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# **Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF): FY2016 Appropriations**

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## Summary

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. 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. Congress funds the ATF through an annual appropriation in the Commerce, Justice, Science (CJS), and Related Agencies Appropriations Act, because it is a component of the Department of Justice (DOJ).

For FY2016, the Administration requested \$1.261 billion for ATF, an increase of 5.3%. This proposed net increase of \$63.4 million over ATF's FY2015 appropriation includes \$8.1 million to “address deficiencies in Investigative Support Services,” which include increased application workloads—principally for suppressors—under the National Firearms Act (NFA) of 1934 and increased firearms trace requests under the Gun Control Act (GCA) of 1968. It also includes \$30.2 million for “staffing restoration” and \$25.1 million in other “base adjustments.”

On May 27, 2015, the House Committee on Appropriations reported an FY2016 CJS appropriations bill (H.R. 2578). This version of the bill would have provided ATF with \$1.25 billion for FY2016. Within this amount, House report language indicated that ATF should be able to:

- meet its critical staffing requirements;
- improve its capacity to process NFA applications and service requests; and
- sustain the updating and expansion of the National Integrated Ballistics Information Network (NIBIN).

NIBIN is computer system that allows law enforcement agencies to share high definition, digital images of bullets and shell casings recovered at crime scenes, so that striations on bullets and hammer and ejector makings on shell casings can be matched microscopically in a manner similar to latent fingerprint matching. In addition, the report language directs ATF to provide an updated analysis of gun trafficking patterns, including Internet-based markets, criminal sources of firearms, and the value of crime gun tracing. During House consideration of H.R. 2578, several amendments were adopted, two of which reduced the funding in the bill by \$10 million (\$5 million apiece) to \$1.24 billion. Other amendments addressed recent ATF efforts to regulate “armor piercing” ammunition, NFA trusts, and Southwest border multiple rifle sales reporting.

On June 16, 2015, the Senate Committee on Appropriations reported its version of the FY2016 CJS appropriations bill (H.R. 2578, as amended) that would provide ATF with \$1.201 billion for FY2016, the same amount Congress appropriated for ATF for FY2015 (excluding a \$3.2 million rescission). Senate report language specifically noted that this amount would be adequate to continue NIBIN, but did not address ATF staffing or application workloads. Senate report language continued to direct ATF to report to the committee on the number of firearms recovered by, and traced for, the Government of Mexico. In addition, Senate report language lauded ATF for co-locating the U.S. Bomb Data Center with the National Center for Explosives Training and Research (NCETR), and noted that DOJ directed all its component agencies to use the ATF Bomb Arson Tracking System to document explosives-related incidents.

This report includes an Appendix that provides a legislative history for several ATF funding limitations related to gun control, most of which included “futility” language that appears to be intended to make them permanent law.

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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. 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. Congress funds the ATF through an annual appropriation in the Commerce, Justice, Science (CJS), and Related Agencies Appropriations Act, because it is a component of the Department of Justice (DOJ).<sup>1</sup>

ATF's relationship with the firearms industry and gun-owning public has been strained, even adversarial, and this has been a perennial source of controversy.<sup>2</sup> In the last several years, ATF has become embroiled in several controversies related to its mishandling of firearms-related criminal investigations, such as a Southwest border gun trafficking operation that allowed hundreds of firearms to be smuggled to Mexico<sup>3</sup> and an undercover store front operation in Wisconsin that allegedly involved the exploitation of disabled individuals in minority communities.<sup>4</sup>

Gun control advocates, conversely, maintain that Congress has not provided ATF with adequate funding and has placed undue conditions on the funding it has provided the agency.<sup>5</sup> As discussed in this report, ATF's FY2016 budget justification asserts that the agency does not have enough resources to monitor the firearms industry, nor conduct routine firearms traces for other law enforcement agencies. As one option, Congress may want to assess whether ATF is properly balancing its administrative (regulatory) and enforcement missions, given recent decreases in firearms-related violent crime and ongoing budget constraints.

## FY2016 ATF Request

In its *Congressional Budget Submission, Fiscal Year 2016*, ATF enumerated three overarching challenges to justify its \$1.261 billion request. Those challenges include the following:

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<sup>1</sup> 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 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 transfer to DOJ on January 24, 2003, under P.L. 107-296.

<sup>2</sup> Ted R. Bromund, "Why Firearms Makers Are So Worried Even as the Second Amendment Is Stronger than Ever," *National Review*, January 27, 2015, <http://www.nationalreview.com/article/397250/why-firearms-makers-are-so-worried-even-second-amendment-stronger-ever-ted-r-bromund>.

<sup>3</sup> U.S. Congress, House Committee on Oversight and Government Reform, *Operation Fast and Furious: Management Failures at the Department of Justice*, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 2, 2012, HRG-2012-CGR-0001 (Washington: GPO, 2012), 219 pp.

<sup>4</sup> U.S. Congress, House Committee on Oversight and Government Reform, *Undercover Storefront Operations: Continued Oversight of ATF's Reckless Investigative Techniques*, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 2, 2014, Serial No. 113-151 (Washington: GPO, 2015), 95 pp.

U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations, *Bureau of Alcohol, Tobacco, Firearms and Explosives' Use of Storefront Operations*, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 27, 2014, HRG-2014-HJH-0009 (Washington: GPO, 2014), 29 pp.

<sup>5</sup> Alan Berlow, "Current Gun Debate May Not Help Beleaguered ATF: Agency Crippled by Weak Laws, Paltry Budgets and Congressional Restrictions," *Center for Public Integrity*, updated May 19, 2014, <http://www.publicintegrity.org/2013/02/11/12155/current-gun-debate-may-not-help-beleaguered-atf>.

1. future attrition and retirement of ATF special agents and support staff;
2. maintaining productivity in the face of increased workloads in both areas, ATF “law enforcement operations” and “investigative support services”; and
3. an urgent need to provide accurate intelligence data and to expand law enforcement capabilities to combat violent crime, including active/mass shooter incidents.<sup>6</sup>

As shown in **Table 1**, the Administration requested \$1.261 billion for ATF for FY2016, an increase of 5.3%. This proposed net increase of \$63.4 million over ATF’s FY2015 appropriation includes \$8.1 million to “address deficiencies in Investigative Support Services,” which include increased application workloads under the National Firearms Act (NFA) of 1934 and increased firearms trace requests under the Gun Control Act (GCA) of 1968.<sup>7</sup> It also includes \$30.2 million for “staffing restoration” and \$25.1 million in other “base adjustments.”

**Table 1. ATF FY2015 Enacted Appropriation, FY2016 Base Budget, and FY2016 Budget Request**

(Dollars in thousands)

	FY2015 Enacted Appropriation			FY2016 Base Budget (Estimated Current Services)			FY2016 Budget Request		
	Positions <sup>a</sup>	FTE <sup>b</sup>	Amount	Positions <sup>a</sup>	FTE <sup>b</sup>	Amount	Positions <sup>a</sup>	FTE <sup>b</sup>	Amount
LEO <sup>c</sup>	4,305	4,118	1,013,524	4,305	4,305	1,064,291	4,305	4,305	1,064,291
ISS <sup>d</sup>	796	762	187,476	796	796	188,732	806	801	196,867
Subtotal	5,101	4,880	1,201,000	5,101	5,101	1,253,023	5,111	5,106	1,261,158
Res-cission			-3,200						
Total	5,101	4,880	1,197,800	5,101	5,101	1,253,023	5,111	5,106	1,261,158

**Source:** CRS presentation of ATF funding and staffing data presented in Bureau of Alcohol, Tobacco, Firearms and Explosives, *Congressional Budget Submissions, Fiscal Year 2016*.

- a. Positions are “permanent positions.”
- b. FTE=Full-Time Equivalent. 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.

