United States General Accounting Office

GAO

Report to the Honorable Craig Thomas
U.S. Senate

February 2000

GUN CONTROL

Implementation of the National Instant Criminal Background Check System

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United States General Accounting Office
Washington, D.C. 20548

General Government Division

B-284250

February 29, 2000

The Honorable Craig Thomas
United States Senate

Dear Senator Thomas:

This report responds to your request for information on a wide variety of topics related to the permanent provisions (phase II) of the Brady Handgun Violence Prevention Act (Brady Act).[1] On November 30, 1998, the Brady Act's permanent provisions went into effect with implementation of the National Instant Criminal Background Check System (NICS). Managed by the Federal Bureau of Investigation (FBI), this computerized system is used to make presale background checks for purchases[2] from federal firearms licensees (FFL) of all firearms, not just handguns.

Under NICS, as the name implies, Congress expected that most background checks would be performed instantly, without a waiting period. Also, under phase II of the Brady Act implementation, if law enforcement is unable to complete the background check within 3 business days,[3] the sale is allowed to proceed—that is, proceed by default. Appendix I presents an overview of the firearms purchase application and background check procedures under NICS. Depending on the willingness of their state governments to act as NICS liaisons, licensed firearms dealers contact either the FBI or designated state agencies (e.g., state police) to initiate background checks. At the time of our review, the FBI was responsible for conducting presale background checks involving (1) both handgun and long gun (e.g., rifles and shotguns) permits or purchases

[1] The Brady Act, Public Law 103-159 (1993), amended the Gun Control Act of 1968 (P.L. 90-618). The interim provisions (phase I) of the Brady Act went into effect February 28, 1994, for handgun purchases only and allowed law enforcement officers up to a maximum of 5 business days to conduct presale background checks for evidence of felony convictions or other disqualifying information.

[2] NICS background checks are to be performed in connection with firearms transfers involving federal firearms licensees and are not to be limited to firearms sales (63 Fed. Reg. 58303, 58306 (1998)). When we use the term "potential buyer" or "potential purchaser," we are also referring to other potential firearms recipients, such as individuals redeeming pawned firearms.

[3] "Business day" is defined by federal regulation as a 24-hour day (beginning at 12:01 a.m.) during which state offices are open in the state in which the proposed firearm transaction is to take place (63 Fed. Reg. 58303, 58307 (1998)).

from licensed dealers in 24 states and (2) long-gun permits or purchases from licensed dealers in 11 other states.[4]

As agreed with your office, in obtaining information on NICS-related topics, we focused on background checks conducted by the FBI's NICS Program Office.[5] Specifically, we collected information related to the following four topics:

- Statistics on background checks, denials, and appeals. We obtained overview statistics regarding the number of background checks by type (i.e., handguns versus long guns), number of purchase denials, and number of appeals of denials.

- Enforcement actions. Regarding individuals who allegedly falsify their status on firearm-purchase applications, we identified applicable federal policies, procedures, and results concerning follow-up enforcement actions, such as referrals for investigations and prosecutions.

- NICS operations. Regarding computer system operations or implementation, we answered the various questions you asked about system architecture, capacity management, system availability, transaction response time, retention of records, monitoring activities, system security authorization, certain exemptions from the Privacy Act of 1974,[6] and the prospect of making NICS a fingerprint-based system rather than a name-based system.

- Pawnshop issues. We identified whether (1) owner redemptions of pawned firearms are subject to background checks and (2) multiple instances of pawning and subsequently redeeming the same firearm by one owner require a background check for each transaction (and, if so, how these multiple transactions are accounted for or reported in NICS workload statistics).

[4] In the other 15 states, licensed firearms dealers are to contact the state police or other designated state agencies that are to conduct the NICS background check and determine whether the transfer would violate state or federal law. As discussed in appendix V, pawnshop redemptions are also subject to NICS background checks.

[5] The NICS Program Office components are (1) two Call Centers (staffed with contract personnel) located in Uniontown, PA, and Moundsville, WV, and (2) the NICS Operations Center (staffed with FBI examiners) located in the FBI's Criminal Justice Information Services complex in Clarksburg, WV.

[6] Public Law 93-579 (1974).

The following section provides an overview of the time that it takes the FBI to conduct background checks under NICS and summarizes the information we collected on the four topics. It also contains the FBI's views on how NICS operations could be improved. Additional information on the four topics is provided in the appendixes.

Results

FBI data show that for the majority (about 72 percent, as of Nov. 30, 1999) of firearm-purchase background checks conducted by the FBI, NICS provided approval responses within 30 seconds after the purchaser's identifying information was input into the system. The remaining 28 percent of the background checks had delayed responses, according to FBI data. From a sample of delayed responses handled by an ad hoc selection of examiners, the FBI concluded that most of these responses (80 percent) were resolved within 2 hours or less and that the remainder (20 percent) required several hours or days to resolve.

Statistics on Background Checks, Denials, and Appeals

During the first year of NICS operations (Nov. 30, 1998, through Nov. 30, 1999) the FBI and designated state agencies conducted about 8.8 million background checks using NICS (see app. II). About 66 percent of the checks involved long guns, about 32 percent involved handguns, and about 1 percent involved dual transactions (both long guns and handguns).[7] About half of the total background checks were conducted by the FBI, and the remainder were conducted by designated state agencies. Further, as of November 30, 1999, FBI data showed the following:

- About 2 percent (81,006) of the FBI's 4.4 million background checks resulted in denials. That is, the potential buyer was found to be disqualified under federal or state law from possessing a firearm because, for example, criminal history records showed a felony conviction.
- About 17 percent (13,989) of the FBI's denials were appealed by the denied purchasers to the FBI.
- About 22 percent (2,710) of the 12,301 appeals, on which a final decision had been reached, were successful, that is, the denials were reversed by the FBI.

Enforcement Actions

Follow-up enforcement regarding individuals who do not acknowledge their prohibited status on firearm-purchase forms can involve various actions (see app. III). For example:

- According to the Bureau of Alcohol, Tobacco and Firearms (ATF), while each denial does not necessarily indicate that there has been a violation of

[7] Percentages do not add to 100 due to rounding.

federal law, ATF is authorized to investigate individuals who receive a denial to determine if these individuals have violated federal firearms laws. For example, under federal law, an individual who knowingly falsifies his or her status on the firearm-purchase form can be criminally prosecuted and, if convicted, sentenced to imprisonment, community confinement, or home detention, depending on the individual circumstances. For various reasons, including insufficient evidence and resource limitations, not all of the purchasers denied by the FBI are investigated and prosecuted. To determine which cases to pursue, ATF and U.S. Attorneys' Offices have established screening criteria or guidelines, with the highest priority placed on cases involving active and potential violent offenders. According to ATF, for the period of November 30, 1998, through September 30, 1999, transactions denied by the FBI or designated state agencies had led ATF to open 380 criminal investigations. Nationally, Executive Office for U.S. Attorneys (EOUSA) data show that, in fiscal year 1999, 2,272 defendants—charged for alleged firearms-related false-statement violations under 18 U.S.C. 922(a)(6) and/or alleged possession violations under 18 U.S.C. 922(g) or 922(n)—were convicted, and that sentences ranged from probation to life, with 43 percent of these defendants receiving a sentence in excess of 5 years. EOUSA could not specifically identify how many of these cases involved "Brady-related" charges, that is, how many cases resulted from follow-up enforcement actions regarding individuals who were denied purchasing firearms from licensed dealers on the basis of background checks conducted under Brady Act requirements. EOUSA officials said that Department of Justice databases do not capture the facts of the cases in which 922(a)(6), 922(g), and 922(n) charges are brought so as to distinguish Brady cases from non-Brady cases.[8]

- If the background check indicates that the prospective purchaser is a fugitive (i.e., an outstanding arrest warrant exists), applicable law enforcement agencies can attempt to arrest the individual. According to the FBI, NICS has resulted in firearm-purchase denials to 2,230 fugitives as of November 30, 1999—and, although no comprehensive statistics are available, some of these individuals subsequently have been arrested as a result of having been identified by the background check process.

- Law enforcement may need to retrieve a firearm from a prohibited individual when (1) the 3-day background check period has elapsed; (2) pursuant to a "default-proceed" response from NICS, the FFL allows a purchaser to obtain a firearm; and (3) a subsequent research of records indicates that the individual is disqualified by federal or state law from

[8] See tables III.2 and III.3 in appendix III.

possessing a firearm. As of December 31, 1999, ATF headquarters reported that it had received referral notifications from the FBI and applicable state authorities that 3,353 prohibited individuals had obtained firearms as a result of default proceeds under NICS,[9] and that it had subsequently opened criminal investigations on 110 of these individuals. ATF further reported that as of September 30, 1999, it had retrieved firearms from 442 prohibited persons. In September 1999, the Department of the Treasury announced it had assembled a special law enforcement team with members from ATF, the U.S. Customs Service, the Internal Revenue Service, and the U.S. Secret Service. The team was to focus on investigating a backlog of NICS referrals involving firearms that had been transferred as a result of default proceeds. According to ATF officials, this temporary program formally ended on September 30, 1999. However, ATF data indicate that a backlog of over 800 delayed denials again existed as of December 31, 1999. In commenting on a draft of this report in early February 2000, ATF headquarters officials said that these delayed denials were processed and referred to field offices, where investigations are being assigned and worked as a priority. Treasury officials stated they would consider reinstituting the program if they believe ATF field offices again need temporary assistance. However, Treasury and Justice officials noted that the number of delayed denials—which require considerable investigative effort on ATF's part—could be minimized by other means, such as focusing on efforts to have more complete information in criminal history records and allowing more time to complete background checks.

NICS Operations

In states where a state agency does not serve as a NICS liaison, licensed firearms dealers are to initiate a background check on firearms transfers by using a toll-free telephone number to contact an FBI Call Center. The Call Centers are linked to the FBI's NICS Operations Center to provide capability to search NICS' three national databases: (1) the National Crime Information Center 2000 (NCIC 2000),[10] which, among other things, contains files on wanted persons (fugitives) and persons subject to protection orders; (2) the Interstate Identification Index (III),[11] which is an index-pointer system for state criminal history records; and (3) the NICS Index, which contains other disqualifying records (e.g., information regarding such persons as aliens illegally or unlawfully in the country,

[9] According to FBI procedure, the agency's examiners at the NICS Operations Center are to notify ATF headquarters of all default-proceed cases in which firearms have been transferred to prohibited individuals.

[10] On July 11, 1999, NCIC 2000, which replaced NCIC, became operational.

[11] III became operational in the 1980s. III was made a segment of the Integrated Automated Fingerprint Identification System, which became operational on July 28, 1999.

individuals who have been dishonorably discharged from the armed forces, and other persons prohibited by federal law from receiving or possessing a firearm).

Summary information on key aspects of NICS operations is as follows (see app. IV):

- NICS architecture. The Brady Act required that the Attorney General establish NICS and that the system (1) assign a unique identification number (a NICS transaction number (NTN)), to each transfer; (2) provide the firearms licensee with the NTN; and (3) destroy all proceed records in the system (other than the NTN and the date that the NTN was assigned).[12] According to the NICS documentation we reviewed and FBI officials we interviewed, NICS satisfies these congressionally mandated functions.[13]

- Capacity management. The FBI uses a capacity management program to ensure that the Call Centers are sufficiently staffed to handle the forecasted volume of searches. The FBI has established a combined Call Center workload requirement of 13,500 searches per day, on average, and up to 27,000 per day during peak times. The workload volume has been 27,000 searches or fewer per day, through November 30, 1999, with 1 exception, according to FBI data.

- System availability. According to the FBI official responsible for NICS operations, the FBI has specified a NICS availability requirement of 98 percent for components of NICS delivered by the contractor (e.g., NICS servers)—meaning that the FBI expects these components of NICS to operate satisfactorily 98 percent of the time during the scheduled 17-hour operating period. The FBI also uses this availability requirement as a baseline against which to compare actual availability of all NICS components. The FBI calculates actual system availability by (1) quantifying the number of minutes that the system is operating satisfactorily during the scheduled 17-hour operating period and (2) dividing this total by the number of minutes that the system is expected to be operational (i.e., 17 hours, or 1,020 minutes, per day, 7 days a week). According to FBI data, for the period of November 30, 1998, through

[12] The FBI established, by regulation, that proceed files will be destroyed no more than 6 months after the transfer is allowed to proceed.

[13] The National Rifle Association and other plaintiffs have filed a lawsuit contending that proceed records should be destroyed immediately—that is, the plaintiffs contend that such records should not be retained for any length of time. The district court dismissed the complaint; the plaintiffs appealed that dismissal. Because this issue is in litigation, we are not addressing the merits of the competing arguments.

November 30, 1999, NICS met the 98-percent availability requirement in one-third of the months and did not meet the requirement in the remaining two-thirds of the months. In those months that NICS did not meet the requirement, availability ranged from 92 percent to 97.7 percent, with an average of 95.4 percent.

- Transaction response time. One measure of responsiveness is the length of time taken by the FBI to provide licensed firearms dealers with a decision on the results of background checks. FBI Call Center performance statistics indicated that the average length of time that the firearms licensee was on the telephone with a Call Center contract staff decreased from 3 minutes and 12 seconds in December 1998 to 2 minutes and 40 seconds in November 1999. During these telephone exchanges, a Call Center contract staff is to provide the licensee with either a proceed response or a delayed response. Call Center contract staff do not provide denied responses because these contract personnel are not authorized to review criminal history records. FBI staff (examiners) at the NICS Operations Center are to research the delayed transactions to determine whether the records indicate that a proceed response or a denied response should be provided. In June 1999, the FBI reported (on the basis of a sample of delayed transactions researched by an ad hoc selection of examiners) that about 80 percent of the delayed transactions were resolved within 2 hours and that the remainder required hours or days to resolve because FBI examiners may have needed to contact local or state sources.[14]

- Retention of records. The Brady Act prohibits the FBI from establishing a federal firearms registry and, in general, requires the destruction of proceed transactions. By regulation, proceed files are to be destroyed no more than 6 months after the transfer is allowed to proceed. Pending changes in regulations would lower this retention period to 90 days. In our September 1999 visit to the NICS Operations Center, we observed that the FBI had documented purge procedures. For a small nonprojectable sample of days (i.e., for purges scheduled to be conducted for 15 days in May and June, 1999),[15] we reviewed contractor log books indicating that purges had been conducted. Both FBI and ATF officials stated that the temporary retention of NICS transaction information provides an "audit

[14] According to the FBI, its examiners actively research delayed transactions for up to 20 days. If the FBI receives disposition information after 20 days, the examiner is to complete the transaction. For instance, if the information demonstrates that the purchaser is prohibited, a retrieval and/or a status change is to occur. FBI officials said that, after 20 days, some delayed transactions are not resolved. This category represents about 2 percent of the FBI's background checks under NICS.

[15] According to FBI documentation, the first purge under NICS was run on May 16, 1999.

log" database that is essential for ensuring that NICS is used only for intended purposes. Additionally, the FBI explained that it uses the audit log to oversee and improve NICS operations.

- Program monitoring activities. The NICS Program Office has an Internal Assessment Group that is responsible for monitoring the Office's implementation of policies and procedures. In August 1999, to develop procedures for monitoring or auditing the Program Office's compliance with purge requirements, the Internal Assessment Group conducted a pilot study at the Office. After these procedures are finalized, the Internal Assessment Group is expected to use the procedures to conduct periodic audits of the Program Office.

- System security authorization. The Office of Management and Budget (OMB) requires federal agencies to authorize information systems before their operation.[16] Justice similarly requires computer systems that process classified or sensitive information to be authorized.[17] Justice further allows authorizing authorities to grant interim approval to process sensitive information on a system before the completion of security plans and authorization.

  The FBI did not authorize NICS before it began operations on November 30, 1998. System authorization was not obtained, according to FBI officials, due to insufficient time and resources to formally test security controls between the date that the FBI received the system from the contractor and the congressionally mandated date for system operation. However, while a formal test of security controls was not conducted, the security officer responsible for NICS' authorization stated that a subset of NICS' security requirements was assessed and a number of vulnerabilities were disclosed.

  The FBI requested an interim approval to operate NICS from the FBI's National Security Division (NSD), which is the FBI's authorization authority. According to an NSD representative, the interim approval was granted for 1 year beginning November 30, 1998. However, according to the security officer responsible for NICS authorization, all authorization requirements (e.g., certification testing) were not completed during the

[16] OMB Circular A-130 requires federal agencies to authorize their information systems for processing. "Authorize processing" is defined as the authorization granted by a management official for a system to process information. Some agencies refer to this as accreditation.

[17] Telecommunications and Automated Information Systems Security, Department of Justice Order 2640.2C, June 25, 1993.

interim period because of competing priorities, such as the authorization of NCIC 2000 and the Integrated Automated Fingerprint Identification System (IAFIS). According to Justice, the completion of security testing was overshadowed by more urgent issues directly impacting NICS' ability to function; therefore, security testing was delayed. On December 2, 1999, NSD extended the interim approval to operate NICS through April 2000. According to the security officer, security testing for NICS was completed on December 21, 1999. The FBI plans to obtain full authorization by March 31, 2000.

However, because of the system vulnerabilities that were identified before NICS went operational and the delays experienced to date in authorizing the system, the FBI continues to lack an adequate basis for knowing whether NICS assets (hardware, software, and data) are sufficiently secure and are not vulnerable to corruption and unauthorized access.

Accordingly, if NICS is not authorized as planned by March 31, 2000, we are recommending that the Attorney General have the FBI Director report on the cause and impact of the delay, and the FBI's plan to achieve immediate authorization.

- Exemption from the Privacy Act. The Privacy Act of 1974 imposes various requirements on federal agencies, including a requirement that agencies allow an individual to access his or her records (containing personally identifiable information) and permit the individual to request the correction of any information that the individual believes is not accurate, relevant, timely, or complete. However, the act also allows agencies to exempt themselves from certain specific requirements of the act. For example, the act allows agencies to exempt any system of records from the access and correction of information requirements if the records involve investigatory material compiled for law enforcement purposes. In its regulations exempting the FBI's NICS, Justice noted, among other things, that (1) access to records in the system would compromise ongoing investigations or constitute a potential danger to the health or safety of law enforcement personnel and (2) NICS itself provides an alternative procedure for amending erroneous records resulting in transfer denials.

- Making NICS fingerprint-based rather than name-based. FBI officials told us that the FBI had no plans to make NICS a fingerprint-based system—that is, the FBI had no plans to change NICS so that database matches would be made using fingerprints rather than the individual's name and other personal descriptors.

Pawnshop Issues

Under current law, owner redemptions of pawned firearms are subject to background checks (see app. V). Treasury's appropriation act language for fiscal years 1999 and 2000 both contain a specific requirement that pawnshop redemptions of firearms be subject to background checks under NICS. Under ATF regulations, multiple pawn-and-redemption transactions of the same firearm by one owner require a new background check each time the owner redeems the firearm.

FBI Observations Regarding System Improvements

NICS operations could be improved, according to the FBI, if (1) more disposition records were automated, (2) licensed firearms dealers were provided electronic access to NICS, (3) more or all states functioned as liaisons for conducting background checks using NICS, and (4) more research time was allowed for background checks.

Automating Disposition Records

The FBI has concluded that about 5 percent of the background check inquiries handled by the FBI take more than 2 hours or days to complete, primarily because arrest disposition information (such as whether the arrest resulted in a conviction) is not fully automated in all states. According to the FBI, to increase awareness and encourage states to expeditiously provide disposition information, the agency has undertaken various outreach initiatives, such as sending FBI representatives to attend state court-clerk conferences.

A longer term and more comprehensive federal effort is a grant program (the National Criminal History Improvement Program) administered by the Bureau of Justice Statistics. Through this program, the federal government has provided funding in recent years to help states automate and upgrade the quality and completeness of criminal records. One of the grant program's priorities for fiscal year 1999 was to increase state participation in III since, as stated in the program announcement, such participation is critical to ensuring that the most accurate and complete criminal records are available instantly for, among other things, the NICS firearm checks. Federal grant obligations under this program totaled $292.5 million during fiscal years 1995 through 1999. Additionally, 5 percent of the funds awarded to states each year under the Byrne Formula Grants Program are to be used for improving criminal justice records.[18]

As previously mentioned, the improvement of criminal history records is a long-term effort. In July 1991, for instance, a federal study reported that, nationwide, an estimated one-third of the final outcomes (dispositions) of

[18] Crime Technology: Federal Assistance to State and Local Law Enforcement (GAO/GGD-99-101, June 7, 1999), pp. 29 and 31.

arrest cases was missing from criminal history records.[19] More recently, in April 1999, the Bureau of Justice Statistics published the results of an updated survey on states' criminal history record repositories. That survey, which inquired about the status of records as of calendar year-end 1997, found that 26 states reported having 60 percent or more of their final dispositions recorded. Twenty-two of these states reported having 70 percent or more of their final dispositions recorded, and 11 of these states reported having 80 percent or more of their final dispositions recorded.[20] Regarding NICS, the rate of criminal record quality improvement will be a major pacing factor in decreasing the size of the delay category needing more than 2 hours or days for resolution (5 percent of all transactions).

Providing Electronic Access to NICS

The FBI, in its final rule (Oct. 30, 1998) implementing NICS, noted that:

> "… in the near future, the FBI will make electronic access available to … [licensed firearms dealers]. This access will essentially allow [dealers] to conduct background checks 24 hours a day except during minimal periods of system maintenance."[21]

At the time of our review, licensed firearms dealers did not have electronic access to the NICS Operations Center. However, FBI officials told us that the FBI is considering providing FFLs with Internet access to the NICS Operations Center. That is, via the Internet, FFLs would be able to (1) send purchaser information (e.g., name and date of birth) to NICS and (2) receive a proceed or a delayed response. The FBI officials noted that providing dealers with electronic access would result in cost savings for the FBI through, for example, possible reductions in the Call Centers' staff. The Call Centers had a fiscal year 1999 operating budget of $16 million.[22]

This electronic access mode would be an alternative to using the telephone and would not be intended to give FFLs a direct link or access path to sensitive information in NCIC 2000, III, or NICS Index. Nevertheless, providing FFLs with access to the NICS Operations Center via the Internet requires that the FBI first identify Internet-related security risks and complexities and then implement the appropriate controls. For example, issues to address include (1) ensuring that FFLs access only the authenticated NICS Web site, (2) authenticating the identity of FFLs, (3)

[19] Automated Record Checks of Firearm Purchases: Issues and Options, Office of Technology Assessment, OTA-TCT-497 (Washington, D.C.: U.S. Government Printing Office, July 1991), p. 1.

[20] Survey of State Criminal History Information Systems, 1997, Bureau of Justice Statistics, (NCJ 175041), April 1999, p. 2.

[21] 63 Fed. Reg. 58303, 58305 (1998).

[22] For fiscal year 1999, the FBI's operating budget for NICS (including the Call Centers) was $42 million.

adequately protecting data during sessions, and (4) ensuring that FFLs exercise controls over the electronic data similar to what they exercise over the current paper records (e.g., ATF forms). FBI officials told us that applicable security risks would be recognized and appropriately incorporated into any plans involving Internet access to the NICS Operations Center.

