

TO: Texas Pawnbrokers

FROM: Leslie L. Pettijohn

DATE: September 8, 1998

RE: Policy Statement 98-1
Impact of the *Brady Act* on Pawn Transactions

The *Brady Act* provides for the establishment of a national instant criminal background check system (NICS) to be effective November 30, 1998. A federal firearm licensee (FFL) must contact the system before transferring any firearm to an unlicensed individual. The transfer of a firearm to an unlicensed individual includes the redemption of a pawned firearm.

In some states, a state law enforcement agency serves as the Point-of-Contact (POC); however, the state of Texas has not designated a POC to perform NICS background checks for FFLs. Thus, the Federal Bureau of Investigations (FBI) will serve as the POC for performing NICS background checks.

The FBI is expected to assess a fee for each background check ranging from \$13 to \$16. The amount of the fee assessed by the FBI may be collected directly from the person redeeming the firearm. In order for a pawnbroker to collect the federally mandated NICS background check, in addition to the pawn service charge authorized by the *Texas Pawnshop Act*, the pawnbroker must collect the same amount for the NICS that the pawnbroker pays the federal government for the NICS background check.

The *Texas Pawnshop Act* provides:

A pawnbroker may not contract for, charge, or receive an amount, other than a pawn service charge, as a charge for credit in connection with a pawn transaction.

A pawnbroker, at the time a firearm is pledged, must properly disclose to any person pledging a firearm that a federally mandated fee to perform a NICS background check will be assessed upon the firearm's redemption. The disclosure should include the expected amount of the fee,

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if known, or the maximum range of the expected fee. The notice must be in writing. The disclosure is important so that pledgors are adequately informed of and have agreed to all of the terms and conditions involving the pawn loan. Additionally, the *Truth-in-Lending Act* requires disclosures of the terms related to consumer credit transactions. Pawnbrokers are strongly encouraged to contact those pledgors with firearms already in pawn who may be subject to the background check advising them of the fee assessment and the effective implementation date.

An example of a disclosure would be:

NOTICE: If any of the pledged goods on this pawn transaction involve a firearm, you may be subject to a required background check to determine whether you are eligible to receive the firearm (*Brady Handgun Violence Prevention Act*). You may be required to pay a fee not to exceed \$16.00 for the background check at the time of redemption of the firearm. The fee, if imposed, is the actual cost charged by the Federal Bureau of Investigations. The pawnbroker does not receive any direct or indirect compensation from this fee.

A pawnbroker may not collect from the person redeeming the firearm any other expense the pawnbroker may incur in connection with the *Brady Act*. The pawnbroker must document the fees collected and the records must support the associated payment of these fees to the FBI.

If the person redeeming the firearm is denied authority to receive the firearm, it should be noted the *Texas Pawnshop Act* prohibits the pawnbroker from accepting payment on a loan unless the pawnbroker returns the pledged goods to the pledgor. When the pledgor is denied the redemption of the firearm, the pawnbroker is not obligated to return the amount of the NICS background check fee that has already been incurred and is payable to the federal government. A pawnbroker shall continue to maintain a pawn loan in an open status until the expiration of the last day of grace. Upon expiration of the last day of grace, the pawnbroker may take the unredeemed firearm into inventory.

The Department of Justice has established appeal procedures for a person who has been denied authority to transfer a firearm. If a pawnbroker has knowledge that an appeal has been filed, the pawnbroker shall continue to hold the firearm in pawn as an open pawn, even if the last day of grace has expired. Upon appeal, if the "denial" status is modified to a "proceed" status, then the pledgor should be permitted to redeem the firearm.