**Table 1** also shows breakouts for the ATF FY2015 enacted budget, FY2016 base budget (current services), and FY2016 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.

<sup>6</sup> U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *ATF Congressional Budget Submission, Fiscal Year 2016*, February 2016, p. 10.

<sup>7</sup> These statutes are codified as amended at 26 U.S.C. §5801 et seq. and 18 U.S.C. Chapter 44, §921 et seq.

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 1**, 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.<sup>8</sup> 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.<sup>9</sup>

**Table 1** and **Table 2** also show that the anticipated FY2015 FTE level funded through appropriations is 4,880 and the requested FY2016 FTE level is 5,106, or a net increase of 226 FTEs. **Table 1** and **Table 2** show the permanent positions associated with the funded FTE, of which five FTEs are associated with the requested additional 10 permanent positions for FY2016. The \$30.2 million for “staffing restoration” includes funding to “restore” another 221 FTEs not associated with new positions, for a net increase of 226 FTE, but only 10 permanent positions. According to ATF, the need to restore the 221 FTEs was exacerbated by a three-year, DOJ-wide hiring freeze.<sup>10</sup>

The \$25.1 million for “base adjustments” essentially represents the estimated level of resources that ATF projects would be needed for upcoming fiscal year (FY2016) to provide the same level of services that it anticipates providing during the current fiscal year (FY2015).

**Table 2. ATF Appropriations and Staffing, FY2012-FY2015, and FY2016 Request**  
(Dollars in thousands)

Fiscal Year	Appropriation(s)	Full-Time Equivalents (FTEs) <sup>a</sup>	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	4,880	5,101
2016 Request	\$1,261,158	5,106	5,111

**Source:** CRS presentation of ATF funding and staffing data presented in Bureau of Alcohol, Tobacco, Firearms and Explosives, *Congressional Budget Submissions, Fiscal Years 2012-2016*.

- 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.

In addition, for FY2016, the Administration requests that ATF’s authority to participate in a personnel management demonstration project be terminated.<sup>11</sup> This demonstration project has allowed ATF to provide some employees with retention pay to compensate them for pay caps that

<sup>8</sup> See CRS Report R43509, *Commerce, Justice, Science, and Related Agencies: FY2015 Appropriations*, coordinated by Nathan James, Jennifer D. Williams, and John F. Sargent Jr., p. 40.

<sup>9</sup> According to the Government Accountability Office, from 2003 to 2013, ATF data showed that firearms investigations accounted for 87% of all agency investigations; arson and explosives 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.

<sup>10</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives, *Congressional Budget Submission, Fiscal Year 2016*, February 2016, p. 6.

<sup>11</sup> *Ibid*, pp. 16-17. See 28 U.S.C. §599B.

are otherwise required under federal law.<sup>12</sup> In lieu of the demonstration project, ATF is seeking permanent legislative authority to compensate several of those employees.<sup>13</sup>

**Table 3** shows ATF permanent positions by selected Office of Personnel Management (OPM) job series for fiscal years 2012-2015, for which Congress appropriated funding, and the Administration’s FY2016 request. For example, special agents (criminal investigators—OPM job series 1811), who are authorized to make arrests and carry firearms, would account for nearly half of the permanent positions under the FY2016 request. Industry Operations Investigators (inspectors—OPM job series 1801), who are not authorized to make arrests or carry a firearm, would account for 16.3% 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<sup>14</sup> and the three-year DOJ hiring freeze noted above. 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 10 additional positions for FY2016 are for “other” positions.

**Table 3. 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 Request	2,485	834	180	81	1,531	5,111

**Source:** CRS presentation of ATF staffing data presented in Bureau of Alcohol, Tobacco, Firearms and Explosives, *Congressional Budget Submissions, Fiscal Years 2012-2016*.

### Curios and Relics, Dealer Inventories, and Appropriations Limitations

For FY2016, the Administration requests 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

- alter the regulatory definition of “curios and relics,”<sup>15</sup> and

<sup>12</sup> See 5 U.S.C. §5304(g)(1).

<sup>13</sup> The Senate-reported FY2016 CJS appropriations bill (H.R. 2578) includes a provision to grant ATF such authority (§206). The House-passed H.R. 2578 does not. Instead, the House provision is identical to the provision included in the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235) and would extend ATF’s authority to participate in the existing personnel management demonstration project through FY2016 (§206).

<sup>14</sup> 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.

<sup>15</sup> 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 (continued...)

- require federally licensed gun dealers to conduct physical inventories.<sup>16</sup>

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, because Congress included “futurity” language in either FY2012 or FY2013, after gun control advocacy groups called for their elimination, because these provisos were viewed by some as unduly constraining ATF efforts to monitor firearms-related commerce.

## **Monitoring Increasing Firearms Commerce**

ATF has maintained that the agency cannot meet its goal of inspecting every federal firearms licensee (FFL) for compliance on a three-year cycle.<sup>17</sup> The Administration, moreover, has maintained that the ATF has been hamstrung by appropriations limitations listed in the **Appendix** to this report, an increase in the number of FFLs, and a surge in firearms-related commerce.<sup>18</sup> For FY2014, for example, ATF reported that it could only conduct 10,000 FFL compliance inspections, a 24% decrease from the previous year, and only 7% of the FFL population.<sup>19</sup>

Meanwhile, for FY2015, ATF reports that it has allocated \$1.014 billion (84.6%) of its \$1.198 billion appropriation under its “law enforcement operations” budget decision unit. ATF proposes allocating a similar percentage (84.4%) for FY2016 for this budget decision unit. This means that less than 16% 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.

While ATF has traditionally allocated a greater share of its resources towards its enforcement mission over its regulatory (administrative) mission, the emphasis on enforcement over

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(...continued)

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 <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.

<sup>16</sup> 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.

<sup>17</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives, *Congressional Budget Submission, Fiscal Year 2016*, February 2016, p. 11.

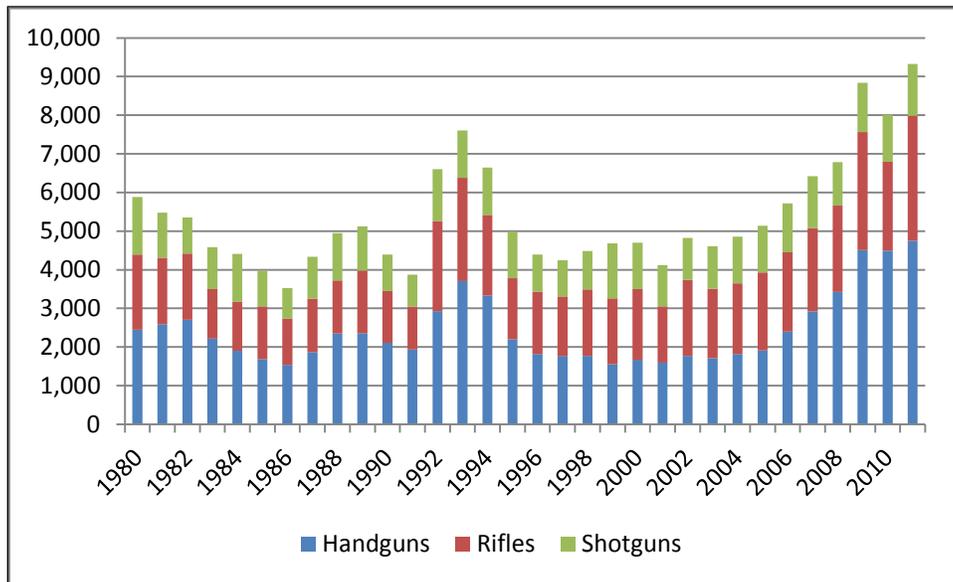
<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

administration might have arguably 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 permit holders.

