



National Instant Criminal Background Check System (NICS)



The First Seven Months
(November 30, 1998 - June 30, 1999)

Federal Bureau of Investigation
Criminal Justice Information Services Division

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EXECUTIVE SUMMARY

In November 1993, the Brady Handgun Violence Prevention Act of 1994 (Brady Act) was signed into law requiring Federal Firearms Licensees (FFLs) to request background checks on individuals attempting to purchase a firearm. The permanent provisions of the Brady Act, which went into effect on November 30, 1998, required the Attorney General to establish a National Instant Criminal Background Check System (NICS) that any FFL may contact by telephone, or other electronic means in addition to the telephone, for information to be supplied immediately, on whether the receipt of a firearm by a prospective transferee would violate Federal or state law.

In its first seven months of operation, the NICS has proven to be a highly effective system in processing over 4.7 million inquiries. Each NICS background check includes automated searches of approximately 34.7 million criminal records, 700,000 records on wanted persons, and 940,000 records on other prohibited persons. Since its establishment, the NICS has ensured the timely transfer of firearms to individuals who are not specifically prohibited under Federal law, while denying transfers to more than 100,000 felons, fugitives, and other prohibited persons.

In many ways, the NICS represents a partnership among the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco, and Firearms (ATF), and state, local, and other Federal agencies. For example, the FBI worked together with state and local law enforcement to design the NICS. Federal and state agencies contribute records on disqualified persons for inclusion in the NICS. States may serve as points of contacts (POCs) to support their Federal Firearms Licensees (FFLs) in conducting NICS checks. Among the most significant examples of this partnership is that in addition to preventing more than one thousand wanted persons from purchasing firearms, the FBI's NICS examiners have actively contacted Federal, state and local law enforcement agencies to provide information which resulted in the apprehension of many of these fugitives from justice.

This report contains a synopsis regarding the background of NICS, how a background check works, statistics for the first seven months of operation, privacy and security issues, success stories and commendations received from various entities.

BACKGROUND OF THE NICS

Situation Before the Brady Handgun Violence Prevention Act

Since the passage of the Gun Control Act in 1968, certain individuals, such as convicted felons, have been prohibited from possessing firearms under Federal law. Until the passage of the Brady Act in 1993, however, there was no mechanism to prevent these individuals from obtaining firearms. Firearms were sold, even by FFLs, on the "honor system." Virtually the only recourse that federal law enforcement had against felons and other prohibited people who sought to purchase firearms was to prosecute them *after* they gained illegal possession of the firearm.

Brady Act Requires Background Checks

The Brady Act put an end to the "honor system" by requiring background checks on firearms purchasers buying firearms from FFLs. The Brady Act called for implementation in two phases: from February 28, 1994 until November 30, 1998, the rules of "Interim Brady" applied; since November 30, 1998, the provisions of "Permanent Brady" have been in place. During Interim Brady, the Brady Act applied only to handgun sales, and background checks were conducted by state and local law enforcement for these sales. During this time, there was no centralized mechanism for firearms background checks, and the Brady Act relied on the willingness of local sheriffs and other state law enforcement officials to do the background checks. Under Interim Brady, law enforcement officials had up to a maximum of five business days to complete background checks. The Interim Brady system was extremely effective, preventing over 310,000 felons, fugitives, and other prohibited people from getting handguns.

Brady Act Requires a National System for Conducting Instant Background Checks

The Brady Act also required the Attorney General to develop within five years a national system for conducting criminal background checks instantly. The Brady Act requires that the national system, the NICS, be utilized by any FFL to determine whether a prospective firearms transfer would violate Federal or state laws.

State and Local Officials Assist the FBI in Designing the NICS

To ensure that the national system required by the Brady Act would meet the needs of state and local law enforcement, the FBI created the Brady Act Task Group. This group was composed of representatives from the ATF and state and local officials who assisted the FBI in identifying the requirements for the NICS and in designing the system. Between 1994 and 1998, the Brady Act Task Group held formal meetings to provide detailed comments and recommendations to the FBI's NICS system developers. This task group was instrumental in preparing the NICS concept of operations. The concept called for firearms background checks to include a check of databases at the state and national levels. In this regard, when an FFL

conducts a NICS check, a name search is conducted for any matching records in three different databases at the national level, which are managed by the FBI. These include:

- The National Crime Information Center (NCIC) which contains approximately 700,000 records on wanted persons and subjects of protective/restraining orders;
- The Interstate Identification Index (III) which contains approximately 34.7 million criminal history records; and
- The NICS Index which contains about 940,000 records of prohibited persons, as outlined in the Brady Act, such as individuals who have received dishonorable discharges from the Armed Services, individuals who have renounced their citizenship, mental defectives, illegal/unlawful aliens and others.

Establishment of the NICS Program Office

On August 1, 1998, the FBI's Criminal Justice Information Services Division established the NICS Program Office. This entity had the responsibility to closely coordinate the final stages of the development of NICS and the transition to an operational program. This included coordinating a multitude of functions and projects including: staffing; development of a training manual; training of employees; developing work procedure manuals; documenting state statutes regarding prohibitive NICS categories; enrollment of FFLs; acquiring space, desks, phones and computers; testing computer applications; setting up a management structure; creating reports on operations; preparing budget estimates; preparing workload projections; creating and modifying work schedules, etc. In addition, coordination of employee input resulted in the creation of the following NICS mission statement:

To enforce the provisions of the Brady Handgun Violence Prevention Act by utilizing an effective system to ensure the timely transfer of firearms to individuals who are not specifically prohibited under Federal law and denying the transfer to those who are prohibited from possessing or receiving such firearms through:

- 1) Effective leadership in the management and operation of NICS:
- 2) Timely, accurate and complete responses to NICS background checks; and
- 3) Timely and effective customer service to other Federal, State, and local law enforcement agencies, Federal Firearms Licensees, and other users of NICS.

FBI's Continuing Partnership with the States

The FBI has continued to seek and act upon the advice of state and local law enforcement in its operation of the NICS. Proven mechanisms are in place for the continuous improvement of

NICS operations. For example, regional and national meetings are held twice each year in which the FBI provides status reports on the NICS to state, local and Federal advisory groups and receives recommendations for NICS system and operational enhancements. In addition, the FBI's NICS Program Office has hosted two NICS State Participant Conferences—one was held while under the provisions of interim Brady and the other took place after permanent Brady was implemented. The second conference was held on June 23-24, 1999, during which the FBI presented briefings and received supportive feedback on its NICS operation to date. Finally, the FBI has incorporated NICS information into its Law Enforcement Online (LEO) program, and, in conjunction with the Department of Justice, has established the NICS Web Site (www.fbi.gov/programs/nics/index.htm) to ensure the rapid, continual dissemination of important new information about the NICS.

WHAT IS A NICS CHECK AND HOW DOES IT WORK?

Legal Requirements for the NICS Background Check

Permanent Brady prohibits a FFL from transferring a firearm until the FFL has contacted the NICS and *either* the transfer has been allowed *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 provide information regarding whether the prospective firearm purchaser is prohibited from possessing a firearm under Federal or state law.

Prohibited categories include:

- (1) convicted felons and people under indictment for a felony;
- (2) fugitives from justice;
- (3) unlawful drug users or drug addicts;
- (4) individuals who have been involuntarily committed to a mental institution or determined to be mentally incompetent;
- (5) illegal aliens and legal aliens admitted under a non-immigrant visa;
- (6) individuals who have been dishonorably discharged from the military;
- (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.

Actions Involved in a NICS Check

Applicant Completes Bureau of Alcohol, Tobacco and Firearms (ATF) Form 4473

To illustrate how the NICS works, consider a person who seeks to buy a handgun from an FFL at a gun store or a gun show. Currently, there are 48,837 type one (gun dealer) and type two (pawn broker) license holders in the United States and U.S. territories enrolled with the NICS Operations Center. It has been determined that approximately 15 percent of the licensed dealers

account for 80 percent of the NICS transactions. The purchaser must provide photo identification to the FFL. The purchaser and the FFL then complete their respective parts of the ATF Form 4473, the "Firearms Transaction Record." The completed ATF Form 4473 will contain information such as name, address, and date of birth, and certification from the purchaser that they are not prohibited under Federal or state law from purchasing or possessing a firearm.

FFLs Contact the State Law Enforcement Agency Serving as a POC for NICS Checks

In states that agree to conduct Brady background checks, once the ATF's Form 4473 is completed, the FFL contacts the state POC for a NICS check. A state POC is a state agency that agrees to conduct Brady background checks, including NICS checks, on prospective gun purchasers. In states that have agreed to serve as POCs, FFLs contact the state POC for a Brady background check, rather than contacting the FBI. Currently, 16 states serve as a full POC for NICS (checks on handguns and long guns) and 11 states serve as partial POC for NICS (states perform checks for handgun purchases, FBI processes checks for long gun purchases). (See **Appendix A.**)

A state POC will access the state's independent criminal history database as well as the NICS. The NICS provides access to millions of criminal history records from all 50 states and the District of Columbia. A state's database typically contains references not only to those of the state's records which are part of the NICS databases, but also to the state's records and manual records—including many final dispositions—which are not part of the NICS. Many states also have access to records about people in the other prohibited categories, such as people who have been involuntarily committed to a mental institution or are under a domestic violence restraining order.

By contrast, where the FFL contacts the FBI directly, the FBI will access only those state records available through the NICS databases. Records which are maintained exclusively by states will not be available through the NICS. Although some of these records can be provided to the FBI and be included in the NICS database, many are not available to the FBI when it performs the NICS check. This is perhaps the most important reason for states to serve as POCs.

In Other States, FFLs Contact the FBI for NICS Checks

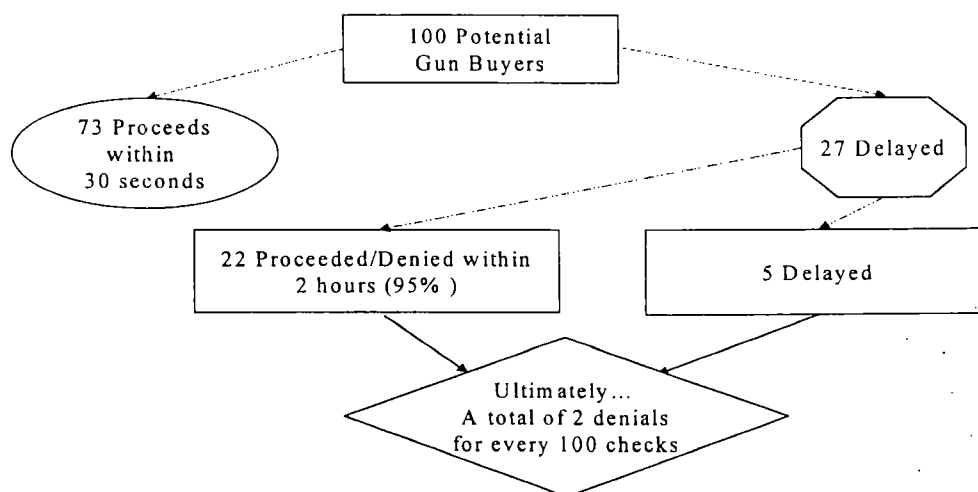
In states that have not agreed to serve as state POCs, once the ATF Form 4473 is completed, the FFL contacts the NICS at the FBI, by telephone through a toll free number, to request a background check. (Refer to NICS Operation Workflow Diagram—**Appendix B**—for overview of activities described on next several pages.) NICS is available for background checks 17 hours a day, seven days a week, including holidays (except Thanksgiving and Christmas). The call is received at one of two call centers located in Moundsville, West Virginia and Uniontown, Pennsylvania.

A call center customer service representative (CSR) enters the buyer's descriptive information into the NICS computer to initiate a search of the NICS databases. Once this information is entered and sent to NICS, one of two responses will be returned from NICS—proceed or delay—along with a NICS Transaction Number (NTN) for that particular transaction. The call center CSR does not have access to or receive any other information in NICS relative to criminal history information, wanted persons information or any other NICS index protected information. Most of the time, the NICS responds immediately with a "proceed" response, because there is no disqualifying or potentially disqualifying information in the system. In these instances, the FFL can complete the sale, and the purchaser can leave the gun store or gun show with the firearm. Sometimes, of course, the NICS identifies disqualifying or potentially disqualifying information in the system and a delay response is generated. In these cases, the NICS will forward the information to the FBI Operations Center where an FBI employee, known as a NICS examiner, must take additional time to review the record to determine whether it is complete, whether it matches the prospective buyer, and whether it contains disqualifying arrest and disposition information.

NICS Responses to Requests for Background Checks Must be Timely and Accurate

Under Permanent Brady, as soon as the NICS is able to determine accurately that there is no information demonstrating that the buyer is a prohibited person, the gun transfer is allowed to proceed. This means that there is no federal waiting period. As described in greater detail below, 73 percent of all prospective gun purchasers are authorized by the NICS to make their purchase *immediately* (within approximately 30 seconds on average after information is entered into NICS). The NICS provides a definitive response ("proceed" or "deny") to 95 percent of all requests within two hours of receipt of information to search NICS. Only five percent of prospective purchasers have to wait more than two hours for a NICS response, and these persons are given their response as soon as the NICS obtains the necessary information. A purchaser whose NICS checks takes more than 24 hours to complete is almost 20 times more likely to be a prohibited person than the average gun buyer. This process is further illustrated as follows:

NICS Operations Transaction Breakdown



RESULTS FROM THE FIRST SEVEN MONTHS OF NICS OPERATIONS

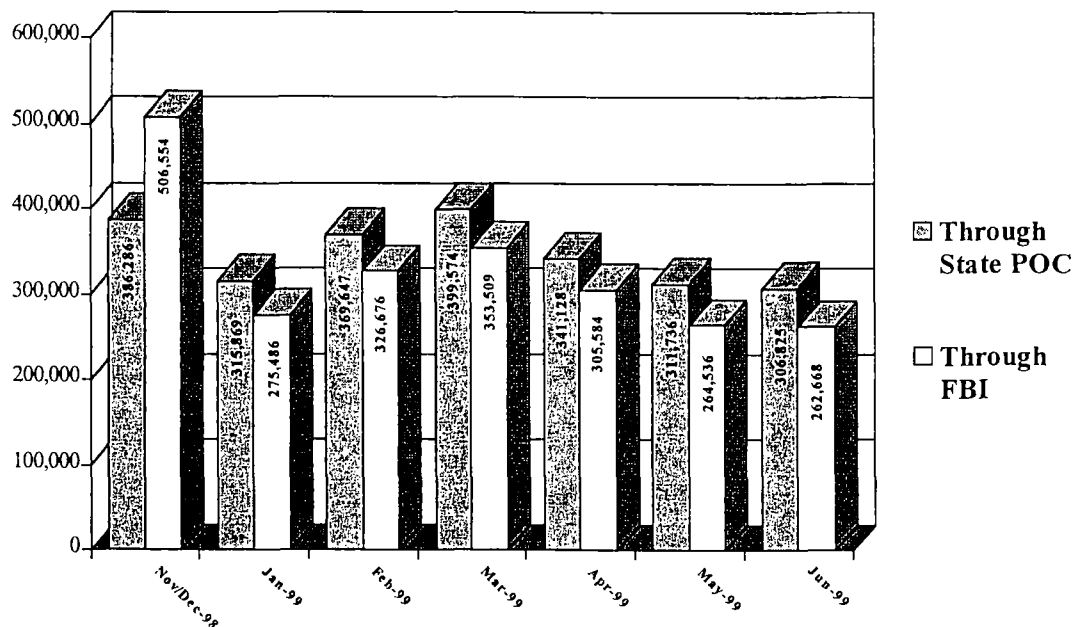
Number of NICS Checks

In the first seven months of operation, through June 30, 1999, there were 4,726,078 checks run through the NICS. Of these, 2,295,013 were handled by the FBI, while 2,431,065 were handled by state POCs. The chart below shows queries by month, divided between FBI and state POCs.

