



Department of the Treasury Financial Crimes Enforcement Network

Guidance

FIN-2014-G001

Issued: February 14, 2014

Subject: BSA Expectations Regarding Marijuana-Related Businesses

The Financial Crimes Enforcement Network (“FinCEN”) is issuing guidance to clarify Bank Secrecy Act (“BSA”) expectations for financial institutions seeking to provide services to marijuana-related businesses. FinCEN is issuing this guidance in light of recent state initiatives to legalize certain marijuana-related activity and related guidance by the U.S. Department of Justice (“DOJ”) concerning marijuana-related enforcement priorities. This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations, and aligns the information provided by financial institutions in BSA reports with federal and state law enforcement priorities. This FinCEN guidance should enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses.

Marijuana Laws and Law Enforcement Priorities

The Controlled Substances Act (“CSA”) makes it illegal under federal law to manufacture, distribute, or dispense marijuana.¹ Many states impose and enforce similar prohibitions. Notwithstanding the federal ban, as of the date of this guidance, 20 states and the District of Columbia have legalized certain marijuana-related activity. In light of these developments, U.S. Department of Justice Deputy Attorney General James M. Cole issued a memorandum (the “Cole Memo”) to all United States Attorneys providing updated guidance to federal prosecutors concerning marijuana enforcement under the CSA.² The Cole Memo guidance applies to all of DOJ’s federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

The Cole Memo reiterates Congress’s determination that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Cole Memo notes that DOJ is committed to enforcement of the CSA consistent with those determinations. It also notes that DOJ is committed to using its investigative and prosecutorial resources to address the most

¹ Controlled Substances Act, 21 U.S.C. § 801, *et seq.*

² James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement* (August 29, 2013), available at <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, the Cole Memo provides guidance to DOJ attorneys and law enforcement to focus their enforcement resources on persons or organizations whose conduct interferes with any one or more of the following important priorities (the “Cole Memo priorities”):³

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Concurrently with this FinCEN guidance, Deputy Attorney General Cole is issuing supplemental guidance directing that prosecutors also consider these enforcement priorities with respect to federal money laundering, unlicensed money transmitter, and BSA offenses predicated on marijuana-related violations of the CSA.⁴

Providing Financial Services to Marijuana-Related Businesses

This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations. In general, the decision to open, close, or refuse any particular account or relationship should be made by each financial institution based on a number of factors specific to that institution. These factors may include its particular business objectives, an evaluation of the risks associated with offering a particular product or service, and its capacity to manage those risks effectively. Thorough customer due diligence is a critical aspect of making this assessment.

In assessing the risk of providing services to a marijuana-related business, a financial institution should conduct customer due diligence that includes: (i) verifying with the appropriate state authorities whether the business is duly licensed and registered; (ii) reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business; (iii) requesting from state licensing and enforcement authorities available information about the business and related parties; (iv) developing an understanding of the normal and expected activity for the business, including the types of

³ The Cole Memo notes that these enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA.

⁴ James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Related Financial Crimes* (February 14, 2014).

products to be sold and the type of customers to be served (e.g., medical versus recreational customers); (v) ongoing monitoring of publicly available sources for adverse information about the business and related parties; (vi) ongoing monitoring for suspicious activity, including for any of the red flags described in this guidance; and (vii) refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk. With respect to information regarding state licensure obtained in connection with such customer due diligence, a financial institution may reasonably rely on the accuracy of information provided by state licensing authorities, where states make such information available.

As part of its customer due diligence, a financial institution should consider whether a marijuana-related business implicates one of the Cole Memo priorities or violates state law. This is a particularly important factor for a financial institution to consider when assessing the risk of providing financial services to a marijuana-related business. Considering this factor also enables the financial institution to provide information in BSA reports pertinent to law enforcement's priorities. A financial institution that decides to provide financial services to a marijuana-related business would be required to file suspicious activity reports ("SARs") as described below.

