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July 7, 2020

This is in response to your letter dated June 6, 2020, which was received in my office on June 11, 2020 for processing under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

You requested a copy of any internal reports, memos, studies or other internal documents at OCC dated since April 1, 2019 about marijuana banking. Your June 15 email narrowed the scope of the request by excluding internal emails and limiting the request to documents such as memos, reports, studies, white papers and similar documents.

Enclosed is a document located responsive to your request. Another document is being withheld by the authority of 5 U.S.C. 552(b)(5) and 12 C.F.R. 4.12(b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

If you consider any of the above to be an improper denial of your request, you may appeal such denial to the Comptroller of the Currency. The appeal should be filed within 90 days of the date of this letter, should state the circumstances and reasons or arguments in support of the appeal, and be submitted via our online FOIA application at <https://foia-pal.occ.gov/> or be mailed to:

Manager, Disclosure Services & Freedom of Information Act Officer
Communications Division
Office of the Comptroller of the Currency
Suite 3E-218
Washington, DC 20219

By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision.

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our FOIA Public Liaison, Frank Vance, for assistance at:

Disclosure Services
Communications Division

Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219
(202) 649-6758
Frank.Vance@occ.treas.gov

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road—OGIS
College Park, MD 20740-6001
(202) 741-5770
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ogis@nara.gov
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Sincerely yours,

Frank D. Vance, Jr.

Frank D. Vance, Jr.
Manager, Disclosure Services
& Freedom of Information Act Officer
Communications Division

Enclosure(s)

#2020-00260-F

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Office of the
Comptroller of the Currency
Washington, DC 20219

SUPERVISORY MEMORANDUM**SM 2020-03**

To: All Examining Personnel

From: Grovetta N. Gardineer, Senior Deputy Comptroller for Bank Supervision Policy

Date: May 12, 2020

Subject: Frequently Asked Questions About Financial Services for Marijuana-Related Businesses

An increasing number of states have permitted the use of marijuana in limited ways. Under the federal Controlled Substances Act (21 USC 801, et seq.), however, it is illegal to manufacture, import, possess, use, and distribute marijuana. The difference between state initiatives and federal law has raised questions about potential Bank Secrecy Act (BSA) compliance risk exposure and other issues for banks¹ that may be doing business with marijuana-related businesses.

This supervisory memorandum provides answers for examiners to frequently asked questions about the provision of financial services to marijuana-related businesses in states that have enacted laws relating to the legal status of the manufacture, importation, possession, use and distribution of marijuana or marijuana derivatives. The answers are adapted from existing information and do not provide new guidance for examiners.

1. What is the current legality of marijuana under federal law?

The Controlled Substances Act makes it illegal under federal law to manufacture, import, possess, use, and distribute marijuana. Although many states impose and enforce similar provisions, an increasing number of states and localities have taken steps in recent years to permit the use of marijuana in limited ways.

2. Is there guidance on whether banks can provide financial services to marijuana-related businesses?

In February 2014, the Financial Crimes Enforcement Network (FinCEN) issued [FIN-2014-G001](#), “BSA Expectations Regarding Marijuana-Related Businesses” (2014 FinCEN guidance), which

¹ “Banks” refers collectively to national banks, federal savings associations, and federal branches and agencies of foreign banking organizations. Note that the Financial Crimes Enforcement Network’s 2014 guidance, FIN-2014-G001, refers to “financial institutions.” For purposes of this supervisory memorandum (except when used in quotation marks), “financial institutions” is replaced with “banks.”

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clarified BSA expectations for banks seeking to provide services to marijuana-related businesses. The 2014 FinCEN guidance also clarifies how banks can provide services to marijuana-related businesses consistent with their BSA obligations. The decision to provide financial services to customers directly or indirectly involved with a marijuana-related business generally lies with bank management. According to the 2014 FinCEN guidance, “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” (see FAQ 4 for more information).

