



March 13, 2018

Opposition Testimony

House Bill 495

Thank you Chairman Blessing, Vice Chairman Reineke, Ranking Member Clyde and Members of the House Government Accountability and Oversight Committee for the opportunity to submit opponent testimony for House Bill 495. The passage of this bill will have a detrimental impact on the Medical Marijuana Control Program's (MMCP) intent, which is to allow registered patients with a physician recommendation to purchase medical marijuana instead of illegal or over prescribed opioids. HB 495 requires patients to establish a bank account for medical marijuana purchases, fund the account, and use a debit card for all purchases. Medical marijuana should not be more difficult for registered patients to purchase legally than it is to procure addictive opioids illegally. The bill also requires **all** financial transactions under the program to run through a closed-loop system. This includes the purchase of office supplies. Office supply vendors will have to register with the closed-loop system and open an account to sell us staples and paper. No reasonable supply chain would agree to participate under these circumstances.

This bill has already created confusion and delay for banks contemplating providing treasury management services for the marijuana industry. State chartered banks that are non-members of the Federal Reserve can bank medical marijuana in Ohio and they will bank it if HB 495 and this committee allow the free market process to unfold.

Grow Ohio Pharmaceuticals has treasury management options today. We can accept credit and debit cards, cash and checks. We are not alone, according to the Financial Crimes Enforcement Network (FinCEN), 400 depository institutions are actively banking marijuana businesses. This may be news to the members of the committee which hopefully prompts you to terminate HB 495. No-one is asking for a closed-loop system - not the banks, credit unions, supply chain, provisional license holders or patients.

No state has an operating closed-loop treasury system. If the legislature is trying to establish an oversight process to prevent money laundering, material diversion, direction of funds to criminal cartels and illegal drug trafficking, systems are already in place. METRC, the state's seed-to sale tracking system, tracks every gram of medical marijuana produced in Ohio and is available for state review 24/7. Ohio's existing Automated Rx Reporting System (OARRS) can be used to track every recommendation made by a physician. Finally, FinCEN safeguards the financial system from illicit use and money laundering, requiring all financial institutions to file Suspicious Activity Reports (SARs) for marijuana transactions even in states where marijuana is legal.

Provisional license holders will invest more than \$500,000,000 in Ohio's medical marijuana program during phase one alone. Future cultivation license holder investments during expansion phases two and three could exceed \$1B. Communication between license holders and the Department of Commerce regarding banking challenges is ongoing which is why the legislature initiating HB 495 was a surprise. Provisional license holders have the most to lose and we are confident the department of commerce has the best interests of the program at heart. If the collective goal remains to provide alternatives to opioids



and illegal drugs while improving our economy and quality of life for Ohio patients, HB 495 is not the solution.

