The Marijuana Conflict

Presented by

ACAMS®
Colorado Chapter
and

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Introductions

Introductory Remarks:

Laurie Kelly, CAMS
Compliance Officer
CoBank
ACAMS Colorado Chapter
Annual Sponsor
Industry Issues

- **Moderator**: Micah Schwalb, Esq., Partner, Roenbaugh Schwalb
- **Panelists**:
  - Robert McVay, Esq, Partner, Harris & Moure
  - Daniel Garfield, Esq., Senior Counsel, McAllister Law Office
  - Adam Orens, The Marijuana Policy Institute
Regulatory Perspectives

- **Moderator:** Cindi Malmgren, CAMS, Wells Fargo
- **Panelists:**
  - Chris Myklebust, Commissioner, Colorado State Banking Commissioner
  - Gary D. TeKolste, Assistant Deputy Comptroller, Office of the Comptroller of the Currency, Denver Field Office
  - Jason Mercer, National Bank Examiner, Office of the Comptroller of the Currency
# Banking Marijuana

**Presented by:**

<table>
<thead>
<tr>
<th>Chris Myklebust</th>
<th>Gary TeKolste</th>
<th>Jason Mercer</th>
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<tbody>
<tr>
<td>State of Colorado Bank Commissioner</td>
<td>Assistant Deputy Comptroller</td>
<td>National Bank Examiner</td>
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<td>Division of Financial Services</td>
<td>Comptroller of the Currency</td>
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<td>Denver Field Office</td>
<td>Denver Field Office</td>
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How did we get to where we are today?
Federalism

• Sharing of power between states and federal government.
• States are sovereign and able to make their own laws.
• Problems arise when state laws directly conflict with federal laws.
• When state and federal laws conflict, federal law may preempt state laws.
• Preemption and conflicting laws may be challenged in court.
• Judicial Branch: brings clarity, boundaries, and influences policy.
United States

• Controlled Substances Act of 1970 – Marijuana (including medical) has a high potential for abuse, no accepted medical purpose, illegal to grow or possess.

• 2005 – Supreme Court reaffirmed authority to regulate regardless of state laws authorizing medical use.

• August 2016, the DEA announced marijuana will remain a Schedule I substance.
Colorado

- 2000 – Legalized Medical Marijuana
- 2012 – Legalized Recreational Marijuana
Dual Banking System
National Charters / State Charters

Similar in that:
• All have Federal Deposit Insurance
• All banks have a federal regulator
• State and federal regulators perform joint examinations in state charters
• Generally subject to same regulations
Current Regulatory Environment

- Marijuana is **ONLY** illegal at the federal level.
- Federal law enforcement and federal regulators don’t have the luxury of considering marijuana a legal substance under state law.
- Have done some things to work within the confines of the law.
What’s been done so far

- HB 1398 – Cannabis Financial Cooperatives
- Chartered The Fourth Corner Credit Union
- Cole memo
- FINCEN Guidance
Possible Solutions

- Change the CSA?
- Safe Harbor?
- Further “Guidance” from federal regulators?
Why Bank Marijuana

• Can be lucrative
• Serve customer base
• Grow the bank
• Altruistic reasons
  - Safety
  - Assist law enforcement
Risks of Banking Marijuana

• Expensive risk management systems required
• Guidance is not law
• Safety of employees and customers
• Reputation risk
• How long will it be lucrative?
• Subject to changes in political climate
• Consequences if you don’t do it right
If you bank marijuana...

- Get your board’s approval
- Build out your BSA program to be commensurate with the risk
- Be transparent with bank vendors
- Train staff or hire people with expertise
- Be diligent
- Have limits – how much is too much?
- Hold your standards high
Banking Marijuana Related Business

• Federal Regulators do not encourage or discourage the banking of Marijuana Related Businesses.
• Banks must establish sound policies, procedures and risk limits.
• Banks must establish robust Customer Due Diligence, Enhanced Due Diligence and ongoing monitoring processes.
• Regulators expect banks to follow the FinCEN issued guidance (FIN-2014-G001) titled “BSA Expectations Regarding Marijuana-Related Businesses.”
FinCEN Marijuana Related Business Guidance

• Issued February 14, 2014
• Covers expectations for financial institutions seeking to provide services to marijuana-related businesses.
• Establishes three types of SARs:
  – Marijuana Limited SAR
  – Marijuana Priority SAR
  – Marijuana Termination SAR
Cole Memo Priorities