3. Has the Office of the Comptroller of the Currency (OCC) set expectations for a bank that chooses to provide financial services to a marijuana-related business?

For banks that choose to provide financial services to customers engaged in marijuana-related businesses, the OCC will review compliance with applicable banking laws and regulations, including compliance with BSA-related requirements for detecting and reporting transactions that are suspicious or violate federal law. These requirements include conducting the required customer due diligence on marijuana-related businesses consistent with the 2014 FinCEN guidance; assessing the money laundering and terrorist financing risks posed by these businesses; and implementing appropriate controls to assure ongoing compliance with BSA-related requirements, including appropriate suspicious activity monitoring and reporting.

4. Is there guidance on what type of due diligence banks should conduct when assessing the risk of providing services to marijuana-related businesses?

The 2014 FinCEN guidance states that customer due diligence is a critical aspect of a bank’s assessment of whether the bank has the capacity to effectively manage the risks associated with providing financial services for any customer engaged in marijuana-related businesses. Specifically, the 2014 FinCEN guidance states that due diligence should include

- verifying that a business is licensed and registered with state authorities.
- reviewing the license application and related documentation.
- requesting information about the business and related parties from state licensing and enforcement authorities.
- developing an understanding of normal and expected business activities, including the types of products sold and customers served.
- monitoring public sources on an ongoing basis for adverse news about the business or related parties.
- monitoring suspicious activity on an ongoing basis.
- updating information collected during due diligence on a periodic basis based on the customer’s risk.

These due diligence items are consistent with FinCEN’s general customer due diligence rule. Under the rule, banks are required to implement appropriate procedures for conducting ongoing customer due diligence. Such due diligence must include (1) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

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(2) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. Refer to 31 CFR 1020.210.

5. Is there a requirement for banks to file Suspicious Activity Reports (SAR) if they provide financial services to a marijuana-related business?

In general, banks are required to file SARs if they detect known or suspected violations of federal law or suspicious transactions related to money laundering activities or BSA violations. Given the Controlled Substances Act's prohibitions, financial transactions involving marijuana-related businesses would generally involve funds derived from illegal activity. The 2014 FinCEN guidance states that banks should file specific types of SARs on activities that involve marijuana-related businesses. The obligation to file SARs is not affected by any state law that decriminalizes or otherwise permits marijuana-related activity.

6. What does the 2014 FinCEN guidance say that banks should consider when preparing to file SARs on transactions related to marijuana-related businesses?

The 2014 FinCEN guidance is intended to help banks determine how to file SARs that will be highly useful in criminal investigations and proceedings. With that in mind, the guidance clarifies how financial institutions can comply with their SAR filing obligations and facilitate law enforcement's access to information pertinent to a priority. These types of SARs are (1) "Marijuana Limited" SARs, (2) "Marijuana Priority" SARs, and (3) "Marijuana Termination" SARs.

In determining which type of SAR is appropriate, the guidance states that banks should take into account the following important priorities (also referred to as "Cole Memo² priorities"):

- 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.
- Preventing marijuana possession or use on federal property.

² In 2013, then Deputy Attorney General, U.S. Department of Justice, James M. Cole issued a memorandum providing guidance to federal prosecutors concerning marijuana enforcement. Known as the Cole Memo, this guidance was rescinded in 2018 by then Attorney General Jefferson B. Sessions. Notwithstanding this rescission, the 2014 FinCEN guidance remains in effect and references to the Cole Memo remain in the 2014 FinCEN guidance.

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7. Under what circumstances should a bank file a “Marijuana Limited” SAR, a “Marijuana Priority” SAR, or a “Marijuana Termination” SAR?

A **“Marijuana Limited” SAR** should be filed if a bank providing services to a marijuana-related business reasonably believes, based on customer due diligence, that the customer does not violate state law or implicate one of the Cole Memo priorities. The bank 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. The 2014 FinCEN guidance states that this type of 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.

