

MARIJUANA-RELATED BUSINESSES (MRB) COMPLIANCE CHECKLIST: RISKS, TIPS & GUIDANCE

RISKS TO CONSIDER	Lower Risk	Medium Risk	Higher Risk
Prosecutorial: <ul style="list-style-type: none"> Is it legal in your state under state law? Is it legal in your state under federal law? What is the position of your local and state prosecutor? What is the position of your state Attorney General? 			
Reputational: <ul style="list-style-type: none"> How will your membership react to these accounts? How will your community react to the CU serving these accounts? How will vendors and correspondent banks react to the CU serving these businesses? If one of your member MRBs is prosecuted for criminal acts beyond selling marijuana, how will your members and community react to the CU being associated with such a criminal enterprise? 			
Compliance: <ul style="list-style-type: none"> Are you working with your examiner to serve these businesses? Has your examiner signed off on the policies and procedures you have put in place to effectively and safely serve these businesses? Does the CU have the required resources to perform enhanced due diligence for these accounts? Does the CU have compliance staff with specific MRB expertise? Have you contacted your insurance carriers to determine whether or not your coverage will be impacted, if you accept these accounts? 			

MRB COMPLIANCE CHECKLIST

<p>Financial:</p> <ul style="list-style-type: none"> • Will you provide credit products to these members? • Have you considered the potential impact of civil asset forfeiture? 			
<p>ITEMS TO CONSIDER WHEN YOUR CREDIT UNION CHOOSES NOT TO SERVE MARIJUANA-RELATED BUSINESSES</p>			
<p>Policies & Procedures:</p> <ul style="list-style-type: none"> • Do you have a policy that specifically states that you will not serve MRBs? • Does your policy define "Marijuana-Related Businesses"? • Does your policy address employees of MRBs? Will you open accounts for them? Will you accept "smelly" cash from them? • Does your policy address MRB ancillary businesses? Businesses that provide products and services to MRBs, such as landlords, electricians, farming supplies stores? • Have you addressed shared branching situations in your policy? • How will you address MRBs that you discover are already in your membership? 			
<p>Training:</p> <ul style="list-style-type: none"> • Has all appropriate staff been trained on these policies? 			
<p>ITEMS TO CONSIDER WHEN YOUR CREDIT UNION CHOOSES TO SERVE MARIJUANA-RELATED BUSINESSES</p>			
<p>Policies & Procedures:</p> <ul style="list-style-type: none"> • Does your policy define "Marijuana-Related Businesses"? Does the definition include businesses that "touch" the plant, or only ancillary businesses that provide products and services to MRBs? Or only employees of MRBs who will deposit MRB related funds into the cred union? • Have you addressed shared branching situations in your policy? • Have you addressed whether MRBs may transact business at branch offices? • Have you updated your BSA Compliance Program to include these high-risk accounts? • Have you included "Marijuana Limited SARs" "Marijuana Priority SARs" and "Marijuana Termination SARs" into your procedures and training? 			

MRB COMPLIANCE CHECKLIST

<ul style="list-style-type: none"> • Have you included an Exit Strategy to efficiently close these accounts if necessary, in a manner that will not impact the rest of the CU's membership? • Have you included enhanced due diligence procedures specifically for these accounts? 	<div style="background-color: #92d050; width: 100%; height: 100%;"></div>	<div style="background-color: #ffff00; width: 100%; height: 100%;"></div>	<div style="background-color: #ff0000; width: 100%; height: 100%;"></div>					
<p>Enhanced Due Diligence: Even if MRBs are legal in your state, and even if federal law allows a safe harbor, these accounts will still be high-risk and enhanced due diligence is required.</p> <ul style="list-style-type: none"> • Account opening procedures: Have you considered what documentation and verification you will require to open these accounts? • Have you considered how you will document and report these accounts for your examiner? • Are you prepared to be continually filing "Limited SARs" – required for every transaction with MRBs? • Have you considered how many MRB accounts your compliance staff can handle at one time, and have you included a limit on the number of accounts you will open? • Will you verify with state authorities whether the MRB is duly licensed and registered? • Will you review the license application (and related documentation) submitted by the MRB for obtaining a state license to operate in your state? • Will you request available information about the MRB and related parties from state licensing and enforcement authorities? • Will you develop 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 (i.e: medical versus recreational customers)? • Will you perform ongoing monitoring of publicly available sources for adverse information about the business and related parties? • Will you monitor the accounts for suspicious activity, including any red flags described in agency guidance? • Will you update MRB account related information on a periodic basis, commensurate with the risk? 				<div style="background-color: #92d050; width: 100%; height: 100%;"></div>	<div style="background-color: #ffff00; width: 100%; height: 100%;"></div>	<div style="background-color: #ff0000; width: 100%; height: 100%;"></div>		
<p>Resources:</p> <ul style="list-style-type: none"> • Do you have full support of the BOD and Senior Management to provide the necessary resources (personnel, technology, & funds) to serve these businesses? • Do you have enough staff to perform the necessary enhanced due diligence for these accounts? • Does someone on your compliance staff have sufficient expertise to fully understand these businesses and their associated risks? • Do you have the necessary technology and monitoring system to effectively monitor these accounts for suspicious activity? 	<div style="background-color: #92d050; width: 100%; height: 100%;"></div>	<div style="background-color: #ffff00; width: 100%; height: 100%;"></div>	<div style="background-color: #ff0000; width: 100%; height: 100%;"></div>					

