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# GUN CONTROL AND TERRORISM

## FBI Could Better Manage Firearm- Related Background Checks Involving Terrorist Watch List Records





Highlights of [GAO-05-127](#), a report to congressional requesters

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## FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records

### Why GAO Did This Study

Membership in a terrorist organization does not prohibit a person from owning a gun under current law. Thus, during presale screening of prospective firearms purchasers, the National Instant Criminal Background Check System historically did not utilize terrorist watch list records. However, for homeland security and other purposes, the Federal Bureau of Investigation (FBI) and applicable state agencies began receiving notices (effective February 3, 2004) when such screening involved watch lists records. GAO determined (1) how many checks have resulted in valid matches with terrorist watch list records, (2) procedures for providing federal counterterrorism officials relevant information from valid-match background checks, and (3) the extent to which the FBI monitors or audits the states' handling of such checks.

### What GAO Recommends

Proper management of firearm-related background checks involving valid matches with terrorist watch list records is important. GAO recommends that the Attorney General (1) clarify procedures to ensure that the maximum amount of allowable information from these background checks is consistently shared with counterterrorism officials and (2) either strengthen the FBI's oversight of state agencies or have the FBI centrally manage all valid-match background checks. The Department of Justice agreed.

[www.gao.gov/cgi-bin/getrpt?GAO-05-127](http://www.gao.gov/cgi-bin/getrpt?GAO-05-127).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Laurie Ekstrand at (202) 512-8777 or [ekstrandl@gao.gov](mailto:ekstrandl@gao.gov).

### What GAO Found

During the period GAO reviewed—February 3 through June 30, 2004—a total of 44 firearm-related background checks handled by the FBI and applicable state agencies resulted in valid matches with terrorist watch list records. Of this total, 35 transactions were allowed to proceed because the background checks found no prohibiting information, such as felony convictions, illegal immigrant status, or other disqualifying factors.

**Firearm-Related Background Checks with Valid Matches to Terrorist Watch List Records, February 3 through June 30, 2004**

| Agency         | Valid matches | Results of background checks |          |  |
|----------------|---------------|------------------------------|----------|--|
|                |               | Allowed to proceed           | Denied   | Results pending or records not available |
| FBI            | 21            | 19                           | 2        | 0  |
| State agencies | 23            | 16                           | 4        | 3  |
| <b>Total</b>   | <b>44</b>     | <b>35</b>                    | <b>6</b> | <b>3</b>                                 |

Source: GAO analysis of FBI data and interviews with state agency officials.

Federal and state procedures—developed and disseminated under the Department of Justice's direction—do not address the specific types of information from valid-match background checks that can or should be provided to federal counterterrorism officials or the sources from which such information can be obtained. Justice officials told GAO that information from the background check system is not to be used for general law enforcement purposes but can be shared with law enforcement agents or other government agencies in the legitimate pursuit of establishing a match between the prospective gun buyer and a terrorist watch list record and in the search for information that could prohibit the firearm transfer. Most state agency personnel GAO contacted were not aware of any restrictions or limitations on providing valid-match information to counterterrorism officials. FBI counterterrorism officials told GAO that routinely receiving all available personal identifying information and other details from valid-match background checks could be useful in conducting investigations.

As part of routine audits the FBI conducts every 3 years, the Bureau plans to assess the states' handling of firearm-related background checks involving terrorist watch list records. However, given that these background checks involve known or suspected terrorists who could pose homeland security risks, more frequent FBI oversight or centralized management would help ensure that suspected terrorists who have disqualifying factors do not obtain firearms in violation of the law. The Attorney General and the FBI ultimately are responsible for managing the background check system, although they have yet to assess the states' compliance with applicable procedures for handling terrorism-related checks. Also, more frequent FBI oversight or centralized management would help address other types of issues GAO identified—such as several states' delays in implementing procedures and one state's mishandling of a terrorism-related background check.

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### **Abbreviations**

|         |   |
|---------|---|
| ATF     | Bureau of Alcohol, Tobacco, Firearms and Explosives |
| FBI     | Federal Bureau of Investigation                     |
| Justice | Department of Justice                               |
| NICS    | National Instant Criminal Background Check System   |
| TSC     | Terrorist Screening Center                          |
| VGTOF   | Violent Gang and Terrorist Organization File        |

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United States Government Accountability Office  
Washington, DC 20548

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January 19, 2005

The Honorable Joseph R. Biden, Jr.  
Committee on the Judiciary  
U.S. Senate

The Honorable Frank R. Lautenberg  
Committee on Homeland Security and  
Governmental Affairs  
U.S. Senate

Terrorist and criminal watch lists—sometimes referred to as watchout, lookout, target, or tip-off lists—are important tools for law enforcement and homeland security purposes. This report responds to your request for information on how the Federal Bureau of Investigation’s (FBI) National Instant Criminal Background Check System (NICS) handles checks of prospective firearms purchasers that hit on and are confirmed to match terrorist watch list records.

As you know, under the Brady Handgun Violence Prevention Act and implementing regulations, the FBI and designated state and local criminal justice agencies use NICS to conduct background checks on individuals seeking to purchase firearms or obtain permits to possess, acquire, or carry firearms.<sup>1</sup> During the NICS check, descriptive data provided by an individual—such as name and date of birth—are used to search databases containing criminal history and other relevant records to determine whether or not the person is disqualified by law from receiving or possessing firearms. For instance, persons prohibited by federal law from receiving firearms include convicted felons, fugitives, unlawful drug users, and aliens illegally or unlawfully in the United States.

According to the Department of Justice (Justice), under federal and state law, neither suspected nor actual membership in a terrorist organization is a stand-alone factor that would prohibit a person from receiving or possessing a firearm. Thus, FBI and state personnel processing NICS transactions historically did not receive notice when NICS searches hit on terrorist watch list records. In such cases, if there were no other records in

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<sup>1</sup>Brady Handgun Violence Prevention Act, Public Law 103-159, 107 Stat. 1536 (1993).

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the databases checked by NICS showing the person to be prohibited, the transaction received an immediate “proceed” response. However, in November 2003, Justice directed the FBI to revise its procedures to better ensure that suspected members of terrorist organizations who have disqualifying factors do not receive firearms in violation of the law. Under revised procedures effective February 3, 2004, all NICS transactions with potential or valid matches to terrorist watch list records are automatically delayed to give NICS personnel the chance to further research the transaction for prohibiting information before a response (e.g., proceed or denied) is given to the initiator of the background check. If no prohibiting information is found, the transaction may proceed and a known or suspected terrorist can legally purchase firearms.

This report addresses the following questions regarding NICS and terrorist watch lists:

- What terrorist watch lists are searched during NICS background checks?
- How many NICS transactions have resulted in valid matches with terrorist watch list records?
- For valid matches, what are federal and state procedures for sharing NICS-related information with federal counterterrorism officials?
- To what extent does the FBI monitor the states’ handling of NICS transactions with valid matches to terrorist watch list records? What issues, if any, have state agencies encountered in handling such transactions?

Also, appendix II of this report presents summary information on federal and state requirements for retaining information related to NICS transactions with valid matches to terrorist watch list records.

In performing our work, we interviewed officials from the Department of Justice, the FBI, and the Terrorist Screening Center—a multiagency center responsible for consolidating federal terrorist watch lists—and reviewed documentation they provided us. We obtained data on NICS transactions that resulted in valid matches with terrorist watch list records during the period February 3, 2004 (when the revised NICS procedures took effect), through June 30, 2004. We also contacted 11 states (California, Colorado, Florida, Hawaii, Illinois, Massachusetts, North Carolina, Pennsylvania, Tennessee, Texas, and Virginia) that FBI data indicated—and the states subsequently confirmed—had processed NICS checks (during the period February 3 through June 30, 2004) that resulted in one or more valid matches with terrorist watch list records. The results of our interviews

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with state officials may not be representative of the views and opinions of others nationwide. We were unable to fully assess the reliability or accuracy of the data provided to us because of ongoing terrorism investigations. However, we did discuss the sources of data with FBI and state officials and determined that the data were sufficiently reliable for the purposes of this review. Further, we reviewed applicable laws, procedures, and other documents related to handling NICS transactions that hit on terrorist watch list records or the retention of NICS information.

We performed our work from April through December 2004 in accordance with generally accepted government auditing standards. Appendix I presents more details about our objectives, scope, and methodology.

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## Results in Brief

During presale screening of prospective firearms purchasers, NICS searches terrorist watch list records generated by numerous federal agencies, including components of the Departments of Justice, State, and Homeland Security. Applicable records are consolidated by the Terrorist Screening Center, which then makes them available for certain uses or purposes, such as inclusion in an FBI database that is searched during NICS checks of prospective firearms purchasers.

During the period February 3 through June 30, 2004, a total of 44 NICS transactions (involving 36 different individuals) resulted in valid matches with terrorist watch list records, according to FBI data and our interviews with state agency officials. Of the 44 transactions with valid matches, 35 were allowed to proceed because the background checks found no prohibiting information, such as felony convictions or illegal immigrant status; 6 were denied based on prohibiting information; and 3 were either pending a final resolution or the final resolution was not available. We could not determine whether the individuals who had more than one valid match had actually attempted to purchase firearms or acquire firearms permits on separate occasions, or if the multiple transactions were run for other purposes (e.g., rechecks), in part because information related to applicable NICS records was not available due to legal requirements for destroying information on transactions that are allowed to proceed.<sup>2</sup>

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<sup>2</sup>In December 2004, FBI officials told us that—during the period July 1 through October 31, 2004—the FBI handled an additional 14 NICS transactions with valid matches to terrorist watch list records, of which 12 were allowed to proceed and 2 were denied. It was beyond the scope of our work to assess the reliability or accuracy of the additional data.

