



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

January 31, 2024

The Honorable Elizabeth Warren  
United States Senate  
Washington, DC 20510

Dear Senator Warren:

Thank you for your letter dated November 14, 2023, regarding guidance issued by the Financial Crimes Enforcement Network (FinCEN) in 2014 (the “2014 Guidance”) clarifying Bank Secrecy Act (BSA) expectations for financial institutions providing services to marijuana-related businesses (MRBs).<sup>1</sup> Treasury is aware of the disparities between state and federal marijuana laws and recognizes that MRBs, including their owners, managers, or other related parties, operating in compliance with state marijuana laws, face substantial challenges in terms of access and availability of financial services. Treasury is particularly aware of the complexity of the legal, criminal, public policy, racial equity, and financial access issues when MRBs are engaged in marijuana-related activities no longer criminalized at the state level, and whose owners, managers, or other related parties may have prior marijuana-related criminal records that would not be considered criminal offenses under current state marijuana laws.

As you are aware, the 2014 Guidance was issued to help financial institutions fulfill their BSA obligations<sup>2</sup> as they provide financial services to MRBs operating in compliance with state marijuana laws. The guidance included red flags to assist financial institutions with identifying suspicious activity, particularly activity in violation of state marijuana laws. The presence of any red flags in a given transaction or business arrangement may indicate a need for additional due diligence, but the 2014 Guidance made clear that any red flags should be viewed “in the context of other indicators and facts,” including whether “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.”<sup>3</sup> These red flags enable financial institutions, such as banks, to make their own determination as to whether to enter into or maintain business relationships with MRB customers based on financial institutions’ business objectives and other relevant factors, such as the products and services sought by the customer, the geographic locations where the customer will conduct or transact business, and financial institutions’ ability to manage risks effectively.

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<sup>1</sup> See [FIN-2014-G001](#), “BSA Expectations Regarding Marijuana-Related Businesses” (February 14, 2014).

<sup>2</sup> Under the BSA and FinCEN’s implementing regulations, financial institutions, such as banks, have certain legal and regulatory obligations to combat money laundering, terrorist financing and other forms of illicit finance activities. These BSA obligations include establishing risk-based anti-money laundering/countering the financing of terrorism (AML/CFT) programs, maintaining certain records, and reporting certain types of activity, including suspicious activity. In particular, FinCEN regulations require a bank to file a suspicious activity report on any suspicious transaction relevant to a “possible violation of law or regulation” including a transaction if it is conducted or attempted by, at, or through the bank involving or aggregating at least \$5,000 in funds or other assets, and the bank knows, suspects, or has reason to suspect that the transaction involves funds derived from “illegal activities.” See, e.g., 31 CFR § 1020.320.

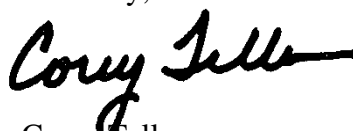
<sup>3</sup> See *supra* note 1, p. 5.

In 2022, FinCEN issued a statement jointly with the Federal Banking Agencies clarifying that no customer type presents a single level of uniform risk or a particular risk profile related to money laundering, terrorist financing, or other illicit financial activity.<sup>4</sup> Financial institutions, such as banks, “that operate in compliance with applicable BSA/AML legal and regulatory requirements, and effectively manage and mitigate risks related to the unique characteristics of customer relationships, are neither prohibited nor discouraged from providing banking services to customers of any specific class or type.”<sup>5</sup> FinCEN considers this approach consistent with the 2014 Guidance in that financial institutions that service MRB customers operating in compliance with state marijuana laws can do as long as the financial institutions fulfill their ongoing BSA/AML compliance obligations (*e.g.*, to report applicable suspicious activity) and appropriately manage their BSA/AML risks.

As Secretary Yellen noted during her previous annual testimony to the House Financial Services Committee, she believes a legislative solution is necessary to address marijuana banking issues on a comprehensive basis.<sup>6</sup> Consistent with Secretary Yellen’s support for a legislative solution, FinCEN has been working to provide technical assistance on various legislative proposals, including the SAFER Banking Act of 2023. In the absence of federal legislation, FinCEN’s ability to provide further clarity remains highly constrained by existing federal law. Treasury and FinCEN are committed to working with you and your staff on legislative solutions that would provide the necessary clarity to MRBs, their service providers, and financial institutions.

If you have any further questions, please contact the Office of Legislative Affairs.

Sincerely,



Corey Tellez  
Acting Assistant Secretary  
Office of Legislative Affairs

cc:

- The Honorable Jeffrey A. Merkley
- The Honorable Raphael Warnock
- The Honorable Earl Blumenauer
- The Honorable Tina Smith
- The Honorable Edward J. Markey
- The Honorable Ron Wyden
- The Honorable Bernard Sanders
- The Honorable Cory A. Booker
- The Honorable Peter Welch
- The Honorable Eleanor Holmes Norton
- The Honorable Jan Schakowsky
- The Honorable Barbara Lee

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<sup>4</sup> See “[Joint Statement on the Risk-Based Approach to Assessing Customer Relationships and Conducting Customer Due Diligence](#)” (July 6, 2022).

<sup>5</sup> *Id.*, p. 2.

<sup>6</sup> Yellen, Janet, House Financial Services Committee, Washington, D.C., April 6, 2022. See [Annual Testimony of the Secretary of the Treasury on the State of the International Financial System](#).

The Honorable Brian Schatz  
The Honorable Becca Balint  
The Honorable Val Hoyle  
The Honorable Katie Porter  
The Honorable Amy Klobuchar  
The Honorable Chris Van Hollen