



INDEPENDENT COMMUNITY
BANKERS *of* AMERICA

Testimony of

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On behalf of the

Independent Community Bankers of America

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Hearing on

“Challenges and Solutions: Access to Banking Services for Cannabis-
Related Businesses”

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Chairman Meeks, Ranking Member Luetkemeyer, and members of the subcommittee, I am Greg Deckard, Chairman, President, and CEO of State Bank Northwest in Spokane, Washington. I testify today on behalf of the Independent Community Bankers of America and community banks nationwide, with more than 52,000 locations. I have played an active role in ICBA for numerous years, having served as chairman of the Policy Development Committee and currently chairing the Legislative Issues Committee. I am also past chairman of the Community Bankers of Washington State.

Thank you for the opportunity to testify at today's hearing titled "Challenges and Solutions: Access to Banking Services for Cannabis-Related Businesses." I am pleased to provide the perspective of thousands of community banks such as mine that operate in states that have legalized cannabis in various forms and for various purposes.

The current conflict between state and federal law has created a cloud of legal uncertainty for community banks, inhibited access to the banking system for cannabis-related businesses and created a serious public safety concern. ICBA urges this committee to consider legislation that would create a federal safe harbor for banks that offer direct or indirect services to cannabis-related businesses that comply with state law. The SAFE Banking Act, sponsored by Representatives Ed Perlmutter, Denny Heck, Steve Stivers, and Warren Davidson would create such a safe harbor. ICBA supported this legislation in the last Congress and plans to support it again upon reintroduction.

At the outset I want to clarify that ICBA's support for a safe harbor must not be interpreted as support for legalization of cannabis for medical, therapeutic, or recreational use. We make no moral or scientific judgments with regard to cannabis use.

State Bank Northwest is a \$145 million asset community bank founded in 1902. With 30 employees and three full service branches, we serve urban, suburban, and rural communities in and around Spokane and Garfield. State Bank Northwest meets the needs of our communities through small business, agricultural, and consumer banking. Like any community bank, we have a stake in the economic prosperity and the public safety of our communities: The two go hand in hand. We are responsible corporate citizens who abide by the laws of our state and our nation – which is difficult when the two are in conflict. At this time, State Bank Northwest has chosen not to serve cannabis-related businesses. As I will clarify in this statement, the legal stakes are simply too high for me, my board, and my investors to tolerate. We owe it our community to ensure that our doors remain open.

As you know, Washington and Colorado were the first states in the nation to legalize cannabis for recreational use in 2012 through the passage of referenda. Retail sales began in 2014. Cannabis is now legal for recreational use in 10 states and the District of Columbia and for medical use in 33 states. Today, Washington has nearly 500 active, licensed recreational cannabis retailers, over 1,000 active, licensed producers or growers, and several dozen licensed cannabis transporters, according to the Washington State Liquor and Cannabis Board.¹ In Washington, the cannabis industry is tightly regulated, including tracking from seed to sale and accounting for literally every gram of cannabis. A fixed number of licenses are available for every category of cannabis business, and cultivation is limited to two million square feet. Security

¹ <https://lcb.wa.gov/>

requirements include 24-hour video surveillance and other measures to prevent theft. Cannabis businesses are subject to a 37 to 43 percent excise tax, and tax revenues are dedicated to health care and substance abuse education.

Cannabis Banking Too Risky for Overwhelming Majority of Community Banks

While legal under state law, every cannabis business licensed in the state of Washington is illegal under the federal Controlled Substances Act, which puts cannabis in the same category as heroin and LSD. As a financial institution, though chartered by the state of Washington, I am regulated, supervised, and examined by the Federal Deposit Insurance Corporation (FDIC). Other state-chartered community banks are regulated by the Federal Reserve. Based on long experience with examiners, bankers fear they will be highly critical of loans to businesses that are illegal under federal law. An examiner could, for example, reduce the balance sheet value of a sound and performing loan, forcing the bank to raise capital, or even pressure the bank to terminate the relationship.

The memories of Operation Choke Point are still fresh. Even legal, legitimate, long-established businesses were, and unfortunately remain, subject to examiner coercion, both subtle and direct. ICBA appreciates the ongoing work of Ranking Member Luetkemeyer and others on this committee to bring an end to Operation Choke Point, just as we now seek your help in creating a safe harbor for legal cannabis businesses.

