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**INSPECTION DIVISION
OFFICE OF INSPECTIONS**



**INSPECTOR'S REPORT
A REVIEW OF THE CJIS DIVISION'S NATIONAL INSTANT CRIMINAL
BACKGROUND CHECK SYSTEM (NICS)
IN CLARKSBURG, WEST VIRGINIA**



A handwritten signature in blue ink, appearing to read "Nancy McNamara", is written over a horizontal line.

**Nancy McNamara
Assistant Director
Inspection Division**

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TABLE OF CONTENTS

I. EXECUTIVE SUMMARY 2

II. SCOPE AND METHODOLOGY 6

III. THE ROOF CASE..... 11

IV. FINDINGS 17

V. CONCLUSION 35

VI. APPENDICES..... 36

A. Federal Prohibitors

B. NICS Process Work Flow

C. Dylann Storm Roof Shooting - Time Line

D. NCIC Printouts for Roof

E. Fax to Lexington County Sheriffs Office

F. Fax to West Columbia Police Department

G. Fax to Columbia Police Department (6/26/15) - Final Disposition Report & Columbia PD Incident Report

H. NICS 2014 Unresolved NICS Federal Firearm Background Checks

I. Examiner Production, Accuracy, and Compliance: Cascading Goals Addendum

J. Binder - Standard Operating Procedures (SOP)

K. Binder - Roof Case

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I. EXECUTIVE SUMMARY

(U//FOUO) **Background:** At the request of the Director, INSD conducted a special review of the Criminal Justice Information Services (CJIS) Division's National Instant Criminal Background Check System (NICS) Section in relation to the purchase of a handgun by Dylann Roof, the subject in the 06/17/2015 Emmanuel African Methodist Episcopal (AME) Church shooting in Charleston, SC. This review commenced on 07/14/2015. INSD traveled to CJIS on 07/20/2015 and conducted leadership and staff interviews; reviewed Standard Operating Procedures (SOPs); and assessed the NICS computerized database system.

(U//FOUO) **Scope and Objectives:** INSD's special review focused on NICS protocols and procedures to assess: (1) the availability and timeliness of actionable intelligence; (2) coordination and information sharing between CJIS and law enforcement agencies; and (3) CJIS Division's oversight and program management preceding the 06/17/2015 church shooting incident. INSD identified Issues and Recommendations which are detailed herein.

(U//FOUO) **Overview of NICS:** NICS is a DOJ program designed to keep firearms from criminals, the mentally ill, illegal aliens, and people who have renounced their U.S. Citizenship or violate a number of State specific prohibitors. NICS is utilized to determine qualification for receiving or possessing firearms according to federal guidelines. The NICS process includes searching, at a minimum, three federally maintained databases. If applicant identifiers match any entries in the federally maintained databases, a designated set of databases, the "External Manual and Automated Databases," are cross-referenced for resolution.

(U//FOUO) **NICS Section Structure:** (H) full-time Examiners range in grade from GS-6 to GS-9. Examiners are assigned to the NICS Section, within the CJIS Division at Clarksburg, West Virginia. The Examiners are divided into various NICS program roles, to include, the Research and Analysis Team; Appeal Services and Explosives; Command Center; Regional Coordinators; and NICS Index Team. Additionally, NICS manages three regional contract Call Centers, which employ approximately (H) Customer Service Representatives (CSSR).

(U//FOUO) **NICS Process:** A NICS background check inquiry can follow several paths from inquiry to resolution. To initiate a firearms background check, an applicant must show the Federal Firearms Licensee (FFL) an approved form of photo identification and provide name, sex, race, date of birth, and the state of residence as required on ATF Form 4473. A NICS Transaction Number (NTN) is provided to the FFL and must be recorded on ATF Form 4473. NICS requested applicants submit additional descriptors and unique identifiers to assist in discerning between similar records, because NICS utilized a descriptive based search. The NICS response to

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2

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FBI-00000151

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an inquiry consisted of a notice to the FFL stating the transfer of the firearm may Proceed, is Denied, or was Delayed pending further review. FFLs were permitted to legally transfer weapons when the NICS response is Proceed or if exceeding three business days from a Delayed inquiry. The criterion for denying a transfer was based on ten federal prohibitors, as well as, additional state specific prohibitors

(U//FOUO) **NICS Section Business Process:** NICS operates from 8 am EST to 1 am EST, seven days a week, every day with the exception of Christmas. A NICS inquiry is processed by either CJIS/NICS or a designated state point of contact, which involves state employees querying NICS and conducting the necessary follow up. Thirty six states opted for the FBI to provide the firearms background check function. For the inquiries processed by NICS, the FFL can contact NICS via telephone (Call Centers) or submit requests through the NICS E-Check¹ automated service. At the NICS Section, Examiners work the inquiry through resolution or until all logical leads are awaiting external response. During some periods (typically weekends or evenings), Examiners triage incoming matters to determine if the inquiry can be either Proceeded or Denied. If the inquiry is Delayed, the inquiry is placed in the appropriate regional queue for in-depth research regarding laws or prohibitions specific to a state or region. This was the case in the Roof matter.

(U//FOUO) **Roof Case:** On Saturday, 04/11/2015, Roof attempted to purchase a .45 caliber Glock handgun at a gun store in West Columbia, South Carolina. Roof's information was checked in the National Instant Crime Background Check System (NICS) as required by law and Delayed due to potential prohibitors. On the next business day, Monday, 04/13/2015, a Examiner at the CJIS facility in West Virginia, began to process the inquiry. The initial check of Roof's criminal history indicated he was arrested for a felony drug charge. This charge was not enough to Deny proceeding with the transaction and required further inquiry. The Examiner reviewed Roof's criminal history and determined the arresting agency listed on Roof's criminal record was the Lexington County Sheriff's Office (LCSO).

(U//FOUO) The Examiner determined a case disposition was not listed, then faxed a request to the Lexington County Sheriff's Office (LCSO) requesting more details on the case. Next, the Examiner faxed a similar request to the Lexington County Prosecutor's Office. The LCSO contacted the Examiner and advised the case did not belong to them, and the Examiner should check with the Columbia Police Department (CPD). The Examiner did not locate a listing for the CPD in Lexington County but did locate a listing for the West Columbia Police Department (WCPD). The Examiner contacted the WCPD and was advised there was no record

¹ NICS E-Check is an electronic service, accessed via the Internet, for the NICS Section to directly accept firearms background checks from FFLs. The system automatically conducts the same review as NICS Call Center CSSRs and responds accordingly.

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3

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of an arrest of Roof. Court records revealed no convictions. Contacted agencies provided either no definitive clarifying information or did not respond. While the Roof inquiry remained in Delayed status, the Examiner processed other inquiries.

(U//FOUO) On Thursday, 04/16/2015, the fourth business day from the initial inquiry request, the Brady Transaction Date, the gun dealer exercised his lawful discretion and transferred the gun to Roof. On 06/17/2015, Roof shot and killed nine people attending church services in Charleston, South Carolina.

Summary Findings

(U//FOUO) The Roof transaction represented one of many paths an FFL inquiry could follow through the complex NICS process. The INSD review identified both areas of exemplary performance and improvement opportunities. Recommendations and identified mitigation opportunities are detailed herein.

(U//FOUO) Positive Outcomes

- The Examiner on the Roof Matter performed as required and in accordance with current policy and procedures.
- NICS Section EM worked proactively to predict and resolve resource and workflow challenges with available in-house resources.
- NICS worked collaboratively as a section and in an “all hands on deck” manner to meet a background check demand which doubled over the past ten years.
- NICS recognized the importance of strong SOPs and devised standardized training for all new Examiners.
- NICS staff articulated dedication and pride in the mission, in spite of heavy workloads and challenges with the receipt of timely information from law enforcement agencies.

(U//FOUO) Issues

- The lack of timely responses and/or incomplete records were primarily responsible for delayed inquiries. Record holders are not required to respond to NICS inquiries.
- Examiners were forced to rely on outdated and inefficient means of communication with various state and local agencies which inhibited effective resolution.
- While demand doubled over the last 10 years, resources remained essentially the same within the NICS Section. Consequently, proactive outreach efforts with agencies and FFLs suffered as resources were pulled to address the increasing number of NICS inquiries.
- To meet statutory requirements, CJIS management amended SOPs and curtailed resolution efforts to focus on initial reviews within the Brady Transaction Period.

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4

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FBI-00000153

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- The NICS SOP prioritized volume over resolution allowing Delayed work to be reviewed on Day 3 which met the statutory requirement, but resulted in inquiries exceeding the Brady Transaction Date.
- NICS was not required, and therefore did not ensure requests for information to outside agencies were received or reviewed by the recipient agency.
- NICS was not required to proactively review current or new information resources to increase overall effectiveness in conducting firearm background checks. Limited resources and SOPs limited the ability of Examiners to pursue additional datasets. For instance, a query of NDEX, which was reviewed and subsequently not included as a NICS dataset, would have revealed the prohibiting Roof incident report.
- Quality assurance processes were burdensome and reduced manpower available for inquiry resolution. During surge periods, quality assurance was limited to full-time Examiners and the surged workforce was not reviewed.
- Emphasis on inquiry quotas, linking performance to the number of processed inquiries, and regularly redirecting employees from other units to work the high volume of incoming inquiries shifted focus away from resolution (M)
- NICS examinations are complicated by statutory requirements, including short data purge windows, and increased Examiner requirements to complete reviews in order to verify prohibitors.
- NICS demonstrated the ability to predict surge requirements, however employee schedules were maintained which did not maximize effectiveness.