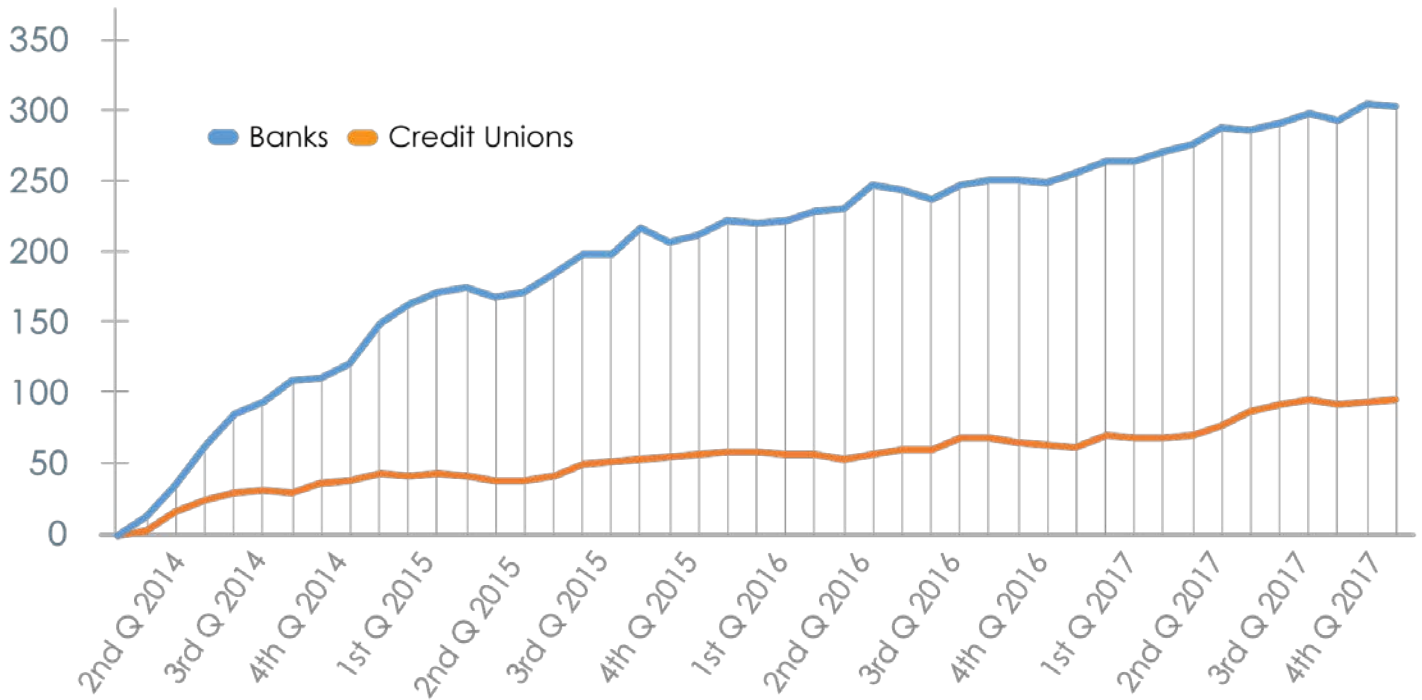
We respectfully request putting HB 495 back in the box. Allow the committed entities to pursue traditional banking solutions that are becoming more available by the day. For example, the US Senate is considering an amendment (SA.2107) to a bill (S.2155) that would restrict federal regulators from “prohibiting, penalizing, or otherwise discouraging a depository institution from providing financial services to a cannabis-related legitimate business.” A proactive step confirming our collaboration would be a joint resolution, perhaps sponsored by this committee, supporting this federal legislation.

Thank you for allowing me to testify I will do my best to answer your questions.

