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ATF Rulemaking Comments
Mail Stop 6N-518, Office of Regulatory Affairs
Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Ave. NE
Washington, DC 20226

Re: Docket No. ATF-2026-0266; RIN 1140-AB05
Comment on Proposed Rule on "Revising Non-Over-the-Counter Firearms Transaction Requirements"

To Whom It May Concern:

Everytown for Gun Safety Support Fund[1] ("Everytown") submits this comment in response to the notice of proposed rulemaking ("NPRM") issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") that amends Department of Justice ("DOJ") regulations on non-over-the-counter ("NOTC") firearms sales in which a federal firearms licensee ("FFL") transfers a firearm to a person residing in the same state who does not appear in person before the FFL. **We strongly oppose the proposed rule, which would put public safety at greater risk by eliminating in-person interactions between FFLs and purchasers for millions of firearms sales per year, thus denying FFLs the ability to observe if purchasers' behavior shows signs of illicit activity (such as straw purchasing or identity fraud) or dangerousness (such as intoxication or mental health crisis). This rule change, which appears to be a gun industry handout designed to benefit online firearm retailers like GrabAGun, will result in more guns ending up in prohibited persons' hands and will open up a new channel for gun traffickers.** Unfortunately, this rule fits a pattern of ATF rules proposed under Director Cekada where industry profits are consistently put over public safety. From an economic perspective, we note the rule will likely harm smaller FFLs that conduct most of their business in-person, but we leave that issue for others and will focus this comment on the significant public safety harms.

The harmful public safety impact of ATF's proposed rule is likely derived in part from the deeply flawed process that ATF has used in issuing it. First, this proposed rule seeks to

[1] Everytown for Gun Safety Support Fund is the education, research and litigation arm of Everytown for Gun Safety, the largest gun violence prevention organization in the country with nearly 11 million supporters and more than 700,000 donors. The Everytown Support Fund seeks to improve our understanding of the causes of gun violence and help to reduce it by conducting groundbreaking original research, developing evidence-based policies, communicating this knowledge to the American public, and advancing gun safety and gun violence prevention in communities and the courts.

amend regulatory provisions that do not currently exist. In this NPRM, ATF proposes changes to baseline regulatory text that has not been published in the Code of Federal Regulations but that ATF hopes to create through a separate ATF NPRM relating to Firearms Transaction Records ("Form 4473").[2] This attempt to use two concurrent NPRMs to modify the same regulatory provisions should not be permitted, as it is misleading to the public, law enforcement stakeholders, and others, and forces those providing comments on this NPRM to respond to changes proposed to baseline regulatory text when that baseline text has not been and may never be adopted. Second, the analysis ATF used to assess costs and benefits in this NPRM is methodologically unsound and does not stand up to scrutiny. Third, ATF has completely failed to assess or even consider the impact and costs of its proposed rule on public safety.

For the reasons discussed in this comment letter, we urge ATF to rescind the NPRM and put public safety first by preserving the existing requirement of face-to-face interaction for gun sales where it is required today.

I. By increasing the number of firearm sales where there is no face-to-face interaction between FFLs and purchasers, the proposed rule increases the risk of firearms ending up in the hands of prohibited or dangerous persons and opens up new opportunities for gun traffickers.

A. The current requirement that FFL sales to unlicensed purchasers involve in-person interaction serves important public safety goals.

The Brady Handgun Violence Prevention Act of 1993 ("Brady Act") requires that when an FFL seeks to sell or transfer a firearm to an unlicensed person, the FFL must first verify the purchaser's identity and initiate a NICS background check on the person, with limited exceptions.[3] Verifying the purchaser's identity and conducting a NICS background check enables the FFL to determine whether the person is prohibited by law from receiving or possessing guns. For all transactions where a NICS background check is required, longstanding federal regulations prohibit FFLs from selling firearms to individuals who do not appear in person at the FFL's business premises.[4] This in-person requirement serves several important public safety purposes.

First, in-person interaction helps ensure that FFLs fulfill the statutory requirement created by the Brady Act that the FFL must have "verified the identity of the transferee by examining a valid identification document" containing the purchaser's photograph prior to making the sale.[5] Prohibited persons frequently attempt to buy guns from FFLs using fraudulent identification. For example, in 2022, a person with multiple felony convictions was sentenced for using stolen identification information to buy more than two dozen firearms, some of which were later used in crimes.[6] And as far back as 2001, the Government Accountability Office ("GAO") reported

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[2] 91 Fed. Reg. 25432.
[3] 18 U.S.C.§ 922(t)(1).
[4] 27 C.F.R § 478.96(b).
[5] 18 U.S.C.§ 922(t)(1)(D), created by the Brady Handgun Violence Prevention Act (Public Law 103-159, 107 Stat. 1536), enacted Nov. 30, 1993.(originally this provision was established as 922(t)(1)(C)).
[6] ATF press release, "Violent Recidivist Sentenced to 10 Years in Prison for Using a Stolen Identity To Buy Guns," June 8, 2022, *available at* https://www.atf.gov/news/press-releases/violent-recidivist-sentenced-10-years-prison-using-stolen-identity-buy-guns.

that its investigators were able to purchase firearms in five states using counterfeit driver's licenses with fictitious identifiers.[7]

However, efforts by prohibited purchasers to buy guns with fraudulent identification are often observed and stopped by responsible FFLs during in-person interactions. For example, in 2024, a prohibited purchaser attempted to buy a firearm from an FFL in Kentucky using fraudulent identification belonging to another person, but the transaction was terminated when the identification provided was flagged as being fraudulent.[8] In 2023, a purchaser sought to buy two guns from a dealer at a gun show in Arizona and presented an ID with a different name; however the gun store employee stopped the sale when he recognized the purchaser from a prior purchase and noticed his ID was different.[9] The in-person nature of the interaction between the FFL and purchaser, and the in-person visual examination of ID documentation in these instances, helped the FFL make sure that they did not incorrectly "verify" a purchaser whose identification document did not check out. In-person interaction thus serves as a safeguard against sales to prohibited persons and a deterrent for prohibited persons to try to use fake or stolen identification to purchase guns.

Second, the in-person requirement allows FFLs to watch for suspicious purchaser behavior that may indicate criminal intent, such as intent to make a straw purchase. Straw purchasing is one of most common methods of firearm trafficking, accounting for nearly 40 percent of firearm trafficking cases.[10] As ATF has noted, "prohibited persons rely on illegal firearm markets supplied by sources such as straw purchasers."[11] Among ATF trafficking investigations initiated between 2017 and 2021, straw purchasers trafficked nearly 38,000 firearms and an average of 11 firearms per investigation.[12]

ATF has publicly advised FFLs that persons intending to make straw purchases often show key indicators, such as when a buyer "is reluctant to undergo a background check, unfamiliar with the firearm being purchased, or in communication with a third party via phone during the purchase."[13] Everytown has also compiled a comprehensive list of red flags of illegal straw purchasing behavior that FFLs can observe, including indicators of coordination between the straw purchaser and actual buyer (e.g., money changing hands between the two inside or outside the store) and indicators that the straw buyer is not the genuine customer (e.g., when the purchaser has little or no knowledge of firearms or is evasive in answering questions from the

