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United States Senate

COMMITTEE ON VETERANS' AFFAIRS
WASHINGTON, DC 20510

December 23, 2009

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

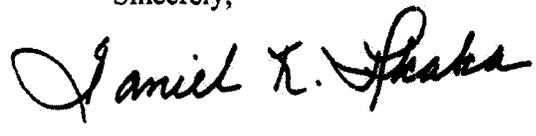
Dear Attorney General Holder:

Enclosed is a letter, recently received from the Social Security Administration, which includes an analysis by SSA explaining why, unlike the Department of Veterans Affairs, the SSA does not report any information to the National Instant Criminal Background Check System pursuant to the Brady Act. Part of the SSA analysis involves a discussion which seeks to differentiate between the practices of VA and SSA in appointing a person to receive and manage benefit payments when there is a determination that a beneficiary is not in a position to manage the funds.

I would appreciate if you would have appropriate Department staff review the SSA analysis and advise me if Department of Justice is satisfied that the approaches of the two agencies are sufficiently different so as to justify a different response under the Brady Act.

Thank you for your attention to this matter. I look forward to hearing your opinion on the matter, along with any recommendations you may have.

Sincerely,



Daniel K. Akaka
Chairman

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SOCIAL SECURITY

Office of the General Counsel

June 12, 2009

Mr. John Strong
NICS Section Chief
Federal Bureau of Investigation
1000 Custer Hollow Road
Clarksburg, WV 26302

Re: NICS Improvement Amendments Act

Dear Mr. Strong:

As you are aware, we recently completed a Federal Agency Survey, which poses questions regarding the requirement that the NICS Improvement Amendments Act of 2007 (NIAA) imposes on Federal agencies to share qualifying information with the National Instant Criminal Background Check System (NICS). After carefully reviewing the matter, we concluded that the Social Security Administration (SSA) does not possess any relevant information for NICS purposes. In this letter, we provide our legal basis for this conclusion.

The Brady Act prohibits ten categories of individuals from receiving or possessing firearms. 18 U.S.C. §§ 922(g) and (n). Of those ten categories, only two bear any reasonable relation to the types of records SSA possesses: 1) 18 U.S.C. § 922(g)(3) applies to individuals who are unlawful users of or addicted to any controlled substance; and 2) 18 U.S.C. § 922(g)(4) applies to individuals who have been adjudicated as a "mental defective." We have focused exclusively on these two subsections of 18 U.S.C. § 922(g).

A. Section 922(g)(3) of the Brady Act

The regulations promulgated to implement this statutory provision define the phrase "unlawful user of or addicted to any controlled substance" as "a person who uses a controlled substance and has lost the power of self control with reference to the use of a controlled substance" and a "person who is a current user of a controlled substance" in a manner not prescribed by a physician, where "the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct." 27 C.F.R. § 478.11. In adjudicating disability claims, SSA does not determine whether a claimant has "lost the power of self control with reference to the use of a controlled substance." On the contrary, SSA's focus is on whether the claimant is capable of engaging in substantial gainful activity despite his or her impairments.

With regard to claims that involve an impairment that results from the use of drugs and alcohol, SSA's claims are coded as involving either alcoholism only, drug addiction only, or both. Those claims that are coded as involving alcohol only would clearly be inappropriate for inclusion in the NICS, since the term "controlled substance" does not include distilled spirits, wine, or malt

beverages. 21 U.S.C. § 802(6); see also 27 U.S.C. § 478.11. With regard to individuals whose claims are coded as involving either drugs only or both alcohol and drugs, we have no way to determine from the coding anything about the type of drug used, the extent of the use, or how recent the use is without physically examining each file. In fact, for SSA's purposes, nicotine is considered a "substance" subject to abuse, and the claims of some individuals are classified as involving drug use simply because they smoke cigarettes.¹ The Controlled Substances Act, on the other hand, specifically excludes tobacco from its definition of "controlled substances." 21 U.S.C. § 802(6); see also 27 U.S.C. § 478.11. Thus, SSA cannot electronically identify these cases: it would have to manually review each and every file involving the use of some drug to determine the extent, timing of use, or type of drug used.² This would be an enormous operational burden on SSA's already-strained resources.

Although, prospectively, SSA could theoretically begin coding cases using categories that would align with the section 922(g)(3) criteria, it would still face the challenge of determining whether the substance use has occurred recently enough to indicate that the individual is actively engaged in such conduct. This would be difficult in view of the amount of time that generally elapses between the dates of medical records used in arriving at the decision and the date of the decision itself. For these reasons, we are of the opinion that we have no relevant records to share that fall under section 922(g)(3).

B. Section 922(g)(4) of the Brady Act

1. There is a clear distinction between managing one's own affairs and managing Social Security benefit payments.

We have concluded that a Social Security claimant who has been found disabled due to a mental impairment and who receives his benefits through a representative payee does not constitute a "mental defective" for purposes of 18 U.S.C. § 922(g)(4).

The Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) regulations, in relevant part, define the term "adjudicated as a mental defective" as follows:

A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

- (1) Is a danger to himself or to others; or
- (2) Lacks the mental capacity to contract or manage his own affairs.

¹ This is consistent with the classification found in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), which includes abusers of nicotine in the category of "substance use disorders." See DSM-IV, pp. 176-177.

² In calendar year 2007 alone, over 13,000 initial determinations had code indicators for either drugs only or both drugs and alcohol.

27 C.F.R. § 478.11.

We believe that the criteria of lacking the “mental capacity to contract or manage his own affairs” is significantly different from SSA’s criteria for representative payee of being “mentally incapable of managing benefit payments; or ... [p]hysically incapable of managing or directing the management of his or her benefit payments.” The ATF criteria focuses on mental capacity to manage the broad range of “affairs,” while the SSA’s representative payee criteria considers both mental and physical capacity with a narrow focus on managing benefit payments.

The online version of the Oxford English Dictionary (available at <http://dictionary.oxford.com/oxford/entry/50003727?>) defines “affair” (especially when used in the plural, as in ATF’s regulation), to mean the “[o]rdinary business or pursuits of life.” The word also means “[a] thing that concerns any one; a concern, a matter” or “[w]hat one has to do, . . . what has to be done.” *Id.* The word “affairs” is therefore a more inclusive term, and brings within its scope and meaning almost anything that a person may do. SSA’s concern when determining the need for a representative payee, however, is much narrower and focuses only on whether the beneficiary is capable of managing or directing the management of his or her benefit payments. 20 C.F.R. §§ 404.2010(a)(1), 416.610(a)(1). Thus, a person who is unable to manage his or her own “affairs” would have many more limitations than a person who only has difficulty with financial matters. While these two groups may overlap to some extent, many individuals disabled due to a mental impairment with a representative payee due to an incapability of managing benefit payments would not meet the ATF’s definition of mental defective.

For purposes of illustration only, consider the following example. A beneficiary suffers from severe depression (the basis of her disability) to the point that she is unable to focus sufficiently to go through her mail and pay bills. She continues to live in her own apartment, obtain food, and perform other daily functions. The beneficiary’s son comes to SSA requesting that he be made the representative payee for his mother because she cannot manage her money and pay bills. After gathering medical and lay evidence, SSA determines the beneficiary is incapable of managing money and needs a representative payee. Although SSA has determined this beneficiary to be incapable of managing or directing management of her funds, she would not seem to meet the definition of a mental defective (incapable of managing her affairs) in the sense contemplated by 27 C.F.R. § 478.11.

Generally, SSA appoints a representative payee if we have determined that the beneficiary is not able to manage or direct the management of benefit payments in his or her interest. 20 C.F.R. §§ 404.2001(a) and 416.601(a). In determining the need for a representative payee, SSA simply considers whether a beneficiary is legally incompetent, or is “mentally incapable of managing benefit payments” or is “physically incapable of managing or directing the management of his or her benefit payments.” 20 C.F.R. §§ 404.2010(a) and 416.610(a).³ SSA also will consider the opinion of a physician or other medical professional “as to whether the beneficiary is able to manage or direct the management of benefit payments.” 20 C.F.R. §§ 404.2015(c) and 416.615(c); Program Operations Manual System (POMS) § GN 00502.020A.1. SSA’s POMS

³ Beneficiaries under 18 are generally paid through a representative payee, with certain exceptions. 20 C.F.R. §§ 404.2010(b), 416.610(b).

further indicates that anything which helps the adjudicator “understand the beneficiary’s ability to manage funds is acceptable evidence of capability and should be considered.” POMS § GN 00502.020B. Thus, SSA’s decision to appoint a representative payee may not necessarily be based on the presence of mental illness or disease, but instead, could be based on a physical condition affecting the beneficiary’s ability to manage benefit payments. Some of the questions asked in determining capability clearly indicate that more than mental capacity is considered. For instance, the POMS at GN 00502.050B. sets forth procedure for developing lay evidence on capability and includes questions such as “Do you ever go to the bank?” and “If you go to the store to buy groceries, how do you get there?”

In promulgating its regulations defining the categories of individuals who are prohibited from receiving or possessing firearms, the ATF relied on existing regulations promulgated by the Department of Veterans Affairs (VA) in developing the definition of the phrase “adjudicated as a mental defective.” The preamble to the ATF’s regulations states that the VA “correctly interpreted the proposed definition of ‘adjudicated as a mental defective’ to mean that any person who is found incompetent by the [VA] under 38 CFR 3.353 will be considered to have been ‘adjudicated as a mental defective. . . .’” 62 Fed. Reg. 34634, 34637 (1997).

The VA defines a mentally incompetent person as “one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation” (emphasis supplied). 38 C.F.R. § 3.353(a). Significantly, as is evident in the underlined phrase above, the VA recognizes that consideration of a beneficiary’s ability to manage his or her funds is only one factor that is examined in determining a person’s ability to manage his or her “own affairs.” As discussed above, that conclusion is also consistent with the accepted definition of the word “affair.” The VA’s regulation also recognizes that, if there is “evidence indicating that the beneficiary may be capable of administering the funds payable without limitation,” such evidence will be referred to the rating agency, who will consider this evidence “together with all other evidence of record, to determine whether its prior determination of incompetency should remain in effect” (emphasis supplied). 38 C.F.R. § 3.353(b)(3).

The VA has recognized the distinction between the ability to manage one’s affairs and the ability to manage one’s funds. In 1993, the VA amended 38 C.F.R. § 3.353 to remove an inconsistency between the definition of “mental incompetency” and the language the same regulation used to describe the presumption in favor of competency. Before the amendment, 38 C.F.R. § 3.353(d) required a presumption of competency in situations where doubt arose as to whether a beneficiary was capable of “administering his or her funds.” The 1993 amendment changed this language to track the definition of “mental incompetency” at 38 C.F.R. § 3.353(a). Accordingly, 38 C.F.R. § 3.353(d) now reads as follows:

Where reasonable doubt arises regarding a beneficiary’s mental capacity to contract or to manage his or her own affairs, including the disbursement of funds without limitation, such doubt will be resolved in favor of competency.

In explaining this amendment, the VA stated that “limit[ing] consideration under § 3.353(d) only to the administration of funds creates internal inconsistency within the regulation and could lead to discrepancies in its application in individual cases.” 58 Fed.

Reg. 37856 (1993). This statement reflects the VA's own recognition that determining whether an individual can administer funds is a narrower inquiry than whether he can manage his or her own affairs.

Finally, the factual scenario in Kumar v. Glidden Co., 2006 WL 1049174 (E.D. Va. August 13, 2006) further illustrates this distinction. In Kumar, the plaintiff alleged mental incapacity in an effort to avoid application of the statute of limitations to bar her personal injury claim. In support of that allegation, Ms. Kumar demonstrated that she received her Social Security disability benefits through her mother as a representative payee, due to Ms. Kumar's problems with alcohol abuse. Id., at *2. Ms. Kumar thus claimed that her mental incapacity should toll the statute of limitations. Id., at *5. In rejecting Ms. Kumar's argument, the district court indicated that the purpose of requiring people with substance abuse problems to name a payee for disability benefits is to protect their own interests because "the individual is incapable of managing such benefits." Id., at *7. The court further determined that Ms. Kumar's inability to manage her Social Security benefits had "little to do with her ability to contact a lawyer, understand her legal rights, or file a lawsuit." Id., at *8. Moreover, earlier in the opinion, the court cited additional evidence demonstrating Ms. Kumar's ability to "look after her own affairs" despite an inability to manage her Social Security benefits, such as: keeping track of her son's medical appointments, communicating with her son's teachers, demonstrating awareness of her financial situation, and participating in the litigation at issue in the case. Id., at *6.

