I. PURPOSE

These procedures outline the general review of credit union financial services related to the marijuana industry and related businesses/members. As the risks related to offering services in this space are varied and high, (particularly while federally illegal), the institution's due diligence and ongoing control over such a portfolio must be robust. Examiners must evaluate management's due diligence in deciding to provide such services. The board and management must have clear understanding of the associated risks, and satisfactory risk management tools in place which are functioning soundly.

The decision to service accounts or relationships related to the marijuana industry should be based on the credit union's business objectives, evaluation of associated risks, and ability to effectively manage those risks. Examiners should assess the effectiveness of program governance, the risk management framework, operational procedures, and compliance with the Bank Secrecy Act ("BSA").

Examiners should evaluate whether the decision to offer such services has been appropriately vetted by the Board of Directors and Management, and whether this type of activity is consistent with the strategic plan, philosophy and credit union's overall risk management practices.

Examiners should closely review third party vendor relationships instituted as part of the overall management and oversight of such a program, and ensure sufficient oversight of this activity is performed by the credit union as the credit union remains fully accountable and responsible (including, but not limited to legal liability and BSA reporting obligations).

The following reference materials should be utilized in detail for more specific review considerations, depending upon a specific institution's involvement in this space. Reviews should be expanded accordingly wherever a high level of risk is observed or suggested.

II. PRIMARY REGULATIONS/REFERENCES

1. **CSBS CANNABIS JOB AID**
2. Controlled Substances Act, 21 USC §812
3. FIN-2014-G001 (BSA Expectations Regarding MRBs)

4. Michigan Regulation and Taxation of Marihuana Act of 2018
5. OCU Letter 2019-CU-02 (Contracts and Vendor Relationships)
6. OCU Letter 2020-CU-01 (Memo Regarding Financial Services to the Marijuana Industry)

III. KEY RISKS AND REVIEW AREAS

1. **Review management/board decisions and related policies:** Careful consideration of all the risks and strategic goals should be documented by the board and management prior to engaging in this type of activity.
   - **a.** Board minutes should document the deliberations and rationale for accepting each of the various risks (and explain any risk-mitigating factors considered), and explain how the decision made fits into the established long-term goals and formal strategic plan of the credit union.
   - **b.** Policies should document the board-established parameters for the program, including stop-loss triggers and appropriate risk limitations relative to net worth.
   - **c.** Thorough review of existing state and federal laws/requirements, legal review of all related contracts and documents/forms should be documented to evidence decisions were fully informed and credit union documents/forms appropriately protect the credit union from undue risk.
   - **d.** Evaluate management's review of existing third-party relationships which may be jeopardized should the credit union enter this space. (E.g., mortgage loans ordinarily sold on the secondary market may need to be held in portfolio, the bond carrier may no longer wish to provide coverage or reduce coverage, card services may be discontinued, armored car service may have policies to not provide services, etal.)

2. **Evaluate if all key risks have been satisfactorily vetted by management/board (with appropriate risk mitigating factors):**
   - **a. Strategic Risk**: How the program fits into the long-term formalized business/strategic plans and risk tolerances of the institution. The **potential risk to net worth** (from various operational risks as well as potential regulatory fines which could be imposed for engaging in this activity) and the related potential impact to the credit union's viability.
   - **b. Reputation Risk**: How will engaging in this type of business affect the member's perception of the credit union, the perception of potential

members, and the relationship the credit union has with each of its vendors.