Filing Suspicious Activity Reports on Marijuana-Related Businesses

The obligation to file a SAR is unaffected by any state law that legalizes marijuana-related activity. A financial institution is required to file a SAR if, consistent with FinCEN regulations, the financial institution knows, suspects, or has reason to suspect that a transaction conducted or attempted by, at, or through the financial institution: (i) involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity; (ii) is designed to evade regulations promulgated under the BSA, or (iii) lacks a business or apparent lawful purpose.⁵ Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, a financial institution is required to file a SAR on activity involving a marijuana-related business (including those duly licensed under state law), in accordance with this guidance and FinCEN's suspicious activity reporting requirements and related thresholds.

One of the BSA's purposes is to require financial institutions to file reports that are highly useful in criminal investigations and proceedings. The guidance below furthers this objective by assisting financial institutions in determining how to file a SAR that facilitates law enforcement's access to information pertinent to a priority.

"Marijuana Limited" SAR Filings

A financial institution providing financial services to a marijuana-related business that it reasonably believes, based on its customer due diligence, does not implicate one of the Cole Memo priorities or violate state law should file a "Marijuana Limited" SAR. The content of this

⁵ See, e.g., 31 CFR § 1020.320. Financial institutions shall file with FinCEN, to the extent and in the manner required, a report of any suspicious transaction relevant to a possible violation of law or regulation. A financial institution may also file with FinCEN a SAR with respect to any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by FinCEN regulations.

SAR should be limited to the following information: (i) identifying information of the subject and related parties; (ii) addresses of the subject and related parties; (iii) the fact that the filing institution is filing the SAR solely because the subject is engaged in a marijuana-related business; and (iv) the fact that no additional suspicious activity has been identified. Financial institutions should use the term “MARIJUANA LIMITED” in the narrative section.

A financial institution should follow FinCEN’s existing guidance on the timing of filing continuing activity reports for the same activity initially reported on a “Marijuana Limited” SAR.⁶ The continuing activity report may contain the same limited content as the initial SAR, plus details about the amount of deposits, withdrawals, and transfers in the account since the last SAR. However, if, in the course of conducting customer due diligence (including ongoing monitoring for red flags), the financial institution detects changes in activity that potentially implicate one of the Cole Memo priorities or violate state law, the financial institution should file a “Marijuana Priority” SAR.

“Marijuana Priority” SAR Filings

A financial institution filing a SAR on a marijuana-related business that it reasonably believes, based on its customer due diligence, implicates one of the Cole Memo priorities or violates state law should file a “Marijuana Priority” SAR. The content of this SAR should include comprehensive detail in accordance with existing regulations and guidance. Details particularly relevant to law enforcement in this context include: (i) identifying information of the subject and related parties; (ii) addresses of the subject and related parties; (iii) details regarding the enforcement priorities the financial institution believes have been implicated; and (iv) dates, amounts, and other relevant details of financial transactions involved in the suspicious activity. Financial institutions should use the term “MARIJUANA PRIORITY” in the narrative section to help law enforcement distinguish these SARs.⁷

“Marijuana Termination” SAR Filings

If a financial institution deems it necessary to terminate a relationship with a marijuana-related business in order to maintain an effective anti-money laundering compliance program, it should

⁶ Frequently Asked Questions Regarding the FinCEN Suspicious Activity Report (Question #16), *available at*: http://fincen.gov/whatsnew/html/sar_faqs.html (providing guidance on the filing timeframe for submitting a continuing activity report).