• Focus on the prevention of:
  – sale and distribution to minors
  – revenues from going to criminal enterprises
  – diversion of marijuana from states where it is legal to states where it is not
  – state authorized marijuana activity from being used to cover trafficking in other illegal drugs or other illegal activity
  – violence and the use of firearms in cultivation and distribution
  – drugged driving
  – public lands from being used to grow marijuana
  – marijuana use on federal property
Customer Due Diligence / Enhanced Due Diligence (CDD/EDD)

• The FinCEN guidance provides minimum guidance for CDD/EDD:
  – (i) verifying with the appropriate state authorities whether the business is duly licensed and registered;
  – (ii) reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business;
  – (iii) requesting from state licensing and enforcement authorities available information about the business and related parties;
  – (iv) developing an understanding of the normal and expected activity for the business, including the types of products to be sold and the type of customers to be served (e.g., medical versus recreational customers);
  – (v) ongoing monitoring of publicly available sources for adverse information about the business and related parties;
  – (vi) ongoing monitoring for suspicious activity, including for any of the red flags described in this guidance; and
  – (vii) refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk.
Enhanced Customer Due Diligence Practices Banks Should Consider

- Verify state and local license and registrations;
- Obtain and review list of significant suppliers and customers;
- Understand the normal and expected activity for the business, including the types of products to be sold and the type of customers to be served;
- Negative news searches on business, related business and principal owners/operators;
- Ongoing updates to the customer’s profile information;
- Ongoing monitoring for suspicious activity, including the specific red flags described in this guidance;
- Periodic site visits;
- Obtain and review annual tax returns and financial statements;
- Obtain and review of customer’s audit reports.
Transaction Monitoring Systems

• Banks should establish ongoing monitoring systems that have the capability of monitoring the nuances of marijuana-related businesses.
  - Monitoring systems must be capable of detecting irregularities in customer activities;
  - Comprehensive review of cash transactions to identify marijuana-related businesses;
  - Detailed review of monetary instrument sales log;
  - Enhanced monitoring of privately owned ATM customers;
  - Effective processes to monitor activities of high risk accounts/customers.
Indirect Marijuana Related Businesses

- FinCEN is in process of developing guidance for indirect Marijuana Related Businesses.
- In circumstances where services are being provided indirectly, financial institutions should file SARs based on existing BSA/AML guidance.
Thank you!

Questions?
BREAK

• Please Return in 10 Minutes
Law Enforcement Perspectives

• **Moderator:** Don Charobee, CAMS
• **Panelists:**
  • Matt Kirsch, First Assistant United States Attorney for the District of Colorado
  • Kevin Merrill, Assistant Special Agent in Charge - DEA
  • Chief John Jackson, Greenwood Village Police Department
Mandates patients are Colorado residents

Allows patients to grow up to six plants, with exceptions (physician recommendations)
As of January 2016, there are \textbf{107,798} medical marijuana patients.

January 2016: \textbf{8,210} patients with plant count recommendations for \textbf{50-99 plants} (8\% of all patients)

December 2013: \textbf{5,308} patients with plant count recommendations for \textbf{50-99 plants} (5\% of all patients)
Let’s do the math…

If 8,200 patients each grow 50 plants, that’s 410,000 marijuana plants.

Per MED, the state-licensed medical and recreational industry currently has 758,000 plants in its inventory tracking system.

If those 8,200 patients harvest one pound per plant every 90 days, that’s 1,640,000 pounds of marijuana per year.
**Residential Grows**

**Washington:** Medical marijuana patients can grow up to 4 plants without registering with the state; up to 15 plants with state registration

- No private recreational marijuana grows

**Oregon:** Residents may grow up to 4 plants per household

**Alaska:** Residents may grow up to 6 plants per household

**Colorado:** Effective January 2017, state law will limit medical marijuana patients and caregivers to growing 99 plants

- Allows for six recreational plants per adult in a residence, plus any finished marijuana that was derived from them
- Some local ordinances limit residential grows
Residential Grows

No regulation by MED

No tax revenue for the state

Individuals and organized groups coming here to exploit the lax environment

Large amounts of marijuana produced in home grows going to out-of-state markets
A 50 plant grow will yield:
- **200 pounds per year**
- **180,000 joints (493 per day)**

A 99 plant grow will yield:
- **400 pounds per year**
- **360,000 joints (986 per day)**
How Much Does a Home Grow Produce?

Five people from Florida move to Colorado, and rent three houses.

All five individuals go to a doctor and get a medical recommendation to grow 99 plants.

Now they can “legally” grow up to 495 plants.
Grow equipment and set up costs for a 50-99 plant grow equal roughly $30,000-$50,000.

