



FEDERAL LEGISLATIVE BRIEF

Cannabis Banking – STATES Act

Background

The Controlled Substances Act (CSA) enforced by the US Drug Enforcement Administration (DEA) classifies cannabis (cannabis/marijuana) as a Schedule I drug, classifying it in the same category with heroin and methamphetamine – meaning it has a high potential for abuse and no currently accepted medical use.

Although cannabis remains illegal at the federal level, it has been in legal use medically in Michigan since 2008. In November 2018 recreational cannabis use was approved by Michigan voters. A growing number of states have legalized various forms of cannabis usage under state law. Today, 47 states and the District of Columbia have passed laws and adopted policies allowing for some cultivation, sale, distribution, and possession of cannabis- all of which are contrary to the federal CSA.

Impact on Credit Unions and Their Members

Access to basic financial services is critical to the success of any business however, due to the illegality at the federal level, financial institutions remain apprehensive to serve the cannabis industry. As states continue to develop their own approaches to cannabis enforcement, the Department of Justice (DoJ) issued guidance to support the state actions however, this guidance, known as the Cole Memo, was rescinded by Attorney General Jeff Sessions on Jan. 4, 2018. This

causes legal uncertainty for those institutions banking the cannabis industry, creates public health and safety issues and undermines the state regulatory regimes already in place.

Regardless of available guidance provided by FinCEN and the DoJ, the financial service industry has been slow to provide services to cannabis businesses. With a limited number of financial institutions willing to bank the industry, cannabis- related businesses are forced to operate on a cash-only basis.

Credit unions, as community-based institutions, seek to serve their communities. Without clear guidance and with a fear of federal prosecution, credit unions are taking significant risk by simply trying to serve their members and ultimately their communities.

Legislative Status

Introduced on March 7, 2019, the Secure And Fair Enforcement Banking Act of 2019 (SAFE Banking Act of 2019), H.R. 1595, is a narrowly focused bill that would provide a safe-harbor for financial institutions to offer their products and services to well-regulated cannabis-related businesses in states where cannabis is legal. It seeks to harmonize federal and state law by prohibiting federal banking regulators from engaging in certain actions against financial institutions serving state-authorized cannabis businesses. H.R. 1595 was passed out of the House Financial

Services Committee on March 28, 2019 and may now head to the House Judiciary Committee for consideration before proceeding to the House floor for debate and votes.

In the 115th Congress (2017-2018) the Strengthening the Tenth Amendment Through Entrusting States (STATES) Act, was introduced. We expect this bill to be introduced again in the 116th Congress. While the scope of the STATES Act extends beyond cannabis banking it does clarify the federal treatment of marijuana in states where it is legal and would permit credit unions in those states to safely serve their members' related needs. It would also provide credit unions, and other financial institutions in states with legalized marijuana use, legal protection so long as they are compliant with all other applicable laws and regulations. Furthermore, the legislation makes clear that compliant financial transactions do not constitute trafficking or result in proceeds of an unlawful transaction.

MCUL Position

As Michigan has now legalized medicinal and recreational cannabis use, the need for financial institutions willing and able to provide banking services to these businesses has increased tremendously. MCUL supports legislation, including H.R. 1595, that enables the banking of cannabis business in states where it is legal to do so. Michigan credit unions play integral roles in the communities they serve, fulfilling banking needs often otherwise unavailable.