

**PROTECTING THE PUBLIC:
Bureau of Alcohol, Tobacco and Firearms
Could Improve its National Instant Criminal
Background Check System Program**

OIG-02-004

November 1, 2001



Office of Inspector General

The Department of the Treasury

Contents

Audit Report	2
Results in Brief.....	2
Background	4
Findings and Recommendations	6
ATF Needs to Better Respond to NICS Impact on Field Divisions	6
Recommendations.....	12
ATF Could Improve the Referral Process to the Field Divisions.....	14
Recommendations.....	18
ATF Needs to Upgrade N-Force Querying Capabilities.....	20
Recommendation	21

Appendices

Appendix 1: Objectives, Scope, and Methodology	23
Appendix 2: Management Response.....	25
Appendix 3: Major Contributors To This Report	38
Appendix 4: Report Distribution.....	39

Abbreviations

ANR	ATF's NICS Referral System
ATF	Bureau of Alcohol, Tobacco and Firearms
Brady Act	Brady Handgun Violence Prevention Act
Brady Branch	ATF's Brady Operations Branch
FBI	Federal Bureau of Investigation
FY	Fiscal Year
NICS	National Instant Criminal Background Check System
OIG	Office of Inspector General
OMB	Office of Management and Budget
U.S.	United States

*The Department of the Treasury
Office of Inspector General*

November 1, 2001

Bradley A. Buckles
Director
Bureau of Alcohol, Tobacco and Firearms

The Brady Handgun Violence Prevention Act (Brady Act) established the National Instant Criminal Background Check System (NICS). As part of the NICS program, the Bureau of Alcohol, Tobacco and Firearms (ATF) is responsible for recovering firearms from individuals prohibited from owning them as determined by background checks conducted under NICS. Prohibited individuals include those who have been convicted in any court of a misdemeanor crime of domestic violence, are fugitives from justice, or were dishonorably discharged from the Armed Forces.

The overall objective of this review was to determine what efforts ATF has made to enforce the Brady Act. We conducted this audit because Congress and the Administration continue to emphasize the effective regulation and control over firearms. We performed our audit fieldwork from January to August 2001 at ATF Headquarters in Washington, D.C., three field divisions, and the Brady Operations Branch (Brady Branch) in Martinsburg, West Virginia. We interviewed ATF officials and evaluated records and procedures. The scope of this review covered November 30, 1998 through December 31, 2000. See Appendix 1 for a more detailed description of the audit objectives, scope, and methodology.

Results in Brief

ATF officials have implemented a NICS program to address their responsibilities under the Brady Act. For example, they established the Brady Branch for receiving and processing NICS referrals from

the Federal Bureau of Investigation (FBI), initially without permanent staffing. ATF has also developed criteria and guidance for processing NICS referrals and conducted training on the NICS program. Field agents conduct investigations and, when needed, remove firearms from prohibited individuals. ATF has also worked with the United States (U.S.) Attorneys to establish prosecution guidelines, so that field agents only fully investigate and develop cases that are likely to be prosecuted.

During our audit, we reviewed a sample of 275 cases that ATF completed where agents needed to retrieve a firearm from a prohibited individual. ATF field agents successfully removed the firearm in 96 percent of these cases. For the remaining 4 percent, after conducting their investigation, ATF was unable to locate the firearm.¹ ATF referred 4 of the 275 cases to the U.S. Attorneys for prosecution. The remainder did not meet the U.S. Attorney prosecution guidelines. In most cases, we found that ATF's NICS investigations were started promptly.

We noted three areas where ATF could further improve the program. First, now that the NICS program is well established, ATF officials can improve it by evaluating and responding to the program's impact on field divisions. Second, the Brady Branch's process for sending referrals to field divisions could be improved. Lastly, the primary database management system used in the field needs to be upgraded.

To address these issues, we recommended that ATF: (1) develop case workload and staffing models to better assess and respond to field division needs in investigating NICS referrals, (2) issue guidance clarifying NICS referral priority within field divisions' other violent crime program activities, (3) develop a NICS program model for all field divisions to use, (4) streamline the referral process to include having the Brady Branch perform additional background work before sending referrals to the field divisions, (5) upgrade the database systems the Brady Branch and the field divisions use so

¹ Our sample was not a statistical one, so these results cannot be projected to the entire universe of ATF's cases.

they can communicate electronically, (6) until such time as referrals can be made electronically, implement an inventory control system in the Brady Branch for referrals sent to field divisions, and (7) upgrade N-Force to include query capabilities the field divisions need.

ATF agreed with the recommendations made in this report. ATF officials will examine current staffing models for field offices and make necessary adjustments. They will also issue guidance clarifying the NICS referral priority within field divisions' other violent crime program activities and they will develop a NICS program model.

The Brady Branch has streamlined the referral process. Staff are now performing some background work of NICS referrals. They are making the referral package more user friendly. They also now send the field divisions a list of referrals the Brady Branch has sent to the field, which the field divisions can then use to verify that all referrals have been received.

ATF is in the process of developing a system to integrate all firearms databases and connect them to other appropriate ATF data files. This integration will allow the Brady Branch to electronically transmit referrals to field divisions. The next phase of N-Force will also allow queries to be generated from the field level.

Background

Under the Brady Act, effective November 30, 1998, no Federal firearms licensee shall transfer a firearm (handgun or long gun) to an individual (non-licensee) without a background check. The FBI, or a designated state agency, uses the NICS computerized system to conduct background checks. Firearms are not to be transferred until a background check determines that the transfer will not violate applicable federal and state laws. However, if the background check is not completed within 3 business days, the sale is allowed to proceed. The FBI continues to research the backgrounds of purchasers, even after 3 days have passed, to

ensure that they are not prohibited individuals. If the FBI's NICS Operation Center determines an individual was prohibited from owning a firearm, the case is referred to ATF for further action.

The FBI makes two types of referrals to ATF: standard and delayed. "Referrals-Standard" are prohibited individuals who attempted to purchase a firearm, but were denied within 3 business days, or before the firearm was transferred. "Referrals-Delayed" are prohibited individuals who obtained a firearm after the 3-day period expired, but before the FBI determined the individual was prohibited.

