[your address & name here]

[date]

The Honorable Senator Lindsey Graham

290 Russell Senate Office Building

Washington DC 20510

Re: **ATF Proposal to Further Restrict Access to**

**Firearms Under the National Firearms Act**

**Docket Number ATF 41 P**

Dear Senator Graham:

With the Senate’s recent approval of B. Todd Jones as Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"), I write to ask your assistance in ensuring that proposed rules enabling further gun restrictions by the Obama White House are not enacted as drafted.

As the first action after Todd’s approval as Director, President Obama announced two new initiatives designed to increase the difficulty for law-abiding citizens to obtain firearms that Congress approved for private ownership. One of those initiatives involves a proposal for ATF to issue new rules for firearms regulated under the National Firearms Act ("NFA"). Congress has determined that NFA firearms are appropriate for ownership by private citizens subject only to registration and transfer tax requirements. The text of ATF's draft proposed rulemaking seeks to impose new obstacles to citizens who seek to follow the law in the registration of these firearms and the payment of the transfer tax. The initiative altogether ignores the transfer of *unregistered* NFA firearms, the ones violent criminals would seek to procure.

When Congress legislated in this area in 1934, it clearly required that "individuals" who sought to own and possess NFA firearms submit to certain requirements including the submission of photographs and fingerprints for identification, and certification from the Chief Law Enforcement Officer ("CLEO") with respect to the background of the individual. *See* 26 U.S.C. §§ 5812(a), 5822(a). But Congress also specifically authorized other types of "persons" to own NFA firearms as well and chose not to impose the same requirements with respect to trusts, corporations, companies, partnerships, and other legal entities. *See* 26 U.S.C. § 7701(a)(1). Over the past 80 years the legislation has proved very effective and even the ATF cannot come up with more than a handful of criminal acts committed with registered firearms. The ATF’s proposed rule change is a solution in search of a problem.

Despite ATF’s success and the lack of criminal activity over decades, Director Jones now seeks to disregard Congressional judgment and impose significant new burdens on every individual associated with legal entities, such as trustees, beneficiaries, officers, and families. Congress was right in its judgment that criminals intent on obtaining access to firearms are extremely unlikely to establish a legal entity, then register the transfer of the NFA firearm with ATF and pay the $200 transfer tax. Criminals just don’t *register* firearms.

Please tell Director Jones and the ATF that it should not disregard that judgment. Doing so will only impose higher costs and additional burdens on law-abiding citizens. More importantly, these new rules add complexity, while significantly increasing the work of state employees responsible for handling and signing the new chief law enforcement officer (“CLEO”) certifications the ATF seeks to implement. ATF should be devoting its resources toward *unregistered* firearms. One would have thought ATF would have received that message from enactment of the Firearms Owners' Protection Act and Congress’ refusal to enact additional gun laws as recently as this spring.

By the ATF’s own calculations, an entity purchasing a firearm under the proposed rules would be required to work more than 7 hours to complete the necessary paperwork. As a professional in this area of law, and after an extensive review of ATF’s own time estimates as well as the average number of trustees impacted, I assess that the actual time commitment would be between 18 to 20 hours on average, or as great as 40 hours or more in the extremes. This does not account for other hard costs. Whether 7 hours or 40 hours, this new proposed rule is nothing but a paperwork exercise further eroding our constitutionally protected rights.

Congress has already determined that NFA firearms are appropriate for ownership by private citizens. One of the major reasons (if not *the* major reason) that gun trusts and other forms of legal entities have become popular means to own NFA firearms is because many CLEO’s simply refuse to sign transfer and making forms, not out of concern for the individual seeking to obtain a NFA firearm, but out of plain disagreement that any private citizens should be permitted firearms. The laws of numerous States agree that private citizens should be allowed to own these firearms. Too many CLEO’s simply refuse to sign forms out of disagreement with the policy judgment of Congress and his or her State legislature.

Until now, law-abiding citizens could vindicate their rights under Federal and State law by going to the trouble and expense of establishing a trust or other legal entity. Far from circumventing Federal law, as the White House press release suggests, individuals have thus used legal entities as the only way available to them to comply with Federal law in the face of obstructionist CLEO’s. ATF now proposes to grant CLEO’s effective veto power in those contexts as well. In short, ATF's proposal would grant a local official the opportunity to undercut the Federal statute and State law by refusing to sign a document simply because he or she does not like the idea of law-abiding private citizens owning guns. This is not equal protection under the law, and there is no way to ensure due process when a CLEO has unilateral, unrestrained, and unchecked power to deny a person the right to own a firearm clearly legal under Federal and State law.

The ATF’s proposed rule will create an unfunded mandate burdening our Sheriffs and other CLEO’s who will have to handle, evaluate, and sign the newly required form. Based upon my own experience with drafting trusts and the ratio of trusts to individual purchasers, I believe the number of CLEO sign off requests will grow by five to ten times the current amount. The States should not be forced to bear the costs necessary to accommodate the ATF’s rule change.

ATF has not proposed how it will accommodate the additional work this rule will require of the agency. Currently wait times for the ATF to process a two page NFA transfer approach one year. Requiring an additional two to eight forms per entity along with all the accompanying documentation will significantly increase the workload of the ATF examiners. The only way this proposal would not increase that work load is if it discouraged would be firearm owners from purchasing. Such a result would be an effective denial of these persons constitutional rights.

The ATF just completed a new system to allow for the electronic submission of NFA transfer forms for non-individuals. This system cannot handle the photograph, fingerprint, and CLEO requirements currently necessary for an individual to purchase a NFA firearm. By requiring these same submissions from all ‘responsible persons’ involved in an entity the ATF will eliminate the usefulness of the tool it just introduced. This short-sighted policy will only make the work at the agency longer and harder.

The requirement of photographs, fingerprints, and a CLEO sign off is a cumbersome vestige of an antiquated system no longer necessary to keep firearms out of the hands of felons. This system was replaced by Congress in the 1990s with the much more thorough and efficient *National Instant Criminal Background Check* (NICS) which can provide the same level of security with only 5% of the cost. Individuals representing entities should not be subjected to the inefficient system established 80 years ago when the NICS system exists and can be used with a mere phone call by any FFL dealer.

Please let ATF know that you do not support this subversion of law and the extra work it will require of your constituents and your state police. Also inform ATF this will hurt small businesses who sell NFA firearms or work with the entities that purchase them. The person to contact is:

Brenda Raffath Friend

Mailstop 6N-602

Office of Regulatory Affairs

Enforcement Programs and Services

Bureau of Alcohol, Tobacco, Firearms, and Explosives

U.S. Department of Justice

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**Attn: ATF 41P**

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Thank you for your attention to this matter, and I would greatly appreciate a copy of your response to Ms. Friend.

Sincerely,

[your name here]