



Exam Procedure Update: Marijuana Related Businesses

DATE: May 20, 2016

TO: All DCU Examination Staff

FROM: Linda Jekel, Director of Credit Unions

RE: Examination Procedures for Credit Unions with Member Accounts in the I-502 Marijuana Business (LCB-licensed marijuana businesses)
2016 Update: Medical Marijuana Endorsements

Introduction and Background

In 2012, Initiative 502¹, or the Recreational Marijuana Law, authorized strict regulation for the production, processing, and retail sale of marijuana in Washington State for limited recreational use by licensed persons through the Washington State Liquor Control Board, now called the Liquor and Cannabis Board (“LCB”).

In 2015, the legislature enacted the Cannabis Patient Protection Act (2SSB 5052 -2017 c 70) and the Marijuana Market Reform Bill (E2SHB 2136),² which amended the Medical Use of Cannabis Act, Ch. 69.51A RCW, the Liquor Control Board Act, Ch 66.08 RCW, and various other statutes relating to controlled substances and retail sales taxes. Credit unions which offer or intend to offer services to recreational marijuana related businesses must consider the new legislation relating to the medical marijuana endorsement process for recreational marijuana businesses.

DFI and the Federal banking agencies recognized the importance of ensuring public access to financial services, including state licensed marijuana related businesses. The decision to open, close, or decline a particular account or relationship is made by the credit union, and should be based on the credit union’s business objectives, evaluation of associated risks, and ability to effectively manage those risks.

These examination procedures are for credit unions banking LCB-licensed marijuana related businesses. Like any other business line at a regulated credit union, examiners should assess the effectiveness of program governance, the risk management framework, operational procedures, and

¹ LCB provides a copy of Initiative 502 and frequently asked questions at http://lcb.wa.gov/marijuana/faqs_i-502.

² See <http://liq.wa.gov/mj2015/medical-mj-faqs>. Additional cannabis bills enacted but not discussed in these procedures include: SB 5121 -2015 c 71, Marijuana Research License, and HB 2000 -2015 c 207, Tribal-State Marijuana Agreements.

compliance with the Bank Secrecy Act (“BSA”). Individual file review and transaction testing will be part of the examiner’s evaluation.

Applicable Regulatory Guidance

The attached Marijuana Banking Examination Questionnaire provides procedural guidance for examiners to use when examining marijuana-related account programs. This questionnaire incorporates the guidance issued by Financial Institutions Crime Enforcement Network (“FinCEN”) on February 14, 2014, entitled “*BSA Expectations Regarding Marijuana-Related Businesses*” (“FinCEN Guidance”), and the requirements of the prosecutorial guidance of the Department of Justice (“DOJ”) to U.S. Attorneys dated August 29, 2013 (“Cole Memo”), and subsequent companion letter to the FinCEN Guidance dated February 14, 2014 (“DOJ Companion Letter”),³ as well as LCB licensing and other important requirements.

The questionnaire addresses which portions of the customer due diligence and ongoing monitoring requirements can be achieved with the assistance of the licensing and ongoing enforcement information provided by the LCB. The LCB will provide licensing application files at the request of credit unions either through the Public Records Act request process or by the client signing a release allowing the LCB to send an application file directly to the credit union. Additionally, the LCB disseminates licensee information to credit unions regarding sales activity, enforcement violations, and changes in location or ownership/financier structure.

The Washington State Department of Financial Institutions (“DFI”) issued answers to FAQs for financial institutions that provide banking services to marijuana-related businesses under I-502, which can also be used as an examiner resource.⁴ Additionally, the LCB website has an FAQ section regarding implementation and regulation of I-502,⁵ and a separate FAQ section on medical marijuana licensing.⁶

³ Copies of the Cole Memo, DOJ Companion Letter, and FinCEN Guidance, are available at <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>, [http://www.justice.gov/usao/waw/press/newsblog%20pdfs/DAG%20Memo%20-%20Guidance%20Regarding%20Marijuana%20Related%20Financial%20Crimes%20%2014%2014%20\(2\).pdf](http://www.justice.gov/usao/waw/press/newsblog%20pdfs/DAG%20Memo%20-%20Guidance%20Regarding%20Marijuana%20Related%20Financial%20Crimes%20%2014%2014%20(2).pdf) and http://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2014-G001.pdf.

