Preemptive Federalism:
The Banking Dilemma Facing State Legal Marijuana Laws

**Abstract**

Despite marijuana use being prohibited under Federal law, as of 2016, 26 states and the District of Columbia have legalized marijuana use for medical purposes, and eight states including the District of Columbia have legalized recreational marijuana use. The current policy framework – cooperative federalism – established a new set of federal priorities in marijuana enforcement. While this new approach has resolved some uncertainties, others questions still persist. For example, under the Bank Secrecy Act (1970), federally insured banks face severe penalties for providing services to the marijuana industry. Because banks can still be prosecuted, less than one percent of banks have been willing to provide these financial services. In sum, further incremental action is needed to resolve the current banking dilemmas regarding state marijuana laws.

**The Banking Dilemma**

This research explored the need for further incremental action concerning federal discretion toward state marijuana use policies. While state banking laws are under the jurisdiction of federal law, banks are hesitant to provide financial services to state legal marijuana businesses out of fear of federal prosecution. In order to resolve this banking dilemma, further incremental action is required using either a top-down, or a bottom-up approach. Several top-down approaches have included Congressional attempts to pass bills that provide banking services to marijuana businesses. One bill granting banking access to marijuana industries was introduced by Representative Ed Perlmutter (D-CO) in 2013, and later in 2015. Another bill was introduced by Senator Corey Booker (D-NJ) in 2015. Not only did this bill provide for financial services to marijuana businesses, it also went further by re-scheduling marijuana from a schedule I to a schedule II narcotic. Also, congressional bill H.R. 5016 provides limited financial appropriations upon federal regulators, such as the Federal Depository Insurance Corporation (FDIC). If approved, this bill would continue to allow federal discretion over banks who provide financial services to the marijuana industry.

From the bottom-up approach, the state of Colorado has attempted to create a cannabis co-op. This co-op would allow marijuana businesses the ability to do their banking. In spite of approval by Governor Hickenlooper in 2014, the Colorado cannabis co-op was denied account access to the Federal Reserve Board’s account payment system in July 2015. In response, the state of Colorado filed a lawsuit challenging the ruling. The lawsuit states that under the Monetary Control Act of 1980, the Federal Reserve Board must grant access to non-member credit unions and by extension, the marijuana co-op. Subsequently, the lawsuit was dismissed in January 2016 by a Federal District Judge. Therefore, the co-op policy was ended.

In sum, each approach, whether top-down or bottom-up, would provide further incremental advancement to the new framework of cooperative federalism taken by the Obama Administration. However, due to the shortcomings of the cooperative guidelines, additional incremental approach is needed. This research explored the dynamics and consequences of the current approach, as well as addresses the need for a new framework of cooperative federalism.

**Marijuana Policy Background**

 In 1970, President Richard Nixon signed the Controlled Substance Act, making marijuana use illegal under federal law. Marijuana was now classified as a Schedule I controlled substance, the most dangerous schedule under the Controlled Substance Act. The Controlled Substance Act prohibits the manufacture, production, and the sale of schedule I narcotics, which are felony offenses (Kamin, 2014). Although marijuana is illegal under federal law, states have been effective at circumventing the Controlled Substance Act of 1970 through the interplays of federalism.

