



Congress of the United States
House of Representatives
Washington, DC 20515-3605

February 3, 2022

The Honorable Marvin G. Richardson
Acting Director/Deputy Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Ave NW
Washington, DC 20226

Dear Acting Director Richardson,

Thank you for the response to our letter that we sent back in November of 2021. We wanted to follow-up on several issues raised by your response and reiterate our concern over ATF's proposed rule requiring federal firearms licensees (FFLs) to preserve records older than 20 years.

We were astounded to learn that ATF has accumulated **nearly 1 billion records** under the Out of Business Records Imaging System. The Administration's proposed rulemaking ATF 2021R-05 will drastically increase this already astronomical number of records on American gun owners.

Current regulations authorizing FFLs to discard records after 20 years were first published in 1985 and have not been changed in the nearly four decades since then.¹ This regulation was enacted to ensure that the federal government complied with existing law restricting the creation of a federal gun registry. It is therefore concerning that the Administration would seek to repeal a decades-old rule without citing any research or data justifying the need for retaining firearm transaction records in perpetuity. Indeed, the only basis for the proposed rulemaking is that firearms are durable and can be operational and in circulation for more than 20 years. Durability, though, always has been a characteristic of firearms.

The proposed rulemaking also states that "some" traces of firearms were conducted on records older than 20 years but neglected to provide a specific number that would demonstrate any realistic need for ATF to mandate perpetual storage of records older than 20 years. In fact, when the ATF published its final rule on the retention of records in 1985, the agency cited one of its own studies which concluded that "relatively few requests for traces of guns involved transactions older than 20 years."² Nor does it appear that circumstances have changed much over the course of nearly four decades, as the firearms trace data for 2020 published on ATF's

¹ 27 CFR 478.129(b)

² CFR Vol. 50, Page 26702 [26696-26704.pdf \(federalregister.gov\)](https://www.federalregister.gov/documents/2020/02/26/2020-04696)

website shows that the average time to crime is 7.01 years from the point of purchasing a firearm, with nearly half occurring within *the first three years*.³

Congress provided statutory authority for ATF to accumulate and store certain records of firearm transactions from out-of-business FFLs, but Congress also by statute has prohibited ATF from maintaining a national gun registry. ATF's new proposal to require FFLs to keep all records of sales in perpetuity means that, eventually, ATF will sweep up records of *every gun sale in America* that occurs at a licensed dealer.

ATF's proposal is even more concerning given the fact that ATF has been making its out-of-business records increasingly accessible and more easily searchable. Whereas such records traditionally consisted of paper files stored in boxes, ATF then moved to microfiche, and now to digitized image files. ATF's database is looking more and more like a prohibited database of firearms and law-abiding gun owners.

That said, we have several questions to which we would like written responses:

- Of the annual trace data that you provided in your response letter, how many and what percentage of traces were conducted that required records older than 20 years?
- Please provide a breakdown of the trace requests conducted and percentage of traces for firearms that required records which were 10 years old, then 11 years old, and for every year after up to 20 years.
- Of the nearly billion records you reportedly have on file, how many of them involve transactions that are older than 20 years?
- Your response states that the National Tracing Center (NTC) does not have the ability “to determine the successful prosecution of hundreds of thousands of crime gun traces,” nor can it “link a trace for a specific prosecution.” We understand these limitations. Without these numbers, what concrete evidence can ATF provide to demonstrate that records older than 20 years are useful or necessary for ATF to complete firearm traces?
- Your response states that “the NTC only traces crime guns, and every time must be identified as such by the requestor selecting the appropriate crime codes.” Please provide a list of all the crime codes a law enforcement agency must choose from when a trace is requested.
- Please provide a breakdown of all the trace requests conducted in the last three years by the crime codes that NTC uses.
- The Out of Business Records Imaging System is simply one database. Can you provide the number of records included in each of ATF's other databases which include firearms purchaser information, like the Multiple Sales (MS) System, Access 2000 (A2K), and the Firearm Recovery Notification Program (FRNP)?

We would urge that you consider rescinding the proposed regulation that would require FFLs to preserve firearm records older than 20 years. Indeed, the evidence provided by ATF thus far demonstrates that such records likely have little utility in prosecuting crime, yet raise serious concerns about whether ATF is creating a prohibited national gun registry.

³ Bureau of Alcohol, Tobacco, Firearms, and Explosives (2020). “Time-to-Crime-Firearms Recovered and Traced in the United States and Territories (xcl).” <https://www.atf.gov/resource-center/firearms-trace-data-2020>

God bless,



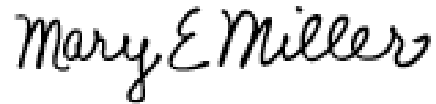
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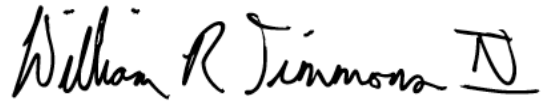
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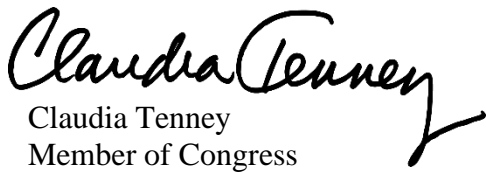
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