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[7] Government Accountability Office, "Firearms: Purchased From Federal Firearm Licensees Using Bogus Identification," GAO-01-427NI, March 21, 2001, *available at* https://www.gao.gov/products/gao-01-427ni.
[8] U.S. Attorney's Office, Western District of Kentucky, press release, "Illegal Alien Charged with Firearm Offenses," Feb. 18, 2025, *available at* https://www.justice.gov/usao-wdky/pr/illegal-alien-charged-firearm-offenses.
[9] Bianca Buono, "'Pretty bold and not too bright': Man arrested after using fake ID at Mesa gun show, police say," NBC 12 News, Sept. 27, 2023, *available at* https://www.12news.com/article/news/crime/mesa-pd-man-arrested-trying-fake-id-buy-firearms-gun-show/75-2973e2cf-3303-42ab-8082-ecdd915fffcd.
[10] ATF, National Firearms Commerce and Trafficking Assessment (NFCTA), Volume III: Firearms Trafficking Investigations—Part III: Firearm Trafficking Channels and Methods Used, April 2024, at p. 2, Table FTC-02, *available at* https://www.atf.gov/firearms/docs/report/nfcta-volume-iii-part-iii/download.
[11] *Id*. at p. 1.
[12] ATF, NFCTA, Volume III: Firearms Trafficking Investigations—Part V: Type and Volume of Firearms Trafficked, April 2024, at p. 10, Table TVF-09, *available at* https://www.atf.gov/firearms/docs/report/nfcta-volume-iii-part-v/download.
[13] ATF website, "Don't Lie for the Other Guy," viewed on June 16, 2026, *available at* https://www.atf.gov/firearms/tools-services-law-enforcement/atf-firearms-programs/dont-lie-other-guy.

dealer).[14] ATF also emphasizes the crucial role of FFLs in stopping straw purchases, explaining that "[g]un retailers can significantly reduce the risk of straw purchasing at their stores, and by doing so contribute to enhanced public safety and the enforcement of gun laws" and that "[e]ducating employees to recognize and respond to red flags indicating a possible straw purchase are key."[15] In-person observation of purchasers by FFLs is an important safeguard against straw purchases. Indeed, it is part of the reason why Director Cekada has described FFLs as "one of the first lines of defense against gun crime" and "a source of critical enforcement information that helps law enforcement identify straw purchasers and disrupt illegal firearm trafficking schemes."[16]

Third, the in-person requirement enables FFLs to identify warning signs that a purchaser may be a danger to themselves or others, such as when the purchaser is under the influence of drugs or alcohol or is showing signs of a mental health crisis or contemplating suicide. The Justice Department has long recognized the risks inherent when someone who is on controlled substances obtains guns. Even the Trump Justice Department recently noted in a legal filing that "drugs and guns are a dangerous combination."[17] Since its establishment in 1998, NICS has denied nearly 241,000 firearm purchases based on the purchaser being an unlawful user of or addicted to a controlled substance — the third-highest denial category of the nine federal prohibitors.[18] And while alcohol is not a controlled substance under federal law, it is well known that alcohol use increases the likelihood of violent behavior and leads to impaired judgment.[19] Nearly half of all homicide perpetrators report being under the influence of alcohol at the time of their crime.[20] Numerous states have passed laws prohibiting firearm carrying while under the influence of alcohol.[21] Having an FFL observe if a potential purchaser is visibly intoxicated or under the influence in-person serves as a check against such dangerous persons becoming armed.

When FFLs are able to observe purchasers in-person, it also helps reduce the chances of firearms being sold to purchasers who are undergoing a mental health crisis or showing signs of

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[14] *See* Everytown, "Special Topic: Basics of a Gun Sale," *available at* https://everytownlaw.org/plcaa-guide/ix-basics-of-a-gun-sale/#c-red-flags-of-illegal-behavior.

[15] ATF website, "Don't Lie for the Other Guy," *supra* note 13.

[16] *See* Robert Cekada, Responses to Questions for the Record, S. Comm. on the Judiciary Hearing (Feb. 2026), response to Senator Durbin question 7b, *available at* https://www.judiciary.senate.gov/imo/media/doc/3502d997-daa5-f550-7914-e7d18cc5b59b/2026-02-04_QFR-Responses_Cekada.pdf.

[17] Brief of the United States in *U.S. v Hemani*, 146 S. Ct. 1677, 225 L. Ed. 2d 314 (2026), filed Dec. 2025, at p. 3, *available at* https://www.supremecourt.gov/DocketPDF/24/24-1234/387312/20251212200434452_24-1234_Hemani_Opening_Brief_and%20Appendix.pdf (internal citations omitted).

[18] *See* FBI, "Federal Denials: Reasons Why the NICS Section Denies," Nov. 30, 1998 - April 30, 2026, *available at* https://www.fbi.gov/file-repository/cjis/federal_denials.pdf/view.

[19] *See, e.g.*, Ingrid M. Wilson, Kathryn Graham, and Angela Taft, "Alcohol Interventions, Alcohol Policy, And Intimate Partner Violence: A Systematic Review," BMC Public Health 14 (2014): 881, *available at* https://doi.org/10.1186/1471-2458-14-881; Charles Casey "Guns, Binge Drinking Go Hand-In-Hand," Futurity, June 17, 2011, *available at* https://web.archive.org/web/20130901034230/http://futurity.org/guns-binge-drinking-go-hand-in-hand/

[20] *See, e.g.*, Shane Drake, "The Toxicology of Homicide Offenders and Victims: A Review," Drug and Alcohol Review 29, no. 2 (2010): 202–25, *available at* https://doi.org/10.1111/j.1465-3362.2009.00099.x; Jennifer C. Karberg and Doris J. James, "Substance Dependence, Abuse, and Treatment of Jail Inmates, 2002," Bureau of Justice Statistics, July 2005, *available at* https://bjs.ojp.gov/content/pub/pdf/sdatji02.pdf.

[21] *See, e.g.*, Ohio Revised Code, § 2923.15 ("No person, while under the influence of alcohol or any drug of abuse, shall carry or use any firearm or dangerous ordnance."); Michigan Penal Code § 750.237(1)(a); Utah Code 76-11-217(2).

wanting to harm others or themselves. Suicide by firearm is a public health crisis in this country, with nearly 27,000 people dying each year (73 deaths each day).[22] Firearm suicides can be prevented, but it is much more difficult to do so once the suicidal person has a firearm. Across all suicide attempts without a gun, four percent result in death, but when a gun is involved, that figure skyrockets to 90 percent.[23] When FFLs have the opportunity to observe and interact with purchasers in-person, they can identify signs that a purchaser is suicidal or experiencing a mental health crisis and can help refer such persons to treatment or support rather than supplying them with lethal means.

Overall, the in-person requirement enables FFLs to accurately verify purchasers' identity and to exercise their discretion not to sell guns to purchasers who are presenting fraudulent identification, displaying suspicious behavior such as straw purchasing indicators, or showing signs of intoxication, mental health crisis, or suicidal behavior. These in-person interactions are crucial to preventing gun trafficking and can help law enforcement catch criminal fraudsters and straw purchasers and save lives. In these ways, the in-person requirement serves as a key safeguard to keep firearms out of the hands of dangerous individuals, individuals in crisis, and traffickers.

