



July 2020

# GUN CONTROL

## DOJ Can Further Improve Guidance on Federal Firearm Background Check Records

Accessible Version

# GAO Highlights

Highlights of [GAO-20-528](#), a report to congressional requesters

## Why GAO Did This Study

Federal agencies are required to submit relevant records for use by the NICS. The FBI and designated state and local criminal justice agencies use the NICS to conduct background checks on persons seeking to purchase firearms from federally licensed firearms dealers.

The Fix NICS Act of 2018 requires the head of each federal department or agency to submit a semiannual written certification to the Attorney General indicating whether it is in compliance with record submission requirements and report related data.

GAO was asked to review federal agencies compliance with these requirements. This report examines (1) the number of records federal agencies submitted to databases checked by the NICS from 2010 through 2019, (2) the extent to which DOJ has provided guidance to support federal agency compliance with record submission and reporting requirements, and (3) federal agency plans to address any challenges in submitting records.

GAO reviewed relevant laws and DOJ guidance, analyzed NICS data from calendar years 2010 through 2019, and interviewed officials from the five selected federal agencies that submitted the most prohibiting records to NICS as of 2019.

## What GAO Recommends

GAO recommends that the Attorney General ensure that additional guidance is provided to federal agencies on Fix NICS Act certification requirements for record submissions and reporting. DOJ concurred with the recommendation.

View [GAO-20-528](#). For more information, contact Triana McNeil at 202-512-8777 or [mcnelt@gao.gov](mailto:mcnelt@gao.gov).

July 2020

## GUN CONTROL

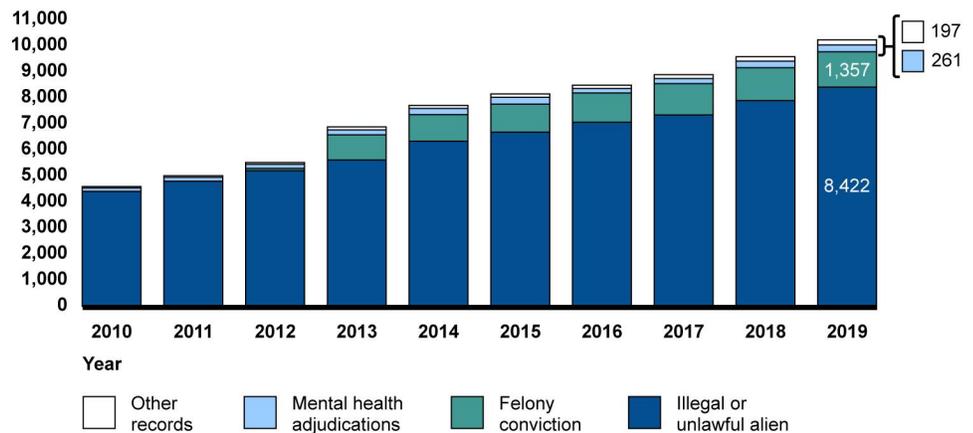
### DOJ Can Further Improve Guidance on Federal Firearm Background Check Records

## What GAO Found

From 2010 through 2019, federal agencies submitted an increasing number of criminal history records to databases used to conduct firearm background checks under the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS). For example, the number of records in the NICS Indices—the database that contains information that automatically prohibits a person from purchasing firearms—more than doubled from 2010 to 2019 (see fig.). Federal agencies also submitted millions of records to two other databases that contain information relevant to prohibitions on firearm purchases, but are not automatic prohibitors. These records included persons convicted of felonies and misdemeanor crimes of domestic violence.

**Federal Records in the National Instant Criminal Background Check System Indices by Prohibiting Category, 2010-2019**

Number of records (in thousands)



Source: GAO analysis of Federal Bureau of Investigation data. | GAO-20-528

The Department of Justice (DOJ) has provided guidance to support federal agency compliance with NICS record submission and reporting requirements. The guidance requires agencies to certify they are submitting all relevant records of persons prohibited from purchasing firearms to the databases checked by the NICS and report related data. However, the five selected agencies GAO reviewed differed in how they interpreted some aspects of the guidance. For example, the Department of Veterans Affairs interpreted the guidance as only requiring it to certify the number of records it created or possessed that automatically prohibit an individual from purchasing firearms. The other four agencies—the Departments of Defense, Homeland Security, Justice, and State—interpreted the guidance as requiring them to also include those records that could result in firearms denials, but are not automatic prohibitors. Providing additional guidance would help DOJ ensure that federal agencies consistently report required information in their certifications that is accurate and complete. The five selected agencies reported plans to address challenges in submitting records to the databases checked by the NICS, including plans to automate the reporting of arrest and disposition records.

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### Abbreviations

ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
CBP	U.S. Customs and Border Protection
DHS	Department of Homeland Security
DOD	Department of Defense
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
Federal agency	Federal department or agency
Fix NICS Act	Fix NICS Act of 2018
ICE	U.S. Immigration and Customs Enforcement
III	Interstate Identification Index
NCIC	National Crime Information Center
NICS	National Instant Criminal Background Check System
OLP	Office of Legal Policy
State	Department of State
VA	Department of Veterans Affairs

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July 8, 2020

Congressional Requesters

In November 2017, a former Air Force service member shot and killed 26 people in Sutherland Springs, Texas. A subsequent investigation revealed that the gunman was able to pass the firearm background check and purchased the firearms that were used in the shooting because the Air Force did not submit records for use during the check that would have made it unlawful for the shooter to receive or possess firearms.<sup>1</sup>

Under the Brady Handgun Violence Prevention Act and implementing regulations, the Department of Justice's (DOJ) Federal Bureau of Investigation (FBI) and designated state and local criminal justice agencies use the National Instant Criminal Background Check System (NICS) to conduct background checks on individuals seeking to purchase firearms from federally licensed firearm dealers.<sup>2</sup> In general, under federal law, there are 10 categories of individuals who are prohibited from possessing or receiving firearms, including individuals who have been convicted of a felony or misdemeanor crime of domestic violence.<sup>3</sup> To support firearm background checks, federal agencies are required to

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<sup>1</sup>Department of Defense Office of Inspector General, *Report of Investigation into the United States Air Force's Failure to Submit Devin Kelley's Criminal History Information to the Federal Bureau of Investigation*, DODIG-2019-030 (Alexandria, VA: Dec. 6, 2018).

<sup>2</sup>Pub. L. No. 103-159, 107 Stat. 1536 (1993).

<sup>3</sup>In general, under federal law, persons are prohibited from possessing or receiving firearms if they (1) have been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year; (2) are a fugitive from justice; (3) are an unlawful user of or addicted to any controlled substance; (4) have been adjudicated as a "mental defective" or committed to a mental institution; (5) are aliens illegally or unlawfully in the United States, or certain other aliens admitted under a nonimmigrant visa; (6) have been discharged from the Armed Forces under dishonorable conditions; (7) having been a citizen of the United States, have renounced their U.S. citizenship; (8) are under a qualifying domestic violence restraining order; (9) have been convicted in any court of a misdemeanor crime of domestic violence; or (10) are under indictment for a crime punishable by imprisonment for a term exceeding 1 year. See 18 U.S.C. § 922(g) and (n).

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**Appendix I: Selected Federal Agencies Firearm  
Record Submissions, Certifications, and  
Implementation Plans**

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submit relevant records of any individual to the databases checked by the NICS.<sup>4</sup>

To strengthen federal agencies submission of records for use during NICS checks, the Fix NICS Act of 2018 (Fix NICS Act) required the head of each federal department or agency (federal agency) to submit a semiannual written certification to the Attorney General indicating whether the agency is in compliance with record submission requirements and address certification reporting requirements.<sup>5</sup> The Act also required each federal agency to establish an implementation plan to improve the reporting of records of any person that falls within one of the 10 prohibited categories and to improve the verification of the accuracy of submitted records.<sup>6</sup> Further, the Fix NICS Act required the Attorney General to publish a semiannual report on federal agency compliance with the Act and to determine annually whether federal agencies have achieved substantial compliance with their implementation plans.<sup>7</sup>

You asked us to review federal entities' compliance with federal law and reporting of information to the NICS. This report examines (1) the number of records federal agencies submitted to the databases checked by the NICS from 2010 through 2019, (2) the extent to which DOJ has provided guidance to support federal agency compliance with Fix NICS Act record submission and reporting requirements, and (3) federal agency plans to address any challenges they face in submitting records.

To examine the number of records federal agencies submitted to the databases checked by the NICS, we reviewed relevant laws such as the

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<sup>4</sup>See 34 U.S.C. § 40901(e)(1)(C). The NICS searches records in three national databases, which are discussed later in this report. Also, according to guidance DOJ issued in 2018, records are relevant for the purposes of NICS checks when they can be used to make a final determination of an individual's eligibility to possess or receive a firearm under federal law. These records include those that agencies create, such as records relating to arrests or criminal convictions, and in some cases, records that agencies possess but were created by another entity, such as another federal agency.

<sup>5</sup>Pub. L. No. 115-141, Div. S, tit. VI, § 602, 132 Stat. 1132, 1132-35 (Mar. 23, 2018). See 34 U.S.C. § 40901(e)(1)(F). In general, we collectively refer to federal departments and agencies as agencies throughout this report.

<sup>6</sup>Pub. L. No. 115-141, Div. S, tit. VI, § 602, 132 Stat. 1132, 1132-35 (Mar. 23, 2018). See 34 U.S.C. § 40901(e)(1)(G).

<sup>7</sup>Pub. L. No. 115-141, Div. S, tit. VI, § 602, 132 Stat. 1132, 1132-35 (Mar. 23, 2018). See 34 U.S.C. § 40901(e)(1)(H).

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**Appendix I: Selected Federal Agencies Firearm  
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Brady Handgun Violence Prevention Act and the Fix NICS Act.<sup>8</sup> We also reviewed DOJ's guidance and memorandums provided to federal agencies on submitting records. We analyzed FBI data on the number of records federal agencies submitted to the three databases used by the NICS—the Interstate Identification Index (III), National Crime Information Center (NCIC), and NICS Indices—from calendar years 2010 through 2019. We selected this time period since it was the most recent 10-year period of available data. We also interviewed officials from five federal agencies—the Department of Defense (DOD), Department of Homeland Security (DHS), DOJ, Department of State (State), and Department of Veterans Affairs (VA)—to discuss their processes for submitting records. We selected these five agencies because they had collectively submitted more than 99 percent of records as of year-end 2019 that automatically prohibit an individual from purchasing a firearm. Further, we interviewed officials from DOJ's Office of Legal Policy (OLP) and the FBI's NICS Section to discuss federal agencies' submission of records.<sup>9</sup> To assess the reliability of FBI data, we reviewed the data provided for consistency and completeness and discussed data quality control procedures with FBI officials responsible for maintaining these data. We determined that the data were sufficiently reliable for the purposes of describing the number of records federal agencies submitted from 2010 through 2019.

To evaluate the extent to which DOJ has provided guidance to support federal agency compliance with Fix NICS Act record submission and reporting requirements,<sup>10</sup> we reviewed relevant provisions of the Act and related laws, such as the NICS Improvement Amendments Act of 2007.<sup>11</sup>

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<sup>8</sup>Pub. L. No. 103-159, 107 Stat. 1536 (Nov. 30, 1993). See also, 18 U.S.C. § 922(g) and (n). Fix NICS Act of 2018, Pub. L. No. 115-141, Div. S, tit. VI, 132 Stat. 1132.

<sup>9</sup>DOJ's OLP develops and implements the department's policy initiatives, coordinates with other department components and executive branch agencies, and serves as primary policy advisor to the Attorney General and the Deputy Attorney General, among other things. The mission of the FBI's NICS Section is to enhance national security and public safety by providing the timely and accurate determination of a person's eligibility to possess firearms under federal or state law.

<sup>10</sup>For the purpose of this report, the Fix NICS Act record submission requirement refers to the requirement for the head of each federal department or agency to submit a semiannual written certification to the Attorney General indicating whether the department or agency is in compliance with the record submission requirements under 34 U.S.C. § 40901(e)(1)(C). Additionally, the reporting requirement refers to the information required for the certification under 34 U.S.C. § 40901(e)(1)(F)(iii).

<sup>11</sup>NICS Improvement Amendments Act of 2007, Pub. L. No. 110-180, 121 Stat. 2559. Fix NICS Act of 2018, Pub. L. No. 115-141, Div. S, tit. VI, 132 Stat. 1132.

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**Appendix I: Selected Federal Agencies Firearm  
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We also reviewed DOJ guidance related to federal agency submission and reporting requirements.<sup>12</sup> We assessed the guidance against federal internal control standards on (1) achieving objectives that are related to operations, compliance, and reporting; and (2) using accurate and complete quality information.<sup>13</sup> We also reviewed templates that DOJ provided to federal agencies for use in completing semiannual certifications and implementation plans. Further, we determined agency compliance with Fix NICS Act provisions and application of DOJ guidance by analyzing semiannual certifications from the 92 federal agencies that submitted one or more certifications during the January 2018 through June 2019 reporting periods.<sup>14</sup> We also analyzed semiannual certifications from the five selected agencies that used a new DOJ certification template for the July through December 2019 period to determine the extent to which the template supported their efforts to comply with certification requirements for record submissions and reporting. Further, we interviewed officials from DOJ's OLP, the FBI's NICS Section, and the five selected agencies to obtain clarification on DOJ's guidance and how the agencies interpreted the record submission and reporting requirements.

We also interviewed officials from components within the five selected federal agencies that submitted records to the databases checked by the NICS to obtain information related to their compliance with the Fix NICS Act and interactions with DOJ. The components included DHS's U.S. Citizenship and Immigration Services, U.S. Coast Guard, U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Secret Service; DOD's U.S. Army, U.S. Navy, and U.S. Air Force; DOJ's Office of the Chief Information Officer; State's Bureau of Consular Affairs and Bureau of Diplomatic Security; and the VA's Veterans Benefits Administration, Veterans Health Administration, and Office of Security and Law Enforcement. The information gathered from the selected federal agencies and their

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<sup>12</sup>See Department of Justice, *Memorandum for All Heads of Federal Departments and Agencies: Implementation of the Fix NICS Act*, (Washington, D.C.: July 2018); and *The Attorney General's Semiannual Report on the Fix NICS Act* (Washington, D.C.: November 2019).

<sup>13</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014). Specifically, see internal control principles (1) fundamental concepts of internal control and (2) use quality information.