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II. SCOPE AND METHODOLOGY

(U//FOUO) On 07/20/2015, a six-member INSD team including, an Inspector-in-Charge, two Inspection Team Leaders, two Assistant Inspectors-in-Place, and a Support Operations Specialist, deployed to the FBI CJIS facility in Clarksburg, West Virginia, to conduct the review. The team conducted interviews with management and Legal Instrument Examiner Teams in the NICS Section. INSD's review focused on three areas: (1) the availability, sharing, and timeliness of actionable intelligence; (2) coordination among CJIS units and law enforcement; and (3) CJIS Division's oversight and program management preceding the 06/17/2015 shooting incident at the Emanuel AME Church in Charleston, South Carolina.

(U//FOUO) INSD conducted a total of 21 interviews. All of the interviews involved personnel assigned to the NICS Section as denoted below:

FBI	Number Interviewed
AD	1
SECTION CHIEF	1
UNIT CHIEF	3
ACTING UNIT CHIEF	2
SUPERVISOR EXAMINER UNIT	2
SUPERVISOR LEGAL ANALYSIS TEAM	1
SUPERVISOR PROGRAM ANALYSIS	1
SUPERVISOR BUSINESS RELATIONS	1
REGIONAL COORDINATOR	2
TRAINING	2
LEGAL INSTRUMENT EXAMINER	4
MAPA	1
Total Interviewed	21

Table 1

(U//FOUO) INSD reviewed NICS Section communications consisting of faxes, reports, Standard Operating Procedures, NICS internal documents, and a NICS SharePoint site. INSD did not review or interview personnel from external agencies.

(U//FOUO) **Overview of NICS:** NICS is a DOJ program designed to keep firearms from criminals, the mentally ill, illegal aliens, and people who have renounced their U.S. Citizenship or violate a number of State specific prohibitors. NICS is utilized to determine qualification for receiving or possessing firearms according to federal guidelines. The NICS process includes searching, at a minimum, three federally maintained databases: the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the NICS Index. If applicant identifiers match any entries in the federally maintained databases, the External Manual and Automated Databases are cross-referenced for resolution. These databases include

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the ATF Relief from Disabilities Database (ATFRDD), the NICS Voluntary Appeal File (VAF), the Disposition and Document File (DDF), and Westlaw (also includes West Docket).

(U//FOUO) **NICS Section Structure:** (H) [redacted] full-time Examiners range in grade from GS-6 to GS-9. Examiners are assigned to the NICS Section, within the CJIS Division at Clarksburg, West Virginia. The Examiners are divided into various NICS program roles, to include, the Research and Analysis Team; Appeal Services and Explosives; Command Center; Regional Coordinators; and NICS Index Team.

- (H) [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

(U//FOUO) Additionally, the NICS Section manages three regional contract Call Centers in Dallas-Fort Worth, Texas; Wheeling, West Virginia; and Barbourville, Kentucky. These call centers employ approximately (H) Customer Service Representatives (CSSR) who triage initial telephone NICS inquiries. An organizational chart is referenced in the Roof Case Binder (Appendix K, Section 2).

(U//FOUO) **NICS Process:** The NICS process can follow several paths from inquiry to resolution. To initiate a firearms background check, an applicant must show the FFL an approved form of photo identification and provide name, sex, race, date of birth, and the state of residence as required on ATF Form 4473. A NICS Transaction Number (NTN) is provided to the FFL and must be recorded on ATF Form 4473. NICS requested applicants submit additional descriptors and unique identifiers to assist in discerning between similar records, because NICS utilized a descriptive based search. The NICS response to an inquiry consists of a notice to the FFL stating

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the transfer of the firearm may Proceed, is Denied, or is Delayed pending further review. FFLs are permitted to legally transfer weapons when the NICS response is Proceed or if exceeding three business days from a Delayed inquiry. The criterion for denying a transfer is based on ten federal prohibitors, as well as, additional state specific prohibitors. The ten federal prohibitors as defined in the Gun Control Act of 1968; Title 18, United States Code (U.S.C.), Sections 921 and 922; Title 27, Code of Federal Regulations (C.F.R.) Part 478.11, are briefly outlined below and incorporated in Appendix A:

- SECTION 922(g)(1) - PERSONS WHO HAVE BEEN CONVICTED IN ANY COURT OF A CRIME PUNISHABLE BY IMPRISONMENT FOR TERM EXCEEDING ONE YEAR
- SECTION 922(g)(2) - PERSONS WHO ARE FUGITIVES FROM JUSTICE
- SECTION 922(g)(3) - PERSONS WHO ARE UNLAWFUL USERS OF OR ADDICTED TO ANY CONTROLLED SUBSTANCE
- SECTION 922(g)(4) - PERSONS WHO HAVE BEEN ADJUDICATED AS MENTAL DEFECTIVES OR HAVE BEEN COMMITTED TO A MENTAL INSTITUTION
- SECTION 922(g)(5) - PERSONS WHO ARE ALIENS AND ARE ILLEGALLY OR UNLAWFULLY IN THE UNITED STATES
- SECTION 922(g)(6) - PERSONS WHO HAVE BEEN DISCHARGED FROM THE U.S. ARMED FORCES UNDER DISHONORABLE CONDITIONS
- SECTION 922(g)(7) - PERSONS WHO, HAVING BEEN CITIZENS OF THE UNITED STATES, HAVE RENOUNCED THEIR U.S. CITIZENSHIP
- SECTION 922(g)(8) - PERSONS SUBJECT TO A COURT ORDER THAT RESTRAINS THEM FROM HARASSING, STALKING, OR THREATENING AN INTIMATE PARTNER OR CHILD OF SUCH INTIMATE PARTNER, OR FROM ENGAGING IN OTHER CONDUCT THAT WOULD PLACE THE PARTNER OR CHILD IN REASONABLE FEAR OF BODILY INJURY
- SECTION 922(g)(9) - PERSONS CONVICTED IN ANY COURT OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE
- SECTION 922(n) - PERSONS WHO ARE UNDER INDICTMENT OR INFORMATION FOR A CRIME PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR.

(U//FOUO) While the majority (91%) of NICS inquiries are resolved within minutes, the absence of complete records and/or unavailable clarifying information requires additional processing to allow for determination of eligibility. Delayed transactions are placed in the "Delayed Queue." In such cases, the Brady Handgun Violence Prevention Act allows the NICS Examiners up to three business days to obtain the missing/clarifying information by contacting local, state, and federal law enforcement agencies. If the information cannot be obtained prior to the expiration of the allotted three business days, also referred to as the Brady Period, and NICS is unable to provide either a Proceed or Deny response, the FFL has the option to legally transfer the firearm. The date on which the transfer may legally occur is called the "Brady Transaction Date."

(U//FOUO) If the NICS Legal Instruments Examiner, hereafter referred to as Examiner, discovers a NICS firearm transaction is Denied after the Brady Transaction Date, the Examiner must verify if the firearm was transferred by the FFL. The Examiner must also obtain the day of

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transfer and select the correct Firearm Retrieval/Referral Ranking Code. The Examiner refers the information obtained from the FFL along with the appropriate Firearm Retrieval/Referral Ranking Code to initiate ATF retrieval of the firearm from the purchaser.

The following is a list of the codes and their descriptions:

- 01 Violent Felony (Rape, Murder, Burglary, Armed Robbery, Arson and Kidnapping)
(The list of violent felony charges provided is all inclusive.)
- 02 Non-Violent Felony (All other felonies)
- 03 Misdemeanor Crime of Domestic Violence
- 04 Protection Order
- 05 Under Indictment
- 06 Fugitive from Justice
- 07 Drug User
- 08 Mental Defective
- 09 Illegal Alien
- 10 Renounced Citizenship
- 11 Dishonorable Discharge
- 12 Active Probation Prohibiting Firearm Possessions
- 13 Misdemeanor Punishable by 2+ Years
- 14 Identification for Firearms Sales
- 15 State Prohibitor (Unless Active Probation Prohibiting Firearm Possessions refer to Firearm Retrieval/Referral code 12).

(H), (N)



(U//FOUO) NICS Section Business Process: NICS operates from 8 am EST to 1 am EST, seven days a week, every day with the exception of Christmas. A NICS inquiry is processed by either CJIS/NICS or a designated state point of contact, which involves state employees querying NICS and conducting the necessary follow up. Thirty-six states opted for the FBI to provide the firearms background check function. For the inquiries processed by NICS, the FFL can contact NICS via telephone (Call Centers) or submit requests through the

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9

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NICS E-Check² automated service. At the NICS Section, Examiners typically select inquiries from the "Pending Queue" and work the inquiry through resolution or until all logical leads are awaiting external response. During some periods (typically weekends or evenings), Examiners triage incoming matters to determine if the inquiry can be either Proceeded or Denied. If the inquiry is Delayed, the inquiry is placed in the appropriate region queue for in-depth research regarding laws or prohibitions specific to a state or region. This was the case in the Roof matter. The NICS process is depicted on page 11, Figure 1, and incorporated in Appendix B.

(U//FOUO) The below chart explains the status of an inquiry as it proceeds through the process.

Inquiry Status	Day Number	Status Explanation
Delayed	1 - 3	Unable to resolve within Brady Transaction Date
Open	4 - 30	Remains in Examiner's personal history for action
Expired	31 - 88	Drops off Examiner's history and is available for action by any Examiner.

Table 2

(U//FOUO) Examiners pull inquiries out of the Pending Queue or their respective Regional Queue and process accordingly. Transactions exceeding the Brady Transaction Date (third business day) remain in an Open status in the Examiner's history for the remainder of the initial 30 days. Open status allows any examiner to access the inquiry if new information becomes available. After 30 days, the inquiry is removed from the Examiner's history and placed in Expired status, also accessible to all Examiners. At Day 88, the records are purged from the system per statute.

