



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

Marijuana Financial Services Cooperatives Act



October 15, 2019



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2019

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- Submit a report and supporting materials to the Office of Legislative Legal Services no later than October 15 of the year preceding the date established for termination.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the Marijuana Financial Services Cooperatives Act. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2020 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 33 of Title 11, C.R.S. The report also discusses the effectiveness of the Commissioner of Financial Services in carrying out the intent of the statutes and makes recommendations for statutory changes.

Sincerely,

Patty Salazar
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

Marijuana Financial Services Cooperatives Act

SUMMARY

What is regulated?

A marijuana financial services cooperative is a cooperative association created to provide financial services to its members and to provide a source of credit for them. Membership is limited to licensed marijuana businesses, hemp businesses and entities that provide services to them.

Why is it regulated?

The Marijuana Financial Services Cooperatives Act (Act), which is administered by the Commissioner of Financial Services (Commissioner), was created to facilitate the provision of traditional financial services to the cannabis industry, services that have generally been unavailable given cannabis's legal status under federal law.

Who is regulated?

No charters have been applied for or issued under the Act.

How is it regulated?

To obtain a charter under the Act, an interested party must submit an application, articles of incorporation or bylaws, biographical information of the proposed board of directors and any incorporators, a business plan, a filing fee and any other information requested by the Commissioner.

What does it cost?

Since no charters have been issued or applied for under the Act, there are no costs associated with the Act.

What disciplinary activity is there?

Since no charters have been issued or applied for under the Act, there have been no disciplinary actions.

KEY RECOMMENDATIONS

Sunset the Act.

The Act was intended to facilitate the development of state-chartered financial institutions that would provide banking services to the state's cannabis industry. The creation of such cooperatives is predicated on them gaining access to the Federal Reserve System, an accomplishment that is unlikely given marijuana's status under federal law. As a result, no charters have been issued under the Act. Additionally, since passage of the Act, the Federal Financial Crimes Enforcement Network issued guidance to traditional financial institutions on how they can offer services to cannabis entities.

METHODOLOGY

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff interviewed staff in the Division of Financial Services and representatives of the financial services and marijuana industries, conducted a literature search and reviewed Colorado statutes and rules.

MAJOR CONTACTS MADE DURING THIS REVIEW

Colorado Bankers Association
Colorado Department of Regulatory Agencies, Division of Financial Services
Colorado Department of Revenue, Marijuana Enforcement Division
Independent Bankers of Colorado
Marijuana Industry Group
Mountain West Credit Union Association

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
Colorado Department of Regulatory Agencies
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Table of Contents

| | |
|---|----|
| Background | 1 |
| Introduction..... | 1 |
| Types of Regulation..... | 3 |
| Licensure | 3 |
| Certification..... | 4 |
| Registration | 4 |
| Title Protection..... | 4 |
| Regulation of Businesses | 5 |
| Sunset Process | 5 |
| Methodology | 5 |
| Profile of the Industry..... | 6 |
| Legal Framework..... | 8 |
| History of Regulation | 8 |
| Legal Summary | 10 |
| Federal Law and Guidance..... | 10 |
| Colorado Marijuana Financial Services Cooperatives Act..... | 14 |
| Program Description and Administration | 19 |
| Collateral Consequences - Criminal Convictions..... | 20 |
| Analysis and Recommendations..... | 22 |
| Recommendation 1 - Sunset the Marijuana Financial Services Cooperatives Act.... | 22 |
| Appendix A - Survey of State-Chartered Financial Institutions | 24 |

Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- I. Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- II. If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- III. Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- IV. Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- V. Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- VI. The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- VII. Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- VIII. Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

¹ Criteria may be found at § 24-34-104(6)(b), C.R.S.

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- IX. Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification; and
- X. Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether a particular regulatory program is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To ascertain a second aspect of the first sunset criterion--whether conditions that led to initial regulation have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the third sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the tenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: www.dora.colorado.gov/opr.

The functions of the Commissioner of Financial Services (Commissioner) related to the administration of the Colorado Financial Services Cooperatives Act (Act), as enumerated in Article 33 of Title 11, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2020, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Commissioner pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the Commissioner. During this review, the Commissioner must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff interviewed staff in the Division of Financial Services and representatives of the financial services and marijuana industries, conducted a literature search and reviewed Colorado statutes and rules.

Additionally, in May 2019, COPRRR conducted a survey of 181 state-chartered financial institutions. A link to the survey was sent via email to 69 state-chartered banks, 38

state-chartered credit unions and 5 state-chartered savings and loans. Of these, an estimated 181 were successfully delivered and 26 individuals responded. This represents a response rate of 14.4 percent.

Profile of the Industry

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less, or the same degree of regulation.

In order to understand the need for regulation, it is first necessary to understand what the industry is and how it works.