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For valid matches, federal and state procedures—developed and disseminated under the Department of Justice’s direction—do not address the specific types of information from NICS transactions that can or should be provided to federal counterterrorism officials or the sources from which such information can be obtained. Justice’s position is that the types of information that can be routinely provided generally are limited to the information contained within the NICS database, such as certain biographical data collected from a gun dealer for purposes of running a NICS check (e.g., name and date of birth). Justice noted, however, that NICS personnel can request additional information from a gun dealer or from a law enforcement agency processing a firearms permit application, if that information is requested by a counterterrorism official in the legitimate pursuit of establishing a match between the prospective gun buyer and a terrorist watch list record. Justice told us that in cases in which a match is established and law enforcement agents want additional information about the firearm transaction—such as the residence address of the prospective firearm purchaser or the make and model of the firearm(s) to be transferred—law enforcement officers could coordinate with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to have ATF request such information from the gun dealer’s records without a warrant. Most state agency personnel we contacted were not aware of any restrictions or limitations on sharing information with counterterrorism officials. Most state personnel told us that—at the request of counterterrorism officials—the state would contact the gun dealer or refer to the state permit application to obtain and provide all available information related to a NICS transaction. FBI counterterrorism officials told us that receiving all available personal identifying information and other details from terrorism-related NICS transactions could be useful in conducting investigations.

Although the Attorney General and the FBI ultimately are responsible for managing NICS, the FBI has not routinely monitored the states’ handling of NICS transactions with valid matches to terrorist watch list records. For example, while the FBI has notified state agencies about the procedures for handling NICS transactions with valid matches to terrorist watch list records, it has not routinely assessed the extent to which the states have implemented and followed procedures. According to the FBI, routine monitoring of the states has not been performed because of the difficulty in obtaining reliable state data. The FBI’s plans call for auditing the states’ compliance with the procedures every 3 years. However, given that valid-match background checks involve known or suspected terrorists who could pose homeland security risks, more timely or more frequent monitoring would help ensure that terrorists who have disqualifying



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factors do not obtain firearms in violation of the law. Also, under the FBI's planned 3-year audit cycle, relevant information from valid-match checks may have been destroyed pursuant to federal or state laws and therefore not available for review. Our work revealed several issues state agencies have encountered in handling terrorism-related NICS transactions, including delays in implementing procedures and a mishandled transaction.

This report provides recommendations for the Attorney General to (1) clarify procedures to ensure that the maximum amount of allowable information from terrorism-related NICS transactions is consistently shared with counterterrorism officials and (2) either implement more frequent monitoring by the FBI of applicable state agencies or have the FBI centrally manage all terrorism-related background checks. The Department of Justice agreed with our recommendations.

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## Background

The permanent provisions of the Brady Handgun Violence Prevention Act took effect on November 30, 1998. Under the Brady Act, before a federally licensed firearms dealer can transfer a firearm to an unlicensed individual, the dealer must request a background check through NICS to determine whether the prospective firearm transfer would violate federal or state law.<sup>3</sup> The Brady Act's implementing regulations also provide for conducting NICS checks on individuals seeking to obtain permits to possess, acquire, or carry firearms. According to the Department of Justice, under current law, inclusion on a terrorist watch list is not a stand-alone factor that would prohibit a person from receiving or possessing a firearm. Thus, if no other federal or state prohibitors exist, a known or suspected terrorist can legally purchase firearms.

Approximately 8.5 million background checks are run through NICS each year, of which about one-half are processed by the FBI's NICS Section and one-half by designated state and local criminal justice agencies. Under

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<sup>3</sup>Under federal law, persons are prohibited from receiving a firearm if they (1) have been convicted of, or are under indictment for, a felony; (2) are a fugitive from justice; (3) are unlawful drug users or are addicted to a controlled substance; (4) have been involuntarily committed to a mental institution or judged to be mentally defective; (5) are aliens illegally or unlawfully in the United States, or certain other aliens admitted under a nonimmigrant visa; (6) have been dishonorably discharged from the military; (7) have renounced their U.S. citizenship; (8) are under a qualifying domestic violence restraining order; or (9) have been convicted of a misdemeanor crime of domestic violence. See 18 U.S.C. § 922(g) and § 922(n).

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federal and state requirements, prospective firearms purchasers must provide information that is needed to initiate a NICS background check. For example, in order to receive a firearm from a licensed dealer, federal regulations require an individual to complete a Firearms Transaction Record (ATF Form 4473). Among other things, this form requires prospective purchasers to provide the following descriptive data: name, residence address, place of birth, height and weight, sex, date of birth, race, state of residence, country of citizenship, and alien registration number (for non-U.S. citizens). A Social Security number is optional. Firearms dealers use the Form 4473 to record information about the firearms transaction, including the type of firearm(s) to be transferred (e.g., handgun or long gun); the response provided by the FBI's NICS Section or state agency (e.g., proceed or denied); and information specifically identifying each firearm to be transferred (e.g., manufacturer, model, and serial number), which shows whether the transaction involves the purchase of multiple firearms. Individuals applying for state permits to possess, acquire, or carry firearms also are required to provide personal descriptive data on a state permit application. State laws vary in regard to the types of information required from permit applicants.

The purpose of the NICS background check is to search for the existence of a prohibitor that would disqualify a potential buyer from purchasing a firearm pursuant to federal or state law. During the NICS check, descriptive data provided by an individual—such as name and date of birth—are used to search databases containing criminal history and other records supplied by federal, state, and local agencies.<sup>4</sup> One of the databases searched by NICS is the FBI's National Crime Information Center database, which contains criminal justice information (e.g., names of persons who have outstanding warrants) and also includes records on persons identified as known or suspected members of terrorist organizations. The terrorist-related records are maintained in the National Crime Information Center's Violent Gang and Terrorist Organization File (VGTOF), which was designed to provide law enforcement personnel with

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<sup>4</sup>In earlier reports, we provided a detailed overview of NICS operations. See GAO, *Gun Control: Implementation of the National Instant Criminal Background Check System*, [GAO/GGD/AIMD-00-64](#) (Washington, D.C.: Feb. 29, 2000); GAO, *Gun Control: Options for Improving the National Instant Criminal Background Check System*, [GAO/GGD-00-56](#) (Washington, D.C.: Apr. 12, 2000); and GAO, *Gun Control: Opportunities to Close Loopholes in the National Instant Criminal Background Check System*, [GAO-02-720](#) (Washington, D.C.: July 12, 2002).

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the means to exchange information on members of violent gangs and terrorist organizations.

Although NICS checks have included searches of terrorist records in VGTOF, NICS personnel at the FBI and state agencies historically did not receive notice when there were hits on these records. The FBI blocked the VGTOF responses (i.e., the responses were not provided to NICS personnel) under the reasoning that VGTOF records contain no information that would legally prohibit the transfer of a firearm under federal or state law. However, in November 2002, the FBI began an audit of NICS transactions where information indicated the individual was an alien, including transactions involving VGTOF records. In one instance involving a VGTOF record, the audit revealed that an FBI field agent had knowledge of prohibiting information not yet entered into the automated databases checked by NICS. As a result, in November 2003, the Department of Justice—citing Brady Act authorities—directed the FBI to revise NICS procedures to better ensure that subjects of VGTOF records who have disqualifying factors do not receive firearms in violation of applicable federal or state law. Specifically, the Brady Act authority cited allows the FBI up to 3 business days to check for information demonstrating that a prospective buyer is prohibited by law from possessing or receiving a firearm.<sup>5</sup>

Under revised procedures effective February 3, 2004, FBI and state personnel who handle NICS transactions began receiving notice of transactions that hit on VGTOF records. Also, under the revised procedures, all NICS transactions with potential or valid matches to VGTOF records are automatically delayed to give NICS personnel the chance to further research the transaction before a response (e.g., proceed or denied) is given to the initiator of the background check. For all potential or valid matches with terrorist records in VGTOF, NICS personnel are to begin their research by contacting the Terrorist Screening Center (TSC) to verify that the subject of the NICS transaction matches the subject of the VGTOF record, based on the name and other descriptors.<sup>6</sup> For confirmed matches, NICS personnel are to determine whether federal counterterrorism officials (e.g., FBI field agents) are

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<sup>5</sup>18 U.S.C. § 922(t)(1)(B)(ii).

<sup>6</sup>Pursuant to Homeland Security Presidential Directive 6, TSC was established on September 16, 2003, to consolidate the government's approach to terrorism screening and provide for the appropriate and lawful use of terrorist information in screening processes.

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aware of any information that would prohibit the individual by law from receiving or possessing a firearm. For example, FBI field agents could have information not yet posted to databases checked by NICS showing the person is an alien illegally or unlawfully in the United States. If counterterrorism officials do not provide any prohibiting information, and there are no other records in the databases checked by NICS showing the individual to be prohibited, NICS personnel are to advise the initiator of the background check that the transaction may proceed. If the NICS background check is not completed within 3 business days, the gun dealer may transfer the firearm (unless state law provides otherwise).

Designated state and local criminal justice agencies are responsible for conducting background checks in accordance with NICS policies and procedures. However, the Attorney General and the FBI ultimately are responsible for managing the overall NICS program. Thus, the FBI's Criminal Justice Information Services Division conducts audits of the states' compliance with federally established NICS regulations and guidelines. Also, the FBI is a lead U.S. law enforcement agency responsible for investigating terrorism-related matters.

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## NICS Searches Terrorist Watch List Records Generated by Numerous Federal Agencies

During presale screening of prospective firearms purchasers, NICS searches terrorist watch list records generated by numerous federal agencies, including components of the Departments of Justice, State, and Homeland Security. Applicable records are consolidated by TSC, which then makes them available for certain uses or purposes, such as inclusion in VGTOF—a database routinely searched during NICS background checks.

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## Numerous Federal Agencies Maintain Terrorist Watch Lists

Terrorist watch lists are maintained by numerous federal agencies. These lists contain varying types of data, from biographical data—such as a person's name and date of birth—to biometric data—such as fingerprints. Our April 2003 report identified 12 terrorist or criminal watch lists that were maintained by nine federal agencies.<sup>7</sup> Table 1 shows the 12 watch lists and the current agencies that maintain them.