The dynamics of federalism focus on the interplay of political forces that protect state autonomy, affording states security from federal enforcement (Young, 2015). Contrary to this viewpoint of state power, the Commerce Clause of the U.S. Constitution states the Controlled Substance Act of 1970 as supreme to any state law. Under Congressional exercises of legislative authority, conflicting state and federal laws are resolved by federal supremacy (Denning, 2015). However, in the marijuana policy domain, preemptive federal policies (i.e., implied pre-emption) have rendered an alternative form of preemptive state policies (i.e., conflict preemption). Conflict preemption is a form of checks and balances where states check the federal government in regards to conflicts of interest based on the anti-commandeering principle. This principle prevents the federal government from forcing states to pass complementary controlled substance laws, as well as requires states to enforce federal drug laws (Vigorito, 2014). Therefore, the federal government relies on the cooperation of the states to implement federal policies (i.e., cooperative federalism) and the federal government relies upon state officials to administer federal programs. While states exercise power under cooperative federalism (Bulman-Pozen, 2014), when their laws are found to be at odds with the federal policy, a conflict dilemma arises. States are independent in determining their own policies contrary to federal law, due to discretionary power granted them under Cooperative Federalism. For example, in order for the “war on drugs” to be a success, federal policymakers rely on state and local government to implement the Controlled Substance Act. From this relationship, federal and state actors work together to enforce marijuana prohibition. Under this framework, the federal government delegate’s responsibility, but the state has discretion in choosing how to accomplish the tasks and which tasks to prioritize (Bullman-Pozen and Gerken, 2009). Therefore, states have advanced their own interests concerning marijuana policies due to their discretionary power by using the anti-commandeering principle.

In 2008, Presidential candidate Barack Obama stated in his campaign that marijuana law enforcement would not be a high priority for his administration (Kamin, 2012). The 2009 Ogden Memo established a new framework of reform, which is the first increment toward cooperative federalism. In cooperation, this new framework allowed states the liberty to implement their own marijuana policies, as long as they comply with federal guidelines. In 2012, Colorado and Washington imposed a more vexing challenge to federal officials by legalizing marijuana for recreational use. The United States Department of Justice responded in August 2013 with the Cole Memorandum, which acknowledged that nearly all marijuana enforcement is conducted at the state level. The principles listed in the Cole memorandum -- much like the Ogden Memo -- demonstrated the preemptive measures of federal authority under the Controlled Substance Act, and was a significant approach in reforming federal marijuana prohibition.

Of all the federal preemptive guidelines mentioned in the Cole memo of 2013, federal guidance to banking and financial services was not listed. Prior to the implementation of Colorado’s Amendment 64, state administrators realized marijuana enterprises would lack access to financial services -- a severe problem for both marijuana businesses and law enforcement agencies (Hudak, 2015). In February 2014, the Department of Justice and the Department of Treasury responded with a memo outlining a potential plan to improve financial services for state legal marijuana businesses. They reiterated the guidelines stated in the original Cole memo and extended the discretionary enforcement of federal prosecutors regarding state compliance. On the other hand, the Department of Treasury issued guidelines from the Financial Criminal Enforcement Network (FinCEN), clarifying the reporting obligations of financial institutions. In compliance with the Bank Secrecy Act, financial institutions would still be required to file Suspicious Activity Reports (SAR), if they know or have reason to suspect they are working with a marijuana business regardless of whether the business is legal under state law (Winn, 2016). The FinCEN memo created three categories of SAR’s: Marijuana Limited (i.e., full compliance), Marijuana Priority (i.e., some compliance), and Marijuana Termination (i.e., non-compliance). Although SAR’s help banks identify and assess their customers risk levels, they also aide federal prosecutors identify banking violations -- such as conspiracy, or money laundering charges. In sum, the FinCEN guidelines informed banks providing services to marijuana businesses that they would not be shielded from federal prosecution. Instead the Money Laundering Control Act of 1986, Title 18, section 1956 and 1957, still forbade banks from engaging in monetary transactions regarding money and property derived from unlawful activity (Buckner, 2015). Financial institutions violating the Money Laundering Control Act could face a maximum fine of $500,000 or twice the value of the property involved in the transaction, and or bank officials receive a prison sentence of up to 20 years.

Although FinCEN’s intent was to enhance transparency for banks to make financial services available to marijuana businesses, banks remained subject to prosecution due to marijuana being illegal under the Controlled Substance Act. According to Frank Keating, President and CEO of the American Bankers Association, the new rules are not stringent enough, given that the possession and distribution of marijuana violates federal law, and banks that support those activities still face the risk of prosecution and sanctions (McErlean, 2015). Federal banking policies have incentivized banks to assist federal officials in combating illicit activity in order to avoid penalties, such as having their charter revoked by the Federal Reserve Board, or losing their Federal Deposit Insurance Corporation insurance. In essence, banks are a backdoor approach for federal enforcement in order to mitigate the societal ills associated with illicit drug trafficking and use (Dickson, 2015). Because most financial institutions refuse to open accounts with marijuana businesses, most have had to remain a cash only business. In spite of FinCEN’s guidance to banks, federal law has prevailed.

