



## U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

*Assistant Director*

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Washington, DC 20226

May 29, 2008

### **OPEN LETTER TO ALL ILLINOIS FEDERAL FIREARMS LICENSEES**

The purpose of this open letter is to advise you of an important change to the procedure you must follow beginning July 1, 2008 in order to comply with the Brady law, 18 U.S.C. § 922(t).

Beginning July 1, 2008, Illinois Firearms Owner Identification (FOID) cards no longer qualify as an alternative to a National Instant Criminal Background Check System (NICS) check through the Federal Bureau of Investigation (FBI). Please note that this change also applies to pawn transactions. The change is discussed in detail below.

#### **BACKGROUND**

The permanent provisions of the Brady law took effect on November 30, 1998. The Brady law generally requires licensed dealers to initiate a NICS background check through the FBI before transferring a firearm to an unlicensed individual. However, the Brady law contains a few exceptions to the NICS check requirement, including an exception for holders of certain State permits to possess, carry, or acquire firearms. The law and implementing regulations provide that permits issued within the past 5 years may qualify as alternatives to the NICS check if certain other requirements are satisfied. Most importantly, the authority issuing the permit must conduct a NICS background check and must deny a permit to anyone prohibited from possessing firearms under Federal, State, or local law.

In 1998, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) sent an Open Letter to all Illinois Federal firearms licensees (FFLs) advising them that Illinois FOID cards would qualify as alternatives to the background check required under the Brady law. FFLs were further advised that they must still comply with State law, and that Illinois law does not recognize the FOID card as an alternative to the background check required under Illinois State law. Specifically, Firearm Transfer Inquiry Program (FTIP) check (which would include a NICS check) must be conducted for all firearms transactions, even if the purchaser has a valid FOID.

Due to a recent Illinois appellate court decision, we have reconsidered whether the FOID card qualifies as an alternative to the NICS check. In *Hiland v. Trent*, 373 Ill. App. 3d 582, 868 N.E. 2d 396 (2007), the court stated that the Firearm Owners Identification Card Act did not prohibit the issuance of a FOID card to a person who is precluded from possessing firearms under Federal law but merely provided the authority to deny a FOID card to such person. As a result, the FOID card will no longer qualify as an alternative to the background check required by the Brady law, as well as the FTIP check.

#### HOW THIS AFFECTS FFLS

Licensees must continue to conduct background checks. Since Illinois is a NICS Point-of-Contact State, you must continue to contact the Illinois State Police, rather than the FBI, to conduct both the Brady and FTIP checks.

If you have any questions about the Illinois FOID card no longer qualifying as an alternative to the NICS check, please call ATF's Brady Operations Branch at (304) 616-4299. As always, we thank you for your cooperation.

A handwritten signature in black ink, appearing to read "Audrey Stucko". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

Audrey Stucko  
Acting Assistant Director  
(Enforcement Programs and Services)