<sup>14</sup>The January through June 2019 certification period was the most recent cycle for which complete information was available at the time of our review.

components is not generalizable to other federal agencies but provides insights into federal agencies' compliance with Fix NICS Act certification requirements for record submissions and reporting, and interactions with DOJ.

To examine federal agency plans to address any challenges they face in submitting records to the NICS, we reviewed Fix NICS Act requirements and DOJ's guidance for the content of agency implementation plans.<sup>15</sup> We reviewed these plans because they are to include information on how to address challenges in submitting records. We also reviewed related DOJ guidance and memorandums, including the department's template for completing the plans in accordance with the Act. Further, we reviewed implementation plans from the five selected federal agencies, as well as implementation plan benchmarks for federal agencies that were included in the Attorney General's semiannual report. We compared the agency implementation plans to DOJ's guidance for completing the plans. We also interviewed officials from the five selected federal agencies to discuss their implementation plans and any challenges they face in submitting records, as well as actions taken or planned to improve the submission of records for use during the NICS checks.

We conducted this performance audit from December 2018 to July 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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### Overview of the National Instant Criminal Background Check System

In general, under the Brady Handgun Violence Prevention Act, before a federally licensed firearms dealer can transfer a firearm to an unlicensed individual, the dealer must request a NICS check to determine whether

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<sup>15</sup>Fix NICS Act of 2018, Pub. L. No. 115-141, Div. S, tit. VI, § 602, 132 Stat. 1132, 1132-35. See 34 U.S.C. § 40901(e)(1)(G).

the prospective firearm transfer would violate federal or state law.<sup>16</sup> To support NICS checks, federal agencies are required to submit relevant records to the databases checked by the NICS.<sup>17</sup> Most of the records in the databases checked by the NICS originate from states, which are generally not required to submit records but do so voluntarily for public safety and other law enforcement purposes.<sup>18</sup> During a NICS check, descriptive data provided by an individual who is attempting to purchase a firearm, such as name and date of birth, are used to search three national databases maintained by the FBI that contain criminal history and other relevant records to determine whether or not the person is disqualified by law from possessing or receiving firearms. The three databases are:

- **Interstate Identification Index (III).** The III is part of the FBI's Next Generation Identification system, which allows for the interstate exchange of criminal history records for authorized criminal and non-criminal justice purposes.<sup>19</sup> Searches of the III provide Next Generation Identification system records on persons who are not automatically prohibited from purchasing firearms but may be prohibited based on further review of the records. This includes records on individuals who have been arrested, charged, indicted, or convicted of a crime punishable by imprisonment for a term exceeding 1 year; persons convicted of certain misdemeanors—such as misdemeanor crimes of domestic violence—and other offenses, such as arrests and convictions for unlawful drug use.
- **National Crime Information Center (NCIC).** NCIC is an automated, nationally accessible database of criminal justice and justice-related records. Among other things, federal, state, and local law enforcement agencies use NCIC to obtain information about a person or property they encounter, such as during a traffic stop. NCIC contains information that may result in a firearm prohibition, such as

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<sup>16</sup>18 U.S.C. § 922(t)(1). In general, a federal firearms licensee has a license that enables the federal firearms licensee to engage in commerce in firearms, including dealing in firearms, manufacturing ammunition and firearms, and importing firearms.

<sup>17</sup>34 U.S.C. § 40901(e)(1)(C).

<sup>18</sup>DOJ has established grant programs intended to strengthen, facilitate, and help states improve the submission and availability of records to the NICS.

<sup>19</sup>The Next Generation Identification system is a fingerprint-based criminal history record repository containing records from all states and territories, as well as from federal and some international criminal justice agencies. The III is used to conduct name-based inquiries of criminal records in the Next Generation Identification system. For purposes of this report, we refer to data in the Next Generation Identification system as III data.

information on wanted persons and persons subject to domestic violence protective orders.<sup>20</sup>

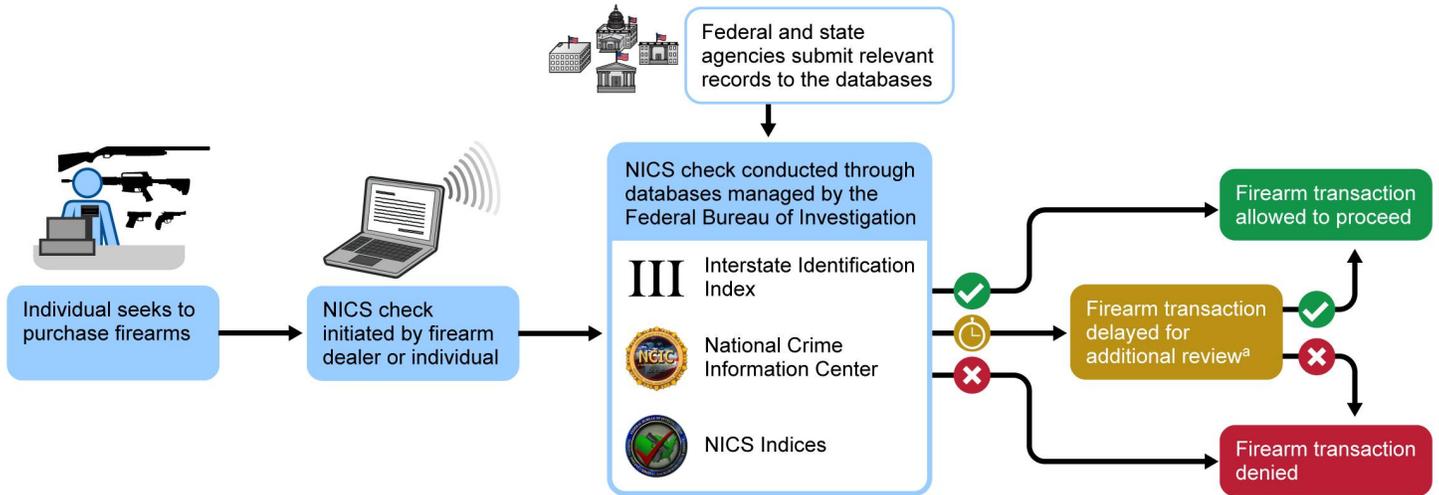
- **NICS Indices.** While III and NCIC records are used for a variety of law enforcement purposes, the FBI maintains the NICS Indices solely for firearms background checks. The NICS Indices contain records on individuals prohibited from possessing or receiving firearms under federal or state law. When policy does not permit records to be included in the III or NCIC, but qualify as a firearm prohibition, the NICS Indices is an alternative to ensure the information is returned on a NICS background check. For example, mental health adjudications are typically found only in the NICS Indices. According to DOJ guidance, a match to a record in the NICS Indices triggers an automatic denial of the firearm transfer. Therefore, federal agencies must “pre-validate” prohibiting information before submitting a record to the NICS Indices. That is, an agency must confirm that the entry is independently adequate by examining the particular prohibitor against the information found in the record and maintain the supporting documentation to show that an individual is prohibited from possessing firearms. Figure 1 provides a general overview of the NICS process.

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<sup>20</sup>The NCIC is an electronic clearinghouse of crime data. The NCIC database consists of 21 files. Seven files contain information on property (e.g., stolen license plates and vehicles) and 14 files that contain information on persons (e.g., wanted persons and protection orders). According to DOJ officials, 10 of the 14 persons files are checked by the NICS, which are discussed later in this report.

**Appendix I: Selected Federal Agencies Firearm Record Submissions, Certifications, and Implementation Plans**

**Figure 1: Overview of the National Instant Criminal Background Check System (NICS)**



Source: GAO analysis of Department of Justice information. | GAO-20-528

<sup>a</sup>Firearm transactions are delayed for additional research to determine a person's eligibility to purchase a firearm.

## NICS Record Submission and Reporting Requirements

Since the Virginia Tech shootings in 2007, laws have been enacted and the federal government has taken other actions that require federal agencies to make records available for use during NICS background checks and periodically report on progress.

### NICS Improvement Amendments Act

The NICS Improvement Amendments Act of 2007 was enacted to address gaps in information available to the NICS databases. This Act required federal agencies to submit relevant records identifying people

prohibited from possessing or receiving firearms to the Attorney General on at least a quarterly basis and to keep the records updated.<sup>21</sup>

### Presidential Directive

The President directed DOJ in 2013 to issue guidance to executive branch agencies regarding the identification and sharing of federal records that prohibit individuals from owning firearms and the submission of these records to the NICS.<sup>22</sup> Agencies were to follow this guidance by submitting a report to DOJ stating whether they possessed these relevant records and, if applicable, to create an implementation plan for making these records available to the NICS. Agencies were also directed to submit annual reports to the President via DOJ regarding these records and their implementation plan.

### Fix NICS Act

The Fix NICS Act of 2018 expanded the reporting requirements of the NICS Improvement Amendments Act of 2007 and codified the 2013 Presidential Memorandum.<sup>23</sup> Specifically, the Act requires the following:

- **Federal agency semiannual certifications.** By January 31 and July 31 of each year, the head of each federal department or agency is to submit a semiannual written certification to the Attorney General. The semiannual certification is to indicate whether the department or agency is in compliance with the record submission requirements by providing the pertinent information contained in any record of any person demonstrating that the person falls within one of the categories described in 18 U.S.C. § 922(g) and (n), not less frequently

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<sup>21</sup>NICS Improvement Amendments Act of 2007, Pub. L. No. 110-180, § 101, 121 Stat. 2559, 2561-64. Also, according to guidance DOJ issued in 2018, records are relevant for the purposes of NICS checks when they can be used to make a final determination of an individual's eligibility to possess or receive a firearm under federal law. These records include those that agencies create, such as records relating to arrests or criminal convictions, and in some cases, records that agencies possess but were created by another entity, such as another federal agency.

<sup>22</sup>The White House, *Presidential Memorandum—Improving Availability of Relevant Executive Branch Records to the NICS System* (Washington, D.C.: Jan. 16, 2013).

<sup>23</sup>Pub. L. No. 115-141, Div. S, tit. VI, 132 Stat. 1132.

than quarterly to the Attorney General.<sup>24</sup> The certification is to state, for the applicable period (1) the total number of records of the federal department or agency demonstrating that a person falls within one of the prohibited categories described in 18 U.S.C. § 922(g) or (n); (2) for each category of records described in 18 U.S.C. § 922(g) or (n), the total number of records of the federal department or agency that have been provided to the Attorney General; and (3) the efforts of the federal department or agency to ensure complete and accurate reporting of relevant records, including efforts to monitor compliance and correct any reporting failures or inaccuracies.<sup>25</sup>

- **Federal agency implementation plans.** Not later than 1 year after the date the Fix NICS Act was enacted, the head of each federal department or agency, in coordination with the Attorney General, was required to establish an implementation plan to ensure maximum coordination, automated reporting or otherwise making records available to the Attorney General, and verification of the accuracy of those records.<sup>26</sup> The Act requires the plan to include annual benchmarks, such as qualitative goals and quantitative measures, and an estimated date by which the federal department or agency will fully comply with the record submission requirements, among other things.<sup>27</sup> Subsequently, not later than the end of each fiscal year after the implementation plan has been established, the Attorney General is required to determine whether the applicable federal department or agency has achieved substantial compliance with the benchmarks included in the plan.<sup>28</sup>
- **DOJ semiannual reports.** The Attorney General is required to publish a semiannual report that generally addresses the submission of required certifications and implementation plans by federal departments and agencies.<sup>29</sup> The report is also to provide a detailed

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<sup>24</sup>34 U.S.C. § 40901(e)(1)(F). According to DOJ officials, the department provides guidance for agencies to use in completing their certifications but does not independently verify the data or information reported.

<sup>25</sup>34 U.S.C. § 40901(e)(1)(F).

<sup>26</sup>Pub. L. No. 115-141, Div. S, tit. VI, § 602, 132 Stat. 1132, 1132-35. See 34 U.S.C. § 40901(e)(1)(G).

<sup>27</sup>Pub. L. No. 115-141, Div. S, tit. VI, § 602, 132 Stat. 1132, 1132-35. See 34 U.S.C. § 40901(e)(1)(G)(ii).

<sup>28</sup>34 U.S.C. § 40901(e)(1)(G)(iii).

<sup>29</sup>34 U.S.C. § 40901(e)(1)(H).

summary of the data provided to the Attorney General in federal department and agency semiannual certifications.

- **Noncompliance penalties.** For each fiscal year 2019 through 2022, political appointees of a federal department or agency that has failed to certify compliance with the record submission requirements, and is not in substantial compliance with an implementation plan, shall not be eligible for the receipt of bonus pay, excluding overtime pay, until the department or agency certifies compliance with the record submission requirements or achieves substantial compliance with an implementation plan.<sup>30</sup>

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## Number of Records Federal Agencies Submitted to Databases Used for Firearm Background Checks

From calendar years 2010 through 2019, the number of records federal agencies submitted to the Interstate Identification Index (III) each year increased or decreased based on several factors. Federal agencies generally submitted an increasing number of records to the NCIC and NICS Indices during this period. In addition, more federal agencies submitted records during this period.