In addition, **Figure 1** illustrates the net annual increase in the U.S. civilian gun stock, which has fluctuated over the 32-year period (1980-2011). Nevertheless, in 2003, the net annual increase in the U.S. civilian gun stock was a little less than 5 million additional firearms. Since 2003, the net annual increase has generally grown. By 2011, the net annual increase in the civilian gun stock was more than 9 million 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 1. Net Annual Increases in U.S. Civilian Gun Stock (1980-2011)**  
(Firearms in thousands)



**Source:** Bureau of Alcohol, Tobacco, Firearms and Explosives publications: *Commerce in Firearms in the United States* (February 2000); *Firearms Commerce Reports, 2012*; and *Annual Firearms Manufacturing and Exportation Report, 2013*.

**Notes:** Does not include certain pistol grip firearms, starter guns, and firearms frames and receivers, which generally fall under a category labeled “miscellaneous” by ATF.

### National Firearms Act (NFA) and Firearms Suppressor Applications

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. Many of these weapons were considered particularly lethal and often the weapons of choice of “gangsters” during the prohibition era (1919-1933).

In its *Congressional Budget Submission, Fiscal Year 2016*, ATF reports that 39 states have recently relaxed laws on silencers (suppressors), and 32 states now allow the use of suppressors

for hunting and other forms of recreational shooting.<sup>20</sup> According to the American Suppressor Association, since 2011:

- 15 states have legalized suppressors for hunting, bringing the total number of states allowing such activities to 37;
- 13 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
- two states have legalized suppressor ownership.<sup>21</sup>

Nine states currently prohibit civilian ownership of suppressors.<sup>22</sup> These changes in state law governing suppressors have led to an increase in workload for ATF.<sup>23</sup>

### **Firearms Tracing and Appropriations Limitations**

Under the GCA, ATF regulates the manufacturing, importing, and selling of firearms as a business to be federally licensed. Federally licensed gun dealers are commonly referred to as federal firearms licensees, or FFLs. The GCA prohibits the interstate mail-order transfer of all firearms and interstate transfer of handguns generally (except by FFLs). It sets forth categories of persons to whom firearms or ammunition may not be sold, such as persons under a specified age or with criminal records. It also requires FFLs to maintain records of all commercial gun sales.

Although the United States does not maintain a registry of firearms or firearm owners (except for NFA weapons, like machineguns, short-barreled shotguns, and silencers), under ATF direction, FFLs maintain a decentralized system of transaction records, through which ATF can sometimes trace a firearm from its manufacturer or importer to its first private owner of record. Over the years, successful firearm traces have generated leads in criminal investigations and have generated data that illustrate wider illegal trafficking trends and patterns. During 2004, ATF processed about 259,000 trace requests.<sup>24</sup> During FY2012, ATF processed about 341,000 trace requests for domestic and international law enforcement agencies.<sup>25</sup>

The release of raw, unfiltered firearms trace data to the public has been the source of controversy in the past, especially when the identities of federally licensed gun dealers who might not have broken any law are released. Congress has placed a limitation on ATF concerning the release of firearms trace data through legislative language in the salaries and expenses account and in a stand-alone provision that requires ATF to include data caveats in any trace data reports. As described in the **Appendix** to this report, Congress included “futurity” language in those provisions for FY2012 in the former case and for FY2013 in the latter case that appears to make those provisions permanent law.

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<sup>20</sup> Ibid, p. 12.

<sup>21</sup> American Suppressor Association, <http://americansuppressorassociation.com/education/>.

<sup>22</sup> Ibid.

<sup>23</sup> Under 18 U.S.C. §921(a)(24), the terms “firearm silencer” and “firearm muffler” mean any device for silencing, 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.

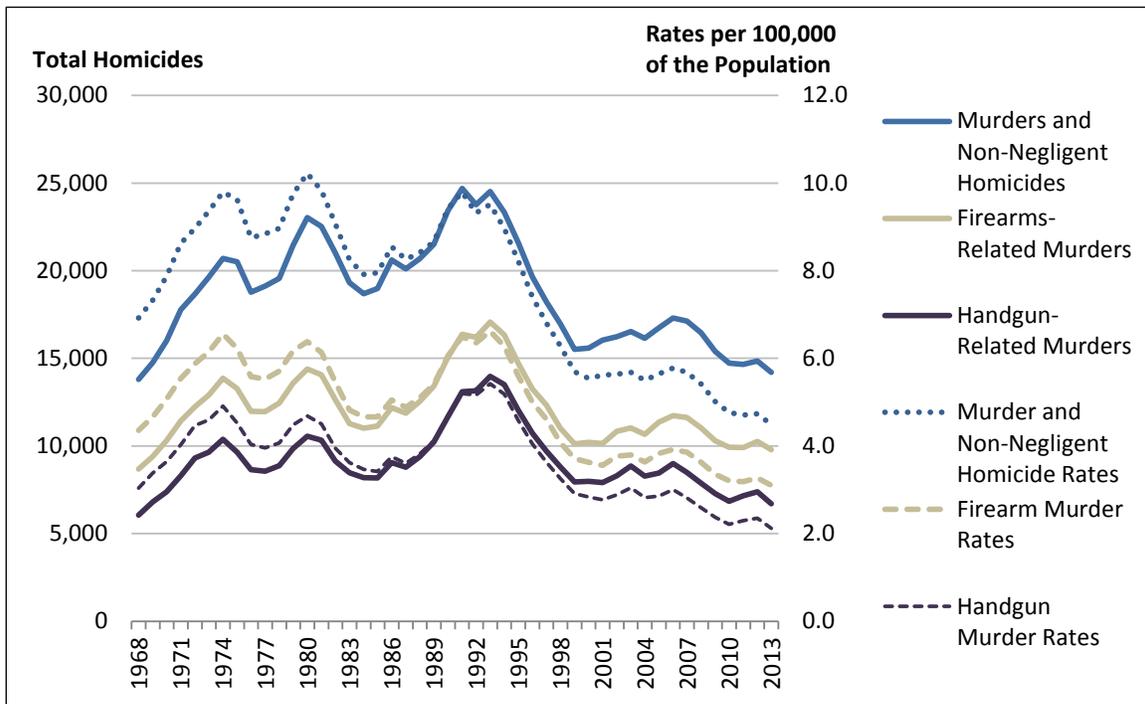
<sup>24</sup> Bureau of Alcohol, Firearms, Tobacco and Explosives, *Congressional Budget Submission, Fiscal Year 2016*, February 2016, p. 26.

<sup>25</sup> Ibid.

## Violent Firearms-Related Crime Trending Downward

In its *Congressional Budget Submission, Fiscal Year 2016*, ATF cited incidents of murder and non-negligent homicide, robbery, and aggravated assault committed with a firearm in calendar year 2012.<sup>26</sup> As **Figure 2** shows, two-thirds of murders are committed with firearms and one-half of homicides are committed with handguns. Yet homicide rates, whether with or without firearms, were lower from about 1999 through 2013 than they were in 1968. During the same years, estimated firearms-related robberies and aggravated assaults have decreased similarly. If violent crime committed with firearms should continue to trend downward, Congress could consider whether ATF should allocate greater resources towards its regulatory mission as one cost-saving measure. In this way, ATF would be better positioned to regulate and monitor legitimate firearms and explosives commerce, while possibly producing improved intelligence on gun trafficking, criminal use of explosives, and related violent crime.

**Figure 2. Estimated Firearms-Related Murders and Non-negligent Homicides (1968-2003)**



Source: Federal Bureau of Investigation, *Uniform Crime Reports*.

## Mass Shootings, Mass Murder, and Mass Public Shootings<sup>27</sup>

ATF also called attention to “mass shootings” in public spaces such as movie theaters, shopping malls, government facilities, schools, and universities.<sup>28</sup> ATF underscored that mass shootings

<sup>26</sup> U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *ATF Congressional Budget Submission, Fiscal Year 2016*, February 2016, p. 10.

