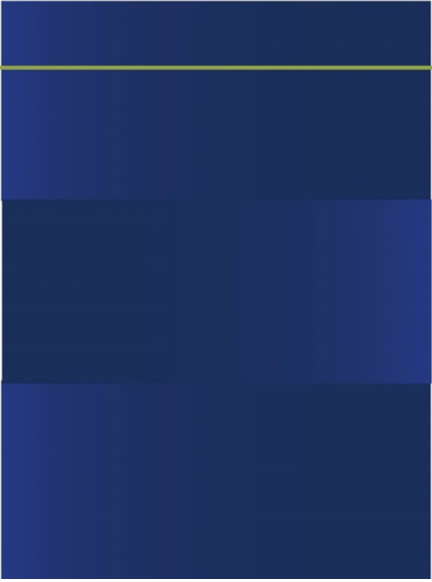




Managing the Cannabis Business For Credit Unions

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HCUA Convention & Annual Meeting
Kansas City, Missouri
September 13, 2019

Significant Areas Covered

1. Current Status of the Law
2. Understanding the Product
3. Marijuana Laws in Kansas & Missouri
4. Practical Guidance for Servicing Marijuana Businesses



The Controlled Substance Act of 1970

Divides drugs into schedules with different levels of regulation



Schedule I

- Drug has a high potential for abuse
- Drug has no currently accepted medical use in treatment in the United States
- Lack of accepted safety for use of the drug under medical supervision
- Includes: ecstasy, heroin, LSD, marijuana

Schedule II

- Drug has a high potential for abuse
- Drug has a currently adopted medical use in treatment in the United States or a currently accepted medical use with severe restrictions
- Abuse of the drug may lead to severe psychological or physical dependence
- Includes: cocaine, morphine, methamphetamine, opium, PCP

Bank Secrecy Act (BSA)

- Passed in 1970 to combat money laundering. Financial Institutions are required to monitor their customers' accounts and report suspicious activity, large currency transactions, and criminal activity.
- It has specific regulations related to marijuana businesses.

US PATRIOT Act (2001)

- PATRIOT Act can deter foreign banks from servicing American clients that operate state-legalized marijuana operations.
- If the foreign institution has a correspondent relationship with a U.S. bank, the foreign bank could be subpoenaed for banking money considered illegal by the U.S. government.



Cole Memo (2013)

Attorney General Cole stated that the Department of Justice (DOJ) would not actively prosecute actors engaged in legalized marijuana businesses unless one of the priorities were implicated.

Priorities include:

- Preventing distribution to minors
- Preventing marijuana revenue from flowing to criminals
- Preventing violence
- Addressing public health issues surrounding the industry

Cole Memo (2013)

- Memo does not create a legally enforceable right.
- Cole Memo encourages states that have legalized marijuana to have a robust system to address the priorities.

FinCEN Guidelines (2014)

- Cole Memo provided security to state legalized marijuana businesses but did not provide access to financial institutions.
- 2014 guidelines provide guidance for financial institutions and advised them on how to serve marijuana businesses while complying with BSA.
- Details specific tracking, monitoring, and reporting requirements for financial institutions.
- Requires financial institutions to continuously review and analyze each marijuana related customer.



Seven FinCEN Guideline Due Diligence Factors

1. Verify with state authorities to determine if the business is licensed;
2. Review documentation relating to the business's license application;
3. Request information from the state authorities;
4. Understand the business and its expected activity and the type of products in distribution (medical v. recreational);
5. Continuously monitor public information on the business;
6. Continuously monitor for suspicious activity; and
7. Periodically update customer information.

Suspicious Activity Reports (SAR)

FinCEN requires financial institutions to file a Suspicious Activity Report on each business related to the legalized marijuana industry.

