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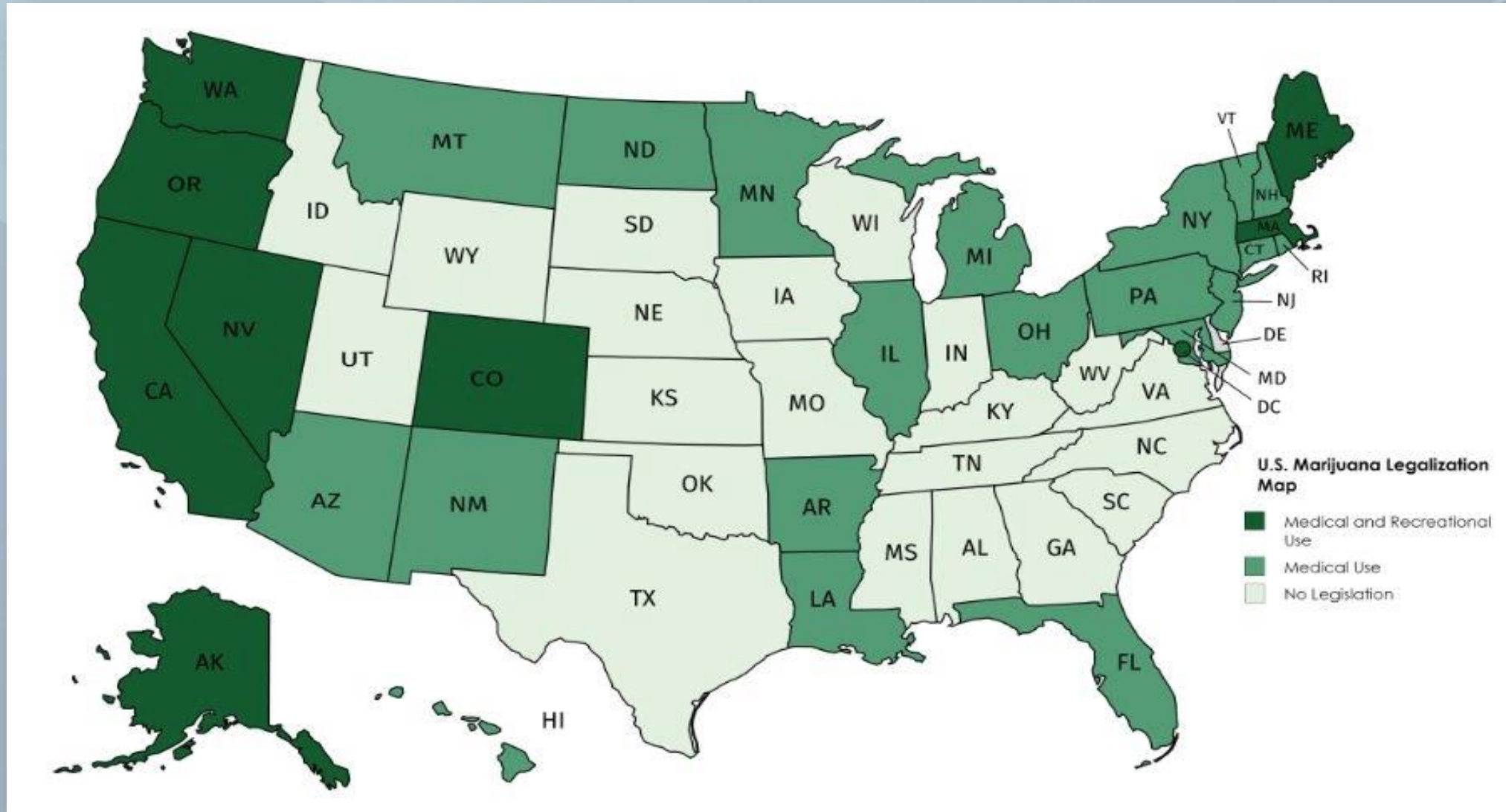
Banking & Marijuana