MONTH(S)	STATE	FBI	TOTAL
November/December '98	386,286	506,554	892,840
January '99	315,869	275,486	591,355
February '99	369,647	326,676	696,323
March '99	399,574	353,509	753,083
April '99	341,128	305,584	646,712
May '99	311,736	264,536	576,272
June '99	306,825	262,668	569,493
6 Month Total (Jan - June)	2,044,779	1,788,459	3,833,238
7 Month Total (Nov/Dec - June)	2,431,065	2,295,013	4,726,078

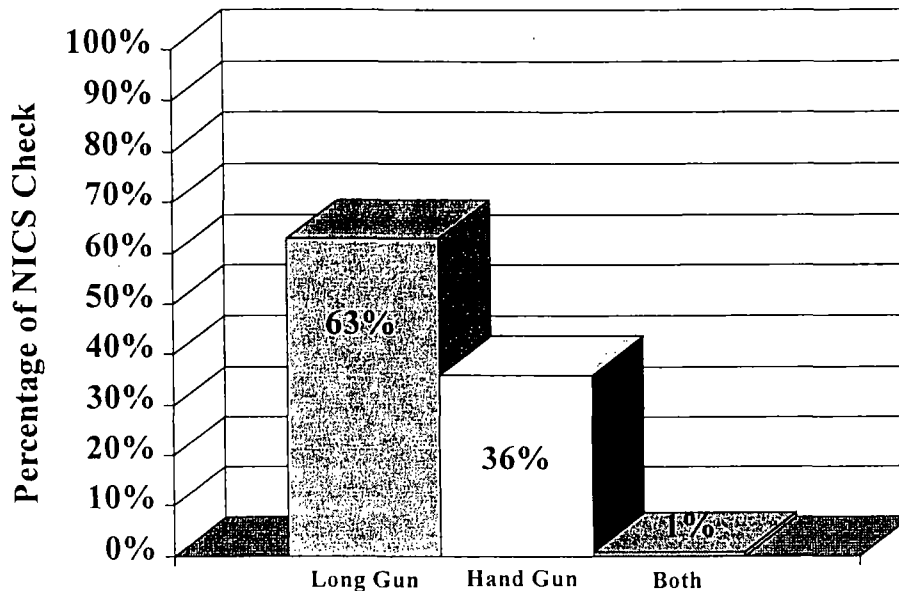
The state and FBI monthly transaction totals are graphically illustrated as follows:

Monthly Breakdown of NICS Queries



With the establishment of the NICS, background checks were required for the first time in connection with the purchase of long guns. Experience has shown that there are significantly more NICS inquiries for long gun purchases than for handgun purchases, as illustrated below.

Handgun and Long Gun Breakdown



Note: NICS inquiries require information as to whether the purchase is for a long gun, handgun or both. NICS does not include information pertaining to make, model or serial number of firearms being purchased.

"Immediate Proceeds "-There is No Disqualifying Information in the NICS

Of the total 2,295,013 NICS checks handled by the FBI, 1,665,232 (73 percent) resulted in an immediate "proceed" determination to the FFL (indicating that no records regarding the prospective buyer have been located by the NICS, and that the gun can be transferred under the Brady Act). The average amount of time that it takes for NICS to provide an immediate proceed after information is entered into NICS is within 30 seconds.

"Delays "-There is Potentially Disqualifying Information in the NICS

The other **27 percent** of NICS checks are delayed, because additional time is required to determine whether a firearms purchaser is prohibited from possessing a firearm. If information needed to finish the background check is available electronically, the background check is

completed within two hours. Of the **27 percent** of NICS checks for which additional information is required, most (**80 percent**) are completed **within two hours** by performing additional electronic checks. In other words, **95 percent** of all NICS checks are completed within two hours.

The remaining five percent of checks cannot be completed electronically and require more time to finish. The FBI must contact the state or local entity that has the information (usually the disposition) to complete the record. For example, the check of criminal history records, comprised primarily of state submissions, is a critical element of a NICS check. Usually, these records contain information to show that an individual was arrested, the crime charged, and whether or not the person was found guilty of the crime. Sometimes, however, the criminal history record will only show that the person was arrested, without showing the disposition of that arrest (that is, whether the arrest resulted in a conviction). Under Department of Justice interpretation of current Federal law, an arrest alone is insufficient to disqualify a prospective purchaser from obtaining a firearm. Final disposition information from the states is therefore critical to the NICS.

The first seven months of NICS operation demonstrate the connection between the lack of state arrest disposition information and the delays in NICS responses. Where the NICS shows a potentially disqualifying criminal history record for a prospective purchaser, *but* does not have electronic access to final disposition information, a NICS examiner must take steps to obtain that information from non-electronic sources. Often, this will require direct contact with the local court where the information is held. The ability to obtain the required disposition information depends on several factors, including whether the court is open (courts are typically closed on weekends), the availability of the court clerk to assist, and accessibility of the disposition information. For these reasons, the Brady Act allows the NICS three business days to complete a check.

The Brady Act allows the NICS three "business" days to complete a check, rather than three days or 72 hours. (A "72 hour" rule would mean that, if a purchase were initiated on a Saturday morning and arrest disposition information was needed, the FBI would have only approximately eight business hours - on Monday - to obtain this information in order to complete the check.) Of the 49,160 NICS denials issued by the FBI during the first seven months of NICS operation, over 11,000 (22%) would not have been issued if the law allowed only 72 hours to complete a check, instead of three business days.

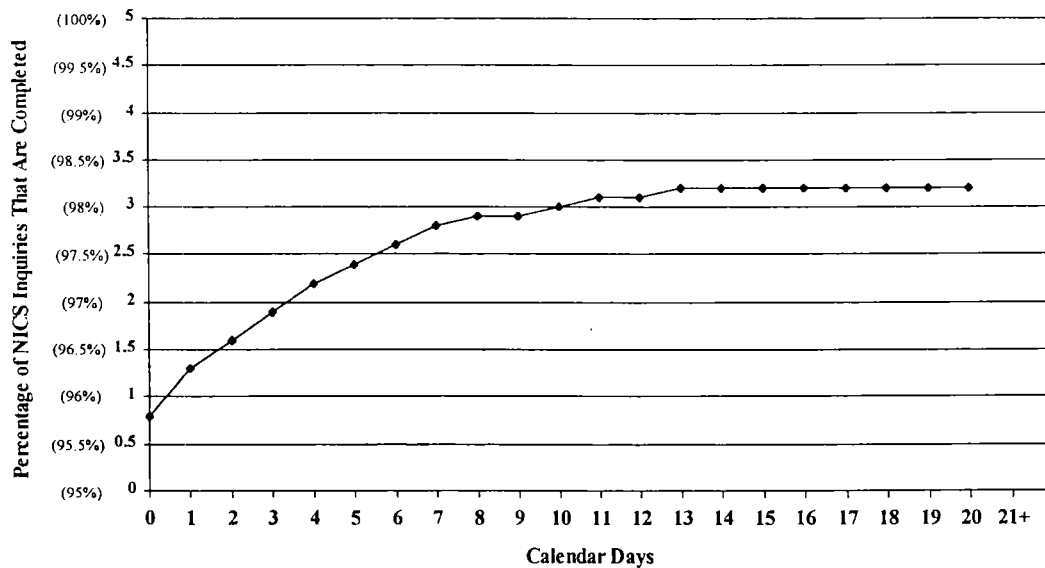
Some examples illustrate the impact of a 72 hour rule. The following denied persons, who tried to buy a gun on Saturday in past months, would not have been stopped from purchasing a firearm: a person convicted of rape in Virginia who tried to buy a gun on Saturday, May 15, 1999; a person convicted in Texas of Aggravated Kidnaping with Attempt to Rape a Child who tried to buy a gun on Saturday, February 27, 1999; a person convicted of domestic violence in Kansas who tried to buy a gun on Saturday, January 30, 1999.

Reducing the time limit for checks from three business days to lesser periods, such as 48 hours or 24 hours, would mean correspondingly greater decreases in the ability of the NICS to prevent unlawful purchases. Of the FBI NICS denials during the first seven months, approximately 15,000 (31%) would not have been stopped if a 48-hour limit had been in place, and approximately 20,000 (41%) would not have been stopped if a 24-hour limit had been in place.

"Default Proceeds "-Although There is Potentially Disqualifying Information in the NICS, Three Business Days have Passed Since the NICS Check was Initiated

A portion of the five percent of NICS checks that require more than two hours to complete cannot be completed within the three-business day time period currently provided under the Brady Act. As illustrated in the graph which follows, approximately 60 percent (three) of the remaining five percent are resolved within ten calendar days. There is relatively little activity depicting receipt of disposition information after 13 calendar days.

Allocation of the Five Percent of NICS Inquiries That Are Not Completed in Two Hours



Note - 95% of all inquiries are completed within two hours. This chart represents the five percent of inquiries not completed within two hours.

As soon as the NICS examiner receives information to complete the check—such as the disposition of an arrest—contact is immediately made with the relevant FFL to provide the result of the NICS check whether or not within the statutory three business day period. However, the Brady Act allows FFLs to transfer firearms after three business days, even if the check is incomplete.

These situations can be called "default proceeds," because the FBI does not actually issue a "proceed" for the firearms transfer. Rather, the FBI provides the FFL with information that efforts are continuing to obtain data to complete the background check. When a final disposition is unable to be retrieved within the three business days, the NICS Operations Center contacts and advises the FFL verbally through a prepared script that the NICS is still in the process of reviewing the matter and cannot give either a 'PROCEED' or a 'DENIAL' response for this sale. The FFL is also advised that if they are not contacted by the NICS by the close of business that day, the Brady Act does not prohibit the transfer of the firearm the following day or at any time within 30 days. Additionally, the FFL is advised that the NICS will be continuing to review the matter for two more weeks and will contact the FFL within that time if NICS discovers definitive information regarding the transaction. Sometimes, the FBI will receive information (usually a disposition of an arrest) after the three business days which indicates the purchaser is prohibited from purchasing or possessing a firearm. The FBI will contact the FFL to determine whether or not the firearm has been transferred.

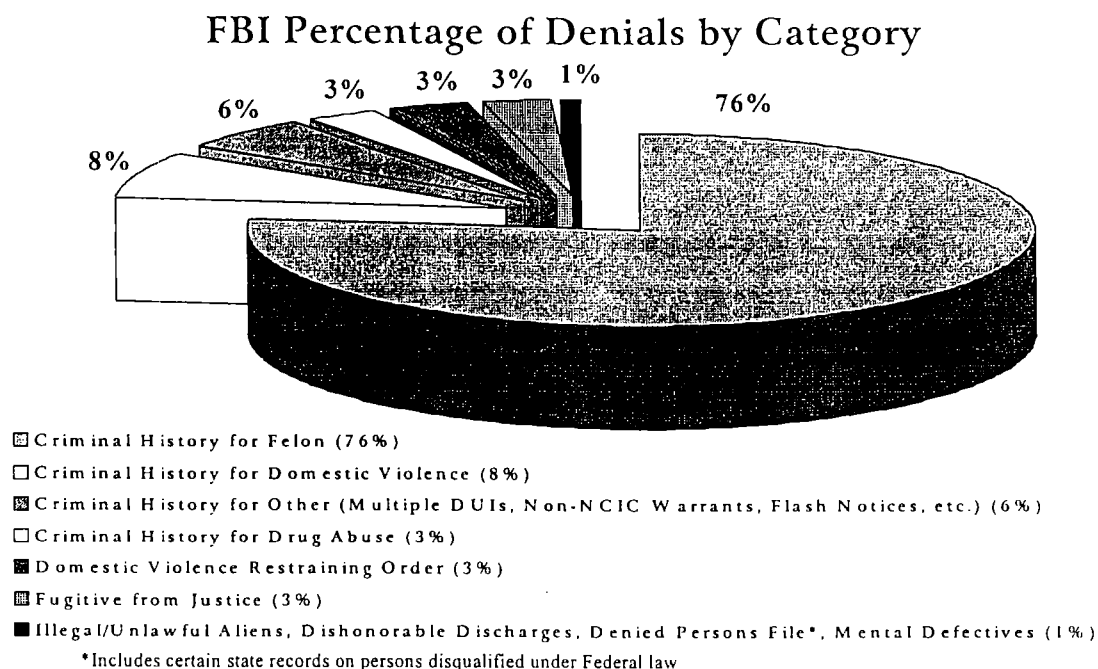
Retrievals

When the FBI determines that an FFL has already transferred the firearm to an individual determined by the NICS to be a prohibited person, the FBI notifies local law enforcement where the firearm was sold or where the purchaser lives, if different, and the ATF that a prohibited person received a firearm. During the first seven months of NICS operations, there were 1,786 occasions where information demonstrating a purchaser was prohibited was received after three business days, and it was determined that the firearm had been transferred to the purchaser, thus necessitating local law enforcement or ATF having to retrieve the firearm(s) from the prohibited person.

