

Cannabis Rescheduling May Solve Banking, Insolvency Issues

By **Richard Ormond** (May 28, 2026)

For nearly three decades, the American cannabis industry has existed in a condition that can only be described as legally incomprehensible. A federal and state mosaic of laws created a maze for the industry and its lawyers.

Rescheduling medical marijuana does not make cannabis legal at the federal level, but it changes how the federal government approaches marijuana. This is the start of an incremental process to solve the banking and insolvency challenge facing the marijuana industry.



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States licensed, taxed, regulated, insured, zoned, audited — and in some cases, rescued — cannabis businesses, while the federal government, until now, simultaneously insisted that every dollar generated by those same businesses is derived from criminal activity. Courts struggle to reconcile this contradiction. Banks largely refuse to touch it.

Insolvency systems are fractured under its weight and relief for bankrupt businesses can only come through alternatives to bankruptcy through state court or statutory processes such as receiverships, corporate dissolutions or assignments for the benefit of creditors. This is because bankruptcy court is strictly a federal process and cannabis, even with rescheduling, remains illegal at the federal level. As such, the U.S. Trustee's Office in bankruptcy is going to be loath to handle monies earned through federally illegal means.

On April 23, Acting Attorney General Todd Blanche signed a final order **moving** state-licensed medical marijuana and U.S. Food and Drug Administration-approved cannabis products to Schedule III, invoking treaty-compliance authority under Title 21 of the U.S. Code, Section 811(d)(1). And by doing so, the Trump administration reframed cannabis rescheduling as a medical, regulatory and institutional problem rather than approaching cannabis solely through the familiar moral or cultural debates that have dominated federal discourse for decades.

The administration's argument was not that medical cannabis should be legal, but that its continued classification as a Schedule I substance had rendered federal banking, tax administration and insolvency law incoherent.

Rescheduling, as articulated by the administration, is positioned as a corrective and an attempt to restore some alignment between federal law and the economic reality without totally abandoning federal regulatory authority. That framing is critical. It helps explain both what rescheduling will meaningfully change and what it will not.

The Controlled Substances Act and the Architecture of Federal Illegality

The Controlled Substances Act was designed to classify drugs according to medical utility and abuse potential. Marijuana's placement in Schedule I, the most restrictive category, carried consequences beyond criminal prosecution.

Schedule I substances are defined as having no accepted medical use and a high potential for abuse, a designation that triggers absolute federal prohibitions on manufacturing,

distribution, possession and facilitation. Unlike cocaine or methamphetamine, which are tightly regulated but schedulable for medical use, marijuana remained locked in a category that rendered all commercial activity unlawful by federal standards.

That classification is the legal foundation for civil asset forfeiture, conspiracy liability, money laundering exposure and, most significantly for the modern industry, the exclusion of cannabis businesses from fair taxation and meaningful access to the federal financial system.

Under federal law, proceeds from marijuana activity are funds derived from illegal activity, regardless of state authorization. This single premise explains nearly every downstream legal problem faced by cannabis operators and their counterparties.

For years, the federal government attempted to soften the edges of this framework through enforcement discretion. U.S. Department of Justice memoranda articulated priorities that focused on minors, cartels, diversion, violence and public safety.

Financial regulators such as the Financial Crimes Enforcement Network followed suit, issuing guidance that allowed banks to service cannabis-related businesses so long as institutions engaged in extensive due diligence and filed suspicious activity reports acknowledging the underlying illegality. These policies were never law — they were tolerances and explicit acknowledgments that federal actors would sometimes look the other way.

Courts, however, were never willing to do that.

Banking Access and the Limits of Federal Tolerance

The collapse of the cannabis banking experiment was not the result of hostility, but of structure. Financial institutions are creatures of federal law. They require access to the Federal Reserve System, the payments infrastructure and deposit insurance regimes that depend on statutory compliance, not prosecutorial discretion. The attempt to create cannabis-only financial institutions exposed this fault line.

When such institutions sought direct access to the federal payments system, courts were forced to confront the contradiction directly. A federal court cannot order a federal agency to facilitate conduct that Congress has criminalized.

The clearest judicial expression of this principle appears in the U.S. Court of Appeals for the Tenth Circuit's 2017 ruling in *Fourth Corner Credit Union v. Federal Reserve Bank of Kansas City*, where a divided panel issued three separate opinions and vacated the U.S. District Court for the District of Colorado's dismissal with prejudice, remanding with instructions to dismiss without prejudice. Because no two judges agreed on a rationale, the decision did not yield a controlling merits opinion under the U.S. Supreme Court's 1977 decision in *Marks v. United States*, but it underscored the practical obstacle facing a financial institution organized to serve marijuana-related businesses while marijuana remained a Schedule I controlled substance under federal law.

