



# OFFICE OF THE INSPECTOR GENERAL

## U.S. Department of Justice

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### **DOJ OIG Releases Report on the Handling of Firearm Purchase Denials through the National Instant Criminal Background Check System**

The Department of Justice (DOJ) Office of the Inspector General (OIG) announced today the release of a report that examined aspects of the National Instant Criminal Background Check System (NICS). NICS, which is administered by the Federal Bureau of Investigation (FBI), is used by Federal Firearms Licensees, importers, and manufacturers to determine whether a prospective purchaser is legally prohibited from buying a firearm. The FBI processed more than 51 million NICS transactions from 2008 to 2014, of which 556,496, or about 1 percent, were denied.

When the FBI denies a sale, it refers the matter to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for additional review, possible firearm recovery, and consideration to pursue prosecution by the U.S. Attorney's Offices (USAO). Between 2008 and 2015, ATF formally referred 509 NICS denial cases that included 558 subjects for possible prosecution, and the USAOs accepted 254 of these subjects, or less than 32 subjects per year, for consideration of prosecution.

Today's report by the DOJ OIG assesses the effectiveness of the FBI quality control processes for NICS transactions, the impact of state reporting and recording on FBI NICS determinations, and the FBI's referral of denied NICS transactions to the ATF. For the ATF, the report addresses initial screening and referral of denied transactions to its field offices for investigation, and field office investigation of denied transactions. The report also addresses USAO prosecution of crimes associated with denials. We were unable to assess the FBI's accuracy in approving NICS transactions because, for approved transactions, identifying information about the purchaser and firearm is purged from NICS within 24 hours pursuant to federal law.

The OIG's findings include:

- The FBI generally has an effective internal control system for processing NICS transactions and for referring denied transactions to ATF, and we found the overall FBI error rate was exceedingly low. However, our review identified weaknesses in the FBI's system for following up on pending transactions. As we note in our report, even an isolated NICS process breakdown can have tragic consequences, as evidenced by the June 2015 fatal shooting at a Charleston, South Carolina church, where the NICS process

lacked timely and accurate data from local agencies that could have prevented the alleged shooter from purchasing the gun he allegedly used.

- States, which handled about 68 million NICS transactions during our review period, are required to update the database with supporting documents as necessary after processing a transaction. We reviewed a judgmental sample of 631 state-processed transactions and determined that in 630 of them the states did not fully update the NICS database or inform the FBI of the transaction's outcome.
- The ATF generally has an appropriate system of internal controls for processing denials and referring them to the proper field division for investigation, but it could strengthen its quality control process by documenting in more detail its selection process and results of its quality control reviews.
- For 15 years, the FBI and the ATF have had a longstanding disagreement regarding the definition of "Fugitive from Justice," a category that disqualifies prospective gun purchasers. According to ATF records, there were 49,448 transactions in this category between November 1999 and May 2015 that the FBI denied under its interpretation of the law, but that the ATF did not consider appropriate denials. 2,183 of these transactions resulted in firearms transfers that the FBI believed should have been denied, but the ATF did not agree and did not attempt to recover the firearms. This disagreement was referred to the DOJ's Office of Legal Counsel (OLC) in 2008, and OLC provided informal advice in July 2008. In August 2010, the FBI requested formal reconsideration of that advice, but 6 years later OLC still has not rendered a decision. We believe this issue should be addressed as soon as possible.
- While the number of defendants prosecuted by the DOJ for gun crimes has increased recently, the number of NICS prosecutions has dropped substantially since FY 2003. There also has been no significant change in the number of NICS cases pursued for prosecution since a January 2013 White House plan, issued after the school shooting in Sandy Hook, Connecticut, that requested the DOJ to maximize enforcement efforts to prevent gun violence and prosecute gun crime. We found that each USAO has substantial discretion in deciding whether to prosecute criminal cases, and USAOs usually require that a potential NICS case involve aggravating circumstances.

Today's report makes seven recommendations to help improve the NICS process throughout the DOJ and to better ensure that state points of contact appropriately and timely update NICS. The DOJ agreed with all of them.

**Report:** Today's report is available on the OIG's website under "Recent Reports" and at the following link: <https://oig.justice.gov/reports/2016/a1632.pdf>.

**Video:** To accompany today's report, the OIG has released a 4-minute video featuring the Inspector General summarizing the report's findings. The video and a downloadable transcript are available at the following link: <https://oig.justice.gov/multimedia/>.