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<sup>7</sup>See GAO, *Information Technology: Terrorist Watch Lists Should Be Consolidated to Promote Better Integration and Sharing*, [GAO-03-322](#) (Washington, D.C.: Apr. 15, 2003).

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**Table 1: Watch Lists Maintained by Federal Agencies**

| <b>Department</b>                        | <b>Agency</b>                                | <b>Watch list</b>   |
|--|--|---|
| State                                    | Bureau of Consular Affairs                   | Consular Lookout and Support System                                 |
|  | Bureau of Intelligence and Research          | TIPOFF <sup>a</sup>   |
| Homeland Security                        | U.S. Customs and Border Protection           | Interagency Border Inspection System                                |
|  | Transportation Security Administration       | No-Fly List   |
|  |  | Selectee List   |
|  | U.S. Immigration and Customs Enforcement     | National Automated Immigration Lookout System                       |
|  |  | Automated Biometric (fingerprint) Identification System             |
| Justice                                  | U.S. Marshals Service                        | Warrant Information Network   |
|  | FBI  | Violent Gang and Terrorist Organization File                        |
|  |  | Integrated Automated Fingerprint Identification System <sup>b</sup> |
| U.S. National Central Bureau of Interpol | Interpol Terrorism Watch List                |   |
| Defense                                  | Air Force (Office of Special Investigations) | Top 10 Fugitive List  |

Source: GAO.

<sup>a</sup>In November 2003, the Terrorist Threat Integration Center assumed responsibility for the functions of the Department of State's TIPOFF counterterrorism program. The Terrorist Threat Integration Center was created in January 2003 to merge and analyze terrorist-related information collected domestically and abroad in order to form the most comprehensive possible threat picture.

<sup>b</sup>The Integrated Automated Fingerprint Identification System is the FBI system for searching the fingerprint-supported criminal history records maintained by the FBI. The fingerprints and corresponding criminal history information are submitted by federal, state, and local law enforcement agencies.

At the time we issued our April 2003 report, federal agencies did not have a consistent and uniform approach to sharing terrorist watch list information.

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## TSC Was Established to Consolidate Terrorist Watch Lists

TSC was established in September 2003 to consolidate the government's approach to terrorism screening and provide for the appropriate and lawful use of terrorism information. In addition to consolidating terrorist watch list records, TSC serves as a single point of contact for law enforcement authorities requesting assistance in the identification of

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subjects with possible ties to terrorism. TSC has access to supporting information behind terrorist records and can help resolve issues regarding identification. TSC also coordinates with the FBI's Counterterrorism Division to help ensure appropriate follow-up actions are taken.

TSC receives the vast majority of its information about known or suspected terrorists from the Terrorist Threat Integration Center, which assembles and analyzes information from a wide range of sources. In addition, the FBI provides TSC with information about purely domestic terrorism (i.e., activities having no connection to international terrorism). According to TSC officials, from December 1, 2003—the day TSC achieved an initial operating capability—to March 12, 2004, TSC consolidated information from 10 of the 12 watch lists shown in table 1 into a terrorist-screening database. The officials noted that the database has routinely been updated to add new information. Further, TSC officials told us that information from the remaining 2 watch lists—the U.S. Immigration and Customs Enforcement's Automated Biometric Identification System and the FBI's Integrated Automated Fingerprint Identification System—will be added to the consolidated database at a future date not yet determined.

A provision in the Intelligence Authorization Act for Fiscal Year 2004 required the President to submit a report to Congress by September 16, 2004, on the operations of TSC.<sup>8</sup> Among other things, this report was to include

- a determination of whether the data from all the watch lists enumerated in our April 2003 report have been incorporated into the consolidated terrorist-screening database;
- a determination of whether there remain any relevant databases not yet part of the consolidated database; and
- a schedule setting out the dates by which identified databases—not yet part of the consolidated database—would be integrated.

As of November 2004, the report on TSC operations had not been submitted to Congress.

TSC, through the participation of the Departments of Homeland Security, Justice, and State and intelligence community representatives, determines

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<sup>8</sup>Public Law 108-177, 117 Stat. 2599, 2623, 2624 (2003).

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what information in the terrorist-screening database will be made available for which types of screening purposes.

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### **Eligible TSC Records Are Added to VGTOF and Searched by NICS**

In November 2003, the Department of Justice directed the FBI's NICS Section to develop appropriate procedures for NICS searches of TSC records when the center and its consolidated watch list database were established and operational. In accordance with this directive, the FBI and TSC have implemented procedures that allow all eligible records in the center's consolidated terrorist-screening database to be added to VGTOF and searched during NICS background checks. According to FBI and TSC officials, since December 2003, eligible records from the terrorist-screening database have been added to VGTOF and searched during NICS background checks.

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### **NICS Transactions Resulted in 44 Valid Matches with Terrorist Records in VGTOF**

For the period February 3 through June 30, 2004, FBI data and our interviews with state agency officials indicated that 44 NICS transactions resulted in valid matches with terrorist records in VGTOF. Of this total, 35 transactions were allowed to proceed because the background checks found no prohibiting information, such as felony convictions or illegal immigrant status, as shown in table 2.

**Table 2: NICS Transactions with Valid Matches to Terrorist Records in VGTOF, February 3 through June 30, 2004**

| Agency handling transactions | Valid matches         | Results of valid matches        |                     |                                      |                             |
|------------------------------|-----------------------|---------------------------------|---------------------|--------------------------------------|-----------------------------|
|                              |                       | Transactions allowed to proceed | Transactions denied | Transactions unresolved <sup>a</sup> | Unknown status <sup>b</sup> |
| FBI                          | 21                    | 19                              | 2                   | 0                                    | 0                           |
| State agencies               | 23 <sup>c</sup>       | 16                              | 4                   | 1                                    | 2                           |
| <b>Total</b>                 | <b>44<sup>d</sup></b> | <b>35</b>                       | <b>6</b>            | <b>1</b>                             | <b>2</b>                    |

Source: GAO analysis of data provided by the FBI's NICS Section and interviews with state agency officials.

<sup>a</sup>Transactions unresolved refers to open transactions pending a final proceed or denied determination.

<sup>b</sup>Unknown status consists of closed transactions for which the final proceed or denied determination was not available.

<sup>c</sup>The 23 valid matches handled by state agencies occurred in 11 states that process NICS transactions (Calif., Colo., Fla., Hawaii, Ill., Mass., N.C., Pa., Tenn., Tex., and Va.).

<sup>d</sup>Of the 44 total valid matches, 30 were related to prospective gun purchases and 14 involved applications for permits to possess, carry, or acquire firearms.

According to FBI data and our interviews with state agency officials, the 44 total valid matches shown in table 2 involved 36 different individuals (31 individuals had one match and 5 individuals had more than one match). We could not determine whether the 5 individuals with more than one match had actually attempted to purchase firearms or acquire firearms permits on separate occasions, in part because information related to applicable NICS records was not available due to legal requirements for destroying information on transactions that are allowed to proceed.<sup>9</sup> Our work indicated that the multiple transactions could have, for example, been run for administrative purposes (e.g., rechecks).

The FBI's revised procedures for handling NICS transactions with valid matches to terrorist watch list records—i.e., to delay the transactions to give NICS personnel the chance to further research for prohibitors—have successfully resulted in the denial of firearms transactions involving known or suspected terrorists who have disqualifying factors. Specifically, two of the six denied transactions shown in table 2 were based on prohibiting information provided by FBI field agents that had not yet been

<sup>9</sup>Additional information on federal and state requirements for retaining records related to NICS transactions is presented in appendix II.



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entered in automated databases checked by NICS. According to agency officials in the two states that handled the transactions, FBI field agents provided information showing that one of the individuals was judged to be mentally defective and the other individual was an alien illegally or unlawfully in the United States. Based on this information, both firearm transfers were denied.

The vast majority of NICS transactions that generated initial hits on terrorist records in VGTOF did not result in valid matches. Specifically, during the period in which the 44 valid matches were identified—February 3 through June 30, 2004—officials from the FBI’s NICS Section estimated that approximately 650 NICS transactions generated initial hits on terrorist records in VGTOF.<sup>10</sup> The high rate of potential matches returned—i.e., VGTOF records returned as potential matches based upon the data provided by the prospective purchaser—is due to the expanded search parameters used to compare the subject of a background check with a VGTOF record. An FBI NICS Section official told us that by comparing data from the NICS transaction (e.g., name, date of birth, and Social Security number) with data from the VGTOF record, it generally is easy to determine if there is a potential or valid match. The official told us that NICS personnel drop the false hits from further consideration and follow up only on transactions considered to be potential or valid matches. A false hit, for example, could occur when the subject of a NICS transaction and the subject of a VGTOF record have the same or a similar name but a different date of birth and Social Security number.

As table 2 shows, the 44 NICS transactions with valid matches to terrorist records in VGTOF were processed by the FBI’s NICS Section and 11 states during the period February 3 through June 30, 2004. In December 2004, FBI officials told us that during the 4 months following June 2004—that is, during July through October 2004—the FBI’s NICS Section handled an additional 14 transactions with valid matches to terrorist records in VGTOF. Of the 14 transactions with valid matches, FBI officials told us that 12 were allowed to proceed because the background checks found no prohibiting information, and 2 were denied based on prohibiting

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<sup>10</sup>The FBI did not have data on the specific number of NICS transactions that hit on terrorist records in VGTOF. However, for the period February 3 through June 30, 2004, FBI data showed that a total of 1,660 NICS transactions hit on either terrorist or violent gang records in VGTOF. FBI officials estimated that approximately 40 percent (about 650) of the 1,660 hits were on terrorist records.

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information. It was beyond the scope of our work to assess the reliability or accuracy of the additional data.

