

# ROADMAP TO CANNABIS BANKING & FINANCIAL SERVICES



**COLORADO  
DEPARTMENT OF  
REGULATORY  
AGENCIES**

Current as of January 2020





**COLORADO**

**Department of  
Regulatory Agencies**

Executive Director's Office

# WILDLY IMPORTANT GOAL

Develop a roadmap to engage the financial services industry to increase the number of financial service providers who serve cannabis-related businesses by December 31, 2019 and implement a plan to increase the number by 20 percent by June 30, 2020.

## VISION

The Office of Governor Jared Polis and the Colorado Department of Regulatory Agencies (DORA) is committed to creating a state regulatory landscape for basic business opportunities, such as access to banking and financial services, for cannabis-related businesses through state regulatory clarity. The following roadmap outlines some key strategies to:

- Create a regulatory landscape where banking and financial service opportunities can be cultivated and as accessible as those afforded to other industries;
- Explore emerging technologies and business models in the financial services industry;
- Identify opportunities for state legislative and regulatory clarity for state-chartered financial institutions, state-licensed money transmitters and state-regulated insurance companies that seek to serve cannabis-related businesses.

# About the Department of Regulatory Agencies (DORA)



DORA is an umbrella state regulatory authority that consists of ten distinct divisions, including the Division of Banking and the Division of Financial Services.

The Division of Banking is responsible for the regulation of state-chartered commercial banks, trust companies, and state licensed money transmitters. The division holds charter and license application hearings and issues rules and regulations affecting regulated institutions. As part of their charge, the staff conducts examinations of state-chartered institutions and licensees within their jurisdiction. The Division of Banking works closely with the Federal Reserve Bank and the Federal Deposit Insurance Corporation in the regulation of commercial banks and is responsible for the enforcement of the Public Deposit Protection Act to protect public entity deposits held by state and national banks.

The Division of Financial Services is responsible for the regulation of state-chartered credit unions, savings and loan institutions and trust companies. As part of their charge, the staff conducts examinations of state-chartered institutions within their jurisdiction. The division works closely with the National Credit Union Administration in the regulation of credit unions and the Federal Deposit Insurance Corporation in the regulation of savings and loan associations and is responsible for the enforcement of the Public Deposit Protection Act to protect public entity deposits held by state and federal savings and loan associations. Further, the division is responsible for the regulation of certain financial activities of life care institutions.

