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## U.S. Gun Policy: Framework and Major Issues

Recent Congresses have enacted legislation modifying certain aspects of the existing federal regulatory regime on firearms and have considered a range of other proposals. The 2022 Bipartisan Safer Communities Act (BSCA) made several changes to federal firearms law, some of which are described below. Recent Congresses have also proposed legislation that sought to ease some firearm restrictions or would have facilitated state reciprocity for persons authorized to carry firearms by other states. Other proposals introduced during recent Congresses sought greater restrictions on federal rules concerning the possession, transfer, or sale of firearms or the expansion of background checks for firearm purchases. These various approaches prompt debate about not only their pros and cons but also their legalities, as Congress's ability to legislate on such matters must comport with constitutional constraints.

### Federal Statutory Framework

Federal laws regulating firearms generally serve as a baseline for permissible firearm use and transactions, leaving states free to supplement federal law with additional policies so long as they do not conflict with federal law.

Two primary federal statutory regimes govern the transfer, sale, and possession of firearms: the National Firearms Act of 1934 (NFA; 26 U.S.C. Chapter 53) and the Gun Control Act of 1968 (GCA; 18 U.S.C. Chapter 44), as amended. The Department of Justice's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) is the principal agency charged with administering these laws.

Through a taxation and registration system, the NFA generally limits the availability of covered weapons, including short-barreled shotguns and rifles, fully automatic "machineguns," silencers, "destructive devices" (e.g., certain bombs, grenades, rockets, and other items), and a catchall category covering "any other weapon" that is "capable of being concealed on the person from which a shot can be discharged through the energy of an explosive." NFA-covered firearms and their owners must be registered with the U.S. Attorney General at any point a firearm changes ownership in the chain of commerce. P.L. 119-21 reduced NFA-required taxes to \$0 for covered weapons other than machineguns and destructive devices.

The GCA sets forth requirements concerning the sale, purchase, and possession of firearms. For instance, persons "engaged in the business" of manufacturing, importing, or selling GCA- or NFA-covered firearms must receive federal licenses from the U.S. Attorney General. These federal firearms licensees (FFLs) must conduct background checks of non-FFL prospective buyers and maintain records on all commercial firearms sales. The GCA also generally limits non-FFLs to purchasing firearms within their states

of residence, except for long guns sold face-to-face by an FFL when the sale is considered lawful by the purchaser's state of residence and the FFL's state of business.

The GCA lists categories of persons who are barred from shipping, transporting, receiving, or possessing firearms or ammunition: those convicted of a crime punishable by imprisonment for a term exceeding one year; fugitives from justice; unlawful users of controlled substances; persons "adjudicated as a mental defective" or who have been committed to mental institutions; unlawfully present aliens or aliens holding non-immigrant visas; those dishonorably discharged from the U.S. Armed Forces; those who have renounced their U.S. citizenship; and persons subject to certain court orders relating to domestic violence or who have committed domestic violence misdemeanors. With limited exceptions, the GCA also bars juveniles from possessing handguns.

Pursuant to GCA amendments in the Brady Handgun Violence Prevention Act of 1993 (P.L. 103-159), the Federal Bureau of Investigation activated the National Instant Criminal Background Check System (NICS) in 1998. NICS is a computer "system of systems" that queries federal, state, local, tribal, and territorial records that could indicate that a prospective customer is ineligible to receive a firearm. FFLs must use NICS to conduct required background checks on non-FFL prospective firearm purchasers. P.L. 110-198 and P.L. 115-141 strengthened federal reporting requirements and encouraged states to make certain records accessible to NICS. More than 500 million background check transactions have been processed through NICS since 1998.

### Selected Firearm Policy Issues

#### Background Checks

Non-FFLs are able to transfer a firearm to another party without conducting a background check, though federal requirements for who is and is not required to be licensed have changed in recent years (and state law may impose additional requirements). Some view non-FFLs' ability to engage in firearms transfers, without being required to adhere to the GCA's background check requirements, as a "loophole." Opponents of this view contend that expanding background checks would be costly and ineffective. Proposals to expand background checks vary in comprehensiveness, ranging from covering sales by non-FFLs at gun shows to broader requirements applicable to nearly all private-party firearms transfers. The 2022 BSCA amended GCA definitions related to who is considered "engaged in the business" of dealing firearms and required to obtain a license and comply with other requirements like conducting background checks. The legislation clarified

that certain dealers must obtain a license even if firearm sales are not connected to their “livelihood.”

### Concealed Carry

Firearms regulations vary considerably from state to state, and activities lawful in one jurisdiction may be barred in another. Recent Congresses have considered proposals addressing state laws governing when someone may carry a firearm in a concealed manner in public. These proposals generally provide that if a state allows residents to carry concealed weapons in some circumstances, the state must honor the concealed-carry privilege given by other states.