Under FinCEN guidance there are 3 types of SARs for marijuana related businesses:

1. **Marijuana Limited:** the financial institution reasonably believes the business does not implicate one of the enforcement priorities and does not violate state law. After this has been filed, the financial institution must file Continuing Activity Reports on the client.
2. **Marijuana Priority:** institution has a reasonable belief that the business implicates at least one of the Cole Memo priorities or violates state regulations.
3. **Marijuana Termination:** the financial institution finds it necessary to terminate the relationship with the client to maintain an effective anti-money laundering program. The SAR should contain a description of the basis for this belief and, if possible, a notification of the client's intent to seek business somewhere else.

SARs by the Numbers

Since the beginning of 2019:

- Financial institutions have filed 73,074 SARs for marijuana related businesses
 - 55,000 have been Marijuana Limited
 - Around 5,000 have been Marijuana Priority reports
 - 16,990 have been Marijuana Termination

Rohrabacher-Blumenauer Agreement (2014)

- The Obama administration used the spending bill to limit the government's oversight over legalized marijuana.
- This agreement, also known as the Cromnibus spending bill, includes a provision that prohibits the DOJ from using funding to prosecute legal marijuana operations.
- Bill has been continuously renewed; current version is set to expire September 2019.

Sessions Memo

- Attorney General Jeff Sessions issued a memo in January of 2018 that reversed the Cole Memo.
- Advised U.S. Attorneys to enforce the current marijuana laws.
- Does mention that DOJ has limited resources and advises prosecutors to weigh all relevant considerations concerning the seriousness of the crime before using resources to prosecute.
- However, Attorney General Anthony Barr testified in his confirmation hearing that he would not go after marijuana companies that comply with state regulations.



2018 Farm Bill

- Allows hemp cultivation broadly, was originally allowed for pilot programs to study industrial hemp, but this bill extended that.
- Removed hemp from Schedule I.
- Allows the transfer of hemp-derived products across state lines for commercial or other purposes.
- Places no restrictions on the sale, transport, or possession of the products, so long as they are produced in a manner consistent with the law.
- CBD oil is legal if it was produced from hemp produced in a manner consistent with the relevant laws.



2018 Farm Bill

- Hemp cannot contain more than 0.3% THC; any plant that contains more is considered marijuana.
- There are significant, shared & state federal regulatory powers over hemp cultivation and production.
- Cultivating without a license or producing marijuana instead of hemp are violations of the bill.
- Legalizes hemp but does not create a system in which it is grown as freely as other plants.
- FDA considering regulations – CBD & food additives

US Small Business Administration Memo (2018)

- Prohibits businesses involved in the marijuana industry from participating in the Small Business Administration lending programs.
- Increases the financial burden for marijuana businesses and ancillary businesses that operate within the marijuana community.



2018 FinCEN Update

- 2018 update advised financial institutions to continue to follow the 2014 FinCEN guidance with regards to clients in the marijuana business even after the Sessions Memo.
- Despite risks, many financial institutions have continued to follow the FinCEN guidance.

Proposed Federal Legislation

Secure and Fair Enforcement Banking Act (SAFE)

- Provisions of the bill would ease the risk of prosecution when financial institutions provide services to marijuana businesses.
- Requires financial institutions to follow the FinCEN guidance.
- Bill was not passed during the 115th Congress, however it is being proposed again for the 116th.

Strengthening the Tenth Amendment Through Entrusting States Act (STATES)

- Proposed during the 115th Congress.
- Would prevent federal interference with states that had decided to legalize marijuana.
- Instead of legalizing marijuana nationally, it would allow each state the options of legalizing recreational or medicinal marijuana or outlawing the plant entirely.
- As of June 2019, the House bill has 206 cosponsors and the Senate bill has 30.



States Allowing Legal Recreational Marijuana

Alaska

California

Colorado

Illinois

Maine

Michigan

Nevada

Oregon

Vermont

Washington

Washington D.C.