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### Records Submitted to Interstate Identification Index, 2010 through 2019

From calendar years 2010 through 2019, federal agencies submitted a total of about 8.6 million records to the Interstate Identification Index (III), with the number of annual submissions ranging from about 620,000 records to about 1.1 million records. In 2010, 45 agencies submitted about 840,000 records, and in 2019, 48 agencies submitted about 1 million records. CBP submitted the most records during this period, followed by ICE and DOJ's U.S. Marshals Service. CBP submitted about 718,000 of the approximately 1 million federal arrest records submitted in 2019, as shown in figure 2.<sup>31</sup> Changes in the total volume of submissions can vary from year to year based on a number of factors. For example,

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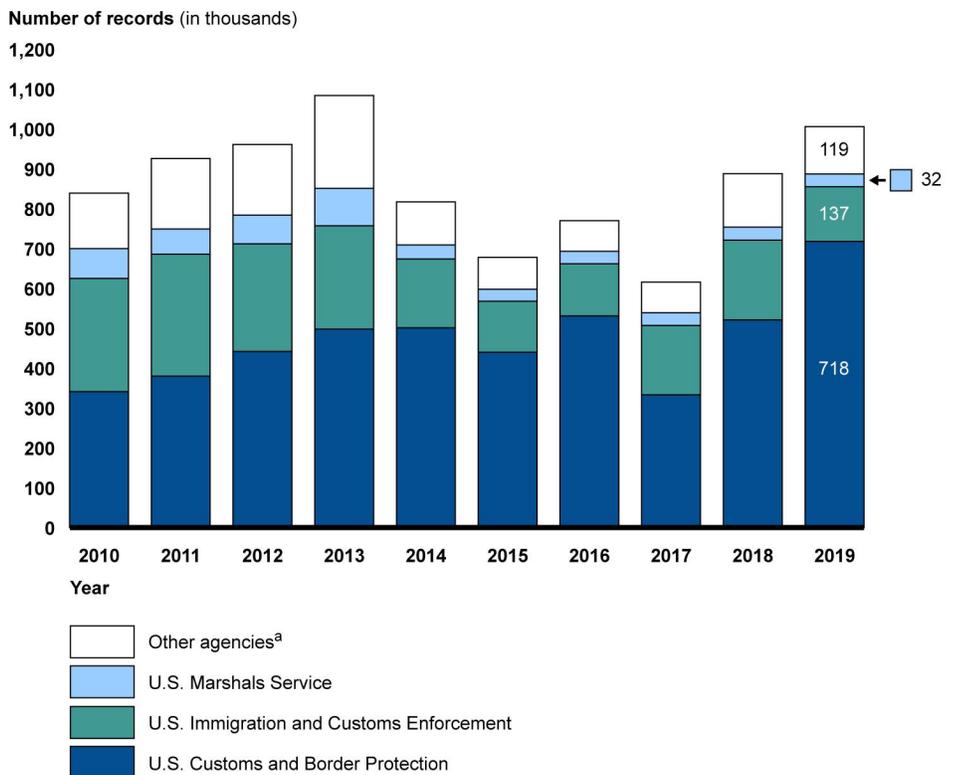
<sup>30</sup>Pub. L. No. 115-141, Div. S, tit. VI, § 602, 132 Stat. 1132, 1132-35. See 34 U.S.C. § 40901(e)(1)(I).

<sup>31</sup>According to DHS officials, the vast majority of records submitted by CBP and ICE were for immigration violations.

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according to DHS officials, any changes in CBP and ICE submissions are determined primarily by changes in migration patterns of illegal and unlawful aliens that impact the volume of immigration violators for any given year.

**Figure 2: Number of Federal Records Submitted to the Interstate Identification Index, 2010-2019**



Source: GAO analysis of Federal Bureau of Investigation data. | GAO-20-528

<sup>a</sup>The largest contributors to the “Other agencies” category over the time period were the Department of Justice’s Bureau of Prisons and U.S. Drug Enforcement Administration. The U.S. Army also submitted large numbers of records in certain years, including more than 52,000 records in 2013 and about 56,000 records in 2019.

The largest contributors to the “Other agencies” category shown in figure 2 were DOJ’s Bureau of Prisons and U.S. Drug Enforcement Administration, but other agencies also made large contributions in certain years. For example, the U.S. Army submitted more than 52,000 records in 2013 and about 56,000 records in 2019, the third most overall for any agency in 2019. The other military services—U.S. Air Force, U.S. Navy, and U.S. Marine Corps—also had increases in the number of records submitted from 2010 to 2019, although their totals were small—

increases in the hundreds or low thousands of submissions—compared to the largest federal contributors. According to DOD, these increases likely occurred for several reasons. For example, according to DOD officials, as a result of the Sutherland Springs, Texas, shooting in 2017, DOD components and military services reviewed all of their records to ensure that arrest and disposition information had been submitted to the III, which resulted in an increase in submissions.<sup>32</sup>

Our analysis of FBI data and interviews with FBI and selected agency officials indicates that the increase in federal records submitted to the III from 2010 through 2013—from about 840,000 records to almost 1.1 million records—could be attributed, in part, to the NICS Improvement Amendments Act of 2007, which was enacted to address gaps in information available to the NICS databases.<sup>33</sup> FBI officials stated that they could not determine why the number of federal records submitted decreased from 2013 to 2014, as the number of records submitted is dependent on the federal agencies themselves. The officials added that at least some of the increase in submissions following the passage of the NICS Improvement Amendments Act of 2007 could have been due to “catch up” submissions of older records and that such submissions had naturally leveled off by 2014.<sup>34</sup>

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## Records in the National Crime Information Center Database, 2010 through 2019

FBI data show that the total number of active federal records in the NCIC that are checked by the NICS increased from about 420,000 at the end of 2010 to over 540,000 at the end of 2019.<sup>35</sup> During a NICS check, 10 of NCIC’s 21 files are searched to help determine whether a person is

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<sup>32</sup>A disposition is the result or conclusion of criminal proceedings, such as charge dismissed, acquittal, or conviction. See 28 C.F.R. § 20.3(i). Arrest records alone are not sufficient to deny the purchase of a firearm. Verification of a conviction for a deniable offense is required.

<sup>33</sup>Pub. L. No. 110-180, § 101, 121 Stat. 2559, 2561-64.

<sup>34</sup>App. I contains additional information on the number of federal records submitted to III for the five selected federal agencies.

<sup>35</sup>According to the FBI, federal agencies add, modify, and cancel NCIC records on a daily basis. The FBI data represent the number of active records in the NCIC at the end of each year.

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eligible to purchase a firearm.<sup>36</sup> The number of federal agencies that submitted records to these files during this time period increased from 29 to 30.<sup>37</sup> ICE, Federal Probation and Parole,<sup>38</sup> and the U.S. Marshals Service consistently had the most active records in the NCIC during this period.<sup>39</sup> As of year-end 2019, ICE was the largest federal contributor of active records in the NCIC with over 321,000 records, as shown in figure 3.

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<sup>36</sup>According to the FBI, the 10 NCIC files represent categories of individuals who are (1) wanted persons, (2) foreign fugitives, (3) the subject of protection orders, (4) on sex offender registries, (5) on supervised release, (6) immigration violators, (7) gang members, (8) individuals who are threats to persons being protected by law enforcement, (9) violent persons, and (10) known or suspected terrorists. Records in these files do not automatically prohibit an individual from purchasing a firearm, but information in these records can help determine an individual's eligibility to purchase a firearm. Interpol submits records to NCIC's foreign fugitive file, and the FBI's Terrorist Screening Center submits records to NCIC's known or suspected terrorist file. DOJ does not include these entities in its list of federal agencies that are required to certify record submissions, so we excluded these agencies and the records for foreign fugitives and known or suspected terrorists from our analysis.

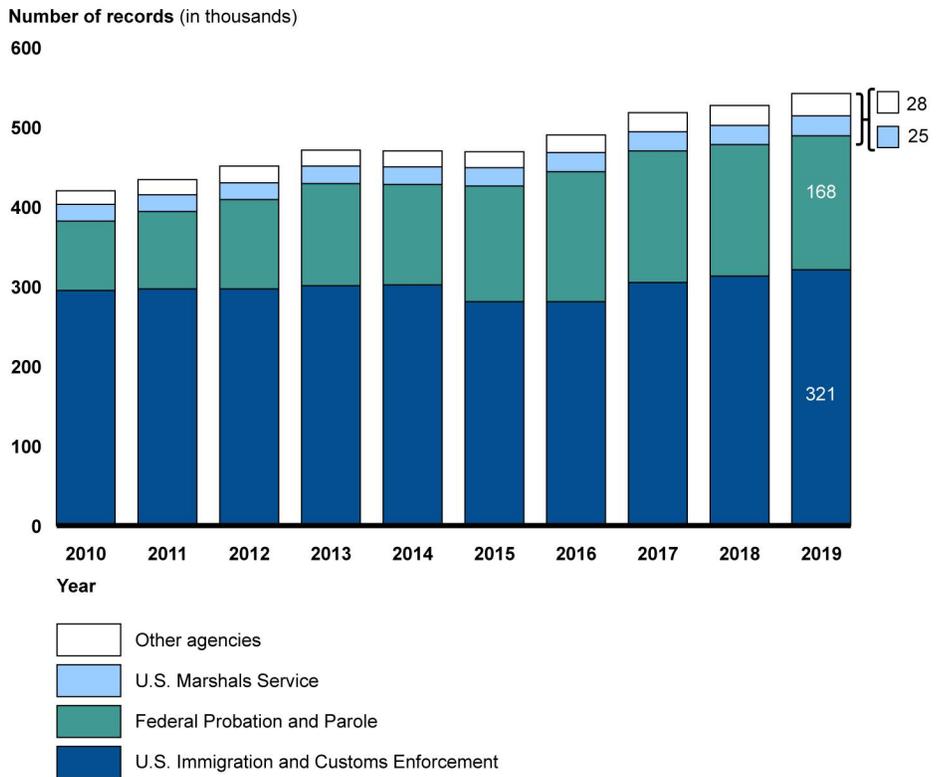
<sup>37</sup>Interpol submits records to NCIC's foreign fugitive file and the FBI's Terrorist Screening Center submits records to NCIC's known or suspected terrorist file. DOJ does not include these entities in its list of federal agencies that are required to certify record submissions so we excluded these records from our analysis.

<sup>38</sup>Federal Probation and Parole is within the Administrative Office of the U.S. Courts. The administrative office is a judicial branch agency that provides a broad range of legislative, legal, financial, technology, management, administrative, and program support services to federal courts.

<sup>39</sup>See app. I for additional information on the number of records entered into NCIC from the five selected federal agencies.

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**Figure 3: Active Federal Records in the National Crime Information Center Searched by the National Instant Criminal Background Check System, 2010-2019**



Source: GAO analysis of Federal Bureau of Investigation (FBI) data. | GAO-20-528

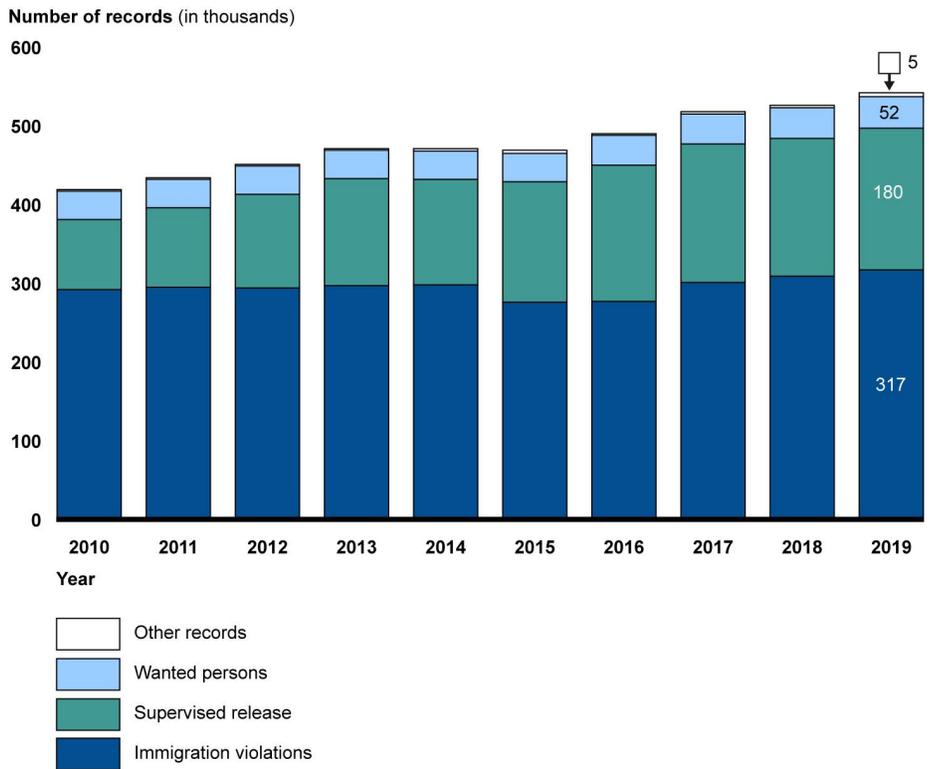
Note: According to the Federal Bureau of Investigation (FBI), 10 National Crime Information Center (NCIC) files are searched during a National Instant Criminal Background Check System (NICS) check. These include individuals who are (1) wanted persons, (2) foreign fugitives, (3) the subject of protection orders, (4) on sex offender registries, (5) on supervised release, (6) immigration violators, (7) gang members, (8) threats to individuals being protected by law enforcement, (9) violent persons, and (10) known or suspected terrorists. Not all of these records automatically prohibit an individual from possessing or purchasing a firearm, but information in these records can help determine an individual's eligibility to purchase a firearm. Interpol submits records to NCIC's foreign fugitive file, and the FBI's Terrorist Screening Center submits records to NCIC's known or suspected terrorist file. The Department of Justice does not include these entities in its list of federal agencies that are required to certify record submissions, so we excluded these agencies and the records for foreign fugitives and known or suspected terrorists from our analysis. Also, according to the FBI, federal agencies add, modify, and cancel NCIC records on a daily basis. The FBI data represent the number of active records in the NCIC at the end of each year.

As of year-end 2019, the largest number of active records in the NCIC were immigration violators, followed by persons on supervised release and wanted persons, as shown in figure 4. About 1,700 of the more than 5,400 active "Other records" for 2019 were protection orders, most of

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which were submitted by the U.S. Army and U.S. Naval Investigative Service.