A **“Marijuana Priority” SAR** should be filed if the bank believes that its marijuana-related business customer’s activity violates state law or runs counter to any of the Cole Memo priorities. The 2014 FinCEN guidance provides several red flags that banks can look for when determining the priority of a SAR filing. (The 2014 FinCEN guidance does not provide an exhaustive list of red flags.) The bank should determine whether red flags are present in account activity or whether the customer exhibits behavior that violates state law or runs counter to the Cole Memo priorities.

A **“Marijuana Termination” SAR** should be filed if the bank deems it necessary to terminate a relationship with a marijuana-related business.

For more information about each SAR type, refer to the 2014 FinCEN guidance.

8. Are banks required to file Currency Transaction Reports (CTR) on marijuana-related business transactions if the banks are already filing continuing activity Marijuana Limited SARs?

The 2014 FinCEN guidance states that banks are required to report currency transactions for marijuana-related businesses in the same way that banks would report any other transaction with the same reporting threshold and requirements.

9. Are marijuana-related businesses eligible for exemptions from CTR filing?

No. The 2014 FinCEN guidance provides that a business engaged in marijuana-related activity may not be treated as a non-listed business under 31 CFR 1020.315(e)(8) and is therefore not eligible for consideration for an exemption with respect to a bank’s CTR obligations under 31 CFR 1020.315(b)(6).

10. Does the 2014 FinCEN guidance apply to a bank providing indirect services to marijuana-related business?

The 2014 FinCEN guidance is unclear on this point. The guidance states that, when services are provided indirectly, the bank may file SARs based on existing regulations and guidance without

distinguishing between Marijuana Limited and Marijuana Priority. The guidance lists two examples of services being provided indirectly: (1) a financial institution providing services to another domestic financial institution that, in turn, provides financial services to a marijuana-related business; and (2) a financial institution 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). The guidance does not, however, indicate whether SARs should be filed in either example. Specific questions regarding the applicability of the FinCEN guidance to indirect relationships should be directed to FinCEN's Resource Center at (800) 767-2825.

The risk of these relationships varies depending on the circumstances and should be assessed based on the bank's risk appetite and controls. Also, while existing OCC guidance does not specifically reference marijuana-related businesses, banks may consider the risk management principles communicated in existing guidance focusing on certain customer segments, i.e., OCC Bulletin 2016-32, "Risk Management Guidance on Foreign Correspondent Banking: Risk Management Guidance on Periodic Risk Reevaluation of Foreign Correspondent Banking," and OCC Bulletin 2014-58, "Banking Money Services Businesses: Statement on Risk Management."

11. Is there guidance on whether a bank is required to terminate a marijuana-related business relationship or what constitutes a reasonable time frame for exiting such a relationship once the bank files a marijuana-related SAR?

The OCC has not issued specific guidance on this point; however, the decision to provide financial services to customers directly or indirectly involved with a marijuana-related business, or to exit an existing relationship, is a bank management decision and can be made on a risk basis. If bank board and management decide to do business with a marijuana-related business, the bank should have adequate policies and procedures in place that demonstrate how it will assess and manage the money laundering and terrorist financing risks associated with these customers and how the bank will comply with BSA/AML laws and regulations. Such procedures should include the bank's processes for considering whether to exit marijuana-related business relationships. Banks are expected to follow their policies and procedures when determining whether to terminate a customer relationship.

12. Are banks allowed to provide financial services to hemp growers? Do banks need to file SARs on these customers?

The Agricultural Improvement Act of 2018 (2018 Farm Bill) removed hemp as a controlled substance. Hemp is defined as the plant *Cannabis sativa* L. and any part of that plant containing no more than 0.3 percent delta-9-tetrahydrocannabinol (THC).³ Banks can provide services to hemp growers and customers engaging in hemp-related business activities. Banks are not required to file SARs on customers solely because they are growing or cultivating hemp, but banks are expected to follow SAR procedures if a customer's activity appears suspicious.

