Proposed U.S. Federal Cannabis Legislation: Briefing on the SAFE Act and STATES Act

Visual Memorandum

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Introduction

- This memorandum provides a basic briefing on two proposed laws:
  - The **Secure and Fair Enforcement Banking Act** (the **SAFE Act**); and
  - The **Strengthening the Tenth Amendment Through Entrusting States Act** (the **STATES Act**).
- Neither bill would federally legalize cannabis or deschedule cannabis from Schedule 1 of the **Controlled Substances Act** (**CSA**).
- Instead, the bills would permit depository institutions, in the case of the SAFE Act, or financial institutions, in the case of the STATES Act, to provide financial services to cannabis-related businesses (**CRBs**) that comply with state laws regulating legalized cannabis-related activity.
- Both bills would benefit from changes that would take into account a broader range of financial services or the realities of possible diligence in the financial sector.
- This memorandum assumes familiarity with the basic legal background of the **Bank Secrecy Act** (**BSA**), CSA, and **Money Laundering Control Act** (**MLCA**) (for reference, see **Appendix A**).

Challenges under the Existing Legal Framework
Overview

- **Changing State Laws and Static Federal Laws Related to Cannabis Are Creating an Unstable Situation.**
  - An increasing number of states are legalizing or have legalized some form of cannabis usage.
  - Canada legalized recreational cannabis, effective on October 17, 2018.
  - Cannabis remains a Schedule 1 drug under U.S. Federal law, and U.S. anti-money laundering (**AML**) provisions continue to apply.
- **The Vast Majority of U.S. Financial Institutions Are Avoiding Direct Business with State-Licensed CRBs.**
  - Relying on existing federal protections remains perilous.
    - Federal agency guidance (discussed in **Appendix A**), such as the guidance issued by the Financial Crimes Enforcement Network (**FinCEN**) in 2014 (the **FinCEN Guidance**), is non-binding and revocable, as seen with the rescission of the **2014** and **2013 Cole Memos**.
  - But avoiding indirect business with state-licensed CRBs and foreign CRBs operating legally will become more challenging for a wider range of U.S. financial institutions if federal law remains static.
    - How do financial institutions make decisions around **indirect business**—conducting business with parties that conduct business with the U.S. cannabis sector? What, if any, diligence must they conduct in these circumstances?
      - *See* Loren Picard, *You already bank the pot industry. You just don't know it*, AMERICAN BANKER (June 30, 2017).
    - How do financial institutions deal with **Canadian CRBs**?

Challenges under the Existing Legal Framework
Calls for Congressional Reform at the Federal Level

- Calls for federal legislative clarity for the financial sector on cannabis-related banking have been made by members of Congress and certain government officials in both political parties, including:
  - **Representative Maxine Waters** (D-CA)—the Chairwoman of the House Financial Services Committee—said that "it's inevitable we are going to have to talk about" this issue.
  - **Representative Denny Heck** (D-WA) said, "We now have I think close to a majority of the nation's population that lives in states where some form of access to marijuana is legal. . . . The businesses that either grow it or process it or retail it are operating under this terrible cloud because banks and credit unions aren't quite sure what the federal regulators will do to them if they provide those services."
  - **Treasury Secretary Steven Mnuchin** said, "We do want to find a solution to make sure that [cannabis] businesses that have large access to cash have a way to get them into a depository institution for it to be safe."
  - **Federal Reserve Board Chairman Jerome Powell** said that the existing legal framework "puts federally chartered banks in a difficult situation" and "it would be great if that could be clarified."
  - **Comptroller of the Currency Joseph Otting** said, "Congress is going to have to act at the national level to legalize marijuana if they want those entities involved in that business to utilize the U.S. banking system."