Denials

Since November 30, 1998, the FBI and the state POCs each have performed approximately one-half of the NICS checks. While the FBI tracks the number of denials that it issues, the FBI does not routinely receive information about denials from the state POCs. In the first seven months of NICS operation, the FBI blocked 49,160 illegal gun sales, a denial rate of 2.13 percent. Based on the information received from individual states, the FBI estimates that a

comparable number of denials have been issued by the state POCs, for an estimated total of 100,000 denials under Permanent Brady. The FBI denials by prohibited category are illustrated as follows:



As reflected by the preceding chart, the overwhelming majority of NICS denials by the FBI are for people with criminal convictions. This includes individuals who have been convicted of a felony, a misdemeanor crime of domestic violence, or drug crimes which establish illegal drug use or drug addiction.

Detailed information on each denial transaction is referred to ATF for investigation.

Dispositions

To try to prevent as many prohibited people as possible from obtaining firearms, the FBI is continuing to work with the states on improving NICS' direct access to state final disposition information, and to assist states in improving the accuracy and completeness of the records that are available to the NICS system for background checks. In addition, FBI representatives have been attending state court clerk conferences to encourage states to provide the needed disposition information on an expeditious basis. Finally, because states that serve as POCs have access to more records that will contain dispositions, the FBI is working to encourage more states to serve as POCs for the NICS.

Additional time beyond the current three business days would improve the ability of NICS to obtain information on prohibited persons before a transfer of a firearm takes place.

Appeals

When an individual is denied a firearms transfer on the basis of a NICS check, that person may appeal this decision directly to the FBI. An important measure of the accuracy of NICS background checks is the number of appeals that have been generated, and more importantly, the number of decisions that have been overturned on appeal. Regarding the 49,160 denials issued from November 30, 1998 through June 30, 1999, the FBI has received only 6,896 appeals which represent less than 15 percent of these denials. Of the 5,169 appeals on which a decision has been reached, 3,823 (74 percent) have sustained the denial, while 1,346 (26 percent) have overturned the denial. Of those overturned upon appeal, approximately 30 percent were the result of information missing from the original record, such as an expungement or restoration of rights.

PRIVACY AND SECURITY ISSUES

Because the NICS contains an extensive amount of sensitive personal information about individual criminal histories and other disqualifying information, there is the potential that the system will be used improperly. Congress recognized this possibility and required the Attorney General to ensure the privacy and security of the system. To fulfill this responsibility, instances of fraud and abuse must be identified. Only by conducting audits of those entities and individuals who have access to the system can fraud and abuse be detected and punished. To perform audits, the FBI must have access not only to the records of prospective firearms purchasers who are denied, it must also have access—at least for a limited period of time—to records of firearms purchasers who are approved.

Basic security audits are essential to preventing the invasions of privacy that would result from misuse of the system. Audits allow the FBI to detect both persons who misuse the system to perform unauthorized background checks as well as felons who assume the identity of a qualified person to buy firearms illegally. Audits also enable the FBI to determine whether false names are submitted to the NICS by FFLs to evade the name check system. For instance, a corrupt FFL may send in one name (known to have no disqualifying record) for a NICS check, but record a different name on the firearms transaction record. If the record of the name sent to the system were destroyed immediately, there would be no way of proving that the dealer had deliberately evaded the background check system by sending it a false name. The audit log contains information relating to each NICS background check requested by FFLs and allows the FBI to audit use of the system by FFLs and POCs. The audit log also allows the FBI to perform quality control checks on the system's operation by a review of the accuracy of the responses given by the NICS record examiners to FFLs.

Thus far, NICS audits conducted by the FBI based on the current NICS rule (the interim audit system) have uncovered multiple instances involving improper use of the system. For example, the audit log has helped the FBI to identify an FFL who was transferring firearms without doing background checks and has aided in identifying several possible "straw purchases" that were forwarded to the ATF for investigation. The audits have also been used to identify

FFLs who have been conducting NICS inquiries on persons outside of the context of a gun transfer. The Federal firearms laws require that the individual completing the ATF Form 4473 must be buying the firearm for himself or herself or as a gift. Any individual who is not buying the firearm for himself or herself or as a gift, but who completes this form, violates the law. Another example would be if an individual knowingly and willingly purchases a firearm for a person who has been previously denied the purchase of a gun. These incidents are referred to as "straw purchases."

A Department of Justice, NICS Regulation, "Final Rule," was published in the *Federal Register* on October 30, 1998. This final rule provides that the FBI may retain records of all NICS transactions for six months, and that the FBI will work to reduce the retention period to the shortest practicable period of time (less than six months) that would allow basic security audits of the NICS. The final rule also provides that records be retained for a longer period if necessary to pursue identified cases of misuse of the system. In addition, the final rule mandates that the information in the Audit Log be used only for the purpose of conducting audits of the use and performance of the system or pursuing cases of misuse of the system.

Pursuant to the final rule, on March 1, 1999, the Department of Justice issued a notice of proposed rulemaking in the *Federal Register* to further reduce the retention period to 90 days. The proposed regulation will also establish a system for conducting audits. With this system, the FBI will provide information from the audit log to the ATF in connection with specific ATF inspections of FFLs, so the ATF inspectors can compare the information in the audit log to the information kept by the FFLs. ATF inspectors will be subject to the same strict requirements regarding the use and destruction of information from the audit log as the FBI. However, giving ATF the ability to use information in the audit log in the course of an on-site inspection will significantly improve the effectiveness of the audits. The FBI is currently finalizing this regulation.

SUCCESS STORIES

NICS has thus far fulfilled its mission. As a result of the concerted efforts of NICS personnel, firearms transfers to non-prohibited purchasers have been accomplished with minimal inconvenience to both the FFL and purchaser. There, of course, have been individuals who have been denied the ability to purchase a firearm. Following are some examples of instances, within different prohibitive categories, where NICS has been successful in obtaining relevant information to deny a firearms transfer.

The NICS Has Assisted in Capturing Wanted Persons

Not only has the NICS prevented more than a thousand wanted persons from purchasing firearms, but the FBI's NICS Examiners also have actively contacted Federal, state, and local law enforcement agencies to provide information which resulted in their apprehension. The following examples illustrate the success of the NICS in helping capture wanted persons:

- On 3/24/99, the NICS identified a person wanted for burglary in Arkansas. The Van Buren, Arkansas, Police Department, was preparing to put this subject on its Ten Most Wanted List. The subject was apprehended.
- On 3/12/99, the NICS identified a person wanted in connection with a major marijuana and cocaine drug ring. The subject was at the top of Colorado's Wanted Persons list. The subject was picked up by the U.S. Marshals' Service in McAllen, Texas.
- On 3/11/99, the NICS identified a person wanted in Oscoda, Michigan, for eight years, for Aggravated Assault with a deadly weapon against a family member. The Texas Highway Patrol picked him up and held him in Texas awaiting extradition to Michigan.
- On 3/1/99, the NICS identified a person wanted for theft and violating a \$5,000 bond. The subject is now in the custody of the Gallup, Texas Police Department.
- On 2/28/99, the NICS identified a person wanted in California for obstructing a court order. He had violated his probation and his whereabouts were unknown. A NICS Examiner informed California that the subject was in Washington State attempting to purchase a firearm. With assistance from another NICS Examiner, all authorities were contacted and the subject was apprehended and extradited to California.
- The Logan Detachment of the West Virginia State Police notified the NICS that, based upon a NICS check, a person wanted for aggravated assault with a gun in Indiana, was arrested on 2/11/99 while still in the gun store by the West Virginia State Police.
- Other examples of wanted persons taken into custody by local law enforcement agencies when identified by the NICS include:
 - An individual from Missouri wanted for fraud was arrested on 2/3/99 by the sheriff's office.
 - A military deserter from New York was arrested by the New York State Police on 1/30/99.
 - An individual from Wisconsin wanted for perjury was arrested on 1/26/99 by the Wisconsin State Patrol.
 - A fugitive from New Mexico wanted for fraud was arrested on 1/13/99.
 - An individual from Louisiana wanted for theft was arrested on 1/12/99 by the New Orleans Police Department.

- A fugitive from Texas wanted for assault was arrested on 1/10/99 by the State police. This individual had two outstanding warrants from the county and eight traffic warrants.
- A person wanted in Cleveland, Ohio, for carrying a concealed weapon was arrested by the State Police in Wheeling, West Virginia.

Mental Defectives Prevented from Purchasing a Firearm

- A man who has been committed to a State hospital on three occasions for threats against elected officials in the State of Washington was denied.

Individuals Who Had Controlled Substance Related Charges Prevented from Purchasing a Firearm

- A man wanted for felony marijuana and cocaine drug ring involvements in Texas was arrested.
- An individual in Louisiana with multiple drug charges was apprehended.
- A man from Louisiana with a drug conviction within the past year and on probation was denied and information of his attempt to purchase a firearm was turned over to his probation officer.

Individuals With Domestic Violence Charges Prevented From Purchasing a Firearm

- A man in Florida with an outstanding warrant for domestic battery and controlled dangerous substance/cocaine was arrested.
- A man in Louisiana charged with domestic violence was apprehended.
- Two individuals charged with domestic battery in West Virginia were arrested.
- An individual charged with menacing-domestic violence was identified.

Dishonorably Discharged Individuals Prevented From Purchasing a Firearm

- An individual who was charged with rape/sodomy of a child and dishonorably discharged from the military.
- An individual in the military who was convicted of stealing by force and violence and dishonorably discharged.

Illegal Aliens Prevented From Purchasing a Firearm

- An illegal/unlawful alien who had been arrested on three separate occasions by United States Immigration and Naturalization Service (INS) in Laredo, Texas, was apprehended.
- An illegal alien who attempted to purchase a gun in Texas was identified.

INS Deported Felons Prevented From Purchasing a Firearm

- An arrest was made of a deportable alien by the Portland, Oregon, INS and returned to Mexico.
- An individual with an immigration violation was voluntarily returned to Mexico.

Other Individuals Prevented from Purchasing a Firearm

- An individual from West Virginia, who was under indictment and had charges of malicious wounding, night time burglary and battery on a correctional officer, was arrested.
- An individual in Kansas, who was previously convicted of felony attempted terroristic threats.

COMMENDATIONS

The NICS Program has received many commendations for denying firearms to ineligible persons as well as other NICS initiatives.

- Dallas County, Texas, DIVERT Court Program, illustrates this appreciation and points to the long-term impact of a single denial. On 4/29/99, the Program Manager of DIVERT wrote to a NICS Supervisor:

"...DIVERT is a judicially-supervised pre-indictment diversion court that provides substance abuse treatment to offenders charged with a State jail felony of possession. The program lasts for one year and includes substance abuse counseling in the community, random urinalysis testing, substance abuse education, and scheduled court attendance. Graduation from the program results in dismissal of the charge. The goal of the program is to return sober, law abiding citizens to the community.

Under the terms and conditions of DIVERT, it is the order of this court that participants 'do not possess a firearm during the term of diversion.' Following your inquiry, the community treatment provider was notified

that a 24-year-old ... participating in her group had attempted to purchase a firearm at a local gun show. That evening during group session, the counselor asked the young man to share with the group his motivation and/or desire to purchase or own a gun. He reported to the case manager the next day that the group had 'processed him,' asking him questions and providing him an opportunity to express his feeling and views. He said he no longer had a desire to purchase a gun, and felt that the group was instrumental in helping him make a better decision about owning a gun at this time in his life.

This letter is to thank you for doing your job—for allowing us this 'therapeutic opportunity' to make a difference in this young man's life. Keep up the good work!"

- During a proceed call with a Federal firearm licensee, the Rio Grande Training Company, Las Cruces, New Mexico, commented on the professionalism of the NICS staff.
- Bexar County, Texas, Sheriff's Office sent a facsimile to a NICS Examiner expressing appreciation for the information she provided.
- A representative from Gander Mountain, Bloomington, Minnesota, expressed: "Thanks to everyone for taking a hard job that was a hornet's nest and making it work. Keep up the good work."
- Holt and Associates, Auctioneers from Colorado Springs, Colorado, stated: "We have had the opportunity to use your NICS Program Services. I am prompted to advise you that the reception was outstanding and that the personnel who assisted were most helpful, courteous, and did make your job much easier. We were conducting an estate auction that included a collection of firearms, and our buyers were from several states. This could have caused a great deal of difficulty for the buyers. I want you to know you have a great staff. In this busy world, too many people don't stop to say -- thanks, good job."
- A licensed gun dealer in Kansas wrote to commend the NICS on its performance running checks for him at a recent gun show: "First of all, I would compliment you for the professionalism that your people extend to us...This past weekend I attended a gun show in Wichita, Kansas. During that period, I ran 40-50 checks with several delays. I was quite surprised at how fast these delays were investigated. The customers also made comments as to how fast the delays were taken care of...Again, thanks for a job well done."

- A famous entertainer attempting to purchase gold-plated pistols which were used in the television series *Have Gun Will Travel* at a cost of \$22,500 whose transaction was delayed but later proceeded because of a "hit" in one of the databases. The FFL commented, "Keep up the good work. I intend to spread the word that NICS is doing a good job."
- The Chief Information Officer from the Administrative Office of Courts in Montgomery, Alabama wrote a letter dated 7/11/99 to the NICS Program Office complimenting two members of the NICS staff who attended the Alabama Court Clerks Conference regarding the receipt of dispositions. An excerpt from this letter follows:

"...(the two representatives*) were there to give a presentation on NICS and to answer questions from the clerks. As you probably know, the NICS program in Alabama has been received with a lack of enthusiasm and the reception given to (the two representatives*) when they arrived on Thursday was cool. Despite this start, your two representatives worked diligently to change the situation and in just a day and a half they had made remarkable progress. Our clerks were sorry to see them leave so soon and they were invited back. The problems of dispositions for NICS in the State of Alabama are not over. However, the attitude has definitely changed and I anticipate that increased cooperation will be seen by your staff. Thank you for devoting some personal attention to this problem.

(The two representatives*) were as confident as any program representatives I have seen. They simply could not be flustered even by the most pointed question or comment. They did not let a potential negative situation overwhelm them but, rather, handled it with tenacity and style... I would like to extend the compliments of the Alabama Judicial System to them."

(*The names of these representatives have been omitted.)