Mel Kurtz
Principal

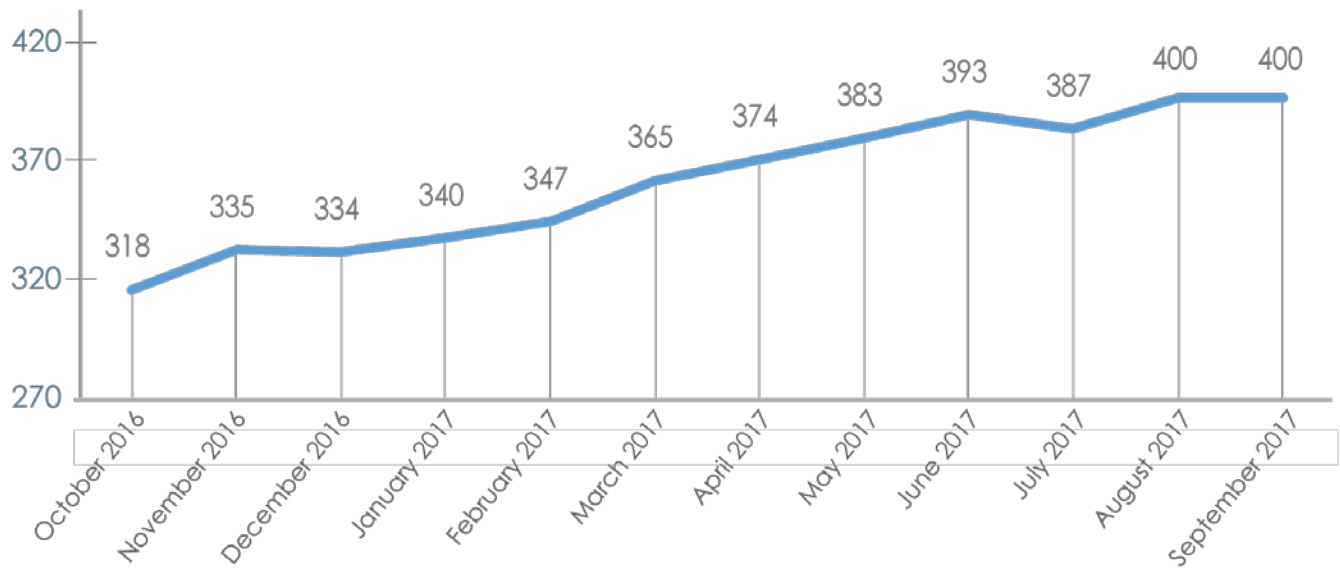
Marijuana Banking Update

Depository Institutions (by type) Providing Banking Services to Marijuana Related Businesses¹
 (Data ending 30 September 2017)



Short term declines in the number of depository institutions actively providing banking services to marijuana related businesses may be explained by filers exceeding the 90 day follow-on Suspicious Activity Report (SAR) filing requirement. Several filers take 180 days or more to file a continuing activity report. After 90 days, a depository institution is no longer counted as providing banking services until a new guidance-related SAR is received.

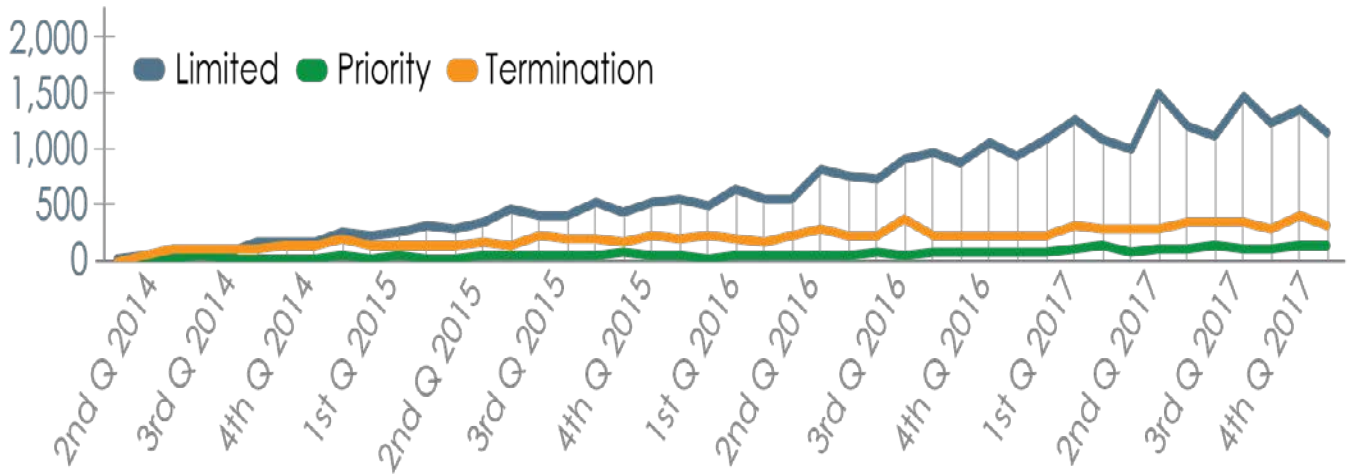
**Number of Depository Institutions Actively Banking Marijuana Businesses in the United States
(Reported in SARs)**



As of 30 September 2017, FinCEN received a total of 39,025 SARs using the key phrases associated with MRBs. Several of the SARs contain more than one key phrase, which accounts for the numbers for each key phrase being greater than the total.

