

(c) In accordance with the authority and responsibility provided to the Attorney General by the Brady Handgun Violence Prevention Act (Public Law 103-159), as amended, the Attorney General, consistent with the process described in section 3 of this memorandum, shall resolve any disputes concerning whether agency records are relevant and should be made available to the NICS.

(d) To the extent they possess relevant records, as set forth in the guidance issued pursuant to subsection (a) of this section, agencies shall prioritize making those records available to the NICS on a regular and ongoing basis.

SEC. 2. *Measuring Progress.* (a) By October 1, 2013, and annually thereafter, agencies that possess relevant records shall submit a report to the President through the Attorney General describing:

(i) the relevant records possessed by the agency that can be shared with the NICS consistent with applicable law;

(ii) the number of those records submitted to databases accessible by the NICS during each reporting period;

(iii) the efforts made to increase the percentage of relevant records possessed by the agency that are submitted to databases accessible by the NICS;

(iv) any obstacles to increasing the percentage of records that are submitted to databases accessible by the NICS;

(v) for agencies that make qualifying adjudications related to the mental health of a person, the measures put in place to provide notice and programs for relief from disabilities as required under the NIAA;

(vi) the measures put in place to correct, modify, or remove records accessible by the NICS when the basis under which the record was made available no longer applies; and

(vii) additional steps that will be taken within 1 year of the report to improve the processes by which records are identified, made accessible, and corrected, modified, or removed.

(b) If an agency certifies in its annual report that it has made available to the NICS its relevant records that can be shared consistent with applicable law, and describes its plan to make new records available to the NICS and to update, modify, or remove existing records electronically no less often than quarterly as required by the NIAA, such agency will not be required to submit further annual reports. Instead, the agency will be required to submit an annual certification to DOJ, attesting that the agency continues to submit relevant records and has corrected, modified, or removed appropriate records.

SEC. 3. *NICS Consultation and Coordination Working Group.* To ensure adequate agency input in the guidance required by section 1(a) of this memorandum, subsequent decisions about whether an agency possesses relevant records, and determinations concerning whether relevant records should be provided to the NICS, there is established a NICS Consultation and Coordination Working Group (Working Group), to be chaired by the Attorney General or his designee.

(a) *Membership.* In addition to the Chair, the Working Group shall consist of representatives of the following agencies:

- (i) the Department of Defense;
- (ii) the Department of Health and Human Services;
- (iii) the Department of Transportation;
- (iv) the Department of Veterans Affairs;
- (v) the Department of Homeland Security;
- (vi) the Social Security Administration;
- (vii) the Office of Personnel Management;
- (viii) the Office of Management and Budget; and
- (ix) such other agencies or offices as the Chair may designate.

(b) *Functions.* The Working Group shall convene regularly and as needed to allow for consultation and coordination between DOJ and agencies affected by the Attorney General's implementation of the NIAA, including with respect to the guidance required by sec-

tion 1(a) of this memorandum, subsequent decisions about whether an agency possesses relevant records, and determinations concerning whether relevant records should be provided to the NICS. The Working Group may also consider, as appropriate:

(i) developing means and methods for identifying agency records deemed relevant by DOJ's guidance;

(ii) addressing obstacles faced by agencies in making their relevant records available to the NICS;

(iii) implementing notice and relief from disabilities programs; and

(iv) ensuring means to correct, modify, or remove records when the basis under which the record was made available no longer applies.

(c) *Reporting.* The Working Group will review the annual reports required by section 2(a) of this memorandum, and member agencies may append to the reports any material they deem appropriate, including an identification of any agency best practices that may be of assistance to States in supplying records to the NICS.

SEC. 4. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Independent agencies are strongly encouraged to comply with the requirements of this memorandum.

SEC. 5. *Publication.* The Attorney General is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

## § 40912. Requirements to obtain waiver

### (a) In general

Beginning 3 years after January 8, 2008, a State shall be eligible to receive a waiver of the 10 percent matching requirement for National Criminal History Improvement Grants under section 40301 of this title if the State is in compliance with an implementation plan established under subsection (b) or provides at least 90 percent of the information described in subsection (c). The length of such a waiver shall not exceed 2 years.

