

New Jersey Executive Order 83

***PREVENTING
GUN VIOLENCE
THROUGH THE
POWER OF
PROCUREMENT***



BRADY
UNITED AGAINST GUN VIOLENCE

ABOUT BRADY

Founded in 1974, Brady works across Congress, courts, and communities, uniting gun owners and non-gun owners alike, to take action, not sides, and end America's gun violence epidemic. Our organization today carries the name of Jim Brady, who was shot and severely injured in the assassination attempt on President Ronald Reagan. Jim and his wife Sarah led the fight to pass federal legislation requiring background checks for gun sales. Brady continues to uphold Jim and Sarah's legacy by uniting Americans from coast to coast — red and blue, young and old, liberal and conservative — against the epidemic of gun violence.

SUMMARY

State and local executives can — and must — act decisively to ensure that firearm sellers, distributors, and manufacturers adopt safe business practices that prevent guns from being diverted to the illegal market. In 2019, New Jersey Governor Phil Murphy did just that when he exercised his procurement powers to issue [Executive Order 83](#) (EO 83), a policy designed to guarantee that firearm industry businesses and financial institutions providing services to the state are committed to gun safety principles. Toward that end, New Jersey state offices sent Requests for Information (RFIs) to the state’s firearms and finance vendors to assess their commitment to public safety principles.

Brady subsequently submitted open records requests for the vendor responses to these RFIs, and our analysis of their content found that EO 83 was successful both in promoting gun safety and laying a strong foundation for future action on its behalf. The firearms industry responses show how seriously different vendors approach their obligation to minimize the public safety risks posed by guns — information which can be used to better inform the state’s procurement decisions. The responses from the finance industry revealed that merely sending an RFI to its members can promote gun safety by giving them good reason to assess their approach to working with the gun industry, educate their executives on gun safety, and even adopt new policies regarding their relationships with gun industry clients.

This report shows how EO 83 established a broad foundation for future actions that will further advance the state’s commitment to gun violence prevention, providing concrete recommendations to state and local executives around the country who wish to replicate and expand on New Jersey’s landmark approach to procurement and gun safety. With the epidemic of gun violence claiming more than 40,000 lives a year, states should focus on measures they can take to promote legal compliance and safe business practices by leveraging their procurement powers — a life-saving, indeed necessary, tool that should be adopted by every state in the nation. This is particularly true in the current national climate, where a few states, such as Texas, are implementing regressive policies that seek to dissuade financial institutions from adopting gun safety strategies. If more jurisdictions follow New Jersey’s lead, however, the industry will face mounting pressure to adopt practices that ensure compliance with the law and protect public safety, leading to less gun violence and more saved lives.

BACKGROUND

PUBLIC PROCUREMENT

Public procurement refers to how a government body sources and purchases goods, services, or works. It is typically a function of the executive branch, which enters into purchase contracts with private vendors. These contracts are very desirable; the government is a reliable and major source of revenue. Because public procurement accounts for a substantial portion of taxpayers' money — one out of every \$3 state and local governments spend goes toward purchasing something¹ — governments should carry out their procurement processes efficiently and with high standards in order to safeguard the public interest.

This process has historically focused on price, with the government buying from the lowest bidder. However, recent years have seen sweeping reforms in the procurement of goods and services related to certain industries, such as promoting diversity among suppliers by developing online portals where small businesses can apply for minority certifications or eliminating confusing paperwork many businesses face when first working with the state.² These reforms have proven fruitful, as a common denominator of top state procurement performers is viewing procurement as a means of advancing state goals.³

THE ROLE OF IRRESPONSIBLE FFLS AS CONTRIBUTORS TO GUN TRAFFICKING AND CRIME

America is experiencing a gun violence epidemic, fueled in part by a small number of irresponsible federally licensed firearm businesses (federal firearms licensees, or “FFLs”). The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) considers FFLs to be the first line of defense in preventing the diversion of guns from the legal to illegal market,⁴ but has found that FFLs are the channel associated with the largest number of illegally diverted guns.⁵ In addition, some individual traffickers, including straw purchasers who buy guns on behalf of another — often prohibited — person,⁶ or unlicensed sellers who buy from FFLs to sell guns to prohibited persons for a profit, return to the same FFL time and again to buy guns — which indicates that such FFLs know, or reasonably should know, that they are facilitating the trafficking of firearms.⁷ Straw purchasers and straw purchasing rings are the number one source of trafficked firearms,⁸ and FFLs who repeatedly sell to straw purchasers pose a particular threat to public safety: Their behavior allows the illegal buyer to divert larger numbers of guns to prohibited persons.⁹ Further, theft from FFLs is spiking, creating another substantial channel through which guns are illegally diverted. Between calendar years 2013 and 2018, FFL burglaries rose by 16% and robberies by 300%. Between 2012 and 2019, more than 53,000 firearms were stolen from gun dealers. Even in the face of these alarming numbers,



PUBLIC PROCUREMENT ACCOUNTS FOR A SUBSTANTIAL PORTION OF TAXPAYERS' MONEY — GOVERNMENTS SHOULD CARRY OUT THEIR PROCUREMENT PROCESSES EFFICIENTLY AND WITH HIGH STANDARDS IN ORDER TO SAFEGUARD THE PUBLIC INTEREST.



however, the gun lobby opposes proposals for stricter security requirements as too onerous,¹⁰ and many FFLs have not voluntarily implemented their own. In all, FFLs that do not adopt safe business practices can pose a significant threat to public safety, as many of these diverted guns end up as crime guns.¹¹

Although there are known indicators of illegal trafficking — large cash payments, for example, or multiple purchases of the same firearm model, particularly cheaper models¹² — federal law does not require FFLs to adhere to all of the safe business practices that would likely prevent these illegal transfers. Additionally, while ATF recommends that FFLs take “every precaution available” to prevent theft and loss,¹³ federal law does not require FFLs to adopt proven and effective measures that would help protect their weapons from theft.¹⁴ As a result, there are significant variations in FFLs’ commitment to adopting common-sense safety and security measures — such as installing alarm systems and video surveillance or locking firearms in safes — that would safeguard inventories. While some have voluntarily adopted reforms that promote public safety, others put profit first. However, when even one FFL undertakes a voluntary reform, it can vastly reduce not only the diversion of guns from that FFL to prohibited purchasers, but also the flow of all new trafficked guns to prohibited persons in the city where the FFL operates.¹⁵ If more FFLs adopt reforms that promote safe dealing and prevent theft, it will significantly reduce gun crime in America by obstructing the largest source of trafficked guns. Until then, irresponsible and complicit FFLs will continue to fuel the gun violence epidemic.