In understanding the shortcomings of the Obama administrations policy discretion on state marijuana policies, new policy is necessary. Understanding the incremental framework regarding the Obama administration’s discretion, any new policy, theoretically, should not differ greatly from any of the prior policies. Advanced by Charles E. Lindblom, incrementalism requires only limited cognitive capacities of decision makers, and reduces the scope and cost of information collection and computation (Etzioni, 1967). Applicable to this line of reasoning, the banking dilemma is an understood factor in which a resolution is necessary. Therefore, could very well serve as another stepping stone in reforming marijuana laws. While small steps could lead to a significant change, there is nothing in this approach to guide the accumulation (Etzioni, 1967). The powers of federalism have significantly limited the federal governments enforcement of marijuana laws within the boundaries of individual states. However, with over half of states now allowing marijuana for either medical or recreational use, the standoff will likely continue at the disadvantage of both state and federal officials. Therefore, reforming federal enforcement of marijuana policy is not only necessary, but should be considered inevitable, as well.

**Two Approaches to Policymaking**

This research investigated the limitations of incremental action concerning cooperative federalism framework from a top-down and bottom-up approach. Most significant, to resolve the shortcoming of the past cooperative federalism approaches taken by the Obama administration, a new approach of cooperative federalism is needed regarding the reform of marijuana policies between both federal and state lawmakers. This study of incremental policy brings about several opportunities in addressed the current dilemma concerning banking laws: low incrementalism, which promotes little to no change; moderate incrementalism, which establishes a new step in the reform process, building off of the past approaches taken; and extreme incrementalism, which establishes a new framework of regulation policy. However, this categorization of incrementalism exists primarily within the top-down approach, as more solutions are prevalent.

**Examples of the Top-Down approach**

**Low Incrementalism:**

* **H.R. 5016,** this bill was proposed by Ander Crenshaw (R-FL) on July 17, 2014 to the Committee on Appropriations. This bill passed the House of Representatives but died in the Senate.

**Moderate Incrementalism**

* **H.R. 2652**, cited as the “Marijuana Businesses Access to Banking Act of 2013, was introduced by Representative Ed Perlmutter (D-CO) on July 10, 2013 to the Committee on Financial Services. Unfortunately, this bill died at the end of the Congressional Session having never left committee.
* **H.R. 2076**, cited as the “Marijuana Business Access to Banking Act of 2015,” was introduced by Representative Ed Perlmutter (D-CO) on April 28, 2015 to the Committee on Financial Services. This bill expired upon conclusion of the 114th Congressional Session.
* **S. 1726,** cited as the “Marijuana Business Access to Banking Act of 2015,” was introduced on July 9, 2015 to the Committee on Banking, Housing, and Urban Affairs
* **H.R. 2215,** cited as the “Secure and Fair Enforcement Banking Act of 2017” or the “SAFE Act of 2017.” Was introduced by Representative Ed Perlmutter (D-CO) on April 27, 2017 to the Committee on Financial Services, in addition to the Committee on the Judiciary. This bill remains an active piece of legislation within the current 115th Congressional Session.
* **S. 1152,** cited as the “Secure and Fair Enforcement Banking Act,” or the “SAFE Banking Act,” was introduced by Senator Jeff Merkley (D-OR) on May 17, 2017 to the Committee on Banking, Housing, and Urban Affairs. This bill remains an active piece of legislation within the current 115th Congressional Session.

**Extreme Incrementalism:**

* **S.** **683**, cited as the “Compassionate Access, Research Expansion, and Respect States Act of 2015,” was introduced by Senator Corey Booker (D-NJ) on March 10, 2015 to the committee on the Judiciary. This bill unfortunately didn’t make it out of committee and expired upon the close of 114th Congressional Session.

