



GOBIERNO DE PUERTO RICO

Oficina del Comisionado de Instituciones Financieras

CARTA CIRCULAR NÚMERO CIF CC-19-01

DE: GEORGE JOYNER, COMISIONADO DE INSTITUCIONES FINANCIERAS
/F/ FIRMA PROTEGIDA ELECTRÓNICAMENTE

A: INSTITUCIONES BANCARIAS QUE OPERAN EN PUERTO RICO BAJO LA
LEY DE BANCOS DE PUERTO RICO

SOBRE: GUÍA SOBRE LA PRESTACIÓN DE SERVICIOS FINANCIEROS A EMPRESAS
RELACIONADAS CON EL CANNABIS MEDICINAL EN PUERTO RICO

FECHA: 25 de marzo de 2019

SECCIÓN I. AUTORIDAD.

Esta Carta Circular se emite al amparo de las disposiciones de la Ley Núm. 4 del 11 de octubre de 1985, según enmendada, conocida como la "Ley de la Oficina del Comisionado de Instituciones Financieras" (la "Ley 4"); y la Ley de Bancos de Puerto Rico, Ley Núm. 55 de 12 de mayo de 1933, según enmendada (la "Ley de Bancos"), 7 L.P.R.A. §§ 1 et seq. Y la Ley del Banco Cooperativo, Ley Núm. 88 de 21 de junio de 1966, según enmendada (la "Ley 88").

SECCIÓN II. PROPÓSITO.

El propósito de esta Carta Circular es responder a preguntas recibidas por la Oficina del Comisionado de Instituciones Financieras (la "OCIF") de las instituciones bancarias con respecto a la prestación de servicios financieros a las empresas relacionadas con el cannabis medicinal debidamente licenciadas por la Oficina de Cannabis Medicinal ("OCM").

Esta Carta Circular también tiene el propósito de aclarar los criterios regulatorios y fomentar que el Banco Cooperativo y las instituciones



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bancarias que operan Puerto Rico les ofrezcan servicios bancarios a estas empresas.

SECCIÓN III. POLÍTICA PÚBLICA DEL GOBIERNO DE PUERTO RICO

La ley 42 del 2017, titulada "Ley para Manejar el Estudio, Desarrollo e Investigación del Cannabis para la Innovación, Normas Aplicables y Límites" ("Ley MEDICINAL"), ha creado un marco jurídico para las organizaciones registradas que producen y dispensan cannabis medicinal en Puerto Rico.

Como cuestión de política pública del Gobierno de Puerto Rico, Puerto Rico ha adoptado un enfoque hacia el cuidado del paciente tomando en consideración los hallazgos de profesionales de la medicina e investigadores muy respetados, al igual que los resultados de los pacientes que se benefician de las propiedades del cannabis medicinal, al promulgar leyes que permitan opciones de tratamiento a individuos que se encuentran enfermos. Puerto Rico ha delineado con exactitud las condiciones para permitirles a médicos autorizados facilitarles el cannabis medicinal a pacientes certificados. El programa de cannabis medicinal creado por la Ley MEDICINAL provee cannabis medicinal para usarse como parte de un tratamiento para pacientes con condiciones específicas.

SECCIÓN IV. LEY FEDERAL RELACIONADAS CON EL CANNABIS MEDICINAL

La Ley Federal no aborda específicamente el cannabis medicinal o sus beneficios. La Ley Federal de Sustancias Controladas ("CSA") declara ilegal manufacturar, distribuir o despachar una sustancia controlada. El cannabis se encuentra en la Lista I, Sección 812 de la CSA descrita como una sustancia controlada.





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En 2013, el Departamento de Justicia federal ("DOJ" por las siglas en inglés para "Department of Justice") y la Red de Cumplimiento contra Delitos Financieros ("FinCEN" para "Financial Crimes Enforcement Network") publicaron unas directrices para ayudar las instituciones financieras que provean servicios a las empresas relacionadas con el cannabis medicinal. Sin embargo, el memorando de 2013 del DOJ ("el Memorando Cole"), que proveyó un nuevo conjunto de prioridades para que los fiscales federales en cuanto al cannabis medicinal, fue revocado recientemente por el Secretario de Justicia Federal, Jeff Sessions.