FIREARMS PROCUREMENT

American law enforcement agencies and their officers buy a lot of guns. Cities across the U.S. spend in excess of \$5 billion a year on guns alone; ammunition and other supplies cost a few billion more. There are over one million law enforcement guns in the U.S.¹⁶ This means

that the No. 1 purchaser of firearms is taxpayers, so government agencies and officials that procure firearms should be able to count on their FFL vendors to deal in a way that best promotes public safety. However, due in part to the absence of common-sense supply-side gun safety laws — which focus on not just the shooter, but how the gun ended up in the shooter’s hands — not all FFLs are similarly responsible; while many have voluntarily adopted policies that promote public safety, others put profit first.

State and local executive branches have discretion when it comes to procurement, presenting opportunities to promote responsible practices from gun industry businesses vying for purchase contracts. Such power is especially fruitful for cities; many states without strong gun safety laws have preempted municipal firearms legislation, meaning localities cannot enact gun safety laws because such power is reserved to the state. Because procurement policies are the jurisdiction of the executive branch, however, such a strategy evades the preemption barrier.¹⁷ To promote gun safety in any jurisdiction without contravening the Second Amendment, **the executive branch can ensure that state taxpayer dollars do not enable gun trafficking and crime, but instead promote gun safety by benefiting responsible firearm industry members and helping to change the irresponsible behaviors that too often enable tragedy.**

\$5 BILLION

Cities across the U.S. spend over
\$5 billion a year on guns alone

FINANCIAL INSTITUTION ENGAGEMENT

Another way to influence FFL behavior is by engaging with financial institutions. Governments are increasingly borrowing from commercial banks,¹⁸ and many rely upon the finance industry to provide government bank accounts, investment options, treasury management, and other services. As a result, governments tend to have strong relationships with many financial institutions — relationships which can be leveraged to advance public safety by engaging with the institutions on what they can do to promote gun safety, such as encouraging the adoption of policies that promote safe firearms transfers.

Financial institutions can leverage the services they provide to the gun industry to reform dangerous and irresponsible behaviors. For example, banks could refuse to extend credit to gun manufacturers that do not adhere to certain gun safety principles,¹⁹ thereby incentivizing them to adopt safe business practices to avoid an increase in their borrowing costs.

Encouraging financial institutions to adopt these policies is especially crucial now, as certain states are passing laws to punish banks that have done so. For example, Texas recently adopted a law that requires banks seeking municipal or state contracts to certify that they do not “discriminate” against the firearm industry, which would include rejecting clients “based on the types of weapons sold or customers served.”²⁰ This law was likely meant to target larger global banks,²¹ such as Citibank (the biggest underwriter of Texas muni sales in 2020),²² Bank of America,²³ and JP Morgan,²⁴ which have policies that appear to preclude financing certain actors, such as companies that make or sell bump stocks or sell to customers under 21. These policies are traditional business practices; banks can and do condition client relationships on reasons specific to a (prospective) client, and their terms include common-sense measures that echo similar restrictions established by some major

retailers, like Walmart. However, due to these new policies,²⁵ banks in Texas must either play along with the gun politics of the legislature or risk being entirely shut out of the state’s municipal bonds market.

Engaging with financial institutions on gun safety and building more social responsibility into firearms procurement are executive initiatives that can be immediately implemented to address America’s gun violence epidemic. If an executive branch requires adherence to certain gun safety principles as a condition to participate in the procurement process, FFLs that fail to adopt those principles will not qualify for — or risk losing — lucrative and reliable purchase contracts. If financial institutions require the same conditions for prospective and existing customers, firearm industry members that do not comply can lose their financial lifelines. Through these means, executive branches can promote responsible behaviors from FFLs, resulting in a safer country.

NEW JERSEY EXECUTIVE ORDER 83

New Jersey is a prime example of an executive branch using its procurement authority to advance the state's goal of protecting the public from gun violence. New Jersey, which spends \$70 million annually on firearms and ammunition for its state police and other law enforcement agencies,²⁶ has decided that those dollars should promote gun safety principles.

On September 19, 2019, Governor Phil Murphy implemented a landmark policy by signing Executive Order 83 (EO 83),²⁷ which seeks to ensure that the state is not doing business with the minority of FFLs that put individual profit over public safety. As he stated: “[M]y administration is committed to making our communities safer by aiming to do business with gun dealers that have adopted best practices to reduce gun violence. We want those who do business with New Jersey to share our values and be committed to ending the scourge of gun violence in our communities.” Senior Advisor Bill Castner added: “The goal here is to ensure we are not engaging

with bad actors and to ask businesses dealing with the state to help ensure minimum standards to reduce the flow of illegal guns to New Jersey.”²⁸

In furtherance of these goals, EO 83 included several directives.²⁹ The state's Division of Purchase and Property (DPP) was ordered to guarantee that any state bid solicitation for guns and/or ammunition requires that each vendor, prior to award, certifies adherence to listed public safety principles (including, among others, taking measures to protect against gun theft and implementing policies to detect and prevent straw purchases).³⁰ To do so, DPP was directed to send requests for information (RFIs) to FFLs from whom the state procures its firearms, asking them to outline their existing policies that enhance and promote firearm safety so that DPP could determine whether their practices adhered to the listed public safety principles. The DPP sent its RFI on October 7, 2019. In addition, the state's Department of Treasury (DOT) was directed to send RFIs to financial institutions doing business with New Jersey. The DOT accordingly issued RFIs asking for disclosure of any company code of conduct or principles that relate to gun safety or the responsible sale of firearms on October 8, 2019.



