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Gun Control: FY2017 Appropriations for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and Other Initiatives

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Summary

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is the lead federal agency charged with administering and enforcing federal laws related to firearms and explosives commerce. ATF is also responsible for investigating arson cases with a federal nexus, and criminal cases involving the diversion of alcohol and tobacco from legal channels of commerce. As an agency within the Department of Justice (DOJ), ATF is funded through an annual appropriation in the Departments of Commerce and Justice, Science, and Related Agencies (CJS) Appropriations Act.

The Administration's FY2017 budget request included $1.306 billion for ATF. This amount was $66.1 million above the FY2016 appropriation. This proposed increase included $11.8 million in technical and base adjustments to anticipate inflation and other variable costs and $54.3 million in budget enhancements. As part of President Barack Obama's gun safety initiative, these budget enhancements include

- $35.6 million for ATF to hire 80 additional special agents and 120 industry operations investigators;
- $4 million (including 8 positions) to upgrade the National Integrated Ballistics Information Network (NIBIN) hardware and software;
- $5.7 million and 22 positions to process firearms and explosives licenses and National Firearms Act (NFA) applications, and expand the use of firearms trace data by ATF and other federal and state law enforcement agencies; and
- $9 million to integrate ATF's case management systems into a single system.

The FY2017 budget request called for the repeal of two limitations that prevent ATF from (1) requiring federal firearms licensees (FFLs) to inventory their gun stocks prior to inspection and (2) changing an administrative definition of "curios and relics." This report includes an appendix that provides a legislative history for several ATF funding limitations related to gun control. It also includes discussion of year-to-year data trends that could affect ATF workloads, such as the number and type of FFLs, growth in the civilian gun stock, and firearms-related violent crime.

In addition, the President's gun safety initiative includes

- $35 million for the Federal Bureau of Investigation (FBI) to address an increase in firearms background checks through the National Instant Criminal Background Check System (NICS);
- $55 million for grants to state, local, tribal, and territorial authorities under the National Criminal History Improvement Program (NCHIP) and NICS Amendments Record Improvement Program (NARIP, P.L. 110-180); and
- $10 million for gun violence research.

NICS was established in November 1998 by the FBI to facilitate an electronic background check process to determine firearms eligibility of unlicensed, private persons seeking to acquire firearms from FFLs, or firearms permits and licenses from state authorities. Through both NCHIP and NARIP, the DOJ Office of Justice Programs provides grants to states, tribes, and territories to improve NICS access to records on persons prohibited from acquiring firearms under federal or state law.

The Senate Committee on Appropriations reported a bill (S. 2837) that would have provided ATF with $1.259 billion for FY2017. On June 7, 2016, The House Committee on Appropriations reported a bill (H.R. 5393) that would have provided ATF with $1.258 billion for FY2017. Report

language indicates that both bills would have fully supported the FBI and NICS. The Senate bill would have provided $75 million for NCHIP and NARIP grants; the House bill would have provided $73 million.

Neither Committee included funding for gun violence research in the reported Departments of Labor, Health and Human Services (HHS), and Education Appropriations bills (S. 3040 and H.R. 5926). Both Committees included limitations in these bills that would continue to prohibit the use of appropriated funding to advocate or promote gun control.

On September 29, 2016, President Obama signed into law a Continuing Appropriations Act, 2017 (P.L. 114-203), which funds most of the federal government through December 9, 2016 at the same levels as appropriated for FY2016. This continuing resolution also extends the long-standing gun control limitations discussed above through that date.

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Introduction

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is the lead federal law enforcement agency charged with administering and enforcing federal laws related to firearms and explosives commerce.[1] ATF is also responsible for investigating arson cases with a federal nexus, and criminal cases involving the diversion of alcohol and tobacco from legal channels of commerce. As an agency within the Department of Justice (DOJ), ATF is funded through an annual appropriation in the Departments of Commerce and Justice, Science, and Related Agencies (CJS) Appropriations Act.[2]

The Federal Bureau of Investigation administers the National Instant Criminal Background Check System (NICS). Through this system, the FBI facilitates an electronic background check process to determine the firearms eligibility of unlicensed, private persons seeking to acquire firearms from federally licensed gun dealers, or firearms licenses or permits from state or local authorities. The Centers for Disease Control and Prevention (CDC) collects and publishes national mortality and morbidity data, including firearms-related death and injuries; however, grants issued by CDC for gun violence research in the past have proven controversial.

This report provides coverage of congressional action on President Barack Obama's FY2017 budget request for his gun safety initiative. This coverage includes analysis of the ATF *Congressional Budget Submission, Fiscal Year 2017*, including discussion of selected data trends that could affect ATF workloads during FY2017. One of those data trends, for example, is the number and type of federally licensed gun dealers, manufacturers, and importers, whom ATF monitors periodically for compliance with federal and state law. Another data trend is the significant growth in newly manufactured and imported firearms introduced into the civilian gun stock annually. This data trend suggests that ATF and the FBI could see increased demands on their resources in FY2017. A third data trend is annual change in firearms-related violent crime: criminal homicides, armed robberies, and aggravated assaults. This report also includes a brief discussion about a controversial annual appropriations limitation that Congress has placed on CDC for 20 years that prohibits the use of appropriated funding to "advocate or promote gun control." The report concludes with an appendix that describes 15 other gun control-related appropriations limitations that Congress has placed on the ATF, FBI, and the Department of State.

Overview of the FY2017 Appropriations Cycle for Gun Safety

As shown in **Table 1**, for FY2016, Congress appropriated ATF $1.24 billion in the Consolidated Appropriations Act, 2016 (P.L. 114-113). For FY2017, the Administration requested $1.306 billion for ATF.

[1] See also, CRS Report R44655, *Gun Control: Federal Law and Legislative Action in the 114th Congress*, by (name re dacted) .

[2] ATF was originally established as a separate bureau in the Department of the Treasury (Treasury) in 1972 by Treasury Department Order No. 120-1. As part of the Homeland Security Act, Congress transferred ATF's enforcement and regulatory functions for firearms and explosives to the Department of Justice from Treasury, adding "explosives" to ATF's title. See P.L. 107-296, 116 Stat. 2135, November 25, 2002, §1111 (effective January 24, 2003). The regulatory aspects of alcohol and tobacco commerce are the domain of the Tax and Trade Bureau (TTB), which encompasses former components of ATF that remained at Treasury when other components of ATF described above were transfered to DOJ.

Table 1. ATF FY2017 Appropriations Action

(Dollars in thousands)

Account	FY2016 Enacted[a]	FY2017 Request[b]	Senate-Reported S. 2837[c]	House-Reported H.R. 5393[d]	Final Action
ATF Salaries and Expenses (S&E)	1,240,000	1,306,063	1,258,600	1,257,757	

a. Consolidated Appropriations Act, 2016, P.L. 114-113, December 18, 2015, 129 Stat. 2242, 2301-2302.

b. U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *ATF Congressional Budget Submission, Fiscal Year 2017*, February 2017, p. 5.

c. Commerce, Justice, Science, and Related Agencies Appropriations Act, 2017 (S. 2837; S.Rept. 114-239).

d. Commerce, Justice, Science, and Related Agencies Appropriations Act, 2017 (H.R. 5393; H.Rept. 114-605).

On April 21, 2016, the Senate Committee on Appropriations reported a bill (S. 2837; S.Rept. 114-239) that would provide ATF with $1.259 billion for FY2017. This amount was $18.6 million above the FY2016 appropriation and $47.5 below the request.

On June 7, 2016, the House Committee on Appropriations reported a bill (H.R. 5393) that would provide ATF with $1.258 billion for FY2017. This amount was $17.8 million above the FY2016 appropriation and $48.3 million below the request.

Both the Senate and House bills would provide the Federal Bureau of Investigation (FBI) with a $35 million increase to address firearms-related background checks. The Senate bill would provide $75 million, and the House bill $73 million, to improved information sharing on persons prohibited from receiving or possessing firearms. As noted below, the Administration requested $50 million for those purposes. Neither bill would provide a requested $10 for gun violence research.

On September 29, 2016, President Barack Obama signed into law a Continuing Appropriations Act, 2017 (P.L. 114-223), which funds most of the federal government through December 9, 2016, at the same levels as appropriated for FY2016. This continuing resolution also extends the long-standing gun control limitations discussed below.

FY2017 ATF and Gun Violence Appropriations Request

In its *Congressional Budget Submission, Fiscal Year 2017*, the Administration proposed an appropriation of $1.306 billion for ATF. If appropriated, this amount would be $66.1 million above the FY2016 appropriation. This amount includes $11.8 million and 73 full time equivalents in technical and base adjustments to anticipate inflation and other variable costs. It also includes $54.3 million, 155 full-time equivalents, and 230 permanent positions in budget enhancements. As part of President Barack Obama's gun safety initiative, these budget enhancements include

- $35.6 million for ATF to hire 80 additional special agents and 120 industry operations investigators;
- $4.0 million (including 8 positions) to upgrade the National Integrated Ballistics Information Network (NIBIN) and ballistic imaging hardware and software;
- $5.7 million and 22 positions to help process federal firearms and explosives licenses and National Firearms Act (NFA) applications, and expand the use of

firearms trace data by ATF and other federal, state, and local law enforcement agencies; and

- $9.0 million to integrate ATF's disparate case management systems into a Next Generation Case Management system.

The FY2017 budget request also calls for the repeal of two appropriations limitations that prevent ATF from requiring federal firearms licensees (FFLs) to inventory their gun stocks prior to annual inspections and changing an administrative definition of "curios and relics."

In addition, the President's gun safety initiative includes

- $35.0 million for the Federal Bureau of Investigation (FBI) to address an increase in firearms background checks through the National Instant Criminal Background Check System (NICS);
- $50.0 million for the National Criminal History Improvement Program (NCHIP);
- $5.0 million for NICS Act Record Improvement Program (NARIP); and
- $10.0 million for gun violence research.

NICS was established by the FBI in November 1998 to facilitate firearms background checks. Through both NCHIP and NARIP, the DOJ Office of Justice Programs provides grants to states, tribes, and territories to improve NICS accessibility to records on persons prohibited from acquiring firearms under federal or state law.

ATF Funding and Staffing for Enforcement Operations and Support Services

Table 2 shows breakouts for the ATF FY2016 enacted budget, FY2017 base budget (current services), and FY2017 request by two budget decision units. Those decision units include "law enforcement operations (LEO)" and "investigative support services (ISS)." These two budget decision units include the amounts of resources and staff allocated to the agency's enforcement and regulatory operations, respectively. ATF adopted this budget decision unit structure during the FY2015 budget request and appropriations cycle.[3]

[3] Prior to the FY2015 budget decision unit realignment, the ATF budget structure included three budget decision units: (1) firearms, (2) explosives and arson, and (3) alcohol and tobacco. While not shown in **Table 2**, the majority of resources in terms of dollars, positions, and full-time equivalents (FTE) were and are still allocated principally for firearms-related enforcement and regulatory operations. In prior years, those operations accounted for over three-quarters of the ATF budget. Arson and Explosives accounted for one-fifth of the ATF budget.

According to the Government Accountability Office, from 2003 to 2013, ATF data showed that firearms investigations accounted for 87% of all agency investigations; explosives and arson accounted for 11%; criminal organizations accounted for almost 1%, but have only been tracked since 2010; and alcohol and tobacco investigations accounted for less than half of 1%. Over that time period, ATF data showed the agency conducting 302,859 investigations. See U.S. Government Accountability Office, *Bureau of Alcohol, Tobacco, Firearms and Explosives: Enhancing Data Collection Could Improve Management of Investigations*, GAO-14-553, June 2014, p. 9.

