



## BACKGROUND INFORMATION ON THE NICS IMPROVEMENT AMENDMENTS ACT OF 2007 AND ANSWERS TO “FREQUENTLY ASKED QUESTIONS”

- The NICS Improvement Amendments Act of 2007 was signed into law on January 8, 2008. It strengthens the Brady Law’s National Instant Check System (NICS) and will make it harder for criminals and other dangerous people to buy firearms. Representative Carolyn McCarthy and Senators Charles Schumer and Edward Kennedy championed the legislation and helped ensure its passage. As the first new federal gun control law in more than a decade, it also helps lay the groundwork to expand Brady background checks to all gun sales.
- The Brady Law, which mandates that federally licensed firearms dealers conduct background checks on prospective gun purchasers, has prevented more than 1.4 million prohibited persons from buying guns. However, a background check is only as good as the records it can search.
- Unfortunately, many prohibited persons are not blocked from buying guns because their records are not in NICS, including about 80-90% of disqualifying mental health records, and 25% of felony convictions. Ten states do not provide relevant domestic violence records that indicate prohibited purchasers.
- The NICS Act provides for financial assistance to aid states in sending records to NICS and financial penalties if they fail to provide records. **Importantly, the NICS Act should help block hundreds of thousands of prohibited buyers who are not presently stopped by the Brady Law because their names are not in NICS.** Numerous states are now taking steps to report more records to NICS because of the attention given to the issue by the NICS Act.
- The NICS Act does allow persons barred from buying or possessing a gun for mental health reasons to seek “relief from disabilities” if they no longer suffer from the condition that originally barred them from buying or possessing guns. The number of persons added to the Brady background check system by the NICS Act should be significantly more than those who receive “relief” pursuant to these provisions.

### *Records Added to the Brady Law’s National Instant Check System (NICS)*

**Q: I have heard that the NICS Act will add more records to the background check system, but I have also heard that the NICS Act wouldn't disqualify anyone currently able to legally purchase a firearm. Which is true?**

A: The Act does not add any additional prohibited classes of gun buyers. It should, however, substantially enhance the reporting of the records of prohibited gun buyers to the Brady background check system.

### ***Mental Illness Prohibition***

**Q: Federal law prohibits people who are dangerously mentally ill from purchasing or possessing a gun. Does the NICS Act change who is covered by this prohibition?**

A: No. The NICS Act does not change the prohibition enacted in 1968 that bars people who are dangerously mentally ill from purchasing or possessing a gun. Under federal law, people may not buy or possess a gun if they are “adjudicated as a mental defective” or “committed to any mental institution.” ATF regulations define “adjudicated as a mental defective” as a:

determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) Is a danger to himself or others; or (2) Lacks the mental capacity to contract or manage his own affairs.

These regulations have not been changed by the NICS Act. Note that merely seeking or receiving treatment for mental illness is not sufficient to bring someone within this prohibited class.

The NICS Act does provide that persons who are entered into NICS because of this mental illness prohibition may seek “relief from disabilities” by petitioning that their names be removed from NICS if they no longer suffer from the mental health condition that originally barred them from buying or possessing guns.

**Q: Will all people whose names are in NICS be able to petition to have their names removed by seeking “relief from disabilities?”**

A: Under the NICS Act, states receive funding to create and maintain state “relief from disabilities” programs. These “relief from disability” provisions apply *only* to those who argue that they are no longer covered by the mental health prohibition, not to those who are barred because of a felony record or other disqualifying factor. The number of persons that receive this relief should be significantly less than the names added to the Brady background check system by the NICS Act.

These “relief” programs will allow persons whose names are entered into NICS by a state because they are barred from possessing a gun for mental health reasons to be removed if

they “will not be likely to act in a manner dangerous to public safety” and if “the granting of the relief would not be contrary to the public interest.”

Twenty-nine states, including California, Massachusetts, and New York, had “relief from disabilities” programs for the mentally ill in effect before enactment of the NICS Act. Some of these states that have had state laws barring gun possession due to mental illness allowed “relief from disabilities” merely with a doctor’s note. The NICS Act provides that state relief from disabilities programs established pursuant to the Act must include a finding that the person no longer poses a danger to the public and that such relief is not contrary to the public interest.

The NICS Act also requires federal agencies, such as the Department of Veterans Affairs, to provide “relief from disabilities” for people whose names have been provided to NICS by that agency but who no longer pose a danger to the public. Federal agencies must remove from NICS any person found by a court or other lawful authority to no longer suffer from the mental illness that barred them from buying or possessing a gun, or if they are fully rehabilitated or complete mandatory treatment, supervision or monitoring.