EXECUTIVE ORDER 83 SEEKS TO ENSURE THAT THE STATE IS NOT DOING BUSINESS WITH THE MINORITY OF FEDERAL FIREARM LICENSEES THAT PUT INDIVIDUAL PROFIT OVER PUBLIC SAFETY.



BRADY TAKES ACTION

Brady submitted a request through New Jersey’s Open Public Records Act (OPRA) to obtain the records received by both DPP and DOT in response to the issued RFIs. This request resulted in our receiving 376 pages of documents obtained by the DPP and DOT — documents full of information which, upon analysis, lead us to determine that EO 83 not only had a positive preliminary impact, successfully promoting gun safety among gun vendors and financial institutions, but that its influence is likely to grow over the years to come. In the following sections, we synthesize the private entities’ responses, explore the effect EO 83 had on these entities, and provide important implications from these productions for other jurisdictions wanting to reduce gun trafficking and violence through executive branch strategies.

WHAT BRADY FOUND

FFLS

In the RFI sent to FFLs, New Jersey’s DPP asked gun industry vendors to respond to sets of questions — one for retailers, one for upstream entities (firearms manufacturers and distributors) — to assist DPP in assessing whether the vendors’ practices adhere to the gun safety principles embraced by New Jersey in EO 83.

Retailers were asked about their policies and practices in place to: prevent, detect, and screen for risky transactions; protect against inventory theft; train employees; assist law enforcement in the investigation and prevention of criminal access to guns; and for any other policies adopted by the dealer that promote public safety. Manufacturers were asked to describe their standards and policies in place to induce the retailers authorized to sell the company’s firearms to adopt these same practices.

In response to our OPRA request, Brady received seven FFL responses, including retailers, manufacturers, and one distributor. Of the respondents, two retailers indicated that they take gun safety seriously. One retailer, Officer Store, went beyond New Jersey’s listed principles by detailing how it matches a purchaser’s identification to the name listed on the invoice, prohibits employees from coaching customers about filling out forms required to be completed in connection to a gun sale, refuses transfers to anyone “exhibiting signs of instability,” and does not participate in gun shows. It also informed DPP of its inventory protection policies, which included electronically recording sales within one day, requiring each employee to pass a background check and attend training, and annually reviewing and updating its compliance policies and procedures. Similarly, retailer Atlantic Tactical mentioned how it conducts background checks on employees pre-employment, does not participate in gun shows, repeatedly completes ATF training, empowers employees to refuse a sale at any time, and uses multiple theft protection measures.

In contrast, retailer Eagle Point attacked each of the RFI’s public safety principles and accused New Jersey of “a profound lack of understanding of the problem,” alleging that the RFI’s drafters were “embarrassingly ignorant of New Jersey and Federal Firearms Law.” Eagle Point’s owner further stated that the FFL “strongly discourage[s] credit cards because of the 5% fee the bank charges us” — although paying in cash is an indicator of a straw purchaser or other individual trafficker.³¹ In response to New Jersey’s question of whether or not the FFL annually reviews and updates its compliance policies, procedures, and training materials regarding firearms and ammunition transactions, Eagle Point claimed that “[FFLs] cannot update once a year. It does not work that way. . . There is no annual review,” although the other FFL responses proved this point wrong by responding affirmatively. In response to whether the FFL tapes or records transactions — both of great value to authorities investigating firearms trafficking or other crimes — the

owner answered: “This IS NOT NAZI GERMANY OR STALIN’S RUSSIA.” This content continues for several pages, and is followed by a list of recommendations for the DPP, including repealing a law that prevents “anyone from defending themselves in their own home with a handgun if they are under the age of sixteen. I call it the New Jersey Sacrifice Your Child Law.”

Remington, the only manufacturer to provide a substantive response to the RFI, stated that its business model is based on sales to wholesale distributors who possess the requisite government authorizations, not on providing inventory to retailers — except select large chains with “robust and professionalized compliance programs.” Remington also cited its membership to the National Sports Shooting Foundation (NSSF), an industry trade association, noting that it adheres to NSSF initiatives. The manufacturer also attached a letter from the NSSF purportedly demonstrating how adherence to NSSF initiatives satisfy compliance with the public safety principles required by the EO.

Finally, Benelli U.S.A. was the sole distributor to respond to the RFI in full. Benelli submitted a list of its policies and distribution controls, including: screening dealers selling its products; credit checks and scrutiny of news reports to ensure its customers maintain a regular business; regularly visiting customers to inspect premises and verify business operations; advising law enforcement prior to authorization of new dealer customers; and

requiring fingerprints and background checks of all of its officers and directors. Benelli is also a manufacturer, so it further detailed the safety features in its products, including extensive safety instructions with each firearm, external safety levers, and the ability to readily and easily check if the gun is loaded. It also listed safeguards in use to prevent theft, such as shipping in boxes lacking any reference to their contents and an extensive internal security system, including screening employees. However, Benelli concluded its response with a section entitled: “Remedies Sought by Gun Control Advocates are Ineffective or Otherwise Undesirable.”

These responses may not have immediately affected the responsibility of vendors from which New Jersey procures its firearms, but they provide extensive information that the state could use to ensure responsible procurement in the future — such as terminating its relationships with those FFLs that the DPP does not believe promote public safety. Officials can also require prospective vendors to respond to the same RFI when issuing invitations to bid or requests for proposals in the future, allowing the state to screen out any vendors that do not advance its goals. These processes will force FFLs with existing government contracts to adhere to New Jersey’s set principles or lose substantial business — outcomes which both remind other FFLs that adopting the state’s principles is key to seeing the state’s money. And, importantly, this policy ensures that New Jersey spends its taxpayer dollars to benefit only responsible FFLs that promote public safety.