States with Decriminalized Recreational Marijuana

Connecticut

Delaware

Hawaii

Minnesota

Mississippi

Missouri

Nebraska

New Hampshire

New Mexico

New York

North Carolina

North Dakota

Ohio

Rhode Island

States with Legalized Medical Marijuana

Alaska

Arizona

Arkansas

California

Colorado

Connecticut

Delaware

Washington D.C.

Florida

Hawaii

Illinois

Kentucky

Louisiana

Maine

Maryland

Massachusetts

Michigan

Minnesota

Missouri

Montana

Nevada

New Hampshire

New Mexico

New York

North Dakota

Ohio

Oklahoma

Oregon

Pennsylvania

Rhode Island

Utah

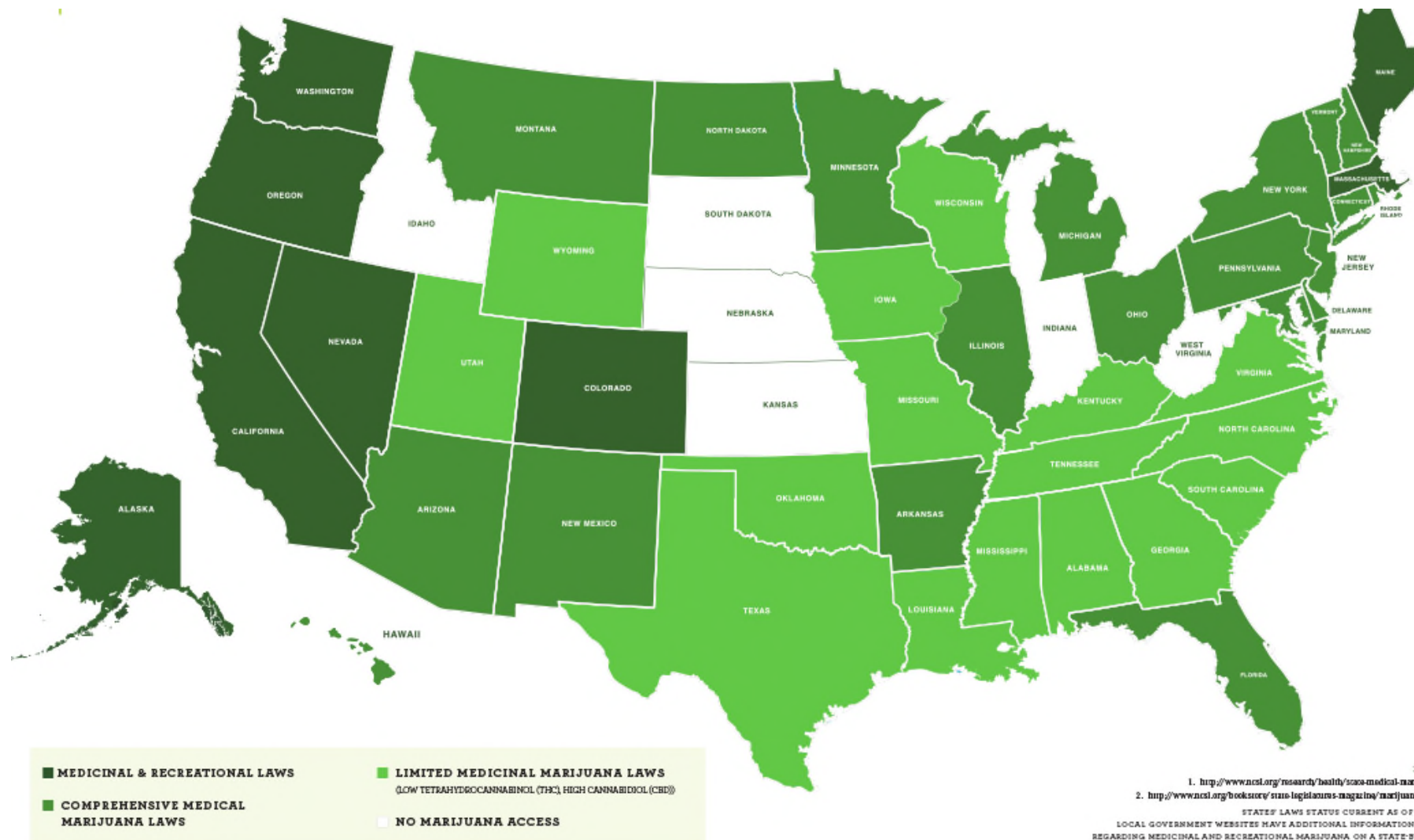
Vermont

Washington

West Virginia



Marijuana Laws Differ by State



Understanding the Product

Hemp vs. marijuana

While hemp and marijuana are both part of the cannabis species, each has unique properties that distinguish its use.

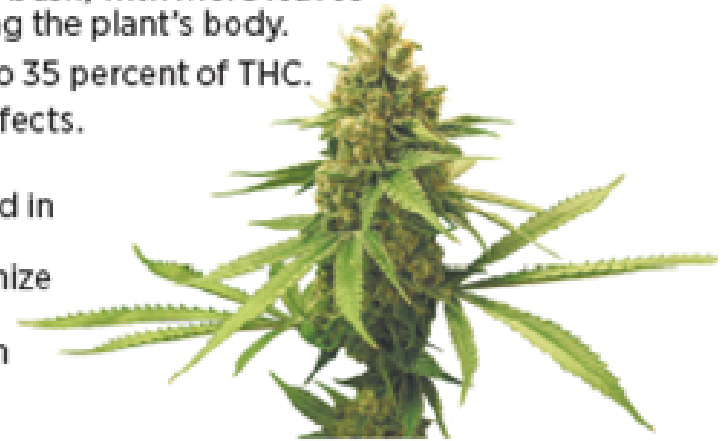
Hemp

- ▶ Can grow as high as 20 feet, with leaves bunched near the top of the stem.
- ▶ Contains 0.3 percent or less of tetrahydrocannabinol (THC).
- ▶ No psychoactive properties.
- ▶ Can grow in most climates, bunched together with other plants; requires little care.



Marijuana

- ▶ Shorter, resembles a bush, with more leaves and buds surrounding the plant's body.
- ▶ Contains 5 percent to 35 percent of THC.
- ▶ Psychoactive side effects.
- ▶ Growth is carefully monitored, controlled in an isolated, warm, humid area to maximize psychoactive uses. Cross-pollination can ruin THC content.



Uses of Hemp



Kansas Marijuana Laws

- In 2018, Kansas passed a law acknowledging the medical efficacy of marijuana.
- SB 282 changed the definition of marijuana to exclude CBD. Bill took effect in May 2018. However, THC remains illegal and it is difficult to produce products without trace amounts of THC.
