

VII. Marijuana Dispensaries Not Feeling So High: Financial Institutions Close Their Doors to State-Legalized Marijuana Businesses

A. Introduction

The Controlled Substances Act (CSA) prohibits “manufactur[ing], distribut[ing], or dispens[ing]” marijuana.¹ The CSA classifies marijuana as a Schedule I drug, which indicates that marijuana “has no currently accepted medical use in treatment.”² However, marijuana use for both medical and recreational purposes is legal in four states and the District of Columbia, and marijuana use solely for medical purposes is legal in twenty-four states.³

Federal marijuana criminalization laws are “the supreme Law of the Land” despite state decriminalization laws.⁴ The CSA and federal anti-money laundering statutes state that financial institutions that either “conduct[]” or “knowing[ly]” facilitate transactions with marijuana businesses violate federal law, regardless of conflicting state law.⁵ Financial institutions that are convicted of violating the CSA and anti-money laundering statutes may be found liable for either criminal or civil penalties, or both.⁶ As a result, access to financial institutions is a “rare luxury” in the marijuana industry.⁷ Nonetheless, access to financial institutions is critical for these businesses, which face financial penalties and other economic risks when they deal solely in cash.⁸ The key concern is how financial

¹ Controlled Substances Act, 21 U.S.C. § 841 (a)(1) (2012).

² *Id.* § 812 (b)(1).

³ *E.g.*, Christopher Ingraham, *These Are the States that Could Legalize Pot Next*, WASH. POST (July 19, 2015), <http://www.washingtonpost.com/news/wonkblog/wp/2015/07/19/these-are-the-states-that-could-legalize-pot-next/> [<http://perma.cc/C7JW-SGJY>].

⁴ U.S. CONST. art. VI, cl. 2.

⁵ 18 U.S.C. § 1956 (a)(1) (2012).

⁶ *See id.* § 1956 (b)(1).

⁷ *See* Julie Andersen Hill, *Banks, Marijuana, and Federalism*, 65 CASE W. RES. L. REV. 597, 600 (2015).

⁸ For example, the IRS assesses a 10% penalty on businesses that pay their income taxes in cash, rather than by bank wire. *See, e.g.*, Clarissa Cooper & Michael Bodley, *Pot Risk vs. Profit: Bankers Cautious of Marijuana Dispensaries*, NBC NEWS (Aug. 20, 2015, 6:40 AM), <http://www.nbcnews.com/business/business-news/marijuana-businesses-banker-brush-big-financial-hurdle-n412581> [<http://perma.cc/99RA-YX4B>].

institutions can provide services to state-legalized marijuana businesses without violating federal law.⁹

This article will trace the obstacles marijuana businesses face in light of conflicting state and federal marijuana criminalization laws. Part I provides an overview of the United States' dual banking system and describes the federal banking system's significant oversight over state banking systems. Part II explores the federal government's regulatory authority over state-legalized marijuana business transactions. Part III discusses recent developments in the relationship between financial institutions and the state-legalized marijuana industry.

B. United States' Dual Banking System

The United States' banking system is referred to as a dual banking system because it is composed of "parallel state and federal banking systems that co-exist."¹⁰ The federal banking system is composed of national banks, also known as federal banks, which derive their power from federal law.¹¹ The Office of the Comptroller of the Currency (OCC) charters and oversees national banks, while the National Credit Union Administration (NCUA) charters and oversees federal credit unions.¹² In contrast, state banking systems are composed of state banks, which derive their power from state law, and are chartered and overseen by state agencies.¹³

The dual banking system, however, "is not a mutually exclusive system."¹⁴ Rather, the dual banking system is a "symbiotic system with state regulatory control over federal banks as well as

⁹ See Serge F. Kovaleski, *Banks Say No to Marijuana Money, Legal or Not*, N.Y. TIMES, Jan. 11, 2014, at A1.

¹⁰ COMPTROLLER OF THE CURRENCY, NATIONAL BANKS AND THE DUAL BANKING SYSTEM 1 (2003), available at <http://www.occ.gov/publications/publications-by-type/other-publications-reports/national-banks-and-the-dual-banking-system.pdf> [<http://perma.cc/787M-ASJN>].

¹¹ *Id.*

¹² *E.g.*, RICHARD SCOTT CARNELL ET AL., THE LAW OF FINANCIAL INSTITUTIONS 60-62 (Vicki Been et al. eds., 5th ed. 2013).