Encouraging States to Be Full Participants

At the time of our review—due to funding concerns or other reasons—35 states were either nonparticipants or partial participants in NICS. However, about 50 percent of the background checks were done by the FBI and about 50 percent were done by designated state agencies, as of November 30, 1999. According to the FBI, NICS was designed with the hope that as many states as possible would be full participants—that is, designated state law enforcement agencies (rather than the FBI) would perform the background checks under NICS. An FBI official told us that the NICS Operations Center was designed originally to have only 15 computer terminal workstations; but, due to the lack of state agency participation, the center now has about 300 workstations. This large number of workstations has strained the capacity of the center's network servers. To mitigate the risks associated with this strain, FBI officials told us the following:

- The FBI had implemented a distributed architecture late in 1999. By moving some processes onto a "middle-tier" of services, overall performance of the system was enhanced. This modification allowed the FBI to handle unprecedented workloads in November and December, 1999.
- The FBI is looking at a full architecture upgrade during 2000 that would address long-term capacity and growth concerns.

According to the FBI, the functioning of NICS would be more effective and efficient if more states were full participants. For instance, FBI officials noted that state law enforcement agencies

- have access to more current criminal history records and more data sources (particularly regarding noncriminal disqualifiers, such as mental hospital commitments) from their own states than does the FBI, and
- have a better understanding of their own state laws and disqualifying factors.

However, given the 1997 Supreme Court decision in Printz v. U.S. (521 U.S. 898),[23] states presumably cannot be required or mandated to conduct background checks under NICS. On the other hand, as the Supreme Court has recognized elsewhere, Congress, in general, may impose reasonable conditions on the receipt of federal funds by states.[24]

In any event, any consideration of encouraging all states to be full participants in NICS must necessarily recognize the following factors:

- States have competing fiscal priorities that may preclude either initiating or expanding their role in NICS without federal financial support.
- States that operate as partial participants in NICS (by conducting background checks on handgun purchasers) may have little interest in expanding their responsibilities to long guns, which traditionally have been viewed as less of a public safety risk than handguns.
- Some states may encounter difficulties in conducting timely or complete background checks for a variety of reasons, including a lack of resources or expertise.

Allowing More Research Time for Background Checks

Under permanent Brady, if the background check is not completed within 3 business days, the sale of the firearms is allowed to proceed by default, or a "default proceed." FBI and Justice officials indicated that NICS could be improved by extending the maximum time allowed for conducting background checks to minimize the number of default-proceed transactions.

Default-proceed transactions involving individuals later determined by the FBI to be prohibited by law from possessing firearms totaled 2,519 during the first 10 months of permanent Brady, according to FBI data. Such transactions increase concerns over public safety and also place demands on law enforcement resources in retrieving the firearms. According to FBI officials, default proceeds occurred primarily because many states' automated criminal history records did not show the disposition (e.g., acquittals or convictions) of felony arrests, and manual efforts to find such information took longer than 3 business days. According to FBI data for these 2,519 transfers, an average of 25 business days elapsed between the initial NICS inquiry and the date the FBI determined that the purchase should have been denied.

[23] In Printz v. U.S., the Supreme Court ruled that the Brady Act's interim (phase I) provision commanding the chief law enforcement officer of each local jurisdiction to conduct background checks was unconstitutional in that it compelled state officers to execute federal law.

[24] New York v. U.S., 505 U.S. 144, 165 (1992); South Dakota v. Dole, 483 U.S. 203, 206 (1987).

Scope and Methodology

Generally, regarding NICS statistics and operational issues, we focused on data centrally available from the FBI's NICS Operations Center. We observed the center's ongoing operations, interviewed managers, obtained statistical data on background checks and operations, and reviewed applicable manuals and other operational guidance. To determine enforcement policies, procedures, and results regarding individuals who falsify their status on firearm-purchase forms, we interviewed responsible officials at Justice, EOUSA, and ATF. Regarding pawnshop issues, we reviewed relevant legislative provisions and regulations and interviewed ATF and FBI officials. Also, we obtained FBI officials' views on how NICS operations could be improved. We used data that were supplied by the agencies.

We performed our work from May 1999 to February 2000, in accordance with generally accepted government auditing standards. Appendix VI presents more information about our objectives, scope, and methodology.

Conclusions

Almost 9 million background checks were conducted during the first year of NICS operations. The FBI conducted about half of these background checks, and designated state agencies conducted the other half. Approximately three-quarters of the background checks done by the FBI resulted in the FFLs' being allowed to immediately transfer the firearms to the potential buyers. The remainder of the FBI background checks were delayed to allow FBI NICS examiners research time to establish a basis for making proceed or deny determinations. The FBI reported (on the basis of a sample of delayed transactions researched by selected examiners) that for about 80 percent of the delayed transactions, the examiners made a proceed or a deny determination within 2 hours. The remainder of the delayed transactions (20 percent) took hours or days to reach a determination, generally because the FBI examiners needed to contact local or state sources for additional information.

Depending upon the circumstances, there are various enforcement actions that the federal government can take against individuals who do not acknowledge their prohibited status on the firearm-purchase form. For example, individuals who knowingly falsify their status on this form can be criminally prosecuted under federal law. Nationally, for fiscal year 1999, EOUSA data indicate that 2,272 defendants charged for alleged firearms-related false-statement violations under 18 U.S.C. 922(a)(6) and/or alleged possession violations under 18 U.S.C. 922(g) or 922(n) were convicted, and that 43 percent of these defendants received a sentence in excess of 5 years. EOUSA could not specifically identify how many of these cases involved Brady-related charges.

Although NICS has been operational for 15 months, it has yet to be authorized as secure in accordance with Justice's own requirements, and attempts to do so have been delayed. Further delays in authorizing NICS will expose the system and the data it processes about individuals to unnecessary risk. Therefore, it is extremely important that the FBI fulfill its commitment to authorize NICS by March 31, 2000.

Recommendation

Regarding system security, we recommend that the Attorney General direct the FBI Director to take appropriate actions to report to the Attorney General and the Department's congressional authorizing committees if NICS is not authorized as planned by March 31, 2000. At a minimum, the report should include the causes for the delays, the impact on the FBI's ability to protect NICS assets, and revised plans for ensuring immediate authorization.

Agency Comments and Our Evaluation

On January 21, 2000, we provided a draft of this report for comment to the Department of Justice and the Department of the Treasury.

On February 9, 2000, Justice's Audit Liaison Office (Justice Management Division) provided us with a written response indicating that the draft had been reviewed and commented on by representatives of the FBI, the Bureau of Justice Statistics, the Office of Justice Programs, EOUSA, the Office of Policy Development, and the Office of the Deputy Attorney General.

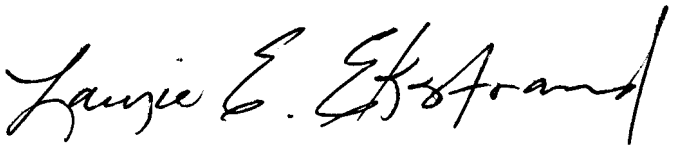
Justice did not indicate whether it agreed with our recommendation. Generally, its comments involved technical clarifications and/or updated information, which we incorporated in this report where appropriate. For example, in written comments, EOUSA provided updated federal prosecution statistics involving false-statement violations of 18 U.S.C. 922(a)(6) and firearms-possession violations of 18 U.S.C. 922(g) and 922(n).

On February 7, 2000, Treasury's Office of Finance and Administration (Office of Under Secretary for Enforcement) orally advised us that the draft had been reviewed by relevant Treasury components, including the Office of General Counsel, the Office of Policy Development, the Office of Professional Responsibility, and ATF. These reviewers generally had no comments on the draft, with one exception. Specifically, ATF provided written comments providing information regarding the number and status of delayed denials. This information has been incorporated in this report where appropriate.

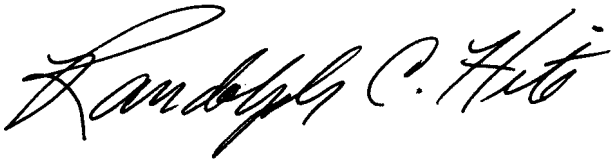
As we arranged with your office, unless you publicly announce this report's contents earlier, we plan no further distribution until 30 days after the date of this report. We will then send copies to relevant congressional committees; the Honorable Janet Reno, Attorney General; the Honorable Louis Freeh, FBI Director; the Honorable Lawrence Summers, Secretary of the Treasury; and the Honorable John Magaw, ATF Director. We will also provide copies to other interested parties upon request.

If you or your staff have any questions about this report or wish to discuss the matter further, please contact Laurie E. Ekstrand at (202) 512-8777, Randolph C. Hite at (202) 512-6240, Danny R. Burton at (214) 777-5700, or Deborah A. Davis at (202) 512-6240. Other key contributors are acknowledged in appendix VII.

Sincerely yours,



Laurie E. Ekstrand
Director, Administration of
Justice Issues
General Government Division



Randolph C. Hite
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Abbreviations

ASI	Alternate Search Id
ATF	Bureau of Alcohol, Tobacco and Firearms
EOUSA	Executive Office for U.S. Attorneys
FBI	Federal Bureau of Investigation
FFL	Federal Firearms Licensee
IAFIS	Integrated Automated Fingerprint Identification System
III	Interstate Identification Index
NCIC	National Crime Information Center
NICS	National Instant Criminal Background Check System
NIST	National Institute of Standards and Technology
NLETS	National Law Enforcement Telecommunications System
NRA	National Rifle Association
NSD	National Security Division
NTN	NICS Transaction Number
NYSIIS	New York State Identification and Intelligence System
OMB	Office of Management and Budget
ORI	Originating Agency Id
PC	personal computer
SGI	Silicon Graphics, Inc.
TCP/IP	Transmission Control Protocol/Internet Protocol

Overview of Firearm-Purchase Application and Background Check Process

This appendix provides a general overview of firearm-purchase application and background check procedures under the National Instant Criminal Background Check System (NICS), which is managed by the Federal Bureau of Investigation (FBI). The procedures apply to the Brady Act's phase II, or permanent provisions, which became effective November 30, 1998. Federal firearms licensees (FFL)—particularly retail sales outlets—have a key role in helping to ensure the integrity of the background check process by verifying the identity of the purchaser and relaying the purchaser's personal identification information to the FBI or to a designated state agency.[1]

Background

Depending on the willingness of their state government to act as a NICS liaison, FFLs contact either the FBI or a designated state agency to initiate background checks on individuals purchasing firearms.[2] Generally, depending upon the state in which the FFL is conducting business and the type of weapon purchased, there are three methods of performing background checks:

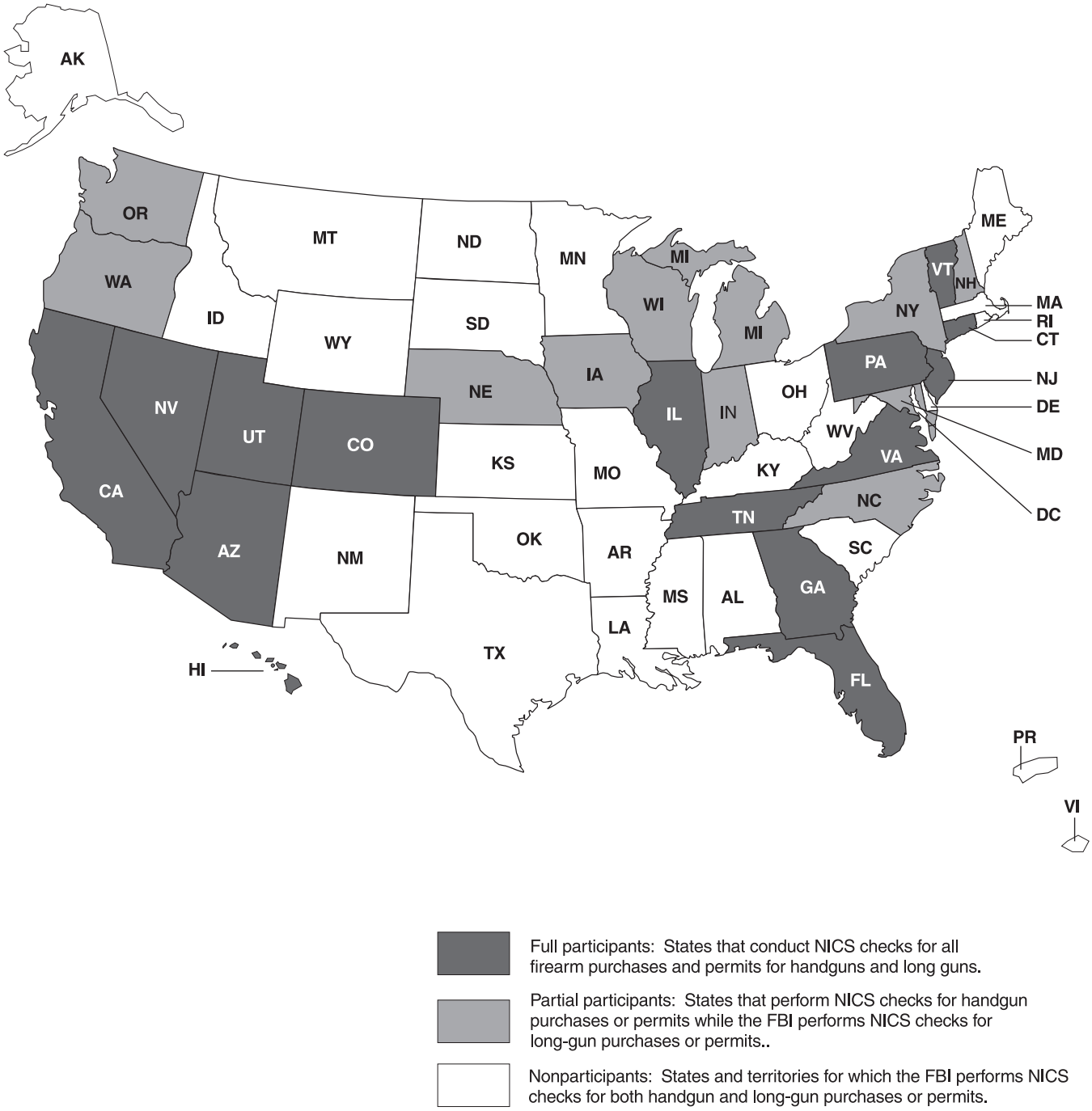
- In the 24 "nonparticipant" states in which the state government has declined to designate a point of contact or liaison for conducting background checks, the FFLs are to contact the FBI to initiate a background check on all firearms transfers (permits or purchases). In addition to 24 states, this category also includes the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.
- In the 15 "full participant" states, FFLs are to contact a designated state agency (e.g., state police), which is to make the NICS background check and determine whether the transfer or issuance of a permit would violate state or federal law.
- In the remaining 11 "partial participant" states, FFLs are to contact (1) the FBI for background checks on long-gun purchases or permits or (2) a designated state agency for background checks on handgun purchases or permits.

[1] NICS background checks are to be performed in connection with firearms transfers and are not to be limited to firearms sales (63 Fed. Reg. 58303, 58306 (1998)). When we use the term "potential buyer" or "potential purchaser," we are also referring to other potential firearms recipients, such as individuals redeeming pawned firearms.

[2] Federal law prohibits persons from purchasing a firearm if they (1) have been convicted of, or are under indictment for, a felony; (2) are fugitives from justice; (3) are unlawful users of, or addicted to, any controlled substance; (4) have been adjudicated as mental defectives or have been involuntarily committed to a mental institution; (5) are illegal or unlawful aliens, or certain other aliens admitted to the United States under a nonimmigrant visa; (6) have been dishonorably discharged from the military; (7) have renounced their U.S. citizenship; (8) are subject to certain domestic violence restraining orders; or (9) have been convicted of a domestic violence misdemeanor.

Figure I.1 illustrates which states and territories are in each of the three participation categories as of February 1, 2000.

Figure I.1: State and Territory Participation in the National Instant Criminal Background Check System (as of Feb. 1, 2000)



Source: FBI data.

As previously discussed, FFLs contact either the FBI or a designated state agency for a NICS background check. Figure I.2 illustrates the background check process in which the FFL contacts the FBI, and figure I.3 illustrates the process in which the FFL contacts a designated state agency.

Figure I.2: Flowchart of NICS Background Checks Conducted by the FBI

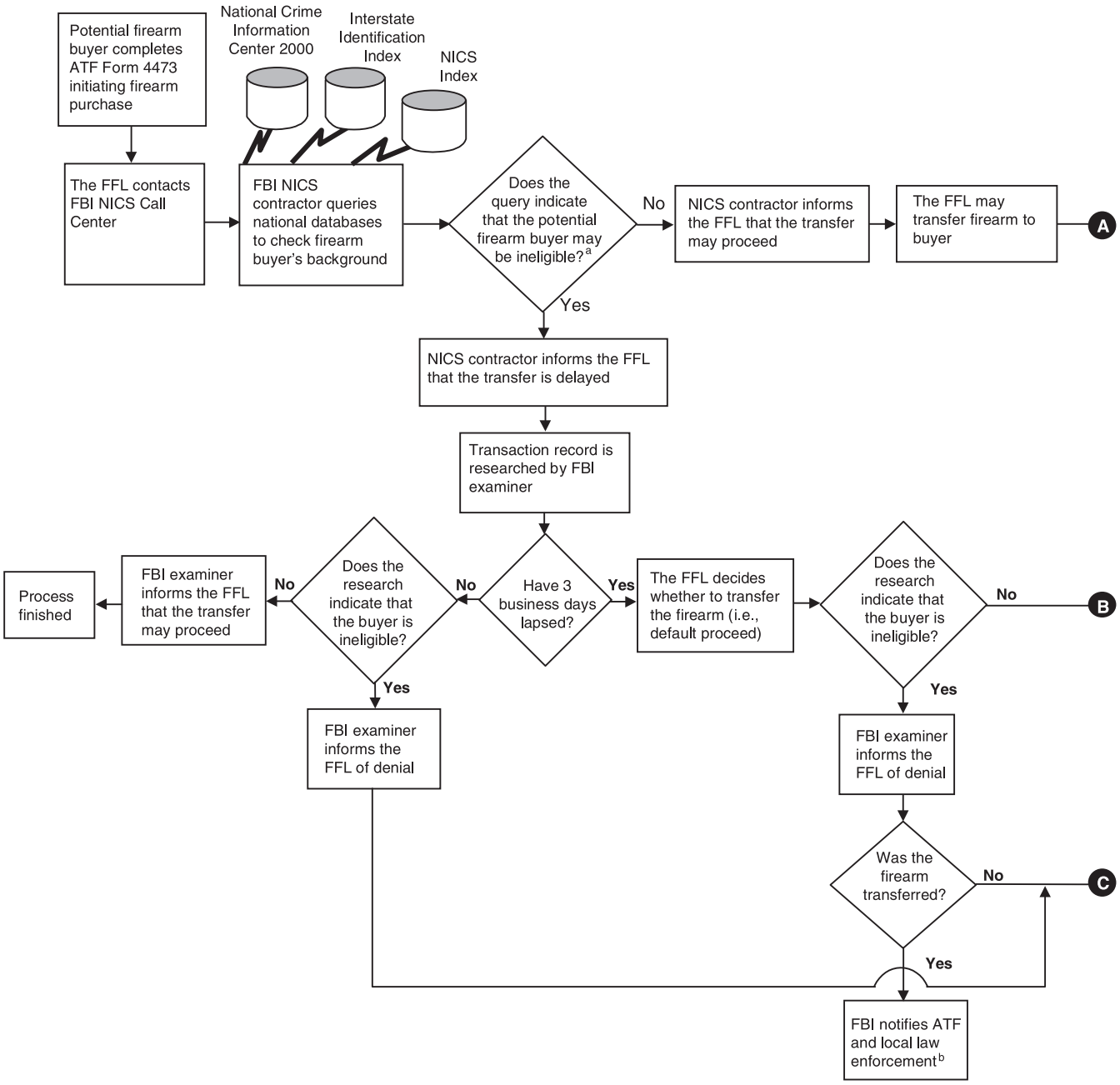
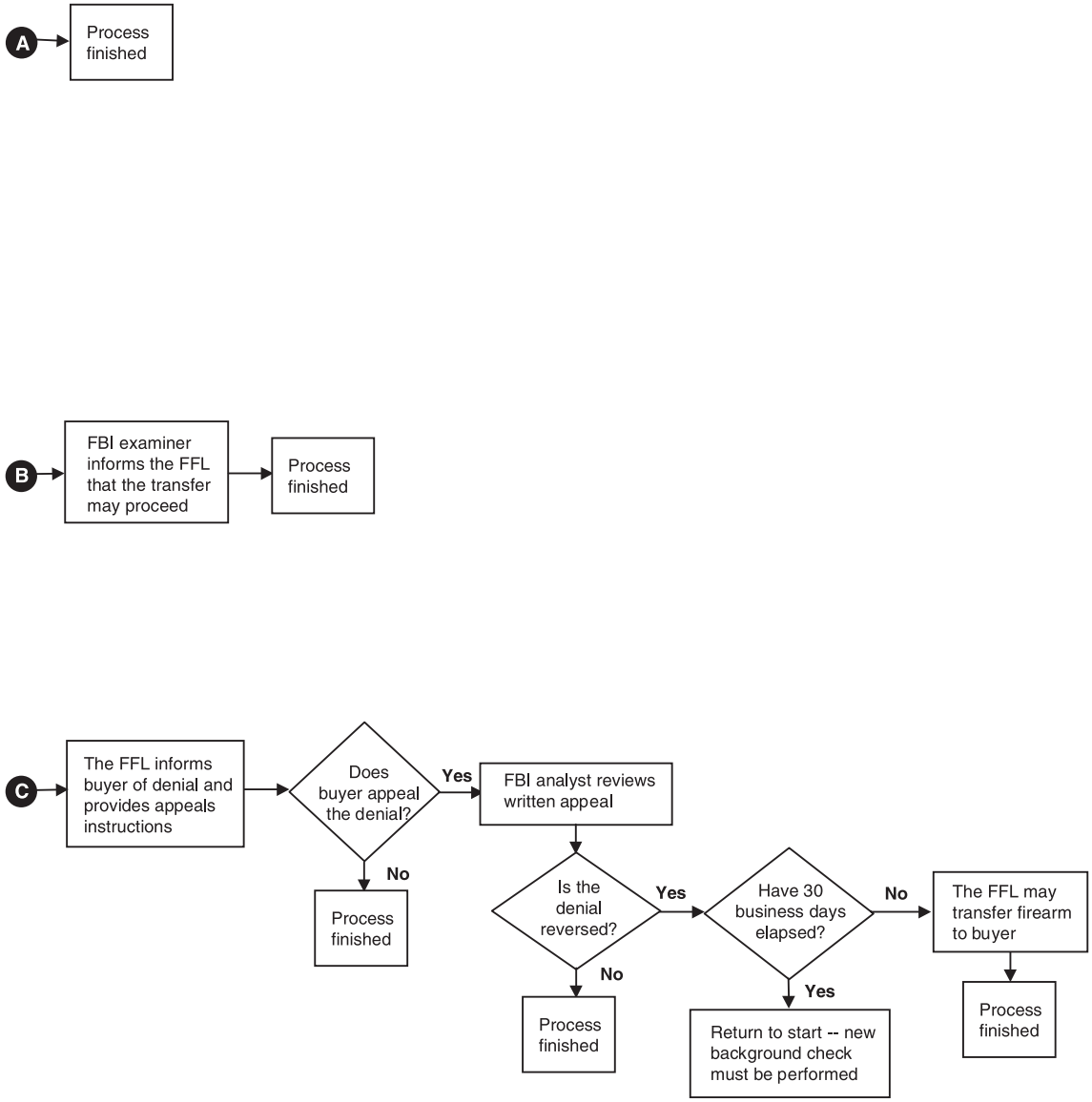


Figure I.2 (cont.)