⁷ FinCEN recognizes that a financial institution filing a SAR on a marijuana-related business may not always be well-positioned to determine whether the business implicates one of the Cole Memo priorities or violates state law, and thus which terms would be most appropriate to include (i.e., “Marijuana Limited” or “Marijuana Priority”). For example, a financial institution could be providing services to another domestic financial institution that, in turn, provides financial services to a marijuana-related business. Similarly, a financial institution could be providing services to a non-financial customer that provides goods or services to a marijuana-related business (e.g., a commercial landlord that leases property to a marijuana-related business). In such circumstances where services are being provided indirectly, the financial institution may file SARs based on existing regulations and guidance without distinguishing between “Marijuana Limited” and “Marijuana Priority.” Whether the financial institution decides to provide indirect services to a marijuana-related business is a risk-based decision that depends on a number of factors specific to that institution and the relevant circumstances. In making this decision, the institution should consider the Cole Memo priorities, to the extent applicable.

file a SAR and note in the narrative the basis for the termination. Financial institutions should use the term “MARIJUANA TERMINATION” in the narrative section. To the extent the financial institution becomes aware that the marijuana-related business seeks to move to a second financial institution, FinCEN urges the first institution to use Section 314(b) voluntary information sharing (if it qualifies) to alert the second financial institution of potential illegal activity. See *Section 314(b) Fact Sheet* for more information.⁸

Red Flags to Distinguish Priority SARs

The following red flags indicate that a marijuana-related business may be engaged in activity that implicates one of the Cole Memo priorities or violates state law. These red flags indicate only possible signs of such activity, and also do not constitute an exhaustive list. It is thus important to view any red flag(s) in the context of other indicators and facts, such as the financial institution’s knowledge about the underlying parties obtained through its customer due diligence. Further, the presence of any of these red flags in a given transaction or business arrangement may indicate a need for additional due diligence, which could include seeking information from other involved financial institutions under Section 314(b). These red flags are based primarily upon schemes and typologies described in SARs or identified by our law enforcement and regulatory partners, and may be updated in future guidance.

- A customer appears to be using a state-licensed marijuana-related business as a front or pretext to launder money derived from other criminal activity (i.e., not related to marijuana) or derived from marijuana-related activity not permitted under state law. Relevant indicia could include:
 - The business receives substantially more revenue than may reasonably be expected given the relevant limitations imposed by the state in which it operates.
 - The business receives substantially more revenue than its local competitors or than might be expected given the population demographics.
 - The business is depositing more cash than is commensurate with the amount of marijuana-related revenue it is reporting for federal and state tax purposes.
 - The business is unable to demonstrate that its revenue is derived exclusively from the sale of marijuana in compliance with state law, as opposed to revenue derived from (i) the sale of other illicit drugs, (ii) the sale of marijuana not in compliance with state law, or (iii) other illegal activity.
 - The business makes cash deposits or withdrawals over a short period of time that are excessive relative to local competitors or the expected activity of the business.

⁸ Information Sharing Between Financial Institutions: Section 314(b) Fact Sheet, *available at*: http://fincen.gov/statutes_regs/patriot/pdf/314bfactsheet.pdf.

- Deposits apparently structured to avoid Currency Transaction Report (“CTR”) requirements.
 - Rapid movement of funds, such as cash deposits followed by immediate cash withdrawals.
 - Deposits by third parties with no apparent connection to the accountholder.
 - Excessive commingling of funds with the personal account of the business’s owner(s) or manager(s), or with accounts of seemingly unrelated businesses.
 - Individuals conducting transactions for the business appear to be acting on behalf of other, undisclosed parties of interest.
 - Financial statements provided by the business to the financial institution are inconsistent with actual account activity.
 - A surge in activity by third parties offering goods or services to marijuana-related businesses, such as equipment suppliers or shipping servicers.
- The business is unable to produce satisfactory documentation or evidence to demonstrate that it is duly licensed and operating consistently with state law.
 - The business is unable to demonstrate the legitimate source of significant outside investments.
 - A customer seeks to conceal or disguise involvement in marijuana-related business activity. For example, the customer may be using a business with a non-descript name (e.g., a “consulting,” “holding,” or “management” company) that purports to engage in commercial activity unrelated to marijuana, but is depositing cash that smells like marijuana.
 - Review of publicly available sources and databases about the business, its owner(s), manager(s), or other related parties, reveal negative information, such as a criminal record, involvement in the illegal purchase or sale of drugs, violence, or other potential connections to illicit activity.
 - The business, its owner(s), manager(s), or other related parties are, or have been, subject to an enforcement action by the state or local authorities responsible for administering or enforcing marijuana-related laws or regulations.
 - A marijuana-related business engages in international or interstate activity, including by receiving cash deposits from locations outside the state in which the business operates, making or receiving frequent or large interstate transfers, or otherwise transacting with persons or entities located in different states or countries.

