

# OFFICE OF FINANCIAL INSTITUTIONS

## OFI BULLETIN

BL-01-2020  
January 30, 2020

**TO: THE CHIEF EXECUTIVE OFFICER/MANAGER FROM:**

**FROM: JOHN DUCREST, COMMISSIONER**

**SUBJECT: CANNABIS BANKING**

Over the last few months, the Office of Financial Institution has been receiving inquiries about banking money for cannabis, specifically medical marijuana, hemp, and hemp-derived products. Due to the number of inquiries and complexities of the laws pertaining to marijuana and hemp, OFI is issuing the following background information and guidance:

*Defining Marijuana.* Marijuana broadly encompasses all parts and all varieties of the cannabis plant, with some exceptions. The cannabis plant contains over a hundred drugs called cannabinoids, which actively affect the central nervous system—including the brain—and the immune system. The primary psychotropic drug in marijuana is tetrahydrocannabinol (THC). A less extreme drug in marijuana is cannabidiol (CBD), which is non-psychotropic.

*Louisiana Law – Medical Marijuana.* The Governor signed SB 143<sup>1</sup> into law in June 2015 to lay the framework for growing and dispensing Medicinal Marijuana, but regulatory hurdles have caused delays. In an effort to kick-start the program, Governor Edwards signed a bill in May 2016 expanding the program to include more conditions and allow doctors to “recommend,” rather than “prescribe,” medical marijuana to patients. The bill limits the number of nontransferable licensed dispensaries to no more than 10.

Medical marijuana in Louisiana became available to patients starting in August 2019. Agricultural centers at Louisiana State University and Southern University have been selected to grow cannabis for the state, overseen by the Louisiana Department of Agriculture and Forestry (LADF). Nine dispensaries have been selected throughout the state.

*Federal Law.* Marijuana use is not only regulated by state law, but also by federal controlled substances law, medical drug law, and an international treaty - the Single Convention on Narcotic Drugs. Under federal law, marijuana and marijuana-derived products are illegal. Therefore, it's very important that FIs strictly adhere to the FinCEN Guidance detailed below.

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<sup>1</sup> [http://www.pharmacy.la.gov/assets/docs/Cmtes/Legis/2015\\_Act-261.pdf](http://www.pharmacy.la.gov/assets/docs/Cmtes/Legis/2015_Act-261.pdf)

*Defining Hemp.* Hemp refers to varieties of cannabis having significantly less THC and more CBD than other varieties of cannabis. According to The Agricultural Improvement Act of 2018 (“Farm Bill”), Hemp plants are defined as any cannabis plant that has 0.3 percent or less THC. At a level greater than 0.3 percent, THC is considered Marijuana.<sup>2</sup>

*Louisiana Law – Hemp.* The Louisiana Legislature passed a HB 491 in 2019 legalizing the sale of hemp and hemp-derived CBD products with a THC concentration of less than 0.3 percent. Governor Edwards signed the legislation into law on June 6, 2019. The bill authorizes growing and processing of hemp, and the selling of hemp-derived CBD products. With the legalization of CBD, the Louisiana Department of Health will take an active role in the regulation of the product, and has the responsibility of permitting manufacturers and registering labels for wholesale food and drug products. Hemp is now legal under Louisiana law when cultivated, possessed, or used for activities authorized by the Farm Bill.<sup>3</sup>

The Farm Bill addresses a number of federal policies and programs that are vitally important to Louisiana’s agricultural industry. Of those policies, Section 12619, removes Industrial Hemp from regulation under the Controlled Substances Act, and Section 10113 provides for the commercial production of industrial hemp.<sup>4</sup> The bill passed both the House and Senate at the end of 2018 and was signed by President Trump on December 20, 2018. Effective October 31, 2019, through November 1, 2021, the new Rule (7 CFR 990) outlines provisions for the US Department of Agriculture (USDA) to approve plans submitted by States and Indian Tribes for the domestic production of Hemp. The new Rule includes provisions for maintaining information on the land where the Hemp is produced, testing the levels of delta-9 tetrahydrocannabinol, disposal of plants not meeting necessary requirements, licensing requirements, etc. The USDA approved Louisiana’s industrial hemp state plan<sup>5</sup> as of December 23, 2019. Louisiana is the first of three states to receive approval under the Farm Bill. With this approval, LDAF was able to move forward and begin accepting industrial hemp license applications.