**Figure 4: Active Federal Records in the National Crime Information Center Searched by the National Instant Criminal Background Check System by Record Type, 2010-2019**



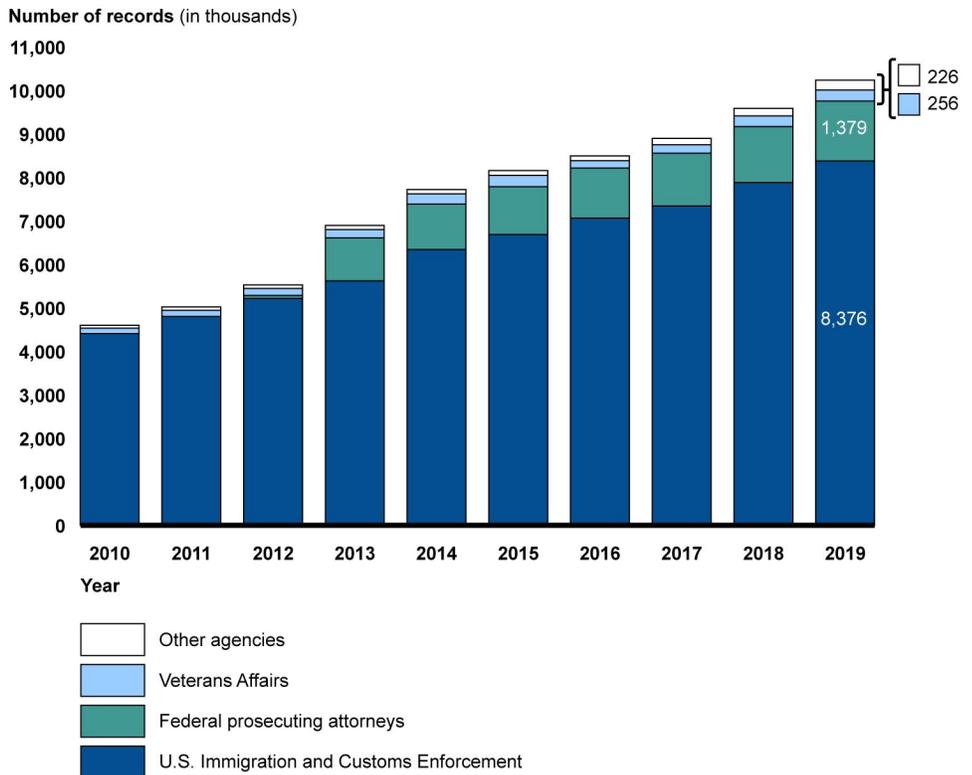
Source: GAO analysis of Federal Bureau of Investigation (FBI) data. | GAO-20-528

Note: According to the Federal Bureau of Investigation (FBI), 10 National Crime Information Center (NCIC) files are searched during a National Instant Criminal Background Check System (NICS) check. These include individuals who are (1) wanted persons, (2) foreign fugitives, (3) the subject of protection orders, (4) on sex offender registries, (5) on supervised release, (6) immigration violators, (7) gang members, (8) threats to individuals being protected by law enforcement, (9) violent persons, and (10) known or suspected terrorists. Not all of these records automatically prohibit an individual from possessing or purchasing a firearm, but information in these records can help determine an individual's eligibility to purchase a firearm. Interpol submits records to NCIC's foreign fugitive file, and the FBI's Terrorist Screening Center submits records to NCIC's known or suspected terrorist file. The Department of Justice does not include these entities in its list of federal agencies that are required to certify record submissions, so we excluded these record types from our analysis. Also, according to the FBI, federal agencies add, modify, and cancel NCIC records on a daily basis. The FBI data represent the number of active records in the NCIC at the end of each year.

## Records in the National Instant Criminal Background Check System Indices, 2010 through 2019

The total number of active federal records in the NICS Indices increased by approximately 123 percent—from over 4.6 million active records at the end of 2010 to about 10.2 million active records at the end of 2019.<sup>40</sup> Over this period, the total number of federal agencies that submitted records to the NICS Indices increased from 10 to 38 agencies. ICE, federal prosecuting attorneys, and VA contributed the most during this time period, as shown in figure 5.

**Figure 5: Active Federal Records in the National Instant Criminal Background Check System Indices by Federal Agency, 2010-2019**



Source: GAO analysis of Federal Bureau of Investigation data. | GAO-20-528

<sup>40</sup>According to the FBI, the NICS Indices is ever-changing, and contributors add, modify, and cancel NICS Indices records on a daily basis. The FBI data represent the number of active records in the NICS Indices at the end of 2019.

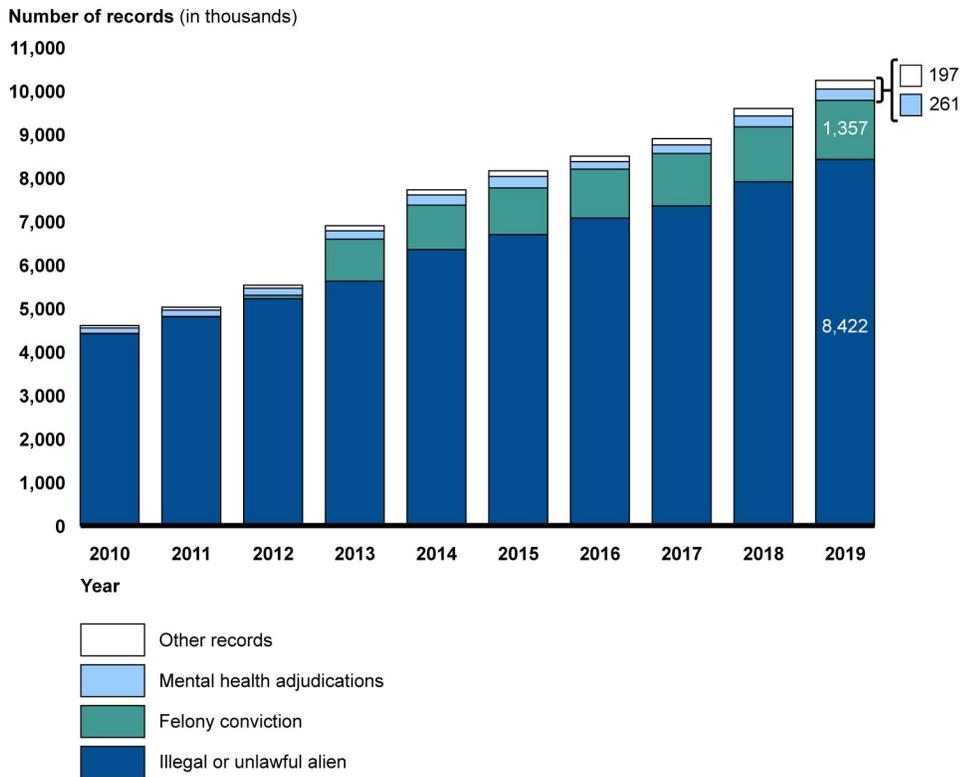
According to DOJ, the increase in federal prosecuting attorneys' submissions to the NICS Indices starting in 2013 can be attributed to a departmental policy change that required the attorneys to submit information on the disposition and prohibitor status (incremental results and final conclusions of criminal proceedings) to the NICS Indices on behalf of other federal agencies. The FBI and State were the largest contributors to the "Other agencies" category. DOD and its components—including the U.S. Army, U.S. Air Force Office of Special Investigations, U.S. Naval Criminal Investigative Service, and the U.S. Marine Corps—also had a large percentage increase in their submissions of active records to the NICS Indices in recent years, from about 11,000 records as of year-end 2016 to over 64,000 records at year-end 2019. According to DOD officials, the increase can be attributed to (1) the Fix NICS Act and the requirements it places on all federal agencies to properly record NICS information and (2) the review and the submission of cases to identify additional records following the Sutherland Springs shooting in 2017.

As shown in figure 6, the top prohibiting categories with active records in the NICS Indices from 2010 through 2019 were for illegal or unlawful aliens (ICE), felony convictions (federal prosecuting attorneys), and mental health adjudications (VA).<sup>41</sup> DOJ officials attributed the increase in the felony conviction category to the departmental policy change that required the federal prosecuting attorneys to submit disposition and prohibitor status to the NICS Indices. The top prohibiting categories for "Other records" in 2019 were for individuals who renounced their citizenship (about 52,000 records), were under indictment (almost 49,000 records), and had misdemeanor domestic violence convictions (more than 41,000 records). DOD components and military services—U.S. Army, U.S. Air Force, U.S. Marines, and U.S. Navy—submitted a mixture of felony conviction and dishonorable discharge records. Each of the military services also submitted hundreds or thousands of active records for controlled substances, along with a smaller number of active records for misdemeanor domestic violence.

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<sup>41</sup>Pursuant to 18 U.S.C. § 922(g)(4), it is unlawful for any person who has been adjudicated as a mental defective or who has been committed to a mental institution to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm; or to receive any firearm which has been shipped or transported in interstate or foreign commerce. See 27 C.F.R. § 478.11.

**Figure 6: Active Federal Records in the National Criminal Background Check System Indices by Prohibiting Category, 2010-2019**



Source: GAO analysis of Federal Bureau of Investigation data. | GAO-20-528

## Federal Agencies Have Had Inconsistent Interpretations of DOJ Guidance Related to Record Submission and Reporting Requirements

DOJ has provided guidance to help agencies comply with Fix NICS Act certification requirements for record submissions and reporting.<sup>42</sup>

<sup>42</sup>Prior to DOJ guidance on Fix NICS Act certification requirements for record submissions and reporting, DOJ also developed a guidance called "Guidance to Agencies Regarding Submission of Relevant Federal Records to the NICS" in March 2013 in response to a presidential directive on identification and sharing of federal records that prohibit individuals from owning firearms and the submission of these records to the NICS.

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However, federal agencies have had inconsistent interpretations of some aspects of this guidance. DOJ's guidance includes a memorandum on semiannual certifications and implementation plans that contains, among other things, details on the Fix NICS Act requirements, information on the 10 prohibited categories, and how to submit relevant records to the NICS databases.<sup>43</sup> DOJ also developed a Frequently Asked Questions document related to record submissions to the databases checked by the NICS and related reporting requirements.<sup>44</sup> Subsequently, DOJ issued an updated Frequently Asked Questions document and procedures for submitting relevant records to the NICS databases in January 2019. DOJ's guidance is intended to help agencies implement Fix NICS Act certification requirements for record submissions and semiannual reporting on the number of records they submit. Specifically:

- The Act's submission provisions require the head of each federal department or agency to submit a semiannual written certification to the Attorney General indicating whether it complied with the record submission requirements.<sup>45</sup> DOJ guidance related to these provisions instructed agencies to submit all relevant records of persons prohibited from receiving or possessing a firearm.<sup>46</sup>
- The Act's reporting provisions require each agency certification to state, for the applicable period, (1) the total number of records of the federal department or agency demonstrating that a person falls within one of the prohibited categories described in 18 U.S.C. § 922(g) or (n); and (2) for each category of records described in 18 U.S.C. § 922(g) or (n), the total number of records of the federal department or

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<sup>43</sup>Department of Justice, *Memorandum for All Heads of Federal Departments and Agencies: Implementation of the Fix NICS Act* (Washington, D.C.: July 2018).

<sup>44</sup>Department of Justice, *Frequently Asked Questions for Federal Agencies* (Washington, D.C.: October 2018 and January 2019).

<sup>45</sup>According to the Fix NICS Act (Pub. L. No. 115-141, Div. S, tit. VI, § 602, 132 Stat. 1132, 1132-35), the head of each federal department or agency is to submit a semiannual written certification to the Attorney General indicating whether the department or agency is in compliance with the record submission requirements under 34 U.S.C. § 40901(e)(1)(C). Under 34 U.S.C. § 40901(e)(1)(C), if a federal department or agency has any record of any person demonstrating that the person falls within one of the categories described in 18 U.S.C. § 922(g) or (n), the head of such federal department or agency is required, not less frequently than quarterly, to provide the pertinent information contained in such record to the Attorney General.

<sup>46</sup>Department of Justice, *Memorandum for All Heads of Federal Departments and Agencies: Implementation of the Fix NICS Act*.

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agency that have been provided to the Attorney General, among other things.<sup>47</sup> DOJ guidance for preparing semiannual certifications specifically states that agencies are to follow these two reporting provisions.

As required by the Fix NICS Act and DOJ guidance, almost all federal agencies complied with the requirement to submit a semiannual certification. Specifically, for the January 1 through June 30, 2019, reporting period, DOJ tracked the status of Fix NICS Act certifications for 92 agencies.<sup>48</sup> We found that all but one of these agencies submitted a semiannual certification, as shown in figure 7.<sup>49</sup> Specifically,

- 45 agencies indicated that they created or possessed relevant records that could be used for the NICS background checks;
- 46 agencies certified that they did not create or possess relevant records and did not expect to do so in the future; and
- one agency—the U.S. Capitol Police—did not submit a semiannual certification. According to DOJ, the U.S. Capitol Police contended that it was not subject to the Fix NICS Act because it is a legislative branch agency. However, in February 2020, following discussions with DOJ officials, the U.S. Capitol Police agreed to provide semiannual certifications and implementation plans in the future.

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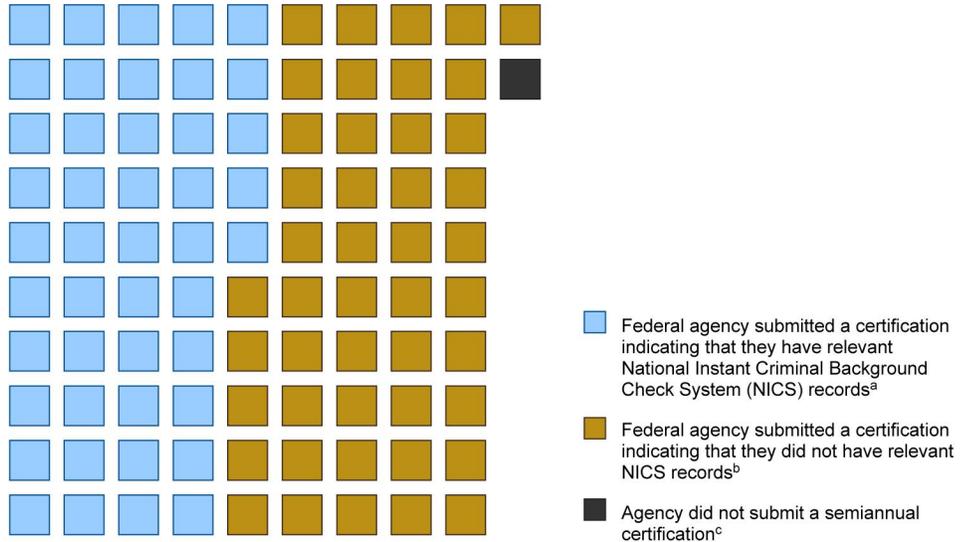
<sup>47</sup>Pub. L. No. 115-141, Div. S, tit. VI, § 602, 132 Stat. 1132, 1132-35. See 34 U.S.C. § 40901(e)(1)(F)(iii).

<sup>48</sup>DOJ has been tracking federal agency certification submissions since July 2018.

<sup>49</sup>We reviewed certifications from agencies that reported possessing or creating relevant records during the most recent period covered by our review, January 1 through June 30, 2019, as well as certifications from agencies that submitted at least one certification reporting that they did not possess records between January 1, 2018, and July 1, 2019. According to DOJ guidance, agencies that certify they do not create records are not required to submit a certification during subsequent certifications periods, unless the agencies begin to create records. The January through June 2019 certification period was the most recent period for which complete information was available at the time of our review. Agencies were to submit certifications for the July through December 2019 certification period by January 31, 2020.