B. Current law appropriately provides only limited exceptions to the in-person requirement.

Recognizing the public safety benefits that come from in-person interaction between FFLs and gun purchasers, federal law currently provides only limited exceptions to the in-person requirement. Such NOTC sales are limited to situations where purchasers are residents of the same state in which the FFL's business premises are located, and to sales that are exempt from the requirement to conduct a NICS background check.[24] Under 18 U.S.C. § 922(t)(3) and implementing regulations, situations where exemptions from NICS checks apply include when purchasers have qualified state firearms permits,[25] when National Firearms Act ("NFA") weapons have been approved by ATF for transfer, and when ATF has certified that running a NICS background check is impracticable.[26]

In addition, pursuant to 18 U.S.C. § 922(c), FFLs are permitted to make a NOTC sale without in-person interaction between the FFL and purchaser in these NICS-exempt situations provided that the following additional conditions are met and the transaction is not otherwise unlawful: (1) the purchaser must submit a sworn statement to the FFL attesting that they are of legal age and not prohibited by local, state or federal law from receiving a firearm; (2) the FFL, prior to shipment or delivery of the firearm, must forward a copy of the sworn statement and a description of the firearm to the chief law enforcement officer ("CLEO") of the transferee's place

[22] *See* Everytown, "Gun Suicide," at https://www.everytown.org/issues/gun-suicide/, citing Everytown Research analysis of Centers for Disease Control and Prevention, National Center for Health Statistics. WONDER Online Database, Provisional Mortality Statistics, Multiple Cause of Death (accessed December 16, 2025). Average: 2020 to 2024.
[23] *Id*., citing Andrew Conner, Deborah Azrael, and Matthew Miller, "Suicide Case-Fatality Rates in the United States, 2007 to 2014: A Nationwide Population-Based Study," Annals of Internal Medicine 171, no. 2 (2019): 885–95, *available at* https://doi.org/10.7326/M19-1324.
[24] 27 C.F.R. § 478.96(b).
[25] The regulations governing such permits are the subject of another pending ATF NPRM. *See* 91 Fed. Reg. 24436.
[26] 18 U.S.C. § 922(t)(3); 27 C.F.R. § 478.102(d).

of residence by mail or electronic notification and receive a return receipt; and (3) the FFL must wait at least seven days following the FFL's receipt of the CLEO return receipt before shipping or delivering the firearm to the purchaser.

C. ATF's proposed rule eliminates the in-person requirement for millions of gun sales per year, increasing opportunities for prohibited or dangerous persons and traffickers to buy firearms.

ATF's proposed rule would essentially rescind the current in-person requirement, removing the limitation that allows NOTC transactions only for sales that are statutorily exempted from the NICS check requirement and instead allowing NOTC transactions to take place for all gun sales made by an FFL to a purchaser in the FFL's state. This is a dramatic departure from current law. The proposed rule would also allow FFLs to verify purchaser identities virtually. This would create more opportunities for remote gun sales where purchasers never need to interact face-to-face with an FFL, including situations where purchasers could order firearms online and have them shipped to them by mail via an in-state FFL.[27] ATF estimates that these changes will result in **3.28 million** more NOTC purchases per year. It is remarkable that an agency that has long championed the importance of FFL in-person detection of potential illegality has now proposed a rule – for the benefit of online gun sellers – that would result in 3.28 million fewer opportunities for FFLs to detect illegal sales in person.

ATF states that the changes in its proposed rule "would provide greater flexibility for individuals lawfully purchasing firearms."[28] But the real effect of the proposed rule would be to create more opportunities for prohibited or dangerous persons to acquire firearms. Significantly, the proposed rule also creates new avenues for straw purchasing and firearms trafficking through remote firearm sales, making it much easier for straw purchasing and unlicensed dealing schemes to operate undetected. Under the proposed rule, a prohibited person could easily engage a straw purchaser to make online gun purchases with little risk of being caught. In this scenario, a prohibited person could pick out the guns they want purchased for them, put them in an online shopping cart, and give money to a straw purchaser to cover the sale. The straw purchaser could then submit a Form 4473 and identification information remotely through the NOTC process and have firearms shipped to them before promptly handing over the firearms to the actual buyer who is a prohibited person. Another problematic scenario enabled by the proposed rule would allow a non-prohibited person to engage in unlicensed dealing (in violation of federal law) by ordering many guns from multiple online firearms retailers and having the guns shipped to them before reselling them to the lucrative market of prohibited purchasers. That same buyer could very easily rotate and space out their purchases among multiple FFLs to evade multiple-sale requirements that ATF uses to identify and crack down on trafficking rings.

The fact that NOTC transactions are limited to sales between FFLs and purchasers in the same state is no real impediment to these trafficking schemes, as online firearm retailers can set up arrangements with FFL affiliates, including wholesalers, in multiple states. As ATF Chief Counsel Robert Leider remarked in a recent interview while discussing NOTC transactions, "the

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[27] Note that the U.S. Postal Service has issued a pending NPRM seeking to permit the mailing of handguns and other concealable firearms by U.S. mail, notwithstanding the longstanding prohibition on handgun shipments by U.S. mail under 18 U.S.C. § 1715. *See* 91 Fed. Reg. 16601.

[28] 91 Fed. Reg. 25216.

center of gravity" in today's firearm sales "is some large interstate dealer that is taking the full value of the firearm and then shipping it to a transfer dealer."[29] The risk that the proposed rule would end up facilitating new opportunities for straw purchasing and illicit trafficking should be of major concern to ATF, yet the NPRM fails to even mention this risk, much less balance the risk against any purported benefits of the proposal.

D. The Brady Act's emphasis on identity verification through document examination assumed such verification would occur in-person, since the internet was not an option for document examination at the time of the Act's enactment.

ATF asserts that it is authorized to remove the in-person requirement from sales where a NICS background check is required because, in ATF's view, "[n]othing in the statute prevents transfers that do require identity verification and a NICS background check from being included within the ambit of section 922(c) NOTC procedures."[30] But this statement misrepresents the structure, intent, and context of the Brady Act in several key ways.

- <u>Internet-based document verification was not feasible or contemplated when the Brady Act was enacted</u>. The Brady Act provided that FFLs are prohibited from transferring firearms to unlicensed persons unless "the transferor has verified the identity of the transferee by examining a valid identification document . . . of the transferee containing a photograph of the transferee" because accurate identity verification through examination of ID documentation was essential to the effective operation of NICS.[31] But, in 1993, when the Brady Act was enacted, examination of ID documentation over the internet was not a feasible option for verification, as the internet was not advanced enough to permit such an "examining" to occur virtually.[32] Examination of an identification document had to happen in person, and the Brady Act did not contemplate otherwise. It was unnecessary for the Brady Act to specifically state that "examining" of identification documents had to be in person, as there was no option to use the internet in 1993 for remote visual examination and no other viable method of examining documents beyond in-person inspection.

  This context is key, because while the NOTC provision at 18 U.S.C. § 922(c) does not specifically state that NOTC sales are only permitted for sales exempted from the NICS requirement, § 922(c) does say that NOTC sales could only occur "[i]n any case not otherwise prohibited by this chapter." Under the Brady Act provision in §922(t)(1)(D), an FFL sale to an unlicensed person <u>is</u> prohibited unless the FFL "has verified the identity of the transferee by examining a valid identification document" (unless one of the § 922(t)(3) NICS exceptions applies), and <u>at the time the Brady Act was enacted, such examination and verification would have necessarily been expected to occur in person</u>. So when ATF construes the current statutes as giving ATF carte blanche to eliminate the

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[29] The Weekly Reload Podcast, "ATF Chief Counsel Robert Leider Explains the Bureau's New Gun Rules," *available at* https://www.youtube.com/watch?v=G92D__DCFQM&t=1s, at 21:48.
[30] 91 Fed. Reg. 25218.
[31] 18 U.S.C. § 922(t)(1)(D). This was (t)(1)(C) when the Brady Act was enacted.
[32] In 1993, there were only 623 websites on the internet. *See* Lara Wildenberg and Blanca Schofield, "How the World Wide Web has changed in 30 years," The Times, April 30, 2023, *available at* https://www.thetimes.com/uk/article/how-the-world-wide-web-has-changed-in-30-years-6xvvv8kjn.

in-person requirement for FFL sales in which a NICS background check is required, ATF ignores that the original understanding of the Brady Act's requirement for examination and verification of the purchaser's identification document by the FFL was that such examination and verification would happen in person and would bring along with it all the other public safety benefits that come with in-person interaction between FFLs and purchases.

