

If The Government Wants Us To Lend To Marijuana-Related Businesses They Sure Have a Funny Way of Showing It

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In the two and half years since Illinois legalized medical marijuana the banking industry remains largely hesitant to bank marijuana-related businesses. This seems true despite a memorandum from the Financial Crimes Enforcement Network (FinCEN) designed specifically to encourage the banking industry to provide, and ease the banking industry's concerns with providing, financial services to marijuana-related businesses. The February 2014 FinCEN memo itself states that it "clarifies how financial institutions can provide services to marijuana-related businesses consistent with their [Bank Secrecy Act] obligations, and aligns the information provided by financial institutions in BSA reports with federal and state law enforcement priorities." The FinCEN memo goes on to state that "[t]his FinCEN guidance should enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses."

Despite this guidance however, the few financial institutions who are actively involved in the space have sometimes found it difficult to apply the FinCEN guidance and still meet the heightened compliance standards related to providing financial services to businesses associated with the marijuana industry. According to a recent article in the magazine *American Banker*, the Des Plaines, Illinois bank Millennium Bank was one such recent example. In March of this year, Millennium Bank entered into a consent order with the FDIC and the Illinois Department of Financial and Professional Regulation, Division of Banking regarding alleged "unsafe or unsound banking practices" involving violations of law or regulation including violations of the BSA. The consent order never specifies any violations relating to marijuana-related businesses but the article cites sources familiar with the matter as confirming it was Millennium Bank's involvement with marijuana-related businesses that led to the consent order. And while Millennium Bank neither admitted nor denied the governments' allegations in the consent order, it did agree to bolster its BSA Department, provide additional training for its employees involved in BSA compliance, adopt a new BSA compliance program, and develop and implement a Customer Due

Diligence Program.

The *American Banker* article also points out that because there is no requirement that other consent orders include any direct references to serving marijuana-related businesses that it is difficult to know exactly how many other financial institutions have encountered these very same issues. What is certain is that as the marijuana industry grows in Illinois and as more and more states pass laws allowing marijuana-related business, these issues will only continue to increase.

It is clear that there is a governmental intention to foster the availability of financial services to marijuana-related businesses. However, what is equally clear is that the availability of financial services to marijuana-related business can come only with strict adherence to a number of additional rules, regulations, disclosures and reporting. Many banks simply do not have the resources – financial or human – to ensure compliance with the added requirements placed on them to serve this industry. Consequently, there remains a large, mostly untapped market for financial services to marijuana-related businesses just waiting for financial institutions with the resources, commitment and outside legal knowledge to navigate the highly detailed regulatory scheme governing this growing industry – and the potentially significant profits associated therewith.

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