Kumar further illustrates the point that an SSA beneficiary's inability to manage benefit payments, by itself, is insufficient to establish that individual's inability to manage his or her own affairs. Thus, if SSA were to submit for NICS inclusion the names of all beneficiaries with mental impairments who have been assigned a representative payee, a significant number of those individuals would be wrongfully identified as lacking the mental capacity to manage their own affairs.

2. Physically examining each file would place an enormous burden on SSA's present workload and resources.

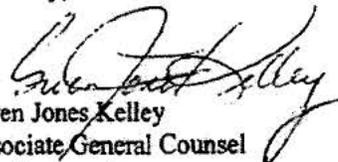
Arguably, SSA could investigate each case file of claimants receiving payments due to a mental impairment through a representative payee and make a determination regarding whether that individual meets the ATF's definition of lacking the capacity to manage one's own affairs. Such an effort would place an enormous burden on SSA's present workload and scarce resources. As of April 2008, SSA had over 1.6 million title II beneficiaries, over 1.2 million title XVI adult beneficiaries, and over 1.4 million title XVI children beneficiaries receiving benefits due to a mental impairment through a representative payee. Further complicating matters, our diagnostic coding does not reveal the specific basis for representative payee assignment.

Even aside from the tremendous burden this would place on SSA's resources, SSA employees are simply not trained to determine whether the evidence supports a determination that a beneficiary lacks the capacity to manage his or her own affairs. As has been discussed previously, the only issue presently being considered is whether the beneficiary lacks the ability to manage benefit payments. Requiring SSA employees to engage in this additional analysis, one that will potentially affect the beneficiary's constitutionally-protected rights, undoubtedly

would call for some type of training regarding what evidence is relevant to the determination. This burden makes the obvious point that in order to provide the information to NICS, the Agency would have to undertake an additional "adjudication related to the mental health of a person" with respect to 18 USC §§ 922(d)(4) and (g)(4) because the Agency currently does not make such a determination in administering the Social Security programs. 18 U.S.C. § 922 note. Thus, the Agency does not currently have "such information on persons for whom receipt of a firearm would violate" the Brady Act. Id. Requiring the agency to create such information would seem to go beyond the scope of this legislation.

Based on all of the foregoing, we continue to believe that we have no records to submit to the NICS. I hope this information is helpful to you. If you have any questions, please do not hesitate to contact me at your convenience.

Sincerely,



Gwen Jones Kelley
Associate General Counsel
for Program Law

THE WHITE HOUSE

WASHINGTON

January 16, 2013

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Improving Availability of Relevant Executive
Branch Records to the National Instant Criminal
Background Check System

Since it became operational in 1998, the National Instant Criminal Background Check System (NICS) has been an essential tool in the effort to ensure that individuals who are prohibited under Federal or State law from possessing firearms do not acquire them from Federal Firearms Licensees (FFLs). The ability of the NICS to determine quickly and effectively whether an individual is prohibited from possessing or receiving a firearm depends on the completeness and accuracy of the information made available to it by Federal, State, and tribal authorities.

The NICS Improvement Amendments Act of 2007 (NIAA) (Public Law 110-180) was a bipartisan effort to strengthen the NICS by increasing the quantity and quality of relevant records from Federal, State, and tribal authorities accessible by the system. Among its requirements, the NIAA mandated that executive departments and agencies (agencies) provide relevant information, including criminal history records, certain adjudications related to the mental health of a person, and other information, to databases accessible by the NICS. Much progress has been made to identify information generated by agencies that is relevant to determining whether a person is prohibited from receiving or possessing firearms, but more must be done. Greater participation by agencies in identifying records they possess that are relevant to determining whether an individual is prohibited from possessing a firearm and a

regularized process for submitting those records to the NICS will strengthen the accuracy and efficiency of the NICS, increasing public safety by keeping guns out of the hands of persons who cannot lawfully possess them.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. Improving the Availability of Records to the NICS. (a) Within 45 days of the date of this memorandum, and consistent with the process described in section 3 of this memorandum, the Department of Justice (DOJ) shall issue guidance to agencies regarding the identification and sharing of relevant Federal records and their submission to the NICS.

(b) Within 60 days of issuance of guidance pursuant to subsection (a) of this section, agencies shall submit a report to DOJ advising whether they possess relevant records, as set forth in the guidance, and setting forth an implementation plan for making information in those records available to the NICS, consistent with applicable law.

(c) In accordance with the authority and responsibility provided to the Attorney General by the Brady Handgun Violence Prevention Act (Public Law 103-159), as amended, the Attorney General, consistent with the process described in section 3 of this memorandum, shall resolve any disputes concerning whether agency records are relevant and should be made available to the NICS.

(d) To the extent they possess relevant records, as set forth in the guidance issued pursuant to subsection (a) of this section, agencies shall prioritize making those records available to the NICS on a regular and ongoing basis.

Sec. 2. Measuring Progress. (a) By October 1, 2013, and annually thereafter, agencies that possess relevant records shall submit a report to the President through the Attorney General describing:

(i) the relevant records possessed by the agency that can be shared with the NICS consistent with applicable law;

(ii) the number of those records submitted to databases accessible by the NICS during each reporting period;

(iii) the efforts made to increase the percentage of relevant records possessed by the agency that are submitted to databases accessible by the NICS;

(iv) any obstacles to increasing the percentage of records that are submitted to databases accessible by the NICS;

(v) for agencies that make qualifying adjudications related to the mental health of a person, the measures put in place to provide notice and programs for relief from disabilities as required under the NIAA;

(vi) the measures put in place to correct, modify, or remove records accessible by the NICS when the basis under which the record was made available no longer applies; and

(vii) additional steps that will be taken within 1 year of the report to improve the processes by which records are identified, made accessible, and corrected, modified, or removed.

(b) If an agency certifies in its annual report that it has made available to the NICS its relevant records that can be shared consistent with applicable law, and describes its plan to make new records available to the NICS and to update, modify, or remove existing records electronically no less often than quarterly as required by the NIAA, such agency will not be required to submit further annual reports. Instead, the agency will be required to submit an annual certification to DOJ, attesting that the agency continues to submit relevant records and has corrected, modified, or removed appropriate records.

Sec. 3. NICS Consultation and Coordination Working Group.
To ensure adequate agency input in the guidance required by section 1(a) of this memorandum, subsequent decisions about whether an agency possesses relevant records, and determinations concerning whether relevant records should be provided to the

NICS, there is established a NICS Consultation and Coordination Working Group (Working Group), to be chaired by the Attorney General or his designee.

(a) Membership. In addition to the Chair, the Working Group shall consist of representatives of the following agencies:

- (i) the Department of Defense;
- (ii) the Department of Health and Human Services;
- (iii) the Department of Transportation;
- (iv) the Department of Veterans Affairs;
- (v) the Department of Homeland Security;
- (vi) the Social Security Administration;
- (vii) the Office of Personnel Management;
- (viii) the Office of Management and Budget; and
- (ix) such other agencies or offices as the Chair may designate.

(b) Functions. The Working Group shall convene regularly and as needed to allow for consultation and coordination between DOJ and agencies affected by the Attorney General's implementation of the NIAA, including with respect to the guidance required by section 1(a) of this memorandum, subsequent decisions about whether an agency possesses relevant records, and determinations concerning whether relevant records should be provided to the NICS. The Working Group may also consider, as appropriate:

- (i) developing means and methods for identifying agency records deemed relevant by DOJ's guidance;
- (ii) addressing obstacles faced by agencies in making their relevant records available to the NICS;
- (iii) implementing notice and relief from disabilities programs; and

(iv) ensuring means to correct, modify, or remove records when the basis under which the record was made available no longer applies.

(c) Reporting. The Working Group will review the annual reports required by section 2(a) of this memorandum, and member agencies may append to the reports any material they deem appropriate, including an identification of any agency best practices that may be of assistance to States in supplying records to the NICS.

Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Independent agencies are strongly encouraged to comply with the requirements of this memorandum.

Sec. 5. Publication. The Attorney General is hereby authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to be "E. A. Tamm", written in a cursive style.



U.S. Department of Justice

Office of Legal Policy

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ST

Principal Deputy Assistant Attorney General

Washington, D.C. 20530

August 23, 2013

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DEPT OF JUSTICE
EXECUTIVE SECRETARIAT

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

FROM: Elana Tyrangiel *Elana Tyrangiel*
Principal Deputy Assistant Attorney General
Office of Legal Policy

SUBJECT: NICS Agency Guidance – Implementation Plan Issues

As you are aware, on January 16, 2013, the President issued a Memorandum to all executive agencies on Improving Availability of Relevant Executive Branch Records to the National Instant Criminal Background Check System (NICS). That Memorandum required the Attorney General to issue guidance on what information federal agencies must share with the NICS. The Attorney General, in turn, issued guidance on March 1, 2013. Pursuant to the timeline set by the Presidential Memorandum, by April 30, 2013, executive agencies were required to submit a report to the Department of Justice advising whether they possess relevant records and setting forth an implementation plan for making information in those records available to the NICS. We have received eight of these reports, and, with the help of the White House, anticipate receiving approximately 24 more.

The reports we have received thus far raise several issues that require decisions by the Department. These issues fall into two categories: (b)(5)

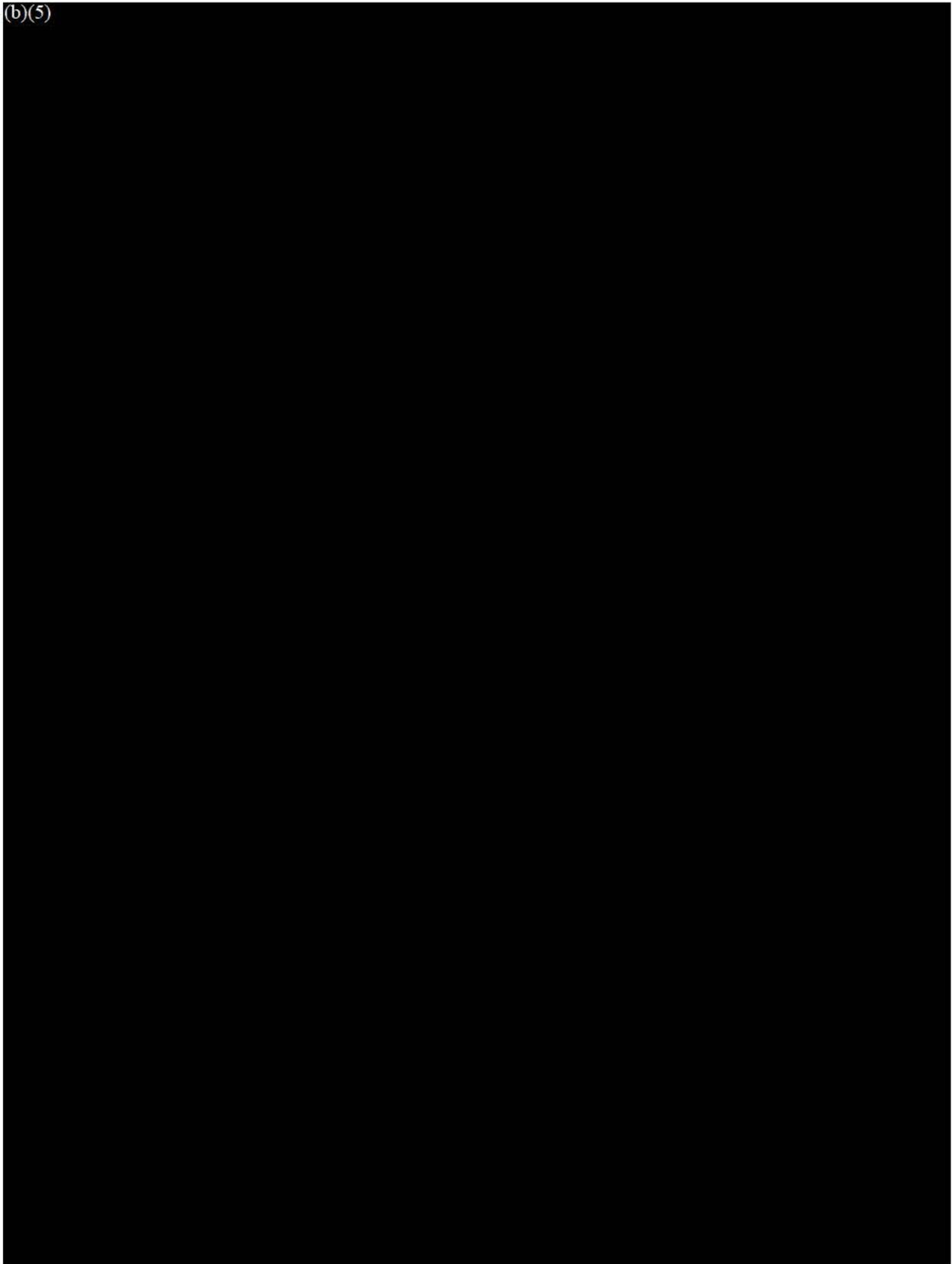
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We recommend proceeding as outlined below.

