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United States General Accounting Office
Washington, DC 20548

March 11, 2002

The Honorable Richard J. Durbin
Chairman
Subcommittee on Oversight of Government Management,
Restructuring, and the District of Columbia
Committee on Governmental Affairs
United States Senate

Subject: *Preliminary Information on Proposal for Next-Day Destruction of
Records Generated by the National Instant Criminal Background Check
System (NICS)*

Dear Senator Durbin:

Based on an interim briefing that we provided to your office on February 28, 2002, this letter responds to your request for preliminary information about how NICS would be affected if records related to sales of firearms by licensed dealers were destroyed within 24 hours after the transfers were allowed to proceed. By law, licensed dealers generally are not to transfer firearms to an individual until a NICS search determines that the transfer will not violate applicable federal and state law.¹ For instance, persons prohibited by federal law from receiving a firearm include convicted felons, fugitives, unlawful drug users, and aliens illegally or unlawfully in the United States. Under current NICS regulations, records of allowed firearms sales can be retained for up to 90 days, after which the records must be destroyed. On July 6, 2001, the Department of Justice (DOJ) published proposed changes to the NICS regulations that would reduce the maximum retention period from 90 days to less than 1 day for records of allowed firearms sales.²

The information in this letter must be considered preliminary and is based on data provided by Federal Bureau of Investigation (FBI) officials at the NICS Program Office in Clarksburg, West Virginia, and interviews with agency officials. Our review is still ongoing, and we have not fully reviewed or verified the FBI's information.

¹In an earlier report, we provided you with a detailed overview of NICS operations. See U.S. General Accounting Office, Gun Control: Options for Improving the National Instant Criminal Background Check System, GAO/GGD-00-56 (Washington, D.C.: Apr. 12, 2000).

²Generally, the proposed changes to the NICS regulations would require next-day destruction of records. More specifically, the proposed changes would require that records related to allowed firearms transfers be destroyed before the start of the next business day following the date on which a "proceed" message allowing the transfer was received by the licensed dealer that requested the NICS search. The NICS business day starts at 8:00 a.m. and runs until 1:00 a.m.

According to NICS officials, after a gun sale is allowed to proceed, the FBI may receive information from a state or local law enforcement agency, a court, or other source showing that the purchaser should have been prohibited from possessing a firearm. In such cases, after a NICS examiner confirms the prohibiting offense, available records (retained under the 90-day retention policy) are to be used to

- identify and contact the licensed dealer to verify whether a firearm was actually transferred to the prohibited person and, if so,
- notify (1) the local police department, as determined by the purchaser's address and (2) the Bureau of Alcohol, Tobacco and Firearms (ATF).

In each of these instances, ATF guidance then requires that an investigation be initiated and that attempted retrieval of the firearm be coordinated with state or local law enforcement to ensure public safety.

According to FBI officials, retained records that were more than 1 day old but less than 90 days old were used to initiate over 100 firearm-retrieval actions in the 4-month period beginning July 3, 2001 (when the current 90-day retention policy became effective) through October 2001.³ Thus, next-day destruction of NICS records could inhibit the ability of law enforcement to retrieve firearms from persons who were approved to purchase firearms but should not have been.

We are continuing to study the firearm-retrieval implications associated with next-day destruction of NICS records. Also, we are continuing to study other potential effects on various aspects of NICS operations.

We provided a draft of this letter for comment to DOJ. On March 8, 2002, Justice's Audit Liaison Office (Justice Management Division) provided us with an e-mail response, which stated that DOJ was still deliberating on how to finalize the proposed rule. Thus, according to the response, it would be inappropriate for DOJ to comment at this time concerning the preliminary conclusion drawn in the draft letter. Further, DOJ noted that its reluctance to comment does not necessarily mean that the department agrees with the substance or content of the letter. DOJ did not raise issues concerning the data reported in this letter.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this letter until 30 days after its date. At that time, we will make copies available to other interested parties upon request.

³ According to the officials, the FBI processed a total of about 1.5 million NICS transactions during this 4-month period.

Please contact me at (202) 512-8777 or Danny R. Burton at (214) 777-5600, if you or your staff have any questions. Other key contributors to this letter were R. Eric Erdman, Geoffrey R. Hamilton, Jan B. Montgomery, and Linda K. Willard.

Sincerely yours,

A handwritten signature in black ink that reads "Laurie E. Ekstrand". The signature is written in a cursive style with a large, stylized initial "L".

Laurie E. Ekstrand
Director, Justice Issues