In 1996, California became the first state to legalize medical cannabis. In 2012, Colorado and Washington State were the first to legalize cannabis for recreational use. As of 2016, a majority of the states have legalized some form of cannabis. In 2012, the Obama administration responded with two memos from Deputy Attorney General James Cole (“Cole Memos”); the first memo related to marijuana enforcement in general and the second memo related to marijuana-related financial crimes. The Financial Crimes Enforcement Network (FinCEN)

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<sup>2</sup> HB491, <http://www.legis.la.gov/legis/BillInfo.aspx?s=19rs&b=HB491&sbi=y>

<sup>3</sup> Agricultural Improvement Act of 2018 (“Farm Bill”)

<sup>4</sup> H.R.2, § 12619, 10113.

<sup>5</sup> USDA approval letter and certificate of approval of the Louisiana Hemp Production Program <http://www.ldaf.state.la.us/wp-content/uploads/2019/12/USDA-Plan-Approval-Letter.pdf>

issued its own guidance (FIN-2014-G001) after the Cole Memos.<sup>6</sup> The FinCEN Guidance was approved by the Federal Reserve Board of Governors (FRB), FDIC, NCUA, and OCC.<sup>7</sup> Each of these agencies incorporated the FinCEN Guidance into their supervisory process and are reviewing the FinCEN Guidance for inclusion in the Federal Financial Institutions Examination Council (FFIEC) BSA/Anti-Money Laundering Examination Manual.<sup>8</sup> Under the Trump administration, Attorney General Jeff Sessions issued a memo on January 4, 2018, which rescinded both Cole Memos.<sup>9</sup> After the rescission by Attorney General Sessions, a FinCEN spokesman said in a statement that his agency's prior pronouncement regarding marijuana banking nevertheless "remains in place," referring to guidance issued in February 2014 to clarify Bank Secrecy Act (BSA) expectations for financial institutions seeking to provide services to marijuana-related businesses.

In 2017, a House Bill and a Senate Bill were introduced, both known as the "SAFE Banking Act," providing protection for depository institutions that provide financial services to cannabis-related legitimate businesses and service providers for such businesses, and for other purposes. In August 2018, 13 banking supervisors, including Louisiana, sent a joint letter to Congress requesting either a safe harbor for banking or that Congress would entrust states with marijuana oversight.<sup>10</sup> The Act was reintroduced in 2019 to the House and cited as the "Secure and Fair Enforcement Banking Act of 2019" or the "SAFE Banking Act of 2019." As specified by the Bill, a depository institution shall not, under federal law, be liable or subject to forfeiture for providing a loan or other financial services to a legitimate marijuana-related business.<sup>11</sup> On September 26, 2019, the bill was received by the Senate and read twice, and referred to the Committee on Banking, Housing, and Urban Affairs.

*Blumenhauer (formerly Rohrabacher)*. The Amendment<sup>12</sup>, which first passed in 2014 (after being introduced to congress in 2001 and failing to pass 6 times), prohibits the Justice Department from spending funds to interfere with state-legal medical marijuana industry. The Amendment was last renewed in 2019. Since it is a part of the appropriations bill for the Department of Justice, this is an annual exercise that must be gone through to continue the

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<sup>6</sup> Financial Crimes Enforcement Network (FinCEN), Department of the Treasury, *BSA Expectations Regarding Marijuana-Related Businesses* on February 14, 2014) ("FinCEN Guidance"), <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>

<sup>7</sup> Letter from FRB, FDIC, NCUA, & OCC to Wash. Governor Jay Inslee dated August 13, 2014, <https://dfi.wa.gov/documents/banks/gov-inslee-interagency-response.pdf>

<sup>8</sup> BSA Examination Manual, <https://bsaaml.ffiec.gov/manual>

<sup>9</sup> Jefferson B. Sessions, III, Attorney General, Department of Justice, *Memorandum for All United States Attorneys: Marijuana Enforcement* (Jan. 4, 2018) ("Sessions Memo"), <https://www.justice.gov/opa/press-release/file/1022196/download>

<sup>10</sup> Letter to Congress from the 13 State Supervisors

<https://www.dobs.pa.gov/Documents/Secretary%20Letters/Banks/MM%20Coalition%202019%20Letter.pdf>

<sup>11</sup> H.R.1595 <https://www.congress.gov/bill/116th-congress/house-bill/1595/text>

<sup>12</sup> H.R.3055 (2019-2020) Sec. 351 <https://www.congress.gov/bill/116th-congress/house-bill/3055/text>

prohibition on the Department of Justice.

