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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: <u>Docket No. ATF-2026-0013; RIN 1140-AA78</u>
<u>Comment on Proposed Rule on "Firearms Transactions and Straw Purchases"</u>

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") to amend Department of Justice regulations regarding the straw purchasing of firearms.

Combating straw purchasing is an urgent public safety priority. Straw purchasing accounts for nearly 40 percent of ATF firearm trafficking cases,[2] and among ATF trafficking investigations initiated between 2017 and 2021, straw purchasers trafficked nearly 38,000 firearms and an average of 11 firearms per investigation.[3] As ATF has noted, "prohibited persons rely on illegal firearm markets supplied by sources such as straw purchasers."[4] For those firearms trafficking cases involving straw purchasing, ATF data found that nearly 24 percent of the

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[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.

[2] 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.

[3] 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.

[4] ATF, NFCTA, Volume III: Firearms Trafficking Investigations, Part III: Firearm Trafficking Channels and Methods Used," April 2024, at p. 1, *available at* https://www.atf.gov/firearms/docs/report/nfcta-volume-iii- part-iii/download.

trafficked guns were used in shootings.[5] In light of the dangers and harms of straw purchasing, Congress has recently taken action to prioritize efforts to combat straw purchasing, including through the Bipartisan Safer Communities Act of 2022, which strengthened straw purchasing prohibitions.

With this NPRM, ATF is proposing to create a new regulatory provision, 27 C.F.R. § 478.105, to identify and explain what straw purchasing conduct is prohibited under federal law while also providing that certain activities are excluded from the scope of the straw purchasing prohibition. While we do not object to ATF's promulgation of a new regulation explaining the types of straw purchasing conduct that are prohibited under federal law, there are significant issues in ATF's NPRM that must be addressed.

The bottom line: ATF's proposed regulation on straw purchasing has several key gaps that must be corrected to make sure that: (1) there is no loophole for straw purchasing through spouses; (2) federal firearm licensees ("FFLs") and customers are fully notified by language in Form 4473 about both types of prohibited straw purchasing conduct; and (3) public safety costs are minimized so communities can be protected.

First, ATF must fix or else eliminate the flawed exclusion in § 478.105(c)(3) for situations where a spouse acquires or receives a firearm paid for by the other spouse. There is no recognized spousal exception to the statutory prohibition on buying a firearm on behalf of another person. But ATF now seeks to insert a new spousal exception into federal regulations, which, in turn, would create a significant risk that spouses who are prohibited from possessing firearms could obtain guns sold by FFLs who do not know that the ultimate recipient spouse is prohibited. That presents a significant public safety risk that the rule must address.

Second, in this NPRM, ATF explains that there are "two types" of straw purchasing: "straw purchasing by making a material misstatement" on a Form 4473 with respect to who is the actual buyer of the firearm, and "straw purchasing by purchasing for a prohibited person."[6] Yet in another recently issued NPRM and accompanying information collection request,[7] ATF proposes revisions to Form 4473 that only reference the second type of straw purchasing on the form. ATF's proposed changes to Form 4473 would also remove information contained in Question 21.a of the current form that clearly explains that a customer cannot be sold a firearm if they are acquiring the firearm on behalf of another person. ATF must ensure that any revised version of Form 4473 clearly defines and explains both types of straw purchasing discussed in this NPRM to help ensure that customers are aware of this prohibited conduct and to ensure that FFLs are on notice to be alert to such conduct.

Third, in this NPRM, ATF provides no formal analysis of the costs of its regulation. In fact, ATF admits it does not have sufficient cost information, stating that ATF "requests more information from the public regarding the economic effects this rulemaking may have on the

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[5] ATF, NFCTA, Volume III: Firearms Trafficking Investigations, Part IX: Investigation Outcomes, April 2024, at p. 5, Table IO-06, *available at* https://www.atf.gov/firearms/docs/report/nfcta-volume-iii-part-ix/download. ATF Special Agents were able to report whether trafficked firearms were or were not used in shootings in approximately 66 percent (6,455 of 9,708) of cases.
[6] 91 Fed. Reg. 24450.
[7] 91 Fed. Reg. 25432; 91 Fed. Reg. 25448.

public and the regulated industries."[8] Prior to issuing any final rule, ATF should evaluate and explain the potential costs and impacts of its proposed exclusions – especially the spousal provision exclusion – on deterring straw purchasing and protecting public safety.