**Examples of the Bottom-Up approach**

* **House Bill 14-1398**- This bill created Colorado’s cannabis co-op and was signed into law by Governor John Hickenlooper on June 6, 2014. This bill created a state based credit union for Marijuana businesses in Colorado to have access to banking services.

**Content Analysis and Discussion**

Using a qualitative content analysis, a study was made of the content of the above bills effecting the marijuana policy domain. The content analysis is useful in identifying the incremental steps characterizing the cooperative federalism framework. The bills are examples of both the top-down and bottom-up approach, represented by Congressional action, as well as Colorado’s cannabis co-op policy.

Doing so will identify insight into the relationship between the federal and state government concerning banking and financial services between the 2013-2017 timeframe. We are interested in the amount and type of federal relief provided to banks and financial industries that can be characterized as cooperative federalism. The results begin with the top-down approach, which consists of a content analysis of each proposed bill to determine the amount of federal relief each provide.

**Results of the top-down approach:**

**Low Incrementalism:**

Congressional bill, H.R. 5016, makes budget appropriations for financial services and general government services. Although none of the content within the bill applied to the thematic elements within my research design. However, because the bill was regarding limited monetary appropriations to financial industries, some claims can be taken into consideration. The financial appropriations allocated to the Treasury Department in Title 1 came to a total sum of $175,000,000. Of this amount appropriated to the Treasury Department, $21,000,000 had to remain available until September 30, 2016. Although there was no mention to any Federal banking regulators, this bill could be preserving the actions taken by the Obama Administration. This would mean that the Cole Memo, as well as the FinCEN guidelines will be adhered to, as they had been implemented prior to this bill’s proposal. Federal discretion would be continued, due to the limited amount of federal resources. However, banks would still be inclined to follow the Bank Secrecy Act, and out of fear of federal prosecution and money laundering charges, many will continue to deny financial services to state marijuana businesses.

**Moderate Incrementalism:**

The first aspect of incremental reform is regarding Federal Banking Regulators, such as the Federal Reserve Board and the FDIC. Of the five congressional bills analyzed, each of them (H.R. 2652, H.R. 2076, S. 1726, H.R. 2215, and S. 1152), prohibited Federal banking regulators from terminating or limiting the depository insurance of a depository institution, all because that financial institution chooses to do business with a marijuana related legitimate business.

Under H.R. 2652, amends would also be made to the Bank Secrecy Act, as depository institutions would no longer be required to file Suspicious Activity Reports (SAR), because a certain party is marijuana related legitimate business. However, H.R. 2076, S. 1726, H.R. 2215, and S. 1152, require financial institutions to comply with the FinCEN guidelines of 2014, when filing suspicious activity reports. By having depository institutions comply with the FinCEN guidelines of 2014, as listed under these 4 pieces of legislation, indicate that both the Cole Memo, as well as the FinCEN guidelines, were necessary incremental steps, even though both the Cole Memo and the FinCEN guidelines failed to resolve the banking dilemma for state legal marijuana businesses.

Therefore, the four congressional bills outline the shortcoming of the prior guidelines, and therefore establishes a potential incremental change in reliving the fear of federal prosecution to banks and financial services through a new approach of cooperative federalism taken in the past. Only this time, the cooperative framework is between Federal banking regulators and banks providing financial services to state legal marijuana businesses through the removal of federal penalty.

**Extreme Incrementalism:**

Perhaps a more radical approach, the bill S.683 makes amends to the Controlled Substance Act of 1970 by removing marijuana from the Schedule I category and placed in the Schedule II category. None of the bills under low or moderate incrementalism addressed any changes to the Controlled Substance Act (CSA), as marijuana would still be listed as a schedule I narcotic under the CSA. By rescheduling marijuana, not only would more medical research be allowed, but relied would also be provided to the banking and financial industry, as well. Considering this reality, S. 683 did address concerns surrounding banking reform laws. First, the bill prohibits federal banking regulators from limiting or punishing depository institutions who provide financial services to state legal marijuana businesses. S. 683 also addresses the criteria for banks filing suspicious activity reports, and under this bill, banks will comply with the FinCEN guidelines issues in 2014. In sum, this bill provides prosecutorial relief to banks choosing to serve state legal marijuana businesses.