THESE PROCESSES WILL FORCE FEDERAL FIREARM LICENSEES WITH EXISTING GOVERNMENT CONTRACTS TO ADHERE TO NEW JERSEY’S SET PRINCIPLES OR LOSE SUBSTANTIAL BUSINESS.

FINANCIAL INSTITUTIONS

Ninety financial institutions responded to the DOT's RFI about their policies on gun safety and the responsible sale of firearms, and the majority of the respondents did have relevant policies. Many are broad and focus on individual clients or the reputation of the institution, but could still be used — and sometimes already are — to impact engagement with the firearms industry. Other financial institutions provided their industry-specific policies that impact FFLs more directly.

A number of responding financial institutions had limited or no exposure to the firearms industry. Some noted policies such as: prohibitions on owning assets invested in publicly-traded firearms manufacturers; restrictions on providing investment services, financing, or advice to firearms manufacturers; restrictions on opening accounts for arms dealers; and guidance discouraging loans to firearm manufacturers. One institution, PNC, mentioned its 2013 guidance discouraging new loans to gun manufacturers, and KeyBank National Association noted that it does not maintain accounts for the NRA.

Several institutions provided information on internal policies responsible for laying out the conditions and parameters to be met before engaging firearm industry members. Many of these institutions require, for example, that retailers adhere to certain responsible selling practices; many also place limitations on the types of weapons the FFL manufactures and/or sells. These policies directly promote the responsible manufacture and sale of firearms, limiting the exposure of financial institutions to irresponsible FFLs. For example, BMO Capital Markets noted its policy under which it will not take new firearm industry customers who do not adhere to requirements such as ensuring buyers are at least 21, requiring background checks, and guaranteeing compliance with all applicable laws and ordinances. BMO will also not provide banking services with entities that manufacture or sell assault-style weapons, bump stocks,

or high-capacity magazines. Further, BMO's account managers are directed to work with existing customers to align their practices to these requirements; if the customer declines, they are transitioned out of the bank. Additionally, among other terms, Goldman Sachs does not make principal equity investments in businesses primarily engaged in manufacturing handguns. PNC noted that its merchant credit processing services works with an external party to determine rules for client acceptance, including prohibiting home-based or card-not-present gun sales.

Many institutions that engage in business with the firearms industry perform enhanced due diligence when onboarding and monitoring industry members. These policies include more stringent due diligence before onboarding an industry client — such as verifying the FFL's license(s) and conducting media searches and website inspections — and more frequent reviews once a client is onboarded. Many institutions with such policies noted that these reviews can result in ending relationships with customers unwilling or unable to comply with the institution's standards and/or those that violate any firearm laws. These policies allow the institutions to actively evaluate their firearm industry relationships and keep them in compliance with the institution's policies and goals; they can also incentivize safe behavior from industry members. For example, Investors Bank requires periodic review of any firearm industry relationship to confirm that the client's transactions and behaviors warrant continuing business. Barclays stated that when prospective transactions may involve exposure to civilian firearms, the institution conducts an enhanced process designed to identify and assess factors that may pose a risk to the community or which do not adhere to Barclays' social responsibilities. U.S. Bank requires documentation of the client's compliance with the law, disclosure around fines or litigation relating to non-compliance with firearms laws, and information on the oversight of vendors' compliance.

A number of general policies that the responding institutions provided also pertained to firearms industry engagement, including individual client avoidance. Many institutions allow individual customers and clients to screen “sin stocks,” such as gambling, tobacco, and weapons, from their portfolios and accounts. At least one institution — BlackRock — is exploring “ideas for new funds,” including portfolios that exclude only firearm manufacturers and retailers; BlackRock also noted that it has initiated contact with clients to help them understand their exposure to civilian firearm companies, and offers clients a choice of products that exclude firearm manufacturers and/or retailers. Sometimes described as “socially responsible investing,” these methods ensure that clients with social concerns can alter or eliminate their firearm industry exposure.

In addition, many institutions provided information on their Environmental, Social, and Governance (ESG), or risk-reputation, policies, through which internal committees and teams assess certain factors to determine the risks posed by prospective industry customers. A few of these institutions automatically deem any firearms industry customer as “high-risk,” and — even if onboarded — subject them to enhanced monitoring and review. These policies often result in reduced business with the firearms industry because such a certain client exceeds the institution’s defined risk appetite. For example, Credit Suisse noted that it “has found its risk appetite limited in some sectors and declined the opportunity to provide services to U.S. based firearms manufacturers for a number of years.”

Brown Brothers Harriman explicitly prohibits opening accounts for arms dealers as they do not fall within the firm’s risk tolerance. During onboarding, First Hope Bank risk rates all customers; conducting gun sales prompts an automatic 30 point addition to a customer’s risk score, with scores greater than 50 subject to quarterly review.

Outside of regular business policies and codes, several institutions outlined direct actions they have taken to promote gun safety. Institutions noted donations, signing pledges, engaging with communities, and forming committees to discuss gun safety. Some have also engaged in conversation with the firearms industry. BlackRock mentioned in its response that it proactively engaged with firearm industry players in which clients are invested regarding their business practices and policies. BlackRock sent respective lists of questions to manufacturers and retailers, asking for their strategies and processes implemented to ensure that these FFLs have sufficient controls in place to manage the risks associated with irresponsible dealing.³² BlackRock noted that it may use the conversations to vote against specific directors or management on shareholder proposals. Schroeders also contacted several companies for clarity on the types of firearms available for sale through companies’ stores or websites, the scope of any changes made to companies’ responsible selling policies, and how compliance is monitored.

