

## FEDERAL RELIEF FROM DISABILITIES PROGRAMS UNDER THE NICS IMPROVEMENT AMENDMENTS ACT OF 2007

The following *minimum* criteria must be satisfied for a Federal department or agency to establish a mental health relief from firearms disabilities program under the NICS Improvement Amendments Act of 2007 (NIAA), Public Law 110-180, Section 101 (enacted January 8, 2008):

1. Adjudicating/Committing Agencies [NIAA § 101(c)(2)(A)(i)]: A Federal department or agency is required to create a Relief from Disabilities program under the NIAA if it:
  - a. makes any adjudication of a person as a mental defective;<sup>1</sup> or
  - b. imposes any commitment to a mental institution.<sup>2</sup>
2. Notice of Potential Firearms Disabilities [NIAA § 101(c)(3)]: A Federal department or agency that conducts the above proceedings, shall, at the commencement of the adjudication or commitment proceeding, provide both oral *and* written notice to the applicant, as follows:
  - a. the adjudication or commitment, when final, will prohibit such person from shipping, transporting, receiving, or possessing firearms and ammunition, pursuant to 18 U.S.C. §§ 922(d)(4) and 922(g)(4);
  - b. any person who knowingly violates 18 U.S.C. §§ 922(d)(4) or (g)(4) may be imprisoned for up to 10 years and/or fined up to \$250,000, pursuant to 18 U.S.C. § 924(a)(2);
  - c. relief from Federal firearms disabilities imposed by 18 U.S.C. §§ 922(d)(4) and (g)(4) is available under the NIAA.
3. Application [NIAA § 101(c)(2)(A)(i)]: The relief program must allow a person who has been formally adjudicated as a mental defective or committed involuntarily to a mental institution to *apply or petition* for relief from Federal firearms prohibitions (disabilities) imposed under 18 U.S.C. 922 §§ (d)(4) and (g)(4).
4. Due Process: The petition for relief must be considered by the Federal department or agency in accordance with principles of due process, as follows:
  - a. The applicant must have the opportunity to submit his or her own evidence to the lawful authority considering the relief application.
  - b. An independent decision maker—someone other than the individual who gathered the evidence for the lawful authority acting on the application—shall review the evidence.

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<sup>1</sup> Federal regulations at 27 C.F.R. § 478.11 define the term “adjudicated as a mental defective” as: A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) Is a danger to himself or others; or (2) Lacks the mental capacity to contract or manage his own affairs. The term shall include—(1) A finding of insanity by a court in a criminal case; and (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b. Note, however, that even though findings of insanity or incompetency by a court in a Federal criminal case may subject persons to Federal firearms disabilities, such persons cannot receive relief from those disabilities under the NIAA.

<sup>2</sup> Federal regulations at 27 C.F.R. § 478.11 define the term “committed to a mental institution” as: A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

- c. A record of the matter must be created and maintained for review.
5. Processing [NIAA § 101(c)(2)(A)(ii)]: The Federal department or agency:
    - a. Must act upon the relief application not later than 365 days after receipt.
    - b. Is deemed to have denied a relief request *without cause* if it fails to resolve an application for any reason, including a lack of appropriated funds, within 365 days of receipt.
  6. Proper Record [NIAA § 101(c)(2)(A)(iii), referring to 18 U.S.C. § 925(c)]: In determining whether to grant relief, the Federal department or agency must receive evidence concerning and consider the following:
    - a. the *circumstances* regarding the firearms disabilities imposed by 18 U.S.C. § 922(g)(4);
    - b. the applicant's *record*, which must include, *at a minimum*, the applicant's mental health and criminal history records; and
    - c. the applicant's *reputation*, developed, *at a minimum*, through character witness statements, testimony, or other character evidence.
  7. Proper Findings [NIAA § 101(c)(2)(A)(iii), referring to 18 U.S.C. § 925(c)]: In granting relief, the department or agency must make the following findings:
    - a. the applicant will not be likely to act in a manner dangerous to **public safety**; and
    - b. granting the relief will not be contrary to the **public interest**.
  8. Judicial Review [NIAA § 101(c)(2)(A)(iii) referring to 18 U.S.C. § 925(c)]: Judicial review of matters subject to the relief process is, as follows:
    - a. Judicial review is available by the Federal district court in which the applicant resides.
    - b. Judicial review is *de novo*, in that the reviewing court may, but is not required to give deference to the decision of the lawful authority that denied the application for relief.
    - c. The reviewing court must have discretion to receive additional evidence necessary to conduct an adequate review, but **only** where the failure to do so would result in a miscarriage of justice.
    - d. If denial of a petition for relief has been reversed after judicial review, the reviewing court shall award the applicant a reasonable attorney's fee—based upon prevailing rates awarded to public interest legal aid organizations in the relevant community—for any and all proceedings in relation to attaining relief.
  9. Effect of Granting Relief: If the Federal department or agency grants relief to a person, or a reviewing Federal court reverses a denial of a petition for relief:
    - a. [NIAA § 101(c)(2)(B)] The mental health adjudication or commitment is deemed not to have occurred for purposes of 18 U.S.C. §§ 922(d)(4) and 922(g)(4).
    - b. [NIAA § 101(c)(2)(B)] The department or agency must notify the person that he/she is no longer prohibited under 18 U.S.C. §§ 922(d)(4) or 922(g)(4) from the acquisition, receipt, transfer, shipment, transportation, or possession of firearms or ammunition.
    - c. [NIAA § 101(a)(4)(D)] On being made aware that the basis under which a record was made available does not apply, or no longer applies, the department or agency must:
      - i. update, correct, modify, or remove the record from any database that the agency maintains and makes available to the Attorney General, in accordance with the rules pertaining to that database; and
      - ii. notify the Attorney General that such basis no longer applies so that the NICS System is kept up to date.