Table 2. ATF FY2016 Enacted Appropriation, FY2017 Base Budget, and FY2017 Budget Request

(Dollars in thousands)

	FY2016 Enacted Appropriation			FY2017 Base Budget (Estimated Current Services)			FY2017 Budget Request		
	Positions[a]	FTE[b]	Amount	Positions[a]	FTE[b]	Amount	Positions[a]	FTE[b]	Amount
LEO[c]	4,250	4,189	1,033,168	4,250	4,250	1,042,964	4,450	4,350	1,087,597
ISS[d]	851	839	206,832	851	851	208,793	881	866	218,466
Total	5,101	5,028	1,240,000	5,101	5,101	1,251,757	5,331	5,216	1,306,063

Source: CRS presentation of ATF funding and staffing data presented in Bureau of Alcohol, Tobacco, Firearms and Explosives, *Congressional Budget Submissions, Fiscal Year 2017*.

a. Positions are "permanent positions."

b. FTE=Full-Time Equivalents. A full-time equivalent (FTE) is the total number of regular, straight-time hours worked (i.e., not including overtime or holiday hours worked) by employees divided by the number of compensable hours applicable to each fiscal year.

c. LEO=Law Enforcement Operations.

d. ISS=Investigative Support Services.

As shown in **Table 2**, for FY2016, ATF reports that it has allocated $1.033 billion (83.3%) of its $1.240 billion appropriation under its "law enforcement operations" budget decision unit. ATF proposes allocating a similar percentage (83.7%) for FY2017 for this budget decision unit. This means that 16.7% of ATF appropriated funding would be allocated for its other budget decision unit, "investigative support services," which funds other mission-critical activities, including FFL qualification and compliance inspections, administrative actions, and firearms traces, as well as other firearms and explosives regulatory efforts.

Table 3. ATF Appropriations and Staffing, FY2012-FY2016, and FY2017 Request

(Dollars in thousands)

Fiscal Year	Appropriation(s)	Full-Time Equivalents (FTEs)[a]	Permanent Positions
2012 Enacted	$1,152,000	5,025	5,101
2013 Enacted	$1,071,568	4,654	4,937
2014 Enacted	$1,179,000	4,658	5,101
2015 Enacted	$1,197,800	4,821	5,101
2016 Enacted	$1,240,000	5,028	5,101
2017 Request	*$1,306,063*	*5,216*	*5,331*

Source: CRS presentation of ATF funding and staffing data presented in Bureau of Alcohol, Tobacco, Firearms and Explosives, *Congressional Budget Submissions, Fiscal Years 2012-2017*.

a. A full-time equivalent (FTE) is the total number of regular, straight-time hours worked (i.e., not including overtime or holiday hours worked) by employees divided by the number of compensable hours applicable to each fiscal year.

Table 2 and **Table 3** show that the anticipated FY2016 FTE level funded through appropriations was 5,028 and the requested FY2017 FTE level was 5,216, or a net increase of 188 FTEs. **Table 2** and **Table 3** also show the permanent positions associated with the funded FTE. For FY2017, 115 FTE are associated with the requested additional 230 permanent positions and $54.3 million for FY2017. The other requested 73 FTE and $11.8 million are for "technical and base adjustments."

These amounts are not associated with any additional permanent positions; rather, they are being requested for a "staffing restoration." The "technical and base adjustments" added to the FY2016 enacted appropriation essentially represents the estimated level of resources that ATF projects needed for upcoming fiscal year (FY2017) to provide the same level of services that it anticipates providing during the current fiscal year (FY2016).

Table 4 shows ATF permanent positions by selected Office of Personnel Management (OPM) job series for fiscal years 2012-2016, for which Congress appropriated funding, and the Administration's FY2017 request. Special Agents (SAs, or criminal investigators—OPM job series 1811) are authorized to make arrests and carry firearms. SAs account for nearly half of the permanent positions under the FY2017 request.

Table 4. ATF Permanent Positions by Selected Job Series

Fiscal Year	Special Agents (1811s)	Industry Operations Investigators (1801s)	Intelligence Analysts (132s)	Attorneys (905s)	Other	Total
FY2012 Enacted	2,485	834	180	81	1,521	5,101
FY2013 Enacted	2,451	797	180	81	1,428	4,937
FY2014 Enacted	2,485	834	180	81	1,521	5,101
FY2015 Enacted	2,485	834	180	81	1,521	5,101
FY2016 Enacted	2,485	834	180	81	1,521	5,101
FY2017 Request	*2,565*	*954*	*180*	*81*	*1,551*	*5,331*

Source: CRS presentation of ATF staffing data presented in Bureau of Alcohol, Tobacco, Firearms and Explosives, *Congressional Budget Submissions, Fiscal Years 2012-2017*.

Industry Operations Investigators (IOIs—OPM job series 1801), by comparison, are not authorized to make arrests or carry a firearm. Instead, IOIs monitor federally licensed firearms and explosives dealers, manufacturers, and importers for their compliance with federal law. IOIs account for 17.9% of the permanent positions under the FY2016 request. Besides a FY2013 reduction, the level of funded positions for these two job series discussed above has not changed. According to ATF, the FY2013 reduction in permanent positions was due to sequestration and the three-year DOJ hiring freeze.[4] The level of funded positions for Intelligence Analysts (OPM job series 132) and Attorneys (OPM job series 905) has also remained level, but those job series did not see an FY2013 reduction. Nor did "other" positions see an FY2013 reduction. The requested 230 additional positions for FY2017 include 80 Special Agents, 120 Industry Operations Investigators, and 30 "other" positions.

Curios and Relics, Dealer Inventories, and Appropriations Limitations

For FY2017, the Administration requested the elimination of two long-standing provisos, included previously in the ATF salaries and expenses appropriations language, that prohibit the use of appropriations by ATF to

[4] U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *ATF Congressional Budget Submission, Fiscal Year 2015*, March 2014, Exhibit B—Summary of Resources.

- alter the regulatory definition of "curios and relics,"[5] and
- require federally licensed gun dealers to conduct physical inventories.[6]

Under the Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6), Congress included futurity language ("in the current fiscal year and any fiscal year thereafter") that appears to be intended to make those provisos permanent law.

In the **Appendix** to this report, there is a comprehensive list of gun control-related spending limitations that Congress has placed on ATF. Like the limitations described above, some, but not all, of these provisos no longer appear in the ATF salaries and expenses appropriations language. This is because Congress included "futurity" language in these provisos in either FY2012 or FY2013, after gun control advocacy groups called for their elimination. These provisos were viewed by some as unduly constraining ATF efforts to monitor firearms-related commerce. The Consolidated Appropriations Act, 2016 (P.L. 114-113) included no provisions that would have changed these appropriations limitations. As described in greater detail below, neither the Senate- nor House-reported FY2017 CJS Appropriation bills include language to alter or overturn these provisions.

Selected Data Trends That Could Affect ATF Workloads

Below is discussion of selected, year-to-year data trends that could affect ATF workloads, such as the number and type of federal firearms licensees, growth in the civilian gun stock, and firearms-related violent crime rates.

ATF Firearms Licensing of Gun Dealers, Manufacturers, and Importers

Under the Gun Control Act of 1968[7] and the National Firearms Act of 1934,[8] as amended, persons who wish to be "engaged in the business" of manufacturing, importing, or selling firearms must be licensed by ATF.[9] Persons who are issued those licenses are known as "Federal Firearms Licensees (FFLs)." As summarized by ATF in January 2016 guidance:

> A person engaged in the business of dealing in firearms is a person who "devotes time, attention and labor to dealing in firearms as a regular course of trade or business with the

[5] Congress included this proviso in the ATF salaries and expenses appropriations language, for FY1996 and every year thereafter, through FY2013, in response to an ATF regulatory proposal to amend the definition of "curios or relics," because of concerns about the volume of surplus military firearms—particularly World War II era firearms—that could be potentially imported into the United States. For the definition of "curios or relics," see 27 C.F.R. §478.11, which generally include firearms that are 50 years old, of museum interest, or derive a substantial amount of their value from the fact that they are novel, rare, bizarre, or because they are associated with some historical figure, period, or event. For a list of "curios and relics," go to https://www.atf.gov/firearms/curios-relics.

[6] Congress included this proviso in the ATF salaries and expenses appropriations language, for FY2004 and every year thereafter, through FY2013, which prohibits that agency from using any appropriated funding to require federally licensed gun dealers (otherwise referred to as federal firearms licensees, or FFLs) to conduct inventories prior to an ATF inspection. This provision was originally part of the FY2004 Tiahrt amendment, known for its sponsor in CJS appropriations subcommittee markup, Representative Todd Tiahrt. The Tiahrt amendment included three other provisos that limit ATF's authority to release unexpurgated firearms trace data publically, require that certain caveats about the limitations of trace data be appended to any such public data releases, and requires the FBI to destroy records on approved firearms-related background checks through the National Instant Criminal Background Check System within 24 hours.

[7] 18 U.S.C. §921 et seq.

[8] 26 U.S.C. §5801 et seq.

[9] The term "engaged in the business" is defined at 18 U.S.C. §921(a)(21).

> principal objective of livelihood and profit through the repetitive purchase and resale of firearms."
>
> Conducting business "with the principal objective of livelihood and profit" means that "the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection."
>
> Consistent with this approach, federal law explicitly exempts persons "who make occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms."[10]

Under current law, FFLs may ship, transport, and receive firearms that have moved in interstate and foreign commerce. In nearly all cases, unlicensed persons must engage the services of an FFL to facilitate interstate firearms transfers to another unlicensed person.

Table 5. Federal Firearms Licensees (FFLs) by License Type

(As of January 11, 2016)

License Type	License Description	Licensee Count	Percent of Total
01 & 02	Dealers and Pawnbrokers in Firearms Licensed under the GCA	64,087	46.3%
03	Collectors of Curios and Relics Licensed under the GCA	59,477	43.0%
06	Manufacturers of Ammunition for Firearms Licensed under the GCA	2,545	1.8%
07	Manufacturers of Firearms Licensed under the GCA	10,513	7.6%
08	Importers of Firearms Licensed under the GCA	1,146	0.8%
09	Dealers Licensed under the NFA	66	0.0%
10	Manufacturers Licensed under the NFA	320	0.2%
11	Importers Licensed under the NFA	216	0.2%
01 through 11	Total FFLs	138,370	100.0%

Source: Bureau of Alcohol, Tobacco, Firearms and Explosives.

ATF has maintained that the agency cannot meet its goal of inspecting every FFL for compliance on a three-year cycle.[11] The Administration, moreover, has maintained that the ATF has been hamstrung by limitations appended to appropriations legislation, listed in the **Appendix** to this report; an increase in the number of FFLs; and a surge in firearms-related commerce.[12] For FY2014, for example, ATF reported that it could only conduct 10,000 FFL compliance inspections, a 24% decrease from the previous year, covering 7% of the FFL population.[13] For

[10] U.S Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *Do I Need A License To Buy and Sell Firearms?*, January 2016, p. 2, https://www.atf.gov/file/100871/download. For further information on this ATF guidance, see CRS Legal Sidebar WSLG1476, *President Obama Announces Executive Actions to "Reduce Gun Violence"*, by (name redacted), (name redacted), and (name redacted) .

[11] Bureau of Alcohol, Tobacco, Firearms and Explosives, *Congressional Budget Submission, Fiscal Year 2016*, February 2016, p. 11.

[12] Ibid.

[13] Ibid.

FY2015, ATF reported that it completed approximately 8,700 FFL compliance inspections, a 13% decrease compared to the previous fiscal year, covering 6% of the FFL population.[14]

Table 5 shows that, as of January 11, 2016, there were 138,370 FFLs according to ATF. Type 3 FFLs, Collectors of Curios and Relics, comprised 43.0% of FFLs. These federal licensed firearms collectors are authorized to engage in limited interstate transfers of "curios and relics."

Types 1 and 2 FFLs, Dealers and Pawnbrokers in Firearms, comprised the next largest percentage, 40.4%. Dealers and Pawnbrokers essentially include retail firearms dealers who routinely make transfers to unlicensed, private persons. Prior to such transfers, federal law requires that a background check be conducted on the unlicensed, prospective transferee (buyer). Type 1 FFLs range from "big box" sporting goods stores to much smaller enterprises.

