



**California State Treasurer Fiona Ma addresses
U.S. House Committee on Financial Services:
House Consumer Protection and Financial Institutions Subcommittee**

**Wednesday, February 13th, 2019
“Challenges & Solutions: Access to Banking Services
for Cannabis-Related Businesses”**

Good afternoon, Chairman Meeks and members of the Committee. Thank you for offering me the opportunity to speak on a matter of critical importance to California.

My name is Fiona Ma, and I am a licensed CPA who is proud to serve as California’s 34th State Treasurer. As the State’s Banker, \$2.3 trillion dollars in transactions move through my office, I oversee \$85 billion in bond debt and manage \$92 billion dollars in short term investments for the State and local governments. In addition, I chair 16 boards, commissions, and authorities that provide financing for our schools, roads, housing, levees, public facilities, and other crucial infrastructure projects that better the lives of all Californians, and provide programs that help Californians save money for costs associated with college, disability, and retirement.

I have served in government since 1995 as a staff to the former California State Senator John Burton who also served in U.S. Congress. In 2002, I got elected to the San Francisco Board of Supervisors and moved on to serve as Majority Whip and Speaker pro Tempore in the California State Assembly - passing 60 pieces of legislation under 2 Governors and 3 Speakers during the Great Recession from 2006-2012.

In 2014, I was elected to the State Board of Equalization, one of the two principal tax collection agencies in our state where cannabis dispensaries are supposed to collect and remit sales taxes.

Duffel bags and sometimes suitcases of cash would arrive quarterly at some of our designated offices and some business owners had to drive 350 miles to pay their taxes. I asked how much we collected from the cannabis industry and my agency really didn't know since tax revenues are "commingled" and deposited with other cash tax payments. I participated in educational tours in Humboldt, Mendocino, and Trinity Counties in California, also known as the Emerald Triangle - where legal outdoor harvest can generate up to \$474 million annually in revenue. To better educate myself and my staff around barriers and challenges of the industry, I held public stakeholder meetings around transportation, track & trace, and banking. Many business owners didn't know the local and state filing requirements and many didn't even file income taxes. And we were also concerned with the public safety surrounding all cash businesses and heard many off-the-record stories. Eventually it became starkly clear that the "Big Elephant" in the room was lack of banking access.

Additionally, I travelled to Colorado, Washington, and Canada and met with Executives of their respective tax collection departments to discuss their experience with this emerging industry and around banking. According to the Colorado Department of Revenue, overall cannabis revenue (from taxes, licenses & fees) has increased dramatically from approximately \$68 million in 2014 to over \$266 million in 2018. Additionally, Washington State has also seen a significant tax collection increase of \$130 million from 2016 to 2017 - when the state collected \$319 million in excise taxes alone. Sales of legal cannabis in Washington have skyrocketed from \$259 million in fiscal year 2015 to \$1.3 billion in fiscal year 2017 - to put that in perspective that is a 500% growth in just two years.

Now we get to California - With nearly 40 million residents and more than a million medical cannabis patients, California's market represents about a third of the North American cannabis market. In the first three quarters after legalizing adult-use cannabis in November 2016, we collected approximately \$228 million in tax revenue.

The cannabis market in California alone is expected to exceed \$5.1 billion in overall revenue in 2020 according to an Arcview Market Research and BDS Analytics report. This same Report highlighted that the legal cannabis market could triple over the next four years - being worth as much as \$32 billion GLOBALLY. The US will fuel a majority of this revenue, and it's critical we accommodate the magnitude of this economic uptick with access to banking for this new state regulated industry.

I wanted to give some history on medical cannabis. The first public cannabis dispensary was founded in San Francisco in 1994 to alleviate nausea and pain to AIDS patients.

Speaking of advocating for patients, we are elected to speak on behalf of our constituents. Additional problems we don't commonly think about related to the unbanked cannabis industry is the negative impact on families when employees are paid in cash because their cannabis employer can't secure a payroll system as an unbanked business:

- How is someone supposed to build credit by operating primarily in cash? If they can't build credit, how can they buy a car, buy a home to support their family, or even qualify to rent a home or an apartment?
- Social Security, State and, Federal Income taxes can't be accurately collected on cash payments wage statements done manually to employees. This doesn't allow employees to pay into - or receive - Social Security benefits.
- The lack of a paper trail for all-cash businesses can pose as a challenge in meeting financial obligations such as paying alimony and child support if an employee chooses to not report their cash income.

