



STATE OF CALIFORNIA

Department of Business Oversight

GOVERNOR **Gavin Newsom** • COMMISSIONER **Manuel P. Alvarez**

MEMORANDUM

To: All California State-Chartered Banks and Credit Unions

From: Manuel P. Alvarez, Commissioner of Business Oversight

Date: October 2, 2019

Subject: Cannabis Banking Guidance

Consumers, businesses, and law enforcement have long been concerned about the lack of banking access for cannabis-related businesses. Historically, the cannabis industry dealt primarily in cash, posing a significant public safety risk, among other problems. Since cannabis regulators began issuing licenses in 2018 following the passage of Proposition 64, state-legal cannabis businesses have proliferated throughout California, but many licensed businesses have struggled to obtain basic banking services as financial institutions remain concerned about complying with federal law.

However, a growing number of state-chartered banks and credit unions are now establishing banking relationships with cannabis-related businesses, with additional financial institutions considering pilot programs for cannabis banking. Regardless of whether banks and credit unions knowingly bank cannabis businesses, most inevitably encounter cannabis-related compliance challenges.

To assist state-chartered institutions, the DBO developed cannabis banking guidance in the form of an extensive questionnaire. This guidance is part of the DBO's continued effort to support banks and credit unions that serve cannabis-related businesses in California and is intended to help financial institutions make appropriate risk assessments. By making this questionnaire available to licensees, the DBO hopes it will serve as an additional resource for banks and credit unions as they roll out their cannabis banking programs.

The questionnaire addresses financial institutions' cannabis program governance and compliance with the federal Bank Secrecy Act (BSA), with a focus on the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) [guidance](#) on cannabis banking. The questionnaire tracks the FinCEN guidance, calling attention to customer due diligence, ongoing monitoring and filing requirements, along with priorities and potential red flags identified by FinCEN. The FinCEN guidance, issued in 2014, includes federal law enforcement priorities taken from parallel guidance issued by the U.S. Department of Justice (Cole Memo). Although the Justice Department rescinded the Cole Memo in 2018, the FinCEN guidance remains in effect.

As an additional resource, in August 2019, the Conference of State Bank Supervisors (CSBS) released a [document](#) to aid bank examiners with examinations of institutions that may be banking cannabis-related businesses. The DBO encourages state-chartered banks and credit unions to review the questionnaire below, along with the CSBS guide, as they consider establishing banking relationships with cannabis-related businesses operating in California in full compliance with all applicable state laws and regulations, and consistent with each financial institution's risk assessments.

The DBO will not bring regulatory actions against state-chartered banks or credit unions solely for establishing a banking relationship with licensed cannabis businesses; however, the DBO expects all financial institutions to comply with FinCEN's BSA expectations, including the FinCEN guidance and priorities set forth in the Cole Memo, and identify, evaluate, and manage risks appropriately.

The DBO stands ready to assist its licensees with early consultations to make sure they properly develop their cannabis banking initiatives.

DBO Marijuana Related Business (MRB) Compliance Questionnaire

Section I. Program Governance

1. Is there a comprehensive risk assessment of the business line?
2. Did management perform a legal review of applicable federal and state laws, including seizure of property and forfeiture/subordination of collateral? Optional: Did management get written legal advice from counsel experienced with the risk issues and follow the advice as evidenced in its policies and procedures?
3. Does the financial institution conduct appropriate initial and ongoing due diligence for new and/or ongoing MRB programs?
4. Has management confirmed with each impacted third-party provider (e.g. fiduciary bond provider, armored car company, depository, ATM servicer, correspondent banks with for-benefit-of deposit arrangement, ACH and wire transfer service providers, shared branching network, Visa, etc.) that they will service this program?
5. Does management have a contingency plan which includes an exit from this business should there be a change in the policies and forbearances from the Federal and State Governments? Are there defined guidelines?
6. Does the financial institution have adequate board-approved policies and procedures in place as to how to handle marijuana accounts and monitor for red flags?
 - a. Does the policy define what a MRB is? Is there a process to identify MRBs?
 - b. Has the Board set appropriate limits to this program? (e.g. type of licensees [commercial, manufacturer, and/or cultivators] accepted, number of accounts accepted, total amount allowed to be deposited, amount and type of loans, etc.). Has the Board set limits in relation to net worth?
 - c. Does board policy address the need for site inspections and provide guidelines as to when and how often this will be required?
 - d. Does the board policy identify how management will handle accounts that do not meet policy requirements?
 - e. Does the policy require periodic training? What is the frequency required by the policy?
 - f. If the financial institution has an Enterprise Risk Management (ERM) program, is the MRB banking program incorporated?