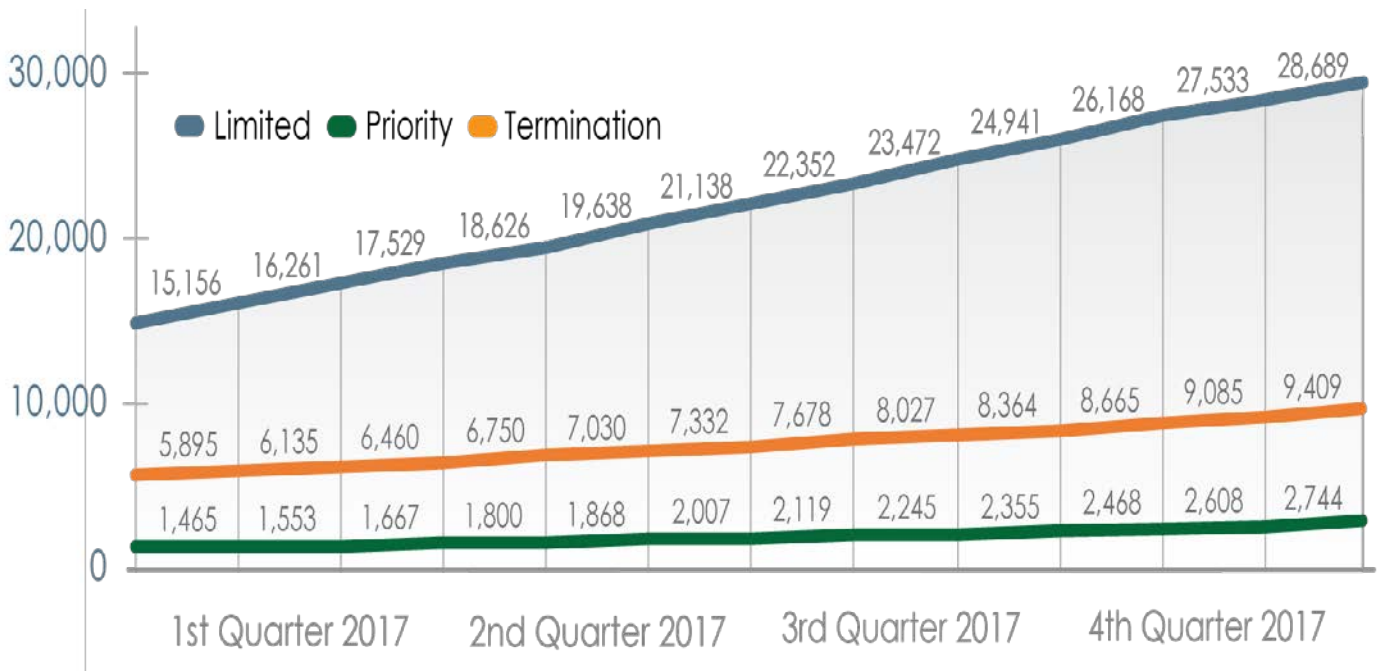
- FinCEN received 28,689 SARs from filers in 50 states, the District of Columbia, the U.S. Virgin Islands, and the Commonwealth of Puerto Rico using the key phrase "Marijuana Limited."
- FinCEN received 2,744 SARs from filers in 44 states, the District of Columbia, and the Commonwealth of Puerto Rico using the key phrase "Marijuana Priority."
- FinCEN received 9,409 SARs from filers in 50 states, the District of Columbia, and the Commonwealth of Puerto Rico using the key phrase "Marijuana Termination."