Challenges under the Existing Legal Framework
Calls for Congressional Reform at the Federal Level

"The **final step** in providing banking services to the cannabis industry is removing federal legal and regulatory roadblocks. **This is the end game** which would allow cannabis to be treated like other cash-intensive regulated industries. . . . The road to removal of federal restrictions is long and hard. It demands policy changes by Congress, the executive branch, and regulatory agencies."

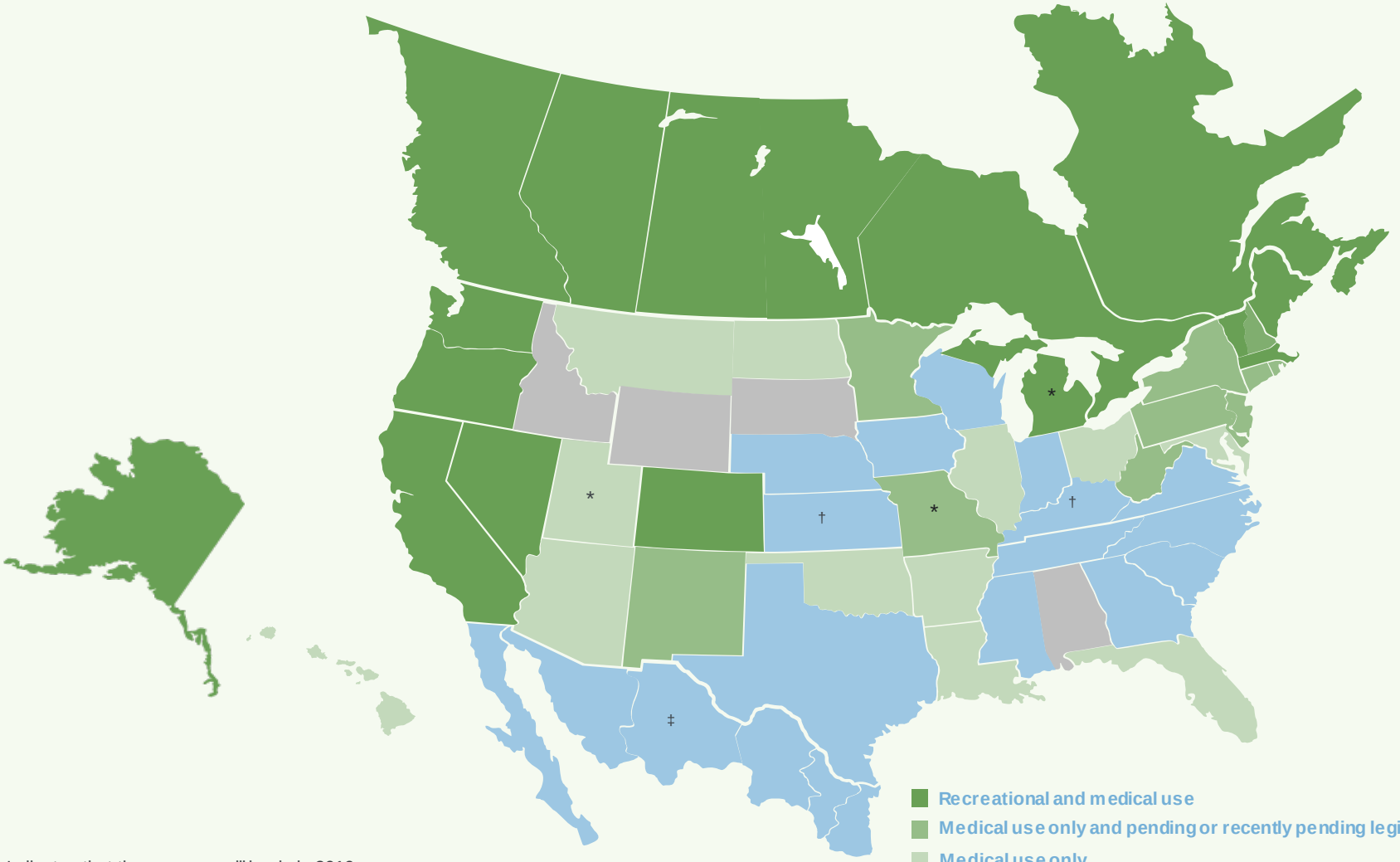
–John Chiang, Cannabis Banking Working Group, California State Treasurer's Office (Nov. 7, 2017)

