

23 MAR 2021

What the Biden Administration Means for Marijuana Reform and Business



As the Biden administration continues to dive deeper into its policy agenda, cannabis is a topic to watch. Though the administration has been focused on tackling immediate priorities, marijuana is likely to rise to the surface in the near term.

The Current Landscape

President Biden's views on marijuana legalization—as well as the Democratic Party's—have evolved over time, as reflected in the [2020 Democratic Party Platform](#). In it, the party stated it would “decriminalize marijuana use and reschedule it through executive action on the federal level. [It would] support legalization of medical marijuana, and believe[d] states should be able to make their own decisions about recreational use.” Medical marijuana is legal in 36 states, and since February 2021, when New Jersey passed its own legalization bill, recreational cannabis is legal in 15. Additionally, some states such as Mississippi, where recreational use is not legal, have agreed to lessen the penalties for possession, while other states like Illinois are expunging arrests related to marijuana possession.

With Democrats controlling Congress and the White House, and with the [cannabis](#)

industry growing ever larger, many expect Congress to soon take up the issue of cannabis in earnest. “Ending the federal marijuana prohibition is necessary to right the wrongs of this failed [War on Drugs] and end decades of harm inflicted on communities of color across the country,” said Senate Majority Leader Chuck Schumer (D-NY), along with Cory Booker (D-NJ) and Ron Wyden (D-OR), in a February 2021 joint statement.

Bipartisan support is swelling. A December 2020 poll found that two-thirds of all Americans, including 51 percent of Republicans, supported a December 2020 bill to federally legalize marijuana. Although the House omitted marijuana legalization in its most recent COVID relief bill, there are three marijuana-related pieces of major legislation that could pass during this congressional term:

- The SAFE Banking Act, which provides a path for the financial system with respect to cannabis.
- The MORE Act, which addresses some of the societal injustices created by the War on Drugs.
- The STATES Act, which protects individuals who comply with state laws regulating marijuana.

All three bills are expected to be re-addressed during this congressional term.

The Biden administration has yet to formally weigh in on or issue an executive order concerning marijuana reform. However, when asked at his confirmation hearing if he thought 2014 Financial Crimes Enforcement Network (FinCEN) guidance should be updated to “set expectation for financial institutions that provide services to cannabis-related industries” and what steps he would take, Deputy Secretary of Treasury nominee Adewale Adeyamo said that he planned to address the issue if confirmed.

What This Means for Business

Organizations of all stripes should be mindful of the current landscape as it relates to cannabis, given the impact the pending legislation will have on law and rulemaking in the workplace. However, two sectors should pay particularly close attention to action in this space: the investment community and the financial services industry.

Investment Community

Descheduling and decriminalizing marijuana, as well as legalizing it to any degree,

would open a larger window of opportunity to list cannabis-related stocks on U.S. exchanges. While providing more legal oversight of the industry would offer the potential for more jobs and revenue by supplying incentive for more people and entities to dive into the industry, it would also open the door for fraud risk. New market entrants should be vetted, as the risk of counterfeit products is high. As they do when deciding to fund any new product or venture, investors should assess their safeguards and risk mitigation framework before diving in.

Financial Services Industry

Banks in particular have long had a complicated relationship with marijuana-related businesses (MRBs). For the most part, MRBs do not have access to the banking industry. They are unable to accept credit cards, deposit revenues, access loans, or write checks to meet payroll or pay taxes, which makes them vulnerable. However, until cannabis is federally legal, financial services will continue to be handled by local providers, such as credit unions, which presents both opportunities and risks. Since regulations vary from state to state, bringing on a MRB client is complex and does not always align with prescribed risk. However, as the \$56 billion industry continues to grow, banks must continue to evaluate whether it makes financial sense to consider banking this contradictory industry.

Even if the current administration makes banking MRBs more feasible, financial institutions should still evaluate clients on a case-by-case basis, ensuring compliance is strong at the core. Banks will need to ensure that MRBs—like other high-risk clients—are equipped with the right technology, ample compliance staff training, and clear parameters on risks and red flags. As compliance teams increasingly find their mandates growing and their resources stagnating or shrinking, looking to outsourced financial crimes risk management solutions can also provide some reprieve and support for managing this risk.

Despite movement on the federal marijuana front, organizations of all stripes should be mindful that the law has not changed yet—and if change does occur at the federal level, consulting with legal counsel and third-party risk experts before engaging in any new sector or product remains advisable.