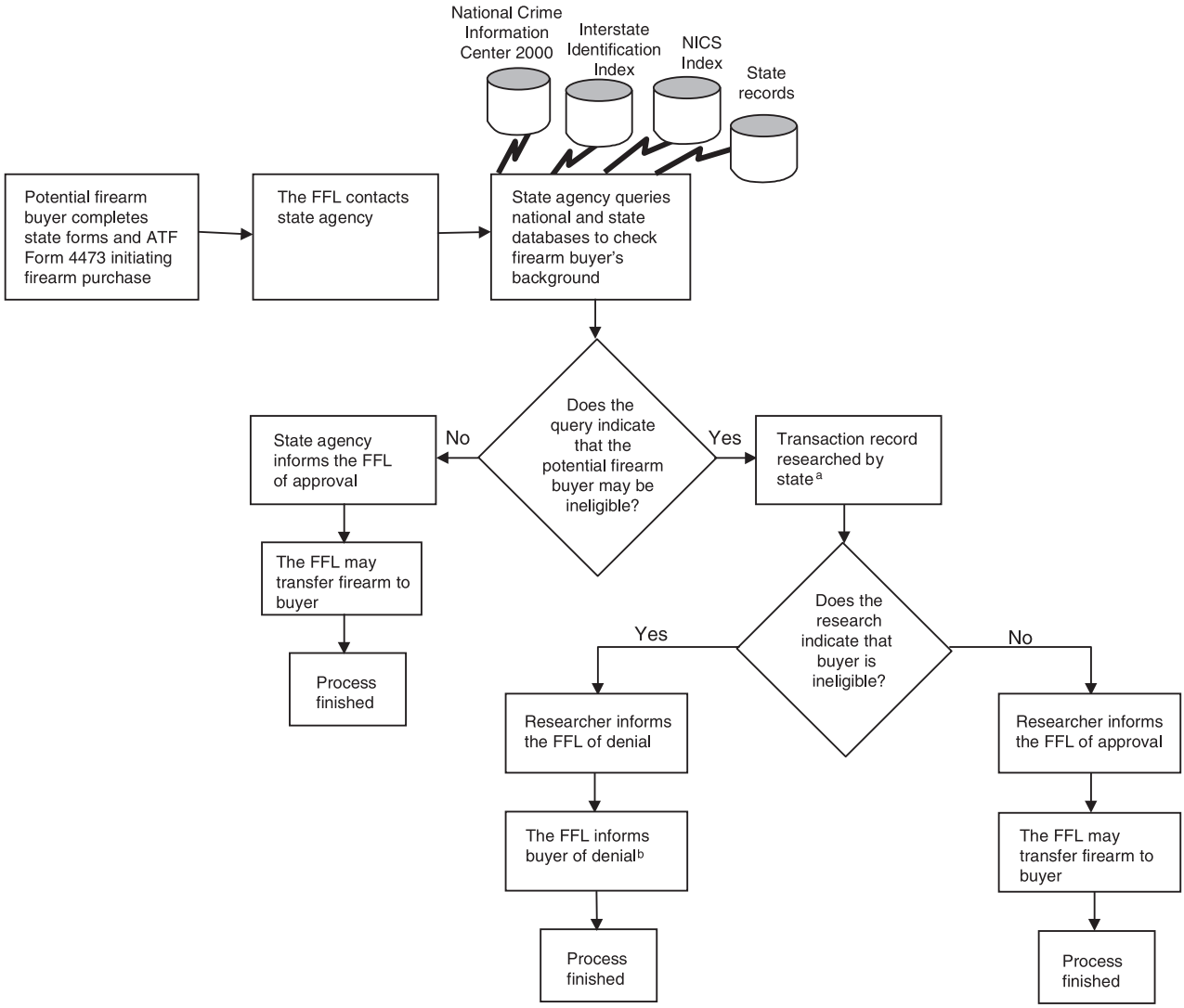
[a]NICS contract personnel are not authorized to review actual criminal history records. The database

query results seen by these personnel are simply an indicator that there either is no match (therefore, a proceed) or a potential match on one or more of the databases (therefore, a delay).

[b]The retrieval actions are discussed in appendix III of this report.

Source: GAO analysis of FBI data.

Figure I.3: Flowchart of NICS Background Checks Conducted by Designated State Agencies



[a]If after 3 business days the FFL has not been notified of the background check results, the FFL may transfer the firearm, unless a state statute provides for a period greater than 3 business days.

[b]States are to have a process whereby denied individuals may appeal the denial.

Source: GAO analysis of FBI data.

Although the two processes presented in figures I.2 and I.3 are similar in that both entities use NICS in the background check process, the following narrative sections relate specifically to the former (fig. I.2), that is, the process in which the FFL contacts the FBI.

The FBI's NICS Program Office is responsible for conducting the background checks and consists of the following components:

- Two Call Centers staffed with contract personnel are located in Uniontown, PA, and Moundsville, WV. FFLs are to use a toll-free telephone number to contact a Call Center.
- The NICS Operations Center (located in the FBI's Criminal Justice Information Services complex in Clarksburg, WV) consists of two groups of FBI legal instrument examiners—(1) research and analysis and (2) customer service.

Firearm Buyer Must Complete ATF Form 4473

Purchasers of any firearm type (both handguns and long guns) from FFLs are subject to a presale background check. The prospective purchaser initiates the process by completing the Bureau of Alcohol, Tobacco and Firearms' (ATF) Form 4473 (Firearms Transaction Record). Basically, in completing this form, the individual is certifying that he or she is not prohibited by federal law from purchasing a firearm.

On the ATF Form 4473, the prospective buyer must also provide the following descriptive data: (1) name; (2) sex; (3) height; (4) weight; (5) race; (6) residence address; (7) date of birth; (8) place of birth; and (9) at the prospective buyer's option, Social Security number or other identification numbers, such as alien registration number or military number. The FFL is to verify the identity of the buyer by examining a valid form of identification that contains a photograph of the buyer.

FFL Contacts FBI Call Center Contract Staff, Who Queries National Databases

After the ATF Form 4473 is completed, the FFL uses a toll-free telephone number to contact an FBI Call Center. Upon receiving the telephone request for a background check, the Call Center's contract staff are to verify the caller's FFL number and code word, initiate a name-based search, and provide a NICS transaction number (NTN)[3] for a valid inquiry. Some of the descriptive data provided on the ATF Form 4473 are to be provided to the Call Center contract staff and are searched against the

[3]The NTN is generated by the NICS computer. Each NTN is to be a unique number assigned to each valid background check inquiry received by NICS. The primary purpose of NTNs is to provide a means of associating inquiries to NICS with the responses provided by NICS to FFLs. The NTNs are further discussed in appendix IV.

records contained in the NICS' three relevant national databases as follows:

National Crime Information Center 2000 (NCIC 2000).[4] NCIC 2000 is the nation's most extensive computerized criminal justice information system. It consists of a central computer located in the FBI's Criminal Justice Information Services complex, Clarksburg, WV; dedicated telecommunications lines; and a coordinated network of federal and state criminal justice information systems. The NCIC 2000 system contains files on the following subjects, among others:

- The wanted persons file contains information on persons for whom a federal warrant, felony warrant, or serious misdemeanor warrant is outstanding, including domestic and foreign warrants.
- The protection order file contains information on restraining orders issued for the purpose of preventing violent or threatening acts or harassment against another person. Active orders that contain a Brady Act indicator of "yes" are prohibitors.

Interstate Identification Index (III).[5] Managed by the FBI, III is an index-pointer system for the interstate exchange of criminal history records. III records include information on persons who are indicted for, or have been convicted of, a crime punishable by imprisonment for a term exceeding 1 year or have been convicted of a misdemeanor crime of domestic violence.

NICS Index. Managed by the FBI, this database contains information provided by federal and state agencies about certain persons prohibited under federal law[6] from receiving or possessing a firearm. The NICS Index is separate and apart from NCIC and III, and all records in the NICS Index are disqualifying records and will prohibit the sale of a firearm. More specifically, the NICS Index contains records on persons who

- were discharged from the armed forces under dishonorable conditions,
- have renounced their U.S. citizenship,

[4]NCIC 2000, which replaced NCIC, became operational on July 11, 1999.

[5]III became operational in the 1980s. III was made a segment of the Integrated Automated Fingerprint Identification System, which became operational on July 28, 1999.

[6]Records on individuals denied under state law, but who are not prohibited under federal law, are not to be entered into the NICS Index. Also, any record entered into the NICS Index must be removed if the record is overturned through the appeal process (discussed later in this appendix).

- have been unlawful users of or addicted to any controlled substance,[7]
- have been adjudicated as a mental defective or have been committed to a mental institution,[8]
- are known aliens and are illegally or unlawfully in the United States or certain aliens admitted under a nonimmigrant visa, or
- have been denied the purchase of a firearm in accordance with federal laws.

On the basis of a consolidated search of the three national databases, the FBI Call Center is to provide the FFL with one of the following two possible one-word responses:[9]

- Proceed. This response is to be provided if no record that might be a match is found in the NCIC 2000, III, and NICS Index databases.

- Delayed. This response is to be provided if the search finds a potentially matching record.[10] A delayed response to the FFL indicates that it would be unlawful to transfer the firearm until receipt of a follow-up proceed response or the expiration of 3 business days, whichever occurs first.[11] Delayed means that more research is required before a proceed or a denied response can be given.

For each delayed response, FBI staff are to conduct research to verify that the matching record applies to the potential buyer and to determine if the potential buyer is disqualified by federal or state law from possessing a firearm. This practice exists because Call Center contract staff are not

[7]Under federal law, a drug-related arrest without a conviction normally will not prohibit a person from purchasing a firearm. However, according to the FBI, persons who have had multiple arrests (regardless of disposition) for use or possession of a controlled substance within the past 5 years, if the most recent arrest occurred within the past year, are prohibited.

[8]According to the FBI, (1) individuals committed to a mental institution by a court, board, commission, or other lawful authority; (2) a person found to be insane in a criminal case; (3) a person found to be mentally incompetent to stand trial; or (4) a person found not guilty by reason of mental responsibility are prohibited. In contrast, persons suffering from mental illness who have voluntarily committed themselves or been committed by a personal physician, family members, or a friend are not disqualified by law from possessing firearms.

[9]Neither response provided to the FFL is to contain any details of the information in the records checked by the system.

[10]A delayed response is also to be given in the event that a search of the databases is not completed within the time limit (normally a 30-second limit). These delays are to be resolved by the FBI after the database search is complete.

[11]"Business day" is defined by federal regulation as a 24-hour day (beginning at 12:01 a.m.) during which state offices are open in the state in which the proposed firearm transaction is to take place (63 Fed. Reg. 58303, 58307 (1998)).

authorized to review criminal history records; instead, FBI staff (examiners) at the NICS Operation Center are to conduct the necessary research of each delayed response to determine whether records indicate that a proceed response or a denied response should be provided.

Questions and Responses Regarding the Process in Which the FFL Contacts the FBI

Using a question-and-response format (as illustrated in fig. I.2), this section provides further information about the firearm-purchase application and background check process in which an FFL contacts the FBI.

Question 1

Does the query indicate that the potential firearm buyer may be ineligible?

Possible Response

No: If the database query finds no records indicating ineligibility, the Call Center contract staff is to (1) provide a proceed response to the FFL and (2) also provide the FFL with an NTN, which is to be recorded on the ATF Form 4473. After receiving the proceed response from the FBI, the FFL can transfer the firearm to the buyer.

Yes: If the database query finds records indicating possible ineligibility, the Call Center contract staff is to (1) inform the FFL that the transaction is delayed, (2) provide the FFL with an NTN to be recorded on the ATF Form 4473, and (3) obtain the FFL contact person's name and telephone number so that he or she may receive the results of the FBI's additional research. Then, as previously mentioned, because Call Center contract staff are not authorized to review criminal history records, FBI staff (examiners) at the NICS Operations Center are to conduct the necessary research to determine eligibility.

According to FBI officials, most delayed responses are the result of the computer search identifying existing criminal history records. Delays that take extensive research generally occur when the search identifies criminal records showing an arrest for a potentially disqualifying offense but containing no information about the outcome or result. For example, there may be a record showing a felony-related arrest with no final disposition, such as whether the case was dismissed or resulted in a conviction.

Question 2

Does the research indicate that the buyer is ineligible?

Possible Response

No: If the research finds no records indicating ineligibility, the FBI is to provide the FFL with a proceed response, and the FFL can then transfer the firearm to the buyer.

Yes: If the research does find records indicating ineligibility, the FBI is to provide the FFL with a denied response. In turn, the FFL is to inform the buyer of the denial and provide the buyer with appeal instructions.

The FFL is not to transfer the firearm until receipt of a proceed response from the NICS Operations Center or expiration of 3 business days (excluding the day on which the query was made), whichever comes first. If 3 business days lapse before the NICS Operations Center has notified the FFL that the firearm purchase should be denied and the FFL transfers the firearm, the FBI is to initiate steps to have the firearm retrieved (see app. III for further discussion of firearm retrievals).

Question 3

Does the buyer appeal the denial?

Possible Response

No: If the buyer does not appeal the denial, no further action is required of the FBI. The FBI noted, however, that if it were to receive information that would change a denial determination to a proceed it would correct the criminal history records.

Yes: The appeal must be made in writing by the appellant. An FBI analyst is to review the appeal.

Question 4

Is the denial reversed on appeal?

Possible Response

No: If the denial is not reversed on appeal, the FBI is to inform the buyer and is not required to take any further action.

Yes: If the denial is reversed on appeal, the FBI is to inform the buyer. If fewer than 30 days have elapsed since completion of the ATF Form 4473, the FFL can transfer the firearm to the buyer. However, if 30 or more days have elapsed, the buyer must submit another ATF Form 4473 to initiate an updated background check. When an appeal results in a proceed determination, the NICS records are to be updated to avoid having future denials based on the same information.

Statistics on Background Checks, Denials, and Appeals Under the National Instant Criminal Background Check System

This appendix presents NICS statistics on the number of background checks, including a quantification of checks associated with handguns versus long guns; the number of denials, by prohibited categories; and the number of appeals of denials. Unless otherwise indicated, the NICS statistics involve only those background checks conducted by the FBI and not those conducted by designated state agencies. As discussed in appendix I, the FBI conducts NICS background checks of purchasers of (1) handguns and long guns for 24 states[1] and (2) long guns for 11 other states. Designated state agencies conduct the NICS background checks for (1) handguns in 11 states and (2) handguns and long guns in 15 states. To provide a comparative perspective, the section on denials also presents Brady Act phase I (interim provisions or pre-NICS) statistics.

Number of Background Checks

During the first year of NICS operations (Nov. 30, 1998, through Nov. 30, 1999), the FBI and designated state agencies conducted about 8.8 million NICS background checks. As table II.1 shows, the FBI conducted about 50 percent of these background checks, and designated state agencies conducted the other 50 percent of the checks.

Table II.1: Number of NICS Background Checks Conducted by the FBI and Designated State Agencies (Nov. 30, 1998, Through Nov. 30, 1999)

	Number of NICS background checks			
Month/Year	FBI	Designated state agencies	Total	Percent
December 1998[a]	506,554	386,286	892,840	10.2%
January 1999	275,486	315,869	591,355	6.7
February 1999	326,676	369,647	696,323	7.9
March 1999	353,509	399,574	753,083	8.6
April 1999	305,584	341,128	646,712	7.4
May 1999	264,536	311,736	576,272	6.6
June 1999	262,668	306,825	569,493	6.5
July 1999	285,991	303,485	589,476	6.7
August 1999	339,891	363,503	703,394	8.0
September 1999	425,848	382,779	808,627	9.2
October 1999	510,376	435,325	945,701	10.8
November 1999	545,172	459,161	1,004,333	11.4
Total	**4,402,291**	**4,375,318**	**8,777,609**	**100.0**
Percent	**50.2%**	**49.8%**	**100.0%**	**-**

[a]The numbers shown for December 1998 include transactions for November 30, 1998, which was the first day of NICS operations.

Source: FBI data.

[1]In addition to these states, the FBI also conducts background checks involving residents of the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. As applicable, these three jurisdictions are included in the statistical tables presented in this appendix.

For the first year of NICS operations, FBI data showed that FBI and designated state agencies' background checks[2] involved the following types of firearms:

- About 32 percent involved only handgun transactions.
- About 66 percent involved only long guns.
- About 1 percent involved handguns and long guns.[3]

Number of Denials

The following two sections provide a comparative perspective on the number of background check denials. That is, for a pre-NICS period, the first section shows the number of denials and the denial rate (i.e., denials as a percentage of inquiries); the second section presents similar information for inquiries under NICS.

Pre-NICS Denials

According to Bureau of Justice Statistics' national estimates for the pre-NICS portion of calendar year 1998 (Jan. 1, 1998, through Nov. 29, 1998), about 2,384,000 presale background checks of handgun-purchase applicants were conducted and, of this total, about 70,000 (or about 3 percent) were denied.[4]

As table II.2 shows, the most prevalent reason for denial was that the applicant was either under felony indictment or had been convicted of a felony (about 63 percent). The existence of domestic violence records that involved a misdemeanor conviction was the second most common reason for denial (about 10 percent).

[2] The FBI data segregating background checks by type of firearm showed a total of about 7.5 million checks. This total excluded FBI and designated state agency checks done for permits and administrative purposes.

[3] Percentages do not add to 100 due to rounding.

[4] "Presale Handgun Checks, the Brady Interim Period, 1994-98," Bureau of Justice Statistics Bulletin (NCJ 175034), BJS, June 1999.

Table II.2: Reasons for Handgun Purchase Denials Under Phase I of the Brady Act (Jan. 1, 1998, Through Nov. 29, 1998)

Reasons for denials	Percentage of denials under phase I of the Brady Act
Felony (indictment or conviction)	63.3%
Domestic violence misdemeanor conviction	9.9
State law prohibition	6.6
Fugitive	6.1
Domestic violence restraining order	3.4
Drug addiction	0.9
Mental illness or disability	0.7
Local law prohibition	0.3
Other[a]	8.8
Total	**100.0%**

[a]The category of "other" includes illegal aliens, persons discharged from the armed services dishonorably, persons who have renounced their U.S. citizenship, and other unspecified persons.

Source: BJS data.

FBI Denials Under NICS

As table II.3 shows, during the first year of NICS operations, the FBI reported that it had handled about 4.4 million NICS background checks. Of this total, about 81,000 (or about 2 percent) resulted in denials.

Table II.3: Results of FBI NICS Background Checks (Nov. 30, 1998, Through Nov. 30, 1999)

Results of background checks	FBI NICS background checks	
	Number	Percent
Proceeds	4,216,314	95.8%
Denials	81,006	1.8
Other[a]	104,971	2.4
Total	**4,402,291**	**100.0%**

[a]The category of "other" includes various statuses or results. For example, some potential handgun purchasers were not residents of the state in which they attempted to purchase the handgun. Also, some transactions had to be canceled and initiated again because the FFL provided incorrect information to the Call Center contract staff.

Source: FBI data.

Table II.4 shows that most (about 70 percent) of the FBI's denials (through Nov. 30, 1999) were based on criminal history records showing felony indictments or convictions.

Table II.4: Number of FBI Denials (and Reasons) Under NICS (Nov. 30, 1998, Through Nov. 30, 1999)

	FBI denials under NICS	
Reasons for denials	**Number**	**Percent**
Felony (indictment or conviction)	56,554	69.8%
Domestic violence misdemeanor conviction	9,055	11.2
Drug addiction[a]	3,072	3.8
Domestic violence restraining order	2,653	3.3
Fugitive	2,230	2.8
Illegal/Unlawful alien[b]	440	0.5
Mental illness or disability	70	0.1
Dishonorable discharge	48	0.1
Citizenship renunciation	0	0
Other[c]	6,884	8.5
Total	**81,006**	**100.1%**

Note: Percentages do not add to 100 due to rounding.

[a]This category includes persons who are unlawful users of, or addicted to, any controlled substance.

[b]This category includes aliens who are illegally or unlawfully in the United States, or certain other aliens admitted to the United States under a nonimmigrant visa.

[c]The category of "other" includes denials due to a state, rather than a federal prohibitor; denials for fugitives for whom a record was not in NCIC; and other noncriminal prohibitors (e.g., protection orders).

Source: FBI data.

Number of Appeals

As table II.5 shows, 13,989 (or about 17 percent) of the FBI's 81,006 total denials were appealed as of November 30, 1999. As further shown, 2,710 (or 22 percent) of the appeals on which a decision had been made were successful—that is, the denials were reversed.

Table II.5: Number of Appeals of FBI Denials (and Results) Under NICS (Nov. 30, 1998, Through Nov. 30, 1999)

	Appeals of FBI denials	
Results of appeals[a]	**Number**	**Percent**
Successful (denial reversed)	2,710	22.0%
Not successful (denial not reversed)	9,591	78.0
Total decided appeals	**12,301**	**100.0%**

Note: The number of denials was 81,006, and about 17 percent of the denials were appealed as of November 30, 1999.

[a]Of the total appeals (13,989), 1,688 were awaiting a decision as of November 30, 1999.

Source: FBI data.

Many of the appeals were successful because the denials were based on FBI examiner errors, such as misinterpretation of state statutes or records, according to the FBI. As table II.6 shows, this reason accounted for 42 percent of the successful appeals for the period of January 1999 through November 1999. According to FBI officials, however, trend data show that FBI examiners are making fewer errors, resulting in fewer successful appeals or overturned denials.