ATF's Brady Branch in Martinsburg, West Virginia receives all of the FBI referrals. The FBI initially faxes all Referrals-Delayed and later electronically downloads all its referral records, both delayed and standard, to the Brady Branch's computer database.

For Referrals-Delayed, the Brady Branch faxes the FBI information to the appropriate field divisions for immediate action. The Brady Branch also prepares a package of information that is mailed to the field divisions. All Referrals-Delayed are forwarded to field divisions for action.

For Referrals-Standard, Brady Branch staff review each referral and compare it to a set of criteria, developed in conjunction with U.S. Attorneys, to determine whether the referral warrants further investigation. The criteria are designed to limit referrals to the field divisions that U.S. Attorneys will not prosecute. If the criteria are met, the Brady Branch staff members will prepare a referral package and mail it to the responsible field division. If the criteria are not met, the Brady Branch will close out the referrals with no further action required.

Once a field division receives a referral from the Brady Branch, it is generally assigned to a field agent for further review and investigation. Referrals-Delayed are considered high priority for action, to ensure that the firearm is removed from the prohibited individual. Referrals-Standard may receive an initial review to determine whether the local U.S. Attorney would be interested in

prosecution. If prosecution is a possibility, the referral is assigned to a field agent for investigation. If the referral is not a likely candidate for prosecution, it is generally closed without further action.

Under the Administration's Project Safe Neighborhoods, emphasis is to be placed on aggressive enforcement of Federal firearms laws against people who are prohibited from possessing firearms, including Brady Act violators. The Department of Justice plans to hire 113 new Assistant U.S. Attorneys to work on firearms violation cases. As this happens, ATF's practices may also need to change, as it may be asked to fully investigate and refer more Brady violators for prosecution.

Findings and Recommendations

Finding 1 ATF Needs to Better Respond to NICS Impact on Field Divisions

ATF officials have implemented a NICS program to address their responsibilities under the Brady Act. Now that the NICS program is well established, ATF officials can improve it by evaluating and responding to the program's impact on field divisions. The NICS program has changed the number of mandatory criminal investigations field divisions must perform along with their other investigative responsibilities, but ATF has not changed its management processes to address this. As a result, ATF Headquarters may not be able to respond to problems as they occur in the field divisions. For example, the large numbers of referrals have overwhelmed some field divisions, which may impact their ability to carry out other ATF violent crime programs. Also, the NICS structure and processes vary between field divisions, without taking advantage of the best practices that exist in some locations.

ATF Has Implemented the NICS Program

In implementing the NICS program, ATF Headquarters provided guidance and collected performance data from field divisions on the NICS program. For example, ATF developed criteria for processing NICS information. A policy was also implemented requiring field investigations of all Referrals-Delayed and some Referrals-Standard. In addition, ATF Headquarters receives biweekly NICS performance reports from the field divisions. These reports include information on Referrals-Delayed received, cases referred for prosecution, the number of defendants, and the firearms retrieved. While there is no specific law enforcement performance measure for NICS, it is included in the calculations for fighting violent crime that ATF uses to assess the impact of its strategic goals. ATF officials have visited the field divisions to discuss NICS issues, among other topics, and have also held a NICS Coordinators' Conference.

The following table shows ATF NICS activity from the time the program began in November 1998 through June 5, 2001.

Table 1: ATF NICS Activity

	Referrals Received	Forwarded to Field:		Referred for Prosecution	Convictions
		Referrals-Delayed	Referrals-Standard		
Total Numbers	217,061	11,106	50,545	2,131	294

There are significant differences between the number of referrals received, forwarded to the field, and referred for prosecution. As we noted earlier, while the Brady Branch forwards all Referrals-Delayed received to the field, ATF Headquarters has established criteria in concert with U.S. Attorneys to limit the number of Referrals-Standard forwarded to the field.

ATF officials attempt to work closely with their respective U.S. Attorneys to identify prosecutable cases to which ATF can devote its limited resources. For the field offices we visited, the U.S.

Attorneys have established either written or verbal prosecution guidelines, which field agents use to determine if a case should be referred for prosecution. Each judicial district may have a different threshold for prosecution, depending upon their local crime problem. Of the approximately 217,000 who have been denied firearm purchases since the Brady system was instituted, only 294 (less than 0.1%) have been convicted.

ATF Needs to Monitor and Address Impact of NICS Program

While ATF has administered the NICS program, they could further improve the program by monitoring and addressing its impact on field divisions. First, discussions with ATF personnel indicated that they did not conduct studies of case workloads, staffing, and other needed resources to ensure the field divisions could effectively and efficiently implement the NICS program. Field divisions we visited and those contacted in an ATF study of the NICS program commented on how NICS referrals have had a negative impact on their other investigative responsibilities and the amount of staff they have to devote to the NICS program. A problem with conducting workload studies is that N-Force, the case management system used in the field, does not communicate with ATF's Simplified Time and Attendance System.² The needed staffing data is not easily accessible and this makes it difficult to perform an analysis of the impact NICS is having on the field divisions.

Second, ATF officials could assist field division directors in making the best use of their investigative resources by clarifying their responsibilities for establishing NICS case priority. To date, ATF has provided conflicting guidance to field divisions on how to prioritize referrals within the context of all other Violent Crime investigations. In some instances, ATF Headquarters instructed field divisions that NICS referrals are to be ranked in priority as the local crime problem dictates. The guidance states that NICS cases are not to be worked at the expense of higher priority investigations; however, priority consideration should be given to

² This system captures information and statistics on the time field agents worked on investigative cases.

Referrals-Delayed, where the firearm has been transferred to a prohibited individual. In the same, as well as other guidance documents, ATF Headquarters also directs field divisions to give priority to immediately investigating Referrals-Delayed and indicates that investigations must be initiated for each Referral-Delayed. ATF Headquarters needs to reinforce that division directors should rank the priority of NICS cases, including Referrals-Delayed, within the context of their other investigations, so they know how to proceed if resources are insufficient to meet the demands of all high priority investigations.