⁴ <http://www.dfi.wa.gov/documents/banks/marijuana-faqs.pdf>

⁵ This section of the LCB’s website can be found at http://www.liq.wa.gov/marijuana/faqs_i-502

⁶ This section of the LCB’s website can be found at <http://www.liq.wa.gov/mj2015/medical-mj-faqs>

ALERT ON LENDING: In light of important court case developments⁷ in 2015 and 2016, DFI is amending the DFI Answers to FAQs regarding lending issues, as noted below. These recent case law developments seriously put in question whether a credit union can look to any assets of a borrower that are directly related to his or her marijuana-related business in the event of the borrower's default and business failure. Bankruptcy Court is not available to either debtor or creditor in such an event. In addition, other methods of collection under Washington State law are problematic unless federal law changes. Under I-502 and LCB Regulations, only LCB licensees may possess a sizable quantity of marijuana. This makes non-judicial execution on marijuana as loan collateral (self-help "repo") impossible. In addition, the ability of Washington Superior Court judges to exercise equitable jurisdiction is now seriously open to question.⁸ In the event of a failed marijuana business, LCB will continue to exercise its policy of destroying the marijuana and other marijuana-infused products, unless the LCB licensee has found another LCB licensee acceptable to the LCB to assume control and ownership of the failed business. Based upon all of these implications, DFI strongly urges an even higher degree of caution with respect to either secured or unsecured lending to marijuana-related businesses.

Note: As of April 2016, it is uncertain whether VISA and MasterCard will accept accounts from LCB licensed marijuana-related businesses. American Express prohibits the use of the card for medical marijuana transactions⁹. Credit union management and examiners should be aware of cash management and credit utilization differences between these businesses and those with access to business credit cards.

Disclaimer: The exam procedures are based on information as of April 11, 2016. The procedures are subject to change based on new information from the legislature, federal regulators, or judicial bodies.

⁷ *Fourth Corner Credit Union v. Federal Reserve Bank of Kansas City*, ___ F.Supp.3d ___, 2016 WL 54129 (D. Colo – 2016); *In re Arenas*, 535 B.R. 845 (10th Cir. BAP 2015). Under the *Arenas* case, the Bankruptcy Appellate Panel of the Tenth Circuit Court of Appeals has ruled that marijuana businesses cannot file bankruptcy (and neither can their creditors avail themselves of their rights in Bankruptcy Court) because federal judges take an oath to uphold federal law and they therefore lack proper authority to grant debtors or creditors relief. Partially relying on this reasoning, a U.S. District Court in Colorado ruled on January 5, 2016, that the court had no equitable jurisdiction to compel the Federal Reserve Bank of Kansas City to issue a master account to a privately insured credit union chartered by the Colorado State credit union regulator, because a U.S. district court judge takes an oath to uphold federal law and issuing such an order would run contrary to the federal Controlled Substances Act outlawing marijuana under federal law. The court in the *Fourth Corner Credit Union* case went on to say the Cole Memo and the FinCEN Guidance did not change the fact that the credit union's offering of banking services to marijuana-related businesses violates federal law. Marijuana is a Schedule I controlled substance. 21 U.S.C. § 812(c). Transporting or transmitting funds known to have been derived from the distribution of marijuana is illegal under 18 U.S.C. § 1960.

⁸ Washington Superior Court judges take an oath to obey the Washington State Constitution and the United States Constitution, not United States Statutes per se. However, Article VI of the U.S. Constitution, the Supremacy Clause, supersedes Washington State law, including I-502. Therefore, based upon the *In re Arenas* and *Fourth Corner Credit Union* cases, DFI is of the view that, absent a change in federal law or contrary case law authority (which appears doubtful), the reasoning in those cases would hold true, and Washington Superior Court Judges would lack equitable jurisdiction to appoint receivers for failing marijuana-related businesses.