Re-scheduling marijuana might not be politically feasible for the time being, as the Drug Enforcement Administration, refused to re-schedule marijuana as a schedule II narcotic in August 2016. Fortunately, this bill does provide relief to banks, as they would no longer be prosecuted for serving state legal marijuana businesses. In the future it is likely that marijuana will be re-scheduled, which would establish a new framework of regulatory policy.

**Results of the bottom-up approach:**

Signed by Colorado Governor John Hickenlooper on June 6, 2014, HB 14-1398 established a state-based cannabis co-op for state legal marijuana businesses. And within the framework of cooperative federalism, these regulations instilled a framework for each cannabis co-op to adhere to. Under this co-op policy, Federal Banking Regulators (Federal Reserve Board, FDIC, et.al), requires that within sixty days after the filing and fee payment, the co-op commissioner shall determine whether the individual co-op’s application complies with this article, and upon written approval by the Federal Reserve Board of Governors, the commissioner shall either approve or deny the co-op’s application to the Federal Reserve Board’s account payment system without notice and hearing. However, if FDIC insurance were to become available for banks and credit unions, the commissioner may determine that the continued issuance of charters through this co-op article as no longer necessary. One significant aspect of the co-op policy, is the requirement stating that all co-op’s will comply with the Cole Memo of 2014, and any co-op found in violation shall have their charter revoked by the commissioner. As for the Bank Secrecy Act, all cannabis co-ops are required to file, with the commissioner, a report of any suspicious transaction indicating a possible violation of law, rule, or federal regulation, which would include both the Cole Memo and the FinCEN guidelines. A co-op shall file the Suspicious Activity Report no later than thirty calendar days after the date of initial detection, and report no later than 60 days after detection. Also, each co-op is required to maintain a copy of each Suspicious Activity Report for a five year period, and shall make all documents available to the commissioner, and/or any Federal, State, or Local law enforcement agent in overseeing the cannabis co-op’s compliance with the Bank Secrecy Act. Lastly, any co-op director, officer, employee, or agent that makes a voluntary disclosure of any violation to a government agency or any other authority, shall be protected from liability to any person for such disclosure.

Colorado’s cannabis co-op policy demonstrates cooperative federalism through compliance with the Cole Memo of 2014, as well as complying with the guidelines of the State Commissioner. Also, cannabis co-ops receive whistleblower protection for conducting their due diligence in reporting suspicious activity to the proper authorities. Unfortunately, this bottom-up approach could lack effectiveness. For instance, members of the cannabis co-op are required to provide written evidence of approval by the Federal Reserve Board to the commissioner. In July 2015, the Federal Reserve Board denied Colorado’s cannabis co-op account access to their payment system. In spite of all of this, the State of Colorado has filed a lawsuit against the Federal Reserve Board, citing that they are legally obligated to authorize Colorado’s cannabis co-ops’ under the Monetary Control Act of 1980. In which the Federal Reserve Board must grant access to their account payment system for state chartered banks.

Without account payment access from the Federal Reserve Board, Colorado’s cannabis co-op will be unable to participate in the electronic transfer of funds, receive debit and credit card payments, and cash checks. In January 2016, it was determined by Federal District Judge, R. Brooks Jackson that the Colorado Cannabis co-op misinterpreted section 248a of the Monetary Control Act of 1980, as this section pertains to the pricing of services provided by the Federal Reserve Bank, not the Federal Reserve Bank’s obligation to grant access to a master account. Overall, United States District Judge, R. Brooks Jackson, went on to dismiss the case on grounds that the court cannot use equitable authority to authorize illegal activity, and therefore hopes that Congress would soon resolve the banking issue.