These responses demonstrate the impact of the DOT’s RFI on financial institutions. The RFI led at least 90 institutions to review their exposure to the firearms

THE REQUEST FOR INFORMATION PERSUADED SOME INSTITUTIONS TO IMPLEMENT NEW POLICIES THAT PROMOTE GUN SAFETY.

industry and consider what future relationships with it might look like. For example, Stifel Financial wrote that its review found its exposure to the sector very limited in size, but that the institution was taking gun safety very seriously at both the management and board levels. While Prager & Company primarily supports unrelated entities, it noted that if its financing activities were to change, it would “certainly consider the adoption” of a gun safety policy or responsible selling code.

The RFI also apparently persuaded some institutions to implement new policies that promote gun safety. Institutional broker-dealer American Veterans Group (AVG) sent its initial response from an SVP on December 19, stating that, though AVG did not have a policy currently in place to promote responsible selling, that they “applaud[ed] the state in its stated goal, and as we grow, hope to be in a position to influence gun safety, and the responsible sale of firearms.” AVG then sent a second letter from its CEO on December 26, revealing the RFI’s significant impact on the institution: “The Firm takes a stand against senseless gun violence . . . the Firm has taken a stand that it will not transact business with any client deemed not committed to gun safety and the responsible use of firearms.”

Investment firm Ramirez also attached a new policy in response. The policy, dated December 1, 2019, requires best practices of firearm industry members as a condition to engage in business with Ramirez, including only transferring a firearm when a background check is completed with a “proceed” response³³ and restricting sales to individuals under 21 unless the buyer has received formal gun safety training. Ramirez also noted that it will not provide underwriting or investment services to gun manufacturers unless they sell guns only through retail channels that follow its set practices. The firm mentioned that the “outreach [by the DOT] has caused senior management at Ramirez to become more informed about gun safety issues and the measures Ramirez can implement to promote more gun safety practices with our customers.”

Drexel Hamilton, an institutional broker-dealer, stated that it had not yet formally adopted a relevant policy, but was “in the process of adopting something along the lines of the attached draft.” The draft, dated October 29, 2019 and titled “Gun Safety,” outlines the institution’s commitment to the need for thorough training in the use and safekeeping of firearms.

Spencer Savings Bank had also “not currently adopted” any relevant policy when it responded, but noted that it was in the process of making a determination on the appropriate policy for doing business with the firearms industry in the future or to otherwise ban such relationships altogether. This undertaking was likely induced by the RFI, as the Bank does not currently engage in business with the firearms industry.

Finally, Stern Brothers produced a “Code of Conduct Related to Gun Safety, Possession of Firearms on Company Property, and the Responsible Sale of Firearms” in its response. This policy demands that any client or partner participating in the sale of guns follow the exact same public safety principles listed in EO 83, suggesting that the order not only spurred this new policy but was integral to its drafting.

Many financial institutions also invited further dialogue with the state concerning firearms safety and what more can be done, including those that indicated they did not “yet” have a relevant policy. These open answers provide New Jersey with an opportunity to encourage such institutions to adopt policies that promote gun safety among their firearms industry clients and customers.

RECOMMENDATIONS FOR EFFECTIVE RESPONSIBLE FIREARMS PROCUREMENT POLICIES

New Jersey’s EO 83 advanced the state’s goal of promoting gun safety through procurement. The responses to the RFI provide the state with sufficient information to work with when evaluating who to give its business to and how to spend taxpayer dollars responsibly. According to the records reviewed, even just the act of sending the RFIs — long before any decisions might be made regarding which businesses are most aligned with the state’s values — promoted gun safety by requiring private entities to evaluate the sufficiency of their policies.

After reviewing these records, Brady makes the following recommendations for New Jersey and other jurisdictions seeking to adopt and promote strong policies to reduce gun violence through their purchasing power and relationships, both of which can be done through executive action.

RECOMMENDATIONS FOR NEW JERSEY

- **Gather information from the state on its firearms procurement contracts to inform follow-up actions.** New Jersey should collect information about all existing firearms procurement contracts, including data on the size and scope of the firearms purchases, the term of the contract, and the duration of the relationship. This information will inform follow-up actions with any noncompliant respondents; it will also allow the state to determine if any vendors did not respond to the RFI and, if so, follow up with a letter demanding a response.

- **Engage in the firearm procurement follow-up actions contemplated by the EO.** The order contains certain mandates for follow-up action. DPP is instructed to ascertain whether FFL vendor practices adhere to the enumerated public safety principles, which it can do by reviewing the gun industry’s responses to the RFI. The DPP is also instructed to determine whether any prospective bid solicitation for firearms or ammunition includes a requirement that each vendor certify adherence to the listed principles prior to any awards. There are several methods through which New Jersey can do so during the procurement process. It can send the same RFI to any future prospective bidders or otherwise integrate the RFI questions into the procurement process (e.g., by requiring answers to the RFI’s questions in any invitation to bid or request for proposal).³⁴ The state can also conduct a forward-looking prequalification process by gathering applicable information from numerous potential vendors and subsequently limiting future bidding to only those that certify adherence to New Jersey’s public safety principles.
- **Set clear objectives for future firearm procurements and employ a transparent selection process.** Doing so will balance supporting businesses that adhere to the public safety principles and the state’s responsibility to spend its taxpayer dollars wisely. For example, New Jersey can decide that it will do business only with industry members that respond in the affirmative to all, or a set substantial percentage of, questions regarding the principles posed in the RFI, and be transparent about its intentions in any invitations for bidding or requests for proposal. The state can then cut ties with industry members who do not meet those criteria — at the expiration of existing contracts, or sooner if permissible — and award contracts to only those vendors meeting the state’s objectives. New Jersey can also work adherence to the principles and compliance with firearms laws into its procurement contract provisions. Subject to due process, this would allow the state to terminate any

contracts with vendors found to be noncompliant.