Table II.6: Reasons for Successful Appeals of FBI Denials Under NICS, January Through November 1999

	FBI examiner error[a]		Record missing information[b]		Applicant misidentified[c]		Other[d]		Total
Month/Year	**Number**	**Percent**	**Number**	**Percent**	**Number**	**Percent**	**Number**	**Percent**	**number**
January 1999	221	52.7%	116	27.7%	46	11.0%	36	8.6%	419
February 1999	128	51.6	80	32.3	12	4.8	28	11.3	248
March 1999	44	36.1	23	18.9	9	7.4	46	37.7	122
April 1999	83	48.8	61	35.9	17	10.0	9	5.3	170
May 1999	40	31.5	55	43.3	14	11.0	18	14.2	127
June 1999	53	39.3	57	42.2	21	15.6	4	3.0	135
July 1999	70	36.8	70	36.8	30	15.8	20	10.5	190
August 1999	59	36.2	60	36.8	34	20.9	10	6.1	163
September 1999	48	36.6	50	38.2	20	15.3	13	9.9	131
October 1999	32	30.5	42	40.0	25	23.8	6	5.7	105
November 1999	41	26.8	57	37.3	42	27.5	13	8.5	153
January Through November, 1999	**819**	**41.7%**	**671**	**34.2%**	**270**	**13.8%**	**203**	**10.3%**	**1,963**

Note 1: These monthly counts are based on the date the appeal decision was made. The categorizations were made by the FBI. The total number of successful appeals in this table is less than the number in table II.5 because the FBI originally did not track the reasons for all successful appeals.

Note 2: Percentages may not add to 100 due to rounding.

[a]The examiner had the relevant information; however, he or she misinterpreted the information.

[b]The database record was not complete. For example, the record did not indicate that the individual's firearms rights had been restored or record had been expunged, or that the individual had received a pardon.

[c]At least two of the personal identifiers matched between the information on the ATF Form 4473 and the database record. However, the record was for an individual other than the potential firearm purchaser based on subsequent fingerprint comparison.

[d]The following is an example of "other" reasons for successful appeals: the database record did not reflect that (1) the original charges, which would have disqualified the individual from possessing a firearm, were reduced or (2) the individual was found guilty of an offense that was not a prohibitor to possessing a firearm.

Source: FBI data.

Federal Enforcement Policies and Results Regarding Falsified Firearm-Purchase Forms

The attempted purchase of a firearm by an individual who knowingly provides false information on a firearm purchase application can be a federal felony offense. A prospective purchaser of firearms from a federally licensed dealer must complete the ATF Form 4473, which requires answers to questions about whether the individual is prohibited from lawfully purchasing or possessing a firearm. When the prospective purchaser has answered "no" to these questions, the dealer is required to contact NICS for a background search.

NICS statistics presented in appendix II show that thousands of firearm-purchase applicants have received a denied response. According to ATF, while each denial does not necessarily indicate that there has been a violation of federal law, ATF is authorized to investigate individuals who receive a denial to determine if these individuals have violated federal firearms laws. That is, 18 U.S.C. 922(a)(6) makes it unlawful for individuals to knowingly make false statements to licensed firearms dealers in connection with the attempted acquisition of a firearm. Further, 18 U.S.C. 922(g) and 922(n) make it unlawful for prohibited persons to receive or possess firearms—for example, in instances where a false statement to a licensed dealer results in the firearm being transferred.

A felony conviction under either statute can result in a sentence of up to 10 years in federal prison. However, Justice officials noted the following:

- While 10 years are authorized by statute, federal sentencing guidelines control what is actually meted out.
- For felons without extensive criminal histories, a sentence typically would not be anything close to 10 years.
- Under some circumstances, the defendant may not receive a term of any significant imprisonment. In some cases, a sentence may be limited to probation, or may be split between incarceration and home detention or community confinement, depending on the individual circumstances.

Federal Enforcement Policies

Regarding the Brady Act, the development and implementation of federal law enforcement policies involve interaction and coordination among (1) the Department of the Treasury and its directly relevant component, ATF, and (2) the Department of Justice and its components, particularly the Executive Office for U.S. Attorneys (EOUSA) and U.S. Attorneys' Offices located in the 94 federal judicial districts. As the lead agency for the enforcement of federal firearms laws, ATF is responsible for investigating criminal attempts to evade the Brady Act's requirements and ensuring that firearms remain out of the hands of prohibited persons. U.S. Attorneys are

responsible for prosecuting individuals charged with violations of federal criminal law, including federal firearms violations involving the Brady Act.

Attorney General Guidance

In November 1998, EOUSA provided Brady Act prosecutive guidance—developed in September 1998 by the Attorney General's Advisory Committee's Subcommittee on Organized and Violent Crime—to all U.S. Attorneys. The guidance stated that thousands of potential Brady false-form cases would likely reach ATF field offices annually, and that the system "would grind to a halt if ATF investigated all the denials." Therefore, before November 30, 1998, to establish local guidelines for the referral of cases for prosecution in each federal judicial district, each U.S. Attorney was directed to meet with the applicable ATF field office special agent-in-charge and consult with other law enforcement leaders in the community.

In establishing Brady Act (phase II or NICS-related) prosecution guidelines, the Advisory Subcommittee recommended that U.S. Attorneys consider the following underlying factors:

- As a general matter, U.S. Attorneys should make every effort to increase the number of Brady false-form prosecutions (from the current annual level of 50 cases).[1]
- Brady false-form prosecutions should be incorporated into the respective U.S. Attorney's Office overall antiviolent crime strategy to remove dangerous offenders from the street.

Because each federal judicial district has its own antiviolent crime strategy, each office's prosecution guidelines will be different. However, the Advisory Subcommittee identified some categories of cases that should be addressed in guidelines for all U.S. Attorneys' Offices. For instance, the Advisory Subcommittee encouraged each U.S. Attorney's Office to have guidelines covering potential defendants who pose a significant threat not being addressed by state or local law enforcement.

ATF Screening and Investigations

Under current procedures, the FBI's NICS Operations Center is to provide ATF with information on all FBI-generated denials, and ATF is to screen the data for possible follow-up investigation and prosecution. After receiving the information on NICS denials, ATF is to conduct two levels of screening to determine which cases should be investigated. As explained in the following sections, the first-level screening takes place at ATF

[1] DOJ officials told us that the annual level of cases indicated in the guidance was an estimate and was not based on specific data.

headquarters, and the second-level screening occurs in applicable ATF field offices. Most NICS referrals to ATF field offices were closed without prosecution.

ATF Headquarters Initially Screens NICS Denials and Makes Referrals to Field Offices

In the first-level screening of NICS denials, ATF headquarters staff are to consider various criteria in deciding which cases to refer to field offices for further investigation and possible prosecution by U.S. Attorneys. The screening criteria include whether the denied purchaser's criminal history has records of violent felonies, serious drug trafficking, or prior firearms convictions. The screening criteria were established to act as a threshold for initiating criminal investigations of potential violations of 18 U.S.C. 922(a)(6).

According to ATF data, as of September 30, 1999, ATF headquarters staff had screened 70,618 denials made by the FBI under NICS. Of this total, ATF headquarters decided that 47,797 denials (68 percent) did not merit referring to the field. However, the other 22,821 (32 percent) were referred to applicable ATF field offices. Most of these referrals were based on criminal history records involving either violent felonies/serious drug trafficking (33 percent) or domestic violence misdemeanors (44 percent).

ATF Field Offices Decide Which Referrals Merit Investigating and Forwarding to U.S. Attorneys

Regarding second-level or field-office screening, in April 1999, ATF headquarters provided its field offices Brady Act enforcement guidance (revised in June 1999) to clarify ATF's responsibility for pursuing Brady violations within certain established criteria. This guidance specified, in part, the following:

- All ATF field offices should dedicate resources to the enforcement of Brady violations, and NICS should be included in each office's strategic objectives. Each office should prioritize its NICS investigations against other investigative needs as the local violent crime problem dictates.

- Priority consideration should be given to referrals in which a firearm has been transferred to a prohibited person. For these referrals, ATF field agents should coordinate with local law enforcement agencies to initiate investigations and take the appropriate steps for removing firearms from the possession of the prohibited person. Options for removal include seizure by law enforcement; voluntary abandonment to law enforcement; or transfer to a nonprohibited third party, such as the licensed dealer who sold the firearm.

- Other referrals meeting ATF and U.S. Attorney guidelines should be processed according to the severity of disqualifying convictions, the

presence of multiple attempts to purchase firearms, and the availability of ATF field office resources.

- ATF field offices should contact their respective U.S. Attorney's Office and document what guidelines have been established regarding the prosecution of NICS cases.

We reviewed copies of investigative/prosecutive guidelines from ATF's 23 field offices (all except Atlanta, which had oral guidelines). Many of the guidelines were general in nature, with the local U.S. Attorney agreeing to consider NICS-related prosecutions on a case-by-case basis. In some guidelines, the U.S. Attorney agreed to consider any cases meeting ATF's national screening criteria. Typically, the guidelines were broadly written so that almost any legitimate NICS-related case could be considered for prosecution.

Almost Half of All NICS Referrals to ATF Field Offices Were Closed Without Investigation or Prosecution

According to ATF officials, the agency does not make referrals for prosecution solely on the basis of the computerized records check conducted by the FBI. That is, ATF takes additional steps to confirm the person's prohibited status. These steps usually involve obtaining an authenticated copy of court records. Further, even a seemingly valid prohibiting offense must be researched to determine if the person's civil rights (to possess a firearm) have been restored—by pardon, formal petition, expungement of the record, or state law. Finally, if there is still a valid prohibiting factor and the case falls within the local U.S. Attorney guidelines, the agent is to take appropriate steps to build the case for prosecution—that is, obtain fingerprints, interview subjects, obtain necessary documentation, and prepare the case-referral report.

ATF officials also emphasized the complexity and time involved in reviewing and investigating NICS denials to prepare them for referral to the U.S. Attorney for prosecution. These officials estimated that total case preparation time can range from 1 week to 6 months, depending on the workload of the special agent and the complexity of the case. Moreover, even after the investigation is completed, the case may not be accepted for prosecution if the U.S. Attorney thinks, for example, that the evidence is weak or that the case has limited jury appeal.

According to ATF data, as of September 30, 1999, ATF field offices had received 20,195[2] NICS-related denials made by the FBI, screened by ATF

[2]According to ATF officials, this number of denials (20,195) is slightly lower than the number (22,821) previously discussed because it reflects data summarized by ATF headquarters from reports submitted by ATF field offices, while the previous number is based on headquarters-generated screening data.

headquarters, and referred to the field for investigation. Another 11,097 NICS-related denials had been received by ATF field offices directly from designated state law enforcement agencies,[3] for a total of 31,292 NICS referrals. Table III.1 shows the following:

- Most (16,077 or 51 percent) of the referrals were pending preliminary review by ATF field agents.
- Another 15,072 of the referrals (or 48 percent) had been preliminarily reviewed by ATF field agents and were closed without further investigation or prosecution, mainly because the cases reportedly did not meet U.S. attorney guidelines in the applicable jurisdiction.
- Another 380 referrals (about 1 percent) had been preliminarily reviewed, and ATF investigations were ongoing.

Table III.1: Enforcement Status of NICS Referrals Received by ATF Field Offices for Investigation (as of Sept. 30, 1999)

	ATF field offices	
Status of NICS denials referred for investigation	Number of NICS referrals	Percent
Received by ATF field offices	31,292	100%
Pending preliminary review	16,077	51
Closed	15,072	48
U.S. Attorney guidelines not met	14,087	-
No prosecutive merit	613	-
U.S. Attorney declined	372	-
Open for investigation	380	1
Pending prosecution	[a]	[a]

Note: These data were summarized by ATF headquarters from individual reports submitted by ATF field offices. Due to data quality problems, the number of NICS referrals received by ATF field offices (31,292) does not equal the number of referrals processed by the field offices. That is, the sum of the referrals pending preliminary review (16,077), referrals closed (15,072), and referrals open for investigation (380) does not total to 31,292.

[a]No ATF nationwide data were available on NICS referrals pending prosecution.

Source: ATF headquarters data.

Prosecutions, Fugitive Arrests, and Firearm Retrievals

Follow-up enforcement actions on falsified firearms purchase forms can result in prosecutions of the individuals, the identification and arrest of fugitives, and the retrieval of firearms from prohibited individuals.

Federal Prosecutions

As presented in the following sections, we obtained national federal prosecution data from EOUSA, visited U.S. Attorneys' Offices in four major cities, and obtained an overview perspective from Justice.

[3]See appendix I for more details about state law enforcement agency participation in NICS.

National Prosecution Data

Table III.2 presents fiscal year 1999 summary statistics regarding federal prosecutions involving violations of relevant firearms-related provisions. As shown:

- During fiscal year 1999, U.S. Attorneys filed 278 cases (309 defendants) involving alleged false-statement violations of 18 U.S.C. 922(a)(6). At fiscal yearend, 316 cases (346 defendants) were pending.
- Also, during fiscal year 1999, U.S. Attorneys filed another 3,401 cases (3,783 defendants) involving alleged firearms-possession violations of 18 U.S.C. 922(g) and 21 cases (24 defendants) involving alleged firearms-possession violations of 18 U.S.C. 922(n). At fiscal year-end, 3,371 cases (3,897 defendants) were pending under section 922(g), and 21 cases (25 defendants) were pending under section 922(n).

As noted in table III.2, EOUSA could not specifically identify how many of these cases involved Brady-related charges, that is, how many cases resulted from follow-up enforcement actions regarding individuals who were denied purchasing firearms from licensed dealers based on background checks conducted under Brady Act requirements.

Table III.2: Firearms-Related Cases Handled by U.S. Attorneys, Fiscal Year 1999

Title 18, U.S. Code	Cases filed in fiscal year 1999	Pending cases at fiscal 1999 year-end
Section 922(a)(6)[a]		
Number of cases	278	316
Number of defendants	309	346
Section 922(g)[b]		
Number of cases	3,401	3,371
Number of defendants	3,783	3,897
Section 922(n)[b]		
Number of cases	21	21
Number of defendants	24	25

[a]According to EOUSA officials, although persons who make a knowing false material statement on ATF Form 4473 would most likely be charged under 18 U.S.C. 922(a)(6), not all persons charged under this statute would necessarily have made the type of false statement generally referred to as a "Brady false form." Also, Department of Justice databases do not capture the facts of the cases in which 922(a)(6) charges are brought so as to distinguish Brady false-form cases from other cases involving false statements in the attempted acquisition of a firearm. For these reasons, EOUSA officials could not state that all of the 922(a)(6) charges that have been brought are Brady-related.

[b]According to EOUSA officials, Department of Justice databases do not capture the facts of the cases in which 922(g) and (n) charges are brought so as to distinguish Brady cases from non-Brady cases.

Source: EOUSA data.

Table III.3 presents national federal prosecution data regarding firearms-related cases that were completed during fiscal year 1999. As shown:

- During fiscal year 1999, U.S. Attorneys completed 155 cases (185 defendants) involving alleged false-statement violations of 18 U.S.C. 922(a)(6). Of the total 185 defendants, 144 were found guilty, and 125 of these received prison sentences.
- Also, during fiscal year 1999, U.S. Attorneys completed another 2,511 cases (2,774 defendants) involving alleged firearms-possession violations of 18 U.S.C. 922(g) and 26 cases (28 defendants) involving alleged firearms-possession violations of 18 U.S.C. 922(n). Of the 2,774 defendants in the section 922(g) cases, 2,105 defendants were found guilty, and 2,006 of these received prison sentences. Of the 28 defendants in the section 922(n) cases, 23 defendants were found guilty, and 19 of these received prison sentences.

As noted in table III.3, EOUSA could not specifically identify how many of these cases involved Brady-related charges, that is, how many cases resulted from follow-up enforcement actions regarding individuals who were denied purchasing firearms from licensed dealers on the basis of background checks conducted under Brady Act requirements.

Table III.3: Federal Firearms-Related Cases Completed by U.S. Attorneys, Fiscal Year 1999

Cases completed and results	False-statement violations 18 U.S.C. 922(a)(6)[a]	Firearms-possession violations 18 U.S.C. 922(g)[b]	Firearms-possession violations 18 U.S.C. 922(n)[b]
Total cases completed			
Number of cases	155	2,511	26
Number of defendants	185	2,774	28
Number of defendants found guilty	144	2,105	23
Number of defendants sentenced to prison	125	2,006	19

[a]According to EOUSA officials, although persons who make a knowing false material statement on ATF Form 4473 would most likely be charged under 18 U.S.C. 922(a)(6), not all persons charged under this statute would necessarily have made the type of false statement generally referred to as a "Brady false form." Also, Department of Justice databases do not capture the facts of the cases in which 922(a)(6) charges are brought so as to distinguish Brady false-form cases from other cases involving false statements in the attempted acquisition of a firearm. For these reasons, EOUSA officials could not state that all of the 922(a)(6) charges that have been brought are Brady-related.

[b]According to EOUSA officials, Department of Justice databases do not capture the facts of the cases in which 922(g) and (n) charges are brought so as to distinguish Brady cases from non-Brady cases.

Source: EOUSA data.

According to Justice officials, for defendants charged and found guilty under these three statutes in fiscal year 1999, sentences ranged from probation to life in prison, with 43 percent of the defendants receiving a sentence in excess of 5 years.

Our Visits to Four U.S. Attorneys Offices

During our fall 1999 visits to U.S. Attorneys Offices in 4 cities—Atlanta, Dallas, Denver, and Seattle—federal prosecutors identified 13 Brady-related cases that had been accepted for prosecution—all in the Northern Judicial District of Texas (Dallas). For each of the four locations, the numbers of Brady-related cases declined and accepted for prosecution were as follows:

- Atlanta. At the time of our visit in September 1999, the U.S. Attorney had received three Brady cases for prosecution and declined them because of lack of jury appeal. The U.S. Attorney had agreed to consider 27 other cases that were pending ATF investigation.
- Dallas. At the time of our visit in October 1999, the U.S. Attorney had received 14 Brady cases for prosecution. Of these cases, 1 was declined (lack of jury appeal), and 13 were accepted for prosecution. Of the 13 cases accepted for prosecution, 4 cases resulted in convictions (with sentences ranging from 10 to 30 months); 1 case resulted in an acquittal; 2 cases were dismissed by the judge; and 4 cases were awaiting trial. The other two cases involved fugitives from justice.
- Denver. At the time of our visit in October 1999, the U.S. Attorney had received two Brady cases for prosecution, both of which were declined. The U.S. attorney had agreed to consider 30 other cases that were pending ATF investigation.
- Seattle. At the time of our visit in October 1999, the U.S. Attorney had not received any Brady cases for prosecution. However, the U.S. Attorney had asked ATF for full investigations on 19 cases.

Overview Perspective From Justice Department

As previously noted, NICS guidance (provided by the Attorney General's Advisory Subcommittee to U.S. Attorneys) stated that every effort should be made to increase the number of Brady prosecutions. However, NICS guidance also notes that prosecuting each and every one of the NICS-related denials (assuming they were all valid denials) may not be realistic.

Rather than overburden the federal system, Justice has stated that it considers the prosecution of firearms violations to be a joint federal/state effort. According to statements by the Deputy Attorney General in 1999:[4]

- Justice has made a conscious decision to work with state and local partners by having the federal government concentrate on high-level gun offenders (e.g., repeat offenders) so that state and local law enforcement can concentrate on other firearms offenses.

[4]See (1) the testimony at a May 27, 1999, hearing before the Subcommittee on Crime, Committee on the Judiciary, House of Representatives, and (2) Justice's October 21, 1999, news briefing.

- The result has been that, while federal firearms prosecutions[5] decreased from 1992 to 1998, federal and state prosecutions combined increased by 22 percent during this period.
- Also, the number of higher-level gun offenders prosecuted in the federal system—those receiving prison sentences longer than 5 years—increased more than 34 percent from 1992 to 1998.

More recently, a January 2000 Justice press release stated that:

- Regarding charges under the Gun Control Act of 1968 (18 U.S.C. 922 or 924), federal prosecutors brought 5,500 firearms cases against 7,057 defendants in 1999, compared to 4,391 cases against 5,876 defendants in 1998.
- The 1999 data indicate a 25.3-percent increase in the number of federal firearms cases and a 20.1-percent increase in the number of defendants compared to 1998.

Arrests of Fugitives

According to NICS Operations Center procedure, when a background check identifies a wanted person, an FBI examiner is to contact the originating law enforcement agency to confirm that the arrest warrant is still in effect. Upon confirmation that the warrant is still valid, the FBI examiner is to provide the purchaser's identifying information to the originating agency. Also, the FBI examiner is to notify the applicable state police headquarters in the state of purchase. This notification can be done by either telephone or the National Law Enforcement Telecommunications System (NLETS), depending on the severity of the warrant charge. For example, for a murder, rape, or kidnapping warrant, a telephone call is to be made immediately, with an NLETS message to follow. If the charge appears to be of a lesser degree, the FBI examiner is to send an NLETS message only. Once the notification has been made, the appropriate state or local law enforcement agency can then seek to apprehend the individual.

According to NICS Operations Center data covering the first year of permanent Brady—through November 30, 1999—about 3 percent (2,230) of the FBI's total NICS denials (81,006) were based on outstanding arrest warrants identified in the NCIC database. Also, FBI has reported that an

[5] Generally, "federal firearms prosecutions" refer to charges brought under the Gun Control Act of 1968, as amended (18 U.S.C. 922 or 924). As previously mentioned, 18 U.S.C. 922 involves false-statement and firearms-possession cases. Under 18 U.S.C. 924, charges can involve, for example, persons who use or carry a firearm in relation to any crime of violence or drug trafficking crime.

indeterminate number of other NICS-related denials were based on outstanding non-NCIC arrest warrants.[6]

According to the FBI, not only has NICS prevented over 2,000 wanted persons from purchasing firearms, but NICS examiners have also contacted federal, state, and local law enforcement agencies to provide information that resulted in their apprehension. Examples of such arrests include the following:

- A person wanted for 8 years in Michigan for aggravated assault against a family member was arrested in Texas and was awaiting extradition (as of July 1999).
- A person wanted in Indiana for aggravated assault with a gun was arrested by the West Virginia State Police while still at the gun dealer's store.
- A person wanted in California for obstructing a court order and violating parole was apprehended in Washington state and extradited to California.

Gun Retrieval Actions

According to FBI procedure, when a NICS examiner discovers (after 3 business days have elapsed) that the subject should have been denied, the examiner must call the firearms dealer to determine if the firearm has been transferred to the prohibited individual. If the transfer has taken place, that individual is then illegally in possession of a firearm, and the NICS Operations Center's Firearms Retrieval Team is to notify (1) the local police department, as determined by the purchaser's address, and (2) ATF headquarters.

Most NICS Delayed Denials Referred to ATF Field Offices Were Closed Without Investigation or Prosecution

According to ATF data, for the period beginning November 30, 1998, through December 31, 1999—a time period covering the first 13 months of NICS operations—ATF headquarters received referral notifications (from the FBI and applicable state authorities) that 3,353 prohibited individuals had received firearms. Under ATF's firearm-retrieval policy, these so-called "delayed denials"[7] were then forwarded by ATF headquarters to the appropriate field office for further review or investigation. Table III.4 shows that, according to ATF:

- Most (2,425 or 72 percent) of the delayed denials had been closed by ATF field offices for various reasons. For example, in 713 cases, ATF field agents were unable to confirm the individuals' prohibited status.

[6]A non-NCIC warrant is one that has been entered into a state or local computer system but has not been reported to the FBI's NCIC database. The FBI does not track denials that were based on this category separately.

[7]ATF also refers to these notifications as "immediate action referrals."

- Another 818 of the delayed denials (or 24 percent) were pending preliminary review by ATF field offices.
- Another 110 delayed denials (3 percent) had been preliminarily reviewed, and ATF investigations were ongoing.