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**Figure 7: Federal Agency Submissions of Fix NICS Act Semiannual Certifications for the January-June 2019 Certification Period**



Source: GAO analysis of Department of Justice (DOJ) information. | GAO-20-528

Notes: According to the Attorney General's semiannual report, the Fix NICS Act was enacted to improve government agencies records submission processes and further strengthen the NICS. See Pub. L. No. 115-141, Div. S, tit. VI, § 602, 132 Stat. 1132, 1132-35. See 34 U.S.C. § 40901. At the time of our review, the January through June 2019 certification period was the most recent period for which complete information was available.

<sup>a</sup>Agency certified that they created or possessed relevant records that could identify a person prohibited from purchasing or receiving a firearm under federal law.

<sup>b</sup>Agency certified that they did not create or possess relevant records and did not expect to possess or create them in the future.

<sup>c</sup>One agency (U.S. Capitol Police) did not submit a semiannual certification. The agency contended that it was not subject to the Fix NICS Act because it is a legislative—not an executive—branch agency. However, following discussions with DOJ officials, in February 2020, U.S. Capitol Police agreed to provide semiannual certifications and implementation plans in the future.

While all but one agency DOJ tracked submitted a certification, we found that many of the certifications submitted during the January 1 through June 30, 2019, reporting period were incomplete. Of the 45 agencies that reported they created or possessed records that are relevant to NICS background checks, we found that 33 agencies submitted a certification that did not address one or more of the Fix NICS Act certification requirements related to record submissions and reporting. Specifically, agencies

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- did not explicitly state whether they were submitting all relevant records to the Attorney General in accordance with the record submission requirements (23 certifications);<sup>50</sup>
- did not report, for the applicable period, the total number of relevant records they possessed identifying whether a person falls within one of the prohibited categories under 18 U.S.C. § 922(g) or (n) (five certifications);<sup>51</sup>
- did not state, for the applicable period, for each prohibited category under 18 U.S.C. § 922(g) or (n), the total number of records the agency provided to the Attorney General (17 certifications);<sup>52</sup> and
- did not describe their efforts to ensure complete and accurate reporting of relevant records to the Attorney General (three certifications).<sup>53</sup>

In January 2020, DOJ issued a template to federal agencies to help ensure the agencies address Fix NICS Act record submission and reporting requirements in their certifications. For example, the template prompts agencies to provide a yes or no answer to a question indicating whether the agency is in compliance with NICS record reporting requirements. The template also provides fields for agencies to provide information on the total number of records they possessed during the reporting period and the total number of records they submitted to the Attorney General for each of the 10 categories that would prohibit an individual from purchasing a firearm. Officials from all of the five selected agencies said that they found the template to be helpful in preparing their certifications.

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<sup>50</sup>According to the Fix NICS Act, Pub. L. No. 115-141, Div. S, tit. VI, § 602, 132 Stat. 1132, 1132-35, the head of each federal department or agency is to submit a semiannual written certification to the Attorney General indicating whether the department or agency is in compliance with the record submission requirements under 34 U.S.C. § 40901(e)(1)(C). Under 34 U.S.C. § 40901(e)(1)(C), if a federal department or agency has any record of any person demonstrating that the person falls within one of the categories described in 18 U.S.C. § 922(g) or (n), the head of such federal department or agency is required, not less frequently than quarterly, to provide the pertinent information contained in such record to the Attorney General. App. II contains information on DOJ's process for reviewing federal agency semiannual certifications, including those that did not explicitly state whether they were submitting all relevant records.

<sup>51</sup>See 34 U.S.C. § 40901(e)(1)(F)(iii)(I).

<sup>52</sup>See 34 U.S.C. § 40901(e)(1)(F)(iii)(II).

<sup>53</sup>See 34 U.S.C. § 40901(e)(1)(F)(iii)(III).

While the template can help agencies report the total number of records they possess during a given reporting period, it does not address how agencies are to determine and certify whether they are submitting all relevant records and does not state the type of records that agencies should include in their semiannual certifications. DOJ guidance also does not define the type of records that agencies should report. Our analysis of semiannual certifications for the five selected agencies that used the template for the July through December 2019 certification period and interviews with officials from these agencies indicates that the agencies differed in their interpretation of some of the certification requirements for record submissions and reporting. For example:

- DOD certified that it was not in compliance with the NICS records submission requirement in part because it could not certify the total number of potentially prohibiting records that it possessed and submitted to the III and NCIC. In contrast, DOJ certified that it was in compliance with the records submission requirement but did not provide in its certification the total number of records that it possessed and submitted to the III and NCIC.<sup>54</sup>
- VA officials said they interpreted the record submission and reporting requirements as only requiring them to include records that are self-validating and trigger an automatic denial of a firearm purchase. For example, VA officials stated that although the VA Police makes arrests and submits records to the NCIC, these records do not need to be included in a certification because they are not predetermined to automatically prohibit a firearms transfer. On the other hand, officials from four of the five selected federal agencies—DOD, DOJ, DHS, and State—interpreted the record submission and reporting requirements to include all relevant records that can be used to determine a person’s eligibility to purchase a firearm, including those that do not trigger an automatic denial.

Agencies had inconsistent interpretations of the record submission and reporting requirements in part because neither the guidance nor the template specify the type of records agencies should report. For example,

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<sup>54</sup>In its certification, DOJ only reported the records it possessed and submitted to the NICS Indices. According to DOJ officials, the department submits hundreds of thousands of records to the III and NCIC annually in the regular course of its law enforcement work. However, because DOJ does not specifically tag each record as being relevant to the NICS prohibitors it cannot provide specific figures in its certifications. As discussed later in this report, both DOD and DOJ have ongoing initiatives to automate their systems to help capture and report the number of records they possess and submit to III and NCIC.

the template and guidance do not specify whether agencies should report only records that are predetermined to automatically prohibit a firearms transfer—such as records submitted to the NICS Indices—or if agencies should also report other records that can be used during a NICS check but are not automatic prohibitors (for example, records related to any of the 10 prohibiting categories that may be submitted to the III and NCIC).<sup>55</sup>

According to DOJ officials who developed the template and prepared the Attorney General’s November 2019 semiannual report, all relevant records for the purpose of Fix NICS Act submission and reporting certification requirements should include those records that can be used to make a final determination of an individual’s eligibility to possess or receive firearms and not just records that are predetermined to automatically prohibit a firearms transfer.<sup>56</sup> DOJ officials stated that before we brought these issues to their attention, they did not believe instructions or additional guidance was necessary. The officials noted that federal agencies had not inquired or made comments about the guidance being unclear. They added that agencies already had the substantive guidance that DOJ had previously provided in 2018.

According to federal internal control standards, internal control is a process that provides reasonable assurance that objectives related to operations, compliance, and reporting will be achieved. An element within these standards includes using appropriate, complete, and accurate quality information to achieve objectives.<sup>57</sup> Providing additional guidance would help DOJ ensure that federal agencies consistently report information in their certifications that is accurate and complete to fully address Fix NICS Act requirements. Additional guidance would also provide greater assurance that the Attorney General’s semiannual reports to Congress accurately reflect the status of agency efforts to submit relevant records for use during NICS checks.

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<sup>55</sup>According to DOJ, the guidance it previously provided to federal agencies was sufficient to explain that agencies should report all records that can be used in a NICS check in their certifications.

<sup>56</sup>The Attorney General’s November 2019 report was the first semiannual Fix NICS report published by the Attorney General and included information on federal agencies’ certifications for the certification periods of January through June 2018, July through December 2018, and January through June 2019, as well as agencies’ implementation plans, among other things.

<sup>57</sup>[GAO-14-704G](#). Specifically, internal control principles (1) fundamental concepts of internal control and (2) use quality information.

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## Fix NICS Act Implementation Plans and Selected Agency Challenges and Efforts to Address Them

To ensure that federal agencies are improving the submission of relevant records to the NICS, the Fix NICS Act required agencies to submit implementation plans. The five selected agencies identified various challenges in submitting records and efforts to mitigate them.

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### Fix NICS Act Implementation Plans

The Fix NICS Act required the head of each federal agency to establish a Fix NICS implementation plan by March 2019.<sup>58</sup> According to DOJ's guidance for creating Fix NICS Act implementation plans, the purpose of these 4-year implementation plans is to, among other things, ensure that federal agencies are improving the submission of relevant records to NICS and to provide an estimated date by which the department or agency will fully comply with the Fix NICS Act's record submission requirements.<sup>59</sup>

According to the Act, implementation plans are required to include annual benchmarks to enable the Attorney General to assess implementation of the plan, including qualitative goals and quantitative measures; measures to monitor internal compliance, including any reporting failures and inaccuracies; a needs assessment, including estimated compliance costs; and an estimated date by which the department or agency will fully comply with the records submission requirements.<sup>60</sup> The Attorney General is required to publish and submit to certain congressional committees a semiannual report that provides, among other things, information related to federal departments' and agencies' submission of implementation plans, a detailed summary of the contents and status of the implementation plans established, and the reasons for the Attorney

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<sup>58</sup>Pub. L. No. 115-141, Div. S, tit. VI, § 602, 132 Stat. 1132, 1132-35. See 34 U.S.C. § 40901(e)(1)(G).

<sup>59</sup>Department of Justice, *Fix NICS Act of 2018: Instructions for Federal Agency Implementation Plans* (Washington, D.C.: January 2019).

<sup>60</sup>Pub. L. No. 115-141, Div. S, tit. VI, § 602, 132 Stat. 1132, 1132-35. See 34 U.S.C. § 40901(e)(1)(G)(ii). See app. I for more details.

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General's determination that a federal department or agency is not in substantial compliance with an implementation plan.<sup>61</sup>

DOJ distributed an implementation plan template to federal agencies to aid in the drafting of these implementation plans and to assist the Attorney General in the review and evaluation of these plans.<sup>62</sup> According to The Attorney General's Semiannual Report on the Fix NICS Act, issued in November 2019, DOJ received implementation plans from all 45 federal agencies that certified they possessed relevant records. According to the report, given the limited time between when agency implementation plans were first established (March 2019) and when agencies were to provide progress reports in their semiannual certifications (July 2019), DOJ did not assess agency performance against the benchmarks the agencies established. The Attorney General determined that all federal agency implementation plans were in substantial compliance with requirements during this initial abbreviated reporting period. For future reporting periods—beginning with agencies' July 2020 certifications—DOJ stated that the Attorney General will determine if agencies are in compliance with the implementation plan requirements based on whether agencies report making substantial progress toward meeting their benchmarks.

According to DOJ officials, the FBI evaluated agency implementation plans for completeness using a checklist developed by DOJ's OLP to determine if agency implementation plans were reasonably established to improve the agency's submission of records to the NICS and contained elements specified in the Fix NICS Act. Based on this analysis, DOJ concluded that all of the submitted implementation plans were satisfactory. Consistent with DOJ's assessment, we found that the five selected federal agencies used DOJ's implementation plan template and included elements specified in the template. For instance, all five agencies provided qualitative goals, identified measures to monitor internal compliance, and described efforts to ensure maximum

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<sup>61</sup>Pub. L. No. 115-141, Div. S, tit. VI, § 602, 132 Stat. 1132, 1132-35. See 34 U.S.C. § 40901(e)(1)(H).

<sup>62</sup>DOJ developed the implementation plan template in January 2019 to provide a framework for agencies to comply with the statutory requirements, such as an annual benchmark of the qualitative goals and quantitative measures, measures to monitor internal compliance, and an estimated date of compliance, among other things.

coordination and automated reporting of records to the Attorney General.<sup>63</sup>

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## Selected Agency Challenges and Planned Efforts to Mitigate Them

In implementation plans and during interviews, four of the five selected federal agencies identified challenges in submitting records to the databases checked by the NICS. All five agencies described efforts to improve submissions or address their challenges, which include efforts to improve the automation of reporting.<sup>64</sup>

### DHS

DHS officials stated that the agency determined which components within the agency possessed relevant records by working with its Fix NICS working group and with DHS's FBI liaison. DHS's working group began meeting regularly with the FBI in 2019 to discuss matters related to the NICS records submissions. DHS reported the following challenges and efforts:

**Keeping immigration records current.** DHS reported that its greatest agency-wide challenge is keeping its records in sync with those stored in the NICS Indices because immigration status can change over time.<sup>65</sup> DHS officials added that these records can be affected by records maintained by three different DHS components—CBP, ICE, and U.S. Citizenship and Immigration Services. DHS officials stated that it has an ongoing effort, led by ICE, to implement a system that will automatically provide the NICS Indices with information on immigration status changes. In addition, to consolidate reporting of DHS immigration records on people who overstay their visa to the NICS Indices, CBP began a pilot

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<sup>63</sup>Additional information on the implementation plans for the five selected agencies is contained in app. I.

<sup>64</sup>While selected agencies have ongoing automation efforts, officials from all five agencies stated that they did not experience any challenges in submitting records to the Attorney General not less frequently than quarterly, as required by the Fix NICS Act. Pub. L. No. 115-141, Div. S, tit. VI, § 602, 132 Stat. 1132, 1132-35. See 34 U.S.C. § 40901(e)(1)(C).

<sup>65</sup>According to DHS officials, a person that was once prohibited from purchasing a firearm because of their legal status could become eligible to purchase one at a later point if their legal status changes.

program to report these data in March 2019, which was still ongoing as of May 2020.

**Updating records with dispositions.** According to DHS officials, the entire law enforcement community—including but not limited to DHS components with a law enforcement function—faces challenges in ensuring that arrest records are complete and are linked to a disposition. ICE reported that it is working on an automated process to update III with dispositions when cases are resolved, and, for longer-lasting cases, submitting an interim disposition to reduce the number of incomplete arrest records held by the agency. Similarly, CBP told us that it is working with the FBI to close its dispositions when people leave CBP custody, which will ensure that no new incomplete dispositions are created.

### DOD

DOD officials stated that the agency created a NICS records working group to determine how to fulfill the Fix NICS Act's requirements. The officials added that the working group includes subgroups that address various issues, such as how to submit records related to military protective orders and drug testing. DOD reported the following challenges and efforts:

**Developing NICS Implementation Policy.** The Undersecretary of Defense for Intelligence is reviewing DOD policies and procedures in order to identify and eliminate gaps. This effort entails a review of applicable internal criminal justice and personnel justice procedures to ensure DOD is complying with the Fix NICS Act requirements. Specifically, the Undersecretary of Defense for Intelligence is to publish DOD's NICS Implementation Policy in June 2021, and all relevant DOD policy is to be updated to incorporate DOD's policy by June 2023.