Types 6, 7, and 8 FFLs include ammunition manufacturers, firearms manufacturers, and firearms and ammunition importers. Types 9, 10, and 11 FFLs include dealers, manufacturers, and importers of firearms and other devices regulated under the National Firearms Act of 1934.

Figure 2 shows the number of FFLs by year for 1980 through 2015 in three broad categories:

- Type 1 and 2 FFLs, Dealers and Pawnbrokers;
- Type 3 FFLs, Collectors of Curios and Relics; and
- all other FFL types.

It shows that number of Type 1 and 2 FFLs, Dealers and Pawnbrokers, decreased precipitously from about 258,607 in 1992 to 73,044 in 2001, a decrease of about 72%. This reduction was partly the result of higher licensing fees that Congress raised in the 1993 Brady Handgun Violence Prevention Act (Brady Act; P.L. 103-159).[15]

This reduction has also been attributed to ATF changes in licensing regulations, such as, a requirement that applicants submit a photograph and fingerprints.[16] Congress codified this regulation in 1994.[17] The number of Type 1 and 2 FFLs continued to decrease, but not as steeply until 2009. Since then, those numbers have increased by 18.3% from 54,184 in 2009 to 64,087 in 2015. On the on other hand, **Figure 1** also shows that the number of Type 3 FFLs, Collectors of Curios and Relics, have increased from 13,512 in 1997 to 64,449 in 2015, an increase of about 377%.

[14] Bureau of Alcohol, Tobacco, Firearms and Explosives, *Congressional Budget Submission, Fiscal Year 2017*, February 2017, p. 14.

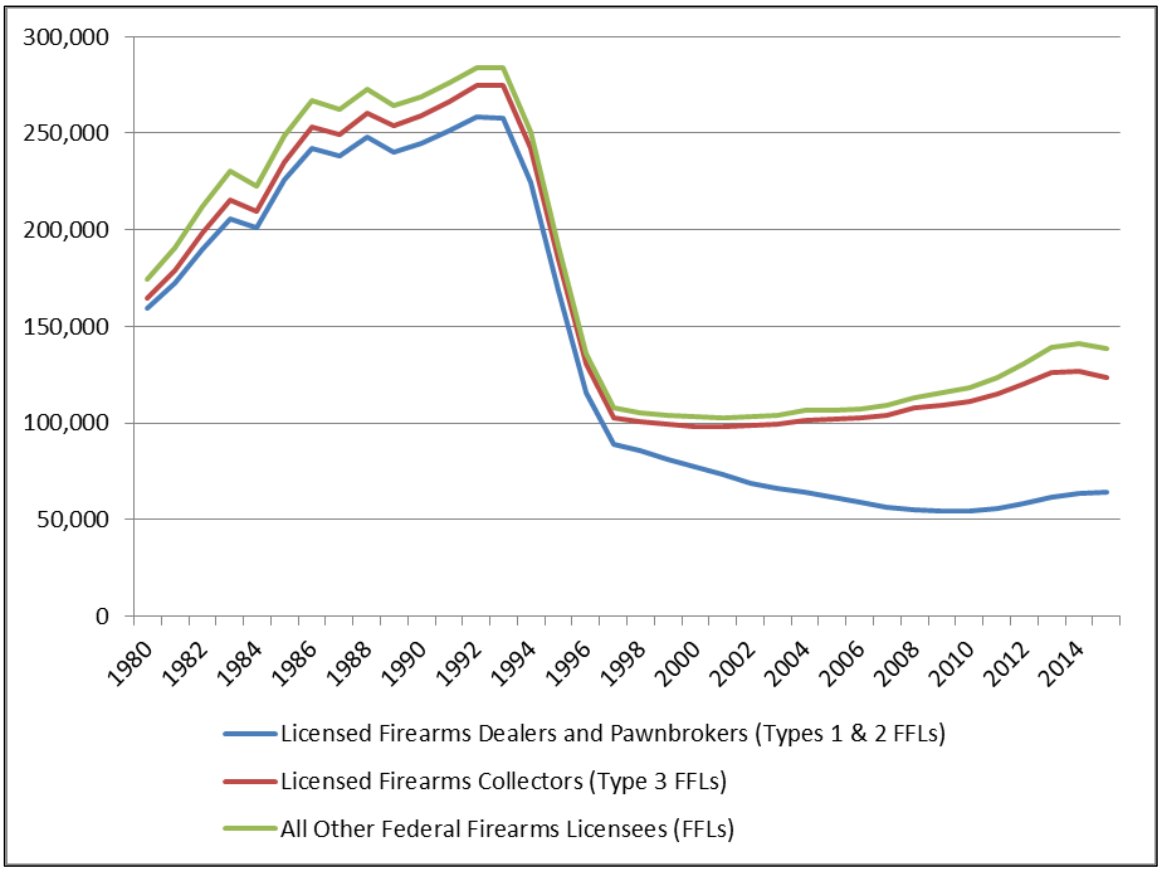
[15] P.L. 103-159; November 30, 1993; 107 Stat. 1536, 1546. This law amended 18 U.S.C. §923(a)(3)(B) to raise the license processing fee from $25 per year to $200 for a three-year license and $90 for a three-year renewal of a valid license.

[16] U.S. Government Accounting Office, *Federal Firearms Licensees: Various Factors Have Contributed to the Decline in the Number of Dealers*, B-262133, March 29, 1996, p. 21.

[17] Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322; September 13, 1994; 108 Stat.1796, 2012.

Figure 1. Federal Firearms Licenses, Dealers and Pawnbrokers Compared to Collectors

(1980-2015)



Source: U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *Firearms Commerce in the United States, Annual Statistical Update 2015*, available at https://www.atf.gov/resource-center/data-statistics.

Growth in the Civilian Gun Stock

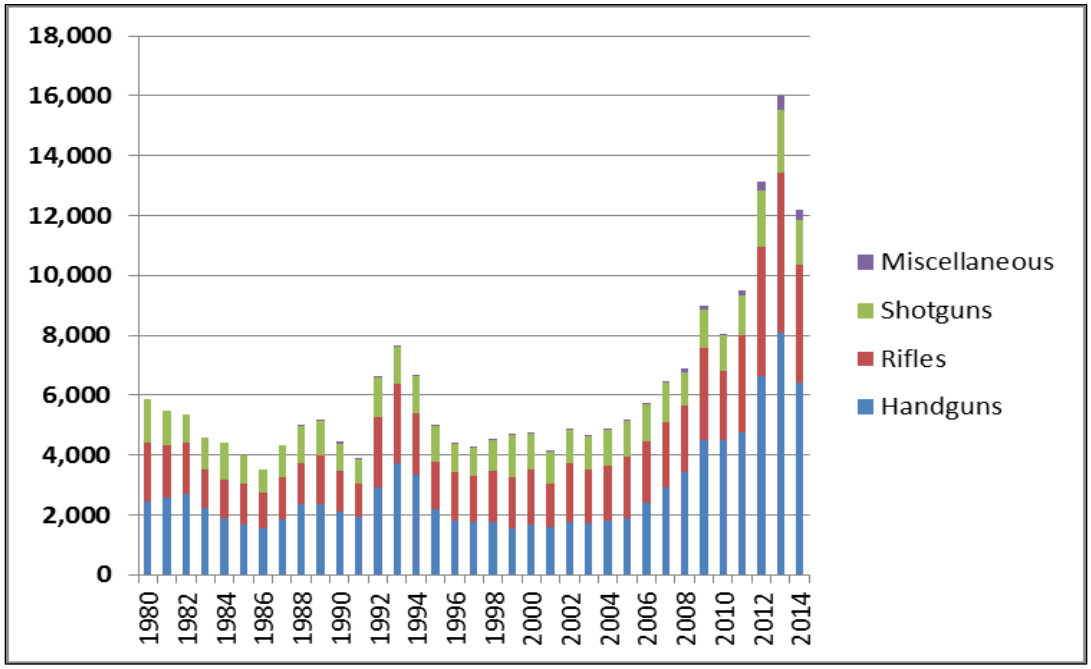
Figure 2 illustrates the net annual increase in the U.S. civilian gun stock. Over a 35-year period, from 1980 to 2014, over 250 million firearms were introduced into the U.S. civilian gun stock. From 1992 to 1994, there were spikes as Congress debated and later passed the Brady Act (P.L. 103-159) and the Violent Crime Control and Reduction Act (P.L. 103-322). There were even greater spikes beginning in 2006. These increases were possibly spurred by fears that either the Administration or Congress would move to regulate firearms more stringently, when the Democrats took control of Congress in 2006, the Virginia Tech tragedy occurred in 2007, President Barack Obama was elected in 2008, several other high-profile mass public shootings occurred in 2009, and the Aurora, CO, and Newtown, CT, tragedies and other mass public shootings occurred in 2012.

In 2013, the year following the December 2012, Newtown, CT, mass shooting, about 16 million firearms were introduced into the U.S. civilian gun stock, marking this year for the single highest net annual increase of firearms in the U.S. civilian gun stock since such data have been collected. As described below, in April 2013, December 2015, and June 2016, the Senate considered legislation to expand background checks for firearms. These increases in the civilian gun stock

could be viewed as one possible measure for ATF's correspondingly increasing responsibilities to regulate and monitor the domestic firearms industry and commerce.

Figure 2. Net Annual Increases in U.S. Civilian Gun Stock (1980-2014)

(Firearms in thousands)



Source: Bureau of Alcohol, Tobacco, Firearms and Explosives, *Firearms Commerce in the United States: Annual Statistical Update*, 2015, pp. 1-6, and *Commerce in Firearms in the United States*, February 2000, pp. A-3 – A-5.

Notes: Miscellaneous firearms include any firearms not specifically defined in the categories on the ATF form 5300.11 Annual Firearms Manufacturing and Exportation Report. According to ATF, examples of such firearms include pistol grip firearms, starter guns, and firearms frames and receivers.

According to Small Arms Survey, there were between 290 and 314 million firearms in the United States held by civilians in 2010, or nearly one firearm for every person in the United States.[18] The Government Accountability Office (GAO) estimated that there were an estimated 350 million firearms in the United States as of 2013.[19] Another source estimated that the U.S. civilian gun stock was between 310 and 320 million firearms as of 2014.[20] In addition, there were about one million firearms in police possession and four million firearms in military possession.[21] According to polls, about 35% of households own a gun, but only 25% of adults own a gun (60 million adults).[22] About 37% of men and 12% of women own guns.[23]

[18] Small Arms Survey, *Research Notes: Estimating Civilian Firearms*, September 2011, http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-9.pdf.

[19] U.S. Government Accountability Office, *Firearms Data: ATF Did Not Always Comply with the Appropriations Act Restriction and Should Better Adhere to Its Policies*, GAO-16-552, June 2016, p. 1 and 49 (footnote 1).

[20] Vincent J.M. DiMaio, *Gunshot Wounds: Practical Aspects of Firearms, Ballistics, and Forensic Techniques*, 3rd ed., 2016, p. 26.

[21] Ibid.