### Detering “Straw Purchases” and Gun Trafficking

Under the GCA, whenever an unlicensed person seeks to acquire a firearm from an FFL, both the FFL and prospective purchaser must truthfully fill out and sign a form verifying the purchaser’s identity. The purchaser also attests under criminal penalty that he or she is not a prohibited person and is the “actual buyer.” For a number of years, various legislative proposals sought to deter “straw purchases”—firearm purchases made on behalf of a prohibited person—by heightening applicable criminal penalties or expanding their reach. The BSCA more explicitly prohibits straw purchases and illegal gun trafficking and establishes heightened penalties for those offenses. A 2024 Commerce Department interim final rule also amended firearm export requirements in an effort to address international firearm trafficking.

### Modifying Ineligibility Rules and Restrictions on Types of Firearms and Accessories

Recent Congresses have enacted legislation addressing several aspects of firearms eligibility that had long been the subject of legislative proposals, while the regulatory landscape regarding restrictions on types of firearms and accessories has shifted. Legislative proposals often raise questions regarding the scope and temporal nature of restrictions (i.e., narrowed versus expanded, and permanent versus temporary), as well as how certain grounds for restriction or ineligibility should be established.

For example, the Consolidated Appropriations Act, 2024 (P.L. 118-42), extended through FY2025, prohibits the Department of Veterans Affairs (VA) from expending appropriated funds to report any person to NICS based on mental incompetency without “an order or finding from a judge, magistrate, or other judicial authority of competent jurisdiction that the beneficiary is a danger to themselves or others.” Since the passage of this legislation, the VA has reported significantly fewer individuals to NICS under 18 U.S.C. § 922(g)(4) compared to previous years.

Separately, the BSCA extended federal grant funding to support implementation of some state “red flag” or “extreme risk protection order” (ERPO) laws that authorize the temporary removal of firearms from persons believed to be dangerous to themselves or others. Other proposals would establish a federal ERPO regime, provide further funding for state and local efforts, or seek to prohibit federal funding of such programs. In April 2025, the Department of Justice and the Department of Education began terminating some BSCA-related grants.

The BSCA also addressed the GCA’s restriction on firearm receipt and possession by persons convicted of misdemeanor crimes of domestic violence, which had been the subject of numerous proposals over several Congresses. The act modified relevant definitions to encompass crimes related to persons in more casual dating relationships, with limitations. Additional proposals would, among other things, expand definitions related to the firearm possession prohibition for persons subject to certain domestic violence restraining orders.

Additionally, Biden-era ATF regulatory actions restricting “bump stock” devices (which accelerate the firing rate of a semiautomatic rifle) and pistol stabilizing braces have run aground in court, while the Supreme Court upheld a rule seeking to facilitate the traceability of so-called “ghost guns” (which lack identifying markings) and weapons parts kits. Some legislative proposals have sought to codify or limit parts of these rules.

### Constitutional Considerations

Congress has broad, but not unlimited, constitutional authority to regulate firearms. While some federal firearm laws have found constitutional support in Congress’s taxing power, most federal firearm laws derive from the Commerce Clause. Congress’s authority over interstate commerce confers wide latitude to regulate the interstate sale of firearms. Moreover, the Supreme Court, most notably in *United States v. Lopez*, 514 U.S. 549 (1994), has recognized that the Commerce Clause permits Congress to regulate firearms activity occurring wholly within a state when that activity has, in the aggregate, “substantial economic effect” on interstate commerce. Still, *Lopez* recognized that the Commerce Clause does not authorize federal regulation of all wholly intrastate firearms activity, opining, for example, that a general federal interest in reducing localized gun violence does not have a sufficient commercial nexus. Congress also could use its spending powers to condition or make available federal money to states that pursue firearms measures beyond the reach of the federal statute. Congress’s ability to compel or coerce state firearms activity is subject to federalism limitations.

Constitutional rights guaranteed to individuals are also relevant. The Supreme Court has ruled that the Second Amendment preserves an individual right to possess a firearm and use it for traditionally lawful purposes, such as self-defense. To justify a regulation of conduct protected by the Second Amendment, the government must demonstrate that the regulation is consistent with a historical tradition of firearm regulation. As such, some gun laws have been the focus of ongoing constitutional challenges, and congressional proposals to expand federal firearms restrictions may need to account for the implications of the Second Amendment. Other constitutional considerations, such as those involving due process principles, also may be relevant to measures affecting individuals’ eligibility to acquire and possess firearms.

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