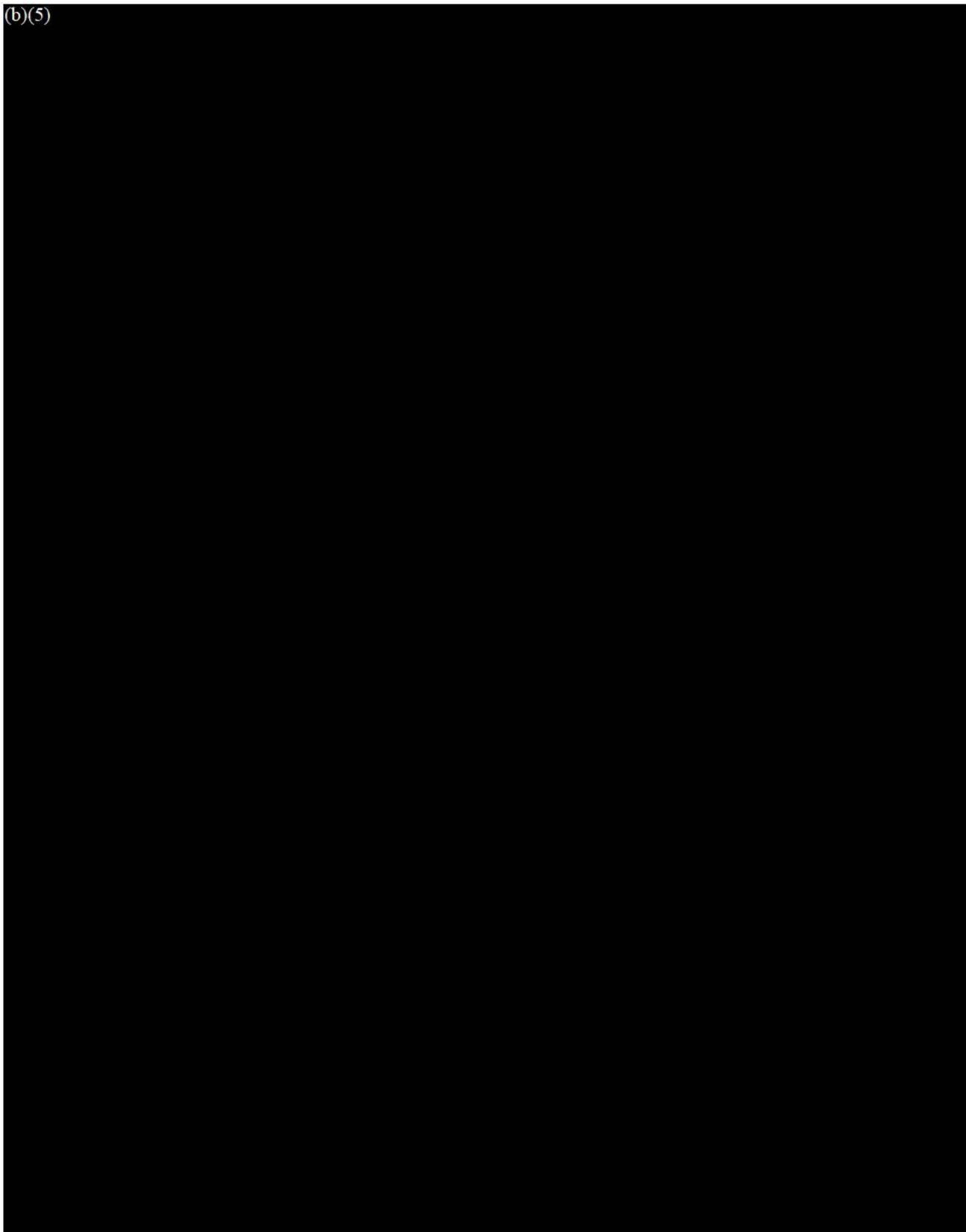
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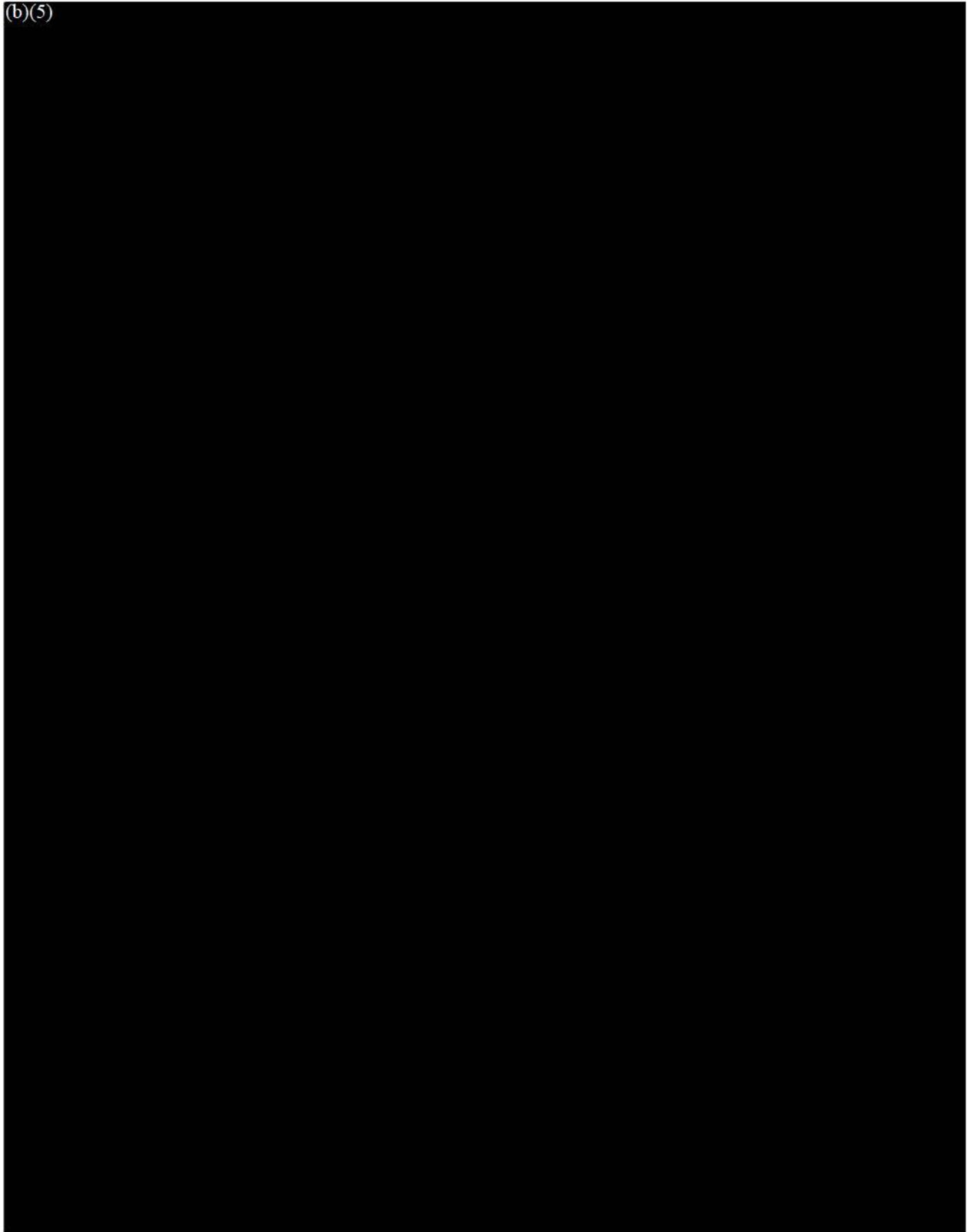
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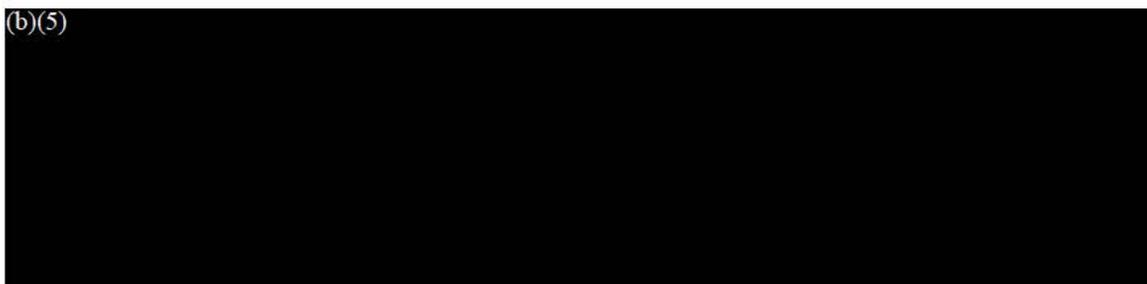
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(b)(5)



(b)(5)



RECOMMENDATION: The Office of Legal Policy recommends proceeding as described above.

APPROVE: _____

DISAPPROVE: _____

OTHER: _____

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

April 13, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Holder:

The National Instant Criminal Background Check System (NICS) is effectively a national gun ban list and placement on the list precludes the ownership and possession of firearms. According to the Congressional Research Service, as of June 1, 2012, 99.3% of all names reported to the NICS list's "mental defective" category were provided by the Veterans Administration (VA) even though reporting requirements apply to all federal agencies.¹ And that percentage remained virtually unchanged as of April 2013.² Given the numbers, it is essential to ensure that the process by which the VA reports names to the Department of Justice (DOJ) for placement on the NICS list recognizes and protects the fundamental nature of veterans' rights under the Second Amendment.

Questionable VA Standards

Specifically, once the VA determines that a veteran requires a fiduciary to administer benefit payments, the VA reports that veteran to the gun ban list, consequently denying his or her right to possess and own firearms. In the past, the VA has attempted to justify its actions by relying on a single federal regulation, 38 C.F.R. § 3.353, which by its plain language grants limited authority to determine incompetence, but only in the context of financial matters:

¹ Names reported by the VA are not only veterans but also include non-veteran dependents. See also, William J. Krouse, CONG. RESEARCH SERV., r42987, Gun Control Proposals in the 113th Congress: Universal Background Checks, Gun Trafficking, and Military Style Firearms (2014).

² Senate Report, 113-86, Veterans Second Amendment Protection Act (2013).

“Ratings agencies have sole authority to make official determinations of competency and incompetency for purposes of: insurance and...disbursement of benefits.”³

Thus, the regulation’s core purpose applies to matters of competency for financial purposes in order to appoint a fiduciary. This financial/fiduciary standard has been employed since the regulation’s initial promulgation in the 1970s and it has nothing to do with regulating firearms.⁴ Most importantly, in addition to the regulation itself, the federal statutory provision granting the VA the authority to promulgate the regulation is squarely focused on financial matters and was not designed to impose firearm restrictions.⁵

Varying Standards

In accordance with the Brady Handgun Violence Prevention Act, the Bureau of Alcohol, Tobacco and Firearms (ATF) adopted a regulation that defined a different standard for firearm regulation than that imposed by the VA. The standard adopted is a “mental defective” standard that, at its core, allows regulation only when someone is a danger to themselves and/or others. The regulation itself even states that the standard does not include persons suffering from mental illness but who are not a danger to themselves.⁶

The VA’s regulation appears to omit important findings and never reaches the question of whether a veteran is a danger to himself, herself, or others. Thus, a VA determination that a veteran is “incompetent” to manage finances is insufficient to conclude that the veteran is “mentally defective” under the ATF’s standard that is codified in federal law.

Due Process Concerns

In addition, the procedural protections the VA affords to veterans are weak. First, the standard of review is particularly low for a fundamental constitutional right: clear and convincing.⁷ Hearsay is allowed.⁸ And, there are no significant checks and balances in place to ensure that there is any evidence to conclude that a veteran is a risk to the public or themselves. Of particular concern, although VA employees can personally meet with veterans and non-

³ 38 C.F.R. §3.353

⁴ Determinations of Incompetency and Competency, 36 Fed. Reg. 19020, 19020 (Sept. 25, 1971) (codified at 38 C.F.R. pt. 3). (“These are amendments to an existing regulation which states the criteria and procedures incidental to a Veterans Administration determination that a beneficiary’s mental condition is such that a fiduciary should manage his affairs and safeguard his funds.”). *See also* Determinations of Incompetency and Competency, 60 Fed. Reg. 55791, 55791 (Nov. 3, 1995) (codified at 38 C.F.R. pt. 3) (“This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning determinations of mental incompetency to make clear that only rating boards are authorized to make determinations of incompetency for purposes of VA benefits and VA insurance.”).

