



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

February 20, 2014

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

Fast Letter 10-51 (Revised)

ATTN: All Veterans Service Center and Pension Management Center Personnel

SUBJ: Processing Requests for Relief from the Reporting Requirements of the National Instant Criminal Background Check System

This letter provides new information on the National Instant Criminal Background Check System (NICS) relief program and the procedures for processing relief requests. Compensation Service is in the process of drafting the regulation to reflect this process. In the interim, please follow the guidance in this letter.

This letter is revised to include a new requirement to obtain a criminal history report, to require the beneficiary to submit certain types of evidence, and to add a table to clarify the procedures for processing relief requests. All relief requests pending on or after the date of this letter must be decided using these updated procedures. Veterans Service Representatives (VSRs) must decide all requests for NICS relief in an administrative decision based upon evidence submitted by the beneficiary or maintained by VA, including a Rating Veterans Service Representative's (RVSR's) evaluation of medical evidence.

Background

The Brady Handgun Violence Prevention Act of 1993 (The Brady Act), codified at 18 U.S.C. § 922, prohibits the sale of firearms to certain people and requires the Department of Justice (DoJ) to establish a process for assisting federally licensed gun dealers in determining whether the law prohibits a person from purchasing a firearm. As mandated by the Brady Act, DoJ created NICS. The law requires VA to report to NICS information about VA beneficiaries who cannot manage their VA benefits, have been rated "incompetent," and require the appointment of a fiduciary to help manage their VA funds.

The NICS Improvement Amendments Act of 2007 (NIAA), Public Law 110-180, set new reporting requirements for federal and state agencies and contains an amendment to the Brady Act that obligates VA to administer a program that allows beneficiaries the opportunity to request relief from the reporting requirements imposed by the Brady Act. When VA grants a beneficiary's relief request, VA must notify DoJ of the change in status so that DoJ can remove the beneficiary's information from NICS. NIAA also obligates VA to provide beneficiaries

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both written and oral notification of the firearms prohibitions and the penalties for violating them, and information regarding the availability of the relief program. In 2013, DoJ instituted a new requirement that a criminal history background report must be obtained for all relief request grants.

NICS Relief Program

The NIAA places the responsibility for administering the relief program on the agency that provided the information to NICS. Public safety is the primary consideration when deciding whether to grant or deny relief. Relief from the reporting requirements is not a benefit under title 38 of the U.S. Code, and, as such, principles common to the VA adjudication process, such as benefit of the doubt and duty to assist (as demonstrated in ordering examinations or securing private medical records), do not apply to this program. The beneficiary seeking relief from the NICS reporting requirements has the burden of proof for these relief requests, and failure to meet that burden is sufficient to deny the request. Decisions that deny relief are not subject to review by the Board of Veterans' Appeals but are subject to review in federal district court under the NIAA. Accordingly, it is important that all denials contain the evidence considered and an explanation of the basis for denial.

Handling Requests for Relief

Requests for relief from the Brady Act reporting requirements must be clear and explicit. Do not infer or interpret a request for relief as a claim for reconsideration of incompetence or a claim of competency as a request for relief.

Development

When VA receives a request for relief from the NICS reporting requirements, consult the table in Enclosure 1 regarding any actions that must be taken before the request for relief is ready to be developed and subsequent steps after development, if warranted.

Competency Decision

If a beneficiary has a relief request pending and VA determines that the beneficiary can manage his or her own benefits (is competent for VA benefit purposes), the request for relief is moot, and VA will notify DoJ of the beneficiary's change in status. DoJ will remove the beneficiary's information from NICS. In the final competency rating, include the following statement under *Reasons for Decision* for the competency issue:

“We received your request for relief from the DoJ reporting requirements contained in the Brady Handgun Violence Prevention Act.

We have determined that you can manage your VA benefits. Therefore, it is not necessary to provide you a decision on your request for relief. VA will inform DoJ of

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your changed status, and DOJ will remove your information from the National Instant Criminal Background Check System.”

