

# Why Universal Background Checks Can't Lead to a Federal Gun Registry



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They were for it before they were against it.

In 1999, Wayne LaPierre of the National Rifle Association testified before Congress urging an instant background check for all private gun sales.<sup>1</sup> In 2013, the same Wayne LaPierre representing the same NRA argued the opposite.<sup>2</sup> Mr. LaPierre is now raising the specter of a national gun registry if universal background checks became law.<sup>3</sup> In particular, the NRA argues that the Obama Administration could simply convert such checks into a registry through executive action. In this memo, we make the practical, legal, and political case for why this won't and can't happen.

## The Practical Reasons

The very process and operation of the background check system intentionally makes it impossible for the federal government to use those records to create a registry of gun owners or the guns they purchase.

Right now, when a person buys a gun at a federally licensed dealer (where a background check is already required), the first thing the store does is to give the buyer a blank copy of ATF Form 4473. The buyer fills in his name, address, and birthday, and affirms that he is not prohibited from having a gun and is not buying it for someone else.<sup>4</sup> The store clerk takes the form, looks at the buyer's photo ID, and then either picks up the phone to call the National Instant Check System (NICS) or logs onto their secure website. It takes an average of 7 seconds for someone at NICS to answer the phone,<sup>5</sup> and the gun dealer reads the name and date of birth from the form or types it into the computer. Typically, within a few minutes NICS can search its database to make sure the buyer is not prohibited from owning a gun. If no records are found, the dealer is told he can proceed with the sale.<sup>6</sup>

Here's what happens next: The buyer leaves the store with the firearm. The NICS system destroys all records of running a check on that buyer within 24 hours.<sup>7</sup> On the 4473 form, the dealer marks that the buyer passed the NICS check, writes down the transaction number and the serial number of the gun that was sold, and files it away, where it must be kept in a paper file by law for 20 years.<sup>8</sup>

Thus, there is *only one official record* of the sale, and it resides in the individual gun dealer's files. Currently, there are approximately 59,000 gun dealers across all 50 states,<sup>9</sup> each of which keeps individual files of the approximately 16 million 4473 forms that are filled out every year.<sup>10</sup> There are only four ways the government can ever even see this record: during a compliance inspection of dealer records, during an ongoing criminal investigation, if your gun is found at a crime scene, or if the gun store goes out of business.

Let's look at this in a practical context:

- Once every 12 months, ATF is authorized to inspect a gun dealer's records to make sure they are in compliance with federal law (though such an audit is rarely performed that regularly—given current funding and staffing levels, it would take ATF 22 years to audit every dealer once<sup>11</sup>). Federal agents do not take the records with them unless they show evidence of a crime—they simply ensure the dealer is keeping them as required by law. This is an in-house review.<sup>12</sup>
- Law enforcement can gain access to a dealer's records either with a warrant or as part of an ongoing criminal investigation, but the dealer keeps possession of the records, and law enforcement may only inspect and examine (not seize) them, unless they contain material evidence of violation of the law.<sup>13</sup>

- If the gun is found at a crime scene, the police may trace the gun by calling the manufacturer and reading them the serial number. The manufacturer will tell the police to which wholesaler they sold the gun, and police will then contact that wholesaler to get the name of the gun store to which the gun was sold. If police can trace a gun back to the gun dealer who sold it, the dealer can go into their files and tell the police who purchased the gun.<sup>14</sup> But since 9 out of 10 traced crime guns were wielded by someone other than the original buyer, this information is not always very helpful to police even when they can find it.<sup>15</sup>
- If the gun store closes within 20 years of a firearm purchase, the dealer will send past 4473 forms to a government warehouse.<sup>16</sup> Currently, the warehouse contains piles and piles of paper records, each page of which has to be individually photographed and uploaded as an image into a computer database. (Think microfiche, for those old enough to remember those days of searching for a needle in a haystack.) Because the database holds only images, it cannot be searched, and the only way to find a record of a specific gun or specific purchaser is to read through every single record, one at a time.<sup>17</sup>

It is, by intentional legal design, the most inefficient and diffuse record-keeping system in the government. The universal background check proposals currently before Congress would place the exact same restrictions on private sales, and these sales would mostly be conducted through the very same licensed firearms dealers.

Given the way the recordkeeping system works, it would be impossible to create a federal database of gun owners based on background check records. If background checks are made universal, even more 4473 forms will be filled out every year, and they will be kept by each individual seller or by the dealer who helped them access the NICS system. There will still only be one record of a private gun sale, and as long as the gun store stays open or the private seller is alive, the government

will never have access to it. Even if the form is eventually sent to the federal warehouse and entered into its 4473 database, the information will still be unsearchable and fail to serve in any way as a registry of gun owners. And the record of the background check itself would still be destroyed within 24 hours. Given the operation of the system, there is simply no practical way to use background checks to create a federal registry of gun owners.

## The Legal Reasons

Not only is it not *practically* possible to create a federal registry of gun owners, it would violate multiple federal laws to do so:

- Federal law is very clear on the subject of a federal registry. It reads:

*No such rule or regulation...may require that records...be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established.*<sup>18</sup>

- Federal law further states that a gun dealer or collector can never be required to submit their records to the federal government, unless it is during an annual inspection, part of a criminal investigation, for the purposes of tracing a gun used in a crime, or because the dealer is going out of business.<sup>19</sup>
- Federal regulations mandate that all federal background check records must be destroyed with 24 hours for everyone who passes the check and is allowed to purchase a gun.<sup>20</sup>

Thus, it would be not only impractical but also illegal to create any sort of federal firearms registry under both the U.S. Code and the Code of Federal Regulations. A universal background check statute would not supersede, repeal, or in any way limit or roll back these laws, meaning it could not be used to create any such federal registry.

## The Political Reasons

Finally, a registry would also be a political nonstarter. Even policymakers on the far left are not calling for a federal registry of gun owners, and if anyone were to do so, the proposal would never even get a vote, much less have a chance of passage. Perhaps that is why registration is not on anyone's agenda—except opponents of gun safety measures.

The President did not propose registration as a policy solution.<sup>21</sup> Senate Judiciary Chairman Patrick Leahy (D-VT) has entertained no hearings on registration. The Democratic House Task Force did not recommend registration.<sup>22</sup> The assault weapons ban bills introduced by Senators Dianne Feinstein (D-CA) and Mark Kirk (R-IL) and Congresswoman Carolyn McCarthy contain no registration.<sup>23</sup> And of course, the bipartisan Senate bill on background checks for private gun sales will contain no whiff of registration. It's a pretend issue.

## Conclusion

The NRA's only real response to calls for a universal background check bill is to stoke fears of a federal gun registry. But in reality, talk of a federal registry is a complete non-sequitur in this debate—it is not practically possible under current law, legally allowable under existing statutes, or politically feasible in even today's climate.

The National Rifle Association once favored universal background checks because they are quick, easy, and effective at keeping guns out of the wrong hands. And as they knew back in 1999—they open no window for federal gun registration.

## END NOTES

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