Financial Crimes Enforcement Network (FinCEN) guidance (described below) does provide some assurances that a bank is complying with anti-money laundering rules if it follows the agency's heightened Suspicious Activity Report (SAR) guidelines. However, without a statutory safe harbor, bankers rationally fear that the politics could shift against cannabis in an instant. It is telling that banks that choose to serve cannabis-related business are required to have an exit plan to unwind their loans, a requirement that does not exist for any other category of lending.

Cannabis Banking Compliance

Financial institutions that choose to accept the risk of serving cannabis-related businesses – and there are only three such banks and three credit unions in the state of Washington – must comply with FinCEN guidance requiring heightened due diligence and ongoing monitoring consistent with the priorities of the 2013 Cole Memo. Named for then-Deputy Attorney General James M. Cole, the Cole Memo reaffirms the Justice Department's commitment to enforcing the Controlled Substances Act, while establishing a set of priorities for the Department's use of its limited investigative and prosecutorial resources. These priorities include preventing distribution of cannabis to minors, preventing the involvement of a cannabis business with organized crime, and ensuring that cannabis is not diverted to a state where it is not legal, among others. In response to the Cole Memo, FinCEN issued guidance creating three new types of SARs for cannabis banking: The Cannabis Limited SAR, Cannabis Priority SAR, and Cannabis Termination SAR, reflecting various degrees of risk of violation of the Cole Memo. FinCEN also established "red flags" to guide institutions' selection of the appropriate SAR. Essentially, the bank is appropriated in a law enforcement capacity and charged with ongoing monitoring of the cannabis-related business. Any lapse or oversight in bank due diligence or monitoring, however inadvertent, could result in severe penalties.

The Cole Memo was rescinded by then-Attorney General Jeff Sessions, but the Treasury Department chose to keep the FinCEN guidance in place.

Cannabis banking compliance goes well beyond compliance associated with other types of banking relationships. This is appropriate given the nature of the industry and the risks involved, but compliance expense, in addition to legal uncertainty, is a significant part of the risk calculus a bank like mine must perform in deciding whether to enter into cannabis banking.

Risk Goes Beyond *Direct* Cannabis Lending

What I have described so far are the risks and burdens associated with serving *direct* cannabis businesses – the licensed producers, processors, and retailers. State Bank Northwest has chosen not to assume those risks and burdens. What is less well appreciated are the risks and burdens of serving, or merely monitoring in the course of our due diligence, the numerous *indirect* cannabis-related businesses. Ancillary businesses provide specialized products and services for growers, processors, and retailers of cannabis. These could include anything from specialized fertilizers, grow lights, marketing, and legal compliance. It could include the owner of a converted warehouse used for indoor cannabis cultivation or a storefront used for retail sales. As businesses that derive revenue ultimately attributable to the sale of cannabis, they too are a source of compliance risk to banks.

But even these businesses do not represent the full scope of compliance risk. Consider the plumbers, electricians, internet service providers, and accountants, all of which offer their services to the broader public, whose customer base includes cannabis-related businesses. These businesses are also drawn into the net, as is any business that, knowingly or unknowingly, derives any revenues from a cannabis business. As a senior official from the Washington State Department of Financial Institutions recently told me, “banks may not know” that they are serving cannabis-related businesses.

In the Inland Northwest, we have a major energy provider. Naturally, their customers include cannabis-related businesses. Utilities don’t discriminate in who they serve. For that reason alone, my bank cannot bank this utility without assuming legal risk and additional compliance burden. But what about their vendors? How many degrees of separation from cannabis do I as a community banker have to investigate and monitor to ensure compliance with federal law?

The problem extends to consumer lending. Employees of cannabis-related businesses are paid from the sale of cannabis, illegal proceeds under federal law and technically subject to a superior federal lien. This means that as a banker I cannot rely on the employee’s salary to underwrite consumer debt. If I want to make a car loan, for example, I would have to consider outside collateral, such as home equity.

This may sound like an overabundance of caution and extreme risk aversion, but I can assure you the risks are very real and carry potentially catastrophic consequences for community banks, including asset forfeiture of tainted deposits which could put a bank out of business overnight. Community bankers are conservative by nature and insist on legal bright lines. This approach has ensured the survival and prosperity of State Bank Northwest for over a century. I like to describe my banking model as “vanilla.” Typical among community banks, we take local deposits and we make local loans.