<sup>27</sup> For further information, see CRS Report R44126, *Mass Murder with Firearms: Incidents and Victims, 1999-2013*, by William J. Krouse and Daniel J. Richardson.

<sup>28</sup> U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *ATF Congressional Budget* (continued...)

have become a preeminent public safety concern and have increased the need for its core law enforcement competencies.<sup>29</sup>

In the wake of the tragedy in 2012 in Newtown, CT, Congress defined “mass killings” to mean “3 or more killings in a single incident” (P.L. 112-265; January 14, 2013). Although that definition does not make reference to a weapon, homicides have been traditionally classified by victim counts (or thresholds) as follows:<sup>30</sup>

*A single homicide* is one victim slain in one event.

*A double homicide* is two victims slain, in one event, in one location.

*A triple homicide* is three victims slain, in one event, in one location.

*A mass murder* is four or more victims slain, in one event, in one location.<sup>31</sup>

*A spree murder* is two or more murder victims slain, in one event, in two or more locations, without the offender “cooling-off” emotionally between murders. The event, however, can be of short or long duration.

*A serial murder* is three or more separate homicidal events, with the offender cooling-off emotionally between homicidal events.<sup>32</sup>

With the exception of the DOJ’s Bureau of Justice Statistics (BJS), no federal agency has compiled longitudinal data on multiple victim homicide incidents. Based on the FBI’s Uniform Crime Reports and Supplementary Homicide Reports (UCR-SHR),<sup>33</sup> BJS estimated that there

(...continued)

*Submission, Fiscal Year 2016*, February 2016, p. 10.

<sup>29</sup> Ibid.

<sup>30</sup> Douglas, Burgess, Burgess, and Ressler, *Crime Classification Manual*, 2006, pp. 12-13.

<sup>31</sup> In a 2008 report on “serial murder,” the FBI National Center for the Analysis of Violent Crime and Behavioral Sciences Unit summarized a common understanding of the nature of “mass murder” that was held by many of the attendees at a 2005 national crime symposium:

Generally, mass murder was described as a number of murders (four or more) occurring during the same incident, with no distinctive time period between the murders. These events typically involved a single location, where the killer murdered a number of victims in an ongoing incident (e.g. the 1984 San Ysidro McDonalds incident in San Diego, California; the 1991 Luby’s Restaurant massacre in Killeen, Texas; and the 2007 Virginia Tech murders in Blacksburg, Virginia).

See U.S. Department of Justice, Federal Bureau of Investigation, National Center for the Analysis of Violent Crime, Behavioral Analysis Unit, *Serial Murder: Multi-Disciplinary Perspectives for Investigators* (July 2008), p. 8, <http://www.fbi.gov/stats-services/publications/serial-murder/serial-murder-july-2008-pdf>.

<sup>32</sup> Ibid, pp. 138-139. In the Protection of Children from Sexual Predator Act of 1998 (P.L. 105-314; October 30, 1998; 112 Stat. 2974, 2987), Congress defined “serial killings” to mean “a series of three or more killings, not less than one of which was committed within the United States, having common characteristics such as to suggest the reasonable possibility that the crimes were committed by the same actor or actors” (28 U.S.C. §540B(b)(2)). This provision authorizes the Attorney General and the FBI Director to investigate serial killings in violation of the laws of a state or political subdivision, if such investigation is requested by the head of a law enforcement agency with investigative or prosecutorial jurisdiction over the offense (see 28 U.S.C. §540B(a)).

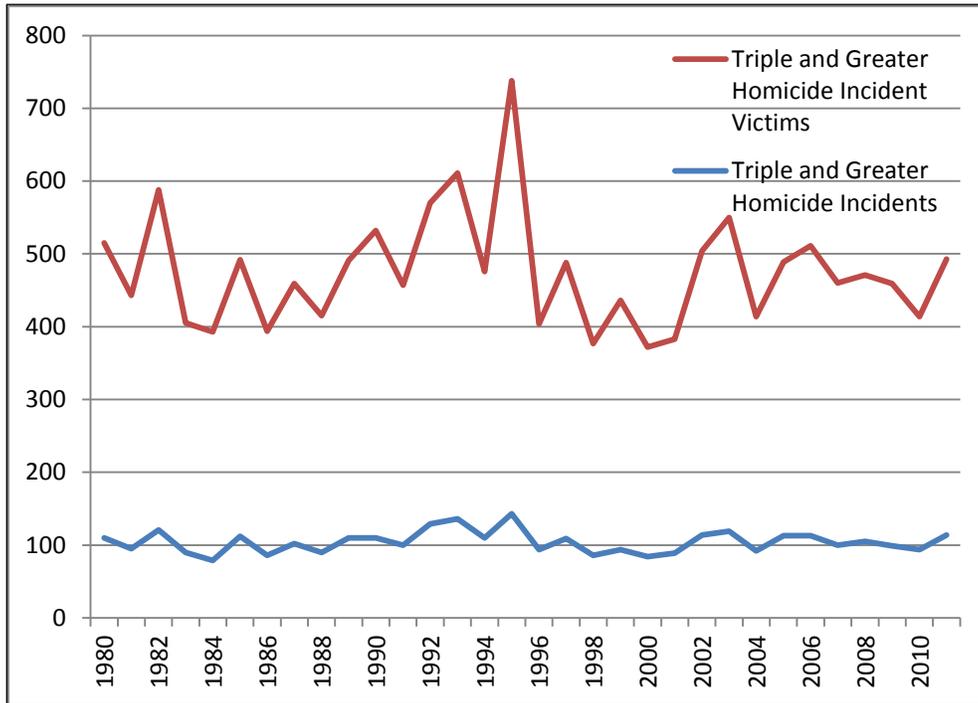
<sup>33</sup> The FBI began collecting monthly crime reports from city, county, and state law enforcement agencies in 1930. Today, as part of the UCR program, the FBI collects incident, victim, property, offender, and arrestee data for 22 crime categories. In 1976, the FBI began collecting SHRs to capture greater data on homicides, including the method of murder. For a discussion of “Data for Measuring Firearms Violence and Ownership,” see National Research Council, *Firearms and Violence: A Critical Review*, National Academies Press, 2005, p. 26. For a more in-depth discussion of the data, see James Alan Fox, *Uniform Crime Reports (United States): Supplementary Homicide Reports, 1976-2002*, Ann Arbor, MI: Inter-University Consortium of Political and Social Research, 2005, <http://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/4179>.

were 987 four or more victim homicide incidents from 1980 to 2011, or an average 31 incidents per year.<sup>34</sup> While the bulk of those incidents were mass murders, it is probable that some of those incidents were serial murders committed over extended time periods, or spree murders that lasted longer than roughly 24 hours. Some researchers have categorized spree murders that have occurred within a 24-hour window as “mass/spree homicides.”<sup>35</sup>

BJS also estimated that there were 2,355 triple homicides for the same years, or an average of 74 incidents per year. As a result, a comprehensive dataset of mass killings could include as many as 105 incidents per year on average for that 32-year period (1980-2011). These incidents accounted for 0.64% of an estimated 523,007 incidents of murder and nonnegligent manslaughter.

As **Figure 3** shows, triple or greater victim homicide incidents have hovered with some yearly variation at about the 100 incident level. While the associated victim counts have fluctuated sporadically from year to year, over the 32-year period, there were an estimated 7,065 victims of triple homicides and 4,797 victims of quadruple or greater victim homicides. These victims combined (11,862) accounted for 2.16% of the estimated 548,455 victims of murder and non-negligent manslaughter incidents.

