



STATE OF OREGON  
OREGON STATE TREASURY  
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June 8, 2015

The Honorable Jacob J. Lew  
Secretary of the Treasury  
Department of the Treasury  
1500 Pennsylvania Ave NW  
Washington, DC 20220

Dear Secretary Lew:

Oregon is in the midst of developing the regulatory structure necessary to support a voter-approved, adult-use marijuana program. The challenges of establishing a safe, regulated program are considerable. In particular, I am concerned by the lack of access to banking services by legal, state-regulated marijuana businesses. The hazards of a growing, cash-only industry are becoming all too real for Oregon. I respectfully call on the Treasury Department to issue new guidance that will result in banking access for Oregon marijuana businesses.

Among my biggest concerns is public safety. Operating exclusively in cash exposes all parties connected to the program – from Oregon growers, to retailers, and even the State – to an excessive amount of risk. Criminals are keenly aware of the large amounts of cash these businesses must carry and transact. Two years ago, a Portland area dispensary was robbed at gunpoint. Today, Oregon's agency in charge of regulating adult-use marijuana is hiring an architect to design a more secure facility to thwart would-be criminals aware of the substantial influx of cash it will process.

Dealing exclusively in cash also reduces transparency in accounting across the industry. This inability to track funds vastly complicates Oregon's efforts to implement an effective regulatory regime that ensures legal compliance and its ability to levy taxes that fund schools, local governments, and law enforcement. Regulatory regimes must catch up with the practical effects of the rapid evolution in public attitudes and policy preferences toward marijuana.

The State of Oregon has closely examined whether it could design a banked, adult-use marijuana program. Many Oregon credit unions and banks have expressed interest in providing financial services to the legal marijuana industry, and legal marijuana businesses want to be customers of those institutions. Notwithstanding these aligned interests, Oregon is all but certain to roll out a largely all-cash program in 2016. The reason: a lack of certainty among financial institutions who risk severe federal consequences for conducting routine business with state-licensed, law-abiding customers.

A recent decision by an Oregon bank illustrates the practical difficulties facing financial institutions. MBank stopped serving its marijuana business accounts in the face of daunting regulatory compliance.

The bank worked closely with state and federal regulators to become the first in Oregon to offer services to marijuana businesses, yet the challenges proved too great. MBank's President and CEO, Jef Baker, acknowledged that the the costs of federal compliance exceeded the resources and capabilities of the bank.<sup>1</sup>

As you know, the Treasury Department and the Department of Justice (DOJ) have acknowledged potential problems and expressed a desire to address them. In February 2014, the Treasury Department's Financial Crimes Enforcement Network ("FinCEN") issued guidance, proclaiming it would "enhance the availability of financial services for marijuana businesses." The financial services industry expected the guidance to provide reasonable safe harbors. They instead concluded that FinCEN's guidance only further highlighted the burdens and risks individual members would need to accept.

FinCEN's guidance requires banks to file suspicious activity reports (SARs) relating to transactions from legal marijuana businesses that are duly licensed under state law. While FinCEN has created a subset of SARs related to legal, state-licensed marijuana businesses, banks still must go far beyond normal banking relationships – including the obligation to verify that those state-regulated customers aren't selling to minors or transporting marijuana to states where possession is illegal, as Oregon law already prohibits. The net effect is a de facto requirement that financial institutions police potential customers and willingly accept liability for any illegal activity by that customer even where it is unreasonable for the institution to know of that activity.

The ultimate solution on this issue will – and indeed must – come from Congressional action. However, the pervasive lack of access to financial services for the marijuana industry demands more immediate actions. While Treasury was well intentioned in bringing financial operations out of the shadows with its 2014 guidance, the goal has not been met and the problems will only grow worse. Banks need assurances that accepting legal marijuana customers will not put their charters in jeopardy, diminish access to federal deposit insurance, or otherwise imperil relationships with federal banking regulators. The more certainty you can give banks and credit unions, the less states and communities will experience the high costs of an all-cash business.

I appreciate your consideration of this important issue.

Sincerely,



Ted Wheeler  
Oregon State Treasurer

cc:

Janet Yellin – Chairman, Board of Governors of the Federal Reserve  
Martin Gruenberg – Chairman, Federal Deposit Insurance Corporation  
Jennifer Shasky Calvery – Director, Financial Crimes Enforcement Network  
Thomas J. Curry – Comptroller of the Currency  
Debbie Matz – Chairman, National Credit Union Administration

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<sup>1</sup> Aaron Mesh, *MBank is Closing its Marijuana Bank Accounts*, WWeek, Apr 10, 2014.  
[http://www.wweek.com/portland/blog-33062-mbank\\_is\\_closing\\_its\\_marijuana\\_bank\\_accounts.html](http://www.wweek.com/portland/blog-33062-mbank_is_closing_its_marijuana_bank_accounts.html)