United States Senate
WASHINGTON, DC 20510

December 14, 2016

Jamal El-Hindi
Acting Director
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, Virginia 22183

Dear Acting Director El-Hindi,

As you know, this past election saw eight states vote to allow or expand some form of legal marijuana use, bringing the grand total to 29 states and jurisdictions in the United States. Yet, in these states, the majority of legal marijuana businesses, and businesses that provide services to them, are all but barred from participating in the financial system. As a result, many legal businesses are forced to operate in cash, which jeopardizes community safety, limits economic growth, and greatly expands the opportunity for tax fraud. We urge you to issue further guidance to financial institutions on their ability to provide services, specifically to indirect businesses that do nothing more than provide services to the state-sanctioned marijuana industry.

In 2014, FinCEN and the Department of Justice issued guidance clarifying reporting requirements, enforcement priorities, and providing clarity to state-legalized marijuana businesses and the financial services industry. However, the 2014 FinCEN guidance did not distinguish between state-sanctioned marijuana businesses and the indirect businesses that service the marijuana industry, leaving it up to individual financial institutions to determine how to classify and treat indirect businesses. Limitations on access to financial services have become increasingly problematic for legal businesses and will only present a larger problem as more states legalize marijuana, either for recreational or medical uses. Indeed, since FinCEN's 2014 guidance was released, less than 3% of the nation's 11,954 federally regulated banks and credit unions have chosen to serve the cannabis industry.[1]

Most banks and credit unions have either closed accounts or simply refused to offer services to indirect and ancillary businesses that service the marijuana industry. A large number of professionals have been unable to access the financial system because they are doing business with marijuana growers and dispensaries. This long list of professionals includes chemists who have had their checking accounts closed due to their role in testing marijuana for the presence of harmful materials like arsenic; the security industry, which marijuana businesses heavily rely on due to the massive amounts of cash they handle; and lawyers offering legal services to marijuana businesses, who have reported banks denying applications for bank accounts and credit cards.

To be clear, these legitimate, indirect businesses have been unable to open checking accounts and accept credit cards or checks. In some cases they have also lost access to existing accounts, such as retirement accounts, and have been forced to pay their employees, taxes, and bills in

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[1] Polly Mosendz and Suzanne Woolley, "America's Legal Pot Economy Is Forced Underground," *Bloomberg*, October 31, 2016. Accessed November 18, 2016. Available at: http://www.bloomberg.com/news/features/2016-10-31/america-s-legal-pot-economy-is-forced-underground

cash. Locking lawyers, landlords, plumbers, electricians, security companies, and the like out of the nation's banking and finance systems serves no one's interest.

Forcing all these direct and indirect businesses to operate in cash not only creates a huge target for criminals, but also complicates the collection of state and federal taxes. The fledgling legal market for marijuana is around $7 billion, a figure that's dwarfed by the overall $50 billion US market, most of which remains illegal.[2] This business environment is an invitation to tax fraud, robberies, money laundering, and organized crime.

With tens of millions of Americans soon gaining legal access to marijuana under state laws, new guidance is necessary in order to allow banks to enhance the availability of financial services for indirect businesses that service the marijuana industry. This will not only bolster the safety of our communities, but it will also help to spur economic growth across the country. We urge FinCEN to issue such guidance without delay.

Sincerely,

Jeffrey A. Merkley
United States Senator

Lisa Murkowski
United States Senator

Ron Wyden
United States Senator

Kirsten Gillibrand
United States Senator

Patty Murray
United States Senator

Elizabeth Warren
United States Senator

[2] "Oregon's marijuana tax revenues top $40 million," KTVZ, October 17, 2016. Accessed on November 18, 2016. Available at: http://www.ktvz.com/news/oregons-marijuana-tax-revenues-top-40-million/123399967

Bernard Sanders
United States Senator

Al Franken
United States Senator

Angus S. King Jr.
United States Senator

Cory A. Booker
United States Senator