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## NICS Procedures Contain General Guidelines for Sharing Information with Counterterrorism Officials

Federal and state procedures—developed and disseminated under the Department of Justice’s direction—contain general guidelines that allow FBI and state personnel to share information from NICS transactions with federal counterterrorism officials, in the pursuit of potentially prohibiting information about a prospective gun buyer. However, the procedures do not address the specific types of information that can or should be provided or the sources from which such information can be obtained. Justice’s position is that the types of information that can be routinely provided generally are limited to the information contained within the NICS database. Justice noted, however, that NICS personnel can request additional information from a gun dealer or from a law enforcement agency processing a firearms permit application, if that information is requested by a counterterrorism official in the legitimate pursuit of establishing a match between the prospective gun buyer and a VGTOF record. Most state personnel told us that—at the request of counterterrorism officials—the state would contact the gun dealer or refer to the state permit application to obtain and provide all available information related to a NICS transaction. FBI counterterrorism officials told us that receiving all available personal identifying information and other details from terrorism-related NICS transactions could be useful in conducting investigations.

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## FBI NICS Section Procedures and Guidance for Sharing NICS-Related Information

As mentioned previously, for all potential or valid matches with terrorist records in VGTOF, NICS personnel are to begin their research by contacting TSC to verify the match. According to the procedures used by the FBI’s NICS Section, during the screening process, TSC will ask NICS staff to provide “all information available in the transaction,” including the location of the firearms dealer, in the pursuit of identifying a valid match. If a coordinated effort by TSC and FBI NICS Section staff determines that the subject of the NICS transaction appears to match a terrorist record in VGTOF—based on the name and other descriptors—TSC is to refer the NICS Section staff to the FBI’s Counterterrorism Division for follow-up. Further, the procedures note that there will be instances when NICS Section staff are contacted directly by a case agent, who will ask the NICS Section staff to share “additional information from the transaction or provide necessary information to complete the transaction.”

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## Justice's Position on Sharing NICS-Related Information

The Department of Justice's position is that information from the NICS database is not to be used for general law enforcement purposes.<sup>11</sup> Justice noted, however, that information about a NICS transaction can be shared with law enforcement agents or other government agencies in the legitimate pursuit of establishing a match between the prospective gun buyer and a VGTOF record and in the search for information that could prohibit the firearm transfer. Justice explained that the purpose of NICS is to determine the lawfulness of proposed gun transactions, not to provide law enforcement agents with intelligence about lawful gun purchases by persons of investigative interest. Thus, Justice told us that as set forth in NICS procedures, all information about a transaction hitting on a VGTOF record can be shared with field personnel in the pursuit of establishing whether the person seeking to buy the gun is the same person with the terrorist record in VGTOF. Justice added that this is done during the search for prohibiting information about the person whose name hit on the VGTOF record. Further, Justice noted that information about NICS transactions also can be and routinely is shared by NICS with law enforcement agencies when the information indicates a violation, or suspected violation, of law or regulation.<sup>12</sup>

According to Justice, the types of information that can be routinely shared under NICS procedures generally are limited to the information collected by or contained within the NICS database. Specifically, Justice noted that—in verifying a match and determining whether prohibiting information exists—the following information can be routinely shared with TSC and counterterrorism officials:

- certain biographical data from the ATF Form 4473 collected from a gun dealer for purposes of running a NICS check (e.g., name, date of birth, race, sex, and state of residence);
- the specific date and time of the transaction;
- the name, street address, and phone number of the gun dealer; and
- the type of firearm (e.g., handgun or long gun), if relevant to helping confirm identity.

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<sup>11</sup>As a basis for its position related to proceeded gun transactions, Justice noted that the Brady Act restricts the use of identifying information in NICS by prohibiting the use of such information to establish a national registry of firearm owners and requiring destruction of the information to protect the privacy of lawful gun purchasers. In addition, Justice noted that recent appropriations act provisions require such identifying information in NICS be destroyed within 24 hours of advising a gun dealer that a transaction may proceed.

<sup>12</sup>See NICS Privacy Act Notice, Routine Use C, 63 Fed. Reg. 65,223, 65,224 (1998).

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Justice told us that additional information contained in the ATF Form 4473, such as residence address or the number and make and model of guns being sold, is not required or necessary to run a NICS check. Justice noted, however, that there are times when NICS personnel will contact a gun dealer and request a residence address on a person who is determined to be prohibited from purchasing firearms—such as when there is a hit on a prohibiting arrest warrant record—so that the information can be supplied to a law enforcement agency to enforce the warrant. Similarly, Justice told us that NICS procedures do not prohibit NICS personnel from requesting a residence address from a gun dealer—or from a law enforcement agency issuing a firearms permit in the case of a permit check—if that information is requested by a counterterrorism official in the pursuit of establishing a match between the gun buyer and the VGTOF record. Justice noted that gun dealers are not legally obligated under either NICS or ATF regulations to provide this information to NICS personnel but frequently do cooperate and provide the residence information when specifically requested by NICS personnel.

Further, Justice told us that in cases in which a match is established and the field does not have the residence address or wants the address or other additional information on the Form 4473 regarding a “proceeded” transaction, FBI personnel can then coordinate with ATF to request the information from the gun dealer’s records without a warrant. Specifically, Justice cited provisions in the Gun Control Act of 1968, as amended, that give the Attorney General the authority to inspect or examine the records of a gun dealer without a warrant “in the course of a reasonable inquiry during the course of a criminal investigation of a person or persons other than the [federal firearms] licensee.”<sup>13</sup> Justice explained that unless the person is prohibited or there is an indication of a violation or potential violation of law, FBI NICS personnel do not perform this investigative function for the field. FBI field personnel can, however, get the investigative information from gun dealers through coordination with ATF.

We recognize that current procedures allow NICS personnel to share “all information available in the transaction” with TSC or counterterrorism officials, in the pursuit of identifying a true match and the discovery of

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<sup>13</sup>See 18 U.S.C. § 923(g)(1)(B)(i). In general, the Attorney General has delegated to the Bureau of Alcohol, Tobacco, Firearms and Explosives—subject to his and the Deputy Attorney General’s direction—the authority to investigate, administer, and enforce the laws relating to firearms, including exercising the function and powers of the Attorney General under various federal firearms laws (see 28 C.F.R. § 0.130).

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information that is prohibiting. However, given Justice’s interpretation, we believe that clarifying the procedures would help ensure that the maximum amount of allowable information from terrorism-related NICS transactions is consistently shared with counterterrorism officials. For example, under current procedures, it is not clear if the types of information that can or should be routinely shared are limited to the information contained within the NICS database or if additional information can be requested from the gun dealer or from the law enforcement agency processing a permit application.

### Types of Information Shared by the FBI’s NICS Section

The FBI’s NICS Section did not maintain data on the types of information it shared with TSC or counterterrorism officials to (1) verify matches between NICS transactions and VGTOF records or (2) pursue the existence of firearm possession prohibitors. According to the NICS Section, such data are not maintained because NICS procedures provide for the sharing of all information available from the transaction, including the location of the gun dealer, in the pursuit of identifying a true match. The NICS Section told us that data required to initiate a NICS check—such as name, date of birth, sex, race, state of residence, citizenship, and purpose code (e.g., firearm check or permit check)—are captured in the NICS database and shared on every NICS transaction. A NICS Section official told us that the specific or approximate date and time of each transaction also is consistently shared with TSC.

TSC did maintain data on the types of information shared by the NICS Section. Specifically, in verifying matches, TSC data showed that NICS Section staff shared basic identifying information about the prospective purchasers (e.g., name, date of birth, and Social Security number). However, TSC data showed that NICS Section staff did not consistently share the specific location or phone number of the gun dealer. According to the procedures used by the FBI’s NICS Section, in the pursuit of identifying a valid match, TSC will ask NICS staff to provide the location of the gun dealer. The NICS Section told us that this includes the specific location and phone number of the gun dealer.

According to TSC officials, once the FBI’s NICS Section has shared information on an identity match and TSC verifies the match, the information provided by the NICS Section is forwarded to the FBI’s Counterterrorism Division. The Counterterrorism Division is to then contact the NICS Section to follow up on the match. If the NICS Section does not receive a response from the Counterterrorism Division, the NICS Section is to aggressively pursue contacting the division to resolve the transaction. Counterterrorism Division officials told us the information

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provided by the NICS Section is routinely shared with field agents familiar with the terrorist records in VGTOF.

NICS Section officials also told us that for each transaction with a valid match to a VGTOF record, NICS Section staff talked directly to a field agent to pursue prohibiting information.<sup>14</sup> The NICS Section did not maintain data on what, if any, additional information from the NICS transactions was shared during these discussions. However, NICS Section officials told us that in no cases did NICS staff contact the gun dealer to obtain—and provide to counterterrorism officials—additional information about the firearm transaction (e.g., information such as the prospective purchaser’s residence address) that was not submitted as part of the initial NICS check or already contained within NICS. The NICS Section was aware of one instance in which NICS staff was asked by a counterterrorism official to obtain address information to assist in determining whether a VGTOF hit was a valid match. In that case—involving a firearm permit check—the NICS staff was able to get residence address information from the law enforcement agency processing the permit application and provide it to the counterterrorism official.

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## State Agency Procedures and Guidance for Sharing NICS-Related Information

According to the FBI-disseminated procedures used by state agencies, in the process of contacting TSC, state staff are to share “all information available in the transaction,” including the location of the firearms dealer, in the pursuit of identifying a true match and determining the existence of prohibiting information. If TSC and state staff make an identity match, TSC is to refer the state staff to the FBI’s Counterterrorism Division for follow-up. Unlike the procedures used by the FBI’s NICS Section, the state agency procedures do not address whether there will be instances when state staff are to be contacted directly by a case agent, or what additional information from the NICS transaction could be shared during such contacts.