Finally, ATF Headquarters could facilitate an exchange of best practices through a NICS program model that divisions could use to help address the problems they face. For example, while ATF Headquarters officials issued guidance requiring the field divisions to designate a NICS coordinator, they did not specify where this person should be situated within the organizational structure. We found that the divisions placed the NICS coordinator in different areas and even gave them different types of responsibility. We also noted that ATF had not issued any timeliness standards for completion of investigations. Without Headquarters guidance, some field divisions had developed their own standards, which varied from 5 days to 21 days. While we recognize that there will be differences in how the divisions operate, based upon their local issues, we also believe that the divisions face many similar problems and could benefit from sharing solutions.

Management is Required to Monitor Programs and Address Problems

To administer a program and maintain management accountability, ATF Headquarters management needs to more closely monitor the NICS program and take any necessary actions to address potential problems. The Office of Management and Budget (OMB) Circular A-123, *Management Accountability and Control*, states that managers are responsible for the quality and timeliness of program performance, increasing productivity, and controlling costs and mitigating adverse aspects of agency operations. To accomplish

this, Federal managers should take proactive measures to identify needed improvements and take corresponding corrective action.

Management of the NICS program is divided between two ATF Headquarters offices, which can lead to confusion over responsibilities. The Office of Firearms, Explosives and Arson is responsible for program oversight, while the Office of Field Operations is responsible for field investigations and resource management. ATF's draft Strategic Plan for Fiscal Year (FY) 2000-2005 commented that both ATF Headquarters and field managers have reported confusion between Directorates (Offices), and between ATF Headquarters and the field divisions, over responsibilities and mandates. Since the possibility of confusion over responsibilities could affect NICS program performance, it is important for ATF Headquarters to take the necessary actions to monitor and control the impact of the NICS program.

Current Management Processes Do Not Address Changes NICS Caused

The NICS program has changed the number of mandatory ATF firearms criminal investigations, but ATF did not change its management processes to address this. ATF Headquarters intended to allow division directors to incorporate the NICS program into their strategies to address local violent crime problems. However, by requiring field divisions to investigate all Referrals-Delayed and certain types of Referrals-Standard, ATF added a new mandatory workload to the divisions. Such a mandatory workload removes the division directors' ability to control caseloads with regard to the local crime problems. Furthermore, no additional resources were given to the field divisions to meet these requirements, contributing to the negative impact NICS referrals are having on other investigations, as noted by an ATF study.

ATF Headquarters analyzes NICS output performance statistics, such as the number of Referrals-Delayed received and the number of cases submitted for prosecution, to monitor field division performance. However, these types of data do not reflect any

impact the volume of NICS cases may have on other types of investigations. They also do not demonstrate the amount of time devoted to NICS investigations or other Violent Crime investigations, nor any changes or trends that may be occurring.

Management May Not Respond to Problems or Promote Best Practices

Without taking these steps to further improve the NICS program, ATF Headquarters may not be able to respond to problems as they occur in the field divisions. The risk exists that without ATF-wide NICS program management and resource coordination to ensure the proper placement of staffing and resources, ATF's efforts to prevent or deter violent crime will be diminished. In an ATF study of 23 field divisions, many reported that NICS investigative workload had a negative effect on crime impact objectives within the division. One field division even reported having to stop all other investigative activities to work NICS referrals. Also, over half of the divisions reported that NICS had a negative impact on their division's operational and administrative effectiveness. ATF must be able to accurately demonstrate the impact of NICS on its field divisions to request any needed additional funds from Congress.

Because ATF Headquarters assigns field division staffing using historical standard numbers of field agents per office, staffing is not necessarily aligned properly. The ratio of support personnel to field agents may not be appropriate for addressing field division workloads. Divisional officials stated that they needed additional support personnel and field agents to handle NICS cases, along with other important investigations. Also, in some field divisions we visited, the Intelligence Units spent a lot of their time on NICS, which may reduce the amount of support they give to other criminal investigations.

NICS structure and processes vary between field divisions, without taking advantage of the best practices that exist in some locations. Not having a NICS program model could result in 23 different programs at the field division level, each learning from its own mistakes, which is an inefficient use of limited resources. For

example, in one of the field divisions we visited, the NICS coordinator, until recently, passed on the NICS referrals to the appropriate field office without doing preliminary reviews. Now, the NICS coordinator is going to be located within the Intelligence Unit and will be responsible for preliminary work on NICS referrals before sending them to field offices. The field division could have benefited from a model indicating the most advantageous method to process referrals and where to place the NICS coordinator. Also, by not having more consistent processes or standards, including timeliness guidelines, it is difficult for ATF Headquarters to determine field division performance in relationship to the other field divisions. These types of comparisons could identify problem areas that need Headquarters' attention.

Recommendations

The ATF Director should ensure that Headquarters officials:

1. Develop case workload studies and staffing models to assess and respond to the NICS program's impact on field division resources, including an analysis of the time and number of field agents and support personnel devoted to NICS and to the performance of other investigative priorities.

Management Comments

ATF concurred with the recommendation. The Office of Field Operations is currently conducting a reassessment of resources. Using the experience gained from the NICS referral process and the resulting case production to date, ATF plans to use the first two quarters of FY 2002 as a base measurement for any staffing model or case workload policy changes.

OIG Comment

We consider this recommendation to have a management decision with a projected final action date of September 30, 2002.

-
2. Issue guidance clarifying NICS referral priority within field divisions' other violent crime program activities.

Management Comments

ATF concurred with the recommendation. ATF officials will clarify the role of the divisions with respect to the allocation of resources for NICS and other violent crime programs. The guidance will clarify the priority of investigating NICS referrals in the context of ATF's overall violent crime program.

OIG Comment

We consider this recommendation to have a management decision with a projected final action date of December 31, 2001.

3. Develop a NICS program model for all the field divisions to use. This model should include "Best Practices" the field divisions may choose from, timeliness standards for investigations, and standards for investigative files.

Management Comments

ATF concurred with the recommendation. ATF has plans to schedule a NICS Coordinators' conference with its main objective being the creation of a NICS program model. Additionally, appropriate guidance regarding the processing and review of NICS referrals will be issued.

OIG Comment

We consider this recommendation to have a management decision with a projected final action date of the June 30, 2002.

