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## **BACKGROUND ON ATF PROPOSED RULE ON NATIONAL FIREARMS ACT GUN TRUSTS**

### ***TO ENSURE PUBLIC SAFETY, RULE WOULD EXTEND TO GUN TRUSTS IDENTIFICATION, LAW ENFORCEMENT SIGN-OFF, AND BACKGROUND CHECK REQUIREMENTS THAT ALREADY APPLY TO INDIVIDUALS***

#### **Background on the National Firearms Act (NFA) Regulation of Machine Guns and Other Weapons**

The National Firearms Act of 1934 (NFA) regulates the transfer of the most destructive firearms available to civilians, including fully automatic machine guns, short-barreled rifles and shotguns, and destructive devices such as Molotov cocktails and bazookas (a more extensive list of regulated weapons is included in the footnote below).<sup>1</sup> The NFA requires that transferees of these weapons submit fingerprints and a photograph, pay a special tax, and undergo a background check. It also requires a “Chief Law Enforcement Officer” or CLEO to sign a certificate stating that the certifying official is satisfied that the fingerprints and photograph accompanying the application are those of the applicant and that the certifying official has no information indicating that possession of the firearm by the applicant would be in violation of state or local law. This requirement is not statutory, but was issued under the federal Bureau of Alcohol, Tobacco, Firearms and Explosives’ (ATF) authority to promulgate regulations governing application forms. The purpose of the CLEO sign-off requirement is to ensure that the official will have the greatest possible access to criminal records concerning persons who wish to possess NFA firearms as well as knowledge of the applicable state and local laws governing the transfer, receipt, and possession of the firearm.

#### **NFA Weapons Can Now be Transferred to Gun Trusts Without a Background Check**

Currently, ATF’s interpretation of the NFA allows machine guns and other devices covered by the law to be transferred to legal entities, e.g. a living trust or corporate entity, with no NFA-level background check or CLEO sign-off (although a Brady background check is usually performed on the individual taking possession of the weapon on behalf of the trust at the time of transfer). Meanwhile, NFA weapons transferred to individuals are subject to all NFA requirements including the fingerprinting, photograph,

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<sup>1</sup> Some examples of the types of firearms that must be registered under the National Firearms Act [26 U.S.C. §5845] include: machine guns; the frames or receivers of machine guns; any combination of parts designed and intended for use in converting weapons into machine guns; any part designed and intended solely and exclusively for converting a weapon into a machine gun; silencers and any part designed and intended for fabricating a silencer; short-barreled rifles; and, short-barreled shotguns. Also included are “destructive devices” (which include Molotov cocktails, anti-tank guns (over 50 caliber), bazookas, and mortars) as well as “any other weapon” (which includes cane guns and gadget-type firearms and “pen” guns which fire a projectile by the action of an explosive).

CLEO sign-off, and background check. The agency's reasoning for exempting legal entities is not entirely clear, although it seems to hinge primarily on references in the implementing regulations regarding "individuals." Page 60 of the *National Firearms Act (NFA) Handbook* (which was co-written with the industry) states, under a section titled "Transfers of NFA firearms to persons other than an individual or an FFL and special (occupational) taxpayer," that:

Section 479.85 of the Code of Federal Regulations requires the ATF Form 4 or Form 5 application to properly identify the transferee. Although transfers to natural persons (individuals) must include a recent photograph, duplicate fingerprint cards, and a certification from law enforcement, the NFA also defines a person to include a partnership, company, association, trust, estate, or corporation. The requirements for fingerprints, photographs, and the law enforcement certificate specified in §479.85 are not applicable for [a] transferee who is not an individual.

In addition, gun trusts can designate multiple people who have access to their NFA weapons. According to ATF, the number of NFA weapons held by trusts or similar legal entities has skyrocketed from 840 in 2000 to 40,700 in 2012. ATF is aware of a case in Tennessee in which applications were submitted to transfer two NFA firearms to a trust in which one of the trustees was a convicted felon.

### **Avoiding the CLEO Sign-Off is the Primary Purpose of the Gun Trust**

For many years, gun advocates in the "full-auto community" have lamented the CLEO sign-off, complaining for decades about local law enforcement officials who refuse to sign off on individual applications to possess NFA weapons. However, without the safeguard of the CLEO sign-off local officials would be denied the ability to control who in their communities is able to obtain the most destructive weapons available and to ensure that those who have them are in compliance with all state and local laws. Local law enforcement officials also need to have discretion to deny people with dangerous histories – but no prohibiting convictions – the ability, for example, to own a machine gun. A current and relevant example would be the recent Waco, Texas outlaw motorcycle gang shootout. A local authority would know if someone is a member of a violent motorcycle gang and, based on that alone, should have the discretion to deny the sign-off. It is also important for law enforcement to know who in their community has access to the most dangerous weapons when officers are serving warrants or are summoned to domestic violence or other dangerous calls. Without the CLEO sign-off it would be much more difficult to keep machine guns and other dangerous NFA weapons out of the hands of gangs, terrorists, and common criminals.

### **ATF Proposes Rule to End the Gun Trust Exemption**

In September 2013, ATF issued a proposed rule (ATF 41P) that would require each "responsible person" of a trust or similar legal entity to submit to the enhanced background check required by the NFA

including the photograph, fingerprints, and law enforcement certification requirements.<sup>2</sup> ATF has acknowledged that the current situation “exposes ATF to a serious liability should an NFA weapon, lawfully acquired, by a prohibited person, be used in a violent crime.”

The ATF proposal would simply extend the requirements that currently apply to individuals to gun trusts and other similar legal entities. This would ensure that no NFA weapons could be transferred without identifying information for each transferee, a CLEO sign-off, and a background check.

The proposed rule would also clarify the transfer of NFA firearms registered to a decedent. The new rule would specify that the executor, administrator, personal representative, or other person authorized under state law to dispose of property in an estate may lawfully possess the decedent's NFA firearm during the term of probate without being treated as a transfer from the decedent that would be subject to all of the NFA requirements. The new section also would clarify that the executor may transfer firearms held by the estate on a tax-free basis when the transfer is to a beneficiary of the estate. If the transfer is to persons outside the estate, the executor must pay the appropriate transfer tax on behalf of the estate.

## **Conclusion**

To protect public safety and ensure that prohibited persons do not have access to the most destructive firearms available to the public, ATF must be allowed to finalize the proposed rule and extend the NFA background check and CLEO sign-off requirements to all entities that acquire NFA weapons.

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<sup>2</sup> ATF’s proposed rule would also amend the certification requirement to no longer require a statement from the certifying official that he or she has no information indicating that the maker or transferee of the NFA firearm will use the firearm for other than lawful purposes.