

Program Standards for Cannabis-Serving Financial Institutions

DISCLAIMER: This document is not intended to constitute legal advice and should not be relied upon as such by the recipient. At the time of this document's publication on July 10, 2023, cannabis remains a Schedule I substance under the Controlled Substances Act and therefore the manufacture, distribution, dispensation, and possession of cannabis or cannabis-derived products is prohibited under federal law – even as 47 states, the District of Columbia, and four U.S. territories allow for some form of cannabis use, with 23 of those states legalizing cannabis consumption for all adults. While proposed federal legislation has been put forward that would create protections for financial institutions that provide banking services to state sanctioned cannabis businesses and legitimate service providers for such cannabis-related businesses, at the time of this document's publication on July 10, 2023, such legislation has yet to be signed into law. As it currently remains a violation of federal law for a financial institution regulated by the federal government to accept deposits or provide services to a cannabis related business, none of the recommendations in this document can protect one from potential federal enforcement actions due to the contradiction between federal and state cannabis laws, but are rather intended to help financial institutions that are considering or have fully evaluated and accepted the applicable risks of servicing the state-sanctioned cannabis industry to: 1) better assess the Banking Secrecy Act (BSA) requirements and compliance costs associated with servicing this unique industry; and 2) maintain a compliant and transparent program.

I. Understanding the Regulatory and Industry Environment

First and foremost, any financial institution (FI) considering servicing state-sanctioned cannabis-related businesses (CRBs) must become familiar with the federal laws and regulations surrounding cannabis as well as the laws and regulations in the states where the FI operates. In the 38 states that have legalized medical cannabis, each state has its own set of rules, license types, and regulations governing such operations within their borders. Therefore, it is imperative that FIs understand the unique rules in every state where they operate or that potential clients operate in given that if a CRB operates in multiple states, they are adhering to a different set of standards based on location. Each state has a nuanced structure not only for the types of licenses and extent of legality, but for how state-regulated businesses may operate – from hours of sales to limitations on product amounts and types.

Key Tip: Consider engaging the state regulator(s) early on to better understand the nuance of each state-specific program when assessing requirements and risks.

II. Shaping and Defining a Cannabis-specific Program

Now that the FI has become familiar with the rules and regulations governing cannabis operations and other CRBs in the specific state(s) of operations, the FI can make a more informed decision on the how their program will be shaped.

Just like no two states' cannabis programs are the same, neither are any two CRB-serving FIs' cannabis programs. The following items at a minimum should be defined when looking to create a cannabis banking program:

- Types of businesses the program will service (i.e., state-sanctioned cannabis businesses and/or their legitimate service providers, hemp-related businesses and/or service providers, CBD businesses, or other cannabinoid variations).
- Fee structure (i.e., flat fee, percent of deposits, hybrid).
- Markets that will be serviced (i.e., statewide, multi-state, or regional).
- Projections of revenue and expense, assessing the costs of required resources to include both technology and staff, and secure approval of the budget needed to establish and maintain such a program.

Additionally, FIs should establish a well-defined risk appetite and assessment statement that addresses at a minimum: 1) what risks the FI is willing to take; 2) how the FI will scale while considering CRB risk; and 3) what share of deposits and/or loans that the FI is willing to have be CRB-related.

Key Tip: Defining key points early will help shape and guide the structured process needed when considering, establishing, and/or maintaining a highly regulated program needed to adhere to BSA requirements when banking CRBs, both in the current legal environment and should safe harbor legislation become law.

III. The Approval Process

FIs should adhere to internal approval processes when looking to establish a cannabis program as well as structuring an external approval process for accepting clients. Starting internally, FIs should take the now defined program to the board for approval of the establishment of said program, including approval documented in meeting minutes as to which businesses the FI will service through its program (i.e., direct, indirect, or hemp/CBD operations).

Key Tip: Consider involving regulators prior to implementation to better incorporate any specific needs or recommendations to mitigate concerns once approved.

IV. Creating Resources and Establishing Procedures

Before launching, FIs should have secured the necessary resources and put in place the necessary procedures to ensure operations adhere to what has been defined and approved in compliance with all relevant laws and regulations. This includes establishing a CRB program administrator and determining what type of certification or subject-matter expertise is necessary for this role to carry out the defined program.

The following list of internal resources to be developed is not exhaustive, but rather focuses on what existing FIs servicing CRBs deem to be most vital for establishing and maintaining program compliancy:

- Program policy and procedures manual.
- Individual risk assessments based on business types.
- Standard operating procedure (SOP) for onboarding, including initial customer due diligence procedures.
 - Know Your Customer/Know Your Business (KYC/KYB) requirements for cannabis businesses, including extensive background checks, negative news searches, and understanding of the entity's global operations, including outside the primary state of interest.
- SOP for continuing elevated due diligence (EDD) monitoring, including ongoing monitoring program to detect and report suspicious or risky activity.
 - Suspicious Activity Report (SAR) filing procedures for initial and continuous SARs.
 - Changes in license status, transfers, and changes in beneficial ownership.
 - Continuous monitoring for negative news and violations information.
- SOP for offboarding.

Key Tip: FIs may also wish to consider creating a CRB committee to evaluate compliance on each relationship with risk assessment statements.

V. Program Launch

Now that the program has been defined and approved, resources and procedures developed, and mechanisms enacted to ensure compliance with all relevant laws and regulations, it is time to take the program from paper to practice. As noted when discussing the requisite budget approval, cannabis banking programs have associated compliance costs, both in terms of dedicated staff and specific software programs. As an FI looks to launch, it must first hire and train staff as well as purchase needed software.

Key Tip: Have relevant staff complete any necessary training on new software before launching.

VI. Program Maintenance and Continual Compliance Needs

As with any other program, the work does not stop once it is launched. The most important part of having a cannabis banking program is ensuring it remains transparent and complies with all relevant laws and regulations. This means FIs must ensure SARs are accurate and on time. It also means that FIs will need to continuously monitor and adapt to a constantly evolving industry and regulatory environment, adapting policies and procedures accordingly. Everything should be documented, especially if there are any exceptions to established policy that should be in a wheelhouse of risk.

Key Tips: Transparent + Compliant + Well-Documented + Monitored + Adaptable



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The Cannabis Financial Industry Group (CFG) coalesces financial institutions and leading risk mitigation services providers serving the regulated U.S. cannabis industry. Visit www.CFIG.org or email Erin@TheLiaisongroup.com for more information.