



Marijuana and Banking

Contact: Blair Bernstein, ABA Public Relations (202) 663-5468 or bbernste@aba.com

Banks face challenges when offering banking services to marijuana-related businesses.

- It's important to understand that despite changes to state laws, federal law still maintains that possession and distribution of marijuana is illegal.
- Banks are required to abide by federal law. Because federal law still criminalizes the possession or distribution of marijuana, offering banking services to marijuana-related businesses means banks run the risk of being accused of money laundering.
- The only existing guidance for bankers on how to handle marijuana-related businesses was issued by FinCEN in February 2014. This guidance sets a high series of expectations for banking any marijuana-related business, including regular filing of Suspicious Activity Reports.
- None of the banking agencies have issued guidance. When asked during meetings, though, representatives have indicated that the FinCEN guidance is the acceptable standard.
- The FinCEN guidance sets extremely high standards for bankers that go far beyond what is expected as due diligence for any other high risk customer.
- FinCEN's guidance still leaves many questions about banking marijuana-related businesses unanswered, including what level of diligence is due, whether collateral involving a marijuana-business is subject to seizure, and what potential risks a bank may face.
- There are still questions about whether banks can offer accounts to employees of marijuana-related businesses, whether accounts or banking services for suppliers of marijuana-related businesses are subject to the same restrictions, and a host of other questions.
- Ultimately, guidance is not federal law and until Congress makes changes to federal law, many banks will be reluctant to accept the risks associated with offering banking services to marijuana-related businesses.

Banks need an act of Congress to offer banking services to marijuana-related businesses.

- Banks are expected to follow all applicable laws – this includes federal laws against marijuana – and face regular compliance examinations.
- The Department of Justice has recommended that resources not be used to investigate and prosecute activities that are legal under state law. But those are *only* recommendations and the guidelines do not apply to other law enforcement agencies, including the Drug Enforcement Agency. Moreover, they can be changed just as quickly as they were issued.
- Financial institutions face significant risk for violating federal law if they offer banking services to marijuana-related businesses, especially under the Controlled Substance Act and the Bank Secrecy Act. This includes the possible loss of their charter to continue operating.
- The same restrictions that prevent banks from offering other types of accounts for marijuana businesses also apply for processing credit and debit card

Marijuana and Banking

(continued)

payments.

- There have been a number of bills introduced in Congress, primarily in the House of Representatives, that would offer some protection for banks offering services to marijuana-related businesses, but so far no legislation has been adopted by either the House or the Senate.

Banks are concerned about the safety of marijuana businesses.

- A bank is always the safest place to store your money and banks want to keep their communities and small businesses safe.
- Small businesses without access to banking services are forced to hold large amounts of cash, which puts the business and its surrounding community at risk. By providing marijuana-related businesses with bank accounts, they would be able to operate in a safer and more secure way.
- Access to the banking system makes it easier for businesses to track income and to pay vendors, employees and tax agencies.
- Banks are unable to offer these products and services because every bank has to abide by federal law, which states that marijuana is illegal.

Some banks do see marijuana businesses as a legitimate small business with growth potential just like any other small business.

- However, the industry has not taken a position on the issue and under current federal laws, most bankers see too much risk to get involved in this business.

Background:

Approximately 23 states and the District of Columbia have authorized usage of marijuana for medical purposes. Of those, four states — Alaska, Colorado, Oregon, Washington and the District of Columbia — have also enacted state laws legalizing recreational marijuana. Colorado and Washington were the first to legalize recreational marijuana in November 2012; Alaska, Oregon and the District of Columbia in November 2014. However, federal law still makes possession and use of marijuana illegal.

All banks are subject to federal law, whether the bank is a national bank or state-chartered bank. At a minimum, all banks maintain federal deposit insurance which requires adherence to federal law. And, all banks must have access to the payment system which is subject to federal jurisdiction. Violation of federal law could subject a bank to lose its charter.

The Department of Justice in February 2014 issued its fourth memo to address the conflict between state and federal law (<http://www.dfi.wa.gov/banks/pdf/dept-of-justice-memo.pdf>). It is important to recognize that the memo stresses that marijuana is still illegal under federal law.

The most important concern for banks is that all banks are subject to the requirements of the Bank Secrecy Act. The BSA imposes criminal penalties on anyone or any bank that knowingly assists in the laundering of money, which includes processing the proceeds of an illegal transaction. Under the BSA, banks also must report to the federal government any suspected illegal activity which would include any transaction associated with a marijuana business since federal law still makes it illegal to possess or distribute marijuana. These reports must be filed even though the business is operating legitimately under state law.

Marijuana and Banking

(continued)

The federal banking regulators have not issued guidance for banks on this issue. However, the Financial Crimes Enforcement Network (FinCEN), a division of the Department of Treasury, did issue guidance on Feb. 14, 2014 (http://www.fincen.gov/news_room/nr/html/20140214.html) which sets expectations for financial institutions dealing with marijuana businesses. The guidance also sets extensive requirements for financial institutions to meet if they want to offer bank accounts to marijuana businesses.

Source:

¹*Frequently Asked Questions: Marijuana and Banking*, American Bankers Association (Feb. 2014).
Retrieved from
<http://www.aba.com/Tools/CommTools/Documents/ABAMarijuanaAndBankingFAQFeb2014.pdf>