The significance of this impasse cannot be overstated. It revealed that cannabis banking exclusion was not a policy choice that could be reversed by guidance or appropriations riders. It was the logical consequence of Schedule I classification. As long as marijuana remained in that category, meaningful participation in the federal financial system would remain structurally impossible.

The Trump administration's rescheduling rationale explicitly acknowledges this reality — at least in connection with medical marijuana. The administration did not argue that banks should be more courageous or that regulators should be more flexible. Instead, it recognizes that the law itself must change if financial normalization is ever to occur despite FinCEN's limp regulatory guidance.

State Legalization and the Judicial Response

While federal law ossified these past 30 years, state law evolved rapidly.

Beginning with California's Compassionate Use Act, states constructed comprehensive regulatory regimes governing medical and adult-use cannabis. These systems imposed licensing requirements, operational controls, security mandates, advertising restrictions and tax obligations more stringent than those applied to many traditional industries.

By the mid-2010s, cannabis had become one of the most heavily regulated agricultural and retail products in the country. This led to other problems such as overtaxation, particularly with the federal taxation requirements that denied all deductions or depreciations for illegal activity except for costs of goods sold under Internal Revenue Service Code Section 280e.

Public opinion followed. Support for legalization climbed steadily across ideological lines, with voters in conservative and liberal states alike approving cannabis reform through ballot initiatives and legislation. By the early 2020s, a supermajority of Americans lived in jurisdictions where some form of cannabis use was lawful under state law.

Yet federal courts consistently refused to treat state authorization as legally transformative. Supreme Court precedent made clear that Congress' commerce clause authority permitted federal prohibition even where activity was intrastate and state licensed.

Lower courts echoed this logic, emphasizing that state laws could not affirmatively authorize conduct that federal law prohibited without triggering preemption concerns. The Supreme Court's 2005 decision in *Gonzales v. Raich* is the foundational authority on this point. In a 6-3 decision, the court held that Congress' commerce clause power extends to the local cultivation and use of marijuana even where state law authorizes it, holding that:

Congress clearly acted rationally in determining that this subdivided class of activities is an essential part of the larger regulatory scheme. The case comes down to the claim that a locally cultivated product that is used domestically rather than sold on the open market is not subject to federal regulation. Given the CSA's findings and the undisputed magnitude of the commercial market for marijuana, *Wickard* and its progeny foreclose that claim.

Congressional appropriations riders limiting enforcement against state-compliant medical programs offered only temporary relief, explicitly tied to funding cycles and subject to renewal creating uncertainty and risk to cannabis operators.

The result was a peculiar balancing act: Cannabis businesses can operate openly under state law, but they cannot meaningfully interact with core federal institutions or cross state lines.

Insolvency, Receivership and the Federal Law Trap

Nowhere has this contradiction been more destabilizing than in insolvency proceedings.

Bankruptcy law is a federal system administered by federal courts and fiduciaries. Trustees, debtors in possession, and receivers are bound not only by state law, but by federal criminal statutes. When cannabis businesses fail, as many inevitably do, they collide with a system that cannot legally administer their assets.

Bankruptcy courts have consistently dismissed cases where trustees, debtors or estates would be required to possess, sell or administer marijuana-derived income in violation of the CSA, while declining to adopt a categorical rule that any connection to the cannabis industry automatically bars relief.[1]

Courts have frequently reasoned that bankruptcy relief is unavailable where administration of the estate, confirmation of a plan, or trustee activity would require ongoing violations of the CSA or would place federal fiduciaries in the position of administering proceeds or assets tied to federally unlawful cannabis activity. The risk of asset forfeiture, money laundering liability and ongoing illegality renders such cases difficult or impossible to administer in federal bankruptcy court.

Even attempts to distance the estate from direct cannabis handling, through management companies, real estate leasing or ancillary services, frequently failed. Courts have often treated material dependence on cannabis revenue as sufficient cause for dismissal, applying good faith feasibility, and cause-for-dismissal doctrines in fact-specific ways.

At the same time, recent decisions have rejected a categorical cannabis bar and have allowed cases to proceed where the court concluded that estate administration would not necessarily require impermissible conduct. The most significant exception to date is *In re: Hacienda Co. LLC*, decided in 2023, where the U.S. Bankruptcy Court for the Central District of California **denied** the U.S. Trustee's motions to dismiss and permitted the case to proceed despite cannabis connections, where the debtor had divested its cannabis operations prepetition and proposed to liquidate its equity interest in a Canadian acquirer.

Similarly, in 2024 in *In re: Callaway*, the U.S. Bankruptcy Court for the Northern District of California denied the U.S. Trustee's motion to dismiss a Chapter 7 case filed by an individual whose estate consisted primarily of ownership interests in cannabis-related LLCs, finding no per se prohibition on cannabis-connected debtors seeking bankruptcy relief.