³ Refer to 7 USC 1639o(4) (defining hemp) and 21 USC 802(16) (defining marijuana).

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The OCC, the other federal banking agencies, and FinCEN recently issued interagency guidance on providing financial services to customers engaged in hemp-related businesses.⁴ Refer to OCC News Release 2019-141, “Agencies Clarify Requirements for Providing Financial Services to Hemp-Related Businesses.”

13. How did the 2018 Farm Bill affect the production of hemp under the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act?

The 2018 Farm Bill that legalized hemp growth and cultivation did not affect the production of hemp under the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act. For example, the U.S. Food and Drug Administration (FDA) must approve cannabis-derived products that are sold with a claim of having health benefits. This may include such products as cannabidiol (CBD) oils, creams, lotions, or food products. Compliance with the FDA requirements would fall on bank customers engaged in businesses involving these products.⁵

14. Has the OCC brought an enforcement action against a bank based solely on the fact that the bank provided financial services to marijuana-related business customers?

No, the OCC has not brought an enforcement action against a bank based solely on the fact that the bank provided financial services to one or more marijuana-related business customers. Nonetheless, the OCC expects banks to assess the specific money laundering and terrorist financing risks posed by customers and to implement appropriate controls to manage their relationships in accordance with applicable laws and regulations. Banks that choose to provide services to customers engaged in marijuana-related businesses must also comply with all applicable BSA-related requirements, including appropriate suspicious activity monitoring and reporting, and should consider the 2014 FinCEN guidance.

15. Should marijuana-related businesses be included in an examination scope? What examination procedures should be used when reviewing marijuana related businesses?

The decision to include marijuana-related businesses in an examination scope should be risk-based and determined in the same way as with any other type of bank product or service that poses money laundering or terrorist financing risk.

There are no BSA/AML examination procedures specific to reviewing marijuana-related businesses. If marijuana-related businesses are included in the BSA/AML examination scope, examiners should use the appropriate sections of the *Federal Financial Institutions Examination Council Bank Secrecy Act/Anti-Money Laundering Examination Manual*. An examination covering marijuana-related business activities may include a comprehensive assessment of a bank’s marijuana-related business banking program or transaction testing of individual

⁴ Visit the [FinCEN website](#) for updated guidance. FinCEN has stated that they will be issuing additional guidance concerning the specific due diligence requirements under the BSA for hemp-related business customers.

⁵ Refer to the “[FDA Regulation of Cannabis and Cannabis-Derived Products, Including Cannabidiol \(CBD\)](#)” web page.

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marijuana-related business relationships. Marijuana-related business relationships may be included in transaction testing under core or expanded procedures such as Customer Due Diligence, Beneficial Ownership, or Suspicious Activity Reporting. The extent of transaction testing and activities conducted is based on various factors, including the examiner's judgment of risks, controls, governance, and the adequacy of independent testing. Examiners should consider OCC and FinCEN guidance during supervisory activities. Examiners may assess the adequacy of controls for developing and implementing new products or services for those banks with newly implemented marijuana-related business programs or programs still in development.

16. If my bank has additional questions on marijuana-related businesses, where should I direct the bank?

For questions pertaining to marijuana-related businesses, banks should continue following the 2014 FinCEN guidance and are encouraged to contact FinCEN's Resource Center at (800) 767-2825 for more information.

For questions pertaining to hemp, banks should contact the U.S. Department of Agriculture or visit the agency's website at www.usda.gov.

For questions pertaining to cannabis-derived products, banks should contact the U.S. Food and Drug Administration or visit the agency's website at www.fda.gov.

17. If I have additional examiner questions on marijuana-related businesses, who should they be directed to?

For policy-related questions, examiners should contact Bank Supervision Policy's BSA/AML Policy group at (202) 649-5470. For examination and supervision-related questions, examiners should contact the appropriate lead experts for their supervision unit.

“Briefing Book 1-17-2020”

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