The Act represents the intersection between the financial services industry and the cannabis industry.

While there are several types of financial institutions, including banks, trust companies, insurance companies, brokerage firms and investment dealers, only those offering banking services are relevant to this discussion.

In the ordinary course of business, most businesses receive payments—cash, drafts (such as checks) and electronic transfers (such as from credit or debit card issuers). Traditional businesses maintain depository accounts at banks, credit unions or thrifts into which these payments are deposited and from which credit might be obtained.

Similarly, most businesses maintain checking accounts, from which they pay their financial obligations, such as rent, taxes, payroll and many others.

In order to provide these very basic services, a financial institution must possess a master account with the Federal Reserve System. This master account, in very simple terms, facilitates the electronic movement of funds among financial institutions. This account allows a customer of one bank to deposit into his or her account a check that is drawn on an account at another bank.

These relatively simple and straightforward services, however, have traditionally been difficult, if not impossible, for Colorado's marijuana industry to access. So long as marijuana remains illegal under federal law, the Federal Reserve System will not approve a master account for a financial institution that openly and pointedly provides services to the marijuana industry.

The Act represents an attempt to rectify this situation, by authorizing the creation of a specialized financial institution, one dedicated solely to servicing the state's cannabis industry.

However, since the Act’s passage, the financial services industry in the state has provided limited banking services to the state’s marijuana industry, albeit at a cost,

In 2014, under the Obama administration, [the Financial Crimes Enforcement Network] issued guidance to banks about how to serve the marijuana industry without running afoul of federal regulators. The memo, which requires financial services providers to regularly file reports on customers with cannabis accounts, was meant to provide assurances to banks.²

These regular reports require the financial institutions to perform their due diligence on their cannabis customers. Not surprisingly, the costs of these extra efforts are in turn passed along to those customers. Anecdotal evidence suggests that these fees can reach 18 to 20 percent or more in deposit fees.

The sixth sunset criterion requires COPRRR to evaluate the economic impact of regulation.

At the national level, an estimated 400, of the approximately 10,000 banks and credit unions across the nation, provide services to marijuana businesses.³ Notably, the number of such institutions grew approximately 20 percent in 2018.⁴

In May 2019, the Colorado Office of Policy, Research and Regulatory Reform conducted a survey of state-chartered financial institutions to ascertain the extent to which state-chartered banks, credit unions and savings and loans are providing banking services to the state’s regulated marijuana industry. The survey’s response rate was 14.4 percent. Complete survey responses can be found in Appendix A.

In short, 23.1 percent of survey respondents reported that they provide basic banking services (deposit and checking accounts) to the regulated marijuana industry. Surprisingly, 7.7 percent reported that they also lend to the regulated marijuana industry.

The volume of business represented by the regulated marijuana industry for these institutions varies considerably with 23.1 percent of respondents indicating that the industry represents 5 percent or less of their deposit base, and between 11 and 25 percent for 7.7 percent of respondents.

While two major shortcomings of the survey are that the instrument surveyed only state-chartered institutions and the response rate was only 14.4 percent, the survey nevertheless indicates that at least a portion of the state’s regulated marijuana industry is receiving banking services.

² Tom Angel, “More Banks Welcome Marijuana Business Accounts, New Federal Report Shows,” *Marijuana Moment*, November 29, 2018. Retrieved January 2, 2019, from www.marijuanamoment.net/more-banks-welcome-marijuana-business-accounts-new-federal-report-shows/

³ Jeff Mordock, “Cash is king—and dangerous—for marijuana businesses that lose bank accounts,” *The Washington Times*. Retrieved April 18, 2019, from www.washingtontimes.com/news/2018/jan/29/marijuana-businesses-carry-bank-problems-security-/

⁴ Tom Angel, “More Banks Welcome Marijuana Business Accounts, New Federal Report Shows,” *Marijuana Moment*, November 29, 2018. Retrieved January 2, 2019, from www.marijuanamoment.net/more-banks-welcome-marijuana-business-accounts-new-federal-report-shows/

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less, or the same degree of regulation.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

On November 7, 2000, the voters of Colorado passed Amendment 20 to the state's constitution, effectively decriminalizing the medical use of marijuana. Amendment 20 became effective on December 28, 2000.

In the years that followed, local governments began licensing medical marijuana dispensaries, which operated almost exclusively on a cash basis.

On October 19, 2009, the United States Department of Justice (DOJ) issued what has come to be known as the "Ogden Memo," which, while recognizing the plenary authority of the various United States Attorneys, directed they,

should not focus federal resources in [their] states on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.⁵

As a result, the Colorado General Assembly passed House Bill 10-1284, thereby creating the Colorado Medical Marijuana Code and giving rise to what would become a burgeoning commercial medical marijuana industry.