Table III.4: Enforcement Status of NICS Delayed Denials Referred to ATF Field Offices for Investigation (as of Dec. 31, 1999)

	ATF field offices	
Status of NICS delayed denials referred for investigation	**Number of NICS delayed denials**	**Percent**
Received by ATF field offices	**3,353**	**100%**
Pending preliminary review	818	24
Closed	2,425	72
Prohibited status not confirmed (713)		
No prosecutive merit (513)		
U.S. Attorney declined (253)		
Other (946)[a]		
Open for investigation	110	3
Pending prosecution	[b]	[b]

Note: Percentages do not add to 100 due to rounding.

[a]This category includes referrals that were forwarded to a local law enforcement agency; referrals where the firearm was later retrieved or transferred to a nonprohibited third-party, with no further investigative action taken; and older referrals for which ATF does not know the reason for closure.

[b]No ATF nationwide data were available on NICS delayed denials pending prosecution.

Source: ATF headquarters data.

Firearms Retrieved From Over 400 Prohibited Persons

As of August 31, 1999, Treasury and ATF reported that firearms had been retrieved from 300 prohibited persons. As part of the retrieval process, ATF had referred 47 of these cases to local law enforcement for further investigation and opened 34 criminal investigations, with the intention of referring these cases for federal prosecution. By September 30, 1999, ATF data indicated that the number of firearms retrieved—either abandoned to or seized by law enforcement, or transferred to a nonprohibited third-party—had increased to 442.

Treasury Department/ATF Announce Effort to Address Delayed Denial Backlog

In a September 1999 report on implementation of the Brady Act,[8] the Treasury Department and ATF announced that 60 special agents from Treasury agencies—20 each from the U.S. Customs Service, Internal Revenue Service, and Secret Service—were being detailed temporarily to help ATF field offices respond to a backlog of delayed denials that were pending investigation at that time. The report also noted the following:

"… [I]n a number of these cases, the individual may not be prohibited under Federal law. … In some cases, the person is prohibited under State law, and thus NICS correctly denied the transaction. In other cases, the computerized records check accurately revealed that an

[8]Implementation of the Brady Law, Department of the Treasury and ATF, September 1999.

individual was convicted of a felony; however, the database does not reveal that the individual subsequently received a restoration of civil rights under State law. Thus, many of these situations are unavoidable, given the fact that no computerized database will contain all the information necessary in order to make the complex determination as to whether an individual has Federal firearms disabilities."

Treasury's comments are consistent with what we found during our work at ATF field offices. The following example from Colorado illustrates why some delayed denials do not result in the firearm being retrieved or the purchaser being prosecuted: For a Colorado firearm-purchase transaction, the NICS background check showed a criminal record with a third-degree misdemeanor assault in Colorado. The NICS examiner contacted the county court to determine if the assault involved domestic violence. The examiner was then told the purchaser also had an outstanding warrant for failure to comply with a court-ordered community service sentence. The transaction was denied (after more than 3 business days) on the basis of the outstanding warrant. After receiving the case, the ATF Denver field agent reviewed the NICS case history report and the associated criminal records. The agent then contacted the local court to confirm facts about the misdemeanor assault, which was not related to domestic violence, and, thus, was not a federal disqualifier. The agent further determined, after review of the outstanding warrant, that the purchaser was not a fugitive as defined for NICS purposes, because there was no evidence he had left the state to avoid prosecution or testimony in a court proceeding. Therefore, the ATF agent determined the purchaser was not legally prohibited from purchasing a firearm.

According to ATF headquarters officials, the temporary use of special agents from other Treasury components formally ended on September 30, 1999. Of approximately 900 backlogged delayed denials at the outset, about 720 had been worked through and resolved, with the remainder reassigned to ATF field agents as part of their normal workload. As previously noted, however, ATF data indicate that a backlog of over 800 delayed denials again existed as of December 31, 1999. In commenting on a draft of this report in early February 2000, ATF headquarters officials said the following:

- These delayed denials have been processed by ATF headquarters and referred to field offices, where the denials are being assigned and worked as a priority.
- Many of these referrals are in various stages of completion, but the overall status has not been reported back to ATF headquarters.

Treasury officials stated they would consider reinstituting the program of using special agents from other Treasury components if ATF field offices again need temporary investigative assistance. However, Treasury and Justice officials noted that the number of delayed denials—which require considerable investigative effort on ATF's part—could be minimized by other means, such as focusing on efforts to have more complete information in criminal history records and allowing more time to complete background checks.

Operations of the National Instant Criminal Background Check System

This appendix addresses the requester's questions regarding NICS architecture, capacity management, system availability, transaction response time, retention of records, monitoring activities, system security authorization, certain Privacy Act[1] exemptions, and making NICS a fingerprint-based system.

NICS Architecture

NICS was established to provide FFLs, that is, gun dealers, with information regarding prospective gun buyers' eligibility to lawfully purchase firearms. FFLs initiate background checks either by contacting one of two FBI Call Centers or the respective designated state agency.[2] The Call Centers or designated state agencies, in turn, conduct automated searches of the following three FBI-managed databases:

- NCIC 2000, which contains approximately 700,000 records on wanted persons and subjects who have protective and/or restraining orders.
- III, which contains approximately 34.7 million criminal records.
- NICS Index, which at the time of our review contained about 1 million records provided by federal and state agencies about persons prohibited under federal law from receiving or possessing a firearm.[3]

What Is the NICS' Functional Architecture?

When FFLs contact the FBI's Call Center or designated state agency, they provide their FFL number[4] and code word and descriptive information about the prospective buyer, such as name; sex; residence address; date of birth; and Social Security number or other identification number, if supplied by the buyer.[5] The Call Center or state agency enters the buyer's information into the NICS' computer to initiate the database search. After the search is completed, NICS informs the Call Center or state agency whether to "proceed" with or "delay" the purchase, and it provides the Call Center or designated state agency with the NTN for that particular transaction. Most of the time (about 72 percent) according to FBI data, NICS responds within 30 seconds with a "proceed," which means that no disqualifying information was found in the three databases. In these instances, the FFL can complete the sale.

[1]Public Law 93-579 (1974).

[2]See appendix I for additional information on designated state agencies.

[3]Records on individuals denied under state law, but not prohibited under federal law, are not to be entered into the NICS Index. Also, any record entered into the NICS Index must be removed if the record is overturned through the appeal process.

[4]ATF assigns the numbers to the FFLs and is to provide a list of valid FFL numbers to the FBI.

[5]This information is captured on ATF Form 4473, the Firearms Transaction Record.

In cases where FFLs contact the FBI's Call Centers, disqualifying or potentially disqualifying information identified by NICS is forwarded to the FBI Operations Center where an FBI employee, known as a NICS examiner, reviews the information to determine whether the prospective buyer is precluded from purchasing the firearm. In making this determination, the NICS examiner may contact state and/or local law enforcement agencies to obtain additional information on the prospective buyer. According to FBI data that are based on a sample of delayed responses from an ad hoc selection of examiners, NICS provides a definitive proceed/deny response back to 80 percent of the initial delay responses within 2 hours.

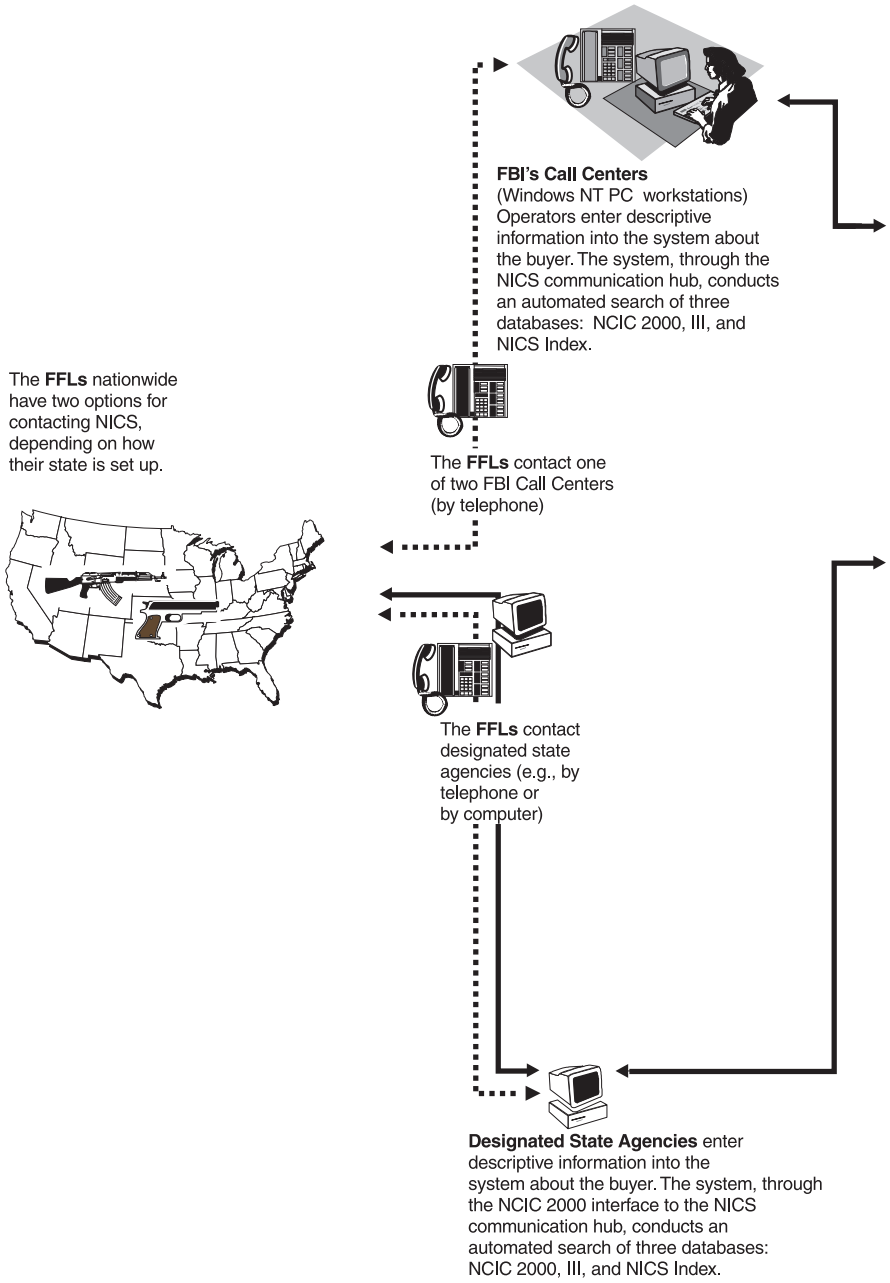
If the examiner's research indicates that the buyer is ineligible, the examiner informs the FFL that the transaction has been denied and provides the FFL with a telephone number to call for further information. If the NICS examiner does not contact the FFL within 3 business days, the FFL can sell the gun to the prospective buyer. If the NICS examiner later concludes that the prospective buyer is precluded from purchasing the gun, the FBI notifies ATF, which reviews the case for investigation. Also, the FBI transfers information to ATF on denial transactions that have been overturned. The FBI transfers these daily extracts (denials and overturned decisions) to the ATF twice a week via common courier.

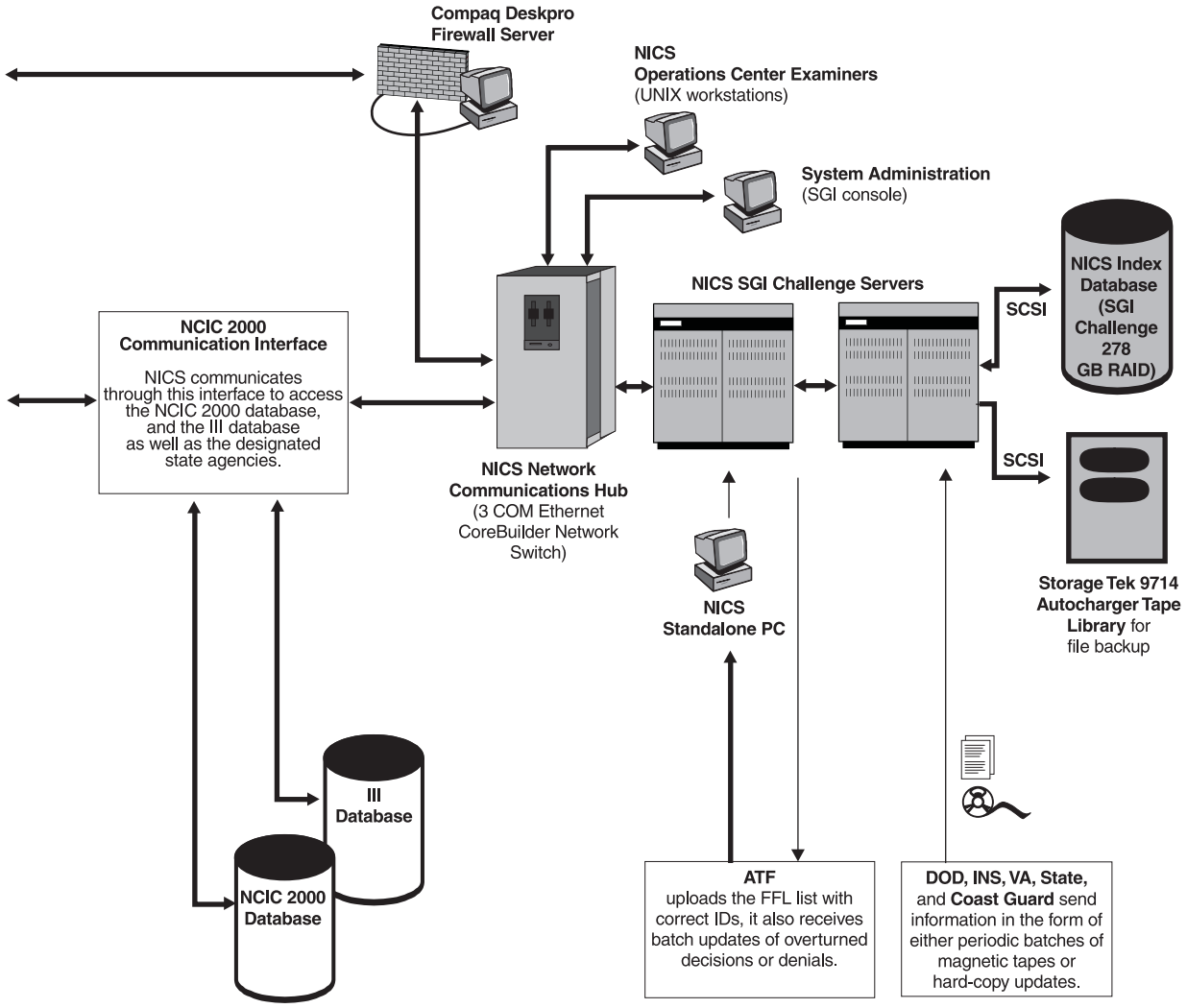
What Is the NICS' Technical Architecture?

The NICS system and the NICS Operations Center reside at the FBI data center in Clarksburg, WV. The two FBI Call Centers are located in Uniontown, PA, and Moundsville, WV.

NICS system hardware includes (1) two Silicon Graphics, Inc. (SGI) Challenge Servers, which process NICS searches (one is a primary server and the other is a backup server); (2) one SGI RAID Disk Storage System, which provides storage for the NICS Index; (3) one StorageTek 9714 Autochanger Tape Library, which is used for file back up; (4) Compaq Deskpro Firewall servers, which provide system security; (5) over 300 UNIX workstations; (6) personal computers (PC); and (7) other peripheral devices, such as Hewlett Packard printers.

Figure IV.1: Simplified Diagram of NICS Architecture





Legend:

- Shows all elements of the NICS architecture
- Transmission control protocol/Internet protocol (TCP/IP)
- Telephone lines
- Batch update

III Interstate Identification Index
NCIC 2000 National Crime Information Center 2000
NICS National Instant Criminal Background Check System
SCSI Small Computer Systems Interface
SGI Silicon Graphics, Incorporated

Source: GAO analysis of FBI data.

NICS is a three-tier, client-server-based architecture. The three tiers are the client, which provides the interface for users to request services to be performed by the server; the controller, which controls the flow of information between the client and the server; and the server, which stores the NICS Index, audit log, and other data in a relational database.

The NICS server and workstation application run on the UNIX operating system, with the Call Center PCs operating in Windows NT. The NICS database is a relational database using an Oracle database management system. In addition to the NICS Index, the NICS database software includes:

- Audit log, which is used to store data on all NICS gun-purchase transactions. The originating NICS search request is logged with an NTN. On a daily basis, the FBI is to destroy all proceed transaction records over 170 days old, except the NTN and the date the NTN was assigned. The audit log includes a table that is used to store a list of the purged NTNs. Once the data are purged from the rest of the audit log tables, the NTN and assigned NTN date are stored in the "NICS_Purged_NTN" table to establish that a record existed.

- Notification table, which identifies whether a state has requested notification for an out-of-state purchase of a long gun, and the Originating Agency Id (ORI) to notify.

- FFL list, which stores information received from ATF on FFLs, including FFL number, active status, password, business name, and address.

- Alternate Search Id (ASI) List, which identifies all valid ASIs and gives a Service Provider[6] the ability to perform a search without entering a valid FFL number.

- ORI list, which identifies all valid ORIs and is used to authenticate an ORI during the course of a transaction.

- Administrative file, which stores information on Service Provider logins and privileges.

[6]Service Providers include FBI analysts, supervisors, and system administrators.

NICS uses a 3COM Ethernet CoreBuilder 5000 switch that functions as the network communications hub and controls the network traffic to and from the NICS system. The primary communications protocol is Transmission Control Protocol/Internet Protocol (TCP/IP), which is used to communicate between the NICS' servers and the Call Centers, the NICS Operations Center, the NCIC 2000 database, the III database, and on-line designated state agencies. NICS uses dedicated T1 lines between the FBI Call Centers and the NICS servers. In addition, NICS communicates through the NCIC 2000 communication interface to access the NCIC 2000 and III databases and the on-line designated state agencies.

What Has the FBI Done to Ensure That NICS Operates as Intended by Congress?

The Brady Handgun Violence Prevention Act[7] required that the Attorney General establish NICS. The act also required that the system assign a unique identification number (NTN) and provide FFLs with that number, and destroy all proceed records in the system regarding the call (other than the identifying number and the date the number was assigned) and all records in the system relating to the person or the transfer.

According to NICS' functional and technical architecture documents and FBI officials, NICS satisfies the congressionally mandated functions by assigning an NTN for each transaction and providing the NTN to the FFL at the time the system provides a proceed or delay response. In addition, the NICS' architecture documents indicate that the system includes a purge routine, which when executed by the system operator, destroys all proceed transaction records, except the NTN and the date the NTN was assigned.[8] As discussed later in this appendix, a lawsuit has been filed that contends that the proceed transaction records should be destroyed immediately—that they not be retained for any length of time. The district court dismissed the complaint; the plaintiffs appealed that dismissal. Because this issue is in litigation, we are not addressing the merits of the competing arguments.

[7]Public Law 103-159 (1993).

[8]The FBI, by regulation, established that proceed files be purged and destroyed after not more than 6 months.

Capacity Management

We focused our inquiries on the FBI's capacity management program for staffing the Call Centers, the volume of background checks done by the Call Centers, and the volume of calls to the Call Centers.

Does the FBI Have a Capacity Management Program?

FBI officials told us that a capacity management program is used for managing the staffing levels at the Call Centers to ensure that the volume of NICS searches can be handled. The officials added that various parameters, such as the FBI's service goal of answering 80 percent of telephone calls within 20 seconds and the number of telephone calls forecasted, have been incorporated into the software used to make Call Center staffing levels and work shifts determinations.

What Have Been the Trends in Capacity Utilization?

FBI officials stated that because they staff to forecasted volume and because the actual volume of NICS searches has been less than the forecasted volume, the Call Centers initially were slightly overstaffed. The Call Centers' staff has been reduced on two occasions. According to the NICS Acting Operations Manager, the FBI has not encountered difficulties in hiring staff for the Call Centers.

What Volume of Transactions (Normal and Peak) Is the System Designed to Handle?

The FBI established a NICS workload requirement of 13,500 searches per day, on average, and up to 27,000 searches per day during peak times from the Call Centers. During the first year of NICS operations, the FBI reported that the Call Centers performed more than 27,000 searches on 1 day. For almost 90 percent of the days during January through August 1999, the Call Centers' search volume was fewer than 13,500 per day. For the months of December 1998 and September, October, and November, 1999, on about 70 percent of the days, the Call Centers conducted between 13,500 and 27,000 searches per day. According to the FBI, these were months wherein the search volumes were expected to be high because of the hunting and holiday-buying seasons.

How Accurate Have the Predictions Been Relating to the Volume of Incoming Transactions?

The FBI forecasts Call Center telephone call volume in half-hour increments. It receives reports on forecasted versus actual call volume on half-hour, daily, weekly, and monthly increments. On the basis of these reports, for each month, December 1998 through November 1999, forecasted volume exceeded actual volume. The percentage of actual calls to forecasted calls ranged from a low of about 52 percent in January 1999 to a high of about 97 percent in October 1999. Overall, for the first year of NICS operations, actual call volume was about three-quarters of the forecasted call volume, according to FBI data.

FBI officials told us that they have revised the forecasted Call Center telephone call volume on the basis of actual call volume, calling patterns,

and speculation that some states will be changing from doing the background checks themselves through designated state agencies to having the FBI conduct the checks through the Call Centers.

System Availability

System availability can be defined as the time that a system is operating satisfactorily, expressed as a percentage of the time that the system is required to be operational. The FBI, in its final rule (Oct. 1998) implementing NICS, stated that the NICS Operations Center,[9] would be open for business 7 days a week, 17 hours each day as follows:

> "The final rule retains the FBI business hours of 9:00 a.m. to 2:00 a.m. [eastern time]. It is understood that some places of business are open during hours during which the NICS Operations Center is unavailable. However, the FBI is servicing retail stores in seven different time zones and has attempted to define its business hours to cover the peak sales times in each zone."[10]

How Does the FBI Measure System Availability, and What Is NICS' System Availability Requirement?

According to the FBI official responsible for NICS operations, the FBI has specified a NICS availability requirement of 98 percent for components of NICS delivered by the contractor (e.g., NICS servers). The FBI expects these components of NICS to operate satisfactorily 98 percent of the time during the scheduled 17-hour operation period (i.e., that the system will experience no more than 20.4 minutes of unscheduled downtime each day). The FBI also uses this availability requirement as a baseline against which to compare actual availability for all NICS components. NICS Operations Center officials told us that they calculate actual system availability by (1) quantifying the number of minutes that the system is operating satisfactorily during the scheduled 17-hour operating period and (2) dividing this total by the number of minutes that the system is expected to be operational (i.e., 17 hours or 1,020 minutes per day, 7 days a week).

What Was Actual NICS System Availability for the Period November 30, 1998, Through November 30, 1999?

