



**EMERGING
MARKETS
COALITION**

CANNABIS PAYMENTS GUIDELINES

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General Statement

As of the writing of this document, while cannabis is legal medicinally in 37 states, four U.S. territories and the District of Columbia, and for adult use in 19 states, two territories and the District of Columbia - it is still illegal at the federal level as a Schedule 1 substance under the Controlled Substances Act. Over the years the federal government has indicated in various ways self-imposed limits to its enforcement of laws against cannabis sales that are legal at the state level but there are no guarantees that any of these approaches will continue from day to day. Thus, cannabis retailers are placed in the difficult position of providing convenient payment methods to customers at their state-legal cannabis stores while avoiding to the extent possible, triggering a federal law enforcement action. There is thus a need for payment methods to support the legal sale and purchase of cannabis in states where it is legal while avoiding taking actions that could result in a federal legal action. No recommendations in this document can insulate one from breaching federal law for involvement in cannabis sales. This document has a different goal - to give an overview of the payment options that are available at the state level that might, if properly used and implemented, be legal within the applicable state and which might avoid triggering federal law enforcement action.

So, no payment method or approach in this document allows a cannabis retailer or other payor to conduct cannabis transactions without violating *federal* law. This document does, however, review the payment methods that are used by cannabis sellers today and evaluates them considering compliance with state laws generally and in terms of avoiding triggering federal law enforcement actions. **This document is for those companies who have fully evaluated and accepted the applicable risks, preferably with their legal counsel with knowledge of this regulatory environment.**

Given the current federal legal status for cannabis, some payment options available to cannabis businesses can feel more like a “workaround” than a solid long-term solution. Cannabis businesses must use the payments tools available if they are to avoid the challenges of being cash-only business. The primary means of retail payments at the point of sale - standard merchant acceptance of network-branded cards like Visa and Mastercard - is not available. At the same time, the acceptance of only cash poses real world security, audit, compliance, and other challenges.

Due to the growth in cannabis dispensaries, providers are now offering several options. This document describes some of the payment methods currently being offered to cannabis businesses today. These change over time and no one method is recommended here. Instead, this document simply explains how they work, and how they are designed to try to fill the payments option void created by the status of cannabis legalization at the federal level. [KT1]

Operators want to obtain stable, reliable non-cash payments processing solutions for online, or in person, cannabis transactions. The goal of this document is to describe non-cash payments methods that are currently available in the market and some of the risks presented by each.

Due Diligence Best Practices

Transparency

When establishing a relationship with a financial services provider they should be your partner in efficient, affordable, compliant, sustainable methods to accept payments. It is essential to fully disclose to them your current business practices and payments processes.

Vetting Your Payments Provider

Every payments provider must have a financial institution - a bank or credit union - supporting their payment solution, whether they are offering card processing services, an ACH wallet, or other electronic payment solutions. As the end user of those services, it is important that you have vetted your payments provider. All too often, operators have a payments solution that hasn't been well vetted and that is abruptly discontinued leading to business disruptions.

One of the best ways to ensure you are offering a stable and compliant payments solution is to assess whether all parties supporting it (including the financial institution and processor) are aware that the transactions are cannabis-related. Below are some questions that may help you to make that assessment.

- 1) How long has the company been in business?
 - Ideally more than 18 months to have been through an audit with their primary regulator
- 2) How many stores does the company support and are they willing to provide you several operator references that you could contact?
 - Ideally, more than 25 locations
 - Provider should be willing to provide operator references to you
 - References are more important when the company is newer or has a smaller number of customers
- 3) Ask your provider if they know which financial institution is supporting their program.
 - They should know who the sponsoring financial institution is.
 - Is this a financial institution that you are aware has a cannabis banking program? If so, it represents lower risk.
 - If they do not know who the sponsor is, there is an increased risk that that financial institution does not know the transactions are cannabis related.
- 4) How are transactions processed - are credit cards a supported payment type? Given the current federal status of cannabis, these transactions are not permitted by national card networks.

