



STATE-LEGAL CANNABIS AND FINANCIAL INSTITUTIONS

Current laws create public safety hazards by discouraging financial institutions from working with legal cannabis businesses

The problem: Medical cannabis providers – and legal retail cannabis businesses in Alaska, Colorado, Oregon, and Washington – face significant difficulties in securing and maintaining accounts at financial institutions. Almost every business involved in the industry has had at least one bank account closed and a vast majority has had multiple accounts closed. Federal money laundering statutes and regulations intended to detect drug trafficking, terrorist activity, and other criminal acts have served as a major obstacle to cannabis businesses obtaining financial services. Ironically, this lack of access to financial institutions is occurring as state regulators are imposing requirements upon cannabis businesses that require the assistance of financial institutions. For example, there is a need to track revenues accurately for the purpose of assessing and collecting taxes. Of course, there are also safety issues to consider when businesses are unable to deposit tens of thousands of dollars in cash.

Federal guidance: Over the past three years, Members of Congress and state officials have worked aggressively to address this critical issue. There have been multiple bills, numerous letters and appeals to Justice and Treasury Department officials, and, most notably, a hearing before the U.S. Senate Judiciary Committee on September 10, 2013, at which Chairman Patrick Leahy (D-VT) pointed out the dangers involved in not having banking services for these businesses and urged Deputy Attorney General James Cole to work toward finding a solution to the problem. As a result, on February 14, 2014, the Department of Justice issued guidance regarding the conditions under which financial institutions may work with cannabis-related businesses.

On the same day in February, the Financial Crimes Enforcement Network (FinCEN), within the Department of Treasury, issued guidance clarifying Bank Secrecy Act (BSA) expectations for financial institutions serving cannabis-related businesses. Under this guidance, financial institutions are expected to file “Marijuana Limited” Suspicious Activity Reports (SARs) with FinCEN to indicate that they are serving cannabis-businesses operating legally under state law. On the other hand, if the financial institution “reasonably believes, based on its customer due diligence” that a cannabis-related business has implicated one of the “Cole Memo” priorities or has violated state law, it is required to file a “Marijuana Priority” SAR. As detailed in an August 2013 memo from Deputy Attorney General James Cole, the Justice Department enforcement priorities with respect to state-legal cannabis businesses are:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Continued action needed: Unfortunately, most financial institutions are still hesitant to serve cannabis businesses; although there are examples of credit unions and regional banks providing limited financial services to some cannabis industry clients. This is due, in part, to the fact that the guidance does not alter the underlying federal money laundering statutes. More importantly, financial institutions do not want to take on the obligation of monitoring customers to determine whether they are acting in violation of the Cole Memo priorities.

The Marijuana Business Access to Banking Act (S. 1726 & H.R. 2076) – bipartisan Senate and House legislation introduced in the 114th Congress –would provide a legal safe harbor for financial institutions working with cannabis businesses in compliance with state law and the guidelines enumerated in the Department of Justice and Department of Treasury 2014 memos.