**Figure 3. Triple and Greater Homicide Incidents and Victims (1980-2011)**



**Source:** U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

**Notes:** All homicide incidents in this figure are either murders or non-negligent manslaughter incidents, as opposed to justifiable homicides. A triple homicide is three victims slain, in one event, in one location. A mass murder is four or more victims slain, in one event, in one location.

<sup>34</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Homicide in the U.S. Known to Law Enforcement*, 2011, December 2013, NCJ 243055, by Erica L. Smith and Alexia Cooper, p. 14.

<sup>35</sup> Some researchers have chosen to categorize spree murders that occur within a 24-hour window as “mass murders,” or “mass/spree murders.” See Hannah Scott and Katie Fleming, “The Female Family Annihilator: An Exploratory Study,” *Homicide Studies*, vol. 18(1), 2013, p. 63.

By comparison, the current public understanding generally of what constitutes a “mass public shooting” was conceptualized arguably by Grant Duwe in his book, *Mass Murder in the United States: A History* (2007).<sup>36</sup> Duwe observed:

The mass murders that often capture the public’s imagination are those in which an offender publically guns down victims for no apparent rhyme or reason. Of the 250 incidents that took place from 1900 through 1999, 191 involved offenders who used firearms. Excluding those that occurred in connection with criminal activity such as robbery, drug dealing, and organized crime, there were 116 mass public shootings during the twentieth century.<sup>37</sup>

Duwe defined mass public shooting as “any incident in which four or more victims are killed publicly in a workplace, school, restaurant, or other public place with guns and within 24 hours.”<sup>38</sup>

With data provided by Duwe, CRS also compiled a 44-year (1970-2013) dataset of firearms-related mass murders that could arguably be characterized as “mass public shootings.” These data show that there were on average:

- one (1.1) incident per year during the 1970s (5.5 victims murdered, 2.0 wounded per incident),
- nearly three (2.7) incidents per year during the 1980s (6.1 victims murdered, 5.3 wounded per incident),
- four (4.0) incidents per year during the 1990s (5.6 victims murdered, 5.5 wounded per incident),
- four (4.1) incidents per year during the 2000s (6.4 victims murdered, 4.0 wounded per incident), and
- four (4.5) incidents per year from 2010 through 2013 (7.4 victims murdered, 6.3 wounded per incident).

These decade-long averages suggest that the prevalence, if not the deadliness, of “mass public shootings” increased in the 1970s and 1980s, and continued to increase, but not as steeply, during the 1990s, 2000s, and first four years of the 2010s.

As one possible oversight issue, Members of Congress could query ATF as to how it proposes to address “mass shootings” through leveraging its core law enforcement competencies. Congress could also query whether the agency has any plans to address data gaps on such incidents, particularly with regard to the offender acquisition of firearms (legally or illegally), the types of firearms used, magazines and ammunition carried, shots fired, reloads made, as well as killed and wounded victim counts per incident.

## House-Passed FY2016 CJS Appropriations Bill

On May 27, 2015, the House Committee on Appropriations reported an FY2016 CJS appropriations bill that would have provided ATF with \$1.25 billion for FY2016. This amount would be a 4.1% increase over the amount Congress appropriated for FY2015 (\$1.201 billion).<sup>39</sup>

<sup>36</sup> Grant Duwe, *Mass Murder in the United States: A History*, 2007, 213 pp.

<sup>37</sup> Ibid, p. 27.

<sup>38</sup> See Glenn Kessler, “Clinton’s Gun Remark Is off the Mark,” *Washington Post*, January 13, 2013, p. A02.

<sup>39</sup> The FY2016 appropriation amount of \$1.201 billion does not reflect a rescission of \$3.2 million for that fiscal year. (continued...)

At the same time, this amount is \$11.2 million less than the Administration's FY2015 request (\$1.261 billion). It is also \$3.0 million less than the ATF projected FY2016 base budget. Within these funding constraints, House report language indicated that ATF should:<sup>40</sup>

- meet its critical staffing requirements;
- improve its capacity to process National Firearms Act (NFA)<sup>41</sup> applications and service requests; and
- sustain the updating and expansion of the National Integrated Ballistics Information Network (NIBIN).<sup>42</sup>

In addition, the report language directed ATF to provide an updated analysis of gun trafficking patterns, including Internet-based markets, criminal sources of firearms, and value of crime gun tracing.<sup>43</sup> On June 3, 2015, the House considered and passed H.R. 2578 by a recorded vote (242 to 183, Roll no. 297). During House consideration, the House adopted two amendments that each reduced the appropriation for ATF by \$5 million to \$1.24 billion for FY2016 (H.Amdt. 299 and H.Amdt. 300). The House rejected another amendment that would have further reduced the ATF appropriations by \$250 million (H.Amdt. 301).

## House Floor Amendments Related to Gun Control

During floor consideration, on June 2 and 3, 2015, the House adopted several other gun control-related amendments that would prohibit the use of appropriations for certain ATF-proposed frameworks or regulations related to administering a statutory armor piercing ammunition prohibition and waivers thereto under a sporting purposes test and legal trusts to hold NFA firearms. The House adopted another amendment that would overturn a long-standing appropriations limitation that bans ATF from using appropriations to consider applications from prohibited persons for firearms rights restoration (disabilities relief). The House rejected an amendment that would have stripped two other gun control-related limitations from the bill. One of those provisions has prohibited ATF from using appropriations to ban the importation of certain shotguns. The other provision, yet to be enacted, would prohibit the ATF from using

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(...continued)

If the rescission is taken into account, the FY2016 appropriation amount would be \$1.198 billion as reflected in Table 1 of this report. The House Committee FY2016 recommendation would be a 4.2% increase over the FY2015 appropriation of \$1.198 billion.

<sup>40</sup> U.S. Congress, House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Commerce, Justice, Science, and Related Agencies Appropriations Bill, 2016* (H.R. 2578), 114<sup>th</sup> Cong., 1<sup>st</sup> sess., May 27, 2015, H.Rept. 114-130, p. 43.

<sup>41</sup> The NFA (26 U.S.C. §5801 et seq.) regulates types of firearms considered to be especially lethal, most notably machine guns and short-barreled shotguns and rifles. This law also regulates firearms, other than pistols and revolvers, which can be more easily concealed on a person (e.g., pen, cane, and belt buckle guns), as well as firearms silencers/suppressors. It taxes all aspects of the manufacture and distribution of such weapons, and it compels the disclosure (through registration with the Attorney General) of the production and distribution system from manufacturer to buyer.

<sup>42</sup> In the late 1990s, ATF developed NIBIN to enable law enforcement agencies to share computerized images of bullets and cartridge casings recovered by law enforcement, including crime scene evidence. Those images are uploaded into several regional computer networks under the NIBIN program. For further information, see Daniel L. Cork et al., *Ballistic Imaging, Committee to Assess the Feasibility, Accuracy, and Technical Capability of a National Ballistic Database*, National Research Council, 2008, p. 133.

<sup>43</sup> H.Rept. 114-130, p. 44. House report language cites a 2000 ATF report entitled *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, which available on the ATF website, <https://www.atf.gov/file/11876/download>.

appropriations to collect multiple rifle sales reports in Southwest border states. A point of order was sustained against another amendment that would have prohibited the use of license plate readers to collect information on individuals attending gun shows.