(U//FOUO) In 2014, NICS received approximately 8,256,688 firearms background inquiries, an average of 22,683 inquiries each day. The NICS Call Centers resolved 5,531,981 of the transactions, with the remainder forwarded to the NICS Section at CJIS. A total of 228,006 of the requests forwarded to the NICS Section were Delayed and went past the three business day Brady requirement. Of those, 172,879 were purged without resolution after 88 days. The NICS Process is depicted below. The 2014 Unresolved NICS Transaction break-down is referenced in Appendix H.

² NICS E-Check is an electronic service, accessed via the Internet, for the NICS Section to directly accept firearms background checks from FFLs. The system automatically conducts the same review as NICS Call Center CSSRs and responds accordingly.

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10

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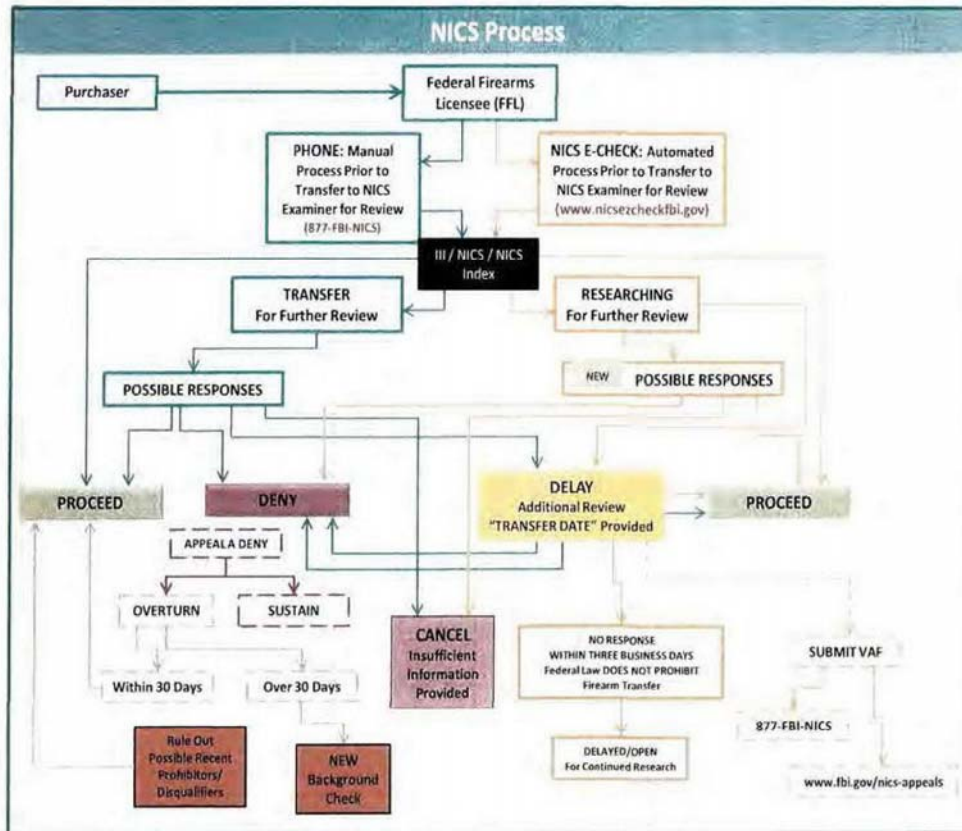


Figure 1

III. THE ROOF CASE

(U//FOUO) On Saturday, 04/11/2015, Roof went to Shooter's Choice, a gun store located at 944 Sunset Boulevard, West Columbia, South Carolina to purchase a .45 caliber Glock handgun. Roof filled out ATF Form 4473 for the FFL. Question 11e on the form was: "Are you an unlawful user of, or addicted to marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?" Roof checked "No" on the form. If Roof responded affirmatively, the FFL would have terminated the sale and would not have contacted NICS. At 3:58 pm, the FFL contacted NICS as required by law and the telephone call was routed to the Dallas-Fort Worth, Texas Call Center. The CSSR entered information from Roof's ATF Form 4473 into the NICS automated system, which reviewed the three federally maintained databases. A potentially matching identifier was located and at 3:58 pm, the CSSR transferred the FFL to the NICS Section in Clarksburg, West Virginia for additional processing. The telephone call was received by the Examiner in Clarksburg at 4:01 pm.

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11

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FBI-00000160

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(U//FOUO) The Examiner received the transfer from the Fort Worth Call Center, pulled the NTN number, 2WCV-F64, to determine if the purchaser and the III matched based on the purchasers descriptive information provided on the 4473, (name, DOB, height, weight) and tried to make a quick determination to Proceed, Deny, or Delay the transaction (NCIC and III records are incorporated in Appendix D). The Examiner identified an III record containing a potential prohibitor, however, the same III record lacked a final disposition. At 4:04 pm, the Examiner advised the FFL the transaction was Delayed and the FFL marked a delayed response in box 21c of the 4473 and noted on the form the firearm could be transferred on 04/16/2015. Due to the additional research required for Roof's inquiry, and also due to the pending backlog of inquiries, the Examiner set the transaction in the Region II Delay Queue for further review by the team responsible for states including South Carolina.

(U//FOUO) On Monday, 04/13/2015, Business Day One, at 1:49 pm, a second Examiner pulled the transaction from the Region II Delay Queue and identified an III hit for a felony/drug arrest. The record indicated the arrest date was 03/01/2015, and the arresting agency was identified as the Lexington County Sheriff's Office (LCSO), Originating Agency Identifier (ORI) number, [REDACTED] (H) Roof was charged with "MPD, SCH I B,C,LSD and SCH II, COCAINE-3rd/SUB." After reviewing the record, the Examiner identified two potential federal prohibitors. Based on the record revealing a felony arrest: 922(g) (1), Persons Who Have Been Convicted In Any Court of A Crime Punishable by Imprisonment For Term Exceeding One Year could have applied. Further, because the arrest was for drug violations, 922(g) (3), Persons Who Are Unlawful Users of/or Addicted To Any Controlled Substance may also have applied.

(U//FOUO) The Examiner checked the External and Manual Automated Databases and found no additional information. The Examiner checked the Regional POC database and located the Lexington County Court website www.sccourts.org. The website led the Examiner to the Lexington County Eleventh Judicial Circuit Public Index, The State of South Carolina VS Dylann Storm Roof, Case Number 2015A4021600503. The website provided Roof's address as 10428 Garners Ferry Road, Columbia, South Carolina, along with the arresting officer's name with an address of "#1 Justice Square, Columbia 29201." In short, the website identified Roof as a defendant in a case wherein a disposition was not listed. A disposition confirming one of the aforementioned federal prohibitors would have likely resulted in an immediate Denial. The criminal history report did not identify the Columbia, SC, Police Department (CPD), nor its corresponding ORI, rather it noted the LCSO was the arresting agency³. The LCSO was not involved in the arrest, but did process Roof at the Lexington County jail.

³ On approximately 6/20/2015 (following the shooting at the AME Church on 06/17/2015), the LCSO amended the III record to reflect CPD as the arresting agency and added CPD as the ORI.

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12

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(U//FOUO) The Examiner generated a Final Disposition Report, Form R-84, which included the pending charges, and faxed it to the LCSO at 1:58 pm in an effort to obtain clarifying information (Appendix E). The Examiner listed information NICS required on the R-84, including an incident report, whether the drugs were field tested, and if Roof admitted to using drugs. At 2:00 pm, the Examiner faxed a similar request to the Lexington County Solicitor's Office. That same day at 4:05 pm, the LCSO faxed the R-84 back to the NICS Section bearing a handwritten note on the R-84 stating, "No arrest or report for this date. The last Arrest was on 02-28-15, Columbia PD will have the report." The note did not contain a telephone number or other identifiers for the CPD. The Examiner reviewed the NICS Section POC List for Region II. The NICS Section POC list was sorted by county and the Examiner was unable to locate a listing for the CPD in Lexington County, but found a listing for the West Columbia Police Department (WCPD) in Lexington County. The Examiner was unaware Columbia, SC was located within two counties, Richland and Lexington, therefore pursued WCPD for the needed information. At 4:07 pm, the Examiner sent the same R-84 information, via fax, to the WCPD requesting the same information previously faxed to the LCSO (Appendix F).

(U//FOUO) On the second business day, 04/14/2015, at 8:46 am, the WCPD responded via fax with a handwritten note on the R-84 stating, "Not WCPD warrant... This is not a WCPD arrest." Based on experience, the Examiner knew responses from agencies indicating a lack of information may indicate a record existed but was not yet entered into the state's system. The fax requesting information from the Lexington County Solicitor's Office remained outstanding. At this point in the process, the Examiner had "Exhausted all Means"⁴ as all possible agencies were contacted as outlined in the state-specific list maintained by NICS, and all database searches were conducted as defined by NICS SOPs. Since court records revealed no convictions and contacted agencies provided no definitive clarifying information or did not respond, the Examiner left the Roof inquiry in the Delayed Queue and processed other inquiries while awaiting a response from the Lexington County Solicitor's Office. According to NICS protocol, the transaction would remain in Delay status indefinitely or until it was purged per statute from the NICS system.

(U//FOUO) On Thursday, 04/16/2015, the fourth business day from the initial inquiry request, the Brady Transaction Date, the gun dealer exercised his lawful discretion and transferred the gun to Roof. The Lexington County Solicitor's Office did not respond to the Examiner's request for information. The Roof transaction went from Delay status to Open/Delay status awaiting any new information within the Examiner's inquiry history.

⁴ The term "Exhausted all Means" is defined, referenced, and articulated in SOP 5.15, Documenting Research Comments, Section I, page 11. The section states, "When examiners have exhausted all resources obtaining information, the following must be entered into the transaction. All resources identified after reasonable research have been exhausted.(sic)"

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13

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(U//FOUO) On 05/11/2015, the Roof inquiry went from Open/Delay status to Expired/Delayed status and dropped off of the Examiner's history. The inquiry remained in the system pending new developments or statutory purge.

