

Cannabis Banking Coalition Position Statement

Issue Summary

States continue to legalize medical and/or recreational marijuana for personal use. Under federal law, marijuana is illegal. The conflict between state and federal laws causes concern with both state and federally chartered banks that rely on federal agencies for regulatory oversight, insurance and access to the electronic payment system.

A majority of banks will not risk providing depository or lending products and services to marijuana-related businesses (MRBs) because of the state/federal law conflict. This leaves a 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 monthly by conference call to educate and advocate for solutions for MRBs. The Coalition is comprised of banking industry representation in a majority of the 28 states (including Washington DC and Puerto Rico) where marijuana is legal either recreationally, medically or both.

The Coalition is not advocating 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 and provide access to payment systems and credit options.

Restricted access to banking – legal and regulatory

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

Absent a change in federal law, attempts have been made to provide guidance to MRBs and financial institutions through the "Cole Memo" issued February 14, 2014 by the Office of the U.S. Attorney General and the FinCEN Guidance (FIN-2014-G001) also issued February 14, 2014. Although a relatively small number of banks have attempted to offer depository services under the guidance, **most financial institutions believe the guidance is insufficient because it doesn't change the underlying federal law, poses a significant additional compliance burden as presented, and is subject to change at any time.**

There is also inconsistent interpretation of the aforementioned FinCEN Guidance. It is imperative that bank regulators at both the state and federal level are clear, consistent, and reasonable in the rules and examination practices they deploy. Regulators must not impede a bank's ability to serve MRBs, particularly if and when Congress makes necessary legislative changes. Primary financial institution regulators such as the FDIC, NCUA, Federal Reserve and OCC should issue consistent written guidance to clarify compliance concerns pertaining to banking MRBs, and FinCEN should address questions that remain with respect to their 2014 Guidance.

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 ancillary businesses that serve MRBs without any additional regulatory burden.*

Congressional action

Congress must take clear action to remove the conflict between federal and state law and eliminate the barriers banks face in banking MRBs. Congressional action is the only meaningful way to provide for more banking options for MRBs.

Federal legislation has 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 Marijuana Access to Banking 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 opportunity to raise awareness and 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.

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