### **Armor Piercing (AP) Ammunition**

On February 13, 2015, ATF proposed a framework for determining whether certain rifle cartridges, like the NATO M855 5.56x45mm, should be considered “armor piercing” due to the metallic composition of the projectile (bullet), and whether the Attorney General should waive such cartridges from an armor piercing ammunition ban, because they are “intended primarily to be used for sporting purposes.”<sup>44</sup> ATF justified the framework and its re-interpretation of the Law Enforcement Officers Protection Act of 1986 (LEOPA; P.L. 99-409), which was enacted to ban “cop killer” bullets that may be used in a handgun, because certain semiautomatic pistols based on M16 and AK-47 receivers have become available through ordinary commercial channels in the United States. However, the House and Senate Chairs of the Judiciary Committees, Representative Bob Goodlatte and Senator Charles Grassley, sent letters to the ATF Director and objected strongly to the reasoning behind the framework, under which ATF might have potentially banned a range of other rifle cartridges that had previously either been exempted from, or not subject to, the armor piercing ammunition ban. On March 10, 2015, ATF withdrew its framework from further consideration due ostensibly to a strong, negative public response.

Representative Richard Hudson offered an amendment (H.Amdt. 329; §553) that would prohibit the use of any funding provided under the bill to be used to classify M855 or SS109 (5.56x45mm) ammunition as armor piercing under P.L. 99-409. The amendment was agreed to by voice vote.

Representative Thomas Massie offered an amendment (H.Amdt. 341; §568) that would prohibit the use of funding provided under the bill to be used to ban any ammunition as armor piercing unless it had been “designed and intended for use in a handgun.” This amendment was agreed to by roll call vote: 250-171 (Roll No. 289).

Representative Paul A. Gosar offered an amendment (H.Amdt. 343; §562) that would prohibit the use of any funding provided under the bill to be used to continue a ban on the importation of 5.45x39mm ammunition as armor piercing. This amendment was agreed to by voice vote.

### **National Firearms Act (NFA) Trusts**

Representative John R. Carter offered an amendment (H.Amdt. 320; §548) that would prohibit the use of any funding under the bill to implement a proposed 2013 regulation that would change certain NFA regulations that require a sign-off by a chief law enforcement officer (CLEO) and NFA Trusts.<sup>45</sup> ATF requires an individual person applying for an NFA tax stamp (transfer authorization) to gain the signature and permission of the CLEO who has jurisdiction in the community in which the individual resides. As part of the Internal Revenue Code, NFA weapons may also be registered to corporations and trusts under limited cases. Under such circumstances, the “responsible person” administering the trust undergoes the background check, but a CLEO

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<sup>44</sup> U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, ATF Framework for Determining Whether Certain Projectiles Are “Primarily Intended for Sporting Purposes” Within the Meaning of 18 U.S.C. §921(a)(17)(C), February 13, 2015, 17 pp., [http://www.atf.gov/sites/default/files/assets/Library/Notices/atf\\_framework\\_for\\_determining\\_whether\\_certain\\_projectiles\\_are\\_primarily\\_intended\\_for\\_sporting\\_purposes.pdf](http://www.atf.gov/sites/default/files/assets/Library/Notices/atf_framework_for_determining_whether_certain_projectiles_are_primarily_intended_for_sporting_purposes.pdf).

<sup>45</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives, “Machine Guns, Destructive Devices and Certain Firearms; Background Checks for Responsible Persons of a Corporation, Trust or Other Legal Entity With Respect to Making or Transferring a Firearm,” 78 *Federal Register* 55014-55029, September 9, 2015.

signature is not required. The September 9, 2013, ATF proposed rule that is the object of this amendment would make all parties to the trust “responsible persons,” so that all persons would have to undergo a background check. Although some parties to the trust may be minors (even infants), ATF maintains that, in this way, a prohibited person could not use a trust as a mechanism to own an NFA weapon. The amendment was agreed to by voice vote.

## **Firearms Disabilities Relief**

Representative Ken Buck offered an amendment (H.Amdt. 302) to the proviso for FY2016 that would require ATF to consider firearms disabilities relief applications. This amendment was agreed to by voice vote. For FY1993 and every year thereafter, a proviso has been included in the ATF salaries and expenses language that has prevented that agency from using appropriated funds 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.

Under current law, there are nine classes of persons prohibited from shipping, transporting, receiving, or possessing firearms or ammunition:

- persons convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- fugitives from justice;
- unlawful users or addicts of any controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. §802);
- persons adjudicated as “mental defective” or committed to mental institutions;<sup>46</sup>
- unauthorized immigrants and nonimmigrant visitors (with exceptions in the latter case, which have changed—effective July 9, 2012—as described below);
- persons dishonorably discharged from the U.S. Armed Forces;
- persons who have renounced their U.S. citizenship;
- persons under court-order restraints related to harassing, stalking, or threatening an intimate partner or child of such intimate partner; and
- persons convicted of a misdemeanor crime of domestic violence.<sup>47</sup>

In addition, there is a 10<sup>th</sup> class of persons prohibited from shipping, transporting, or receiving firearms or ammunition:

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<sup>46</sup> Under 27 C.F.R. Section 478.11, the term “adjudicated as a mental defective” is defined to include a determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence or a mental illness, incompetency, condition, or disease, (1) is a danger to himself or others, or (2) lacks the mental capacity to manage his own affairs. The term also includes (1) a finding of insanity by a court in a criminal case and (2) those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. Sections 850a, 876(b).

This definition was promulgated by an ATF final rule (*Federal Register*, vol. 62, no. 124, June 27, 1997, p. 34634).

It is noteworthy that it is possible for individuals to become eligible after being disqualified under Section 922(g)(4). For example, under the NICS Improvement Amendments Act of 2007 (P.L. 110-180), veterans beneficiaries who have been determined to be mental defectives could appeal for administrative relief and possibly have their gun rights restored if they could demonstrate that they were no longer afflicted by a disqualifying condition. Such appeals, however, are made to the Department of Veterans Affairs.

<sup>47</sup> 18 U.S.C. §922(g).

- persons under indictment in any court of a crime punishable by imprisonment for a term exceeding one year.<sup>48</sup>

It also unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any of the prohibited persons enumerated above, if the transferor (seller) has reasonable cause to believe that the transferee (buyer) is prohibited from receiving those items.<sup>49</sup>

Under the GCA, there is a provision that allows the Attorney General (previously, the Secretary of the Treasury) to consider petitions from a prohibited person for “relief from disabilities” and have his firearms transfer and possession eligibility restored.<sup>50</sup> Since FY1993, however, the limitation on the ATF annual appropriations for salaries and expenses noted has prohibited the use of any appropriations to process such petitions.<sup>51</sup> While a prohibited person arguably could petition the Attorney General, bypassing ATF, such an alternative has never been successfully tested. As a result, the only way a person can reacquire his lost firearms eligibility is to have his civil rights restored or disqualifying criminal record(s) expunged or set aside, or to be pardoned for his crime. According to ATF, the agency processed 22,969 applications for firearms disabilities relief from 1968 through 1982, restoring firearms privileges to 7,581 applicants and denying restoration to 4,251 applicants.<sup>52</sup> For further information, see the **Appendix** to this report.

### **Race or Ethnicity Disclosure and ATF Form 4473**

Representative Diane Black offered an amendment to H.R. 2578 to prohibit the use of appropriations to require any person to disclose their race or ethnicity in connection with a firearms transfer under federal law, pursuant to Section 478.124 of Title 27, or Section 25.7 of Title 28, Code of Federal Regulations, or the Office of Management and Budget (OMB) Statistical Policy Directive No. 15, “Race and Ethnic Standards for Federal Statistics and Administrative Reporting.” The House adopted this amendment by voice vote.

In April 2012, the ATF modified its Form 4473 to include a question (number 10) that requires persons seeking to purchase a firearm from a federally licensed gun dealer to disclose their race or ethnicity.<sup>53</sup> According to ATF:

- Ethnicity refers to a person’s heritage and persons of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race, are considered Hispanic or Latino; and
- Race refers to one or more of the following:
  - American Indian or Alaska Native, a person having origins in any of the original peoples of North and South America (including Central America), and who maintains a tribal affiliation or community attachment;

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<sup>48</sup> 18 U.S.C. §922(n).