No obstante lo anterior, las directrices de FinCen publicadas en el 2014 (las "Guías de FinCEN de 2014" o las "Guías") permanecen en vigor. Estas Guías de FinCen de 2014 se incluyen como anejo y las mismas se incorporan por referencia y se hacen formar parte de esta Carta Circular.

Las Guías de FinCEN de 2014 aclaran las expectativas de cumplimiento con la Ley de Secreto Bancario ("BSA") para las instituciones financieras que proveen servicios financieros a las empresas relacionadas con el cannabis y detalla cómo proveer los servicios de acuerdo con las obligaciones de la BSA. Estos principios son los mismos que se pueden aplicar a todas las relaciones bancarias. Al publicar las Guías de FinCEN de 2014, FinCEN procuró aumentar la disponibilidad de los servicios financieros para las empresas relacionadas al cannabis medicinal legal, e igualmente procuró aumentar la transparencia financiera de éstas.

Las Guías de FinCEN de 2014 estipulan que a la hora de involucrarse en una relación bancaria con una empresa relacionada con el cannabis, los procedimientos requeridos de debida diligencia son:

- Verificar con las autoridades apropiadas del Estado si la empresa está debidamente licenciada y registrada;





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- Revisar la solicitud de licencia (y la documentación relacionada) que sometió la empresa para obtener la licencia que le otorga el Estado para operar su empresa relacionada con el cannabis;
- Solicitar a los encargados de otorgar las licencias y a las autoridades de ley orden la información acerca de la empresa y de las partes vinculadas;
- Desarrollar un entendimiento de las actividades normales y esperadas de la empresa, incluyendo los tipos de productos que estarán a la venta y el tipo de cliente que se espera (Ejemplo: clientes de uso medicinal o recreacional);
- Supervisión constante de los recursos públicamente disponibles que contengan información negativa de la empresa y de las partes involucradas;
- Supervisión constante de actividad sospechosa, incluidas en cualquiera de las alertas rojas descritas en la guía del FinCEN; y
- Renovar periódicamente la información obtenida como parte de la diligencia debida con respecto al cliente y el perfil de riesgo.

Las Guías de FinCEN de 2014 además disponen que las instituciones financieras que consideren proveerles servicios financieros a las empresas relacionadas con el cannabis deben considerar si implica una de las prioridades estipuladas en el memorando de Cole o si infringe la ley del Estado. Las Guías también proveen instrucciones concernientes a la radicación de denuncias de actividad sospechosa ("SAR"). Una institución financiera que le provee servicios financieros a una empresa relacionada con el cannabis que razonablemente crea que, basándose en la diligencia debida con respecto al cliente, (i) no implica una de las





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prioridades del memorando Cole y no infringe la ley del Estado, debe completar un "Marijuana Limited" SAR; o (ii) si implica una de las prioridades del memorando de Cole o si infringe una ley del Estado debe completar un "Marijuana Priority" SAR. Según dispuesto en las Guías, el contenido de este SAR debe limitarse a la siguiente información: (1) información que permita identificar el sujeto de la transacción y partes relacionadas; (2) direcciones del sujeto de la transacción y partes relacionadas; (3) el hecho de que la institución financiera está radicando el SAR por la única razón de que el sujeto se dedica a un negocio relacionado al cannabis; y (4) el hecho de que no se ha identificado actividad sospechosa adicional. Las instituciones financieras deben usar la frase "MARIJUANA LIMITED" en la sección narrativa del formulario.

Si una institución financiera considera necesario dar por terminada una relación con una empresa relacionada con el cannabis, con el fin de mantener un sistema eficaz contra el lavado de dinero, la institución debe completar un SAR y anotar las razones que provocaron la terminación.