# SCOPE OF ISSUE

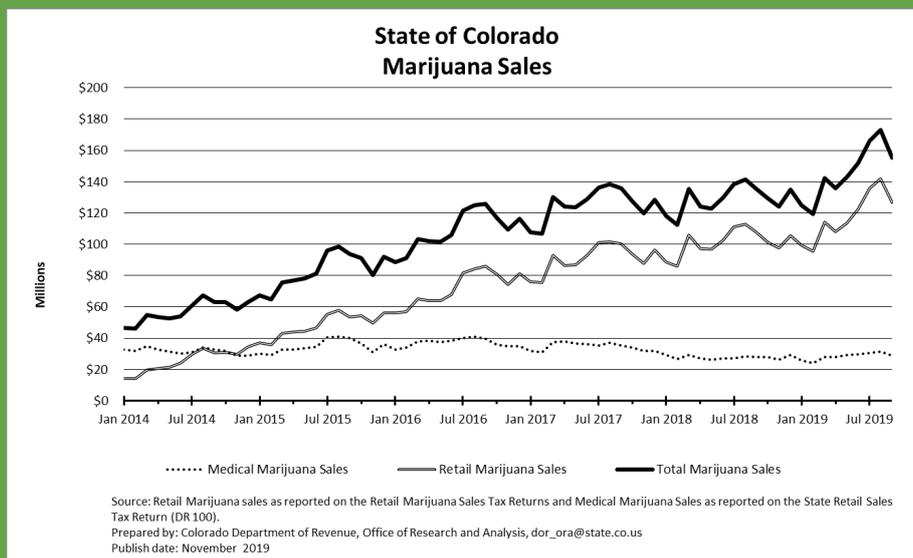
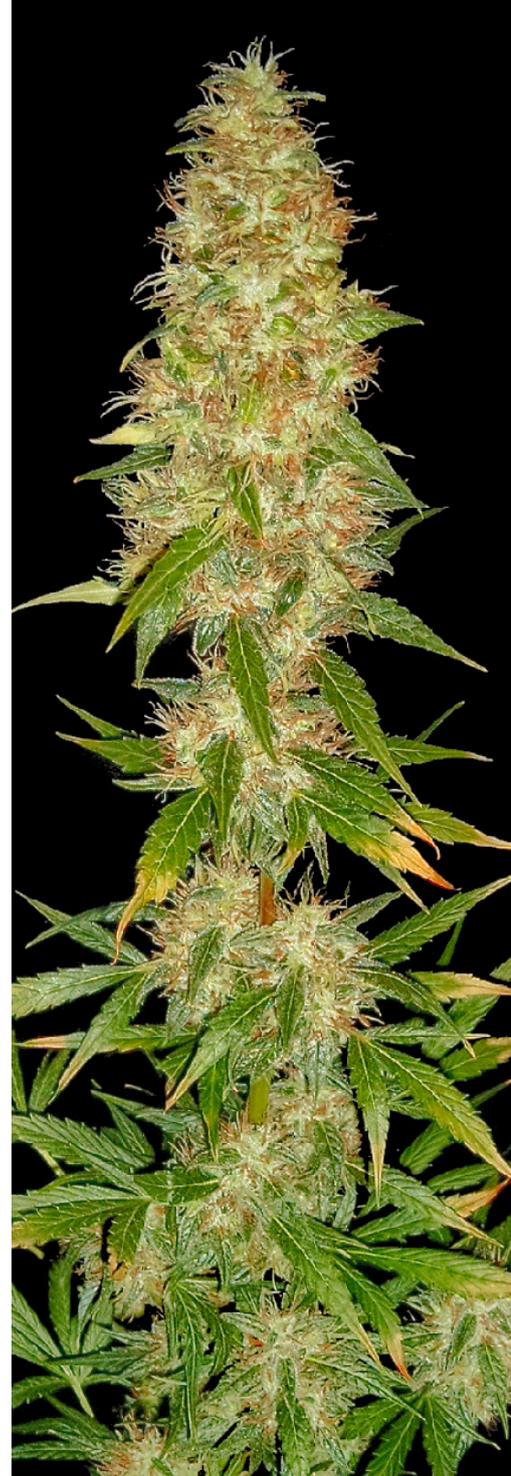
## *Legal Cannabis*

As of November 2019, thirty-three states and the District of Columbia have passed laws broadly legalizing marijuana in some form.

Coloradans voted to make recreational marijuana available to adults over the age of 21 in 2014. Since then, and as other states who have legalized marijuana have experienced, access to banking services for the legal marijuana industry is an on-going conundrum.

Similar banking challenges apply to those in the hemp industry. As of December 20, 2018, hemp is no longer a controlled substance at the federal level as the 2018 Farm Bill removed hemp from Schedule I of the Controlled Substances Act. However, hemp may not yet be produced lawfully under federal law unless it is produced under the industrial hemp pilot provisions of the Agricultural Act of 2014 (2014 Farm Bill). For hemp production to be legal under federal law beyond the 2014 Farm Bill pilot, the U.S. Department of Agriculture (USDA) must first promulgate regulations and guidelines to implement the hemp production provisions of the 2018 Farm Bill. Currently, the USDA has promulgated an interim final rule, Establishment of a Domestic Hemp Production Program, and has requested comment. Colorado state agencies are engaged in a robust stakeholder process to support that effort, which includes DORA's participation in the Colorado Hemp Advancement and Management Plan (CHAMP) sponsored by the Colorado Department of Agriculture.