**Submitting historical records.** DOD submissions to the NICS Indices increased from 260 in 2017 to 60,801 as of June 2019.<sup>66</sup> After the Sutherland Springs, Texas, shooting in 2017, DOD components and law enforcement agencies began reviewing their historical criminal justice records from 1998—when the NICS was established—through 2017 to identify records that were missing from the III, NCIC, and the NICS Indices. As part of this initiative, DOD reported that it submitted 46,494

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<sup>66</sup>Department of Defense, *Department of Defense Certification in Response to the Attorney General's July 2018 Memorandum* (Washington, D.C.: July 2019).

historical records to the NICS Indices. These records, combined with those DOD submitted in 2018 and 2019, increased the total number of records to 60,801. According to DOD, this initiative is to be completed in June 2020. In addition, according to DOD officials, the U.S. Army and the U.S. Navy identified and submitted missing historical records of dishonorable discharge to the NICS Indices, and they are regularly submitting new dishonorable discharge records to the NICS Indices on a weekly and daily basis, respectively.

**Tracking III and NCIC record submissions.** According to DOD officials, not all components or law enforcement agencies can track how many records they submit to the III or NCIC databases because their computer systems are not capable of providing this information.<sup>67</sup> As a result, DOD certified that it is not in compliance with the Fix NICS Act's record submission requirements. To address this issue, DOD reported in its implementation plan that it plans to acquire a system that can track these record submissions. This system is to be evaluated by DOD's Office of Cost Assessment and Program Evaluation in September 2020, reach initial operating capability by September 2021, and enable DOD to be compliant with the Fix NICS Act by September 2023.

**Addressing military protective orders.** Military personnel subject to military protective orders are not prohibited from purchasing firearms. A military protective order is a directive from a military official prohibiting contact between a protected person and a member of the military. Since military protective orders are not issued by a court, military personnel subject to them are not prohibited from purchasing firearms.<sup>68</sup> DOD officials told us that DOD is advocating for legislative changes that would permit military judges to issue military protective orders. These protective orders would prohibit persons subject to them from purchasing firearms. In the interim, DOD is formulating a policy under which it would advise individuals who obtain a military protective order to also seek a protective

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<sup>67</sup>According to DOD officials, each of its law enforcement agencies uses separate systems to collect and share records relevant to NICS background checks with the FBI. However, without a single data repository, DOD has no centralized mechanism to track records shared with the FBI. DOD officials stated that the U.S. Army can track how many records it submits to the databases used by the NICS.

<sup>68</sup>According to U.S. Coast Guard officials, the U.S. Coast Guard also issues military protective orders and follows similar policies and procedures.

order from a civilian court, which prohibits people subject to them from purchasing firearms.

**Addressing drug test policies.** Military personnel that test positive for drug use but are precluded from being tried by a court martial are reported to the NICS Indices based on guidance DOJ's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) provided to DOD. However, DOD generally does not report positive drug test results for its civilian employees to the NICS Indices.<sup>69</sup> DOD officials stated that they are exploring ways to address this issue. In addition, DOD established a subgroup for drug testing to determine how drug-testing sites, which generally do not have access to the NICS Indices, can best report drug test results.

## DOJ

DOJ created a NICS working group and charged it with making recommendations to maximize DOJ compliance with the Fix NICS Act, improving the quality and timeliness of DOJ's record sharing, and improving the efficiency of reporting by exploring the increased use of automated reporting. DOJ reported the following challenges and efforts:

**Confirming component compliance.** DOJ officials stated that they are confident that all relevant records are being reported to the databases checked by the NICS. DOJ is developing a data collection instrument that will be issued to all component heads to confirm that this is correct.

**Improving arrest and disposition reporting.** According to DOJ, the department's NICS working group is currently focused on identifying a way to automate the linking of arrest and disposition records. DOJ's goal is to increase the percentage of completed arrest records with a corresponding disposition by 4 percent annually. In addition, DOJ is conducting a pilot targeting one of 94 federal judicial districts to identify challenges, resources, and efforts required to implement a national automated computer reporting system that would assist in matching federal arrest and disposition information.

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<sup>69</sup>According to DOD officials, since late fiscal year 2018, the U.S. Air Force Office of Special Investigations has reported positive drug test results for its civilian employees to the NICS Indices.

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In addition, in response to an Attorney General directive, the FBI is working with federal agencies to help improve the completeness of federal records in the III.<sup>70</sup> For example, according to FBI officials, the FBI conducts outreach with the dozens of federal agencies that contribute criminal history records to the III to obtain missing disposition information. As of December 31, 2019, the III contained about 19.1 million federal arrests records, of which about 12.8 million contained dispositions, and about 6.3 million were missing dispositions.<sup>71</sup> Five federal agencies accounted for about 88 percent of all total federal arrest records. Their number of arrests and the status of related dispositions are shown in table 1.

**Table 1: Federal Arrest and Disposition Records in the Interstate Identification Index (III), Year-End 2019**

Federal agency name	Total arrests	Arrests with dispositions	Arrests without dispositions	% Arrests with dispositions (%)	% Arrests without dispositions (%)
U.S. Customs and Border Protection	8,406,431	4,665,510	3,740,921	55	45
U.S. Immigration and Customs Enforcement	3,747,278	2,450,099	1,297,179	65	35
United States Marshals Service	2,222,902	1,728,286	494,616	78	22
Federal Bureau of Prisons	1,690,572	1,637,503	53,069	97	3
U.S. Drug Enforcement Administration	723,382	587,687	135,695	81	19

Source: GAO analysis of Federal Bureau of Investigation data. | GAO-20-528

**State**

State collected information for its certification using a combination of electronic records and manual data calls to its components. State reported the following challenges and efforts:

**Training agency employees.** State reported that efficiently training its globally dispersed workforce on Fix NICS Act reporting requirements posed a challenge. To accomplish this task, State created an

<sup>70</sup>Department of Justice, *Executive Summary: The Reporting of Information to the National Instant Criminal Background Check System (NICS) and Review of ATF Form 4473* (Washington, D.C.: Mar. 2018).

<sup>71</sup>Some arrest records lack a corresponding disposition because the outcome of the arrest has not been determined—for example, because a person that was arrested is still awaiting trial.

informational intranet website, distributed informational videos, and updated its policy manual to reflect Fix NICS Act requirements.

**Reviewing cases to confirm record submission.** According to agency officials, supervisors within State are required to perform mandatory case reviews every 90 days, which, among other things, confirm that records are being submitted to the NCIC or III databases.

**Updating arrest records.** According to State officials, the agency is working with field offices to improve the completeness of State's arrest records, as around 11 to 12 percent of these records lack a corresponding disposition.

## VA

VA officials stated that they did not encounter any challenges in submitting records to the NICS Indices because these data are pulled from the agency's corporate data system, which they consider reliable. VA reported that these records are audited by the FBI every 2 to 3 years, and the Veterans Benefits Administration reported that it maintains a 100-percent pass rate for the records it submits to the NICS Indices.

**Submitting records on individuals rated mentally incompetent.** Within the VA, the Veterans Benefits Administration reported that it provides relevant records for those individuals rated as "mentally incompetent" to manage their financial affairs to the NICS Indices on a monthly basis using an automated system. The Veterans Benefits Administration intends to increase the frequency of its automated reporting to the NICS Indices from monthly to weekly. Agency officials told us that this effort will be completed by the end of calendar year 2020.

Another component within the VA—the Veterans Health Administration—reported in its implementation plan that while it possesses relevant records that were created by other entities, it does not report these records to the Attorney General. According to the VA officials, the Veterans Health Administration did not create these records and only possesses them, so it cannot necessarily vouch for their reliability. Further, the Veterans Health Administration stated that the submission of these records to NICS databases, especially when part of the medical record is used in a clinical setting or to meet veterans' psychological needs, could potentially sever the relationship between the veteran and the VA.

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## Conclusions

The submission of federal agency records to the databases checked by the NICS is important to help ensure that individuals do not unlawfully purchase firearms from gun dealers. Federal agencies have submitted an increasing number of records over the past 10 years. DOJ has also provided guidance to assist agencies in submitting relevant records and preparing related certifications that are required by the Fix NICS Act. However, the five selected federal agencies differed in how they interpreted key aspects of DOJ's guidance. Providing additional guidance would help DOJ ensure that federal agencies consistently report information in their certifications that is accurate and complete to fully address Fix NICS Act requirements. Additional guidance would also provide greater assurance that the Attorney General's semiannual reports to Congress accurately reflect the status of agency efforts to submit relevant records for use during NICS checks.

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## Recommendation for Executive Action

We recommend that the Attorney General ensure that additional guidance is provided to federal agencies to clarify Fix NICS Act certification requirements for record submissions and reporting. (Recommendation 1)

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Departments of Defense, Homeland Security, Justice, State, and Veterans Affairs for their review and comment. The departments provided no written comments. DOJ concurred with the recommendation. In addition, the Departments of Defense, Homeland Security, and Justice provided written technical comments, which we incorporated into the report as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Attorney General, the Secretary of Defense, the Acting Secretary of Homeland Security, the Secretary of State, and the Secretary of Veterans Affairs. In addition, the report is available at no charge on GAO's website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or [McNeilT@gao.gov](mailto:McNeilT@gao.gov). Contact points for our

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**Appendix I: Selected Federal Agencies Firearm  
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Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.



Triana D. McNeil  
Director, Homeland Security and Justice

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*List of Requesters*

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
House of Representatives

The Honorable Carolyn B. Maloney  
Chairwoman  
Committee on Oversight and Reform  
House of Representatives

The Honorable Jacky Rosen  
United States Senate

The Honorable Nanette Diaz Barragán  
House of Representatives

The Honorable Donald S. Beyer  
House of Representatives

The Honorable Earl Blumenauer  
House of Representatives

The Honorable Suzanne Bonamici  
House of Representatives

The Honorable David N. Cicilline  
House of Representatives

The Honorable Steve Cohen  
House of Representatives

The Honorable Danny K. Davis  
House of Representatives

The Honorable Peter A. DeFazio  
House of Representatives

The Honorable Debbie Dingell  
House of Representatives

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The Honorable Anna G. Eshoo  
House of Representatives

The Honorable Raúl M. Grijalva  
House of Representatives

The Honorable Alcee L. Hastings  
House of Representatives

The Honorable Brian Higgins  
House of Representatives

The Honorable Pramila Jayapal  
House of Representatives

The Honorable Hakeem S. Jeffries  
House of Representatives

The Honorable Hank Johnson, Jr.  
House of Representatives

The Honorable William R. Keating  
House of Representatives

The Honorable Daniel T. Kildee  
House of Representatives

The Honorable Barbara J. Lee  
House of Representatives

The Honorable Ted W. Lieu  
House of Representatives

The Honorable Daniel W. Lipinski  
House of Representatives

The Honorable Zoe Lofgren  
House of Representatives

The Honorable Gregory W. Meeks  
House of Representatives

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The Honorable Eleanor Holmes Norton  
House of Representatives

The Honorable Frank Pallone, Jr.  
House of Representatives

The Honorable Mike Quigley  
House of Representatives

The Honorable Jamie Raskin  
House of Representatives

The Honorable Kathleen M. Rice  
House of Representatives

The Honorable Jan Schakowsky  
House of Representatives

The Honorable Adam B. Schiff  
House of Representatives

The Honorable Bobby Scott  
House of Representatives

The Honorable José E. Serrano  
House of Representatives

The Honorable Jackie Speier  
House of Representatives

The Honorable Eric M. Swalwell  
House of Representatives

The Honorable Dina Titus  
House of Representatives

The Honorable Nydia M. Velázquez  
House of Representatives

The Honorable Bonnie Watson Coleman  
House of Representatives

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The Honorable John A. Yarmuth  
House of Representatives

# Appendix I: Selected Federal Agencies Firearm Record Submissions, Certifications, and Implementation Plans

For each of the five selected federal agencies in our review—the Department of Homeland Security (DHS), Department of Defense (DOD), Department of Justice (DOJ), Department of State, and Department of Veterans Affairs (VA)—this appendix summarizes information on records submitted to databases checked by the National Instant Criminal Background Check System (NICS).<sup>1</sup> This appendix also provides information on each agency’s most recent Fix NICS Act certifications and implementation plan.

## Department of Homeland Security

DHS submitted firearms-related records to the three databases checked by the NICS. These records are shown in table 2.

**Table 2: Department of Homeland Security (DHS) Contributions to the Interstate Identification Index (III), National Crime Information Center (NCIC) Database, and National Instant Criminal Background Check System Indices (NICS Indices), as of December 31, 2019**

Department of Homeland Security	Number of records submitted to III <sup>a</sup>	Number of active records in NCIC	Number of active records in NICS Indices
Department of Homeland Security	686	Not listed	Not listed
Bureau of Customs	Not listed	466	Not listed
U.S. Customs and Border Protection	718,205	Not listed	2
Federal Protective Service	43	4	Not listed
Transportation Security Administration-Federal Air Marshal Service	1	1	Not listed
U.S. Immigration and Customs Enforcement	137,488	321,086	8,376,398

<sup>1</sup>As discussed previously in this report, the three databases checked by the NICS are the Interstate Identification Index (III), the National Crime Information Center (NCIC) database, and the NICS Indices.

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U.S. Coast Guard	241	26	255
U.S. Secret Service	918	400	1,122
<b>Total</b>	<b>857,582</b>	<b>321,945</b>	<b>8,377,777</b>

Source: GAO analysis of Federal Bureau of Investigation data. | GAO-20-528

Note: Not listed indicates the component or organization was not listed for that index for 2019.

<sup>a</sup>Records for the III are arrest submissions reported for calendar year 2019.

As required by the Fix NICS Act, DHS submitted a semiannual certification.<sup>2</sup> The first certification covered three 6-month semiannual reporting periods, January 2018 through June 2019, and DHS subsequently submitted a certification covering the July through December 2019 certification period. DHS did not explicitly certify its compliance with the record submission requirement in its January through June 2019 certification pursuant to the Fix NICS Act, but DHS officials stated that the department had fulfilled this requirement for this certification period. DHS explicitly certified its compliance for the July through December 2019 certification period. These certifications are summarized in table 3.