"While today's announcement [on the infeasibility of providing a California public bank to service the cannabis industry] may not lay out the path some of us had hoped, it did reinforce the inconvenient reality that a **definitive solution** will remain elusive until the federal government takes action. . . . Red, blue, and purple states . . . have legalized the adult use of recreational or medicinal cannabis. **So it's finally time** that the slow, clunky machinery of the federal government work, in a bipartisan fashion, to change federal law. . . ."

–John Chiang, Cannabis Banking Working Group, California State Treasurer's Office (Dec. 27, 2018)

Challenges under the Existing Legal Framework

The Map



* Indicates that the program will begin in 2019.
† KY and KS also have recently pending legislation for recreational use.
‡ Mexico's Supreme Court recently deemed its national marijuana prohibition law unconstitutional.

December 2018

Challenges under the Existing Legal Framework
Momentum towards Banking Clarity

- Over the last five years, 142 members of Congress have sponsored a version of the SAFE Act and/or the STATES Act that would address the provision of direct and indirect financial services to CRBs.
- In light of this legislative and regulatory momentum, Isaac Boltansky, Director of Policy Research for Compass Point Research & Trading, predicts the following:

> "We continue to believe that the next Congress is likely to provide cannabis banking clarity for operators in legal states. . . . Public perception and state pressure should combine to catalyze Congressional action on cannabis, but our sense is that the likeliest next step is banking clarity. We believe the odds of cannabis legalization in the next Congress stand at 25%, but peg the odds of banking clarity for cannabis companies operating in legal states at 75%."
>
> *–Isaac Boltansky, Compass Point Research & Trading, LLC (Nov. 26, 2018)*

The SAFE Act
Overview

The **Secure and Fair Enforcement Banking Act** (the **SAFE Act**)

- The House (H.R. 2215) and Senate (S. 1152) versions are similar, but not identical.
- Both the House and Senate versions:
  - Provide that the purpose of the bill is to create protections for depository institutions that provide financial services to cannabis-related legitimate businesses (see next page for definition).
  - Provide a safe harbor from federal banking regulators taking certain actions against a depository institution that provides financial services to cannabis-related legitimate businesses.
  - Provide protection from liability under any Federal law for providing financial services to cannabis-related legitimate businesses and from forfeiture of collateral for loans to such businesses or to owners of real estate or equipment leased to cannabis-related legitimate businesses.
  - Clarify that the SAFE Act does not impose a new obligation to provide financial services to cannabis-related legitimate businesses.
  - Amend the BSA to require financial institutions to comply with guidance issued by FinCEN when filing suspicious activity reports (**SARs**) related to cannabis-related legitimate businesses.
- The SAFE Act is the older variant of the bills and was introduced in the House by Representatives Ed Perlmutter and Denny Heck in April 2017 and in the Senate by Senator Jeff Merkley in May 2017.

The SAFE Act
Definitions

- The SAFE Act covers financial services by depository institutions to cannabis-related legitimate businesses.
  - "**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)
      - participates in any business or organized activity that involves handling cannabis or **cannabis products** (i.e., any article containing cannabis, such as concentrates, edibles, tinctures, cannabis-infused products, topicals); or
      - provides
        - any financial service, including **retirement plans or exchange traded funds**, relating to cannabis; or
        - 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.
  - "**Company**" means a partnership, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, State, or any other entity.
  - "**Manufacturer**" means a person or company who manufactures. . . .
  - "**Producer**" means a person or company who plants, cultivates, harvests . . . .
  - "**Financial services**" means a financial product or service, as defined in section 1002 of the Dodd-Frank Act