CONCLUSION

The NICS has been working successfully for more than seven months to ensure the timely transfer of firearms to individuals who are not specifically prohibited by Federal law from possessing a firearm. In addition, the NICS has prevented the acquisition of firearms by an estimated 100,000 criminals, fugitives, and others who should not have firearms. The NICS staff has provided timely and effective customer service to other Federal, state and local law enforcement agencies, FFLs, and other users of NICS.

Partnership with the states has been successful through the transition from design and development to the operation of the NICS. The cooperation with the states continues via conferences, seminars, and telephonic communications for future enhancements to the NICS.

An excellent, detailed baseline of statistical data has been collected which will help the NICS Program Office in evaluating and improving performance of the NICS, based on analysis of patterns and trends (e.g., workloads, response times, etc.). By assuring that effective audits of the system are conducted and by assuring that adequate time and resources are provided to complete thorough checks, the NICS will be able to perform even more effectively in the future.

**NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM
POINT OF CONTACT (POC) STATES AND TERRITORIES**

- **Full Participants (16):** States which conduct NICS checks for all firearms purchases and for permits for handguns and long guns:

Arizona	Nevada
California	New Jersey
Colorado	Pennsylvania
Connecticut	South Carolina
Florida	Tennessee
Georgia	Utah
Hawaii	Vermont
Illinois	Virginia

(NICS performs pre-pawn checks for Florida.)

- **Partial Participants (11):** States which perform checks for handgun permits, while the FBI performs NICS checks for long gun purchases:

Iowa	New York
Michigan	North Carolina
Nebraska	

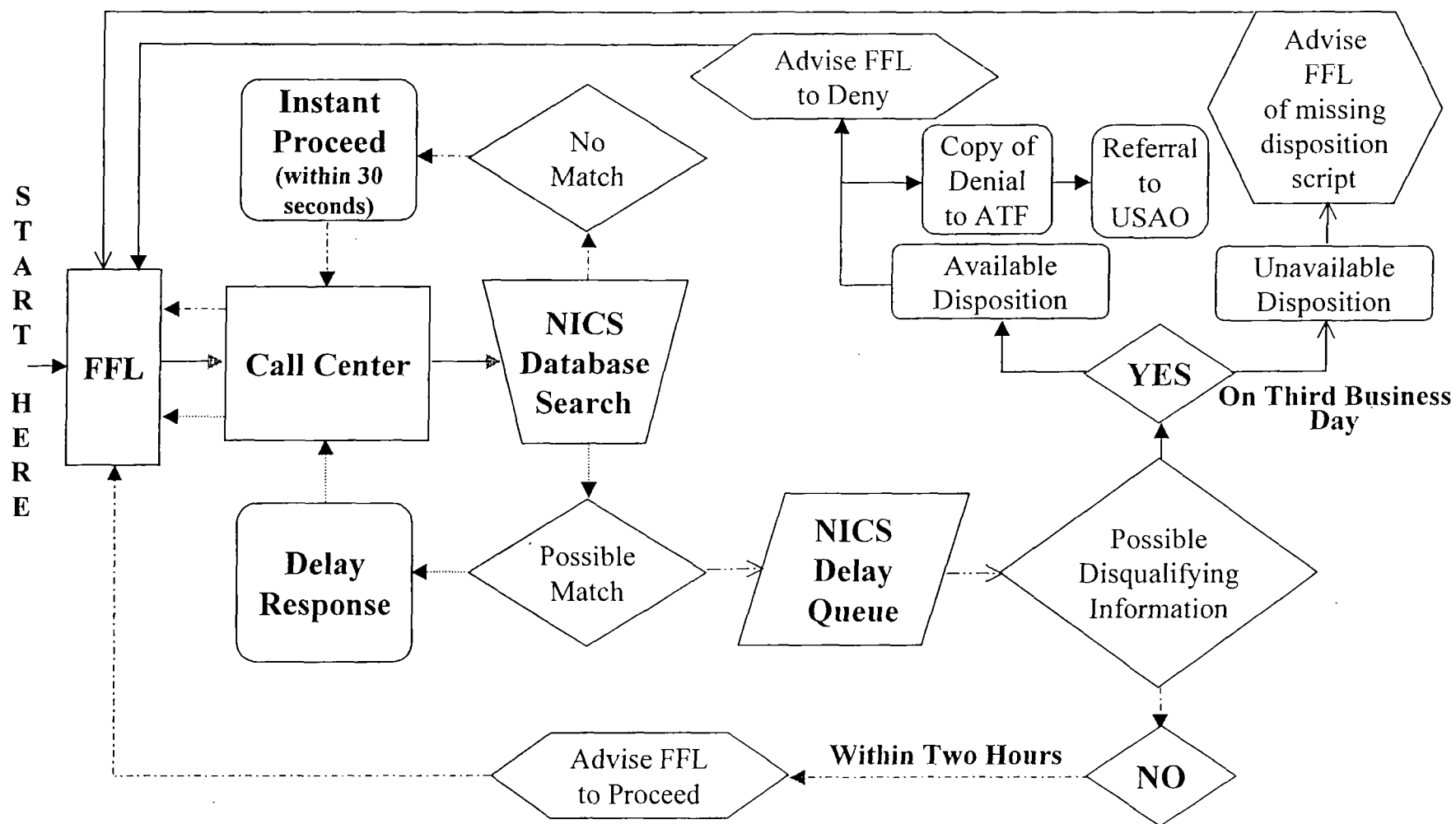
States which perform NICS checks for handgun purchases, while the FBI performs NICS checks for long gun purchases:

Indiana	Oregon
Maryland	Washington
New Hampshire	Wisconsin

- **Non-Participants (26):** The FBI performs NICS checks on both handguns and long guns for:

Alabama	Montana
Alaska	New Mexico
Arkansas	North Dakota
Delaware	Ohio
Idaho	Oklahoma
Kansas	Puerto Rico
Kentucky	Rhode Island
Louisiana	South Dakota
Maine	Texas
Massachusetts	U.S. Virgin Islands
Minnesota	West Virginia
Mississippi	Wyoming
Missouri	Washington, D.C.

NICS Operations Work Flow Diagram



APPENDIX B



March 14, 2000

The President
The White House
Washington, DC 20500

Dear Mr. President:

We are pleased to provide you with the first annual report prepared by the Federal Bureau of Investigation (FBI) describing the operation of the Brady Act's National Instant Criminal Background Check System (NICS). This letter summarizes the key findings of the FBI's report, provides additional information from the Bureau of Alcohol, Tobacco and Firearms (ATF) on enforcement issues relating to the Brady Act, and reports on steps that we believe should be taken to make our country's firearms background check system even more effective.

The report demonstrates that NICS is a powerful new tool to assist law enforcement and federally-licensed firearms dealers in keeping guns out of the wrong hands. NICS currently allows the FBI and its partners in state and local law enforcement to perform instant searches of over 35 million records. NICS blocks criminal purchases efficiently by checking these records before the sale of a gun by a federally-licensed gun dealer takes place. NICS stopped approximately 179,000 felons, fugitives, domestic violence abusers, and other prohibited persons from buying guns from licensed dealers in its first thirteen months, adding to the 312,000 who were stopped under the Brady Act's interim provisions. Over 10 million checks were run through NICS between November 30, 1998 and December 31, 1999.

Most NICS checks take only seconds to complete. During NICS' first year, the FBI cleared 72 percent of prospective gun buyers within 30 seconds of the dealer's request for the check, allowing most gun buyers to receive their guns without any wait. Even when a transfer was delayed because a check revealed potentially disqualifying information, the FBI provided a response within two hours for 95 percent of prospective buyers. The other five percent of prospective gun buyers had records in NICS that required additional time for law enforcement to check. Data from the first year of operation demonstrates that a purchaser whose NICS check takes more than 24 hours to complete is almost 20 times more likely to be determined to be a prohibited person than other gun buyers.

NICS is a partnership between federal and state law enforcement authorities. Twenty-six states have agreed to participate in NICS by designating state points of contact

DOUBLING FUNDS TO MAKE BRADY CHECKS FASTER AND MORE EFFECTIVE.

The President today will also announce that his FY 2001 budget provides \$70 million to give law enforcement more tools to increase the speed and accuracy of Brady Background checks, and keep guns out of the hands of even more prohibited persons. The President's initiative doubles funding for the National Criminal History Records Improvement Program (NCHIP), created under the Brady Law to improve the accessibility of records used for Brady background checks. NCHIP helps states to update, computerize and complete their records on felons, fugitives, domestic abusers, mentally ill prohibited persons and others restricted from purchasing firearms. To date, over \$200 million has been provided to states through NCHIP.

PUSHING FOR BIPARTISAN CONGRESSIONAL ACTION ON COMMON SENSE GUN LEGISLATION.

For over eight months, the Republican leadership has refused to allow the House and Senate conferees to meet and have a substantive debate on the common sense gun measures in the pending juvenile crime bill. Joined by a bipartisan group of House members, the President will urge Congress to pass Representative Lofgren's motion today calling on conferees to meet in the next two weeks. The President will also call again on Congress to send him strong gun safety legislation that would: require background checks at gun shows; mandate the sale of child safety locks with handguns; bar the importation of high capacity ammunition clips; and hold adults accountable if they allow children easy access to loaded guns that are later used to kill or maim. As part of his comprehensive strategy to reduce gun violence, the President will also urge support for his \$280 million National Gun Enforcement Initiative to hire 500 new Bureau of Alcohol, Tobacco & Firearms (ATF) agents and inspectors; fund over 1,000 new federal, state and local gun prosecutors; expand ATF's crime gun tracing and ballistics testing program; and help communities replicate successful gun violence reduction programs like Richmond's Project Exile and Boston's Operation Ceasefire.

The President

Page 2

(POCs) for some or all background checks. In POC states, state officials rather than the FBI perform background checks using NICS. State POCs strengthen the system, because they often can perform more thorough checks than the FBI. POCs are familiar with the state's own firearms laws and local crime problems, and the POCs have access to information in state databases that is not typically available to the FBI. Approximately one-half of the checks run through NICS in its first year were handled by the state POCs.

In addition to fulfilling its primary purpose of stopping illegal gun purchases before they occur, NICS also assists law enforcement in apprehending fugitives and supports federal investigations and prosecutions of violent offenders. NICS not only prevented more than 2,400 fugitives from justice from purchasing firearms, but FBI employees conducting NICS checks were able to identify wanted persons to federal, state, and local law enforcement agencies. This contact resulted in the apprehension of a significant number of fugitives, including at least one prison escapee. NICS also transmits information about those denied gun purchases to ATF, and ATF has sent approximately 28,000 such reports concerning the most serious and violent offenders to its field offices. These included nearly 15,000 persons denied due to a domestic violence conviction or a restraining order for domestic violence. Information from NICS denials helps law enforcement target limited resources, and individuals referred based on NICS denials are subject to investigation for false statement and other criminal charges.

The period of time that law enforcement officials are given to complete checks under NICS is a critical factor in NICS' effectiveness at keeping guns out of the wrong hands. On November 30, 1998, the maximum period of time that the Brady Act allows law enforcement to require a dealer to delay a sale so that additional records can be checked was reduced from five business days to three. In a relatively small but significant number of cases, the Brady Act's current three-business-day period is insufficient to stop the illegal acquisition of a gun from a licensed dealer. During the first year of NICS operation, 3,849 people determined by NICS to be prohibited were able to acquire guns from licensed dealers because the three-business-day window was inadequate to allow completion of the NICS check, and the dealer reported a transfer of the firearm notwithstanding the pendency of the check. ATF must investigate each of these cases to ensure the removal of firearms from the possession of prohibited persons, diverting law enforcement resources from other investigations and forcing investigators to face a potential danger that could be avoided if the three-business-day window were extended, as previously recommended by the Administration.

We recommend that firearms dealers await completion of a NICS check before transferring a firearm. Allowing more time to complete checks would assist in preventing transfers to prohibited persons without any adverse impact on the vast majority of gun buyers, whose checks are completed within two hours. Conversely, reducing the time available for law enforcement to complete checks under NICS - as some have suggested - would pose significant public safety risks. Data from the first year of NICS operation reveal that if the period of time available to complete background checks had been 24 hours, instead of three business days,

The President

Page 3

33,992 of the prohibited persons that the FBI stopped using the NICS would have been able to buy guns.

Funding for the National Criminal History Improvement Program (NCHIP) should be enhanced to allow states to provide NICS with greater access to needed records. Since passage of the Brady Act, the Justice Department has awarded over \$200 million in grants to states to update, computerize, and complete their criminal history records. This funding has helped significantly in making records available to NICS. Nonetheless, most delays in establishing a potential gun buyer's prohibited status occur when NICS determines that an arrest has been made, but the record is incomplete, so that the FBI must find out through state courts or local officials whether the arrest resulted in a disqualifying conviction. Moreover, the risks of violent acts by those with domestic violence convictions or subject to domestic violence restraining orders must not be underestimated. Additional NCHIP monies will enable states to make more criminal disposition information available in their records and enhance the availability of records revealing a domestic violence prohibition.

States should be encouraged to participate in NICS. Because current law prohibits the FBI from charging a fee for the NICS checks that it performs, Congress has appropriated funds for the FBI to conduct checks. Congress, however, does not provide funds to POC states to defray their costs, effectively requiring them to charge their residents for a service that the FBI provides free of charge. In addition, when a background check reveals incomplete information, such as an arrest record without a disposition, the FBI or state POC must request the missing information from the state court or other state or local records system. To comply with this request, the states incur some expense for the benefit of public safety. Incentives should be developed to encourage states to participate as POCs and provide disposition information for Brady background checks.

The FBI must be allowed to retain NICS records for a limited period of time to protect the privacy and security of NICS. The FBI retains records of approved transfers only for use in audits, including those performed by ATF during federal firearms dealer compliance inspections. Such inspections have identified instances of incomplete reporting and misuse of NICS, including the use of NICS for unauthorized purposes. If immediate destruction of NICS records were required, these abuses would go undetected and could be expected to increase.

Extending the Brady Act's requirements to gun shows and flea markets should remain a priority. As you know, under current law, the protections of the Brady Act are only available for transfers by licensed gun dealers. Because the Brady Act only applies to the gun sales that are conducted by licensed dealers at gun shows, the gun show loophole still allows thousands of guns to change hands at gun shows and flea markets without any background check whatsoever.