File all documents exclusive to this relief decision on the right side of the claims folder and in Virtual VA or incorporate them into VBMS as appropriate.

Deciding Relief

In determining whether to grant or deny a relief request, consider not just the beneficiary’s desire to own firearms and/or ammunition. The beneficiary’s safety and the safety of his/her family and the community must also be considered. As VA’s determinations on requests for relief have the potential to affect public safety, grant relief on the basis of clear and convincing evidence. There is clear and convincing evidence to grant relief when the record shows affirmatively, substantially, and specifically that the beneficiary is not likely to act in a manner dangerous to public safety and that granting relief will not be contrary to the public interest.

In determining whether to grant relief, VSRs **must** consider the evidence listed below. If the beneficiary does not provide the necessary evidence, the request is not ready for a decision.

- A current statement from the beneficiary’s primary mental-health physician assessing the beneficiary’s current and past (5-year period preceding the request for relief) mental health status, specifically whether the beneficiary has ever been a danger to himself or herself or to others, and whether he or she would pose such a danger if VA granted relief from the Brady Act restrictions and the beneficiary purchased and possessed a firearm. A statement is considered current if it is based upon an assessment conducted during the 90-day period immediately preceding the relief request.
- The beneficiary’s reputation, as provided in statements and other evidence submitted by the beneficiary. These statements must identify the person supplying the information; provide the person’s complete contact information, to include a current address and telephone number; and describe the person’s relationship with the beneficiary and frequency of contact. The beneficiary may get such a statement from anyone, to include church clergy, law enforcement officials, employers, friends, and family members, as long as the person providing the statement has had recent and frequent contact with the beneficiary and can attest to the beneficiary’s good reputation. Specifically, the person providing such a statement must indicate whether the beneficiary has a reputation for violence and whether the beneficiary would be a danger to himself or herself or others if VA granted relief from the Brady Act restrictions and the beneficiary purchased and possessed a firearm.
- A criminal history report, which the NICS POC will provide to the VSR upon request. If there are any questions as to the contents of the criminal history report or how to interpret the report once received from the NICS POC, direct them via e-mail to the NICS mailbox, VAVBAWAS/CO/NICS. The NICS POC will clarify the contents of the report with the VA Inspector General or other sources, as appropriate, and respond to the VSR with the pertinent information.

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The VSR **must deny** a request for relief and issue the appropriate administrative decision if the VSR determines, based upon clear and convincing evidence, that the beneficiary would be a danger to himself or herself or others if VA granted relief from the Brady Act firearm restrictions. This standard is satisfied if any of the following is reflected in the record:

- A mental-health professional's assessment of the beneficiary's current and past mental health status indicates that the beneficiary would be a danger to himself or herself or others if VA granted relief.
- A diagnosis of mental disability with symptoms, including the presence of suicidal or homicidal ideations.
- A diagnosis of substance abuse and symptoms indicating a danger to self or others.
- The beneficiary has a reputation for violence, which the VSR confirms by making contact with the person who provided the reputation evidence.
- The beneficiary is a convicted felon. Relief is available only if the beneficiary presents evidence that, notwithstanding the felony conviction, his or her right to possess a firearm has been restored.
- The beneficiary has a misdemeanor conviction in the past 5 years for a violent offense, including but not limited to menacing, stalking, assault, or battery, or any conviction for an attempt to commit such an offense.
- The beneficiary has been charged with a violent offense, but a court, board, or commission has determined that the beneficiary does not have the mental capacity to proceed with a trial (unless competency has been restored or the beneficiary has been rehabilitated through any procedure available under the law).
- The beneficiary has felony or misdemeanor charges pending for a violent offense, to include charges for attempting to commit such crimes.

Absent such evidence, you **must grant** the beneficiary's relief request and issue an appropriate administrative decision.