In **Senate** but not **House** version

The SAFE Act
Safe Harbor for Depository Institutions

- The SAFE Act provides a **safe harbor** for **depository institutions**, which would prohibit a **Federal banking regulator** from:
  - Terminating a depository institution's deposit insurance solely because it provides financial services to cannabis-related legitimate businesses operating pursuant to state law
  - Prohibiting, penalizing or discouraging a depository institution from providing financial services to such businesses or to a State exercising jurisdiction over such businesses
  - Recommending or incentivizing a depository institution not to offer financial services to certain account holders involved in such businesses
  - Taking adverse or corrective actions on loans to such businesses or to owners of real estate or equipment leased to such businesses solely because such businesses are cannabis-related businesses

Federal banking regulators

- Federal Reserve Board
- CFPB
- FDIC
- OCC
- NCUA
- Any Federal agency or department that regulates banking or financial services, as determined by the Treasury Secretary

The safe harbor would not apply to prosecution by DOJ.

The SAFE Act
Protections Under Federal Law

- **General Protections**. Within a State or local jurisdiction that has legalized cannabis-related activity, a depository institution that provides financial services to a cannabis-related legitimate business may not be held liable under any Federal law or regulations:
  - solely for providing such financial services pursuant to State or local law; or
  - for further investing any income derived from the financial services.

  The Senate SAFE Act's general protections are **broader**, as they include providing financial services to cannabis-related legitimate businesses that comply with the laws of tribal jurisdictions. Protections within tribal jurisdictions also apply to other parts of the Senate SAFE Act and are absent in the House version.

- **Protections from Forfeiture**. The bills also provide protection from criminal, civil, or administrative forfeiture for legal interests in collateral for loans to such businesses or owners of real estate or equipment leased to such businesses and from liability under any Federal law for providing loans or other financial services to such businesses.

  The Senate SAFE Act's forfeiture protections are potentially **narrower** in two respects:
  - Only explicitly protect collateral for loans (House also includes "another financial service")
  - Explicitly limited to forfeiture occurring "solely because the collateral is owned by a [CRB]"

The SAFE Act
Obligations for Financial Institutions

No Obligation to Provide Financial Services

- Neither SAFE Act bill compels depository institutions to provide financial services to cannabis-related legitimate businesses.

Modified Reporting Obligations for Financial Institutions

- The SAFE Act amends the **BSA**'s requirements for filing SARs (for information on existing guidance for filing SARs on CRBs, please see page 30).
  - Requires a financial institution to comply with appropriate FinCEN guidance when it reports a:
    - **House version:** "suspicious *transaction* pursuant to this subsection and *the reason for the report* relates to a cannabis-related legitimate business"
    - **Senate version:** "suspicious *activity* related to a transaction by a cannabis-related legitimate business"
  - Requires the Treasury Secretary to ensure that guidance issued by FinCEN:
    - Is consistent with the SAFE Act's purpose and intent; and
    - Does not inhibit financial institutions from providing services to cannabis-related legitimate businesses in State or local jurisdictions that permit such cannabis-related activity.

The STATES Act
Overview

The **Strengthening the Tenth Amendment Through Entrusting States Act** (the **STATES** Act)

- The STATES Act (S. 3032) is the newer bill and was first introduced by Senators Elizabeth Warren and Cory Gardner on June 7, 2018.
- Purpose of the bill is to amend the CSA to create a new rule regarding the CSA's application to marijuana.
- The bill clarifies federal law in general with respect to states that have legalized marijuana by providing that the CSA generally would not apply to marijuana-related conduct that is legal under state law.
- The bill would protect the financial services sector by providing that:
  - The proceeds of any marijuana transaction conducted in compliance with state law would not be deemed the proceeds of an unlawful transaction under the **MLCA** or **any other provision of law**; and
  - Marijuana-related conduct that is legal under state law would not serve as a basis for criminal or civil asset forfeiture.
- **President Donald Trump** commented in June 2018 that he "probably will end up supporting" the bill.