**Discussion**

To elaborate on the findings, the top down approach has entertained a policy approach, which can arguably devise a new framework to relinquish the shortcomings of the FinCEN guidelines of 2014. The new incremental approach, as mentioned in each “Marijuana Business Access to Banking Act’s,” “SAFE Banking Acts,” as well as the “Compassionate Use, Research Expansion, and Respect States Act of 2015,” call for the prevention of federal financial regulators from limiting or revoking depository institutions FDIC insurance. This means that banks and depository institutions can provide financial services to marijuana businesses without facing any penalty from financial regulators, who must now allow banks to provide financial services to state legal marijuana businesses. Another policy solution, as prevalent in H.R. 2076, S. 1726, S. 683, H.R. 2215 and S. 1152 requires depository institutions to adhere to the FinCEN guidelines of 2014, rather than excuse banks from filing Suspicious Activity Reports altogether (as was mentioned in H.R. 2652). The FinCEN guidelines of 2014 require financial institutions to verify with both the marijuana business owner, as well as the appropriate state officials, in determining the legitimacy of their new potential customer. In essence, preventing Federal banking regulators from limiting or revoking depository institutions FDIC insurance, as well as imposing the FinCEN guidelines of 2014 upon banks, appears to be the most practical solutions due to their consistency within the given two year timeframe.

From the bottom-up approach, Colorado’s cannabis co-op has implications for stakeholders at the state level. For example, the Cole Memo of 2014 requires Colorado state officials to adhere to the preventive federal enforcement measures. Under these guidelines, being the Bank Secrecy Act, co-ops have obligations. Obligations for these co-ops include conducting their due diligence and reporting any suspicious findings to the proper authorities, as well as other financial institutions, if necessary. Colorado’s cannabis co-op must also adhere to the Cole Memo, as well as the Bank Secrecy Act when filing Suspicious Activity Reports. Upon request, each Suspicious Activity Report on file must be presented to the cannabis co-op Commissioner, as well as any Federal banking regulator representative. In sum, the Suspicious Activity Reports filed by chartered cannabis co-op in compliance with the Bank Secrecy Act, intend to prevent any violations listed under the Cole Memo, and Colorado’s state marijuana laws.

However, because the Federal Reserve Board has denied cannabis co-ops access to their account payment system, setbacks have occurred. This ruling indicates that as long as marijuana is illegal under federal law, the Colorado cannabis co-ops are seen as illegitimate, due to the Federal District Judge dismissing the lawsuit regarding the cannabis co-op, and sided with the ruling of the Federal Reserve Board. Most significant, the Federal District Judge, R. Brooks Jackson, explained that the Colorado cannabis co-op misinterpreted the Monetary Control Act of 1980, citing the plaintiff’s argument as pertaining to pricing of services by the Federal Reserve Bank, not the Bank’s obligation to provide access to their master account. However, the cannabis co-op was possibly designed as only a temporary solution, especially if FDIC insurance was not limited or revoked if banks provided services to marijuana businesses.

From the literature review, research has suggested that the theory of federal supremacy has prevented banks from denying financial services to marijuana businesses. Banks are a back door approach to prevent drug trafficking and money laundering through regulatory confinement. Therefore, in order to avoid penalties from Federal banking regulators, banks refuse to serve state marijuana businesses. However, if banks were subject to federal enforcement immunity, such as not having their FDIC insurance revoked, much of the banking conflict facing state legal marijuana businesses could be resolved. States have won the battle of regarding marijuana policies, but have lost the war when it comes to banking laws.

The theory of cooperative federalism is demonstrated in both the top-down and bottom-up approaches. For example, Colorado’s cannabis co-op policy requires state chartered co-op’s to abide by the Cole Memo of 2014. Also, all cannabis co-ops within the state of Colorado are required to follow the Bank Secrecy Act, and file Suspicious Activity Reports when necessary and report them to the appropriate authorities. As for the Congressional bills proposed, both of the “Marijuana Businesses to Banking Acts of 2015,” both of the “SAFE Banking Acts,” as well as the “Compassionate Use, Expansive Research and Respect States Choice Act of 2015,” would require depository institutions to adhere to the FinCEN guidelines of 2014 when it comes to filing Suspicious Activity Reports. In essence, federal guidelines implemented by the Obama Administration remain prevalent within the top-down approach. However, in order for them to remain effective at reforming marijuana policies, further incremental change is needed.