- **Send a second RFI to financial institutions and engage with those that invited dialogue.** New Jersey can send RFIs to the same, or a subset of the same, financial institution respondents and compare any changes in responses, particularly for those banks that indicated they did not “yet” have a relevant policy or were otherwise considering adopting relevant policies. Additionally, New Jersey can reach back out to the multiple institutions that showed interest in further dialogue with the state. In this follow up, New Jersey can encourage these institutions to enact strong standards or codes of conduct, using comprehensive policies sent in response to the original RFI as examples of how they can promote gun safety and responsible dealing.
- **Score financial institutions’ policies and use those scores as a factor when awarding contracts.** New Jersey can develop a list of best practices for financial institutions based on its review of the first round of responses, then use this list to grade or score financial institutions on their commitment to gun safety. The state can further use these grades/scores as a factor when making decisions involving business with financial institutions, and publicize this selection process to the financial industry. By doing so, New Jersey would encourage financial institutions to enact strong gun safety policies because they will be prioritized in business decisions.

RECOMMENDATIONS FOR OTHER JURISDICTIONS CONSIDERING FIREARMS PROCUREMENT POLICIES

- **Research the sources of crime guns and generate a list of principles that would reduce gun crime in the community.** Jurisdictions should develop a clear set of principles — such as the “public safety principles” outlined in New Jersey’s EO 83 — that the jurisdiction believes is particularly important for FFLs to adhere to. These can be tailored to address issues specific to the community. For example, if a jurisdiction knows that a substantial number of crime guns recovered within its borders come from FFL theft, it can include the adoption of robust safety and security measures as one of its principles. In addition, jurisdictions can solicit information from many FFLs on their safe business practices to gain a better understanding of what practices are in use by industry members, and use this to add to or modify its set of principles.
- **Integrate the set of principles into the procurement process.** The jurisdiction can require all prospective firearm vendors and suppliers who participate in future procurements to provide information on those vendors’ practices and policies that promote the jurisdiction’s set of principles and/or require that any prospective vendor certifies adherence to these principles and provides proof. For example, the city of Toledo, Ohio, implemented a policy requiring all prospective firearms vendors to answer six questions concerning how and to whom they sell weapons before being awarded with a contract.³⁵ Ensuring adherence to the principles can also be streamlined by implementing a prequalification process for firearms purchases; an “approved vendors list,” for example, that limits future participation in bidding and proposals to those vendors that share the jurisdiction’s values.³⁶

- **Set clear objectives for future firearm procurement and maintain a transparent selection process.** By setting clear objectives — such as doing business with only those industry members that certify adherence to all, or a set substantial percentage of, the jurisdiction’s set of principles — and being transparent in any invitations for bidding or requests for proposals about these objectives, the jurisdiction can balance supporting FFLs that promote public safety with its responsibility to spend taxpayer dollars wisely. The jurisdiction can then cut ties with industry members who do not meet those objectives at the expiration of current contracts, or sooner if permissible, and award contracts only to vendors whose responses are deemed as satisfactory under the objectives.
- **Incorporate adherence to the principles and other terms into procurement contract provisions.** Jurisdictions can integrate adherence to the set principles and other terms that advance the jurisdiction’s goals, such as compliance with firearms laws, into the firearm procurement contracts awarded to selected vendors. Subject to due process, this would allow jurisdictions to terminate contracts with vendors found to be noncompliant by law enforcement or otherwise found to have violated the jurisdiction’s principles.

RECOMMENDATIONS FOR LEVERAGING RELATIONSHIPS WITH FINANCIAL INSTITUTIONS

- **Engage with financial institutions regarding the jurisdiction’s set of principles.** When communicating with financial institutions, such as through an RFI, the jurisdiction should explicitly list the specific principles it values for promoting gun safety. This could incentivize financial institutions to adopt policies dictating firearm industry relationships

that also promote these principles, just as some financial institutions used New Jersey’s specific set of principles to draft new organizational guidelines. Jurisdictions can also encourage bank executives to partner with states and localities to expand solutions to the gun violence epidemic outside of the legislative arena.

- **Send follow-ups to any institutions that invite further dialogue to encourage adoption of policies.** Many institutions demonstrated interest in continuing dialogue with New Jersey in their RFI responses. This can result in follow-up conversations in which the jurisdiction can encourage the institution to enact strong standards or codes of conduct. In addition, after reviewing the first round of responses, the jurisdiction can generate a list of best practices from all institutional policies, which it can pitch to the institutions inviting future correspondence as examples of policies that best promote gun safety and responsible dealing.
- **Score financial institutions on their commitment to gun safety and use these factors as a score for future purposes.** New Jersey’s financial responses contained a variety of policies and codes impacting the gun industry, with some promoting gun safety more directly than others. Interested jurisdictions can use these responses, and/or other publicly available information, to develop a list of best practices for financial institutions, and use this list to grade or score those institutions on their commitment to gun safety. Jurisdictions can then use these grades or scores as a factor when making decisions that involve business with financial institutions, and publicize this selection process to the financial industry, inviting submissions of any new or revised policies. This ensures that the jurisdiction prioritizes giving business to institutions that take gun safety seriously, and incentivizes and rewards policies that demand gun safety from industry clients.