Finding 2

ATF Could Improve the Referral Process to the Field Divisions

The Brady Branch's process for sending referrals to field divisions could be improved. First, the referral packages are not as complete and easy to interpret as they could be. Second, the referrals are sometimes not timely, or are even lost between the Brady Branch and the field divisions. Several factors have contributed to the need for an improved referral process, including that (1) ATF has not fully utilized the Brady Branch resources, because the NICS program and Brady Branch are relatively new, (2) the Brady Branch must mail its referral packages to the field divisions because the Branch's information system does not communicate with the field's system, and (3) there are no controls in place to ensure the referral packages sent to field divisions are actually received. As a result, ATF has not made the most efficient use of both the field division and Brady Branch resources. Also, some investigations and firearm retrievals were delayed. ATF management needs to address these issues to ensure that pertinent information is identified, captured, and distributed in a form and time frame that permits people to perform their duties efficiently.

Brady Branch Could Make Referral Packages More Useful

Field division personnel commented that Brady Branch referral packages could address additional factors and could be easier to use. First, Brady Branch staff could perform more background research related to specific state laws to assist field agents. Second, the Brady Branch staff could take steps to make the packages easier to interpret. Currently, the package includes a cover memo, a summary of information about the purchaser, FBI database search information, and, in some instances, court documents the investigative specialist may have obtained. Field division personnel must review the whole package to identify pertinent information.

The Brady Branch has had little time available to consider improvements to the process, because ATF's NICS program and the Brady Branch staff are relatively new. When the NICS program

began in November 1998, field agents were detailed on a rotating basis to the Brady Branch to examine referrals and forward them to the field divisions. The first permanent staff was not hired until January 2000. As of January 2001, the Brady Branch had 15 permanently assigned personnel. Also, when the program was established, ATF was not expecting the volume of referral activity that has since developed. In the early months of calendar year 2000, there was a backlog of 14,000 referrals, which the permanent staff eliminated in August 2000.

Under the current referral process, field agents have increased administrative responsibilities. First, field agents must read the entire package to determine some key information, since the packages do not have a consistent format or order of information, particularly within the FBI search section. For example, field agents may have to read the entire arrest record to determine what prohibiting factor the FBI denied on. Second, field division personnel must perform additional background checks after receiving the package from the Brady Branch. In some cases, after doing more research, the field agents determine the referrals are not prohibited individuals, meaning that an investigation is unnecessary. For the three field divisions we visited, the percentage of referrals identified as non-prohibited individuals in our review of Referrals-Delayed for one quarter were as follows:

Table 2: Percentage of Not Prohibited Individuals

Field Division	Investigation Determined Not Prohibited Individual	Number of Not Prohibited Individuals Identified	Total Number of Referrals-Delayed Received
New Orleans	23%	48	206
Dallas	22%	28	127
Louisville	13%	13	102

An ATF study, which solicited information from the field divisions, noted similar complaints from other field divisions.

To help address this issue, the Brady Branch could use a list of common state laws that re-instate prohibited individuals to reduce the number of referrals made to the field divisions. For example, in Louisiana, two unique provisions of State law directly impact NICS.

- In the case of enumerated offenses under Louisiana State statute, once ten years have passed after a sentence is completed, the individual regains the right to possess firearms, and is no longer considered a prohibited individual under State statute.
- The FBI NICS denial criteria of "fugitive from justice" mean that the person has fled the state. However, FBI denials are sometimes individuals with warrants who have not fled the state, are not federal fugitives, and still live at the address of record maintained by the court. If the subject has not left the state, it is not a violation of Federal gun laws and ATF does not have jurisdiction.

Having the Brady Branch include more commonly known state laws with its list of criteria when reviewing the referrals it receives, would reduce the investigative caseloads at the field division level.

ATF Needs to Better Control Referral Packages Sent to Field Divisions

The referrals are sometimes not timely or are even lost between the Brady Branch and the field divisions. For example, in the field divisions we visited, many Referrals-Delayed investigations were started and some cases completed before the Brady Branch referral packages were received, so that the packages were not useful to the field agents. Also, a number of referrals the Brady Branch sent to the field divisions were never received. In one division, there were no records of receiving 18 Referrals-Delayed identified in our sample as having been sent to the field division. We noted similar situations in the other two field divisions we visited. There was no way to determine if the divisions had ever received the referrals, or that they had actually been sent.

The untimely and lost referrals occurred because of the referral process that has been established within ATF. First, ATF faxes all Referrals-Delayed to field divisions and then later mail packages by private carrier. Because ATF has stressed the importance of the NICS program, the field divisions are devoting much of their resources to promptly investigating NICS cases. In many instances, field agents begin work as soon as the fax is received. Second, the Brady Branch must wait for the electronic transfer of information from the FBI before it can compile its referral package and send it to the field divisions. The packages are mailed, because ATF's NICS Referral (ANR) System does not communicate with N-Force, the case management system the field divisions use. Finally, once the packages are sent to the field divisions, there are no controls in place to ensure the referral packages sent are actually received.

As a result of the established process and the untimely referrals, ATF resources are not used efficiently. The Brady Branch is wasting its resources putting together packages if the investigation is already done. Also, some investigations were delayed or not performed at all. For the lost referrals we identified, the Brady Branch re-sent the referrals to the field divisions for action on firearms purchases that were several months old. Given that we observed lost referrals in all three field divisions, we believe this situation may be occurring in other field divisions as well. Since there is no process to ensure that all referrals are received in field divisions, it is possible that some needed investigations are not being performed.

The field divisions should receive the referral package in the most efficient and effective manner possible. The packages should differentiate between urgent and less urgent referrals, so field agents can allocate their time working more urgent referrals first. The packages should contain as much pertinent and easily identifiable information as possible. Complete information includes a list of databases searched, courts and Federal firearms licensees contacted, and the most current addresses for the Federal firearms licensees and the prohibited individuals. The most efficient way to get this information to the field divisions is to electronically transfer

the referral package from the ANR system to the field divisions' N-Force system.