If State Bank Northwest were to change its risk calculus and offer services to cannabis-related businesses, my bank itself would effectively become a cannabis-related business and “toxic” to other banks I rely on for day-to-day services. It is the nature of our financial system that a bank exists within a network of other financial institutions. These include credit card processors, check clearing providers, wire transfer services, correspondent banks, and bankers’ banks, among others. Since cannabis legalization, many of these critical partners, facing the same legal conflicts that we face, have refused or threatened to withdraw services from banks that serve cannabis-related businesses in states where it is legal. At least one prominent bankers’ bank in my region, has flatly refused to work with such banks. The largest armored car services provider has cancelled contracts with banks that serve the cannabis industry.

The SAFE Banking Act of 2019

I hope that I have given you a sense of the full scope of the legal and compliance quagmire faced by community banks in states that have legalized cannabis. This statement reflects not only my judgment but a broad consensus of the many bankers I’ve spoken with in Washington state and around the country. While a small number of institutions have chosen to assume the risk of serving cannabis-related businesses, the industry remains cash intensive and a target for armed robbery. While I am not aware of violent crime statistics specifically associated with cannabis businesses, intuition, supported by anecdote, tells us that cash businesses are a potentially grave public safety hazard. This is the most urgent aspect of limited access to banking services for cannabis-related businesses.

The solution is an effective, statutory safe harbor such as that embodied in the Safe Banking Act. Among other provisions, the Act would:

- Prohibit federal banking regulators from taking certain actions against a depository institution that provides financial services to cannabis-related legitimate businesses. These include threatening or limiting a bank’s deposit insurance, downgrade a loan, prohibit or discourage the provision of banking services, or take any other prejudicial action solely because a bank customer is a CRB.
- Provide protection from liability under any federal law for providing financial services to cannabis-related legitimate businesses and from forfeiture of collateral for loans to such businesses or to owners of real estate or equipment leased to cannabis-related legitimate businesses.
- Clarify that the SAFE Act does not impose a new obligation to provide financial services to cannabis-related legitimate businesses.
- Amend the BSA to require financial institutions to comply with guidance issued by FinCEN when filing suspicious activity reports (SARs) related to cannabis-related legitimate businesses.

Public Banking is Not a Viable Solution

Before concluding this statement, I wish to stress that, with an effective safe harbor, America’s community banks have ample capacity and willingness to serve all facets of the legal cannabis-related industry, should they choose to.

I urge this committee not to consider various forms of public banking as a viable solution to the banking access problem. The California State Treasurer’s Office, represented on today’s panel,

recently commissioned a study of the feasibility of establishing a state bank in California to serve the cannabis industry.² That study, conducted by Level 4 Ventures, Inc., a business analytics firm specializing in cost modeling, was released in December 2018. The study found that such a bank would not be viable because it would be too costly to capitalize and would not return a profit for at least 30 years. The study states that: “Our conclusion is that no option for a public bank focused on the cannabis industry is feasible.”

ICBA concurs with the conclusion of this independent study. It is worth noting that then-California Treasurer John Chiang, Ms. Ma’s predecessor, had previously suggested the creation of a public bank, so the report’s conclusions were not predetermined by its sponsorship. Following the release of the report, Chiang said, “While today’s announcement [on the infeasibility of providing a California public bank to service the cannabis industry] may not lay out the path some of us had hoped, it did reinforce the inconvenient reality that a definitive solution will remain elusive until the federal government takes action.”

Beyond the question of viability, community bankers are rightly concerned that once established, a special purpose cannabis bank would expand beyond its original scope and compete directly with community banks and other private sector competitors. We’ve seen this time and again with the creation of limited purpose financial institutions.

Conclusion

Thank you again for convening this hearing and raising the profile of a critical issue in Washington state and other states that have legalized cannabis. If a solution is not found, the problems I have described in this statement will only become more urgent in the coming years. ICBA hopes to work with this committee to advance the SAFE Banking Act of 2019 to create a statutory safe harbor so that banks like mine are free to serve the growing cannabis industry, should we choose to do so, without fear of legal and regulatory repercussion.

I’m happy to answer any questions you may have.

² <https://www.treasurer.ca.gov/comm-external-urls/cannabis-feasibility-full-report.pdf>. See also: Laura Alix. “Public Bank Isn’t the Answer for California’s Pot Industry: Report.” American Banker. December 28, 2018. <https://www.americanbanker.com/news/public-bank-isnt-the-answer-for-californias-marijuana-industry-report>.