7. Has the board considered and addressed the practicalities of cash management, including the facility's capacity and security issues associated with handling greater amounts of cash than with other merchants?
8. Is the BSA Officer (or other individual) given designated authority to oversee account opening/denial, customer due diligence forms, ongoing Board reporting, and tracking of regulatory changes/updates?
9. Does the BSA Policy prohibit the exemption of marijuana-related business (MRB) customers for CTR filing purposes? (31 C.F.R. §1020.315(b)(6))
 - a. Does the BSA policy address the requirements to file marijuana priority, limited and termination SARs?
 - b. Has the BSA software been upgraded or parameters adjusted to effectively monitor transactions posted by MRBs, if applicable?
 - c. Have the BSA software parameters been reviewed by an independent party?
10. Does the financial institution have a manual or automated Suspicious Activity Monitoring (SAM) process? Is SAM robust enough to detect normal vs unusual activity?
 - a. Are these accounts captured in the financial institution's high-risk accounts monitoring process?
 - b. Does FI utilize in machine learning, AI, or cloud-based monitoring?
11. Has the Board established appropriate risk-based pricing standards for MRB deposit and loan accounts? In addition to service fees, risk-based pricing for deposit accounts could include retainers to cover financial institution costs in the event of seizure.
 - a. Are there limitations placed on the products and/or services available to MRB customers? If so, list services available to these businesses.
 - b. Are certain transaction restrictions placed on MRB deposit accounts e.g. wire transfers, check cashing, etc.?
 - c. Given the volatility and uncertainty of MRB deposits, are strategies in place to segregate or flag these funds from other customer or member deposits?
12. Does Board, senior management, and employee BSA training include sufficient detail on marijuana-related BSA risks and is the coverage commensurate with the institution's involvement in the industry?
13. Does the institution have the staffing resources necessary to perform sufficient due diligence and ongoing monitoring on the MRB accounts, particularly given the size, nature, and risk inherent in the individual customers?

14. Does the ALLL methodology consider the inherent credit risks associated with MRB borrowers, if applicable?
15. Does the independent loan review appropriately test adherence to the financial institution's policy on lending to MRBs?
 - a. Loan files: Under what circumstances do the provisions in the loan and collateral documents contain requirements that the financial institution can accelerate the loan terms and call the balance due and payable, such as the MRB loses its Cannabis Licensing Authority (CLA) license, runs counter to the Cole Memo requirements, or engages in activity that triggers red flags listed in the FinCEN guidance?
 - b. Loan files: Does the financial institution take steps to prevent the furtherance of any violation of the Cole Memo, including notice to the borrower to halt the offending activity or evict a violating tenant? Does the institution take action under the loan documents if the borrower will not act?
 - c. Do the financial institution managers make an effort to identify loans made to persons who are not engaged in a marijuana-related business but who have a relationship with a marijuana-related business (e.g. landlord/tenant) that involves collateral for a financial institution loan?
 - d. Does management have a process to search the financial institution's loan and deposit data file for any undisclosed or possible MRB accounts?

Section II. File Review

16. Is management completing adequate due diligence on each MRB account? (http://www.fincen.gov/statutes_regs/guidance/)
 - a. Did management verify the license at the California Bureau of Cannabis Control's Portal? (https://cannabis.ca.gov/check_a_license/)
 - b. Did management verify that access to any marijuana related retail business is in accordance to state requirements?
 - c. Has the financial institution received application and continued license and enforcement information regarding this licensee from the CLA?
 - d. Does management conduct due diligence on all marijuana business "true parties of interest" who become members? (Recommend that this be accomplished through the CLA)
 - e. Does management have an understanding of the normal and expected activity for the business, including the types of products to be sold and the type of customers to be served? (Recommend that this be accomplished through information obtained through the CLA, online information searches, internal monitoring reports, and inquiry with the account holder)