State court receiverships have fared better, operating under state authority and often with the tacit acquiescence of federal agencies. Yet even there, the specter of forfeiture and banking exclusion looms large. Receivers managing cannabis assets must navigate licensing regimes, cash management challenges, security concerns and compliance risks that far exceed those faced in conventional commercial cases.

Agriculture, Perishability and the Unresolved Perishable Agricultural Commodities Act Question

Cannabis's status as an agricultural product adds another layer of complexity. Federal law affords special protections to producers of perishable agricultural commodities through trust mechanisms designed to ensure payment.

Cannabis strains, particularly in flower form, resemble traditional herbs and specialty crops in many respects. Yet, participation in these federal regimes requires licensure and compliance that Schedule I classification effectively forecloses.

Whether cannabis could ever be integrated into PACA-style agricultural-creditor protections

remains unresolved. Rescheduling would not itself make PACA applicable, but it could remove one threshold obstacle to later regulatory or legislative treatment of cannabis as an agricultural commodity rather than contraband. That shift could have meaningful implications for lender protections, supplier rights, and receivership administration, but those consequences would depend on further statutory, regulatory, or judicial development.

What Rescheduling Does and Does Not Accomplish

The Trump administration's rescheduling initiative is best understood as a recalibration, not a revolution.

Moving covered medical marijuana activity to Schedule III would not legalize recreational use nationwide, eliminate federal oversight or permit unfettered interstate commerce. It would, however, begin to dismantle the central legal fiction that has governed the industry for decades: that a product regulated, taxed and relied upon by state governments has no accepted medical use and exists entirely outside lawful commerce.

Rescheduling would materially alter banking risk, but the change must be framed carefully. For covered medical marijuana activity within the scope of Schedule III and applicable U.S. Drug Enforcement Administration or FDA controls, financial transactions would no longer rest on the same Schedule I premise, materially changing anti-money laundering and SAR analysis.

Adult use and other noncovered activity will remain exposed unless and until broader rescheduling, de-scheduling or legalization occurs. Access to payment systems, credit facilities and insured depositories would become more legally defensible for covered activity rather than merely tolerated.

Tax law will also shift, though the scope would depend on the precise reach of rescheduling. To the extent marijuana activity is no longer treated as trafficking in a Schedule I or II controlled substance, Section 280E would no longer operate in the same manner, aligning covered cannabis taxation more closely with basic principles of net-income assessment and reducing incentives for cash hoarding and informal finance. Insolvency law would follow more cautiously. Trustees and receivers could more easily administer covered cannabis estates without the same degree of personal criminal-exposure risk, making restructurings, orderly liquidations, and creditor recoveries more feasible, but not automatically routine.

What rescheduling would not do is remove cannabis from federal control. Regulatory oversight would likely increase, not decrease, as agencies assert jurisdiction over manufacturing standards, labeling, distribution, and medical claims. The Trump administration is explicit on this point: Normalization is not deregulation.

Conclusion

For decades, cannabis law has been defined by contradiction. The Trump administration's rescheduling initiative represents the first serious attempt to resolve that contradiction at the structural level, rather than through informal tolerances and prosecutorial discretion.

For lawyers advising banks, fiduciaries, receivers and distressed companies, the implications are profound. The question is no longer whether cannabis businesses can exist — they already do — but whether the legal system governing finance and insolvency can continue to pretend that they do not.

Rescheduling will not end cannabis law's complexity. It will, however, begin to restore coherence to a system that has long operated on many legal fictions. For practitioners, that shift marks the beginning of a new and, hopefully, more manageable era. That being said, it will take years for the system to adapt to rescheduling and there will not be an overnight transformation.

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[1] See, e.g., *In re Way to Grow, Inc.*, 597 B.R. 111 (Bankr. D. Colo. 2018), *aff'd sub nom. Way to Grow, Inc. v. Inniss (In re Way to Grow, Inc.)*, 610 B.R. 338 (D. Colo. 2019) (dismissing Chapter 11 of debtors knowingly selling equipment to cannabis growers); *Burton v. Maney (In re Burton)*, 610 B.R. 633 (9th Cir. BAP 2020) (affirming dismissal where debtor held an equity interest in an entity cultivating and selling cannabis under an Arizona state license, while emphasizing that the mere presence of marijuana near a bankruptcy case does not automatically bar relief and that dismissal must rest on articulated legal and factual grounds); *Blumsack v. Harrington (In re Blumsack)*, 657 B.R. 505 (1st Cir. BAP 2024) (affirming dismissal for cause, while rejecting a categorical rule that cannabis-industry employment alone bars Chapter 13 relief).