I. **ATF must ensure that its proposed regulations do not facilitate straw purchasing on behalf of prohibited spouses.**

ATF notes in the NPRM that "[a] common straw purchase transaction involves one spouse purchasing on behalf of a prohibited spouse."[9] ATF states that its proposed rule "would make clear that such conduct is prohibited."[10] However, the rule itself does not provide sufficient clarity or deterrence on this point and, unless corrected, would likely result in more firearms ending up in prohibited spouses' hands.

ATF correctly acknowledges in its NPRM that there are "two types of straw purchasing." First, there is "straw purchasing by making a material misstatement" with respect to who is the actual buyer of the firearm.[11] And, second, there is "straw purchasing by purchasing for a prohibited person."[12] The first type of straw purchasing, i.e., making a material misstatement about who is the actual buyer, has long been prohibited by 18 U.S.C. § 922(a)(6) and § 924(a)(1)(A). The second type of straw purchasing, i.e., buying on behalf of a prohibited person, is prohibited by 18 U.S.C. § 932 as added by the Bipartisan Safer Communities Act of 2022.

ATF's proposed new regulation, 27 C.F.R. § 478.105, would include in subsection (c) a list of exclusions describing activities that would not count as a straw purchase "by material false statement," including an exclusion for "(3) Acquiring or receiving a firearm by a spouse when the other spouse has paid for the firearm, provided that both spouses live at the same address." With this exclusion, ATF is attempting to create a new spousal exception to the first type of straw purchasing, i.e., where the customer does not honestly state on the form that they are not the actual transferee or buyer of the firearm. While ATF notes in the NPRM that it has previously recognized certain exceptions to the prohibition on buying a firearm on behalf of another person, such as for parents purchasing firearms on behalf of minor children or purchases made as bona fide gifts where the gift giver does not receive anything of value, this spousal exception appears new.[13] A subsequent provision in § 478.105(e)(2) provides that "The exceptions listed in paragraph (c) of this section to straw purchasing by a material false statement do not apply to a straw purchase by a prohibited person."

The new spousal exception created by this proposal is deeply flawed and does not provide enough guidance for FFLs to be able to operationalize it effectively. The new exclusion applies if three elements are present: (1) the two individuals involved in the transaction are

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[8] 91 Fed. Reg. 24451.
[9] 91 Fed. Reg. 24451. *See also, e.g.*, U.S. Attorney's Office for the Eastern District of Virginia press release, "[Final defendant sentenced to 12 years in prison for her role in a fentanyl and firearm trafficking conspiracy]," July 18, 2024 (defendant "knew that [her husband], for whom she was purchasing the firearms, was a convicted felon and had pending drug and firearms charges in Maryland and, therefore, could not legally possess a firearm or ammunition.").
[10] 91 Fed. Reg. 24451.
[11] 91 Fed. Reg. 24450.
[12] *Id*.
[13] *Id*.

married; (2) both individuals live at the same address; and (3) both individuals are not prohibited from buying guns. The proposed regulation offers zero guidance to FFLs on how to confirm and verify each of these required elements. There is no requirement that an FFL inquire as to each of these elements or require documentation to verify the marriage, the address of each individual, and the legality of each person's firearm possession. As a result, there is no practical way for an FFL - faced with two customers that come into a store together - to know if those individuals are married. The proposed rule would place FFLs in the awkward position of guessing and/or inquiring into customers' marital status during a sale. Without sufficient guidance or required protocol to verify each of these elements, this new exception creates serious public safety risks.

Crucially, there is nothing in the new regulation indicating how an FFL would know if a customer's spouse is prohibited from possessing a firearm if the customer is buying it on behalf of the spouse. A NICS background check of the purchasing spouse would not reveal the prohibited status of the other spouse, and there is no question in ATF's proposed redesigned Form 4473 that would reveal that the purchase is on behalf of a spouse in the same way that Question 21.a in the current form asks the buyer if they are the actual buyer and warns that they cannot acquire the firearm on behalf of another person. Thus, ATF's proposed reforms would result in less scrutiny of spouse purchases than the current system, giving prohibited persons greater incentive and opportunity to obtain firearms through their spouse — and potentially exacerbating pressures in abusive spousal relationships.