Table IV.1 shows reported NICS availability for the period November 30, 1998, through November 30, 1999. NICS met or exceeded its availability requirement of 98 percent in one-third of the months during this period. NICS did not meet its requirement for the remaining two-thirds, with availability ranging from 92 percent to 97.7 percent, or an average of 95.4 percent. According to Justice officials, NICS' overall availability is affected by its dependence on other FBI controlled systems—namely IAFIS/III and NCIC 2000—to complete transaction checks. Often, when these systems experience difficulties, NICS cannot function.

[9]The Call Centers are to be open the same hours as the Operations Center, according to FBI officials.

[10]63 Fed. Reg. 58303, 58305 (1998). Beginning May 1, 1999, the FBI temporarily changed the Operations Center's business hours to 8 a.m. to 1 a.m. eastern time to more efficiently meet demand.

Table IV.1: NICS Availability and Downtime, by Month (Nov. 30, 1998 Through Nov. 30, 1999)

Month/Year	NICS availability (percentage of time)	NICS unscheduled downtime[a] Percentage of time	Amount of time
December 1998[b]	96.9%	3.1%	16 hours, 17 minutes
January 1999	94.7	5.3	27 hours, 55 minutes
February 1999	96.7	3.3	15 hours, 40 minutes
March 1999	98.3	1.7	8 hours, 53 minutes
April 1999	98.8	1.2	5 hours, 52 minutes
May 1999	98.5	1.5	7 hours, 59 minutes
June 1999	99.5	0.5	2 hours, 37 minutes
July 1999	92.0	8.0	42 hours, 18 minutes
August 1999	95.1	4.9	25 hours, 40 minutes
September 1999	95.8	4.2	21 hours, 26 minutes
October 1999	97.7	2.3	12 hours, 6 minutes
November 1999	94.4	[a]5.6	28 hours, 46 minutes
December 1998[b] - November 1999	**96.5%**	**3.5%**	**215 hours, 29 minutes**

[a]Downtime is the amount of time during normal business hours that the designated state agencies' or Call Centers' processing was down; therefore, they were unable to complete NICS background checks.

[b]Includes November 30, 1998, which was the first day of NICS operations. Availability for the first day was 91.9 percent.

Source: FBI data.

Table IV.2 shows the reported availability of just the Call Centers. The pattern is similar to the one in table IV.1. The difference between the two tables is that table IV.2 accounts for only the time the Call Centers were taken out of operation during normal business hours. Table IV.2 does not include the time when designated state agencies were unable to conduct background checks, while the Call Centers were able to conduct checks.

Table IV.2: Call Center Availability and Downtime, by Month (Nov. 30, 1998 Through Nov. 30, 1999)

Month/Year	NICS availability (percentage of time)	NICS unscheduled downtime[a]	
		Percentage of time	Amount of time
December 1998[b]	97.2%	2.8%	14 hours, 27 minutes
January 1999	94.8	5.2	27 hours, 18 minutes
February 1999	97.5	2.5	11 hours, 59 minutes
March 1999	98.4	1.6	8 hours, 24 minutes
April 1999	98.9	1.1	5 hours, 41 minutes
May 1999	98.5	1.5	7 hours, 54 minutes
June 1999	99.5	0.5	2 hours, 21 minutes
July 1999	92.0	8.0	41 hours, 56 minutes
August 1999	95.2	4.8	25 hours, 19 minutes
September 1999	95.8	4.2	21 hours, 23 minutes
October 1999	97.7	2.3	12 hours, 3 minutes
November 1999	94.4	5.6	28 hours, 42 minutes
December 1998[b] - November 1999	**96.6%**	**3.3%**	**207 hours, 27 minutes**

Note: Percentages do not add to 100 due to rounding.

[a]Downtime is the amount of time during normal business hours that the Call Centers processing was down; therefore, the Call Centers were not available to the FFLs for background checks.

[b]Includes November 30, 1998, which was the first day of NICS operations. Call Center availability for the first day was 91.9 percent.

Source: FBI data.

FBI officials noted that they are unable to provide FFLs with advance notice of NICS outages that occur during normal business hours because the FBI does not know in advance when the outages will occur. The officials stated that when the NICS Operations Center's business hours changed from 9 a.m. through 2 a.m. to 8 a.m. through 1 a.m., the FBI notified those FFLs that had previously called the Call Centers for a background check between 1 a.m. and 2 a.m. of the change in business hours.

How and When Is Routine System Maintenance Performed?

According to an FBI official, routine maintenance is done by the FBI contractor with technical assistance from the FBI. These maintenance activities include creating backup tapes, running the "NICS daily" (database maintenance for system performance), loading data, and purging records from the audit log and the NICS Index. Additionally, the majority of scheduled and unscheduled system maintenance is performed during the 7-hour period when NICS is off-line.

Is the Nighttime Shutdown Period the Appropriate Time to Conduct Routine Maintenance?

According to the FBI, the nighttime shutdown period is the appropriate time to conduct routine maintenance. FBI NICS managers explained that the maintenance strategy is to perform routine maintenance daily during the 7-hour window when NICS is off-line. Also, the managers noted that, when possible, the more time-intensive activities (such as loading federal data) are run during nonpeak operational hours so as not to impact system performance.

What Have Been the Sources of NICS Unscheduled Outages, and What Steps Have Been Taken to Correct Them and to Prevent Future Occurrences?

From December 1998 through September 1999, the FBI identified more than 360 unscheduled outages associated with NICS. According to the FBI, these outages were not evenly distributed, but rather occurred during particular months. The greatest number of days with system outages occurred during December 1998, with most occurring during the first week of NICS. We grouped these outages into eight major components. Table IV.3 shows these components and the associated unscheduled outages, by percent. The table also provides examples of FBI descriptions of the source/cause and resolution for each of these components.

Table IV.3: Sources of NICS Unscheduled Outages, by Component (Dec. 1998 Through Sept. 1999)

Component	Percentage of unscheduled outages	Examples	
		Source/Cause	Resolution
IAFIS/III	38.0%	An FBI data center official called NICS officials to let them know that IAFIS/III was about to fail.	NICS system administrators restarted the NICS application.
NCIC/IAFIS/III[a]	8.6	NCIC and IDAS/III[b] stopped responding. NICS received numerous error messages from NCIC 2000. After confirming the problem with NCIC 2000, NICS began shutdown procedures.	Call Center and states were back in service, and Operations resumed searches and record requests.
NCIC[a]	23.5	NCIC front end was not working.	Unknown FBI actions were taken to resolve NCIC front-end problem. Contractor help desk sent a broadcast message out to NICS operations to stop searches and record requests.
NICS	13.0	Oracle stopped responding on the NICS system.	NICS system administrator forced the NICS system to use the backup server. Oracle database administrator verified proper database functioning.
Tuxedo®[c]	5.8	Tuxedo queue for Select NTN was abnormally high. This Tuxedo process is only accessed by NICS Operations.	Rebooted all NICS workstations and restarted the Select NTN Tuxedo server.
Call Centers	5.8	Call Center proceed rate was at 0%.	NICS system administrator took operations offline; problem corrected itself before states or Call Centers were removed.
NICS/Tuxedo	1.7	Lost the entire NICS application. Tuxedo processes exited and restarted unexpectantly. Oracle and Tuxedo errors.	Used secondary server during troubleshooting process. Restarted NICS application.
Other	3.6	Communications (T1) line was not responding.	Contractor and service provider contacted to correct T1 lines; contractor rebooted Clarksburg router.
Total	**100.0**		

[a]As previously mentioned, NCIC 2000 replaced NCIC on July 11, 1999. This reference to NCIC means either NCIC or NCIC 2000.

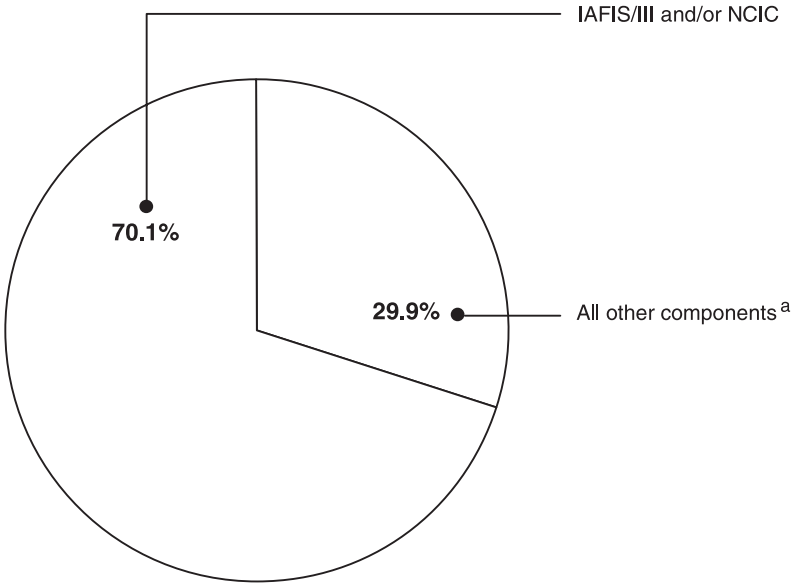
[b]The Identification Division Automated Services (IDAS) system was replaced by IAFIS on July 28, 1999. III formerly was a segment of IDAS and now is a segment of IAFIS.

[c]The FBI uses Tuxedo to communicate requests for processing from the client to the server, monitor and control usage of server processes, control communications between server processes, and manage which server resources respond to client requests.

Source: GAO analysis of FBI data.

On the basis of our review of the FBI-described system outages, IAFIS, III, and/or NCIC problems were the sources for over two-thirds of the NICS system outages, as illustrated in figure IV.2.

Figure IV.2: Primary Components Contributing to NICS' Unscheduled Outages for the Period of December 1998 through September 1999



[a]These components were NICS, Tuxedo, Call Centers, NICS/Tuxedo, and other.

Source: GAO analysis of FBI data.

Transaction Response Time

This section discusses the following three measures of response time:

- the percentage of callers to the FBI Call Centers' background check telephone lines that did not abandon their telephone calls;
- the percentage of telephone calls to the FBI Call Centers' background check lines that were answered within 20 seconds; and
- the length of time it took either the FBI Call Centers or the NICS Operations Center to provide FFLs with a final response, that is, to proceed with or to deny the firearm transaction.

Does the FBI Have the Capability to Measure "Dropped" Telephone Calls?

The FBI can and does measure telephone calls to the FBI Call Centers that are dropped. The FBI refers to such calls as "abandoned" calls and it defines an abandoned call as one in which the caller (i.e., an FFL) chooses to disconnect while in the hold queue.

Monthly, What Have Been the Types and Extent of Access Problems, Such as Busy Signals and Abandoned Calls?

According to FBI officials, callers to the Call Centers are not to receive busy signals. Instead, if FBI Call Center contract staff do not answer an incoming call when the caller selects the background check option, the call is placed in a hold queue until a staff person is available to handle the call.

FBI officials told us they knew of only two instances in which callers to the Call Centers got busy signals due to NICS operations problems. The first instance was November 30, 1998, (the first day NICS was operational) when the Call Centers did not have enough T1[11] lines to handle the volume of calls. The second instance occurred when the Call Centers' long-distance carrier had problems that resulted in busy signals. The FBI officials added that callers may have gotten busy signals at other times, but the cause would have been carrier problems at the local (the callers') level. With the exception of the two instances of busy signals—and system outages (previously discussed)—the officials said that the FBI has not identified any problems with callers getting through to the Call Centers.

Regarding abandoned calls, table IV.4 provides data on the number of calls to the Call Centers and the number of calls in which the caller abandoned the call while in a hold queue as reported by the FBI. Table IV.4 also shows the percentage of telephone calls to the Call Centers that was answered, by month (i.e., the number of calls answered[12] divided by the total calls attempted). For the first 7 months of operation, the percentage of calls answered ranged from 98.1 percent to 99.9 percent. For July 1999 through September 1999, the percentage of calls answered fell to under 98 percent. In October and November, 1999, the percentage of calls answered again rose to over 98 percent.

According to FBI officials, high numbers of abandoned calls generally have occurred immediately following system outages, such as those that occurred from July through September, 1999, as a result of the NCIC and III upgrades. The officials explained that during an outage, the Call Centers are taken out of service and FFLs are unable to contact the Call Centers. Once NICS is back in service and the Call Centers are reopened, the Call Centers are flooded with calls that queue up waiting for an available staff member to handle the call. FFLs that do not want to wait in the queue hang up and "abandon" their call. After long outages, these officials said, it is logical to assume that call abandonment is exacerbated by FFLs who call repeatedly and hang up until the call is handled promptly. However, the FBI officials added, there is no way to determine the exact reasons an FFL decided to abandon a call. Furthermore, the FBI officials said that minimizing outages should result in fewer abandoned calls.

[11] According to the FBI, T1 lines are digital trunks with 24 channels per trunk. They stated that the system has 23 T1 circuits for incoming calls to the Call Centers that allow 552 incoming calls at one time.

[12] That is, the caller was connected to a Call Center contract staff. A background check may or may not have been completed.

These officials also said that trends in call arrival patterns can affect the Call Centers' ability to handle incoming calls. The officials noted that recent trends have shown that a higher percentage of calls have been arriving late in the afternoon and early evening.

Table IV.4: Percentage of Call Center Telephone Calls Answered (Nov. 30, 1998, Through Nov. 30, 1999)

Month/Year	Calls attempted	Calls abandoned	Calls answered	Percentage of calls answered
December 1998[a]	533,759	10,041	523,718	98.1%
January 1999	264,145	3,993	260,152	98.5
February 1999	310,718	436	310,282	99.9
March 1999	330,704	1,048	329,656	99.7
April 1999	293,646	4,046	289,600	98.6
May 1999	252,453	1,567	250,886	99.4
June 1999	253,680	1,264	252,416	99.5
July 1999	266,239	6,224	260,015	97.7
August 1999	244,353	5,084	239,269	97.9
September 1999	408,303	20,913	387,390	94.9
October 1999	473,453	8,312	465,141	98.2
November 1999	511,608	8,352	503,256	98.4
December 1998[a] - November 1999	**4,143,061**	**71,280**	**4,071,781**	**98.3%**

Note 1: This table combines data from the two FBI Call Centers.

Note 2: Not all of the calls attempted are for background checks, according to FBI officials. For instance, NICS Operations Center staff periodically call the Call Centers to monitor Call Center availability. Additionally, not all calls for background checks result in a background check being conducted by the Call Centers. For example, if an FFL does not provide the code word that matches the FFL's identification number, the call is to be transferred to the NICS Operations Center (customer service staff) to complete the background check.

[a]This time frame includes November 30, 1998, which was the first day of NICS operations. According to FBI data, the percentage of calls answered on the first day was 93.8 percent.

Source: FBI data.

The FBI has a goal that at least 80 percent of the calls to the Call Centers be answered within 20 seconds. FBI officials said that this goal has generally been achieved. However, the officials also commented that the goal was not met on several days when NICS experienced significant technical difficulties.

What Procedures Did the FBI Implement to Track Such Problems?

The NICS Operations Center receives daily Call Center performance reports. These reports contain data by one-half-hour increments on, among other things, the call arrival and call abandonment rates and percentage of calls answered within 20 seconds.

How Effective Have Those Procedures Been in Reducing or Eliminating the Problems?

As previously mentioned, on the first day of NICS operations (Nov. 30, 1998), some callers to the FBI Call Centers did receive busy signals. However, FBI officials told us that additional T1 lines were immediately installed; thus, by the second day of operations (Dec. 1, 1998) the busy-signal problem was resolved.

Also, the officials commented that, by using the daily reports showing call arrival and abandonment rates, staffing at Call Centers are adjusted (on an ongoing basis) to better cover call peak times. Additionally, limited use of overtime has been approved to handle unexpected spikes in call arrival patterns.

Due to NICS Inaccessibility, What Were the Estimated Financial Costs or Lost Sales That Small Retail Firearms Businesses in the United States Incurred During the Peak 1998 Christmas Selling Season?

We found no reliable nationwide data on the financial costs or estimated retail sales lost, if any, during the first month of NICS implementation. In response to our inquiries, industry officials—from the National Rifle Association, National Association of Arms Shows, National Pawnbrokers Association, and National Association of Federally Licensed Firearms Dealers—told us that gun dealers were adversely affected during the first month of NICS implementation, as a result of system crashes and Call Center inaccessibility. However, it is unclear to what extent, if any, these problems resulted in delayed or deferred sales versus lost sales. As previously discussed, busy signals and system outages did occur on the first day of NICS implementation (Nov. 30, 1998), which limited access to NICS for some customers and resulted in a higher percentage of abandoned calls. However, for the first full month of implementation (Dec. 1998), the percentage of abandoned calls was generally consistent with the overall percentage for the first year of operation.

What Trend Data Are Available Regarding the Number (and Percentage) of Applications That Have Experienced Delays Under NICS?

Trend data are available from the FBI on delayed background checks that the FBI NICS Operations Center and the Call Centers performed. The FBI does not have data on delayed background checks that were performed by designated state agencies.

FFLs who have their background checks done by the FBI initiate this process through an FBI Call Center. The FBI Call Center contract staff are to either provide the FFLs with a response to proceed with the firearm transfer or to delay the transfer. If the NICS background check does not identify any potentially disqualifying information (i.e., no potentially matching records were identified through the three database searches), the Call Center contract staff are to tell the FFL that the transfer may proceed (i.e., an immediate proceed). If a potentially disqualifying record is identified or a database is unable to complete its search within 30 seconds, the Call Center contract staff are to tell the FFL to delay the

transfer. A delay response means that it would be unlawful for the FFL to transfer the firearm until it receives a proceed response or until the expiration of 3 business days, whichever comes first.

According to FBI data, between November 30, 1998, and November 30, 1999, about 72 percent of the background checks conducted by the FBI were immediate proceeds. The remaining 28 percent were delays. As seen in table IV.5, the percentage of delayed transactions by month has ranged from about 26 to 32 percent.

Table IV.5: FBI Immediate Proceed and Delay Responses (Nov. 30, 1998, Through Nov. 30, 1999)

	Immediate proceed		Delay	
Month/Year	**Number**	**Percent**	**Number**	**Percent**
December 1998[a]	367,342	73.1%	135,128	26.9%
January 1999	193,110	71.3	77,699	28.7
February 1999	234,936	72.5	89,088	27.5
March 1999	258,176	73.6	92,680	26.4
April 1999	224,093	73.8	79,418	26.2
May 1999	193,558	73.9	68,220	26.1
June 1999	194,017	74.4	66,796	25.6
July 1999	191,212	68.3	88,755	31.7
August 1999	244,097	72.4	92,893	27.6
September 1999	304,812	72.2	117,421	27.8
October 1999	360,134	71.3	145,072	28.7
November 1999	378,297	71.5	150,524	28.5
December 1998[a] - November 1999	**3,143,784**	**72.3%**	**1,203,694**	**27.7%**

Note: The total number of background checks in this table is less than the total number of FBI-performed background checks shown in table II.1 (4,402,291). Table IV.5 does not include checks that the FBI started, canceled, and started again as a new check because, for example, the FFL corrected a piece of information he or she had provided to a Call Center staff. In these instances, NICS does not allow information for running a background check to be changed once it has been entered into the system.

[a]This time frame includes November 30, 1998, the first day of NICS operations. According to FBI data, for the first day, 65 percent of the transactions were proceeds, and 35 percent were delays.

Source: FBI data.

FBI data showed that the average talk time (i.e., length-of-call time) of these telephone calls[13] to the Call Centers has decreased from 3 minutes and 12 seconds in December 1998,[14] to 2 minutes and 30 seconds in June 1999. The average talk time of these calls increased for the months of July 1999 to November 1999 by 12 seconds or less. While the FBI does not have

[13]The talk time or length-of-call time is the amount of time that the Call Center contract staff is on the telephone with the FFL plus about 5 seconds after the call for the Call Center staff to get prepared for the next call, according to FBI officials.

[14]This includes talk time for November 30, 1998, the first day of NICS operations.

an average length-of-call or talk-time goal for the Call Centers, FBI officials told us that they closely monitor length-of-call statistics. These officials said that when they identify anomalies in the daily statistics, they question the Call Centers' contractors for the reason(s) for these anomalies.

What Was the Average Time of Such Delays, and What Were the Reasons for the Delays?

Transactions that receive a delay response by the FBI Call Centers are sent electronically to the NICS Operations Center where they are to be researched by FBI employees known as NICS examiners. According to the FBI, these examiners review the record(s) identified through the NICS search to determine whether the record(s)

- is complete,
- matches the potential buyer, and
- contains disqualifying arrest and disposition information.

The FBI developed information on the length of time it has taken examiners to research delayed transactions. FBI officials stated that the delayed transactions that they analyzed were selected from the delay queue from an ad hoc sample of examiners for a 1-day period. The officials said that because the delay transactions were selected at random for each examiner, the results of the study provided valid indicators of the time required to resolve delayed transactions. The FBI concluded that for about 80 percent of the delayed transactions (or 22 percent of all transactions), FBI examiners took 2 hours or less from the time that they received the transaction information to provide the FFL with a proceed or deny response. The FBI explained that when the information needed to finish the background check was available electronically, the examiner completed the background check within 2 hours.

The FBI also concluded that it took more than 2 hours to provide the FFL with a proceed or deny response for the remaining 20 percent of the delayed transactions (or 5 percent of all transactions). The FBI stated that in these instances, the examiners had to contact state or local entities to obtain information to complete the record—generally disposition information. According to the FBI, about 40 percent of these transactions took no more than 3 calendar days to complete, and an additional 20 percent took between 3 and 10 calendar days to complete. We note, however, that the reliability of these percentages (40 percent and 20 percent) is uncertain because the calculations are based on incomplete data. That is, for transactions involving FBI contacts with state or local entities, the FBI examiners did not always annotate applicable file comments showing contacts and/or resolution dates.

How Do the Number (and Percentage) and Time of Delays Under NICS Compare to Those of State Systems, Particularly Virginia's and Georgia's Systems?

Virginia was the first state to implement a point-of-sale system for checking the criminal records of individuals buying handguns. Under Virginia's system, which was implemented in November 1989 (9 years earlier than NICS), licensed dealers in the state call a toll-free number at Virginia State Police headquarters in Richmond.

Since NICS' implementation on November 30, 1998, Virginia has been a full-participant state in the system (see app. I). That is, in Virginia, before selling a handgun or a long gun, FFLs are to contact the Virginia State Police, who are to conduct a background check to determine whether the transfer would violate state or federal law. During our June 1999 visit to Richmond, Virginia State Police officials commented that NICS was developed based on Virginia's system. Also, the officials provided us with background check statistics, which indicated that the state's results (regarding, e.g., delays) were similar to those of the FBI under NICS. More specifically, comparative data showed the following:

- Number (and percentage) of delays. For the 9-month period of January through September, 1999, Virginia Firearms Transaction Program statistics showed 129,740 background check transactions and that 34,417 (26.5 percent) of the total were initially delayed.[15] This percentage is similar to the delayed response rate (28 percent) reported by the FBI for its background checks under the first year of NICS.

