



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, D.C. 20420

February 9, 2009

Director (00/21)
All VA Regional Offices and Centers

Fast Letter 09- 08

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

This letter provides information and guidance concerning the new law governing the National Instant Criminal Background Check System (NICS), incompetency, and firearms.

Background

The Brady Handgun and Violence Prevention Act of 1993, Public Law 103-159 (The Brady Act), prohibits the sale of firearms to certain people. Section 922(g)(4) of title 18, United States Code, defines ineligible persons. Pursuant to 18 U.S.C. § 922(g) (4) and section 103(e)(1) of the Brady Act, a person who is prohibited, based on a finding of incompetency, from possessing, shipping, transporting, or receiving firearms or ammunition must be reported to DoJ for inclusion in the National Instant Criminal Background Check System (NICS) database. The Federal Bureau of Investigation (FBI) manages the NICS database for DoJ.

On January 8, 2008, the NICS Improvement Amendments Act of 2007, Public Law 110-180 (NIAA) was signed into law (codified at 18 U.S.C. § 922 note). Prior to the NIAA, a finding of incompetence, even if subsequently revised, was a permanent ban to firearm ownership. The NIAA removes firearms restrictions for persons no longer adjudicated as incompetent, and even allows relief from the restrictions for those who are presently adjudicated incompetent.

The NICS Improvement Amendments Act of 2007

The NIAA 2007 sets new requirements for Federal and State agencies, and contains several amendments to the Brady Act that obligate VA to:

Page 2.

Director (00/21)

- **Provide updated competency information to DoJ** -- Ensure our internal database is updated or corrected when a beneficiary is determined no longer incompetent and notify DoJ of any changes so that it can update its NICS database.
- **Provide a relief program** -- Create a program allowing beneficiaries the opportunity to apply for relief from the firearms prohibitions imposed by the Brady Act.
- **Provide specific due process** -- Provide beneficiaries both written and oral notification of the firearms prohibitions, penalties for violating them, and information regarding the availability of the relief program.

Please see the enclosure for answers to questions the public may ask concerning this new law.

NICS Database

Pursuant to Title I, Section 101(a)(4)(D) of the NIAA, when a beneficiary has competency restored by VA, VA must update, correct, or remove the name of the individual from any database VA maintains and makes available to DoJ. VA will continue to update the NICS database monthly to report the status of beneficiaries who have been adjudicated incompetent and is developing system enhancements to remove the names of those beneficiaries who are readjudicated by VA as competent.

Competency Information

The Compensation and Pension Service relies on the accurate input of data into BDN/VETSNET to update the NICS database. However, when stakeholders request a status or history of a beneficiary's competency status, C&P Service first checks Virtual VA. If the desired information is not available in BDN/VETSNET or Virtual VA, the Service will send an e-mail under the subject "NICS verification" to the Veterans Service Center Manager (VSCM) with jurisdiction of the claims folder. The VSCM's designee will review the folder and respond to C&P Service within three business days with the complete dates (including month, day and year) of all periods of incompetency/competency.

Relief Program

Pursuant to 18 U.S.C. 925(c) and Section 101(c)(2)(a) of the NIAA, a person may apply to VA for relief from the prohibitions imposed by Federal laws with respect to the

Page 3.

Director (00/21)

acquisition, receipt, transfer, shipment, transportation, or possession of firearms. VA may grant such relief if it would not be contrary to the public interest, and if the evidence satisfactorily establishes that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not likely act in a manner dangerous to public safety. VA will consider relief only for persons VA rated incompetent, not those persons a court, commission, or other lawful authority has declared incompetent and that body has not restored competency. The Act requires that each application for relief must be processed no later than 365 days after its receipt, or VA will be deemed to have denied it without cause.

The regional office will retain jurisdiction over appeals for competency issues only, while C&P Service will decide applications for relief. The beneficiary will submit the initial request for relief to the RO of jurisdiction. The RO will follow the guidelines as set forth in M21-1MR, Part III, Subpart ii, Chapter 5, Section F (M21-1MR III.ii.5.F) for temporary transfer of a VA claims folder and, under end product 290, send the principal guardianship folder (PGF), claims folder, and a memorandum requesting the relief determination to:

Department of Veterans Affairs
Compensation and Pension Service
NICS Manager – 212
810 Vermont Ave, NW
Washington, DC 20420

C&P Service is responsible for acknowledging the claim and directing any development. In response to status inquiries, the RO will verify receipt of the request for relief and refer all status inquiries to VAVBAWAS/CO/212A under the subject "NICS relief inquiry." The inquiry must include the beneficiary's name, claim number, and contact information—including address and telephone number. Upon adjudication of the request for relief, C&P Service will notify the beneficiary in writing of its decision and update the NICS database as necessary.