⁵ 38 U.S.C. § 501(a)(1)–(4). The VA’s authority to promulgate regulations is limited to those which “establish the right to benefits under such laws” and the “manner and form” of the process by which a veteran is to receive the benefits.

⁶ (95R–051P), 61 Fed. Reg. 47095, 47097 (Sept. 6, 1996) (codified at 27 C.F.R. § 478.11).

⁷ 38 C.F.R. § 3.353(c)

⁸ Procedural Due Process and Appellate Rights, 38 C.F.R § 3.103, provides substantive details about the hearing process and specifically, in section (d) of the regulation, does not institute general federal evidentiary rules, but instead allows for admission of any type of evidence, which reasonably includes hearsay.

veteran dependents who are receiving VA benefits, only when VA personnel meet with veterans are they directed to consider whether competency is at issue.⁹ Thus, it appears that veterans are immediately targeted by VA personnel upon initial contact.

Furthermore, when a veteran receives a letter stating that the VA believes he is unable to manage his finances, that veteran now has the burden of proving that he is in fact competent to manage his benefit payments and does not need a fiduciary. However, underlying the hearing is a real possibility that the right to firearms will be infringed. Therefore, in light of the liberty and property interests involved, placing the burden of proof on the veteran is highly suspect. Under similar circumstances, the burden is generally on the government. Further, the hearing that takes place is inside the VA administrative system and composed of VA employees rather than a neutral decision maker.

Under the current practice, a VA finding that concludes that a veteran requires a fiduciary to administer benefit payments effectively voids his Second Amendment rights—a consequence which is wholly unrelated to and unsupported by the record developed in the VA process. Accordingly, Congress needs to understand what justifies taking such action without more due process protections for the veteran.

In order to more fully understand the interplay between the differing standards of the VA and ATF, the procedural processes involved, and what effect it has on Second Amendment rights, please answer the following:

1. Is the primary purpose of the NICS list to preclude firearm ownership and possession by individuals who are a danger to themselves and/or others? If not, what is the primary purpose of the NICS list?
2. Is the primary purpose of the VA's reporting system to report the names of individuals who are appointed a fiduciary?
3. Out of all names on the NICS list, what percentage of them have been referred by the VA?
4. Do you believe that a veteran adjudicated as incompetent to manage finances and appointed a fiduciary is likewise mentally defective under the ATF standard? If so, what is the basis for that conclusion?

⁹ M21-1MR Part 3, General Claims Process, U.S. DEP'T OF VETERANS AFFAIRS, Subpart IV –“General Rating Process,” Chapter 8 – “Competency, Due Process and Protected Ratings,” Section A Topic 2: “Considering Competency While Evaluating Evidence.” Accessible at http://www.benefits.va.gov/WARMS/M21_1MR3.asp.

5. Does the standard employed by the VA to report names to the DOJ for subsequent placement on the NICS list comply with the protections of the Second Amendment? If so, please explain how, in light of due process concerns described above.
6. Given that the VA adjudication process can result in a complete infringement of a person's fundamental Second Amendment right, do you believe that the use of the "clear and convincing" evidentiary standard is proper? If so, why?
7. Is the DOJ satisfied that all names reported from the VA for placement on the NICS are, in fact and in law, persons who should not own or possess a firearm because they are dangers to themselves and/or others? If so, what evidence supports that conclusion?
8. Given that 99.3% of all names in the NICS "mental defective" category are reported from the VA, has the DOJ reviewed the VA's reporting standards and procedure? If so, please provide a copy of the review that took place. If no review took place, please explain why not.
9. What review process does DOJ have in place to ensure that names are properly on the NICS list?
10. How many individuals have appealed their placement on the NICS list? How many individuals were successful in their appeal?
11. In light of the fact that the Supreme Court has held the Second Amendment to be a fundamental right, has the DOJ changed any processes and procedures relating to the NICS system which were in existence prior to that holding?
12. Besides the VA, what other federal agencies have reported names to the NICS list since 2005? And how many names were reported by each agency since 2005?

Please number the responses according to their corresponding questions. Thank you in advance for your cooperation with this request. Please respond no later than April 30, 2015. If you have questions, contact Josh Flynn-Brown of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 13, 2015

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley:

This responds to your letter to Attorney General Holder dated April 13, 2015, which requested information concerning the National Instant Criminal Background Check System (NICS), including the use by the Department of Veterans Affairs (VA) of the “mental defective” category. We appreciate your interest in receiving responsive information according to the numbered questions in your letter but, in this instance, we believe that the narrative set forth below presents the information in a more coherent and understandable manner.

First, some of the concerns you raise and the questions you ask are directed at the process by which the VA makes determinations that a beneficiary is unable to manage his or her benefits, and thus requires an alternate payee. The VA is better positioned to address those concerns and answer those questions, and we would defer to the VA’s expertise on matters associated with its own process.

That said, the Brady Handgun Violence Prevention Act amended the Gun Control Act to require, among other things, that federally licensed firearms dealers contact the “national instant criminal background check system” established by the Attorney General to determine whether a proposed firearm transfer would violate the law. (18 U.S.C. § 922(t).) The NICS was created in response to this requirement and checks several databases (including the Interstate Identification Index (III), the National Crime Information Center (NCIC) and the NICS Index) to determine whether a firearm transfer from a licensed dealer is lawful and may proceed. The FBI serves as the custodian of information submitted by federal, state, and local law enforcement to the III and NCIC, and serves the same role with respect to the NICS Index. Unlike the III and NCIC, which are general law enforcement databases utilized for a variety of purposes, the NICS Index is utilized only for purposes related to firearms and explosives background checks. The VA, like other federal agencies, is required by Section 101(a)(4) of the NICS Improvement Amendments Act of 2007 (NIAA) (Pub. L. 110-180, 121 Stat. 2559 (Jan. 8, 2008)) to report to the Attorney General the names and other identifying information of those persons who are prohibited from receiving firearms under § 922(g) or (n) of Title 18, U.S. Code.

The Gun Control Act of 1968, as amended, provides that “[i]t shall be unlawful for any person . . . (4) who has been adjudicated as a mental defective or who has been committed to a

mental institution . . . to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” (18 U.S.C. § 922(g)(4).) The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has promulgated regulations regarding commerce in firearms and ammunition (27 C.F.R. Part 478). Pursuant to those regulations, adjudication as a “mental defective” is defined as a “determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) Is a danger to himself or to others; or (2) Lacks the mental capacity to contract or manage his own affairs.” (27 C.F.R. § 478.11.) VA determinations concerning a beneficiary’s need for an alternate payee fit within the second prong of this definition, not the first. VA regulations define a “mentally incompetent person” as “one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation.” (38 C.F.R. § 3.353.)

As you know, in *District of Columbia v. Heller*, the Supreme Court expressly acknowledged that nothing in the Court’s opinion “should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill. . . .” (554 U.S. 570, 626 (2008).) Accordingly, the standards used in determining whether an individual is prohibited by 18 U.S.C. § 922(g)(4) were not changed as a result of the *Heller* decision.

In determining what information to provide to the Attorney General, the VA, like all other federal agencies, is subject to the statutory language and the ATF regulations described above, as well as the standards articulated in the NIAA. Section 101(c) of that Act provides the standards to be applied by federal agencies that submit information to the Attorney General related to persons prohibited from possessing firearms for mental health reasons. Those standards prohibit the sharing of such information with the NICS unless the affected individual had “an opportunity for a hearing by a court, board, commission, or other lawful authority,” among other factors.

We should also note that under section 101(c)(2)(A) of the NIAA, if a federal agency makes mental health adjudications covered by the Gun Control Act, the agency is required to notify the individual of the potential impact on the ability to possess firearms at the commencement of the adjudication process. Such agencies must also establish programs permitting those affected to apply for relief from the prohibition against possessing or obtaining firearms. The relief program must provide for judicial process after final agency action. The agency must resolve a relief application not later than 365 days after submission; otherwise the application is deemed to have been denied without cause. The VA has established a program that is consistent with these requirements. As a result, those affected can take advantage of the VA’s relief from disability process. Further, if an agency adjudication is reversed, by operation of law the person who was the subject of the prior determination is no longer prohibited from possessing a firearm. Again, however, you may wish to contact the VA for more complete information about its adjudication process, including applicable procedures, standards, and its relief from disability process.

The FBI reviews agency compliance with the requirements outlined above during triennial audits of the agencies that contribute records to the NICS Index. During this audit of a

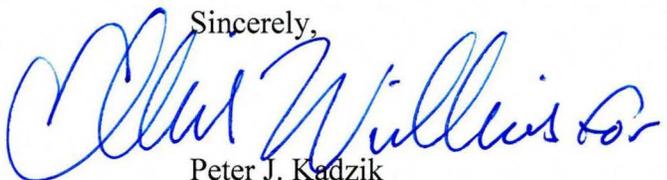
contributor's records, samples of 400 NICS Index entries are reviewed to ensure they are appropriate. Any problematic entries are reported to the FBI's NICS Audit Unit, which follows up with the contributor to arrange for removal or other corrective action. The last audit of the VA for NICS compliance, which occurred in 2012, indicated that 128 of the 400 sampled Index entries (based upon 18 U.S.C. § 922(g)(4)) pertained to veterans who were deceased. While retention of an individual's information in the system after his or her demise is considered to be an error by NICS, there were no errors discerned for any other reason in this sample. As a result of the audit, the VA was asked to remove entries pertaining to deceased individuals from the NICS Index.

Contrary to the assertion in your letter, federal records (including VA records) do not constitute the majority of the NICS Index submissions related to mental health. As of December 31, 2014, more than 93% of the active NICS Index records related to mental health were submitted by the states. Moreover, as of December 31, 2014, only 1.84% of the active records in the NICS Index were VA submissions (242,164 of the 13,195,768 records in the NICS Index). As requested, enclosed is a chart reflecting the numbers of records provided to the NICS Index by each federal agency since 2005.

In 2014, the FBI received 28,652 appeals of NICS Index denials or delays. FBI records do not indicate how many of those appeals related to VA records or to the federal mental health prohibitor. If an individual's attempt to acquire a firearm is delayed or denied based upon a VA-submitted entry in the NICS Index, the individual is referred to the VA, where the individual may request the reason for the denial, challenge the accuracy of the records upon which the denial was based, and apply for correction of the record on which the denial was based. (28 C.F.R. § 25.10.) If the individual is successful, the record will be removed or corrected in the NICS Index. If the individual again attempts to acquire a firearm, the individual's firearm transaction would be allowed to proceed, assuming there are no other prohibitors. The VA may be able to provide you with information about the numbers of individuals who have applied for corrections to records submitted to NICS by that agency, or have otherwise been successful in using its relief from disabilities program; that information is not maintained by the FBI.

We hope that this information is helpful and appreciate your ongoing support of the FBI and its mission. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Peter J. Kadzik
Assistant Attorney General

Enclosure

cc: Honorable Patrick J. Leahy
Ranking Member

Active Records in the NICS Index

Federal Agency	Program-to-Date Totals as of 12/31/2005	Program-to-Date Totals as of 3/31/2015
Amtrak Railroad Police		5
Court Services & Offender Supervision Agency for the D.C., U.S.		4,114
Department of Agriculture, U.S.		276
Department of Defense, U.S.	15,025	10,761
Department of Health and Human Services, U.S.		159
Department of Homeland Security, U.S.	3,308,514	6,422,717
Department of Housing and Urban Development, U.S.		20
Department of Interior, U.S.		2
Department of Justice, U.S.	34,415	1,110,943
Department of State, U.S.	12,603	28,650
Department of Transportation, U.S.		1
Department of Veterans Affairs, U.S.	91,476	242,164
Internal Revenue Service		9
Railroad Retirement Board, U.S.		47
Social Security Administration, U.S.		10
Other – Federal Court, U.S.		5,411
Total	3,462,033	7,825,289



310 5795 100 2
U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 30, 2015

The Honorable Paul D. Ryan
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

The Department of Justice is pleased to transmit the sixth annual report required by the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007, Pub. L. 110-180 (NIAA or Act), which was signed into law on January 8, 2008.

The NIAA amends the Brady Handgun Violence Prevention Act of 1993, Pub. L. 103-159 (Brady Act), under which the Attorney General established the NICS. The Brady Act requires Federal Firearms Licensees to contact the NICS before transferring a firearm to an unlicensed person in order to obtain information on whether the proposed transfer is prohibited under federal or state law.

