



U.S. DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK

May 8, 2014

The Honorable Dianne Feinstein
Chairman
Senate Caucus on International
Narcotics Control
United States Senate
818-C Hart Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Co-Chairman
Senate Caucus on International
Narcotics Control
United States Senate
818-C Hart Senate Office Building
Washington, DC 20510

Dear Chairmen Feinstein and Grassley:

Thank you for your letter dated April 1, 2014, regarding the Financial Crimes Enforcement Network (FinCEN) guidance clarifying the Bank Secrecy Act (BSA) expectations for financial institutions seeking to provide services to state-regulated marijuana-related businesses. Consistent with the Department of Justice's recent announcement on its prosecutorial and enforcement priorities regarding marijuana-related financial crimes, FinCEN's guidance helps financial institutions file reports that contain information of high value to law enforcement. As a result, law enforcement will have greater insight into marijuana-related business activity generally, and will be able to focus on businesses and activity that present priority concerns. As requested, responses to your eight questions are set forth below.

Question #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?

FinCEN does not purport to enhance the availability of financial services for illegal drug traffickers. The primary objective of FinCEN's guidance is to enhance financial transparency, which is core to FinCEN's mission and a fundamental purpose of the BSA. Given law enforcement's priorities with respect to marijuana-related financial crimes, some financial institutions may accept the risks associated with providing financial services to state-regulated marijuana-related businesses. Consistent with its mission, FinCEN wants to ensure that any such financial activity that occurs is transparent and subject to appropriate anti-money laundering safeguards.

May 8, 2014

Page 2

Question #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?

FinCEN's guidance has no impact on the application of federal criminal laws. We defer to the Department of Justice's views on the matter in question as outlined in its separate guidance dated February 14, 2014.

Question #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?

As stated above, we defer to the Department of Justice on all matters pertaining to the criminal treatment of this activity, including issues related to forfeiture.

Question #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?"

FinCEN's guidance does not alter any provision of the BSA, including the criminal penalties provided for in 31 U.S.C. § 5322 and 31 C.F.R. § 1010.840.

Question #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?

Only the Department of Justice has discretion to determine whether to prosecute violations of the BSA. We defer to them on any questions concerning the enforcement of criminal money laundering laws.

May 8, 2014

Page 3

Question #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 the steps?

FinCEN does not interfere with criminal investigations or prosecutions conducted by the Department of Justice.

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

FinCEN has no independent litigation authority. We defer to the Department of Justice on any questions concerning the Federal Rules of Evidence. We note, however, that suspicious activity reports (SARs) are confidential, prosecutors must consult with FinCEN's counsel before disclosing SARs in discovery, and, as a matter of policy, FinCEN discourages the use of a SAR against the filing institution as that could chill the filing of such reports in the future.

Question #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?

As with all regulatory matters, in the past we have received questions from financial institutions both through our Helpline and at industry-sponsored outreach events where FinCEN was a participant. We do not maintain statistical records on informal contacts with financial institutions or the particular questions asked. To solicit input from the financial industry regarding the provision of financial services to marijuana-related businesses, we discussed the issue at the most recent meeting of the Bank Secrecy Act Advisory Group, a congressionally established forum that brings together representatives from regulatory and law enforcement agencies at the state and federal levels, as well as financial institutions and industry representatives. We have also encouraged financial institutions with questions about the guidance to contact FinCEN, so that we can monitor questions for the purpose of providing any necessary additional guidance.

The Honorable Dianne Feinstein
The Honorable Charles E. Grassley

May 8, 2014

Page 4

FinCEN is committed to fostering a fair but effective BSA regulatory environment, and we believe that our recent guidance contributes to that effort. We are also committed to listening to concerns and feedback regarding the guidance's effectiveness, and making changes where appropriate. If we may be of further assistance on this issue, please contact Patrick O'Brien, FinCEN's Congressional Liaison, at 202-354-6037.

Sincerely,



Jennifer Shasky Calvery
Director