



BLBA BULLETIN NO. 15-02

Issue Date: January 16, 2015

Expiration Date: Indefinite

Subject: National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007 (NIAA).

Background: The Brady Handgun Violence Prevention Act of 1993 required the Attorney General to establish a system that allows federal firearms dealers to determine whether a potential buyer is prohibited from receiving the firearm under the federal Gun Control Act of 1968 or state law. This system, the NICS, is a federal database that became operational on November 30, 1998.

The ability of the NICS to determine quickly and effectively whether an individual is prohibited from possessing or receiving a firearm depends on the completeness and accuracy of the information made available to it by federal, state, and tribal authorities. The NIAA was an effort to strengthen the NICS by increasing the quantity and quality of relevant records accessible to the system. Among its requirements, the NIAA mandates that federal departments and agencies provide relevant information to the Attorney General for the NICS on no less than a quarterly basis. The statute specifies that federal agencies must provide this information “notwithstanding any other law,” and, as a result, information can be shared by agencies despite the otherwise applicable limitations of other laws (Privacy Act, Health Insurance Portability and Accountability Act, etc.). For any information provided, the NIAA also requires federal agencies to update, correct, modify or remove records once they become aware that information should no longer be prohibiting.

On January 16, 2013, President Obama issued a Memorandum directing the Department of Justice (DOJ) to provide guidance to agencies to improve the implementation of this law. This memorandum also required each Federal agency to issue an annual report setting forth relevant records possessed by the agency, the number of records submitted each year, and various other details concerning efforts required in connection with NICS reporting.

Purpose: To inform the appropriate Office of Workers' Compensation (OWCP) Division of Coal Mine Workers' Compensation (DCMWC) personnel of their responsibilities and DCMWC procedures required to effectively identify, track and report relevant case file records in accordance with the NIAA of 2007.

References: P. L. 110-180, NICS Improvement Amendments Act of 2007

Applicability: Appropriate National Office and District Office personnel.

Actions:

A. Prohibitors and Relevant Records

There are several categories of persons who are prohibited from shipping, transporting, possessing or receiving a firearm by federal law, and for each there are relevant records that establish such prohibition and therefore should be reported to the NICS. Records possessed by DCMWC are relevant for the NICS if they can reliably identify an individual as being someone who is prohibited from shipping, transporting, possessing or receiving a firearm.

Only relevant records obtained by State or local agencies need be reported to the NICS. Federal records that DCMWC obtains should not be reported to the NICS because the creating federal agency is independently responsible for its submission to the NICS.

The following describes the category of prohibited individuals for whom DCMWC may possess relevant record types:

Persons adjudicated “mentally defective” or committed to a mental institution

- a. This includes any person who has been determined by a court, board, commission, or other lawful authority as being a danger to himself/herself or others, or lacking the mental capacity to contract or manage his/her own affairs.
- b. A mental institution is a facility that provides diagnoses by licensed professionals of mental retardation or mental illness.
- c. “Mental defective” does not include a person:
 - (1) who has been granted relief from the disability through a qualifying federal or state relief from disability program as authorized by the NIAA; or
 - (2) whose adjudication or commitment was imposed by a federal department or agency and,
 - a) the adjudication or commitment has been set aside or expunged;
 - b) the individual has been fully released or discharged from all treatment, supervision or monitoring;
 - c) the individual has been found by a court, board, commission, or other lawful authority to no longer suffer from the mental health condition that was the basis for the adjudication or commitment, or has otherwise been found to be rehabilitated through any procedure

- available under law; or
- d) whose adjudication or commitment is based on a medical finding of disability, without an opportunity for a hearing by a court, board, commission, or other lawful authority and the person has not been adjudicated as a “mental defective” pursuant to 18 U.S.C. § 922(g)(4).

d. Formal commitment of a person to a mental institution by a court, board, commission or other lawful authority includes commitment to a mental institution involuntarily, commitment for mental defectiveness or mental illness or commitment for other reasons, such as for drug use. It does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

Relevant records defined by Department of Justice: Judgment and commitment orders, sentencing orders, and court or agency records of adjudications of an individual’s inability to manage his or her own affairs if such adjudication is based on marked subnormal intelligence or mental illness, incompetency, or disease (including certain agency designations of representative or alternate payees for program beneficiaries).

Potential DCMWC specific relevant records: Judgment and commitment orders, court ordered guardianship documents, and other documents collected as part of DCMWC determinations regarding guardianship pertaining to appointment of a representative payee. See Coal Mine (BLBA) Procedure Manual Chapter 2-1407, Representative Payee, specific reference 2-1407.7.

B. DCMWC Responsibilities

When a relevant record is obtained by DCMWC, it should be recorded and reported to the Branch of Standards Regulations and Procedures (BSRP) in the National Office. BSRP will then confer with the Office of the Solicitor (SOL) for referral to NICS.

Relevant records as described in Part A of this bulletin may be identified in daily incoming correspondence. Another source of information about beneficiaries who should not be allowed to purchase firearms is the information gathered prior to the assignment of a representative payee (see BLBA PM Chapter 2-1407.7).

When a claims examiner obtains documents that are potentially relevant to whether a person is prohibited from possessing or receiving a firearm, the claims examiner must provide a written report, with copies of the potentially relevant documents attached, to his or her district director. The district director will forward the information to DCMWC’s BSRP in the National Office. BSRP will share this information with SOL for review. The district director or his/her designee enters diary action code NICS (“Refer to NICS”) in CAPS with a start date equal to the date the matter is referred to BSRP. SOL will refer relevant information to NICS.

Action if the relevant record is not or is no longer prohibiting. DCMWC is required to update, correct, modify, or remove records once DCMWC becomes aware that the information is no longer prohibiting under the Gun Control Act. If upon receipt of additional information or

otherwise, a claims examiner determines that a previously identified relevant record was never or is no longer prohibiting, the claims examiner must provide a written report to his or her district director. The district director will forward the information to BSRP who will share the information with SOL. The district director or his/her designee updates diary action code NICS (*Refer to NICS*) in CAPS with a end date equal to the date the matter is referred to BSRP. SOL will refer relevant information to NICS.

Disposition: This bulletin is to be retained until these instructions are incorporated in the BLBA Procedure Manual.



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Distribution: All DCMWC Staff