

# United States Senate

WASHINGTON, DC 20510

January 18, 2018

The Honorable Jamal El-Hindi  
Acting Director  
Financial Crimes Enforcement Network  
1500 Pennsylvania Ave, NW  
Washington, DC 20220

Dear Acting Director El-Hindi:

During a January 17, 2018 hearing before the Senate Banking Committee, Under Secretary for Terrorism and Financial Crimes Sigal Mandelker testified that the Financial Crimes Enforcement Network's (FinCEN) 2014 guidance clarifying Bank Secrecy Act ("BSA") expectations for financial institutions seeking to provide services to marijuana-related businesses "remains in place."<sup>1</sup> To that end, we urge you to continue to keep the guidance in place. When FinCEN issued the guidance it sought to "enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses."<sup>2</sup> These are laudable goals and given the increasing number of states who have legalized certain cannabis operations, such guidance is needed now more than ever.

As you know, the federal government classifies marijuana as a Schedule I drug. Notwithstanding the federal ban, 29 states and the District of Columbia have legalized certain marijuana-related activity. According to Marijuana Business Daily, nationwide legalized marijuana sales are estimated at \$6 billion and projected to grow to \$9 billion by the end of the year. The number of shops is estimated at over 4,500. New Jersey currently has a regulated medical cannabis industry and we must ensure that the banking system is open to these marijuana-related businesses. Federal law prohibits banks from serving marijuana-related businesses leaving such businesses to handle unsafe amounts of cash. Fortunately, FinCEN's guidance provided assurance that community financial institutions could serve marijuana-related businesses so long as the institution reported suspected wrongdoing. As such, since 2014, the number of banks and credit unions serving marijuana-related businesses has more than tripled.<sup>3</sup>

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<sup>1</sup> *U.S. Senate Committee on Banking, Housing & Urban Affairs: Executive Session and Combatting Money Laundering and Other Forms of Illicit Finance: Administration Perspectives on Reforming and Strengthening BSA Enforcement*, 115th Cong. (2018) (testimony of Sigal Mandelker, Under Secretary for Terrorism and Financial Crimes, U.S. Department of Treasury). <https://www.banking.senate.gov/public/index.cfm/hearings?ID=1708B21B-3754-4DAD-923C-4FE7582851B7>

<sup>2</sup> "BSA Expectations Regarding Marijuana-Related Businesses." BSA Expectations Regarding Marijuana-Related Businesses | FinCEN.gov. February 14, 2014. Accessed January 10, 2018. <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>.


<sup>3</sup> Quinton, Sophie. "Why It's Getting Easier for Marijuana Companies to Open Bank Accounts." The Pew Charitable Trusts. December 6, 2017. Accessed January 10, 2018. <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/12/06/why-its-getting-easier-for-marijuana-companies-to-open-bank-accounts>.

Unfortunately, the recent decision by Attorney General Sessions, to rescind the Cole Memo has layered more uncertainty onto an industry already facing challenges. Owners of such businesses report that “they live constantly with shifting legal terrain, losing their bank accounts and lines of credit and never knowing how vulnerable they may be to losing their business or being federally prosecuted.”<sup>4</sup> Without access to the banking sector, these businesses will face serious challenges paying their employees, conducting transactions with vendors, and meeting state tax obligations. Moreover, this could stall or even end efforts in New Jersey to help those suffering with cancer, veterans and other patients from getting non-opioid alternatives to serious medical issues. In short, we expect that FinCEN will maintain current guidance allowing financial institutions to provide banking services to legalized cannabis operations. We thank you in advance for your prompt attention to this matter.

Sincerely,



Robert Menendez  
United States Senator



Cory A. Booker  
United States Senator

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<sup>4</sup> Savage, Charlie, and Jack Healy. "Trump Administration Takes Step That Could Threaten Marijuana Legalization Movement." The New York Times. January 04, 2018. Accessed January 10, 2018.  
[https://www.nytimes.com/2018/01/04/us/politics/marijuana-legalization-justice-department-prosecutions.html?\\_r=0](https://www.nytimes.com/2018/01/04/us/politics/marijuana-legalization-justice-department-prosecutions.html?_r=0).