Administrative Decision

The Regional Office (RO) will handle all requests for relief by preparing an administrative decision (see [M21-1MR, Part III, Subpart v, Chapter 1, Section A, Topic 2](#)). Since medical records may be used in deciding whether to grant or deny relief, an RVSR will review the evidence and then refer a summary of the evidence reviewed, via a VA Form 21-6796 (blue sheet), to the VSR, who will then prepare an administrative decision titled "NICS Relief Request." The RO Director must approve all administrative decisions after concurrence by the

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Veterans Service Center Manager or Pension Management Center Manager, or the manager's designee. Inform the beneficiary of the determination by sending the NICS relief grant or denial letter (Enclosure 3 or 4).

After sending the NICS relief grant letter, notify the NICS POC within 3 days at the NICS mailbox, VAVBAWAS/CO/NICS, under the subject "**NICS relief grant.**" The notification must include the beneficiary's name, claim number, Social Security number (if different than claim number), date of birth, contact information (including address and telephone number), and the date of the grant of relief. Compensation Service will notify the FBI, which manages the NICS database for DoJ, to remove the beneficiary from the NICS database.

Questions

Questions concerning this letter should be e-mailed to VAVBAWAS/CO/NICS.

/S/

Thomas J. Murphy
Director
Compensation Service

/S/

David R. McLenachen
Director
Pension and Fiduciary Service

Enclosures

Enclosure 1 – Procedural Table for NICS Relief Development

| STEP: | ACTION: | |
|--|--|---|
| 1 | Before developing or reviewing the request for relief, wait until a final decision is reached on any claims involving incompetency or reconsideration of incompetency. | |
| | <p>IF:</p> <p>The request for relief is received prior to the final incompetency rating,</p> | <p>THEN:</p> <p>Back flap the relief request or include a note that the relief request was received in VBMS as appropriate.</p> <p>Flash the file to note that there is a relief request pending that must be decided after the incompetency decision is made.</p> <p>Wait for the incompetency rating to become final before taking any additional actions regarding the request for relief.</p> <p>If the beneficiary is found competent, then the relief issue is moot. Follow the instructions in the <i>Competency Decision</i> section of this fast letter for the appropriate statement to include in the competency decision.</p> <p>If the beneficiary is found incompetent, then move to step 2.</p> |
| <p>A claim for reconsideration of competency is received in conjunction with the request for relief,</p> | <p>Back flap the relief request or include a note that the relief request was received in VBMS as appropriate.</p> <p>Flash the file to note that there is a relief request pending that must be decided after a decision is made on the claim for reconsideration.</p> <p>Wait for a decision on the claim for reconsideration of competency to become final before taking any additional actions regarding the request for relief.</p> <p>If the beneficiary is found to be competent, then the relief issue is moot. Follow the instructions in the <i>Competency Decision</i> section of this fast letter for the appropriate statement to include in the competency decision.</p> <p>If the beneficiary continues to be found incompetent, then move to step 2.</p> | |

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| | The request for relief is received following the final rating of incompetency, | Move to step 2. |
| 2 | Establish an end product (EP) 290 using “NICS Relief Request” claim label. | |
| 3 | Send the NICS Relief Development Letter with the consent form to the beneficiary (Enclosure 2). The consent form allows VA to obtain the beneficiary’s criminal history. | |
| 4 | Wait 30 days after sending the NICS Relief Development Letter and consent form or until the consent form is received, then follow the procedures below based on whether a signed consent form is returned. | |
| | IF: | THEN: |
| | The beneficiary does not return the signed consent form within 30 days, | Deny the request for relief using the NICS Relief Denial Letter (Enclosure 4). |
| | The beneficiary returns the signed consent within 30 days, | Ensure an electronic copy of the signed consent form exists in VBMS or Virtual VA as appropriate. Move to step 5. |
| 5 | Verify that the beneficiary has submitted all required evidence. | |
| | IF: | THEN: |
| | The beneficiary has submitted both of the following forms of evidence: Mental health evidence – A current statement from the beneficiary’s primary mental-health physician assessing the beneficiary’s current and past (5-year period preceding the request for relief) mental health status. The assessment must specifically address whether the beneficiary has ever been a danger to himself or herself or to others and whether he or she would pose such a danger if VA granted relief from the Brady Act firearm restrictions and the beneficiary possessed a firearm. A “current” statement is based upon an assessment conducted during the 90-day period immediately preceding the relief request. Reputation evidence – Statements and other evidence submitted by the beneficiary concerning any reputation for violence. These statements must identify the person | Move to step 6. |