The NIAA requires the Attorney General to make an annual report to Congress regarding the compliance of each federal department or agency with the record reporting provisions of the Act and the progress of states in automating the databases containing the information described in the Act and in making that information electronically available to the Attorney General pursuant to the Act's requirements. Also, the Director of the Bureau of Justice Statistics is to make an annual report to Congress regarding estimates of available records submitted by the states under the Act, and the practices of the states regarding the collection, maintenance, automation, and transmittal of information relevant to determining whether a person is prohibited from possessing or receiving a firearm by federal or state law, by the state or any other agency, or any other records relevant to the NICS. This annual report is intended to satisfy these four reporting requirements.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide assistance regarding this or any other matter.

Sincerely,

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Peter J. Kadzik
Assistant Attorney General

Enclosure



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 30, 2015

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Madam Leader:

The Department of Justice is pleased to transmit the sixth annual report required by the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007, Pub. L. 110-180 (NIAA or Act), which was signed into law on January 8, 2008.

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Peter J. Kadzik
Assistant Attorney General

Enclosure



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 30, 2015

The Honorable Robert W. Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Department of Justice is pleased to transmit the sixth annual report required by the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007, Pub. L. 110-180 (NIAA or Act), which was signed into law on January 8, 2008.

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Peter J. Kadzik
Assistant Attorney General

Enclosure



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 30, 2015

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Conyers:

The Department of Justice is pleased to transmit the sixth annual report required by the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007, Pub. L. 110-180 (NIAA or Act), which was signed into law on January 8, 2008.

The NIAA amends the Brady Handgun Violence Prevention Act of 1993, Pub. L. 103-159 (Brady Act), under which the Attorney General established the NICS. The Brady Act requires Federal Firearms Licensees to contact the NICS before transferring a firearm to an unlicensed person in order to obtain information on whether the proposed transfer is prohibited under federal or state law.

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Peter J. Kadzik
Assistant Attorney General

Enclosure



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 30, 2015

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

Dear Mr. Leader:

The Department of Justice is pleased to transmit the sixth annual report required by the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007, Pub. L. 110-180 (NIAA or Act), which was signed into law on January 8, 2008.

The NIAA amends the Brady Handgun Violence Prevention Act of 1993, Pub. L. 103-159 (Brady Act), under which the Attorney General established the NICS. The Brady Act requires Federal Firearms Licensees to contact the NICS before transferring a firearm to an unlicensed person in order to obtain information on whether the proposed transfer is prohibited under federal or state law.

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Peter J. Kadzik
Assistant Attorney General

Enclosure



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 30, 2015

The Honorable Harry Reid
Minority Leader
United States Senate
Washington, DC 20510

Dear Mr. Leader:

The Department of Justice is pleased to transmit the sixth annual report required by the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007, Pub. L. 110-180 (NIAA or Act), which was signed into law on January 8, 2008.

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We hope this information is helpful. Please do not hesitate to contact this office if we may provide assistance regarding this or any other matter.

Sincerely,

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Peter J. Kadzik
Assistant Attorney General

Enclosure



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 30, 2015

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Department of Justice is pleased to transmit the sixth annual report required by the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007, Pub. L. 110-180 (NIAA or Act), which was signed into law on January 8, 2008.

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Sincerely,

A handwritten signature in black ink, appearing to read "PJKA".

Peter J. Kadzik
Assistant Attorney General

Enclosure



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 30, 2015

The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Leahy:

The Department of Justice is pleased to transmit the sixth annual report required by the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007, Pub. L. 110-180 (NIAA or Act), which was signed into law on January 8, 2008.

The NIAA amends the Brady Handgun Violence Prevention Act of 1993, Pub. L. 103-159 (Brady Act), under which the Attorney General established the NICS. The Brady Act requires Federal Firearms Licensees to contact the NICS before transferring a firearm to an unlicensed person in order to obtain information on whether the proposed transfer is prohibited under federal or state law.

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Sincerely,

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Peter J. Kadzik
Assistant Attorney General

Enclosure



**Report to Congress
Pursuant to Requirements of the NICS
Improvement Amendments Act of 2007
(Public Law 110-180)**

VI. Federal Compliance with NIAA Requirements

As discussed above, the NIAA contains provisions that are intended to increase the information available to the NICS for background check purposes. To accomplish that goal, the NIAA mandates reporting of certain information by federal departments and agencies. Additionally, as noted above, the NIAA requires any agency that makes disqualifying mental health adjudications or commitments to adopt a relief from mental health disabilities program. The following section outlines implementation efforts on both fronts.

a. President's Memorandum

As described in the last NIAA Report to Congress, on January 16, 2013, President Obama issued a Presidential Memorandum entitled, "Improving Availability of Relevant Executive Branch Records," directing Federal agencies – consistent with the requirements of the NIAA – to provide to the NICS on a regular and ongoing basis any records demonstrating that a person is prohibited from receiving or possessing a firearm. Pursuant to the Presidential Memorandum, in March 2013, DOJ issued guidance to agencies regarding the identification and sharing of relevant federal records and their submission to the NICS. The Memorandum also required agencies to submit a report to

DOJ advising whether they possess relevant records as described in the guidance, and setting forth an implementation plan for making information in those records available to the NICS.

Since the last report, DOJ received implementation plans from all twelve departments or agencies that were deemed by DOJ to possess relevant records. The list of these departments and agencies follows:

- Environmental Protection Agency
- Department of Defense
- Department of Housing and Urban Development
- Department of Veterans Affairs
- Department of Health and Human Services
- Department of Homeland Security
- Department of Labor
- Department of State
- Office of Personnel Management
- Railroad Retirement Board
- Small Business Administration
- Social Security Administration

DOJ reviewed these agencies' implementation plans and provided feedback to help them identify relevant records and determine how they could make those records available to the NICS. Since the issuance of the Attorney General's guidance, these agencies have made significant progress in improving their reporting, with several agencies now making all relevant records available to the NICS. DOJ continues to work cooperatively with additional agencies to resolve outstanding questions, surmount any remaining hurdles, and increase the availability of federal records to the NICS.

In addition, as described in the last report, in early 2013 DOJ successfully launched an improved and expanded, automated and direct, link between the case management system employed by the 94 U.S. Attorney's Offices (USAOs) and the NICS Index. As a result, critical information from nearly one million pending and historical indictments, informations, and other charging instruments filed across the country was instantly fed into the NICS Index. This interface was further designed to capture and transmit newly filed charging instruments on a daily basis. The sharing of this data provides the FBI, NICS operators, and authorized state and local operators with the information necessary to deny the transfer of firearms from FFLs to prohibited persons who are under indictment or charged with a crime, consistent with 18 U.S.C. § 922(n).

DOJ continues with weekly updates to the NICS Index from the USAO community. If the disposition is a felony conviction, for example, the newly designed system will automatically update the information in the NICS Index and the basis to deny the transaction (i.e., 18 U.S.C. § 922(g)(1)). In contrast, if the person is acquitted or the disqualifying charges are otherwise dismissed, the original charging instrument will be

removed or updated to reflect that it no longer serves as a basis to deny the firearm transfer.

As of May 13, 2014, there were 1,010,753 entries in the NICS Index from the USAOs. On February 24, 2013, the DOJ began capturing the number of denials resulting from USAO entries. From February 24, 2013, through May 13, 2014, 1071 subjects have been denied based on the USAO entries.

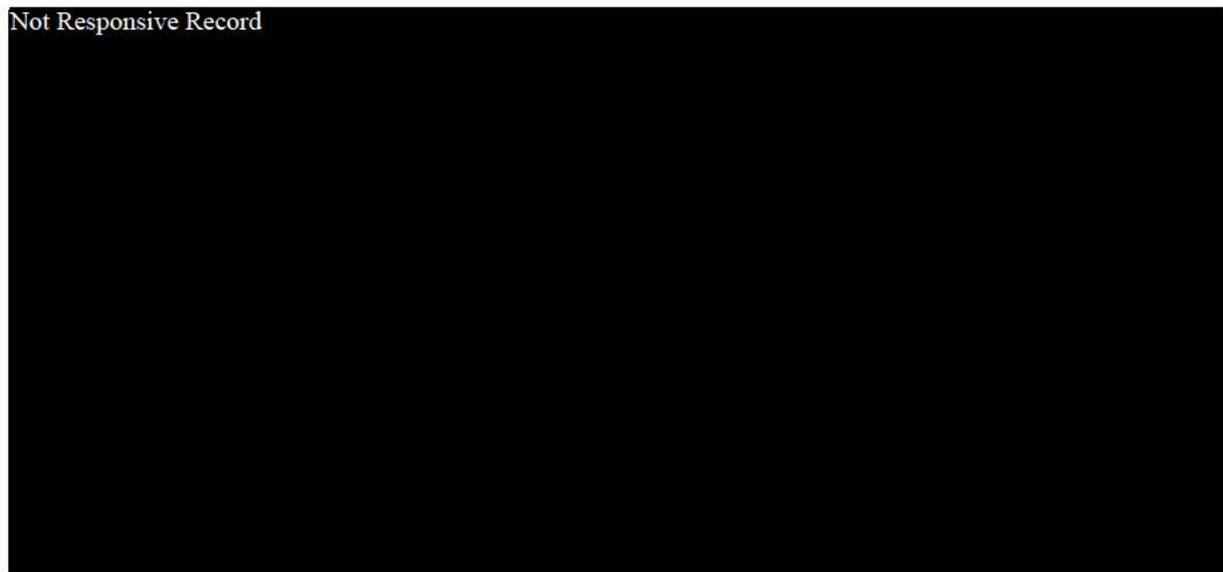
As a result of DOJ's work with states and federal agencies, an additional 2,842,759 records were made available to the NICS Index in 2013. This is a greater increase than any year since the NICS was created in 1998. More than half of this increase is due to additional records on persons prohibited from possessing firearms for reasons related to mental health. States and federal agencies made available an additional 1,439,513 such records in 2013, which is also the largest increase in this category of records in a single year since the inception of the NICS.

b. Relief from Mental Health Disabilities Program

Based on the response to DOJ guidance, it appears that a number of federal departments and agencies likely create qualifying mental health records. DOJ is working with these departments and agencies to ensure that relevant information is transmitted to the NICS.

ATF has instructed federal departments and agencies on the relief from disabilities program requirements, as well as the notice requirements for federal departments and agencies that make qualifying mental health adjudications. The Veterans Administration has established a relief from mental health disabilities program and provides notice as required by the NIAA. ATF will continue to work with federal departments and agencies to identify whether they make qualifying mental health adjudications, and for those that do, will assist them in complying with the relief from disability requirements of the NIAA.

