

SUPPORTING STATEMENT FORM

Voluntary Appeal File Application Form

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

Title 18 United States Code, section 922(t)(2)(C) requires the National Instant Criminal Background Check System (NICS) to destroy most transactional information of the system. Title 28, Code of Federal Regulations (CFR), Part 25.9(b)(1) further outlines and delineates that the NICS Section must destroy all identifying information of the purchaser on allowed (i.e., proceeded) transactions within 24 hours of the federal firearms licensees (FFL) being notified of the transaction's proceed status. After 90 days, all other information about that transaction except its NICS transaction number (NTN) and creation date are also destroyed. Further, all information about transactions remaining open after 90 days is also generally destroyed at that point. See 28 CFR 25.9(b)(2). This means that, if a potential purchaser was denied a firearm and successfully appeals the decision, resulting in a proceeded transfer, NICS cannot retain a record of the overturned appeal or the supporting documentation. If the record is not able to be updated (or if fingerprints were used to exclude the purchaser from a disqualifying record used in the evaluation), the same potential purchaser could continue to experience extended delays or be denied during future transactions; and if that individual appeals the decision, the documentation/information (e.g., fingerprint cards, court records, pardons) must be resubmitted for every subsequent appeal. The Voluntary Appeal File (VAF) was established, per 28 CFR 25.10(g), for this reason.

Through the VAF process, applicants can voluntarily request the FBI's NICS Section maintain information about themselves in the VAF. The VAF is maintained by the NICS for the purpose of preventing future erroneous denials or extended delays of a firearm transfer. With the VAF process, applicants (whether they have previously attempted a firearm transfer or not) must complete the VAF application form (OMB-1110-0043) by supplying mandatory information such as last name, first name, mailing address, residential address, state of residence, country of citizenship, date of birth, place of birth, sex, race, and ethnicity. The applicant must sign the application to authorize the NICS to retain the information in the VAF. The applicant's fingerprints are also required, but they are covered in the collection for OMB 1110-0046, the FD-1212 Voluntary Appeal File (VAF) fingerprint card. If approved, the individual receives a unique personal identification number (UPIN) that must be provided to FFLs during future transactions to point NICS to the now-resolved problematic record(s).

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information collected with the VAF application form will serve to further identify subjects of future NICS transactions like firearms purchasers by their descriptive data. The descriptive data will initially be used to query various FBI Criminal Justice Information Services Division systems/databases to determine if the VAF applicant is a match to any subjects in those systems/databases. The regulation requires written consent from the individual to be included in the VAF. A template statement has been included on the form that explains to what the applicant is agreeing when they sign the application. If at any time the individual wishes their information to be removed from the VAF, a written request must be submitted to have the information removed.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

The VAF online process is an outward-facing Web page that allows the VAF applicant to establish a self-service account. The applicant obtains a link to electronically submit their VAF application with fingerprint card securely online using the same fields as included in the hard copy application form. Fingerprint cards can be submitted by mail, scanned and uploaded with their electronic application, or sent electronically through the United States Postal Service (USPS). USPS is the only third party authorized to transmit fingerprints electronically and directly to the Next Generation Identification/electronic Depart (NGI)/electronic Departmental Order (eDO) process. As more users move toward the electronic submission of the VAF application, the need for the hard copy application form will likely become obsolete. However, the current process does still allow for manual submissions.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item A.2 above.

This is the only means for entry into the VAF per the regulation. No other agency would be offering this service, and no other method would be accepted. No other processes allow the applicant to consent to the FBI retaining their information and records for this purpose.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The collection of information itself will have little to no economic impact on small businesses and small entities. The collection audience is individual potential firearm purchasers. The VAF process is itself completely voluntary by the applicant, and the state, local, and tribal agencies that NICS Section staff may need to contact are not required to respond. To the contrary, any, if any, economic impact resulting from the application itself (e.g. the NICS Section's validation of a record provided by the VAF applicant) may be later negated because allowing individuals to voluntarily submit information to the FBI so that the NICS Section can maintain that information removes the need for FBI or point of contact states to later request that information from, e.g.,

courts and law enforcement agencies since that firearm prohibition has now been cleared.