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| | <p>supplying the information; provide the person's complete contact information, to include a current address and telephone number; and describe the person's relationship with the beneficiary and frequency of contact. The person providing such a statement must indicate whether the beneficiary has a reputation for violence and whether the beneficiary would be a danger to himself or herself or others if VA granted relief from the Brady Act firearm restrictions and the beneficiary possessed a firearm.</p> <p>Field offices must obtain all information available on beneficiary criminal history:</p> <p>If the beneficiary does not provide the required evidence:</p> | <p>Request statements or other evidence from law enforcement officials showing that a request for relief will not be contrary to the public interest.</p> <p>Deny the request for relief using the NICS Relief Denial Letter (Enclosure 4) stating a failure to submit the required evidence as the basis for the denial.</p> |
| 6 | <p>Make a decision on the request for relief using the following procedures:</p> <p>IF:</p> <p>A mental-health professional's assessment of the beneficiary's current and past mental health status indicates that the beneficiary would be a danger to himself or herself or others if VA granted relief;</p> <p>The beneficiary has a diagnosis of mental disability with symptoms including the presence of suicidal or homicidal ideations;</p> <p><u>The beneficiary has a diagnosis of substance abuse and symptoms indicating a danger to self or others;</u></p> <p>The beneficiary has a reputation for violence, which is confirmed by making contact with the person who provided the reputation</p> | <p>THEN:</p> <p>Deny the request for relief using the NICS Relief Denial Letter (Enclosure 4). (See step 8.)</p> |

| | | |
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| | <p>evidence;</p> <p><u>The beneficiary is a convicted felon;</u></p> <p><u>The beneficiary has a misdemeanor conviction during the 5-year period immediately preceding the request for a violent offense, including but not limited to menacing, stalking, assault, or battery, or any conviction for an attempt to commit such an offense;</u></p> <p><u>The beneficiary has been charged with a violent offense but a court, board, or commission has determined that the beneficiary does not have the mental capacity to proceed with a trial; or</u></p> <p><u>The beneficiary has felony or misdemeanor charges pending for a violent offense, to include charges for attempting to commit such crimes.</u></p> <p>If none of the above conditions exists:</p> | <p>Grant the request for NICS relief using the NICS Relief Grant Letter (Enclosure 3)</p> <p>Forward the signed consent form to the NICS point of contact (POC) at the NICS mailbox, VAVBAWAS/CO/NICS. In the email, provide the claimant’s name, file number, and date of request. In the subject line of the email, include “Criminal History Needed.”</p> <p>Move to step 7.</p> |
| 7 | Once the criminal history report is received from the NICS POC, the RVSR must re- | |