En enero 4 de 2018, el Secretario de Justicia Federal, Jeff Sessions publicó un memorando dirigido a todos los abogados revocando varios memorandos relacionados al cumplimiento de las leyes federales del uso del cannabis, incluyendo el memorando Cole. Como ya se ha señalado, la guía de FinCen sigue vigente.

Como resultado de la revocación del memorando Cole por parte del Ex-Secretario de Justicia Federal Sessions, los miembros del Congreso han abogado por la retención de la guía de FinCen. Un grupo bipartita compuesto por 31 miembros de la Cámara de Representantes y un grupo bipartita compuesto por 15 Senadores le enviaron una carta a FinCen alentando FinCen a continuar con su guía de 2014 y a continuar apoyando





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la infraestructura bancaria para la industria de cannabis. Solicitaron que las empresas que se encuentran operando de acuerdo con las leyes locales y que se rigen por los factores establecidos por la guía del FinCen puedan continuar con acceso a instituciones financieras. Estas cartas señalan que los objetivos prioritarios establecidos por FinCen les ha permitido a las empresas legales de cannabis la oportunidad de conducir su comercio de forma segura a través de instituciones financieras que ayudan a reducir el uso de dinero en efectivo, promueven la seguridad pública, reducen el fraude y proveen supervisión reglamentaria a través de informes de actividad sospechosa. Las cartas del Congreso indican además que la anulación de las Guías de FinCen infundiría incertidumbre en los mercados financieros y que cualquier intento de alterar este mercado sería peligroso e imprudente. La respuesta del Departamento del Tesoro fue que la guía permanece vigente.

SECCIÓN V. GUÍA DE LA OCIF

La OCIF es conscientes de que el marco jurídico inestable en el ámbito federal ha disuadido a las instituciones bancarias que operan en Puerto Rico de proveer servicios financieros a las empresas de cannabis medicinal. Sin embargo, dentro del marco regulatorio aplicable, aquellas instituciones que estén preparadas para aplicar las prácticas adecuadas de debida diligencia con respecto al cliente, al igual que la verificación y monitoreo de transacciones, de conformidad con principios y procedimientos establecidos, deben saber que la posición de la OCIF sobre este tema es que no existe impedimento legal alguno en las leyes que administra la OCIF para que el Banco Cooperativo y los bancos comerciales que operan en Puerto Rico bajo la Ley de Bancos de Puerto Rico puedan proveer servicios financieros a las compañías de cannabis medicinal.





1. Efectos nocivos de la falta de acceso a servicios financieros

Debido a que actualmente el cannabis aún está incluido en la Lista I bajo la Ley Federal de Sustancias Controladas, las empresas relacionadas con el cannabis medicinal que operan de acuerdo con las leyes y regulaciones de Puerto Rico siguen enfrentando problemas para establecer relaciones bancarias con instituciones financieras.

La política pública enunciada por el Gobierno de Puerto Rico hace claro que la capacidad de establecer relaciones bancarias es un asunto urgente para la industria legal de cannabis. Siempre y cuando resulte difícil abrir y mantener una cuenta bancaria, la industria dependerá mayormente del dinero en efectivo para hacer negocios y operar.

Estas limitaciones les imponen una carga a los negocios legales de cannabis. Por ejemplo, las compañías les pagan a sus empleados con sobres que contienen dinero en efectivo, cargan con bolsas que contienen miles de dólares para comprar giros bancarios y algunos pagan impuestos con dinero en efectivo. También se ha reportado que algunas empresas han abierto "holdings" o cuentas bancarias personales. Hacer que las empresas relacionadas con el cannabis medicinal operen sólo con dinero en efectivo crea un problema de seguridad pública, ya que una empresa que opera sólo con dinero en efectivo, sus suplidores, empleados y clientes se convierten en blanco para los criminales. Las grandes sumas de dinero en efectivo que se distribuyen fuera del sistema regulado de la banca son inaceptables y crea un riesgo para estas empresas, sus empleados y asociados. Asimismo, las operaciones con grandes sumas de dinero en efectivo obstaculizan el rastreo de fondos destinados para impuestos y combatir el lavado de dinero.

