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Do You Feel Lucky, Banker? The Shaky Prospects For Financial Transactions With Marijuana-Related Businesses

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Federal law prohibits the manufacture, possession, or use of marijuana for any purpose, including medical purposes. This prohibition notwithstanding, as of January of 2018, 29 states plus the District of Columbia have legalized marijuana for medical purposes, six states have legalized marijuana for recreational use, and Maine and Massachusetts have approved legalization measures that have not yet taken effect. Because of this conflict between federal law and the growing state-level legalization movement, financial institutions, the majority of which are governed by federal law or, in the case of state-chartered banks and credit unions, are reliant upon systems and services overseen and administered by federal agencies, are wary of potential federal enforcement actions and, as a result, state-legal marijuana-related businesses are largely denied access to the banking system. This means that marijuana-related businesses are generally unable to open checking accounts, accept credit and debit cards, use electronic payroll services or remote bill pay, or access the automated clearing house ("ACH") electronic payment system. It also means that these businesses, and in some cases businesses that serve or support them, such as property owners who lease space to dispensaries or cultivators, have difficulty obtaining bank loans and lines of credit, forcing them to rely on high-interest, short-term hard money loans to meet financing needs.

This article provides an overview of the primary federal laws and regulations governing financial institutions, and the potential penalties thereunder, that have prevented the banking industry from becoming more engaged with the state-legal marijuana industry, describes various federal actions that have been taken to address these concerns and to increase banking access for state-legal marijuana-related businesses, and discusses the implications of these federal actions for marijuana-related businesses and those businesses that service them.

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