

EARL BLUMENAUER

THIRD DISTRICT, OREGON

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January 29, 2015

Mr. Martin Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Mr. Gruenberg:

It is no secret that we are in the midst of a revolution when dealing with marijuana in the United States. Four states and the District of Columbia have legalized adult use, and at least half of the American population has access to legal medical marijuana. Our financial regulations have not kept pace, however, despite the President's assurance that he has "bigger fish to fry" than focusing federal enforcement against these enterprises, which after all, are legal under state law.

One of the anomalies is that due to uncertainty regarding the financial regulatory status, they have been largely forced to conduct their business on an all-cash basis. Everyone acknowledges the insanity and unfairness of requiring legal businesses to pay their taxes with shopping bags full of \$20 bills.

We are slowly but surely making progress in this regard. In the past year alone, Congress voted twice in favor of expanding access to banking services for marijuana businesses. Congress has also acted to prevent the Department of Justice from interfering with state medical marijuana laws. More progress appears to be in the offing in Congress, and the administration has taken significant steps toward a more rational treatment of these businesses.

That's why I was so disheartened to read the enclosed *Denver Post* article (David Migoya, *MBank pulls out of Colorado a week after taking on cannabis accounts*, *Denver Post*, January 26, 2015) that only a week after announcing they would offer banking services to state legal marijuana businesses in Colorado, MBank—a community bank headquartered in Oregon—abruptly decided to suspend these services. The article alluded to pressure from the Federal Deposit Insurance Corporation (FDIC) as a factor in MBank's decision. If this is true, it raises serious questions about the application of federal financial oversight.

Facilitating access to banking services for marijuana-related businesses is imperative as more states move toward legalization. With legal marijuana sales projected to hit \$8 billion by 2018, the need for regulators to get this right is as great as the need for access to reliable banking

services. In addition to obvious business needs, this is a matter of grave public safety. I have led efforts in Congress to protect financial institutions as they expand these services, and I have encouraged the Obama administration to find a workable solution.

Progress on this front was made just under a year ago when the US Department of Treasury's Financial Crimes Enforcement Network (FinCEN) issued guidance clarifying how financial institutions can provide services to marijuana-related businesses while complying with a related U.S. Department of Justice (DOJ) memo identifying law enforcement priorities. The purpose of this guidance is to "enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses." The allegations in the *Denver Post* that the FDIC appears to be governing by informal fiat runs counter to these steps taken by the administration to date.

In keeping with the enforcement trends issued by the administration, the FDIC should develop workable guidance to appropriately structure financial services for marijuana-related businesses.

Furthermore, I was troubled to read in the same *Denver Post* article that the FDIC may have encouraged MBank to suspend their activities in Colorado, not because they violated federal guidance or state laws, but allegedly because of heightened media attention around their expansion. To better ascertain the facts in this matter, and to better understand what standards the FDIC applies to banks who offer services to marijuana-related businesses, I would appreciate your response to the following questions as soon as possible:

1. When FinCEN released its guidance in February 2014, the FDIC declined to comment. Almost a year has gone by. Has your agency taken a position on these guidelines?
2. Do you plan to release any official guidance relating to the provisioning of financial services for legal marijuana businesses? If so, what is your timeline? If not, why not?
3. In the absence of official guidance, are there unofficial rules or guidelines that the FDIC applies when reviewing these cases? If so, please describe other similar applications of this approach. Have other banks approached you regarding entry into marijuana-related business banking? If so, please describe how many. As demand for these services increases, it is incumbent on your agency to respond appropriately.
4. Did the FDIC provide MBank guidance prior to entering the Colorado market? If the FDIC had concerns about the nature of MBank's business, were they voiced before MBank's announcement?
5. After MBank's announcement regarding their intention to provide financial services to marijuana-related businesses in Colorado, did the FDIC in any way influence or pressure MBank to suspend operations in the state, as suggested by the *Denver Post*?

Your attention to this matter as soon as possible is important to help hundreds of legal businesses and hundreds of thousands of customers across the country.

Answers to these questions will shed light on the regulatory challenges financial institutions face as they seek to expand services to marijuana-related businesses. Financial institutions need confidence that they can provide banking services to legitimate marijuana businesses without threat that their regulators will penalize them, threaten their deposit insurance, increase their capital requirements or force them to close accounts or stop providing services.

I encourage the FDIC to conduct its operations in a way that maintains stability in the financial system, but also addresses the very real public safety issues associated with the lack of financial services in this sector.

Sincerely,

A handwritten signature in black ink, appearing to read "Earl Blumenauer", with a long horizontal flourish extending to the right.

Earl Blumenauer
Member of Congress