Hay mucha preocupación del gobierno, incluidos los miembros del Congreso federal, oficiales de ley y orden, el Gobierno de Puerto Rico y otros



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oficiales estatales, que se limite a los negocios legales del cannabis medicinal a operar con dinero en efectivo y se les dificulte poder establecer y mantener relaciones con proveedores de servicios financieros regulados. Proveerles a estas empresas el acceso necesario a los servicios financieros regulados las establece como negocios transparentes, regulados, que pagan impuestos, aportan a la economía del país y se convierten en una parte del alivio que podrán experimentar los pacientes que sufren de enfermedades serias.

Mientras que la anulación del memorando Cole pudiera indicar el punto de vista de los oficiales del gobierno federal, es un hecho innegable que muchas jurisdicciones, incluyendo Puerto Rico, han legalizado el cannabis medicinal. Por otro lado, la posición de las agencias bancarias reguladoras es a los efectos de que, generalmente, tomar la decisión de abrir, cerrar o declinar una cuenta o una relación la lleva a cabo el banco basándose en sus objetivos operacionales, en la evaluación de los riesgos que se asocian al ofrecimiento de productos y servicios, y a su habilidad para manejar dichos riesgos.

2. Posición oficial de la OCIF

La OCIF, en la medida del ámbito de su jurisdicción para así hacerlo, explícitamente interpreta que las leyes aplicables al Banco Cooperativo de Puerto Rico y a todos los bancos que hacen negocios en Puerto Rico bajo la Ley de Bancos de Puerto Rico, no impiden prestarle servicios financieros a las cooperativas que decidan ofrecerle servicios a la industria de cannabis, o a las empresas relacionadas al cannabis medicinal que opere en cumplimiento con el marco legal establecido en Puerto Rico.

En vista de lo anterior, la OCIF no impondrá acción regulatoria adversa al Banco Cooperativo de Puerto Rico ni a ningún banco autorizado a hacer





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negocios en Puerto Rico por el solo hecho de establecer una relación financiera con alguna empresa relacionada al cannabis medicinal que opere en cumplimiento con el marco legal establecido en Puerto Rico, siempre y cuando cumplan con los requerimientos de las Guías de FinCen de 2014, las disposiciones y las prioridades establecidas en el memorando Cole y cualesquiera otras disposiciones de ley aplicables. Los bancos deben evaluar los riesgos asociados al ofrecimiento de productos y servicios como hacen con respecto a todas sus relaciones bancarias.

SECCIÓN V. CONCLUSIÓN

La industria bancaria es una parte importante de la economía de Puerto Rico, y las empresas no pueden prosperar sin la ayuda de relaciones bancaria apropiadas.

Por lo tanto, en virtud de todo lo antes expuesto, se emite esta Carta Circular Conjunta para aclarar las directrices y guías de la OCIF para la prestación de servicios financieros para las empresas relacionadas con el cannabis medicinal en Puerto Rico.

SECCIÓN VI. VIGENCIA

Las disposiciones de esta Carta Circular comenzarán a regir inmediatamente.

Anejo: FIN 2014-G001





Department of the Treasury Financial Crimes Enforcement Network

Guidance

FIN-2014-G001

Issued: February 14, 2014

Subject: BSA Expectations Regarding Marijuana-Related Businesses

The Financial Crimes Enforcement Network (“FinCEN”) is issuing guidance to clarify Bank Secrecy Act (“BSA”) expectations for financial institutions seeking to provide services to marijuana-related businesses. FinCEN is issuing this guidance in light of recent state initiatives to legalize certain marijuana-related activity and related guidance by the U.S. Department of Justice (“DOJ”) concerning marijuana-related enforcement priorities. This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations, and aligns the information provided by financial institutions in BSA reports with federal and state law enforcement priorities. This FinCEN guidance should enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses.