The STATES Act
Cannabis-Specific Amendments to the CSA

- The STATES Act would amend the CSA by inserting a new section (**710**) that specifically governs marijuana-related activities:
  - Renders inapplicable CSA prohibitions on the manufacture, production, possession, distribution, dispensation, administration, or delivery of marijuana where such activity complies with:
    - (a) **State law** or (b) **tribal law**,
    - **Subject to exceptions under Section 710(c) and (d)** (see page 16).
- The original version of the STATES Act would have also amended the CSA's definition of "marihuana" to exclude industrial hemp.
  - This amended definition was omitted from the bill's most recent language likely because the Farm Bill—which was signed into law on December 20, 2018—revised the definition.

The STATES Act
Protections for Financial Institutions

Of particular importance to financial institutions is the STATES Act's new rule of construction, which provides that proceeds from CRBs operating in compliance with the STATES Act will not trigger prosecution under the MLCA.

- **Marijuana-related activity** in compliance with state law and the STATES Act shall not:
  - Be unlawful;
  - Constitute "trafficking" of a controlled substance within the meaning of the CSA (21 U.S.C. § 841) or any other provision; or
  - Constitute the basis for criminal forfeiture under the CSA (21 U.S.C. § 881) or civil forfeiture under 18 U.S.C. § 981.
- **Proceeds from transactions** involving marijuana-related activity in compliance with state law and the STATES Act shall not:
  - Be deemed the proceeds of an unlawful transaction under the MLCA or any other law.

The STATES Act
Exceptions that Trigger CSA and MLCA Violations

- The STATES Act would **not** protect financial institutions from prosecution under the MLCA if the financial institution provides services to a CRB that participates in certain cannabis-related activity, including, for example:
  - distribution to persons under 21 years old (other than distribution of medical marijuana in compliance with state law) (21 U.S.C. § 859) (**Section 710(c)(1) and (4)**)
  - violating the CSA with other controlled substances (**Section 710(d)(1)**)
  - conducting marijuana-related activities that violate State or tribal law (**Section 710(d)(2)**)
  - employing or hiring a person under 18 years old for the manufacture, production, possession, distribution, dispensation, administration, or delivery of marijuana (**Section 710(d)(3)**).
- As a **practical matter** for due diligence, it may be difficult for a financial institution to determine whether a CRB complies with the provisions under **Section 710(c)-(d)**.

Comparing the SAFE and STATES Acts
Overview

	Pros for Financial Institutions	Cons for Financial Institutions

SAFE Act	▪ Addresses specific issues facing the banking sector
	  ▪ Expressly protects depository institutions
	  ▪ Bars actions by federal banking regulators
	  ▪ Amends the BSA and instructs the Treasury/FinCEN to act accordingly
		▪ Does not amend the CSA
		▪ Only shields depository institutions
		  ▪ Omits broker-dealers, underwriters, asset managers, custodians
		▪ Only expressly discusses actions taken by Federal banking regulators, which do not include DOJ
		▪ Conditions protections on the CRB engaging in activities "pursuant to" State law

STATES Act	▪ Amends the CSA
	  ▪ Protects CRBs, in addition to their service providers
		▪ Does not expressly reference the financial services sector
		  ▪ Merely prescribes a general rule of construction for receiving proceeds
		  ▪ Provides no guidance for customer due diligence requirements—including for Section 710(c)-(d)—and issues no directives to financial regulatory agencies to do so
		▪ Conditions protection on the CRB "acting in compliance with" State law

