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## NICS Reporting of Veterans with Fiduciaries: Issues for Congress

Under 18 U.S.C. §922(g)(4), persons “adjudicated as a mental defective” are prohibited from legally buying, selling, or possessing a firearm. Veterans that have a fiduciary appointed to them because they are deemed unable to manage their finances are considered by Bureau of Alcohol, Tobacco, Firearms and Explosives’ (ATF’s) and Department of Veterans Affairs’ (VA’s) regulations to have been “adjudicated as a mental defective” for purposes of Section 922(g)(4).

When the VA deems a veteran unable to manage their VA benefits, it appoints a fiduciary to manage them on the veteran’s behalf. When a fiduciary is appointed for this reason, the veteran is to be reported to the National Instant Criminal Background Check System (NICS), a national namecheck system administered by the Federal Bureau of Investigation (FBI). NICS is used by authorized firearm dealers—known as Federal Firearm Licensees (FFLs)—to confirm whether a potential firearm purchaser is prohibited from legally buying, selling, or possessing a firearm. Consequently, veterans with a VA-appointed fiduciary are not lawfully allowed to purchase, sell, or possess firearms.

Critics of this policy argue that, through this NICS reporting, VA is wrongfully preventing veterans who are not a threat to themselves or others from purchasing a firearm. Some also argue that, because the policy in question does not require any sort of judicial ruling, the policy violates the due process rights of veterans. By contrast, proponents of this policy argue that NICS reporting and associated internal quality reviews ensure that the VA is submitting names to NICS with “100% accuracy” because the process provides VA employees “immediate, focused feedback” if names are not being submitted to NICS accurately or with appropriate frequency. Furthermore, supporters argue that this system is designed to prevent individuals who may harm themselves or others from receiving a firearm.

### NICS and Veterans Deemed Mentally Incompetent

Section 102 of the Brady Handgun Violence Prevention Act of 1993 (P.L. 103-159) requires all FFLs to use NICS to conduct background checks on prospective buyers before completing a firearm sale. “NICS reporting” refers to the process, for federal, state, local, and tribal law enforcement and certain government agencies, to report to NICS persons ineligible to own firearms under federal law.

Federal law (18 U.S.C. §922(g)) lists the nine classes of people who cannot ship, transport, possess, or receive

firearms and ammunition. These prohibitions are reinforced by federal, state, local, and tribal law enforcement and government agencies that report such prohibited individuals to NICS. These classes are

- persons convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- fugitives from justice;
- unlawful users or addicts of any controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. §802);
- persons “adjudicated as a mental defective” or committed to mental institutions;
- unauthorized immigrants and nonimmigrant visitors (with exceptions in the latter case);
- persons dishonorably discharged from the U.S. Armed Forces;
- persons who have renounced their U.S. citizenship;
- persons under court-ordered restraints related to harassing, stalking, or threatening intimate partners or children of such intimate partners; and
- persons convicted of misdemeanor crimes of domestic violence.

ATF regulations define “adjudicated as a mental defective” in 27 C.F.R. §478.11, as

(a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

- (1) Is a danger to himself or to others; or
- (2) Lacks the mental capacity to contract or manage his own affairs.

(b) the term shall include

- (1) A finding of insanity by a court in a criminal case; and
- (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental

responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

Furthermore, VA defines “mental incompetency” as a person “who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation.”

Accordingly, under ATF and VA regulations, an order or finding from a judge, magistrate, or other judicial authority is not required for an individual to be “adjudicated as a mental defective” and added to NICS. However, a provision in the Consolidated Appropriations Act of 2024 (P.L. 118-42) prohibits VA from expending any appropriated funds in FY2024 to report any person to NICS based on mental incompetency without “an order or finding from a judge, magistrate, or other judicial authority of competent jurisdiction that the beneficiary is a danger to themselves or others.” This provision was extended through FY2025 by the two continuing resolutions enacted in 2024 (P.L. 118-83 and P.L. 118-158) and was in the full-year Continuing Appropriations and Extensions Act of 2025 (H.R. 1668). Because this provision is in an annual appropriations bill, rather than *U.S. Code*, it expires on September 30, 2025, unless extended through additional legislation.