- The owner(s) or manager(s) of a marijuana-related business reside outside the state in which the business is located.
- A marijuana-related business is located on federal property or the marijuana sold by the business was grown on federal property.
- A marijuana-related business's proximity to a school is not compliant with state law.
- A marijuana-related business purporting to be a "non-profit" is engaged in commercial activity inconsistent with that classification, or is making excessive payments to its manager(s) or employee(s).

Currency Transaction Reports and Form 8300's

Financial institutions and other persons subject to FinCEN's regulations must report currency transactions in connection with marijuana-related businesses the same as they would in any other context, consistent with existing regulations and with the same thresholds that apply. For example, banks and money services businesses would need to file CTRs on the receipt or withdrawal by any person of more than \$10,000 in cash per day. Similarly, any person or entity engaged in a non-financial trade or business would need to report transactions in which they receive more than \$10,000 in cash and other monetary instruments for the purchase of goods or services on FinCEN Form 8300 (Report of Cash Payments Over \$10,000 Received in a Trade or Business). A business engaged in marijuana-related activity may not be treated as a non-listed business under 31 C.F.R. § 1020.315(e)(8), and therefore, is not eligible for consideration for an exemption with respect to a bank's CTR obligations under 31 C.F.R. § 1020.315(b)(6).

* * * * *

FinCEN's enforcement priorities in connection with this guidance will focus on matters of systemic or significant failures, and not isolated lapses in technical compliance. Financial institutions with questions about this guidance are encouraged to contact FinCEN's Resource Center at (800) 767-2825, where industry questions can be addressed and monitored for the purpose of providing any necessary additional guidance.



U.S. Department of Justice

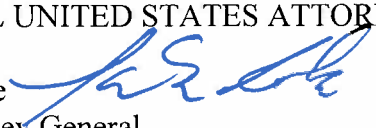
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

February 14, 2014

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole 
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Related Financial Crimes

On August 29, 2013, the Department issued guidance (August 29 guidance) to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). The August 29 guidance reiterated the Department's commitment to enforcing the CSA consistent with Congress' determination that marijuana is a dangerous drug that serves as a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. In furtherance of that commitment, the August 29 guidance instructed Department attorneys and law enforcement to focus on the following eight priorities in enforcing the CSA against marijuana-related conduct:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Under the August 29 guidance, whether marijuana-related conduct implicates one or more of these enforcement priorities should be the primary question in considering prosecution

under the CSA. Although the August 29 guidance was issued in response to recent marijuana legalization initiatives in certain states, it applies to all Department marijuana enforcement nationwide. The guidance, however, did not specifically address what, if any, impact it would have on certain financial crimes for which marijuana-related conduct is a predicate.

The provisions of the money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act (BSA) remain in effect with respect to marijuana-related conduct. Financial transactions involving proceeds generated by marijuana-related conduct can form the basis for prosecution under the money laundering statutes (18 U.S.C. §§ 1956 and 1957), the unlicensed money transmitter statute (18 U.S.C. § 1960), and the BSA. Sections 1956 and 1957 of Title 18 make it a criminal offense to engage in certain financial and monetary transactions with the proceeds of a “specified unlawful activity,” including proceeds from marijuana-related violations of the CSA. Transactions by or through a money transmitting business involving funds “derived from” marijuana-related conduct can also serve as a predicate for prosecution under 18 U.S.C. § 1960. Additionally, financial institutions that conduct transactions with money generated by marijuana-related conduct could face criminal liability under the BSA for, among other things, failing to identify or report financial transactions that involved the proceeds of marijuana-related violations of the CSA. *See, e.g.*, 31 U.S.C. § 5318(g). Notably for these purposes, prosecution under these offenses based on transactions involving marijuana proceeds does not require an underlying marijuana-related conviction under federal or state law.