¹³ COMPTROLLER OF THE CURRENCY, *supra* note 10.

¹⁴ Robert F. Roach, *Bank Mergers and the Antitrust Laws: The Case for Dual State and Federal Enforcement*, 36 WM. & MARY L. REV. 95, 119 (1994).

federal regulatory control over state banks.”¹⁵ Yet, national banks have notably more oversight over state banks than state banks have over national banks.¹⁶ The pervasive overlap in supervisory responsibilities between federal and state banking systems presents significant financing challenges to marijuana businesses that face varying degrees of legality under federal and state law.¹⁷

C. Federal Regulation of Marijuana-Related Business Transactions

1. CSA

In 2013, the Department of Justice (DOJ) released a memorandum to all United States Attorneys that underscored the gravity of CSA violations.¹⁸ The DOJ noted, however, that its “limited investigative and prosecutorial resources” would primarily be used to “address the most significant threats” to CSA enforcement.¹⁹ The memorandum listed the DOJ’s key enforcement concerns, which include preventing the distribution and sale of marijuana from states with decriminalization laws to states with criminalization laws.²⁰ Moreover, the DOJ stated that “conduct in compliance with . . . [state] laws and regulations is less likely to threaten the federal [enforcement] priorities.”²¹ This implies that the DOJ may be more willing to overlook CSA violations in jurisdictions that have decriminalization laws.²²

¹⁵ *Id.*

¹⁶ *E.g.*, Hill, *supra* note 7, at 607.

¹⁷ *See id.* at 597; *Navigating the Maze of Medical Cannabis - Uncertainty and the Challenge of Obtaining Banking and Insurance Services for Marijuana-Related Businesses*, LOCKE LORD 1 (Jan. 13, 2014), available at <http://www.lockelord.com/newsandevents/publications/2015/01/~media/AD013D1D90634C0E9D883BDB592A27DA.ashx> [<http://perma.cc/PM2F-XEWZ>] [hereinafter *Navigating the Maze of Medical Cannabis*].

¹⁸ U.S. DEP’T OF JUSTICE, GUIDANCE REGARDING MARIJUANA ENFORCEMENT (2013), available at <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf> [<http://perma.cc/D9FT-WJ93>].

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Hill, *supra* note 7, at 609 (“[T]he Department of Justice has acknowledged its ‘limited investigative and prosecutorial resources’ and

However, the DOJ did not grant financial institutions in states with decriminalization laws, which have state-legalized marijuana business customers, immunity from federal prosecution.²³ In fact, in a previous memorandum, the DOJ asserted that financial institutions that either conduct or knowingly facilitate marijuana-related transactions violate the CSA, regardless of the law in their respective states.²⁴ The DOJ explicitly refused to permit state law to serve as a defense to federal enforcement of the CSA.²⁵

Financial institutions therefore have two options in determining if they should grant marijuana businesses access to their services: (1) deny access due to a risk of federal prosecution for CSA violations or (2) permit access with the anticipation that the DOJ will not have the resources to investigate and prosecute.²⁶ The latter option exposes financial institutions to substantial risk because the prospect of criminal prosecution and civil penalties often do not justify the benefit of acquiring new customers.²⁷

2. The Bank Secrecy Act (BSA) and Anti-Money Laundering Statutes

The BSA requires financial institutions to assist the Treasury Department in detecting and reporting suspicious financial activities to the Financial Crimes Enforcement Network (FinCEN).²⁸ FinCEN is a bureau within the Treasury Department that collects and analyzes

suggested that the federal government may ignore some Controlled Substances Act violations in states that legalize and regulate marijuana use.”).

²³ *Id.* at 610.

²⁴ See U.S. DEP’T OF JUSTICE, GUIDANCE REGARDING THE OGDEN MEMO IN JURISDICTIONS SEEKING TO AUTHORIZE MARIJUANA FOR MEDICAL USE (2011), *available* at <http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/dag-guidance-2011-for-medical-marijuana-use.pdf> [http://perma.cc/DD4Z-4AH6] (“Persons who are in the business of cultivating, selling or distributing marijuana, and those who knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law.”).

²⁵ *Id.*

²⁶ See Hill, *supra* note 7, at 610.