- The entire regulatory framework for FFL sales established by the Gun Control Act and Brady Act supports some level of in-person interaction, even for NOTC transactions, except for incredibly remote FFLs. It is also notable that under the Gun Control Act as amended by the Brady Act, most of the NICS-exempt transactions under § 922(t)(3) where NOTC transactions are permitted are for scenarios where the purchaser still engages in some type of in-person interaction that served to verify the purchaser's identity. These situations include transactions where the purchaser "has presented to the licensee" a state permit under 18 U.S.C. § 922(t)(3)(A) (and at the time of the Brady Act's enactment, such presentation of a permit would have necessarily been in-person as the internet was not a viable option at that time), as well as transactions under 18 U.S.C. § 922(t)(3)(B) in which an NFA application has been submitted and approved in which case the purchaser had to obtain and submit fingerprints to verify their identity. Only in situations where an FFL is truly remote was the in-person requirement allowed to be waived by the Attorney General as impracticable under § 922(t)(3)(C), and then only on a case-by-case basis.

- When the Brady Act was enacted, the Justice Department was enforcing the longstanding prohibition on handgun shipments by U.S. mail. Additionally, when the Brady Act was enacted, 18 U.S.C. § 1715, the longstanding law that prohibits the shipment of handguns and other concealable firearms through the U.S. mail, was fully in effect and enforced by the Department of Justice. In fact, the Gun Control Act itself was also adopted in part to prevent mail-order sales of firearms after Lee Harvey Oswald used a rifle he had ordered through the mail to assassinate President Kennedy. This year, the Trump administration Justice Department's Office of Legal Counsel expressed its view that this statute is no longer to be enforced and the U.S. Postal Service has issued a proposed rulemaking allowing handguns to be shipped via U.S. mail—a change that, in combination with this NOTC NPRM, would open the floodgates for massive amounts of handguns to be purchased through online firearm retailers and shipped to purchasers at their homes.[33] It is likely that the Brady Act would have been even more pronounced about the importance of in-person purchaser interaction in the NOTC sales process had delivery of handguns via U.S. mail been allowed at the time of its enactment.

In short, the Brady Act's requirement for an examination and verification of the purchaser's identification document should not be read by ATF as an open-ended invitation to eliminate the in-person requirement, because such examination and verification would necessarily have been understood to occur in-person at the time of the law's enactment. ATF attempts to bypass this original understanding by proposing to explicitly allow, via regulation, FFLs to verify identification documents through the internet. But this is inconsistent with the

[33] *See* 91 Fed. Reg. 16601.

design and congressional intent of the Brady Act. In addition, as discussed below, ATF's proposal for virtual verification has troubling shortcomings and serves as an inadequate substitute for in-person interaction which enables FFLs to observe and deter attempts by prohibited and dangerous persons to buy guns.

E. <u>The identity verification process in the proposed rule is inadequate</u>.

As discussed above, it was unnecessary at the time of enactment for the Brady Act to specifically state that "examining" of identification documents and verification of identity had to be done in person, as there was no other viable method of examining documents. But now the proposed rule seeks to replace in-person examination and verification of identification documents with fully remote verification for NOTC transactions that require a NICS background check. The process put forward in the proposed rule for remotely verifying identification documents, however, is an inadequate substitute for in-person verification. Use of remote identity verification by federal agencies such as the Internal Revenue Service ("IRS") has shown troubling shortcomings, yet the NPRM would compound those concerns by having thousands of private FFL businesses use the process. In the firearm sales context, remote verification does not adequately safeguard against the risk of straw purchases made through remote sales on behalf of prohibited persons. Also, there are legitimate concerns that the NPRM's proposals for remote identity verification would require the collection of massive amounts of personally identifiable information ("PII") and biometric data on firearms purchasers that could be sold, shared, or compromised in a data breach or hack.[34]

ATF's proposed rule would allow FFLs to remotely verify a purchaser's ID document with no in-person interaction before the FFL initiates a NICS background check on the purchaser. The NPRM provides for an identity assurance level 2 ("IAL2") remote identity proofing level, which would involve the purchaser submitting a completed Form 4473 with a copy of a photo identification document electronically to the FFL. The FFLs would then conduct a video conference with the purchaser, during which the FFL would compare the copy of the purchaser's photo identification document with the transferee's appearance. The FFL would have to use a credential service provider ("CSP") to verify the purchaser's identity through a remote identity verification process that involves "a live physical facial comparison (e.g., "selfie" verification), using a live capture of the transferee's facial image and liveness detection."[35] The NPRM notes that federal agencies such as the IRS have implemented IAL2 remote identity proofing.[36] However, the NPRM would not have large government agencies using a CSP, but rather would have thousands of private FFLs, each with their own hardware, software and business operations, attempt to use this verification process. The NPRM does not offer any examples of the successful use of this technology by private businesses.

Furthermore, there are indications from the federal agency experience that the IAL2 remote identity proofing process is not sufficiently foolproof to justify eliminating the in-person requirement for verifying identity for a firearms purchase. In 2025, GAO audited the IRS ID.me

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[34] *See, e.g.*, Corey G. Johnson and Byard Duncan, "Gun Lobbyists and Cambridge Analytica Weaponized Gun Owners' Private Details for Political Gain," ProPublica, Feb. 5, 2025, *available at* https://www.propublica.org/article/guns-lobbying-cambridge-analytica-nssf-privacy-elections.
[35] 91 Fed. Reg. 25228.
[36] 91 Fed. Reg. 25218.

identity proofing program for taxpayers to access IRS-held information[37] and raised these serious concerns:

- Impersonation risks: GAO noted that "[a]ccording to [the National Institute of Standards and Technology], when organizations attempt to provide users' identities remotely via a web application, they face risks of impersonation or other attacks."[38] While GAO noted that liveness detection can help safeguard against impersonation risks, there are concerns that such liveness detection can be defeated by fraudulent documentation that bears the photo of the purchaser but false identifying information.

- Agency evaluation of CPS performance and accuracy: Unless the administering government agency exerts careful oversight of the CSP's performance at remote identity verification, it is possible that the CSP will not actually verify identification with sufficient accuracy. That government oversight may prove lacking; GAO found in its IRS review that "IRS officials were unable to show us that they evaluated or documented the outcomes of IRS's digital identity-proofing program, including ID.me solutions."[39]

- Use of artificial intelligence without appropriate controls: CSPs also increasingly use artificial intelligence ("AI") for verification with uncertain efficacy, and GAO found that the IRS was not adequately keeping track of their CSP's use of AI in facial recognition technology.[40] It is also likely that fraudsters' use of evolving AI capabilities may further complicate accurate remote identity verification, as AI may be used to alter or impersonate appearances to match identification documents provided.

- Accumulation of purchasers' PII: GAO also noted that concerns were raised about how CSPs acquire and use PII, "particularly the potential use of facial recognition technology, biometric data, and other sensitive information . . . the more personal information and biometric data collected by CSPs, the more risk that personal data could be compromised should a private invasion occur at the CSP."[41] This collection of PII could not only raise concerns about maintenance of a registry of firearm purchasers' biometric information and other PII, but could also raise concerns about sharing or selling of such information to third parties or the vulnerability of such stored PII to hackers.