(U//FOUO) On 06/17/2015, Roof allegedly shot and killed nine people attending church services at the Emanuel AME Church in Charleston, South Carolina.

(U//FOUO) On 06/19/2015, after Roof's name was publically released, the NICS Section conducted a "Notoriety Check⁵" concerning Roof. According to NICS procedure, a Notoriety Check is conducted when, "special attention is being paid by the news media due to events related to the following: firearms, explosives, and terrorism." The Roof transaction was located within the NICS records and an Audit Flag was placed on the transaction for preservation.

(U//FOUO) On 06/20/2015, The III record was updated by LCSO. The updated record stated, "(H) (CPD ORI number) COLUMBIA PD . . .CIT-44-53-370(D)(2) – MISDEMEANOR, ARREST CHARGE1 –POSS OTHER, CONTROLLED SUB IN SCHED I, TO V – 1ST, OFFENSE DATE – 02/28/2015, PALM PRINTS AVAILABLE." (Appendix D)

(U//FOUO) On 06/24/2015, a separate Examiner contacted WCPD to obtain the incident report. The WCPD reported they were not the arresting agency and did not have this information. The Examiner began to research Columbia, SC and found it covered two counties, Richland and Lexington. The Examiner went online and found contact information for the CPD and called CPD to request information. CPD requested the Examiner to fax the request for information to CPD in order to have a written confirmation of the request. The Examiner faxed CPD a request for the incident report and also requested their ORI identifier. CPDs ORI (H) is in Richland County, not Lexington County.

(U//FOUO) On 06/26/2015 CPD faxed the final disposition and incident report to NICS (Appendix G).

(U//FOUO) On 06/29/2015, the NICS Section processed the incident report from the CPD along with the ORI information. The Regional Coordinator for Region II updated the NICS Region II POC contact list. The same day, the Regional Coordinator contacted the FFL by telephone and instructed him to Deny the transaction (pursuant to NICS SOP Number 3.4). The Regional Coordinator directed the FFL to fax the Roof 4473 Form to the ATF, which served to notify the ATF a prohibited individual was in possession of a firearm.

⁵ Notoriety Assessment procedures are defined on page one of the "Procedures Regarding Notoriety Assessments of the NICS Audit Log."

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14

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(U//FOUO) A review of the CPD incident report revealed Roof was contacted by the CPD on 02/28/2015 at 8:42 pm. CPD received a complaint from mall security at the Columbiana Centre Mall, 100 Columbiana Circle, Columbia SC, regarding a male wearing all black clothing, entering stores in the mall, and asking employees how many associates were working and what time they closed. A CPD police officer made contact with Roof at the mall, conducted a consent search, and located an unlabeled white bottle containing multiple orange strips in Roof's jacket pocket. Roof advised the officer the strips were Suboxone and Roof admitted he did not have a prescription for the Suboxone. Roof stated he received the Suboxone from a friend. Roof was placed under arrest and charged with possessing Suboxone, a Schedule III narcotic. While the initial contact and investigation occurred on 02/28/2015, the III records denote Roof's arrest date as 3/1/2015.

(U//FOUO) Federal Prohibitor section 922(g)(3) – Persons Who Are Unlawful Users of or Addicted to Any Controlled Substance, section 2, prohibits, “A person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician” from obtaining a firearm. Since, the CPD incident report regarding Roof's arrest indicated Roof was arrested for possession of Suboxone, a schedule III narcotic and Roof admitted to using the substance, 922(g)(3) would have applied. Under 922(g)(3), if the Examiner obtained the information in the CPD report, the inquiry would have been Denied. A time-line of events related to the Roof transaction, beginning with the booking date as documented in the III record, is outlined on page 16, Figure 2 and incorporated as Appendix C.

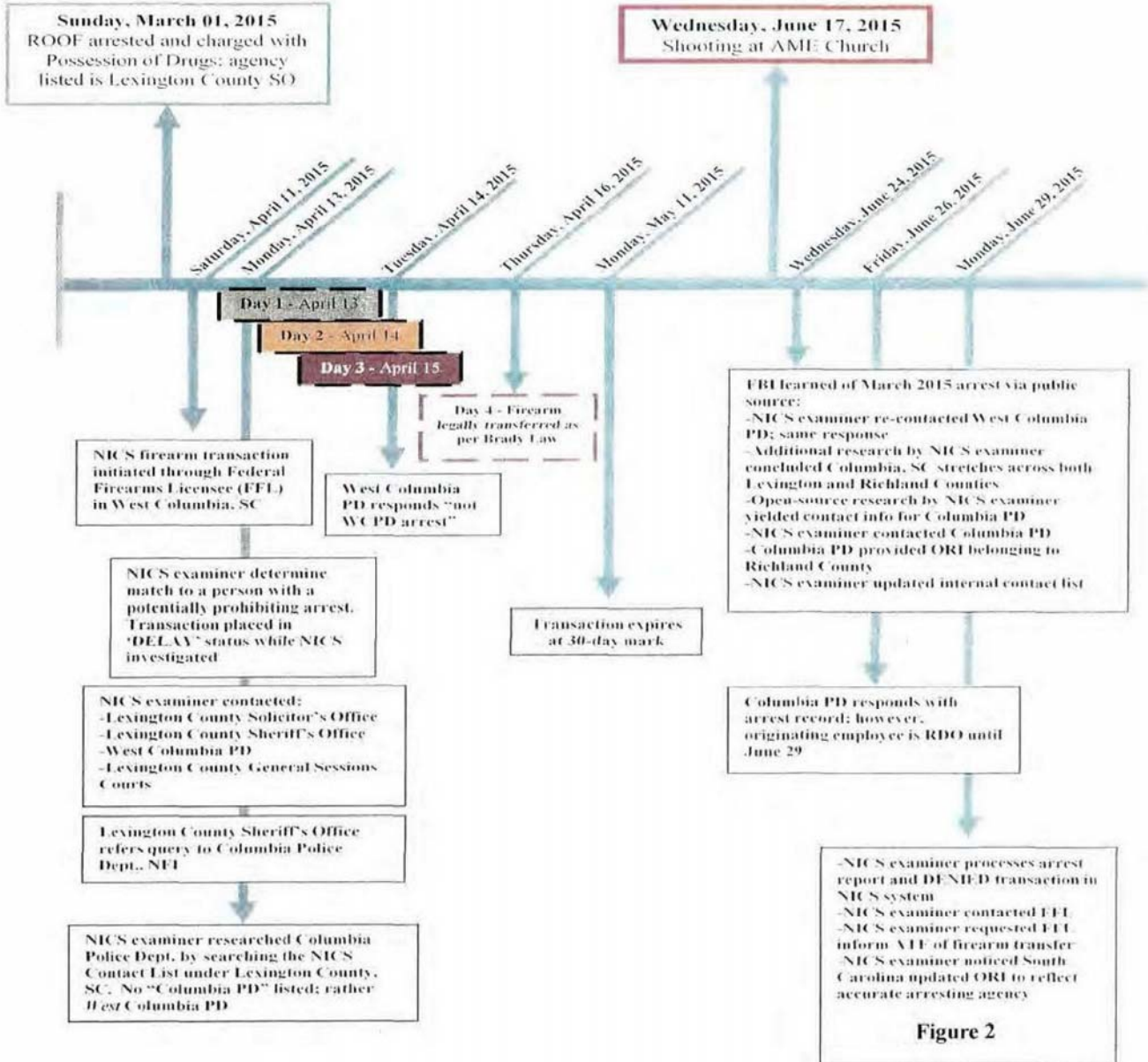
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15

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Timeline of Events – Dylann Storm ROOF



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IV. Findings

(U//FOUO) The Roof transaction represented one of many paths an FFL initiated background check inquiry could follow through the complex NICS process. The INSD review identified both areas of exemplary performance and improvement opportunities.

(U//FOUO) **Positive Outcomes:** This section contains specific analysis on effective performance by the NICS Section. In Fiscal Year 2014, the NICS Section resolved 97% of all NICS transactions within three business days, as required by law, with limited resources and systemic challenges.

(U//FOUO) **Positive Outcome 1:** The Examiner on the Roof Matter performed as required and in accordance with current policy and procedures.

(U//FOUO) **Analysis:** Examiners processed numerous unique and complex inquiries each day. To function effectively, Examiners relied on accurate information being immediately available from external agencies along with accurate NICS POC database information. In spite of having neither immediately available in the Roof matter, the Examiner showed initiative and a clear understanding of responsibilities and SOPs in attempting to obtain missing information. Due to the incorrect ORI listed in the III record, the Examiner contacted the LCSO, the agency listed on the III record. The LCSO recommended the Examiner contact CPD. The Examiner, following NICS protocols, reviewed the NICS POC list and located WCPD in Lexington County. Unbeknownst to the Examiner, CPD was in the Richland County. The Examiner had no knowledge Columbia, SC stretched over two counties; Richland and Lexington. Further, the WCPD was located in the same county where Roof purchased the gun, and therefore the Examiner arrived at a reasonable conclusion. The Examiner reviewed the Lexington County Court website which indicated the arrest was in Lexington County, however, there was no disposition on the report. The Examiner faxed the Lexington County Solicitor's Office a request for information and waited for a response. The Examiner's efforts were reasonable given SOPs, expectations, and available information.

(U//FOUO) **Positive Outcome 2:** NICS Section EM worked proactively to predict and resolve resource and workflow challenges with available in-house resources.