- Have reduced penalties for marijuana possession for first and second time offenses.

Missouri Marijuana Laws

- Missouri passed Amendment 2 to legalize Medical Marijuana in 2018. Under this amendment, with a physician's approval, patients may qualify for medical marijuana if they are diagnosed with an approved condition.
- Home cultivation is permitted by caregivers and qualified patients that apply for and receive a cultivation card. Statewide marijuana possession is decriminalized for 10 grams or less of marijuana, remains a criminal misdemeanor punishable by fine only.

Understanding Prop 2 in Missouri

Amendment is intended to allow state-licensed physicians to recommend marijuana for medical purposes to patients suffering from serious illnesses or medical conditions.

Qualifying Medical Conditions - Includes conditions of, symptoms related to, or side effects from the treatment of:

- Cancer
- Epilepsy
- Glaucoma
- Intractable Migraines
- Muscular Sclerosis
- Seizures
- Parkinson's Disease
- Tourette's
- Debilitating Psychiatric Disorders

Oversight Under Prop 2

The Department of Health and Senior Services has the power of oversight and regulation of medical marijuana. Some responsibilities under Prop 2 are:

- **Manufacture/ Growing:** Require a seed-to-sale tracking system that tracks plants from an immature stage to a qualifying patient. Certify at least two commercially available systems to licensees as compliant with section's tracking standards.
- **Processing:** Department must begin accepting and develop a method for processing applications for licenses to cultivate or distribute medical marijuana within the state.
- **Dispensing:** Department must also process license applications of dispensaries, and provide enough licenses to supply the demand for medical marijuana within the state.