- f. Is there documentation that the FI engages in ongoing monitoring of publicly available sources for adverse information about the business and related parties? (Recommend that this be accomplished through information obtained through the CLA and online information searches)
- g. Does the due diligence documentation support that the FI engages in ongoing monitoring for suspicious activity, including for any of the red flags described in the FinCEN guidance? (Recommend that this be accomplished, in part, through information obtained through the CLA)
- h. Is there supporting documentation that shows the FI refreshes information obtained as part of customer due diligence on a periodic basis or at least every 90 days and commensurate with the risk? (Recommend that this be accomplished through information obtained through the CLA)

Section III. Account Testing/Identification of FinCEN Red Flags

- 17. Does any licensed marijuana related business member:
 - a. Receive substantially more revenue than may reasonably be expected given the relevant limitations imposed by the state in which it operates?
 - b. Receive substantially more revenue than its local competitors or than might be expected given the population demographics?
 - c. Deposit more cash than is commensurate with the amount of marijuana-related revenue it is reporting for federal and state tax purposes?
 - d. Fail to or is unable to demonstrate that its revenue is derived exclusively from the sale of marijuana in compliance with state law, as opposed to revenue derived from (i) the sale of other illicit drugs, (ii) the sale of marijuana not in compliance with state law, or (iii) other illegal activity?
 - e. Make cash deposits or withdrawals over a short period of time that are excessive relative to local competitors or the expected activity of the business?
 - f. Engage in rapid movement of funds, such as cash deposits followed by immediate cash withdrawals?
 - g. Allow deposits by third parties with no apparent connection to the accountholder?
 - h. Engage in excessive commingling of funds with the personal account of the business's owner(s) or manager(s), or with accounts of seemingly unrelated businesses?
 - i. Include individuals conducting transactions for the business that appear to be acting on behalf of other, undisclosed parties of interest?
 - j. Submit financial statements that are inconsistent with actual account activity?
 - k. Fail to or is unable to demonstrate the legitimate source of significant outside investments?

- l. Engage in international or interstate activity, including by receiving cash deposits from locations outside the state in which the business operates, making or receiving frequent or large interstate transfers, or otherwise transacting with persons or entities located in different states or countries?
- m. If a retail outlet: only sells marijuana, marijuana infused products and marijuana paraphernalia?
- n. If a retail outlet: only sells marijuana advertised for medical purposes if the retailer has a “medical marijuana endorsement?”

Section IV. Cole Memo Priorities

18. Does the financial institution specifically monitor for the eight priorities found in the Cole memo? (Recommend that this be accomplished, in part, through information obtained through the CLA)
- a. Preventing the distribution of marijuana to minors (CLA);
 - b. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels (CLA and FI);
 - c. Preventing the diversion of marijuana from states where it is legal under state law in some form to other states (CLA);
 - d. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity (CLA & FI);
 - e. Preventing violence and the use of firearms in the cultivation and distribution of marijuana (CLA);
 - f. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use (CLA);
 - g. Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands (CLA); and
 - h. Preventing marijuana possession or use on federal property (CLA).

Section V. FinCEN Filings

19. If the financial institution reasonably believes, based on its customer due diligence, that the financial services to a marijuana-related member does not implicate one of the eight Cole Memo priorities (question #18 above) or violate state law -- do they file a “Marijuana Limited” SAR every 90 days?
- a. Does the “Marijuana Limited” SAR include all of the following?
 - i. identifying information of the subject and related parties;
 - ii. addresses of the subject and related parties;
 - iii. the fact that the filing institution is filing the SAR solely because the subject is engaged in a marijuana-related business; and

iv. the fact that no additional suspicious activity has been identified.
(Financial institutions should use the term “MARIJUANA LIMITED” in the narrative section)

20. If, in the course of conducting customer due diligence (including ongoing monitoring for red flags), the financial institution detects changes in activity that potentially implicate one of the Cole Memo priorities or violate state law, does the financial institution file a “Marijuana Priority” SAR?

- a. Do the “Marijuana Priority” SARs include all of the following?
- i. identifying information of the subject and related parties;
 - ii. addresses of the subject and related parties;
 - iii. details regarding the enforcement priorities the financial institution believes have been implicated; and (iv) dates, amounts, and other relevant details of financial transactions involved in the suspicious activity.

(Financial institutions should use the term “MARIJUANA PRIORITY” in the narrative section to help law enforcement distinguish these SARs.)

21. If management deems it necessary to terminate a relationship with a marijuana- related business in order to maintain an effective anti-money laundering compliance program, do they use the term “MARIJUANA TERMINATION” in the narrative section of the SAR?