

**DoD IG Responses to Post Hearing Questions for the Record for the Hearing,
“Firearm Accessory Regulations and Enforcing Federal and State Reporting
to the National Instant Criminal Background Check System (NICS)”
December 6, 2017**

Questions for the Record from Senator Charles E. Grassley:

The Inspector General for the Department of Defense (“DOD”) recommended in 1997 and in 2015 that the DOD needed to take steps to improve its NICS reporting and to comply with federal law and DOD regulations. And yet, in a report issued on December 4, 2017, it appears that from 2015 to 2016, 31 percent of DOD records were not being reported to the FBI.

1. Why has the Department of Defense failed to do a better job?

Answer: The Military Services did not take the recommendations and the identified deficiencies seriously enough. I believe that was a result of a variety of factors, including the Services not assigning an individual to be responsible for ensuring the recommendations were implemented, not verifying compliance with the submission requirements, and not inspecting on a regular basis whether the required records had been submitted. However, we intend to examine more thoroughly the causes for the deficiencies as part of our recently announced review regarding the DoD’s submission of information for inclusion in the Federal Bureau of Investigation’s databases. This review will also determine whether the DoD has implemented the recommendations of the report we issued on December 4, 2017.

2. As Inspector General, what could your office have done better to hold DOD accountable for its NICS reporting?

Answer: We have issued several reports over the years identifying deficiencies and recommending improvements. We believe that follow up is important. We have therefore announced another follow-up review to ensure that the DoD components actually implement the recommendations we made.

3. What is your office doing differently now to make sure that DOD focuses its attention on this issue?

Answer: See response to question 1 and 2 above.

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Questions for the Record from Senator Dianne Feinstein:

Inspector General Fine, your most recent report on the Military Criminal Investigative Organizations and their compliance with the DOD Guidance 5505.11, indicated that all of the military organizations still fail to provide records to NICS.

1. Does this concern you? Why?

Answer: Yes. The deficiencies can have serious consequences, as illustrated by the case of Devin Kelley. It does concern us that after several OIG reports identifying deficiencies, including our 2015 report, the Military Services still had significant deficiencies when we conducted our follow-up review in 2017.

2. What mechanisms do you have as the Inspector General to ensure that the military organizations are adhering to the policy? How are you employing them right now?

Answer: As the Inspector General, we can expose deficiencies and make recommendations for improvement. By doing so, we shine a spotlight on practices that need to be improved. We can also conduct follow-up reviews to ensure that agreed-upon recommendations are actually implemented. In addition, to highlight recommendations that remain open, on August 31, 2017, we issued a Compendium of Open OIG Recommendations to the DoD. In the Compendium, we identify 1298 open recommendations; all but 47 were agreed to by DoD management. We intend to issue such a Compendium report on an annual basis. By doing this, we can and will increase the spotlight on open recommendations, which is intended to spur the DoD to implement corrective action on deficiencies we find.

3. Do you think as an inspector general, you need more enforcement mechanisms to force these organizations to adopt recommendations made by your office?

Answer: Under the Inspector General Act of 1978, as amended, we cannot force management to implement any recommendation. However, we will focus attention on OIG recommendations that are not implemented. One way to increase attention on these recommendations, and to spur corrective action, is for Congress to request information from the Department about the progress they are making to implement open recommendations.

4. How will you ensure that you follow the guidance and recommendations from the Inspector General to fix how you are supplying records to NICS?

Answer: We believe that this question would be better addressed by the Military Services. However, from the OIG perspective, we have issued several reports over the years identifying deficiencies and recommending improvements. We recently announced a review of the DoD's submission of information for inclusion in the Federal Bureau of Investigation's databases, which will also determine whether the DoD actually implemented the recommendations of the report we issued on December 4, 2017.

5. In your report, you ask that the Air Force "regularly updates" you with its progress. Have you specified how frequently that is? Can you update Congress as well?

Answer: We intend to ask for updates at least every 3 months. In addition, we have begun a review that will assess the DoD's progress in implementing our recommendations. We would be willing to update Congress on the status of the DoD's progress on the implementation of our recommendations, as well as on the status of our ongoing investigation and review.

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Questions for the Record from Senator Richard Blumenthal:

1. What happens when there is a lapse in reporting by a branch of the military?

Answer: A lapse in reporting can have serious consequences, as illustrated by the tragic event on November 5, 2017, when Devin Kelley, a former Air Force member, shot and killed many people at the First Baptist Church in Sutherland Springs, Texas. Prior to that event, several OIG reports identified deficiencies and lapses in reporting. Because of the deficiencies and lapses in reporting criminal incident data to the FBI, Devin Kelley was able to purchase a firearm even though he had a disqualifying conviction while in the Air Force. If the Air Force sent his fingerprints and final disposition report to the FBI, this could have prevented him from legally buying a gun. It does concern us that after several OIG reports that identified deficiencies, the Military Services still had significant deficiencies when we conducted our follow-up review in 2017.

2. How would this come to the attention of higher-level officers?

Answer: We have issued several reports over the years identifying deficiencies and recommending improvements. We made recommendations in each of those reports to appropriate senior officials within the Services. We also believe that follow up is important. Therefore, on November 9, 2017, we announced a review regarding the DoD’s submission of information for inclusion in the Federal Bureau of Investigation’s databases, which will also determine whether the DoD actually implement the recommendations in the report we issued on December 4, 2017. We will provide this report to the Secretary of Defense, the Deputy Secretary of Defense, the Service Secretaries and their Chiefs of Staff, the Under Secretary of Defense for Intelligence, and Deputy Chief Management Officer to ensure leaders at the highest level within the DoD are aware of the results of our review.

3. How long would it take before someone noticed?

Answer: As stated above, the DoD OIG has issued several reports over the years identifying deficiencies in complying with the reporting and recommending improvements. This should have been addressed previously, as discussed at the hearing.

4. What protocol do higher-level officers undertake if they are notified of a lapse in reporting.

Answer: We believe that this question would be better addressed by the Military Services.

5. How can this process be improved?

Answer: On November 9, 2017, we announced a review regarding the DoD's submission of information for inclusion in the Federal Bureau of Investigation's databases, which will determine whether the DoD actually implement the recommendations of the report we issued on December 4, 2017. We will make additional recommendations, where warranted, to correct any continuing deficiencies we identify in this review as well. In this matter, we also intend to ask for updates on corrective actions at least every 3 months. We will also update Congress on the status of the DoD's progress on implementing our recommendations, as well as the status of our ongoing investigation and review.

6. In addition to the periodic reports issued by your office, what steps does the Department of Defense take on a continuous basis to monitor compliance with reporting requirements?

Answer: The Service and Military Criminal Investigative Organizations' (MCIO) Inspectors General are charged with the responsibility to evaluate compliance with Federal and Department regulations and policies. In this regard, the Service and MCIO Inspectors General should conduct regular recurring compliance inspections of their Components to assess and review the submission of criminal incident information for inclusion in the Federal Bureau of Investigation's databases. However, we determined that compliance in these areas was not given adequate attention during their inspections.

7. Does the Department have an internal system for monitoring compliance with reporting obligations? Does it operate continuously?

Answer: See response to question 6 above.