

THE NEW ERA OF EXECUTIVE ACTION

PROMOTING SAFER GUN POLICY

August 25, 2015

Background

Since 1982, there have been at least sixty-nine mass shootings in the United States, thirty-two of which occurred after 2006. More than three-quarters of the guns used by shooters were obtained legally. The United States leads the world in gun ownership, with almost nine guns for every ten people in the country, according to a Small Arms Survey. Among its developed counterparts, the United States has the second-highest percent of murders by firearm (68 percent of 17,128 murders in 2007).

Compared to other nations, the United States has historically had lax gun control policies. In 1993, Congress passed the Brady Handgun Violence Act, which instituted federal background checks on firearm purchases from federally licensed retailers. However, an estimated 40 percent of gun sales (from a 1997 National Institute of Justice survey) are private and do not involve a licensed dealer, meaning they do not require a background check. In 1994, Congress passed the Violent Crime Control and Law Enforcement Act, which banned assault weapons. The act expired in 2004 and has not yet been reinstated.

A majority of Americans support some sort of increased gun control. A 2012 poll showed that 74 percent of National Rifle Association (NRA) members and 87 percent of non-NRA gun owners support requiring criminal background checks for anyone purchasing a gun. In 2013, a poll conducted by ABC/*Washington Post* revealed that 52 percent of people favored stricter gun control laws and 57 percent supported a nationwide ban on assault weapons.

A number of violent gun incidents have occurred during Barack Obama's presidency, including the 2011 assassination attempt of Gabrielle Giffords in Tuscon, Arizona, the 2012 shooting at a screening of "The Dark Knight Rises" in Aurora, Colorado, and the 2012 shooting at Sandy Hook Elementary School in Newtown, Connecticut. Overall, there have been at least fourteen mass shootings during Obama's presidency.

This brief is part of The Century Foundation initiative, The New Era of Executive Action, which is available online at <https://tcfdotorg.atavist.com/executive-action>.

In recent years, representatives have attempted to pass numerous pieces of legislation to address gun control, with little success. The most notable attempt was in 2013, when an amendment that would have required background checks on all commercial sales of guns was defeated in the Senate by six votes.

Action

On January 16, 2013, President Obama announced twenty-three executive actions that his administration was taking to address gun violence, under the initiative “Now Is The Time.” Three of the executive actions are Presidential Memoranda:

- Improving Availability of Relevant Executive Branch Records to the National Instant Criminal Background Check System
- Engaging in Public Health Research on the Causes and Prevention of Gun Violence
- Tracing of Firearms in Connection with Criminal Investigations

What It Does

The three memoranda reflect important issues that the administration believes are integral in helping to prevent future gun violence.

1. Facilitating Federal Background Checks

Through presidential memorandum, Obama directed the Department of Justice to issue guidance to agencies regarding the identification and sharing of relevant Federal records and their submission to the National Instant Criminal Background Check System (NICS). The memorandum specifies that agencies should prioritize making those records available to NICS and should report their progress to the President. Additionally, it establishes a NICS Consultation and Coordination Working Group to decide whether an agency possesses relevant records and whether such records should be provided to NICS.

Additional executive actions addressing this issue include, among others:

- Providing states with incentives (\$20 million in fiscal year 2013 and a proposed \$50 million in FY 2014) to share information on their criminal history and mental health records.
- Beginning the regulatory process to remove unnecessary legal barriers under the Health Insurance Portability and Accountability Act so that states may more freely share information about mental health issues involving potential gun purchasers.

2. Improving Mental Health Research and Services

Through presidential memorandum, Obama ends the freeze on gun violence research by directing the Secretary of Health and Human Services to conduct or sponsor public health research into the causes of gun violence. Sci-

entific agencies are not allowed to use funds to advocate or promote gun control, but the memorandum specifies that research on gun violence is not advocacy, but rather, “critical public health research that gives all Americans information they need.”

Additional executive actions addressing this issue include, among others:

- Issuing final regulations governing how existing group health plans that offer mental health services must cover them at parity with medical and surgical benefits under the Mental Health Parity and Addiction Equity Act of 2008.
- Issuing a letter to state health officials making clear that Medicaid plans must comply with mental health parity requirements.

3. Strengthening Law Enforcement Tools to Prosecute Gun Crime

Through presidential memorandum, Obama is requiring federal law enforcement to trace all firearms taken into federal custody. The reason for this, as given by the memorandum, is that tracing is an important investigative tool that may lead to the apprehension of suspects as well as provide valuable intelligence about patterns on regional gun movement.

Additional executive actions addressing this issue include, among others:

- Nominating a director for the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).
- Proposing rulemaking to give law enforcement the ability to run a full background check on an individual before returning a seized gun.

Status

In June of 2013, the White House released a Progress Report on the President’s Executive Actions to Reduce Gun Violence. It noted that the administration has completed or made significant progress on twenty-one of the twenty-three executive actions.

On August 29, 2013, President Obama announced two new executive actions that would build on the previous twenty-three.

- The ATF issued a proposed regulation that requires trusts or corporations that acquire weapons which require registration and a fingerprint-background check to run such checks on any associated individuals.
- The administration announced a new policy of denying requests to private entities to bring military-grade firearms back into the United States, with only a few exceptions, such as for museums.

Impact

President Obama acknowledged in an interview that, “As important as these steps are, they are in no way a substitute for action by Congress.” However, these actions have had some impact already, such as:

- In the nine months since the president’s directive, federal agencies made available to the NICS over 1.2 million additional records identifying persons prohibited from possessing firearms, which is nearly a 23 percent increase from the number of records that federal agencies had made available by the end of January.
- The expansion of mental health and substance use disorder benefits and parity protections in the ACA has the potential to help 62 million Americans.

Response

Support

- Josh Sugarmann, Executive Director of the Violence Policy Center praised the administration’s effort, stating: “The combination of improved and expanded background checks, effective bans on assault weapons and high-capacity ammunition magazines, and stronger anti-trafficking laws will work together to prevent another Newtown and to stem the daily gun violence that tears apart too many families and communities.”
- Dan Gross, president of the Brady Campaign to Prevent Gun Violence, also praised the Administration’s actions, stating that the president, “has shown tremendous leadership.”

Criticism

- The NRA gave strong objections to the administration’s actions, issuing a statement that said: “Attacking firearms and ignoring children is not a solution to the crisis we face as a nation. Only honest, law-abiding gun owners will be affected and our children will remain vulnerable to the inevitability of more tragedy.”
- John Donohue, professor of Law at Stanford University, asserted that few of the administration’s proposals would address the problem of stolen guns. In an article in the *Washington Post*, he stated, “About a million guns are stolen each year. Shutting off the spigot on the purchase end is helpful, but it does not solve the problem that some gun owners are completely irresponsible in how they allow access to their guns to criminals.”