A key distinction between marijuana and hemp, which are both genus Cannabis is that hemp, whether growing or not, contains delta-9 tetrahydrocannabinol (THC) concentration of no more than three-tenths of one percent (0.3%) on a dry weight basis.



## Bank Secrecy Act and Anti-Money Laundering Compliance

While it is a credit union's or bank's business decision as to the types of permissible services and accounts to offer, credit unions and banks must have a Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) compliance program commensurate with the level of complexity and risks involved.

Colorado state-chartered banks and credit unions have generally not provided services to the marijuana industry due to the aforementioned legal and reputational risks and lack of federal clarity. As a result, there are a substantial number of cannabis and cannabis-related businesses that do not have access to banking services. Further, access to credit card processing systems for the marijuana industry is prohibited. Without access to deposit or credit card services, the marijuana industry is highly reliant upon cash as a primary payment method, which poses concerns for public safety.

In an attempt to provide some clarity regarding providing banking services to a growing volume of states that legalized marijuana on the state level, in February 2014 the Financial Crimes Enforcement Network (FinCEN), a division of the U.S. Treasury Department, in coordination with the Department of Justice (DOJ), issued guidance for banks and credit unions that wish to serve the industry while meeting the Federal Bank Secrecy Act (BSA) obligations. The guidance sought to clarify customer due diligence and suspicious activity reporting (SAR) expectations for financial institutions providing services to marijuana-related businesses (MRB). Known as "Marijuana Guidance," The Guidance: BSA Expectations Regarding Marijuana-Related Businesses, FIN-2014-001 provides financial institutions general guidance for managing the risks associated with banking the marijuana industry. In addition, James M. Cole, former Deputy Attorney General, U.S. Department of Justice, issued a Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement" (August 29, 2013), known as the "Cole Memo." Also on February 14, 2014, the DOJ issued supplemental guidance directing that prosecutors also consider eight enforcement priorities with respect to marijuana-related financial crimes. Enforcement priorities included the following:

# E N F O R C E M E N T

1. Preventing the distribution of marijuana to minors.
2. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels.
3. Preventing the diversion of marijuana from States where it is legal under state law in some form to other states.
4. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity.
5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana.
6. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use.
7. Preventing growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands.
8. Preventing marijuana possession or use on federal property.



Banks and credit unions relied upon the two guidance documents to develop risk management practices to provide banking services to the marijuana industry. In addition, bank and credit union regulators, including the Colorado Division of Banking and Colorado Division of Financial Services, both within DORA, used the guidance documents to help assess the effectiveness of a bank's policies, procedures, and practices when reviewing a bank's BSA program and responsibilities as it relates to banking the marijuana industry. In general, the guidance documents were helpful. However, on January 4, 2018, then Attorney General Jeff Sessions rescinded the Cole Memo and directed U.S. Attorneys to follow established principles when pursuing prosecutions related to marijuana activities. Despite the rescission of the Cole Memo, Colorado banks continue to use the guidance for its risk management program.

Given the considerations at the federal level, Colorado state-chartered financial institutions seeking to serve state-licensed cannabis-related businesses is a business decision that should be made on the institutions' specific business objectives, an evaluation of risk, and the capacity to manage effectively.

DORA is committed to providing regulatory clarity, advocating for legislative action, and identifying other opportunities to make financial services as accessible to the cannabis-related industry as those afforded to other industries.

Service to state-licensed, cannabis-related businesses.



- Institution's specific business objective;
- Evaluation of risk;
- Capacity to manage effectively

# ROADMAP TO CANNABIS BANKING



## 1: ESTABLISH WORKING GROUP

Hold monthly meetings with the DORA Executive Director's Office, various Division Directors and respective division leadership.

## 2: INCREASE TRANSPARENCY

Improve coordination with Governor's Office, and with other state agencies by participating in the Colorado Hemp Advancement Plan (CHAMP) and through engagement with the Department of Revenue.



## 3: ENGAGE TRADE ASSOCIATIONS

Engage current Colorado regulated financial services entities regarding cannabis related companies and individuals that need basic banking service, and hire an innovations strategist.