Most state agency officials we contacted told us they interpreted the procedures as allowing them to share all available information related to a NICS transaction requested by counterterrorism officials, including any information contained on the forms used to purchase firearms or apply for

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<sup>14</sup>We did not interview FBI field agents because the NICS transactions and related VGTOF records involved ongoing terrorism investigations. Instead, we interviewed officials from the FBI’s Counterterrorism Division who were responsible for coordinating with field agents to determine whether or not they were aware of prohibiting information.

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firearms permits. Also, most state agency officials told us they were not aware of any restrictions or specific FBI guidance on the types of information that could or could not be shared with counterterrorism officials. According to the FBI's NICS Section, the procedures used by state agencies note that in the process of contacting TSC, state staff will share all information available in the transaction in the pursuit of identifying a true match and the discovery of information that is prohibiting. As mentioned previously, we believe that clarifying the procedures would help ensure that the maximum amount of allowable information from terrorism-related NICS transactions is consistently shared with counterterrorism officials.

The state agencies we contacted did not maintain data on the types of information they shared with TSC or counterterrorism officials to verify matches between NICS transactions and VGTOF records or pursue prohibiting information. However, in verifying matches, TSC data showed that state agency staff shared basic identifying information about the prospective purchasers (e.g., name, date of birth, and Social Security number). TSC data also showed that state agency staff did not consistently share the specific location or phone number of the gun dealer. TSC officials told us they basically can identify the date and time of a firearm transaction because TSC records the date and time NICS staff call TSC, which occurs very shortly after the gun dealer initiates the NICS check. TSC and FBI Counterterrorism Division officials told us they handle state agency referrals the same way as they handle referrals from the FBI's NICS Section.

Most of the state agency officials we contacted told us that if requested by counterterrorism officials (e.g., FBI field agents), state agency staff would either call the gun dealer or refer to the state permit application to obtain and provide all available information related to a NICS transaction. This information could include the prospective purchaser's residence address and the type and number of firearms involved in the transaction. Officials in three states told us that state staff had shared the prospective purchaser's residence address with FBI field agents. In one of the three cases, the field agent was interested in the residence address because the individual was in the country illegally and was wanted for deportation.

In its written comments on a draft of this report, Justice noted that in the case of the individual who was in the country illegally, because the individual was a prohibited person, there was no restriction on obtaining and providing the additional information about the denied transaction to a law enforcement agency after the identity was already established. Justice

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also noted that regarding the sharing of information from state firearm permit applications, there is no Brady Act limitation on the state supplying transaction information to field agents for investigative purposes after identity is established, as the use and dissemination of state firearm permit information is governed by state law.

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### NICS-Related Information Could Be Useful to Counterterrorism Officials

According to officials from the FBI's Counterterrorism Division, personal identifying information and other details about NICS transactions with valid matches to terrorist records in VGTOF could be useful to FBI field agents in conducting terrorism investigations. Specifically, the officials noted the potential usefulness of locator information, such as the prospective purchaser's residence address, the date and time of the transaction, and the specific location of the gun dealer at which the transaction took place. The officials also told us that information on the type of firearm(s) involved in the transaction and whether the transaction involved the purchase of multiple firearms could also be useful to field agents. According to one official, in general, agents would want as much information as possible that could assist investigations. The FBI's NICS Section noted, however, that NICS procedures provide for sharing information only when it is relevant to determining a true match between a NICS transaction and a terrorist record in VGTOF.

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### The FBI Has Not Routinely Monitored the States' Handling of Terrorism-Related NICS Transactions; States Have Encountered Issues

Although the Attorney General and the FBI ultimately are responsible for managing NICS, the FBI has not routinely monitored the states' handling of terrorism-related background checks. For example, the FBI does not know the number and results of terrorism-related NICS transactions handled by state agencies since June 30, 2004. Also, the FBI has not routinely assessed the extent to which applicable state agencies have implemented and followed procedures for handling NICS transactions involving terrorist records in VGTOF. The FBI's plans call for conducting audits of the states' compliance with the procedures every 3 years. Our work revealed several issues state agencies have encountered in handling NICS transactions involving terrorist records in VGTOF, including delays in implementing procedures and a mishandled transaction.



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## FBI Has Not Routinely Monitored the States' Handling of NICS Transactions Involving VGTOF Records

The FBI has not routinely monitored the states' handling of NICS transactions involving terrorist records in VGTOF. For example, in response to our request for information—covering February 3 through June 30, 2004—the FBI's NICS Section reviewed all state NICS transactions that hit on VGTOF records during this period to identify potential matches. We used this information to follow up with state agencies and create table 2 in this report. However, since June 30, 2004, the FBI's NICS Section has not tracked or otherwise attempted to collect information on the number of NICS transactions handled by state agencies that have resulted in valid matches with terrorist records in VGTOF or whether such transactions were approved or denied. NICS Section officials told us that while the NICS Section does not have aggregate data, FBI officials at TSC and the FBI's Counterterrorism Division are aware of valid-match transactions that state agencies handle. Given the significance of valid matches, we believe it would be useful for the FBI's NICS Section to have aggregate data on the number and results of terrorism-related NICS transactions handled by state agencies, particularly if the data indicate that known or suspected terrorists may be receiving firearms. In response to our inquiries, in October 2004, Justice and FBI NICS Section officials told us they plan to study the need for information on state NICS transactions with valid matches to terrorist records in VGTOF and the means by which such information could be obtained.

Also, while the FBI has taken steps to notify state agencies about the revised procedures for handling NICS transactions involving VGTOF records—including periodic teleconferences and presentations at a May 2004 NICS User Conference<sup>15</sup>—the FBI has not routinely assessed the extent to which states have implemented and followed the procedures. According to the FBI, the NICS Section performed an assessment of all NICS transactions involving VGTOF records from February 3, 2004 (the day the block on VGTOF records was removed) to March 22, 2004, in order to assess the extent to which the states implemented and followed procedures. For example, a NICS Section official told us that NICS personnel called state agencies to make sure they contacted TSC to verify matches and also contacted counterterrorism officials to pursue prohibiting information. However, according to the NICS Section, the assessment concluded on March 23, 2004, because NICS Section personnel

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<sup>15</sup>Each year, the FBI's NICS Section sponsors a national conference for designated state and local agencies that conduct background checks, during which various issues related to the NICS program are addressed.

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could not fully assess the reliability or accuracy of the information provided by the states. Officials from two states told us that additional FBI oversight could help ensure that applicable procedures are followed. One of the state officials told us that such FBI oversight could be particularly important since NICS transactions with valid matches to VGTOF records are rare and there could be turnover of state personnel who process the transactions.

As part of routine state audits the FBI conducts every 3 years, the FBI plans to assess the states' handling of terrorism-related NICS transactions. Specifically, every 3 years, the FBI plans to audit whether designated state and local criminal justice agencies are utilizing the written procedures for processing NICS transactions involving VGTOF records. Moreover, for states with a decentralized structure for processing NICS transactions—i.e., states with multiple local law enforcement entities that conduct background checks (rather than one central agency)—the goal of the audit is to determine if local law enforcement agencies conducting the checks have in fact received the written procedures, and if so, whether the procedures are being followed.<sup>16</sup> However, given that the relevant NICS transactions involve known or suspected terrorists who could pose homeland security risks, we believe that a 3-year audit cycle is not sufficient. Also, under a 3-year audit cycle, information from NICS transactions with valid matches to terrorist records in VGTOF may have been destroyed pursuant to federal or state requirements and therefore may not be available for review.<sup>17</sup> Further, a 3-year audit cycle may not be sufficient help ensure the timely identification and resolution of issues state agencies may encounter in handling terrorism-related NICS transactions.

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## States' Issues in Handling Terrorism-Related NICS Transactions

State agencies have encountered several issues in handling NICS transactions involving terrorist records in VGTOF. Specifically, of the 11 states we contacted, 9 states experienced one or more of the following issues:

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<sup>16</sup>According to the Department of Justice's Bureau of Justice Statistics, over 3,000 state and local agencies conduct background checks related to firearm transfers.

<sup>17</sup>As mentioned previously, appendix II presents information on federal and state requirements for retaining information related to NICS transactions with valid matches to terrorist watch list records.

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- 4 states had delays in implementing procedures,
  - 3 states questioned whether state task forces were notified,
  - 2 states had problems receiving responses from FBI field agents,
  - 1 state mishandled a transaction, and
  - 3 states raised concerns about notifications.

#### Four States Had Delays in Implementing Procedures

Four of the 11 states we contacted had delays of 3 months or more in implementing NICS procedures for processing transactions that hit on VGTOF records—procedures that were to have been effective on February 3, 2004. Each of the 4 states processed one NICS transaction with a valid match to terrorist records in VGTOF before becoming aware of and implementing the new procedures. In processing the transactions, our work indicated that at least 3 of the 4 states did not contact TSC, as required by the procedures. The fourth state did not have information on how the transaction was processed. Although our work indicated that the FBI provided the new procedures to state agencies in January 2004, 1 of the 4 states did not implement the procedures until after a state official attended the May 2004 NICS User Conference. Officials in the other 3 states were not aware of the new procedures at the time we made our initial contacts with them in June 2004 (2 states) and August 2004 (1 state). Subsequent discussions with officials in 2 of the 3 states indicated the new procedures have been implemented. In November 2004, an official in the third state told us the procedures had not yet been implemented.

#### Three States Questioned whether State Task Forces Were Notified

Officials in 3 of the 11 states told us they believed their respective state's homeland security or terrorism task forces should be notified when a suspected terrorist attempts to purchase a firearm in their state, but the officials said they did not know if TSC or the FBI provided such notices. Officials from the FBI's Counterterrorism Division did not know the extent to which FBI field agents notified state and local task forces about terrorism-related NICS transactions, but the officials told us that such notifications likely are made on a need-to-know basis.<sup>18</sup> Justice and FBI officials acknowledged that this issue warrants further consideration.