In November 2012, the voters of Colorado legalized industrial hemp and the recreational use of marijuana. The ballot initiative, known as Amendment 64, took effect on December 10, 2012, requiring the Executive Director of the Department of Revenue to begin accepting license applications for retail marijuana stores, cultivation operations and marijuana products manufacturers on October 1, 2013.

⁵ U.S. Department of Justice. *Memorandum for Selected United States Attorneys, from David W. Ogden, Deputy Attorney General, regarding Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana*, October 19, 2009. Retrieved January 30, 2019, from www.justice.gov/archives/opa/blog/memorandum-selected-united-state-attorneys-investigations-and-prosecutions-states

House Bill 13-1317 implemented Amendment 64 by creating the Colorado Retail Marijuana Code, which created the regulatory framework for the state’s retail marijuana industry.

In August 2013, the DOJ issued what has become known as the “Cole Memo,” which provided guidance to U.S. Attorneys on the enforcement priorities of the DOJ with respect to the enforcement of marijuana laws and found that state enforcement of state marijuana laws should be the primary means of marijuana enforcement.⁶

However, despite the Cole Memo, Colorado’s constitutional amendments relating to marijuana, and similar efforts in other states, marijuana remains illegal under federal law. As a result, Colorado’s marijuana industry generally lacked the same kind of access to financial services as other industries.

In February 2014, the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) issued its own guidance to financial institutions regarding its enforcement obligations under the Bank Secrecy Act. In short, the FinCEN guidance outlined the types of reports that financial institutions must submit when serving marijuana-industry clients.⁷ Importantly, this guidance did not expressly authorize financial institutions to serve the marijuana industry.

Thus, the General Assembly passed House Bill 14-1398, the Colorado Marijuana Financial Services Cooperatives Act, in an attempt to create a new type of financial services institution to serve Colorado’s marijuana industry.

With the enactment of the 2018 Farm Bill on December 20, 2018, Congress removed hemp (defined as any cannabis plant that contains not more than 0.3 percent delta-9 tetrahydrocannabinol on a dry-weight basis) from the federal Controlled Substances Act.⁸

Finally, Senate Bill 19-224, effective January 1, 2020, combined the Retail Marijuana Code and the Medical Marijuana Code into a single Colorado Marijuana Code.

⁶ U.S. Department of Justice. *Memorandum for all United States Attorneys, from James M. Cole, Deputy Attorney General, regarding Guidance Regarding Marijuana Enforcement*, August 29, 2013, pp. 1-2. Retrieved January 31, 2019, from www.justice.gov/iso/opa/resources/3052013829132756857467.pdf

⁷ U.S. Department of the Treasury, Financial Crimes Enforcement Network. *FIN-2014-G001: BSA Expectations Regarding Marijuana-Related Businesses*, February 14, 2014. Retrieved January 31, 2019, from www.fincen.gov/sites/default/files/shared/FIN-2014-G001.pdf

⁸ U.S. Department of Agriculture, Office of the General Council. *May 28, 2019 Memorandum for Sonny Perdue, Secretary of Agriculture, Legal Opinion on Certain Provisions of the Agriculture Improvement Act of 2018 Relating to Hemp*. Retrieved September 25, 2019, from ams.usda.gov/sites/default/files/HempExecSumandLegalOpinion.pdf

Legal Summary

The second and third sunset criteria question

Whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent; and

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

Federal Law and Guidance

Several federal laws and guidance documents are relevant when discussing marijuana in general, and marijuana-related financial services in particular. These include:

- The Controlled Substances Act and the Cole Memo, and
- The Bank Secrecy Act and FinCEN guidance.

The federal Controlled Substances Act classifies marijuana and the cannabinoid, tetrahydrocannabinol (THC), in Schedule I,⁹ which means that they have a high potential for abuse, they have no currently accepted medical use in treatment in the United States, and there is a lack of accepted safety for use of them under medical supervision.¹⁰ As such, both substances are illegal under federal law.

Regardless, in August 2013, the DOJ, recognizing the fact that nearly half the states had either decriminalized or legalized marijuana in some form, issued the Cole Memo, providing guidance regarding marijuana enforcement. It delineated the DOJ's enforcement priorities as preventing:¹¹

- The distribution of marijuana to minors;
- Revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;

⁹ 21 U.S.C. §§ 812(c)(c)(10) and (17).

¹⁰ 21 U.S.C. § 812(b)(1).

¹¹ U.S. Department of Justice. *Memorandum for all United States Attorneys, from James M. Cole, Deputy Attorney General, regarding Guidance Regarding Marijuana Enforcement*, August 29, 2013, pp. 1-2. Retrieved January 31, 2019, from www.justice.gov/iso/opa/resources/3052013829132756857467.pdf

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- The diversion of marijuana from states where it is legal under state law in some form to other states;
 - State-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
 - Violence and the use of firearms in the cultivation and distribution of marijuana;
 - Drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
 - Growing marijuana on public land and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
 - Marijuana possession or use on federal property.