Monthly Totals for Marijuana Guidance Reports by Key Phrase



FY Quarters

Cumulative Totals for Marijuana Guidance Reports by Key Phrase



FY Quarters

¹ FinCEN guidance specifies three phrases for describing a financial institution's relationship to marijuana related businesses in Suspicious Activity Reports (SARs):

- The **Marijuana Limited** filing means the financial institution's due diligence indicates that the marijuana related business does not raise any of the red flags as defined in the Cole Memo and is compliant with the appropriate state's regulations regarding marijuana businesses. The financial institution is providing banking services to the marijuana related business.
- The **Marijuana Priority** filing means the financial institution's due diligence indicates that the marijuana related business may raise one or more of the red flags as defined in the Cole Memo or may not be fully compliant with the appropriate state's regulations regarding marijuana related businesses. The financial institution is providing banking services to the marijuana related business while further investigation is being conducted.
- The **Marijuana Termination** filing means the financial institution decided to terminate its relationship with the marijuana related business for one or more of the following reasons:
 - The financial institution's due diligence indicates that the marijuana related business raises one or more of the red flags as defined in the Cole Memo.
 - The marijuana related business is not fully compliant with the appropriate state's regulations.
 - The financial institution has decided not to have marijuana related customers for business reasons.

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MAR 8, 2018 @ 10:58 AM 24,735 👁

Senate Could Vote To Let Marijuana Businesses Use Banks This Week



Tom Angell, CONTRIBUTOR

I cover the policy and politics of marijuana [FULL BIO](#) ▾

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A bipartisan group of senators is stepping up the push to let marijuana businesses store their profits in banks, with a possible vote coming as soon as this week.



PHOTO: TOM SYDOW

PHOTO: TOM SYDOW

Under the current federal prohibition of cannabis, many banks refuse to do businesses with marijuana growers, processors and sellers that operate legally in accordance with a growing number of state laws. As a result, many cultivators and dispensaries operate on a cash-only basis, which makes them targets for robberies.

That could soon change under a proposal that ten U.S. senators filed on Wednesday.

The measure, led by Sens. Jeff Merkley (D-OR) and Lisa Murkowski (R-AK), would prevent federal officials from punishing a financial service provider "solely because the depository institution provides or has provided financial services to a cannabis-related legitimate business."


It is an amendment to a larger bill being considered on the Senate floor this week that would remove some restrictions that were enacted on financial institutions as part of the 2010 Dodd-Frank Act.

Despite a U.S. Department of Justice move in January to undo protections for state marijuana laws, a top Trump administration official has repeatedly indicated he wants to solve cannabis businesses' banking access problems.

[Treasury Sec. Steven Mnuchin](#), in an appearance before a House committee last month, testified that the issue is at the "top of the list" of his department's concerns.

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During a separate House hearing last month, Mnuchin indicated he [wants cannabis businesses](#) to be able to store their profits in banks.

“I assure you that we don’t want bags of cash,” he said. “We do want to find a solution to make sure that businesses that have large access to cash have a way to get them into a depository institution for it to be safe.”

Prior to being confirmed by the Senate last year, Mnuchin said in response to [written questions](#) from a senator that marijuana businesses' banking and tax issues are "very important."

In 2014, under the Obama administration, the Treasury Department’s Financial Crimes Enforcement Network (FinCEN) published a memo outlining how banks can open accounts for cannabis businesses without triggering federal enforcement

actions. But because the document did not change overarching federal laws, many banks have remained reluctant to work with marijuana providers.

In January, [U.S. Attorney General Jeff Sessions rescinded](#) a broader Obama-era policy that had generally allowed states to implement their own marijuana laws without Justice Department interference. That decision spurred concern that the Trump administration will delete the banking memo too.

Late in January, a Treasury official [wrote in a letter to lawmakers](#) that the department is “consulting with law enforcement” about whether to keep the cannabis guidance for depository institutions.

The policy remains in effect for now, a Mnuchin deputy [testified at a Senate hearing](#).

