



IBA Talking Points Cannabis and Banking

11/07/18

Issue Update

The Controlled Substances Act, enacted in 1970, makes the possession and distribution of cannabis (marijuana) illegal under federal law. As a result, movement of funds derived from a cannabis-related business can be considered money laundering. However, 31 states, the District of Columbia, Guam and Puerto Rico currently permit some form of cannabis use for medical purposes, and nine states and the District of Columbia have legalized adult recreational use of cannabis. This creates a direct conflict between state and federal law.

Previously issued guidance from the Department of Justice limiting enforcement risk (*i.e.*, the “Cole Memo”) was rescinded in January 2018, while FinCEN guidance instructing banks how to properly report suspicious activities on state-authorized cannabis activities remains in effect. The banking regulators have remained silent. As a result of the conflict between state and federal law, banks face significant risk in providing services to both direct (*e.g.*, cannabis dispensaries) and “secondary” relationships (*e.g.*, landlords, employees and suppliers of cannabis-related businesses).

Why It Matters

The rift between federal and state law has left banks trapped between their mission to serve the financial needs of their local communities and the threat of federal enforcement action. As a result, there is currently a significant state-legal business sector that is left largely without access to banking products and services. These businesses operate on an all-cash basis, which makes them vulnerable to violent criminal activity, as well as fraud, theft, operational and tax challenges. While banks take no position on the moral issue of cannabis legalization, these businesses should be brought into the banking system to increase the transparency and accountability of the industry and to ensure public safety for communities.

It is no longer simply a question of whether or not banks will serve the cannabis industry directly, since this industry is now part of the economic fabric of the states where it has been legalized. In addition to growers and retailers, there are vendors and suppliers, landlords and employees. The market for legal U.S. cannabis sales was estimated at \$5.4 billion dollars in 2015, and the market in California alone is expected to reach \$3.7 billion in 2018. In those communities, indirect connections to cannabis revenues are difficult, if not impossible, for banks to identify and avoid. To eliminate all financial activity that touches cannabis from the banking system would require the marginalization of a significant portion of economic activity in those states.

Recommended Action Items

1. Congress should approve a legislative solution that provides banks with clarity regarding the regulatory treatment of cannabis accounts and the ability to serve cannabis-related businesses in states where the activity is legal, if banks choose to do so. One suggestion would be to support H.R. 2252 or S. 1152, legislation that creates a safe harbor from federal sanctions for financial institutions that serve cannabis-related businesses in states where cannabis is legal.
2. Regulators should properly instruct examiners on how to handle cannabis-related accounts (including industrial hemp), including secondary relationships with landlords, suppliers or investors.
3. FinCEN should maintain the guidance on the treatment and reporting of suspicious activity for cannabis-related accounts and provide clarity on banking “ancillary” accounts (*e.g.*, suppliers, vendors, landlords and employees of cannabis businesses).

For more information:

Contact the Indiana Bankers Association Government Relations Team of [Dax Denton](#), [Eric Augustus](#) or [Josh Myers](#) at 317-387-9380.

Additional resources:

- Krieg DeVault LLP: <https://bit.ly/2PLSKKa>
- American Bankers Association: <https://bit.ly/2OrV7Nn>
- Independent Community Bankers of America: <https://bit.ly/2PfRwr5>