

UNIVERSAL BACKGROUND CHECKS

- Universal background checks are unenforceable without mandatory registration – which is illegal under the 1986 Gun Control Act and 1993 Brady Act.
- FFLs face liability if a private sale is conducted for modified guns with unsafe changes from factory configuration.
- Universal background checks would not address the problem of the main source of crime guns: the black market.

REGISTRIES ARE UNLAWFUL

Currently, background checks are conducted for all retail sales by federally licensed firearm retailers (FFLs). That includes retail sales that occur at gun shows where a firearm is sold at a booth ran by the FFL or online firearm sales that are required to ship directly to an FFL for a background check. The only transfers remaining are private firearm sales which are legal in most of the United States. The glaring problem with universal background checks is they are unenforceable without a mandatory national firearm registry. Without knowing exactly who has the hundreds of millions of privately-owned firearms, it is impossible to control the flow of private sales.

Federally, a national firearm registry is prohibited due to language in the 1986 Gun Control Act and the Brady Act of 1993, which led to the creation of the National Instant Criminal Background Check System (NICS) and made clear that NICS cannot be used to create a firearm registry. Gun control advocates know that failing universal background

checks would be a precursor to justify modifying current legislation to achieve the goal of knowing where all the guns are. The problem is that even with a firearm registry, it would not stop criminals, nor reduce violent crime. Law-abiding citizens would register their firearms because they follow the law, and criminals would make sure to keep their guns off the list. According to the latest Bureau of Justice Statistics (BJS) Survey of Prison Inmates, an estimated 287,400 prisoners possessed a firearm during their offense of which they are serving time. Of that population, “Seven percent had purchased it under their own name from a licensed firearm dealer.”¹ Almost 80 percent of inmates acquired their firearms from nefarious sources.

NO EFFECT ON CRIMINALS

The survey also found that over 80 percent of the state and federal inmates may have been prohibited from buying a firearm under federal law. Considering these figures, it is no surprise that criminals do not seek to purchase firearms from licensed dealers. In fact, this is confirmed by

an extremely low NICS denial rate. In 2019, the FBI’s NICS system denied 103,592 firearm transfers, a denial rate of only 0.37 percent of the over 28 million NICS Firearm Background Checks.

If universal background checks were mandated, the question becomes whether criminals would change their behavior and instead choose to obtain firearms from FFLs that require a background check. The Centers for Disease Control and Prevention review of the effectiveness of various firearm laws published in 2003, found no evidence this would happen. More recently, a 2013 Justice Department review of violence prevention studies found that even a “perfect universal background check system” would not address the largest sources of crime guns.² Further, the study found that effectiveness would depend on “requiring gun registration”.

Additionally, evidence that a universal background check law would fail to limit access to firearms among prohibited populations can be found in an analysis of the implementation of the Brady Act. According to a 2000 study, there was “no evidence that implementation of the Brady Act was associated with a reduction in homicide rates.”

CONFISCATION RISK

Ultimately, the goal of registration for

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antigun advocates is confiscation of law-abiding owners' firearms. The strategy is historically present in many countries as far back as Nazi Germany to modern day Australia, United Kingdom, Venezuela, and most recently, Canada. In the United States, disarming law-abiding citizens could be expedited by registration records that pinpoint gun owners' locations. After registration and confiscation, violent crime skyrockets for years because criminals know that none of their victims are armed. After all, most criminals get their firearms from the black market or steal them.

LIABILITY FOR FFLS

Gun control proponents understand that universal background checks will not have a positive effect on reducing violent crime. Universal background checks are the first

step in dismantling the Second Amendment and the firearm and ammunition industry. Forcing private party transactions to be processed through NICS creates serious concerns for heavily regulated firearm dealers and the increasingly strained NICS system. The proposed regulation puts increased liability on the federally licensed firearm dealer for selling firearms not in their inventory. If a private seller has made unsafe modifications to a firearm, and a dealer facilitates the transfer to a private buyer, the dealer would certainly be caught up in a liability suit. Additionally, there would be new regulations to account for firearms not already included in the FFL's records. This new regulatory hurdle would likely have growing pains for both federal agencies and businesses. The risk is categorically higher for FFLs because paperwork

violations, regardless of intent or amount, are grounds for license revocation.

Rather than enacting an ineffective new law that would severely impact the constitutionally-protected lawful commerce of firearms and infringe on the Second Amendment rights of law-abiding Americans, the NSSF urges lawmakers to ensure that NICS has the proper resources to guarantee the background check system is operating effectively and efficiently as Congress intended it to work.

The National Shooting Sports Foundation, the firearm and ammunition industry trade association, strongly opposes any measures to require universal background checks.

¹ <https://www.bjs.gov/content/pub/pdf/suficspi16.pdf>

² Greg Ridgeway, Ph.D., "Summary of Select Firearm Violence Prevention Strategies," National Institute of Justice, Jan. 4, 2013.