### (b) State estimates

#### (1) Initial state estimate

##### (A) In general

To assist the Attorney General in making a determination under subsection (a) of this section, and under section 40914 of this title, concerning the compliance of the States in providing information to the Attorney General for the purpose of receiving a waiver under subsection (a) of this section, or facing a loss of funds under section 40914 of this title, by a date not later than 180 days after January 8, 2008, each State shall provide the Attorney General with a reasonable estimate, as calculated by a method determined by the Attorney General and in accordance with section 40914(d) of this title, of the number of the records described in subpara-

graph (C) applicable to such State that concern persons who are prohibited from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18.

**(B) Failure to provide initial estimate**

A State that fails to provide an estimate described in subparagraph (A) by the date required under such subparagraph shall be ineligible to receive any funds under section 40913 of this title, until such date as it provides such estimate to the Attorney General or has established an implementation plan under section 40917 of this title.

**(C) Record defined**

For purposes of subparagraph (A), a record is the following:

(i) A record that identifies a person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year.

(ii) A record that identifies a person for whom an indictment has been returned for a crime punishable by imprisonment for a term exceeding 1 year that is valid under the laws of the State involved or who is a fugitive from justice, as of the date of the estimate, and for which a record of final disposition is not available.

(iii) A record that identifies a person who is an unlawful user of, or addicted to a controlled substance (as such terms “unlawful user” and “addicted” are respectively defined in regulations implementing section 922(g)(3) of title 18 as in effect on January 8, 2008) as demonstrated by arrests, convictions, and adjudications, and whose record is not protected from disclosure to the Attorney General under any provision of State or Federal law.

(iv) A record that identifies a person who has been adjudicated as a mental defective or committed to a mental institution, consistent with section 922(g)(4) of title 18 and whose record is not protected from disclosure to the Attorney General under any provision of State or Federal law.

(v) A record that is electronically available and that identifies a person who, as of the date of such estimate, is subject to a court order described in section 922(g)(8) of title 18.

(vi) A record that is electronically available and that identifies a person convicted in any court of a misdemeanor crime of domestic violence, as defined in section 921(a)(33) of title 18.

**(2) Scope**

The Attorney General, in determining the compliance of a State under this section or section 40914 of this title for the purpose of granting a waiver or imposing a loss of Federal funds, shall assess the total percentage of records provided by the State concerning any event occurring within the prior 20 years, which would disqualify a person from possessing a firearm under subsection (g) or (n) of section 922 of title 18.

**(3) Clarification**

Notwithstanding paragraph (2), States shall endeavor to provide the National Instant

Criminal Background Check System with all records concerning persons who are prohibited from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18, regardless of the elapsed time since the disqualifying event.

**(c) Eligibility of State records for submission to the National Instant Criminal Background Check System**

**(1) Requirements for eligibility**

**(A) In general**

From the information collected by a State, the State shall make electronically available to the Attorney General records relevant to a determination of whether a person is disqualified from possessing or receiving a firearm under subsection (g) or (n) of section 922 of title 18 or applicable State law.

**(B) NICS updates**

The State, on being made aware that the basis under which a record was made available under subparagraph (A) does not apply, or no longer applies, shall, as soon as practicable—

(i) update, correct, modify, or remove the record from any database that the Federal or State government maintains and makes available to the National Instant Criminal Background Check System, consistent with the rules pertaining to that database; and

(ii) notify the Attorney General that such basis no longer applies so that the record system in which the record is maintained is kept up to date.

The Attorney General upon receiving notice pursuant to clause (ii) shall ensure that the record in the National Instant Criminal Background Check System is updated, corrected, modified, or removed within 30 days of receipt.

**(C) Certification**

To remain eligible for a waiver under subsection (a), a State shall certify to the Attorney General, not less than once during each 2-year period, that at least 90 percent of all records described in subparagraph (A) has been made electronically available to the Attorney General in accordance with subparagraph (A).

**(D) Inclusion of all records**

For purposes of this paragraph, a State shall identify and include all of the records described under subparagraph (A) without regard to the age of the record.

**(2) Application to persons convicted of misdemeanor crimes of domestic violence**

The State shall make available to the Attorney General, for use by the National Instant Criminal Background Check System, records relevant to a determination of whether a person has been convicted in any court of a misdemeanor crime of domestic violence. With respect to records relating to such crimes, the State shall provide information specifically describing the offense and the specific section

or subsection of the offense for which the defendant has been convicted and the relationship of the defendant to the victim in each case.

