

Testimony
Of
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On Behalf Of
The Credit Union National Association
Before the
Committee on Banking, Housing, and Urban Affairs
United States Senate
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“Challenges for Cannabis and Banking:
Outside Perspectives”
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Good afternoon, Chairman Crapo, Ranking Member Brown, and Members of the Committee. Thank you for this opportunity to testify on a very important issue: ensuring access to mainstream financial services for cannabis businesses that operate legally under state law.

My name is Rachel Pross. I am the Chief Risk Officer of Maps Credit Union, a midsized financial cooperative in Salem, Oregon. I am testifying today on behalf of the Credit Union National Association, the nation's largest credit union advocacy organization. CUNA represents both state and federal credit unions and the 115 million members across the United States that they serve.

Maps Credit Union ("Maps") has approximately two hundred and seventy employees and \$770 million in assets. Our credit union was founded in 1935 when a group of teachers pooled together their scarce resources for the collective, greater good. Today, Maps has a community charter and serves over 65,000 member-owners in Oregon's relatively rural Willamette Valley. Our cooperative has ten branches in addition to a robust educational outreach program that includes two student-operated branches in our local high schools.

As a community-focused organization, we have seen and experienced first-hand the many challenges facing both financial institutions and state-sanctioned cannabis businesses seeking to operate within the financial mainstream. My testimony will talk about those challenges, but, before going into great detail, I'd like to start by telling you a story. It is the story of how my credit union, Maps Credit Union, has sought to overcome those challenges since 2014 and has become a part of the solution for the Willamette Valley communities of Oregon. Our efforts were sparked by the people of the State of Oregon voting in favor of ballot measure 91 and, as a result, making the use of cannabis for both recreational and medicinal purposes legal under Oregon law.¹

¹ Cannabis usage for medicinal purposes became legal in the State of Oregon in 1998.

The Maps Credit Union Approach to Cannabis Banking: Offering Communities in Oregon a Safe Solution

As a financial cooperative, Maps believes that it is our duty to serve the members of our community and to listen to the needs of the individuals and businesses who contribute to that community. Though Maps has no position on whether cannabis should be legalized federally, we acknowledge that the voters of Oregon have already spoken on that issue for the people of our state. Accordingly, after extensive research and risk analysis in 2014, our member-elected, volunteer Board of Directors voted to serve cannabis businesses for two primary reasons:

(1) to serve the underserved—which speaks to the credit union mission and philosophy as a not-for-profit financial cooperative, and

(2) to enhance the safety of our community in the Willamette Valley by removing large amounts of cash from the streets of our cities by ensuring that legal cannabis businesses operating in the State of Oregon had access to mainstream financial services.

To our knowledge, Maps is the only financial institution in the State of Oregon that has continuously served the cannabis industry since 2014. And, in the five years since, our organization has come to provide banking services to five hundred Oregon-sanctioned cannabis businesses. That makes the cannabis banking program at Maps one of the largest in the United States.

In terms of safety, statistics show that cash-only businesses increase the risk of crime. This is especially true in the cannabis industry given the lack of access to mainstream financial services. A 2015 analysis by the Wharton School of Business Public Policy Initiative found that, in the absence of being banked, one in every two cannabis dispensaries were robbed or burglarized—with the average thief walking away with anywhere from \$20,000 to \$50,000 in a single theft. Compare that with the statistics from our credit union. In 2017 and 2018 alone, Maps received well over \$529 million in cash deposits from cannabis businesses. So far this year, we've received another \$169 million in cash deposits- meaning that we are on track to remove over \$860 million in cash from the sidewalks of Oregon's communities in just three years.

That's millions of dollars that used to be carried around in backpacks and shoeboxes by legitimate, legal business owners in the State of Oregon, making them prime targets for thieves and other criminals.

When Maps' Board of Directors voted to serve cannabis businesses, they knew it would be one of the first programs of its kind in the country, and they committed to fostering the diligent culture of risk management and compliance necessary to do it properly. Maps' goal was and is to help set a standard nationwide, enabling other credit unions to eventually serve the industry with tried-and-true best practices.