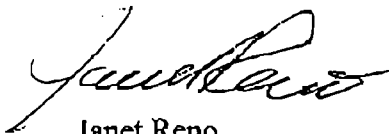
The President

Page 4

The Departments of the Treasury and Justice, and the FBI and ATF, will continue to work together to keep guns out of the wrong hands. The Brady Act and NICS have proven to be very effective means to accomplish that goal, which would be significantly advanced by the recommendations set forth above.

Respectfully,

Lawrence H. Summers
Secretary of the Treasury



Janet Reno
Attorney General

March 14, 2000

NICS REPORT RELEASE AND GUN LEGISLATION EVENT

DATE: March 15, 2000
LOCATION: East Room
BRIEFING TIME: 10:45am – 11:00am
EVENT TIME: 11:15am – 12:15pm
FROM: Bruce Reed, Charles Brain

I. PURPOSE

Joined by members of Congress, you will unveil the FBI's first annual report on the National Instant Criminal Background Check System (NICS) created under the Brady Law. The new report shows that in its first year of operation, the NICS stopped 179,000 felons, fugitives, domestic abusers, and other prohibited persons from buying guns. You will also highlight your budget proposal to make Brady checks even faster and more effective. Finally, you will urge Congress to resist the gun lobby by passing the motion Representative Lofgren will offer today calling on juvenile justice conferees to meet in the next two weeks, and by moving on gun safety legislation that has been stalled for over eight months.

II. BACKGROUND

PUSHING FOR BIPARTISAN CONGRESSIONAL ACTION ON COMMON SENSE GUN LEGISLATION. For over eight months, the Republican leadership has refused to allow the House and Senate conferees to meet and have a substantive debate on the common sense gun measures in the pending juvenile crime bill. Later today, Representative Lofgren (D-CA) will offer a motion to instruct conferees insisting that the Conference Committee on Juvenile Justice should have its first substantive meeting to offer amendments and motions within the next two weeks. The motion will most likely be taken up mid to late afternoon and will be debated for one hour. While the motion is not binding on the conferees, the NRA and other anti-gun safety groups are working aggressively to defeat the motion. Coming on the heels of the Michigan shooting, this motion has been more controversial than previous efforts to instruct the conferees by Representatives Lofgren, McCarthy (D-NY) and Jackson-Lee (D-TX), among others. Joined by a bipartisan group of House members, you will urge Congress to pass Representative Lofgren's motion today calling on conferees to meet in the next two weeks.

You will also call again on Congress to send you strong gun safety legislation that would: require background checks at gun shows; mandate the sale of child safety locks with handguns; bar the importation of high capacity ammunition clips; and hold adults accountable if they allow children easy access to loaded guns that are later used to kill or maim.

As part of your comprehensive strategy to reduce gun violence, you will also urge support for your \$280 million National Gun Enforcement Initiative to hire 500 new Bureau of Alcohol, Tobacco & Firearms (ATF) agents and inspectors; fund over 1,000 new federal, state and local gun prosecutors; expand ATF's crime gun tracing and ballistics testing program; and help communities replicate successful gun violence reduction programs like Richmond's Project Exile and Boston's Operation Ceasefire.

RELEASING FIRST ANNUAL REPORT ON NATIONAL INSTANT CHECK SYSTEM. Today's report confirms that the NICS is a powerful tool to help law enforcement and federally-licensed gun dealers keep guns out of the wrong hands. In its first 13 months of operation (November 30, 1998-December 31, 1999), the NICS conducted over 10 million background checks and blocked an estimated 179,000 prohibited gun sales. Through NICS, the FBI and its state and local law enforcement partners perform instant searches of over 35 million records to help prevent the sale of guns to prohibited buyers. To date, the Brady Law has stopped more than 500,000 felons, fugitives, and other prohibited persons from purchasing firearms. Among the key findings of today's report:

- **Most checks completed within seconds.** During the first year of NICS, 72 percent of checks were completed within 30 seconds, and 95 percent were completed within two hours. In the remaining cases where completing a check takes longer, there is a strong law enforcement rationale for additional time: an individual whose check takes more than 24 hours to complete is almost 20 times more likely than the average gun buyer to be a felon or other prohibited purchaser.
- **Vast majority of sales blocked to felons and other criminals.** Of sales denied by the FBI, 71 percent were to felons, 15 percent to individuals with domestic violence misdemeanors or under restraining orders, and 4 percent to persons with histories of drug abuse.
- **NICS checks help law enforcement apprehend fugitives.** The report shows that NICS prevented more than 2,400 wanted persons from buying guns, and that FBI employees identified those persons to federal, state and local law enforcement agencies – leading to the apprehension of dangerous fugitives from justice.
- **Cutting time for law enforcement checks means more criminals get guns.** The report shows that if the FBI were given only 24 hours to complete all background checks, instead of up to three business days as under current law, nearly 34,000 prohibited purchasers – over 38 percent of FBI denials – would have received guns since the NICS first took effect.

DOUBLING FUNDS TO MAKE BRADY CHECKS FASTER AND MORE

EFFECTIVE. You today will also announce that your FY 2001 budget provides \$70 million to give law enforcement more tools to increase the speed and accuracy of Brady Background checks, and keep guns out of the hands of even more prohibited persons. Your initiative doubles funding for the National Criminal History Records Improvement Program (NCHIP), created under the Brady Law to improve the accessibility of records used for Brady background checks. NCHIP helps states to update, computerize and complete their records on felons, fugitives, domestic abusers, mentally ill prohibited persons and others restricted from purchasing firearms. To date, over \$200 million has been provided to states through NCHIP.

III. PARTICIPANTS

Briefing Participants:

Attorney General Janet Reno
Secretary Lawrence Summers
Bruce Reed
Charles Brain
Eric Liu
Leanne Shimabukuro
Broderick Johnson
Paul Glastris

Meet and Greet Participants:

Attorney General Janet Reno
Secretary Lawrence Summers
Secretary Andrew Cuomo (T)
Deputy Attorney General Eric Holder
Members of Congress
Suzann Wilson, Jonesboro, AR
Regina Kaut, sister of Suzann Wilson

Program Participants:

YOU

Rep. Carolyn McCarthy (D-NY)
Rep. Connie Morella (R-MD)
Rep. Zoe Lofgren (D-CA)

IV. PRESS PLAN

Open Press.

V. SEQUENCE OF EVENTS

- **YOU** will greet the Members of Congress in the State Dining Room.
- **YOU** will be announced, accompanied by the Members of Congress, into the East Room.
- **YOU** will make remarks and introduce Rep. Carolyn McCarthy.
- Rep. Carolyn McCarthy will make remarks and introduce Rep. Connie Morella.
- Rep. Connie Morella will make remarks and introduce Rep. Zoe Lofgren.
- Rep. Zoe Lofgren will make remarks.
- **YOU** will make concluding remarks, work a ropeline, and depart.

VI. REMARKS

To be provided by speechwriting.

ORRIN G. HATCH, UTAH, CHAIRMAN

TOM THURMOND, SOUTH CAROLINA
 CHARLES E. GRASSLEY, IOWA
 ARLEN SPECTER, PENNSYLVANIA
 JON KYL, ARIZONA
 MIKE DEWINE, OHIO
 JOHN ASHCROFT, MISSOURI
 SPENCER ABRAHAM, MICHIGAN
 JEFF SESSIONS, ALABAMA
 BOB SMITH, NEW HAMPSHIRE

PATRICK J. LEAHY, VERMONT
 EDWARD M. KENNEDY, MASSACHUSETTS
 JOSEPH R. BIDEN, JR., DELAWARE
 HERBERT KOHL, WISCONSIN
 DIANNE FEINSTEIN, CALIFORNIA
 RUSSELL D. FEINGOLD, WISCONSIN
 ROBERT G. TORRICELLI, NEW JERSEY
 CHARLES E. SCHUMER, NEW YORK

MANUS COONEY, Chief Counsel and Staff Director
 BRUCE A. CONEN, Minority Chief Counsel

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-8275

June 12, 2000

Dear Colleague:

I am writing to ask you to cosponsor of the NICS Partnership Act of 2000. This important legislation will improve the National Instant Criminal Background Check System (NICS) by authorizing the Department of Justice to reimburse states for their reasonable and necessary costs under the NICS.

Under the Brady Law, all Federal firearm licensees are required to conduct a background check on the purchaser of any firearm through the NICS. This comes at an unfair cost to many states. The NICS is mandated by Federal law, but many states are picking up the tab for conducting effective background checks. Since more comprehensive criminal history records are currently available at the state and local level in many states than at the Federal level, about half of the states have elected to serve as points of contact (POCs) to access the NICS.

Currently, the following 15 states serve as a full POCs for NICS: Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Nevada, New Jersey, Pennsylvania, Tennessee, Utah, Vermont and Virginia. Another 11 states serve as partial POCs for NICS by performing checks for handgun purchases while the FBI processes checks for long gun purchases: Iowa, Michigan, Nebraska, New York, North Carolina, Indiana, Maryland, New Hampshire, Oregon, Washington, and Wisconsin.

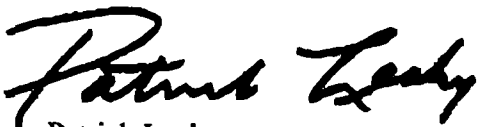
In fact, of the 8,621,000 background checks conducted last year, 4,538,000 were handled by the FBI and 4,083,000 – almost half – were handled by state POCs. So while some states relied on the FBI to conduct Brady background checks and paid nothing, the states that elected to conduct more effective background checks paid the full cost of them. That is unfair to states that are doing the right thing.

The NICS Partnership Act of 2000 will remedy this inequity. It would authorize \$40 million for fiscal year 2001, \$50 million for fiscal year 2002, and \$60 million for fiscal year 2003 to the Department of Justice to reimburse each state for its reasonable and necessary costs for serving as a POC.

Effective Brady background checks are the responsibility of the Federal government under Federal law. As a result, it is only fair for Congress to reimburse states their reasonable costs needed to conduct effective Brady background checks.

If you would like to be an original cosponsor of the NICS Partnership Act of 2000, please have your staff contact Ed Pagano of my staff at 224-7703.

Sincerely,

A handwritten signature in black ink, reading "Patrick Leahy". The signature is fluid and cursive, with the first name "Patrick" and last name "Leahy" clearly distinguishable.

Patrick Leahy
United States Senator

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S.L.C.

106TH CONGRESS
2D SESSION**S.** _____

IN THE SENATE OF THE UNITED STATES

Mr. LEAHY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To authorize funding for National Instant Criminal
Background Check System improvements.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "NICS Partnership Act
5 of 2000".

6 **SEC. 2. NATIONAL INSTANT CRIMINAL BACKGROUND**
7 **CHECK SYSTEM IMPROVEMENTS.**

8 (a) **AUTHORIZATION FOR REIMBURSEMENT TO**
9 **STATES SERVING AS POINTS OF CONTACT.**—There are
10 authorized to be appropriated \$40,000,000 for fiscal year
11 2001, \$50,000,000 for fiscal year 2002, and \$60,000,000

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S.L.C.

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1 for fiscal year 2003, to the Department of Justice to di-
2 rectly reimburse States for the reasonable costs necessary
3 to serve as points of contact for access to the National
4 Instant Criminal Background Check System established
5 under Public Law 103-159.

6 (b) REPORT ON REIMBURSEMENT FORMULA FOR
7 STATES SERVING AS POINTS OF CONTACT.—Not later
8 than 90 days after the date of enactment of this Act, the
9 Attorney General shall submit to the Committees on the
10 Judiciary of the Senate and the House of Representatives
11 a report on the appropriate formula for the direct reim-
12 bursement to States of the reasonable costs necessary to
13 serve as points of contact for access to the National In-
14 stant Criminal Background Check System established
15 under Public Law 103-159.



Department of Justice

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MORE THAN HALF A MILLION ILLEGAL GUN PURCHASES STOPPED BY BRADY BACKGROUND CHECKS

WASHINGTON, DC – More than 500,000 attempted gun purchases by felons, fugitives, domestic violence abusers, and other prohibited persons have been stopped since the implementation of Brady Act background checks in 1994, the Justice Department announced today.

The latest estimates from the FBI show that since the beginning of this year, 27,862 gun purchases by prohibited buyers have been denied, bringing the total number of sales stopped to more than half a million. These 27,862 denials are in addition to the 179,000 illegal purchases stopped by the National Instant Check System (NICS) during its first thirteen months of operation and the 312,000 who were stopped under the Brady Act's interim provisions.

NICS allows the FBI and its partners in state and local law enforcement to perform instant searches of over 35 million records to determine if a purchaser is prohibited from buying a gun. NICS blocks criminal purchases efficiently by checking these records before the sale of a gun by a federally-licensed gun dealer takes place.

Most NICS checks take only seconds to complete. During NICS's first year, the FBI cleared 72 percent of prospective gun buyers within 30 seconds of the dealer's request for the check, allowing most gun buyers to receive their gun with no wait. Even when a transfer was delayed because a check revealed potentially disqualifying information, the FBI provided a response within 2 hours for 95 percent of prospective buyers. The other 5 percent of prospective

- 2 -

gun buyers had records in the NICS that required law enforcement to spend additional time checking. Data from the first year of operation demonstrates that a purchaser whose NICS check takes more than 24 hours to complete is almost 20 times more likely to be determined to be a prohibited person than other gun buyers.

The FBI develops its estimates by doubling the actual number of denials issued by the FBI. This conservative estimate assumes that the 26 states that perform their own checks through NICS deny sales at rates consistent with FBI's denial rate. NICS is a partnership between federal and state law enforcement authorities. Twenty-six states have agreed to participate in NICS by designating state points of contact (POCs) for some or all background checks.

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00-126

EXECUTIVE SUMMARY

In November 1993, the Brady Handgun Violence Prevention Act of 1994 (Brady Act) was signed into law, requiring Federal Firearms Licensees (FFLs) to request background checks on individuals attempting to purchase a firearm. The permanent provisions of the Brady Act, which went into effect on November 30, 1998, required the Attorney General to establish the National Instant Criminal Background Check System (NICS) that any FFL may contact for information to be supplied immediately as to whether the receipt of a firearm by a prospective transferee would violate federal or state law.

In its first 13 months of operation,¹ November 30, 1998, through December 31, 1999, the NICS has proven to be a highly effective system processing over 10 million inquiries. Each NICS background check includes automated searches of approximately 35 million criminal records, over 500,000 records on wanted persons, over 200,000 subjects of protective/restraining orders, and over one million records on other prohibited persons. Since its establishment, the NICS has ensured the timely transfer of firearms to individuals who are not specifically prohibited under federal law, while denying transfers to more than an estimated 179,000 felons, fugitives, and other prohibited persons.