**Table 3: Department of Homeland Security (DHS) Fix NICS Act Semiannual Certifications for the 2018 and 2019 Certification Periods**

Agency certified compliance with record submission requirements	Total number of prohibiting records agency reported for this period	Number of records agency submitted to the Attorney General during this period	Efforts to ensure complete and accurate reporting
<b>January 2018 through June 2019 Certification Periods<sup>a</sup></b>			
Yes <sup>b</sup>	11,420,425	10,520,425	DHS components reported efforts, such as working with the Federal Bureau of Investigation (FBI) to update existing immigration records and determine what data should be shared in the future, testing an automated system to identify individuals that overstay their visas, and reviewing records for their relevancy to the National Criminal Instant Background Check System (NICS).
<b>July through December 2019 Certification Period</b>			

<sup>2</sup>DHS submitted a certification that covered three semiannual certification periods, January 2018 through June 2018, July 2018 through December 2018, and January 2019 through June 2019. It is not possible to disaggregate the information in this certification by 6-month certification period. According to DHS officials, DOJ agreed that DHS could submit a certification covering all three periods as a single document.

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Yes.	3,124,212	3,124,212	DHS components reported efforts such as working with FBI auditors to verify entries, using automated systems to identify record discrepancies, reviewing records for their relevancy to the NICS, and incorporating secondary record review for compliance with NICS policies.
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Source: GAO analysis of DHS information. | GAO-20-528

<sup>a</sup>DHS's certification did not differentiate between the three 6-month semiannual certification periods. Instead, DHS provided aggregate record totals and described its efforts for the entire 18-month period covered by this certification.

<sup>b</sup>While DHS did not explicitly certify its compliance with the record submission requirements in this certification pursuant to the Fix NICS Act, DHS officials told us that the department had fulfilled these requirements for this certification period.

DHS submitted an implementation plan as required by the Fix NICS Act, which is summarized in table 4.

**Table 4: Department of Homeland Security (DHS) Fix NICS Act Implementation Plan**  
Implementation Plan—The Fix NICS Act and Department of Justice guidance specifies that agency implementation plans are to include these specific elements:

Element	Description
Efforts to ensure maximum coordination and reporting of records to the Attorney General	DHS components reported various efforts to ensure complete and accurate reporting, such as working with Federal Bureau of Investigation (FBI) auditors to verify entries, using automated systems to identify record discrepancies, reviewing records for their relevancy to the NICS, and incorporating secondary record review for compliance with NICS policies.
Qualitative goals and quantitative measures	DHS components reported, among other things, various qualitative goals, such as efforts to streamline NICS record entry and the development of automated reporting systems.
Measures to monitor internal compliance	DHS components reported various compliance measures, such as monthly audits, reviews for compliance with NICS policies, and self-inspections.
A needs assessment with compliance costs	DHS components identified various resource requirements, including additional personnel and a desire for an automated interface between DHS and NICS systems, but DHS has not yet determined the cost of these requirements.
An estimated date for full compliance with NICS record submission requirements	None specified.

Source: GAO analysis of DHS information. | GAO-20-528

## Department of Defense

DOD submitted firearms-related records to all three databases checked by the NICS. These records are shown in table 5.

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**Table 5: Department of Defense (DOD) Contributions to the Interstate Identification Index (III), National Crime Information Center (NCIC) Database, and National Instant Criminal Background Check System Indices (NICS Indices), as of December 31, 2019**

<b>Department of Defense</b>	<b>Number of records submitted to III<sup>a</sup></b>	<b>Number of active records in NCIC</b>	<b>Number of active records in NICS Indices</b>
Department of Defense	157	Not listed	5,197
Pentagon Force Protection Agency	Not listed	Not listed	5
U.S. Air Force/U.S. Air Force Office of Special Investigations	5,575	178	12,498
U.S. Army	56,475	1,569	34,925
U.S. Marine Corps	2,878	466	3,818
U.S. Navy/Naval Criminal Investigative Service	6,239	591	7,813
<b>Total</b>	<b>71,324</b>	<b>2,804</b>	<b>64,256</b>

Source: GAO analysis of Federal Bureau of Investigation data. | GAO-20-528

Note: Not listed indicates the component or organization was not listed for that system for 2019.

<sup>a</sup>Records for the III are arrest submissions reported for calendar year 2019.

As required by the Fix NICS Act, DOD submitted a January through June and a July through December 2019 semiannual certification, stating in both certifications that it was not in compliance with NICS records submission requirements. These certifications are summarized in table 6.

**Table 6: Department of Defense (DOD) Fix NICS Act Semiannual Certifications for January-June and July-December 2019 Certification Periods**

<b>Agency certified compliance with record submission requirements</b>	<b>Total number of prohibiting records agency reported for this period</b>	<b>Number of records agency submitted to the Attorney General during this period</b>	<b>Efforts to ensure complete and accurate reporting</b>
<b>January through June 2019 Certification Period</b>			
No.	<sup>a</sup>	6,256 <sup>b</sup>	The Office of the Under Secretary of Defense for intelligence initiated a study to identify DOD and Military Service policy gaps for reporting information to the National Criminal Instant Background Check System (NICS).
<b>July through December 2019 Certification Period</b>			
No.	3,751 <sup>b</sup>	3,751 <sup>b</sup>	DOD has created a working group to address the issue of standardized reporting of all 10 NICS prohibitors across the department. DOD is exploring the creation of a department-wide database for all NICS reporting across the department.

Source: GAO analysis of DOD information. | GAO-20-528

<sup>a</sup>DOD did not provide this information in this certification.

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<sup>b</sup>This figure reflects the number of records submitted to the NICS Indices. DOD does not have the ability to track submissions made by its components to the National Crime Information Center database or the Interstate Identification Index.

DOD submitted an implementation plan as required by the Fix NICS Act, which is summarized in table 7.

**Table 7: Department of Defense (DOD) Fix NICS Act Implementation Plan**  
Implementation Plan—The Fix NICS Act and Department of Justice guidance specifies that agency implementation plans are to include these specific elements:

Element	Description
Efforts to ensure maximum coordination and reporting of records to the Attorney General	DOD plans to establish a consolidated tracking process for the department to ensure timely submission of records to the Federal Bureau of Investigation and establish policy to fill reporting policy gaps.
Qualitative goals and quantitative measures	Among other things, update all relevant department policy by June 2023 and acquire a new computer system to track the National Criminal Instant Background Check System (NICS) record submissions.
Measures to monitor internal compliance	DOD’s Inspector General will continue to conduct audits and monitor internal compliance, and the department will develop a quality assurance process.
A needs assessment with compliance costs	None specified.
An estimated date for full compliance with NICS record submission requirements	DOD reported that it will be fully compliant by September 2023.

Source: GAO analysis of DOD information. | GAO-20-528

## Department of Justice

DOJ submitted firearms-related records to the three databases checked by the NICS. These records are shown in table 8.

**Table 8: Department of Justice (DOJ) Contributions to the Interstate Identification Index (III), National Crime Information Center (NCIC) Database, and National Instant Criminal Background Check System Indices (NICS Indices), as of December 31, 2019**

Department of Justice	Number of records submitted to III <sup>a</sup>	Number of active records in NCIC	Number of active records in NICS Indices
Department of Justice	47	10	7
Bureau of Prisons	2,232	33 <sup>b</sup>	Not listed
Bureau of Alcohol, Tobacco, Firearms and Explosives	7,386	1,178	254
U.S. Drug Enforcement Administration	15,856	0	165
Federal Bureau of Investigation	13,128	6,464	77,755
Federal Criminal Justice Agencies (Other)	Not listed	9	Not listed
U.S. Attorneys’ Office/ Federal Prosecuting Attorneys	777	84	1,378,754

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<b>Department of Justice</b>	<b>Number of records submitted to III<sup>a</sup></b>	<b>Number of active records in NCIC</b>	<b>Number of active records in NICS Indices</b>
U.S. Marshals Service	32,011	25,248	Not listed
<b>Total</b>	<b>71,437</b>	<b>33,026</b>	<b>1,456,935</b>

Source: GAO analysis of Federal Bureau of Investigation data. | GAO-20-528

Note: Not listed indicates the component or organization was not listed for that index for 2019.

<sup>a</sup>Records for the III are arrest submissions reported for calendar year 2019.

<sup>b</sup>Bureau of Prisons counts for NCIC are active records for Federal Corrections.

DOJ submitted its January through June and July through December 2019 semiannual certifications as required by the Fix NICS Act, summarized in table 9 below. DOJ did not explicitly certify its compliance with record submission requirements in its January through June 2019 certification pursuant to the Fix NICS Act, but DOJ officials stated that it fulfilled these requirements for this certification period. DOJ explicitly certified its compliance for the July through December 2019 certification period.

**Table 9: Department of Justice (DOJ) Fix NICS Act Semiannual Certifications for January-June and July-December 2019 Certification Periods**

<b>Agency certified compliance with record submission requirements</b>	<b>Total number of prohibiting records agency reported for this period</b>	<b>Number of records agency submitted to the Attorney General during this period</b>	<b>Efforts to ensure complete and accurate reporting</b>
<b>January through June 2019 Certification Period</b>			
Yes <sup>a</sup>	53,058 <sup>b</sup>	53,058 <sup>b</sup>	DOJ reported that its National Instant Criminal Background Check System (NICS) records working group identified methods to maximize DOJ's compliance with the Fix NICS Act's record-sharing requirements; to improve the quality and timeliness of the department's record-sharing; to increase criminal history record accuracy; and to reduce the burden of the NICS compliance, including the increased use of automated reporting.
<b>July through December 2019 Certification Period</b>			
Yes	52,042 <sup>b</sup>	52,042 <sup>c</sup>	

Source: GAO analysis of DOJ information. | GAO-20-528

<sup>a</sup>While DOJ did not explicitly certify its compliance with the record submission requirements in this certification pursuant to the Fix NICS Act, DOJ officials stated that the department had fulfilled these requirements for this certification period.

<sup>b</sup>According to DOJ, these numbers reflect the net changes in the number of records in the NICS Indices from the beginning of the reporting period to the end of the reporting period. These numbers do not necessarily represent the number of new records submitted by the department during this time frame, as some records were removed during this period as well. For instance, an indictment might

**Appendix I: Selected Federal Agencies Firearm Record Submissions, Certifications, and Implementation Plans**

have been dismissed. These figures reflect the number of records submitted to the NICS Indices. According to DOJ, it does not have the ability to track submissions made by its components to the Interstate Identification Index or National Crime Information Center databases.

<sup>c</sup>DOJ did not include this information in this certification.

DOJ submitted an implementation plan in accordance with the Fix NICS Act, which is summarized in table 10.

**Table 10: Department of Justice (DOJ) Fix NICS Act Implementation Plan Implementation Plan—The Fix NICS Act and DOJ guidance specifies that agency implementation plans are to include these specific elements:**

Element	Description
Efforts to ensure maximum coordination and reporting of records to the Attorney General	DOJ created a working group and charged it with making recommendations intended to, among other things, improve the quality and timeliness of the department’s record-sharing, increase record accuracy, and explore the increased use of automated reporting. For example, DOJ reported that the working group is exploring the feasibility of a computer system that would link DOJ and the Administrative Office of the U.S. Courts case management systems in order to allow for automated record submissions.
Qualitative goals and quantitative measures	DOJ’s target is to increase the completion of its arrest records by 4 percentage points per year, which are currently 84 percent complete. DOJ has ongoing pilot studies to identify challenges, resources, and efforts required to implement a nationwide system to automate criminal history reporting.
Measures to monitor internal compliance	A DOJ office is responsible for auditing use of DOJ computer systems and is to work with department leadership to create annual goals.
A needs assessment with compliance costs	The automation project involving DOJ and the Administrative Office of the U.S. Courts will likely require substantial resources. While DOJ has not yet determined the cost of this system, it plans to submit an updated implementation plan with this information once the working group establishes that this system is feasible.
An estimated date for full compliance with NICS record submission requirements	DOJ estimates that it will take 4 years for it to become fully compliant with the requirement to make complete and accurate records available to the NICS.

Source: GAO analysis of DOJ information. | GAO-20-528

## Department of State

The Department of State (State) submitted firearms-related records to the three databases checked by NICS. These records are shown in table 11.

**Table 11: The Department of State Contributions to the Interstate Identification Index (III), National Crime Information Center (NCIC) Database, and National Instant Criminal Background Check System Indices (NICS Indices), as of December 31, 2019**

Department of State	Number of records submitted to III <sup>a</sup>	Number of active records in NCIC	Number of active records in NICS Indices
Department of State	304	334	51,686
<b>Total</b>	<b>304</b>	<b>334</b>	<b>51,686</b>

Source: GAO analysis of Federal Bureau of Investigation data. | GAO-20-528

<sup>a</sup>Records for the III are arrest submissions reported for calendar year 2019.

**Appendix I: Selected Federal Agencies Firearm Record Submissions, Certifications, and Implementation Plans**

State submitted its January through June and July through December 2019 semiannual certifications as required by the Fix NICS Act, and these certifications are summarized in table 12. State did not explicitly certify its compliance with record submission requirements in its January through June 2019 certifications pursuant to the Fix NICS Act, but State officials told us that the department had fulfilled these requirements for this certification period. State explicitly certified its compliance for the July through December 2019 certification period.

**Table 12: Department of State (State) Fix NICS Act Semiannual Certifications for January-June and July-December 2019 Certification Periods**

<b>Agency certified compliance with record submission requirements</b>	<b>Total number of prohibiting records agency reported for this period</b>	<b>Number of records agency submitted to the Attorney General during this period</b>	<b>Efforts to ensure complete and accurate reporting</b>
<b>January through June 2019 Certification Period</b>			
Yes <sup>a</sup>	<b>3,139</b>	3,139	State reported that it conducted internal outreach, offered training, updated guidance, and monitored compliance via case reviews and quarterly quality control checks.
<b>July through December 2019 Certification Period</b>			
Yes	<b>2,992</b>	2,992	State reported that it trained supervisors and teams via seminars and videos, established an informational internal website, and monitored compliance via mandatory case reviews, random audits, and quality control checks.

Source: GAO analysis of State information. | GAO-20-528

<sup>a</sup>While State did not explicitly certify its compliance with the record submission requirements in this certification pursuant to the Fix NICS Act, State officials told us that the department had fulfilled these requirements for this certification period.

State submitted an implementation plan as required by the Fix NICS Act, which is summarized in table 13.

**Table 13: Department of State (State) Fix NICS Act Implementation Plan Implementation Plan—The Fix NICS Act and Department of Justice guidance specifies that agency implementation plans are to include these specific elements:**

<b>Element</b>	<b>Description</b>
Efforts to ensure maximum coordination and reporting of records to the Attorney General	State described its efforts to coordinate efforts with its National Instant Criminal Background Check System (NICS) liaison and to randomly spot-check of investigative case files for accuracy.
Qualitative goals and quantitative measures	State's goals included, among other things, convening an inter-departmental working group and implementing 100 percent of its updating at least 60 percent of its records with biometric identifiers.