Along with Merkley and Murkowski, the other cosponsors of the new cannabis banking amendment are Sens. Patty Murray (D-WA), Ron Wyden (D-OR), Rand Paul (R-KY), Michael Bennet (D-CO), Edward Markey (D-MA), Elizabeth Warren (D-MA), Bernie Sanders (I-VT) and Kamala Harris (D-CA).

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Similar [standalone legislation](#) has 15 Senate cosponsors, while a [House companion](#) version has 89 lawmakers signed on.

It is currently unknown if the measure will receive a floor vote as part of the consideration of the broader banking reform bill.

Documents released by FinCEN late last year showed that the number of banks willing to work with the marijuana industry has [steadily grown over time](#), but that data was compiled prior to the revocation of the Justice Department guidance on state cannabis laws.

Read the full text of the bipartisan marijuana banking amendment below:

[SA 2107](#). Mr. MERKLEY (for himself, Ms. Murkowski, Mrs. Murray, Mr. Wyden, Mr. Paul, Mr. Bennet, Mr. Markey, Ms. Warren, Mr. Sanders, and Ms. Harris) submitted an amendment intended to be proposed by him to the bill [S. 2155](#), to promote economic growth, provide tailored regulatory relief, and enhance consumer protections, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. SECURE AND FAIR ENFORCEMENT BANKING.

(a) Short Title.--This section may be cited as the ``Secure and Fair Enforcement Banking Act'' or the ``SAFE Banking Act''.

(b) Safe Harbor for Depository Institutions.--A Federal banking regulator may not--

(1) terminate or limit the deposit insurance or share insurance of a depository institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) or the Federal Credit Union Act (12 U.S.C. 1751 et seq.) solely because the depository institution provides or has provided financial services to a cannabis-related legitimate business;

(2) prohibit, penalize, or otherwise discourage a depository institution from providing financial services to a cannabis-related legitimate business or to a State or Indian tribe that exercises jurisdiction over cannabis-related legitimate businesses;

(3) recommend, incentivize, or encourage a depository institution not to offer financial services to the owner, operator, or an individual that is an account holder of a cannabis-related legitimate business, or downgrade or cancel financial services offered to an account holder of a cannabis-related legitimate business solely because--

(A) the account holder later becomes a cannabis-related legitimate business; or

(B) the depository institution was not aware that the account holder is the owner or operator of a cannabis-related legitimate business; and

(4) take any adverse or corrective supervisory action on a loan to an owner or operator of--

(A) a cannabis-related legitimate business solely because the business owner or operator is a cannabis-related business without express statutory authority, as in effect on the day before the date of enactment of this Act; or

(B) real estate or equipment that is leased or sold to a cannabis-related legitimate business solely because the owner or operator of the real estate or equipment leased or sold the equipment or real estate to a cannabis-related legitimate business.

(c) Protections Under Federal Law.--

(1) In general.--In a State, political subdivision of a State, or Indian country that allows the cultivation, production, manufacturing, transportation, display,

dispensing, distribution, sale, or purchase of cannabis pursuant to a law (including regulations) of the State, political subdivision of the State, or the Indian tribe that has jurisdiction over the Indian country, as applicable, a depository institution and the officers, director, and employees of the depository institution that provides financial services to a cannabis-related legitimate business may not be held liable pursuant to any Federal law (including regulations)--

(A) solely for providing the financial services pursuant to the law (including regulations) of the State, political subdivision of the State, or Indian tribe; or

(B) for further investing any income derived from the financial services.

(2) Forfeiture.--A depository institution that has a legal interest in the collateral for a loan made to an owner or operator of a cannabis-related legitimate business, or to an owner or operator of real estate or equipment that is leased or sold to a cannabis-related legitimate business, shall not be subject to criminal, civil, or administrative forfeiture of that legal interest pursuant to any Federal law for providing the loan or other financial services solely because the collateral is owned by a cannabis-related business.

