

2018

Green Market Report

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The Economics of Cannabis Banking

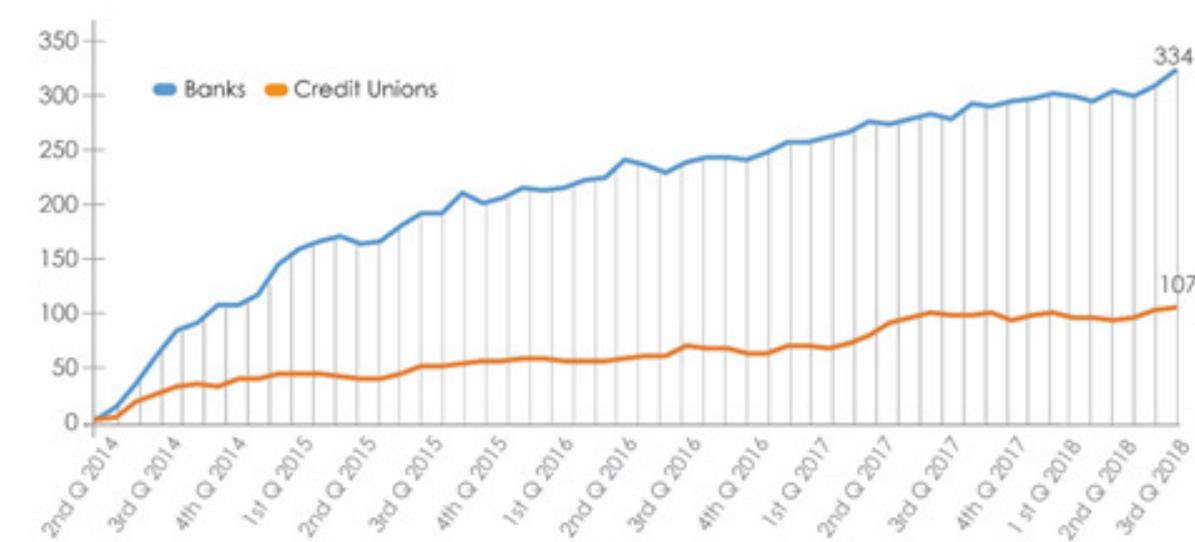
The Economics of Cannabis Banking

CANNABIS BANKING SUMMARY

According to a report released by the Financial Crimes Enforcement Network (FinCEN) for the period ending June 30, 2018, there are 441 U.S. depository institutions (banks and credit unions) providing banking services to marijuana related businesses (MRB). This number is up from the reported 340 institutions serving MRBs institutions as of January 2017. The FinCEN report does not indicate how many MRB accounts are serviced by each institution, but at a minimum we know that there are 441 institutions that have serviced at least one MRB account. On the surface this may appear to be a significant number, especially given widespread perception that MRBs cannot obtain bank accounts. In fact, the 441 figure obscures the reality that there are actually very few financial institutions servicing what we would consider to be a significant number, 15 or more, of MRB accounts. Our research puts that number as low as 35. This reflects both a supply side shortage of institutions willing and needed to service the MRB demand, and a tremendous opportunity for those institutions that do choose to enter the marijuana market.

Marijuana Banking Update

Depository Institutions (by type) Providing Banking Services to Marijuana Related Businesses¹
(Data ending 30 June 2018)



FOLLOWING THE LIMITED BANKING GUIDANCE

Prior to 2018, there existed only two federal documents pertaining to marijuana banking: the February 14, 2014 Cole Memorandum which set forth DOJ enforcement priorities of federal laws related to marijuana banking, and FinCEN’s same-dated “BSA Expectations Regarding Marijuana-Related Businesses” which lays out how financial institutions can permissibly service the marijuana market. When Attorney General Jeff Sessions rescinded the Cole Memorandum on January 4, 2018, it caused considerable uncertainty about the future of state legalized marijuana in the U.S., including marijuana banking. Some financial institutions that had been considering taking on MRB accounts put those plans on hold, while at least one institution that was servicing the marijuana market decided to close

all their MRB accounts. But as more time has passed since the Sessions announcement, the feared federal crackdown against state-legalized marijuana has not materialized. In fact, there has been no change whatsoever in the enforcement (or non-enforcement) of federal laws, which is now in hands of individual U.S. Attorneys who show every indication of continuing to follow the letter and spirit of the Cole Memorandum. Critically for the banking sector, the FinCEN Guidance was unaffected by the Sessions announcement and now stands alone as the sole and definitive only piece of federal guidance on the subject of marijuana. The result is that with each day, banks and credit unions are becoming more comfortable with the idea that marijuana banking can be done in a responsible, sustainable, and profitable manner.

The Federal Financial Institutions Examination Council (FFIEC), which sets forth the standards banks must follow, regularly publishes handbooks, guidance, and best practices for most all other banking products. To date, however, they have issued nothing on marijuana. When it comes to their compliance obligations bankers crave certainty, so the relative dearth of federal marijuana banking guidance leaves too much uncertainty for many banks to overcome. But with little in the way of guidance from the federal government, we are seeing other industry players attempt to fill that void. Individual institutions, banking and credit union associations, industry experts, technology providers, and others have contributed to an emerging set of “best practices” surrounding banking. At the same time, both federal and state bank and credit union examiners are becoming well versed on how to examine institutions banking MRB’s. The bottom line is that marijuana banking is too important for the industry to simply wait for Washington to act, and more and more financial institutions are taking notice.

STATE OWNED BANKING OUTLOOK

A number of states have already conducted or are in the process of conducting feasibility studies on creating a state owned and run Marijuana Bank. Based on our experience, we believe a state-run bank has little to no probability of success in meeting the immediate and growing need of banking access for the marijuana industry. Not only would it take a significant amount of time to establish, but even then, a state bank is not immune from federal law, including federal money laundering laws, which are the source of the original problem. This also is true for de novo (newly founded) institutions that would contain a business plan to service a significant number of MRB accounts.

PERMISSIBLE ELECTRONIC PAYMENT SOLUTIONS

There are frequently a number of questions and misconceptions regarding electronic payments involving MRB transactions. To begin with, the debit and credit card networks have prohibited marijuana transactions from utilizing their networks. In examination of operators currently utilizing card payments, the true nature of the business must be masked. Merchant bankcard applications are commonly opened as a nursery, flower shop, or consulting company. ATM's and reverse ATM's may be a stop-gap measure but add additional regulatory concerns and oversight. Hypur along with its partner financial institutions has developed a transparent electronic payment system for both consumer to business, and B2B transactions. This is being conducted in complete transparency with all parties involved.

THE OUTLOOK FOR CANNABIS BANKING

Although marijuana banking is moving in a positive direction, the pace is too slow and the scope too limited to meet the needs of this rapidly growing industry. The initial reluctance of financial institutions to service MRBs was entirely understandable given the ongoing disparity between state and federal law. But beginning with the issuance of the FinCEN Guidance we now have a four and a half year long sample size to draw from. And what we have learned is that during that time there has been no know federal enforcement action against a financial institution solely for banking MRBs. The banks and credit unions that have entered this market are doing so extremely profitably, and in the process are performing a valuable public service but getting this money off the street and into accounts where it can be monitored and tracked. In short, the marijuana banking system in the U.S., imperfect though it may be, is working.

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