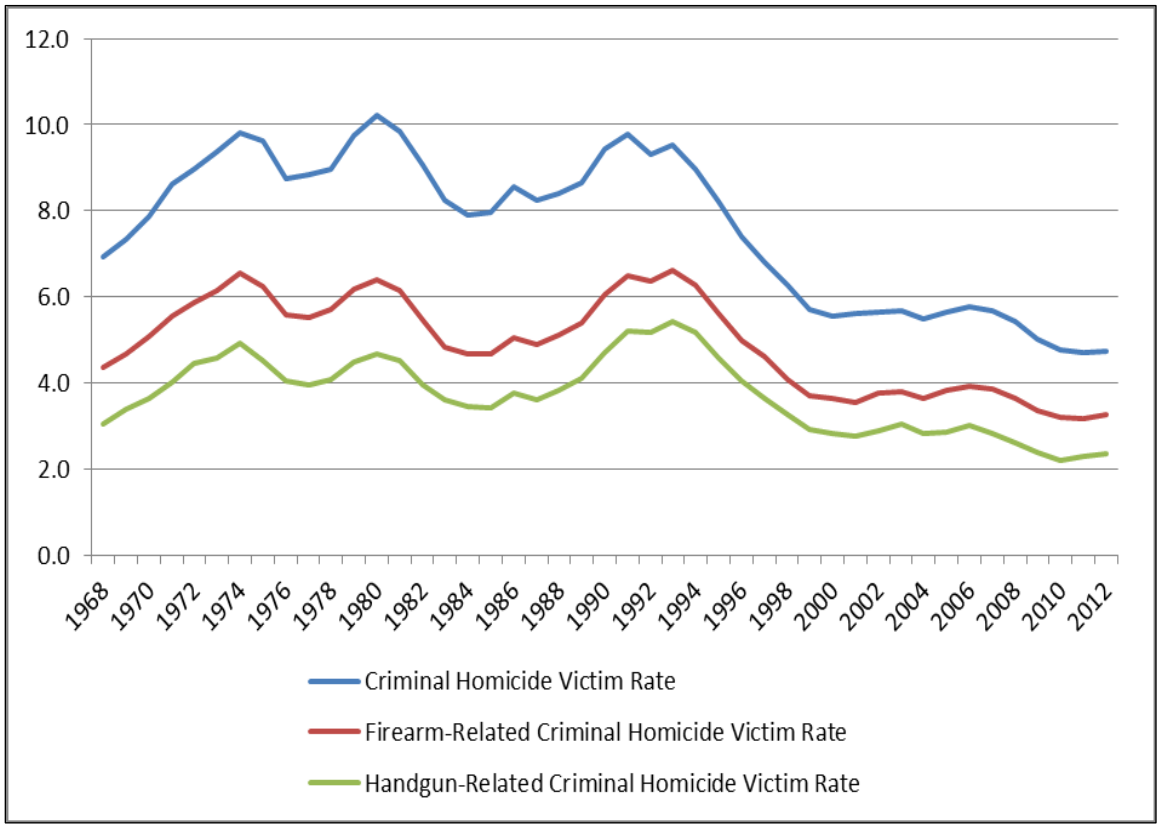
[22] Philip J. Cook and Kristin A. Goss, *Gun Debate: What Everyone Needs to Know, 2014*, p.3.

[23] Ibid., p. 4.

Violent Firearms-Related Crime Trending Downward

In its *Congressional Budget Submission, Fiscal Year 2017*, ATF cited incidents of criminal homicide, robbery, and aggravated assault committed with a firearm in calendar year 2014.[24] The data in **Figure 3** show criminal homicide victim rates, as well as estimated victim rates for all firearm- and handgun-related homicides. Gleaned from the FBI-compiled *Uniform Crime Reports* (UCRs), the data show that, from year-to-year, about two-thirds of all victims were killed with firearms and one-half of all victims were killed with handguns. Criminal homicide victim rates, with or without firearms, were lower in 2014 than they were in 1968.

Figure 3. Estimated Firearms-Related Criminal Homicide Rates per 100,000 Population (1968-2014)



Source: Federal Bureau of Investigation (FBI), Uniform Crime Report (UCR) program. The FBI UCR program defines **criminal homicide** to include murder and nonnegligent manslaughter as the willful (nonnegligent) killing of one human being by another.

In earlier years, however, criminal homicides peaked in 1974 at 20,710, 1980 at 23,040, 1991 at 24,700, and 1993 at 24,526. While firearms-related homicides bumped up slightly in 2006 and 2012, overall they have decreased by over half from 1993 to 2014, from 6.6 to 3.0 victims per 100,000 population. The estimated firearms murder rate per 100,000 population in 2014 was

[24] U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *ATF Congressional Budget Submission, Fiscal Year 2017*, February 2016, p. 10.

lower than in 1968. In 2014, it was 3.0 per 100,000 population. In 1968, it was 4.4 per 100,000 population.

According to the FBI *Uniform Crime Reports*, about 40%, or two-in-five robberies are committed with firearms, and about 22%, or one-in-five, aggravated assaults are committed with a firearm. Firearms-related robberies and aggravated assaults have also decreased since 1993. There were about 109 firearms-related robberies per 100,000 population in 1993 compared to 41 in 2014; and there were about 112 firearms-related aggravated assault per 100,000 population in 1993, compared to 52 in 2014.

Concluding Observations About ATF Workloads and Data Trends

As noted above, the number of federally licensed dealers and pawnbrokers (Type 1 and Type 2 FFLs) decreased significantly from 1992 to 2009. Since then, that number has increased by 18.3%, to 64,087 in 2015. Nevertheless, there are significantly fewer Type 1 and Type 2 FFLs than there were in 1992, when there were 258,607. Meanwhile, the number of firearms introduced into civilian gun stock has grown appreciably to 8 million or more newly introduced firearms per year since 2009. These two phenomena together suggest that at least some federally licensed Type I firearms dealers are transferring significantly greater quantities of firearms at the retail level to unlicensed, private persons. ATF has traditionally allocated the lion's share of its resources towards its enforcement mission over its regulatory (administrative) mission. Moreover, the emphasis on enforcement over administration arguably might have been increased by ATF's transfer from the Department of the Treasury to DOJ. If firearms-related violent crime should continue to decrease nationally, Congress could consider whether ATF should allocate a greater share of its resources towards its regulatory mission, particularly the monitoring of FFLs and explosives licensees and permittees.[25]

Increase in National Firearms Act (NFA) Applications for Silencers

Under the NFA, as amended, the ATF regulates non-military commerce in machine guns, short-barreled rifles and shotguns, silencers, a "catch-all" class of other "concealable" firearms identified as "any other weapon," and destructive devices. However, according to the American Suppressor Association, since 2011:

- 17 states have legalized suppressors [silencers] for hunting, bringing the total number of states allowing such activities to 39;
- 15 states have passed "shall sign" or "shall certify" legislation that requires the presiding chief law enforcement officers in a community where an applicant lives to sign off on federal NFA applications for suppressors; and
- three states have legalized suppressor ownership.[26]

Eight states currently prohibit civilian ownership of suppressors.[27] These changes in state law governing suppressors have led to an increase in workload for ATF.[28] The number of legally

[25] Under 18 U.S.C. §843(b), as amended, Congress statutorily required ATF to inspect explosives licensees every three years. See P.L. 107-296; November 25, 2002; 116 Stat. 2135, 2281. According to ATF, there were 10,440 Federal Explosives Licensees (FELs) and Federal Explosives Permittees (FELs) in 2015, https://www.atf.gov/resource-center/fact-sheet/fact-sheet-federal-firearms-and-explosives-licenses-types.

[26] American Suppressor Association, http://americansuppressorassociation.com/education/.

[27] Ibid.

[28] Under 18 U.S.C. §921(a)(24), the terms "firearm silencer" and "firearm muffler" mean any device for silencing, (continued...)

registered suppressors in the ATF National Firearms Registry and Transfer Record (NFRTR) system have increased from 285,087 in December 2010[29] to 762,282 in February 2015,[30] an increase of 167.3%.

Senate Committee Action

The Senate-reported FY2017 CJS appropriations bill (S. 2837) would provide ATF with $1.259 billion for FY2017. This amount was $18.6 million above the ATF's FY2016 appropriation, but $47.5 million below the Administration's request. However, this amount is $6.8 million above the ATF projected base budget. Senate report language expressed support for

- the National Integrated Ballistics Information Network (NIBIN) and ongoing ATF efforts to address gun violence and enforce existing gun laws, while maintaining regulatory oversight over the U.S. domestic firearms industry;
- moving the U.S. Bomb Data Center (USBDC) permanently to the National Center for Explosives Training and Research (NCETR) and for ongoing efforts to provide advanced bomb disposal training to state, tribal, and local technicians; and
- ATF efforts to combat firearms trafficking across the United States-Mexico border.

Report language, however, was silent on increased staffing for firearms compliance inspections, increased NFA applications, and funding for a new investigative case management computer system.

House Committee Action

The House Committee on Appropriations reported an FY2017 appropriations bill (H.R. 5393, H.Rept. 114-605). This bill would provide ATF with $1.258 billion for FY2017. This amount is nearly $17.8 million above the ATF's FY2016 appropriation, but is $48.3 million below the Administration's FY2016 request.

With regard to ballistic imaging, House draft report language expressed concern that federal law enforcement agencies had not consistently entered crime scene ballistic evidence into NIBIN, "despite evidence that doing so aids investigations and reduces gun violence." House report language also directed ATF to report back to the Committee on its plans to upgrade NIBIN and establish revised protocols for information sharing through this computer network. With regard to the NCETR, report language urged ATF to continue its support of the Center's efforts to counter advanced improvised explosive devices. With regard to ATF's growing NFA workload, report language noted the Committee's concern with longer processing times and the committee recommendation included $6.0 million to address this workload.

(...continued)

muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

[29] U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *Firearms Commerce in the United States, 2011*, p. 24.

[30] U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *Firearms Commerce in the United States: Annual Statistical Update, 2015*, p. 15.

The House-reported bill included no provisions to change ATF appropriations limitations related to dealer inventory-taking or the curios and relics definition. On the other hand, as in years past, the House-reported bill included futurity language in other limitations that would have possibly made them permanent law. Those riders addressed "gun walking" across the U.S.-Mexico border, firearms parts exports to Canada, curios and relics imports, and importation restrictions on shotguns that have been characterized as non-sporting.

In addition, as in the past, the House bill included a provision that would have prohibited ATF from collecting multiple long gun (rifle and shotgun) sales reports from federally licensed gun dealers in southern border states (California, Arizona, New Mexico, and Texas).

Several amendments were adopted in full committee markup. According to *Congressional Quarterly*, one amendment was defeated by a vote of 17-29.[31] This amendment would authorize the Attorney General to deny a firearms transfer to anyone considered to be a "dangerous terrorist."[32]

Post-Orlando Senate Floor Debate

Following the June 12, 2016, Orlando, FL, mass shooting, Senator Christopher Murphy and other Democrats successfully advocated for the consideration of gun control legislation after holding the Senate floor for nearly 15 hours.[33] When the Senate took up the FY2017 Departments of Commerce and Justice, Science, and Related Agencies (CJS) Appropriations bill (H.R. 2578, the expected vehicle for S. 2837), several gun control-related amendments were debated.

Senator Murphy offered an amendment (S.Amdt. 4750) that would have expanded federal background check requirements to capture intrastate firearms transfers between unlicensed persons (non-dealers).[34] Supporters of the Murphy amendment maintain that it would have required "universal" background checks, although it too included exceptions.[35] The Senate rejected further consideration of the Murphy amendment on procedural grounds.[36] The Senate also rejected a procedural motion on an amendment offered by Senator Grassley (S.Amdt. 4751) that included some provisions that were identical to those included in the amendment he

[31] Todd Ruger, "Appropriators Advance Bill Without Gun Provision Sought by Democrats," *Congressional Quarterly News*, May 24, 2016.

[32] For further information, see CRS Report R42336, *Terrorist Watch List Screening and Background Checks for Firearms*, by (name redacted) .

[33] Seung Min Kim and Burgess Everett, "Democrats End Filibuster, Announce GOP to Hold Gun Votes," *Politico*, June 15, 2016, updated on June 16, 2016.

[34] The Murphy amendment reflected the language of a bill previously introduced by Senator Chuck Schumer and Representative Jackie Speier (S. 2934 and H.R. 3411).