Written Notification

The law provides certain requirements for informing beneficiaries of firearms prohibitions and the penalties for violating them. Effective immediately, on the notice of proposed incompetency, include the following:

Page 4.

Director (00/21)

“A determination of incompetency will prohibit you from purchasing, possessing, receiving, or transporting a firearm or ammunition. If you knowingly violate any of these prohibitions, you may be fined, imprisoned, or both pursuant to the Brady Handgun Violence Prevention Act, Pub.L.No. 103-159, as implemented at 18, United States Code 924(a)(2).”

“If we decide that you are unable to handle your VA funds, you may apply to this regional office for the relief of prohibitions imposed by the Brady Act with regards to the possession, purchase, receipt, or transportation of a firearm. Submit your request to the address at the top of this letter on the enclosed VA Form 21-4138, *Statement in Support of Claim*. VA will determine whether such relief is warranted.”

The above text will replace the current Brady Bill language in the PCGL section entitled “What Could Be Affected” (paragraph M09b) and the MAP-D paragraph entitled “Incompetency--Brady Bill Notice.” Ensure a VA Form 21-4138 is enclosed with the notice.

On the PCGL notice implementing the incompetency determination, under the second paragraph, in the section, “What Did We Decide,” include the following language:

“The Brady Handgun Violence Prevention Act prohibits you from purchasing, possessing, receiving, or transporting a firearm or ammunition while VA’s finding of incompetency is in effect. You may be fined and/or imprisoned if you knowingly violate this law.”

“You may apply to VA for the relief of firearms prohibitions imposed by the law by submitting your request to the address at the top of this letter on the enclosed VA Form 21-4138, *Statement in Support of Claim*. VA will determine whether such relief is warranted.”

Again, be sure to enclose VA Form 21-4138.

Oral Notification

VA must also provide oral notification of the firearms prohibitions, penalties, and information regarding the relief program. Effective immediately, upon sending the proposed notice of incompetency, the RO must contact the beneficiary and orally inform him/her of the following:

Director (00/21)

- The determination of incompetency will prohibit the purchase, possession, receipt, or transportation of a firearm or ammunition;
- Violation of the law may result in a fine and/or imprisonment; and
- Relief of any firearm prohibitions resulting from the determination of incompetency may be available by submitting a request to the RO.

VA must make reasonable efforts to contact the beneficiary. Such reasonable efforts will generally consist of an initial telephone contact to the current telephone number of record and at least one follow-up attempt. A voice-mail message is not considered sufficient oral notification. If a current, valid telephone number is not available for the beneficiary, employ reasonable efforts to secure one. Those efforts may include searching the telephone directory, reviewing available VA hospital records, or contacting the representative.

Prepare a VA Form 119, *Report of Contact*, using the guidelines as set forth in M21-1MR, III.iii.1.B.2.e when:

- Compliance with the three NICS oral requirements has been met, or
- After reasonable efforts to contact the beneficiary, compliance with the NICS oral notification requirements was not possible.

The VA Form 119 must clearly document the exact reason for noncompliance with the NICS oral notification requirements (e.g., beneficiary was physically or mentally incapacitated). If the beneficiary later reports never receiving or not understanding the initial oral notice, provide it again and document that fact using VA Form 119.

Fiduciary Program Responsibilities

During visits, the field examiner (FE) will orally advise the beneficiary of the Brady Bill provisions. The FE will ensure beneficiaries with a rating of incompetency are aware of the firearms prohibitions and penalties, and are given information regarding the relief program. In each field examination report the FE will document that the provisions of the Brady Bill were discussed.

Page 6.

Director (00/21)

Questions

If you have any questions concerning information contained in this fast letter, please e-mail your inquiry to VAVBAWAS/CO/212A.

/s/

Bradley G. Mayes

Director

Compensation and Pension Service

Enclosure