While the Cole Memo's guidance reinforced the DOJ's position that United States Attorneys and federal law enforcement should continue to focus on the enumerated priorities, it also clarified the DOJ's expectation,

that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests.¹²

In such circumstances,

enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity.¹³

Taken together, these provisions were generally interpreted as meaning that so long as state law created a robust regulatory environment that was strongly enforced, the federal government would not interfere except in those individual cases where the DOJ's enforcement priorities were at risk.

The Bank Secrecy Act requires U.S. financial institutions to,

Keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding \$10,000 (daily aggregate amount), and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities.¹⁴

¹² U.S. Department of Justice. *Memorandum for all United States Attorneys, from James M. Cole, Deputy Attorney General, regarding Guidance Regarding Marijuana Enforcement*, August 29, 2013, p. 2. Retrieved January 31, 2019, from www.justice.gov/iso/opa/resources/3052013829132756857467.pdf

¹³ U.S. Department of Justice. *Memorandum for all United States Attorneys, from James M. Cole, Deputy Attorney General, regarding Guidance Regarding Marijuana Enforcement*, August 29, 2013, p. 3. Retrieved January 31, 2019, from www.justice.gov/iso/opa/resources/3052013829132756857467.pdf

¹⁴ U.S. Department of the Treasury, Financial Crimes Enforcement Network. *FinCEN's Mandate from Congress*. Retrieved January 30, 2019, from www.fincen.gov/resources/fincens-mandate-congress

FinCEN is the bureau within the U.S. Department of the Treasury tasked with implementing, administering, and enforcing compliance with the Bank Secrecy Act.¹⁵ As such, the agency issued its guidance in February 2014, which outlined its expectations of financial institutions seeking to provide services to marijuana-related businesses. It stated that,

In general, the decision to open, close, or refuse any particular account or relationship should be made by each financial institution based on a number of factors specific to that institution.¹⁶

The guidance further requires financial institutions to conduct customer due diligence that includes:¹⁷

- 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 marijuana-related business;
- 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 sold and the type of customers to be serviced (e.g., medical versus 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 guidance; and
- Refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk.

In conducting its customer due diligence, “a financial institution should consider whether its marijuana client implicates any of the Cole Memo enforcement priorities or violates state law.”¹⁸

¹⁵ U.S. Department of the Treasury, Financial Crimes Enforcement Network. *FinCEN’s Mandate from Congress*. Retrieved January 30, 2019, from www.fincen.gov/resources/fincens-mandate-congress

¹⁶ U.S. Department of the Treasury, Financial Crimes Enforcement Network. *FIN-2014-G001: BSA Expectations Regarding Marijuana-Related Businesses*, February 14, 2014, p. 2. Retrieved January 31, 2019, from www.fincen.gov/sites/default/files/shared/FIN-2014-G001.pdf

¹⁷ U.S. Department of the Treasury, Financial Crimes Enforcement Network. *FIN-2014-G001: BSA Expectations Regarding Marijuana-Related Businesses*, February 14, 2014, pp. 2-3. Retrieved January 31, 2019, from www.fincen.gov/sites/default/files/shared/FIN-2014-G001.pdf

¹⁸ U.S. Department of the Treasury, Financial Crimes Enforcement Network. *FIN-2014-G001: BSA Expectations Regarding Marijuana-Related Businesses*, February 14, 2014, p. 3. Retrieved January 31, 2019, from www.fincen.gov/sites/default/files/shared/FIN-2014-G001.pdf

In general, a financial institution is required to file a suspicious activity report (SAR) when the institution knows, suspects, or has reason to suspect that a transaction:¹⁹

- Involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity,
- Is designed to evade regulations promulgated under the Bank Secrecy Act, or
- Lacks a business or apparent lawful purpose.

Since marijuana is illegal under federal law, “financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity,” thus necessitating the submission of a SAR.²⁰

To address the unique issues surrounding the provision of financial services to marijuana-related businesses, FinCEN articulated three distinct types of SARs for use by such institutions:²¹

Marijuana Limited SAR - This SAR is for use by an institution that reasonably believes, based on customer due diligence, that its customer’s activities do not implicate one of the Cole Memo priorities or a violation of state law.

Marijuana Priority SAR - This SAR is for use by an institution that reasonably believes, based on customer due diligence, that its customer’s activities implicate one of the Cole Memo priorities or a violation of state law.