ENDNOTES

1. Liz Farmer, Procurement Management: How Do States Rank?, GOV. TECH, Feb. 18, 2016, <https://www.govtech.com/budget-finance/procurement-management-how-do-states-rank.html>.
2. See id.; see also MINN. GOV'T, New, Online Minnesota Small Business Certification Web Portal Makes It Easier for Small Businesses to Compete for Federal, State, and Local Public Contracts (May 2, 2018), <https://mn.gov/admin/media/news/?id=36-338062>; Liz Farmer, How State Procurement Offices are Learning to Buy Better, GOVERNING, June 17, 2019, <https://www.governing.com/archive/gov-procurement-governing-institute-report.html>.
3. See, e.g., Liz Farmer, Procurement Management: How Do States Rank?, GOV. TECH, Feb. 18, 2016.
4. ATF, Commerce in Firearms in the United States 2 (Feb. 2000) (hereinafter "ATF, CIF").
5. See ATF, Following the Gun; Enforcing Federal Laws Against Firearms Traffickers 12, 41 (June 2000) (hereinafter "ATF, FTG"). "Licensed dealers, including pawnbrokers, have access to a large volume of firearms, so a corrupt licensed dealer can illegally divert large numbers of firearms." Id. at 12. Indeed, "[a]ll investigations involving FFL traffickers were associated with by far the highest average number of guns per investigation, over 350." Id. at 41.
6. Notably, the "actual purchaser" does not have to be prohibited for such a transaction to count as a straw purchase. *Abramski v. United States*, 573 U.S. 169, 172 (2014).
7. ATF, FTG, supra n. 4, at 14 (for example, ATF noted that the analyzed FFL-involved trafficking investigations summarized in this report often included multiple firearms trafficking channels, including straw purchasers and unlicensed sellers).
8. Id. at 11.
9. Id. at 15. In the FTG investigations, when irresponsible FFLs worked with other types of traffickers, the average number of guns diverted per investigation increased dramatically when compared to investigations of straw purchasers and unlicensed sellers that did not involve conspiracy with a corrupt FFL.
10. See, e.g., Betsy Woodruff Swan, Gun Store Robberies Alarm Law Enforcement Officials, POLITICO (June 23, 2020), <https://www.politico.com/news/2020/06/23/gun-store-robberies-law-enforcement-336104> ("The firearms industry opposes proposals for stricter security requirements as too onerous, according to Lawrence Keane, top lobbyist for the National Shooting Sports Federation."); see also NRA-ILA, California: Senate Appropriations Committee Passes Anti-Gun Bills, May 28, 2017, <https://www.nraila.org/articles/20170528/california-senate-appropriations-committee-passes-anti-gun-bills> ("SB 464, sponsored by Senator Jerry Hill (D-13) would increase the storage and security requirements of all firearms in the inventory of a licensed firearms dealer. California already has some of the strictest laws in the country regarding how dealers must store and secure firearms. This bill simply places more costs and mandates on law-abiding business owners.").
11. ATF, CIF, supra n.3, at 19, n.29.
12. See ATF, Guide to Investigating Illegal Firearms Trafficking 77 (1997), <https://www.ojp.gov/pdffiles1/Digitization/173151NCJRS.pdf>.
13. ATF, Learn about Firearms Safety and Security (Apr. 26, 2018), <https://www.atf.gov/firearms/learn-about-firearms-safety-and-security>.
14. Between 2012 and 2016, ATF recorded ten stolen guns from New Jersey FFLs, which are required to install alarm systems and implement internal security and safe storage measures for all guns on their premises. In the same timeframe, Vermont – which has fewer FFLs but no safety requirements – ATF recorded 90 guns stolen from those FFLs (and Maryland FFLs, of which there are twice as many as in New Jersey, reported 354). Compare ATF, Federal Firearms Licensee (FFL) Theft/Loss Report 2012 Summary – 2016 Summary, available at <https://www.atf.gov/resource-center/data-statistics>.
15. See, e.g., Daniel W. Webster et al., Temporal Association between Federal Gun Laws and the Diversion of Guns to Criminals in Milwaukee, 89 J. Urban Health 87 (2012) (hereinafter "Webster et al., Temporal Association"). Specifically, when the top source FFL responsible for selling two-thirds of guns recovered in Milwaukee with a short time-to-crime decided to stop selling a particular gun popular in crime, the following 14-month period during which this policy was in place was associated with a 68% reduction in the diversion of guns to criminals from that FFL, and a 44% decrease in the flow of all new guns trafficked into Milwaukee. Id.
16. U.S. CONF. OF MAYORS, Using Purchasing Power of Cities to Promote Better Gun Policies (2019), <https://www.usmayors.org/the-conference/resolutions/?category=a0D4N0000FD0m9UAD&meeting=87th%20Annual%20Meeting>.
17. In fact, the U.S. Conference of Mayors has passed a resolution encouraging the use of cities' purchasing power to promote better gun policies as a way to advance public safety without violating preemption laws. U.S. CONF. OF MAYORS, Using Purchasing Power of Cities to Promote Better Gun Policies (2019), <https://www.usmayors.org/the-conference/resolutions/?category=a0D4N0000FD0m9UAD&meeting=87th%20Annual%20Meeting>.
18. See, e.g., Benji Nguyen et al., Risky Business: Bank Loans to Local Governments, STANFORD INST. FOR ECON. POL'Y RESEARCH 2 (Aug. 2017), https://drive.google.com/file/d/1WY0fCQQ9pwzLDuxXWXPHL81zcuWSv_hG/view.
19. Mayra Rodriguez Valladares, State Legislatures Can Pressure Banks to Cut Ties with the Firearms Industry, FORBES, Aug. 25, 2019, <https://www.forbes.com/sites/mayrarodriguezvalladares/2019/08/25/state-legislatures-can-pressure-banks-to-cut-ties-with-the-firearms-industry/?sh=446ce08a5f4d>.
20. See Lydia Beyoud & Nushin Huq, Texas Puts Banks in Tight Spot with New Law Backing Gunmakers, BLOOMBERG LAW, Sept. 1, 2021, <https://news.bloomberglaw.com/banking-law/texas-puts-banks-in-tight-spot-with-new-law-backing-gunmakers>.
21. See, e.g., Danielle Moran & Amanda Albright, Bank of America, Citi Risk Hit to Their Texas Businesses over Gun Policies, BLOOMBERG, Apr. 28, 2021, <https://www.bloomberg.com/news/articles/2021-04-28/bofa-citi-risk-hit-to-business-in-texas-over-gun-policies>.
22. See Tiffany Hsu, Citigroup Sets Restrictions on Gun Sales by Business Partners, N.Y. TIMES (Mar. 22, 2018), <https://www.nytimes.com/2018/03/22/business/citigroup-gun-control-policy.html?login=email&auth=login-email>.
23. See Tiffany Hsu, Bank of America to Stop Financing Makers of Military-Style Guns, N.Y. TIMES (Apr. 10, 2018), <https://www.nytimes.com/2018/04/10/business/bank-of-america-guns.html>.