²⁷ See *id.*

²⁸ E.g., *FinCEN’s Mandate From Congress*, FIN. CRIMES ENF’T NETWORK, http://www.fincen.gov/statutes_regs/bsa/ [https://perma.cc/TPB7-MFG8?type=source].

financial transactions in order to detect and prevent money laundering.²⁹ In light of conflicting state and federal marijuana criminalization laws, FinCEN issued guidance to financial institutions that explained how they could provide services to marijuana businesses without violating the BSA and anti-money laundering statutes.³⁰ To comply with the BSA, financial institutions must file Suspicious Activity Reports (SAR) each time they conduct transactions with marijuana-related business customers.³¹

There are three types of SAR: (1) “Marijuana Limited,” (2) “Marijuana Priority,” and (3) “Marijuana Termination.”³² Marijuana Limited reports, which are filed for transactions with state-legalized marijuana businesses, identify the parties involved in the transaction and are generally filed “solely because the subject is engaged in a marijuana-related business . . . and no additional suspicious activity has been identified.”³³ These reports are required because the financial institution is technically funding “illegal activity” according to the CSA.³⁴ Second, Marijuana Priority reports are filed when a financial institution “reasonably believes, based on its customer due diligence, that its customer’s conduct implicates [the DOJ’s enforcement priorities] or violates state law.”³⁵ Lastly, Marijuana Termination reports are filed when financial institutions must “terminate [their] relationship[s] with . . . marijuana-related business[es] in order to maintain an effective anti-money laundering compliance program.”³⁶

In its memorandum, FinCEN did not promise financial institutions, which comply with SAR filing, immunity from federal prosecution and civil liability.³⁷ Financial institutions cannot use adherence to FinCEN guidance or compliance with state decriminalization laws as defenses in prosecutions for BSA

²⁹ See, e.g., *What We Do*, FIN. CRIMES ENF’T NETWORK, http://www.fincen.gov/about_fincen/wwd/ [<http://perma.cc/53RB-CRKT>].

³⁰ *Navigating the Maze of Medical Cannabis*, *supra* note 17.

³¹ *Id.* at 3.

³² *Id.*

³³ FIN. CRIMES ENF’T NETWORK, FIN-2014-G001, BSA EXPECTATIONS REGARDING MARIJUANA-RELATED BUSINESSES (2014), *available* at https://www.fincen.gov/statutes_regs/guidance/html/FIN-2014-G001.html [<http://perma.cc/XP9A-QRCG>].

³⁴ *Navigating the Maze of Medical Cannabis*, *supra* note 17, at 3.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

violations.³⁸ Financial institutions, therefore, have little incentive to provide services to marijuana-related businesses due to the inconvenience of SAR filing, and the risk of both federal prosecution and civil liability.³⁹

3. Federal Deposit Insurance

All national and state banks must acquire federal deposit (FDIC) insurance.⁴⁰ Similarly, all federal credit unions must acquire insurance from the NCUA, and “most states . . . require federal insurance for state-chartered credit unions, but a few states . . . allow their credit unions to purchase . . . [private] share insurance.”⁴¹ Financial institutions that acquire federal insurance either through the FDIC or NCUA must accordingly comply with federal law.⁴²

FDIC-insured institutions must ensure that they are conducting “safe and sound” business transactions.⁴³ The FDIC requires that FDIC-insured institutions guarantee “that they are not facilitating fraudulent or other illegal activity.”⁴⁴ Accordingly, the FDIC concentrates its efforts on “manag[ing] risks that could result in losses for the federal insurance funds.”⁴⁵ The FDIC requires additional due diligence for institutions that perform transactions

³⁸ *E.g.*, U.S. DEP’T OF JUSTICE, GUIDANCE REGARDING MARIJUANA RELATED FINANCIAL CRIMES (2014), *available at* [http://www.justice.gov/sites/default/files/usao-wdwa/legacy/2014/02/14/DAG%20Memo%20-%20Guidance%20Regarding%20Marijuana%20Related%20Financial%20Crimes%20%2014%2014%20\(2\).pdf](http://www.justice.gov/sites/default/files/usao-wdwa/legacy/2014/02/14/DAG%20Memo%20-%20Guidance%20Regarding%20Marijuana%20Related%20Financial%20Crimes%20%2014%2014%20(2).pdf) [<http://perma.cc/Y54X-7592>].

³⁹ *See* Hill, *supra* note 7, at 617.

⁴⁰ *Id.*

⁴¹ *Id.* at 617-18.

⁴² *E.g.*, *id.* at 618.

