

Cannabis Banking Coalition Statement

Updated July 2018

Issue Summary

Although states continue to legalize medical and/or recreational marijuana for personal use, it remains illegal under federal law. The conflict between state and federal law causes concern among both state and federally chartered banks that rely on federal agencies for regulatory oversight, insurance and access to funding and the payment system.

A majority of banks will not risk providing depository or lending products and services to marijuana-related businesses (MRBs) because of this conflict. As such, this leaves a state-legal business sector largely without access to banking products and services. This is a growing concern nationwide due to the increased public safety issues arising out of an industry that currently operates mostly in cash. Cash-only businesses pose a risk to public safety and create challenges ranging from processing customer payments to record keeping and tax collection.

Cannabis Banking Coalition

The Cannabis Banking Coalition (Coalition) was formed in July 2016 and meets regularly by conference call to educate and advocate for solutions related to cannabis banking. The Coalition is comprised of banking industry representation in most of the 29 states (as well as Washington DC and Puerto Rico) where some form of marijuana is legal either recreationally, medically or both.

The Coalition does not advocate for further legalization but supports the notion that MRBs operating legally under state law should have access to traditional banking services that keep their funds safe, provide access to payment systems, provide transparency in taxation and record-keeping, and provide access to credit options.

Access to Banking – Legal and Regulatory Challenges

The fact that marijuana remains illegal under federal law is the major barrier preventing most banks from serving MRBs. While some financial institutions have attempted to offer financial products and services to MRBs, doing so is complicated, expensive, and challenging from a legal and regulatory perspective.

From February 2014 to January 2018, the “Cole Memo,” issued by the Office of the U.S. Attorney General, and FinCEN guidance (FIN-2014-G001) both sought to provide a framework for how banks could enact a compliance regime to provide financial services to MRBs while maintaining oversight necessary to understand the risks of banking an industry that remained illegal under federal law. For

most financial institutions, the guidance was insufficient because it did not change federal law, posed significant compliance burdens, was subject to inconsistent interpretation among bank regulators, and was temporary. Moreover, **following rescission of the Cole Memo in January, it is riskier than ever for financial institutions to provide services to MRBs and to businesses that have an indirect connection to the cannabis industry.**

To address the barriers in banking MRBs and ancillary businesses, the U.S. Congress must pass clear legislation permitting such banking activity. It is also imperative that bank regulators at both the state and federal level provide clear, consistent, and reasonable rules and oversight. FinCEN, along with federal financial institution regulators such as the FDIC, NCUA, Federal Reserve and OCC, should issue consistent written rules addressing both direct and indirect service to state-legal marijuana businesses and the individuals connected to such organizations. This will likely occur only after clear congressional action.

Both legal matters *and* regulatory compliance burdens must be addressed at the federal level to resolve the banking dilemma facing marijuana-related businesses and the communities in which they operate. *This includes clarifying that banks may continue to serve both direct and ancillary businesses that serve MRBs without any additional regulatory burden.*

Congressional Action

Congressional action is the only meaningful way to provide for more banking options for MRBs. A variety of legislative proposals have been introduced in both the U.S. Senate and House in an attempt to encourage banks to serve MRBs. While some financial institutions consider bills like “The SAFE Banking Act” or the “STATE Act” to be a path forward in serving MRBs, others consider such legislation insufficient as it doesn’t decriminalize marijuana at the federal level. The Coalition views such legislation as an important step forward in potentially provide a safe harbor for banks. The Coalition is willing to consider any proposed legislative solutions that provide a high degree of clarity and certainty and welcomes the opportunity to provide perspective from the industry on this issue.

The Cannabis Banking Coalition consists of 20 states. Following are states that have signed onto this statement to date:

Alaska Bankers Association
Colorado Bankers Association
Hawaii Bankers Association
Illinois Bankers Association
Maine Bankers Association
Maryland Bankers Association

Massachusetts Bankers Association
Michigan Bankers Association
Ohio Bankers Association
Oregon Bankers Association
New Hampshire Bankers Association
New Jersey Bankers Association

New Mexico Bankers Association
Pennsylvania Bankers Association
Puerto Rico Bankers Association
Vermont Bankers Association
Washington Bankers Association