Comparing the SAFE and STATES Acts
Approach to Removing Federal Barriers

- The SAFE Act provides a **safe harbor** and other protections specific to the banking sector from actions by federal banking regulators.
  - Protections are directed at the banking sector:
    - Amends the BSA and instructs the Treasury to ensure that guidance on SARs issued by FinCEN comports with the SAFE Act's purpose and intent and does not inhibit the provision of financial services to state-compliant CRBs.
  - Unclear how the bill applies to actions pursued by the DOJ, which is not a federal banking regulator.
- The STATES Act **amends the CSA** so that certain cannabis-related activities that are lawful in the State jurisdiction no longer serve as a predicate offense for triggering prosecution under the MLCA.
  - Structurally changes the CSA:
    - Protects CRBs that comply with state laws unless certain amended CSA provisions are implicated.
  - Protections do not expressly reference the financial services industry:
    - Only provides a general rule of construction for recipients of proceeds from transactions in compliance with the STATES Act.
    - Unclear what actions federal banking regulators should take (for example, how the bill would affect SAR obligations and diligence requirements).

Comparing the SAFE and STATES Acts
Breadth of Protection

The STATES Act protects a broader range of financial service providers to state-compliant CRBs than the SAFE Act—but its protection is conditioned on compliance with the amended CSA.

- The SAFE Act only covers **depository institutions**. It would **not** protect broker-dealers, underwriters, asset managers, or custody that relied on nonbank entities.
- The STATES Act extends protection to encompass **financial institutions** generally since they would be recipients of proceeds from transactions that comply with State law.
  - However, even if the cannabis-related activity complied with State law, prosecution under the CSA and MLCA could still occur if other activities targeted by **Section 710(c)-(d)** of the amended CSA were implicated (e.g., creating substantial risk of harm to human life, distributing recreational marijuana to persons under 21, employing persons under 18).

Comparing the SAFE and STATES Acts
Further Challenges

- The protections turn on the CRB's compliance with State laws.
  - The bills would not protect depository institutions or other financial institutions providing services to CRBs that are **not** compliant with State laws.
    - What happens when there is a nonmaterial lack of compliance with State laws?
  - The **SAFE Act** only expressly shields depository institutions that bank CRBs engaged in specified activities "pursuant to" State law.
    - **"pursuant to"** is not defined, leaving uncertain the extent of compliance needed for a CRB to be a "cannabis-related *legitimate* business" and for its depository institution to be protected under the SAFE Act.
  - The **STATES Act** only expressly exempts proceeds from transactions with CRBs "acting in compliance with" State law.
    - **"acting in compliance with"** is not defined, leaving uncertain the extent of diligence needed for a CRB and its financial services provider to be protected under the STATES Act.
    - A CRB's failure to comply with State law or Sections 710(c)-(d) of the amended CSA seems to reinstate liability under the CSA and MLCA for its financial services provider, irrespective of the rigor of due diligence.
- Though moving in the right direction of clarity, **neither the SAFE Act nor STATES Act** goes far enough to alleviate concerns with providing financial services to CRBs.

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Appendix A: Legal Background

Appendix A: Legal Background
Legislation – Controlled Substances Act

- The **CSA** (21 U.S.C. §§ 801-904) classifies cannabis as a **Schedule I drug**.
- The CSA prohibits the knowing or intentional manufacturing, distributing and/or dispensing of Schedule I drugs, as well as:
  - **Conspiring** to engage in, or **aiding and abetting** such activities
    - An individual who has knowledge that the CSA has been violated and assists an offender may be charged as an accessory after the fact, with the potential for aiding and abetting
  - **Foreign** manufacture or distribution of Schedule 1 drugs intending, knowing, or having reasonable cause to believe that the controlled substance will be unlawfully imported into the United States

Schedule 1 Drugs

Drugs or substances designated as a **Schedule I drug** have been deemed to have:

- A high potential for abuse
- No currently accepted medical use in treatment in the United States
- Lack of accepted safety for use under medical supervision

Appendix A: Legal Background
Legislation – Money Laundering Control Act

- The **MLCA** (18 U.S.C. §§ 1956 and 1957) prohibits any person from knowingly conducting certain financial or monetary transactions involving the proceeds of "**specified unlawful activities**," including proceeds from marijuana-related violations of the CSA.
  - There are currently no safe harbor provisions for banking CRBs that are compliant with state law.
  - "**Specified unlawful activities**" also includes manufacture, importation, sale, or distribution of marijuana in violation of **foreign** law.