As noted in the August 29 guidance, the Department is committed to using its limited investigative and prosecutorial resources to address the most significant marijuana-related cases in an effective and consistent way. Investigations and prosecutions of the offenses enumerated above based upon marijuana-related activity should be subject to the same consideration and prioritization. Therefore, in determining whether to charge individuals or institutions with any of these offenses based on marijuana-related violations of the CSA, prosecutors should apply the eight enforcement priorities described in the August 29 guidance and reiterated above.¹ For example, if a financial institution or individual provides banking services to a marijuana-related business knowing that the business is diverting marijuana from a state where marijuana sales are regulated to ones where such sales are illegal under state law, or is being used by a criminal organization to conduct financial transactions for its criminal goals, such as the concealment of funds derived from other illegal activity or the use of marijuana proceeds to support other illegal activity, prosecution for violations of 18 U.S.C. §§ 1956, 1957, 1960 or the BSA might be appropriate. Similarly, if the financial institution or individual is willfully blind to such activity by, for example, failing to conduct appropriate due diligence of the customers’ activities, such prosecution might be appropriate. Conversely, if a financial institution or individual offers

¹ The Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) is issuing concurrent guidance to clarify BSA expectations for financial institutions seeking to provide services to marijuana-related businesses. The FinCEN guidance addresses the filing of Suspicious Activity Reports (SAR) with respect to marijuana-related businesses, and in particular the importance of considering the eight federal enforcement priorities mentioned above, as well as state law. As discussed in FinCEN’s guidance, a financial institution providing financial services to a marijuana-related business that it reasonably believes, based on its customer due diligence, does not implicate one of the federal enforcement priorities or violate state law, would file a “Marijuana Limited” SAR, which would include streamlined information. Conversely, a financial institution filing a SAR on a marijuana-related business it reasonably believes, based on its customer due diligence, implicates one of the federal priorities or violates state law, would label the SAR “Marijuana Priority,” and the content of the SAR would include comprehensive details in accordance with existing regulations and guidance.

services to a marijuana-related business whose activities do not implicate any of the eight priority factors, prosecution for these offenses may not be appropriate.

The August 29 guidance rested on the expectation that states that have enacted laws authorizing marijuana-related conduct will implement clear, strong and effective regulatory and enforcement systems in order to minimize the threat posed to federal enforcement priorities. Consequently, financial institutions and individuals choosing to service marijuana-related businesses that are not compliant with such state regulatory and enforcement systems, or that operate in states lacking a clear and robust regulatory scheme, are more likely to risk entanglement with conduct that implicates the eight federal enforcement priorities.² In addition, because financial institutions are in a position to facilitate transactions by marijuana-related businesses that could implicate one or more of the priority factors, financial institutions must continue to apply appropriate risk-based anti-money laundering policies, procedures, and controls sufficient to address the risks posed by these customers, including by conducting customer due diligence designed to identify conduct that relates to any of the eight priority factors. Moreover, as the Department's and FinCEN's guidance are designed to complement each other, it is essential that financial institutions adhere to FinCEN's guidance.³ Prosecutors should continue to review marijuana-related prosecutions on a case-by-case basis and weigh all available information and evidence in determining whether particular conduct falls within the identified priorities.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA, the money laundering and unlicensed money transmitter statutes, or the BSA, including the obligation of financial institutions to conduct customer due diligence. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct of a person or entity threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

² For example, financial institutions should recognize that a marijuana-related business operating in a state that has not legalized marijuana would likely result in the proceeds going to a criminal organization.