Presented by Zane Gilmer

January 11, 2018



Marijuana Landscape Post 2016 Election



Additional States Considering Legalization in 2018 and Beyond

Arizona (again)

Vermont

New Jersey

Michigan

Rhode Island

Connecticut



Marijuana Industry at a Glance

	2015	2016	2017	Prediction
California	\$2.7 billion	\$2.7 billion	\$2.76 billion	\$6-7 billion
Colorado	\$996 million	\$1.3 billion	\$1.16 billion (through Sept.)	\$1.5-2 billion
National	\$5.7 billion	\$6.7 billion	\$7.0 billion	\$24 billion



Consolidated Appropriations Act of 2017 “Rohrabacher-Farr” Amendment

SEC. 537.

None of the funds made available in this Act to the Department of Justice may be used, with respect to any of the States of Alabama, Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, or with respect to the District of Columbia, Guam, or Puerto Rico, to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Statement by President Donald J. Trump on Signing H.R. 244 into Law

“Division B, section 537 provides that the Department of Justice may not use any funds to prevent implementation of medical marijuana laws by various States and territories. I will treat this provision consistently with my constitutional responsibility to take care that the laws be faithfully executed.”



U.S. v. McIntosh (9th Cir. Aug. 16, 2016)

Section 542 prohibits DOJ from spending money on actions that prevent medical marijuana states from giving practical effect to their state laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

By prosecuting state-authorized medical marijuana users, DOJ, without taking any legal action against the medical marijuana states themselves, prevents them from implementing their laws that authorize the use, distribution, possession, or cultivation of medical marijuana by prosecuting individuals for those actions.

If the federal government prosecutes such individuals, it prevents the state from giving practical effect to its law providing for non-prosecution of individuals who engage in the permitted conduct.

Holding: Section 542 prohibits DOJ from spending funds from relevant appropriations for the prosecution of individuals who engage in conduct permitted by state marijuana laws.

See also U.S. v. Marin Alliance for Medical Marijuana (D.Cal. Oct. 19, 2015)



Safe Streets RICO Lawsuit (10th Cir. June 7, 2017)



- Anti-marijuana interest group Safe Streets sued marijuana operators and those that did business with them alleging RICO violations
- Safe Streets also sued Governor Hickenlooper and other city and state marijuana licensing authorities arguing preemption
- Federal district court dismissed and Safe Streets appealed
- Tenth Circuit reversed, holding that Safe Streets sufficiently pled civil RICO claims against defendants, specifically that the alleged RICO activity decreased Plaintiff's property value
- Tenth Circuit affirmed dismissal against state and city authorities

OTHER CASES: *Justin Smith v. Hickenlooper* (no standing for preemption); Nebraska and Oklahoma as intervenors (U.S. Supreme Court has jurisdiction)

RICO Cases Beyond Colorado



- *McCart v. Beddow, et al.* (D. Ore. June 13, 2017)
 - 43 defendants
 - Property owners
 - Marijuana entities and owners operating at property
 - City and state agencies
 - Bank that holds mortgage on property
 - Claims include RICO, trespass, and nuisance
 - Currently at motion to dismiss stage
 - Bank's MTD = not active participant in marijuana activity
- *Crimson Galeria Limited Partnership v. Healthy Pharms, Inc., et al.* (D. Mass. Sept. 7, 2017)
 - 19 defendants
 - Property owners
 - Marijuana entities and owners
 - Investors
 - City and state agencies
 - Bank that allegedly provides banking services to marijuana operator
 - Currently at motion to dismiss stage
 - Bank's MTD = not active participant in marijuana activity; following FinCEN guidance; not proximate cause of alleged harm/damage