#### Two States Had Problems Receiving Responses from FBI Field Agents

Officials in 2 of the 11 states told us that in the pursuit of prohibiting information, their respective states had problems receiving responses from FBI field agents. These problems led to delays in each state's ability to resolve one NICS transaction with a valid match to a terrorist record in

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<sup>18</sup>As mentioned previously, we did not contact FBI field agents because the transactions involved ongoing terrorism investigations.

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VGTOF. According to state officials, under the respective state's laws, the two transactions were not allowed to proceed during the delays, even though prohibiting information had not been identified. The two transactions were resolved as follows:

- In response to our inquiries, in November 2004, an analyst in one of the states contacted an FBI field agent, who told the analyst that the subject of the background check had been removed from VGTOF. A state official told us the NICS transaction was in a delay status for nearly 10 months.
- Regarding the other state, the NICS transaction was in an unresolved status for a period of time specified by state law, after which it was automatically denied. According to state officials, a state analyst made initial contact with an FBI field agent, who said he would call the analyst back. The state officials told us that the analyst made several follow-up calls to the agent without receiving a response.

As of November 2004, the FBI had not responded to our request for information regarding the issues or circumstances as to why the FBI field agents had not contacted the two states' analysts.

#### One State Mishandled a Transaction

One of the 11 states mishandled a NICS transaction with a valid match to a terrorist record in VGTOF. Specifically, although the state received notification of the VGTOF hit, the information was not relayed to state staff responsible for processing NICS transactions. Consequently, the transaction was approved without contacting TSC or FBI counterterrorism officials. We informed the state that the FBI's NICS Section had identified the transaction as matching a VGTOF record. Subsequently, state personnel contacted TSC and an FBI field agent, who determined that prohibiting information did not exist. State officials told us that to help prevent future oversights, the state has revised its internal procedures for handling NICS transactions that hit on VGTOF records.

#### Three States Raised Concerns about Notifications

Officials in 3 of the 11 states told us that the automatic (computer-generated) notification of NICS transactions that hit on a certain (sensitive) category of terrorist records in VGTOF is not adequately visible to system users and could be missed by state personnel processing NICS transactions. The FBI has taken steps to address this issue and plans to implement computer system enhancements in June 2005.

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## Conclusions

Under revised procedures effective February 3, 2004, all NICS transactions with potential or valid matches to terrorist watch list records in VGTOF are automatically delayed to give NICS personnel at the FBI and applicable state agencies an opportunity to further research the transactions for prohibiting information. The primary purpose of the revised procedures is to better ensure that known or suspected members of terrorist organizations who have disqualifying factors do not receive firearms in violation of federal or state law. An additional benefit has been to support the nation's war against terrorism. Thus, it is important that the maximum amount of allowable information from these background checks be consistently shared with counterterrorism officials. However, our work revealed that federal and state procedures for handling terrorism-related NICS transactions do not clearly address the specific types of information that can or should be routinely provided to counterterrorism officials or the sources from which such information can be obtained. For example, under current procedures, it is not clear if certain types of potentially useful information, such as the residence address of the prospective purchaser, can or should be routinely shared. Also, under current procedures, it is not clear if FBI and state personnel can routinely call a gun dealer or a law enforcement agency processing a permit application to obtain and provide counterterrorism officials with information not submitted as part of the initial NICS check. Further, some types of information—such as the specific location of the dealer from which the prospective purchaser attempted to obtain the firearm—have not consistently been shared with counterterrorism officials. Consistently sharing the maximum amount of allowable information could provide counterterrorism officials with valuable new information about individuals on terrorist watch lists.

The FBI has plans that call for conducting audits every 3 years of the states' handling of terrorism-related NICS transactions. However, given that these NICS background checks involve known or suspected terrorists who could pose homeland security risks, more frequent FBI oversight or centralized management is needed. The Attorney General and the FBI ultimately are responsible for managing NICS, and the FBI is a lead law enforcement agency responsible for combating terrorism. However, the FBI does not have aggregate data on the number of NICS transactions involving known or suspected members of terrorist organizations that have been approved or denied by state agencies to date. Also, the FBI has not assessed the extent to which the states have implemented and followed applicable procedures for handling terrorism-related NICS transactions. Moreover, under a 3-year audit cycle, relevant information from the background checks may have been destroyed pursuant to federal

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or state laws and therefore may not be available for review. Further, more frequent FBI oversight or centralized management would help address other types of issues we identified—such as several states’ delays in implementing procedures and one state’s mishandling of a terrorism-related NICS transaction.

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## Recommendations for Executive Action

Proper management of NICS transactions with valid matches to terrorist watch list records is important. Thus, we recommend that the Attorney General (1) clarify procedures to ensure that the maximum amount of allowable information from these background checks is consistently shared with counterterrorism officials and (2) either implement more frequent monitoring by the FBI of applicable state agencies or have the FBI centrally manage all terrorism-related NICS background checks.

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## Agency Comments and Our Evaluation

We requested comments on a draft of this report from the Department of Justice. Also, we provided a draft of sections of this report for comment to applicable agencies in the 11 states we contacted.

On January 7, 2005, Justice provided us written comments, which were signed by the Acting Assistant Director of the FBI’s Criminal Justice Information Services Division. According to Justice and FBI officials, the draft report was provided for review to Justice’s Office of Legal Policy, the FBI’s NICS Section (within the Criminal Justice Information Services Division), the FBI’s Counterterrorism Division, and the Terrorist Screening Center.

Justice agreed with our two recommendations. Specifically, regarding our recommendation to clarify NICS procedures for sharing information from NICS transactions with counterterrorism officials, Justice stated that (1) the written procedures used by the FBI’s NICS Section will be revised and (2) additional written guidance should be provided to applicable state agencies. Regarding our recommendation for more frequent FBI oversight or centralized management of terrorism-related NICS background checks, Justice has requested that the FBI report to the department by the end of January 2005 on the feasibility of having the FBI’s NICS Section process all NICS transactions involving VGTOF records.

In its written comments, Justice also provided (1) a detailed discussion of the Brady Act’s provisions relating to the retention and use of NICS information and (2) clarifications on the states’ handling of terrorism-related NICS transactions. These comments have been incorporated in

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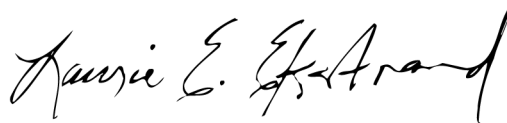
this report where appropriate. The full text of Justice's written comments is reprinted in appendix III.

Officials from 7 of the 11 states we contacted told us they did not have any comments. Officials from the remaining 4 states did not respond to our request for comments.

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As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its issue date. At that time, we will send copies of this report to interested congressional committees and subcommittees. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report or wish to discuss the matter further, please contact me at (202) 512-8777 or [ekstrandl@gao.gov](mailto:ekstrandl@gao.gov), or my Assistant Director, Danny R. Burton, at (214) 777-5600 or [burtond@gao.gov](mailto:burtond@gao.gov). Other key contributors to this report were Eric Erdman, Lindy Coe-Juell, David Alexander, Katherine Davis, and Geoffrey Hamilton.



Laurie E. Ekstrand  
Director, Homeland Security and Justice Issues

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# Appendix I: Objectives, Scope, and Methodology

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## Objectives

Our overall objective was to review how the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS) handles checks of prospective firearms purchasers that hit on and are confirmed to match terrorist watch list records. The FBI and designated state and local criminal justice agencies use NICS to determine whether or not individuals seeking to purchase firearms or apply for firearms permits are prohibited by law from receiving or possessing firearms. Specifically, we addressed the following questions:

- What terrorist watch lists are searched during NICS background checks?
- How many NICS transactions have resulted in valid matches with terrorist watch list records?
- For valid matches, what are federal and state procedures for sharing NICS-related information with federal counterterrorism officials?
- To what extent does the FBI monitor the states' handling of NICS transactions with valid matches to terrorist watch list records? What issues, if any, have state agencies encountered in handling such transactions?

Also, we obtained summary information on federal and state requirements for retaining information related to NICS transactions with valid matches to terrorist watch list records (see app. II).

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## Scope and Methodology

In performing our work, we reviewed applicable federal laws and regulations, FBI policies and procedures, and relevant statistics. We interviewed federal officials at and reviewed documentation obtained from the Department of Justice's Office of Legal Policy; the FBI's Counterterrorism Division; the FBI's NICS Section and Criminal Justice Information Services Division at Clarksburg, West Virginia; and the Terrorist Screening Center (TSC), which is the multiagency center responsible for consolidating federal terrorist watch lists. Generally, our analyses focused on background checks processed by the FBI's NICS Section and 11 states during the period February 3, 2004 (when the FBI's procedures for handling terrorism-related NICS transactions became effective), through June 30, 2004. The 11 states we contacted (California, Colorado, Florida, Hawaii, Illinois, Massachusetts, North Carolina, Pennsylvania, Tennessee, Texas, and Virginia) were those that FBI data indicated—and the states subsequently confirmed—had processed NICS checks (during the period February 3 through June 30, 2004) that resulted in one or more valid matches with terrorist watch list records.



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**Terrorist Watch List Records Searched during NICS Background Checks**

To determine what terrorist watch list records are searched during NICS background checks, we interviewed officials from the FBI's NICS Section and the Criminal Justice Information Services Division—the FBI division responsible for maintaining the Violent Gang and Terrorist Organization File (VGTOF)—and obtained relevant documentation. Also, we interviewed TSC officials and obtained documentation and other relevant information on TSC's efforts to consolidate federal terrorist watch list records into a single database. Eligible records from TSC's consolidated database are shared with VGTOF and searched during NICS background checks.

