

THE ENHANCED BACKGROUND CHECKS ACT OF 2021

THE PROBLEM

Though 91% of NICS background checks provide an answer within minutes, about 9% of cases require further investigation and review by the Federal Bureau of Investigation (FBI). Due to the federal “default proceed” rule, those agencies only have three business days to conduct and finish their investigation. Under current federal law, if a dealer who has initiated a background check has not been notified that the purchaser is prohibited under state or federal law within three business days, the dealer can decide whether or not to proceed with the sale at his or her discretion. The FBI notifies the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) any time a default proceed sale occurs.

This “default proceed” provision allowed 2,989 prohibited purchasers to buy guns in 2019 before a background check cleared. Many default proceed cases require extra time and attention precisely because the firearm purchaser has a long record of dangerous red flags; **default proceed sales are four times more likely to involve a prohibited purchaser than other background checks.** In cases where a sale went through under the default proceed procedure and the FBI was ultimately able to complete a background check, the FBI has reported that more than 5 percent—or an estimated 4,000 individuals each year were determined to be legally prohibited from purchasing or possessing a firearm.

One of the most glaring examples of this loophole’s danger occurred in 2015 when a white supremacist shot and killed nine African American worshippers at the Mother Emanuel AME Church in Charleston, South Carolina. Although the shooter should have failed a background check because of his history of unlawful controlled substance use, his background check was not completed within three business days. In this case, the dealer proceeded to transfer the gun to the Mother Emanuel shooter after the three business days elapsed. Approximately two months later, the shooter used the gun purchased in the default proceed sale to murder the churchgoers.

THE SOLUTION

The FBI has recommended extending the three-business-day period to allow agents more time to complete background check investigations and to reduce the number of prohibited purchasers who are able to purchase firearms by default.

H.R. 1446 will address this dangerous loophole in our laws by allowing the FBI much-needed additional time to investigate whether the firearm should be transferred to the individual, thereby preventing potentially dangerous people from obtaining the gun. This bill would also minimize the risk to ATF agents and reduce wasting their limited resources to retrieve guns from people who should not have had them in the first place. For the average law-abiding citizen, this bill would have no impact on their ability to purchase a gun. If you walk into a store to buy a gun and pass a background check, then you would be able to leave with your gun that same day, just the same as you can today.

PROTECTING DUE PROCESS

H.R. 1446 would establish a procedure that reduces the risk that an unlawful gun purchaser will be allowed to obtain firearms without restricting the ability of lawful gun owners to do so. This bill simply requires a person to submit a petition asserting that 10 business days or more have passed and the gun sale or transfer has not been approved. The petition puts the FBI on notice that if they are not able to determine whether the person is prohibited within the following 10 business days, the person may receive the firearm by default.

This bill would appropriately balance the risk that a dangerous, prohibited person might obtain a gun by default against the risk that a law-abiding and responsible person might be temporarily deprived of the gun.

PUBLIC OPINION AND RESPONSE

Recognizing the irresponsibility of the default proceed rule, some gun dealers, including Walmart—the biggest seller of firearms in the country—refuse to engage in default proceed transactions and have made it a matter of policy to only sell firearms when the individual affirmatively passes a background check.

Most Americans believe that any person who seeks to lawfully acquire a firearm must pass a background check before obtaining the gun. A January 2013 poll found that 76.3% of Americans—including 67% of gun owners—support giving law enforcement up to five business days, if needed, to complete a background check for gun buyers.