In addition to these concerns with implementation, effectiveness, oversight, and PII collection with respect to IAL2 remote identity proofing processes, the NPRM also does not sufficiently safeguard against straw purchasing conducted through remote identity verification. Under the NPRM, a straw purchaser can order a gun from an online firearm retailer, fill out and submit the Form 4473 remotely, provide a copy of their identification, and provide a selfie, all at the explicit direction of a prohibited person for whom the gun is actually being purchased. The remote identity verification process gives the FFL no visibility into red flag indicators of straw purchasing that may be apparent during in-person interactions. This is a significantly easier path

[37] Government Accountability Office, "Taxpayer Identity Verification: IRS Should Strengthen Oversight of Its Identity-Proofing Program," June 2025, *available at* https://www.gao.gov/assets/gao-25-107273.pdf.
[38] *Id*. at p. 8.
[39] *Id*. at p. 18.
[40] *Id*. at 19-21.
[41] *Id*. at p. 7.

for straw purchasers than appearing in-person at FFL business premises.[42]

F. The proposed rule requires no remote identification verification for NOTC transactions where the purchaser presents a state permit in lieu of undergoing a NICS background check.

In this NPRM, the changes ATF proposes to 27 C.F.R. § 478.96(c), including the required use of a remote identity verification process involving a CSP, only applies to NOTC transactions in which a NICS background check is required. ATF's proposal for new 27 C.F.R. § 478.96(b), which would set requirements for NOTC transactions in which a NICS background check is not required, such as when a purchaser presents a state permit under 18 U.S.C. § 922(t)(3)(A) in lieu of having a NICS background check, does not require any remote identity verification process at all.[43]

This creates an enormous gap that can easily be exploited by underage or prohibited persons to obtain guns.[44] Under ATF's proposal, an underage purchaser or a prohibited person could steal a family member's drivers license and concealed carry permit, remotely submit copies of the documents to an FFL along with a completed Form 4473, and then purchase a gun without any video or selfie verification required to confirm that the actual buyer is in fact the person whose ID and permit documents are being submitted. This is a significant flaw in ATF's proposed rule that, if put into effect, would create enormous opportunity for fraudulent transactions that result in guns ending up in prohibited hands.

G. The proposed rule does not make clear the sequencing of NICS checks and CLEO notification, leading to the possibility of delayed denials when firearms have already been sent in the mail to purchasers.

In addition to the identification verification challenges discussed above, the NPRM also creates significant confusion regarding the sequencing of required steps that an FFL would need to take when conducting a NOTC transfer for which a NICS check is required. As previously noted in subsection B above, 18 U.S.C. § 922(c) requires FFLs to take several steps before

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[42] If ATF is confident in the effectiveness of its proposed remote identity verification process and plans to issue a final rule implementing it, it will be incumbent on ATF to also create an implementation plan for online sellers of ammunition to be able to use the process as well to verify the identity and eligibility of online ammunition purchasers. An Everytown report found that online ammunition retailers make it far too easy for underage teens to buy ammunition online, and if ATF issues a final rule establishing an ATF-approved remote identity verification process, it is foreseeable that states and other jurisdictions will want to require online ammunition sellers to use the process too. *See* Everytown report, "Underage Ammo Sales," March 20, 2024, *available at* https://smokinggun.org/report/underage-ammo-sales/.

[43] Note that ATF's proposed changes to 27 C.F.R. § 478.96(b) are found in ATF's Form 4473 NPRM, not in this NOTC NPRM, which makes it foreseeable that the public, law enforcement, and other commenters may not even realize that ATF is not applying this NPRM's identity verification process to transactions where a state permit is presented in lieu of a NICS background check. As discussed more fully in Part II.A below, this is yet another reason why ATF's use of several concurrent NPRMs to amend the same regulatory provision is deeply problematic.

[44] Additionally, ATF has issued a pending NPRM to clarify the regulatory standards that govern when a state-issued firearms permit qualifies as an alternative to a NICS check, and ATF's proposed rule would increase the likelihood that individuals who have become prohibited since receiving a state permit or who were inadequately vetted for the state permit will be able to buy firearms without a NICS check. *See* 91 Fed. Reg. 24436. This NPRM, in combination with the current NOTC NPRM that does not require identity verification for those presenting state permits, would provide even more prohibited persons with an opportunity to purchase guns.

conducting an NOTC sale, including forwarding a copy of the purchaser's sworn statement and Form 4473 to the CLEO of the purchaser's place of residence and then waiting at least seven days following the receipt of the CLEO's return receipt before shipping or delivering the firearm to the purchaser.

Now that ATF is seeking to allow NOTC sales for purchases where NICS checks are required, it is possible under the NPRM that FFLs could wait to run the NICS check until after receiving the CLEO return receipt and after waiting the requisite seven days, and if the NICS check is then delayed for three business days, a default proceed sale could be made to the purchaser and the firearm could be shipped to the purchaser's residence. If the NICS check ultimately results in a delayed denial because the purchaser is prohibited, then ATF or other law enforcement agencies would need to retrieve the firearm that had already been shipped. The lack of clarity in the NPRM over the sequencing of FFLs' required steps thus increases the possibility of more default proceed sales being made to prohibited purchasers through delayed denial NICS checks, which would thus require more retrieval actions.

To avoid this scenario, the NPRM should make clear that the NICS check would need to be initiated and completed and the purchase cleared by NICS to proceed <u>before</u> the FFL provides notification to the CLEO of the NOTC transaction.

* * *

As discussed above, there are strong indications that ATF's proposed rule does not provide for sufficient remote verification of transferees' identities in NOTC transactions, and that important public safety safeguards are lost with the proposed rule's elimination of in-person interaction between the FFL and purchaser. The Brady Act was neither originally understood nor intended to give carte blanche to ATF to substitute remote identity verification for in-person visual examination of identification documents and comparison of those documents to the person standing at the counter. ATF's proposed rule upends the Brady Act's design, which sought to ensure in-person interaction with purchasers in nearly all sales settings. Further, remote identity verification processes are not foolproof enough to justify sacrificing the public safety benefits of in-person identity verification, which include enabling the FFL to observe purchasers for indicators of straw purchasing, fraudulent documentation, or signs of intoxication, mental health crisis or dangerousness.

In its NPRM, ATF says that it "believes that section 922(c) also applies to transfers requiring a NICS background check, <u>as long as the FFL can sufficiently verify the transferee's identity for the purposes of NICS background checks and public safety concerns</u>."[45] ATF should withdraw the proposed rule and its proposal to extend the NOTC process to transactions requiring a NICS background check, as the conditions the NPRM articulates for such an extension have not been met.

II. <u>The credibility of this proposed rule is further undermined by the deeply flawed process that was used to issue it</u>.

In addition to our concerns about the detrimental substantive impact of this proposed rule, we are also alarmed by the deficiencies in the process through which the proposed rule was put

[45] 91 Fed. Reg. 25221 (emphasis added).

forward. ATF's use of two separate and concurrent NPRMs to modify the same regulatory provisions, its methodologically unsound assessment of the costs and benefits of this regulatory change, and its failure to even consider the impacts and costs of its proposed rule on public safety undermine the credibility and legal foundation of this proposed regulatory change.

A. ATF improperly issued multiple concurrent NPRMs amending the same regulatory provisions, with this NPRM proposing amendments to regulatory text that does not currently exist.

It is deeply troubling that ATF concurrently published in the Federal Register two NPRMs that amend the same regulatory provisions: an NPRM on Revising Firearm Transaction Record, Form 4473, and this NPRM revising NOTC transaction requirements. Each NPRM makes a set of proposed changes to regulations at 27 C.F.R. § 478.96 and 27 C.F.R. § 478.124(c). In this NPRM, ATF treats its proposed changes in the Form 4473 NPRM as if they had been adopted, even though they have not. This NPRM then proposes additional changes to the same regulatory provisions — again assuming that the proposed changes from the Form 4473 NPRM have already been fully adopted.