**Appendix I: Selected Federal Agencies Firearm Record Submissions, Certifications, and Implementation Plans**

<b>Element</b>	<b>Description</b>
Measures to monitor internal compliance	State measures included 90-day case reviews; supervisory review of open cases; and, by the end of 2022, random spot-checks of at least 5 percent of its investigative case files.
A needs assessment with compliance costs	State estimated that it would be in compliance by the end of calendar year 2019.
An estimated date for full compliance with NICS record submission requirements	State estimated that it would be in compliance by the end of calendar year 2019.

Source: GAO analysis of State information. | GAO-20-528

## Department of Veterans Affairs

The Department of Veterans Affairs (VA) submitted firearms-related records to the three databases checked by the NICS. These records are shown in table 14.

**Table 14: The Department of Veterans Affairs Contributions to the Interstate Identification Index (III), National Crime Information Center (NCIC), and the National Instant Criminal Background Check System Indices (NICS Indices), as of December 31, 2019**

<b>Department of Veterans Affairs</b>	<b>Number of records submitted to III<sup>a</sup></b>	<b>Number of active records in NCIC</b>	<b>Number of active records in NICS Indices</b>
Department of Veterans Affairs	233	7	256,246
<b>Total</b>	<b>233</b>	<b>7</b>	<b>256,246</b>

Source: GAO analysis of Federal Bureau of Investigation data. | GAO-20-528

<sup>a</sup>Records for the III are arrest submissions reported for calendar year 2019.

VA submitted its January through June and July through December 2019 semiannual certifications as required by the Fix NICS Act. These certifications are summarized in table 15.

**Table 15: Department of Veterans Affairs (VA) Fix NICS Act Semiannual Certifications for January-June and July-December 2019 Certification Periods**

<b>Agency certified compliance with record submission requirements</b>	<b>Total number of prohibiting records agency reported for this period</b>	<b>Number of records agency submitted to the Attorney General during this period</b>	<b>Efforts to ensure complete and accurate reporting</b>
<b>January through June 2019 Certification Period</b>			
Yes <sup>a</sup>	b	25,845 <sup>c</sup>	VA reported that it electronically updated, modified, and removed records at least quarterly.
<b>July through December 2019 Certification Period</b>			
Yes <sup>a</sup>	2,461	2,461 <sup>d</sup>	VA reported that it electronically updated, modified, and removed records monthly.

Source: GAO analysis of VA information. | GAO-20-528

**Appendix I: Selected Federal Agencies Firearm Record Submissions, Certifications, and Implementation Plans**

<sup>a</sup>While the VA did not explicitly certify its compliance with the record submission requirements in this certification pursuant to the Fix NICS Act, VA officials told us that the department had fulfilled these requirements for this certification period.

<sup>b</sup>VA did not include this information in this certification.

<sup>c</sup>This total includes new submissions to the NICS Indices as well as deletions of records that were no longer accurate, for instance because the person the record identified was deceased.

<sup>d</sup>VA submits records on a monthly basis to the NICS Indices with both additions and deletions. The additions are those who are found incompetent to handle their affairs under 18 U.S.C. § 922(g)(4). The deletions include those who were found incompetent but whose competency has been restored, gained a relief under the NICS Improvement Amendments Act of 2007, or those who are now deceased.

VA submitted an implementation plan as required by the Fix NICS Act, which is summarized in table 16.

**Table 16: Department of Veterans Affairs (VA) Fix NICS Act Implementation Plan Implementation Plan—The Fix NICS Act and Department of Justice guidance specifies that agency implementation plans are to include these specific elements:**

<b>Element</b>	<b>Description</b>
Efforts to ensure maximum coordination and reporting of records to the Attorney General	VA works with the Federal Bureau of Investigation (FBI) to ensure that records are accurate. VA records are reported electronically to the FBI monthly.
Qualitative goals and quantitative measures	VA's goals are to increase the frequency of its reporting from monthly to weekly and to maintain a 100-percent accuracy rate.
Measures to monitor internal compliance	VA uses internal performance metrics and quality checks, such as monthly reviews, which are intended to identify program deficiencies and enable management to take corrective action.
A needs assessment with compliance costs	VA plans to increase the frequency of its reporting from monthly to weekly and does not expect this to involve any additional costs.
An estimated date for full compliance with NICS record submission requirements	VA attested that is it already fully compliant with the Fix NICS Act.

Source: GAO analysis of VA information. | GAO-20-528

# Appendix II: Department of Justice Process for Reviewing Federal Agencies' Semiannual Certifications

According to Department of Justice (DOJ) officials, the department's Office of Legal Policy reviews federal agency semiannual certifications and may contact an agency to confirm compliance with Fix NICS Act certification requirements for record submissions and reporting.<sup>1</sup> For example, if an agency submitted a certification without explicitly stating whether the agency was in compliance with the requirement to submit all relevant records, DOJ may contact the agency for an explanation, as shown in figure 8.<sup>2</sup>

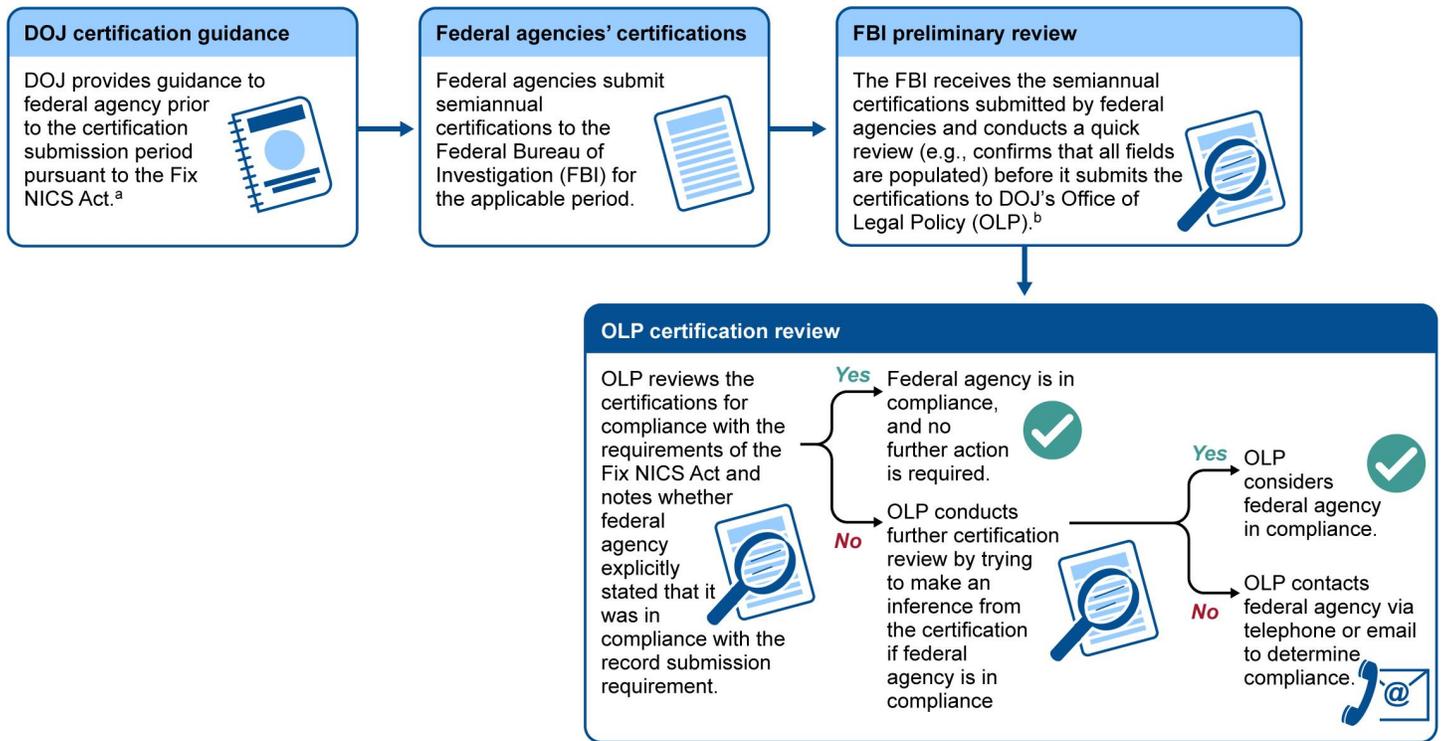
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<sup>1</sup>Pub. L. No. 115-141, Div. S, tit. VI, § 602, 132 Stat. 1132, 1132-35. See 34 U.S.C. § 40901(e)(1)(F).

<sup>2</sup>According to the Fix NICS Act, the head of each federal department or agency is to submit a semiannual written certification to the Attorney General indicating whether it complied with the record submission requirements under 34 U.S.C. § 40901(e)(1)(C), which states that each federal department or agency shall, not less frequently than quarterly, provide records of persons prohibited from receiving or possessing a firearm under 18 U.S.C. § 922(g) and (n) to the Attorney General.

**Appendix II: Department of Justice Process for Reviewing Federal Agencies' Semiannual Certifications**

**Figure 8: Department of Justice (DOJ) Process for Reviewing Federal Agency Semiannual Certifications under the Fix NICS Act**



Source: GAO analysis of DOJ information. | GAO-20-528

<sup>a</sup>According to the Attorney General's semiannual report, the Fix NICS Act was enacted to improve government agencies records submission processes and further strengthen the National Instant Criminal Background Check System (NICS). See Pub. L. No. 115-141, Div. S, tit. VI, § 602, 132 Stat. 1132, 1132-35. See 34 U.S.C. § 40901.

<sup>b</sup>DOJ's OLP develops and implements the department's policy initiatives; coordinates with other department components and other executive branch agencies; and serves as the primary policy advisor to the Attorney General and the Deputy Attorney General, among other things.

For the January through July 2019 certification period, we found that 23 of the 45 federal agencies that indicated they create or possess records that are relevant to the NICS submitted a certification that did not explicitly state whether the agency was in compliance with Fix NICS Act certification requirements for record submissions. DOJ officials acknowledged that many certifications did not explicitly indicate whether the agency was in compliance. To address this issue, the officials said they contacted federal agencies via telephone or email to obtain clarifying information. For example, if an agency submitted a certification indicating that the number of records it possessed and the number of records it submitted were not the same, DOJ may contact the agency to determine the reason why.

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**Appendix II: Department of Justice Process for  
Reviewing Federal Agencies' Semiannual  
Certifications**

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Based on its analysis, DOJ determined that all 23 agencies that did not explicitly state in their certification whether they were in compliance with the requirement to submit all relevant records were in compliance. This information was subsequently included in The Attorney General's Semiannual Report on the Fix NICS Act that was issued to Congress in November 2019.

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# Appendix III: GAO Contact and Staff Acknowledgments

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## GAO Contact

Triana D. McNeil, (202) 512-6691 or [mcneilt@gao.gov](mailto:mcneilt@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Eric Erdman (Assistant Director), Su Jin Yon (Analyst-In-Charge), Willie Commons III, Dominick Dale, Michele Fejfar, Peter Haderlein, Eric Hauswirth, Christoph Hoashi-Erhardt, and Stephan Komadina made significant contributions to this report.

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# Appendix IV: Accessible Data

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## Data Tables

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**Highlights Summary Page Figure: Federal Records in the National Instant Criminal Background Check System Indices by Prohibiting Category, 2010-2019**

Year	Illegal or unlawful alien	Felony conviction	Mental health adjudications	Other records
2010	4413	8	125	54
2011	4802	9	146	64
2012	5217	80	162	68
2013	5621	966	191	119
2014	6346	1022	236	118
2015	6692	1075	264	127
2016	7071	1127	171	126
2017	7352	1205	198	142
2018	7905	1265	250	170
2019	8422	1357	261	197

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**Figure 2: Number of Federal Records Submitted to the Interstate Identification Index, 2010-2019**

Year	U.S. Customs and Border Protection	U.S. Immigration and Customs Enforcement	U.S. Marshals Service	Other agencies <sup>a</sup>
2010	341	284	75	139
2011	380	306	63	177
2012	442	270	72	177
2013	498	259	94	233
2014	501	173	35	108
2015	440	128	30	80
2016	531	131	31	77
2017	333	174	32	77
2018	521	200	33	134
2019	718	137	32	119

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**Figure 3: Active Federal Records in the National Crime Information Center Searched by the National Instant Criminal Background Check System, 2010-2019**

Year	U.S. Immigration and Customs Enforcement	Federal Probation and Parole	U.S. Marshals Service	Other agencies
2010	295	87	21	17
2011	297	97	21	19
2012	297	112	21	21
2013	301	128	22	20
2014	302	126	22	20
2015	281	145	23	20
2016	281	163	24	22
2017	305	165	24	24
2018	313	165	24	25
2019	321	168	25	28

**Figure 4: Active Federal Records in the National Crime Information Center Searched by the National Instant Criminal Background Check System by Record Type, 2010-2019**

Year	Immigration violations	Supervised release	Wanted persons	Other records
2010	292	89	36	2
2011	295	101	36	2
2012	294	119	36	2
2013	297	136	36	2
2014	298	134	36	3
2015	276	153	36	4
2016	277	173	38	2
2017	301	176	38	3
2018	309	175	39	3
2019	317	180	40	5

**Figure 5: Active Federal Records in the National Instant Criminal Background Check System Indices by Federal Agency, 2010-2019**

Year	U.S. Immigration and Customs Enforcement	Federal prosecuting attorneys	Veterans Affairs	Other agencies
2010	4412	0	124	64
2011	4801	0	145	75

2012	5216	71	161	79
2013	5620	991	189	98
2014	6344	1044	234	100
2015	6689	1099	260	108
2016	7066	1152	168	109
2017	7345	1211	194	147
2018	7882	1286	246	175
2019	8376	1379	256	226

**Figure 6: Active Federal Records in the National Criminal Background Check System Indices by Prohibiting Category, 2010-2019**

Year	Illegal or unlawful alien	Felony conviction	Mental health adjudications	Other records
2010	4413	8	125	54
2011	4802	9	146	64
2012	5217	80	162	68
2013	5621	966	191	119
2014	6346	1022	236	118
2015	6692	1075	264	127
2016	7071	1127	171	126
2017	7352	1205	198	142
2018	7905	1265	250	170
2019	8422	1357	261	197