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| | | |
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| | <p>evaluate the evidence while taking into account the beneficiary's criminal history.</p> <p>If there are any questions as to the contents of the criminal history report, contact the NICS POC, who will clarify the contents of the report with the Federal Bureau of Investigation (FBI) or VA Office of General Counsel as appropriate.</p> | |
| 8 | <p>Follow the procedures below according to whether the RVSR determines that the request for relief should be granted or denied based on all the evidence, including the criminal history.</p> | |
| | IF: | THEN: |
| | <p>If the RVSR determines that the request for relief should be <u>denied</u> based on all the evidence, including the criminal history,</p> | <p>The RVSR will provide this information via a VA Form 21-6789, Deferred Rating Decision (blue sheet) noting the results of the medical evidence reviewed, to the VSR, and the VSR should write up the administrative decision to reflect this evidence (following the instructions in the Administrative Decision section of this fast letter) and <u>deny</u> the request for relief using the NICS Relief Denial Letter (Enclosure 4).</p> |
| | <p>If the RVSR determines that the request for relief should be <u>granted</u> based on all the evidence, including the criminal history,</p> | <p>The RVSR will provide this information to the VSR via a blue sheet noting the results of the medical evidence reviewed, and the VSR should write up the administrative decision to reflect this evidence (following the instructions in the Administrative Decision section of this fast letter) and <u>grant</u> the request for relief using the NICS Relief Grant Letter (Enclosure 3).</p> |

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Enclosure 2 – NICS Relief Development Letter

VARO Heading and Address

XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXX

In reply, refer to:
File Number: XXXXXXXX

IMPORTANT — reply needed

Dear Mr./Ms.:

We received your request for relief from the Department of Justice reporting requirements contained in 18 U.S.C. § 922(d)(4) and (g)(4), The Brady Handgun Violence Prevention Act of 1993 (The Brady Act), Public Law 103-159. VA must report to the National Instant Criminal Background Check System (NICS) individuals whom VA determines to be unable to manage their own financial affairs.

Pursuant to 18 U.S.C. § 925(c) and § 101(c)(2)(A) of the NICS Improvement Amendments Act of 2007, Public Law 110-180, after receiving your request for relief, VA is obligated to decide whether you are eligible to receive relief from the reporting requirements of the Brady Act. This letter contains information about what we will do with your request and what you can do to help us decide it.

We may grant relief if clear and convincing evidence shows the circumstances regarding your disability and your record and reputation are such that you are not likely to act in a manner dangerous to yourself or others and the granting of relief is not contrary to public safety and/or the public interest. In order for us to process your request, you must submit the required evidence outlined below within 30 days from the date of this letter. If we do not receive all of the required evidence, your request for relief will be denied.

What Evidence Should You Provide?

To support your request for relief, you must submit all of the following evidence:

- A statement from your primary mental-health physician assessing your mental health status over the last five years.
- Medical information addressing the extent of your mental health symptoms and whether or not you are likely to act in a manner dangerous to yourself or to public.

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- Evidence of your reputation, through character witness statements, testimony, or other character evidence. This may include statements from clergy, law enforcement officials, and/or persons that are aware of your reputation in the community and show that the granting of relief would not be contrary to the public interest. (Statements or records from law enforcement officials may be provided by the Federal Bureau of Investigation (FBI); the Bureau of Alcohol, Tobacco, and Firearms (ATF); the Attorney General, or other local law enforcement agencies.)

A signed consent form that is attached to this letter that will allow us to procure your criminal history.

You may also submit documentation that a court, board, or commission has found you competent.

Please put your VA file number on the first page of every document you send us.

Where Should You Send Your Evidence?

Please send all documents to this address: (include RO address)

How Soon Should You Send Your Evidence?

We strongly encourage you to send any information or evidence as soon as you can. If we do not hear from you within 30 days, we will deny your request.

How Can You Contact Us?

Please give us your VA file number, **XXXXXXXXXX**, when you do contact us.

- Send written correspondence to the address above.
- Send us an inquiry using the Internet at <https://iris.custhelp.com>.
- Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.

We look forward to resolving your request in a timely and fair manner.