Recommendations

We recommend that the ATF Director ensure:

1. The referral process is streamlined by having the Brady Branch perform more background duties. This includes:
 - a. Designating Referrals-Delayed as Urgent or Less Urgent as determined by ATF criteria, with the Urgent going immediately to the field divisions, while the Less Urgent are developed further at the Brady Branch.
 - b. Developing a more user-friendly referral package that highlights the prohibiting factor and includes the most current address and any courts or Federal firearms licensees the Brady Branch contacted.
 - c. Having Brady Branch personnel examine the Referrals-Delayed for non-prohibiting factors, using criteria the field divisions develop on common State gun laws and local prosecutorial practices, to reduce the number of unnecessary referrals being sent to the field.

Management Comments

ATF concurred with the recommendation to streamline the referral process. The Brady Branch is now using a limited period of time to perform certain background work, which has the effect of identifying the Referrals-Delayed with the highest priority. This includes contacting the Federal firearms licensee to determine if the firearm was in fact transferred, making it a higher priority. ATF is also making the referral package more user friendly by highlighting specific data on the referral documents. Since April 2001, ATF has prioritized the Referrals-Standard by using investigative criteria developed to mirror existing local U.S. Attorney's prosecutorial guidelines. In March 2001, ATF has streamlined the referral process for Referrals-Delayed, by eliminating redundancy of effort and duplication of materials sent to the field.

OIG Comment

We consider this recommendation to have a management decision with final action completed. ATF officials have taken steps to streamline the referral process. We encourage them to continue seeking other ways to address the high number of non-prohibited persons that field agents spend time on. Reducing the number of NICS referrals the field agents must investigate when the person is not prohibited would improve productivity and allow field agents to focus on cases where public safety is truly at risk.

2. The ANR and N-Force systems are upgraded so they can communicate electronically.

Management Comments

ATF concurred with the recommendation. It has contracted with an outside company to develop a system to integrate all firearms databases and connect them to other appropriate ATF data files. The fusion of ANR and N-Force is part of that effort and will allow for direct electronic transmittal of NICS referrals to field offices.

OIG Comment

We consider this recommendation to have a management decision with a projected final action date of January 31, 2002.

3. The Brady Branch uses a numbering system or inventory list as a control to ensure referrals sent to the field divisions are actually received until referrals can be made electronically.

Management Comments

ATF concurred with the recommendation. The Brady Branch has created a report that will be forwarded to the ATF NICS coordinator in each division office on a weekly basis. The list can be matched to any referrals received by fax or Federal Express.

OIG Comment

We consider this recommendation to have a management decision with final action completed.

Finding 3

ATF Needs to Upgrade N-Force Querying Capabilities

N-Force, the designated database management system for NICS, does not meet the needs of field divisions. As a result, field divisions have had to establish auxiliary databases for NICS referrals, which is an inefficient use of resources. The N-Force design does not meet the search requirements field divisions need to manage the NICS program, although OMB requires information systems to fulfill such standards.

N-Force does not meet the querying needs of field divisions. Field division personnel commented that N-Force can only be searched by case number and project code. They, however, need to be able to query the database in other ways, such as by NICS tracking numbers to determine if they have already received a duplicate referral or by purchaser name to determine if the individual is associated with any other referrals already received.

Because N-Force does not meet their needs, the three field divisions we visited have each implemented a different database management software package to query NICS referral information. The separate systems allow searches by any data field, such as referral type, name, field office, and field agent. The field divisions are performing dual entry of the same NICS referral information, first into N-Force, because it is the designated database management system, and second, into their own unique database management systems so they can query the referral information. The dual entry is inefficient, further taxing field agents and support personnel who, in some instances, are already overwhelmed with a large number of NICS referrals. However, field division personnel commented that they would continue the dual entry of information until N-Force is capable of querying the way it is needed to perform their investigations.

Although ATF is required to ensure its information systems fulfill agency requirements, N-Force was not designed to meet the needs of field divisions. OMB Circular A-130, *Management of Federal Information Resources*, established requirements that all executive agencies must review information systems to determine how mission requirements might have changed and whether the information systems continue to fulfill ongoing and anticipated mission requirements. The NICS program has impacted field divisions' workloads. Receiving a large volume of referrals has resulted in field divisions needing a new method to manage and track information. Because N-Force does not provide this method, field divisions created their own information systems to meet their needs.

Recommendation

We recommend that the ATF Director ensure:

1. N-Force is upgraded to allow querying capabilities the field divisions need.

Management Comments

ATF concurred with the recommendation. The Requirement Analysis for the next phase of N-Force was completed in March 2001. This analysis demonstrated that the current system used to send referrals could be automated to decrease data entry and processing time. With ANR/N-Force integration and additional query capability for the field, many, if not all, data problems will be reduced or eliminated.

OIG Comment

We consider this recommendation to have a management decision with a projected final action date of January 31, 2002.

* * * * *

We appreciate the cooperation we received from ATF officials during this audit. If you wish to discuss this report, you may contact me at (312) 886-6300, ext. 118. Major contributors to this report are listed in Appendix 2.

"/s/

Roberta N. Rickey
Regional Inspector General for Audit

We conducted this review because Congress and the Administration continue to express concern over the enforcement of gun laws.

Our overall objective was to determine what efforts ATF has made to enforce the Brady Act. Our specific objectives were to determine whether:

- ATF has developed criteria for processing NICS information and making timely referrals to the field divisions,
- ATF field divisions have developed criteria for processing Brady Branch referrals and are conducting timely investigations, and
- ATF monitors field division performance in conducting NICS referral investigations.

Our review generally covered NICS activities from November 1998 through December 2000. To accomplish our objectives, we conducted work at ATF's Brady Operations Branch in Martinsburg, West Virginia and Headquarters in Washington, D.C., where we interviewed officials and other employees regarding their NICS functions and duties. We reviewed policies, procedures, and records related to: (a) criteria used in conducting preliminary reviews of NICS referrals and (b) information used to measure the Brady Branch and field division performance.