(U//FOUO) **Analysis 2a:** NICS is in the final stages of development of a comprehensive and purpose-built system, referred to as New NICS, to address the increasing NICS transaction volume and existing process inefficiencies. The current NICS system, first developed in November of 1998, was constantly maintained and updated but is

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17

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technically outdated and labor intensive. NICS leadership recognized the need for a new solution, identified resources, and implemented the creation of New NICS. The chart below illustrates the benefits for both internal and external users of the New NICS system, which will be implemented in two phases starting in January 2016. The full extent of efficiencies are anticipated by 2017 after testing and development allows for full implementation.

Benefits of New NICS

	Internal Users	External Users
Phase 1	<ul style="list-style-type: none"> ✓ Refresh Outdated Design & Technology ✓ Accommodate Frequent Legislative Changes Through Increased System Flexibility ✓ Support Growing Volumes by Increasing System Capacity & Scalability ✓ Increase Efficiency by Automating Manual Processes 	<ul style="list-style-type: none"> ✓ Improved Name Search Algorithm (More Immediate Determinations) ✓ Near Real Time 24 Hour Purge Upon Proceed Determinations ✓ Quicker Responses to Background Checks
Final Operating Capability (FOC)	<ul style="list-style-type: none"> ✓ Improve Service through Computer-Telephony Integration ✓ Full Integration with Next Generation Identification (NGI) ✓ Increased System Availability 	<ul style="list-style-type: none"> ✓ Automated Status Checks ✓ 24-Hour Access to Electronic Check (E-Check) ✓ Improved Efficiency for Point-of-Contact (POC) States and Federal Agencies via Internet Accessibility

Table 3

(U//FOUO) **Analysis 2b:** The NICS Section implemented an innovative resource review and allocation strategy, known as the Tiger Team. The Tiger Team was tasked with evaluating current region assignments and determining the most effective way to assign regions and workloads within the New NICS development. The Tiger Team determined primary, secondary, and tertiary assignments to Examiners based on grade level. As higher grades are held to a higher standard, additional Regions were assigned to Examiners based on pay grade to increase accountability, fairness, and Section capacity.

(U//FOUO) **Analysis 2c:** NICS Section EM effectively forecasted the surging of additional Examiner resources based on historical telephone call analysis, to minimize Examiner fatigue with increasing transaction work load. In October 2013, CJIS Division acquired a new Avaya Voice over Internet Protocol (VOIP) phone system, which provided software to assist the NICS Section in forecasting call volumes. This

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18

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FBI-00000167

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forecasting demonstrated NICS leadership's ability to incorporate new technology and develop new processes.

(U//FOUO) **Positive Outcome 3:** NICS worked collaboratively as a section and in an "all hands on deck" manner to meet a background check demand which doubled over the past ten years.

(U//FOUO) **Analysis 3a:** The NICS Section devised and instituted an "Escalation Plan"⁶ to collaboratively address high firearms background check inquiry volume. The Escalation Plan was created to identify and communicate the need for assistance during the NICS Section's busiest times. The Escalation Plan was devised and utilized as a proactive approach to maintain manageable Delay Queue totals in order to meet the statutory three business day deadline and remain below the high/maximum risk level. Third day work was prioritized over second day work to remain compliant with the statutory three business day requirement. The two Escalation Charts below account for the NICS busy and non-busy seasons. The Busy Season Escalation Chart is used the second week in October through March 31st or anytime the national and/or political spotlight impacts the NICS Section's volume. The Non-busy Season Escalation Chart is used beginning April 1st through the 1st week of October. Resources are surged based on Escalation level from the following NICS Units: Research and Analysis (R&A), Legal Instrument Examiners (LIEs), Legal Research and Analysis Team (LRAT), Call Center System and Statistical Team (CCSST), Management Advisory and Program Advisory Team (MAPs), NICS Advisory Unit (NAU), and NICS Operations Unit (NOU).

⁶ As outlined in "2015 NICS Escalation Plan," Escalation is defined as the process of surging additional NICS Section resources to meet the demand of processing an increased volume of NICS transactions for a particular shift or day.

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19

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Busy Season 2nd Week in October to March 31st				Non-Busy Season April 1st to 1st Week in October				
Escalation	Estimated Queue Total	2nd and 3rd Day Combined	Percentage of Employees	Escalation	Estimated Queue Total	3rd Day	2nd Day	Percentage of Employees
Normal	0-4,000	Up to 2,700	100% R&A	Normal	0-6,000	0-500	0-2,000	100% R&A
Low	4,001-5,000	Up to 2,700	100% R&A 30% LIEs	Low	6,001-7,000	501-1,000	2,001-3,000	100% R&A 30% LIEs
Medium	5,001-6,000	Up to 2,700	100% R&A 50% LIEs 30% State Support, Liaison Unit, LRAT, CCSST, MAPS, and NAU	Medium	7,001-8,000	1,001-1,500	3,001-5,000	100% R&A 50% LIEs 30% State Support, Liaison Unit, LRAT, CCSST, MAPS, and NAU
High	6,001-8,000	Up to 2,700	100% R&A 80% LIEs CFEP Employees NOU Supervisors 50% State Support, Liaison Unit, LRAT, CCSST, MAPS, and NAU	High	8,001-10,000	1,501-3,500	5,001-7,500	100% R&A 80% LIEs CFEP Employees NOU Supervisors 50% State Support, Liaison Unit, LRAT, CCSST, MAPS, and NAU
Maximum	8,001+	Up to 2,700	ALL	Maximum	10,001+	3,501+	7,501+	ALL

Figure 3

(U//FOUO) A common theme developed in interviews was concern about the more frequent use of the Escalation Plan, and for longer periods, to simply manage normal daily inquiry volume. Simply, personnel were concerned resources could not resolve current volume without using the Escalation Plan.

(U//FOUO) **Analysis 3b:** Examiners collaborated effectively, promoting efficiency, accuracy, and a positive work environment. Examiners helped one another navigate transactions using each Examiner’s regional expertise to expedite inquiries when needed. During a prescribed training period, new trainees were paired with mentors for four weeks of one-on-one training. Immediately after the six-week CJIS Training and Advisory Process Unit (CTAP) training course, new Examiners were once again paired up with a mentor for an additional four weeks. This interaction developed the trainee skills providing context and confidence, as well as, creating a strong team environment.

(U//FOUO) **Positive Outcome 4:** The NICS Section recognized the importance of strong SOPs and devised standardized training for all new Examiners.

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(U//FOUO) **Analysis 4a:** The NICS Section maintained extensive, detailed SOPs providing guidance and direction for the workforce. The spirit of the SOPs was to provide clarity and operational guidance. In spite of being operationally restrictive and/or outdated with the changing NICS environment, NICS Section management demonstrated a sincere effort to lead the section and provide appropriate oversight and guidance.

(U//FOUO) **Analysis 4b:** NICS maintained an effective standardized training regimen for all new Examiners. As described in Analysis 3b, during a prescribed training period, new trainees were paired with mentors for four weeks of one-on-one training session. Immediately after the six-week CTAP Unit (CTAP) training course, new Examiners were once again paired up with a mentor for an additional four weeks. The mentorship program ensured new Examiners developed a thorough understanding of the NICS process. Also, mentor Examiners enforced a sense of value and mission on new Examiners.

(U//FOUO) **Positive Outcome 5:** The NICS Section staff demonstrated dedication and pride in the mission, in spite of heavy workloads and challenges with the receipt of timely information from law enforcement agencies.

(U//FOUO) **Analysis 5a:** A common theme developed during interviews and observations was one of enthusiasm for the mission and recognition of the importance of NICS. Articulated frustrations were cast in terms of a desire to improve performance and efficiency, not negative toward the leadership, process, or organization. The articulated recommended improvements were aimed at improving processes, not changing the NICS Section.

(U//FOUO) **Issues:** Of the unresolved transactions in Fiscal Year 2014, 288,006 remained in the Delayed Queue exceeding the allowed three days and of those inquiries, 172,879 transactions were purged from the NICS system with no resolution. While less than 3 percent of the total inquiries, the inquiry volume is large enough for concern. This section contains specifics issues and recommendations identified during the review.

(U//FOUO) **Issue 1:** Untimely responses and/or incomplete records represented the primary reasons for delayed inquiries. Record holders were not required to respond to NICS inquiries.

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21

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(U//FOUO) **Analysis 1a:** INSD reviewed a random sample of 13 NICS transactions from the Delayed queue. All of the reviewed transactions were past the Brady Transfer Date. Eleven (85%) of the 13 NICS transactions were delayed due to missing NCIC and/or III dispositions. Two out of the 13 (15%) NICS transactions were delayed due to missing records. The missing information in all transactions would have been leveraged to make a determination to proceed or deny the NICS transaction, and was not available to the Examiner. Interviews revealed NICS Section personnel believe in the cases where information is not listed, the record holders nearly always possess the needed information. Typically, the information is simply not listed in the federally maintained systems or the NICS Section does not have direct access to the resident system.

(U//FOUO) **Analysis 1b:** Approximately 119 Law Enforcement Agencies across the country have overtly limited or refused contact with NICS leading to incomplete or inaccurate data available to Examiners. Lack of participation by state and local record holders created an intelligence gap for Examiners to effectively process gun permit requests within these states. States are not mandated to provide responses to NICS requests. An "Uncooperative Contact List" is maintained by NICS (refer to Roof Case Binder, Appendix K, Section 17).

(U//FOUO) **Analysis 1c:** The NICS Section's manual process for identifying Regional Point of Contact (POC) information for all agencies with arrest authority within a region is time consuming, resource intensive, and difficult to maintain. During the Roof transaction, the NICS POC list did not list CPD as having jurisdiction in Lexington County. This information would have resulted in locating CPD and the information required to Deny the transaction.