⁹ See article "Payment Options Legal Marijuana Business" at <http://www.creditcards.com/credit-card-news/payment-options-legal-marijuana-businesses-1282.php>

Warning: Marijuana is a Schedule I controlled substance.¹⁰ The possession, manufacture, distribution, or dispensing of marijuana (except in a manner authorized by the Controlled Substances Act) is illegal.¹¹ Aiding and abetting the manufacture, distribution, and dispensing of marijuana is also illegal.¹² Likewise, transporting or transmitting funds known to have been derived from the distribution of marijuana is illegal.¹³

¹⁰ 21 U.S.C. § 812(c).

¹¹ 21 U.S.C. §§ 841 (a)(1), 844(a).

¹² 18 U.S.C. § 2.

¹³ 18 U.S.C. § 1960.

Appendix

The decision to do business with any person, including depositors and borrowers, ultimately rests with the credit union. A credit union is privileged to refuse to open an account or to close an account, as long as the reason for doing so is not motivated by discrimination against a protected class such as race, national origin, gender, sexual orientation, familial status, or religion. All credit unions should review the Cole Memo¹⁴ and DOJ Companion Letter¹⁵ by the U.S. Department of Justice and Bank Secrecy Act guidance¹⁶ published by the Financial Crimes Enforcement Network regarding marijuana-related businesses.

Pricing of Deposit Accounts for Marijuana-Related Businesses

Examiners should review the pricing of marijuana-related business accounts. These accounts are typically quite labor intensive and credit unions should generally price the accounts to offset the high cost of serving them.

Lending

In general, credit unions must proceed with enhanced due diligence and caution when lending to marijuana-related businesses. If a credit union decides it wants to engage in this type of lending, then it should: (1) Fully understand the risks involved; (2) have strong controls in place to minimize and limit the risks; (3) have experienced and knowledgeable personnel to properly underwrite, control and manage the unique risks of lending to marijuana-related businesses; and (4) have a viable exit strategy if either federal or state rules or regulations change, or if an adverse situation or concern arises, such as loss of LCB license.

DFI FAQs on Lending

The Washington State Department of Financial Institutions (“DFI”) issued answers to FAQs for financial institutions that provide banking services to marijuana-related businesses under I-502.¹⁷ Questions 7 and 8 pertain to lending to marijuana-related businesses. The information contained in the FAQs 7 and 8 should be used as a broad basis for performing a lending review on marijuana-related businesses.

FAQ 7 - Do the Cole Memo, FinCEN Guidance and DOJ Companion Letter specifically address lending to marijuana-related businesses?

- The Cole Memo, FinCEN Guidance and the DOJ Companion Letter do NOT specifically address lending, even though lending is a banking activity;

¹⁴ U.S. Deputy Attorney General James M. Cole, August 29, 2013, Guidance Regarding Marijuana Enforcement.

¹⁵ U.S. Deputy Attorney General James M. Cole, February 14, 2014, Guidance Regarding Marijuana-Related Financial Crimes.

¹⁶ Financial Crimes Enforcement Network, February 14, 2014, BSA Expectations Regarding Marijuana-Related Businesses.

¹⁷ A copy of this document is available at <http://www.dfi.wa.gov/banks/marijuana-guidance.htm>. Then click on DFI Answers to FAQs.

- Nonetheless, the Cole Memo, the FinCEN Guidance and the DOJ Companion Letter *may* provide a set of general standards by which a program of lending to LCB-licensed marijuana businesses could be independently made by the credit union in the exercise of proper risk management;
- There is, however, elevated risk in lending by a financial institution due to:
 1. The lack of any written guidance to date from the DOJ or financial regulators concerning lending (i.e., only FinCEN Guidance related to deposits and withdrawals);
 2. The risk that the collateral on secured loans (if any) may be subject to civil or criminal forfeiture; and
 3. The risk that, in the even a marijuana-related business fails, the debt owed from an unsecured or secured loan will be unrecoverable due to the inability to use non-judicial foreclosure (self-help “repo”), creditor’s remedies in Bankruptcy Court, or receivership in the Washington Superior Court.

FAQ 8 – To the extent that the Cole Memo, FinCEN Guidance and the DOJ Companion Letter do not address lending, what set of standards should financial institutions apply with respect to lending to marijuana-related businesses?