⁴³ Thomas E. Howard, *Marijuana Businesses Ripe for Lending Industry*, CHI. DAILY L. BULLETIN (May 20, 2015), http://howardandhoward.com/user_area/uploads/CDLB%20-%20Marijuana%20Business%20Howard%20TE%205-20-15.pdf [<http://perma.cc/R6ZH-RT7J>].

⁴⁴ FED. DEPOSIT INS. CORP., FIL-43-2013, FDIC SUPERVISORY APPROACH TO PAYMENT PROCESSING RELATIONSHIPS WITH MERCHANT CUSTOMERS THAT ENGAGE IN HIGHER-RISK ACTIVITIES (2014), *available at* <https://www.fdic.gov/news/news/financial/2013/fil13043.pdf> [<https://perma.cc/L44M-59NT>].

⁴⁵ Hill, *supra* note 7, at 619.

with businesses that the FDIC considers “high-risk” or have significant “reputational risk.”⁴⁶ Reputational risk is the “potential that negative publicity regarding an institution’s business practices . . . will cause a decline in the customer base, costly litigation, or revenue reductions.”⁴⁷

Due diligence for industries with high-risk or reputational risk requires an insured bank to “not only know its customers; it must also know the customers of its customers.”⁴⁸ Several financial institutions have recently closed their accounts for *legally* operating businesses and third-party payment processors that have reputational risk.⁴⁹ Therefore, financial institutions are very unlikely to perform the due diligence required for providing services to the federally *illegal* marijuana industry, which potentially has reputational risk.⁵⁰

Financial institutions have little incentive to comply with the FDIC’s regulatory obstacles to provide services to marijuana businesses.⁵¹ Without access to banking services, marijuana businesses must finance their operating activities, such as paying employees and service providers, with cash.⁵² Cash-only operations present significant safety and economic risks.⁵³ Marijuana businesses regularly pay their taxes by “hauling large bags of cash to the board’s office.”⁵⁴ Moving such large quantities of cash may “encourage[] crime and violence.”⁵⁵ Accordingly, marijuana dispensaries often hire security detail and use armored vehicles.⁵⁶ In addition, a pure cash operation creates an economic risk that marijuana dispensaries

⁴⁶ *Id.* at 619-20.

⁴⁷ FED. RESERVE BD., COMMERCIAL BANK EXAMINATION MANUAL (2011), *available at* <http://www.federalreserve.gov/boarddocs/supmanual/cbem/cbem.pdf> [<http://perma.cc/6BW8-EB3X>].

⁴⁸ *See* Hill, *supra* note 7, at 620.

⁴⁹ *See id.* at 620-21.

⁵⁰ *See id.* at 621.

⁵¹ *See id.*

⁵² *See, e.g. id.*, at 597.

⁵³ *See* Kurt Chirbas, *Marijuana Dispensaries Need Banking Access, California Officials Say*, L.A. TIMES (July 31, 2015, 6:20 PM), <http://www.latimes.com/local/la-me-pot-banking-20150801-story.html> [<http://perma.cc/3VSZ-UASV>].

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *See generally* Cooper & Bodley, *supra* note 8.

may underreport their taxes.⁵⁷ The cash-based operations of the marijuana industry also lessen banks' willingness to transact with them because a reduced access to banking documents makes it challenging to audit marijuana businesses.⁵⁸ The administrative due diligence required of FDIC-insured financial institutions with marijuana business customers, which previously operated cash-only businesses, would likely be too costly for institutions to find it reasonable to provide their services.⁵⁹

Similar to the FDIC, the NCUA concentrates its efforts on managing risks that could result in losses for federally-insured credit unions.⁶⁰ Unlike the FDIC, however, "the NCUA has not identified 'high-risk' industries" and "does not pursue enforcement actions based solely on reputational risk."⁶¹ Although it may appear that the NCUA may take a more favorable view of insuring financial institutions that have state-legal marijuana business customers than the FDIC, in practice it does not.⁶²

In 2014, the state of Colorado granted a state banking charter to the Fourth Corner Credit Union (Fourth Corner), which is a financial institution that offers services to marijuana businesses.⁶³ The Federal Reserve (the Fed), however, rejected Fourth Corner's request to obtain a master account number that would allow it "to make electronic funds transfers like any other bank or credit union."⁶⁴ The Fed rejected Fourth Corner's request because the NCUA found Fourth Corner ineligible for deposit insurance.⁶⁵

⁵⁷ *E.g.*, Hill, *supra* note 7, at 603.