(U//FOUO) **Recommendation 1a:** The NICS Section should consider automating external POC lists to ensure Examiners have comprehensive contact information for state/local law enforcement and judicial agencies.

(U//FOUO) **Recommendation 1b:** The NICS Section should consider leveraging the existing CJIS Executive Advisory Policy Board (APB), which is made up of state representatives who meet several times a year, to assist in updating of POC lists, increasing record availability to the NICS Section, or improving agency responsiveness. Additional enterprise outreach efforts should be leveraged, such as the Office of Partnership and Engagement, NJTTF, National Academy, and other similar organizations to assist in updating of POC lists, increasing record availability to the NICS Section, or improving agency responsiveness.

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(U//FOUO) **Recommendation 1c:** The NICS Section EM should consider leveraging relevant Headquarters and Field Office Representatives when an external agency is deemed unresponsive or uncooperative. The FBI Representatives, through proper liaison efforts, could obtain the information in an expedient manner. The NICS Section could potentially utilize field office resources/Task Force Officers/CJIS Coordinators to obtain the information and/or influence uncooperative agencies.

(U//FOUO) **Recommendation 1d:** Organizations such as the International Association of Chiefs of Police (IACP) and the National Sheriffs Association (NSA) could be utilized to message state, local, and tribal agencies' leadership components on the importance of working with the NICS Section to help prevent the transfer of firearms to prohibited individuals.

(U//FOUO) **Recommendation 1e:** The NICS Section should consider leveraging OCA to identify potential legislative remedies.

(U//FOUO) **Issue 2:** Examiners rely on inefficient means of communication with various state and local agencies which inhibited effective resolution.

(U//FOUO) **Analysis 2a:** Due to NICS Section SOP and workloads, Examiners do not routinely call external agencies for information. Largely, faxes are used because many external agencies require fax requests. Faxing is a widely accepted business practice and a method to ensure veracity of requests, however the NICS Section SOPs do not require Examiners to confirm a fax submission is received and current policy makes it optional for an Examiner to follow up or send a second request due to lack of resources, as outlined in EC dated 10/31/2006, (F) Fax responses returned to NICS can be confusing, unclear, contain little useful information, or may never arrive.

(U//FOUO) **Analysis 2b:** NICS firearm background inquiry requests for information, regardless of the mode of communication or the time constraints under Brady, were not followed up with a telephone call or other direct, affirmative communication. Discussing potentially prohibiting data prior to the Brady Transaction Date, especially where potential leads exist and an agency is cooperative, would lead to resolutions. The Examiner could have clarified the inconsistencies with the 04/13/2015 Roof gun transaction request, if SOPs promoted directly contacting the LCSO or the WCPD in an affirmative manner. The LCSO and the WCPD both responded to fax requests, and therefore would have likely assisted the Examiner obtain additional information.

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(U//FOUO) **Recommendation 2:** The NICS Section should, at a minimum, consider an SOP wherein an Examiner confirms faxes are received and/or makes personal contact when necessary, and if feasible. The NICS Section should also devise strategies to encourage agencies to update NCIC records and ORI information.

(U//FOUO) **Issue 3:** While demand doubled over the last 10 years, resources remained essentially the same within the NICS Section. Consequently, proactive outreach efforts with agencies and FFLs suffered as resources were pulled to address the increasing number of NICS inquiries.

(U//FOUO) **Analysis 3a:** In 1999, the NICS Section had an FSL of (H) of which (H) employees were onboard and processed 4,538,020 NICS firearms background check inquiries. In 2015, the NICS Section has an FSL of (H) of which (H) employees are onboard and projected to process 8,611,726 NICS firearms background check inquiries. The following table describes the yearly staffing level since 1999 to present:

Calendar Year	FSL	Onboard	Over/Under	FBI-Initiated Firearm Background Checks
1999				4,538,020
2000				4,260,270
2001				4,291,926
2002				4,248,893
2003				4,462,801
2004				4,685,018
2005				4,952,639
2006				5,262,752
2007				5,136,883
2008				5,813,249
2009				6,083,428
2010				6,037,394
2011				6,875,625
2012				8,725,425
2013				9,315,963
2014				8,256,688
2015	Projection: 8,611,726			

Table 4

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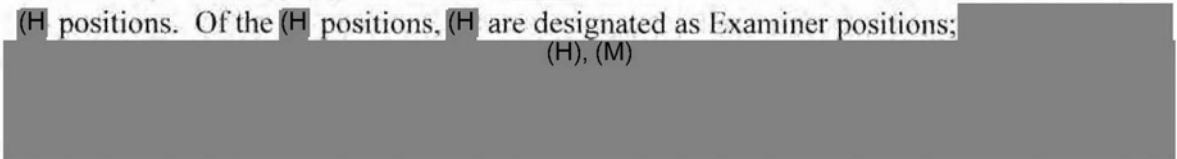
24

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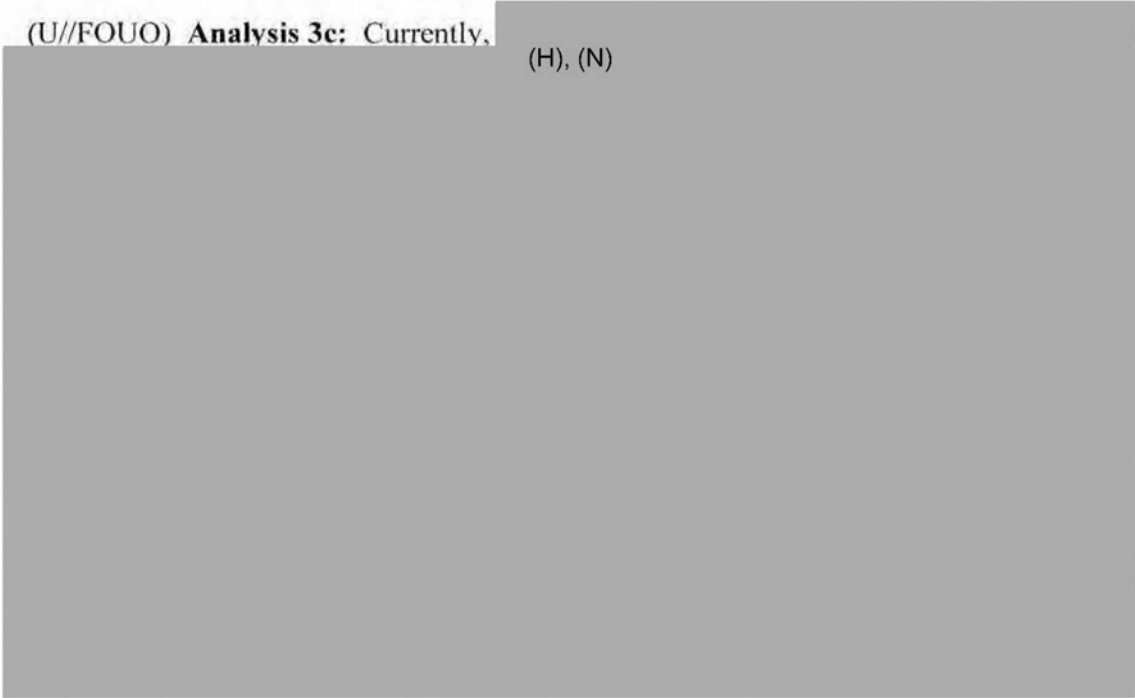
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(U//FOUO) **Analysis 3b:** The NICS Section FSL is appropriated by Congress. The 2015 Congressionally approved FSL is (H) The NICS Section was approved to backfill (H) positions. Of the (H) positions, (H) are designated as Examiner positions; (H), (M)



(U//FOUO) **Analysis 3c:** Currently, (H), (N)



(U//FOUO) **Analysis 3d:** On 06/28/2001, the Attorney General issued a directive to increase the NICS Section Immediate Determination Rate (IDR) which was averaging 71%, to at least 90%. In July 2002, the NICS Section increased its IDR to 90%, and also increased its onboard FSL from (H) in 2001 to (H) in 2002, an 11% increase in FSL. NICS assumed the processing of all firearms transactions for each state. In 2004, U.S. House Bill 2673-93, the Consolidated Appropriation Bill, signed by President George W. Bush, on 01/23/2004, modified retention guidelines for Proceeded NICS transactions. This required the NICS Section to destroy all identifying information on a Proceeded transaction within 24 hours after the FFL was notified of the Proceed status. The increase of the IDR resulted in a requirement for more inquiries to be resolved immediately. Due to this change in retention legislation, Examiners could no longer use previous transaction data as a research tool for subsequent requests as the data was promptly

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purged. Each inquiry, even for high volume firearms buyers must be initiated and researched again anew as previously discovered data was purged.

(U//FOUO) **Analysis 3e:** On 06/14/2002, Arizona ceased to operate as a full NICS POC state, meaning the NICS Section was required to absorb the workload. The NICS Section had (H) onboard Examiners. On 10/01/2003, Indiana ceased to operate as a full NICS POC state. The NICS Section had (H) onboard Examiners. On 07/01/2005, Georgia ceased to operate as a full NICS POC state. The NICS Section had (H) onboard Examiners. On 12/28/2012, Michigan ceased operations as a full NICS POC state. The NICS Section had (H) onboard Examiners. On 02/14/2012, the shooting at Sandy Hook Elementary School and subsequent discussions of potential changes in gun laws caused the NICS Section's workload to increase by 46% in 2013. The NICS Section onboard employees were (H). In spite of increasing workload, the NICS Section onboard resources have diminished since 2006.

Recommendation 3a: Efforts should be made to align resource growth with workload.