There have been many straw purchasing incidents that involve a spouse or partner in an intimate relationship purchasing firearms on behalf of the other partner in the relationship. In its National Firearm Commerce and Trafficking Assessment, ATF found that out of firearm trafficking cases involving identified straw purchasers between 2017 and 2021, the straw purchaser was an intimate partner or spouse of the trafficker in over 24% of cases.[14] Evidence indicates that such straw purchasing incidents frequently involve situations where a woman is in an abusive relationship and is pressured to straw-purchase a firearm by her abusive partner.[15] Any regulatory effort to clarify or explain federal straw purchasing law must be carefully crafted so as not to exacerbate the problem of straw purchasing occurring in intimate relationship contexts.

Public safety would be put at greater risk if ATF follows through with its proposal to create a new exclusion from the first type of straw purchasing for spousal purchases, because

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[14] ATF, NFCTA, Volume III: Firearms Trafficking Investigations—Part VI: Characteristics of Firearm Traffickers, End Users, and Defendants," at p. 25, Table CFT-22, *available at* https://www.atf.gov/media/20761/download.

[15] *See, e.g.*, Esprene Liddell-Quintyn, *et al.*, "A Study on Gun Violence and Intimate Partner Violence," MacArthur Foundation, March 18, 2025, *available at* https://www.macfound.org/media/article_pdfs/macarthur-report-_ipv-and-gun-violence.pdf (p. 13: "it is known that women can sometimes become engaged in illegal gun-related activity when coerced by male counterparts to become straw purchasers, when the person who wants a firearm is barred from obtaining one…Many women may not realize they are engaging in illegal activity when they purchase a firearm on someone else's behalf and may often do so out of financial need or abusive/manipulative relationships."); Stephen Montemayor, "'Straw' gun buyers often are women in abusive relationships," Minnesota Star Tribune, May 24, 2024, *available at* https://www.startribune.com/women-in-abusive-relationships-are-frequent-firearm-buyers-for-those-barred-from-owning-them/600368422. ("A Star Tribune review of more than two dozen [Minneapolis area straw purchasing] cases charged since 2014 found that a majority involve women connected to an intimate partner, close friend or relative who leaned on them to get their guns. And many of their cases reveal backdrops of trauma or domestic violence.")

there is no way to effectively administer such an exclusion. If ATF wants to allow spouses to buy firearms on behalf of the other spouse while minimizing that public safety risk, there should be a question on Form 4473 asking if the purchaser is buying the firearm on behalf of a spouse, and if the purchaser says yes, then a NICS background check should be required on the ultimate recipient spouse as well to ensure the spouse is not prohibited.

Notably, none of ATF's stated justifications for its current spousal exclusion approach explains why ATF cannot take further steps to ensure prohibited spouses do not end up armed. In its NPRM, ATF says it was prompted to put in this exclusion because ATF had "recently received inquiries regarding . . . the purchase of firearms as marital property" and that this "has led to some confusion among FFLs whether a purchase may be completed using money from a spouse or with a spouse present."[16] But this confusion does not prevent ATF taking steps to ensure that prohibited spouses are not the ultimate recipients of spousal purchases. ATF further attempts to explain its current approach to spousal purchasing by saying:

> [A]mong two spouses who may lawfully possess firearms and live at the same address, it does not matter which spouse fills out the form or hands over the money. Both the firearm and the funds used to pay for it will likely be martial [sic] property. For tracing purposes, the form will identify the name of a responsible adult who acquired the firearm and the correct address where that person lives. The exception[ ] to straw purchasing for spouses . . . reflect[s] that ATF will not micromanage family affairs. ATF retains an interest in such transactions only when a member of the family is prohibited by law from possessing a firearm.[17]

Keeping guns out of the hands of those prohibited by law from possessing them is not "micromanaging family affairs." It is enforcing the laws on the books. If ATF truly does retain an interest in keeping firearms out of the hands of those prohibited by law from possessing them, the proposed rule's spousal straw purchasing loophole must be closed. One way to do so would be to strike the spousal exclusion altogether. Alternatively, ATF could require a spouse to disclose if a purchase is being made on behalf of a non-buying spouse, which would allow for scrutiny to ensure the non-buying spouse is not prohibited and would also deter prohibited non-buying spouses from pressuring their partner into making purchases. Accordingly, we urge ATF to either strike the spousal exclusion from the rule or else ensure that spouses are asked on Form 4473 if they are buying on behalf of their spouse and if so, ATF should require a NICS check to be conducted on the non-buying spouse to ensure they are not prohibited.