c. **Legal/Compliance Risk**: How do the credit union's activities fit within existing state and federal regulations; how are any related risks being controlled/limited. Include the existence of the product/service, the contractual relationships/commitments/obligations, tracking and reporting requirements and the ability to adjust to any changes in the aforementioned.
d. **Liquidity Risk**: How resilient is the credit union relative to unexpected and/or large shifts in liquidity from this activity. Include consideration of large infusions of liquidity, the management of large cash volume transactions, and the ability to satisfy large outflows of liquidity (from changes in the marketplace and/or exit strategies which may need to be executed in a short period of time).
e. **Transaction Risk**: What controls are in place to identify the activity in this space, identify activity which triggers required reporting, identify/prevent activity which exceeds the board risk-tolerance parameters, identify/prevent activity representing illegal movement of funds by members and/or non-members through the credit union, and ensure such controls are functioning and effective.
f. **Interest Rate Risk**: Evaluate the pricing and degree of flexibility in this activity to ascertain if changes in the marketplace could have a negative undue effect on the credit union's financial condition.
g. **Credit Risk**: Evaluate any related lending practices to identify risks particular to this type of activity. (E.g. evaluation of the reliability of income streams to repay obligations over their term; the reliability of collateral availability to satisfy obligations which are not paid timely, the likelihood of market changes having a sudden and significant impact on delinquency or losses.

3. **Evaluate other common industry aspects:**
   a. Historical priorities-- how does the institution ascertain the absence of:
      i. distribution to minors
      ii. sales to and/or revenue profit by criminal enterprises
      iii. diversion to states where it is illegal
      iv. firearms/violence in the cultivation and distribution

v. drugged driving and exacerbation of other adverse public health consequences
vi. the credit union activities being used as a cover or pretext for trafficking other illegal drugs or other illegal activity
vii. the activity on public lands or use/possession on federal property

b. FinCEN requirements: Has an analysis of the FinCEN reporting requirements been performed and are systems in place to ensure all SARs and CTRs are prepared and filed timely as required?

c. Decision not to offer services: If an institution has decided not to offer services related to this industry, is there still a policy in place outlining:

i. the decision and how the activity is determined/defined (e.g. are these or other definitions/differentiations used)
   1. Tier 1: Businesses which touch the seeds or plant including growers, harvesters, processors (producing marijuana-based oils or other products), transporters, wholesalers, and retailers.
   2. Tier 2: Businesses which sell products or provide services to Tier 1s or otherwise facilitate the growing, processing, transport, sale, or consumption of marijuana potentially including hydroponic suppliers, payment processors, private ATM companies (both fiat and crypto), and licensing and tax consultants, packaging suppliers, or trade groups. To meet our informal definition of a Tier 2 MRB, the business should have reason to know it is supplying goods or services to the Tier 1 and should derive some "material" part ("material" to be defined by the FI although some commentators suggest that a certain percentage of revenue derived from MRBs—like 50% or more—could separate a Tier 2 from a Tier 3) of its revenue from its relationship with the Tier.
   3. Tier 3: Businesses not focused on providing products or services to Tier 1s but who do so as an ancillary or immaterial part of their business. Examples include armored car companies who transport cash on behalf of Tier 1s as an immaterial part of their overall business, accountants or tax or licensing consultants who work with Tier 1s as an

immaterial part of their practice, or fertilizer companies who sell products to the general market including Tier 1s.
4. How is legacy cash identified and/or considered in the above.

ii. Is there a system in place for monitoring account activity to:
1. Identify long term members who may now be engaging in activity not permitted by the credit union
2. Identify the prospective activity planned by new members
3. Monitor account activity to ensure it remains within activities deemed permissible by the credit union (with ongoing evaluations to identify MRB activity which might be systematically rising to an impermissible level/nature).

iii. Is there a system which defines credit union actions to be taken if impermissible activity is identified, and which considers:
1. The need to notify authorities when appropriate.
2. Remedial measures to return to a state of compliance deemed acceptable by the credit union.
3. Account closure and/or membership termination as appropriate.
4. Do all account agreements contain language consistent with these actions or that facilitates them?

4. Determine if the institution has adjusted related business processes to also include MRB impacts:

i. Regular Risk Assessment
ii. Public information monitoring
iii. Training practices
iv. Bond/Insurance coverages
v. Contingency planning (including backups for vendor services)
vi. Disaster recovery procedures
vii. Third Party due diligence practices
viii. On employee satisfaction and/or health
ix. Cash Management controls, logistics, and security
x. Budgeting: Equipment and additional physical/personnel resources

IV. ATTACHMENT

1. Additional Basic Review Guide