Licensing Process

Cultivation Facility:

- Each facility in operation requires a separate license; multiple licenses may be used in a single facility.
- License is valid for three years from date of issuance and shall be renewable except for good cause. No more than 3 licenses shall be issued to any entity under common control.
- Department may limit the number of licenses given to cultivation facilities, but may not be limited to fewer than 1 license per 100,000 inhabitants in Missouri.

Dispensaries:

- Entities may apply for and obtain one or more licenses for dispensaries. Each dispensary will require a separate license.
- Licenses are valid for 3 years from issuance and are renewable. No more than 5 dispensary licenses shall be issued to any entity under common control, ownership, or management.
- Department may limit the number of licenses given to dispensaries, number may not be limited to fewer than 24 licenses in each congressional district in Missouri.

Ordinances Under Prop 2

- No facility shall be initially sited within 1,000 feet of any then-existing elementary or secondary school, child day-care center, or church.
- Local government shall not prohibit facilities expressly or through the enactment of ordinances or regulations that make operation unduly burdensome.
- Local governments may enact ordinances and regulations not in conflict with the amendment, governing the time, place, and manner of operation of marijuana facilities in the locality.
- Local governments may establish civil penalties for violation of an ordinance or regulations governing the time, place, and manner of operation of the facilities.

Local Ordinances

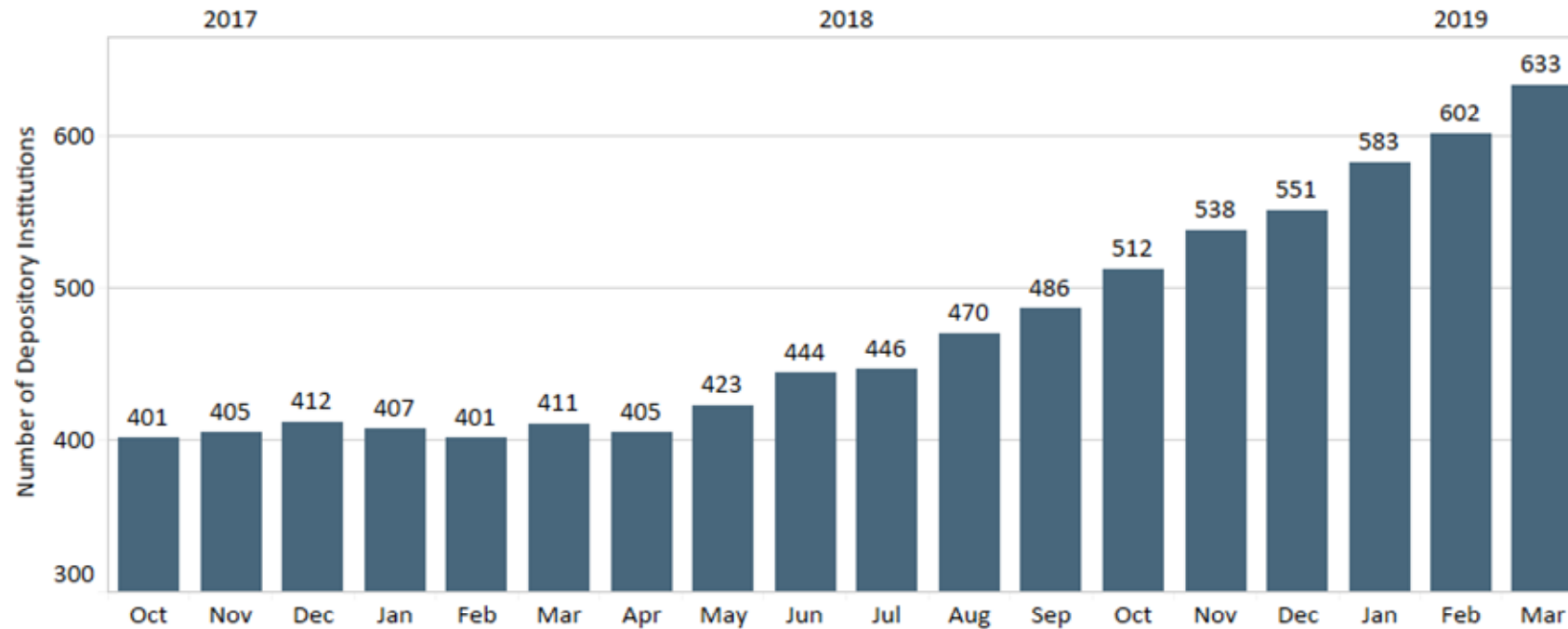
- Some local ordinances exist or are being considered.
- Be aware for compliance.

