

**United States Senate**  
WASHINGTON, DC 20510

December 7, 2023

**VIA ELECTRONIC TRANSMISSION**

The Honorable Steven Dettelbach  
Director  
Bureau of Alcohol, Tobacco, Firearms, and Explosives  
Washington, DC 20226

Dear Director Dettelbach

I write to express my deep concern with and strong opposition to the ATF proposed rule ATF 2022R-17, Definition of Engaged in the Business as a Dealer in Firearms.

This proposed rule claims to “implement” the provision of the Bipartisan Safer Communities Act (BSCA) that amended the definition of “engaged in the business” by striking the phrase “with the principal objective of livelihood and profit” and replacing it with “to predominantly earn a profit.” Incredibly, this minor statutory revision generated a 108-page proposed rule creating rebuttable presumptions that supposedly demonstrate when a person is engaged in the business of dealing firearms.

Even the Office of Management and Budget (OMB) concedes this is a “significant regulatory action.”<sup>1</sup>

The proposed rule creates a sweeping licensing requirement for individuals “even if they make few or **no [firearms] sales**...”<sup>2</sup> This requirement is directly contrary to the plain language of BSCA, which requires that a person transact the “repetitive purchase and resale of firearms” to be “engaged in the business” of dealing firearms. Congress never intended to effectively end private party transactions and create a de facto database of ownership, which is the inevitable outcome here. This rule is simply unconstitutional.

Instead of targeting criminals like Mexican cartels operating firearms trafficking cells, the proposed rule will likely subject unintentional violators to civil and administrative actions.<sup>3</sup> Its “fact-specific” approach is far too vague to provide clear guidance to individuals who will require a license.<sup>4</sup> It does not set a minimum number of transactions that determines if a person is engaged in the business.<sup>5</sup> Instead, it creates a series of presumptions triggering a licensing

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<sup>1</sup> Definition of “Engaged in the Business” as a Dealer in Firearms, 88 Fed. Reg. 61993, 62007 (proposed Sept. 8, 2023) (to be codified at 27 C.F.R. pt. 478)

<sup>2</sup> *Id.* at 62015 (emphasis added).

<sup>3</sup> Melissa Quinn and E.D. Cauchi, *Grassley pushes Biden administration for information on gun trafficking into Mexico after CBS Reports investigation*, CBS News (Oct. 10, 2023) <https://www.cbsnews.com/news/gun-trafficking-mexico-atf-chuck-grassley-cbs-reports/>.

<sup>4</sup> *Id.* at 62021.

<sup>5</sup> *Id.* at 62000.

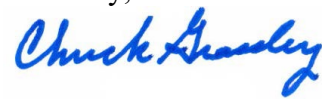
requirement with little consideration for whether the presumptions discourage the best and safest practices for selling firearms. For example, an individual who sells a firearm with its original packaging may require a license to transact the sale.<sup>6</sup> The original packaging often includes the user manual and trigger locks. A burdensome licensing requirement may discourage a seller from including these safety components.<sup>7</sup> If ATF is attempting to increase gun safety, its proposed rule clearly misses the mark.

ATF's flawed approach has far-reaching and potentially unconstitutional effects. ATF estimates either 24,540 or 328,296 people may require a license under the proposed rule. Taking an average of those two numbers, there would be 176,418 new federal firearms dealers. These individuals will now be subject to qualification and compliance inspections by ATF Industry Operations Investigators.<sup>8</sup> Worse, since the proposed rule broadly captures even a single online sale transacted from the seller's home, certain areas of the seller's home may now be subject to warrantless "inspections" for the duration of the seller's license.<sup>9</sup> A law-abiding gun owner who attempts to sell a single firearm may now receive fewer constitutional protections than those enjoyed by other Americans.

This circumvention of constitutional rights will come at a high cost to taxpayers. Current ATF Investigators have 83,749 Federal Firearms Licensees (FFLs) that require compliance inspections.<sup>10</sup> The proposed rule will increase that figure more than threefold to 260,000 FFLs requiring an inspection for compliance purposes.<sup>11</sup> Using the 2022 numbers for inspections completed, 6,979,<sup>12</sup> it would take ATF Investigators over 37 years to visit the number of FFLs because of this ruling. The result is irresponsible, unsustainable, and diverts precious resources without advancing public safety.

I urge you to abandon this proposal.

Sincerely,



Charles E. Grassley

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<sup>6</sup> *Id.* at 62001.

<sup>7</sup> Senate Judiciary Committee Hearing entitled "The Gun Violence Epidemic: A Public Health Crisis," 118th Cong. (2023) (testimony of Amy Swearer) ("I think most concerning are some of the presumptions that ATF wants to now write in .... Because it includes things like selling the firearm with the original manufacturers packaging. That packing includes things that are essential for gun safety including the user's manual and the original trigger locks...").

<sup>8</sup> Proposed Rule at 62013.

<sup>9</sup> *Id.* at 62017 ("Such persons would need to file a Form 7 application, pay a licensing fee, undergo a qualification inspection, maintain Form 4473 and A&D records for every firearm transaction and undergo periodic compliance inspections.")

<sup>10</sup> Fact Sheet - Facts and Figures for Fiscal Year 2022, Bureau of Alcohol, Tobacco, Firearms & Explosives, January 2023, <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-facts-and-figures-fiscal-year-2022> (last visited Nov. 30, 2023.)

<sup>11</sup> Proposed Rule at 62009.

<sup>12</sup> Fact Sheet - Facts and Figures for Fiscal Year 2022, Bureau of Alcohol, Tobacco, Firearms & Explosives, January 2023, <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-facts-and-figures-fiscal-year-2022> (last visited Nov. 30, 2023.)

cc: Helen Koppe  
Office of Regulatory Affairs, Enforcement Programs and Services  
Bureau of Alcohol, Tobacco, Firearms, and Explosives