Marijuana Laws and Law Enforcement Priorities

The Controlled Substances Act (“CSA”) makes it illegal under federal law to manufacture, distribute, or dispense marijuana.¹ Many states impose and enforce similar prohibitions. Notwithstanding the federal ban, as of the date of this guidance, 20 states and the District of Columbia have legalized certain marijuana-related activity. In light of these developments, U.S. Department of Justice Deputy Attorney General James M. Cole issued a memorandum (the “Cole Memo”) to all United States Attorneys providing updated guidance to federal prosecutors concerning marijuana enforcement under the CSA.² The Cole Memo guidance applies to all of DOJ’s federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

The Cole Memo reiterates Congress’s determination that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Cole Memo notes that DOJ is committed to enforcement of the CSA consistent with those determinations. It also notes that DOJ is committed to using its investigative and prosecutorial resources to address the most

¹ Controlled Substances Act, 21 U.S.C. § 801, *et seq.*

² James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement* (August 29, 2013), available at <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, the Cole Memo provides guidance to DOJ attorneys and law enforcement to focus their enforcement resources on persons or organizations whose conduct interferes with any one or more of the following important priorities (the “Cole Memo priorities”):³

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Concurrently with this FinCEN guidance, Deputy Attorney General Cole is issuing supplemental guidance directing that prosecutors also consider these enforcement priorities with respect to federal money laundering, unlicensed money transmitter, and BSA offenses predicated on marijuana-related violations of the CSA.⁴

Providing Financial Services to Marijuana-Related Businesses

This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations. In general, the decision to open, close, or refuse any particular account or relationship should be made by each financial institution based on a number of factors specific to that institution. These factors may include 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. Thorough customer due diligence is a critical aspect of making this assessment.

In assessing the risk of providing services to a marijuana-related business, a financial institution should conduct customer due diligence that includes: (i) verifying with the appropriate state authorities whether the business is duly licensed and registered; (ii) reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business; (iii) requesting from state licensing and enforcement authorities available information about the business and related parties; (iv) developing an understanding of the normal and expected activity for the business, including the types of

³ The Cole Memo notes that these enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA.

⁴ James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Related Financial Crimes* (February 14, 2014).

products to be sold and the type of customers to be served (e.g., medical versus recreational customers); (v) ongoing monitoring of publicly available sources for adverse information about the business and related parties; (vi) ongoing monitoring for suspicious activity, including for any of the red flags described in this guidance; and (vii) refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk. With respect to information regarding state licensure obtained in connection with such customer due diligence, a financial institution may reasonably rely on the accuracy of information provided by state licensing authorities, where states make such information available.

As part of its customer due diligence, a financial institution should consider whether a marijuana-related business implicates one of the Cole Memo priorities or violates state law. This is a particularly important factor for a financial institution to consider when assessing the risk of providing financial services to a marijuana-related business. Considering this factor also enables the financial institution to provide information in BSA reports pertinent to law enforcement's priorities. A financial institution that decides to provide financial services to a marijuana-related business would be required to file suspicious activity reports ("SARs") as described below.

Filing Suspicious Activity Reports on Marijuana-Related Businesses

The obligation to file a SAR is unaffected by any state law that legalizes marijuana-related activity. A financial institution is required to file a SAR if, consistent with FinCEN regulations, the financial institution knows, suspects, or has reason to suspect that a transaction conducted or attempted by, at, or through the financial institution: (i) involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity; (ii) is designed to evade regulations promulgated under the BSA, or (iii) lacks a business or apparent lawful purpose.⁵ Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, a financial institution is required to file a SAR on activity involving a marijuana-related business (including those duly licensed under state law), in accordance with this guidance and FinCEN's suspicious activity reporting requirements and related thresholds.

One of the BSA's purposes is to require financial institutions to file reports that are highly useful in criminal investigations and proceedings. The guidance below furthers this objective by assisting financial institutions in determining how to file a SAR that facilitates law enforcement's access to information pertinent to a priority.