Marijuana Termination SAR - This SAR is for use by an institution that terminates a relationship with a marijuana-related business in order to maintain an effective anti-money laundering compliance program.

However, on January 4, 2018, the DOJ rescinded all previous guidance related to its enforcement of the nation’s marijuana laws. In doing so, the DOJ reiterated its general principles that,

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

¹⁹ U.S. Department of the Treasury, Financial Crimes Enforcement Network. *FIN-2014-G001: BSA Expectations Regarding Marijuana-Related Businesses*, February 14, 2014, p. 3. Retrieved January 31, 2019, from www.fincen.gov/sites/default/files/shared/FIN-2014-G001.pdf

²⁰ U.S. Department of the Treasury, Financial Crimes Enforcement Network. *FIN-2014-G001: BSA Expectations Regarding Marijuana-Related Businesses*, February 14, 2014, p. 3. Retrieved January 31, 2019, from www.fincen.gov/sites/default/files/shared/FIN-2014-G001.pdf

²¹ U.S. Department of the Treasury, Financial Crimes Enforcement Network. *FIN-2014-G001: BSA Expectations Regarding Marijuana-Related Businesses*, February 14, 2014, pp. 3-4. Retrieved January 31, 2019, from www.fincen.gov/sites/default/files/shared/FIN-2014-G001.pdf

effect of criminal prosecution, and the cumulative impact of particular crimes on the community.²²

Regardless, as recently as March 2018, FinCEN reiterated that the reporting structure outlined in its 2014 guidance, guidance that relied heavily on the Cole Memo, remained in place.²³

Colorado Marijuana Financial Services Cooperatives Act

The Colorado Marijuana Financial Services Cooperatives Act (Act) defines a marijuana financial services cooperative (Cannabis Co-op) as

a cooperative association incorporated pursuant to [the Act] for the twofold purpose of providing specified financial services to its members and creating a source of credit for them.²⁴

Once duly organized, an institution may apply to the Commissioner of Financial Services (Commissioner) to become a Cannabis Co-op by submitting such forms as the Commissioner may require, along with the institution's articles of incorporation, bylaws²⁵ and the filing fee established by the Commissioner.²⁶

The Commissioner has developed a checklist for applicants to follow in submitting their applications. Required documents include:²⁷

- Letter of Acceptance/Admission confirming access into the Federal Reserve System;
- Letter of application;
- Draft articles of incorporation;
- Draft bylaws;
- Biographical reports on all proposed members of the board of directors, the manager and any other person who will sign the articles of incorporation as an incorporator;
- Business plan;
- Check for the filing fee; and
- Any other items requested by the Commissioner.

²² U.S. Department of Justice. *Memorandum for all United States Attorneys, from Jefferson B. Sessions, Attorney General, regarding Marijuana Enforcement*. January 4, 2018. Retrieved January 31, 2019, from www.justice.gov/opa/press-release/file/1022196/download

²³ U.S. Department of the Treasury, Financial Crimes Enforcement Network. *Marijuana Banking Update: Depository Institutions (by type) Providing Banking Services to Marijuana Related Businesses (Data ending 31 March 2018)*. Retrieved January 2, 2019, from www.fincen.gov/sites/default/files/shared/277157%20EA%202nd%20Q%20MJ%20Stats_Public.pdf

²⁴ § 11-33-104(1), C.R.S.

²⁵ Pursuant to section 11-33-105, C.R.S., the Commissioner is required to prepare a standard form of bylaws.

²⁶ § 11-33-104(3)(a), C.R.S.

²⁷ Division of Financial Services Policy No. 400-21.

Within 60 days of application, the Commissioner must determine whether the application complies with the Act and whether the proposed Cannabis Co-op would benefit its proposed members.²⁸

Additionally, the institution must provide the Commissioner with written evidence of approval by the Federal Reserve System Board of Governors for access to the Federal Reserve System.²⁹

Once such evidence is presented, the Commissioner and the Executive Director of the Colorado Department of Regulatory Agencies must convene a stakeholder group to identify any conflicts between the Act and other state laws. The Commissioner must report these findings to the General Assembly, along with recommended solutions. The Commissioner is prohibited from approving any Cannabis Co-op application until any such conflicts have been resolved.³⁰

After any conflicts have been resolved, the Commissioner may issue a certificate of approval, which must be submitted to the Colorado Secretary of State, along with the Cannabis Co-op's articles of incorporation.³¹ Only then may the Commissioner issue a charter to the Cannabis Co-op.³²

However, no more than 10 Cannabis Co-op charters can be outstanding at any one time.³³

The deposits with and capital of a Cannabis Co-op are not backed by the full faith and credit of the State of Colorado.³⁴

Once chartered, a Cannabis Co-op has the power to, among other things:³⁵

- Receive the savings of its members as payment on shares or as deposits;
- Make loans to its members;
- Make loans to other Cannabis Co-ops;
- Make deposits in state and national financial institutions insured by an agency of the federal government; and
- Make certain, enumerated investments.