Sincerely yours,

Veterans Service Center Manager

Enclosure

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Consent for VA to Obtain a Criminal History for the Purpose of NICS Relief

“I understand that the Department of Veterans Affairs (VA) may seek to obtain my criminal background history during consideration of my request for relief from the reporting requirements contained in 18 U.S.C. § 922 (d)(4), The Brady Handgun Violence Protection Act of 1993, Public Law 103-159, and National Instant Criminal Background Check System (NICS) Improvement Act Amendment Amendments of 2007, Public Law 110-180. I consent to VA seeking this information from any and all sources and give permission for the release of my criminal background history and any other associated documents to VA. I further waive my rights under the Privacy Act, 5 U.S.C. § 552a(b), with regard to the release of this information to VA from any federal or state agency.”

Name: _____

Claim Number: _____

Signature of Veteran: _____

Date: _____

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Enclosure 3 – NICS Relief Grant Letter
VARO Heading and Address

XXXX
XXXXXXXXXX
XXXXX, XX XXXXX

In reply, refer to:
File Number: xxx xx xxxx

Dear Mr./Ms. :

We received your request for relief under the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007 (NIAA), Public Law 110-180.

What We Decided

We decided that you are eligible for relief from the Department of Justice reporting requirements imposed by The Brady Handgun Violence Protection Act of 1993, Public Law 103-159, codified at 18 U.S.C. § 922.

We reviewed the following evidence in considering your request:

- (enter evidence)

Our review of this evidence reveals that your disability, record, and reputation are such that you are not likely to act in a manner dangerous to yourself or others. Further, the granting of relief is not contrary to public safety or the public interest. Please allow the Department of Justice up to eight weeks to update its records in accordance with our decision.

If You Have Questions or Need Assistance

You may find more information about the NICS Relief program in 18 U.S.C. § 925(c). If you have any questions regarding this decision, you may contact us by letter, Internet, or telephone. In all communications, be sure to refer to your VA file number, XXXXXXXX.

| To Contact VA by | Here is what to do. |
|-------------------------|---|
| Mail | Send inquiries to the address at the top of this letter |
| Internet | Send an inquiry via VA's website at https://iris.custhelp.com |
| Telephone | Call 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833. |

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We sent a copy of this letter to your representative, XXXXXX, whom you can also contact if you have questions or need assistance.

Sincerely yours,

Veterans Service Center Manager

cc:

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Enclosure 4 – NICS Relief Denial Letter

VARO Heading and Address

XXXX
XXXXXXXXXX
XXXXXX, XX XXXXX

In reply, refer to:
File Number: xxx xx xxxx

Dear Mr./Ms. :

We received your request for relief under the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007 (NIAA), Public Law 110-180.

What We Decided

We determined you are *not* eligible for relief from the Department of Justice reporting requirements imposed by The Brady Handgun Violence Protection Act of 1993, Public Law 103-159, codified at 18 U.S.C. § 922.

We considered the following evidence:

- (enter evidence)

Based on this review, we are unable to conclude through clear and convincing evidence regarding your disability, record, and reputation that you will not likely act in a manner dangerous to yourself or others and the granting of relief would not be contrary to the public interest.

Your Right for Review

NIAA relief requests are not matters which fall within the scope of title 38 of the United States Code and denial of such requests are not subject to review by the Board of Veterans' Appeals. However, denials of requests for relief under the NIAA are subject to review in federal district court. See 18 U.S.C. § 925(c) for more information concerning your appellate rights.

If You Have Questions or Need Assistance

You may find more information about the NICS Relief program in 18 U.S.C. § 925(c). If you have any questions regarding this decision, you may contact us by letter, Internet, or telephone. In all cases, be sure to refer to your VA file number, XXXXXXXX.

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| To Contact VA by | Here is what to do. |
|-------------------------|---|
| Mail | Send inquiries to the address at the top of this letter |
| Internet | Send an inquiry via VA's website at https://iris.custhelp.com . |
| Telephone | Call 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833. |

We sent a copy of this letter to your representative, XXXXXX, whom you can also contact if you have questions or need assistance.

Sincerely yours,

Veterans Service Center Manager

cc: