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Before the U.S. House of Representatives

Committee on Oversight and Government Reform

Subcommittee on Federal Law Enforcement

Hearing: Oversight of the Bureau of Alcohol, Tobacco, Firearms and Explosives' Out-of-Business Records Retention Practices

November 18, 2026

I. Introduction

Chairman Higgins, Ranking Member Casar, and distinguished members of the Subcommittee:

Thank you for the opportunity to testify about the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Out-of-Business Records Repository (OBRR), the legal authority governing its operation, and the responsibilities that federal law places on the firearms businesses whose records sustain it.

For nearly three decades, my practice has been devoted to representing federally licensed firearms dealers, manufacturers, and other firearms businesses. I am the founder and National Coordinating Counsel of FFLGuard, an attorney-led nationwide legal services program dedicated to helping federal firearms licensees (FFLs) comply with the law. Our approach is not merely to meet minimum legal requirements, but to exceed them. We call that approach Law Plus.

I speak from the perspective of the licensees who generate these records, preserve them for years, respond to urgent trace requests, and ultimately surrender them when their businesses permanently close. They are employers, parents, veterans, neighbors, and small-business owners. They deserve a regulatory system that treats them fairly.

Because gun dealers are people, too.

My central point is straightforward: The authority governing the reproduction, digitization, preservation, and destruction of surrendered records is a threshold legal question that cannot be answered merely by describing the system's limitations on searching. Separately, ATF's pending proposal to end indefinite retention of most covered records is a meaningful regulatory development. Those are complementary questions, not competing ones.

II. What FFLs Contribute, and What They Bear

Federal firearms licensees create and maintain acquisition and disposition (A&D) records and, where required, ATF Forms 4473. These records make lawful firearms tracing possible. A trace generally follows a firearm from its manufacturer or importer through the commercial distribution chain to its first retail purchaser. Subsequent private transfers may not be reflected in the original dealer's records.

ATF does not create this information. Licensees do.

Licensees shoulder the cost of personnel, recordkeeping systems, secure storage, inspections, and timely responses to trace requests. When a business closes without a successor, federal law requires delivery of its prescribed records within 30 days. At that point, the business loses control over the documents and the government assumes responsibility for their custody and subsequent use. [1]

Recognizing these facts is not opposition to legitimate criminal investigations. It is a demand that the burdens imposed upon lawful businesses, and the government's responsibilities once records are surrendered, be measured by clear law and actual investigative necessity.

III. The Threshold Legal Question: Surrender Is Not the Entire Analysis

Section 923(g)(4) of Title 18 expressly requires the surrender of prescribed records upon absolute discontinuance of a firearms business. Section 926(a), as amended by the Firearms Owners' Protection Act of 1986 (FOPA), restricts certain rules or regulations adopted after FOPA that would require records to be recorded at or transferred to government-controlled facilities or establish systems of registration of firearms, firearm owners, or transactions. The statutory language must be read together and according to its terms. [1]

Congress plainly authorized receipt of records from businesses that have closed. But receipt is one operation; copying, digitizing, indexing, storing, accessing, and destroying the originals are distinct operations. It is legitimate for Congress to ask precisely what legal authority governs each step and what limits apply.

The distinction matters even if the repository cannot be searched by purchaser name. **A technological restriction on searching is an important safeguard, but it does not, by itself, answer the antecedent question of authority to reproduce and retain the records.**

I do not ask this Subcommittee to disregard contrary legal analyses. In 1996, the Government Accountability Office (GAO) concluded that the out-of-business records system it examined complied with the statutory and appropriations restrictions at issue. In 2016, GAO likewise found that ATF's ordinary Out-of-Business Records Imaging System (OBRIS), which stored non-text-searchable images, complied with the appropriations restriction it reviewed. Those findings are material and should be acknowledged. Yet they are also not judicial holdings foreclosing congressional reconsideration of the law or examination of later operational changes. [2][3]

Nor should the legislative history be oversimplified. GAO documented that an early Senate version of FOPA would have prohibited centralized maintenance and computerized retrieval of surrendered records, but that restriction did not become law. GAO also identified congressional support and funding for conversion of microfilm records to digital images in connection with fiscal year 2005 appropriations. Congress therefore has a substantial existing record to examine, rather than a blank slate. [3]