Cannabis Co-op membership is limited to:³⁶

- Licensed marijuana businesses,

²⁸ § 11-33-104(3)(a), C.R.S.

²⁹ §§ 11-33-104(3)(a) and 11-33-104(4)(a), C.R.S.

³⁰ § 11-33-104(4)(b)(I), C.R.S.

³¹ § 11-33-104(4)(b)(II), C.R.S.

³² § 11-33-104(5)(a), C.R.S.

³³ § 11-33-104(5)(b), C.R.S.

³⁴ § 11-33-116(2), C.R.S.

³⁵ § 11-33-107(1), C.R.S.

³⁶ § 11-33-106(1), C.R.S.

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- Industrial hemp businesses, and
 - Entities that provide goods or services to licensed marijuana businesses that can demonstrate an inability to obtain comparable services from a bank or credit union.

Individuals are prohibited from becoming members of a Cannabis Co-op.³⁷

A Cannabis Co-op may charge an entrance fee and an annual membership fee, but such fees must be the same for all members.³⁸ The members of a Cannabis Co-op may withdraw at any time, but advance written notification may be required.³⁹

A Cannabis Co-op may expel a member if the member fails to comply with the rules and policies of the Cannabis Co-op,⁴⁰ but only after written notice and an opportunity to be heard has been provided.⁴¹

Cannabis Co-ops must disclose to their members that:⁴²

- Federal law does not authorize financial institutions, including Cannabis Co-ops, to accept proceeds from activity that is illegal under federal law;
- It is not the obligation of the State of Colorado to defend the Cannabis Co-op or its deposits or capital in the event of a seizure; and
- Deposits with and the capital of the Cannabis Co-op are:
 - Subject to seizure by the federal government,
 - Not federally insured, and
 - Not backed by the full faith and credit of the State of Colorado.

Cannabis Co-ops may pay dividends to members,⁴³ and they are not tax-exempt.⁴⁴

Cannabis Co-ops must:⁴⁵

- Comply with all applicable federal laws, such as the Bank Secrecy Act;
- Conduct customer due diligence to prevent violation of the enforcement priorities enumerated in the Cole Memo; and
- File annual reports with the Commissioner demonstrating compliance with applicable federal and state laws.

³⁷ § 11-33-106(2)(b), C.R.S.

³⁸ § 11-33-116(1), C.R.S.

³⁹ § 11-33-121(1), C.R.S.

⁴⁰ § 11-33-121(1), C.R.S.

⁴¹ § 11-33-121(2), C.R.S.

⁴² § 11-33-106(4)(a), C.R.S.

⁴³ § 11-33-120, C.R.S.

⁴⁴ § 11-33-125, C.R.S.

⁴⁵ §§ 11-33-126(1) and -126(2), C.R.S.

Cannabis Co-ops are prohibited from using the terms “bank” and “credit union” in their articles of incorporation, trade name or any advertisements.⁴⁶ Cannabis Co-ops must use the term “marijuana financial services cooperative” in their articles of incorporation and the terms “marijuana” or “cannabis” in their trade names and any advertising.⁴⁷

Only duly chartered Cannabis Co-ops may use the following terms in their names and advertising:⁴⁸

- Cannabis credit cooperative,
- Marijuana credit cooperative,
- Cannabis credit co-op,
- Marijuana credit co-op,
- Cannabis financial services cooperative,
- Marijuana financial services cooperative,
- Cannabis financial services co-op, and
- Marijuana financial services co-op.

Other statutory provisions relevant to Cannabis Co-ops are consistent with those of other state-chartered financial institutions, such as:

- The requirement for examinations, which for Cannabis Co-ops must be conducted every six months;⁴⁹
- The payment of semiannual assessments to the Commissioner;⁵⁰
- The requirement to file quarterly reports with the Commissioner;⁵¹
- The requirement to hold annual meetings of members;⁵²
- The requirement to hold annual elections to enumerated positions and committees;⁵³
- The process by which Cannabis Co-ops may merge;⁵⁴
- The Commissioner’s authority to issue subpoenas;⁵⁵
- The Commissioner’s authority to issue cease and desist orders;⁵⁶
- The Commissioner’s authority to suspend or remove a director, officer or employee of a Cannabis Co-op for committing certain, enumerated acts;⁵⁷ and
- The Commissioner’s ability to suspend a Cannabis Co-op.⁵⁸

⁴⁶ § 11-33-108(1)(a), C.R.S.

⁴⁷ § 11-33-108(1)(b), C.R.S.

⁴⁸ § 11-33-108(2)(a), C.R.S.

