

Cannabis Business Blog

Banking for Marijuana Businesses on the Rise

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The Financial Crimes Enforcement Network (“FinCen”) issued a Marijuana Related Business [update](#) in June with data from the first quarter of 2017. FinCen reports that the number of depository institutions that are actively banking marijuana businesses increased to 368 by the end of March of 2017. This is an approximate 22% increase from the end of March 2016. FinCen has received an increasingly large number of suspicious activity reports (“SARs”) from banking institutions for marijuana businesses.

At first blush, this does not seem to be a positive development for legal marijuana businesses. However, it is. In February of 2014, FinCen issued [FIN-2014-G001](#) “BSA Expectations Regarding Marijuana-Related Businesses”. This guidance asks depository institution to issue three different types of SARs for marijuana businesses. A “marijuana limited” SAR should be used when the depository institution, based on its own due diligence, believes that the marijuana business depositing funds does implicate a [Cole Memorandum](#) priority or a violation of state law. This type of SAR is filed solely because the depositor is engaged in a marijuana related business and no other suspicious activity has been identified.

A “marijuana priority” SAR and a “marijuana termination” SAR are filed when the depository institution believes that a Cole memo priority is implicated or money laundering is occurring, respectively. These are red flag filings. The update issued by FinCen indicates that marijuana limited filings sharply increased during the first quarter of 2017, but marijuana priority and marijuana termination filings remaining relatively flat. This indicates that, in addition to more banks accepting deposits from marijuana businesses, more transactions are occurring where there is no apparent violation of the Cole Memo.

If Congress enacts the [Secure and Fair Enforcement Banking Act](#) (the “SAFE Banking Act”), a bi-partisan bill currently being considered in the House Financial Services Committee, depository institutions such as banks and credit unions will have additional protections from adverse federal action if they opt to provide services to marijuana businesses. Even without legislative action, this new report from FinCen indicates that banking for marijuana businesses is on the rise.

If you have a marijuana business that is attempting to use a bank, or if you are a bank or credit union wishing to accept deposits from marijuana businesses, feel free to contact any member

of our [Cannabis](#) practice group.

Warning Regarding Federal Law: The possession, distribution, and manufacturing of marijuana is illegal under federal law, regardless of state law which may, in some jurisdictions, decriminalize such activity under certain circumstances. Penalties for violating federal drug laws are very serious. For example, a conviction on a charge of conspiracy to sell drugs carries a mandatory minimum prison term of five years for a first offense and, depending on the quantity of marijuana involved, the fine for such a conviction could be as high as \$10 million. In addition, the federal government may seize, and seek the civil forfeiture of, the real or personal property used to facilitate the sale of marijuana as well as the money or other proceeds from the sale. Although the U.S. Department of Justice (DOJ) recently rescinded its guidance regarding prioritization of criminal prosecutions of individuals and entities operating in compliance with effective state regulatory systems, DOJ left in place long standing guidance to federal prosecutors regarding how to exercise this discretion. Individuals and companies are cautioned to consult with experienced attorneys regarding their exposure to potential criminal prosecution before establishing business operations in reliance upon the passage of state laws which may decriminalize such activity. Federal authority to prosecute violations of federal law as crimes or through seizures and forfeiture actions is not diminished by state law. Indeed, due to the federal government's jurisdiction over interstate commerce, when businesses provide services to marijuana producers, processors or distributors located in multiple states, they potentially face a higher level of scrutiny from federal authorities than do their customers with local operations.

Tags: banking marijuana businesses, BSA Expectations Regarding Marijuana-Related Businesses, Cole Memorandum priority, Cole Memorandum violation, depository institutions, FIN-2014-G001, Financial Crimes Enforcement Network, FinCen, marijuana limited, marijuana priority SAR, marijuana termination SAR, SAFE Banking Act, SARs, Secure and Fair Enforcement Banking Act, suspicious activity reports