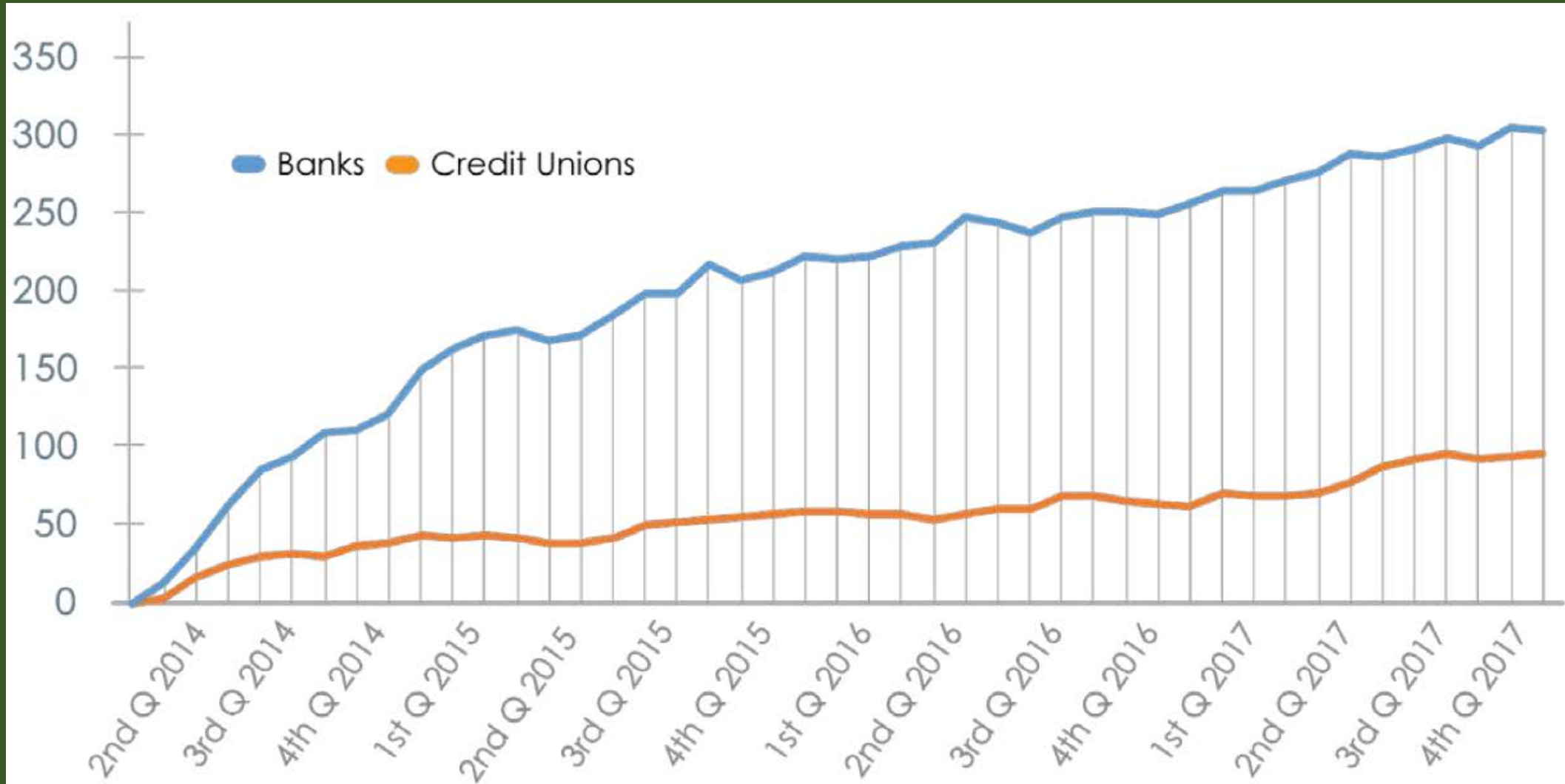
Fourth Corner Credit Union v. Federal Reserve Bank of Kansas City (10th Cir. June 27, 2017)

- Fourth Corner obtained Colorado state credit union charter to provide services to the marijuana industry
- Fourth Corner sued Fed. Reserve after being denied master account
- Colorado federal district court dismissed lawsuit and Fourth Corner appealed to Tenth Circuit
- Three judge panel of Tenth Circuit wrote separate opinions
 - Dismissal with prejudice, because activity violates CSA
 - Dismissal without prejudice, because issue not ripe
 - Reverse dismissal, because court should assume Fourth Corner would follow the law