[35] The Murphy amendment (S.Amdt. 4750) represents an alternative proposal to two amendments (S.Amdt. 2908 and S.Amdt. 4716) previously offered by Senators Joe Manchin and Pat Toomey that would have expanded federal background check requirements to capture intrastate firearms transfers between unlicensed persons under narrower circumstances. Supporters have dubbed the Manchin-Toomey amendment as the "comprehensive" background check proposal, because the background check requirements described above would have been expanded to transfers between unlicensed persons arranged at a "gun show" or "pursuant to advertisement, posting, display or other listing on the Internet or other publication by the transferor of his intent to transfer, or the transferee of his intent to acquire, a firearm." In the House, Representatives Peter King and Mike Thompson introduced a nearly identical measure, the Public Safety and Second Amendment Rights Protection Act of 2015 (H.R. 1217).

[36] Anna Redalat, "Senate Rejects Murphy Background-Check Provision and 'Terror Gap' Bill," *Newtown Bee*, June 24, 2016.

previously offered in December 2015 to the Health Care Reconciliation bill (H.R. 3762).[37] Those provisions were intended to improve background checks, but did not include any provisions that would have expanded background check requirements.

In addition, the Senate considered several other amendments (S.Amdt. 4720, S.Amdt. 4749, S.Amdt. 4858, and S.Amdt. 4859) that would have authorized the denial of firearms and explosives transfers to any person whom the Attorney General deemed to be a "dangerous terrorist." While some of those amendments made reference to the "No Fly" list, all of these amendments were loosely modeled on the "Terror Gap" proposal, which was originally developed by DOJ under then-Attorney General Alberto Gonzalez.[38] None of these amendments would have prohibited anyone from receiving or possessing a firearm simply because they were on the "No Fly" list, a claim mistakenly but repeatedly made by many mass media outlets. All but one of those "Terror Gap" amendments were blocked on procedural votes.

The Senate voted on a procedural motion on a modified "Terror Gap" proposal (S.Amdt. 4858) that has commonly been referred to as the "Collins compromise." The Senate, however, rejected this motion (46 to 52) to recommit H.R. 2578 to the Committee on the Judiciary with instructions to report the bill back with the language of the Collins compromise. And, the 52 votes against that motion were not enough to suggest that the Senate would be able to obtain the 60 votes likely required to amend the bill successfully.[39] This motion was described as a "test vote."[40]

Other Appropriated Funding

NICS and FBI Funding

In November 1998, the FBI activated the National Instant Criminal Background Check System (NICS). Through this system, background checks are completed for all unlicensed persons seeking to obtain firearms from FFLs or firearms-related licenses and permits from state authorities. Intrastate transfers between unlicensed persons are not covered by the federal background check requirements. In recent years, the FBI has seen a significant increase in NICS transactions associated with firearms-related background checks by federal and state authorities. FBI-administered background checks through NICS increased from about 6.6 million in FY2011 to 8.5 million in FY2015.

For FY2017, the Administration has requested a $35 million increase for NICS. This amount includes $15 million to sustain 75 professional support positions for FY2016, and $20 million to secure an additional 160 contractors. Report language accompanying both the Senate- and House-reported FY2017 CJS Appropriations bills (S. 2837 and H.R. 5393) indicated that those bills would have provided the requested $35 million for NICS. For FY2016, the FBI reports that NICS program budget was anticipated to be $94.1 million. Hence a $35 million enhancement would bring the FY2017 NICS programs budget to $121.1 million.

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[37] Ibid.

[38] Senator Frank Lautenberg and Representative Peter King first introduced this DOJ proposal (S. 1237/H.R. 2074) in the 110th Congress. In the 114th Congress Senator Dianne Feinstein and Representative King reintroduced this proposal (S. 551 and H.R. 1076). Senator Lautenberg dubbed this bill the "Terror Gap" proposal. See Herb Jackson, "Lautenberg Bill Aims To Close 'Terror Gap," *Record* (Bergen County, NJ), April 28, 2007, p. A04.

[39] Karoun Demirjian, "Bipartisan Gun Control Compromise Fails to Nab 60 Votes, but Survives First Hurdle," *Washington Post*, June 23, 2016, p. A13.

[40] Seung Min Kim, "Collins Gun Plan Survives Test Vote, Remains in Limbo," *Politico*, June 23, 2016.

NCHIP and NARIP Grants

Congress has appropriated funding to improve criminal history recordkeeping under a DOJ-administered grant program known as the National Criminal History Improvement Program (NCHIP). This program was originally authorized under the 1993 Brady Act (P.L. 103-159). After the April 2007 Virginia Tech mass shooting, Congress passed the NICS Improvement Amendments Act of 2007 (P.L. 110-180, NIAA). This act strengthens a provision of the Brady Act that requires federal agencies to make records on persons prohibited from possessing firearms available electronically to the FBI for the purposes of firearms-related background checks through NICS. It also includes provisions designed to encourage states to make such records available to the FBI. This act prioritizes federal–state record sharing on persons deemed too mentally incompetent to be trusted with firearms, as wells as records on domestic violence misdemeanor convictions and restraining orders. The Administration has designated the grant program under P.L. 110-180 to be the NICS Amendments Improvement Act (NARIP).

- For FY2016, Congress provided $73 million for these purposes, of which not less than $25 million was for grants for purposes addressed in P.L. 110-180.
- For FY2017, the Administration requested $48 million for NCHIP and $5 million for NARIP.
- The Senate bill (S. 2837) would provide $75 million for these purposes, of which not less than $25 million would be for grants for purposes addressed in P.L. 110-180.
- The House bill (H.R. 5398) would provide $73 million for these purposes, of which not less than $25 million would be for grants for purposes addressed in P.L. 110-180.

Gun Violence Research

For FY2017, the Administration requested $10 million for the Centers of Disease Control and Prevention (CDC) to sponsor research into preventing and ameliorating gun violence, which has been interpreted by some public health scholars to include firearms-related homicides, suicides, and accidents.[41] In the aftermath of the December 2012, Newtown, CT, mass shooting, the Administration made similar requests for FY2014, FY2015, and FY2016, but Congress did not appropriate funding for these purposes, possibly because some Members of Congress have viewed CDC- and NIH-sponsored research in the past as insufficiently objective in its support for greater gun control.

For FY1997 and every fiscal year thereafter, Congress has attached a provision to Departments of Labor, Health and Human Services (HHS), and Education appropriations prohibiting the use of appropriated funds to "advocate or promote gun control." On June 14, 1996, during subcommittee mark-up of the FY1997 Labor, HHS, and Education appropriations bill (H.R. 3755), Representative Jay Dickey offered an amendment that would have redirected $2.6 million in funding away from a CDC program that had previously funded research on the risks of gun death

[41] Peter Hemenway has observed that for the better part of the 20th century, gun assaults were viewed for the most part as a criminal justice problem, while gun suicides were viewed as a mental health problem and gun accidents as a safety issue. Since the mid-1980s, however, there has been momentum to view firearm injuries, across the board, as a public health problem. Proponents for this point of view claim that their approach to firearms-related injury prevention and control is "proactive rather than reactive, and pragmatic rather than doctrinaire." Peter Hemenway, *Private Guns, Public Health*, University of Michigan Press, Ann Arbor, 2010, p. 9.

and injury associated with gun ownership. Although the Dickey amendment was not approved, the subcommittee gave voice vote approval to an amendment by Committee Chair, Representative Robert Livingston. This amendment read as follows:

> Provided further, That none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control.

Although this language was not offered by Representative Dickey, it has become known as the "Dickey" amendment. Regarding the enacted provision, House FY1997 report language noted the following:

> The bill contains a limitation to prohibit the National Center for Injury Prevention and Control at the Centers for Disease and Prevention from engaging in any activities to advocate or promote gun control. The CDC may need to collect data on the incidence of gun related violence, but the Committee does not believe that it is the role of the CDC to advocate or promote policies to advance gun control initiatives, or to discourage responsible private gun ownership. The Committee expects research in this area to be objective and grants to be awarded through an impartial peer review process.[42]

At issue, in 1996, was CDC-sponsored research by Dr. Arthur L. Kellermann, who had his findings published in 1993 in the *New England Journal of Medicine*.[43] It is significant to note that, in 1996, the House Committee on Appropriations heard testimony[44] from several witnesses who either provided "scathing attacks" or "passionate defenses" of Dr. Kellermann's work.[45]

From FY1997 through FY2011, this appropriations limitation was embedded in the CDC salaries and expenses language and only applied to the Centers. For FY2012, Congress expanded the scope of the prohibition to all of HHS. In addition, for FY2012, Congress modified another limitation in previous years bills that prohibited any department or agency funded under the bill for "publicity or propaganda ... designed to support or defeat the enactment of legislation," so that it extended to:

> any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.

At issue, in 2011, were three National Institutes of Health (NIH)-sponsored research initiatives that examined links between alcohol availability and gun violence, as well as parental gun ownership as a hazard to children.[46]

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[42] H.Rept. 104-659, to accompany H.R. 3755, making FY1997 appropriations for the Departments of Labor, Health and Human Services, and Education, and Related Agencies, July 8, 1996, p. 49.

[43] Arthur L. Kellerman, et al., "Gun Ownership as a Risk Factor for Homicide in the Home," in the *New England Journal of Medicine* 329 (1993), pp. 1084-91.

[44] U.S. Congress, House Committee on Appropriations, Subcommittee on Labor, Health and Human Services, and Education, *Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations for 1997*, Part 7,Testimony of Members of Congress and Other Interested Individuals and Organizations, 104th Cong., 2nd sess., March 6, 1996, pp. 926-970.

[45] Paul Gallant and Joanne Eisen, "Kellerman, Arthur L. (1955-)," *Guns in American Society: An Encyclopedia of History, Politics, Culture, and the Law*, ABC-CLIO, LLC, Santa Barbara, CA, 2012, p. 471.

[46] Brian Doherty, "You Know Less Than You Think About Guns: The Misleading Uses, Flagrant Abuses, and Shoddy Statistics of Social Science About Gun Violence," *Reason*, February 2016, http://reason.com/archives/2016/01/05/you-know-less-than-you-think-a.

While these limitations do not overtly prohibit research on gun violence, they were clearly a congressional response to research that was objectionable to at least some Members of Congress for improperly advocating or promoting gun control with tax payer-funded research. Critics maintain that these limitations have had a "chilling effect" on CDC and other federal agencies charged with advancing public health. In fact, many press accounts have purported that these provisions have imposed a "virtual ban" on gun violence research.[47]

In the aftermath of the December 2012, Newtown, CT mass shooting, President Barack Obama released a plan, *Now Is The Time*, to reduce gun violence.[48] In this plan, the President underscored that "research on gun violence is not advocacy." As an executive action, the President issued a memorandum directing CDC and other agencies within HHS to

> conduct or sponsor research into the causes of gun violence and the ways to prevent it. The Secretary shall begin by identifying the most pressing research questions with the greatest potential public health impact, and by assessing existing public health interventions being implemented across the Nation to prevent gun violence.[49]

For FY2017, however, the Senate and House Committees on Appropriations reported Labor-HHS-Education Appropriations bills (S. 3040 and H.R. 5926). Both bills include the limitations described above. Neither bill would provide the requested $10 million for gun violence research.

Continuing Resolution

On September 29, 2016, President Obama signed into law a Continuing Appropriations Act, 2017 (P.L. 114-203), which funds most of the federal government through December 9, 2016, at the same levels as appropriated for FY2016. This continuing resolution also extends the long-standing gun control limitations on ATF, CDC, HHS, and the Departments of Labor and Education discussed above through that date, as well as those described in the **Appendix** to this report.

[47] John R. Lott, Jr., *War on Guns: Arming Yourself Against Gun Control Lies*, Regency Publishing, 2016, p. 9.

[48] White House, *Now Is the Time: The President's Plan to Protect Our Children and Our Communities by Reducing Gun Violence*, January 16, 2013, http://www.wh.gov/now-is-the-time.