⁵⁸ *See* Chirbas, *supra* note 53.

⁵⁹ *See id.*

⁶⁰ *See* Hill, *supra* note 7, at 622.

⁶¹ *Id.*

⁶² *See generally* Trevor Hughes, *Federal Bankers: No Account for Colo. Cannabis Credit Union*, USA TODAY (July 31, 2015, 5:50 PM), <http://www.usatoday.com/story/money/business/2015/07/31/federal-bankers-no-account-colo-cannabis-credit-union/30943749/> [<http://perma.cc/6KNL-3NG5>].

⁶³ *E.g.*, Hill, *supra* note 7, at 624.

⁶⁴ *E.g.*, Hughes, *supra* note 62.

⁶⁵ Nathaniel Popper, *Banking for Pot Industry Hits a Roadblock*, N.Y. TIMES DEALBOOK (July 30, 2015), http://www.nytimes.com/2015/07/31/business/dealbook/federal-reserve-denies-credit-union-for-cannabis.html?_r=0 [<http://perma.cc/ZQ97-2PP6>] ("[T]he Fed would consider the decision made by the National Credit Union

According to the NCUA, Fourth Corner failed to prove how it would ‘mitigate the risk associated with serving a single industry that does not have an established track record of success and remains illegal at the federal level.’⁶⁶

Consequently, Fourth Corner sued the Fed demanding “equal access” to the financial system and sued the NCUA for due process violations.⁶⁷ The Fourth Corner case highlights the tense relationship between state-chartered credit unions in states with decriminalization laws who service marijuana-related customers, and the federal banking system: these state-chartered credit unions cannot obtain access to the Fed due to the reluctance of federal insurers to grant deposit insurance.⁶⁸

In lieu of federal insurance, state-chartered credit unions can select private insurance.⁶⁹ State-chartered credit unions that secure private insurance are not foreclosed from the opportunity to obtain master accounts with the Fed.⁷⁰ Yet, “only nine states . . . have privately insured credit unions, and there are only about 150 non-federally insured state-chartered credit unions total.”⁷¹ Due to the unknown risk exposure and adverse federal law, “it is not clear that a private insurer would be willing to insure [state-chartered credit unions] with marijuana business.”⁷² Insurers are discouraged from insuring financial institutions that have marijuana business customers in part because “[a]ctuaries and underwriters have not had much experience in this industry, making it difficult to gauge risk.”⁷³

In sum, there are four things that must likely happen before insurers can embrace the marijuana industry: (1) insurers must be able to calculate the risk associated with insuring financial institutions that provide services to marijuana businesses, (2) insurers must discover that the risk associated with insuring these financial institutions is minimal, (3) laws regarding financial transactions

Administration on whether to grant the Denver credit union deposit insurance . . .”).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *See id.*

⁶⁹ *See Hill, supra note 7, at 623.*

⁷⁰ *See Popper, supra note 65.*

⁷¹ *See Hill, supra note 7, at 623.*

⁷² *See id.*

⁷³ *Navigating the Maze of Medical Cannabis, supra note 17, at 3.*

involving marijuana must become stable, and (4) marijuana-related transactions must not contravene public policy.⁷⁴

D. Current Developments in the Relationship Between Financial Institutions and State-Legalized Marijuana Industries

1. The Advent of Colorado Cannabis Credit Cooperatives

In 2014, Colorado legislators approved the nation's first state-run financial system for marijuana sellers with two goals: (1) growing Colorado's legal marijuana industry, and (2) allowing marijuana businesses access to the federal banking system.⁷⁵ The system would be composed of uninsured financial cooperatives that would operate in a manner similar to credit unions and would be governed by state law.⁷⁶ These "cannabis credit co-ops" would not be required to obtain federal deposit insurance,⁷⁷ but would be dependent upon the Fed for acquiring charters and obtaining access to the Fed's payment services.⁷⁸

The Fed is unlikely to grant these co-ops access to its payment systems because (1) the Fed and its employees might be prosecuted for "engag[ing] in money laundering" under the Money Laundering Control Act,⁷⁹ and (2) the Fed and its employees might be prosecuted for "conspiring to manufacture and distribute marijuana, aiding and abetting . . . and acting as accessories after the fact."⁸⁰ Compounding upon these federal hurdles are additional challenges at the state level, including difficulty in enticing private

⁷⁴ *See id.*

⁷⁵ *See* Keith Coffman, *Colorado Lawmakers OK Co-Op Banking Option For Marijuana Sellers*, REUTERS (May 8, 2014, 1:45 AM), <http://www.reuters.com/article/2014/05/08/us-usa-marijuana-colorado-idUSBREA3M27X20140508> [<http://perma.cc/GUN3-EALQ>].