## 4: ENCOURAGE NEW & EMERGING TECHNOLOGIES

Issue Interim Regulatory Guidance for Virtual Currencies and the Colorado Money Transmitter Act, and get legal guidance from the Attorney General regarding providing services under the Money Transmission Act and the Trust Companies Act to issue public guidance for consumers and the industry.



# ROADMAP TO CANNABIS BANKING

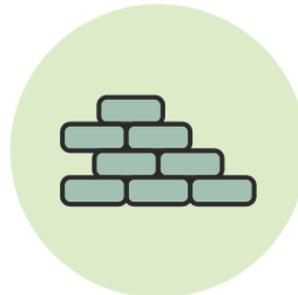


## 5: PROVIDE REGULATORY GUIDANCE

Provide regulatory clarity related to the state regulator's expectations and requirements of state-chartered financial institutions under the Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) compliance requirement, and engage other states to derive best practices.

## 6. REDUCED BARRIERS TO ENTRY WHILE UPHOLDING GUARDRAILS FOR CONSUMER PROTECTION

Evaluate current chartering and licensing requirements for state-chartered financial institutions and state-licensed money transmitters.



## 7: DEMONSTRATE SUPPORT

Submit letter in partnership with other state bank regulators in support of federal legislation.

# KEY STRATEGIES TO ACHIEVE GOAL

Goal: Create a regulatory landscape where banking and financial service opportunities can be cultivated and as accessible as those afforded to other industries.

<i>Strategies</i>	<i>Policies/Actions</i>	<i>Progress to Date</i>
<p>Establish an internal working group consisting of senior leadership from the Divisions of Banking, Financial Services, Insurance and Real Estate.</p>	<p>Monthly meetings with the DORA Executive Director's Office, various Division Directors and respective division leadership to discuss:</p> <ul style="list-style-type: none"> <li>• Current regulatory challenges</li> <li>• Recent federal activity</li> <li>• Key state legislative and regulatory activity</li> <li>• Upcoming regulatory opportunities</li> <li>• Upcoming conferences and speaking engagements</li> <li>• Stakeholder outreach</li> </ul>	<p>Complete and ongoing since January 2019</p> <ul style="list-style-type: none"> <li>• The internal working group meets monthly and will continue through June 2020 to share new information, and draft guidance.</li> <li>• New members, such as the Division of Real Estate, have been added.</li> </ul>
<p>Increase transparency of state information, including improved coordination with state agencies to identify current barriers and respective opportunities, particularly as it relates to access to information for both regulators and the financial services industry.</p>	<p>Improve coordination with Governor's Office:</p> <ul style="list-style-type: none"> <li>• DORA Executive Director attends all industry stakeholder meetings hosted by Governor Polis, including for the cannabis industry in July 2019 and the hemp industry in September 2019.</li> <li>• Coordinate with Governor's Office on in-person meetings in Washington D.C., emphasizing DORA's commitment to assisting the industry.</li> </ul>	<p>On Track</p> <ul style="list-style-type: none"> <li>• Various members of DORA are serving in leadership and active roles in the Colorado Hemp Advancement Management Plan (CHAMP). The DORA Executive Director serves on the Board; the division leadership of the Divisions of Banking and Insurance serve on the Executive Committee; and various other staff as serving as directors.</li> </ul>

	<p>Improve coordination with other state agencies:</p> <ul style="list-style-type: none"> <li>• Participate in the Colorado Hemp Advancement Plan (CHAMP) initiative.</li> <li>• Attend MED stakeholder meetings with regulators, law enforcement, industry and community members.</li> </ul>	<p>On Track</p> <ul style="list-style-type: none"> <li>• Coordinate with the Department of Revenue MED to survey regulated entities on the accessibility of financial services available, and attended stakeholder meeting in Trinidad, CO.</li> </ul>
<p>Engage banking and credit union trade associations to identify areas of opportunity.</p>	<p>Communicate with current Colorado regulated financial services entities regarding cannabis related companies and individuals that need basic banking services, including in person meetings, presentations, etc.</p>	<p>On Track</p> <ul style="list-style-type: none"> <li>• As of November 2019, the Divisions of Banking and Financial Services have engaged directly with the three major trade associations in Colorado regarding cannabis topics a minimum of 15 times since January 2019.</li> </ul>
	<p>Hire Stakeholder and Innovations Strategist to support the Division of Banking and Division of Financial Services in their efforts to achieve statewide engagement.</p>	<p>Complete</p> <ul style="list-style-type: none"> <li>• Strategist serves as a primary point of contact for the industry and serves as a director for the CHAMP program, helping facilitate conversations specific to banking and insurance.</li> </ul>

Goal: Explore emerging technologies and business models in the financial services industry.

<i>Strategies</i>	<i>Policies/Actions</i>	<i>Progress to Date</i>
Encourage innovative technologies to enter the Colorado market.	The Division of Banking issued its Interim Regulatory Guidance for Virtual Currencies and the Colorado Money Transmitter Act.	<p>Complete</p> <ul style="list-style-type: none"> <li>The Division of Banking actively works with blockchain and innovative technology companies wishing to serve cannabis related businesses in Colorado through its money transmitter licensing process.</li> </ul>
	Get legal guidance from the Attorney General regarding providing services under the Money Transmission Action and the Trust Companies Act to issue public guidance for consumers and the industry.	<p>Target: Spring 2020.</p> <ul style="list-style-type: none"> <li>Currently doing an assessment of the specific issues that need to be addressed based on feedback from stakeholders.</li> </ul>

Goal: Identify opportunities for state legislative and regulatory clarity and guidance for state-chartered financial institutions, state-licensed money transmitters and state-regulated insurance companies that seek to serve cannabis-related businesses.

<i>Strategies</i>	<i>Policies/Actions</i>	<i>Progress to Date</i>
<p>Provide guidance for state chartered banks and credit unions providing services to cannabis-related businesses.</p>	<p>Provide regulatory clarity related to the state regulator’s expectations and requirements of state-chartered financial institutions under the Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) compliance requirements.</p>	<p>Ongoing</p> <ul style="list-style-type: none"> <li>• Provided to state chartered credit unions in April 2019. The guidance reminds of the importance of all Bank Secrecy Act (BSA) obligations when providing services to cannabis-related businesses.</li> <li>• The Division of Banking distributed an aid to state-chartered banks in August 2019 to provide a roadmap of regulatory matters that are taken into consideration.</li> </ul>
	<p>Engage other state-level banking and financial services regulators from states in which marijuana is legal in some form to identify best practices.</p>	<p>Ongoing</p> <ul style="list-style-type: none"> <li>• Leadership from the Division of Banking and Division of Financial Services have attended more than a dozen roundtables with other state regulators to discuss the challenges and opportunities in regulating cannabis-related businesses since January 2019.</li> </ul>

<p>Reduce barriers to entry while upholding guardrails for consumer protection</p>	<p>Evaluating current chartering and licensing requirements for state-chartered financial institutions and state-licensed money transmitters.</p>	<p>In Progress</p> <ul style="list-style-type: none"> <li>The Divisions of Banking and Financial Services have reviewed existing Colorado statute and rules and found no chartering or licensing requirements that are significant impediments to regulated entities for providing banking and financial services to the Colorado cannabis industry.</li> </ul>
<p>Demonstrate support for a Federal solution</p>	<p>Submitted letter in partnership with other state bank regulators in support of federal legislation.</p>	<p>Ongoing</p> <ul style="list-style-type: none"> <li>The April 15, 2019 letter was signed by 25 state bank supervisors, including Colorado.</li> <li>Another letter was sent to Congressional leadership on September 24, 2019, in support of House Bill 1595. The House of Representatives passed the SAFE Act on September 26, 2019. Ongoing support is being communicated to the Colorado Congressional delegation.</li> </ul>