In many ways, the NICS represents a partnership among the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco and Firearms (ATF), and local, state, and other federal agencies. For example, the FBI worked together with ATF and local and state law enforcement to design the NICS. State and federal agencies contribute records on disqualified persons for inclusion in the NICS. States may serve as points of contact (POCs) to support their FFLs in conducting NICS checks. Among the most significant examples of this partnership is that in addition to preventing more than 2,400 wanted persons from purchasing firearms, the FBI's NICS examiners have actively contacted local, state, and federal law enforcement agencies to provide information that has resulted in the apprehension of many of these fugitives from justice.

¹Note: This NICS operations report covers the period of November 30, 1998, through December 31, 1999, and updates the statistical information in the seven month report released on September 9, 1999. Future reports will be published annually and will encompass transactions on a calendar year (January-December) basis.

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BACKGROUND OF THE NICS

Situation Before the Brady Handgun Violence Prevention Act

Since the passage of the Gun Control Act in 1968, certain individuals, such as convicted felons, have been prohibited from possessing firearms under federal law. Until the passage of the Brady Act in 1993, however, there was no mechanism to prevent these individuals from obtaining firearms. Firearms were sold, even by FFLs, on an honor system. Virtually the only recourse that federal law enforcement had against felons and other prohibited people who sought to purchase firearms was to prosecute them *after* they gained illegal possession of the firearm.

Brady Act Requires Background Checks

The Brady Act put an end to the honor system by requiring background checks on firearms purchasers buying firearms from FFLs. The Brady Act called for implementation in two phases: from February 28, 1994, until November 30, 1998, the rules of Interim Brady applied; since November 30, 1998, the provisions of Permanent Brady have been in place. During the Interim Brady phase, the Brady Act applied only to handgun sales, and background checks were conducted by local and state law enforcement. During this time, there was no centralized mechanism for firearms background checks, and the Brady Act relied on the willingness of local sheriffs and other state law enforcement officials to do the background checks. Under Interim Brady, law enforcement officials had up to a maximum of five business days to complete background checks. The Interim Brady system was extremely effective, preventing over 310,000 felons, fugitives, and other prohibited persons from getting handguns.

Brady Act Requires a National System for Conducting Instant Background Checks

The Brady Act also required the Attorney General to develop within five years a national system for conducting criminal background checks instantly. The Brady Act requires that the national system, the NICS, be utilized by any FFL to determine whether a prospective firearms transfer would violate federal or state laws.

Local and State Officials Assist the FBI in Designing the NICS

To ensure that the national system required by the Brady Act would meet the needs of local and state law enforcement, the FBI created the Brady Act Task Group. This group was composed of representatives from the ATF and state and local officials who assisted the FBI in identifying the requirements for the NICS and in designing the system. Between 1994 and 1998, the Brady Act Task Group held formal meetings to provide detailed comments and recommendations to the FBI's NICS system developers. This task group was instrumental in preparing the NICS concept of operations.

The concept called for firearms background checks to include a check of databases at the state and national levels. When an FFL conducts a NICS check, a name search is conducted for any matching records in three different databases, managed by the FBI. These include:

- The National Crime Information Center (NCIC), which contains over 500,000 records on wanted persons and over 200,000 subjects of protective/restraining orders;
- The Interstate Identification Index (III), which contains approximately 35 million criminal history records; and
- The NICS Index, which contains over one million records of other prohibited persons, as outlined in the Gun Control Act, such as individuals who have received dishonorable discharges from the armed services, individuals who have renounced their citizenship, mental defectives, and illegal/unlawful aliens.²

Establishment of the NICS Program Office

On August 1, 1998, the FBI's Criminal Justice Information Services Division established the NICS Program Office. This entity had the responsibility to closely coordinate the final stages of the development of NICS and the transition to an operational program. This included coordinating a multitude of functions and projects such as: staffing; development of a training manual; training of employees; developing work procedure manuals; documenting state statutes regarding prohibitive NICS categories; enrollment of FFLs; acquiring space, desks, phones, and computers; testing computer applications; setting up a management structure; creating reports on operations; preparing budget estimates; preparing workload projections; and creating and modifying work schedules.

²During the first year of the NICS operations, records in the NICS Index rose from approximately 900,000 to over one million. The FBI continues to work to increase records in this database.

Coordination of employee input resulted in the creation of the following NICS mission statement:

To enforce the provisions of the Brady Handgun Violence Prevention Act by utilizing an effective system to ensure the timely transfer of firearms to individuals who are not specifically prohibited under federal law and denying the transfer to those who are prohibited from possessing or receiving such firearms through:

1. effective leadership in the management and operation of the NICS;
2. timely, accurate, and complete responses to NICS background checks; and
3. timely and effective customer service to other local, state, and federal law enforcement agencies, Federal Firearms Licensees, and other users of NICS.

FBI's Continuing Partnership with the States

The FBI has continued to seek and act upon the advice of local and state law enforcement in its operation of the NICS. Proven mechanisms are in place for the continual improvement of NICS operations. For example, regional and national meetings are held semi-annually in which the FBI provides status reports on the NICS to local, state, and federal advisory groups and receives recommendations for NICS system and operational enhancements. In addition, the FBI's NICS Program Office has hosted two NICS State Participant Conferences—one was held while under the provisions of interim Brady and the other took place after permanent Brady was implemented. The second conference was held on June 23-24, 1999, during which the FBI presented briefings and received supportive feedback on the NICS operation to date. Finally, the FBI incorporated NICS information into its Law Enforcement Online (LEO) program, and, in conjunction with the Department of Justice (DOJ), established the NICS Web site (www.fbi.gov/programs/nics/index.htm) to ensure the rapid, continual dissemination of important new information about the NICS.

WHAT IS A NICS CHECK AND HOW DOES IT WORK?

Legal Requirements for the NICS Background Check

The Brady Act prohibits a FFL from transferring a firearm until the FFL has contacted the NICS and *either* the transfer has been allowed *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 provide information regarding whether the prospective firearm purchaser is prohibited from possessing a firearm under federal or state law.

Prohibited categories include:

1. convicted felons and persons under indictment for a felony;
2. fugitives from justice;
3. unlawful drug users or drug addicts;
4. individuals who have been involuntarily committed to a mental institution or determined to be mentally incompetent;
5. illegal aliens and legal aliens admitted under a non-immigrant visa;
6. individuals who have been dishonorably discharged from the military;
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.

Actions Involved in a NICS Check

Applicant Completes Bureau of Alcohol, Tobacco and Firearms (ATF) Form 4473

It has been determined that approximately 15 percent of the licensed dealers account for 80 percent of the NICS transactions. Currently, there are 49,844 type one (gun dealer) and type two (pawn broker) license holders in the United States and U.S. Territories enrolled with the NICS Operations Center. The purchaser must provide photo identification to the FFL. The purchaser and the FFL then complete their respective parts of the ATF Form 4473, known as the Firearms Transaction Record. The completed ATF Form 4473 contains information such as name, address, and date of birth, and a certification from the purchaser that he or she is not prohibited under state or federal law from purchasing or possessing a firearm.

FFLs Contact the State Law Enforcement Agency Serving as a POC for NICS Checks

In states that agree to conduct Brady background checks, once the ATF's Form 4473 is completed, the FFL contacts the state POC for a NICS check. A state POC is a state agency that agrees to conduct Brady background checks, including NICS checks, on prospective gun purchasers. In states that have agreed to serve as POCs, FFLs contact the state POC for a Brady background check rather than contacting the FBI. Currently, 15 states serve as a full POC for NICS (checks on handguns and long guns) and 11 states serve as partial POC for NICS (states perform checks for handgun purchases; and FBI processes checks for long gun purchases.) See Appendix A.

A state POC will access the state's independent criminal history database as well as the NICS system. The NICS provides access to millions of criminal history records from all 50 states and the District of Columbia. A state's database typically contains references not only to those of the state's records which are part of the NICS databases, but also to the state's records and manual records—including many final dispositions—which are not part of the NICS. Many states also have access to records about people in the other prohibited categories, such as people who have been involuntarily committed to a mental institution or are under a domestic violence restraining order. Through programs such as the National Criminal History Improvement Program (NCHIP), federal authorities are working to improve NICS access to such records, but the availability of these records to the states is a very important benefit of state participation in the system.

In Other States, FFLs Contact the FBI for NICS Checks

In states that have not agreed to serve as state POCs, once the ATF Form 4473 is completed, the FFL contacts the NICS at the FBI, via a toll free telephone number,³ to request a background check. (Refer to NICS Operation Workflow Diagram—Appendix B—for overview of activities described on next several pages.) NICS is available for background checks 17 hours a day, seven days a week, including holidays (except Thanksgiving and Christmas). The call is received at one of two call centers located in Moundsville, West Virginia, and Uniontown, Pennsylvania.

A call center customer service representative (CSR) enters the buyer's descriptive information into the NICS computer to initiate a search of the NICS databases. Once this information is entered and sent to NICS, one of two responses will be returned from

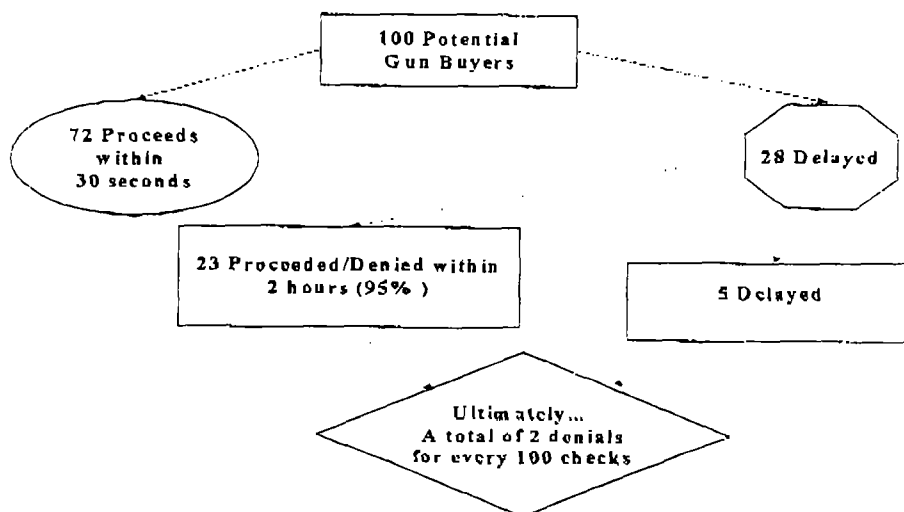
³The NICS Operation Center is currently working to develop an alternative electronic means by which FFLs might contact the NICS in addition to the telephone.

NICS—proceed or delay—along with a NICS Transaction Number (NTN) for that particular transaction.

The call center CSR does not have access to and cannot receive any other information in the NICS relative to criminal history information, wanted persons information, or any other NICS Index protected information. Most of the time, the NICS responds immediately with a proceed response because there is no disqualifying or potentially disqualifying information in the system. In these instances, the FFL can complete the sale, and the purchaser can leave the gun store or gun show with the firearm. Sometimes, the NICS identifies disqualifying or potentially disqualifying information in the system and generates a delay response. In these cases, the NICS will forward the information to the FBI Operations Center where an FBI employee known as a NICS examiner will review the record to determine whether it is complete, whether it matches the prospective buyer, and whether it contains disqualifying arrest or disposition information.

NICS Responses to Requests for Background Checks Must be Timely and Accurate

Under the Brady Act, as soon as the NICS is able to determine accurately that there is no information demonstrating that the buyer is a prohibited person, the gun transfer is allowed to proceed. This means that there is *no* federal waiting period. As described in greater detail below, 72 percent of all prospective gun purchasers are authorized by the NICS to make their purchase *immediately* (within approximately 30 seconds on average after information is entered into NICS). Experience shows that the NICS provides a definitive response (proceed or deny) to 95 percent of all requests within two hours of receipt of information to search NICS. Only five percent of prospective purchasers have to wait more than two hours for a NICS response, and these persons are given their response as soon as the NICS obtains the necessary information. A purchaser whose NICS check takes more than 24 hours to complete is almost 20 times more likely to be a prohibited person than the average gun buyer. This process is further illustrated as follows:



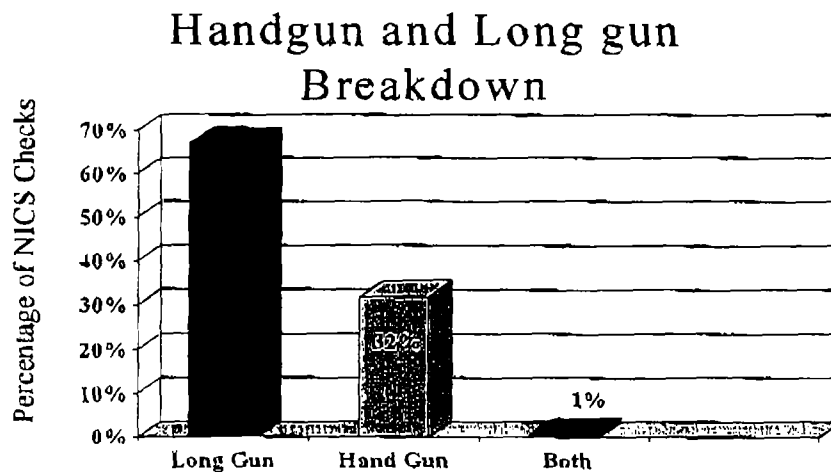
RESULTS FROM THE FIRST YEAR OF NICS OPERATIONS

Number of NICS Checks

In the first 13 months of operation, the NICS completed 10,030,963 background checks. Of these, 5,044,574 were handled by the FBI, while 4,986,389 were handled by state POCs. The chart below shows queries by month, divided between FBI and state POCs.

NICS TRANSACTIONS		
	<i>State</i>	<i>Federal</i>
<i>November 98 (one day only)</i>	6,626	14,570
<i>December 98</i>	379,660	491,984
<i>1998 Totals</i>	386,286	506,554
<i>January 99</i>	315,869	275,486
<i>February 99</i>	369,647	326,676
<i>March 99</i>	399,574	353,509
<i>April 99</i>	341,128	305,584
<i>May 99</i>	311,736	264,536
<i>June 99</i>	306,825	262,668
<i>July 99</i>	303,485	285,991
<i>August 99</i>	363,503	339,891
<i>September 99</i>	382,779	425,848
<i>October 99</i>	435,325	510,376
<i>November 99</i>	459,161	545,172
<i>December 99</i>	611,071	642,283
<i>1999 Totals</i>	4,600,103	4,538,020
<i>Project to Date</i>	4,986,389	5,044,574

With the establishment of the NICS, background checks were required for the first time in connection with the purchase of long guns. Experience has shown that there are significantly more NICS inquiries for long gun purchases than for handgun purchases, as illustrated below.