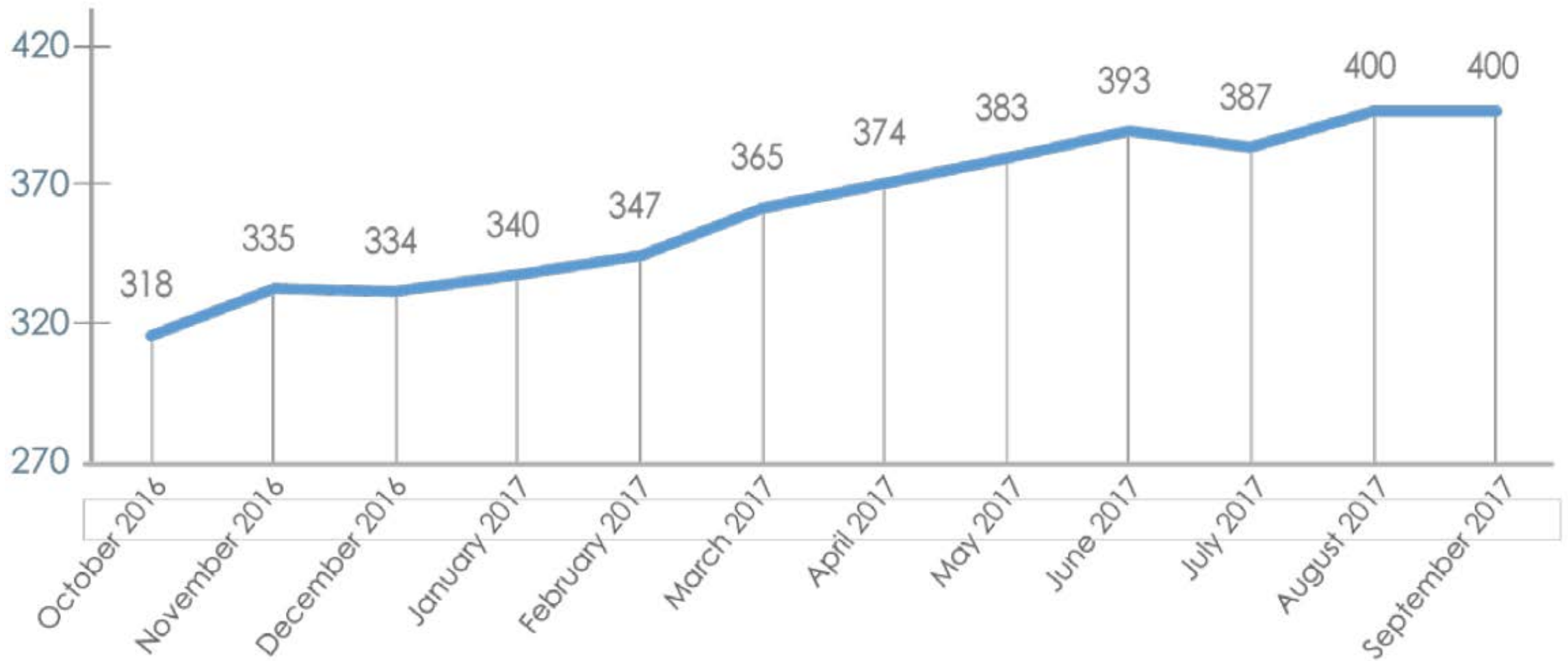
Outcome = Dismissed, but Fourth Corner can file new application for master account

FinCEN Marijuana Banking (Q3 2017)