However, a CRB operating in compliance with applicable foreign laws (e.g., Canadian law) and not causing marijuana to be unlawfully imported into the United States would **not** give rise to a **specified unlawful activity**.

Consequently, providing banking services to such a compliant foreign CRB would **not** violate the **MLCA**.

Appendix A: Legal Background
Legislation – Bank Secrecy Act

- The **BSA** requires, among other things, financial institutions to **establish AML programs** and **report illegal/suspicious activities** to the Treasury Department's FinCEN.
- At minimum, a **BSA compliance program** must provide for:
  - A system of internal controls to assure ongoing compliance;
  - Independent testing for compliance to be conducted by bank personnel or an outside party;
  - Designee(s) responsible for coordinating and monitoring day-to-day compliance;
  - Training for appropriate personnel; and
  - Appropriate risk-based procedures for conducting ongoing customer due diligence.
- **Reporting of illegal/suspicious transactions and currency transaction reporting**
  - The FinCEN Guidance advises that most CRB transactions require the filing of **SARs**, as discussed further on page 30.
  - Under the implementing regulations, financial institutions must file currency transaction reports on the receipt or withdrawal by any person of **>$10,000 in cash per day** (31 C.F.R. §§ 1010.310-314).

Appendix A: Legal Background
Legislation – Rohrabacher-Blumenauer Amendment

- First voted on in 2003 and first enacted on December 16, 2014, the **Rohrabacher-Farr Amendment** (now **Rohrabacher-Blumenauer Amendment**) prohibits DOJ from spending money prosecuting cannabis-related activities that are permissible under state medical marijuana laws.
- As a budget amendment, it must be approved every year.
  - In 2018, the amendment was renewed by the Consolidated Appropriations Act, 2018 on March 23, 2018 and was scheduled to expire on September 30, 2018.
    - The amendment was effectively extended by the Continuing Appropriations Act, 2019 on September 28 and by congressional resolution on December 7 but eventually expired on December 21.
  - In 2019, the amendment was effectively renewed by the Further Additional Continuing Appropriations Act, 2019 on January 25 and is scheduled to expire on February 15.
- ***United States v. McIntosh***, 833 F.3d 1163 (9th Cir. 2016): Ninth Circuit ruling that applied the amendment to uphold limits on federal enforcement against individuals complying with state medical marijuana laws.

Appendix A: Legal Background
Agency Guidance – Cole Memos

- The **2013 Cole Memo** instructed DOJ attorneys and law enforcement officials to focus their cannabis-related CSA enforcement on the following eight **Cole Priorities**:
  - Preventing the distribution of marijuana to minors;
  - Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
  - Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
  - Preventing state-authorized marijuana activity from being used as a cover for the trafficking of other illegal drugs or other illegal activities;
  - Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
  - Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana;
  - Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
  - Preventing marijuana possession or use on federal property.

Appendix A: Legal Background
Agency Guidance – Cole Memos

- The **2013 Cole Memo** noted that, outside these enforcement priorities, the federal government traditionally relies on **state and local law enforcement agencies** to address marijuana activity through enforcement of their own narcotics laws.
  - The memo also noted that jurisdictions that have enacted laws legalizing marijuana in some form, and that have implemented strong systems to control the cultivation, distribution, sale and possession of marijuana, are less likely to threaten the federal enforcement priorities.

