## BRADY HANDGUN VIOLENCE PREVENTION ACT OF 1993

The Brady Handgun Violence Prevention Act of 1993 (Brady Act), Public Law 103-159, was signed into law requiring Federal Firearms Licensees (FFL) to request background checks on prospective firearm transferees. The permanent provisions of the Brady Act, effective November 30, 1998, required the U.S. Attorney General to establish the National Instant Criminal Background Check System (NICS). FFLs may contact the NICS by telephone, or other electronic means, to determine whether or not the transfer of a firearm would violate Section 922 (g) or (n) of Title 18, United States Code (U.S.C.), or state law.

## ACCESS TO THE NICS

Access to the NICS is restricted to the following three circumstances:

❖ An FFL can initiate a background check only in connection with a proposed firearm transfer as required by the Brady Act and pursuant to 18 U.S.C. § 922(t)(1).

❖ Pursuant to Title 28, Code of Federal Regulations (C.F.R.), Section 25.6 (j)(i), to provide information to local, state, or federal criminal justice agencies only in connection with the issuance of a firearm-related or an explosives-related permit or license.

❖ Title 28 C.F.R. §25.6 (j)(2) permits the NICS to respond to inquiries by the Bureau of Alcohol, Tobacco, Firearms and Explosives in connection with a civil or criminal law enforcement activity relating to the Gun Control Act of 1968 or the National Firearms Act.

## HOW THE NICS WORKS

All states have the option to implement a state-based NICS program. Such states serve as a point of contact (POC) between the NICS and the state's FFLs. The FFLs conducting business in these POC states contact a state-designated agency to initiate all background checks.

The FFLs conducting business in the states that do not operate in a POC capacity, otherwise known as non-POC states, contact the FBI Criminal Justice Information Services Division's NICS Section to initiate background checks. Also, several states share responsibility with the FBI for processing background checks for the state's FFLs. These partial-POC states process the FFL's handgun checks, while the FBI processes the FFL's long gun checks.

When an FFL initiates a NICS background check, a name and descriptive information search is conducted for matching records in three national databases. These databases are the National Crime Information Center (NCIC), which contains information on wanted persons and protection orders; the Interstate Identification Index (III), which contains criminal history records; and the NICS Index. The NICS Index contains information that may not be available in the NCIC or the III regarding persons predetermined to be prohibited from receiving firearms under federal or state law. A valid match of a NICS Index record to a prospective firearm transferee results in an immediate determination of firearm disqualification.

A search of the applicable databases of the Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE) is also conducted on all non-U.S. citizens.

The majority of NICS checks are determined within minutes, sometimes seconds, after the background check search is initiated. If the NICS does not match any records in the databases searched, the FFL is advised the firearm transfer may proceed. If the search yields a valid match to prohibiting information, the FFL is advised to deny the transfer of the firearm.

If the search is matched to any potentially prohibiting records, the NICS Section must reach out to judicial and/or law enforcement agencies for the information needed to render a final decision. The Brady Act allows three business days for this purpose. If the information is not obtained within the three-business-day time frame and a final decision of proceed or deny is not made, the FFL has the option to legally transfer the firearm.

## PRIVACY AND SECURITY

The data stored in the NICS is documented federal information. Access to this information is restricted to agencies authorized by the FBI. Extensive measures are taken by the FBI to ensure the security and integrity of the NICS information and agency use. The information specific to background checks that result in an allowed transaction is destroyed in accordance with existing federal law. Further information pertaining to privacy and security of the NICS is located via the NICS Web site.

A deny message from the NICS indicates the subject of the background check has been matched with a similar name and/or similar descriptive information of a record containing a state law prohibition or the following federally prohibitive criteria:

**18 U.S.C. §922 (g)(1)**
Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year
**18 U.S.C. §922 (g)(2)**
Is a fugitive from justice
**18 U.S.C. §922 (g)(3)**
Is an unlawful user of or addicted to any controlled substance
**18 U.S.C. §922 (g)(4)**
Has been adjudicated as a mental defective or committed to a mental institution
**18 U.S.C. §922 (g)(5)**
Is an alien illegally or unlawfully in the United States or who has been admitted to the United States under a nonimmigrant visa
**18 U.S.C. §922 (g)(6)**
Has been discharged from the Armed Forces under dishonorable conditions
**18 U.S.C. §922 (g)(7)**
Having been a citizen of the United States, has renounced U.S. citizenship
**18 U.S.C. §922 (g)(8)**
Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner
**18 U.S.C. §922 (g)(9)**
Has been convicted in any court of a misdemeanor crime of domestic violence
**18 U.S.C. §922 (n)**
Is under indictment for a crime punishable by imprisonment for a term exceeding one year

Please reference the Federal Register, Volume 62, Number 124, *Rules and Regulations*, for more complete definitions of the prohibiting categories.

## NICS SECTION INFORMATION

**NICS Customer Service**
**1-877-FBI-NICS (324-6427)**

**NICS Section Facsimile**
**1-888-550-6427**

**NICS Appeal Facsimile**
**1-304-625-0535**

**Telecommunications Device for the Deaf (TDD)**
**1-877-NICS-TTY**

**NICS Web Site**
**www.fbi.gov/nics**

**NICS E-mail Address**
**NICS@ic.fbi.gov**

**NICS Appeal Web Site**
**www.fbi.gov/nics-appeals**

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**U.S. Department of Justice**
Federal Bureau of Investigation
*Criminal Justice Information Services Division*

# National Instant Criminal Background Check System (NICS)