6. Describe the consequence to federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If the data from the VAF application form is not collected, the NICS Section will not be able to maintain the individual's information or initiate the VAF application process. See 28 CFR 25.10(g). The VAF application form includes the "applicant statement" signature and the date giving the FBI consent to enter the individual into the VAF and maintain relevant information about that applicant. The potential purchaser will likely face future delayed or denied responses from NICS and, as discussed earlier, that individual would have to appeal any subsequent denied attempt to receive a firearm and resubmit documentation/information to overturn that decision.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly.**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it.**
- **requiring respondents to submit more than an original and two copies of any document.**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years.**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study.**
- **requiring the use of statistical data classification that has not been reviewed and approved by OMB.**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances.

8. If applicable, provide a copy and identify the date and page number of publications in the *Federal Register* of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection-of-information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The 60-Day Notice was published in the Federal Register on [DATE] (XX FR XXXXX). The comment period ended on [DATE]. XX comments were received.

9. Explain any decision to provide any payments or gifts to respondents, other than remuneration of contractors or grantees.

No government funds will be used as payment or for gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Pursuant to 28 CFR 25.10(g), information in the VAF is used to prevent future erroneous denials and extended delays of NICS transactions; that regulation also clearly states the information in the VAF can only be used for that purpose.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no sensitive questions as defined by this section.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. General, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

It is estimated the time it takes to read, complete, and upload documents is 30 minutes. Travel time to the fingerprinting facility and post office is not factored in the time estimate. It is estimated 11,073 respondents will apply yearly.

With 11,073 applicants responding, the formula for applicant burden hours would be as follows: (11,073 respondents x .5 hours per VAF application) = 5,536.5 hours. Normally, only one application is received per respondent.

The VAF application process is performed on average by 54 GS 11 Step 5 Criminal History Challenge Analysts. The 2024 Office of Personnel Management Grade Scale Salary Table (for the locality pay area of rest of United States) indicates a GS 11 Step 5 employee makes \$82,226 per year. As a standard when calculating cost, thirty-one percent is added for benefits. This brings the annual cost per employee to \$107,716.06. Fifty-four employees at this rate would total \$5,816,667.24 in salaries.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- **The cost estimate should be split into two components: (a) a total capital and startup cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of service component. The estimates should consider costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the**

time over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

There are no startup costs associated with this collection as the VAF process has already been in use for years.

14. Provide estimates of the annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 into a single table.

An estimate of the total annual cost burden associated with the collection, total burden hours is not easily calculatable. Some applications are processed quickly while others can take up to 60 days, dependent on the complexity of the case. For instance, should it be determined the applicant was not a match to any prohibiting category based on submitted fingerprints, the application could be resolved within one day. Conversely, should the applicant match potential prohibiting categories based on fingerprint comparison, each potential prohibitor requires research, likely external, and could include contacting multiple agencies in multiple locations. In those cases, the process could take up to 60 days. For these reasons, it is difficult to determine an annual hour burden to process a VAF application.

15. Explain the reasons for any program changes or adjustments.

The VAF application form has been updated to provide notice of potential local law enforcement contact as part of applicant review process and collection of residential address in addition to mailing address of applicant.

Under the Bipartisan Safer Communities Act (BSCA), NICS is required to make three additional record checks for potential transferees whose age is 18-20 years old. These expanded checks are to determine whether the potential transferee has a possible disqualifying juvenile record. This record check necessitates contacting “local” law enforcement for those situations, which, in turn requires collecting further residential information about the applicant. That information is already provided on the Bureau of Alcohol, Tobacco, Firearms and Explosives Form 4473, (Firearms Transaction Record)

16. For collections of information whose results will be published, outline plans for tabulations, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

The data collected will be utilized by the NICS Section solely in connection with determining eligibility for entry into the VAF to be utilized with firearm background checks conducted through the Brady Act and the regulations promulgated thereunder. Also included are National Firearms Act firearm checks (*see* 28 CFR 25.6(j)(2)) or, in the near future, during a “firearm handler background check” (*see* 89 FR 100424). The VAF is also open to persons that have never been the subject of a NICS check to preemptively prevent erroneous denials or extended delays. This information will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

We are requesting no exemption.

18. Explain each exception to the certification statement.

This collection of information does not include any exceptions to the certificate statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS.

This collection does/does not contain statistical data.