

COLORADO

Department of
Regulatory Agencies

Division of Financial Services

To: Colorado State Chartered Credit Unions and Savings and Loan Institutions

From: Mark Valente, Commissioner of the Division of Financial Services

Date: November 25, 2019

Subject: Guidance - Cannabis Banking

The Colorado Division of Financial Services (DFS) is pleased to forward to you this guidance in the form of a checklist in an effort to serve cannabis-related businesses in Colorado. The Colorado Division of Financial Services does not take a position on the question of legalization or decriminalization of cannabis at the state or federal levels, but the DFS does support legislative steps to provide clarity to the question of whether financial institutions may safely allow state-authorized cannabis related businesses to have access to their services.

The Secure and Fair Enforcement (SAFE) Banking Act would align federal and state laws concerning cannabis related business and their access to banking services by prohibiting federal banking regulators from engaging in adverse action against financial institutions. The Strengthening the Tenth Amendment Through Entrusting States (STATES) Act would exempt federal enforcement against individuals acting in compliance with state laws.

In 2013, the Department of Justice (DOJ) issued guidance in the "Cole Memo". The Cole Memo did not alter the criminality of cannabis or address cannabis banking, but laid out eight enforcement priorities. In 2014, the DOJ published a second Cole Memo addressing enforcement of money laundering and laws under the Bank Secrecy Act (BSA), including the filing of Suspicious Activity Reports (SAR). The DOJ reiterated that financial institutions must adhere to the FinCEN guidance issued concurrently with the second Cole Memo. In January 2018, the Cole Memo was rescinded, but this document still provides best practices for financial institutions to follow regarding cannabis banking. FinCEN issued guidance in 2014 regarding BSA expectations for banking cannabis related business. This included member due diligence, a SAR filing structure and red flags to help identify cannabis related businesses.

The passage of the 2018 Farm Bill has essentially declassified hemp (defined as cannabis with less than 0.3% THC) as a Schedule I substance. This allows hemp to be treated like any other crop and opens the door for hemp businesses to obtain crop insurance, loans, grants, and tax write-offs.

In August 2019, National Credit Union Administration (NCUA) Chairman Rodney Hood stated that credit unions in states where marijuana is legal won't be sanctioned for providing services to cannabis-related businesses as long as they follow money laundering, BSA, and

other rules. Hood stated, "It's a business decision for the credit unions if they want to take the deposits". He added, "We don't get involved with micro-managing credit unions."

The Division of Financial Services will not bring regulatory action against Colorado state chartered financial institutions solely for providing financial services for business accounts to lawfully operating cannabis businesses with their fields of membership. All Colorado state chartered financial institutions must comply with FinCEN's BSA expectations and priorities set forth in the Cole Memo.

In general, the decision to open, close or refuse any particular account or relationship should be made by each state chartered financial institution based on its particular business objectives, an evaluation of the risks associated with offering a particular product or service and its capacity to manage those risks effectively as part of the financial institution's Enterprise Risk Management Program. Boards and management teams of our-chartered financial institutions should carefully review the risk and rewards of entering into the arena of providing financial services to industrial hemp businesses and consult with your legal counsel.

Accordingly, the Division of Financial Services believes that state chartered financial institution's obligations under BSA/AML, as it relates to a customer engaged in the lawful production of industrial hemp, are satisfied as long as the financial institution:

- Complies with existing BSA/AML statutes;
- Implements an effective Customer Identification Program (CIP) and due diligence program;
- Creates a defined policy on hemp lending, underwriting guidelines, concentration limits and appropriate allowance considerations;
- Implements reasonable and effective enhanced due diligence procedures for high risk customers; and
- Follows Title 35, Article 61 of the state constitution, the law that addresses the Industrial Hemp Regulatory Program.

Additional Resources include: Bank Secrecy Act, 31 U.S.C Part 5311-5314, Colorado Revised Statute 35-61-109 and 7 U.S.C Part 5940 - Section 7606.

The Division of Financial Services, part of the Department of Regulatory Agencies (DORA), works to protect public interest and preserve public trust by regulating the business of state-chartered credit unions, savings and loan associations and the financial activities of life care institutions under its supervision.

**EXPECTATIONS FOR A
CANNABIS RELATED BUSINESS (CRB) PROGRAM**

- Develop policies and procedures covering the on-boarding guidelines, on-going due diligence and monitoring, and relationship termination of CRB clients. This includes all new and revised policies and procedures related to the CRB program.
- Develop CRB program management group's organizational chart
- Develop a list of all CRB clients, including all direct CRB, ancillary, and investment accounts
- Obtain CRB member due diligence and monitoring reports including any reviews completed on the newly implemented forms, review reports, interaction logs, and documentation of reviews of transfers between related parties (including related party companies). This includes access to supporting documentation.
- Obtain management reports or analysis completed for the CRB program, including any cash flow monitoring reports, profitability reports, etc.
- Obtain any CTR's and SAR's filed for all CRB members.
- Create CRB risk assessments
- Develop a CRB exit strategy plan/contingency plan
- Create a description of all account types and services provided to MRB clients. Please also include all associated pricing structures and fee schedules.
- Obtain legal reviews for the CRB program. This includes any legal reviews of any contracts with third party vendors that provide or are utilized to provide services to MRB clients.
- Create cash controls and monitoring practices (explanation of how cash is processed and handled)
- Create CRB program limits and concentration limits.

- Obtain any revised policies and spreadsheets relating to the internal review process of MRB clients and/or account activity.
- Maintain and internal training documentation
- Maintain any audit reports performed on the third party BSA monitoring systems. Please also include documentation showing any parameter modifications made to these third party BSA monitoring systems.
- Maintain all documentation relating to any terminated account relationships including:
 - All filed CTR's and SAR's including the Termination SAR
 - Communication regarding the closing of accounts.
 - Any other documentation pertaining to the accounts.
- Maintain a list of onsite and location verification site visits performed.
- Maintain a list of annual regulatory compliance audit reports.
- Maintain a log of all 314(b) inquiries received from other financial institutions, and information requests from the institution of other financial institutions.
- Maintain list of background checks performed on owners of clients of CRB. Include those where criminal records were noted, and the legal review of the background check.
- Maintain a due diligence file for institution's third party vendors including a copy of the draft contract, transaction history for the past 3 months, and analysis used to determine minimum balance requirement.
- If an automated CRB banking program or platform (third party or internal) has been implemented, maintain documentation / copy of reports where the program tracks the receipt and review of annual regulatory compliance audit reports.

This document is meant for informational purposes only. This Colorado Division of Financial Services can be reached at 303-894-2336 to answer any specific questions.

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