Institutions by Type Providing Services to MRBs



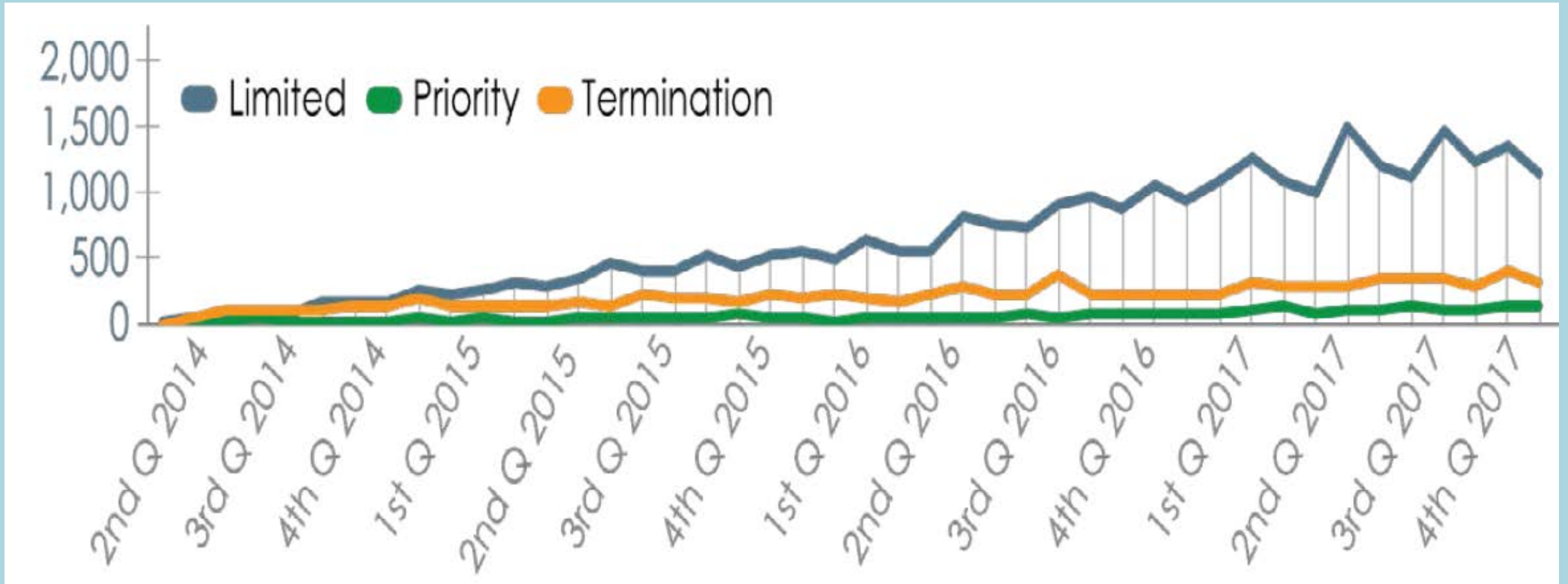
Source: FinCEN Q3 2017 Marijuana Banking Update



Source: FinCEN Q3 2017 Marijuana Banking Update

FinCEN Marijuana Banking (Q3 2017)

Monthly MRB SARs by Type



SARs by the Numbers Through September 2017

28,689 “Marijuana Limited” SARs filed from all 50 states, the District of Columbia and Puerto Rico

2,744 “Marijuana Priority” SARs filed from 44 states, the District of Columbia and Puerto Rico

9,409 “Marijuana Termination” SARs filed from 50 states, the District of Columbia and Puerto Rico

Recent Marijuana Enforcement Action

- On December 14, 2017, Denver Police raided eight Sweet Leaf marijuana center locations
- Allegations of selling marijuana in excess of 1 ounce limit (“Looping”)
- The Denver Department of Excise and Licenses suspended 26 licenses held by Sweet Leaf for medical, retail, cultivation, and extraction operations
- 13 Sweet Leaf employees arrested



Attorney General Sessions' Rescission of DOJ Marijuana-Related Guidance

- January 4, 2018
- Rescinded all prior DOJ marijuana-related guidance
- Congress has determined that marijuana is dangerous drug and anti-money laundering is important
- Prosecutors should follow well-established principles that govern all federal prosecutions as set forth in U.S. Attorneys' Manual
- "These principles require federal prosecutors deciding which cases to prosecute to weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes in the community."
- No need for marijuana specific guidance