Not Responsive Record



Appendix B - NCIC - September 30, 2014

	W - Wanted Persons & Foreign Fugitives	H - Protection Orders	X - Sex Offenders	C - Supervised Release	N - Immigration Violator	M - Missing Persons	U - Unidentified Persons	T - Gang Member	J - Identity Theft	Grand Totals
Alabama	11,134	4,599	10,648	0	0	1,287	31	1	46	27,746
Alaska	403	1,285	2,564	0	0	1,145	29	0	2	5,529
American Samoa	1	0	0	0	0	0	0	0	0	1
Arizona	16,962	18,040	14,532	12,817	0	1,893	342	0	818	65,404
Arkansas	142,559	11,964	11,177	24	0	407	78	174	54	166,437
California	240,799	222,896	64,316	1,833	0	19,987	3,044	5	931	553,811
Colorado	36,198	107,528	13,441	13,595	0	1,113	46	1	41	172,053
Connecticut	3,274	28,905	5,892	11,625	0	458	19	0	54	50,227
DC	624	1,881	1,292	0	0	461	1	0	0	4,259
Delaware	3,248	1,670	3,692	1	0	146	18	1	2	8,778
Florida	269,708	187,488	65,380	165,278	0	3,074	732	500	0	692,160
Georgia	256,303	8,261	19,615	32	0	1,724	157	65	4,126	290,283
Guam	381	433	625	0	0	0	0	0	0	1,439
Hawaii	523	3,785	2,605	0	0	383	8	0	0	7,306
Idaho	24,195	1,028	4,028	0	0	132	10	175	9	29,577
Illinois	35,194	30,252	24,434	0	0	2,278	169	0	0	92,327
Indiana	51,446	83,220	9,549	12,296	0	937	27	186	255	157,916
Iowa	11,181	21,460	6,038	1	0	361	7	1	192	39,241
Kansas	8,603	4,647	8,352	3,542	0	567	23	668	261	26,663
Kentucky	9,979	16,824	7,841	0	0	467	33	485	29	35,658
Louisiana	12,565	10,343	12,451	0	0	2,312	22	7	16	37,717
Maine	1,407	4,698	3,059	0	0	82	3	135	113	9,497
Mariana Islands	0	0	0	0	0	0	0	0	0	0
Maryland	18,931	7,384	7,072	0	0	2,279	69	60	306	36,101
Massachusetts	16,852	19,759	11,241	0	0	1,983	22	0	1	49,858
Michigan	76,168	15,728	40,588	0	0	4,810	82	0	84	137,460
Minnesota	16,261	16,291	17,890	0	0	499	45	0	51	51,038
Mississippi	11,226	582	6,384	0	0	920	20	0	0	19,132
Missouri	27,860	14,893	15,310	84	0	847	56	0	252	59,302
Montana	2,810	4,422	2,423	148	0	126	6	12	446	10,393
Nebraska	5,678	1,099	4,727	1,598	0	271	3	1,001	14	14,391
Nevada	14,221	30	5,800	1,666	0	921	106	3	55	22,802
New Hampshire	2,655	3,865	2,650	0	0	68	6	125	310	9,699
New Jersey	56,340	169,468	14,929	1	0	1,051	317	4,407	3,717	250,240
New Mexico	98,775	6,293	4,063	3,198	0	719	15	0	177	113,241
New York	33,540	230,618	37,568	0	0	4,393	883	4,956	18	311,976
North Carolina	24,887	11,809	16,195	0	0	1,204	22	4,601	493	59,211
North Dakota	1,187	23	1,717	0	0	65	0	0	1	2,993
Ohio	14,614	33,327	22,893	1,497	0	1,049	37	0	45	73,462
Oklahoma	18,785	5,791	7,051	0	0	1,069	30	1,973	10	34,710
Oregon	16,817	15,022	20,660	1	0	981	46	0	161	53,688
Pennsylvania	104,208	29,838	16,746	39	0	2,728	97	2	1,445	155,103
Puerto Rico	1,493	0	1,991	0	0	2,845	4	0	1	6,334
Rhode Island	1,772	12,567	1,961	0	0	102	2	0	11	16,415
South Carolina	63,378	2,474	12,155	543	0	633	29	2,251	181	81,644
South Dakota	993	2,942	3,295	0	0	66	2	0	1	7,300
Tennessee	32,691	16,993	13,821	0	0	949	57	365	293	65,169
Texas	208,417	16,145	79,968	1	0	6,001	794	49,292	3,656	364,274
Utah	1,584	4,139	7,089	0	0	432	12	0	95	13,351
Vermont	261	2,207	2,024	0	0	48	3	12	2	4,557
Virgin Islands	76	106	1	0	0	23	0	0	0	206
Virginia	52,541	27,065	19,346	0	0	632	66	2,256	48	101,954
Washington	44,374	99,092	21,222	1	0	1,647	150	32	288	166,786
West Virginia	1,511	2,903	3,431	0	0	310	22	0	20	8,197
Wisconsin	15,297	18,627	18,712	0	0	1,030	26	30	192	53,914
Wyoming	1,163	957	1,892	1	0	193	24	28	7	4,065
State Submissions	2,124,066	1,563,768	734,258	229,822	0	80,118	7,833	73,810	19,330	4,833,005
FEDERAL										0
U.S. Air Force	4	1	0	0	0	7	0	0	5	17
Amtrak Railroad Police	5	0	0	0	0	0	0	0	0	5
Alcohol, Tobacco and Firearms	780	0	0	0	0	0	0	0	0	780
Bureau of Engraving and Printing	0	0	0	0	0	0	0	0	0	0
Bureau of Immigration and Customs Enforcement	2,306	0	1	0	298,480	0	1	1,793	0	302,581
Bureau of Mint Police	0	0	0	0	0	0	0	0	0	0
U.S. Capitol Police	0	0	0	0	0	0	0	0	0	0
U.S. Coast Guard	23	0	0	0	0	1	0	0	0	24
Central Intelligence Agency	0	0	0	0	0	0	0	0	0	0
U.S. Army Criminal Investigations Division	0	0	0	0	0	0	0	0	0	0
Department of Commerce	0	0	0	0	0	0	0	0	0	0
Drug Enforcement Administration	0	0	0	0	0	0	0	0	0	0
Department of Interior	779	153	196	0	0	165	10	0	3	1,306

Appendix B - NCIC - September 30, 2014

	W - Wanted Persons & Foreign Fugitives	H - Protection Orders	X - Sex Offenders	C - Supervised Release	N - Immigration Violator	M - Missing Persons	U - Unidentified Persons	T - Gang Member	J - Identity Theft	Grand Totals
Fish and Wildlife Services	0	0	0	0	0	0	0	0	0	0
Department of Homeland Security	0	0	0	0	0	0	0	0	0	0
Department of Agriculture	2	0	0	0	0	3	0	0	0	5
Department of Defense	1	0	0	0	0	0	0	0	0	1
Department of Energy	0	0	0	0	0	0	0	0	0	0
Department of Justice	1	0	0	0	0	0	0	0	0	1
Department of Labor	0	0	0	0	0	0	0	0	0	0
Department of State	360	0	0	0	0	0	0	0	0	360
Department of Transportation	0	0	0	0	0	1	0	0	0	1
Defense Protective Services	0	0	0	0	0	0	0	0	0	0
Defense Security Services	0	0	0	0	0	0	0	0	0	0
Environmental Protection Agency	0	0	0	0	0	0	0	0	0	0
El Paso Intelligence Center	0	0	0	0	0	0	0	0	0	0
Federal Aviation Agency	0	0	0	0	0	0	0	0	0	0
Federal Air Marshals	1	0	0	0	0	0	0	0	0	1
Federal Bureau of Investigation	6,225	3	1	1	0	158	9	339	1	6,737
Food and Drug Administration	1	0	0	0	0	0	0	0	0	1
Federal Emergency Management Agency	0	0	0	0	0	0	0	0	0	0
Federal Protective Service	1	0	0	0	0	0	0	0	0	1
Federal Reserve System	0	0	0	0	0	0	0	0	0	0
National Gallery of Art	0	0	0	0	0	0	0	0	0	0
Government Printing Office	0	0	0	0	0	0	0	0	0	0
General Services Administration	0	0	0	0	0	0	0	0	0	0
Health and Human Services	0	0	0	0	0	0	0	0	0	0
Interstate Commerce Commission	0	0	0	0	0	0	0	0	0	0
Interpol	18,942	0	138	0	0	1,237	0	15	0	20,333
Internal Revenue Service	4	0	0	0	0	0	0	0	0	4
U.S. Marines	442	0	0	0	0	0	0	0	0	442
National Aeronautics and Space Administration	0	0	0	0	0	0	0	0	0	0
National Instant Criminal Background Check System	0	0	0	0	0	0	0	0	0	0
Naval Investigative Service	24	0	0	0	0	40	3	0	1	68
Nuclear Regulatory Commission	0	0	0	0	0	0	0	0	0	0
National Security Agency	0	0	0	0	0	0	0	0	0	0
Naval Clemency & Parole Board	0	0	0	0	0	0	0	0	0	0
Office of Personnel Management	0	0	0	0	0	0	0	0	0	0
U.S. Air Force Office of Special Investigations	71	3	0	0	0	1	0	0	0	75
Postal Inspection Service	397	0	0	0	0	0	0	0	0	397
U.S. Park Police	0	0	0	0	0	1	4	0	0	5
Smithsonian Institute	0	0	0	0	0	0	0	0	0	0
Secret Service	430	0	0	0	0	0	0	0	0	430
Treasury Inspector General	23	0	0	0	0	0	0	0	0	23
Department of Treasury	0	0	0	0	0	0	0	0	0	0
Transportation Security Administration	0	0	0	0	0	0	0	0	0	0
Administrative Office of the US Courts	0	0	0	0	0	0	0	0	0	0

Appendix B - NCIC - September 30, 2014

	W - Wanted Persons & Foreign Fugitives	H - Protection Orders	X - Sex Offenders	C - Supervised Release	N - Immigration Violator	M - Missing Persons	U - Unidentified Persons	T - Gang Member	J - Identity Theft	Grand Totals
U.S. Army	1,406	24	0	0	0	24	2	0	0	1,456
Bureau of Customs	71	0	0	0	0	2	0	6	0	79
Marshals Service	22,035	0	0	0	0	1	0	0	0	22,036
U.S. Navy	274	0	0	0	0	0	0	0	0	274
Veteran's Affairs	4	1	0	0	0	18	0	0	1	24
Zoological Park Police	0	0	127	0	0	0	0	0	0	127
Federal Prosecutors	0	0	0	7,636	0	0	0	0	0	7,636
Federal Pretrial Services	0	0	0	0	0	0	0	0	0	0
Federal Corrections	0	0	0	126,089	0	0	0	59	0	126,148
Federal Probation and Parole	0	87	0	0	0	0	0	0	0	87
Federal Courts	1	0	0	0	0	1	0	0	0	2
Agencies not otherwise classified	0	0	0	0	0	0	0	0	0	0
Other Federal Agencies	0	0	0	0	0	0	0	0	0	0
Federal Subtotals	54,613	272	463	133,726	298,480	1,660	29	2,213	11	491,467
Total	2,178,679	1,564,040	734,721	363,548	298,480	81,778	7,862	76,023	19,341	5,324,472

Appendix C - NICS Index Statistics - September 30, 2014

	Felony	Under Indictment/ Information	Fugitive from Justice	Controlled Substance	Mental Health	Illegal Unlawful Alien	Dishonorable Discharge	Renounced U.S. Citizenship	Protection / Restraining Order	MCDV	State Prohibitors	Denied Persons File	Totals
Alabama			1		822		1		1				825
Alaska					1								1
American Samoa													
Arizona	4	1	1	30	16,979					2	2		17,019
Arkansas	10,962		1	1	2,404	2			2	2,097			15,469
California	3,507		8	1	611,022	19	1		9	6,858		447	621,872
Colorado	5				50,211				194	94			50,504
Connecticut	15,553	304	42,533	5,358	19,627				614	18,273	7,290		109,552
Delaware					19,745								19,745
District of Columbia				2	605	2		11					620
Florida	69,507				128,530					5			218,042
Georgia				3	7,915					1			7,919
Guam													
Hawaii					1,703					3	1		1,707
Idaho					4,003					1			4,004
Illinois	3				44,647		1			1	2,957		47,609
Indiana	1				6,280					1			6,282
Iowa	72	18		10	11,436	2	1		40	130	1	7	11,717
Kansas					5,566				1	1			5,568
Kentucky	2,580	118	7	59	13,681					121			16,566
Louisiana	294,059				729	1			443	14,477	575		310,284
Maine	1				2,765								2,768
Mariana Islands													
Maryland	9			2	7,192						3		7,206
Massachusetts	15		395,527		1								395,543
Michigan	10		1	2,197	123,573		1	2	1	1	169		125,955
Minnesota	26	3	1	734	44,904					30	35		45,733
Mississippi					2,725								2,725
Missouri					39,673			1		687			40,361
Montana	1				3			1		2			7
Nebraska	2			3	25,830					19			25,854
Nevada	101		2	73	3,993		2		234	901			5,306
New Hampshire	180			2,845	2			1		13,584			16,612
New Jersey	15				424,927	11			12	24		2	424,991
New Mexico	182,539				6,630				3,075	27,419			219,663
New York				2	284,272				40,692		98,229		423,195
North Carolina	839	5	17	32	57,712	8	26	2	63	1,565	207	502	60,978
North Dakota					309					1			310
Ohio	1		1		45,915								45,917
Oklahoma	1	1		18	25				1				46
Oregon	1			5	30,297					2			30,305
Pennsylvania	1				709,246								709,247
Puerto Rico	3												3
Rhode Island					27								27
South Carolina	1		3	12	63,189	2	1			2			63,210
South Dakota					118								118
Tennessee	7			13	17,124			1	1	2			17,148
Texas	2				239,961	4	1			4			239,972
Utah	1,213	71	860	140	7,989	29	1		894	1,146	1	2,475	14,819
Vermont	4,750				24					6		26,875	31,655
Virgin Islands													
Virginia	105,933		1	78	218,664					51			324,727
Washington	308	6	78	89	104,465	2	1		100	332	209		105,598
West Virginia					14,505						1		14,506
Wisconsin	91	1	6	7	17,958				1	215	1	10	18,290
Wyoming	2		445		3					3			453
State & Territory Totals	712,383	528	439,493	11,714	3,439,927	82	37	19	46,378	88,061	109,681	30,318	4,878,541