Note: NICS inquiries require information as to whether the purchase is for a long gun, handgun or both. NICS does not include information pertaining to the number, make, model or serial number of the firearm(s) being purchased.

Immediate Proceeds – There is No Disqualifying Information in the NICS

Of the total 5,044,574 NICS checks handled at the federal level, 4,890,399 were processed through the Call Center, where 3,494,311 (72 percent) resulted in an immediate proceed determination to the FFL.⁴ This indicates that no records regarding the prospective buyer have been located by the NICS, and that the Brady Act does not prohibit transfer of the gun. It takes 30 seconds or less to provide an immediate proceed after information is entered into NICS.

⁴The remaining 154,175 NICS checks were processed through the FBI's Operations Center. These include overflow calls from the Call Center, processing of permit checks, and initial searches from FFLs in POC states that experience difficulty with their state system.

Delays—There is Potentially Disqualifying Information in the NICS

The other 28 percent of NICS checks are delayed because additional time is required to determine whether a firearm purchaser is prohibited from possessing a firearm. If information needed to finish the background check is available electronically, the background check is completed within two hours. Of the NICS checks for which additional information is required, 80 percent are completed within two hours after performing additional electronic checks. In other words, approximately 95 percent of all NICS checks are completed within two hours.

The remaining five percent of checks cannot be completed electronically and require more time to finish. The FBI must contact the local or state entity that has the information usually disposition information about an arrest, to complete the record. For example, the check of criminal history records, which are comprised primarily of state submissions, is a critical element of a NICS check. Usually, these records contain information about an arrest, the crime charged, and whether or not the person was found guilty of the crime. Sometimes, however, the criminal history record will only show an arrest without showing the disposition of that arrest (that is, whether the arrest resulted in a conviction). Under current federal law, an arrest alone is insufficient to disqualify a prospective purchaser from obtaining a firearm. Therefore, final disposition information from the states is critical to the NICS.

The first year of NICS operation demonstrated the connection between the lack of state arrest disposition information and the delays in NICS responses. When the NICS shows a potentially disqualifying criminal history record for a prospective purchaser but does not have electronic access to final disposition information, a NICS examiner must take steps to obtain that information from nonelectronic sources often requiring direct contact with the local court where the information is held. The ability to obtain the required disposition information depends on several factors, including whether the court is open (courts are typically closed on weekends), the availability of the court clerk to assist, and accessibility of the disposition information. For these reasons, the Brady Act allows the NICS three business days to complete a check.

It is significant that the Brady Act allows the NICS three business days to complete a check, rather than three days or 72 hours. A 72-hour rule would mean that, if a purchase were initiated on a Saturday morning and arrest disposition information was needed, the FBI would have approximately eight business hours—on Monday—to obtain this information in order to complete the check. Of the 89,836 NICS denials issued by the FBI during the first year of NICS operation, over 13,000 or 15 percent would not have been issued if the law allowed only 72 hours to complete a check instead of three business days.

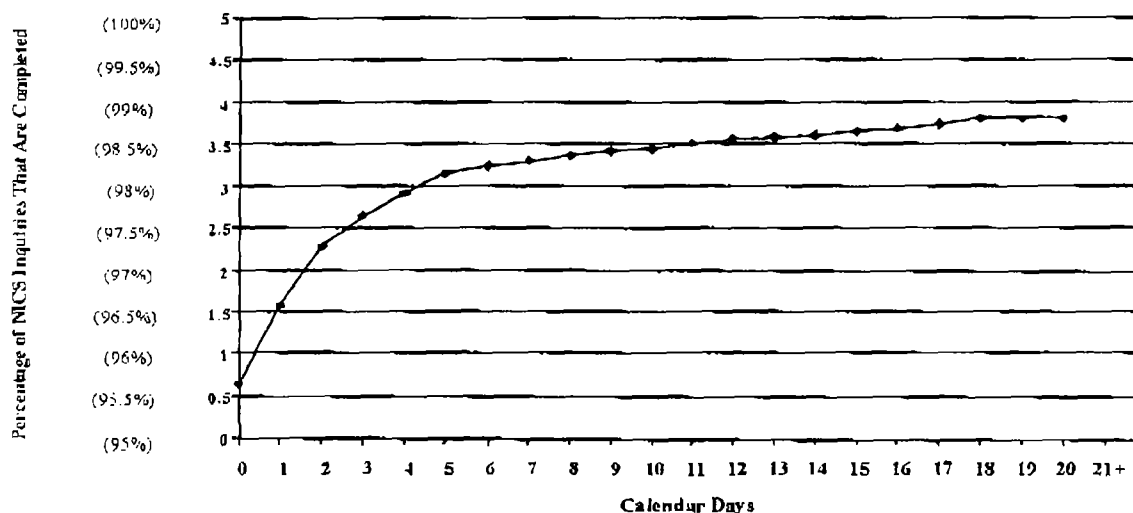
Some examples illustrate the impact of a 72-hour rule. The following denied persons, who tried to buy a gun on Saturday in past months, would not have been stopped from purchasing a firearm: a person convicted of rape in Virginia who tried to buy a gun on Saturday, May 15, 1999; a person convicted in Texas of Aggravated Kidnaping with Attempt to Rape a Child who tried to buy a gun on Saturday, February 27, 1999; and a person convicted of domestic violence in Kansas who tried to buy a gun on Saturday, January 30, 1999.

Reducing the time limit for checks from three business days to lesser periods, such as 48 hours or 24 hours, would mean a corresponding decrease in the ability of the NICS to prevent unlawful purchases. Of the FBI NICS denials during the first year, 21,354 or 24 percent would not have been stopped if a 48-hour limit had been in place and 33,992 or 38 percent would not have been stopped if a 24-hour limit had been in place.

Default Proceeds—Although There is Potentially Disqualifying Information in the NICS, Three Business Days have Passed Since the NICS Check was Initiated

A portion of the five percent of NICS checks that require more than two hours to complete cannot be completed within the three-business day time period currently provided under the Brady Act. The data regarding the time where checks cannot be completed in two hours is illustrated in the graph below:

Allocation of the Five Percent of NICS Inquiries That Are Not Completed in Two Hours



Note: 95% of all inquiries are completed within two hours. This chart represents the five percent of inquiries not completed within two hours.

As soon as the NICS examiner receives information to complete the check—such as the disposition of an arrest—contact is immediately made with the relevant FFL to provide the result of the NICS check, whether or not within the statutory three business day period. However, the Brady Act does not prohibit FFLs from transferring firearms after three business days even if the check is incomplete.

These situations are called default proceeds, because the FBI does not actually issue a proceed for the firearms transfer. Rather, the FBI provides the FFL with information that efforts are continuing to obtain data to complete the background check. When a final disposition is un retrievable within the three business days, the NICS Operations Center contacts and advises the FFL verbally through a prepared script that the NICS is still in the process of reviewing the matter and cannot give either a proceed or a denial response for the sale. The FFL is also advised that if they are not contacted by the NICS by the close of business that day, the Brady Act does not prohibit the transfer of the firearm on the following day or at any time within 30 days. Additionally, the FFL is advised that the NICS will continue to review the matter for two more weeks and will contact the FFL within that time if the NICS discovers definitive information regarding the transaction. Sometimes, the FBI will receive information such as a disposition of an arrest after the three business days indicates the purchaser is prohibited from purchasing or possessing a firearm. The FBI will contact the FFL to determine whether or not the firearm has been transferred.

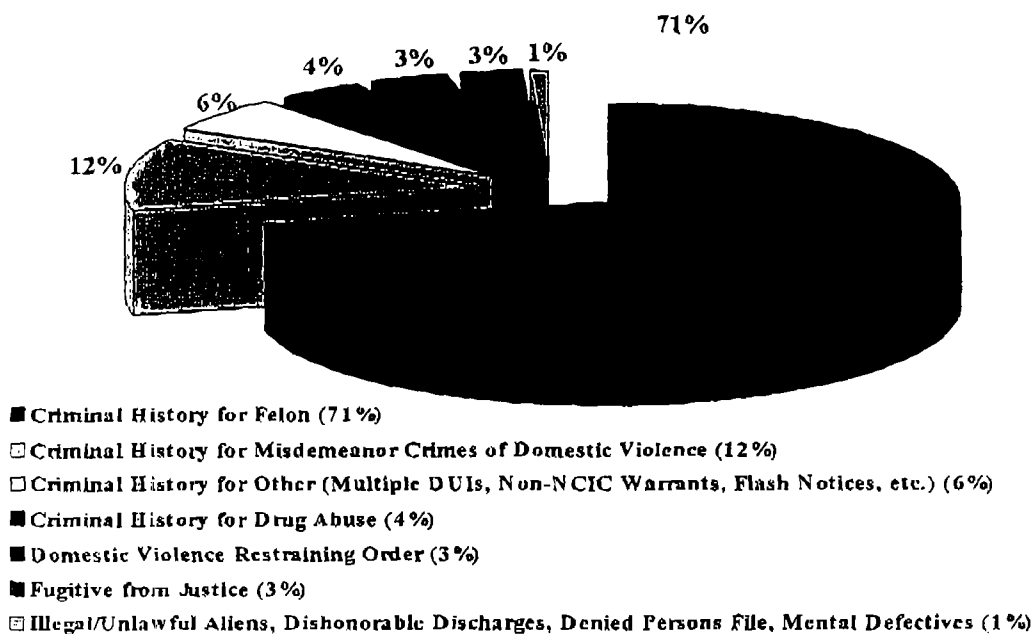
Retrievals

When the FBI determines that an FFL has already transferred the firearm to an individual determined by the NICS to be a prohibited person, the FBI notifies both the ATF and local law enforcement where the firearm was sold (or where the purchaser lives, if different), that a prohibited person received a firearm. During the first year of NICS operations, there were 3,849 occasions where information demonstrating a purchaser was prohibited was received after three business days, and it was determined that the firearm had been transferred to the purchaser, thus necessitating local law enforcement or ATF having to retrieve the firearm(s) from the prohibited person.

Denials

Since November 30, 1998, the FBI and the state POCs each have performed approximately one-half of the NICS checks. Even though the FBI tracks the number of denials that it issues, the FBI does not routinely receive information about denials from the state POCs. In the first year of NICS operation, the FBI blocked 89,836 illegal gun sales, a denial rate of about two percent. Based on the information received from individual states, the FBI estimates that a comparable number of denials have been issued by the state POCs, for an estimated total of 179,000 denials under the permanent provisions of the Brady Act.⁵ The FBI denials by prohibited category are illustrated as follows:

FBI Percentage of Denials by Category



⁵The denial calculation basis now used by the NICS eliminates a software flaw that, in limited circumstances, previously counted an original denial and a subsequent entry in the same record as two separate denials.

As reflected by the preceding chart, the overwhelming majority of NICS denials by the FBI are for people with criminal convictions. These includes individuals who have been convicted of a felony, a misdemeanor crime of domestic violence, or drug crimes that establish illegal drug use or drug addiction. Detailed information on each denial transaction is referred to ATF for investigation.

Dispositions

In trying to prevent as many prohibited people with disqualifying information as possible from obtaining firearms, the FBI is continuing to work with the states on improving NICS' direct access to state final disposition information, and to assist states in improving the accuracy and completeness of the records that are available to the NICS system for background checks. In addition, FBI representatives have been attending state court clerk conferences to encourage states to expeditiously provide the needed disposition information.⁶ Finally, because POC states have access to more records containing dispositions, the FBI is working to encourage more states to serve as POCs.

Additional time beyond the current three business days would improve the ability of NICS to obtain information on prohibited persons before a transfer of a firearm takes place.

Appeals

When an individual is denied a firearms transfer on the basis of a NICS check, that person may appeal the decision directly to the FBI. A critical measure of the accuracy of NICS background checks is the number of appeals that have been generated, and more importantly, the number of decisions that have been overturned on appeal. Regarding the 89,836 denials issued by the FBI from November 30, 1998 through December 31, 1999, the FBI has received 15,505 appeals, representing 17 percent of the denials. Denials have been sustained on 10,895 appeals while 2,913 appeals have resulted in the denial being overturned. Of those overturned upon appeal, approximately 46 percent were the result of information missing from the original record, such as an expungement or restoration of rights. As of December 31, 1999, 1,697 appeals were in various stages of the review process.

⁶Some state court systems have expressed significant difficulties in responding to NICS requests for information. Some courts are seeking reimbursement from the NICS for the costs of locating disposition information. Unfortunately, this is not an expense for which the NICS can currently provide reimbursement.

NICS SYSTEM AVAILABILITY AND DEVELOPMENT

During July 1999, the FBI replaced two computer systems that are integral to the NICS operation and that interface with the NICS. One of the new systems, the National Crime Information Center (NCIC) 2000, which includes information on wanted persons, persons under protective orders, and others, was implemented on July 11, 1999. Because NCIC 2000 provides enhanced name search capabilities, it is very beneficial to the NICS process.

The second new system, the Integrated Automated Fingerprint Identification System (IAFIS) was interfaced with the NCIC 2000 and NICS on July 28, 1999. The IAFIS was developed to support the electronic capture, submission, processing, matching, and storage of fingerprints received by the FBI. The IAFIS will enhance system capabilities and reliability, provide rapid response time, provide electronic submission and transfer of fingerprint and criminal history information, conduct remote searches of FBI criminal and fingerprint database information, and enhance latent fingerprint search capabilities.

Implementation of these two new systems will significantly enhance law enforcement's ability to identify the perpetrators of criminal activity. Bringing these two systems on-line however, did have some adverse effect on NICS availability.

System Availability

NICS system availability generally improved from the date of first operation through June 1999. As previously discussed, in July 1999, the FBI replaced two major computer systems; both of which interface with the NICS. Implementation of these two new systems created some periods of system unavailability. The FBI is continuing to refine these systems and to eliminate all periods of unavailability. The table below summarizes the availability for NICS during its first 13 months of operation.