(H) **Recommendation 3b:** The NICS Section was approved to backfill [REDACTED] positions, of which [REDACTED] are Examiners. [REDACTED] (H), (M)
[REDACTED] (H), (M)

Recommendation 3c: The NICS Section should request resources from DOJ to augment a portion of the [REDACTED] (H), (N)
[REDACTED]

(U//FOUO) **Issue 4:** To meet statutory requirements, the NICS Section management amended SOPs and curtailed resolution efforts to focus on initial reviews within the Brady Transaction Period. The NICS Section should review SOPs to prioritize inquiries exceeding the Brady Transaction Period as well as inquiries within the period.

(U//FOUO) **Analysis 4a:** Due to the work volume of Examiners, the NICS Section amended SOPs to eliminate work processes (customer service and second faxes) to meet the three business day mandate. Expectations for Examiner efforts shifted as workload increased. Relevant NICS Section SOPs (Appendix J) were reviewed and appeared comprehensive:

- SOP Number 5.5.4 IN-HOUSE RESEARCH, page 1, states: All internal automated systems (NTN inquiry[by name, FBI, social security number], NGI, NCIC, DDF, ATFRDD, and Web sites) must be checked. The NICS library (e.g., state information pages, terminology pages) and Westlaw,

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FBI-00000175

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when applicable, must be researched by the Examiner. The LAT [Legal Analysis Team] may then be contacted **prior** to calling or faxing any external agency to determine the level/disposition of the arrest charge.

- SOP number 5.5.5. EXTERNAL RESEARCH, State/Federal/International Processing Pages/Contact Lists, Page 1, states: The Examiner will contact the state POC, the courts, district attorneys, probation offices, arresting agencies, etc. for disposition, level of offense, incident report, etc. via fax, phone, mail, email, and/or Nlets (sic) in accordance with the preference indicated on the State Processing Page and Contact List. If the preference indicates that other agencies can only be contacted if no response is received, or as a last resort, other agencies must be contacted, as soon as possible after the 10th calendar day. This will ensure that all resources, in keeping with NICS Standard Operating Procedure and established state contact procedures, are being exhausted. Every effort must be made to obtain the necessary information, in order to reach a final decision on a NICS transaction during the research phase.
- SOP Number 5.15 DOCUMENTING RESEARCH COMMENTS, Section I, page 11, states: When Examiners have exhausted all resources obtaining information, the following must be entered into the transaction. "All resources identified after reasonable research have been exhausted."

The NICS Section personnel articulated direction from management to expedite inquiries. Effective 10/01/2006, NICS management eliminated the second fax requirement⁷. Prior to 10/01/2006, when a fax was not responded to by an external agency, the Examiners were required to expend additional time to review the Delayed/Open transactions, prepare and disseminate a second follow-up fax request, and denote such in the transaction comments. The widespread reliance on the 2006 EC rather than current SOPs appeared to result in a broader practice of single, fax-based attempts to gather information as the operational definition of "exhausting all means." Efforts beyond this threshold certainly occurred, but only at the occasional initiative of individual Examiners and at a risk of falling short of established quotas discussed below.

Recommendation 4: The NICS Section should ensure SOPs prioritize resolution as well as volume.

(U//FOUO) **Issue 5:** NICS SOPs prioritized volume over resolution allowing Delayed work to be reviewed on Day 3 which met the statutory requirement, but resulted in inquiries exceeding the Brady Transaction Date.

⁷ EC from NICS Section dated 10/31/2006.

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(U//FOUO) **Analysis 5a:** INSD interviews revealed the NICS Section compliance policy was measured by working all transactions within the Brady Transaction Period. The number of firearms background check inquiries not addressed until the third business day have been as high 600 transactions in a single day. When NICS is processing more complicated Delayed inquiries on the third day, there was a little time allotted for external agencies to respond to a NICS request. As a natural consequence, even if agencies responded the next day, the inquiry exceeded the Brady Transaction Period.

(U//FOUO) **Analysis 5b:** Examiners started at a GS-6 level and could attain a GS-8 status. Examiners could compete for promotion to a GS-9, however positions were limited (37% of the workforce). Examiners worked on a quota system based on GS level. To achieve a successful rating, a GS-6 had to produce between 1.5 and 1.99 transactions an hour, a GS-7 had to produce 2.5 and 2.65 transactions per hour, a GS-8 had to produce between 2.75 and 2.99 transactions per hour, and a GS-9 had to produce 3.25 and 3.5 transactions per hour. In addition, if an Examiner wanted to reach the next GS level, within grade accuracy baselines have to be at the "Successful" level which is between 98.09% and 98.64% for all GS levels. In so far as employee success was based heavily on the number of inquiries processed, the NICS Section system encouraged employees to meet a minimal "exhaust all means" threshold and then move on to the next inquiry. Further, encouraging this behavior was the policy wherein Examiners may not promote if the Examiner incorrectly Proceeded an inquiry twice in six months. Proceeding a prohibited transaction was rightly discouraged, however this created an incentive for Delaying a questionable inquiry because little attention was paid to Delayed inquiries, especially once exceeding the three day review period. None of these efforts to promote the speed of inquiry resolution or discourage errors were improper, however in total, the impact of these policies encouraged volume over resolution and created a risk in inquiries being Delayed, exceeding the Brady Transaction Period, and resulting in the transfer of a firearm to a prohibited individual.

(U//FOUO) **Recommendation 5a:** The NICS Section should ensure SOPs result in intended outcomes.

(U//FOUO) **Recommendation 5b:** The NICS Section should not allow transactions to reach the Day 3 Queue. Delayed work should be reviewed no later than Day 2 in order to provide an agency a minimum of 24 hours to respond to the request for information prior to the expiration of the Brady Transaction Date.

(U//FOUO) **Issue 6:** The Brady Handgun Violence Protection Act does not define how an agency should respond to requests or require a response, the Act only focused on the sale or

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28

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Denial of a firearm within three business days. The NICS Section did not ensure requests for information to outside agencies were received or reviewed by the recipient agency.

(U//FOUO) **Analysis 6:** The NICS Section did not ensure requests for information to outside agencies were either received or reviewed by the recipient agency (state, local, or judicial law enforcement partner). In many cases, the requests went unaddressed; in other instances, the faxed responses returning to the NICS Section were confusing, unclear, or contained no information. In the Roof case, the Examiner sent faxes to three agencies, however, one agency did not respond and the other two agencies did not clarify CPD was a neighboring police department in the adjacent county, even if they possessed this information. While it is not reasonable to expect responding agencies to predict what extra information might be of value, both the LCSO and the WCPD clearly knew more about CPD than provided on the faxed reply. A follow-up telephone call to LCSO or WCPD would likely have clarified the confusion regarding the arresting agency resulting in the location and review of the CPD report.

(U//FOUO) **Recommendation 6a:** The NICS Section should develop an SOP to prioritize efforts to ensure requests for information are received, addressed, and fully exploited.

(U//FOUO) **Recommendation 6b:** The NICS Section should coordinate with OCA to assess the possibility for legislative relief to facilitate effective NICS Operations.

(U//FOUO) **Issue 7:** The NICS Section did not comprehensively review current or new information resources to increase overall effectiveness in conducting firearm background checks. Ad hoc efforts were undertaken when resources and SOPs permitted.

(U//FOUO) **Analysis 7a:** The approval process to incorporate a new dataset and to ensure it meets all internal and external requirements, was a resource intensive process which required dedicated resources to effectively implement change into the NICS system. The resource demand discouraged the NICS Section from reviewing new data sets as balanced against applying resources to call volume. Interfacing software with state agencies and reprogramming systems for compatibility are expensive and complicated undertakings. In addition, the implementation of new database requirements, such as the purging of data, makes the approval process complicated and requires agreement by many stakeholders.

(U//FOUO) **Analysis 7b:** The N-DEx System is a national information sharing system, which enables users to search, link, and analyze more than 500,000,000 local, state,

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29

SUBJECT TO PROTECTIVE ORDER**FBI-00000178**

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tribal, and federal criminal justice records. The NICS Section could implement an automated process to cross-reference N-DEx data against the biographical identifiers annotated on the ATF Form 4473. Additionally, both Immigration and Customs Enforcement (ICE) and N-DEx queries could be modified to include possible matches. Currently, ICE searches were based on the exact data entered by the applicant or by the FFL, which left room for error. A similar search algorithm to Sentinel could produce additional information to exploit which would have otherwise gone unnoticed. The additional databases could increase the overall effectiveness when researching firearms background checks. Several states maintain court record databases, warrant databases, and mental health databases, all of which could enhance the overall decision making capability of the Examiners. N-DEx was reviewed by the NICS Section in 2013 and was not included as a dataset (Appendix K, Section 24) because the review determined a low information return rate at the time and a conflict with purging requirements. Since then, N-DEx was populated with significantly more data to potentially resolve inquiries, which would have been the case in the Roof matter. The NICS Section would still have to resolve purging conflicts with N-DEx.

(I), (K)

(U//FOUO) **Recommendation 7a:** The NICS Section should seek to identify and review additional database resources or stakeholders both internal and external to the FBI.

(K)

(U//FOUO) **Issue 8:** Quality assurance processes were resource intensive and reduced manpower available for inquiry resolution. Quality assurance was limited to full-time Examiners and the surged workforce was not regularly reviewed. (The New NICS platform is under development to resolve many of these issues.)

(U//FOUO) **Analysis 8a:** The NICS Assessment Unit (NAU) conducts a quality assurance (QA) check of two NICS transactions processed by every Examiner, limited to the NAU workday. At times where the Escalation Plan was activated at its highest level,

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30

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FBI-00000179

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the NAU was involved entirely in working inquiries and therefore not conducting any QA (Appendix K, Section 4). The NAU reviewed the QA process quarterly via roundtable discussion to ensure reviews were similarly applied. Beyond the quarterly roundtable, the NAU did not have definitions or delininations to synchronize QA reviews more comprehensively.