- If your provider is accepting credit cards, or claims that all cards can be accepted, it is likely that the financial institution supporting the transactions is unaware that they are cannabis related, representing a high level of risk.
- If the transactions are being processed as “cashless ATM” or “point of banking”, you should approach this solution with caution, and understanding that Visa has provided clear guidance that coding a retail purchase as an ATM transaction (using cashless ATM) is prohibited. [[See this MJBiz article regarding Visa's statement on “Cashless ATMs” and Misuse of Transactions for complete information.](#)]

Risk Assessment

An important step in the decision to use one or more payment mechanisms over another is to ensure that your organization has examined the risks for each. This process can be formal or informal and is dependent on the complexity and unique needs of each organization. Please note that the services available vary by state and service providers that cross borders must have done so with a well thought out state law compliance plan.

Some of the key risk consideration to examine may be:

- Reliability of the system – will this payment mechanism be available 99% of the time? Is there a risk of discontinuance?
- Ease of use for employees – is this option the most efficient use of employee’s time? Does it require additional training or is it difficult to use?
- Customer understanding and adoption – will there be a need to educate the customer, or do they understand how it works?
- Opportunity for internal or external fraud or theft – does this method of payment increase security risks? Does it introduce opportunities for fraud?
- Reputational risk – will customers be adversely impacted? Will my financial institution approve this payment mechanism?
- Cost – is the cost relatively close to what a non-cannabis mechanism pays?

Payment Methods

Business to Consumer (B2C) vs. Business to Business (B2B)

Payment Type	B2C	B2B	Notes
Cash	✓	✓	Review Cash Management Best Practices
Branded Cards	✓	✓	Restrictions currently exist from all major issuers
Checks	✓	✓	
Traditional ATMs	✓		
BNPL/Consumer Credit	✓		
Cashless ATM	✓		
Open Loop	✓	✓	
Closed Loop	✓		
Crypto	✓	✓	Typically, B2C could be B2B

Business to Consumer

Credit Cards

Although no explicit prohibition of card acceptance by cannabis retailers is found in operating rules for either Visa or Mastercard, it is widely publicized that both networks do not allow them. Discover and American Express are more explicit in their position. While Cannabis sales are illegal at the Federal level, we do not expect the payment brands to allow their card to be used at dispensaries. It is understood that the major card brand position is due to the fact that cannabis is currently illegal at the federal level. Therefore, many acquiring FIs will not knowingly risk their network standing by accepting cannabis transactions. Where credit card transactions are accepted, it sometimes appears that the underlying acquiring financial institution was unaware they were processing cannabis transactions, as was the case in the Eaze Technologies scheme. [\[Read more about Eaze Technologies scheme and subsequent conviction of “conspiracy to commit bank fraud” by clicking this link from Westlaw Today.\]](#)

This increases the risk of any participant in the payment being implicated, therefore delaying acceptance of credit cards for cannabis transactions is deemed best practice.

Debit Cards

The use of financial institution debit cards for cannabis transactions has emerged as a solution by some payment processors, intended to avoid the challenges presented by acceptance of major national card brands. There are more than a dozen regional PIN Debit networks with varying degrees of tolerance to state legal cannabis transactions. However, it should be noted that currently (*as of August 2022*) there is no debit network that has publicly endorsed cannabis transactions. Participants in PIN debit card acceptance are cautioned to ensure transparency - that the underlying financial institution is aware of the true nature of the transactions and that transactions are processed in the businesses name at the correct address.

Cash

Please [refer to and download a copy of](#) the EMC Cash Management Standards for information on this topic.

Checks

- 1) The cannabis related business (CRB) should have a financial institution relationship and operating checking account to facilitate acceptance of checks and ACH as payment for goods
- 2) The CRB should utilize processes and systems similar to other heavily cash-based businesses, such as check cashing, to mitigate fraud risk associated with accepting checks as payment. This is usually done using a third party service.
- 3) All checks should be deposited with the financial institution daily

- a) All checks should be properly endorsed for deposit only with the business's name and account number
- b) Ideally, all checks should be scanned and deposited using the financial institution remote deposit capabilities
 - i) Low volume businesses may be able to use the mobile remote deposit application
 - ii) High volume business may employ a check scanner with financial institution supplied software (local or cloud-based) to scan higher volume of checks
 - iii) Follow your financial institution's procedures for retaining scanned (physical) checks before destroying them

On-Site Traditional ATMs

Please [refer to and download a copy of](#) the EMC Cash Management Standards for information on this topic.