- The **2014 Cole Memo** reiterated the **Cole Priorities** and clarified that:
  - The provisions of the anti-money laundering statutes, the unlicensed money remitter statute and the BSA remain in effect with respect to cannabis-related conduct.
  - Financial transactions involving proceeds generated by cannabis-related conduct can form the basis for prosecution under these statutes.
  - Prosecution of a financial institution for offering financial services to a CRB whose activities do not implicate any of the **Cole Priorities** may not be appropriate.

Appendix A: Legal Background
Agency Guidance – FinCEN Guidance

The **FinCEN Guidance** provides further guidance on both customer due diligence and SARs.

- "[C]larified how financial institutions can provide services to [CRBs] consistent with their BSA obligations," noting that it should "enhance the availability of the financial service for, and the financial transparency of," CRBs.
- Indicated that financial institutions considering providing financial services to CRBs should conduct customer due diligence that includes:
  - Verifying with the appropriate state authorities whether the business is duly licensed and registered;
  - Reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its CRBs;
  - Requesting from state licensing and enforcement authorities available information about the business and related parties;
  - Developing an understanding of the normal and expected activity for the business, including the types of products to be sold and the types of customers to be served (e.g., medical vs. recreational customers);
  - Ongoing monitoring of publicly available sources for adverse information about the business and related parties;
  - Ongoing monitoring for suspicious activity, including for any of the red flags described in the FinCEN Guidance; and
  - Refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk.

Appendix A: Legal Background
Agency Guidance – FinCEN Guidance

The FinCEN Guidance also clarified that the obligation for financial institutions to file SARs remains unaffected by state legalization of cannabis. The FinCEN Guidance provided additional guidance regarding three types of marijuana-related SARs that financial institutions may file:

Marijuana Limited	Marijuana Priority	Marijuana Termination
A financial institution should file a **Marijuana Limited** SAR on a CRB if it reasonably believes, based on its customer due diligence, that the CRB does not implicate the Cole Priorities. This SAR is limited to: ▪ identifying information of the subject and related parties; ▪ addresses of the subject and related parties; ▪ the fact that the filing institution is filing the SAR solely because the subject is engaged in a marijuana-related business; and ▪ the fact that no additional suspicious activity has been identified.	A financial institution should file a **Marijuana Priority** SAR on a CRB that it reasonably believes, based on its customer due diligence, implicates the Cole Priorities or violates state law. The SAR should include: ▪ identifying information of the subject and related parties; ▪ addresses of the subject and related parties; ▪ details regarding the enforcement priorities the financial institution believes have been implicated; and ▪ dates, amounts, and other relevant details of financial transactions involved in the suspicious activity.	A financial institution should file a **Marijuana Termination** SAR if it deems it necessary to terminate a relationship with a CRB to maintain an effective anti-money laundering compliance program and, if it becomes aware that the CRB seeks to move to a second financial institution, to voluntarily alert the second financial institution of potential illegal activities. The FinCEN Guidance lists numerous "red flags" to distinguish priority SARs.

Appendix A: Legal Background
Agency Guidance – Sessions Memo

In January 2018, then-Attorney General Jeff Sessions issued a one-page memorandum **rescinding** the 2013 Cole Memo and the 2014 Cole Memo (the **Sessions Memo**).

- Instructed prosecutors—in deciding which cannabis-related activities to prosecute—to "follow well-established principles that govern all federal prosecutions" and "as reflected in chapter 9-27.000 of the U.S. Attorneys' Manual. This involves weighing 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 on the community.
- Initially raised uncertainty whether the **FinCEN Guidance** remained in place, but it was later confirmed that the FinCEN Guidance is still in effect.
  - Letter from Drew Maloney, Assistant Secretary for Legislative Affairs, Treasury Department (Jan. 2018): "The SAR reporting structure set forth in FinCEN's February 2014 guidance remains in place."
  - Statement by FinCEN Director Ken Blanco (Nov. 2018): "[T]he BSA guidelines that we put out in 2014 are the ones that [financial institutions] should still be following to meet their BSA requirements."