**Q: If a request for “relief from disabilities” is not granted within 365 days, does that person automatically regain their right to buy and possess guns?**

**A:** No. In cases involving disqualification for mental health reasons, the NICS Act provides that if a federal agency fails to act on a petition for “relief from disabilities” within 365 days, then that petition is deemed *denied*. The gun lobby tried and failed to include a provision that would have automatically granted relief if a federal agency did not act on a petition for “relief from disabilities” within 365 days. A person disqualified by a federal agency for mental health reasons whose relief is denied must then file a lawsuit if they wish to have their petition for “relief from disabilities” considered. If the suit is successful, attorneys fees can be awarded, but only if the person successfully proves to a court that he or she is no longer prohibited and that relief should have been granted. Such fee awards are capped at the rate awarded to legal aid organizations. Attorney fee awards under the NICS Act are available only to those who successfully challenge their denial of relief by federal agencies – they do not apply to denials of relief by states.

**Q: I have heard that the NICS Act could require federal agencies to remove from NICS the names of people who have completed temporary treatment for mental illness. Is this true?**

**A:** The NICS Act states that federal agencies may not supply records to NICS if a person has been “fully released or discharged from all mandatory treatment, supervision, or monitoring.” This provision of the NICS Act only applies to the small minority of mental health records supplied by federal agencies – it does not apply to the vast majority of mental health records, which are supplied to NICS by the states. Indeed, the NICS Act provides for funding to add hundreds of thousands of new state records to NICS.

This provision of the NICS Act is unclear, but could be interpreted to prohibit federal agencies from providing records for the small percentage of people who are ordered to receive temporary treatment, supervision or monitoring, and then are fully released or discharged from that treatment, supervision, or monitoring. The Department of Justice has not yet issued regulations interpreting this provision of the NICS Act. The Brady Campaign will be monitoring the regulatory process to ensure that the Department of Justice properly reconciles this *reporting* provision of the NICS Act with the *continuing prohibition* on gun purchasing or possession by anyone who “has been adjudicated as a mental defective or has been committed to any mental institution.”

### ***Veterans and Mental Illness***

**Q: Is it true that the NICS Act will automatically remove 90,000 mentally ill veterans from NICS without individual review?**

A: No. Some groups have asserted that the Department of Veterans Affairs (VA) improperly provided to NICS the names and identifying information for 88,898 beneficiaries who had been adjudicated mentally incompetent by the VA or by the court system. The VA’s standard for adjudicating incompetence is equivalent to ATF’s standards, so the names appear to have been properly furnished to NICS.

Under the NICS Act, federal agencies, such as the VA, must provide for “relief from disabilities” programs for people whose names have been provided to NICS by that agency and who no longer pose a danger to the public. Federal agencies must remove from NICS any person who is found by a court or other lawful authority to no longer suffer from the mental illness that barred them from buying or possessing a gun, or if they are fully rehabilitated or complete all mandatory treatment, supervision or monitoring. There is no provision in NICS for the automatic removal of all of these veterans’ names from NICS.

**Q: Some opponents of the NICS Act called it the “Veterans Disarmament Act.” Does the NICS Act disarm all veterans who could buy and possess guns before the NICS Act was enacted?**

A: No. The NICS Act does not change the prohibition enacted in 1968 that bars people who are dangerously mentally ill from possessing a gun. Under federal law, people who are dangerously mentally ill may not buy or possess a gun if they are involuntarily committed to a mental institution or found by a court or lawful authority to be a danger to themselves or others or unable to manage their own affairs.

The NICS Act will help to ensure that the 80-90% of disqualifying mental health records that are not presently in NICS are sent to the system, so that people who are barred by federal law from buying a gun are properly blocked by the Brady background check. The names of many thousands of people who are already barred from buying a gun, but whose names are not in NICS, will now be added to NICS and blocked from buying a gun because of the NICS Act.

**Q: Will veterans previously barred from buying or possessing a gun because of mental illness now be able to buy and possess guns?**

A: Veterans, as well as non-veterans, are still barred from buying or possessing a gun if they are dangerously mentally ill as demonstrated by being involuntarily committed to a mental institution or found by a court to be a danger to themselves or others or unable to manage their own affairs. If veterans no longer suffer from the mental health condition that barred them from buying or possessing guns, however, they may petition for “relief from disabilities” to have their names removed from NICS. Federal agencies must also remove from NICS any person who is found by a court or other lawful authority to no longer suffer from the mental illness that barred them from buying or possessing a gun, or if they are fully rehabilitated or complete all mandatory treatment, supervision or monitoring.

### ***Background Check Fees***

**Q: Does the Act prohibit fees for background checks?**

A: The NICS Act states that the FBI is barred from imposing a “user fee” for Brady background checks. This is not new. It codifies language that has existed in appropriations legislation for years. The Act does not prevent states from charging fees for background checks.