⁴⁹ § 11-33-109(1)(a), C.R.S.

⁵⁰ § 11-33-109(1)(b), C.R.S.

⁵¹ § 11-33-109(2), C.R.S.

⁵² § 11-33-111, C.R.S.

⁵³ § 11-33-112(1), C.R.S.

⁵⁴ § 11-33-124, C.R.S.

⁵⁵ § 11-33-109(6), C.R.S.

⁵⁶ § 11-33-109(7), C.R.S.

⁵⁷ § 11-33-109(8)(a), C.R.S.

⁵⁸ § 11-33-122, C.R.S.

The Commissioner may require reserves sufficient to protect the interests of Cannabis Co-op members,⁵⁹ and the Commissioner may revoke the charter of a Cannabis Co-op that violates any federal laws or due diligence requirements of the Act.⁶⁰

The Commissioner may assess civil fines for violations of any cease and desist, suspension or removal order,⁶¹ not to exceed \$1,000 per day for each person in violation of such an order, or the Commissioner may assess a lump sum civil fine of not more than \$50,000.⁶² All civil fines are deposited in the General Fund.⁶³

The Commissioner has broad authority to adopt any rules necessary for the administration and enforcement of the Act,⁶⁴ although the Commissioner has not done so.

If federal deposit insurance provided by the Federal Deposit Insurance Corporation or the National Credit Union Administration becomes available for financial institutions providing services to the marijuana industry, the Commissioner is authorized to determine that the issuance of charters under the Act is no longer necessary.⁶⁵

⁵⁹ § 11-33-118, C.R.S.

⁶⁰ § 11-33-126(3), C.R.S.

⁶¹ §§ 11-33-110(1)(a) and (3)(a), C.R.S.

⁶² § 11-33-110(3)(a), C.R.S.

⁶³ § 11-33-110(4), C.R.S.

⁶⁴ § 11-33-109(3), C.R.S.

⁶⁵ § 11-33-104(3)(a), C.R.S.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The third, fourth and fifth sunset criteria question:

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;

Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively; and

Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

The Marijuana Financial Services Cooperatives Act (Act) is administered by the Commissioner of Financial Services (Commissioner) through the Department of Regulatory Agencies' (DORA's) Division of Financial Services (Division).

However, as a practical matter, no one has ever applied for a charter under the Act. As a result, this Program Description describes the anticipated process were the Act to be invoked.

Since the Act has never been utilized, the Division has no staff dedicated to its administration and has expended no funds.

Anyone seeking a charter under the Act must first obtain access to the Federal Reserve System of the United States (Federal Reserve), and submit the Letter of Acceptance/Admission issued by the Federal Reserve to the Commissioner along with:

- Letter of application;
- Draft articles of incorporation;
- Draft bylaws;
- Biographical reports on all proposed members of the board of directors, the manager and any other person who will sign the articles of incorporation as an incorporator;
- Business plan;
- Filing fee; and

-
- Any other items requested by the Commissioner.

While there is no standard format for the required letter of application, the Commissioner would expect the letter to include a summary of why the organizers are starting the cooperative, the location of any anticipated branches and a summary of the cooperative's strategic plans.

The Business Plan must include:

- A narrative description of the proposed cooperative's mission, operating goals and specific strategies to achieve its goals;
- Projected financial statements (balance sheet and income/expense statement) for at least the first three years of operation;
- A narrative description of how the cooperative will comply with the requirement that only entities licensed to own or operate a marijuana business are allowed to be members;
- The estimated population of the number of members of the cooperative; and
- The number of licensed marijuana entities that have indicated they will join and support the proposed cooperative.

The application filing fee is between \$100 and \$1,000, depending on the complexity of the application.

Once the application and supporting materials have been approved, the Commissioner and DORA's Executive Director must study the state's banking and credit union statutes to identify any conflicts with the Act and submit that study to the General Assembly. Only after the General Assembly rectifies any identified conflicts can the Commissioner issue a charter under the Act. Importantly, the study described in this paragraph must be completed only for the first application under the Act.

Although Division staff reports receiving several telephone inquiries per year regarding the Act, no charter applications have been received.

Since no applications for charters under the Act have ever been received, no charters have been issued, no examinations have been conducted and no disciplinary action has been taken.

Collateral Consequences - Criminal Convictions

The ninth sunset criterion requires COPRRR to examine whether the agency under review, through its licensing processes, imposes any sanctions or disqualifications based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Although the Act contains no restrictions on issuing a charter to those with criminal histories, the Retail Marijuana Code and the Medical Marijuana Code⁶⁶ (licensees of which are potential members of marijuana cooperatives) contain certain limitations. However, since no marijuana financial services cooperative charters have been applied for, none have been denied, revoked or sanctioned based on criminal history.