Average kilowatt usage peaks at 10,000-25,000 per month during certain times in the growing cycle. (A typical house is 500-800 kilowatt hours per month.)
If this group possesses average growing skills and knowledge, they can produce at least one pound of finished marijuana per plant per growing cycle.

This results in this group producing 495 pounds of marijuana every 90 days, or 1,980 pounds per year.
If this group sold its marijuana at $2,000 per pound, they could make $3.9 million per year.

If they transport it to the East Coast, they could get $4,000 per pound and net $7.9 million a year.
Criminal Organizations Exploiting Colorado Marijuana Laws

Relocating from other states
Supplying the black market in other states

Acquiring multiple houses for large grows
- Rent or purchase

Willing to pay inflated rent; often cash in advance

Protected with firearms and security systems
Involvement in Other Crimes

Polydrug Trafficking
Credit Card Skimming
Financial Fraud
  ➢ Mortgages
  ➢ Insurance
  ➢ Medicaid
Human Smuggling from Cuba
Home Invasions & Assaults
DOJ PRIORITIES FOR MARIJUANA ENFORCEMENT
The Cole Memo Priorities

1. Preventing the distribution of marijuana to minors;
2. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
3. Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
4. Preventing state-authorized activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
The Cole Memo Priorities

5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
6. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
7. Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
8. Preventing marijuana possession or use on federal property
SARS AND MARIJUANA-RELATED BUSINESSES
“Marijuana Limited” SAR Filings

• A financial institution providing financial services to a marijuana-related business that it reasonably believes, based on its customer due diligence, does not implicate one of the Cole Memo priorities or violate state law.
“Marijuana Priority” SAR Filings

- A financial institution filing a SAR on a marijuana-related business that it reasonably believes, based on its customer due diligence, implicates one of the Cole Memo priorities or violates state law.
“Marijuana Termination” SAR Filings

• If a financial institution deems it necessary to terminate a relationship with a marijuana-related business in order to maintain an effective anti-money laundering compliance program.
MARIJUANA LEGALIZATION IMPACT ON LOCAL LAW ENFORCEMENT
Law Enforcement Challenges
and Unintended Consequences

• Law Enforcement Training
• Data Collection
• DUID/Impaired Driving
• Noxious Odor complaints in neighborhoods
• Mold issues affecting officer safety
• Infused Products & Edibles
• BHO Explosions
• Increase Use by Youth
• Increase in disorder and crime
<table>
<thead>
<tr>
<th>Amendment 20</th>
<th>Amendment 64</th>
</tr>
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<tbody>
<tr>
<td>• Debilitating medical condition</td>
<td>Anyone ≥ 21 can . . .</td>
</tr>
<tr>
<td>• Affirmative defense or exemption</td>
<td>• Can possess up to 1 oz. of marijuana</td>
</tr>
<tr>
<td>• Caregivers</td>
<td>• Paraphernalia is legal</td>
</tr>
<tr>
<td>• Plant count</td>
<td>• Can grow, process and keep the yield of 6 plants</td>
</tr>
<tr>
<td>• A person &lt; 21 can legally obtain medical marijuana</td>
<td>• Can assist other ≥ 21 with growing</td>
</tr>
<tr>
<td></td>
<td>• Legal to transfer 1oz or less without remuneration</td>
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<td></td>
<td>• And . . .</td>
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## CO MJ Categories

### Colorado Marijuana

<table>
<thead>
<tr>
<th>Recreational Commercial</th>
<th>Medical Commercial</th>
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<tbody>
<tr>
<td>DOR-MED</td>
<td>DOR-MED</td>
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<tr>
<td>Businesses, Owners &amp; Employees licensed</td>
<td>Businesses, Owners &amp; Employees licensed</td>
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<tr>
<th>Recreational Home Grows</th>
<th>Caregiver Model</th>
</tr>
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<tbody>
<tr>
<td>Any 21 year old can grow 6 plants-No licensing</td>
<td>Caregivers can grow for up to 5 patients and themselves-No licensing Routinely see large grows</td>
</tr>
<tr>
<td>Local Law Enforcement</td>
<td>CDPHE-Local Law Enforcement</td>
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330,425 new patient applications have been received to date since the registry began operating in June 2001. The total number of patients who currently possess valid Registry ID cards is 106,066.

Sixty-four percent of approved applicants are male.

The average age of all patients is 42.5. Currently 358 patients are minors (under the age of 18).

Fifty + percent of patients reside in the Denver-metro area (Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas & Jefferson counties), with the remainder of patients residing in counties throughout Colorado.

Patients on the registry represent all the debilitating conditions covered under Amendment 20. Severe pain accounts for 93 percent of all reported conditions; muscle spasms account for the second-most reported condition at 24.2 percent.