We also visited ATF field divisions in Dallas, Louisville, and New Orleans. In selecting these divisions, we considered the number of NICS investigations initiated, the number of Referrals-Delayed received in the first quarter of FY 2001, the total number of all referrals (Delayed and Standard) received in FY 2001, and their location in States participating or not participating in the NICS program. We interviewed ATF division directors and group supervisors to review and evaluate their procedures for processing NICS referrals. We also reviewed division investigation case files. We selected two samples of referrals for additional testing. We sampled 100% of the referrals for the 1st Quarter FY 2001

(Referrals-Delayed) and a 5% sample for FY 2000 (Referrals-Delayed and Referrals-Standard). We determined when referrals were received in the field divisions, when investigations started, when they were completed, and the results of the investigations. Finally, we reviewed a sample of transferred or unrecovered firearms to determine if the firearms were traced to any subsequent criminal activity.

We conducted our audit between January 2001 and August 2001 in accordance with generally accepted government auditing standards.



DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, DC 20226

OCT 19 2001

903000:KMC
8100

MEMORANDUM TO: Regional Inspector General for Audit
FROM: Director
SUBJECT: ATF Response to Draft Audit Report on
the Bureau's National Instant Criminal
Background Check System (NICS)

This is in response to your request for comments by the Bureau of Alcohol, Tobacco and Firearms (ATF) on the above-referenced draft audit report.

Background

This report discusses the actions taken by ATF in the implementation of the permanent provisions of the Brady law that became effective on November 30, 1998. The Brady law requires Federal firearms licensees (FFLs), including pawnbrokers, to initiate a criminal background check through NICS prior to transferring a firearm to an unlicensed individual. NICS is administered by the Federal Bureau of Investigation (FBI).

ATF's two primary responsibilities with regard to Brady law implementation are to regulate and inspect FFLs to ensure compliance with the provisions of the law, and to enforce the Brady law by investigating criminal violations of the Brady law and other Federal firearms laws committed by FFLs or individuals. The audit report addresses one part of this second responsibility - the way in which ATF processes and responds to NICS referrals from the FBI.

-2-

Regional Inspector General for Audit

The Brady law allows a licensee to proceed with the transfer of a firearm if he has not received a "denied" response from NICS after the lapse of 3 business days. While most NICS checks can be completed within the statutory period, in a significant number of cases, law enforcement authorities are unable to complete the NICS check within 3 business days. This usually occurs when the prospective buyer has a criminal history, but the criminal history records do not clearly reveal whether the individual is legally prohibited from receiving a firearm.

The FBI continues to research the backgrounds of purchasers, even after 3 business days have elapsed, to ensure that they are not prohibited individuals. If the FBI's NICS Operations Center determines that an individual is prohibited, it will contact the licensee with a "denied" response. If the licensee then notifies the FBI that the firearm has already been transferred to the prohibited person, the FBI refers the case to ATF for further action. These referrals are called "delayed referrals."

To respond to delayed denials, the FBI and ATF have jointly established a referral system, so that ATF will learn immediately of firearms transferred to prohibited persons. The names of approximately 12,000 purchasers identified as prohibited, who received firearms because their background checks could not be completed within the time window, have been referred to ATF by the FBI. The investigation of delayed denials is ATF's highest NICS investigative priority and every effort is made to recover firearms transferred to prohibited individuals.

NICS has also created a new source of criminal investigative information about prohibited persons who attempt to purchase firearms, but are prevented from doing so as a result of the NICS check. To deal with the FBI referrals based on this information (known as "standard referrals"), ATF has developed a screening system to refer the most significant cases to the field for further investigation. The screening system places the highest priority on cases involving both potential and active violent offenders.

-3-

Regional Inspector General for Audit

Criminal investigations are opened on individuals who pose the greatest threat to public safety.

ATF also worked closely with United States Attorneys throughout the country in developing prosecution guidelines for GCA violations arising out of NICS referrals. In addition, ATF's NICS enforcement efforts are an integral part of the Administration's comprehensive firearms enforcement strategy, Project Safe Neighborhoods.

The draft report focuses on the procedures that ATF has in place to process NICS referrals and concludes that ATF's program could be improved in three areas. First, now that the NICS program is well established, ATF officials can improve it by evaluating and responding to the program's impact on field divisions. Second, the Brady Operations Branch's process for sending referrals to field divisions could be improved. Lastly, the primary database management system used in the field needs to be upgraded. The draft report makes seven specific recommendations to further these three goals.

ATF is in general agreement with the conclusions of the report. We offer the following comments regarding the audit team's three findings and seven recommendations:

FINDING 1 ATF Needs to Better Respond to NICS Impact on Field Divisions:

Recommendation 1. Develop case workload studies and staffing models to assess and respond to the NICS program's impact on field division resources, including an analysis of the time and number of field agents and support personnel devoted to NICS and to the performance of other investigative priorities.

-4-

Regional Inspector General for Audit

Recommendation 2. Issue guidance clarifying NICS referral priority within field divisions' other violent crime program activities.

Recommendation 3. Develop a NICS program model for all field divisions to use. This model should include "Best Practices" the field divisions may choose from, timeliness standards for investigations, and standards for investigative files.

Comments on Finding

The impact of NICS on our field divisions varies from negligible to considerable. The impact may be better measured by the negative effect resulting from NICS enforcement on our individual field offices. While impacting a division, problems are not "across the board," and are often unique to a particular State, where State laws, the courts, and local interpretations directly affect the volume of referrals.

Furthermore, although the impact of NICS continues to be monitored, its relative "newness" has made management difficult. With trends in referral statistics still developing, the impact of the Brady law is beginning to take shape.

As the number of referrals, both standard and delayed, declines, the long-term level of NICS referrals will likely become apparent. The initial flood of denials, naturally lessening over time as the eligible pool of prohibited purchasers dries up, will become more recognizable, as well as manageable.

Recommendation 1. Develop case workload studies and staffing models to assess and respond to the NICS program's impact on field division resources, including an analysis of the time and number of field agents and support personnel devoted to NICS and to the performance of other investigative priorities.

-5-

Regional Inspector General for Audit

Actions Taken

We agree that the process of creating staffing models and case workload studies for more efficient use of both field agents and support personnel deserves attention. In fact, a reassessment of resources by the Office of Field Operations (FO) staff is currently underway. ATF must first address its critical staff shortages nationwide and with the completion of the assessment, make adjustments as necessary.