⁷⁶ *E.g., id.*

⁷⁷ CO. REV. STAT. § 11-33-104(3)(a) (2014).

⁷⁸ Hill, *supra* note 7, at 638-9.

⁷⁹ 18 U.S.C. §§ 1956(a) (2012) ("Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity . . .").

⁸⁰ Hill, *supra* note 7, at 640-41.

investment, possible conflict with state laws requiring state co-ops comply with federal law, and lack of an established system of oversight.⁸¹ The co-op system, therefore, has little chance of being successful, and even if it gains traction in Colorado, it “is not itself the solution to the marijuana banking problem.”⁸²

2. Large New York Banks Deny New York State-Legalized Marijuana Dispensaries Access to Their Services

In September 2015, several New York corporations were granted state licenses to manufacture and dispense medical marijuana within New York.⁸³ A few days after the approval, several major banks located in New York explained that they would not provide services to these newly state-legalized marijuana businesses.⁸⁴ Wells Fargo said, “While the use of medical marijuana is legal under applicable state laws [N]ot banking marijuana-related businesses is based on applicable federal laws.”⁸⁵ Spokespeople at JP Morgan Chase and KeyBank echoed these sentiments.⁸⁶ However, one CEO of a New York marijuana dispensary stated that he anticipates paying his employees and bills through banking services, but would not identify which financial institution would offer its services to his dispensary.⁸⁷ Though it is unclear what the source will be, the possibility remains that smaller New York banks or credit

⁸¹ *Id.* at 641-42.

⁸² *Id.* at 643.

⁸³ *E.g.*, Lindsay Ellis, *Banks Edge Into New York Medical Marijuana Markets-Establishments Cautious Due to Drug’s Illegal Federal Status*, TIMES UNION (Sept. 12, 2015, 12:35 AM), <http://www.timesunion.com/tuplus-business/article/Banks-edge-into-New-York-medical-marijuana-markets-6499994.php> [<http://perma.cc/V2K9-XD2J>].

⁸⁴ *E.g.*, Josefa Velasquez, *Major NY Banks Plan to Avoid Medical Marijuana Firms*, POLITICO N.Y. (Sept. 17, 2015, 5:23 AM), <http://www.capitalnewyork.com/article/albany/2015/09/8576967/major-ny-banks-plan-avoid-medical-marijuana-firms> [<http://perma.cc/3LQM-A5XH>].

⁸⁵ *Id.*

⁸⁶ *Id.* (paraphrasing the statements made by the banks’ spokespeople, “[T]hey would not accept funds associated with medical marijuana . . .”).

⁸⁷ *Id.*

unions may be willing to provide services to the newly state-legalized medicinal marijuana industry.⁸⁸

E. Conclusion

The lack of access to financial services “stands as a formidable barrier to growth of the state-legal marijuana industry.”⁸⁹ The only manner in which state-legal marijuana businesses will obtain access to financial institutions is through federal legislation, by either federally “decriminalizing marijuana or by removing criminal and civil penalties associated with marijuana banking.”⁹⁰ Earlier this year President Obama said, “At a certain point, if enough states end up decriminalizing, then Congress may then reschedule marijuana.”⁹¹ Until that time comes, financial institutions will likely refrain from providing services to state-legalized marijuana businesses due to the risk of federal prosecution and civil penalties, and thus marijuana businesses will be forced to fend for themselves.⁹²

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⁸⁸ *See id.*

⁸⁹ *E.g.*, Hill, *supra* note 7, at 600.

⁹⁰ *Id.* at 647.

⁹¹ Vice News, *President Obama Speaks with Vice News*, (Mar. 17, 2015, 1:30 PM), <https://news.vice.com/video/president-obama-speaks-with-vice-news> [<https://perma.cc/444N-62KC>].

⁹² *E.g.*, Hill, *supra* note 7, at 647.

⁹³ Student, Boston University School of Law (J.D. 2017).