[49] White House, –"Engaging in Public Health Research on the Causes and Prevention of Gun Violence," presidential memorandum, January 16, 2013, https://www.whitehouse.gov/the-press-office/2013/01/16/presidential-memorandum-engaging-public-health-research-causes-and-preve.

Appendix. Firearms-Related Appropriations Limitations and Other Provisions

Congress has placed nine provisos related to domestic gun control on Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) appropriations for salaries and expenses (S&E) and included another six provisos in either the Department of Justice (DOJ) general provisions or the general provisions for the entire Commerce, Justice, Science (CJS) and Related Appropriations Act.[50] Congress has included "futurity" language (e.g., "in each fiscal year thereafter") in several of these provisos that appears to be intended to make them permanent law. One proviso—the "Tiahrt amendment"—has included futurity language since FY2005, but was included in subsequent appropriations acts through FY2012. This proviso restricts ATF from using appropriations to release unfiltered firearms trace data, and prohibits the use of such data for the purposes of supporting civil lawsuits.[51] Gun control advocates have argued that the Tiahrt amendment and other limitations on the ATF appropriations have unduly hampered that agency from enforcing the law, and consequently have called for their repeal.[52] Supporters of gun rights, on the other hand, maintain that these limitations prevent ATF from overreaching its statutory and regulatory authority.[53]

For FY2012, Congress included futurity language in four of those provisos that appears to be intended to make them permanent law. Those FY2012 provisos are:

- S&E Proviso One: Firearms Acquisition/Disposition Data Collection;
- S&E Proviso Six: Trace Data and Tiahrt Amendment;
- S&E Proviso Eight: Out-of-Business Dealers' Records Searches; and
- NICS Fee Prohibition and Next-Day Destruction of Records.

For FY2013, Congress included futurity language in several additional provisos. Those FY2013 provisions are:

- S&E Proviso Two: Curios or Relics Definition;
- S&E Proviso Seven: Dealer Inventory;
- S&E Proviso Nine: Dealer License Denials for Lack of Business; and
- Trace Data Caveats.

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[50] In January 2003, the ATF was transferred from the Department of the Treasury to the Department of Justice. Because ATF domestic gun control-related gun control provisions date back to 1978, they have been carried over the years in Treasury, Postal Service, and General Government (Treasury-Postal) Appropriations Acts; in a Science, State, Justice, Commerce, and Related Agencies Appropriations Acts; and in Commerce, Justice, Science (CJS) and Related Agencies Appropriations Acts. For further information on how appropriations subcommittee jurisdictions have changed over this period, see CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920 to 2015*, by (name redacted) and (name redacted) .

[51] Joanna Anderson and Tamar Hallerman, "C-J-S Bill Advances After Democratic Gun Provisions Turned Back," *Roll Call*, May 8, 2014. John Gramlich, "Permanent Gun Law Changes in Senate CR Irk Gun Control Advocates, Democrats," *Roll Call*, March 14, 2013.

[52] Erica Goode and Sheryl Gay Stolberg, "Legal Curbs Said to Hamper A.T.F. in Gun Inquiries," *The New York Times*, December 26, 2012, p. 1.

[53] National Rifle Association, "Elections Matter: Pro-Second Amendment House Stands Up for Your Rights in Funding Bill," June 5, 2015, https://www.nraila.org/articles/20150605/elections-matter-pro-second-amendment-house-stands-up-for-your-rights-in-funding-bill.

As discussed in the text of this report and below, the Administration has requested for FY2014, FY2015, and FY2016 that two of those provisos be repealed. Those provisos are:

- S&E Proviso Two: Curios or Relics Definition; and
- S&E Proviso Seven: Dealer Inventory.

For FY2013, FY2014, and FY2015, the House CJS appropriations bills included futurity language in two other provisions. While these provisos were included in the enacted appropriations laws, the futurity language was not. Those provisos are:

- Firearms Parts Exports to Canada; and
- Curios and Relics Imports.

There are five other provisos for which Congress has not included futurity language. Those provisos are:

- S&E Proviso Three: Relief from Firearms Disabilities for Individuals;
- S&E Proviso Four: Relief from Firearms Disabilities for Corporations;
- S&E Proviso Five: ATF Reorganization and Dismantlement;
- Anti-Gun Walking Amendment; and
- Shotgun Imports.

In the 114th Congress, legislation has been introduced to repeal several of these provisos (see H.R. 1449 and H.R. 2939). A more detailed legislative history of all these provisos discussed above along with their language is provided below.

Salaries and Expenses (S&E) Provisos

ATF S&E Proviso One: Firearms Acquisition/Disposition Data Collection

For FY1979 through FY2012, Congress included a proviso in the ATF S&E appropriations language in response to an administrative proposal made during the Carter Administration that would have required firearms manufacturers, importers, and dealers to submit quarterly reports on the sale and disposition of firearms.[54] House and Senate report language expressed the view that this proposed regulation exceeded ATF's authority under the Gun Control Act of 1968 (H.R. 12930; H.Rept. 95-1259 and S.Rept. 95-939). In addition, a proviso was enacted that prohibits ATF from using appropriations for the purposes of creating what has often been characterized as a "registry of firearms or firearms owners."[55] For FY2012, futurity language ("hereafter") was included in this proviso, which appears to be intended to make it permanent law. The proviso reads as follows:

> *Provided*, That no funds appropriated herein or hereafter shall be available for salaries or administrative expenses in connection with consolidating or centralizing, within the Department of Justice, the records, or any portion thereof, of acquisition and disposition of firearms maintained by [F]ederal firearms licensees.[56]

[54] 43 *Federal Register* 11800-11810, March 21, 1978.

[55] Treasury, Postal Service, and General Government Appropriations Act, 1979, P.L. 95-429, October 10, 1978, 92 Stat. 1001, 1002.

[56] Consolidated and Further Continuing Appropriations Act, 2012, P.L. 112-55, November 18, 2011, 125 Stat. 552, (continued...)

ATF S&E Proviso Two: Curios or Relics Definition

For FY1996 through FY2013, Congress included a proviso in the ATF S&E appropriations language that prohibits ATF from using appropriated funding for the purposes of changing the definition of "curios or relics."[57] This provision was in response to an ATF proposal to amend the definition of "curios or relics,"[58] because of concerns about the volume of surplus military firearms that could be imported into the United States. ATF has consistently opposed the importation of certain World War II era, surplus military firearms. The language of this proviso is as follows:

> *Provided further,* That no funds appropriated herein shall be used to pay administrative expenses or the compensation of any officer or employee of the United States to implement an amendment or amendments to 27 CFR 478.118 or to change the definition of "Curios or relics" in 27 CFR 478.11 or remove any item from ATF Publication 5300.11 as it existed on January 1, 1994.[59]

For FY2013, Congress included futurity language ("the current fiscal year and any fiscal year thereafter") in this proviso, which appears to have made it permanent law.[60] For each fiscal year thereafter, FY2014 through FY2017, the Administration has requested as part of its annual congressional budget submissions that this proviso be repealed. The Consolidated Appropriations Act, 2016 (P.L. 114-113) included no provision to repeal or change this appropriations limitation. Neither the Senate nor the House CJS FY2016 bills (S. 2837 and H.R. 5393) included any provisions to repeal or change this appropriations limitation.

ATF S&E Proviso Three: Relief from Firearms Disabilities for Individuals

For FY1993 and every year thereafter, Congress included a proviso in the ATF S&E appropriations language that prevents that agency from using appropriations to consider applications for disabilities relief (i.e., reinstatement of an applicant's right to gun ownership) from individuals who are otherwise ineligible to be transferred a firearm.[61] In the 102nd Congress, House report language (H.R. 5488; H.Rept. 102-618) included the following justification: "the Committee believes that the $3.75 million and the 40 man-years annually spent investigating and acting upon these applications for relief would be better utilized by ATF in fighting violent crime." Senate and Conference report language were silent on this issue. The language of this proviso is as follows:

(...continued)

609; 18 U.S.C. 923 note.

[57] Treasury, Postal Service, and General Government Appropriations Act, 1996, P.L. 104-52, November 19, 1995, 109 Stat. 468, 471.

[58] See 27 C.F.R. §478.11 for the definition of "curios or relics," which generally include firearms that are 50 years old, of museum interest, or derive a substantial amount of their value from the fact that they are novel, rare, bizarre, or because they are associated with some historical figure, period, or event. For a list of "curios and relics," go to http://www.atf.gov/publications/firearms/curios-relics/. Federally licensed firearms collectors are authorized to engage in limited interstate transfers of "curios and relics," whereas in nearly all cases an unlicensed person must engage the services of a federally licensed gun dealer to facilitate interstate firearms transfers to another unlicensed person.

[59] Consolidated and Further Continuing Appropriations Act, 2012, P.L. 112-55, November 18, 2011, 125 Stat. 552, 609.

[60] Consolidated and Further Continuing Appropriations Act, 2013, P.L. 113-6, March 26, 2013, 127 Stat. 248.

[61] Treasury, Postal Service, and General Government Appropriations Act, 1993, P.L. 102-393, October 6, 1992, 106 Stat. 1729, 1731.

> *Provided further,* That none of the funds appropriated herein shall be available to investigate or act upon applications for relief from Federal firearms disabilities under 18 U.S.C. 925(c).

For FY2015, this proviso was included in the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235). For FY2016, the Senate Committee on Appropriations included identical language in its reported CJS appropriations bill (H.R. 2578, as amended). The House-passed version of H.R. 2578, however, reflected a floor amendment (H.Amdt. 302) that would have required ATF to process disability relief applications for individuals. The Consolidated Appropriations Act, 2016 (P.L. 114-113), however, did not include this amended provision. Instead, it included and maintained the appropriations limitation described above. Both the Senate and House FY2017 CJS Appropriations bills (S. 2837 and H.R. 5393) included identical provisions.

ATF S&E Proviso Four: Relief from Firearms Disabilities for Corporations

For FY1994 and every year thereafter, Congress added a related proviso explicitly stating that appropriated funds could be used to process disability relief applications for corporations.[62]

> *Provided further,* That such funds shall be available to investigate and act upon applications filed by corporations for relief from Federal firearms disabilities under section 925(c) of title 18, United States Code.[63]

For FY2015, this proviso was included in the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235). For FY2016, an identical proviso was included in the House-passed CJS appropriations bill (H.R. 2578) and Senate-reported bill (H.R. 2578, as amended). The Consolidated Appropriations Act, 2016 (P.L. 114-113) included this appropriations limitation. Both the Senate and House FY2017 CJS Appropriations bills (S. 2837 and H.R. 5393) included identical provisions.

ATF S&E Proviso Five: ATF Reorganization or Dismantlement

For FY1994 and every year thereafter, Congress included a proviso in the ATF S&E appropriations language that prevents the use of appropriations to dismantle that agency. That provision was a response to Vice President Al Gore's National Performance Review report released on September 7, 1993, which called for the transfer of ATF's law enforcement functions to the Federal Bureau of Investigation (FBI).[64] Under this recommendation, ATF's regulatory and revenue functions were to remain at the Department of the Treasury, but be transferred to the Internal Revenue Service. The language of this proviso is as follows:

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[62] Treasury, Postal Service, and General Government Appropriations Act, 1994, P.L. 103-123, October 28, 1993, 107 Stat. 1226, 1228-1229. For example, ATF granted Northrop Grumman Systems Corporation (NGSC) relief for violations of a TRW Electronic Products, Inc., which was convicted in federal court for a violation of 18 U.S.C. §371 (Conspiracy to commit offense or defraud the United States) on June 30, 1999, in U.S. District Court for the Central District of California (Case No. CR99-673). On September 23, 2014, ATF granted NGSC relief pursuant to 18 U.S.C. §925(c) as the successor to TRW Electronic Products, Inc. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, "Granting of Relief; Federal Firearms Privileges," 79 *Federal Register* 73906, December 12, 2014.

[63] Consolidated and Further Continuing Appropriations Act, 2012, P.L. 112-55, November 18, 2011, 125 Stat. 552, 609.