- Time of delays. Regarding Virginia's initial delay statistics for the first 9 months of 1999, according to Virginia State Police officials, (1) the majority of the initial nonapproval responses were resolved within minutes and (2) the remaining transactions requiring additional research were generally resolved in 8 to 16 hours. Regarding the FBI's delayed responses under the first year of NICS, FBI data indicated that (1) the majority were resolved within 2 hours or less and (2) the remaining transactions required more than 2 hours to resolve, mainly because arrest dispositions were not available electronically.

As in Virginia, Georgia has an instant background check system, which is run by the Georgia Bureau of Investigation. For calendar year 1999, statistics show that the Georgia Bureau of Investigation conducted 252,807 background checks involving firearms (handguns and long guns). About 94 percent of these checks (238,389) resulted in approvals of sales. Of the total approvals, 59 percent were immediate, according to the statistics, while the other 41 percent required additional research (however, the time

[15]Virginia refers to these transactions as "initial nonapprovals."

required was not specified). About 96 percent of checks done by the FBI (from Nov. 1998 through Nov. 1999) resulted in approvals. While not directly comparable to the Georgia Bureau of Investigation on the percentage of immediate approvals, we note that of the total number of background checks done by the FBI during this period, about 72 percent were immediate approvals.[16]

What Has the FBI Done to Ensure That the NICS Name Search Software Operates at Optimal Performance?

The name search software that NICS uses to identify potential matches in III, NCIC 2000, or the NICS Index is based on the New York State Identification and Intelligence System (NYSIIS) Phonetic Code. NICS also uses a date-of-birth match that is based on the month and day of birth, with the year of birth using a window of plus or minus 1 year. According to an FBI official, the FBI is exploring putting a filter between NCIC 2000 and NICS that would eliminate certain types of matches from the NYSIIS search that would not be relevant to a NICS background check denial.

Retention of Records

The Brady Act both prohibits the FBI from establishing a federal firearms registry and requires, in general, the destruction of proceed (approved) transaction records. According to the FBI's final rule implementing NICS:

- The FBI will not establish a federal firearms registry.
- The FBI will retain records of approved transactions in an audit log (the NICS audit log) for a limited time solely for the purpose of satisfying the separate Brady Act requirement of ensuring the privacy and security of NICS and the proper operation of the system.[17]

What Measures Have Been Taken to Ensure That NICS Information Is Not Used to Establish a National Registry?

In responding to this question, FBI officials emphasized that no national registry of firearm owners exists and that the FBI has no intention of creating one. The officials also noted the following:

- NICS is incapable of establishing such a registry because it does not have information about the make, model, or serial numbers of the firearms sold, nor does it have information about whether the sales actually occurred.
- The decentralized nature of NICS, with law enforcement agencies in various states conducting background checks, would make collection of information for a national registry impossible.

[16] These figures on percentage of background checks are not directly comparable because the Georgia data were based on the total number of approvals, whereas the FBI data were based on the total number of background checks.

[17] 63 Fed. Reg. 58303 (1998).

The FBI has developed various procedures to ensure the destruction of data—excluding the NTN and the date that the NICS search was run (the NTN creation date)—for background check transactions that did not result in a denial or that were denied and successfully appealed. These NICS transaction data are in (1) electronic format, such as the NICS database and backup tapes, and (2) hard-copy format, such as notes or files maintained by FBI examiners and other employees.

Regarding the NICS database, FBI officials explained that as part of the nightly maintenance procedures, the NICS system administrator is to execute a purge of all approved or proceed transactions that are 170 days old,[18] that is, 170 days after the firearm transfer was allowed. Pending changes in regulation would lower the retention period to 90 days. Our review of the NICS' source code and variable tables showed that the purge routine is documented in the NICS' system documentation.

During a visit to the NICS Operations Center, we verified that the FBI does have written purge procedures for the system administrator. We observed, for example, that the contractor's on-line maintenance requirements include a purge function. We also reviewed system administrator log book entries for a limited, nonprojectable number of days (i.e., the last 12 days in May 1999 and 3 days in late June 1999) that indicated purges had been conducted.[19] In addition, this documentation indicated that the initial purge was conducted on May 16, 1999, several days before the 6-month retention period allowed by regulation. FBI officials told us that the first purge routine was conducted early to allow time to correct problems before expiration of the 6-month retention period.

In conducting further testing at the NICS Operations Center, we judgmentally selected one "create date" (Jan. 17, 1999)—that is, a date 6 months or more earlier than our September 28 and 29, 1999, visit to the center. At our request, while we observed the process, the contractor staff used the computerized system to generate a list of all NTNs created on January 17, 1999. Then, from that list of several thousand NTNs, we judgmentally selected five NTNs. Again, while we observed, the contractor staff input the five NTNs into the system to determine if any personal

[18]According to FBI officials, the purge is based on 170 days rather than 180 days because the FBI maintains the backup tapes for the NICS database for the previous 9 days.

[19] The log book entries indicated that the purge had been conducted on 14 of the 15 days we reviewed. FBI officials said that the purge is based on 170 days, which is less than the 6-month time period established in the regulations. Thus, the officials explained that the FBI can still be in compliance with the regulations if, on any given night, the purge routine is not run due to maintenance problems or other reasons.

identification information was available for retrieval. In each instance, the monitor screen did not display any such information.

FBI officials explained that the NICS database is backed up onto tapes routinely. The NICS Operations Center keeps up to nine full backups. As each new backup is created, the oldest backup data are overwritten. Because the purge routine is run based on 170 days, FBI officials said the backup tapes do not contain data on proceed transactions more than 180 days old.

Regarding hard-copy data purges, FBI officials told us that all NICS Program Office employees were sent a memorandum specifying purge requirements. In addition, the NICS Operations Center developed a matrix that listed the types of items to be purged (e.g., case history printouts, incoming disposition fax cover sheets, and appeals tickler system documents). Once every quarter, each FBI employee with access to NICS background information must sign a statement certifying that the employee has purged all applicable information and data using appropriate methods. We reviewed a copy of each of these documents—the memorandum, the matrix, and the employee certification statement.

If NICS Is Not Currently in Full Compliance, What Would Be the Cost of Any Modifications Needed to Achieve System Compliance?

As discussed herein, the FBI believes that NICS operations fully comply with applicable law. However, the National Rifle Association (NRA), and other plaintiffs, have filed a lawsuit[20] contending, among other things, that any retention period for records on lawful firearm purchasers is a violation of federal law. The plaintiffs allege that the Brady Act and other statutory provisions require the "immediate destruction" of such records. In January 1999, the NRA's request for a preliminary injunction was denied in the U.S. District Court for the District of Columbia. In July 1999, the district court dismissed the NRA's complaint. The NRA filed an appeal of the dismissal in December 1999. Because these issues are in litigation, we did not address the merits of the competing arguments.

Relating to the cost to perform immediate purges of approved firearms transactions, in a December 1998 affidavit related to the lawsuit, an FBI employee who served as project manager for NICS, commented that such reprogramming of NICS would take a minimum of 6 months time and cost at least $1.5 million or possibly in excess of $2 million.

[20] NRA, Inc., et al. v. Reno (Civ. A. No. 98-2916 JR), U.S. District Court for the District of Columbia.

FBI officials also provided information on how the immediate destruction of firearms transaction data would affect operations. The officials stated, for example, that without these data, the FBI could not

- identify FFLs who provided Call Center contract staff with information for a background check different from the information on the ATF Form 4473;
- look up previous background check transactions to determine, for example, why a background check on an individual one week resulted in a proceed and a check another week resulted in a delay or a deny; or
- perform assessments on the quality of NICS examiners' proceed and deny determinations.

These officials explained that the FBI or ATF has used the firearms transaction data for the purposes previously noted. For example, using this transaction information in its normal FFL audit processes, ATF has identified discrepancies between information provided on the ATF Form 4473 and the background information provided to the Call Center staff. Also, the officials said that FFLs have brought to the FBI's attention situations in which a background check on an individual one week resulted in a proceed and a check another week resulted in a delay or a deny. The officials said if the background check that resulted in the proceed determination was made less than 170 days ago, they could retrieve data on that transaction to determine why the first background check was a proceed and the subsequent one was not (e.g., the FFL may not have provided the exact same data to the Call Center for each transaction).

Does NICS Contain Extraneous Data That Are Unnecessary for Determining Whether Federal Disqualifiers Exist?

According to FBI officials, NICS does not contain extraneous data unnecessary for law enforcement purposes, such as determining whether federal disqualifiers exist. The officials noted that, while information contained in NICS is used to identify prohibited persons, some of the records predate NICS and are used for other law enforcement purposes. Specifically, as previously discussed in appendix I, NICS provides access to three national databases—NCIC 2000, III, and the NICS Index. The NCIC[21] and III databases predate NICS and have long been generally used for law enforcement purposes. Because these two databases contain criminal history information, misdemeanor as well as felony records may be included. A Brady-related background check against these databases generates a "hit" on any records, not just disqualifying records. For example, background checks against these databases generate a hit (and, in turn, a delayed response to the FFL) if the prospective purchaser has

[21]As previously noted, on July 11, 1999, NCIC 2000 replaced NCIC.

either a felony or a misdemeanor record, even though the latter may not be a disqualifier. For each delayed response, an FBI examiner is to review applicable records and determine whether the transaction should proceed or result in a deny response.

The third database (the NICS Index) was created specifically for NICS and is to contain noncriminal justice records only on individuals prohibited by law from possessing firearms—for example, illegal aliens, persons involuntarily committed to a mental institution, persons who have renounced their citizenship, and persons who have been dishonorably discharged from the armed forces. As noted in appendix I, records on individuals denied under state law, but who are not prohibited under federal law, are not to be entered into the NICS Index. Also, any record entered into the NICS Index must be removed if the record is overturned through the appeal process.

Are the NTNs Randomly Generated, and Do They Point to Any Identifying Records?

NTNs are seven-digit, alpha-numeric strings that are created for each transaction. According to the FBI, NTNs are not generated on the basis of any of the information contained in incoming transactions. Furthermore, the FBI said that, although not randomly generated, the NTNs do not point to any identifying records once the audit log is purged.

According to FBI officials, the NTNs are created by converting an assigned "base 10" number into a 7-digit, alpha-numeric string. These officials stated that the first assigned number was an arbitrary number. Each subsequent transaction's assigned number increases by one. This number is converted into an alpha-numeric string using a "base 30" approach in which 30 characters (alphabetic and numeric) are available for use.[22]

What Are the Specific Reasons for Retaining an Audit Log of Nonblocked Transactions?

In its final rule implementing NICS, the FBI gave the following reasons for retaining a temporary log of background check transactions that allow a firearm transfer to proceed (nonblocked transactions):

"In order to meet her responsibility to maintain the integrity of Department [of Justice] systems, … the Attorney General must establish an adequate system of oversight and review. Consequently, the FBI has proposed to retain records of approved transactions in an audit log for a limited period of time solely for the purpose of satisfying the statutory requirement of ensuring the privacy and security of the NICS and the proper operation of the system. Although the Brady Act mandates the destruction of all personally identified information in the NICS associated with approved firearms transactions (other than the identifying number and the date the number was assigned), the statute does not specify a

[22]FBI officials noted that by using a higher base, such as base 30, large base 10 numbers can be expressed in significantly fewer characters.

period of time within which records of approvals must be destroyed. The Department attempted to balance various interests involved and comply with both statutory requirements by retaining such records in the NICS Audit Log for a limited, but sufficient, period of time to conduct audits of the NICS.…By auditing the system, the FBI can identify instances in which the NICS is used for unauthorized purposes, such as running checks of people other than actual gun transferees, and protect against the invasions of privacy that would result from such misuse. Audits can also determine whether potential handgun purchasers or FFLs have stolen the identity of innocent and unsuspecting individuals or otherwise submitted false identification information, in order to thwart the name check system. The Audit Log will also allow the FBI to perform quality control checks on the system's operation by reviewing the accuracy of responses given by the NICS record examiners to gun dealers."[23]

Both FBI and ATF officials emphasized to us that the temporary retention of NICS transaction information provides an audit log database that is essential for ensuring that NICS is used only for intended purposes. For example, during a 2-week period in 1999, ATF conducted a NICS-compliance pilot project in one metropolitan area by comparing firearms dealers' records with audit log information. ATF has reported finding several instances of violations, such as (1) some transfers of firearms were made without a background check and (2) some records were falsified to incorrectly show a proceed response. On the basis of these results, ATF plans to use audit log information to conduct inspections in other areas of the country.

FBI officials also described how they use the audit log to improve or oversee NICS operations. These uses include the following:

- To reduce research time. When an examiner receives a transaction to research because the NICS search resulted in a potential database match, the examiner is to search the audit log to determine if research had previously been done on this individual through a prior background check.[24] If research had been done previously, the examiner can use this information in making a determination as to whether the firearm transaction should proceed or be denied.

- To assess proceed/deny determinations made by NICS examiners. The NICS Program Office Internal Assessment Group (discussed later) has begun assessing responses NICS examiners gave to FFLs. The group used the audit log to obtain a list of transactions worked by each examiner from

[23]63 Fed. Reg. 58303, 58304 (1998).

[24]Records on proceed transactions are to be maintained in the audit log not more than 6 months. Records on denied transactions are to be maintained in the audit log for 10 years.

which it selected ones to review, to determine, in part, whether the examiner made the proper decision.

Program Monitoring Activities

Generally, any government agency that handles sensitive, personal identifying information should be expected to have a monitoring system or assessment program in place for ensuring that such information is not misused. Under NICS, such monitoring or assessment is particularly important regarding the requirement that personal identifying information on approved transactions be purged at or before expiration of the applicable retention period specified by regulation.

What Internal or External Assessment Programs Does the FBI Have in Place to Monitor NICS Operations?

The NICS Program Office has an Internal Assessment Group that is staffed with five people. Among other things, this group is to (1) assess the NICS Operations Center's implementation of policies and procedures, (2) monitor NICS performance data, and (3) provide relevant feedback to the appropriate FBI staff.

Additionally, according to FBI officials, the following actions have been taken or are planned to ensure that all information—other than the NTN and the date that the NICS search was run—are purged for transactions that did not result in a denial or that were denied and successfully appealed:

- All NICS Program Office employees were sent a memorandum that specified purge requirements. Also, once every quarter, each FBI employee with access to NICS background information must sign a statement certifying that the employee has purged all applicable information and data using appropriate methods.

- In August 1999, to develop procedures for assessing compliance with purge requirements, the Internal Assessment Group conducted a pilot study of the NICS Program Office's purge procedures. After the assessment procedures are finalized, the Internal Assessment Group is expected to use them to determine whether the purge procedures are effective and in compliance with federal regulations.

- The role of another monitoring component—the audit unit within the FBI's Criminal Justice Information Services Division—may be expanded to cover NICS purge requirements. This unit is responsible for biennially (every other year) visiting each state to assess state law enforcement agency compliance with guidelines for using and safeguarding NCIC information. In reference to those states that have elected to serve as

liaisons under NICS, the FBI is considering whether to expand the audit unit's role to include reviewing the states' compliance with the NICS purge requirements.

System Security Authorization

To ensure the security of automated systems, the Office of Management and Budget (OMB) requires federal agencies to authorize[25] information systems before their operation and to reauthorize systems at least every 3 years thereafter. As part of this authorization process, OMB requires that agencies consider risk when deciding what security controls to implement and to follow National Institute of Standards and Technology (NIST) guidance in specifying, designing, testing, and accepting appropriate technical security controls.[26] Among other things, NIST recognizes the importance of conducting a risk assessment and using this assessment to specify that system security requirements are correctly defined and appropriate/cost-effective security controls are developed and implemented, and that agencies conduct formal testing of system security controls to validate that they are operating as intended. Our work with leading organizations also emphasizes the need to perform and document risk assessments.[27] Leading organizations document the results of risk assessments for various reasons, including holding managers accountable for decisions made and establishing a permanent record so that risk assessment records were available to serve as a starting point for subsequent risk assessments.

Justice guidance similarly requires that computer systems that process classified or sensitive information be authorized.[28] Before authorizing computer systems, Justice requires that its components (1) conduct and document risk analysis and risk management actions, (2) conduct and document certification tests, (3) prepare a system security plan, (4) prepare and test contingency plans, and (5) prepare a summary of compliance with security requirements and a statement of residual risk for the authorizing authority. In addition, Justice allows authorizing

[25] OMB Circular A-130 requires federal agencies to authorize their information systems for processing. "Authorize processing" is defined as the authorization granted by a management official for a system to process information. Some agencies refer to this as accreditation.

[26] An Introduction to Computer Security: The NIST Handbook (NIST Special Publication 800-12, undated); and Guide for Developing Security Plans for Information Technology Systems (NIST Special Publication 800-18, Dec. 1998).

[27] Information Security Risk Assessment: Practices of Leading Organizations (GAO/AIMD-00-33, Nov. 1999).

[28] Telecommunications and Automated Information Systems Security, Department of Justice, June 25, 1993.

authorities to grant interim approval to process sensitive information on a system before the completion of security plans and authorization, provided that (1) measures to prevent compromise, loss, misuse, or unauthorized alteration of sensitive information are implemented and (2) a schedule to accomplish the accreditation is developed and implemented.

Did the FBI Follow a System Security Authorization Process for NICS in Accordance With Applicable Guidance?

According to the security officer responsible for NICS authorization, the FBI considered risk before defining system security requirements for NICS. The security officer stated that risk was an ongoing topic of discussion throughout NICS' requirement and design definition phases. However, a documented risk assessment was not developed and the security officer could not provide any other verifiable evidence that an assessment was performed.

According to the security officer, FBI/NICS program and security representatives defined a set of minimum security requirements for NICS, which were derived from the FBI's internal security policy[29] and the Integrated Automated Fingerprint Identification System's (IAFIS) security requirements. These requirements were used as the basis for specifying the security controls implemented in NICS. The security officer further stated that while a formal test of security controls was not conducted, a subset of NICS' security requirements was assessed in October and November 1998, and several vulnerabilities were disclosed. FBI officials were unable to provide any evidence that these vulnerabilities had been addressed.

Further, the FBI did not authorize NICS before it became operational on November 30, 1998. This was not done, according to FBI officials, because there was not enough time and resources to formally test security controls between the time that the FBI received the system from the contractor and the congressionally mandated date for system operation. On November 24, 1998, the FBI requested an interim approval to operate NICS from the FBI's National Security Division (NSD), which is the FBI's authorization authority. According to an NSD representative, NSD granted the interim approval on January 23, 1999, for 1 year beginning November 30, 1998. According to the security officer responsible for NICS authorization, all authorization requirements (e.g., certification testing) were not completed during the interim period because of competing priorities, such as the authorization of NCIC 2000 and IAFIS. According to Justice officials, the completion of security testing was overshadowed by more urgent issues

[29] Manual of Investigative Operations Guide, FBI Automated Data Processing and Telecommunications (ADPT) Security Policy, FBI, Part II, Section 35.

directly impacting the system's ability to function; therefore, security testing was delayed. As a result, on December 2, 1999, NSD extended the interim approval to operate through April 2000.

According to the security officer, security testing for NICS was completed on December 21, 1999. The test results are to document gaps, if any, between the NICS' security requirements and the security capabilities and are to be used to identify existing vulnerabilities and residual risk. The FBI intends to then determine whether the residual risk is acceptable to the authorizing official and, if not, whether it is cost-effective to correct the vulnerabilities. The FBI plans to obtain full authorization for NICS by March 31, 2000.

In light of the system vulnerabilities that were identified before the system went operational and the delays experienced to date in authorizing the system, the FBI continues to lack an adequate basis for knowing whether NICS assets (hardware, software, and data) are sufficiently secure and are not vulnerable to corruption and unauthorized access.

Exemption From the Privacy Act

The Privacy Act of 1974,[30] in general, has various provisions that federal agencies must follow regarding records containing personally identifiable information. These provisions include agency recordkeeping requirements, disclosure-related provisions and restrictions, and access and amendment provisions. For example, the Privacy Act requires agencies to, among other things, allow an individual to gain access to his or her records and permit the individual to request the correction of information that the individual believes is not accurate, relevant, timely, or complete. If the agency declines to amend the record in accordance with the individual's request, the agency must inform the individual as to the reason for its refusal as well as permit the individual to request a review of such refusal.

The Privacy Act also, however, permits agencies to exempt themselves from certain specific requirements of the act. For example, the act allows agencies to exempt any system of records from certain Privacy Act requirements if the system of records is investigatory material compiled for law enforcement purposes. Agencies exempting record systems from Privacy Act requirements must include a statement explaining the reasons why such records are to be exempted from a provision of the act.

[30]Public Law 93-579 (1974).

Regarding Erroneous Data Generated by NICS, Has the FBI Exempted Itself From the Safeguards of the Privacy Act? If So, Why?

The Department of Justice has exempted the FBI's NICS from certain Privacy Act requirements, including the access to records and correction of information provisions. In its exempting regulations, Justice gave the following reasons:

- An individual's access to records in the system would compromise ongoing investigations, reveal investigatory techniques and confidential informants, invade the privacy of persons who provide information in connection with a particular investigation, or constitute a potential danger to the health or safety of law enforcement personnel.

- To require the FBI to amend information thought to be not accurate, timely, relevant, and complete would create an impossible administrative burden—-because of the nature of the information collected and the essential length of time it is maintained—-by forcing the agency to continuously update its investigations attempting to resolve these issues.

Justice also noted, in its exempting regulations, that individuals concerned with the accuracy, timeliness, or completeness of records maintained about them remain free to avail themselves of any means for access or amendment applicable to the record sources, and that record contributors have a continuing responsibility to delete or update contributions determined to be invalid or incorrect (see 28 CFR 25.5(b)). Justice further noted that NICS itself provides an alternative procedure for amending erroneous records resulting in transfer denials (see 28 CFR 25.10). This NICS procedure is designed to implement a Brady Act requirement regarding the correction of erroneous system information. The Brady Act, in general, provides that prospective purchasers may submit to the Attorney General information to correct, clarify, or supplement records of the system. The Brady Act further provides that after receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous federal records relating to the prospective purchaser and give notice of the error to any federal department or agency or any state that was the source of such erroneous records.

What Would Be the Estimated Costs of Adhering to the Privacy Act?

FBI officials commented it is difficult to quantify the additional administrative expenses that the FBI would incur if Justice had not exempted NICS from certain Privacy Act provisions. The officials opined, however, that the expenses "would be considerable."

Making NICS Fingerprint-based Rather Than Name-based

Background checks under NICS are name-based rather than fingerprint-based. NICS identifies database matches using an individual's name and other personal descriptors, such as date of birth, sex, and state of residence, rather than the individual's fingerprints. However, there has been congressional interest in the latter. For instance, a recent Senate bill would have required the Attorney General to study the feasibility of developing (1) a single fingerprint convicted offender database in the federal criminal records system maintained by the FBI and (2) procedures under which a licensed firearm dealer may voluntarily transmit to NICS single digitalized fingerprints for prospective firearms purchasers.[31]

Are There Any Plans or Intent to Add Fingerprints to the System?