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**Number of NICS Transactions with Valid Matches to Terrorist Watch List Records**

To determine the number of NICS transactions that resulted in valid matches with terrorist records in VGTOF—during the period February 3 through June 30, 2004—we interviewed officials from the FBI's NICS Section and reviewed FBI data. The FBI did not have comprehensive or conclusive information on transactions handled by state agencies, but FBI data indicated that 12 states (California, Colorado, Florida, Georgia, Hawaii, Illinois, Massachusetts, North Carolina, Pennsylvania, Tennessee, Texas, and Virginia) likely had processed one or more NICS transactions with a valid match to terrorist records in VGTOF during this period. We interviewed agency officials in the 12 states to corroborate the FBI data and to obtain additional information about the related background checks (e.g., whether the transactions were allowed to proceed or were denied). We also worked with officials from the FBI's NICS Section and state agencies to resolve any inconsistencies. For example, our work revealed that 1 of the 12 states (Georgia) had not processed a terrorism-related NICS transaction during the period we reviewed. As such, our subsequent interviews and analysis focused on background checks processed by the FBI's NICS Section and the remaining 11 states.

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**Procedures for Sharing NICS-Related Information with Counterterrorism Officials**

To determine federal and state procedures for sharing NICS-related information with federal counterterrorism officials, we reviewed applicable federal laws and regulations, including the Brady Handgun Violence Prevention Act<sup>1</sup> and NICS regulations. We also reviewed FBI and state procedures for handling NICS transactions involving terrorist records in VGTOF—procedures that were developed and disseminated under the Department of Justice's direction. We interviewed officials from

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<sup>1</sup>Brady Handgun Violence Prevention Act, Public Law 103-159, 107 Stat. 1536 (1993).

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the Department of Justice's Office of Legal Policy, the FBI's NICS Section, and the 11 states to determine the scope and types of NICS-related information that could be shared with federal counterterrorism officials under applicable procedures. Further, for NICS transactions with valid matches to terrorist records in VGTOF—during the period February 3 through June 30, 2004—we interviewed officials from the FBI's NICS Section and Counterterrorism Division, TSC, and the 11 states to determine the types of NICS-related information that were shared with counterterrorism officials.

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### FBI Monitoring of the States' Handling of NICS Transactions and Issues Encountered by State Agencies

To determine the extent to which the FBI has monitored the states' handling of NICS transactions involving VGTOF records, we interviewed officials from the Department of Justice's Office of Legal Policy, the FBI's NICS Section, and state agencies. We reviewed documents the FBI used to notify state agencies about the procedures for handling terrorism-related NICS transactions. We also reviewed data and other information the FBI maintained on transactions handled by the states. Further, we obtained information on the FBI's plans to periodically audit whether designated state and local criminal justice agencies are utilizing the written procedures for processing NICS transactions involving VGTOF records. To identify issues state agencies have encountered in handling terrorism-related NICS transactions, we interviewed officials from the 11 states. For identified issues, we interviewed officials from the Department of Justice and the FBI's NICS Section and Counterterrorism Division to discuss the states' issues and obtain related information.

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### Federal and State Requirements for Retaining Information from Terrorism-Related NICS Transactions

To determine federal and state requirements for retaining information from terrorism-related NICS transactions, we interviewed officials from the FBI's NICS Section and state agencies and reviewed applicable federal laws and regulations. We also reviewed a Department of Justice report that addressed the length of time the FBI and applicable state agencies retain information related to firearm background checks.<sup>2</sup> Further, we interviewed officials from the FBI and reviewed relevant FBI documents to determine how the federal 24-hour destruction requirement for NICS records of allowed firearms transfers would affect the FBI's NICS Section and state policies and procedures.

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<sup>2</sup>Department of Justice, Bureau of Justice Statistics, *Survey of State Procedures Related to Firearm Sales, Midyear 2003*, NCJ 203701 (Washington, D.C.: Aug. 2004).

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## **Data Reliability**

We performed our work from April through December 2004 in accordance with generally accepted government auditing standards. We were unable to fully assess the reliability or accuracy of the data regarding valid matches with terrorist records in VGTOF because the data related to ongoing terrorism investigations. However, we discussed the sources of data with FBI, TSC, and state agency officials and worked with them to resolve any inconsistencies. We determined that the data were sufficiently reliable for the purposes of this review. The results of our interviews with officials in the 11 states may not be representative of the views and opinions of others nationwide.

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# Appendix II: Federal and State Requirements for Retaining Information from Terrorism-Related NICS Transactions

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## Federal Records Retention Requirements: Next-Day Destruction

On July 21, 2004, the FBI's NICS Section implemented a provision in federal law that requires any personal identifying information in the NICS database related to allowed firearms transfers to be destroyed within 24 hours after the FBI advises the gun dealer that the transfer may proceed.<sup>1</sup> The law does not provide an exception for retaining information from NICS transactions with valid matches to terrorist records in VGTOF. Thus, information in the NICS database from such transactions also is subject to the federal 24-hour destruction provision. Before the 24-hour destruction provision took effect, federal regulations permitted the retention of all information related to allowed firearms transfers for up to 90 days.<sup>2</sup> The federal 24-hour retention statute does not specifically address whether identifying information in the NICS database related to permit checks—which do not involve gun dealers—is subject to 24-hour destruction. According to the FBI's NICS Section, the 24-hour destruction requirement does not apply to permit checks. Rather, information related to permit checks is maintained in the NICS database for up to 90 days after the background check is initiated.

In implementing the 24-hour destruction provision, the FBI's NICS Section revised its policies and procedures to allow for the retention of nonidentifying information related to each proceeded background check for up to 90 days (e.g., information about the gun dealer). According to the FBI, by retaining the nonidentifying information, the FBI's NICS Section can initiate firearm retrieval actions when new information reveals that an individual who was approved to purchase a firearm should not have been. The nonidentifying information is retained for all NICS transactions that are allowed to proceed, including transactions involving subjects of terrorist watch lists.

Also, in implementing the 24-hour destruction provision, the FBI's NICS Section created a new internal classification system for transactions that are "open." Specifically, if NICS staff cannot make a final determination (i.e., proceed or denied) on a transaction within 3 business days, the NICS Section is to automatically change the status to open. The NICS Section maintains personal identifying information and other details related to open transactions until either (1) a final determination on the transaction

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<sup>1</sup>See section 617 of Public Law 108-199, 118 Stat. 3, 95 (2004).

<sup>2</sup>We previously reported on Justice's then-proposed next-day destruction policy. See GAO, *Gun Control: Potential Effects of Next-Day Destruction of NICS Background Check Records*, [GAO-02-653](#) (Washington, D.C.: Jul. 10, 2002).

is reached or (2) the expiration of the retention period for open transactions, which is a period of no more than 90 days. Regarding terrorism-related NICS transactions, the open designation would be used, for example, if NICS Section staff did not receive responses from FBI field agents within 3 business days.

The 24-hour destruction provision did not affect federal policies for retaining NICS records related to denied firearms transactions. Under provisions in NICS regulations, personal identifying information and other details related to denied firearms transactions are retained indefinitely. Also, according to Justice and FBI officials, there are no limitations on the retention of NICS information by TSC or counterterrorism officials, who received the information to verify identities and determine whether firearm-possession prohibitors exist.

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## **State Records Retention Requirements Vary**

Among the states, requirements vary for retaining records of allowed transfers of firearms.<sup>3</sup> Some states purge a firearm transaction record almost immediately after the firearm sale is approved, while other states retain such records for longer periods of time. Under NICS regulations, state records are not subject to the federal 24-hour destruction requirement if the records are part of a system created and maintained pursuant to independent state law. Thus, states with their own state law provisions may retain records of allowed firearms transfers for longer than 24 hours. The retention of state records related to denied firearms transactions varies.

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<sup>3</sup>See Department of Justice, Bureau of Justice Statistics, *Survey of State Procedures Related to Firearm Sales, Midyear 2003*, NCJ 203701 (Washington, D.C.: Aug. 2004).

# Appendix III: Comments from the Department of Justice



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

January 7, 2005

Ms. Laurie Ekstrand  
Director, Homeland Security and Justice Issues  
United States Government Accountability Office  
Washington, DC 20548

Re: GAO-05-127

Dear Ms. Ekstrand:

Thank you for the opportunity to review the Government Accountability Office (GAO) draft report entitled "*GUN CONTROL AND TERRORISM: FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records.*" The draft report has been reviewed by various components of the Department of Justice (DOJ), including the FBI Criminal Justice Information Services (CJIS) Division, National Instant Criminal Background Check System (NICS) Section. This letter constitutes the formal Department of Justice comments to the draft report and it is requested that it be included in GAO's final report.

The report reviews the experience of the NICS in implementing new procedures under which the NICS delays checks on firearms transactions that hit on a terrorist watch list record in the National Crime Information Center's (NCIC) Violent Gang and Terrorist Organization File (VGTOF). The new procedures began in February 2004, pursuant to a November 2003 DOJ directive, and required the NICS to delay such transactions so that NICS personnel can coordinate with FBI field agents to determine whether the agents have prohibiting information about a prospective purchaser on the watch list that is not yet available in the automated databases checked by the NICS. Because persons placed on a terrorist watch list are not prohibited from possessing or receiving firearms<sup>1</sup>, before the February 2004 change in procedures, such transactions had not been delayed unless the NICS check hit upon another prohibiting record. As the report notes, the new procedures have been successful in enabling the NICS to deny two gun transactions during the five-month period reviewed based on prohibiting information provided by the FBI field agents that had not yet been entered in the automated databases checked by NICS.

<sup>1</sup> As noted in your report, under federal law, persons are prohibited from receiving or possessing a firearm if they (1) have been convicted of, or are under indictment for, a felony; (2) are a fugitive from justice; (3) are unlawful drug users or are addicted to a controlled substance; (4) have been involuntarily committed to a mental institution or judged to be mentally defective; (5) are aliens illegally or unlawfully in the United States, or certain other aliens admitted under a nonimmigrant visa; (6) have been dishonorably discharged from the military; (7) have renounced their U.S. citizenship; (8) are under a qualifying domestic violence restraining order; or (9) have been convicted of a misdemeanor crime of domestic violence. See Title 18, United States Code, Sections 922(g) and (n).

