



La Cámara de Comercio de Puerto Rico
y su Comité de Cannabis y Cáñamo
presentan el Conversatorio:

ASPECTOS BANCARIOS Y EL CANNABIS MEDICINAL



Federal Regulatory Guidance

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Federal Regulatory Guidance for MRBs

- ➔ Background:
 - ➔ Marijuana remains a Schedule I drug under the Controlled Substance Act
 - ➔ Historically, federal government defers to states to prosecute local crimes, including marijuana drug crimes
- ➔ Federal comity: if the state has a strong and effective regulatory and enforcement system, the federal government is loathe to interfere

Federal Regulatory Guidance for MRBs

- ➔ Former Deputy Attorney General James M. Cole issued two DOJ Memorandums (“Cole Memos”) to outline guidance for all federal enforcement activity
- ➔ 2013 Cole Memo: addresses marijuana crime policy
- ➔ 2014 Cole Memo: addresses financial crime policy
- ➔ but,
- ➔ **COLE MEMOS RESCINDED BY AG SESSIONS**

2013 Cole Memo

- ➔ “Applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.”
 - ➔ A “guide to the exercise of investigative and prosecutorial discretion.”
- ➔ Does not alter federal law and the criminality of marijuana at federal level

2013 Cole Memo: Eight Federal Priorities

- ➔ 2013 Cole Memo seeks to prevent the:
 - ➔ Distribution of marijuana to minors
 - ➔ Funding of criminal enterprises
 - ➔ Diverting of legal marijuana to states where it is not legal
 - ➔ Using marijuana activity as pretext for other criminal activity
 - ➔ Illegal use of firearms or violence in cultivation and distribution of marijuana
 - ➔ Drugged driving and other adverse public health consequences;
 - ➔ The cultivation of marijuana on public lands
 - ➔ The use or possession of marijuana on federal land

2013 Cole Memo: Comity and Deference

- ➔ “The federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity.”
- ➔ Federal authorities should “focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.”

2014 Cole Memo: Financial Institutions

- ➔ Addresses financial crimes where marijuana-related crimes are a predicate:
 - ➔ BSA
 - ➔ Money laundering
 - ➔ Unlicensed money transmitter
- ➔ Financial institutions exposed to civil or criminal liability under federal law for banking marijuana-related activity.

2014 Cole Memo: Financial Institutions

- ➔ Applies 2013 Cole Memo guidance to financial institutions
- ➔ Investigations and prosecutions of financial institutions guided by eight federal priorities
- ➔ “In determining whether to charge individuals or institutions with any of these offenses based on marijuana related violations . . . prosecutors should apply the eight enforcement priorities described in the [2013 Cole Memo].”

2014 Cole Memo: Prosecution Appropriate

- ➔ Specifically spells out application of guidance
- ➔ If provide banking services to a MRB knowing
 - ➔ Legal marijuana is being diverted to prohibition states
 - ➔ Funds are being used to conduct other criminal activity
- ➔ Alternatively, if “willfully blind” to such activity
 - ➔ By failing to conduct customer due diligence
- ➔ Prosecution may be appropriate

2014 Cole Memo: Prosecution Inappropriate

- ➔ Also, specifically spells out where prosecution is **inappropriate**.
- ➔ If a financial institution offers services to a MRB whose activities:
 - ➔ “Do not implicate any of the eight priority factors, prosecution for these offenses may not be appropriate.”

2014 Cole Memo: Scope of Guidance

- ➔ Cole Memos do not:
 - ➔ Change federal legal status of marijuana
 - ➔ Bar investigation or prosecution even absent one of the federal priorities
- ➔ **But** guidance repeatedly, and specifically, directs federal enforcement where the eight federal priorities are affected.
- ➔ **COLE MEMOS RESCINDED BY AG SESSIONS**

Rohrabacher-Farr Amendment (must be renewed annually)

- Limits DOJ's spending relating to enforcement activity targeting legal marijuana state regulatory regimes
- “None of the funds made available in this Act to the [DOJ] may be used . . . to prevent [states] from implementing their own [] laws that authorize the use, distribution, possession, or cultivation of medical marijuana.”

FinCEN Guidance with Banking MRBs

- ➔ Intended to be comprehensive
- ➔ Financial institution obligations
 - ➔ Enhanced due diligence
 - ➔ Regulatory structure specific to MRBs
 - ➔ Additional filing requirements
- ➔ Financial institution must develop BSA/AML compliance system that accounts for MRB guidance from DOJ
 - ➔ Eight federal priorities from Cole Memos

FinCEN Guidance: Customer Due Diligence

- “Thorough customer due diligence is a critical aspect of making this assessment.”
- A financial institution should include CDD that includes:
 - Verifying business is duly licensed and registered
 - Reviewing state license application for MRB
 - Requesting available information from state licensing and enforcement authorities
 - Developing 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
 - Ongoing monitoring for adverse information about the business and related parties
 - Ongoing monitoring for suspicious activity, including for any of the FinCEN red flags
 - Refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk

FinCEN Guidance: SARs Generally

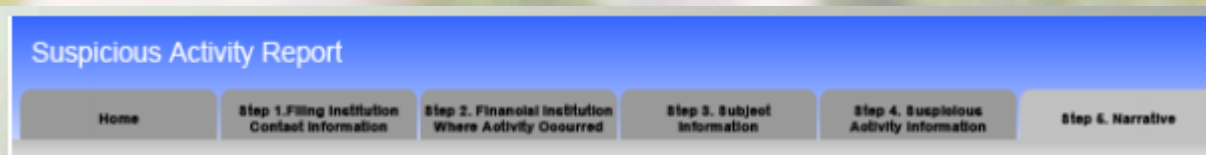
- ➔ In 2014 Guidance, FinCEN notes that Suspicious Activity Reports need to be filed when financial transactions:
 - ➔ Involve funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity or
 - ➔ Are designed to evade regulations promulgated under the BSA or
 - ➔ Lack a business or apparent lawful purpose.

FinCEN Guidance: Legal MRBs

- ➔ Legal MRB transactions still required to have a SAR
- ➔ But SARs are a regulatory tool designed to help federal and local law enforcement
 - ➔ Monitor use of financial system to help uncover crime
 - ➔ Help law enforcement focus limited resources on activity that government actually wants to prevent
- ➔ State legal marijuana is not a target of interest to law enforcement at federal, state, or local level
- ➔ What is a regulator to do?

FinCEN Guidance: MRB SARs

- ➔ Suspicious Activity Reports meet MRBs
 - ➔ Marijuana-Limited SAR
 - ➔ Does not implicate a federal priority
 - ➔ Marijuana-Priority SAR
 - ➔ Credit Union reasonably believes violates a federal priority
 - ➔ Marijuana-Termination SAR
- ➔ Should indicate type of Marijuana SAR in ALL CAPS



The image shows a screenshot of the Suspicious Activity Report (SAR) form interface. The title "Suspicious Activity Report" is displayed in a blue header bar. Below the header, there is a navigation bar with six tabs: "Home", "Step 1. Filing Institution Contact Information", "Step 2. Financial Institution Where Activity Occurred", "Step 3. Subject Information", "Step 4. Suspicious Activity Information", and "Step 5. Narrative". The "Step 4. Suspicious Activity Information" tab is currently selected and highlighted.

FinCEN Guidance: Red Flags

- ➔ FinCEN provides guidance on how to categorize between the three MRB SARs.
- ➔ Generally includes the following categories:
 - ➔ Use of a state-licensed MRB as a front for criminal activity
 - ➔ Insufficient documentation to demonstrate that it is engaged in a lawful MRB business
 - ➔ Based on public searches, principals or MRB are currently or have engaged in bad acts
 - ➔ Concealment of activity
 - ➔ Hiding MRB activity
 - ➔ Activity inconsistent with size and type of business, nature of business, or banking activity

Five Pillars of BSA/AML Compliance Program

- ➔ BSA compliance officer
- ➔ Policies, procedures & controls
- ➔ Training
- ➔ Independent testing
- ➔ Beneficial Ownership – Due Diligence Rule

Customer Identification Program (CIP)

- ➔ Part of the USA Patriot Act
- ➔ Keys:
 - ➔ Approved by board
 - ➔ Specifically tailored
 - ➔ Customers must be informed

Goals of Successful CIP

- ➔ **MUST:**
 - ➔ Obtain basic identifying data
 - ➔ Verify customer identity
 - ➔ Retain records used to verify identity
 - ➔ Include check of key government lists (e.g., SDN, OFAC)
- ➔ Additional aspects:
 - ➔ How to handle discrepancies
 - ➔ Terms for banking while ID is verified
 - ➔ What to do if credit union believes ID is unknown

Compliance & MRBs

- ➔ Enhanced due diligence (EDD)
 - ➔ FinCEN Guidance on customer due diligence
- ➔ Going above and beyond
- ➔ Working with regulators
- ➔ Risk v. reward

Avoiding Pitfalls

- ➔ Document, document, document!
- ➔ Ensure sufficient resources
- ➔ Consult counsel (internal and external)
- ➔ Show thoughtfulness in compliance steps
- ➔ Remain vigilant
- ➔ Put yourself in regulator's shoes

IS IT RIGHT FOR YOU?

Is it right for you?

- ➔ Big market opportunity
- ➔ But reward must be balanced against increased risks and costs
 - ➔ Reputational risk of banking MRBs
 - ➔ Marijuana use and sale remains a federal crime
 - ➔ Financial transactions for MRBs can form the basis of a civil or criminal violation under the BSA and related AML statutes
 - ➔ Banking for MRBs will require very strict adherence to federal guidance and BSA/AML reporting requirements specific to MRBs

Is it right for you?

- ➔ Does your leadership want to be involved?
- ➔ Does your constituency want to be involved?
- ➔ Is it right for your credit union?

Is it right for you?

- ➔ Can you invest the resources?
 - ➔ Assess current compliance program
 - ➔ Requires building a new MRB-compliance program
 - ➔ Important to monitor MRBs on an ongoing basis
 - ➔ Update as guidance and regulation changes
 - ➔ Closely follow local and federal legislative and administrative authority regarding financial services for MRBs
 - ➔ Additional regulatory scrutiny

Thank You!
QUESTIONS?

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