(U//FOUO) **Analysis 8b:** Higher GS level Examiners were held to higher production and quality requirements as GS-9s were expected to be more knowledgeable and accurate than lower grade Examiners. A GS-9 was expected to produce between 3.25 and 3.50 of Delayed Queue baseline transactions per hour to be rated "Successful." This represented an 116% expected increase in productivity over GS-6 Examiners with a 36% pay increase according to the OPM GS payscale for the "Rest Of U.S." All Examiners conducted the same type of work, the higher grade employees were expected to be more efficient, especially with more difficult inquiries. Additionally, increased pay would result in greater retention resulting in a more experienced workforce. Increased experience would likely result in fewer quality assurance problems.

(U//FOUO) **Recommendation 8a:** The NICS Section should revise QA policy to make the QA process more efficient and comprehensive, especially during periods of Escalation.

(U//FOUO) **Recommendation 8b:** The NICS Section should consider replacing the GS-6 and GS-7 workforce with an expanded cadre of GS-9s. The higher standards applied to GS-9s, along with appropriate management engagement and oversight, would result in a more capable and experienced work force, improving quality and efficiency.

(U//FOUO) **Issue 9:** Emphasis on inquiry quotas, linking performance to the number of processed inquiries, and regularly redirecting employees from other units to work inquiries, shifted focus away from resolution, (M).

(U//FOUO) **Analysis 9a:** The NICS Section promoted achieving quotas and rewarding employees based on the quantity of firearms checks processed hourly over resolution. The number of transactions or quota each employee was expected to process was based on an employee's GS level. Employees who achieved the quotas were rated higher on their annual PARs. Examiners unable to meet their quotas were rated below the successful performance level. The exceptions to this were Examiners who did not routinely conduct line transactions but were asked to join the line Examiners when

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31

SUBJECT TO PROTECTIVE ORDER**FBI-00000180**

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resources were needed in a region due to Escalation⁸. The “non-line” Examiners from other units were not responsible for meeting a quota (i.e. staff from the NICS Business Development Unit). (See NICS Operations Unit, Production, Accuracy, Compliance Cascading Goals Addendum, Appendix I)

(U//FOUO) **Analysis 9b:** The Escalation Plan was being instituted regularly and for longer periods of time. Interviews and observation revealed a (M) based on these elements. As noted, a common theme developed in interviews was concern about the more frequent use of the Escalation Plan, and for longer periods, to simply manage normal daily inquiry volume. Simply, personnel were concerned resources could not resolve current volume without using the Escalation Plan. (M)

(U//FOUO) **Recommendation 9:** The NICS Section should review SOPs regarding inquiry quotas, performance, and Escalation to maximize resource efficiency of inquiry resolution.

(U//FOUO) **Issue 10:** NICS Section examinations were complicated by statutory requirements, including short data purge windows and increased review required to verify prohibitors.

(U//FOUO) **Analysis 10a:** The Code of Federal Regulations required the NICS Section to destroy, within 24 hours, identifying information submitted by or on behalf of any person who has been determined not to be prohibited from possessing or receiving a firearm once the FFL has been notified. In support of the CFR, the NICS database system automatically purged all Proceed transactions within 24 hours, and all other transactions at 88 days except for Denied transactions which remain indefinitely. After Day 88, a Delayed gun purchaser can reapply for a gun permit, and no record of any prior Delayed gun transaction would exist in the NICS database system. After 24 hours, all Proceeded gun transactions were purged from the NICS system making it impossible to research any possible straw purchasers (straw purchasers are individuals who purchase firearms for someone else) or potential suspicious firearms transactions. After Day 88, all Delayed transactions were also purged making it impossible to research past firearm transactions. Complex inquiries must be re-worked each time an applicant applies to purchase a firearm except when the applicant voluntarily enrolls in the Voluntary Appeals Process (VAP). The VAP allowed NICS to maintain applicant data past purged periods.

⁸ Escalation was the process of surging additional NICS Section resources to meet the demand of processing an increased volume of NICS transactions for a particular shift or day.

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32

SUBJECT TO PROTECTIVE ORDER

FBI-00000181

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(U//FOUO) **Analysis 10b:** An active arrest warrant met the federal prohibitor criteria outlined in 922(n), which specifically prohibited the issuance of a firearms to individuals who are under indictment or information for a crime punishable by imprisonment for a term exceeding one year. Currently, if a warrant meeting this criteria appears as the result of an NCIC or III check, an internal SOP requires the Examiner to confirm the warrant is active with the originating agency before Denying the inquiry. The responsibility of accurate NCIC records resides with the contributing agency not the NICS Section. A denied patron could appeal the Denied decision and resolve the prohibited firearms request with the contributing agency.

(U//FOUO) **Analysis 10c:** The LCSO III report indicated Roof had been arrested for possession of Suboxone, a schedule III narcotic. Roof also admitted to using the substance. Federal Prohibitor section 922(g)(3) – Persons Who Are Unlawful Users of or Addicted to Any Controlled Substance, section 2, defines the prohibitor as, “A person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician.” The use of the controlled substance by Roof would have been sufficient to deny the transaction. Currently, an Examiner is required to verify the arrest and underlying facts not listed in the criminal history report. Requiring the Examiner to Deny the inquiry based on the NCIC or III arrest record would result in the purchaser being denied the ability to purchase a firearm until able to establish the NCIC or III arrest record was inaccurate. Appeal processes exist allowing the purchaser to rectify inaccurate records. The responsibility for accurate records resides with the entering agency, and appealing a denial resulting from inaccurate records is the responsibility of the purchaser. If a Denial on the apparent records was permitted, the Examiner would immediately process the inquiry as Denied, thereby preventing the inquiry from becoming Delayed and allowing the Examiner to work on other inquiries without a Delayed inquiry exceeding the Brady Period.

(U//FOUO) **Recommendation 10:** The NICS Section should coordinate with OCA to assess the possibility for legislative relief to facilitate effective NICS Operations.

(U//FOUO) **Issue 11:** The NICS Section demonstrated the ability to predict surge requirements; however, employees maintained schedules which did not maximize effectiveness.

(U//FOUO) **Analysis:** On average, Fridays and Saturdays have the highest NICS call and E-Check transaction volume (outlined in the graph below). The region experts should be staffed appropriately across all days/shifts to include weekends. Converting the four days a week/ten hour shifts to five days a week/eight hour shift, could increase NICS coverage by

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33

SUBJECT TO PROTECTIVE ORDER**FBI-00000182**

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adding an additional work day to every Examiner, to maximize staffing coverage for a standard work week. Further, shorter shifts allow more focused application of resources within a given day. The table below illustrates transaction volume by month, day, and full-time equivalent (FTE).

2015 Project Data

Day of Week	Transfer Process				Delay Queue				Total FTE
	Call Center		E-Check Transfer		New Unassigned		Information Received		
	Volume	FTE	Volume	FTE	Volume	FTE	Volume	FTE	
September	Monday	4,260	(H)	5,883	(H)	2,508	(H)	3,231	(H)
	Tuesday	3,752		5,182		2,242		3,623	
	Wednesday	4,372		6,038		2,626		3,294	
	Thursday	4,128		5,700		2,452		2,780	
	Friday	6,026		8,321		3,421		2,371	
	Saturday	6,212		8,578		3,560		190	
	Sunday	2,527		3,489		1,370		108	
October	Monday	3,294		4,549		2,206		3,532	
	Tuesday	3,514		4,852		2,275		3,756	
	Wednesday	3,629		5,010		2,383		3,552	
	Thursday	4,148		5,728		2,666		3,183	
	Friday	6,392		8,826		4,025		2,601	
	Saturday	5,924		8,181		4,145		243	
	Sunday	1,960		2,707		1,266		133	
November	Monday	3,668		5,066		2,717		4,752	
	Tuesday	3,455		4,771		2,540		3,310	
	Wednesday	3,986		5,505		2,938		3,965	
	Thursday	3,238		4,472		2,472		2,768	
	Friday	7,829		10,812		5,265		2,938	
	Saturday	5,336		7,368		3,689		244	
	Sunday	2,007		2,771		1,436		237	
December	Monday	4,721		6,519		2,920		5,905	
	Tuesday	4,877		6,735		3,201		5,635	
	Wednesday	4,911		6,782		3,447		4,015	
	Thursday	3,197		4,415		2,238		2,437	
	Friday	6,899		9,528		4,599		3,118	
	Saturday	6,811		9,406		4,527		270	
	Sunday	2,493		3,443		1,696		192	

Table 5

(U//FOUO) **Recommendation:** The NICS Section should conduct a review of existing scheduling practices and propose revisions to maximize efficiency.

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FBI-00000183

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V. CONCLUSION

(U//FOUO) The INSD review determined Examiners met established requirements, but the review also exposed challenges and deficiencies in protocols which require careful review to improve performance. Current SOPs and workload limit the flexibility of Examiners to explore databases not prescribed within the SOP and likely inhibited a simple search query, which in the Roof case, would have identified a CPD contact or could have facilitated the acquisition of information enabling the Examiner to identify the prohibited violation. From a corporate perspective, interagency communications, process adjustments, and resources present the most significant challenges. The lack of effective communication and information sharing among agencies routinely results in NICS inquiries exceeding the Brady Transaction Date enabling firearms to be transferred without a full vetting of charges, dispositions, or other prohibitors. Prioritization of the NICS process on volume over resolution increases the risk of unvetted firearm transfers. Allowing Delayed work to be reviewed on Day 3 met the statutory requirement, but increased the likelihood inquiries exceeded the Brady Transaction Date. CJIS management should continue to assess NICS resource alignment to maximize efficiency. Re-aligned resources, the addition of new data sets, and creation of an enhanced surge capacity should be considered.

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35

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