

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-6515

October 12, 2023

The Honorable Steven M. Dettelbach
Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Ave. NE
Washington, D.C. 20002

Dear Director Dettelbach:

The House Committee on Small Business writes to inquire about the Bureau of Alcohol, Tobacco, and Firearm, and Explosives' (ATF) recent proposed changes to the definition of "engaged in the business of selling firearms." This proposed rule would require nearly 25,000 new individuals or entities to register as a Federally Licensed Firearm (FFL) Dealer, functionally turning them into small businesses.¹ This change creates an ambiguous standard that could cause an individual to be labeled as being "engaged in the business of selling firearms," requiring them to register with and pay a fee to the ATF.² Additionally, this rule obscures the difference between individuals and potential businesses, complicating the landscape for people, businesses, and entrepreneurs. It appears that the ATF may not have properly considered small entities during this rulemaking process as required by the Regulatory Flexibility Act (RFA).

It is difficult to determine whether this rulemaking is based on the Biden Administration's disdain for the Second Amendment or its contempt for American small businesses, but it most certainly will not achieve its desired ends. This rule states that anyone who sells a firearm with the "predominant purpose" of making a profit is "engaged in the businesses of selling firearms," and must register as a FFL dealer.³ Under the proposed standard nearly 25,000 new "businesses" will essentially be created overnight, and few, if any, are prepared to, nor intend to operate as a business.⁴ Additionally, the rule could require an individual who sells just one firearm to register as a FFL dealer, depending on their "predominant purpose."⁵ This standard is ambiguous, and due to the nature of this rule, will create confusion among individuals that the ATF now contends are firearms dealers.

¹ Definition of "Engaged in the Business" as a Dealer in Firearms, 88 FR 61993, 62017 (2023) (to be codified at 27 CFR 478).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* (See generally the ATF refusing to set a minimum threshold for number of weapons sold before becoming "engaged in the business" of selling firearms).

It is important for agencies to examine small businesses interests—which make up 99.9 percent of all businesses in the United States—when passing any new rule. The Committee is unconvinced that the ATF’s explanation of how this rule impacts small business, which is less than one page, is sufficient to explain this rule’s impact on the nearly 25,000 new small businesses it creates. America’s small businesses deserve to have their voices heard and considered. We therefore request the following information as soon as possible but no later than October 26, 2023:

1. For small businesses, the entirety of increased costs of this rule are owed to the ATF, such as the cost of creating an FFL license application and the application fees. Despite controlling all of the costs associated with this regulation, the ATF does not list a cost per business for this rule. What is the average additional cost a small business would incur as a result of this rule?
 - a. Why did the ATF not include this figure in the published proposed rule?
2. The RFA requires agencies to consider suitable alternatives which would be less costly for small business. In its RFA, the ATF indicates that it did not find a suitable alternative. What alternatives did the ATF consider?
 - a. What would have been their impact on small entities?
 - b. Why were these alternatives deemed insufficient?
 - c. Why did the ATF not explain the alternatives in its original RFA analysis?
3. If an individual sold, or sought to sell, a single firearm purely for monetary gain, would they now be considered as “engaged in the business of selling firearms?”
4. The ATF anticipates that nearly 25,000 new individuals or entities must register as a firearm dealer. Of those entities, how many does the ATF anticipate will stop selling firearms?
5. What impact will this rule have on existing FFL dealers, many of whom are small businesses?
6. How did the ATF assess the costs of this rule on large entities, compared with the 25,000 new small businesses it created?
7. What impact does the ATF believe adding 25,000 new FFL dealers will have on the price of firearms?
8. Why did the ATF not explain this rules’ impact on the 25,000 businesses it identified?

The Honorable Steven M. Dettelbach

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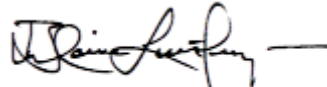
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To schedule the delivery of your response or ask any related follow-up questions, please contact Committee on Small Business Majority Staff at (202) 225-5821. The Committee on Small Business has broad authority to investigate “problems of all types of small business” under House Rule X. Thank you in advance for your cooperation with this inquiry.

In God we trust,



Roger Williams
Chairman
Committee on Small Business



Blaine Luetkemeyer
Vice Chairman
Committee on Small Business



Pete Stauber
Member
Committee on Small Business



Aaron Bean
Member
Committee on Small Business

cc: The Honorable Nydia M. Velasquez, Ranking Member
Committee on Small Business