The compliance framework Maps utilizes to serve canna-businesses is based on the U.S. Department of the Treasury's Financial Crimes Enforcement Network BSA Expectations Regarding Marijuana-Related Businesses ("FinCEN Guidance"). Though the February 2014 Cole Memorandum from the Department of Justice ("Cole Memo") was rescinded in January of 2018 by Attorney General Sessions, the guidelines of the Cole Memo remain in place as part of the FinCEN Guidance.

To comply with the FinCEN Guidance, Maps has established a rigorous screening and compliance protocol and has invested considerably in the robust infrastructure required to appropriately monitor and maintain these high-risk accounts. We have a centralized team of dedicated professionals in our cannabis banking program, and the staffing averages one full time employee for every forty cannabis business accounts. Our Bank Secrecy Act and Anti-Money Laundering Compliance Program has been reviewed by both State and Federal financial regulators on multiple occasions, and we also obtain an independent, external compliance audit of the Program annually. In February 2018, I had the opportunity to represent Maps as a guest presenter on behalf of the financial sector at U.S. Attorney Billy Williams' Oregon Marijuana Summit in Portland. The subsequently issued enforcement priorities of the Oregon U.S. Attorney also play an important role in the monitoring of cannabis business account activity at Maps.

As part of Maps' initial evaluation and ongoing monitoring of cannabis-related accounts, we collect corporate records, ownership information (including criminal background checks on all account signers), ongoing financial statements, and day-to-day account transaction activity. All of that information is meticulously scrutinized to

ensure the activity on the accounts is legitimate and, to the best of our knowledge, completed in accordance with State laws and the FinCEN Guidance. We work closely and transparently with our regulators, and we take pride in having a collaborative relationship with the Oregon Liquor Control Commission to ensure that the cannabis businesses we serve are operating in compliance with all applicable state licensure requirements. That information sharing is permissible under Oregon House Bill 4094, which was signed into law in April 2016 by Oregon Governor Kate Brown. HB 4094 exempts financial institutions that provide financial services to lawful marijuana-related businesses from any applicable criminal law in the State of Oregon and includes a provision on information sharing.

Most importantly, in accordance with the FinCEN Guidance, the Credit Union files quarterly Suspicious Activity Reports (“SARs”) on every cannabis-related business account in the organization, and we file Currency Transaction Reports (“CTRs”) on every cash transaction or group of cash transactions totaling over \$10,000 in one business day. Also, in accordance with the FinCEN Guidance, the Credit Union prioritizes SARs with regard to which cannabis accounts are acting in accordance with State law and any accounts we suspect could possibly be engaged in illegal activities such as diversion into other states, money laundering, or black-market sales.

To put some numbers around this compliance program, as of June 30, Maps has filed approximately 19,500 individual reports (CTRs and SARs) related to cannabis business accounts since January of 2017. Diving more deeply into that number, Maps has filed 3,489 Suspicious Activity Reports since January 1, 2017, and 91.5% of those SARs were directly due to our filing obligations for cannabis businesses under the FinCEN guidance. When filing SARs, Maps provides the names of all individuals who are involved with the accounts, all account activities broken down by individual transactions, and a description of that activity. Once a SAR is filed, law enforcement can request additional supporting documentation related to the reported activity, giving the government a very broad ability to review the information we have so diligently collected and retained on the accounts.

Because the cannabis industry is primarily cash-based, these transaction records would not otherwise be available if financial institutions were not permitted to serve the industry. We firmly believe that providing banking services to this industry delivers a significant benefit to law enforcement because Maps is essentially providing free, highly-detailed information at least every quarter on cannabis-related monetary activity in the State of Oregon. Furthermore, we educate each and every one of our cannabis-related accountholders about the FinCEN Guidance and the criticality of compliance and transparency. This ultimately reduces the likelihood of financial crime on their parts. They want to keep their accounts with us, so they carefully adhere to the requirements given to them.