(d) Rule of Construction.--Nothing in this section shall require a depository institution to provide financial services to a cannabis-related legitimate business.

(e) Requirements for Filing Suspicious Activity Reports.--Section 5318(g) of title 31, United States Code, is amended by adding at the end the following:

``(5) Requirements for cannabis-related businesses.--

``(A) Definitions.--In this paragraph--

``(i) the term `cannabis' has the meaning given the term `marihuana' in section 102 of the Controlled Substances Act (21 U.S.C. 802);

``(ii) the term `cannabis-related legitimate business' has the meaning given the term in section 6 of the SAFE Banking Act;

``(iii) the term `financial service' means a financial product or service, as defined in section 1002 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5481);

` `(iv) the term `Indian country' has the meaning given the term in section 1151 of title 18; and

` `(v) the term `Indian tribe' has the meaning given the term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

` `(B) Reporting of suspicious transactions.--A financial institution or any director, officer, employee, or agent of a financial institution that reports a suspicious activity related to a transaction by a cannabis-related legitimate business shall comply with appropriate guidance issued by the Financial Crimes Enforcement Network. The Secretary shall ensure that the guidance is consistent with the purpose and intent of the SAFE Banking Act and does not inhibit the provision of financial services to a cannabis-related legitimate business in a State, political subdivision of a State, or Indian country that has allowed the cultivation, production, manufacturing, transportation, display, dispensing, distribution, sale, or purchase of cannabis, or any other conduct relating to cannabis, pursuant to law or regulation of the State, the political subdivision of the State, or Indian tribe that has jurisdiction over the Indian country."

(f) Definitions.--In this section:

(1) Cannabis.--The term `cannabis" has the meaning given the term `marihuana" in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(2) Cannabis product.--The term `cannabis product" means any article which contains cannabis, including an article which is a concentrate, an edible, a tincture, a cannabis-infused product, or a topical.

(3) Cannabis-related legitimate business.--The term `cannabis-related legitimate business" means a manufacturer, producer, or any person or company that--

(A) engages in any activity described in subparagraph (B) pursuant to a law established by a State or a political subdivision of a State; and

(B)(i) participates in any business or organized activity that involves handling cannabis or cannabis products, including cultivating, producing, manufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing cannabis or cannabis products; or

(ii) provides--

(I) any financial service, including retirement plans or exchange traded funds, relating to cannabis; or

(II) any business services, including the sale or lease of real or any other property, legal or other licensed services, or any other ancillary service, relating to cannabis.

(4) Company.--The term ``company" means a partnership, corporation, association, (incorporated or unincorporated), trust, estate, cooperative organization, State, or any other entity.

(5) Depository institution.--The term ``depository institution" means--

(A) a depository institution as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

(B) a Federal credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752); or

(C) a State credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(6) Federal banking regulator.--The term ``Federal banking regulator" means each of the Board of Governors of the Federal Reserve System, the Bureau of Consumer Financial Protection, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, or any Federal agency or department that regulates banking or financial services, as determined by the Secretary of the Treasury.

(7) Financial service.--The term ``financial service" means a financial product or service, as defined in section 1002 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5481).

(8) Indian country.--The term ``Indian country" has the meaning given the term in section 1151 of title 18, United States Code.

(9) Indian tribe.--The term ``Indian tribe" has the meaning given the term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

(10) Manufacturer.--The term ``manufacturer" means a person or company who manufactures, compounds, converts, processes, prepares, or packages cannabis or

cannabis products.

(11) Producer.--The term "producer" means a person or company who plants, cultivates, harvests, or in any way facilitates the natural growth of cannabis.

(12) State.--The term "State" means each of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States.

Tom Angell publishes [Marijuana Moment](#) news and founded the nonprofit [Marijuana Majority](#). Follow Tom on [Twitter](#) for breaking news and [subscribe to his daily newsletter](#).