FBI officials told us that the FBI had no plans to make NICS a fingerprint-based system. The officials noted, however, that fingerprints are an important part of the NICS appeals procedure. Fingerprints may be used during this procedure to determine if the individual making the appeal is the person who was actually arrested/convicted.

If So, What Are the Specific Justifications?

This question is not applicable, given that the FBI had no plans for making NICS a fingerprint-based system.

What Are the Operational Implications and the Estimated Costs?

According to FBI officials, making NICS a fingerprint-based system would present a variety of logistical and technical challenges. In explanation, the officials noted that:

- NICS would require a total redesign to (1) collect fingerprints at the point of sale and (2) use those fingerprint images as part of the automated search for matches against prohibited individuals.
- Not all prohibited individuals have fingerprints on file.
- Auditing the integrity of fingerprint information collected would present challenges.

[31]S. 254 was passed by the Senate but rejected by the House.

Background Checks Regarding Owner Redemptions of Pawned Firearms

According to the National Pawnbrokers Association, there are 12,000 or more pawnshops in the United States, and at any given time, there are an estimated 3 million firearms held in pawnshop vaults. The requester asked us to address the following questions:

- Are owner redemptions of pawned firearms classified as transactions subject to background checks through NICS? If so, what is the rationale for doing so?
- Do multiple instances of pawning and subsequently redeeming the same firearm by one owner require a background check for each transaction? If so, how are these multiple transactions accounted for or reported in NICS workload statistics?

Background

As of July 1999, there were about 106,000 FFLs in the United States, according to ATF data.[1] Although there are nine categories of FFLs—including manufacturers, importers, and collectors—firearms dealers and pawnbrokers comprised about 79 percent of the licensed universe. A pawnbroker needs a federal firearms license to accept firearms into pawn. A pawnbroker with a federal firearms license may sell new firearms as well as used firearms that are not redeemed from pawn. According to the National Pawnbrokers Association:

- There are currently between 12,000 and 14,000 pawnshops operating throughout the United States.
- Over the course of a year, an estimated 10 million firearms are taken in by pawnshops and their whereabouts reported to local police.
- At any given time, there are an estimated 3 million firearms held in pawnshop vaults.

Under Current Law, Owner Redemptions of Pawned Firearms Are Subject to NICS Background Checks

Under current law, owner redemptions of pawned firearms are subject to background checks. More specifically, Treasury's appropriation act language for fiscal years 1999 and fiscal year 2000 both contain a specific requirement that pawnshop redemptions of firearms be subject to background checks under NICS.

[1] As we have previously reported, the number of FFLs has declined steadily since its peak of about 260,700 in April 1993, largely due to increased ATF enforcement, additional application requirements, and higher licensing fees. See, Federal Firearms Licensees: Various Factors Have Contributed to the Decline in the Number of Dealers (GAO/GGD-96-78, Mar. 29, 1996).

Previous History Regarding the Application of Brady Act Background Checks to Pawnshop Redemptions

Previously, as enacted in 1993, interim Brady required background checks for the transfer of all handguns from a licensed dealer to an unlicensed individual. The interim Brady provisions did not specifically exempt pawnshop redemptions from the background check requirement. According to ATF's Office of Chief Counsel:

- Long before passage of the Brady Act, pawnshop redemptions were considered transactions that were subject to provisions of the Gun Control Act of 1968. This interpretation was upheld in 1974 by the Supreme Court.[2]
- Without a specific statutory amendment to the Brady Act, pawnshop redemptions are considered transactions subject to the background check requirement.

However, in 1994, the background check provisions of interim Brady were amended by the Violent Crime Control and Law Enforcement Act of 1994,[3] which specifically exempted from background checks any firearms transactions involving "the return of a handgun to the person from whom it was received." Under this language, in general, the redemption of pawned handguns was exempted from the background check requirement during Brady's phase I period.

Permanent Brady Does Not Exempt Pawnshop Redemptions

The permanent Brady provisions contained no specific exemption of pawnshop redemptions from the requirement for a background check.

In February 1998, ATF published a notice of proposed rulemaking to implement the requirements placed on FFLs by permanent Brady.[4] In the notice, ATF proposed that permanent Brady's instant background check requirements would apply to the redemption of pawned firearms. Subsequently, during the public comment period, 338 respondents submitted comments disagreeing with ATF's interpretation that the permanent provisions of Brady apply to the redemption of a pawned firearm. Many of the commenters argued that the Brady Act was intended to apply only to the sale of a firearm and not to the redemption of a pawned firearm. A national trade association representing 3,600 pawnbrokers suggested that Congress did not intend to cover the redemption of a pawned firearm and that the term "transfer" in Brady referred to a transfer of title. The association contended, for instance, that the 1994 amendment of interim Brady by the Violent Crime Control and

[2] Huddleston v. United States, 415 U.S. 814 (1974).

[3] Public Law 103-322 (1994).

[4] 63 Fed. Reg. 8379 (1998).

Law Enforcement Act indicated congressional intent to not apply background check requirements to pawn loans under permanent Brady.

After considering the arguments raised by the commenters, ATF concluded in its final rule that the permanent provisions of Brady do apply to the redemption of a pawned firearm for the following reasons:

- The redemption of a pawned firearm has always been treated as a disposition under the Gun Control Act of 1968, and ATF Form 4473 (Firearms Transaction Record) has always been required for such redemptions. Therefore, a redeemed firearm is a "transfer" within the meaning of the permanent provisions of Brady.
- The Supreme Court has held that the redemption of a pawned firearm was an acquisition within the meaning of the Gun Control Act.[5] Thus, there is no basis for exempting the redemption of a pawned firearm from the permanent provisions of Brady.
- Unlike the 1994 statutory amendment of interim Brady, there is no provision in permanent Brady that specifically exempts transactions involving the return of a firearm to the person from whom it was received.

Accordingly, as published in October 1998, the ATF final rule does not exempt pawnshop redemptions from the background check provisions of permanent Brady.[6] ATF officials further explained that:

- The 1994 statutory amendment that exempted pawnshop redemptions from background checks applied to the provisions of interim Brady—18 U.S.C. 922(s)—which expired on November 29, 1998.
- On November 30, 1998, the provisions of permanent Brady—18 U.S.C. 922(t)—went into effect. Because the pawnshop exemption was an amendment to 18 U.S.C. 922(s), this exemption expired along with the other provisions of interim Brady.
- Regarding permanent Brady, current appropriations act language requires background checks for pawnshop redemptions of firearms. Even if such appropriations act language is not included in future appropriations acts, absent a specific amendment, under ATF interpretation, the background check requirement will continue under permanent Brady—18 U.S.C. 922(t)—and ATF's implementing regulations.

[5] Huddleston v. United States, 415 U.S. 814 (1974).

[6] 63 Fed. Reg. 58272 (1998).

ATF officials noted that, at the same time ATF was making its final regulatory decision, Congress passed Treasury's fiscal year 1999 appropriations act.[7] This act contained a specific requirement that pawnshop redemptions be subject to background checks under NICS. This requirement is also contained in Treasury's fiscal year 2000 appropriations act.[8] The appropriation act language also provides that a pawnbroker may complete an optional NICS check at the time a firearm is offered as collateral for a loan. If the optional check results in a denial, however, the dealer must notify law enforcement within 48 hours of receiving the denial notice. This optional check is in addition to the mandatory NICS check required at the time a firearm is redeemed from pawn.

Although Not Separately Identified, Multiple Pawn Transactions Are Included in NICS Statistics

As previously discussed, under current federal law, each time a firearm is redeemed from a pawnshop, a background check must first be requested and conducted through NICS. Therefore, under ATF regulations, multiple pawn and redemption transactions of the same firearm by one owner would require a new background check each time the owner redeemed the firearm from pawn.

Currently, for statistical reporting purposes, NICS does not differentiate between inquiries made for (1) retail sales of firearms and (2) owner redemptions of pawned firearms. Rather, each NICS inquiry is treated the same for statistical reporting purposes.

According to FBI officials, NICS currently contains no "purpose code" that would specifically identify pawnshop-related background checks, as opposed to other NICS checks (e.g., retail sales). Also, NICS is not currently able to differentiate between the optional background checks done when a firearm is offered as collateral for a loan and the mandatory checks that are to be done when the firearm is redeemed from pawn. In addition, NICS cannot tell which pawnshop queries actually resulted in the physical transfer of the firearm to the individual.

In response to our inquiries, FBI officials told us that, eventually, NICS will be able to identify pawnshop-related transactions for statistical reporting purposes. The officials explained that a "program change request" has been initiated to add a "purpose code" to the computerized system—a purpose code to specifically identify background checks involving pawnshop-related transactions.

[7] Omnibus Consolidated Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105-277 (1998).

[8] Treasury and General Government Appropriations Act, 2000. Public Law 106-58 (1999).

Objectives, Scope, and Methodology

Objectives

We were asked to address various questions or concerns regarding NICS statistics, enforcement actions, system operations, and pawnshop issues:

- Statistics on background checks, denials, and appeals. Obtain overview statistics regarding (1) types of background checks (i.e., handguns versus long guns), (2) purchase denials, and (3) successful appeals of denials.
- Enforcement actions. Regarding individuals who allegedly falsify their status on firearm-purchase applications, identify applicable federal policies, procedures, and results with respect to follow-up enforcement actions, such as referrals for investigations and prosecutions.
- NICS operations. Regarding system operations or implementation, answer various questions regarding system architecture, capacity management, system availability, transaction response time, records retention, system security authorization, system monitoring, certain Privacy Act of 1974 exemptions, and addition of fingerprints to the system. (The specific questions from the requester are listed below.)
- Pawnshop issues. Identify whether (1) owner redemptions of pawned firearms are subject to background checks and (2) multiple instances of pawning and subsequently redeeming the same firearm by one owner require a background check for each transaction (and, if so, how these multiple transactions are accounted for or reported in NICS workload statistics).

Overview of Our Scope and Methodology

Generally, regarding NICS statistics and operational issues, we focused on data centrally available from the Federal Bureau of Investigation's (FBI) NICS Operations Center, which is located in Clarksburg, WV. The center conducts presale background checks involving (1) all firearms, both handguns and long guns, purchased from licensed dealers in 24 states and (2) long guns purchased from licensed dealers in 11 other states. As discussed in appendix I, the 24 states are referred to as nonparticipants in NICS, and the 11 states are referred to as partial participants. In the other 15 states (full participants), licensed dealers are to contact a designated state point of contact (e.g., state police), who is to conduct the NICS check. We contacted applicable officials in two of these states—Georgia and Virginia—to obtain information about their background check systems. We selected these two states because they operate instant check systems similar to NICS, and these systems were in place when NICS became operational.

Regarding enforcement actions, we interviewed responsible officials at Justice, EOUSA, and ATF. Regarding pawnshop issues, we reviewed

relevant legislative provisions and regulations and interviewed ATF and FBI officials.

The following sections present more information about our scope and methodology for each of the respective objectives or topics. In responding to these objectives, we used data that were supplied by the agencies.

Scope and Methodology of Our Work Regarding Statistics on Background Checks, Denials, and Appeals

For the first year of NICS operations (Nov. 30, 1998, through Nov. 30, 1999), we obtained various NICS statistics, such as (1) the number of background checks and queries involving long guns versus handguns; (2) the number of denials, arrayed by prohibited categories; and (3) the number of denials successfully appealed.

As previously mentioned, we relied mainly on data centrally available from the FBI's NICS Operations Center. The center provided us with national statistics on the number of NICS-related background checks, showing

- the number of checks conducted by the FBI for nonparticipant states (handguns and long guns) and partial-participant states (long guns) and
- the number of checks conducted by designated state agencies in the full-participant states (handguns and long guns) and the partial-participant states (handguns).

Beyond these aggregate numbers, however, the center did not have access to all NICS-related national statistics, such as the number of denials by prohibited categories and the number of denials successfully appealed. Rather, regarding these types of data, the center was able to provide us with statistics covering only those background checks conducted by the FBI and not those conducted by designated state agencies in full-participant and partial-participant states.

Also, to provide a broader perspective, we contacted the Bureau of Justice Statistics to obtain information about background checks conducted under interim Brady Act provisions. The Bureau of Justice Statistics has published three reports covering Brady's interim (phase I) period.[1]

[1]These Bureau of Justice Statistics reports are entitled: Presale Firearm Checks (NCJ 162787), February 1997; Presale Handgun Checks, 1997 (NCJ 171130), June 1998; and Presale Handgun Checks, the Brady Interim Period, 1994-98 (NCJ 175034), June 1999.

Scope and Methodology of Our Work Regarding Enforcement Actions

We contacted Justice, Treasury, the FBI, ATF, and EOUSA to identify applicable federal enforcement policies, procedures, and results regarding individuals who falsify their status on firearm-purchase applications—ATF Form 4473 (Firearms Transaction Record). For instance, we obtained relevant information on referrals for investigations and prosecutions as well as information on arrests of fugitives and the extent of firearm-retrieval actions under NICS.

Again, we focused on centrally available information, beginning with the number of firearm-purchase denials made by the FBI that then are to be forwarded to ATF's NICS Branch. We interviewed officials at this component to identify ATF headquarters' criteria for screening the firearm-purchase denials and making referrals to ATF field offices. Similarly, we visited ATF field offices in four major metropolitan areas (see the next paragraph) to discuss local criteria for further screening firearm-purchase denials, initiating investigations, and referring cases to U.S. Attorneys' Offices for prosecution. In each of these four locations, we also met with U.S. Attorney Office staff to discuss prosecution policies and, if applicable, the number of cases prosecuted and the results.

The four major metropolitan areas we visited were Atlanta, GA; Dallas, TX; Denver, CO; and Seattle, WA. Generally, we judgmentally selected these locations on the basis of two factors. First, each location has both an ATF field office and a U.S. Attorney Office. Second, the locations reflect a mix of state participation in NICS. More specifically, Georgia is a full participant in NICS; Colorado began as a full participant, then switched to the nonparticipant category, and now is back to being a full participant; Texas is a nonparticipant state; and Washington is a partial-participant state.

During our contacts with FBI and ATF officials, we also inquired about follow-up enforcement polices, procedures, and results regarding the following two types of situations:

- The background check shows that the firearm-purchase applicant is a fugitive, that is, the subject of an outstanding arrest warrant.
- The firearm was transferred to a person prohibited by law from receiving or possessing a firearm. This type of transfer can occur when the FBI determines—after 3 business days have passed since the background search was requested (a default proceed)—that the individual is prohibited from possessing a firearm.

Scope and Methodology of Our Work Regarding NICS Operations

In addition to having various telephone discussions with officials at the FBI's NICS Operations Center, we made three visits to the center in 1999—June 8 and 9, September 28 and 29, and October 12 and 13. During our visits, we interviewed applicable managers and reviewed relevant documents to obtain answers to the requester's questions enumerated below. Given the number and breadth of the questions and the need to report within relatively short time frames, we largely relied on testimonial and documentary evidence provided by the FBI. Thus, we did not fully or independently verify all of the answers. However, regarding the topic of records retention, we determined whether system documentation included procedures for purging personal identification information before or at expiration of the allowed retention period specified by regulation. We also conducted some limited or nonprojectable testing of such purges. The team performing this work included staff with information management technology backgrounds.

More specific details about the scope and methodology of our work regarding the various aspects of NICS operations are as follows.

NICS Architecture

Requester questions. (1) What is the NICS' functional architecture? (2) What is the NICS' technical architecture? (3) What has the FBI done to ensure that NICS operates as intended by Congress?

To describe the system architecture, we reviewed several key documents, including the NICS' Element Software Design Document, the NICS' Element Specification document, the NICS' Element Interface Control Document, interface flowcharts, and the draft NICS' Contingency Plan. In addition, we toured the FBI's NICS Operations Center in West Virginia. To supplement our document analyses, we interviewed key NICS operations officials and contractor representatives responsible for designing, modifying, implementing, and operating NICS. To determine what the FBI has done to ensure that NICS operates as intended by Congress, we reviewed the Brady Act to identify the congressionally mandated functions. We also interviewed key NICS operations officials.

Capacity Management

Requester questions. (1) Does the FBI have a capacity management program? (2) What have been the trends in capacity utilization? (3) What volume of transactions (normal and peak) is the system designed to handle? (4) How accurate have been the predictions relating to the volume of incoming transactions?

At the NICS Operations Center, we discussed these questions with responsible FBI officials, including the Operations Manager and Assistant Operations Managers.

System Availability

Requester questions. (1) How does the FBI measure system availability, and what is NICS' system availability requirement? (2) What was actual NICS system availability for the period November 30, 1998, through November 30, 1999? (3) How and when is routine system maintenance performed? (4) Is the nighttime shutdown period the appropriate time to conduct routine maintenance? (5) What have been the sources of NICS unscheduled outages, and what steps have been taken to correct them and prevent future occurrences?

We discussed these questions with FBI officials at the NICS Operations Center. In doing so, we obtained information showing the amount of downtime (in minutes) for each month. We also discussed with FBI officials the reasons for unscheduled outages and steps they have taken to correct such outages, and we reviewed applicable documentation.

Transaction Response Time

Requester questions. (1) Does the FBI have the capability to measure "dropped" telephone calls? (2) Monthly, what have been the types and extent of access problems, such as busy signals and abandoned calls? (3) What procedures did the FBI implement to track such problems? (4) How effective have those procedures been in reducing or eliminating the problems? (5) Due to NICS inaccessibility, what were the estimated financial costs or lost sales that small retail firearms businesses in the United States incurred during the peak 1998 Christmas selling season? (6) What trend data are available regarding the number (and percentage) of applications that have experienced delays under NICS? (7) What was the average time of such delays, and what were the reasons for the delays? (8) How do the number (and percentage) and time of delays under NICS compare to those of state systems, particularly Virginia's and Georgia's systems? (9) What has the FBI done to ensure that the NICS name search software operates at optimal performance?

We discussed applicable questions with (1) FBI managers at the NICS Operations Center; (2) representatives of interest or industry groups, such as the National Rifle Association; the National Association of Federally Licensed Firearms Dealers; the American Shooting Sports Council; the National Shooting Sports Foundation; Gun Owners of America; the National Association of Arms Shows, Inc.; and the National Pawnbrokers Association; (3) Virginia State Police officials in Richmond, VA; and (4) Georgia Bureau of Investigation officials in Decatur, GA. We obtained FBI

Call Center statistics—the number of calls attempted, answered, and abandoned (dropped)—which we used to calculate monthly percentages of calls answered. Also, we obtained trend statistics regarding delayed responses provided by the FBI to firearms dealers.

Retention of Records

Requester questions. (1) What measures have been taken to ensure that NICS information is not used to establish a national registry? (2) If NICS is not currently in full compliance, what would be the cost of any modifications needed to achieve system compliance? (3) Does NICS contain extraneous data that are unnecessary for determining whether federal disqualifiers exist? (4) Are the NTNs randomly generated, and do they point to any identifying records? (5) What are the specific reasons for retaining an audit log of nonblocked transactions?

We reviewed Brady Act requirements and the implementing regulations. During our September and October, 1999, visits to the NICS Operations Center, we identified what policies and procedures were in place for purging records regarding both (1) the computerized database or system, including backup tapes, and (2) paper records, such as notes or files maintained by FBI examiners and other employees. While on-site we did the following:

- We asked one of the SAIC contractor staff to pull up on his monitor screen the on-line maintenance requirements so that we could observe whether these requirements included a purge function.
- We reviewed the NICS' Element Software Design Document and the NICS' Element Specification document to determine whether the purge function was included as one of the system design functions. Also, we reviewed the source code and purge routine table to determine whether the purge function was designed to delete data not more than 6 months after the transfer was allowed.
- For a small nonprojectable sample of days (i.e., the last 12 days in May 1999 and 3 days in late June 1999), we reviewed operations documentation—that is, the operator's log of nightly routine maintenance procedures—for indications that purges had been conducted. The NICS Operations Center did not know in advance of our visit which days we intended to select for testing.
- We judgmentally selected one date at least 6 months before the date of our visit to the NICS Operations Center (Jan. 17, 1999) whereby all approved transactions should have been purged. At our request, we observed while contractor staff had the computer generate a list of all NTNs created on January 17, 1999. From that list, we judgmentally selected five NTNs. Again, while we observed, we had contractor staff input these NTNs into

the computerized system to determine if any personal identification information could be retrieved from these records.

Also, during our visit to the NICS Operations Center, we discussed purge requirements with FBI staff in two separate groups: (1) the NICS Program Office Internal Assessment Group and (2) the Criminal Justice Information Services Division Audit Unit. We discussed the assessment or audit work these groups had done and reviewed relevant policy statements and other corroborating documentation. We did not independently evaluate the scope or methodology of the work done by these groups.

Program Monitoring Activities

Requester question. What internal or external assessment programs does the FBI have in place to monitor NICS operations?

During our September 1999 visit to the NICS Operations Center, we discussed this question with FBI officials in the two separate groups previously mentioned.

System Security Authorization

Requester question. Did the FBI follow a system security authorization process for NICS in accordance with applicable guidance?

To address this question, we reviewed applicable guidance, including OMB Circular A-130, An Introduction to Computer Security: The NIST Handbook (NIST Special Publication 800-12), and the Guide for Developing Security Plans for Information Technology Systems (NIST Special Publication 800-18). We also reviewed the FBI's security policy, internal memorandums, and the security plan for the NICS Operations Center and the Call Centers. To supplement our document analyses, we interviewed key NICS security officials.

Exemptions From the Privacy Act of 1974

Requester questions. (1) Regarding erroneous data generated by NICS, has the FBI exempted itself from certain safeguards of the Privacy Act? If so, why? (2) What would be the estimated costs of adhering to the Privacy Act?

To address these questions, we (1) interviewed appropriate agency officials, (2) reviewed pertinent provisions of the Privacy Act, and (3) reviewed applicable Federal Register notices of proposed and final rules regarding the exemption of NICS from certain provisions of the Privacy Act.

Making NICS Fingerprint-based Rather Than Name-based

Requester questions. (1) Are there any plans or intent to add fingerprints to the system? (2) If so, what are the specific justifications? (3) What are the operational implications and the estimated costs?

To address these questions, we interviewed FBI officials at the NICS Operations Center.

Scope and Methodology of Our Work Regarding Pawnshop-related Issues

To address the questions about owner redemptions of firearms from pawnshops, we reviewed (1) relevant provisions of the Brady Act, including applicable amendments, and Treasury's fiscal year 1999 and 2000 appropriation acts and (2) Treasury and ATF documentation, including proposed and final rules for implementing Brady Act provisions. Also, we discussed these issues with (1) officials in ATF's Office of Chief Counsel and the Regulations Division and (2) representatives of the National Pawnbrokers Association. Further, we contacted the FBI's NICS Operations Center to determine the extent, if any, to which the system captures statistical information regarding pawnshop-related transactions.

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Acknowledgments

In addition to the persons named above, David P. Alexander, Monica Anzaldi, Scott A. Binder, Felicia M. Bradley, Danny R. Burton, Philip D. Caramia, Deborah A. Davis, Geoffrey R. Hamilton, Madhav S. Panwar, Mary Lane Renninger, Chuck Roney, Dennise R. Stickley, and Ellen Wolfe made key contributions to this report.

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