As stated above, the problems vary in nature and scope, and while no one answer is appropriate, a review would likely improve overall program efficiency. Based on the experience gained from the NICS referrals process and the resulting case production to date (cases recommended v. prosecuted), ATF plans to use the first two quarters of Fiscal Year 2002 (FY-02) as a base measurement for any staffing model or case workload policy changes.

Through continued monitoring of these areas, and by placing an emphasis on individual division and field office differences, FO will be able to more accurately respond to this recommendation and make adjustments of personnel, as needed.

Target Date for Completion

Based on results of monitoring the NICS program during the first half of FY-02, ATF FO will examine current staffing models for field offices and make necessary adjustments by September 30, 2002.

Recommendation 2. Issue guidance clarifying NICS referral priority within field divisions' other violent crime program activities.

-6-

Regional Inspector General for Audit

Actions Taken

While NICS investigative priorities have remained relatively the same (*firearms retrievals* having highest priority), other changes in the NICS program may have caused some priority imbalances in the overall violent crime program activities of a few divisions. We agree with this IG recommendation, and accordingly FO will address this issue and clarify the role of its divisions with respect to the allocation of resources for NICS and the other violent crime programs.

Target Date for Completion

By December 31, 2001, ATF's Offices of FO and Firearms, Explosives and Arson (FEA) will issue policy guidance to the divisions to clarify the priority of investigating NICS referrals in the context of ATF's overall violent crime program and will identify best practices for processing and assigning these referrals.

Recommendation 3. Develop a NICS program model for all field divisions to use. This model should include "Best Practices" the field divisions may choose from, timeliness standards for investigations, and standards for investigative files.

Actions Taken

We agree with this recommendation and have already taken some action to address this issue. In August 2000, the Offices of FO and FEA held a conference with the NICS Coordinators in Las Vegas, Nevada. The purpose of the conference was essentially to allow for "best practices" to be shared by those divisions having similar problems and concerns. With the subsequent development of refinements to address the concerns, and with others still underway (ANR/N-FORCE merger), another conference should be scheduled with the subsequent creation of a NICS program model its main objective. Additionally, field divisions will be issued appropriate guidance regarding the processing and review of NICS referrals.

-7-

Regional Inspector General for Audit

Target Date For Completion

With respect to practices, ATF will hold a NICS Coordinators conference during the third quarter, FY-02, where "best practices" in handling NICS referral processing and investigations will be identified.

FINDING 2 ATF Could Improve the Referral Process to the Field Divisions:

Recommendation 1. The NICS referral process could be streamlined and the number of referrals sent to the field reduced by having the Brady Operations Branch perform more background duties, such as (a) prioritizing Referrals-Delayed, (b) developing a more user-friendly referral package, and (c) performing a more in-depth analysis of information received from the FBI by applying local prosecutorial guidelines and knowledge of State laws.

Recommendation 2. The ANR and N-Force systems (databases used by ATF to process NICS referrals and manage criminal investigations) could be upgraded and integrated.

Recommendation 3. The Brady Operations Branch could use a numbering system or inventory list as a control to verify a field division's receipt of NICS referrals until referrals can be made electronically.

Comments on Finding

The Brady Operations Branch in Martinsburg, West Virginia, is the ATF office responsible for processing NICS referrals received from the FBI and forwarding those referrals to ATF field offices for investigation. Since November 1998, ATF has received over 232,000 NICS referrals and sent approximately 65,000 of those referrals to the field for investigation.

- 8 -

Regional Inspector General for Audit

Recommendation 1. The NICS referral process could be streamlined and the number of referrals sent to the field reduced by having the Brady Operations Branch perform more background duties, such as (a) prioritizing Referrals-Delayed, (b) developing a more user-friendly referral package, and (c) performing a more in-depth analysis of information received from the FBI by applying local prosecutorial guidelines and knowledge of State laws.

Actions Taken

1(a) It is recommended that ATF categorize delayed denial referrals as "Urgent" or "Less Urgent," with "Urgent" referrals being sent to field offices immediately and "Less Urgent" referrals remaining at the Brady Operations Branch for further development.

Presently the ANR/N-Force integration plan does not allow for delayed denials to be entered or designated in different categories, but we agree with this IG recommendation in general and ATF has taken steps to improve the NICS referral process at the Brady Operations Branch. Brady Operations Branch is using a limited period of time (not to exceed 72 hours) to perform certain background work, which has the effect of identifying the delayed denials with the highest priority, i.e., those where the prohibited person has actually received the firearm.

To achieve this purpose, Brady Operations Branch has implemented the practice of prioritizing all delayed denials by contacting Federal firearms licensees to determine if the firearm was in fact transferred and obtaining copies of ATF Form 4473 involved in the suspect transaction to further assist the investigator. All delayed denials involving prohibited persons who are in possession of firearms are then immediately sent to ATF field offices for investigation.

-9-

Regional Inspector General for Audit

Delayed denials that are identified by the Brady Operations Branch where the firearm had never been transferred essentially become a standard referral and are processed as such. Delayed denials, where it is determined that the firearm was transferred to the prohibited person, but has subsequently been returned to the FFL or transferred to a third party, are annotated accordingly before being sent to the field office.

1(b) In the fall of 2000, ATF received funding for ANR version 2.0, which resulted in a new and enhanced format referral package. The new referral document provides up-to-date information on the FFL involved in the transaction, as well as more detailed purchaser information and a brief identifier of the reason for denial. We agree to further make the NICS referral package more user friendly. Based on the IG recommendation, the Brady Operations Branch will immediately highlight the specific reason for denial on page 1 of the referral documents and continue to attach the complete criminal history information as background for the investigator.

1(c) We agree with this recommendation and believe that the necessary improvements have already been implemented with regard to standard referrals. Since April 2001, Brady Operations Branch has prioritized standard denials sent to certain ATF field offices by using investigative criteria developed to mirror existing local U.S. Attorneys' prosecutorial guidelines. This further "background" work using local criteria has significantly reduced the number of referrals and enhanced the quality of referrals sent to field offices. For example, the Dallas Field Office has seen an 80 percent and the Houston Field Office a 93 percent reduction in NICS referrals. The Brady Operations Branch has also made a number of other operational improvements. One example is the practice of assigning specific examiners to ATF field divisions in an effort to develop a familiarity with local investigative criteria, as well as laws of specific States.

