Audit Log of all transactions that pass through the NICS will be maintained by the FBI. Records of firearm transfer approvals in the Audit Log will be maintained for a period of 18 months. The Audit Log will be used to analyze system performance and data integrity, conduct system audits, support the appeals process, and ensure security. After the retention period, information contained in the Audit Log related to the individual and the transfer will be destroyed. Only the NICS Transaction Number (NTN), a unique number assigned to each valid background check inquiry received by NICS, and the date on which the NTN was assigned, will be retained beyond eighteen months. The FBI will retain a log of all transactions related to firearm transfer denials for 10 years, after which time these records will be transferred to a Federal Records Center for retention.

The FBI maintains other inquiry-response systems such as NCIC, which have similar records retention periods, so limited record retention is not a new thing for them. Retaining records of NICS transactions approvals for 18 months will allow the FBI to effectively manage the data and ensure the security of the NICS. Some benefits of this prudent records management and security process include:

* the ability to ensure the integrity and data accuracy of the system;

* the ability to perform audits of the use of the system by FFLs and POCs, to ensure that they are performing the background checks in accordance with the Brady Law. Audits will also help to identify if the system is being used to perform unauthorized checks of individuals unrelated to gun transfers;

* the ability to investigate and prove cases of misuse, such as allegations of FFLs using the system to run checks of people other than actual gun purchasers, or using personal information that does not match the corresponding ATF For 4473;

* the ability to use the data in resolving billing disputes with FFLs who do not get access to the NICS via a designated State law enforcement Point of Contact (POC); and

* the ability to perform internal quality control reviews of the decisions of the officers and analysts who process the NICS background checks.

These factors are discussed in more detail below.

Ensuring System Integrity and Data Accuracy

A reasonable data retention period is needed in order to ensure that the system is working properly and that the data in the system and the responses provided by the system are accurate. Without having an adequate amount and retention of data, system malfunctions, data inaccuracies, and keying errors, would be difficult, if not impossible to detect and correct. For example, because NICS actually links and uses information from multiple systems, errors such as keying errors, or false positive identifications of legitimate firearms purchasers might occur causing an individual who should be approved for a firearms purchase to be disqualified due to a technical error. In addition, if an individual who has been denied a firearms transfer wishes to challenge the accuracy of the record upon which the denial is based, or wishes to assert that his or her rights to possess a firearm have been restored, he or she may do so by filing an application to the denying agency. Having data retained in the NICS Audit Log will allow expeditious identification and resolution of such cases.

Conducting System Audits

The FFLs are only permitted to conduct NICS checks relating to the transfer of a firearm. NICS may not be used for other purposes such as conducting checks of other than persons purchasing firearms. The FBI will conduct periodic system audits to determine whether the FFLs are using the NICS properly and to ensure that the system is not being used to perform unauthorized checks of individuals unrelated to gun transfers. For example, an FFL may not use the system to check on a prospective employee's background, or check on his or her neighbor.

Investigating System Misuse

There are over 60,000 non-law enforcement FFLs nationwide that will be authorized to conduct NICS checks on prospective firearms purchases. Unlike NCIC and III which are law enforcement specific systems used only by authorized law enforcement personnel, the NICS will authorize over 60,000 FFLs nationwide to have background checks performed on individuals. Having an audit log will allow the FBI to investigate allegations of system misuse against FFLs or others who have used the system for illegal reasons. Without some form of records retention, there would be nothing to prevent FFLs or others authorized to initiate NICS checks from using the system to check anyone's background.

Resolving Billing Disputes

Having an audit log will allow the FBI to go back and check 18 months worth of NICS system inquiries in cases where FFLs claim they did not request the checks for which they were billed. The identifying information contained in the audit log about the customers who were checked could be compared to the dealer's records for the NICS checks for which they are billed. This will also provide additional security against criminals using the identities of innocent citizens to purchase guns, and other cases of system misuse, because it would allow the FBI to contact the individuals who were checked when necessary to help in the investigation of any wrong doing.

Quality Control

The decision to allow the purchase of a firearm based on a NICS check will not necessarily be totally automated. Background checks made through the NICS will consolidate matching records from NCIC, III, and the NICS Index. In cases where the checks are performed by state POCs, the POC will evaluate any records that return matching the prospective purchaser to determine whether that individual is the subject of the matching records and whether the records provide reason to believe that the prospective purchaser is ineligible to purchase a firearm under state or Federal law. In states where FFLs contact the FBI NICS Operation Center directly for checks, an FBI analyst will make these determinations. In either scenario, having an audit log of the records in the NICS will provide the FBI with the ability to review employee decisions and evaluate how well these eligibility decisions are being made.

Without the ability to go back and conduct routine quality control reviews of these decisions, there would be no way to ensure the accuracy of decisions made by officers and analysts who inform gun dealers to proceed with or deny a firearms transfer.

Options for Records Retention

This section discusses a range of time frame options for retention of NICS records for audit and system security purposes.

Option 1 - Retain Records of Transactions of Firearm Transfer Approvals in a NICS Audit Log for 24-Hours

Under this option, all records of approved firearms transfers would be deleted from NICS within 24-hours. Only the NICS transaction number (NTN) and the date of the transaction will be retained beyond 24-hours.

This option stems from the gun advocates' interpretation of the Brady Act which mandates that the Federal Government destroy all records in the NICS system that relate to approved transfers of firearms. The gun advocates and certain members of Congress interpret this as meaning files must be destroyed immediately. However, the Brady Act does not dictate <u>when</u> the records must be destroyed, and the Department's interpretation allows for maintaining the records for a reasonable period of time to ensure the security of the system.