DOJ Marijuana-Related Guidance Rescinded

- David W. Ogden, Deputy Att’y Gen., [Memorandum for Selected United States Attorneys: Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana](#) (Oct. 19, 2009)
- James M. Cole, Deputy Att’y Gen., [Memorandum for United States Attorneys: Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use](#) (June 29, 2011)
- James M. Cole, Deputy Att’y Gen., [Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement](#) (Aug. 29, 2013)
- James M. Cole, Deputy Att’y Gen., [Memorandum for All United States Attorneys: Guidance Regarding Marijuana Related Financial Crimes](#) (Feb. 14, 2014)
- Monty Wilkinson, Director of the Executive Office of U.S. Att’ys, [Policy Statement Regarding Marijuana Issues in Indian Country](#) (Oct. 28, 2014)



Office of the Attorney General
Washington, D. C. 20530

January 4, 2018

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: Jefferson B. Sessions, III
Attorney General

A blue ink signature of Jefferson B. Sessions, III, written over the name in the "FROM:" field.

SUBJECT: Marijuana Enforcement

Now What?

More Federal Investigations and Prosecutions?

- Sessions' action removes hurdle for local federal prosecutors
- Inconsistency between U.S. Attorney Districts
- Overzealous prosecutor uncertainty
- "Rohrabacher-Blumenauer" Amendment



U.S. Attorney for the District of Colorado Bob Troyer

“Today the Attorney General rescinded the Cole Memo on marijuana prosecutions, and directed that federal marijuana prosecution decisions be governed by the same principles that have long governed all of our prosecution decisions. The United States Attorney’s Office in Colorado has already been guided by these principles in marijuana prosecutions -- focusing in particular on identifying and prosecuting those who create the greatest safety threats to our communities around the state. We will, consistent with the Attorney General’s latest guidance, continue to take this approach in all of our work with our law enforcement partners throughout Colorado.”

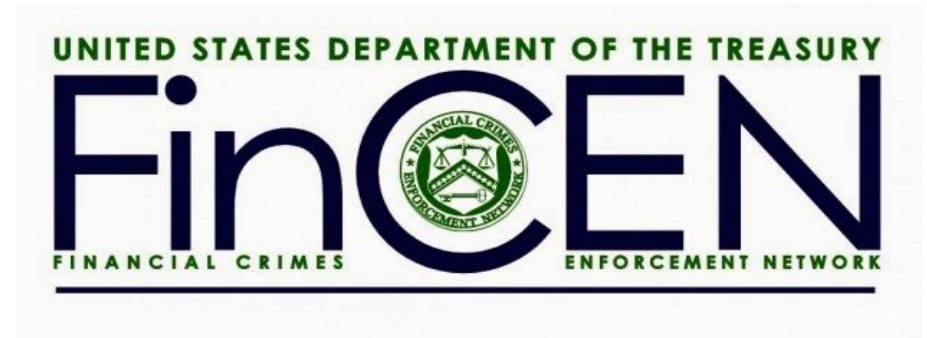


THE UNITED STATES ATTORNEY'S OFFICE
DISTRICT *of* COLORADO

What Now?

Was FinCEN's Marijuana Guidance Rescinded?

- FinCEN guidance relies on DOJ guidance
- SARs filing requirements largely dependent on DOJ enforcement priorities
- “FinCEN works closely with law enforcement and the financial sector to combat illicit finance and provide relevant information that allows law enforcement to pursue their priorities. We will continue to work with DOJ and other stakeholders on this issue.”