-10-

Regional Inspector General for Audit

Regarding delayed denials, it remains ATF's current policy to send delayed denials as soon as possible after receipt at the Brady Operations Branch to ATF field offices for investigation, however; some adjustments have been made. Beginning in March 2001, the Brady Operations Branch streamlined the referral process by having the FBI fax all delayed denials only to the Brady Operations Branch rather than by sending simultaneous referrals to the ATF National Enforcement Operations Center. This change eliminated redundancy of effort and the duplication of materials sent to the field, with only a minimal impact on timeliness. As detailed above in our response 1(a), Brady Operations Branch is performing certain background work to verify if prohibited persons received firearms. Whenever possible, the Brady Operations Branch has also instituted the practice of obtaining court records to further validate the initial information received from the FBI.

ATF has to balance public safety against attempts to prioritize delayed denials. In the case of delayed denials ATF has knowledge that a prohibited person is allegedly in possession of a firearm. Consequently, for delayed (unlike standard denials), we continue to believe that the application of local prosecutorial guidelines and the impact of individual State laws should be addressed by ATF investigators and ATF division counsel in field offices rather than the Brady Operations Branch.

Target Date for Completion

Completed.

Recommendation 2. The ANR and N-Force systems (databases used by ATF to process NICS referrals and manage criminal investigations) could be upgraded and integrated.

-11-

Regional Inspector General for Audit

Actions Taken

We agree with this recommendation. Beginning in January 2001, FEA contracted with an outside company to develop a system to integrate all firearms databases and connect them to other appropriate ATF data files. The fusion of ANR and N-Force is part of that effort and will allow for direct electronic transmittal of referrals of NICS denials to ATF field offices. Also, it will automatically create an investigative file for all delayed and standard denials. The anticipated delivery date for ANR/N-Force integration is January 2002.

Target Date For Completion

ANR/N-Force upgrade and integration - January 31, 2002.

Recommendation 3. The Brady Operations Branch could use a numbering system or inventory list as a control to verify a field division's receipt of NICS referrals until referrals can be made electronically.

Actions Taken

Prior to April of 2001, there were delays in receiving electronic submissions of delayed denials from the FBI of up to 3 weeks. ATF and FBI now have a protocol in place whereby the Brady Operations Branch receives "next day delivery" of electronic downloads, which has a positive impact on tracking referrals sent to the field offices.

In terms of inventory controls, the Brady Operations Branch already tracks all referrals (delayed denials) sent via fax by reviewing a fax confirmation report, which is automatically generated by the Branch's fax machine. Since January of 2000, Brady Operations Branch has utilized Federal Express to distribute standard referrals to ATF field offices. The Brady Operations Branch uses the Federal Express "on line" tracking system to verify delivery of those referrals to field offices.

-12-

Regional Inspector General for Audit

We agree with this recommendation and based on the IG recommendation, the Brady Operations Branch has created a report that will be forwarded to the ATF NICS coordinator in each division office on a weekly basis. This report will include a list of referrals documenting the NICS transaction number and the names of the individuals referred for investigation during that week.

The list can then be matched to any referrals received by fax or Federal Express. Upon integration of ANR and N-Force, all electronic transfers of referrals will be automatically tracked, eliminating the need for a weekly tracking report.

Target Date For Completion

Completed.

FINDING 3 ATF Needs to Upgrade N-Force Querying Capabilities:

Recommendation 1. N-Force is upgraded to allow querying capabilities the field divisions need to effectively manage the NICS program.

Comments on Finding

Not long after the Brady Operations Branch became operational, it was apparent that data entry and the processing of referrals would require modification of existing systems' capabilities. The ultimate goal of having the Brady Operations Branch electronically transmit a NICS Transaction Number through N-Force (already in the system) to the field will become a reality. With the ANR/N-Force integration and additional query capability for the field, many, if not all, data problems will be reduced or eliminated entirely.

-13-

Regional Inspector General for Audit

Recommendation 1. N-Force is upgraded to allow querying capabilities the field divisions need to effectively manage the NICS program.

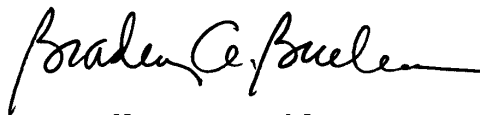
Actions Taken

We agree with this recommendation. The Requirement Analysis for the next phase of N-Force was completed in March 2001. This analysis demonstrated that the system currently used to send referrals to the field could be automated to considerably decrease data entry and processing time. Once case generation becomes automatic, action can be taken more promptly in the field, using more timely data, and queries can be generated from the field, division, and Headquarters levels.

Target Date for Completion

Development of the above functionality was started in May 2001, and is currently ongoing. Testing is slated for this fall, and implementation is expected by January 31, 2002.

We would like to extend our appreciation to you for the opportunity to comment on the draft report. We also appreciate the professional, courteous, and open-minded approach to clarifying issues that your audit team demonstrated during the audit process. Their interactions with ATF management and other employees helped to make this audit a positive and valuable experience.



Bradley A. Buckles

Addendum

Chicago Regional Office

Roberta N. Rickey, Regional Inspector General for Audit
Janice A. Miller, Audit Manager
Bradley Mosher, Auditor-in-Charge
Claire Schmidt, Auditor

The Department of the Treasury

Office of the Under Secretary of the Treasury for Enforcement
Office of the Assistant Secretary of the Treasury for
Management, Chief Financial Officer
Office of Organization Improvement
Office of Strategic Planning & Evaluations
Office of Budget
Management Control Branch

Bureau of Alcohol, Tobacco and Firearms

Director
Assistant Director, Field Operations
Assistant Director, Firearms, Explosives & Arson
Assistant Director, Management/Chief Financial Officer
Assistant Director, Inspection
Assistant Director, Liaison & Public Information
Assistant Director, Training & Professional Development
Chief, Strategic Planning Office

Office of Management and Budget

Treasury Bureau Chief
OIG Budget Examiner