II. ATF's proposed revisions to Form 4473 do not fully define or explain straw purchasing, reducing awareness for FFLs or customers.

As noted above, ATF recently proposed to revise Form 4473 to make the form, in ATF's words, "more streamlined."[18] ATF's revised form would replace current Question 21.a, which explains that a customer cannot be sold a firearm if the customer is acquiring the firearm on behalf of another person. ATF proposes replacing Question 21.a with a short bullet point within

[16] 91 Fed. Reg. 24450.
[17] 91 Fed. Reg. 24451.
[18] 91 Fed. Reg. 25441.

new Question 2.d that asks the customer to initial that "I have not engaged in a 'straw purchase' as that term is defined in the instructions," and then the form includes a definition of straw purchase on a separate page.

However, the revised Form 4473's definition of straw purchasing then only describes the second type of straw purchasing discussed in this NPRM, namely, straw purchasing by purchasing for a prohibited person. This is inadequate; the revised Form 4473 neither mentions in the definition nor explains to customers elsewhere in the form that prohibited straw purchasing can also include making a material misstatement on the form about who is the actual buyer. In firearm trafficking cases initiated by ATF between 2017 and 2021, about 30% of all persons referred to U.S. Attorney Offices for prosecution were referred for violations of the statutes prohibiting this type of straw purchasing (18 U.S.C. § 922(a)(6) and 18 U.S.C. § 924(a)(1)(A)).[19] Customers must be clearly informed by Form 4473 that <u>both</u> types of straw purchasing are illegal, and ATF's proposed revisions to Form 4473 should not move forward unless the revised form accomplishes this. We have also raised this concern in comments we provided to ATF's information collection request for Form 4473 changes as well as ATF's NPRM proposing changes to the regulations governing Form 4473.

III. <u>ATF's rulemaking process must assess the costs that gaps and exclusions in straw purchasing regulations might impose on the public and the safety of our communities</u>.

In its NPRM, ATF provides very little analysis of the costs and impacts of its proposal to explain what constitutes prohibited straw purchasing and to list certain activities as excluded from that prohibition. ATF even admits that it put forward this proposal without first obtaining sufficient cost information, stating in the NPRM that ATF "requests more information from the public regarding the economic effects this rulemaking may have on the public and the regulated industries."[20]

Even if ATF is not required by the Office of Management and Budget to assess the costs and benefits of its proposed regulatory changes, ATF owes it to the communities it serves to conduct such an assessment, particularly with respect to an issue as important as straw purchasing. And as part of that assessment, ATF must look at costs and impacts on stakeholders other than just the firearms industry and gun purchasers. ATF does mention in the NPRM that "[t]his proposed rulemaking provides qualitative benefits to the firearms industry and firearms purchasers by providing clarity on the scope of what constitutes unlawful straw purchasing."[21] But there are other constituencies who are deeply impacted by straw purchasing and the harms it causes, including law enforcement, domestic violence survivors, victims of shooting incidents involving trafficked guns, and the public health community.

Prior to issuing any final rule, ATF should evaluate and discuss the potential costs and impacts of its proposed rule, including its exclusions, on all of these stakeholders and on the overall effort to prevent and deter straw purchasing and protect public safety.

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[19] ATF, NFCTA, Volume III: Firearms Trafficking Investigations, Part IX: Investigation Outcomes" April 2024, at p. 17, Table IO-18a, *available at*.https://www.atf.gov/media/14521/download.
[20] 91 Fed. Reg. 24451.
[21] *Id*.

IV. Conclusion

Straw purchasing causes serious harm to our communities, and it must be combated vigorously. Any regulatory attempts by ATF to clarify what is and is not prohibited straw purchasing conduct must prioritize the goal of reducing straw purchasing and must not create loopholes that risk making the problem worse. ATF's current proposal falls short in several respects, and for the sake of public safety we urge that it either be revised, as discussed above, or else withdrawn.

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