More than 235 different physicians have signed for current patients in Colorado.

Total Caregivers in Colorado 2,732. Caregivers with Increased plant counts 769
<table>
<thead>
<tr>
<th>Number of Licensed Medical Marijuana Businesses as of July 1, 2016</th>
<th>Number of Licensed Retail Marijuana Businesses as of June 1, 2016</th>
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<tbody>
<tr>
<td>Centers</td>
<td>Stores</td>
</tr>
<tr>
<td>529</td>
<td>435</td>
</tr>
<tr>
<td>Cultivations</td>
<td>Cultivations</td>
</tr>
<tr>
<td>786</td>
<td>572</td>
</tr>
<tr>
<td>Infused Product Manufacturers</td>
<td>Product Manufacturers</td>
</tr>
<tr>
<td>237</td>
<td>193</td>
</tr>
<tr>
<td>Testing Facilities</td>
<td>Testing Facilities</td>
</tr>
<tr>
<td>13</td>
<td>15</td>
</tr>
<tr>
<td>Medical Total=1565</td>
<td>Retail Total=1215</td>
</tr>
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</table>
Increased Use

Formula for Increased Use of Marijuana

- Increased availability
- Decreased perception of risk
- Increased social acceptance of Marijuana
“The state’s heavy consumption of marijuana is predictable given that the drug is legal there... Colorado stands out as the only state which is a top consumer of all four substances (Opioids, Alcohol, Cocaine & Marijuana)... But residents of the mile-high state are also heavy consumers of all non-marijuana intoxicants as well...”
Colorado youth are particularly at risk because of the rising THC potency:

- National THC potency (1995) 3.9%
- National THC potency (current) 12.6%
- Colorado THC potency: 17.1%
- Wax potency: 50%-90%
Broken Windows & Disorder:

“…Broken windows is based on the notion that signs of incivility, like broken windows, signify that nobody cares, which leads to greater fear of crime and a reduction of community efficacy, which in turn can lead to more serious crimes and greater signs of incivility, repeating the cycle into a potential spiral of decay…”

June 30th 2016 CBS4:

Denver Mayor Michael Hancock talked about drugs, specifically marijuana, in response to the attack.

“Let’s be clear. Marijuana is drawing people to the mall. The travelers are very clear. I can tell you this because I’ve talked to the travelers,” said Hancock. “This is one of the results of the legal marijuana industry in Denver and we’re going to have to deal with it.”
Prosecutors: Colorado sees increase in homicides motivated by marijuana

Fox31News May 24, 2016-Some prosecutors in Colorado say they're noticing a new trend: An increase in murders motivated by marijuana. In Aurora, the last 10 of 15 drug-related homicide cases were connected to marijuana. Arapahoe County District Attorney George Brauchler said it's not the big-time dealers who are involved. For the most part, it has been the small-time ones on the streets. In Jefferson County, a burned-up car had a dead body inside, and investigators later determined the victim was harvesting marijuana nearly 100 miles away in Agate. When he was killed, he was stuffed into the trunk.
"There is increased crime, sometimes violent crime, associated with legalization of marijuana," Brauchler said. "That's not what you'd expect. You'd expect the harder-core drugs."
Denver prosecutors charge 3 in Park Hill triple killing, say shootings happened during marijuana deal

June 16, 2016-Denver Post: Denver crime scene investigators work the scene of a fatal shooting near the intersection of E. 36th Ave and Hudson St. in Denver. According to Denver Police the shooting occurred Saturday evening. Upon arrival, two were found dead inside a home and a third died at a local hospital.
• The house fire that injured two earlier Monday south of Nederland’s Barker Reservoir — in the area of Pinecliff Trail and Alpine Drive — could have been started by a hash oil explosion, according to Erie Abramson, volunteer captain for Nederland Fire.
Driver accused of killing Longmont girl riding bike thought he hit curb
Kyle Kenneth Couch, 20, turned himself into police on Friday

Longmont police this week revealed — more than two months after the crash — that they suspect Couch was under the influence of marijuana at the time, based on three blood samples, officer observations and the smell of unburned marijuana inside his Ford F-250 pickup.

Longmont Times-Cal-July 29, 2016
Programmatic Myths

• No major issues
• Crime is down
• Black market/Cartels
• Marijuana = alcohol?
• Diversion?
• Impaired driving will NOT go up
• Officers to focus on other crimes
• Today’s MJ = MJ from the past
If we could go back...

