



General Government Division

B-256668

March 14, 1994

The Honorable Lloyd M. Bentsen
The Secretary of the Treasury

Attention: Assistant Secretary (Management)/Chief Financial
Officer

Dear Mr. Secretary:

As you know, last November Congress passed the Brady Handgun Violence Prevention Law, Public Law 103-159 (1993). The Brady Law, among other things, increased the application fee for gun dealers to obtain a federal firearms license (FFL). Gun dealers make up approximately 90 percent of the total number of federal firearms licensees. Other firearms licensees include manufacturers, importers and collectors.

Prior to the Brady Law, FFL fees for all licensees were statutorily set by the Gun Control Act of 1968, Public Law 90-618. For example, the application fee to conduct business as a gun dealer was set at \$10 per year (\$30 for 3 years). The Brady Law raised the 3-year fee to \$200 for new licenses (about \$67 per year) and \$90 for a 3-year renewal; the fees for other FFLs have not changed.

Early this year, you unveiled a proposal to further increase the gun dealer's license fee to \$600 per year, an amount generally intended to cover the cost of processing and issuing a license, along with other measures intended to reduce and control the nation's almost 250,000 federally licensed gun dealers. Last year, the Bureau of Alcohol, Tobacco and Firearms (ATF) had not calculated actual total program costs but had estimated the direct costs to process and issue one gun dealer's license to be about \$375. Recently, ATF revised its estimate to approximately \$650 for processing a new FFL application and approximately \$575 for processing a renewal FFL application.

Regardless of what licensees are eventually charged for FFLs, we believe that you should consider asking Congress to establish a FFL user fee program as part of your proposal. Currently, the fees for gun dealers are set in statute under the Brady Law, and the fees for other licenses are set under

the Gun Control Act of 1968. Congressional action is required to adjust fees to reflect changes in program costs. We believe that the FFL program meets the criteria of Office of Management and Budget (OMB) Circular A-25, User Charges, for establishing a user fee and that the establishment would greatly facilitate periodic reassessment of the fees without requiring congressional approval.

FFL PROGRAM MEETS USER FEE CRITERIA

Criteria and guidance on user fees come primarily from two sources: (1) 31 U.S.C. 9701, Fees and charges for Government services and things of value (Title V of the Independent Offices Appropriation Act of 1952) generally referred to as the User Charge Statute and (2) OMB Circular A-25 (as amended July 8, 1993). The User Charge Statute provides broad user fee authority, and OMB Circular A-25 provides more specific federal policy guidelines for establishing and assessing user fees.

The User Charge Statute authorizes federal agencies to establish and collect user charges for services or things of value provided by the agency. It states: "It is the sense of Congress that each service or thing of value provided by an agency . . . to a person . . . is to be self-sustaining to the extent possible . . ."¹

OMB Circular A-25 is more specific. Agencies are encouraged to set charges so they cover costs associated with providing the service and become self-sustaining. The circular provides guidance on the types of activities subject to user charges and the basis upon which user charges are to be set. Federal agencies are to identify programs that provide "special benefits" in order to establish user charges. According to the circular, a special benefit is determined to exist when a service or privilege provides a benefit to an "identifiable recipient" beyond those that are received by the general public.

The circular provides examples of the types of special benefits that can be used in determining if user fees apply. According to OMB Circular A-25,

". . . a special benefit will be considered to accrue and a user charge will be imposed when a Government service: (a) enables the beneficiary to obtain more immediate or substantial gains or values (which may or

¹31 U.S.C. 9701.

may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use) . . ."

Federal Firearms Licensees Accrue Special Benefits

All federal firearms licensees accrue "special benefits." For example, gun dealers who obtain a FFL are in a unique position to conduct business in the purchase and sale of firearms. Special benefits afforded to federally licensed gun dealers include the ability to purchase an unlimited quantity of firearms at lower wholesale prices. In addition, gun dealers are generally exempt from established waiting periods. Further, there are no restrictions on the frequency of purchases. The license also enables dealers to have guns shipped to them across state lines. Other licensees also accrue special benefits. We believe these privileges afforded to federal firearms licensees meet the criteria of special benefits as defined in OMB Circular A-25.

USER FEES COULD RECOVER FFL PROGRAM COSTS

By establishing a user fee for FFLs, ATF could recover the full cost of managing the FFL program. Once the FFL fees are established as user fees, the Secretary of the Treasury would be required to reassess the license fees every 2 years to ensure that the license fees cover program costs.

OMB provides specific guidance for determining the full cost to the federal government. The OMB circular states:

"Full cost includes all direct and indirect costs to any part of the federal government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of direct and indirect personnel costs, including salaries and fringe benefits . . . physical overhead . . . management and supervisory costs . . . the costs of enforcement, collection, research, establishment of standards, and regulation, etc. . . ."

Further, OMB directs federal agencies to determine or estimate full cost from their best available records. Specifically, OMB states that new accounting systems need not be established solely for the purpose of setting user fees.

The OMB circular also directs that legislative proposals for establishing user fees should not normally specify precise

charges. The user charge "should be set by regulation. This will allow administrative updating of fees to reflect changing costs . . ."

When current fees are set in statute, OMB directs federal agencies to assess their fees and propose legislation to establish user fee programs. The circular states,

"When there are statutory prohibitions or limitations on charges, legislation to permit charges to be established should be proposed. In general, legislation should seek to remove restraints on user charges and permit their establishment under the (OMB) guidelines . . ."

FFL fees are currently set in statute and require congressional action for change. This makes it difficult to change fees and does not ensure that the fee charges keep pace with changes in costs to the government. Evidence of this is that until the Brady Law passed, FFL fees had not been changed since 1968, even for inflation. Conversion to a user fee would shift authority for changing fees to the Secretary of the Treasury.

The Vice President's National Performance Review (NPR) encourages all federal agencies to assess the cost of providing services and charge user fees when appropriate. The intent is that those individuals who benefit from special privileges should bear the costs of operating the program. Otherwise, the cost of managing the program is borne by the taxpayers. The NPR specifically recommended that the Department of the Treasury establish a user fee for gun dealers to recover the costs of operating the FFL program. Generally, we agreed with this recommendation in our report on the NPR². Moreover, we believe the FFL program meets the criteria for establishing a user fee.

Thus, we believe that you should consider asking Congress to propose legislation to establish a FFL user fee program. In considering such a program we believe that you should evaluate the appropriateness of assessing all licensees for user fees. We believe that this is an appropriate action to take, according to the User Charge Statute and the guidelines set forth in OMB Circular A-25.

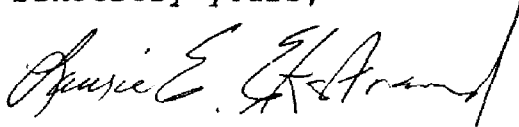
²GAO's Comments on the National Performance Review's Recommendations (GAO/OCG-94-1, December 1993).

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We are sending copies of this correspondence to interested congressional committees and the Director, Office of Management and Budget. Copies will also be made available to others upon request. If you have any questions please call me at (202) 512-8777.

Sincerely yours,



Laurie E. Ekstrand
Associate Director, Administration
of Justice Issues

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