As a pressing word of caution, there are numerous unscrupulous players trying to benefit from the severe shortage of legitimate financial services available to cannabis businesses, and concerns around criminal prosecution are only feeding those predatory players' flames. Cannabis businesses are frequently bombarded with proposals for payment "solutions" that are unregulated (and therefore not subject to Bank Secrecy Act compliance), and their "solutions" are often very clearly a form of money laundering. We have heard of proposals involving everything from cryptocurrency to cashless "chit" mechanisms to the use of prepaid gift cards—none of which would provide the Federal government any valuable information on cannabis-related financial activity or the movement of cannabis within the United States. Credit unions, however, are heavily regulated and prudently abide by State and Federal guidelines, so we are undoubtedly a safe and transparent choice for both cannabis businesses and the U.S. government.

With the momentum currently seen across the United States toward the legalization of cannabis either medicinally or recreationally in many states, there is deepening interest in the financial sector for serving these businesses. Having been founded by a group of teachers, it should come as no surprise that Maps is passionate in our beliefs about the importance of education and advocacy. To that end, I presented Maps' cannabis banking program sixteen times nationwide last year. This collaboration is part of the DNA in credit unions, and we consider it a privilege and an honor to assist other credit unions with vetting their own programs.

Even Without Directly Accepting the Cannabis Industry as Clients, Credit Unions and Banks Operating in States Where Cannabis is Legal Still Risk Unknowingly Serving Cannabis-related Businesses.

Indirect connections to cannabis revenues are hard, if not impossible, for financial institutions to both identify and avoid. The simple reality is that growers and retailers in the cannabis industry do not operate in a vacuum. Instead, like almost every other business, the industry is dependent upon any number of vendors and suppliers to function. These are everyday businesses like the printing company that makes a business card, the office supply company that fulfills order for pens and copy paper, the housekeeping crew or landlord that cleans or rents office or retail space, and even the utility company that provides that office/retail space or growing location with water or electricity. Under the existing status quo, a credit union that does business with any one of these indirectly affiliated entities could unknowingly risk violating the federal Controlled Substances Act, USA Patriot Act, Bank Secrecy Act, and/or the Racketeer Influenced and Corrupt Organizations Act, among other federal statutes.

Yet, as a bipartisan group of Senators noted in a 2016 letter to FinCEN, “[l]ocking Lawyers, landlords, plumbers, electricians, security companies, and the like out of the nation’s banking and finance systems serves no one’s interests.”² The current rift between federal and state law has left credit unions and other financial institutions trapped in a scenario where their mission to serve the financial needs of their local communities is directly pitted against the inability to have perfect information regarding every indirect business activity and the threat of federal enforcement action.

Without banking services, cannabis businesses and the businesses indirectly related to them are less able to obey the law, pay taxes, and follow state regulations. The public safety risks posed by these businesses are easily mitigated through access to mainstream banking service providers and keeping the cash off the streets. This is a critically important public service.

² 2016 Senate Letter to FinCEN requesting guidance on ancillary businesses (Dec. 14, 2016), available at https://www.warren.senate.gov/files/documents/12-14-16_SL_FinCEN_Indirect_Businesses.pdf (last accessed July 10, 2019).

Even Without Directly Accepting the Cannabis Industry as Clients, Credit Unions and Banks Operating in States Where Cannabis is ILLEGAL Still Risk Unknowingly Accepting Funds Derived from Cannabis-related Businesses.

There are twenty-five members of the Senate Banking Committee. Though some form of cannabis usage for either medicinal and/or recreational purposes is legal in many states represented by this Committee's membership, it remains either partially or wholly illegal in a significant number of the states that the members of this Committee have been elected to serve. Given that reality, it may be tempting for some Senators on this Committee to believe that the issues relating to this problem do not affect either the financial institutions in their state or their individual constituents. That belief, however, would be wrong.

The reality is that the United States benefits from a nationally, even globally interconnected economy, where a company like Wal-Mart—based in the state of Arkansas—where recreational cannabis usage is illegal— could conceivably, or even likely has sold paper or light bulbs to a recreational cannabis business operating legally in the state of California through its online platform or the 167 retail stores it operates in that state. The same is true for companies like Albertson's, a grocery chain based in the state of Idaho, where cannabis usage is illegal for both medicinal and recreational purposes. Yet, the interconnected nature of our national and global economy understands that Albertson's operates 129 stores in the state of California, 32 stores in the state of Washington, and 30 stores in Oregon--states where cannabis usage is legal for both medicinal and recreational purposes. These examples hint at the truth: every time an employee of a cannabis-related business uses his or her paycheck to buy something as benign as groceries, the local Arkansas or Idaho bank or credit union depositing the companies' profits gained from those sales is directly impacted by the dilemma before this Committee today.