Challenges for participating AND non participating institutions

- Significant uncertainty with the industry
- Clear Policies and procedures
- Employee training
- What it means to participate or not
- Marijuana-related businesses create challenges
 - Defining an MRB
 - Identifying MRBs at outset of relationship
 - Depository and lending services for MRBs
 - Real estate / collateral concerns
 - Cross border accounts

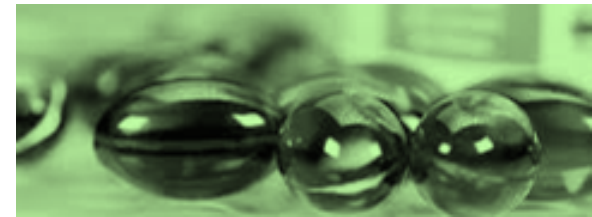


Hemp Overview

Hemp legalized in Colorado in 2014 as part of legislation concerning recreational marijuana (Amendment 64, section 16(d))

Hemp “includes the plant *Cannabis sativa* L. and any part or derivative of such plant, including seeds of such plant, whether growing or not, that is used exclusively for industrial purposes (fiber and seed) with a tetrahydrocannabinols concentration of not more than 0.3 percent on a dry weight basis.”

Many uses for hemp, including fibers and CBD oil



Hemp Law Overview

- President Obama signed the Agricultural Act of 2014 (a/k/a the 2014 Farm Bill)
- Notwithstanding CSA, an institution of higher education or State department of agriculture may grow or cultivate industrial hemp if:
 - The industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and
 - The growing or cultivation of the industrial hemp is allowed under the laws of the State in which such institution of higher education or State department of agriculture is located and the research occurs.



August 2016 Statement of Principles on Industrial Hemp

- Issued by USDA, DEA, DOJ, FDA, and HHS to interpret how federal law applies to 2014 Farm Bill
- Conduct is limited to growth and cultivation by an institution of higher education or State department of agriculture for purposes of agricultural or other academic research or under the auspices of a State agricultural pilot program for the growth, cultivation, or marketing of industrial hemp.
- Section 7606 did not remove industrial hemp from the controlled substances list. Therefore, Federal law continues to restrict hemp-related activities, to the extent that those activities have not been legalized under section 7606.

Hemp Law Overview (Cont.)

- Fertilizer Access and Responsible Management (FARM) Act of 2016
 - Essentially reaffirms 2014 Farm Bill
- Funding restrictions for enforcement actions concerning activity in compliance with Farm Act
- Industrial Hemp Farming Act of 2017
 - Bipartisan bill that would remove hemp from CSA



Hemp by the Numbers

33

- 33 states have enacted some form of hemp-specific legislation
- Hemp farm acreage = 23,343 nationwide; 7,500 Colorado
- Nearly 500 registered hemp farmers in Colorado through October 2017
 - Approximately 95% of farmers focus on CBD oil
- Nationwide sales grew from \$108 million in 2014 to \$358 million in 2017
 - By 2022, sales may reach \$1.8 billion

\$1.8



Key Colorado Hemp Legislation/Laws

Colorado S.B. 184 (2014): created an Industrial Hemp Grant Research Program for state universities to research and develop hemp strains that are best suited for industrial applications and develop new seed strains

Colorado S.B. 109 (2017): directed commissioner of agriculture to create a group to study the feasibility of hemp products use in animal feed

Colorado S.B. 117 (2017): permits Colorado water rights-holders to use their water to grow industrial hemp for commercial or research purposes

- Bureau of Reclamation prohibits water from being used for federally controlled substances

C.R.S. 35-61-101 to 109 (2016)

- Permits hemp cultivation for commercial and research purposes to be overseen by Industrial Hemp Committee under the Dept. of Ag.
 - Dept. of Ag. Only regulates cultivation of hemp, not processing, sale, or distribution
- Establishes seed certification program
- Establishes a grant program for state institutions of higher education for research of new seed varieties

Bottom Line on Hemp

Cultivation is generally prohibited under federal law

Limited CSA carve out for state higher education and departments of agriculture to grow the crop for research and pilot programs

Commercial production and sales may be beyond scope of Farm Bill

Hemp-derived products are legal to purchase

In sum, the law is murky

Questions?





ZANE A. GILMER

STINSON LEONARD STREET

303.376.8416 | www.stinson.com

zane.gilmer@stinson.com



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