MRB COMPLIANCE CHECKLIST

<ul style="list-style-type: none"> Do you have the necessary security at the CU to accept large cash deposits? 			
<p>Products and Services:</p> <ul style="list-style-type: none"> Have you determined what products and services you will offer these accounts? Lending? Shared branching? Or will you limit services to reduce risk? Have you determined pricing for these accounts, to ensure that increased compliance costs are covered? Have you and your legal counsel drafted MRB account agreements that protect the CU in case of any problems with the account? Under what circumstances can the account be quickly closed to reduce potential risks? 			
<p>Training:</p> <ul style="list-style-type: none"> Has appropriate staff, including branch staff, been trained on the policies, procedures, and philosophy of accepting MRB accounts? Are leadership and staff prepared to address various reactions by members and the community serving these businesses? 			
<h3 style="margin: 0;">ITEMS TO CONSIDER WHEN OPENING ACCOUNTS FOR HEMP & CBD OIL BUSINESSES</h3>			
<p>Policies and Procedures:</p> <ul style="list-style-type: none"> If the hemp business will be growing and cultivating the plant, will you require the business member to provide documentation showing it has complied with your State's hemp production requirements (as required by the 2018 Farm Bill)? If the business will be selling hemp products, such as CBD oil, will you require a Certificate of Analysis from a trusted independent third party to prove that the product has less than 0.3% THC? 			
<h3 style="margin: 0;">TIPS & GUIDANCE</h3>			
<p>Exit Strategy: To efficiently close these accounts, if necessary, in a manner that will not impact the rest of the CU's membership.</p> <ul style="list-style-type: none"> Be prepared to order very large sums of cash from the Federal Reserve, if these accounts must be liquidated. Be prepared to schedule appointments with each account holder to come to the CU, with armed escorts, to retrieve the cash. Prepare for this process to take several weeks. 			

MRB COMPLIANCE CHECKLIST

Prosecutorial Risk: Request a memorandum from your local US Attorney regarding his/her priorities regarding enforcing state and federal marijuana laws.

Compliance Risk:

- Consider starting your MRB account program with a very limited number of accounts, to allow time for your compliance staff to build expertise and efficiencies, and to address any unforeseen issues and risks.
- Do not hesitate to add compliance staff as the number of MRB accounts grow – consider a reasonable ratio of accounts to compliance staff and stick to it. If you are pricing these accounts correctly, funding for new compliance resources should be feasible.
- Watch out for concentration risk. Keep in mind that the demand to serve these businesses is extremely high and the supply remains low.

Reputational Risk:

- Keep your third-party vendors (armored car services) and insurers well informed, so that you don't run into any unexpected challenges.

Enhanced Due Diligence Red Flags: FinCEN has shared the following Red Flags as indicators of possible suspicious activity.

- The MRB receives substantially more revenue than may be expected in relation to competitors, the local market, or compared to the state and federal taxes being reported and its not able to demonstrate that the revenue is coming exclusively from the sale of marijuana in compliance with state law.
- Rapid movement of funds, such as cash deposits followed by immediate cash withdrawals.
- Deposits by third parties with no apparent connection to the accountholder.
- Individuals conducting transactions for the MRB appear to be acting on behalf of other, undisclosed parties of interest.
- The MRB is unable to produce satisfactory documentation or evidence to demonstrate that it is duly licensed and operating consistently with state law.
- The MRB is unable to demonstrate the legitimate source of significant outside investments.
- A member seeks to conceal or disguise involvement in marijuana-related business activity. For example, the member may be using a business with a non-descript name (i.e. a “consulting”, “holding”, or “management” company) that purports to engage in commercial activity unrelated to marijuana but is depositing cash that smells like marijuana.
- An MRB engages in international or interstate activity, including (a) by receiving cash deposits from locations outside the state in which the MRB operates, (b) making or receiving frequent or large interstate transfers, or (c) otherwise transacting with persons or entities located in different states or countries.

[Note that Red Flags only trigger the need for further due diligence to determine whether there is a reasonable explanation for the activity.]

MRB COMPLIANCE CHECKLIST

Enhanced Due Diligence to uncover criminal activity (formerly referred to as the “Cole Priorities”):

- Ensure that the MRB is not distributing marijuana to minors.
- Ensure that no revenue from the sale of marijuana is going to criminal enterprises, gangs, and cartels.
- Ensure that the MRB is not diverting marijuana from your state (where it has been legalized) to states that have not legalized it.
- Ensure that the MRB is not a cover or pretext for trafficking of other illegal drugs or other illegal activity.
- Ensure that the use of violence or firearms is not associated with the MRB's cultivation and distribution of marijuana.
- Ensure that drugged driving and exacerbation of other adverse public health consequences are not associated with the MRB.
- Ensure that the MRB is not growing marijuana on public lands.
- Ensure that the MRB is not promoting the possession or use of marijuana on federal property.

REFERENCES: The information in this checklist was compiled from the following sources

- [FFIEC's BSA/AML Examination Manual](#)
- [FinCEN's BSA/AML Regulations](#)
- [FinCEN's Guidance: BSA Expectations Regarding Marijuana-Related Businesses \(FIN-2014-G001\)](#)
- [CUNA's eGuide](#)
- Margaret Kilburn, Cornerstone Community Financial
- John Masten, Greylock Federal Credit Union
- Rachel Pross, MAPS Credit Union
- Heidi Lachenmaier, Whitefish Credit Union
- [CUNA's CU Magazine](#)
- Sundie Seefried, Partners Colorado Credit Union
- [Agricultural Improvement Act of 2018](#)
- [Food and Drug Administration Rules: Requirement to Establish a Product of Process Control System \(21 CFR 111.75\)](#)