The question before Congress should not be whether someone can apply the label "registry" to a collection of records. **It is whether each governmental practice is authorized, appropriately limited, necessary for the statutory purpose, and accountable to the people whose information is involved.**

IV. Chronology of the Repository's Development

The present system arose through a series of legislative and administrative decisions:

- **1968 | Gun Control Act.** Established the modern federal firearms licensing and recordkeeping framework, including regulatory procedures for records of discontinued businesses. [1][2]
- **Fiscal year 1979 | Appropriations restriction.** Congress began including restrictions on the use of appropriated funds to consolidate or centralize records maintained by FFLs. The restriction was later made permanent. [3][4]
- **July 29, 1985 | Twenty-year retention rule.** An ATF regulation became effective generally replacing permanent retention of covered dealer and collector transaction records with a 20-year period, while preserving indefinite retention for certain manufacturer and importer acquisition records. [5]

- **May 19, 1986 | FOPA enacted.** Congress codified the statutory surrender requirement and added limitations on later regulations and firearms registration systems. [1][2]
- **1991 | Microfilming and destruction of originals.** ATF began a project to microfilm out-of-business records and destroy the underlying paper originals. [2]
- **Fiscal year 1992 | Computerized indexing.** ATF began creating a computerized index to locate microfilm records using information such as serial numbers and FFL identifiers. [2]
- **September 11, 1996 | GAO/GGD-96-174.** GAO reported on the microfilm system, its operation, and its compliance with the restrictions examined. [2]
- **Fiscal year 2005 | Congressional support for digitization.** A congressional conference report recognized and funded conversion of existing microfilm images into digital images. [3]
- **2006 | OBRIS.** ATF developed its digital imaging system and began processing newly received records as non-text-searchable images. [3]
- **November 18, 2011 | Public Law 112-55.** Congress made the relevant appropriations restriction on consolidation or centralization permanent. [4]
- **January 27, 2012 | ATF Order 1340.6.** ATF issued an internal order concerning obtaining and shipping out-of-business records; the subsequent 2016 order identifies and cancels it. [6]
- **June and September 2016 | GAO report and ATF Order 1340.6A.** GAO found OBRIS compliant with the appropriation restriction but identified a separate violation in ATF's treatment of certain Access 2000 out-of-business records. ATF issued revised surrender and shipping procedures on September 16. [3][6]
- **October 4, 2021 | ATF Order 1340.6B.** ATF further revised its procedures, expressly addressing electronic submissions, imaging, and the normal destruction of processed originals. [6]
- **August 24, 2022 | Indefinite retention expansion.** Amendments to 27 C.F.R. § 478.129 required licensees to retain additional categories of records until their businesses or licensed activities were discontinued. [5]
- **May 6, 2026 | Proposed retention reform.** ATF published *Firearm Records Retention Periods*, RIN 1140-AA95, considering finite 20- or 30-year periods for most covered licensee records and records received by the National Tracing Center. [5]

This chronology is important for two reasons. **First, the repository's method of preserving records changed materially over time. Second, record retention policy has changed before and can change again.** Neither a legacy practice nor a modern software architecture should become immune from review simply because it has existed for decades.

V. Copying, Digitization, and Destruction Require Independent Scrutiny

The government's own records describe the practices that merit examination.

The 1996 GAO report documented the 1991 microfilming initiative and destruction of original records. The 2016 GAO report explained that the digital system maintained scanned images without optical character recognition, limiting text-based retrieval. [2][3]

The publicly released ATF Order 1340.6A, dated September 16, 2016, and Order 1340.6B, dated October 4, 2021, state that original records ordinarily are destroyed after processing. Order 1340.6B also explains that electronic submissions are converted into image files not searchable by purchaser name. Those orders primarily govern receipt and shipment procedures; their existence should not be mistaken for an independent determination that every subsequent processing or destruction practice has the requisite legal authorization. [6]

ATF Director Robert Cekada testified before this same Subcommittee on May 14, 2026, that ATF receives surrendered records, scans them, and makes them retrievable for tracing through a serial-number-based process. He further stated that the system is not a searchable national gun-owner registry. His testimony is relevant to how the system operates and should be accurately understood. It does not eliminate Congress's independent responsibility to review the legal basis for preservation, conversion, retention, and destruction. It was merely the system in place when he became ATF Director. [7]

The pertinent legal record includes the underlying legal memoranda, National Archives and Records Administration schedules and authorizations, ATF orders and procedures, and documentation of how original and electronic records are handled. Of particular historical relevance is the April 21, 1989 ATF legal memorandum identified in GAO's 1996 report, if available. [2]

The questions are concrete: What authority permits conversion? What safeguards ensure the accuracy and completeness of an image? When may an original be destroyed? What is the legal disposition of copies? How are retention and access limits verified? And can Congress evaluate whether a less intrusive alternative would fulfill legitimate investigative needs?