- The financial institution should take into consideration that since it is not authorized under Washington State law to possess sizable quantities of marijuana, it cannot consider non-judicial “repo” of marijuana as collateral for a loan.
- The financial institution should consider the fact that there may be no judicial remedy under existing federal or state law for the collection, either in Bankruptcy Court or a Washington Superior Court Receivership, of either a secured or unsecured debt owed the credit union out of marijuana assets of a borrower’s business.
- The financial institution should consider setting aside appropriate “reserves” for all LCB-licensed marijuana-related businesses – with greater “reserves” to be set aside in relation to the level of risk based on the type of lending.
- Pricing of the loans should be considered in relation to the amount of monitoring that needs to be undertaken.
- No lending should be made to any marijuana-related business that is not licensed by the LCB.
- There may be lower risk associated with a secured loan for which the financial institution receives collateral property (such as real property) that is *not* in any way related to the LCB-licensed marijuana-related business.¹⁸
- Financial institution managers should make an effort to identify loans made to persons who are not engaged in a marijuana-related business, but who have a relationship with a marijuana-related business (e.g. landlord/tenant) that involves collateral for a financial institution loan.

¹⁸ However, before embarking on a lending policy related to the nature of collateral, credit unions should consult with independent, knowledgeable legal counsel as to the implications of civil and criminal forfeiture laws (if any) to different types of collateral.

Credit Union Actions That Are Needed Prior to Making Loans to Marijuana-Related Businesses

At a minimum, credit unions will need to perform the following actions prior to making loans to marijuana-related businesses:

- Management must perform a complete and thorough pre-program analysis of whether the financial institution can successfully lend to marijuana-related businesses given the present risks, including an appropriate legal review. The legal review must address the potential impact of the Federal drug seizure laws, including, but not limited to, forfeiture and subordination of collateral position, and current case law developments as to the lack of jurisdiction (if at all and to what degree) of either the Bankruptcy Court or the Washington Superior Court to exercise equitable jurisdiction to address creditor claims.
- The Board of Directors (“Board”) must formally approve this type of lending practice after reviewing and analyzing the pre-program analysis report and legal opinion. The Board should approve a stand-alone policy, which establishes prudent lending limits, sets appropriate customer due diligence requirements (both upfront and ongoing), establishes prudent and appropriate underwriting standards for this type of lending [above and beyond what the credit union’s member business lending standards are], and discusses red flags/significant risk indicators consistent with the FinCEN Guidance.
- Management should establish satisfactory procedures for this type of lending, which include individual responsibilities and accountability, and provide strong procedural guidance for how this type of lending will be administered, monitored and reported.
- Management should establish procedural guidance for collecting on loans in which federal drug seizure laws have come into play.
- Management are cautioned to consider the suitability of loan guarantees and collateral not related to marijuana itself as contingent collection alternatives when making either secured or unsecured loans.
- Management should establish procedural guidance for how this type of lending will be reviewed independently, either internally (by an internal audit department or the like) or externally, to validate that the program is being administered according to the credit union’s policy standards and procedural guidance.
- Management should develop procedures and standards for reserving for marijuana-related business loans.

Examples of Lending to Marijuana-Related Businesses

1. Loan Secured with Property Used in a Marijuana-Related Business (direct), or Loan Secured by Collateral that is Leased to a Third-Party Marijuana-Related Business (indirect)

- Marijuana is still illegal under federal law, and consequently, this causes additional risks to originating loans to marijuana-related businesses or lending to land owners whose collateral property is leased to marijuana-related businesses. These types of marijuana-related loans may be subject to drug seizure laws and subject to having their lien positions become subordinate to federal government claims.
- Under current court case developments and existing federal and state law, a credit union:
 - Cannot avail itself of creditor's rights in Bankruptcy Court;
 - Cannot non-judicially foreclose on ("repo") marijuana as collateral; and
 - Will likely be unable to use the Washington State courts to order receivership and sale of marijuana to satisfy secured debt owed.

With secured *direct* lending to a marijuana-related business, it is advisable that a credit union consider collateralizing non-marijuana assets or assets unrelated to the marijuana-related business. Otherwise, in the event of a failed marijuana-related business, the credit union assumes the legal risk of its collateral being destroyed by the LCB according to LCB Rules.