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One of the main points made in the report is that the existing procedures are not clear enough as to what information can be shared with FBI field agents when processing a NICS check hitting on an NCIC VGTOF record. In particular, the report suggests that the procedures be more explicit with respect to when a prospective purchaser's residence address can and should be obtained and shared by NICS with FBI field agents. The FBI's NICS VGTOF Standard Operating Procedures (SOP) explicitly provide that all information about a transaction that is obtained in the course of processing a NICS check, including the name and address of the gun dealer, will be shared by the NICS with law enforcement agents or other government agencies to establish whether the person seeking to buy the gun is the same person with the record in the NCIC VGTOF. This information sharing is done in legitimate pursuit of prohibiting information about the person whose name hit on the NCIC VGTOF record. In addition, although not explicitly stated in the FBI's NICS VGTOF SOP, it is understood by the NICS personnel that if requested by an FBI field agent for purposes of establishing the identity of the purchaser with the NCIC VGTOF record, the NICS will contact a gun dealer or a firearms licensing authority to request the residence address of the prospective purchaser, information that is not required for running a NICS check. We agree, however, that this procedure concerning a follow-up call to obtain a residence address at the request of an FBI field agent should be made a part of the written FBI's NICS VGTOF SOP, and the FBI will so revise its written procedures.

A discussion of the Brady Handgun Violence Prevention Act's (Brady Act) provisions relating to the retention and use of NICS information is helpful in understanding the information sharing provisions of FBI's NICS VGTOF procedures. The Brady Act restricts the use of identifying information in the NICS about "proceeded" gun transactions, prohibiting the use of such information to establish a national registry of firearm owners and requiring its destruction to protect the privacy of lawful gun purchasers. Congress has recently imposed a new legal requirement, set forth in the 2004 and 2005 Omnibus Appropriations bills, that such identifying information is destroyed by the NICS within 24 hours of advising a gun dealer that a transaction can proceed. Thus, since the establishment of the NICS in November 1998, the DOJ has taken the position that information from the NICS about lawful gun transactions is not to be used for general law enforcement purposes. However, because the purpose of the NICS is to determine the lawfulness of proposed gun transactions, identifying information about a transaction that has not been "proceeded" can be shared by the NICS with law enforcement agents or other government agencies in legitimate pursuit of potentially prohibiting information about a proposed firearm transferee. Thus, as set forth in the FBI's NICS VGTOF procedures, all NICS information about a transaction hitting on an NCIC VGTOF record can be shared with field personnel in pursuit of establishing whether the person seeking to buy the gun is the same as the person with the record in the NCIC VGTOF.

There is no similar limitation under the Brady Act on sharing NICS information with law enforcement agencies about persons determined to be prohibited from possessing or receiving a firearm, and NICS information on "denied" transactions can be and routinely is provided to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

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In addition, although NICS information about "proceeded" transactions cannot, because of these legal restrictions, be shared with law enforcement officials just to provide notice of lawful gun purchases by persons of investigative interest, information about NICS transactions, including transactions that are eventually "proceeded," can be and routinely is shared by the NICS with law enforcement agencies when the information indicates a violation, or suspected violation, of law or regulation. Thus, Routine Use C of the NICS Privacy Act Notice provides:

If, during the course of any activity or operation of the system authorized by the regulations governing the system (28 CFR, part 25, subpart A), any record is found by the system which indicates, either on its face or in conjunction with other information, a violation or potential violation of law (whether criminal or civil) and/or regulation, the pertinent record may be disclosed to the appropriate agency/organization/task force (whether Federal, State, local, joint, or tribal) and/or to the appropriate foreign or international agency/organization charged with the responsibility of investigating, prosecuting, and/or enforcing such law or regulation . . .

63 FR 65226-27 (Nov. 25, 1998).

In general, the FBI NICS Section only collects certain biographical data on a prospective gun purchaser for purposes of running a NICS check (e.g., name, date of birth, sex, race, state of residence). Additional information contained in the ATF Form 4473 maintained by the gun dealer, such as a residence address or the number and make and model of guns being sold, is not required or necessary to run a NICS check. There are, however, times when the NICS will contact a gun dealer and request a residence address on a person that is determined to be prohibited, such as when there is a hit on a prohibiting arrest warrant record, so that the information can be supplied, pursuant to Routine Use C, to a law enforcement agency that can enforce the warrant. Gun dealers are not legally obligated under the NICS or the ATF regulations to provide this information to the NICS, but frequently do cooperate and provide the residence information when specifically requested by the NICS.

Similarly, when requested by a counterterrorism official for the purpose of establishing identity, additional information about the transaction can and is sought by the FBI NICS Section. The FBI's NICS VGTOF SOP states: "There will be instances when the VGTOF Examiners [NICS personnel specially assigned to handle transaction VGTOF hits] are contacted directly by the case agent. The case agent will ask the VGTOF Examiner to share additional information from the transaction or provide necessary information to determine true identity and complete the transaction." The VGTOF Examiners will provide any additional information available on the transaction requested by the counterterrorism officials in order to resolve the identity issue. The additional information can include the residence address of the prospective gun buyer or firearms permit applicant obtained through a special request to the gun dealer or firearms permitting authority that initiated the check. If the information is provided in response to the request, the NICS will share that information with the counterterrorism official for the



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purpose of establishing true identity of the prospective purchaser. In addition, FBI field personnel can obtain additional information on proceeded transactions from gun dealers for investigative purposes through coordination with ATF. Thus, if identity is already established and the person is a lawful purchaser, counterterrorism official, if they do not already know the subject's residence address or wish to see address or other additional information recorded on the ATF Form 4473, can coordinate with the ATF to obtain from the gun dealer additional information on the ATF Form 4473. If identity is established and the subject is a prohibited person, the NICS will attempt to obtain the residence address from the gun dealer if requested by the counterterrorism official. As noted above, the FBI plans to make these procedures an explicit part of the written FBI's NICS VGTOF SOP used by VGTOF Examiners.

A special request for additional information was made by the FBI NICS Section in one instance when a counterterrorism official requested the residence address of a subject while coordinating with FBI NICS personnel in the pursuit of determining a true match on a terrorism-related NCIC VGTOF record. That case involved a firearm permit application, and the FBI NICS Examiner was able to obtain the subject's residence address from the law enforcement agency processing the permit application and provide it to the counterterrorism official in pursuit of determining a true match. In the rest of the cases involving NCIC VGTOF hits processed by the FBI NICS Section to date, the FBI field personnel have been able to determine whether a match exists from the information the NICS received from the gun dealer when initiating a NICS check and without a special call to the gun dealer or firearm permitting authority requesting a residence address.

The report also makes the following observation about the practice of state personnel in seeking and providing additional information to FBI field personnel when processing transactions hitting on VGTOF records in Point-of-Contact (POC) states:

Most of the state agency officials we contacted told us that if requested by counterterrorism officials (e.g., FBI field agents), state agency staff would either call the gun dealer or refer to the state permit application to obtain and provide all available information related to a NICS transaction. This information could include the prospective purchaser's residence address and the type and number of firearms involved in the transaction. Officials in three states told us that state staff had shared the prospective purchaser's residence address with FBI field agents. In one of the three cases, the field agent was interested in the residence address because the individual was in the country illegally and was wanted for deportation.

We note that, contrary to the report's implication, in the case involving the illegal alien, because the individual was a prohibited person, there was no restriction on obtaining and providing the additional information about the denied transaction to a law enforcement agency after identity was already established. In addition, in the case of information from state firearm permit applications, there is no Brady Act limitation on the state supplying transaction information to

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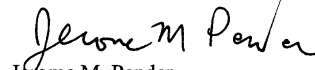
the FBI field agents for investigative purposes after identity is established, as the use and dissemination of state firearm permit information is governed by state law. It is not clear from the report whether in other instances the state sought the information from a gun dealer after identity was already established or was requested by the field as part of the effort to establish identity. Written guidance provided to the POC states makes it clear that all information concerning a transaction may be provided in pursuit of establishing a true match. We agree, however, that additional written guidance should be provided to the POC states clarifying when additional information may be sought from a gun dealer and shared with FBI field personnel.

Finally, in discussing how POC states are implementing the procedures for processing NICS checks that hit on NCIC VGTOF records, the report notes that: (1) there are inconsistencies in how state agency staff have implemented the procedures and how successful they have been in getting responses from FBI field agents; (2) despite an initial effort by the FBI to obtain information about NCIC VGTOF transactions processed by the POC states, the FBI has been unable to obtain complete aggregate information concerning the number of POC transactions with confirmed matches to the NCIC VGTOF (i.e., although the Terrorist Screening Center and FBI field agents know when there is a confirmed match, the FBI NICS Section does not have aggregate match data for POC state NCIC VGTOF hits in the same way that it has that data for NCIC VGTOF hits that it processes); and (3) there is a need for more oversight of how the POC states are implementing the NCIC VGTOF hit procedures to ensure there is consistency in how the NICS checks for prohibiting information on these transactions.

We note that since implementing these procedures in February 2004, it has become apparent that the volume of affected transactions is low enough that all of the NCIC VGTOF hits could be processed by the FBI NICS Section. Given that fact, together with the report's findings concerning inconsistencies in POC states' handling of the transactions, and the fact that the effort involved in ensuring consistency in POC implementation of the procedures would be greater than simply having the FBI NICS Section process POC transactions with NCIC VGTOF hits, the FBI has been requested to report to the DOJ by the end of January 2005 on the feasibility of having *all* NCIC VGTOF hits processed by the FBI NICS Section.

Thank you for the opportunity to comment on your report.

Sincerely yours,

  
Jerome M. Pender  
Acting Assistant Director  
Criminal Justice Information  
Services Division

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