³ Under FinCEN's guidance, for instance, a marijuana-related business that is not appropriately licensed or is operating in violation of state law presents red flags that would justify the filing of a Marijuana Priority SAR.

United States Senate

SENATE CAUCUS ON
INTERNATIONAL NARCOTICS CONTROL
HART SENATE OFFICE BUILDING, ROOM 818-C
WASHINGTON, DC 20510

April 1, 2014

Ms. Jennifer Shasky Calvery
Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, VA 22183

Dear Director Calvery:

The mission of the Financial Crimes Enforcement Network (FinCEN) is to safeguard the nation's financial system from illicit use and to combat money laundering. However, the guidance that FinCEN recently issued regarding the proceeds of illegal marijuana trafficking severely undermines that mission.

As you know, recently the states of Colorado and Washington became the first jurisdictions in the world to legalize the production, trafficking, possession and use of marijuana for recreational purposes. The Controlled Substances Act, however, still bans these activities under federal law.

Last August, the Department of Justice (DOJ) announced that it would not challenge these state laws, despite their obvious conflict with federal law. Additionally, the DOJ issued guidance to prosecutors concerning the enforcement of the Controlled Substances Act that would allow marijuana businesses in these states to operate, notwithstanding their violation of federal law. However, even after the DOJ issued this guidance, financial institutions refused to provide banking services to marijuana businesses. This is not surprising, given the participation of these businesses in illegal activity. In response, on February 14, 2014, FinCEN and the DOJ each issued guidance regarding the proceeds of illegal marijuana trafficking.

Like the memorandum it issued in August, the DOJ's recent guidance was couched in terms of prosecutorial or enforcement discretion. But such discretion may not be properly employed to *facilitate* illegal activity. Similarly, FinCEN's guidance appears focused on *assisting* those businesses that seek to inject the proceeds of criminal activity into the nation's financial system.¹ This turns FinCEN's mission on its head.

¹ For example, FinCEN's guidance states that it "should enhance the availability of financial services for . . . marijuana-related businesses." Financial Crimes Enforcement Network, *Guidance: BSA Expectations Regarding Marijuana-Related Businesses*, FIN-2014-G001 (February 14, 2014). Moreover, in the press release accompanying the guidance you stated that "FinCEN seeks to move from the shadows the historically covert financial operations of

FinCEN's guidance purportedly "clarifies how financial institutions can provide services to marijuana-related businesses."² However, the guidance is dangerously misleading. Indeed, following the guidance may expose financial institutions to civil or criminal liability. Congress and the President may reconsider marijuana's legality, but until federal law is changed, selling marijuana, laundering marijuana proceeds, and aiding and abetting those activities all remain illegal. Far from *clarifying* the obligations of financial institutions, FinCEN's guidance appears to create uncertainty where none had existed beforehand.

To help Congress, financial institutions, and the American public understand both the basis and the real-world implications of FinCEN's guidance, please answer the following questions:

1. Given FinCEN's mission to safeguard the nation's banking system from illicit use and to combat money laundering, on what legal authority does it purport to "enhance the availability of financial services" for illegal drug traffickers?
2. Does FinCEN's guidance alter the federal criminal laws that prohibit the distribution and sale of marijuana, the laundering of marijuana proceeds, and any services that aid and abet these activities?
3. Does FinCEN's guidance alter the federal criminal laws that subject any proceeds obtained, directly or indirectly, from illegal activity, including the distribution of marijuana, to forfeiture?
4. Does FinCEN's guidance alter the Bank Secrecy Act's criminal penalties for failing to establish an anti-money laundering program designed "to guard against money laundering through financial institutions"?³
5. Does FinCEN have any authority to exercise enforcement discretion relating to the federal criminal laws referenced above, or to decline to enforce these laws?
6. Does FinCEN anticipate taking any steps to protect financial institutions from criminal prosecution by the DOJ if a financial institution follows its guidance and provides financial services to illegal drug traffickers? If so, what are those steps?
7. Does FinCEN know of any reason why Suspicious Activity Reports filed by a financial institution relating to an illegal marijuana business, perhaps with the name of the marijuana business redacted, may not be used as evidence against that

marijuana businesses." Financial Crimes Enforcement Network, Press Release, *FinCEN Issues Guidance to Financial Institutions on Marijuana Businesses* (February 14, 2014).