- The credit union must exercise enhanced due diligence in the following regards:
 - *Making* and *monitoring* of the loan to make sure that the standards of the Cole Memo are followed, including monitoring for absence of relevant "red flags" spelled out in the FinCEN Guidance, and that the marijuana-related business is licensed;
 - Reporting a violation of any principle of the Cole Memo, if discovered; and
 - Taking steps within the power of the credit union to prevent the furtherance of the violation, including notice to the borrower to put a halt to the activity (e.g. eviction) and taking measures under the loan documents, if the borrower will not act. The credit union should have provisions in its loan and collateral documents that state the credit union can accelerate the loan terms and call the balance due and payable, if the use of the property by the marijuana-related business is illegal or runs counter to the Cole Memo requirements.

2. Unsecured Credit-Card Lending

- Unsecured merchant credit-card lending would facilitate the ability of marijuana-related licensees to operate the same as any other legitimate business without the risk of forfeiture. However the credit union must still consider reputation risks and the credit risk, if the borrowers' income is disrupted.

If the account is closed with a balance owing, the credit union has no collateral anyway – the risk is the outstanding balance.

Unsecured marijuana merchant credit card lending should have separate *monitoring* of how merchant credit cards are used – similar to the way the FinCEN Guidance requires for deposits and withdrawals.

Under current court case developments and existing federal and state law, a credit union is unlikely to collect by looking to marijuana owned or controlled by the marijuana-related business. The credit union cannot be a creditor in Bankruptcy Court, because a debtor cannot file bankruptcy. A credit union cannot be a creditor under a receivership, because the Washington Superior Court likely lacks jurisdiction to order a receivership to auction business assets to satisfy creditors.

The credit union should look to the financial statement, credit score, and inventory of non-marijuana assets of a marijuana-related business borrower prior to engaging in credit-card lending to that would-be borrower.

Additional Information and Guidance Regarding Banking Marijuana-Related Businesses

- Examiners should evaluate whether banking marijuana-related businesses have been appropriately vetted by the credit union's Board and Management, and whether this type of banking activity is consistent with the credit union's strategic plan, philosophy and overall enterprise risk management practices.
- Examiners should evaluate whether the credit union's costs of banking marijuana-related business accounts is consistent with the benefits of the program. Specifically, is the credit union being adequately compensated for the cost involved, and if not, what actions should the credit union take to ensure it will be properly compensated in the future? Additionally, are all the costs of providing products and services to marijuana-related accounts being considered?
- Credit unions should have an exit strategy and procedures for terminating marijuana-related accounts should federal enforcement policy related to marijuana change.

Concluding Statement - Examiners must use the attached Marijuana Deposit Account Questionnaire, the guidance provided in this document, and the FinCEN, DFI, LCB and other relevant guidance, to examine a credit union's program to bank marijuana-related business accounts.

Important Links:

Cole Memo <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

FinCEN Guidance http://www.fincengov/statutes_regs/guidance/pdf/FIN-2014-G001.pdf

Liquor Control Board Website <http://www.liq.wa.gov> (see FAQs on I-502)

DFI Guidance <http://www.dfi.wa.gov/banks/pdf/guidance-marijuana-related-business.pdf>

Marijuana-Related Compliance Questionnaire

(**REQUIRED** to be completed by examiner if the financial institution [FI] accepted membership from anyone in the marijuana-related business [MRB])

Guidance Cites	Section I. Program Governance	Yes/No	Examiner Notes
http://dfi.wa.gov/banks/marijuana-guidance.htm	1. Does the credit union (CU) have adequate board-approved policies and procedures in place as to how to handle marijuana accounts and monitor for red flags?		
	2. Is there a comprehensive risk assessment of the business line?		
	3. Did management perform a legal review of applicable federal and state laws, including seizure of property and forfeiture/subordination of collateral? Optional: Did management get written legal advice from counsel experienced with the risk issues and follow the advice as evidenced in its policies and procedures?		
	4. Is the BSA Officer (or other individual) given designated authority to oversee account opening/denial, customer due diligence forms, ongoing Board reporting, and tracking of regulatory changes/updates?		
	5. Has management confirmed with each impacted third party provider that they will service this program (examples: armored car company, depository, ATM servicer, correspondent banks with for-benefit-of deposit arrangement, shared branching network, Visa, etc.)?		
	6. Has the board considered and addressed the practicalities of cash management, including the facility's capacity and security issues associated with handling greater amounts of cash than with other merchants?		
31 C.F.R. § 1020.315(b)(6)	7. Does the BSA Policy prohibit the exemption of marijuana-related business (MRB) customers for CTR filing purposes?		
http://lcb.wa.gov/publications/Marijuana/I-502/Fact-Sheet-I-502-REVISED-11-19-12.pdf	8. Has the Board set appropriate limits to this program? (type of licensees [producer, processor, and/or retailer] accepted, number of accounts accepted, total amount allowed to be deposited, amount and type of loans, etc.)		
	9. Has the Board established appropriate risk-based pricing standards for MRB deposit and		

Guidance Cites	Section I. Program Governance	Yes/No	Examiner Notes
	loan accounts? In addition to service fees, risk-based pricing for deposit accounts could include retainers to cover credit union costs in the event of seizure.		
	10. Does employee BSA training include sufficient detail on marijuana-related BSA risks and is the coverage commensurate with the institution's involvement in the industry?		
	11. Does the institution have the staffing resources necessary to perform sufficient due diligence and ongoing monitoring on the MRB accounts, particularly given the size, nature, and risk inherent in the individual customers?		
	Section I. continued - Program Governance of Lending		
	12. Does the ALLL methodology consider the inherent credit risks associated with MRB borrowers?		
	13. Does management have a contingency plan which includes an exit from this business should there be a change in the policies and forbearances from the Federal and State Governments?		
	14. Does the independent loan review appropriately test adherence to the credit union's policy on lending to MRBs?		
	a. Loan files: Under what circumstances do the provisions in the loan and collateral documents contain requirements that the financial institution can accelerate the loan terms and call the balance due and payable, such as the MRB loses its LCB license, runs counter to the Cole Memo requirements, or engages in activity that triggers red flags listed in the FinCEN guidance?		
	b. Loan files: Does the credit union take steps to prevent the furtherance of any violation of the Cole Memo, including notice to the borrower to halt the offending activity or evict a violating tenant? Does the institution take action under the loan documents if the borrower will not act?		
	15. Do the financial institution managers make an effort to identify loans made to persons who		

Guidance Cites	Section I. Program Governance	Yes/No	Examiner Notes
	are not engaged in a marijuana-related business but who have a relationship with a marijuana-related business (e.g. landlord/tenant) that involves collateral for a financial institution loan?		

Guidance Cites	Section II. File Review	Yes/No	Examiner Notes
http://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2014-G001.pdf	16. Is the FI completing adequate due diligence on <u>each</u> MRB account?		
WAC 314-55	a. Did management verify the license with the WA Liquor and Cannabis Board [LCB] at http://liq.wa.gov/marijuana/I-502 ?		
http://lcb.wa.gov/mlicense/application-process	b. Did management verify that any medical marijuana endorsement advertised by the business was granted in accordance with LCB procedures?		
	c. Is the FI set up to receive application and continued license and enforcement information regarding this licensee from the LCB?		
	d. Does management conduct due diligence on all marijuana business “true parties of interest” who become members? (Recommend that this be accomplished through the LCB)		
http://www.atg.wa.gov/uploadedFiles/FosterA/GO2014No02.pdf	e. Has management verified that the local government where the business is located has not formally or effectively banned a marijuana business from its jurisdiction?		
	f. Does management have 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? (Recommend that this be accomplished through information obtained through the LCB)		

Guidance Cites	Section II. File Review	Yes/No	Examiner Notes
	<p>g. Is there documentation that the FI engages in ongoing monitoring of publicly available sources for adverse information about the business and related parties? (Recommend that this be accomplished through information obtained through the LCB)</p>		
	<p>h. Does the due diligence documentation support that the FI engages in ongoing monitoring for suspicious activity, including for any of the red flags described in the FinCEN guidance? (Recommend that this be accomplished, in part, through information obtained through the LCB)</p>		
	<p>i. Is there supporting documentation that shows the FI refreshes information obtained as part of customer due diligence on a periodic basis or at least every 90 days and commensurate with the risk? (Recommend that this be accomplished through information obtained through the LCB)</p>		