VI. Tracing Should Be Measured by Actionable Investigative Value

Firearms tracing can help law enforcement identify a first retail purchaser, develop leads, and investigate trafficking. Director Cekada explained those functions in his May 2026 testimony and described firearms crime intelligence as a tool for supporting investigations. [7]

But completing a trace and producing a useful investigative outcome are not synonymous. A trace that identifies a first retail purchaser may be relevant; it may also lead **nowhere**, particularly when the firearm has changed hands in the secondary market over many years.

ATF's May 2026 proposed rule itself acknowledges the diminishing utility of older records and the burdens associated with indefinite preservation. The agency's data show that most "successful" traces identifying a purchaser involve records less than 20 years old. Records older than 20 years do still contribute to some completed traces, but the occurrences of these successes are much less frequent. [5]

The correct policy question is whether retaining these records longer produces a true, "successful" trace: **actionable information that materially advances bona fide investigations**. With that in mind, the analysis must then be whether any marginal benefit justifies the burdens and privacy risks of indefinite storage. That inquiry should evaluate investigative outcomes, not simply the number of records accumulated or trace requests marked complete.

NSSF, the firearm industry trade association, made this distinction in its July 30, 2026 public comment on the pending retention rule. It supports a 20-year period, questions the cost-benefit justification for indefinite storage, and urges consideration of whether older records actually produce actionable law-enforcement intelligence. I fully agree with the practical importance of that inquiry. [8]

VII. Support for the Pending Rulemaking, Without Prejudging the Larger Question

ATF's pending Notice of Proposed Rulemaking, *Firearm Records Retention Periods*, 91 Fed. Reg. 24413 (May 6, 2026), is a meaningful opportunity for reform. The proposal would replace indefinite retention with alternative 20- or 30-year periods for most covered A&D records and Forms 4473, generally measured from the firearm's disposition. It would also set a 20- or 30-year maximum period for covered records held by ATF, generally measured from **ATF's receipt** of surrendered records. Certain manufacturer and importer acquisition records would remain subject to indefinite retention. These are proposals, not rules presently in force. [5]

I support a definite retention framework and favor the 20-year alternative for covered records. The distinction between a disposition-based clock for FFLs and a receipt-based clock for ATF is significant. A record may be decades old when surrendered, yet remain in federal custody for another 20 years under the proposal. Its continued retention should be understood in light of the underlying transaction and its demonstrated investigative utility.

My support for a finite retention framework does not constitute an endorsement of every existing repository practice or resolve whether the present repository is the appropriate statutory or operational model. **The legal authority for copying and digitization, the reasons for retaining the copies, and the safeguards governing the destruction of originals remain independent questions. And these questions deserve answers.**

I also recognize the incredible reform push described publicly by Director Cekada, including efforts to rebuild trust with licensees and reduce unnecessary regulatory burdens while preserving legitimate law-enforcement functions. A constructive approach to this proposed rule is consistent with that publicly stated mission. [7]

VIII. The Perspective of Federally Licensed Firearms Businesses

The debate surrounding ATF's Out-of-Business Records Repository involves legitimate questions of statutory authority, government accountability, privacy, law-enforcement utility, and administrative burden.

For federally licensed firearms businesses, however, these questions are not abstract. Licensees are responsible for generating and maintaining the underlying records, often for decades. They bear the costs of complying with federal recordkeeping requirements and face potentially serious consequences for failing to do so.

When those records are surrendered, the licensee relinquishes control over their subsequent handling. **It is therefore entirely reasonable for the firearms industry to expect clarity concerning the government's authority to reproduce, digitize, retain, and ultimately destroy those records.**

That expectation does not depend upon whether the repository can presently be searched by purchaser name. The scope of its search capabilities and the legal authority underlying its existence and operation are separate questions.

Nor does recognizing the legitimate investigative purposes of firearms tracing require accepting indefinite retention as necessary or appropriate.