² Financial Crimes Enforcement Network, *Guidance: BSA Expectations Regarding Marijuana-Related Businesses*, FIN-2014-G001 (February 14, 2014).

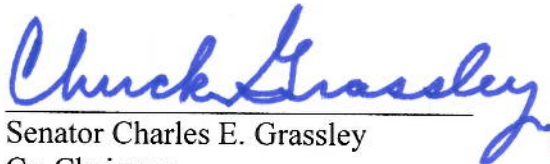
³ See 31 U.S.C. §§ 5318(h) & 5322(a).

financial institution, including as a party admission under Federal Rule of Evidence 801(d)(2)?

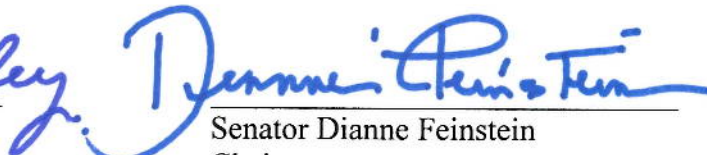
8. How many financial institutions asked FinCEN for guidance about whether they could provide services to illegal marijuana businesses prior to the issuance of its guidance?

Thank you for your cooperation and attention in this matter. We would appreciate a response by April 15, 2014. Please number your answers in accordance with our questions. If you have any questions, please do not hesitate to contact Chris Lucas or David Bleich at (202) 224-5225, or Matt Bentrott at (202) 228-3081.

Sincerely,



Senator Charles E. Grassley
Co-Chairman



Senator Dianne Feinstein
Chairman



STATE OF COLORADO



STATE OF WASHINGTON

October 2, 2013

The Honorable Jacob J. Lew
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

The Honorable Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

The Honorable Debbie Matz
Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Dear Secretary Lew, Chairman Bernanke, Chairman Gruenberg, Comptroller Curry, Director Cordray, and Chairman Matz:

We write to you regarding the need for flexibility in the federal banking regulations that will allow state-licensed marijuana producers, processors, and retailers access to the banking system. Colorado and Washington are in the process of implementing citizen initiatives permitting the production, processing, and sale of marijuana to adults for recreational use, in compliance with state law. Access to the banking system by these state-licensed businesses is a necessary component in ensuring a highly regulated marijuana system that will accurately track funds, prevent criminal involvement, and promote public safety. In order to achieve the mutual federal and state goal of establishing tightly-controlled marijuana regulatory systems, we urge you to issue inter-agency guidance that will allow legal, licensed marijuana businesses access to the banking system.

On August 29, 2013, the United States Department of Justice (USDOJ) issued a memorandum outlining federal priorities in the enforcement of the federal Controlled Substance Act, with regard to marijuana, in light of new state laws in Colorado and Washington. This memo emphasized eight enforcement priorities, which our states support and are adhering to as we

establish regulatory schemes. The regulatory systems in our states are designed to assure strict audit and tracking of supply chains of intra-state licensees, prevent access to minors, diversion to other states, and other criminal activity. The willingness of the USDOJ to exercise this flexibility in response to the will of the voters in our states demonstrates bold leadership by the President, Attorney General Holder, and the Administration.

