



**PERSPECTIVES ON MARIJUANA:
BANKING AND PROSECUTION
A Financial Regulator's View**

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Western District of Washington
Anti-Money Laundering & SAR Forum
September 30, 2014 – 1:30-2:30 PM
Seattle U.S. Attorney's Office



December 2012: The Big Question in Olympia

How do we
implement the will
of the people –
I-502 –
notwithstanding
federal law?





Preliminary Tax Question 1

- The first question was whether the Treasurer (mandated to deposit marijuana taxes) can deposit these funds in a bank and disburse them according to I-502 without the Department of Justice seeking to enjoin that as a violation of anti-money laundering laws – or seizing the state’s revenues.



Preliminary Tax Question 2



- Once the issue of being able to collect taxes, deposit them, and disburse them was resolved, the State could address other issues.



The Bankability Issue 1

- Like the Governor, Attorney General and all other state agencies, DFI's paramount concern was public safety.





The Bankability Issue 2

- ***All-cash businesses***, without benefit of a bank or credit union as intermediary, pose a huge ***public safety problem*** – the danger of armed robbery as well as the difficulty of preventing the federal government’s priority criminal targets from potentially exploiting I-502.



The Bankability Issue 3



- DFI ultimately saw that *banking and money transmission issues* would become key factors in the success of I-502.



February 2013: A “Marriage” of Two Regulatory Concepts

- From the beginning, DFI shared with its counterparts the belief that I-502’s success was going to be dependent on “marrying” two regulatory concepts:
 - A ***system of prosecutorial “priorities”*** based on measurable standards.
 - A ***system of special enhanced due diligence (EDD)*** consistent with Bank Secrecy Act (BSA) reporting standards.



Timeline of Implementation Events

November 2012	INITIATIVE 502
January-June 2013	State Converses with DOJ & Treasury Department
July 2013	DOJ Signals No Suit to Enjoin I-502
August 29, 2013	COLE MEMO
October 2, 2013	Inslee-Hickenlooper Letter to Federal Banking Regulators
November 2013	Federal Banking Regulators Defer to DOJ and FinCEN
February 14, 2014	FinCEN GUIDANCE & DOJ COMPANION MEMO ISSUED
March-June 2014	Follow-Up with Federal Banking Regulators
June-July 2014	Responses from Federal Deposit Insurance Corporation (“FDIC”) and National Credit Union Administration (“NCUA”) to Director Jarvis
September 2014	DFI EXAMINATION PROCEDURES FOR BANKS & CREDIT UNIONS



October 2013: “Marriage” of Cole Memo & LCB Rules/Software 1

- One of the brilliant aspects of I-502 implementation was rulemaking designed to assure compliance with *all 8 priorities of the Cole Memo.*





October 2013: “Marriage” of Cole Memo & LCB Rules/Software 2

- The *LCB Rules*, the *LCB Tracking Software*, and the *transparency of LCB data* concerning marijuana applicant/licensee information (under State Public Records Act) confirmed to DFI that a *special EDD Program for BSA compliance* could be implemented for banking as well.



October 2013: “Marriage” of Cole Memo & LCB Rules/Software 3

- DFI worked with the Governor and Attorney General to advance this idea, which resulted in the October 2, 2013, joint letter from Washington and Colorado to federal banking regulators.
- This letter urged inter-agency guidance that would allow *licensed* marijuana businesses access to the banking system.



February 2014: FinCEN Guidance & DOJ Companion Memo 1

- DFI is pleased with the FinCEN Guidance and DOJ Companion Memo regarding deposit-taking and money transmission.
- The FinCEN/DOJ approach is thoroughly consistent with other EDD approaches FinCEN and DOJ have taken (such as for international currency exchangers and money transmitters).



February 2014: FinCEN Guidance & DOJ Companion Memo 2

- The FinCEN Guidance and DOJ Companion Memo are thoroughly capable of being implemented within the framework of existing BSA compliance.
- Banks and credit unions can comply with these standards.



LCB Public Information and FinCEN Guidance Compliance

- Because the concerns addressed in the LCB Rules and LCB Tracking Software mirror the priorities of the Cole Memo so well, banks and credit unions in Washington State can leverage LCB public information very well in complying with the FinCEN Guidance.



March-June 2014: Bank and Credit Unions Sought More Assurances 1

- Notwithstanding the FinCEN Guidance and DOJ Companion Memo, banks and credit unions perceived their need for additional assurances from federal banking regulators.
- DFI sought those assurances on behalf of its state-chartered banks and credit unions.



March-June 2014: Bank and Credit Unions Sought More Assurances 2

- FDIC and NCUA responded by letter this summer that DFI's stakeholders could rely on the FinCEN Guidance.
- DFI determined to produce its own exam procedures, based on the FinCEN Guidance and Cole Memo.



September 2014: DFI Exam Procedures 1

Examiner is instructed to Review:

- Board of Directors minutes for full knowledge of risks and explicit approval.
- Policies, procedures, and infrastructure capabilities.
- Any agreements with affected 3rd party service providers.
- Customer Identification Program (“CIP”) files – both accepted and rejected.
- Public Records Request of LCB, both at application and for routine review.
- Membership / account agreements.
- SARs filed and policy for filing SARs consistent with FinCEN Guidance.



September 2014: DFI Exam Procedures 2

What the examiner is looking for:

- Adequate controls to identify all marijuana-related accounts.
- Compliance with the FinCEN Guidance, including its:
 - Reaffirmation of the 8 principles of the Cole Memo
 - Its identification of “Red Flags”
 - Its procedures for filing Marijuana-Related SARs
- Exit plan should the current DOJ policy of “prosecutorial discretion” change.



Lending Issues 1



- Banks and credit unions are expected to do comprehensive risk assessments of loans to marijuana businesses or secured by marijuana-related collateral.



Lending Issues 2

- DOJ and FinCEN may need to provide further guidance in the area of lending by financial intermediaries.





Conclusion 1

- Basic banking services to LCB licensees are critical to assuring public safety.
- DOJ and FinCEN have provided a viable working plan for accomplishing this.



Conclusion 2

- Banks and credit unions have to make their own independent determination whether to extend merchant deposit services or make loans, consistent with the Cole Memo and FinCEN Guidance.
- DFI webpage regarding marijuana-related businesses: <http://dfi.wa.gov/banks/marijuana-guidance.htm>