

Banking Cannabis with Confidence: Complying with Federal Guidelines

ACAMS Connecticut Chapter
LINK TO BANKING

BLIN
THE BANKERS LINK TO CANNABIS COMPLIANCE

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How it all began...



Banking Marijuana Related Businesses (MRBs)



Things to Consider Before Providing Banking Services to MRBs

- More and more banks are expressing interest in the MRB space
- Two key things you need before boarding accounts
 - Solid BSA/AML program (this includes your written program and automated AML system)
 - Good, Accurate Data



Current State Regulatory Wrap up (as of 4/16)



29 states & DC currently have laws legalizing marijuana in some form



Eight states have legalized marijuana for recreational use

- In Alaska, adults 21 & older can now transport, buy or possess up to an ounce of marijuana & six plants
- Oregon allows adults to possess up to an ounce of marijuana in public & 8 ounces at home
- DC is moving w/ plans to implement a marijuana initiative
- Colorado & Washington previously passed similar ballot measures legalizing marijuana in 2012



Some have medical marijuana laws allowing for limited use

- Some medical laws are broader than others, with types of medical conditions varying from state to state



Some states, criminal penalties have been eliminated for small amounts of marijuana

“Cole Memo”

Written by DOJ Deputy Attorney General James M Cole in 2013

- Congress determines that marijuana is a serious crime providing significant income to criminals, gangs, & cartels
- Advises Prosecutors to focus on preventing:
 - Distribution to minors
 - Revenue from/to criminals, gangs, & cartels
 - Diversion of marijuana to states where illegal
 - Being used as a cover for distribution of other illegal drugs
 - Violence and the use of firearms within the business
 - Drugged driving or other adverse public health issues
 - Growing of marijuana on public lands
 - Possession or use on federal property

Enforcement Priorities



Relevant considerations

Department of the Treasury Financial Crimes Enforcement Network

FIN-2014-G001

ISSUED February 14, 2014

Subject: BSA Expectations Regarding Marijuana-Related Business

- FinCEN issues guidance to financial institutions due to the contradicting state and federal legislation
- Federal law supersedes state law
- Confusing? Not really



**Department of the Treasury
Financial Crimes Enforcement Network**

Thorough Customer Due Diligence is Critical

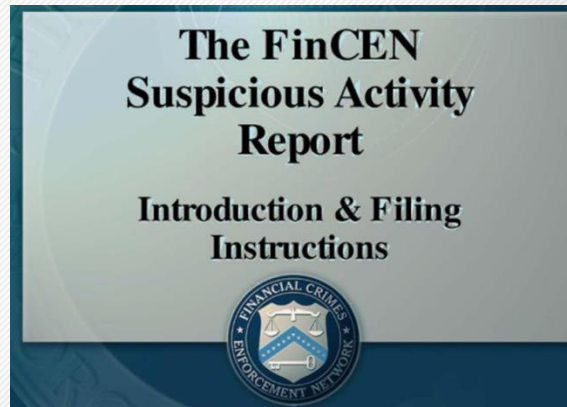
- Verify and review state license & registrations
- Periodically update this review as ongoing CDD
- Request information from the state about the business and the related parties
- Understand expected activity for the business, including the types of products to be sold & type of customers to be served (medical vs. recreational)



SAR Filing

What triggers the filing of a SAR? If you know, suspect or have reason to suspect there has been a violation of law or regulation.

Therefore, a financial institution is required to file a SAR on activity involving a marijuana-related business...”



SARs

- Same report as all others
- Key Terms (to be used in the narrative)
 - Marijuana Limited
 - Limited Information – file if no indication of significant issues
 - Marijuana Priority
 - Reason to believe a significant issues occurred
 - Marijuana Termination
 - If FI decides to terminate a relationship with an MRB
 - FinCEN urges the use of Section 314(b) to share info with other FIs

Red Flags – Priority SARs



Substantially more revenue than is reasonably expected given state limitations



Cash deposits or withdrawals over a short period of time that appear excessive relative to competitors or expected activity of business



Financial Statements provided are inconsistent with actual account activity



Structured Deposits



Rapid movement of funds (velocity) such as cash deposits immediately followed by cash/wire withdrawals

More Red Flags



Deposits by third parties with no apparent connection to the accountholder



Excessive commingling of funds with personal or seemingly unrelated business accounts



Owner or manager resides outside of state where the business is licensed, or other foreign ties



Customer seeks to hide nature of business with a non-descript name, such as “consulting”, “holding”, or “management” company



MRBs vs Ancillary Businesses



MRB BSA/AML Program

- FinCEN guidance
- Laws/regulations where MRB operates
- Assess, mitigate and manage risk
- Savvy BSA/AML professional
- Sense of CDD
- Sense of community



Payment Options

- Cash
- Check/Money Orders
- Electronic Transfers
- Digital/Virtual/Cyber/Crypto Currencies
- Converting to a cashless payment system



“Sessions Memo”

Written by DOJ Attorney General Jeff Sessions in 2018

- Reiterates that marijuana is illegal
- Marijuana prosecution decisions:
 - Follow well-established principles
 - Originally set forth in 1980
 - Reflected in Chapter 9-27.000 US Attorney’s Manual
 - Weigh all relevant considerations
 - Sessions memo intended solely as a guide to exercise discretion
 - Previous guidance specific to marijuana enforcement unnecessary
 - Previous guidance rescinded

FinCEN Statement – January 2018

- DOJ failed to notify bank advisors prior to rescinding Cole memos
- DOJ spokesman declined to comment whether it had coordinated with FinCEN
- The Sessions memo did not mention FinCEN's marijuana guidance
- It was reported that FinCEN spokesman Stephen Hudak said in a statement that the agency's guidance "remains in place."
- Treasury spokesperson said the administration is reviewing the FinCEN guidelines but they "remain in place."

Resources for Banking Cannabis



Link to Banking resources:

- **Use L2B Consulting for:**
 - Reviewing and enhance written BSA/AML program to comply with the FinCEN guidelines and Cole Memos
 - Conducting data validations of your core banking and automated AML system
 - Reviewing and enhancing your existing automated AML system to include parameters and rule sets as well as the red flags provided by FinCEN
- **Software - Bankers Link to Cannabis Compliance (BLINCC):**
 - Link the bank to MRB customer data
 - Monitor MRB data for suspicious activity
 - Generate daily, weekly and monthly transaction and financial reports

Questions?



Thank You!

For more information on how Link to Banking can help assist you with your MRB clients, contact us today.

LinktoBanking.com

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