Cashless ATMs/Point of Banking Systems

Cashless ATMs also referred to as /Point of Banking is a debit card payment that is coded the same as an ATM transaction, but that occurs using debit card processing equipment rather than a cash dispensing ATM. To reflect an ATM cash withdrawal, the equipment will round up the purchase amount to the nearest \$5 increment. The cardholder can accept the change back, or can choose to designate the change as a tip. Not only is the cashless ATM a cumbersome process, it can also cause inadvertent consumer harm. The cardholder is likely to incur an out-of-network ATM fee, or in some cases an over-the-counter cash advance fee for a transaction that is actually a point of sale purchase.

This payment method warrants additional caution, as it could be deemed a violation under the UDAAP (Unfair, deceptive, or abusive acts and practices) Act. Visa has provided clear guidance that coding a retail purchase as an ATM transaction (with cashless ATM) is prohibited on its network.

[\[See this MJBiz article regarding Visa's statement on "Cashless ATMs" and Misuse of Transactions for complete information.\]](#)

Digital Payments

There are payment providers in the market that have created digital first payment solutions for cannabis transactions. Similar to Venmo, CashApp, or PayPal, the payment provider's technology creates a connection between the consumer financial institution account and a digital wallet that allows for the consumer to pay a merchant via their primary financial institution account. Digital payments can support a transaction in store, via eCommerce, or during delivery. There are multiple digital native payment products available in the market including Consumer-to-Merchant direct payments, Buy Now, Pay Later, and Crypto solutions.

Consumer-to-Merchant

Digital wallet payments from the consumer to the merchant are a more modern approach to payments as compared to card-based payments as there is no physical card. This payment type does not require specialized equipment or software integrations as the fintech company manages technology requirements with POS or other providers. The consumer visits a website or downloads the payment app on their smartphone to enroll. After identity verification, the consumer connects their financial institution account via secured authentication, using mobile/online banking credentials, or by entering their routing number and account number. After enrollment, the consumer pays for cannabis products via a QR code scanned by the merchant that includes product receipt information. The transaction settles with the merchant after it is deducted from the consumer's account.

Buy Now, Pay Later

The buy now, pay later market is exploding, and there are some innovative providers that have applied this product to cannabis purchases. The product allows a transaction to be paid for in 4 equal installments, the first of which is due at the time of purchase. Best practice for these types of programs is for the consumer to not be charged interest for the loan, but instead for the transaction to be funded by the merchant. This means that like paying merchant processing charges, the merchant will be settling for the whole purchase amount, less a discount, at the point of sale. Subsequent bi-weekly payments are collected from the consumer by the payment processor and underlying lender. While slightly more costly, the consumer's increased purchasing power leads to a larger average ticket.

Crypto

Crypto is a complex payment type, requiring expertise in systems, compliance, and tax. The best form of Crypto payments is to leave the complex process of connecting to consumer wallets, moving funds, settling, reporting, compliance, etc. to a professional fintech company. Dispensaries seeking to execute in-house programs, expose themselves to a multitude of unique challenges related to tax, reporting, volatility, etc.).

However, crypto based payments can be seen as an advantageous strategy because they are more anonymous when compared to other payment types. This is something consumers may see as an advantage. When a consumer pays with crypto they typically transfer US dollars into a wallet or purchase crypto from an exchange. The consumer then will use that crypto they purchased by transferring it via a FinTech partner to a merchant account that has been verified. Typically, the merchant is remitted funds in US dollars a few days later into their financial institution account.