Guidance Cites	Section III. Account Testing/Identification of FinCEN Red Flags	Yes/No	Examiner Notes
<p>http://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2014-G001.pdf</p>	<p>17. Does any licensed marijuana-related business member:</p>		
	<p>a. Receive substantially more revenue than may reasonably be expected given the relevant limitations imposed by the state in which it operates?</p>		
	<p>b. Receive substantially more revenue than its local competitors or than might be expected given the population demographics?</p>		
	<p>c. Deposit more cash than is commensurate with the amount of marijuana-related revenue it is reporting for federal and state tax</p>		

Guidance Cites	Section III. Account Testing/Identification of FinCEN Red Flags	Yes/No	Examiner Notes
	purposes?		
	d. Fail to or 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?		
	e. Make cash deposits or withdrawals over a short period of time that are excessive relative to local competitors or the expected activity of the business?		
	f. Engage in rapid movement of funds, such as cash deposits followed by immediate cash withdrawals?		
	g. Allow deposits by third parties with no apparent connection to the accountholder?		
	h. Engage in excessive commingling of funds with the personal account of the business's owner(s) or manager(s), or with accounts of seemingly unrelated businesses?		
	i. Include individuals conducting transactions for the business that appear to be acting on behalf of other, undisclosed parties of interest?		
	j. Submit financial statements that are inconsistent with actual account activity?		
	k. Fail to or is unable to demonstrate the legitimate source of significant outside investments?		
	l. Engage 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		

Guidance Cites	Section III. Account Testing/Identification of FinCEN Red Flags	Yes/No	Examiner Notes
	interstate transfers, or otherwise transacting with persons or entities located in different states or countries?		
	m. If a retail outlet: <u>only</u> sells marijuana, marijuana infused products and marijuana paraphernalia?		
	n. If a retail outlet: only sells marijuana advertised for medical purposes if the retailer has a “medical marijuana endorsement.”		

Guidance Cites	Section IV. Cole Memo Priorities	Yes/No	Examiner Notes
http://www.dfi.wa.gov/banks/pdf/dept-of-justice-memo.pdf	18. Does the FI specifically monitor for the eight priorities found in the Cole memo? (Recommend that this be accomplished, in part, through information obtained through the LCB)		
	a. Preventing the distribution of marijuana to minors (LCB);		
	b. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels (LCB and FI);		
	c. Preventing the diversion of marijuana from states where it is legal under state law in some form to other states (LCB);		
	d. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity (LCB & FI);		
	e. Preventing violence and the use of firearms in the cultivation and distribution of marijuana (LCB);		
	f. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use (LCB);		
	g. Preventing the growing of marijuana on public lands and the		

Guidance Cites	Section IV. Cole Memo Priorities	Yes/No	Examiner Notes
	<p>attendant public safety and environmental dangers posed by marijuana production on public lands (LCB); and</p>		
	<p>h. Preventing marijuana possession or use on federal property (LCB).</p>		

Guidance Cites	Section V. FinCEN Filings	Yes/No	Examiner Notes
	<p>19. Does the FI file CTRs on the receipt or withdrawal by any person of more than \$10,000 in cash per day?</p>		
	<p>20. If the FI reasonably believes, based on its customer due diligence, that the financial services to a marijuana-related member does not implicate one of the 8 Cole Memo priorities (question #7 above) or violate state law -- do they file a "Marijuana Limited" SAR every 90 days?</p>		
	<p>a. Does the "Marijuana Limited" SAR include all of the following? (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)</p>		
	<p>21. 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, does the FI file a "Marijuana Priority" SAR?</p>		
	<p>a. Does the "Marijuana Priority" SARs include all of the following? (i) identifying information of the subject and related</p>		

Guidance Cites	Section V. FinCEN Filings	Yes/No	Examiner Notes
	<p>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)</p>		
	<p>22. If management deems it necessary to terminate a relationship with a marijuana-related business in order to maintain an effective anti-money laundering compliance program, do they use the term “MARIJUANA TERMINATION” in the narrative section of the SAR?</p>		