This is an irregular process that will likely prove misleading and wasteful. Commenters responding to either NRPM may not be aware of the full set of changes that ATF plans to make to the regulatory provisions they are commenting on, and commenters responding to this NPRM are being asked to comment on proposed changes to baseline versions of text that have not actually been adopted, may never be adopted in that form, and can only be found by searching through other NPRMs. As a result, commenters may end up submitting, and ATF will have to review, comments that do not reflect and respond to ATF's full set of proposed regulatory changes, which wastes both commenters' and the agency's time.

For example, this NPRM proposes changes to NOTC transaction requirements in 27 C.F.R. § 478.96, which the Form 4473 NPRM would already "revise and restructure" from current law.[46] The Form 4473 NPRM would make substantive and structural changes to §§ 478.96(b), (c), and (d), significantly revising those provisions from the current published regulatory language. But the NOTC NPRM then proposes to make extensive line edits to the Form 4473 NPRM's proposed new § 478.96(c), which it redesignates as subsection (d), and inserts an entirely new and lengthy § 478.96(c) which alters the substance of the documentation and notification requirements that the Form 4473 NPRM had previously proposed and adds new remote identity verification requirements. Neither NPRM places its proposed changes in the context of the other NPRM's proposed changes, forcing commenters on this NPRM to cross-reference both current regulations and the Form 4473 NPRM's proposed changes to try to understand how this NPRM would change current law. For example, as discussed in Footnote 42 above, a commenter needs to carefully read both NPRMs to realize that the Form 4473 NPRM does not require a remote identity verification process under new § 478.96(b) for NOTC transactions where a state permit is presented in lieu of a NICS background check, while this NPRM does require a remote identity verification process for NOTC transactions where a NICS check is required. And, if the Form 4473 NPRM's proposed changes to §§ 478.96(b), (c), or (d) end up modified as a result of the notice and comment rulemaking process, as is common, it is likely that this NOTC NPRM's proposed changes to § 478.96 would need to be redrafted.

[46] 91 Fed. Reg. 25435.

Similarly, this NPRM would modify identification documentation requirement language in 27 C.F.R. § 478.124(c) which the Form 4473 NPRM already proposed to amend. These are critically important regulatory provisions governing NOTC sales requirements that will potentially affect millions of transactions per year, and ATF's proposed revisions to them are extraordinarily difficult to follow and evaluate because of ATF's convoluted use of dual NPRMs.

Not only does ATF's concurrent NPRM approach make it difficult for the public to assess and comment upon the combined impact of the proposed rules, but ATF also fails to adequately address in either of its NPRMs the ways that the proposed changes intersect and the combined impact they would have. This is most clearly on display in how ATF fails to discuss that the combination of the two NPRMs means that no remote identification verification would be required for NOTC transactions where the purchaser presents a state permit in lieu of undergoing a NICS background check (as discussed above in Part I.F).

ATF should withdraw any and all concurrently issued NPRMs that propose to amend the same regulatory provisions and instead, for each regulatory provision that ATF proposes to amend, issue a single NPRM that contains all of the proposed changes to that provision. To do otherwise undermines the integrity of the regulatory process, compromises the ability of commenters to accurately view and comment on the changes ATF proposes, and masks key substantive impacts of the combined proposed changes that are not specifically addressed in either NPRM. It is insufficient for ATF to claim, as it does in Footnote 37 of this NPRM, that this new rule would incorporate amendments proposed in the Form 4473 NPRM. Instead, each NPRM must propose changes to text that actually exists.[47] Further, while ATF maintains on its internet site an eRegulations page[48] showing how regulations would be changed by upcoming proposed rules, the NPRMs posted in the Federal Register do not make commenters aware of this website. The regulatory process must not mislead commenters by treating proposed changes as already adopted, must not deny commenters the opportunity to see in each NPRM the full set of changes ATF proposes to make to a regulatory provision, and must not allow agencies to sidestep discussion of proposed rules' substantive impacts by hiding those impacts within the intersection of multiple NPRM provisions.

B. ATF's calculation of purported benefits of the proposed rule is methodologically unsound.

In the NPRM, ATF notes that the proposed rule has been determined by the Office of Management and Budget to be a significant regulatory action that necessitates a regulatory cost-benefit analysis.[49] In considering the benefits of the proposed rule, ATF focuses on the benefits to be attained by the population of persons "who purchase firearms in transactions subject to NICS background check requirements, and who wish to purchase their firearms remotely but from licensees with business premises located in the state in which the person resides."[50] The proposed rule's cost-benefit analysis estimates $1.04 billion in net savings over ten years for that population, a figure ATF uses as the primary justification for concluding that benefits exceed costs.

[47] 91 Fed. Reg. 25220, fn 37.
[48] https://regulations.atf.gov/upcoming-regulation-changes#
[49] 91 Fed. Reg. 25220.
[50] 91 Fed. Reg. 25221.

But ATF’s estimate is not credible. It rests on a chain of unsupported assumptions, each of which independently inflates the projected savings — and when compounded together, they produce a number that bears little relationship to likely real-world outcomes. ATF should substantially revise or withdraw this analysis, and certainly must do so before considering finalizing this proposed rule.

ATF's benefit calculation relies on assumptions that individually and collectively inflate projected savings, including the following:

- Travel time assumption: ATF assumes a 30-minute one-way trip for all purchasers, with no empirical support. In doing so, ATF ignores one available source of data on distances traveled to purchase firearms – its own National Firearms Commerce and Trafficking

Table GP-01: Distances from Purchaser to FFL, Purchaser to Possessor, and FFL to Recovery Location, 2017 – 2021

Distance	Purchaser to FFL		Purchaser to Possessor		FFL to Recovery	
	Number	Percent	Number	Percent	Number	Percent
<=10 miles	832,142	60.60%	358,157	46.00%	414,131	34.80%
11 - 25 miles	317,436	23.10%	113,764	14.60%	222,767	18.70%
26 - 50 miles	109,461	8.00%	60,157	7.70%	111,830	9.40%
51 - 100 miles	54,402	4.00%	47,613	6.10%	92,648	7.80%
101 - 200 miles	35,699	2.60%	47,775	6.10%	90,826	7.60%
201 - 300 miles	12,200	0.90%	27,069	3.50%	50,410	4.20%
>300 miles	11,820	0.90%	124,352	16.00%	207,304	17.40%
Total	**1,373,160**		**778,887**		**1,189,916**	
Median miles	**8**		**13**		**23**	

Assessment (“NFCTA”) report. This research found that 60.6% of traced crime gun purchasers lived within 10 miles of the FFL where they acquired their firearm, with a median purchaser-to-FFL distance of 8 miles.[51]

ATF does not explain how a median trip of 8 miles translates to a 30-minute one-way journey for the majority of purchasers, nor does it cite any transportation data in support of that figure. Because travel time constitutes the largest single component of ATF's benefit estimate — approximately 3.6 million of the 3.99 million total hours claimed — the 30-minute assumption requires empirical justification that ATF has not provided. ATF should ground this input in actual travel time data, such as Federal Highway Administration Office of Highway Policy Information travel time statistics[52] or National Household Travel Survey data, stratified by geography.[53]

- Adoption rate: ATF assumes that 50% of all firearm purchasers would elect to buy remotely, attributing this figure to internal subject matter expert judgment based on “indications” from FFLs and purchasers.[54] No survey data, market research, stated

[51] ATF, NFCTA, Volume II: Crime Guns–Part III: Crime Guns Recovered and Traced within the United States and its Territories, March 2024, at p. 36, Table GP-01, *available at* https://www.atf.gov/media/15426/download.
[52] https://www.fhwa.dot.gov/policyinformation/travel_monitoring/tvt.cfm.
[53] https://nhts.ornl.gov/.
[54] 91 Fed. Reg. 25222.

methodology, or comparator adoption studies are cited. The proposed rule would require buyers to complete a multi-step identity proofing process involving videoconferencing with the FFL, third-party IAL2 credential verification, and a potential per-transaction convenience fee. ATF has not demonstrated why 50% is a reasonable central estimate rather than an upper-bound scenario, nor has it provided any sensitivity analysis around this figure. Because the entire benefit calculation scales linearly with adoption rate, this assumption requires rigorous empirical support before it can bear the weight ATF places on it.