24. See Amanda Albright & Danielle Moran, JPMorgan's Texas Muni Work Becomes Latest Culture War Fallout, BLOOMBERG, Sept. 30, 2021, <https://www.bloomberg.com/news/articles/2021-09-30/jpmorgan-says-texas-gun-law-blocks-bank-from-muni-bond-deals>.
25. See *id.*
26. Michael Aron, Murphy Uses State Pocketbook as Weapon in Gun Safety Campaign, NJ SPOTLIGHT NEWS, Sept. 10, 2019, <https://www.njspotlight.com/news/video/gun-vendors-selling-to-nj-must-follow-rules-under-order/>.
27. N.J. Exec. Order No. 83 (2019), <https://nj.gov/infobank/eo/056murphy/pdf/EO-83.pdf>.
28. N.J. GOV'T, Governor Murphy Signs Landmark Executive Order on Gun Safety (Sept. 10, 2019), <https://www.nj.gov/governor/news/news/562019/20190910b.shtml>.
29. Including the directives described, EO 83 also directed the Commissioner of the Department of Banking and Insurance to take all appropriate action to prohibit or limit the sale, procurement, marketing or distribution of insurance products that may serve to encourage the improper use of firearms.
30. Specifically, the Order states that adherence to “public safety principles related to firearms” includes but is not limited to: (a) for retail dealers, that such dealers have policies to prevent, detect, and screen for the transfer of firearms to straw purchasers or firearms traffickers; to protect against theft; to train employees and have reasonable employment policies designed to ensure maximum compliance with the law; and to assist law enforcement in the investigation and prevention of criminal access to guns; and (b) for manufacturers, that they have standards for retail dealers authorized to sell the company's firearms that induce those dealers to adopt the principles listed in (a). *Id.*
31. See U.S. DEP'T OF JUST., OFF. OF INSPECTOR GEN., A Review of ATF's Operation Fast and Furious and Related Matters 19 (2012), <https://oig.justice.gov/reports/2012/s1209.pdf> (“ATF has identified circumstances that it considers indicative of straw purchasing and gun trafficking. These include the following:... sales paid for in cash...”).
32. DOT Financial Institution production at 81–82 (hereinafter “DOT production”). In engaging with manufacturers, BlackRock inquired: What is your strategy and process for managing the reputational, financial, and litigation risk associated with manufacturing civilian firearms?; How do you assess the financial, reputational and litigation risk of the various aspects of your product lines and how each of those products is distributed?; What steps do you take to support the safe and responsible use of your products?; How do you determine where you will allow your products to be distributed? (Do your distribution channels include private sales? Do you require distributors to disclose to you warnings received by [ATF]? Do you monitor whether distributors and retailers of your products have a high volume of their guns identified as having been used in crimes?); What strategies do you employ to monitor how your products are being sold? (Do you require retailers to certify that they do background checks? Do you require training of retailer staffs? Do you have a process in place to flag orders of unusual size or identify patterns of disproportionate sales?); and Are you investing in Research & Development to promote the safety of your products (e.g., effective trigger locking technology)? What is your strategy in this area?

In engaging with retailers, BlackRock inquired: What types of firearms do you currently sell? And what share of your revenue and profit do they rep-

resent?; What is your strategy to manage the reputational, financial and litigation risk associated with selling these products?; What are your policies and practices for determining to whom you will sell firearms? (Do you set age limits? Require background checks and what is the rigor of those checks?); What steps do you take to ensure compliance with relevant laws regarding who may or may not purchase firearms? (e.g., prohibiting felons or domestic abuse offenders from purchasing; sales to minors of certain products; training provided to employees so that they comply with applicable laws and regulations.); What licensing do you have for your gun sales?; What other strategies do you employ to prevent the potential misuse of firearms you sell? (e.g., limits on bulk purchases, preventing straw purchases.) How do you assess the reputational, financial and litigation risk of such misuse for your business?; and What steps do you take to support and promote gun safety education at the point of sale?

33. Under 18 U.S.C. § 922(t)(1), if an FFL who has initiated a background check has not been notified within three business days that the sale would violate federal or state laws, the dealer may proceed with the sale by default.
34. For example, the city of Toledo implemented a new procurement policy requiring prospective firearm vendors to answer six questions dealing with how and to whom they sell weapons before entering into a contract; if the vendor cannot answer appropriately, Toledo will take its business elsewhere. See, e.g., Toledo Mayor, Police Chief Says the City Will Only Buy Weapons, Ammunition from “Responsible” Companies in the Wake of the Country's Latest Mass Shooting, WTOL11, Oct. 30, 2018, <https://www.wtol.com/article/news/local/toledo-mayor-police-chief-says-the-city-will-only-buy-weapons-ammunition-from-responsible-companies-in-the-wake-of-the-countrys-latest-mass-shooting/512-0e49400e-669d-40a3-899d-134a7f560e3d>.
35. The policy also states that if the vendor does not answer appropriately, Toledo will take its business elsewhere. See, e.g., Toledo Mayor, Police Chief Says the City Will Only Buy Weapons, Ammunition from “Responsible” Companies in the Wake of the Country's Latest Mass Shooting, WTOL11 (Oct. 30, 2018).
36. The State could also consider developing an online portal where firearm industry members can apply for a “public safety principle” certification. Minnesota has an online portal where small businesses can apply for minority certifications with the goal of eliminating confusing additional paperwork. See Liz Farmer, Procurement Management: How Do States Rank?, GOVTECH, Feb. 19, 2016, <https://www.govtech.com/state/Procurement-Management-How-Do-States-Rank.html>.



***TAKE ACTION
NOT SIDES***