We respectfully ask you as federal banking regulators to provide guidance consistent with the Administration's leadership and the eight enforcement priorities, to enable the banking industry to offer full banking services to state marijuana licensees. It is apparent through the work of our state regulatory agencies and testimony before the U.S. Senate Judiciary Committee that, absent a means to properly account for the significant amounts of cash generated by licensed marijuana producers, processors and retailers, our states' and USDOJ's interests in promoting public safety and preventing diversion of marijuana and criminal activity will be exceedingly difficult. For example, our states will soon be licensing hundreds of retail stores, each of which will, without a normal banking relationship, be forced to conduct business on an all-cash basis. This creates an unnecessary inviting target for criminal activity.

Action by federal regulators to allow state-licensed marijuana businesses to fully access the national banking system would promote public safety and provide a significantly better means of meeting the state and USDOJ enforcement priorities. Enabling marijuana producers, processors and retailers to accept Automated Clearing House (ACH) transactions (credit and debit cards), accept and deposit cash and checks, and pay third parties by ACH, check or wire transfer, would reduce the amount of cash in the system and lessen the threat of criminal activity. Permitting normal banking relationships for state marijuana licensees would also assure a means of tracking the flow of funds, and prevent diversion of marijuana proceeds to illegal activities and to states and foreign jurisdictions in which marijuana remains illegal.

USDOJ has acknowledged "that a tightly regulated market in which revenues are tracked and accounted for" is essential to fulfilling the USDOJ priorities set forth in its guidelines. We believe the best way to achieve this goal is by permitting state marijuana licensees controlled and monitored access to the U.S. banking system where their revenues can be accounted for and tracked.

The federal banking agencies, in collaboration with the Financial Crimes Enforcement Network (FinCEN), the Office of Foreign Asset Control (OFAC), and the Criminal Division of the Internal Revenue Service (IRS) have implemented and maintain a sophisticated system of anti-money laundering laws and regulations under the USA PATRIOT Act, Bank Secrecy Act (BSA), and associated Treasury Regulations (collectively, AML laws). Compliance with these AML laws is assured by use of IT auditing and tracking systems at both the government and private level, which can trace the flow of funds nationally and internationally. Businesses for which there is heightened risk of money-laundering (e.g., money transmitters and currency exchangers) are required, together with the bankers to whom they deposit their funds, to employ enhanced due diligence (EDD) procedures to assure AML laws are not violated.

We request that you work with the USDOJ, FinCEN, OFAC, and IRS to provide a highly controlled banking solution within the scope of present AML laws to help our states conform to the USDOJ enforcement priorities. In turn, our state regulatory agencies are committed to

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working with you in devising a system — also within the framework of existing AML laws — which will permit state marijuana licensees to bank revenues and use normal banking relationships to pay taxes and transfer funds to creditors (e.g. landlords, utilities providers, and others in the supply chain), just like any other small business. We believe an EDD program, which could include special BSA reporting procedures, can meet the letter and spirit of the AML laws and be maintained in cooperation with the state regulatory agencies of Colorado and Washington.

We understand a special EDD program for state marijuana licensees may require inter-agency guidance from you as federal banking regulators. Accordingly, we ask you to formally adopt inter-agency guidance recognizing that our respective states are diligently acting in good faith in overseeing state regulatory systems that satisfy the USDOJ enforcement priorities, and providing that banks and credit unions may provide normal banking relationships to state marijuana licensees and those persons with whom they do business.

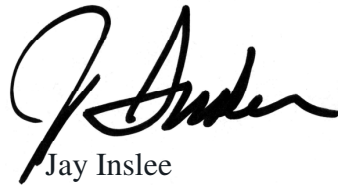
Presently, there are a host of banks and credit unions in Colorado and Washington that we understand are willing to provide normal banking relationships to state marijuana licensees, and who would submit to all special EDD requirements of applicable federal banking regulators under their compliance programs for AML laws.

We look forward to your consideration of this proposal, and we welcome communication from you at your earliest convenience.

Sincerely,



John W. Hickenlooper
Governor of Colorado



Jay Inslee
Governor of Washington