- Buyer count: To convert 13.09 million estimated annual firearms sales into a buyer count, ATF assumes each purchaser acquires an average of two firearms per year, yielding 6.55 million buyers.[55] Again, ATF provides no empirical source for this figure. More importantly, ATF does not address the distribution of purchases across buyers. If purchases are concentrated among a smaller number of high-volume buyers — as is plausible given the potential presence of collectors and repeat buyers in the NICS data — the mean would overstate the number of discrete buyers affected by the rule. ATF should ground this assumption in survey data on individual purchase frequency before relying on it to define the scope of the affected population.

- Leisure wage valuation: ATF applies a $26/hour leisure wage derived from U.S. Department of Health and Human Services guidance originally developed for valuing involuntary regulatory compliance burdens.[56] Applying this guidance to voluntary retail travel conflates consumer choice with regulatory burden and is inconsistent with OMB Circular A-4 distinctions between compliance costs and ordinary consumer behavior.[57]

C. ATF did not consider public safety risks and costs in its cost-benefit analysis of the proposed rule.

Even more troubling, in conducting its cost-benefit analysis for this NPRM, ATF only looked at costs to FFLs that elect to offer customers remote purchasing options, including costs of software to facilitate the transactions.[58] ATF did not look at costs that the proposed rule would impose on public safety. A cost-benefit analysis for this proposed rule is invalid without accounting for public safety costs.

The proposed rule would dramatically expand access to remote firearm purchases. Any regulation that alters the conditions under which firearms change hands necessarily implicates public safety — the risk of diversion to prohibited persons, straw purchases, fraud, and the downstream costs of gun violence. OMB Circular A-4 requires that regulatory cost-benefit analyses account for all significant social costs, including third-party harms.[59] ATF's analysis does not do this. Its cost ledger shows $0 in quantified costs. This is not a minor methodological gap — it is a structural deficiency that renders the entire analysis invalid and incapable of supporting the conclusion that benefits exceed costs.

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[55] *Id.*.
[56] 91 Fed. Reg. 25223, citing https://aspe.hhs.gov/sites/default/files/private/pdf/257746/VOT.pdf.
[57] OMB Circular A-4, Sept. 17, 2003, *available at* https://www.whitehouse.gov/wp-content/uploads/2025/08/CircularA-4.pdf.
[58] 91 Fed. Reg. 25224.
[59] OMB Circular A-4, *supra* note 57.

ATF itself acknowledges the public safety stakes: The rule proposes IAL2/AAL2 identity verification standards specifically because ATF concedes that remote sales introduce "risks inherent with remote or virtual firearm purchases."[60] Having identified those risks, ATF's obligation under Executive Order 12866 was to attempt to quantify them — or, at minimum, to explain why quantification was not feasible and provide a qualitative assessment.[61] Neither has been done. The agency cannot simultaneously acknowledge that the rule creates public safety risks and decline to assign any cost to those risks in a purported cost-benefit analysis.

A technically valid analysis would require, at a minimum, estimating the marginal increase in firearm diversion attributable to remote sales, and translating that into the expected increase in costs of gun homicide, gun assault, and gun suicide using established federal valuation methodology. Also, in other recently-issued NPRMs, ATF has noted that regulatory changes that will result in more previously-prohibited persons becoming eligible to buy firearms will increase the risk of harm "up to and including potential mass casualty events."[62] "The proposed rule also would mean significantly more firearms would be mailed to purchasers, likely increasing the number of mail thefts involving firearms. Until an analysis of these effects is conducted, ATF's claimed $1.04 billion in net savings has no meaningful denominator and cannot be used to justify finalizing this rule.

Federal agencies have well-established methodologies for valuing mortality and morbidity risks — most prominently the Value of a Statistical Life (VSL). The U.S. Department of Transportation[63] and U.S. Environmental Protection Agency[64] both apply VSL-based frameworks — currently in the range of $11 to 13 million per statistical life — to quantify the mortality costs of regulatory changes. These frameworks are directly applicable here.

To that end, a complete cost-benefit analysis for this rule would require the following components:

- Marginal diversion rate: ATF would need to estimate the extent to which remote sales increase the probability that a firearm is diverted to a prohibited person, relative to the in-person baseline. This requires drawing on existing research on the relationship between point-of-sale controls and diversion rates — for example, studies examining how background check requirements, waiting periods, and dealer record-keeping affect trafficking patterns. ATF's NFCTA Volume IV and published criminological literature provide a starting point.[65]

- Downstream violence costs: Each marginally diverted firearm carries an expected cost in terms of gun homicide, gun assault, and gun suicide risk. Using VSL for fatalities and

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[60] 91 Fed. Reg. 25225.
[61] Executive Order 12866, Sept. 30, 1993, *available at* https://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf.
[62] *See* ATF NPRM, "Revising Definitions of 'Adjudicated as a Mental Defective' and 'Committed to a Mental Institution,'" at 91 Fed. Reg. 25182.
[63] https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis.
[64] https://www.epa.gov/environmental-economics/mortality-risk-valuation.
[65] ATF, NFCTA, Volume IV, *available at* https://www.atf.gov/firearms/national-firearms-commerce-and-trafficking-assessment-nfcta-firearms-trafficking-investigations-volume-four.

published cost-of-injury estimates (e.g., from the Bureau of Justice Statistics or peer-reviewed public health literature) for non-fatal gun assaults, ATF would translate the estimated diversion rate into an expected annual social cost. This is the same methodology used in ATF's own prior regulatory analyses and by other federal agencies in regulations affecting products with mortality implications.

- <u>Fraud and identity spoofing costs</u>: Remote identity verification, even at IAL2/AAL2, introduces residual risks of identity fraud not present in in-person transactions. These costs — including law enforcement, prosecution, and victim costs — should be estimated using available data on identity fraud rates in comparable remote verification contexts.

- <u>Sensitivity analysis</u>: Given genuine uncertainty in the marginal diversion rate, ATF should present low, central, and high estimates, consistent with OMB Circular A-4 guidance on uncertainty. If even the low-end estimate of public safety costs materially erodes or eliminates the claimed $103.7 million in annual benefits, that finding alone would counsel against finalizing the rule as proposed.

- <u>Increased consumer fraud risk</u>: With online and remote purchasing, there is increased risk of fraud for consumers. This would require additional costs for proper vetting and verification for sellers.

- <u>Expanding access to firearms</u>: It would be fairly reasonable to assume that a remote option also reduces barriers for individuals who are disinclined to purchase a firearm in-person because of prohibited status, intoxication, mental illness, or other factors.