Federal Agencies	Felony	Under Indictment/ Information	Fugitive from Justice	Controlled Substance	Mental Health	Illegal Unlawful Alien	Dishonorable Discharge	Renounced U.S. Citizenship	Protection / Restraining Order	MCOV	State Prohibitors	Denied Persons File	Totals
Air Force Office of Special Investigations, U.S.					1								1
Alcohol, Tobacco, Firearms, and Explosives, U.S.	6	1	1	2	44	56			1	6	1		120
Amtrak Railroad Police			5										5
Army, U.S.				449	1								450
Coast Guard, U.S.	10			101			17						128
Court Services & Offender Supervision Agency for the D.C., U.S.				7,232									7,232
Department of Agriculture, U.S.	275	1											276
Department of Defense, U.S.	1				1		10,382						10,384
Department of Health and Human Services, U.S.	46	17				1					43		107
Department of Interior, U.S.					2								2
Department of Justice, U.S.					1								1
Department of State, U.S.		1	1	5	5	5		26,439					26,456
District Court, U.S.					6								6
Drug Enforcement Administration, U.S.						83							83
Federal Bureau of Investigation, U.S.	9,418	437	6,500	1,399	1,151	2,071	33	22	234	22,580	4,872		48,722
Federal Pre-Trial Services				6,174									6,174
Federal Prosecuting Attorneys	999,297	31,369		170	795	10							1,031,641
Immigration and Customs Enforcement, U.S.	1					6,266,168							6,268,169
Internal Revenue Service						9							9
Naval Criminal Investigative Service, U.S.										1			1
Navy, U.S.					2								2
Railroad Retirement Board, U.S.	39	2			1								42
Secret Service, U.S.	1			145	205				1		1		353
Social Security Administration, U.S.			4										4
Veterans Affairs Department, U.S.	0	0	11	0	223,375	0	0	0	0	0	0	0	223,386
Federal Totals	1,009,092	31,828	6,522	15,674	225,600	6,268,405	10,432	26,461	236	22,587	4,917	0	7,621,754
State & Territory Totals	712,303	528	439,493	11,714	3,439,927	82	37	19	46,378	88,061	109,681	30,318	4,878,541
Federal Totals	1,009,092	31,828	6,522	15,674	225,600	6,268,405	10,432	26,461	236	22,587	4,917	0	7,621,754
Totals	1,721,395	32,356	446,015	27,388	3,665,527	6,268,487	10,469	26,480	46,614	110,648	114,598	30,318	12,500,296



**Report to Congress
Pursuant to Requirements of the NICS
Improvement Amendments Act of 2007
(Public Law 110-180)**

March 2016

V. Department of Justice NIAA Implementation Efforts

Several Department of Justice (DOJ) components are involved in overseeing, coordinating, and assisting with the implementation of the NIAA at the federal and state level, including the NICS Section of the FBI, ATF, BJS, the Office of Legal Policy (OLP), the Executive Office for United States Attorneys, and others as necessary. This section highlights the efforts of those DOJ components in areas such as oversight, coordination and assistance. Since passage of the NIAA, DOJ and its components have engaged in significant and reoccurring outreach efforts to relevant state and federal stakeholders, provided implementation assistance through written guidance, websites, training and conferences, and provided grant funding to eligible states that seek to improve the information accessible to the NICS. Listed below are the activities that DOJ has undertaken since the last report. Since May 2014, DOJ has:

- Made awards to 41 states and one territory in September 2014 to support NIAA and National Criminal History Improvement Program (NCHIP) related activities totaling approximately \$38.9 million. Of the \$38.9 million awarded, \$11.4 million

was awarded to 17 states under the NIAA established grant program (the NICS Act Record Improvement Program or NARIP).

Made awards to 40 states, one territory, and the District of Columbia in September 2015 to support NIAA and NCHIP related activities totally approximately \$56.9 million. Of the \$56.9 million awarded, \$22.7 was awarded to 22 states under the NIAA established grant program.

- Since 2009, \$95 million has been awarded to a total of 28 eligible states under the grant program authorized by NIAA.
- Maintained and updated a “Questions and Answers” guide to the NIAA on the BJS Web site < http://www.bjs.gov/index.cfm?ty=tp&tid=49#q_and_a>.
- Continued to consult with state NIAA task forces on developing strategies to improve record availability and reporting.
- Continued to provide reference and resource materials when requested by state and federal departments and agencies.
- Continued to provide training and technical assistance to states on mental health relief from disabilities program requirement.
- Continued to provide detailed information about the NIAA and related grant opportunities to the Bureau of Indian Affairs to be shared with tribal governments.
- Continued to work with federal departments and agencies to facilitate information sharing, as required by the NIAA and the January 2013 Presidential Memo. Multiple agencies still have not met the requirements of the NIAA in its entirety and are detailed below.
 - The Department of Defense has not begun submitting those subjects who are prohibited under the mental health prohibition.
 - The U.S. Immigration and Customs Enforcement and the Department of Veterans Affairs have not updated their NICS Index entries for the past few years causing many erroneous denials. Even though the NICS Section has been involved in conversations regarding these updates, the updates have not yet occurred.
 - The Department of Labor (DOL) has been in contact with the NICS Section, but the NICS has not received any submissions at this time from the DOL.

- The Social Security Administration (SSA) has had discussions with the NICS Section regarding submitting mental health records in the near future. However, the SSA has not begun submitting these records to date.
- The Railroad Retirement Board has not entered into any conversations with the NICS Section regarding their mental health submissions to the NICS Index.

VI. Federal Compliance with NIAA Requirements

As discussed above, the NIAA contains provisions that are intended to increase the information available to the NICS for background check purposes. To accomplish that goal, the NIAA mandates reporting of certain information by federal departments and agencies. Additionally, as noted above, the NIAA requires any agency that makes disqualifying mental health adjudications or commitments to adopt a relief from disabilities program. The following section outlines implementation efforts on both fronts.

a. President's Memorandum

As described in the last report, on January 16, 2013, President Obama issued a Presidential Memorandum entitled, "Improving Availability of Relevant Executive Branch Records, directing Federal agencies – consistent with the requirements of the NIAA – to provide to the NICS on a regular and ongoing basis any records demonstrating that a person is prohibited from receiving or possessing a firearm. Pursuant to the Presidential Memorandum, in March, 2013, DOJ issued guidance to agencies regarding the identification and sharing of relevant Federal records and their submission to the NICS. The Memorandum also required agencies to submit a report to DOJ advising whether they possess relevant records as described in the guidance, and setting forth an implementation plan for making information in those records available to the NICS.

Since the last report, DOJ received implementation plans from all twelve departments or agencies that were deemed by DOJ to possess relevant records. The list of these departments and agencies follows:

- Environmental Protection Agency
- Department of Defense
- Department of Housing and Urban Development
- Department of Veterans Affairs
- Department of Health and Human Services
- Department of Homeland Security
- Department of Labor
- Department of State
- Office of Personnel Management
- Railroad Retirement Board
- Small Business Administration

- Social Security Administration (SSA)

DOJ reviewed these agencies' implementation plans and provided feedback to help them identify relevant records and determine how they could make those records available to the NICS. Since the issuance of the Attorney General's guidance, the agencies have made significant progress in improving their reporting, with several agencies now making all relevant records available to the NICS. DOJ continues to work cooperatively with additional agencies to resolve outstanding questions, surmount any remaining hurdles, and increase the availability of federal records to the NICS.

In addition, as described in the last report, in early 2013 DOJ successfully launched an improved and expanded automated and direct link between the case management system employed by the 94 U.S. Attorney's Offices (USAO) and the NICS Index. As a result, critical information from nearly one million pending and historical indictments, informations, and other charging instruments filed across the country was instantly fed into the NICS Index. This interface was further designed to capture and transmit newly filed charging instruments on a weekly basis. The sharing of this data provides the FBI, NICS operators, and authorized state and local operators with the information necessary to deny the transfer of firearms from FFLs to prohibited persons who are under indictment or charged with a crime, consistent with 18 U.S.C. § 922(n). It also allows for the denial of firearm transfers to persons prohibited under any of the 922(g) prohibitors, including felons and persons convicted of misdemeanor crimes of domestic violence, as well as under any applicable state prohibitions.

DOJ continues with weekly updates to the NICS Index from the U.S. Attorney's Office community. If the disposition is a felony conviction, for example, the newly designed system will automatically update the information in the NICS Index and the basis to deny the transaction (i.e., 18 U.S.C. § 922(g)(1)). In contrast, if the person is acquitted or the disqualifying charges are otherwise dismissed, the original record will be removed from the NICS Index.

As of November 17, 2015, there were 1,093,246 entries in the NICS Index from the USAOs. On February 24, 2013 the DOJ began capturing the number of denials resulting from USAO entries. 2,317 subjects have been denied based on the USAO entries from February 24, 2013, through November 17, 2015.

As a result of DOJ's work with states and federal agencies, an additional 2,842,759 records were made available to the NICS Index in 2013. This is a greater increase than any year since NICS's creation (1998). More than half of this increase is due to additional records on persons prohibited from possessing firearms for reasons related to mental health. States and federal agencies made available an additional 1,439,513 such records in 2013, which is also the largest increase in this category of records in a single year since NICS's inception.

Starting in 2016, the SSA plans to submit approximately 162,000 records annually to the NICS Index. It is important to note that the SSA was granted an exception by the DOJ

from submitting old records. Those clients who fall under the mental health prohibitor will be submitted in a day-forward approach.

The NICS Section continues to work with the Veteran's Administration in conducting a clean-up of their NICS Index entries to ensure all entries are valid and accurate.

The United States Immigration and Customs Enforcement is the largest contributor to the NICS Index. The NICS Section continues to work with them with the goal of having known erroneous records removed from the NICS Index.

b. Relief from Mental Health Disabilities Program

Based on the response to DOJ guidance, it appears that a number of federal departments and agencies likely create qualifying mental health records. DOJ is working with these departments and agencies to ensure that relevant information is transmitted to the NICS.

ATF has instructed federal departments and agencies on the relief from disabilities program requirements, as well as the notice requirements for federal departments and agencies that make qualifying mental health adjudications. The Veterans Administration has established a mental health relief from disabilities program and provides notice as required by the NIAA. ATF will continue to work with federal departments and agencies to identify whether they make qualifying mental health adjudications, and for those that do, will assist them in complying with the relief from disability requirements of the NIAA.