Some Missouri municipalities, cities, and counties that have passed or are considering local regulations include:

- Blue Springs
- Brookfield
- Carthage
- Creve Coeur
- Kansas City
- Kirksville
- Maryland Heights
- Nixa
- North Kansas City
- Rolla
- Springfield
- Webster Groves
- West Plains

Practical Guidance for Servicing Marijuana Businesses

Depository Institutions Actively Banking Marijuana-Related Businesses in the United States: October 2017 - March 2019



Source: U.S. Treasury Financial Crimes Enforcement Network

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To Offer Services to Marijuana-Related Businesses or Not?

If you decide to not provide services to marijuana-related businesses, make sure you have the proper wording in your documents to avoid any anti-discrimination claims.

Legal Product vs. Class I Controlled Substance

If offering service, consider the type of product being marketed by your member.

Hemp vs. marijuana

While hemp and marijuana are both part of the cannabis species, each has unique properties that distinguish its use.

Hemp

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If Controlled Substance Being Offered Falls Under Prop 2

Key Points to Consider:

- Corporate governance
- Management oversight
- Lending issues
- Due diligence
- FinCEN red flag compliance
- Cole Memo priorities

Corporate Governance/BOD Oversight

- Policies and procedures
- Red flag compliance
- Risk assessment of business lines
- Appropriate pricing standards
- Overall limits to program



Management Oversight

- Legal review
- BSA oversight
- Third-party verification
- Cash management
- Proper fees
- Training and staff
- Due diligence
- Insurance coverage

Lending

- Credit risk/due diligence
- Exit plan
- Collateral
- Guarantee
- Waiver of illegality
- Judicial/non-judicial
- Indirect lending control
- Unsecured loans/credit cards



Business Due Diligence

- Proper license
- Ongoing licensure
- True party of interest
- Local government compliance
- Public records check

**Due Diligence
Checklist**



FinCEN Red Flag/Testing

- Receive substantially more revenue than may reasonably be expected
- Receive substantially more revenue than local competitors
- Deposit more cash than is commensurate with the amount of marijuana-related revenue it is reporting for state & federal tax purposes
- Excessive cash deposits or withdrawals over a short period of time



FinCEN Red Flag/Testing

- Excessive comingling of funds with personal accounts of the owner, manager, or seemingly unrelated businesses
- Submit financial statements that are inconsistent with actual account activity
- Fail to or unable to demonstrate the legitimate source of significant outside investment



Cole Memo Priorities

- Prevent the distribution of marijuana to minors
- Prevent revenue from the sale of marijuana from going to criminal enterprises
- Prevent the diversion of marijuana from states where it is legal under state law to other states
- Prevent state-authorized marijuana activity from being used as a cover or pretext for trafficking of other illegal drugs or activities
- Prevent 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
- Prevent the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands
- Prevent marijuana possession or use on federal property

Questions



Thank you



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