<sup>49</sup> 18 U.S.C. §922(d).

<sup>50</sup> 18 U.S.C. §925(c). See also Relief from Disabilities Under the Act, 27 C.F.R. §478.144.

<sup>51</sup> For FY1993, see P.L. 102-393; 106 Stat. 1732 (1992). For FY2012, see P.L. 112-55; 125 Stat. 552, 609 (November 18, 2011). The FY2012 limitation provides: “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).”

<sup>52</sup> These data were provided to CRS by the ATF Office of Legislative Affairs in January 2003.

<sup>53</sup> This form is available electronically on the ATF website, <https://www.atf.gov/file/61446/download>.

- Asian, a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;
- Black or African American, a person having origins in any of the Black racial groups of Africa;
- Native Hawaiian or Other Pacific Islander, a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands, or
- White, a person having origins in any of the original peoples of Europe, the Middle East, or North Africa.<sup>54</sup>

ATF directs any person of other ethnicity, who does not fall within those categories, to select the closest representation.

Current law requires that the gun dealer and prospective firearms purchaser (transferee) complete an ATF Form 4473 and sign it under penalty of law.<sup>55</sup> This completed form essentially serves as the legal authorization for the federally licensed gun dealer to submit a background check on the prospective firearms purchaser to the Federal Bureau of Investigation through a computer system known as the National Instant Criminal Background Check System (NICS). Some opponents of greater gun control have asserted that this administrative change serves no purpose, but to allow the federal government to discern “what subdivided ethnicity owns guns versus the single [w]hite category.”<sup>56</sup> ATF maintains that this change in Form 4473 was made simply in compliance to the OMB Directive Statistical Policy Directive No. 15. (For related legislation, see H.R. 1739/S. 1385).<sup>57</sup>

### **Shotgun Imports and Southwest Border Long Gun Multiple Sales Reporting**

Representative Elizabeth Esty offered an amendment (H.Amdt. 307) that would have struck two provisions in the bill related to shotgun imports (§532) and a Southwest border state multiple rifles sales reporting (§537), but the amendment was withdrawn.

Section 532 of H.R. 2578 would prohibit ATF from banning the importation of certain shotguns that the agency characterized 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). For FY2012 and every year thereafter, such language has been included in enacted appropriations laws for ATF. For further information, see the **Appendix** to this report.

Section 537 of H.R. 2578 would prohibit the use of any funding provided under the bill to continue implementing a 2011 information collection initiative, under which ATF has required federal firearms licensees (FFLs) to report to ATF whenever they make multiple sales or other dispositions of more than one rifle within five consecutive business days to an unlicensed person. Such reporting is limited to firearms that are (1) semiautomatic, (2) chambered for ammunition of

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<sup>54</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives, “Questions and Answers Revised F4473,” April 2012 edition, <https://www.atf.gov/file/61841/download>.

<sup>55</sup> Making a false statement to a federally licensed firearms dealer in connection with a firearms transfer is illegal under two provisions of a Gun Control Act of 1968 (18 U.S.C. §924(a)(1)(D) and 18 U.S.C. §924(a)(2)).

<sup>56</sup> Raquel Okyay, “Pratt, Advocates for Gun Rights Blast Obama’s New Racial Reporting on Gun Forms,” *Human Events Online*, September 28, 2014, downloaded from *Nexis* on August 20, 2015.

<sup>57</sup> CRS conversation with the ATF Office of Legislative Affairs, August 21, 2015.

greater than .22 caliber, and (3) capable of accepting a detachable magazine. For FY2011 and every year thereafter, the House CJS appropriations bills have included similar language to block this initiative, but such language has yet to be enacted.

### **License Plate Readers and Gun Show Patrons**

Representative Doug Lamborn offered an amendment (H.Amdt. 348) to prohibit the use of appropriations to collect information about individuals attending gun shows with electronic automobile license plate readers. Representative Lamborn stated that the American Civil Liberties Union had uncovered an email which revealed that the Drug Enforcement Administration and ATF had considered using such an investigative surveillance technique in the Phoenix, AZ, area in the 2009 timeframe. Representative Sam Farr raised a point of order that the amendment changed existing law and was a violation of House Rule XXI, clause 2.<sup>58</sup> The point of order was sustained and therefore further consideration of the amendment could not occur.

## **Senate-Reported FY2016 CJS Appropriations Bill**

On June 16, 2015, the Senate Committee on Appropriations reported its version of the FY2016 CJS appropriations bill (H.R. 2578, as amended) that would provide ATF with \$1.201 billion, the same amount Congress appropriated for ATF for FY2015 (excluding a \$3.2 million rescission). Senate report language addressed four areas of ATF operations:

- Combating Gun Violence and Enforcing Gun Laws,
- United States-Mexico Firearms Trafficking,
- United States Bomb Data Center, and
- National Center for Explosives Training and Research.

While the Senate Committee amendment would provide no additional funding for ATF for FY2016, report language maintained that the recommendation is adequate to allow ATF to administer and enforce existing federal firearms laws and programs. For example, report language specifically noted that the amount would be adequate to continue the National Integrated Ballistics Information Network (NIBIN), which allows federal, state, local, and tribal law enforcement agencies to share ballistic images of bullets and shell casings recovered at crime scenes, so that striations on bullets and hammer and ejector markings on shell casings can be matched microscopically in a manner similar to latent fingerprint matching. Senate report language did not address ATF staffing issues or increases in NFA applications or firearms tracing requests.

With regard to United States-Mexico firearms trafficking, report language directed ATF to continue reporting back to the committee on the number of firearms recovered by the Government of Mexico. And, of those firearms:

- How many has ATF attempted to trace?
- How many were successfully traced? and
- How many were found to have originated in the United States prior to being recovered in Mexico?

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<sup>58</sup> See CRS Report R41634, *Limitations in Appropriations Measures: An Overview of Procedural Issues*, by Jessica Tollestrup.

The Senate version of the bill also includes a provision (§216) that would continue to ban any DOJ agency from using appropriations to transfer an operable firearm to a known or suspected “drug cartel” agent without continuously monitoring and controlling such firearm. As described in the **Appendix** of this report, this provision was first sponsored as an amendment offered by Senator John Cornyn for FY2012. It has been included in every DOJ appropriation since then. It was also included in the House-passed bill for FY2016 (H.R. 2578, §215). This provision is a response to a flawed Southwest border gun trafficking investigation known as “Operation Fast and Furious.”

In addition, report language lauded ATF for co-locating the U.S. Bomb Data Center with the National Center for Explosives Training and Research (NCETR), and noted that DOJ had directed all its component agencies to use the ATF Bomb Arson Tracking System to document explosives-related incidents. Report language directed ATF to make space available for Federal Bureau of Investigation (FBI) and Department of Homeland Security’s Office Bombing Prevention analysts at the U.S. Bomb Data Center. Finally, report language directed ATF to maintain its FY2015 level of operations at NCETR to train federal, state, local, and tribal technicians in advanced fire investigations and advanced explosives disposal techniques.

## 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.<sup>59</sup> Congress has included “futuraity” 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.<sup>60</sup> 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.<sup>61</sup> Supporters of gun rights, on the other hand, maintain that these limitations prevent ATF from overreaching its statutory and regulatory authority.<sup>62</sup>

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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<sup>59</sup> 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 2013*, by Jessica Tollestrup.

<sup>60</sup> 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.

<sup>61</sup> 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.

<sup>62</sup> 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 in this **Appendix**, the Administration has requested for FY2014, FY2015, and FY2016 that two of those provisos be repealed. Those provisos include:

- 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 include:

- 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 include:

- 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 114<sup>th</sup> 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.<sup>63</sup> 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."<sup>64</sup> 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

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<sup>63</sup> 43 *Federal Register* 11800-11810, March 21, 1978.

