

MARIJUANA BANKING

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Why are we talking about this?

- Although a lot is BSA related, there are things to consider here
- Currently, thirty-three states, the District of Columbia, Guam and Puerto Rico have all legalized the use of marijuana to some degree. Yet the possession, distribution or sale of marijuana remains illegal under federal law, which means any contact with money that can be traced back to state marijuana operations could be considered money laundering and expose a bank to significant legal, operational and regulatory risk

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What do we have?

- Cole memo, but been rescinded
 - <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>
- FinCEN Guidance
 - <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>
- Possible congressional action?

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What is expected??

- Don't just jump into this! It takes time and planning!
- Be prepared for the risk.



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What is an MRB?

- **Tier 1 MRB** - Plant Touching (Direct)
 - Highest risk for FinCEN & Cole Priorities
 - Involved in manufacturing, distribution, or dispensing of marijuana
 - Earn revenues directly from the sale and distribution of marijuana
 - Typically licensed by the state
 - Includes seeds, processing, testing, retail delivery, planting, packaging, transporting, cultivation, dispensaries, harvesting, and wholesale.
- https://mrbmonitor.com/wp-content/uploads/2017/01/Defining_Marijuana-Related_Business_ACAMS_TodaySep_2016.pdf

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What is an MRB?

- **Tier 2 MRB** - Ancillary (Indirect)
 - Elevated Risk for FinCEN and Cole Priorities
 - Not licensed by state as a “marijuana business”
 - Earns a substantial portion of its revenue from Tier 1 MRBs
 - Includes laboratories, security services, consultants, and other businesses that are built to provide specific products and services to Tier 1 MRBs.

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What is an MRB?

- **Tier 3 MRB** -Service Business
 - Low Risk for FinCEN and Cole Priorities
 - Not specifically focused on selling to Tier 1 MRBs or the marijuana industry
 - Includes businesses that service or provide other general logistical support. (Attorneys, accountants, registered agents, contractors, etc.)
 - Earn an insignificant or/irregular revenue from Tier 1 or Tier 2 MRBs.

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What an MRB is not.....

- Notice anything missing?
 - Employees of MRBs
 - These are individuals and not classified as an MRB
- What do we do
 - Monitor
 - Look for suspicious behavior
 - If dealing in quantities of cash outside of expectations need to look at filing SAR

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What have an MRB, what now?

- Need effective policies and procedures
 - Not just canned info, be specific for your bank
- Review your account opening procedures
 - Ask questions for business accounts
 - Get an estimate or expectation of the volume or revenues of the business
 - How did they find you? Especially if out of market.
- MONITOR!
 - Have sufficient staff to monitor
 - Review financials, or other resources available to ensure there is no unexpected or unusual activity
 - File SARs

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SARs – Three Types

- The Marijuana **Limited** filing means the financial institution's due diligence indicates that the MRB does not raise any of the red flags as defined in the Cole Memo and is compliant with the appropriate state's regulations regarding marijuana businesses.
- The Marijuana **Priority** filing means the financial institution's due diligence indicates that the MRB may raise one or more of the red flags as defined in the Cole Memo or may not be fully compliant with the appropriate state's regulations regarding MRBs.
- The Marijuana **Termination** filing means the financial institution's due diligence indicates that the MRB raises one or more of the red flags as defined in the Cole Memo, or is not fully compliant with the appropriate state's regulations regarding MRBs, or has decided not to have marijuana related customers for business reasons, and the financial institution has decided to terminate its relationship with the MRB.

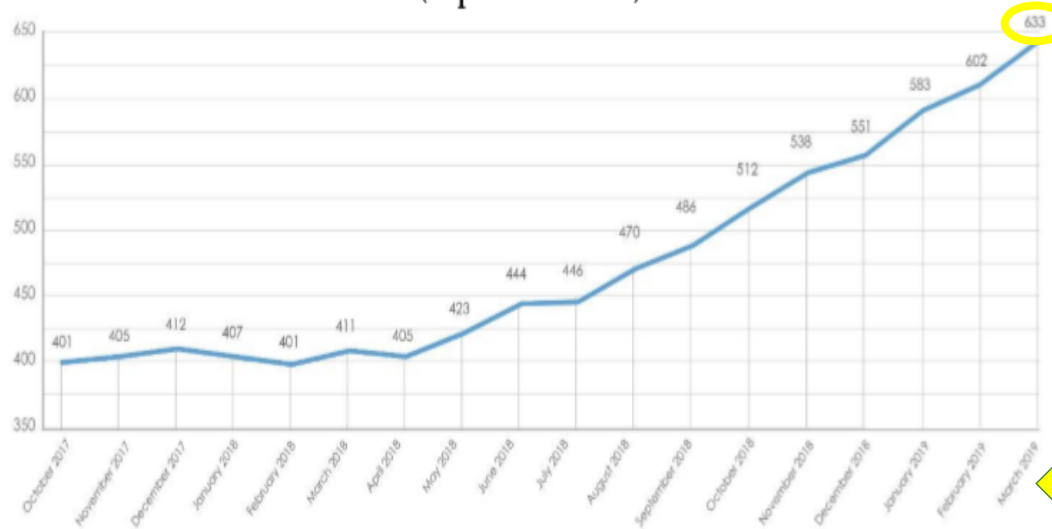
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SARs

- As of March 31, 2019, FinCEN has received a total of **81,725 SARs** using the key phrases associated with MRBs. Several of the SARs contain more than one key phrase, which accounts for the numbers for each key phrase being greater than the total.
 - FinCEN received 61,036 SARs from filers using the key phrase “Marijuana Limited.”
 - FinCEN received 6,067 SARs from filers using the key phrase “Marijuana Priority.”
 - FinCEN received 19,368 SARs from filers using the key phrase “Marijuana Termination.”

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**Number of Depository Institutions Actively Banking
Marijuana Related Businesses in the United States
(Reported in SARs)**



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Other things to consider

- These are high risk customers
 - Daily important, but look as aggregate data
- Check license status annually
 - Make sure they are abiding by the state rules
- Conduct annual review
 - Make sure activity is consistent with financials
 - Are goods sold similar to goods purchased?
 - Consider onsite visits (no samples please)
 - Document reviews!!!

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Hemp/CBD

- These businesses are not illegal with the passage of the 2018 Farm Bill
- Need to monitor these accounts, but not responsible for testing THC contents
- Don't overact to these businesses

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Questions?

