

FinCEN issues Marijuana Banking Update Report

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The Financial Crimes Enforcement Network of the U.S. Department of the Treasury (FinCEN), issued a Marijuana Banking Update Report for the period ending March 31, 2017. Back in January, I wrote about a bi-partisan group of U.S. Senators urging FinCEN to issue updated guidance for marijuana related businesses (MRBs). While FinCEN has not issued any additional guidance, the report, does indicate an increase in the number of financial institutions' comfort level in banking money from MRBs.

By the end of October 2016, 301 banking institutions were providing services to MRBs (less than 3% of the nation's 11,954 federally regulated banks and credit unions). The current report shows that number slightly increased to 368 since the end of March. For the same period, 28,651 suspicious activity reports (SARs) were filed for MRBs.

FinCEN's guidance for MRBs, require financial institutions to file SARs for MRBs indicating one of three categories:

- **Green Light: Marijuana Limited** 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 (guidance provided by the Department of Justice) and is compliant with the appropriate state's regulations regarding marijuana businesses. The financial institution is providing banking services to the MRB.
- **Yellow Light: Marijuana Priority** 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 financial institution is providing banking services to the MRB while further investigation is being conducted.
- **Red Light: Marijuana Termination** means the financial institution decided to terminate its relationship with the MRB for one or more of the following reasons:
 - The financial institution's due diligence indicates that the MRB raises one or more of the red flags as defined in the Cole Memo.
 - The MRB is not fully compliant with the appropriate state's regulations.
 - The financial institution has decided not to have marijuana related customers for business reasons.

In April, Congress introduced "The Secure and Fair Enforcement Banking Act (SAFE Banking Act)," to allow unrestricted access to banking services for state legalized MRBs. The bill remains in committee for review.

For additional information contact a member of the Medical Marijuana Practice Group.