**(3) Application to persons who have been adjudicated as a mental defective or committed to a mental institution**

The State shall make available to the Attorney General, for use by the National Instant Criminal Background Check System, the name and other relevant identifying information of persons adjudicated as a mental defective or those committed to mental institutions to assist the Attorney General in enforcing section 922(g)(4) of title 18.

**(d) Privacy protections**

For any information provided to the Attorney General for use by the National Instant Criminal Background Check System, relating to persons prohibited from possessing or receiving a firearm under section 922(g)(4) of title 18, the Attorney General shall work with States and local law enforcement and the mental health community to establish regulations and protocols for protecting the privacy of information provided to the system. The Attorney General shall make every effort to meet with any mental health group seeking to express its views concerning these regulations and protocols and shall seek to develop regulations as expeditiously as practicable.

**(e) Attorney General report**

Not later than January 31 of each year, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the progress of States in automating the databases containing the information described in subsection (b) and in making that information electronically available to the Attorney General pursuant to the requirements of subsection (c).

(Pub. L. 110-180, title I, §102, Jan. 8, 2008, 121 Stat. 2564; Pub. L. 115-141, div. S, title VI, §603(a), Mar. 23, 2018, 132 Stat. 1135.)

CODIFICATION

Section was formerly classified in a note under section 922 of Title 18, Crimes and Criminal Procedure, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-141, §603(a)(1), substituted “section 40301 of this title” for “the Crime Identification Technology Act of 1988 (42 U.S.C. 14601)” and inserted “is in compliance with an implementation plan established under subsection (b) or” before “provides at least 90 percent of the information described in subsection (c)”.

Subsec. (b)(1)(B). Pub. L. 115-141, §603(a)(2), inserted “or has established an implementation plan under section 40917 of this title” after “the Attorney General”.

**§ 40913. Implementation assistance to States**

**(a) Authorization**

**(1) In general**

From amounts made available to carry out this section and subject to section

40912(b)(1)(B) of this title, the Attorney General shall make grants to States and Indian tribal governments, in a manner consistent with the National Criminal History Improvement Program, which shall be used by the States and Indian tribal governments, in conjunction with units of local government and State and local courts, to establish or upgrade information and identification technologies for firearms eligibility determinations. Not less than 3 percent, and no more than 10 percent of each grant under this paragraph shall be used to maintain the relief from disabilities program in accordance with section 40915 of this title.

**(2) Grants to Indian tribes**

Up to 5 percent of the grant funding available under this section may be reserved for Indian tribal governments, including tribal judicial systems.

**(b) Use of grant amounts**

Grants awarded to States or Indian tribes under this section may only be used to—

(1) create electronic systems, which provide accurate and up-to-date information which is directly related to checks under the National Instant Criminal Background Check System (referred to in this section as “NICS”), including court disposition and corrections records;

(2) assist States in establishing or enhancing their own capacities to perform NICS background checks;

(3) supply accurate and timely information to the Attorney General concerning final dispositions of criminal records to databases accessed by NICS, including through increased efforts to pre-validate the contents of those records to expedite eligibility determinations;

(4) supply accurate and timely information to the Attorney General concerning the identity of persons who are prohibited from obtaining a firearm under section 922(g)(4) of title 18 to be used by the Federal Bureau of Investigation solely to conduct NICS background checks;

(5) supply accurate and timely court orders and records of misdemeanor crimes of domestic violence for inclusion in Federal and State law enforcement databases used to conduct NICS background checks;

(6) collect and analyze data needed to demonstrate levels of State compliance with this chapter; and

(7) maintain the relief from disabilities program in accordance with section 40915 of this title, but not less than 3 percent, and no more than 10 percent of each grant shall be used for this purpose.

**(c) Eligibility**

To be eligible for a grant under this section, a State shall certify, to the satisfaction of the Attorney General, that the State has implemented a relief from disabilities program in accordance with section 40915 of this title.

**(d) Condition**

As a condition of receiving a grant under this section, a State shall specify the projects for which grant amounts will be used, and shall use