- Slow the “Train Down”...
- Act quicker and more decisive from the start
- Educate communities and elected officials
- Counter the lobby “spin”
- Limit Non-Commercial cultivations, Caregivers and Co-Op Grows
- Limit Edibles and Infused Products
- Minimize the conflicts, A20 & A64
- Proactive in data collection
- Fund training and equipment
Police Foundation
Practical Guide for Law Enforcement

http://www.policefoundation.org/content/marijuana-guidebook
www.rmhidta.org
click on “Reports”
Marco Vasquez
Colorado Association of Chiefs of Police
marcvasquez@Comcast.net
303.935.2235
Practical Considerations

• **Moderator:** Laurie Kelly, CAMS, CoBank ACB
• **Panelists:**
  • Phyllis Skene-Stimac, Former Chief Compliance Officer and Executive Vice President, MoneyGram and Former Deputy Chief Compliance Officer, Western Union
Practical Considerations for Financial Institutions

Phyllis Skene-Stimac, CAMS
August 17, 2016
The Marijuana Industry

- A growing industry - “It’s as small today as it’s ever going to be”
  - Colorado's Legal Marijuana Industry Is Worth $1 Billion
  - 20 plus states with approved Medical usage
  - 9 states have ballot initiatives – 5 for recreational use

- The Conundrum
  - Legitimate business in the state where it’s legal
  - Illegal at the federal level and in many states
  - Legislative and political climate has not kept pace

“At least nine states will charge ahead with marijuana initiatives on ballots in November — a record number — despite the federal government’s decision not to loosen restrictions on the drug, underscoring the precariousness of any type of legal recognition” -Washington Post
The Financial Industry – The Conflict

- Banks and MSBs are highly regulated
- Regulatory expectations are very high
- The industry is considered extremely high risk
- Various federal regulators
  - OCC, The FED, NCUA, OTS, FinCEN
- State banking authorities
- Money laundering, corruption concerns are central to the banking problem
- The financial industry is stuck in middle

March 25, 2016 -- Letters to all five federal financial institution regulators – and FinCEN – asking them to issue combined guidance governing how financial institutions can effectively serve marijuana-related business have been sent by four senators representing states that have recently legalized marijuana use.
What Financial Institutions/MSB’s need to be aware of

• Department of Justice - Cole Memo
  – Distribution to minors
  – Corruption- proceeds to gangs, cartels, criminal enterprises
  – Interstate movement from states where it’s legal to other states
  – Preventing state authorized activity to be used as a front for other illegal activity
  – Preventing violence and the use of firearms in the cultivation and distribution
  – Prevent drugged driving and public health consequences
  – Preventing growing on public lands
  – Preventing marijuana possession or use on federal property
What Financial Institutions/MSB’s need to be aware of

• FinCEN Guidance
  – Filing Obligations-
    • SAR- Marijuana Limited- no appearance of Cole memo priorities or violation of state laws
    • SAR- Marijuana Priority SAR- implication of Cole memo priorities or violation of state laws
    • SAR- Marijuana Termination
    • Currency Transaction Reports (CTR)
    • FinCEN Form 8300 (Report of Cash Payments >$10,000 received in a Trade or Business)
  – 314 (b) voluntary information sharing
What Financial Institutions/MSB’s need to be aware of

• Red Flags
  – Revenue unreasonable based on license and limitations
  – Revenue substantially greater than local competitors
  – Depositing more cash than commensurate with revenue
  – Business cannot demonstrate its revenue derived from Marijuana is in compliance
  – Structured deposits
  – Rapid movement of funds
  – Deposits by 3rd parties
What Financial Institutions/MSB’s need to be aware of

• Red flags continued
  – Excessive commingling
  – Financial statements are inconsistent with financial activity
  – International or interstate activity
  – Business is unable to produce satisfactory documentation or evidence of state licensing
  – Business is unable to demonstrate the legitimate source of outside investments
  – Negative information available from open source data
  – Enforcement actions related to the marijuana business
Are there practical things you can do?

• For the most part banks are just saying no, however....
• You can consider the following:
  – Assess your financial institution’s appetite for risk
  – Ensure policies and procedures are updated and in place
  – Update Board/Compliance Committee Oversight and Approvals
  – Implement enhanced due diligence
  – Implement specific “red flag” monitoring
  – Make sure your 1st, 2nd and 3rd lines (business, compliance and audit) are trained up and prepared to support this as an extremely high risk business.

Can you say what the practical solution, short of Congressional action looks like? Until the federal law is changed, there simply isn’t one. The risk would stay the same no matter what rule or regulation is issued. When coupled with extremely heightened expectation for scrutiny of the customer and the extremely risky nature of the business from a legal perspective banks have elected to just say no- American Bankers Association, February 2014
Questions are guaranteed in life; Answers aren't.

Thank You