Business to Business

ACH

ACH or Automated Clearing House transactions are electronic payments similar to wire transactions but typically used for smaller transaction amounts and is a lower cost to the user. Unlike the wire system (see below), it is a batch push and pull system meaning both debits and credits can be sent. It is governed by the NACHA (National ACH Association) Operating Rules and has two operators, the Federal Reserve, and the Electronic Payment Network (EPN) - without the restrictions of card network brands or their terms of service, and with well-defined rules for bank transaction clearing. At the time of this publication, NACHA has taken a neutral stance on the use of ACH for cannabis transactions noting the issue of the federal legal status and various state legal statuses. Only an ACH Originator which is either a business, non-profit, or government entity can originate transactions to both consumer, business, and government accounts. Banks and credit unions take on the due diligence responsibilities as Originating Depositor Financial Institutions (ODFIs) to onboard and give access to originating ACH transactions. ACH transactions also have a return process which includes insufficient funds several other reasons so transactions are not final like they are for wires.

ACH is widely used for Business-to-Business payments in all other industries. Within the cannabis industry due to limited access, many businesses to business payments are still done via cash. ACH business-to-business payments require one of the cannabis businesses to be onboarded with an Originating Depositor Financial Institution (ODFI) including all the due diligence required. Once this access has been granted, the cannabis originator can make payments to other cannabis businesses as well as government agencies like taxing authorities. All transactions, whether to a business, non-profit organization, or a government agency need to follow the NACHA Operating Rules and the rules and guidelines set by the ODFI.

Wire

Wire transfers are credit payments from one bank account to another using the electronic wire system. These payments are fast, secure, and final. These process

from a financial institution to the Federal Reserve Bank's Fedwire system for domestic wires and if international wires are used will use international correspondent banks which can delay the process. Wires are typically used for business to business large dollar payments due to the increased fees associated with this payment method. The advantage for using wires is there are not the same risks for insufficient funds or returns like there are with checks or ACH. It also is only a credit push system so the payment must originate for the payor to the payee.

Checks are a written, signed and dated with a specific amount from a checking account with a MICR (Magnetic Ink Character Recognition) line with routing and account information. Traditionally checks have been physical but with the passage of Check 21, images of checks are allowed to be used for processing through the check system and some even convert to ACH using specific codes. Checks are used primarily for business-to-business transactions, tax, and license payments, and even can be used by consumers. There are risks of insufficient funds and returns with checks as well as longer processing times than ACH or Wires. There are also increased risks of check fraud due to advancements in image technology.

Bill Payments

Bill payments are a service most financial institutions have that allow for electronic payments of bills such as utilities, lending payments, and more. Bill payments will either send physical checks to lockboxes or will use digital endpoints to electronically make payments.

Real Time Payments/ FedNow Payments

Real Time Payments are the newest payment rail and has been set up by The Clearing House to allow payments to be made in real time digitally. FedNow is another real time payment option the Federal Reserve is developing and planning to launch in 2023. Both are considered higher risk due to the speed of payment and there are not many providers or options available to cannabis operators at the time of this publication.

Closing Statement

This is a living document. In this market of constantly evolving legislation, regulation and innovation, new payment methodologies are being released and tested. The EMC Payment Guidelines committee will review and update this with EMC Membership input.

Every company needs to analyze its own risk factors and develop a risk management program that works for them. In this industry there is inherent risk, but it is essential that each company measure its own opportunities/rewards against its own risk appetite.

The laws are different in each state. Financial institutions, processors, and payments service providers in each state may be different. So, it is essential to evaluate the best solution for you and your clients.

These Guidelines will educate you as to various options to aid in your own selection process. This is not a definitive document, rather an educational overview of payment options in this market. You may have providers in your state who have solutions better or different than what is outlined here. Carefully evaluate any providers, against the rules in your own state, consult your own legal counsel, and weigh against your own risk appetite.

Normalizing financial services in this underserved market is a mission of EMC Members and Alliances. Offering education and Guidelines of all areas of financial services helps industries (financial services and cannabis), investors, and government to come together towards this normalization goal.

Thank you for your time in reading and utilizing this important material, and your engagement with EMC.