

United States Senate

WASHINGTON, DC 20510

July 28, 2014

Mr. Denis McDonough
Chief of Staff
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. McDonough and Attorney General Holder:

We write to request that the Administration provide guidance to departments and agencies ensuring a consistent and uniform application of federal laws that could affect licensed marijuana businesses, dispensaries, and growers in Washington state and Colorado.

As you know, our states are implementing regulatory and licensing schemes to ensure any production and sale of marijuana is in accord with state law, and is conducted in a manner that preserves public health and safety. In working toward this goal, in some instances, our states will have to react to new information and evolving circumstances as this process moves forward. We believe the federal government should support Colorado and Washington state's effort to establish a successful regulatory framework in a way that achieves greater certainty for local officials, citizens, and business owners as they tackle this complicated and important task. At times, however, certain federal agencies have taken different approaches that seem to be at odds with one another and may undermine our states' ability to regulate the industry adequately.

In order to provide more regulatory clarity, we believe that the Administration should provide consistent and uniform guidance to departments and agencies regarding the interpretation and application of the Controlled Substances Act ("CSA") and other federal laws that could impact the marijuana industries in our states. Without such guidance, our states' citizens face uncertainty and risk the inconsistent application of federal law in Colorado and Washington state, including the potential for selective enforcement actions and prosecution.

The Justice and Treasury Departments have issued guidance regarding federal enforcement priorities under the CSA and the Bank Secrecy Act ("BSA"). Specifically, state governments, businesses and citizens can now rely upon the August 29, 2013 Cole Memorandum to all United States Attorneys. We understand the Cole memorandum to recommend enforcement of the CSA only when a business fails to satisfy one or more of its eight criteria. In addition, the Financial Crimes Enforcement Network ("FinCEN") issued its February 14, 2014 guidance that sought to

establish the framework to allow legal marijuana businesses to access the banking system under limited circumstances. While it is not yet clear whether the FinCEN guidance will be successful, it represents an attempt to achieve at least some degree of consistency with the Cole Memorandum.

In contrast, the Bureau of Reclamation recently interpreted its legal duty under the CSA to affirmatively apply to its water-related contracts in Washington state, Colorado, and elsewhere. Under the Bureau's interpretation of its legal duty, it "will not approve use of Reclamation facilities or water in the cultivation of marijuana" and reclamation facilities are required to notify the Department of Justice of any such use. Yet in this same policy, the Bureau acknowledges it "does not have a responsibility or designated role in actively seeking enforcement of the CSA."

While recognizing the multi-faceted responsibilities of the Bureau, including meeting tribal treaty rights and management of natural resources, the Bureau's interpretation of its legal duty under the CSA raises the question of whether another department may interpret its responsibilities differently. The potential for these differing approaches underscores the need for a consistent and uniform interpretation and application of federal marijuana-related laws across all departments and agencies.

To ensure such consistency and uniformity, we believe it is appropriate for the White House to assume a central and coordinating role for this government-wide approach. We therefore believe it is incumbent upon the Administration to work with all federal departments and agencies setting forth a clear, consistent and uniform interpretation and application of the CSA and other federal laws that could affect the industry. Such guidance should reflect the same deference to our state laws as does the Cole memorandum.

We understand the legal complexity of this issue and appreciate the Administration's efforts thus far to provide certainty about federal enforcement priorities under federal laws as they relate to marijuana. We look forward to your timely response to this letter and working with you as Colorado and Washington state continue their work to implement their respective state initiatives.

Sincerely,



Patty Murray
United States Senator



Mark Udall
United States Senator



Maria Cantwell
United States Senator



Michael F. Bennet
United States Senator