"Marijuana Limited" SAR Filings

A financial institution providing financial services to a marijuana-related business that it reasonably believes, based on its customer due diligence, does not implicate one of the Cole Memo priorities or violate state law should file a "Marijuana Limited" SAR. The content of this

⁵ See, e.g., 31 CFR § 1020.320. Financial institutions shall file with FinCEN, to the extent and in the manner required, a report of any suspicious transaction relevant to a possible violation of law or regulation. A financial institution may also file with FinCEN a SAR with respect to any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by FinCEN regulations.

SAR should be limited to the following information: (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.

A financial institution should follow FinCEN’s existing guidance on the timing of filing continuing activity reports for the same activity initially reported on a “Marijuana Limited” SAR.⁶ The continuing activity report may contain the same limited content as the initial SAR, plus details about the amount of deposits, withdrawals, and transfers in the account since the last SAR. However, 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, the financial institution should file a “Marijuana Priority” SAR.

“Marijuana Priority” SAR Filings

A financial institution filing a SAR on a marijuana-related business that it reasonably believes, based on its customer due diligence, implicates one of the Cole Memo priorities or violates state law should file a “Marijuana Priority” SAR. The content of this SAR should include comprehensive detail in accordance with existing regulations and guidance. Details particularly relevant to law enforcement in this context include: (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.⁷

“Marijuana Termination” SAR Filings

If a financial institution deems it necessary to terminate a relationship with a marijuana-related business in order to maintain an effective anti-money laundering compliance program, it should

⁶ Frequently Asked Questions Regarding the FinCEN Suspicious Activity Report (Question #16), available at: http://fincen.gov/whatsnew/html/sar_faqs.html (providing guidance on the filing timeframe for submitting a continuing activity report).

⁷ FinCEN recognizes that a financial institution filing a SAR on a marijuana-related business may not always be well-positioned to determine whether the business implicates one of the Cole Memo priorities or violates state law, and thus which terms would be most appropriate to include (i.e., “Marijuana Limited” or “Marijuana Priority”). For example, a financial institution could be providing services to another domestic financial institution that, in turn, provides financial services to a marijuana-related business. Similarly, a financial institution could be providing services to a non-financial customer that provides goods or services to a marijuana-related business (e.g., a commercial landlord that leases property to a marijuana-related business). In such circumstances where services are being provided indirectly, the financial institution may file SARs based on existing regulations and guidance without distinguishing between “Marijuana Limited” and “Marijuana Priority.” Whether the financial institution decides to provide indirect services to a marijuana-related business is a risk-based decision that depends on a number of factors specific to that institution and the relevant circumstances. In making this decision, the institution should consider the Cole Memo priorities, to the extent applicable.

file a SAR and note in the narrative the basis for the termination. Financial institutions should use the term “MARIJUANA TERMINATION” in the narrative section. To the extent the financial institution becomes aware that the marijuana-related business seeks to move to a second financial institution, FinCEN urges the first institution to use Section 314(b) voluntary information sharing (if it qualifies) to alert the second financial institution of potential illegal activity. See *Section 314(b) Fact Sheet* for more information.⁸

Red Flags to Distinguish Priority SARs

The following red flags indicate that a marijuana-related business may be engaged in activity that implicates one of the Cole Memo priorities or violates state law. These red flags indicate only possible signs of such activity, and also do not constitute an exhaustive list. It is thus important to view any red flag(s) in the context of other indicators and facts, such as the financial institution’s knowledge about the underlying parties obtained through its customer due diligence. Further, the presence of any of these red flags in a given transaction or business arrangement may indicate a need for additional due diligence, which could include seeking information from other involved financial institutions under Section 314(b). These red flags are based primarily upon schemes and typologies described in SARs or identified by our law enforcement and regulatory partners, and may be updated in future guidance.