Of the 33,025,815 total active entries in the NICS indices on December 31, 2024, 7,932,798 were for people who were adjudicated as a mental defective and 205,685 of those were submitted by federal agencies. Of those, 199,454 (96.97%) were submitted by VA, though it is unknown what portion of these entries were submitted because a veteran was appointed a fiduciary. In the last fiscal year for which data is available (2023), there were 66,050 veterans in VA’s Fiduciary Program. This includes veterans who VA determined to be unable to manage their benefits or who have been determined by a court with jurisdiction as being unable to manage their financial affairs. Since the passage of 2024 appropriations legislation, VA notes that they have only reported three people to NICS under 18 U.S.C. §922(g)(4).

### Challenging VA’s Determinations of Mental Incompetency

A determination of incompetency must be based on all evidence of record and be consistent with the percentage of disability and facts related to any hospitalization or commitment of the person. VA’s regulations require that no incompetency determination be made unless the “medical evidence is clear, convincing, and leaves no doubt as to the person’s incompetency” or there has been “a definite expression regarding the question by the responsible medical authorities.” In a case in which there is a reasonable doubt as to the beneficiary’s competency to contract or manage his or her affairs, the regulations require the case to be resolved in favor of a determination of competency. VA can later reverse a determination of incompetency based on new or overlooked evidence of the beneficiary’s competency.

For veterans who were reported to NICS because they needed a fiduciary to manage their benefits, the NICS Improvement Amendments Act of 2007 requires VA to allow them to petition for relief from disability. VA does not have a statutory “duty to assist” a beneficiary in a request for relief, and a beneficiary is not entitled to the “benefit of the doubt” in the evaluation of a request for relief. The policy of VA is to deny a request for relief if evidence shows the beneficiary would be a “danger to self or others” if relief were granted. The evidence must be “clear and convincing” to deny a request for relief, and according to VA, claims processors must deny a request for relief from disability if they find a physician believing the veteran would be a danger to self or others if relief were granted, a history of violent behavior, a diagnosis of mental disability with symptoms that include the presence of suicidal or homicidal ideations, or a substance use disorder. A denial of relief from disability may not be appealed to the Board of Veterans Appeals or U.S. Court of Appeals for Veterans Claims. The decision can, however, be reviewed by the U.S. District Court for the district of residence of the beneficiary.

### Recent Legislative Activity

On May 6, 2025, the House Veterans’ Affairs Committee reported the Veterans 2<sup>nd</sup> Amendment Protection Act (H.R. 1041). This legislation would codify the aforementioned appropriations legislation provision that prevents VA from reporting any person to NICS based on its determination that they require a fiduciary to manage their benefits without an “order or finding from a judge, magistrate, or other judicial authority of competent jurisdiction that the beneficiary is a danger to themselves or others.” It would not change 18 U.S.C. §922(g)(4) nor would it require that names submitted to NICS by VA prior to the 2024 appropriations legislation under this statute be removed. If enacted into law, absent actions by VA and ATF, there would be a mismatch between who VA and ATF deem to be a prohibited person under 18 U.S.C. §922(g)(4) and who VA is authorized to report to NICS, potentially complicating compliance with and implementation of 18 U.S.C. §922(g)(4).

Other relevant legislation is the Veterans 2<sup>nd</sup> Amendment Restoration Act of 2025 (H.R. 496). This bill would require the VA to remove names already transmitted to NICS under 18 U.S.C. §922(g)(4) and rewrite 18 U.S.C. §922(g)(4) to note that “a person shall not be treated as having been adjudicated as a mental defective solely on the basis that the Secretary of Veterans Affairs has determined that such person—

- 1) Is mentally incompetent under section 3.353 of title 38, Code of Federal Regulations (or successor regulation); or
- 2) requires a fiduciary under section 5502 of title 38, United States Code.”

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