The pending ATF rulemaking offers a meaningful opportunity to restore finite retention periods and reduce unnecessary burdens on licensees. In my professional judgment, the proposed 20-year alternative represents a more appropriate balance between recordkeeping obligations and demonstrated investigative utility.

Ultimately, the firearms industry deserves a regulatory framework that is lawful, understandable, proportionate, and consistently administered. The obligations imposed upon licensees should be matched by equally serious obligations of accountability on the part of the government.

IX. Conclusion

The recordkeeping duties imposed on federal firearms licensees are extensive, serious, and enforceable. The overwhelming majority of the businesses I represent work hard to meet those obligations while serving their customers and communities.

They are not asking Congress to excuse misconduct or obstruct legitimate law enforcement. They are asking for a system that respects statutory limits, acknowledges regulatory burdens, protects sensitive records, and demands accountability from the government as well as the regulated community.

The duty to surrender records does not end the legal inquiry. The ability to search by serial number rather than purchaser name does not end it either. The legal authority governing reproduction, digitization, retention, and destruction warrants careful examination, independent of the operational limitations that ATF has placed upon its current system.

Meanwhile, ATF's pending retention proposal presents a tangible opportunity to end an indefinite burden and evaluate the proper balance between legitimate investigative utility and the obligations imposed upon lawful firearms businesses. **Accountability must work both ways.**

For decades, Congress has asked what ATF needs from firearms dealers. **Maybe it is time Congress asked what firearms dealers need from ATF.**

Thank you for the opportunity to testify.

Respectfully submitted,

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November 18, 2026

Authorities and References

[1] 18 U.S.C. §§ 923(g)(1), 923(g)(4), 926(a); 27 C.F.R. §§ 478.124, 478.125, 478.127, 478.129. Statutory text: https://uscode.house.gov/us/usc/119-124/t18/s923/ and https://uscode.house.gov/us/usc/119-124/t18/s926/.

[2] U.S. General Accounting Office, *Federal Firearms Licensee Data: ATF's Compliance with Statutory Restrictions*, GAO/GGD-96-174 (Sept. 11, 1996), particularly Appendix V and Appendix VIII. https://www.gao.gov/assets/ggd-96-174.pdf.

[3] U.S. Government Accountability Office, *Firearms Data: ATF Did Not Always Comply with the Appropriations Act Restriction and Should Better Adhere to Its Policies*, GAO-16-552 (June 2016), particularly pp. 21–28, Appendix III, and Appendix VII. https://www.gao.gov/assets/gao-16-552.pdf.

[4] Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609 (Nov. 18, 2011); discussed in 91 Fed. Reg. 24419 (May 6, 2026).

[5] ATF, *Firearm Records Retention Periods*, Notice of Proposed Rulemaking, RIN 1140-AA95, ATF No. 2025R-08P, 91 Fed. Reg. 24413 (May 6, 2026); discussing 50 Fed. Reg. 26702 (June 28, 1985), and 87 Fed. Reg. 24652 (Apr. 26, 2022). https://www.govinfo.gov/content/pkg/FR-2026-05-06/pdf/2026-08929.pdf.

[6] ATF Order 1340.6 (Jan. 27, 2012), identified in the cancellation clause of ATF Order 1340.6A; ATF Order 1340.6A (Sept. 16, 2016), §§ 4–6; ATF Order 1340.6B (Oct. 4, 2021), §§ 5, 7, 10. ATF FOIA production containing the two later orders: https://www.gunowners.org/wp-content/uploads/Final-Response-Packet-2020-0802-Rolling-Production-Number-2.pdf.

[7] Statement of Robert Cekada, Director, ATF, before the House Oversight and Government Reform Subcommittee on Federal Law Enforcement (May 14, 2026), and official hearing transcript, particularly testimony concerning tracing and out-of-business records. https://docs.house.gov/meetings/GO/GO33/20260514/119277/HHRG-119-GO33-Wstate-CekadaR-20260514.pdf; https://www.govinfo.gov/content/pkg/CHRG-119hhrg63745/html/CHRG-119hhrg63745.htm.

[8] National Shooting Sports Foundation, Comment on RIN 1140-AA95, Docket No. ATF-2026-0003, dated July 30, 2026, comment identifier ATF-2026-0003-4091 (copy supplied by NSSF to the witness).