



## Department of Treasury

Bureau of Alcohol, Tobacco, Firearms

Washington, DC 20226

October 30, 1998

### **Open Letter to Licensees Regarding Pawnbroker Transactions**

Dear Federal Firearms Licensee:

As you are aware, the permanent provisions of the Brady Law, which take effect on November 30, 1998, generally require licensees to contact the national instant criminal background check system (NICS) before transferring any firearm to an unlicensed individual. Under the temporary provisions of Brady, a pawnbroker was not required to conduct a background check when he or she returned a handgun to the person from whom it was received. However, under permanent Brady, NICS checks are required before a firearm can be redeemed from pawn. This requirement is set forth in the final regulations published in the October 29, 1998 Federal Register and is posted on the Bureau of Alcohol, Tobacco and Firearms (ATF) web site at under "Regulations."

As you may be aware, the Omnibus Appropriations Act for 1999 provides that a pawnbroker may complete a NICS check when a firearm is offered as collateral for a loan, at the option of the dealer. However, if the optional NICS check results in a denial, the dealer must notify law enforcement within 48 hours of receiving the denial notice. This optional check is in addition to the mandatory NICS check required at the time the firearm is redeemed.

In the near future, ATF will be publishing a Notice of Proposed Rulemaking setting forth the procedures pawnbrokers must follow if they wish to complete the optional NICS check at the time a firearm is offered for pawn. ATF also will develop a new form on which to conduct the optional check. In the interim, pawnbrokers who decide to conduct the optional NICS check may want to follow the voluntary procedure set forth below.

If a pawnbroker decides to conduct an optional NICS check when a firearm is offered as collateral, the pawnbroker should have the transferee complete those parts of ATF Form 4473, Section A, necessary to complete the NICS check.

If the optional NICS check results in a denial, the dealer should record the date the denial was received, as well as the name of the law enforcement agency and officer contacted in response to the denial, in the space next to Item(s) 12c and/or 12d, as applicable, on the Form 4473. The denied Form 4473 should be maintained in the dealer's records, as specified in 27 CFR § 178.129.

A dealer may not transfer a firearm to any person he or she knows or has reasonable cause to believe is subject to Federal firearms disabilities. Therefore, if a dealer possesses a firearm at the time he or she receives a denial response from NICS, the dealer may not lawfully transfer the firearm to the individual attempting to pawn the firearm.

If the pawnbroker accepts the firearm for pawn, the pawnbroker must have the transferee complete, in its entirety, another Form 4473 (separate from the Form 4473 completed for the optional NICS check), at the time the transferee redeems the firearm. After completion of the second Form 4473, a second NICS check must be performed.

If the second NICS check is denied, the pawnbroker is prohibited from transferring that firearm to the transferee. The pawnbroker must file all denials in his or her records as provided for in 27 CFR § 178.129. If the transaction is not denied and the pawned firearm is redeemed, the Form 4473 completed for the optional NICS check and the Form 4473 completed upon redemption should be attached to each other. The two forms then should be filed in compliance with 27 CFR § 178.124(b), based upon the information on the Form 4473 completed upon redemption.

We hope these suggested interim procedures assist you in conducting your business. If you have any questions, please contact your nearest ATF office.

Sincerely yours,

Jimmy Wooten  
Assistant Director  
Firearms, Explosives and Arson