Not Responsive Record



Appendix B - Records Available in NCIC as of December 31, 2015										
	W - Wanted Persons & Foreign Fugitives	H - Protection Orders	X - Sex Offenders	C - Supervised Release	N - Immigration Violator	M - Missing Persons	U - Unidentified Persons	T - Gang Member	J - Identity Theft	Grand Totals
Alabama	11,904	4,501	11,203	0	0	1,285	30	1	49	28,973
Alaska	527	1,100	2,777	13	0	1,154	28	0	2	5,601
American Samoa	1	0	0	0	0	0	0	0	0	1
Arizona	68,285	17,881	15,361	13,053	0	2,221	342	0	819	117,962
Arkansas	151,288	13,639	12,217	56	0	501	100	188	65	178,054
California	236,058	235,049	65,457	1,471	0	19,788	3,126	0	778	561,727
Colorado	38,147	133,593	13,939	17,089	0	1,203	46	1	64	204,082
Connecticut	3,511	30,014	5,431	10,947	0	472	18	0	205	50,598
Delaware	3,244	1,825	3,616	1	0	138	18	1	3	8,846
DC	682	1,994	1,257	0	0	438	1	0	0	4,372
Florida	267,285	191,332	68,796	161,315	0	3,200	758	347	0	693,033
Georgia	211,768	8,890	20,661	37	0	1,787	153	94	4,897	248,287
Guam	452	439	652	0	0	0	0	0	0	1,543
Hawaii	475	4,677	2,679	0	0	417	8	0	0	8,256
Idaho	25,507	957	4,283	0	0	126	12	170	11	31,066
Illinois	37,095	30,315	24,250	0	0	2,164	172	0	0	93,996
Indiana	64,377	87,697	8,298	11,709	0	983	25	155	249	173,493
Iowa	13,070	23,813	5,284	1	0	355	7	0	146	42,676
Kansas	9,987	5,099	9,772	3,570	0	609	24	512	302	29,875
Kentucky	11,073	16,097	8,238	0	0	551	35	431	38	36,463
Louisiana	15,556	13,741	13,006	0	0	2,480	21	7	13	44,824
Maine	1,325	4,615	2,652	0	0	68	3	153	162	8,978
Mariana Islands	0	0	0	0	0	0	0	0	0	0
Maryland	20,284	8,095	6,088	73,358	0	2,039	71	21	423	110,379
Massachusetts	16,248	19,658	10,652	0	0	2,229	20	0	1	48,808
Michigan	82,624	15,976	42,385	0	0	4,244	81	0	117	145,427
Minnesota	17,310	16,913	17,821	0	0	570	42	0	121	52,777
Mississippi	13,796	764	6,771	0	0	1,146	23	0	2	22,502
Missouri	29,485	14,915	18,024	112	0	881	58	0	807	64,282
Montana	3,254	4,735	2,507	87	0	123	7	6	492	11,211
Nebraska	8,940	1,800	5,059	1,798	0	270	3	1,270	14	19,154
Nevada	14,936	36	7,674	1,954	0	934	109	3	58	25,704
New Hampshire	2,856	3,844	2,798	0	0	68	6	170	468	10,210
New Jersey	56,640	172,043	15,366	15,346	0	1,136	319	1,534	3,835	266,219
New Mexico	102,559	6,399	4,085	2,652	0	793	16	0	209	116,713
New York	33,706	231,946	39,458	0	0	4,400	868	5,384	27	315,789
North Carolina	25,547	12,084	17,241	0	0	1,261	22	4,524	446	61,125
North Dakota	1,435	109	1,611	0	0	71	0	0	1	3,227
Ohio	15,323	32,281	22,827	2,139	0	1,359	35	0	18	73,982
Oklahoma	21,493	6,893	7,420	0	0	1,050	28	2,097	20	39,001
Oregon	17,548	16,065	21,317	1	0	984	49	0	137	56,101
Pennsylvania	111,027	29,027	18,425	61	0	1,930	105	2	1,510	162,087
Puerto Rico	1,630	0	2,222	0	0	2,775	4	0	2	6,633
Rhode Island	1,932	14,582	2,164	0	0	109	2	0	43	18,832
South Carolina	67,227	2,532	12,908	617	0	724	29	2,766	264	87,067
South Dakota	1,229	2,876	3,434	0	0	76	2	0	0	7,617
Tennessee	33,778	17,535	15,773	0	0	1,081	59	328	338	68,892
Texas	232,918	16,376	85,157	1	0	6,316	811	63,224	3,355	408,158
Virgin Islands	63	113	114	0	0	30	0	0	0	320
Utah	1,660	9,467	7,359	0	0	412	12	0	76	18,986
Vermont	254	2,082	1,992	0	0	53	3	6	2	4,392
Virginia	55,545	29,366	20,784	0	0	691	69	2,511	23	108,989
Washington	45,839	101,651	21,747	1	0	1,689	136	25	317	171,405
West Virginia	1,655	2,748	3,408	0	0	319	22	0	21	8,173
Wisconsin	16,481	17,823	20,436	346	0	953	28	60	314	56,441
Wyoming	536	710	1,817	0	0	76	10	0	2	3,151
State Submissions	2,227,375	1,638,712	766,673	317,735	0	80,732	7,976	85,991	21,266	5,146,460

Appendix B - Records Available in NCIC as of December 31, 2015										
	W - Wanted Persons & Foreign Fugitives	H - Protection Orders	X - Sex Offenders	C - Supervised Release	N - Immigration Violator	M - Missing Persons	U - Unidentified Persons	T - Gang Member	J - Identity Theft	Grand Totals
FEDERAL										
U.S. Air Force	1	18	0	0	0	6	0	0	1	26
Amtrax Railroad Police	9	0	0	0	0	0	0	0	0	9
Alcohol, Tobacco and Firearms	865	0	0	0	0	0	0	0	0	865
Bureau of Engraving and Printing	1	0	0	0	0	0	0	0	0	1
Bureau of Immigration and Customs Enforcement	2,457	0	1	0	276,341	0	1	1,853	0	280,653
U.S. Coast Guard	18	4	0	0	0	2	0	0	0	24
Department of Interior	778	196	199	0	0	174	10	0	2	1,359
Department of Interior through the DOJ	0	27	19	0	0	0	0	0	0	46
Department of Agriculture	1	0	0	0	0	3	0	0	0	4
Department of Defense	1	0	0	0	0	0	0	0	0	1
Department of Justice	1	0	0	0	0	0	0	0	0	1
Department of State	330	0	0	0	0	1	0	0	0	331
Department of Transportation	0	0	0	0	0	1	0	0	0	1
Federal Air Marshals	1	0	0	0	0	0	0	0	0	1
Federal Bureau of Investigation	6,104	1	1	0	0	156	7	271	1	6,541
Food and Drug Administration	1	0	0	0	0	0	0	0	0	1
Federal Protective Service	2	0	0	0	0	0	0	0	0	2
Interpol	26,088	0	142	0	0	1,910	0	0	0	28,140
Internal Revenue Service	4	0	0	0	0	0	0	0	0	4
U.S. Marines	452	0	0	0	0	0	0	0	0	452
National Instant Criminal Background Check System	23	54	0	0	0	41	3	0	0	121
U.S. Air Force Office of Special Investigations	65	0	0	0	0	1	0	0	0	66
Postal Inspection Service	448	1	0	0	0	0	0	0	0	449
U.S. Park Police	0	0	0	0	0	3	4	0	0	7
Secret Service	414	0	0	0	0	0	0	0	0	414
Treasury Inspector General	21	0	0	0	0	0	0	0	0	21
U.S. Army	1,208	109	0	0	0	16	2	0	0	1,335
Bureau of Customs	80	0	0	0	0	1	0	8	0	89
Marshals Service	22,845	0	0	0	0	1	0	0	0	22,846
U.S. Navy	247	0	0	0	0	0	0	0	0	247
Veteran's Affairs	7	1	0	0	0	31	0	0	1	40
Federal Prosecutors	3	0	0	0	0	0	0	0	0	3
Federal Pretrial Services	0	0	0	7,503	0	0	0	0	0	7,503
Federal Probation and Parole	0	0	3	145,836	0	0	0	50	0	145,889
Federal Courts	0	83	0	0	0	0	0	0	0	83
Federal Criminal Justice Agencies not otherwise classified	7	0	0	0	0	1	0	0	0	8
Federal Subtotals	62,482	494	365	153,339	276,341	2,348	27	2,182	5	497,583
Total	2,289,857	1,639,206	767,038	471,074	276,341	83,080	8,003	88,173	21,271	5,644,043

Appendix C - Records Available in the NICS Index Statistics - December 31, 2015

State	Felony	Under Indictment/ Information	Fugitive from Justice	Controlled Substance	Mental Health	Illegal Unlawful Alien	Dishonorable Discharge	Renounced U.S. Citizenship	Protection / Restraining Order	MCDV	State Prohibitors	Denied Persons File	Totals
Alabama			1	2	1,903		1		1	1			1,909
Alaska	4,338				93				1,199				5,630
American Samoa													
Arizona	4	1	1	18	23,032					2	3		23,061
Arkansas	11,665		1		2,892	2			2	2,460			17,022
California	4,432		8	2	684,341	19	2		10	8,245			697,059
Colorado	7				61,848				212	186			62,253
Connecticut	348,793	316	47,279	5,664	22,752				689	21,064	89,630		536,187
Delaware					19,819								19,819
District of Columbia					694	2		1					697
Florida	89,190		1	18	133,118				2	25	9,891		232,245
Georgia				23	10,053					1	1		10,078
Guam													
Hawaii					2,065					3	1		2,069
Idaho					6,869					1			6,870
Illinois	2,682	1,767	27	623	47,386	293	9	9	293	227	7,167		60,483
Indiana	770	1			8,443					2			9,216
Iowa	95	23	3	32	41,333	2	3		66	139	1		41,697
Kansas					6,172				2	899			7,073
Kentucky	4,081	124	3,773	11	23,506					220			31,715
Louisiana	324,419				2,735	1			1,209	19,829	2,463		350,656
Maine	6				3,150								3,156
Mariana Islands				1									1
Maryland	13				13,971						6		13,990
Massachusetts	19		416,047	1,598	11,541								429,205
Michigan	20		2	2,057	132,084		1		1	4	334		134,503
Minnesota	37	1	2	676	50,619				7	32	1,177		52,551
Mississippi					9,182								9,182
Missouri				4	44,374					635			45,013
Montana	1	1			3					2			7
Nebraska	3		1		27,895	1				22			27,922
Nevada	161		1	78	5,188	1	2		310	1,085			6,826
New Hampshire	197			2,880	2					13,714			16,793
New Jersey	19				449,153	12			15	23			449,222
New Mexico	190,767	1			6,999				2,947	27,411			228,125
New York				1	382,870				52,653		96,797		532,321
North Carolina	989	2	20	47	139,663	10	25	1	136	1,800	309		143,002
North Dakota					1,258					1			1,259
Ohio	1		1		51,011								51,013
Oklahoma	1	1			1,004				1				1,007
Oregon	2				31,136					2			31,140
Pennsylvania	2		2	99	756,952		1						757,056
Puerto Rico	8,427	9,147											17,574
Rhode Island					306								306
South Carolina	6		5	11	75,089	8	3		2	2			75,126
South Dakota					549								549
Tennessee	8			6	25,596				1	2			25,613
Texas	2				262,069	12	1			6			262,090
Utah	2,435	147	1,623	194	9,147	45	3		1,166	1,497	20		16,277
Vermont	31,922				414					6			32,342
Virgin Islands													
Virginia	106,916		1	53	246,053					287			353,310
Washington	400	10	53	79	106,436	2	1		115	356	314		107,766
West Virginia					21,785						2		21,787
Wisconsin	106	2	6	6	23,023					252	1		23,396
Wyoming	3		17,780	2	4					13			17,802
State & Territory Totals	1,132,939	11,544	486,638	14,185	3,987,580	410	52	11	61,039	100,456	208,117		6,002,971

	Felony	Under Indictment/ Information	Fugitive from Justice	Controlled Substance	Mental Health	Illegal Unlawful Alien	Dishonorable Discharge	Renounced U.S. Citizenship	Protection / Restraining Order	MCDV	State Prohibitors	Denied Persons File	Totals
Federal													
Air Force Office of Special Investigations, U.S.					1								1
Alcohol, Tobacco, Firearms, and Explosives, U.S.	8	3	1	4	58	59	1		1	8	1		144
Amtrak Railroad Police			7										7
Army, U.S.				34	1								35
Coast Guard, U.S.	22			73		1	24						120
Court Services & Offender Supervision Agency for the D.C., U.S.				1,649									1,649
Department of Agriculture, U.S.	275	1											276
Department of Defense, U.S.	1				1		10,711						10,713
Department of Health and Human Services, U.S.	77	4				3					116		200
Department of Housing and Urban Development, U.S.	14	2											16
Department of Interior, U.S.					3								3
Department of Justice, U.S.					1	1							2
Department of State, U.S.		1		2	6	17		32,654					32,680
Department of Transportation, U.S.						1							1
District Court, U.S.					10								10
Drug Enforcement Administration, U.S.						55							55
Federal Bureau of Investigation, U.S.	9,928	701	7,624	1,919	1,215	2,833	33	1	353	25,686	6,425		56,718
Federal Pre-Trial Services				4,879									4,879
Federal Prosecuting Attorneys	1,064,139	33,239		197	832	936				84			1,099,427
Immigration and Customs Enforcement, U.S.	1					6,688,523							6,688,524
Internal Revenue Service						12							12
Naval Criminal Investigative Service, U.S.										1			1
Navy, U.S.					1								1
Postal Inspection Service, U.S.						1							1
Railroad Retirement Board, U.S.	50	6			2								58
Secret Service, U.S.	3	1		269	296						1		570
Social Security Administration, U.S.	91	39	4								11		145
Veterans Affairs Department, U.S.			11		260,381								260,392
Federal Totals	1,074,609	33,997	7,647	9,026	262,808	6,692,442	10,769	32,655	354	25,779	6,554	0	8,156,640
State & Territory Totals	1,132,939	11,544	486,638	14,185	3,987,580	410	52	11	61,039	100,456	208,117		6,002,971
Federal Totals	1,074,609	33,997	7,647	9,026	262,808	6,692,442	10,769	32,655	354	25,779	6,554		8,156,640
Totals	2,207,548	45,541	494,285	23,211	4,250,388	6,692,852	10,821	32,666	61,393	126,235	214,671	0	14,159,611

NOTE As a result of the passage of the NICS Improvement Amendments Act of 2007 and the new reporting requirements, a system build took place on 05/19/2008 to change the NICS Index and associated reporting capabilities. Records entered into the Federally Denied Persons File prior to this date will continue to appear in the Denied Persons File until such time each agency modifies the category of the records previously entered to reflect the appropriate category associated with a federal firearms prohibition. The statistical fluctuation from August to September 2009 in the U. S. Immigration and Customs Enforcement category was due to a refreshment of their files.