In short, ATF's cost-benefit analysis fails on two distinct levels. First, it omits the category of costs most directly implicated by this rule — public safety costs — in violation of OMB Circular A-4 and Executive Order 12866. This is not a gap that can be addressed through comment responses; it requires a substantive revision of the analysis prior to finalization. Second, the benefit estimates on which ATF relies are individually and jointly inflated by unsupported assumptions. Correcting either problem materially undermines ATF's conclusion that benefits exceed costs. Correcting both makes that conclusion untenable.

* * *

ATF in its NPRM "requests comments on the costs or benefits of the proposed rule and on the appropriate methodology and data for calculating those costs and benefits."[66] For the reasons cited in this comment, ATF should withdraw its concurrent NPRMs amending the same regulatory provisions, withdraw this NPRM's cost-benefit analysis, conduct a complete analysis that incorporates VSL-based public safety cost estimates alongside corrected benefit inputs, and reopen the comment period on that revised analysis before proceeding further.

III. <u>The proposed rule appears designed more to promote the business model of online firearm retailers like GrabAGun than to promote public safety</u>.

ATF's proposed NOTC rule, in combination with other pending proposed rules, including a proposed U.S. Postal Service rule to allow handgun shipments directly to unlicensed

[66] 91 Fed. Reg. 25227.

purchasers through the U.S. mail, appears to be part of an attempt by the Trump administration to effectively legalize door-to-door delivery for guns purchased online. This would create and facilitate the opportunity for consumers to order guns through internet retailers in much the same way they order products on Amazon.

In the preceding sections of this comment, we have highlighted significant concerns about how this new fully remote system, which ATF estimates will be used an estimated 3.28 million times per year, would expand opportunities for straw purchasing and gun trafficking, and for prohibited and dangerous persons alike to acquire guns through use of fraudulent identification information. We also note that the proposed rule will almost certainly have a negative economic impact on thousands of small business and community-based FFLs who conduct their business responsibly and through in-person transactions – yet another harmful impact of the proposed rule that ATF does not meaningfully evaluate in the NPRM. But we are especially alarmed that ATF's rules changes appear designed to particularly benefit certain online firearm retailer companies, including the one in which Donald Trump Jr. holds a significant financial stake.

GrabAGun is a Texas-based online firearms retailer that sells assault-style rifles, high-capacity magazines, silencers, short-barreled rifles and shotguns, and forced-reset triggers. The company's marketing explicitly positions it as the "Amazon of guns," with a mobile-focused interface targeted at Millennials and Gen Z customers.[67]

In March 2025, Donald Trump Jr. was named to GrabAGun's prospective board of directors as part of preparations to take the company public via merger with Colombier Acquisition Corp. II — a special purpose acquisition company (SPAC) sponsored by conservative financier Omeed Malik, with whom Trump Jr. has previously worked on Truth Social, PublicSquare, Rumble, and other ventures.[68] Pursuant to a December 2024 consultant agreement, Trump Jr. received 300,000 shares of GrabAGun.[69] On July 16, 2025, he rang the opening bell of the New York Stock Exchange when GrabAGun went public under the ticker "PEW."[70] The stock fell roughly 24% on its first day, was down 50% within a week, and was down more than 71% by July 29; even after the slide, Trump Jr.'s stake was reportedly worth about $2.5 million as of July 22, 2025.[71] GrabAGun has been explicit about its dependence on Trump Jr.'s political brand: one of its key regulatory filings warns investors that "[o]ur business may be harmed, in particular, if Donald J. Trump Jr. ceases to be involved with GrabAGun or to support our business and publicize our product offerings."[72]

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[67] *See* Chelsea O'Donnell, "Trump Jr. Promotes 'Amazon of Guns' in Bid to Woo Wall Street," The Smoking Gun, June 20, 2025, *available at* https://smokinggun.org/trump-jr-promotes-amazon-of-guns-in-bid-to-woo-wall-street/; Chelsea O'Donnell, "Trump Jr. Becomes GrabAGun Director Ahead of IPO," The Smoking Gun, April 14, 2025, *available at* https://smokinggun.org/trump-jr-becomes-grabagun-director-ahead-of-ipo/.
[68] *Id*.
[69] *See* Erin Doherty, "Shares of gun seller GrabAGun — backed by Donald Trump Jr. — tank after NYSE trading debut," CNBC, July 16, 2025, *available at* https://www.cnbc.com/2025/07/16/trump-jr-grabagun-stock-gun-merger.html.
[70] *Id*.
[71] Chelsea O'Donnell, "Update: Trump Jr.-Backed GrabAGun Has Market Meltdown," The Smoking Gun, Aug. 5, 2025, *available at* https://smokinggun.org/update-trump-jr-backed-grabagun-has-market-meltdown/.
[72] *Id*.

GrabAGun has publicly celebrated the ATF's new rules. In a May 13 earnings call two weeks after ATF's wave of regulations were announced, the company's CEO noted that:

> ATF has proposed new regulations that would allow certain firearm transfers to occur remotely with federal background check requirements still met through secure identity verification. If finalized, lawful consumers could complete the full compliance process remotely. That includes direct-to-home firearm delivery within an approved framework. This could be the most significant change to firearms retail distribution in decades. Importantly, infrastructure required to operate in this environment is complex. As currently proposed, the new regulations require remote identity verification, meeting federal standards, seamless NICS integration, advanced compliance systems, secure record keeping, and the operational ability to execute all of it accurately at scale. <u>GrabAGun is uniquely positioned for this opportunity</u>. For more than 15 years we have built the digital infrastructure and compliance foundation required to support highly regulated online firearm transactions. <u>Few companies are positioned to adapt this quickly if the rules change</u>.[73]

On the May 13 earnings call, GrabAGun also noted that it had made what was a fortuitously timed business decision: In January 2026, four months before ATF regulations that could legalize at-home firearms delivery, GrabAGun launched Pew Logistics, "our white-labeled direct consumer fulfillment solution."[74] GrabAGun described the new venture as essentially an out-of-the-box compliance and logistics solution for manufacturers who want to sell direct-to-consumer. They emphasized that they were investing heavily: The company said that they had more than doubled their current footprint in Q4 2025 after the purchase of "our new headquarters and fulfillment facility" and more than doubled operating expenses in Q1 year-over-year in part due to "the launch and scaling of Pew Logistics."[75] One can imagine that in a world where national online sales are legal but require a distributed network of in-state FFLs in all 50 states, a company with an existing infrastructure to handle the compliance and logistics would be well-positioned to take advantage.

It is imperative that ATF's process of proposing and amending regulations not be influenced by politically-connected companies. Yet a company closely tied to the President's son has stated that it sees itself as "uniquely positioned" to take advantage of the opportunities created by ATF's proposed rules changes, and particularly this NPRM. A reasonable observer could find these circumstances suspicious. To ensure confidence in the integrity of its rulemaking process, ATF must disclose any communications between ATF and Department of Justice personnel and individuals associated with GrabAGun between January 2025 and the issuance of this NPRM.

IV. <u>Conclusion</u>

In light of the significant substantive and process deficiencies with this proposed rule, and because public safety would be harmed if the rule were implemented, ATF must withdraw

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[73] Yahoo Finance, "GrabAGun Digital Hldgs Q1 2026 Earnings Call Transcript," May 13, 2026, *available at* https://finance.yahoo.com/news/grabagun-digital-hldgs-q1-2026-213717760.html (emphasis added).
[74] *Id.*
[75] *Id.*

this deeply flawed NPRM.

Thank you for your consideration of this comment.

Sincerely,

/s/ Justin Wagner

Justin Wagner
Senior Vice President for Law & Policy
Everytown for Gun Safety Support Fund