



# FAST FACTS

Federally licensed retailers are required to run a background check through the FBI's National Instant Criminal Background Check System (NICS)<sup>i</sup> when transferring a firearm to an individual. Firearms retailers rely on NICS to ensure the lawful transfer of firearms to law-abiding citizens. Over 160 million NICS background checks have been conducted from Nov. 30, 1998 through Dec. 30, 2012; more than 19.5 million were conducted in 2012 alone.

However, a background check is only as good as the records in the database. That is why the firearms industry supports improving the current NICS system by increasing the number of prohibiting records states submit to the FBI databases, helping to prevent illegal transfers of firearms to those who are prohibited from owning firearms under current law. Including these missing records will help ensure more accurate and complete background checks.

States must improve the NICS database by submitting any and all records establishing an individual is a prohibited person, such as mental health records showing someone is an "adjudicated mental defective" or involuntarily committed to a mental institute, as well as records showing someone is the subject of a domestic violence protective order, a drug addict or subject to another prohibited category.<sup>ii</sup>

The firearms industry has a long record of supporting background checks.<sup>iii</sup> The NSSF supported background checks prior to the



- **FBI NICS databases are incomplete because many states have not provided all records that establish someone is prohibited from owning a firearm under current law, especially including mental health adjudications and involuntary commitments orders.**
- **The firearms industry is launching a campaign, Fix NICS<sup>SM</sup> to encourage states to report to NICS all records that establish someone is prohibited from owning a firearm under current law.**
- **Congress should condition federal grants to states on submitting prohibiting records. States that fail to provide records to NICS should face grant penalties, just as states that fail to meet certain drunk-driving law thresholds may lose federal highway funds.**

passage in 1993 of the Brady Act that created a background check system and NICS in 1998. The existing background check system must be fixed, however, before Congress even considers whether to expand background checks, otherwise we'll just have more incomplete and inaccurate checks.

### The Problem

The federal government cannot mandate state participation due to the 10th Amendment of the U.S. Constitution.<sup>iv</sup> Unfortunately, far too

many states fall short on submitting prohibiting mental health and other records. Twelve states and 5 territories had made fewer than 10 records available and sixteen states had made fewer than 100 records available as of March 31, 2013, according to FBI data.<sup>v</sup>

While some progress has been made over the last few years, much of it is concentrated in just a few states.<sup>vi</sup> The failure of states

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to submit prohibiting records is simply unacceptable and limits the effectiveness of NICS.

### Industry Working Toward Solution

The firearms industry is launching a campaign to encourage states to report to NICS all records that establish someone is prohibited from owning a firearm under current law. Through a multi-state effort focused on forming coalitions in the states with the fewest submitted records, the industry is dedicating significant resources to helping states overcome the legal, technological, and intrastate coordination challenges preventing effective record sharing.

“Fix NICSSM” is about keeping firearms out of the hands of prohibited persons, like the shooter in the Virginia Tech tragedy who was able to purchase a firearm from a federally licensed firearms retailer because his prohibiting mental health records were not in the NICS system.

### Carrot & Stick Approach Needed

Our industry isn’t calling on Congress to appropriate new federal funds to fix the NICS system. In these tough fiscal times, the tools are already in place to encourage states to submit more records. Just as states that fail to meet certain drunk-driving law thresholds may lose federal highway funds, states that fail to provide records to NICS should face grant penalties. Congress simply needs to do a better job conditioning current federal monies going to the states to incentivize record sharing.

The NSSF supported the NICS Improvement Amendments Act of 2007, which was enacted to encourage states to submit more records on prohibited individuals to the NICS database.<sup>vii</sup> However, the law has never been fully implemented due to problems in quantifying records.

One incentive not yet implemented would allow a state to obtain a waiver of the matching requirement for

National Criminal History Record Improvement Program’s (NCHIP) grants, if a state submits at least 90 percent of its records identifying prohibited individuals. There were also Byrne grant penalties included in the 2007 law that have not yet been implemented.

Congress must rework such a “carrot and stick” approach in a way that can be fully implemented to encourage states to fully participate in NICS. Increasing the number of prohibiting records is the best way to keep prohibited individuals from purchasing firearms, without punishing law-abiding retailers and firearms owners.

*The National Shooting Sports Foundation represents over 8,000 firearms and ammunition manufacturers, retailers and ranges. Our members are committed to following the law and promoting safe, legal transfer of firearms. For more information about the FixNICS campaign, visit FixNICS.org.*

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- i There are 21 full or partial Point of Contact states, which have a state-designated agency responsible for processing some or all NICS background checks on behalf of the federal firearm licensees (FFLs) within the state.
  - ii Note: Fix NICS does not seek to require all mental health records be submitted to NICS, only those that establish an individual falls into one of the current federal categories of persons prohibited from receiving firearms. The categories are available here in full: <http://www.fbi.gov/about-us/cjis/nics/general-information/fact-sheet>
  - iii NSSF press release, “At NICS User Conference, NSSF Supports Virginia Governor’s Call to Add Mental Health and Other Records to Background Check System,” May 2012, <http://www.nssf.org/newsroom/releases/2012/050112.cfm> (Last accessed Feb. 5, 2013).
  - iv *Printz v. United States* - 521 U.S. 898 (1996)
  - v The National Shooting Sports Foundation obtained data on the number of active adjudicated mental health records in the NICS Index from the Federal Bureau of Investigation.
  - vi U.S. Government Accountability Office, “Gun Control: Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks,” GAO-12-684, July 2012.
  - vii The NICS Improvement Amendments Act of 2007 (NIAA), Pub. L. 110-180



11 Mile Hill Road  
Newtown, CT 06470-2359  
T: 203.426.1320  
F: 203.426.1087  
[nssf.org](http://nssf.org)