Lastly, the theory of incrementalism comes into play. In 2013, the “Marijuana Business to Banking Act of 2013,” aimed to excuse depository institutions from filing Suspicious Activity Reports. However, in both “Marijuana Businesses to Banking Acts of 2015,” each of the “SAFE Banking Acts,” and the “Compassionate Use, Expansive Research and Respect States Choice Act of 2015,” would have depository institutions adhere to the FinCEN guidelines of 2014 when filing Suspicious Activity Reports. Therefore, the FinCEN guidelines were a necessary incremental step in allowing in allowing banks to provide financial services to marijuana businesses. However, because banks were not subject to any federal immunity under the Bank Secrecy Act, most banks remain reluctant to work with marijuana businesses; demonstrating the need for further incremental action. Therefore, by preventing Federal banking regulators from terminating the FDIC insurance of depository institutions, much of the banking debacle could be resolved. After all, one of the top reasons why banks deny financial services to marijuana businesses is out of fear of losing their FDIC insurance. Lastly, the FinCEN guidelines remain as a relevant tool for financial institutions in their obligation to filing Suspicious Activity Reports. Under the FinCEN guidelines, depository institutions were instructed to work with both marijuana businesses and the appropriate state regulatory agencies. Under this new approach, fear of prosecution from Federal banking regulators would be alleviated. Therefore, banks could provide financial services to state legal marijuana businesses without having to fear federal prosecution.

**Recommendations**

In conclusion, in realizing the approaches taken by the Obama Administration, in regards to the Cole Memo and the FinCEN guidelines, have endured shortcoming regarding banking laws, further incremental action is needed. Therefore, the incremental approach outlined in both of “Marijuana Business Access to Banking Act of 2015,” each of the “SAFE Banking Acts,” as well as the “Compassionate Use, Expansive Research and Respect States Choice Act of 2015,” would serve as a practical solution in resolving the banking dilemma. The new approach prohibits depository institutions from having their FDIC insurance revoked by Federal banking regulators, and requires banks to adhere to the FinCEN guidelines in filing Suspicious Activity Reports. This approach seems relevant, as not only are the FinCEN guidelines of 2014 still applicable, but also alleviate the fear of federal prosecution from Federal banking regulators. Therefore, this approach appears the most practical in being the next incremental approach, as this approach would enhance the reformative marijuana policy framework of cooperative federalism taken by the Obama Administration, particularly in resolving the ongoing banking dilemma.

The Obama administration made progress in reforming marijuana laws by establishing a regulatory framework of cooperative federalism among both state and federal policymakers. As mentioned, the Cole Memo outlines federal guidelines states are required to follow in implementing their marijuana policy, while the FinCEN guidelines outline a framework of cooperative federalism between federal financial regulators and banks. However, a new approach at preventing Federal banking regulators from limiting or terminating a depository institutions FDIC insurance is strongly recommended, as the FinCEN guidelines did not grant prosecutorial relief to banks. Therefore, this approach establishes a new framework of cooperative federalism between federal financial regulators and banks, and is critical, as many marijuana businesses have to operate entirely on cash.

 Due to the cash only nature of state legal marijuana businesses, states cannot effectively maintain track of the general revenue derived from legal marijuana sales, not to mention that the revenue could be going to criminal enterprises- such as drug cartels- or possibly be used as a cover up for other criminal activity. The Cole Memo explicitly outlines the prevention of both, preventing revenue from legal marijuana sales from going to criminal enterprises and preventing the use of state legal marijuana for covering other criminal activity. Therefore, concerns still surround both state governments and state legal marijuana businesses, as the likelihood of criminal activity remain. In order to resolve these concerns, banks must be allowed to serve state legal marijuana businesses by relieving them of federal prosecution through the framework of cooperative federalism.

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