MONTH	TOTAL CALL CENTER AVAILABILITY ⁷	TOTAL POINT OF CONTACT STATE AVAILABILITY ⁸
<i>December '98</i>	97.24%	97.74%
<i>January '99</i>	94.82%	95.58%
<i>February '99</i>	97.48%	96.71%
<i>March '99</i>	98.41%	98.63%
<i>April '99</i>	98.89%	98.94%
<i>May '99</i>	98.50%	98.54%
<i>June '99</i>	99.54%	99.62%
<i>July '99</i>	92.04%	92.67%
<i>August '99</i>	95.20%	95.56%
<i>September '99</i>	95.81%	95.97%
<i>October '99</i>	97.71%	97.94%
<i>November '99</i>	94.37%	94.54%
<i>December '99</i>	95.32%	95.47%
<i>Average</i>	96.56%	96.76%

⁷Availability through the NICS system at the FBI's call center in Moundsville, West Virginia, and Uniontown, Pennsylvania.

⁸Availability recorded through the NICS system in the states that serve as POCs.

System Development

A future enhancement to the processing of the NICS background checks includes the utilization of electronic access or unassisted search, whereby FFLs will query the NICS through a direct electronic line. It is anticipated that a pilot system could be in place as early as at the beginning of year 2001.

The NICS system was Y2K tested and found to be compliant, which was demonstrated with the successful rollover into the new millennium. Continual efforts are being made to ensure that the NICS is operating to its full capacity.

PRIVACY AND SECURITY ISSUES

Because the NICS contains an extensive amount of sensitive personal information about individual criminal histories and other disqualifying information, there is the potential that the system will be used improperly. Congress recognized this possibility and required the Attorney General to ensure the privacy and security of the system. To fulfill this responsibility, instances of fraud and abuse must be identified. Audits of those entities and individuals who have access to the system are conducted to detect and punish fraud. To perform audits, the FBI must have access not only to the records of prospective firearms purchasers who are denied, but also at least for a limited period of time to records of firearms purchasers who are approved.

Basic security audits are essential to preventing the invasions of privacy that would result from misuse of the system. Audits allow the FBI, working in conjunction with the ATF, to detect both persons who misuse the system to perform unauthorized background checks and felons who assume the identity of a qualified person to buy firearms illegally. Audits also enable the FBI to determine whether FFL submit false names to evade the name check system. For instance, a corrupt FFL may send in one name known to have no disqualifying record for a NICS check, but record a different name on the firearms transaction record. If the record of the name sent to the system were destroyed immediately, there would be no way of proving that the dealer had deliberately evaded the background check system by sending the NICS a false name. The audit log contains information relating to each NICS background check requested by FFLs and allows the FBI to audit use of the system by FFLs and POCs. The audit log also allows the FBI to perform quality control checks on the system's operation by a review of the accuracy of the responses given by the NICS record examiners to FFLs.

Thus far, NICS audits conducted by the FBI and ATF based on the current NICS rule (the interim audit system) have uncovered multiple instances involving improper use of the system. For example, the audit log has helped the FBI to identify an FFL who was transferring firearms without doing background checks and has aided in identifying several possible straw purchases forwarded to the ATF for investigation.⁹ The audits have also been used to identify FFLs who have been conducting NICS inquiries on persons outside of the context of a gun transfer.

⁹A straw purchase includes the situation in which the person acquiring the firearm purchases it on behalf of a person who has previously been denied a purchase.

The DOJ NICS Regulation Final Rule was published in the *Federal Register* on October 30, 1998. This final rule provides that the FBI may retain records of all NICS transactions for six months, and that the FBI will work to reduce the retention period to the shortest practicable period of time (less than six months) that would allow basic security audits of the NICS. The final rule also provides that records be retained for a longer period if necessary to pursue identified cases of misuse of the system. In addition, the final rule mandates that information in the audit log be used only for the purpose of conducting audits of the use and performance of the system or pursuing cases of misuse of the system.

SUCCESS STORIES

As a result of the concerted efforts of NICS personnel and law enforcement officials at all levels of government, firearms transfers to non-prohibited purchasers have been accomplished with minimal inconvenience to both the FFL and purchaser. At the same time, numerous persons prohibited by law from possessing a firearm have been denied a firearm. The following are some examples of instances within different prohibited categories, where NICS has been successful in obtaining relevant information to deny a firearms transfer.

The NICS Has Assisted in Capturing Wanted Persons

The NICS has prevented more than 2,400 fugitives from purchasing firearms. In addition, the FBI's NICS examiners have contacted local, state, and federal law enforcement agencies to provide information which often resulted in the fugitives' apprehension. The following recent examples illustrate the success of the NICS in helping capture fugitives:

- In December 1999, an individual in Texas who was attempting to redeem a firearm, was found to be under indictment and had an outstanding warrant for a felony charge of indecency with a child involving sexual contact. NICS notified the Wichita Fall Sheriff's Office which would extradite the individual to the Big Lake Sheriff's who had issued the warrant.
- On November 30, 1999, an individual tried to purchase a firearm in Corinth, Mississippi. NICS identified the individual was wanted for escaping from a prison in Georgia. In obtaining the individual's address from the FFL, the NICS notified the Georgia Department of Corrections which contacted Mississippi law enforcement and the individual was captured.
- On November 30, 1999, an individual with an active warrant for several offenses in Maryland attempted to purchase a firearm in Kentucky. The subject was apprehended and is awaiting extradition to Maryland.
- On November 30, 1999, through a NICS transaction it was found that an employee of an FFL in Missouri was attempting to purchase a firearm. The employee had an active warrant in Jefferson County, Missouri. Since the FFL was out of jurisdiction for the Jefferson County Sheriff's Office, the Joplin Police Department was notified and the subject was taken into custody.
- On November 26, 1999, an individual with two active warrants for a probation violation on charges of controlled substance, drug trafficking and unlawful use of a weapon attempted to purchase a firearm. Within ten minutes of NICS initiating the transaction, the Clarksburg, West Virginia, Police Department obtained the individual's address and apprehended the subject.

- On November 23, 1999, an individual with an active warrant for a probation violation attempted to purchase a firearm. The NICS obtained the subject's address from the FFL and notified the Umatilla County, Oregon, Sheriff's Office. The individual was apprehended in a sting operation at the FFL within an hour of the NICS processing the transaction.
- On November 20, 1999, Oklahoma law enforcement agency confirmed an active warrant on an individual attempting to purchase a firearm. Authorities immediately responded and the individual was apprehended within 20 minutes.
- On October 11, 1999, the NICS notified El Reno, Oklahoma, law enforcement of an individual with an active warrant. The individual was apprehended. The Oklahoma law enforcement agency who worked with the NICS in apprehending the individual informed the examiner that law enforcement officers have apprehended several individuals due to the NICS program.
- On August 21, 1999, an individual wanted for military desertion from the United States Navy was apprehended by the Minnesota State Police the same day.
- On August 21, 1999, an individual with an active warrant was attempting to purchase a firearm. Law enforcement confirmed the warrant. Within one hour NICS was advised that the subject was apprehended while trying to purchase a firearm at another FFL.
- On August 21, 1999, a fugitive from justice was apprehended within an hour of NICS contacting the Minnesota state police as a result of an attempted gun purchase. This individual had a valid warrant with the United States Navy and was later extradited to the United States Naval Authorities.
- An individual with an active warrant attempted to purchase a firearm. The originating agency of the warrant was notified. NICS notified the originating agency and later received a call from the arresting agency thanking the FBI for their efforts. The subject had been apprehended and was being extradited back to Florida.

Mental Defectives Prevented from Purchasing a Firearm

- As a result of a NICS transaction, an escapee from a mental health facility, involuntarily committed for suicidal attempts, was apprehended by local authorities.
- An individual who had been involuntarily committed to a state hospital on three occasions for threats against elected officials in the state of Washington was denied the purchase of a firearm.

Individuals Who Had Controlled Substance Related Charges Prevented from Purchasing a Firearm

- An individual wanted for felony marijuana and cocaine drug ring involvements in Texas was arrested.
- An individual from Louisiana with a drug conviction within the past year and on probation was denied from buying a firearm. Information on his attempt to purchase a firearm was turned over to his probation officer.

Individuals With Criminal Domestic Violence History Prevented From Purchasing a Firearm

- On December 31, 1999, an individual attempted to purchase a firearm in Mississippi and was discovered to be using a false name. In researching the case, the NICS discovered the individual was under a domestic violence indictment in California. NICS notified the District Attorney's Office.
- An individual in Florida with an outstanding warrant for domestic battery and controlled dangerous substance (cocaine) was arrested.

Dishonorably Discharged Individuals Prevented From Purchasing a Firearm

- An individual who was charged with rape/sodomy of a child and was dishonorably discharged from the military was denied a firearm.
- An individual in the military was convicted of stealing by force and violence and dishonorably discharged was prevented from purchasing a gun.

Illegal Aliens Prevented From Purchasing a Firearm

- An individual who had been arrested on three separate occasions by United States Immigration and Naturalization Service (USINS) in Laredo, Texas, was apprehended.

USINS Deported Felons Prevented From Purchasing Firearms

- An arrest was made of a deportable individual by the Portland, Oregon, USINS and returned to Mexico.

Other Individuals Prevented from Purchasing a Firearm

- On July 16, 1999, NICS received a call from a department store in Jacksonville, Texas, regarding some juveniles looking to purchase explosive devices. The local authorities were notified and the youths were questioned. NICS received thanks for helping to prevent a potentially dangerous situation.
- An individual in Alaska was using a deceased brother's identification to attempt to purchase a firearm. The individual was apprehended for various charges and questioned regarding the death of his brother.

COMMENDATIONS

The NICS Program has received many commendations for denying firearms to ineligible persons as well as other NICS initiatives.

- Holt and Associates, Auctioneers from Colorado Springs, Colorado, stated: "We have had the opportunity to use your NICS Program Services. I am prompted to advise you that the reception was outstanding and that the personnel who assisted were most helpful, courteous, and did make our job much easier. We were conducting an estate auction that included a collection of firearms, and our buyers were from several states. This could have caused a great deal of difficulty for the buyers. I want you to know you have a great staff. In this busy world, too many people don't stop to say - thanks, good job."
- A licensed gun dealer in Kansas wrote to commend the NICS on its performance running checks for him at a recent gun show: "First of all, I would compliment you for the professionalism that your people extend to us.... This past weekend I attended a gun show in Wichita, Kansas. During that period, I ran 40-50 checks with several delays. I was quite surprised at how fast these delays were investigated. The customers also made comments as to how fast the delays were taken care of.... Again, thanks for a job well done."
- The Chief Information Officer from the Administrative Office of Courts in Montgomery, Alabama, wrote a letter dated July 11, 1999 to the NICS Program Office complimenting two members of the NICS staff who attended the Alabama Court Clerks Conference regarding the receipt of dispositions. An excerpt from this letter follows:

"...the two representatives were there to give a presentation on NICS and to answer questions from the clerks. As you probably know, the NICS program in Alabama has been received with a lack of enthusiasm and the reception given to the two representatives when they arrived on Thursday was cool. Despite this start, your two representatives worked diligently to change the situation and in just a day and a half they had made remarkable progress. Our clerks were sorry to see them leave so soon and they were invited back. The problems of dispositions for NICS in the State of Alabama are not over. However, the attitude has definitely changed and I anticipate that increased cooperation will be seen by your staff. Thank you for devoting some personal attention to this problem.

The two representatives were as confident as any program representatives I have seen. They simply could not be flustered even by the most pointed question or comment. They did not let a potential negative situation overwhelm them but,

rather, handled it with tenacity and style...I would like to extend the compliments of the Alabama Judicial System to them."

RECOMMENDATIONS

Based on the first year of operation, it is clear that the ability of the NICS to stop prohibited persons from acquiring firearms would be improved by:

- more time to complete checks when records are not electronically available;
- a means to help states with the cost of performing as a POC state;
- a means to assist state courts with the costs of seeking disposition information;
- additional funds for NCHIP to improve NICS access to records; and
- longer retention of records period to enable the NICS Program Office to review examiner accuracy, assure system privacy, and detect fraud and misuse of the system. Currently, the retention period is 180 days. A notice of proposed rulemaking is being finalized that reduces the retention period to 90 days. The Advisory Policy Board concurs with the FBI to have a one-year retention of records.

CONCLUSION

The NICS has been working successfully for more than a year to ensure that prohibited persons do not acquire firearms from licensed gun dealers. It has prevented the acquisition of firearms by an estimated 179,000 criminals, fugitives, and others who should not have firearms. The NICS staff has provided timely and effective customer service to other local, state and federal law enforcement agencies, FFLs, and other users of NICS, and has ensured the timely transfer of firearms to individuals who are not prohibited by law from possessing a firearm.

Partnership with the states has been successful through the transition from design and development to the operation of the NICS. The cooperation with the states continues via conferences, seminars, and telephonic communications for future enhancements to the NICS.

An excellent, detailed baseline of statistical data has been collected which will help the NICS Program Office in evaluating and improving performance of the NICS. By assuring that effective audits of the system are conducted and by assuring that adequate time and resources are provided to complete thorough checks, the NICS will be able to perform more effectively in the future.

APPENDIX A: POINT OF CONTACT (POC) STATES AND TERRITORIES

- **Full Participants (15):** States which conduct NICS checks for all firearms purchases and for permits for handguns and long guns:

Arizona	Nevada
California	New Jersey
Colorado	Pennsylvania
Connecticut	Tennessee
Florida	Utah
Georgia	Vermont
Hawaii	Virginia
Illinois	

(NICS performs pre-pawn checks for Florida.)

- **Partial Participants (11):** States which perform checks for handgun permits, while the FBI performs NICS checks for long gun purchases:

Iowa	New York
Michigan	North Carolina
Nebraska	

States which perform NICS checks for handgun purchases, while the FBI performs NICS checks for long gun purchases:

Indiana	Oregon
Maryland	Washington
New Hampshire	Wisconsin

- **Non-Participants (27):** The FBI performs NICS checks on both handguns and long guns for:

Alabama	New Mexico
Alaska	North Dakota
Arkansas	Ohio
Delaware	Oklahoma
Idaho	Puerto Rico
Kansas	Rhode Island
Kentucky	South Carolina
Louisiana	South Dakota
Maine	Texas
Massachusetts	U.S. Virgin Islands
Minnesota	West Virginia
Mississippi	Wyoming
Missouri	Washington, D.C.
Montana	

APPENDIX B: NICS Transaction Flow