The early adopters of medical cannabis helped pass California's landmark Prop. 215 in 1996, the first medicinal cannabis initiative in the U.S.

Fast forward to 2016 and Prop 64: the Adult Usage Marijuana Act also known as California Marijuana Legalization Initiative which was passed by the California voters with 7.9 million votes representing 57% of the vote.

Following the passage of Prop 64, my predecessor Treasurer John Chiang invited me to join a seventeen-member working group made up of members of the cannabis industry, the banking and financial services sector, state licensing officials and the related tax collecting agencies.

The group published a report of its findings in November of 2017 concluding that even though there were some temporary, or adaptation steps the state itself could take to improve the safety of the public and enable efficient collection of tax and fee revenue, the only truly durable solution was for the federal government to act.

One of the recommendations of the group suggested that the state explore establishing a state-backed financial institution devoted exclusively to the cannabis business. That exploration produced another thoughtful report, released just six weeks ago, that concluded much the same thing—that the only effective long-term solution that would produce acceptable results for the financial services sector was to change federal laws and regulations related to offering basic banking services to this growing industry.

I recognize that there have been multiple federal congressional proposals to tackle the complex and multi-faceted issues surrounding this industry. But all have stalled either from lack of broad-based support or from some measure of over complexity. One particular and promising standout in this group of proposals is to offer some form of “SAFE HARBOR” to banks engaged with the industry. I support this approach.

The Committee is undoubtedly aware that cannabis businesses are not alone in struggling to gain access to banking—even though theirs is the most difficult situation. Any business that handles significant amounts of currency is also subject to greater scrutiny by the financial services industry for all of the reasons that are well understood by members of this committee. Large sums of cash are untraceable and are frequently associated with illicit activities making banks and financial service providers approach these businesses with a high degree of caution. Even with these barriers, it is important to note that more than three hundred financial institutions across the U.S have filed Suspicious Activity Reports associated with cannabis businesses in a recent quarter.

However, the clash between federal law and state law in the cannabis industry presents an especially difficult problem for states such as California where cannabis use is now legal. Currently, there are 33 states that allow legal medicinal use and 10 states plus the District of Columbia that allow adult recreational use. One of the surest ways of bringing a business out of the shadows and collecting lawfully-imposed taxes is to promote access to the economy’s banking and payments systems.

Yet, federally regulated banks and financial institutions risk severe penalties if they inadvertently aid and abet—no matter how remotely—activities that the federal government deems illegal.

The well understood Cole Memorandum offered some sense of comfort to those financial institutions skilled enough to properly know their customer, apply appropriate due diligence to the business activities of those customers, and to safeguard their banks as well as the nation's payment system from known bad actors who violated the eight basic tenets set forth in that Memo.

Unfortunately, the Cole Memorandum has been rescinded and now these financial institutions are left without even the most basic safe harbor mechanisms to guide their business decisions.

It is for this reason that I believe that the risk management of these financial service firms has been transformed into outright risk avoidance by too many institutions and why we need your help.

We supported "The SAFE Banking Act", originally introduced as H.R. 2215 in 2017, proposed by Congressman Perlmutter. The SAFE Banking Act would provide a "safe harbor" for those federally regulated or federally insured banks and credit unions wishing to accommodate cannabis businesses in my state—and the thirty two others—who have approved the use of cannabis in some form or another, is a necessary step, represents a positive evolution of public policy, and exhibits a common sense approach to the problems I've described.

To sum, an effective safe harbor mechanism in federal law promotes the safety of the public, improves the efficiency of collecting the taxes and fees we use to regulate the industry, and does not allow the banks and credit unions to totally abdicate their responsibilities to know their customers and avoid illicit money laundering. I encourage the committee to consider and approve such a measure.

I would be happy to answer any questions you have and I thank you again for the opportunity to speak with you today.

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