*FinCEN Guidance.* The FinCEN Guidance refers to the Cole Memo priorities, each of which is aimed at preventing the most significant threats, in the most effective, consistent, and rational way. Federal priorities include the following:

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

*Filing Suspicious Activity Reports (SARs) on Marijuana-Related Businesses.* The FinCEN Guidance establishes the following new types of SARs for marijuana-related transactions:

1. Involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity;
2. Is designed to evade regulations promulgated under the BSA; or
3. Lacks a business or apparent lawful purpose.

“Marijuana Limited” SAR Filings are for transactions 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.

“Marijuana Priority” SAR Filings are for 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.

“Marijuana Termination” SAR Filings are for 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 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.

*Red Flag to Distinguish Priority SARs.* The FinCEN Guidance includes the following red flags that indicate that a marijuana-related business may be engaging in activity that implicates one of the Cole Memo priorities:

1. 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:
  - a. The business receives substantially more revenue than may reasonably be expected given the relevant limitations imposed by the state in which it operates.
  - b. The business receives substantially more revenue than its local competitors or than might be expected given the population demographics.
  - c. 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.
  - d. 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.
  - e. 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.
  - f. Deposits apparently structured to avoid Currency Transaction Report (CTR) requirements.
  - g. Rapid movement of funds, such as cash deposits followed by immediate cash withdrawals.
  - h. Deposits by third parties with no apparent connection to the account holder.
  - i. Excessive commingling of funds with the personal account of the business's owner(s) or manager(s), or with accounts of seemingly unrelated businesses.
  - j. Individuals conducting transactions for the business appear to be acting on behalf of other, undisclosed parties of interest.
  - k. Financial statements provided by the business to the financial institution are inconsistent with actual account activity.
  - l. A surge in activity by third parties offering goods or services to marijuana-related businesses, such as equipment suppliers or shipping servicers.
2. The business is unable to produce satisfactory documentation or evidence to demonstrate that it is duly licensed and operating consistently with state law.
3. The business is unable to demonstrate the legitimate source of significant outside investments.
4. 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.

5. 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.
6. 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.
7. 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.
8. The owner(s) or manager(s) of a marijuana-related business reside outside the state in which the business is located.
9. A marijuana-related business is located on federal property or the marijuana sold by the business was grown on federal property.
10. A marijuana-related business's proximity to a school is not compliant with state law.
11. 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).

FinCEN, along with the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC), in consultation with the Conference of State Bank Supervisors (CSBS), recently issued a summary in December 2019 titled "Providing Financial Services to Customers Engaged in Hemp-Related Businesses"<sup>13</sup> that provides additional resources/references and states that FinCEN will issue additional guidance after further reviewing and evaluating the U.S. Department of Agriculture (USDA) interim final rule. According to the Federal Reserve in Washington, the guidance emphasizes that FIs are no longer required to file SARs for customers solely because they are engaged in the growth or cultivation of Hemp in accordance with applicable laws and regulations. For Hemp-related customers, FIs are expected to follow standard SAR procedures, and file a SAR if suspicious activity is observed.

*Currency Transaction Reports.* The FinCEN Guidance states that all 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.

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<sup>13</sup> Providing Financial Services to Customers Engaged in Hemp-Related Businesses  
<https://www.fincen.gov/sites/default/files/2019-12/Hemp%20Guidance%20%28Final%2012-3-19%29%20FINAL.pdf>

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*Conclusion.* Federal laws relating to marijuana and marijuana-derived products, including Hemp and Hemp-derived Cannabidiol Products, remains uncertain and are still under review and development. It is anticipated that more states will legalize some form of marijuana and marijuana-derived products in the future.

Given the differences between state and federal law as it relates to marijuana and marijuana-related products, OFI is unable to provide clear direction to financial institutions on the legalities of banking monies derived from these products. OFI recommends that financial institutions review the important information contained in this Bulletin and the FinCEN Guidance, and become familiar with the FFIEC BSA/AML Examination Manual<sup>14</sup>, BSA Statute and Regulations, and file the appropriate SAR Reports as prescribed by the FinCEN Guidance. Institutions should also consult their attorney for additional guidance.

This Bulletin will also be posted on OFI's website [www.ofi.la.gov](http://www.ofi.la.gov). If you have any questions, please contact Chief Examiner Jonathan D. Finley at 225-922-0637 or [jfinley@ofi.la.gov](mailto:jfinley@ofi.la.gov).

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<sup>14</sup> FFIEC BSA/AML Examination Manual <https://bsaaml.ffiec.gov/>