



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

August 24, 2018

The Honorable Paul Ryan
Speaker
U.S. House of Representatives
H-232 U.S. Capitol
Washington, D.C. 20515

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
S-230 U.S. Capitol
Washington, D.C. 20510

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives
H-204 U.S. Capitol
Washington, D.C. 20515

The Honorable Charles Schumer
Democratic Leader
U.S. Senate
S-221 U.S. Capitol
Washington, D.C. 20510

Dear Speaker Ryan, Leader McConnell, Leader Pelosi, and Leader Schumer:

As state banking supervisors, we are responsible for ensuring the safety and soundness of state-chartered banks, and state-chartered credit unions in several jurisdictions. Banks and credit unions are pillars in their communities that provide access to credit and serve an important role in civil society. Many state banking supervisors also regulate money transmitters, some of which have been providing services to marijuana businesses in the absence of traditional financial institutions.

The well-documented conflict between federal and state law creates barriers for banks desiring to serve businesses involved in state licensed marijuana activities. As of August 1, 2018, 31 states, the District of Columbia and the territories of Guam and Puerto Rico have legalized medical and/or recreational marijuana usage, and other states are likely to follow. This has resulted in regulatory and legal risk at the insured depository level, propagated de-risking, and created a “cash and carry” industry.

The lack of clarity by the federal government for how banks can serve this industry, without the threat of forfeiture of assets or criminal penalties, results in many transactions occurring in cash. Barriers for financial institutions to serve marijuana and ancillary businesses creates a commercial condition lacking robust regulation and supervision and a diminished ability to identify operators acting to circumvent federal and state licensing and regulatory frameworks. This raises concerns with respect to public safety, increases difficulty tracking the flow of funds, and contributes to a loss of economic activity, workforce development and community development opportunities.

The limited number of financial institutions that serve this industry previously relied on the “Cole Memo” from the Department of Justice and guidance from the Financial Crimes Enforcement Network (FinCEN) related to Bank Secrecy Act and Anti-Money Laundering Act requirements. Earlier this year, the Department of Justice rescinded the Cole Memo, leading to uncertainty about banks’ ability to serve this industry without running afoul of federal statutes.

It is incumbent on Congress to resolve the conflict between state cannabis programs and federal statutes that effectively create unnecessary risk for banks seeking to operate in this space without the looming threat of civil actions, forfeiture of assets, reputational risk, and criminal penalties. While Congress has taken some action, such as the Rohrabacher amendment prohibiting federal funds being used to inhibit state medicinal marijuana programs, this has been an impermanent approach that requires a permanent resolution.

We urge Congress to consider legislation that creates a safe harbor for financial institutions to serve a state-compliant business, or entrusts sovereign states with the full oversight and jurisdiction of marijuana-related activity.

State banking supervisors are not the first to call for action, and our request is consistent with those made by Governors, state Attorneys Generals and Treasurers, community banks, and a coalition of state banking associations representing 22 states and Puerto Rico that desire clarity about the ability to bring these businesses into the regulatory reporting framework.

A majority of states now have medical marijuana programs and it has become increasingly necessary to craft policy to respond to emerging challenges in this rapidly growing industry. We must work together to look for solutions rather than avoiding this challenge and ignoring the new policy landscape.

Sincerely,

/s/
Robin Wiessmann
Secretary
Pennsylvania Department of Banking and
Securities

/s/
Iris Ikeda
Commissioner of Financial Institutions
Hawaii Department of Commerce and
Consumer Affairs

/s/
Patrice Walsh
Acting Director
Alaska Division of Banking and Securities

/s/
John Ducrest
Commissioner
Louisiana Office of Financial Institutions

/s/
Jorge Perez
Commissioner
Connecticut Department of Banking

/s/
Patrick M. McPharlin
Director
Michigan Department of Insurance and
Financial Services

/s/
Melanie Hall
Commissioner
Montana Division of Banking and Financial
Institutions

/s/
Mick Thompson
Commissioner
Oklahoma State Banking Department

/s/
George E. Burns
Commissioner
Nevada Financial Institutions Division
Department of Business and Industry

/s/
Andrew R. Stolfi
Administration/Insurance Commissioner
Oregon Division of Financial Regulation

/s/
Maria T. Vullo
Superintendent
New York Department of Financial Services

/s/
Gloria Papiez
Director
Washington Department of Financial
Institutions

/s/
G. Edward Leary
Commissioner
Utah Department of Financial Services