- A customer appears to be using a state-licensed marijuana-related business as a front or pretext to launder money derived from other criminal activity (i.e., not related to marijuana) or derived from marijuana-related activity not permitted under state law. Relevant indicia could include:
 - The business receives substantially more revenue than may reasonably be expected given the relevant limitations imposed by the state in which it operates.
 - The business receives substantially more revenue than its local competitors or than might be expected given the population demographics.
 - The business is depositing more cash than is commensurate with the amount of marijuana-related revenue it is reporting for federal and state tax purposes.
 - The business 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.
 - The business makes cash deposits or withdrawals over a short period of time that are excessive relative to local competitors or the expected activity of the business.

⁸ Information Sharing Between Financial Institutions: Section 314(b) Fact Sheet, *available at*: http://fincen.gov/statutes_regs/patriot/pdf/314bfactsheet.pdf.

- Deposits apparently structured to avoid Currency Transaction Report (“CTR”) requirements.
 - Rapid movement of funds, such as cash deposits followed by immediate cash withdrawals.
 - Deposits by third parties with no apparent connection to the accountholder.
 - Excessive commingling of funds with the personal account of the business’s owner(s) or manager(s), or with accounts of seemingly unrelated businesses.
 - Individuals conducting transactions for the business appear to be acting on behalf of other, undisclosed parties of interest.
 - Financial statements provided by the business to the financial institution are inconsistent with actual account activity.
 - A surge in activity by third parties offering goods or services to marijuana-related businesses, such as equipment suppliers or shipping servicers.
- The business is unable to produce satisfactory documentation or evidence to demonstrate that it is duly licensed and operating consistently with state law.
 - The business is unable to demonstrate the legitimate source of significant outside investments.
 - A customer seeks to conceal or disguise involvement in marijuana-related business activity. For example, the customer may be using a business with a non-descript name (e.g., a “consulting,” “holding,” or “management” company) that purports to engage in commercial activity unrelated to marijuana, but is depositing cash that smells like marijuana.
 - Review of publicly available sources and databases about the business, its owner(s), manager(s), or other related parties, reveal negative information, such as a criminal record, involvement in the illegal purchase or sale of drugs, violence, or other potential connections to illicit activity.
 - The business, its owner(s), manager(s), or other related parties are, or have been, subject to an enforcement action by the state or local authorities responsible for administering or enforcing marijuana-related laws or regulations.
 - A marijuana-related business engages 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.

- The owner(s) or manager(s) of a marijuana-related business reside outside the state in which the business is located.
- A marijuana-related business is located on federal property or the marijuana sold by the business was grown on federal property.
- A marijuana-related business's proximity to a school is not compliant with state law.
- A marijuana-related business purporting to be a "non-profit" is engaged in commercial activity inconsistent with that classification, or is making excessive payments to its manager(s) or employee(s).

Currency Transaction Reports and Form 8300's

Financial institutions and other persons subject to FinCEN's regulations must report currency transactions in connection with marijuana-related businesses the same as they would in any other context, consistent with existing regulations and with the same thresholds that apply. For example, banks and money services businesses would need to file CTRs on the receipt or withdrawal by any person of more than \$10,000 in cash per day. Similarly, any person or entity engaged in a non-financial trade or business would need to report transactions in which they receive more than \$10,000 in cash and other monetary instruments for the purchase of goods or services on FinCEN Form 8300 (Report of Cash Payments Over \$10,000 Received in a Trade or Business). A business engaged in marijuana-related activity may not be treated as a non-listed business under 31 C.F.R. § 1020.315(e)(8), and therefore, is not eligible for consideration for an exemption with respect to a bank's CTR obligations under 31 C.F.R. § 1020.315(b)(6).

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FinCEN's enforcement priorities in connection with this guidance will focus on matters of systemic or significant failures, and not isolated lapses in technical compliance. Financial institutions with questions about this guidance are encouraged to contact FinCEN's Resource Center at (800) 767-2825, where industry questions can be addressed and monitored for the purpose of providing any necessary additional guidance.