Wal-Mart is the single largest employer in 21 states in this country, including Kansas, Arkansas, Louisiana, Mississippi, Virginia, Alabama, Georgia, South Carolina, and Ohio, making these concerns an everyday consideration for the credit unions and

banks operating in those states and choosing to accept their corporate profits and individual employee paychecks for deposit. The same is true for other nationally prominent retail chains serving as one of a state's largest employers, such as Lowe's Home Improvement in North Carolina, Kroger Grocery Stores in Arizona, Albertson's in Montana, and Giant Grocery Stores and Home Depot in Pennsylvania. Because each of these retail chains has a significant footprint in states where cannabis-related businesses are legal for either medicinal or recreational purposes—and often both—there can be little doubt that some income that they derive is related to the cannabis industry. Yet, the inability for credit unions and banks to accept deposits or bank individuals affiliated with their state's largest employers would have devastating consequences to the economies of each of those states and, most importantly, its citizens. That result, however, is exactly what the status quo can be read to require.

These challenges are not limited to the retail sector alone. In states like South and North Dakota where Sanford and Avera Healthcare systems serve as the states' largest employers, recognition of the fact that each operates medical facilities in Minnesota—where physicians and nurse practitioners are legally permitted to prescribe Cannabis for certain medical conditions—suggests that some portion of each company's earnings could derive from cannabis-related business. Yet, no one wants to see the credit unions and banks in North and South Dakota stop accepting deposits related to the largest employers in each state. Additional examples exist, such as the investment portfolio of Nebraska's Berkshire Hathaway or the internet and telephone communication services provided in cannabis-legal states by Sprint and Century Link. In short, the banking systems in every single member of this Committee's own state are jeopardized by Congress's failure to address this issue. And so are the banking abilities of your largest employers and the banking abilities of your individual constituents. For each of these reasons, the members of this Committee, and Congress as a whole, must act.

Congress Should Grant Financial Institutions That Serve State-Sanctioned Cannabis or Cannabis-Related Businesses a Safe Harbor from Criminal Prosecution for Providing Banking Services.

In the absence of a federal law providing explicit legal clearance for financial institutions to provide banking services to the Cannabis industry, it is highly likely that many of these businesses will be forced to continue operating outside of the financial mainstream. That outcome increases the potential of lost tax revenue, increases the likelihood of criminal thefts in our communities, and deprives both state and federal law enforcement of important information about cannabis activity. We need Congress to resolve the risk financial institutions face by providing a safe harbor for credit unions and banks serving state-sanctioned cannabis businesses. That's why both Maps and the Credit Union National Association support legislation like "The SAFE Banking Act," sponsored by Senator Merkley as S.1200 in the Senate and Representative Perlmutter as H.R. 1595 in the House during the current 116th Congress.

If enacted, the SAFE Banking Act would offer narrowly targeted federal protections for credit unions and other financial institutions accepting deposits from, extending credit or providing payment services to an individual or business engaged in cannabis-related commerce in states where such activity is legal with a safe harbor, so long as they are compliant with all other applicable laws and regulations. Furthermore, the SAFE Banking legislation provides safe harbor to credit unions and their employees who are not aware if their members or customers are involved in this business. We believe this is a reasonable and sound approach.

Conclusion

Credit unions do not have a position on the federal legalization of cannabis. The simple fact of the matter, however, is that many credit unions operate in states and communities that have made cannabis usage or growth legal for medicinal and/or recreational purposes. We strongly believe that financial institutions should be permitted to lawfully serve businesses that engage in activities that are authorized under their state laws, even when such activity may be inconsistent with federal law. For that reason, credit unions will continue to support the SAFE Banking Act.

On behalf of America's credit unions and their 115 million members, we urge both Congress and the Administration to work towards turning this legislation into the law and providing financial institutions with the certainty needed to better serve our communities.

Thank you for the opportunity to testify today. I am happy to answer any questions the Committee members may have.