[64] Treasury, Postal Service, and General Government Appropriations Act, 1994, P.L. 103-123, October 28, 1993, 107 Stat. 1226, 1229.

> *Provided further,* That no funds made available by this or any other Act may be used to transfer the functions, missions, or activities of the Bureau of Alcohol, Tobacco, Firearms and Explosives to other agencies or Departments.[65]

For FY2015, this proviso was included in the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235). For FY2016, identical language was included in the House-passed and Senate-reported versions of H.R. 2578.[66] Similarly, the Consolidated Appropriations Act, 2016 (P.L. 114-113) included this appropriations limitation. Both the Senate and House FY2017 CJS appropriations bills (S. 2837 and H.R. 5393) included identical provisions.

ATF S&E Proviso Six: Trace Data and the Tiahrt Amendment

For FY2004 through FY2012, Congress included a proviso in the ATF S&E appropriations language that is known for the Member who originally offered the amendment, Representative Todd Tiahrt.[67] For FY2003, Congress had previously included a related provision in the Treasury-Postal appropriations act, which was reportedly included in the bill at the request of Representative George R. Nethercutt.[68] As shown below, the Nethercutt provision was drawn more narrowly than the Tiahrt proviso.

The Tiahrt amendment prohibits ATF from using appropriations to make unfiltered trace data available to any parties other than domestic and foreign law enforcement (with greater restrictions in the latter case) and national security agencies. The proviso exempts trace reports, which ATF has traditionally produced for statistical purposes and firearms trafficking trend analysis. Unlike other ATF appropriations provisions, this one has been substantively altered several times. The last substantive revision was for FY2010. Nevertheless, it has included some form of futurity language ("in each fiscal year thereafter") since its inception, most recently for FY2012.[69] The language of this proviso is as follows:

> *Provided further,* That, during the current fiscal year and in each fiscal year thereafter, no funds appropriated under this or any other Act may be used to disclose part or all of the contents of the Firearms Trace System database maintained by the National Trace Center of the Bureau of Alcohol, Tobacco, Firearms and Explosives or any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code, or required to be reported pursuant to paragraphs (3) and (7) of such section, except to: (1) a Federal, State, local, or tribal law enforcement agency, or a Federal, State, or local prosecutor; or (2) a foreign law enforcement agency solely in connection with or for use in a criminal investigation or prosecution; or (3) a Federal agency for a national security or intelligence purpose; unless such disclosure of such data to any of the entities

[65] Consolidated and Further Continuing Appropriations Act, 2012, P.L. 112-55, November 18, 2011, 125 Stat. 552, 609.

[66] In the 113th and 114th Congresses, Representative F. James Sensenbrenner Jr. introduced legislation to abolish ATF and transfer its firearms, explosives, and arson enforcement and regulatory missions to the FBI, and its alcohol and tobacco regulatory and enforcement missions to the Drug Enforcement Administration. See H.R. 5522 and H.R. 1329, respectively.

[67] Consolidated Appropriations Act, 2004; P.L. 108-199; January 23, 2004; 118 Stat. 3, 53.

[68] James V. Grimaldi and Sari Horwitz, "After Gun Industry Pressure, Veil Was Dropped over Tracing Data," *Washington Post*, October 24, 2010, p. A11.

[69] At the request of Congress, the Comptroller General examined the futurity language for FY2008 and issued an opinion that it made the limitation permanent law. U.S. Government Accountability Office, "Bureau of Alcohol, Tobacco, Firearms, and Explosives—Prohibition in the 2008 Consolidated Appropriations Act," July 15, 2008, http://www.gao.gov/decisions/appro/316510.pdf.

> described in (1), (2) or (3) of this proviso would compromise the identity of any undercover law enforcement officer or confidential informant, or interfere with any case under investigation;
>
> and no person or entity described in (1), (2) or (3) shall knowingly and publicly disclose such data;
>
> and all such data shall be immune from legal process, shall not be subject to subpoena or other discovery, shall be inadmissible in evidence, and shall not be used, relied on, or disclosed in any manner, nor shall testimony or other evidence be permitted based on the data, in a civil action in any State (including the District of Columbia) or Federal court or in an administrative proceeding other than a proceeding commenced by the Bureau of Alcohol, Tobacco, Firearms and Explosives to enforce the provisions of chapter 44 of such title, or a review of such an action or proceeding;
>
> except that this proviso shall not be construed to prevent: (A) the disclosure of statistical information concerning total production, importation, and exportation by each licensed importer (as defined in section 921(a)(9) of such title) and licensed manufacturer (as defined in section 921(a)(10) of such title); (B) the sharing or exchange of such information among and between Federal, State, local, or foreign law enforcement agencies, Federal, State, or local prosecutors, and Federal national security, intelligence, or counterterrorism officials; or (C) the publication of annual statistical reports on products regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives, including total production, importation, and exportation by each licensed importer (as so defined) and licensed manufacturer (as so defined), or statistical aggregate data regarding firearms traffickers and trafficking channels, or firearms misuse, felons, and trafficking investigations.[70]

After FY2012, this proviso has not appeared in any subsequent ATF appropriations. It appears that the futurity language discussed above was considered to make this proviso permanent law.[71]

Congress included a related provision in the FY2003 Treasury-Postal appropriations act. This provision arguably has prohibited, and possibly would continue to prohibit, ATF from using appropriated funding for the purposes of processing Freedom of Information Act (FOIA) requests for trace data.[72] Report language stated:

> The need to maintain these databases [firearms trace data and multiple handgun sales reports] on a limited confidential basis that has been in place at ATF for several years for tracing records derives from the long-term nature of criminal investigations. In addition to jeopardizing criminal investigations and officer safety, such information, once released, might easily be disseminated through the Internet. This would not only pose a risk to law enforcement and homeland security, but also to the privacy of innocent citizens (H.Rept. 107-575).

The language of this provision is as follows:

> Sec. 644. No funds appropriated under this Act or any other Act with respect to any fiscal year shall be available to take any action based upon any provision of 5 U.S.C. 552 with respect to records collected or maintained pursuant to 18 U.S.C. 846(b), 923(g)(3) or 923(g)(7), or provided by Federal, State, local, or foreign law enforcement agencies in connection with arson or explosives incidents or the tracing of a firearm, except that such

[70] Consolidated and Further Continuing Appropriations Act, 2012, P.L. 112-55, November 18, 2011, 125 Stat. 552, 609-610; 18 U.S.C. 923 note.

[71] Ibid.

[72] Consolidated Appropriations Resolution, 2003; P.L. 108-7, February 20, 2003, 117 Stat. 11, 473.

> records may continue to be disclosed to the extent and in the manner that records so collected, maintained, or obtained have been disclosed under 5 U.S.C. 552 prior to the date of the enactment of this Act.[73]

This provision was not included in subsequent appropriations laws. However, it too includes futurity language ("with respect to any fiscal year"), which appears to be intended to make it permanent law. It is noteworthy that the scope of subsequent Tiahrt provisos also prohibited all FOIA disclosures of trace data.

ATF S&E Proviso Seven: Dealer Inventory

For FY2004 through FY2013, Congress included a proviso in the ATF S&E appropriations language that prohibits the agency from using any appropriations to require federal firearms licensees to conduct inventories before an inspection.[74] This provision was also part of the FY2004 Tiahrt amendment. The language of this proviso is as follows:

> *Provided further*, That no funds made available by this or any other Act shall be expended to promulgate or implement any rule requiring a physical inventory of any business licensed under section 923 of title 18, United States Code.[75]

For FY2013, Congress included futurity language ("for any fiscal year thereafter") in this provision, which appears to have been intended to make it permanent law.[76] As part of its FY2014, FY2015, and FY2016 budget request, the Administration requested that this proviso be repealed. The Consolidated Appropriations Act, 2016 (P.L. 114-113) includes no provision that would change this appropriations limitation. Neither the Senate nor the House FY2017 CJS Appropriations bills (S. 2837 and H.R. 5393) included any provisions to repeal or change this limitation.

ATF S&E Proviso Eight: Out-of-Business Dealers' Records Searches

For FY1997 through FY2012, Congress included a proviso in the ATF S&E appropriations language that prohibits ATF from using appropriations to search computerized records of out-of-business FFLs.[77] Such records—the bound logs of firearms acquisitions and dispositions and ATF Form 4473s—are digitized for storage purposes and kept in a microform format for evidentiary purposes.[78] For FY2012, futurity language ("hereafter") was included in this proviso, which appears to be intended to make it permanent law (P.L. 112-55). The language of this provision is as follows:

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[73] Ibid.

[74] Consolidated Appropriations Act, 2004, P.L. 108-199, January 23, 2004, 118 Stat. 3, 53.

[75] Consolidated and Further Continuing Appropriations Act, 2012, P.L. 112-55, November 18, 2011, 125 Stat. 552, 610.

[76] Consolidated and Further Continuing Appropriations Act, 2013, P.L. 113-6, March 26, 2013, 127 Stat. 248.

[77] Omnibus Consolidated Appropriations Act, 1997, P.L. 104-208, September 30, 1996, 110 Stat. 3009, 3009-319, 18 U.S.C. 923 note.

[78] As part of any firearms transfer from a federal firearms licensee (FFL) to a private person, the Gun Control Act of 1968 (18 U.S.C. §921 et al.) requires them to fill out jointly an ATF Form 4473. In addition, the FFL is required to verify the purchaser's name, address, date of birth, and other information by examining a government-issued piece of identification, most often a driver's license. Among other things, the buyer (transferee) attests on the ATF Form 4473 that he is not a prohibited person, and that he is the "actual transferee/buyer."

> *Provided further,* That, hereafter, no funds made available by this or any other Act may be used to electronically retrieve information gathered pursuant to 18 U.S.C. 923(g)(4) by name or any personal identification code.[79]

ATF S&E Proviso Nine: Dealer License Denials for Lack of Business

For FY2004 and through FY2013, Congress included a proviso in the ATF S&E appropriations language that prohibits ATF from using appropriations to deny or renew a dealer license for lack of business.[80] This proviso was in response to ATF efforts during the Clinton Administration to reduce the number of individuals who arguably held federal firearms licenses simply for the sake of convenience, as opposed to the means to pursue their principal source of livelihood. Pro-gun control groups referred to such dealers as "kitchen table top dealers." It too was part of the FY2004 Tiahrt amendment. The language of this provision is as follows:

> *Provided further,* That no funds authorized or made available under this or any other Act may be used to deny any application for a license under section 923 of title 18, United States Code, or renewal of such a license due to a lack of business activity, provided that the applicant is otherwise eligible to receive such a license, and is eligible to report business income or to claim an income tax deduction for business expenses under the Internal Revenue Code of 1986.[81]

After 2013, this provision was not included in any subsequent appropriation, possibly because of the futurity language ("for any fiscal year thereafter") in P.L. 113-6, which appears to have been intended to make it permanent law.[82]

Other Stand-Alone Appropriations Provisions

Anti-Gun Walking Amendment

For FY2012 through FY2015, Congress has included a provision in the annual CJS appropriations acts that prohibits an investigative tactic known as "gun walking." As part of a flawed investigation known as "Operation Fast and Furious," the DOJ Office of the Inspector General found that ATF special agents did not act in a timely manner to arrest, or at least confront, suspected "straw purchasers"[83] and interdict the firearms they had purchased in multiple transactions from federally licensed gun dealers, when the agents arguably had a reasonable suspicion or probable cause to believe that they, the straw purchasers, were trafficking firearms illegally to known associates of Mexican drug trafficking organizations. Senator John Cornyn sponsored an amendment to the FY2012 CJS appropriations act that included a related provision

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[79] Ibid.

[80] Consolidated Appropriations Act, 2004, P.L. 108-199, January 23, 2004, 118 Stat. 3, 53.

[81] Ibid.

[82] Consolidated and Further Continuing Appropriations Act, 2013, March 26, 2013, 127 Stat. 248.