⁶⁶ These two codes will merge into the Colorado Marijuana Code on January 1, 2020.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendation that follows is offered in consideration of this criterion, in general, and any criteria specifically referenced in that recommendation.

Recommendation 1 - Sunset the Marijuana Financial Services Cooperatives Act.

The Marijuana Financial Services Cooperatives Act (Act) was intended to facilitate the development of state-chartered financial institutions that would provide banking services to state-licensed marijuana businesses, hemp businesses and the entities that provide services to them. The creation of such cooperatives is predicated on them gaining access to the Federal Reserve System.

Amendments 20 and 64 to the Colorado Constitution legalized medical and recreational marijuana, as well as hemp, under state law. However, marijuana remains illegal under federal law, raising a number of difficult policy issues, including that of banking. The federal government could find that a financial institution that knowingly accepts deposits from the marijuana industry is complicit in the trafficking of illegal drugs, money laundering, and other offenses. Thus, so long as marijuana remains illegal under federal law, it is unlikely that the Federal Reserve Bank will grant access to its system to a financial institution that exists to serve the marijuana industry.

The first sunset criterion asks, among other things,

Whether regulation by the agency is necessary to protect the health, safety, and welfare; whether the conditions that led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less, or the same degree of regulation[.]⁶⁷

Since no charters have been issued under the Act, it is reasonable to conclude that the Act does nothing to protect the public health, safety and welfare. Therefore, sunset is justified.

Similarly, if the federal government were to legalize marijuana and the Federal Reserve Bank were to grant access to the Federal Reserve System, the Act would be unnecessary because traditional banks and credit unions would be able to provide banking services to the marijuana industry.

Further analysis of the second question posed in the first criterion also supports sunseting the Act.

⁶⁷ § 24-34-104(6)(b)(I), C.R.S.

Prior to the passage of the Act in 2014, anecdotal evidence suggests that federal agencies like the Drug Enforcement Administration and the Federal Deposit Insurance Corporation, regularly threatened financial institutions that provided banking services to the marijuana industry with enforcement actions. As a result, financial institutions refused to provide such services to the industry.

However, in February 2014, as the Act was making its way through the General Assembly, the federal Financial Crimes Enforcement Network (FinCEN), a unit of the U.S. Department of the Treasury and an enforcer of the federal Bank Secrecy Act, issued guidance to financial institutions regarding the provision of banking services to the marijuana industry.

As a result of that guidance, a small number of traditional financial institutions began providing limited banking services to the marijuana industry. According to a survey conducted by the Colorado Office of Policy, Research and Regulatory Reform in May 2019, 23.1 percent of responding state-chartered financial institutions (banks, credit unions and savings and loans) reported that they provide deposit and checking account services to the state's regulated marijuana industry. Therefore, it is reasonable to conclude that conditions have changed since the Act's passage.

For all of these reasons, the General Assembly should sunset the Act.

Appendix A - Survey of State-Chartered Financial Institutions

In May 2019, the Colorado Office of Policy, Research and Regulatory Reform conducted a survey of 181 state-chartered financial institutions. A link to the survey was sent via email to 69 state-chartered banks, 38 state-chartered credit unions and 5 state-chartered savings and loans. Of these, an estimated 181 were successfully delivered and 26 individuals responded. This represents a response rate of 14.4 percent.

1. Which of the following best describes your financial institution?

| | |
|------------------|-------|
| Bank | 53.8% |
| Credit Union | 46.2% |
| Savings and Loan | 0.00% |

2. Does your financial institution accept deposits from the regulated marijuana industry?

| | |
|-----|-------|
| Yes | 23.1% |
| No | 76.9% |

3. Does your financial institution offer checking accounts to the regulated marijuana industry?

| | |
|-----|-------|
| Yes | 23.1% |
| No | 76.9% |

4. Does your financial institution lend funds to the regulated marijuana industry?

| | |
|-----|-------|
| Yes | 7.7% |
| No | 92.3% |

5. Which of the following best describes the deposit base represented by the regulated marijuana industry for your financial institution?

| | |
|---------------|-------|
| 0% | 0.00% |
| 1-5% | 23.1% |
| 6-10% | 0.00% |
| 11-25% | 7.7% |
| 26-33% | 0.00% |
| 34-50% | 0.00% |
| 51-75% | 0.00% |
| More than 75% | 0.00% |

6. Which of the following best describes the total value of deposits held by your institution on behalf of the regulated marijuana industry?

| | |
|-----------------------------|-------|
| None | 69.2% |
| \$1 - \$1 million | 11.5% |
| \$1 million - \$5 million | 7.7% |
| \$5 million - \$10 million | 3.8% |
| \$10 million - \$25 million | 3.8% |
| Over \$25 million | 3.8% |