<sup>64</sup> Treasury, Postal Service, and General Government Appropriations Act, 1979; P.L. 95-429; October 10, 1978; 92 Stat. 1001, 1002.

Department of Justice, the records, or any portion thereof, of acquisition and disposition of firearms maintained by [F]ederal firearms licensees.<sup>65</sup>

### **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.”<sup>66</sup> This provision was in response to an ATF proposal to amend the definition of “curios or relics,”<sup>67</sup> 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.<sup>68</sup>

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.<sup>69</sup> For each fiscal year thereafter, FY2014 through FY2016, the Administration has requested as part of its annual congressional budget submissions that this proviso be repealed.

### **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.<sup>70</sup> In the 102<sup>nd</sup> 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:

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<sup>65</sup> Consolidated and Further Continuing Appropriations Act, 2012; P.L. 112-55; November 18, 2011, 125 Stat. 552, 609; 18 U.S.C. 923 note.

<sup>66</sup> Treasury, Postal Service, and General Government Appropriations Act, 1996; P.L. 104-52; November 19, 1995; 109 Stat. 468, 471.

<sup>67</sup> 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.

<sup>68</sup> Consolidated and Further Continuing Appropriations Act, 2012; P.L. 112-55; November 18, 2011, 125 Stat. 552, 609.

<sup>69</sup> Consolidated and Further Continuing Appropriations Act, 2013; P.L. 113-6; March 26, 2013; 127 Stat. 248.

<sup>70</sup> 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, these provisos were 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, reflects a floor amendment that would require ATF to process disability relief applications for individuals.

### **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.<sup>71</sup>

*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.<sup>72</sup>

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).

### **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).<sup>73</sup> 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:

*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.<sup>74</sup>

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<sup>71</sup> 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.

<sup>72</sup> Consolidated and Further Continuing Appropriations Act, 2012; P.L. 112-55; November 18, 2011, 125 Stat. 552, 609.

<sup>73</sup> Treasury, Postal Service, and General Government Appropriations Act, 1994; P.L. 103-123; October 28, 1993; 107 Stat. 1226, 1229.

<sup>74</sup> Consolidated and Further Continuing Appropriations Act, 2012; P.L. 112-55; November 18, 2011, 125 Stat. 552, 609.

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.<sup>75</sup>

### **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.<sup>76</sup> 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.<sup>77</sup> As shown below, the Nethercutt provision is arguably less restrictive 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.<sup>78</sup> 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 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

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<sup>75</sup> In the 113<sup>th</sup> and 114<sup>th</sup> 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.

<sup>76</sup> Consolidated Appropriations Act, 2004; P.L. 108-199; January 23, 2004; 118 Stat. 3, 53.

<sup>77</sup> James V. Grimaldi and Sari Horwitz, “After Gun Industry Pressure, Veil Was Dropped over Tracing Data,” *Washington Post*, October 24, 2010, p. A11.

<sup>78</sup> 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>.

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.<sup>79</sup>

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.<sup>80</sup>

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.<sup>81</sup> 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 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.<sup>82</sup>

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 amendments would have also prohibited all FOIA disclosures.

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<sup>79</sup> 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.

<sup>80</sup> *Ibid.*

<sup>81</sup> Consolidated Appropriations Resolution, 2003; P.L. 108-7; February 20, 2003; 117 Stat. 11, 473.

<sup>82</sup> *Ibid.*

### **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.<sup>83</sup> 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.<sup>84</sup>

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.<sup>85</sup> As part of its FY2014, FY2015, and FY2016 budget request, the Administration requested that this proviso be repealed.

### **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.<sup>86</sup> 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.<sup>87</sup> 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:

*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.<sup>88</sup>

### **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.<sup>89</sup> 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:

<sup>83</sup> Consolidated Appropriations Act, 2004; P.L. 108-199; January 23, 2004; 118 Stat. 3, 53.

<sup>84</sup> Consolidated and Further Continuing Appropriations Act, 2012; P.L. 112-55; November 18, 2011, 125 Stat. 552, 610.

<sup>85</sup> Consolidated and Further Continuing Appropriations Act, 2013; P.L. 113-6; March 26, 2013; 127 Stat. 248.

<sup>86</sup> Omnibus Consolidated Appropriations Act, 1997; P.L. 104-208; September 30, 1996; 110 Stat. 3009, 3009-319; 18 U.S.C. 923 note.

<sup>87</sup> 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.”

<sup>88</sup> *Ibid.*

<sup>89</sup> Consolidated Appropriations Act, 2004; P.L. 108-199; January 23, 2004; 118 Stat. 3, 53.

*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.<sup>90</sup>

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.<sup>91</sup>

## **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” 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 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.<sup>92</sup>

For FY2015, Congress included this provision in the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235; §215). For FY2016, the House included this provision in the CJS appropriations bill (H.R. 2578; §215). The Senate Committee on Appropriations included it in its version of the bill (H.R. 2578, as amended; §216).

### **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

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<sup>90</sup> Ibid.

<sup>91</sup> Consolidated and Further Continuing Appropriations Act, 2013; March 26, 2013; 127 Stat. 248.

<sup>92</sup> Ibid.

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.<sup>93</sup>

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.

## **Trace Data Limitations and Caveats**

This provision was first included in the FY2004 CJS appropriations bill as part of the Tiahrt amendment presented earlier.<sup>94</sup> 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.<sup>95</sup>

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<sup>93</sup> Consolidated and Further Continuing Appropriations Act, 2012; P.L. 112-55; November 18, 2011, 125 Stat. 552, 632; 18 U.S.C. 922 note.

<sup>94</sup> Consolidated Appropriations Act, 2004; P.L. 108-199; January 23, 2004; 118 Stat. 3, 53.

<sup>95</sup> Consolidated and Further Continuing Appropriations Act, 2012; P.L. 112-55; November 18, 2011, 125 Stat. 552, 633.

For FY2013, Congress included futurity language (“for FY2013 and thereafter”) in this provision that appears to have been intended to make it permanent law.<sup>96</sup>

### **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.<sup>97</sup> 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, 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

<sup>96</sup> Consolidated and Further Continuing Appropriations Act, 2013; P.L. 113-6 (§514); November 26, 2013; 127 Stat. 271.

<sup>97</sup> Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006; P.L. 109-108; November 22, 2005; 119 Stat. 2290, 2343-2344.

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.<sup>98</sup>

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 versions of that provision, but such language was not included in any of the enacted appropriations laws for those fiscal years. For FY2016, identical provisions are included in the House-passed and Senate-reported versions of H.R. 2578 (§516 and §517, respectively). For FY2016, the House version of the provision does not include futurity language.

### **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.<sup>99</sup> The language of this provision (originally numbered §521) is as follows:

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.<sup>100</sup>

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. For FY2016, identical provisions were included in the House-passed and Senate-reported versions of H.R. 2578 (§517 and §518, respectively). For FY2016, the House version of the provision does not include futurity language.

### **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).<sup>101</sup> 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—

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<sup>98</sup> Consolidated and Further Continuing Appropriations Act, 2012; P.L. 112-55; November 18, 2011, 125 Stat. 552, 634-635.

<sup>99</sup> Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006; P.L. 109-108; November 22, 2005; 119 Stat. 2290, 2344.

<sup>100</sup> Consolidated and Further Continuing Appropriations Act, 2012; P.L. 112-55; November 18, 2011, 125 Stat. 552, 635.

<sup>101</sup> 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>.

- (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.<sup>102</sup>

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. For FY2016, identical provisions were included in the House-passed and Senate-reported versions of H.R. 2578 (§532 in both bills).

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<sup>102</sup> Consolidated and Further Continuing Appropriations Act, 2012; P.L. 112-55; November 18, 2011, 125 Stat. 552, 639-640.