



TESTIMONY OF AARON SMITH

*OF THE*

NATIONAL CANNABIS INDUSTRY ASSOCIATION

*BEFORE THE*

UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCIAL INSTITUTIONS

“CHALLENGES AND SOLUTIONS: ACCESS TO BANKING SERVICES FOR CANNABIS-RELATED  
BUSINESSES”

FEBRUARY 13, 2019

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**Introduction:**

Chairman Meeks, Ranking Member Luetkemeyer, and members of the Subcommittee, I am Aaron Smith, Executive Director and Co-Founder of the National Cannabis Industry Association (NCIA), the largest national trade association dedicated to protecting state-legal cannabis businesses, defending state laws, and advancing federal policy reforms. On behalf of our members, we thank you for the opportunity to discuss our support for providing fair access to banking and financial services for state-licensed cannabis cultivators, processors, and retailers throughout the country.

Founded in 2010, NCIA represents nearly 2,000 member-businesses and tens of thousands of cannabis professionals committed to replacing criminal marijuana markets with a responsible and regulated cannabis industry.

Currently, our industry supports hundreds of thousands of jobs, tens of millions in tax revenue, and billions in economic activity. In 2017, the five states that had taxed and regulated adult-use sales (Alaska, Colorado, Nevada, Oregon, and Washington) collected more than \$790 million in state tax revenue that year. However, per current federal law, cannabis remains a Schedule I drug under the Controlled Substances Act. This blocks state-licensed cannabis business and firms providing ancillary products or services to the industry from accessing banking services, forcing them to operate in an all-cash environment. This situation not only creates an unnecessary public safety risk, it poses an undue burden on state and local tax and licensing authorities, which are forced to take large cash payments. These taxes and licensing fees fund the enforcement of state marijuana laws as well as school construction, drug education activities, and infrastructure programs.

After nearly a decade of significant regulatory changes at the state level, now is the time to conduct a universal review of this federal framework and make changes that would foster greater productivity and transparency. Ending the conflict between state and federal cannabis laws will promote a sound and robust financial system that best supports the economic growth and job creation driven by the growing number of state-licensed cannabis businesses across the country.

**The Current Cannabis Banking Situation:**

To date, forty-six states, the District of Columbia, as well as Guam and Puerto Rico have passed legislation authorizing some form of cannabis for regulated medical or adult-use purposes and thirty-three states have

enacted laws regulating the commercial production and sale of medical or adult-use marijuana. Ten of those states, which include 80 million people, or nearly 25% of the United States' population, have passed laws allowing for the responsible use of cannabis for adults over 21.

Despite significant legal changes and advancement of the status of medical and adult-use cannabis across the country, most banks, credit unions, and financial institutions do not provide traditional banking services to cannabis-related businesses. These denied services include access to standard checking or savings accounts, the ability to receive loans and lines of credit, and the capability to accept common debit and credit cards. As a result, business owners often have no choice but to pay their employees, their federal and state taxes, and process every consumer purchase in cash, in addition to paying for armored trucks to transport the money.

In order to operate safely and successfully, businesses must have access to traditional financial services. For the cannabis industry, which conducts hundreds of millions of dollars in transactions across the majority of U.S. states, the lack of access to financial services creates public safety hazards, including an increased chance of becoming a target for robberies, loss of economic opportunity, and inability to retain workforce talent. Restricting financial services to licensed cannabis businesses also prevents the elimination of illicit businesses currently operating in the grey and black markets. The absence of clarity and direction by the federal government for financial institutions about how to provide banking services for state-legal, licensed cannabis businesses has undoubtedly created undue hardship for cannabis-related entities.

In 2014, to elevate some of the banking challenges associated with the cannabis industry, the U.S. Department of the Treasury's Financial Crime Enforcement Network (FinCEN) issued guidance regarding the conditions under which financial institutions may work with cannabis-related businesses. As a result, some credit unions and regional banks have been providing limited financial services to some cannabis industry businesses. However, the number of banks working with cannabis-related businesses remains marginal in the current context of an emerging global industry. In addition, before the House Financial Services Committee early last year, Treasury Secretary Steve Mnuchin confirmed that the department is reviewing the existing FinCEN guidance and does not want to rescind current guidance without having a replacement policy to address public safety concerns.

NCIA commends the Secretary for keeping the FinCEN guidance in place, especially as more states have passed cannabis-related legislation. However, the FinCEN guidance does not solve the fundamental need for financial institutions to facilitate ordinary banking access and services at standard costs for licensed businesses operating in compliance with state laws. Currently, a cannabis business attempting to open a bank account might be charged \$10,000 to \$1,000,000 in fees per year for excessive compliance and regulatory costs required for a financial institution to successfully follow obligations under federal anti-money-laundering laws. Moreover, many cannabis companies pay initial and annual state and local licensing fees necessary to operate, as well as tax rates of 60% or more because of an arcane provision in the federal tax code. Because of these excessive fees and taxes, the average cannabis-related business often does not have the resources necessary to pursue traditional financial products common to other state-licensed industries.

### **Looking Ahead:**

The U.S. legal medical and adult-use cannabis market is currently estimated to be valued between \$10 and \$11 billion and is expected to grow to \$56 billion by 2025 with the possibility of employing one million individuals. However, the U.S. illicit cannabis market is currently estimated to be near \$30 billion. This

adverse ratio between the legal and illegal cannabis marketplace is a direct result of outdated federal policy toward a responsible industry operating at the state and local level.

Last month, before the Senate Judiciary Committee, Attorney General nominee, William Barr, said he would not go after cannabis-related business in compliance with state law and urged Congress that the legislative process, rather than administrative guidance, is ultimately the right way to resolve whether and how to legalize marijuana. However, until the United States establishes a permanent solution, most-state permitted cannabis-related businesses will continue to operate in a cash-only environment and this will allow the illicit market to exist at unreasonable levels.

As we have seen in states with full adult-use legalization, removing restrictions on cannabis leads to greater financial accountability and transparency, which naturally combats the illicit marketplace. Addressing the challenges associated with a regulatory maze of conflicting federal and state laws will allow state-compliant entities to operate in a fully regulated environment and encourage the expansion of regulated markets, increase consumer safety standards, reduce access to minors and combat illegal trafficking throughout the country.

**Conclusion:**

In conclusion, the cannabis industry has thoroughly evolved into a national commercial enterprise and NCIA expects to see more states enact and expand cannabis laws in the coming year and beyond. State laws that have replaced the criminal markets with systems that provide for the tightly regulated production and sale of cannabis to patients and adults over 21 are working to improve public safety overall -- but, the unnecessary hazards caused by outdated federal banking policies must be resolved in order for our communities to fully realize the public safety benefits of regulation.

I want to thank the Chair, Ranking Member, and the Subcommittee for your time to discuss access to banking services for cannabis-related businesses. This topic is important to all the members of NCIA and the entire legal cannabis industry. On behalf of NCIA, I encourage Congress to update and develop federal policies that will provide clarity and enable reasonable access to banking and financial services for state-licensed cannabis businesses. I again thank the committee for the opportunity to submit testimony today.