[83] A "straw purchase" occurs when an individual poses as the actual transferee, but he is actually acquiring the firearm for another person. In effect, he serves as an illegal middleman. As part of any firearms transfer from an FFL to a private person, the GCA requires them to fill out jointly an ATF Form 4473. In addition, the FFL is required to verify the purchaser's name, address, date of birth, and other information by examining a government-issued piece of identification, most often a driver's license. Among other things, the purchaser attests on the ATF Form 4473 that he is not a prohibited person, and that he is the "actual transferee/buyer." Hence, straw purchases are known as "lying and buying for the other guy." Straw purchases are illegal under two provisions of the GCA (18 U.S.C. §§922(a)(6) and 924(a)(1)(A)).

to prevent "gun walking." While the language of the Cornyn amendment was modified, the related FY2012 provision reads as follows:

> Sec. 219. None of the funds made available under this Act, other than for the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act, may be used by a Federal law enforcement officer to facilitate the transfer of an operable firearm to an individual if the Federal law enforcement officer knows or suspects that the individual is an agent of a drug cartel, unless law enforcement personnel of the United States continuously monitor or control the firearm at all times.[84]

For FY2015, Congress included this provision in the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235; §215). The Consolidated Appropriations Act, 2016 (P.L. 114-113) included this provision (also number §216). For FY2017, both the Senate and House Appropriations bills (S. 2837 and H.R. 5393) included this provision (§215 and §213, respectively). The House bill included futurity language (for fiscal year FY2017 and each fiscal year thereafter).

NICS Fee Prohibition and Next-Day Destruction of Records

For FY1999 through FY2012, Congress has included a provision in the annual CJS appropriations acts that prohibits the Department of Justice from using appropriations to levy a fee for firearms-related background checks under the National Instant Criminal Background Check System (NICS). This provision was crafted to counter a Clinton Administration proposal to levy a $5 fee for such checks. For FY2004 and every year thereafter, along with the fee prohibition, Congress has included a provision that requires the FBI to destroy background check records within 24 hours on persons who are eligible to receive firearms. This provision was originally part of the FY2004 Tiahrt amendment and was crafted in response to a 90-day audit log that was maintained by the FBI during the Clinton Administration for audit and other purposes. For FY2012, Congress inserted futurity language ("hereafter") in this provision. The language of this provision is as follows:

> Sec. 511. Hereafter, none of the funds appropriated pursuant to this Act or any other provision of law may be used for—
>
> (1) the implementation of any tax or fee in connection with the implementation of subsection 922(t) of title 18, United States Code; and
>
> (2) any system to implement subsection 922(t) of title 18, United States Code, that does not require and result in the destruction of any identifying information submitted by or on behalf of any person who has been determined not to be prohibited from possessing or receiving a firearm no more than 24 hours after the system advises a Federal firearms licensee that possession or receipt of a firearm by the prospective transferee would not violate subsection (g) or (n) of section 922 of title 18, United States Code, or State law.[85]

After FY2012, this provision was not included in any subsequent CJS appropriations, possibly because of the futurity language in P.L. 112-55, which appears to have been intended to make this provision permanent law.

[84] Ibid.

[85] Consolidated and Further Continuing Appropriations Act, 2012, P.L. 112-55, November 18, 2011, 125 Stat. 552, 632; 18 U.S.C. 922 note.

Trace Data Limitations and Caveats

This proviso was first included in the FY2004 CJS appropriations bill as part of the FY2004 Tiahrt amendment.[86] The language of this provision (originally number §516) is as follows:

> (a) Tracing studies conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives are released without adequate disclaimers regarding the limitations of the data.
>
> (b) The Bureau of Alcohol, Tobacco, Firearms and Explosives shall include in all such data releases, language similar to the following that would make clear that trace data cannot be used to draw broad conclusions about firearms-related crime:
>
> > (1) Firearm traces are designed to assist law enforcement authorities in conducting investigations by tracking the sale and possession of specific firearms. Law enforcement agencies may request firearms traces for any reason, and those reasons are not necessarily reported to the Federal Government. Not all firearms used in crime are traced and not all firearms traced are used in crime.
> >
> > (2) Firearms selected for tracing are not chosen for purposes of determining which types, makes, or models of firearms are used for illicit purposes. The firearms selected do not constitute a random sample and should not be considered representative of the larger universe of all firearms used by criminals, or any subset of that universe. Firearms are normally traced to the first retail seller, and sources reported for firearms traced do not necessarily represent the sources or methods by which firearms in general are acquired for use in crime.[87]

For FY2013, Congress included futurity language ("for FY2013 and thereafter") in this provision that appears to have been intended to make it permanent law.[88]

Firearms Parts Exports to Canada

Congress first included this provision in the FY2006 Science, State, Justice, Commerce, and Related Agencies Appropriations Act to prohibit the use of funds provided under this act to require certain export licenses.[89] This provision was a congressional response to new regulations promulgated during the Clinton Administration (1999) that were based on the Organization of American States (OAS) Model Regulations for the Control of the International Movement of Firearms. As a result of the export licensing provisions in these regulations, it arguably became cost prohibitive for a Canadian resident to acquire certain firearms parts from U.S. gun dealers. Hence, this provision (originally number §520) makes certain firearms parts exempt from some, but not all export licensing requirements.

> (a) Notwithstanding any other provision of law or treaty, none of the funds appropriated or otherwise made available under this Act or any other Act may be expended or obligated by a department, agency, or instrumentality of the United States to pay administrative expenses or to compensate an officer or employee of the United States in connection with requiring an export license for the export to Canada of components,

[86] Consolidated Appropriations Act, 2004, P.L. 108-199, January 23, 2004, 118 Stat. 3, 53.

[87] Consolidated and Further Continuing Appropriations Act, 2012, P.L. 112-55, November 18, 2011, 125 Stat. 552, 633.

[88] Consolidated and Further Continuing Appropriations Act, 2013, P.L. 113-6 (§514), November 26, 2013; 127 Stat. 271.

[89] Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, P.L. 109-108, November 22, 2005, 119 Stat. 2290, 2343-2344.

> parts, accessories or attachments for firearms listed in Category I, section 121.1 of title 22, Code of Federal Regulations (International Trafficking in Arms Regulations (ITAR), part 121, as it existed on April 1, 2005) with a total value not exceeding $500 wholesale in any transaction, provided that the conditions of subsection (b) of this section are met by the exporting party for such articles.
>
> (b) The foregoing exemption from obtaining an export license—
>
> (1) does not exempt an exporter from filing any Shipper's Export Declaration or notification letter required by law, or from being otherwise eligible under the laws of the United States to possess, ship, transport, or export the articles enumerated in subsection (a); and
>
> (2) does not permit the export without a license of–(A) fully automatic firearms and components and parts for such firearms, other than for end use by the Federal Government, or a Provincial or Municipal Government of Canada; (B) barrels, cylinders, receivers (frames) or complete breech mechanisms for any firearm listed in Category I, other than for end use by the Federal Government, or a Provincial or Municipal Government of Canada; or (C) articles for export from Canada to another foreign destination.
>
> (c) In accordance with this section, the District Directors of Customs and postmasters shall permit the permanent or temporary export without a license of any unclassified articles specified in subsection (a) to Canada for end use in Canada or return to the United States, or temporary import of Canadian-origin items from Canada for end use in the United States or return to Canada for a Canadian citizen.
>
> (d) The President may require export licenses under this section on a temporary basis if the President determines, upon publication first in the Federal Register, that the Government of Canada has implemented or maintained inadequate import controls for the articles specified in subsection (a), such that a significant diversion of such articles has and continues to take place for use in international terrorism or in the escalation of a conflict in another nation. The President shall terminate the requirements of a license when reasons for the temporary requirements have ceased.[90]

This provision was included in the Consolidated and Continuing Appropriations Act, 2015 (P.L. 113-235, §517). For FY2013 through FY2016, the House Committee on Appropriations included futurity language in its versions of that provision, but such language was not included in any of the enacted appropriations laws for those fiscal years. Section 517 of the Consolidated Appropriations Act, 2016 (P.L. 114-113) continued to prohibit the use of funds in that act to require export licenses for the purposes described above. For FY2017, both the Senate and House CJS Appropriations bills (S. 2837 and H.R. 5393) included this provision (§517 and §516, respectively). The House bill included futurity language (in fiscal year 2017 and each fiscal year thereafter).

Curios and Relics Imports

Congress first included this provision in the FY2006 Science, State, Justice, Commerce, and Related Agencies Appropriations Act to prohibit the use of funds in this act to deny certain import applications.[91] The language of this provision (originally numbered §521) is as follows:

[90] Consolidated and Further Continuing Appropriations Act, 2012; P.L. 112-55, November 18, 2011, 125 Stat. 552, 634-635.

[91] Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, P.L. 109-108, November 22, 2005, 119 Stat. 2290, 2344.

> Notwithstanding any other provision of law, no department, agency, or instrumentality of the United States receiving appropriated funds under this Act or any other Act shall obligate or expend in any way such funds to pay administrative expenses or the compensation of any officer or employee of the United States to deny any application submitted pursuant to 22 U.S.C. 2778(b)(1)(B) and qualified pursuant to 27 CFR section 478.112 or .113, for a permit to import United States origin "curios or relics" firearms, parts, or ammunition.[92]

This provision was included in the Consolidated and Continuing Appropriations Act, 2015 (P.L. 113-235; §517). For FY2013 through FY2015, the House Committee on Appropriations included futurity language in its version of that provision, but such language was not included in any of the enacted appropriations laws for those fiscal years. Section 518 of the Consolidated Appropriations Act, 2016 (P.L. 114-113) continued to prohibit the use of funds in that act to deny import applications for "curios or relics" firearms, parts, or ammunition. For FY2017, both the Senate and House CJS Appropriations bills (S. 2837 and H.R. 5393) included this provision (§518 and §517, respectively). The House provision included futurity language (in fiscal year 2017 and each fiscal year thereafter).

Shotgun Imports

Congress first included this provision in the FY2012 CJS appropriations law in response to an ATF study, which characterized certain shotguns as "non-sporting," because they include certain "military-style" features (e.g., pistol grips, folding or collapsible stocks, laser sights, as well as the ability to accept large capacity ammunition feeding devices).[93] The language of this provision (originally number §541) is as follows:

> None of the funds made available by this Act may be used to pay the salaries or expenses of personnel to deny, or fail to act on, an application for the importation of any model of shotgun if—
>
> (1) all other requirements of law with respect to the proposed importation are met; and
>
> (2) no application for the importation of such model of shotgun, in the same configuration, had been denied by the Attorney General prior to January 1, 2011, on the basis that the shotgun was not particularly suitable for or readily adaptable to sporting purposes.[94]

This provision was included in the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235; §533). For FY2013 through FY2015, the House Committee on Appropriations included futurity language in its version of this provision, but such language was not included in any of the enacted appropriations laws for those fiscal years. Section 532 of the Consolidated Appropriations Act, 2016 (P.L. 114-113) continued to prohibit the use of funds provided in that act from being used to deny the importation of certain shotgun models on the basis that the shotgun was not particularly suitable for or readily adaptable to sporting purposes For FY2017, both the Senate and House CJS Appropriations bills (S. 2837 and H.R. 2578)

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[92] Consolidated and Further Continuing Appropriations Act, 2012, P.L. 112-55, November 18, 2011, 125 Stat. 552, 635.

[93] U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Firearms and Explosives Industry Division, *ATF Study on the Importability of Certain Shotguns*, January 2011, http://www.atf.gov/firearms/industry/january-2011-importability-of-certain-shotguns.pdf.

[94] Consolidated and Further Continuing Appropriations Act, 2012, P.L. 112-55, November 18, 2011, 125 Stat. 552, 639-640.

included this provision (§ 531 and § 530, respectively). The House provision included futurity language (for fiscal year 2017 and each fiscal year thereafter).

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