

# BASIC REVIEW AREAS – MRB PRODUCTS/SERVICES

REVISION DATE

10/12/2020

In addition to the considerations outlined in Policy #10160, the following provides an additional basic review tool for evaluating an institution's practices related to products and services involving Marijuana Related relationships and/or Businesses (MRBs). Examiners should expand the scope in any area where notable risk is present or suspected.

## 1. Board minutes and decision-making

Evaluate the decision-making process and board minutes to ascertain if the board is reasonably knowledgeable about the related risk(s), and the whether the board's decision was well-informed.

- a. Ascertain if the board explicitly approved the program
- b. Review available documentation and/or conduct interviews as needed to evaluate the deliberations and rationale regarding various risks and risk-mitigating factors.
- c. Evaluate the explanation for how this activity fits within the credit union's risk tolerance and strategic goals
- d. Review the board-approved policies and risk limits (relative to net worth) for each MRB related activity, including stop-loss triggers
- e. Evaluate whether the credit union's costs of banking MRB accounts are commensurate with the benefits of the program.
  - i. Review credit union's cost and revenue analysis
  - ii. Review planned corrective actions (remedial measures), should product performance fall short of expectations
  - iii. Evaluate if all costs associated with providing products and services to marijuana-related accounts are being considered
- f. Review credit union's contingency plan, which should establish a means to effectively and rapidly exit the product, should the need arise. The contingency plan should establish exit strategies should there be a change in the policies and practices of the Federal and State governments and/or for additional safety and soundness considerations. The plan should include detailed:
  - i. Time frames
  - ii. Assigned responsibilities
  - iii. Distribution of Funds plan (including liquidity considerations)
  - iv. Insurance coverage
  - v. Law enforcement involvement
  - vi. Security escalation

## 2. Board Policy and Practice

Assess the adequacy of board approved policies and procedures in place to identify and manage MRB accounts. Board policies must clearly define what activities constitute an MRB (or marijuana related activity). A review of Board

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approved policies specific to the banking of MRBs and compliance with the Bank Secrecy Act (BSA) should include evaluation of the following:

- a. Types of MRBs deemed permissible by the board
- b. Deposit Agreements/Applications' adequacy covering all potential exit needs
- c. Risk Rating System
- d. Permissibility of legacy cash (identification, monitoring, and corrective actions)
- e. Account Opening Procedures
  - i. Ensuring proper licensing with the Michigan Department of Licensing and Regulatory Affairs (LARA)
  - ii. Identification of all owners
  - iii. Monitoring of ongoing eligibility
- f. Anticipated transaction activity and currency levels
- g. Defined onboarding requirements and validations
- h. Deposit Account Covenants
  - i. Volume limits (if any)
  - ii. Requirements to provide documentation that is either recurrent or that requires updating
  - iii. Notification of changes to management or beneficial ownership
  - iv. Non-disclosure agreement

### **3. Risk Management components**

- a. Review monitoring and ongoing due diligence practices
  - i. Transaction activity triggers
  - ii. Business reputation monitoring
  - iii. Onsite inspections: Site visit reports should include proof of the date, time and location the audit was performed.
  - iv. Dedicated staff assigned to specific MRBs
    - 1. Regular direct communication with the business, including verification of product and service offerings
    - 2. Obtain periodic financial statements from MRBs
    - 3. Conduct reasonable/necessary reviews and monitoring to identify members who may be engaging in MRB-related criminal activity
    - 4. Review site visit practices
    - 5. Obtain third-party compliance reporting to ensure the MRB is following established guidance.
    - 6. Ongoing monitoring of publicly available sources for adverse information about individuals, MRB businesses and related parties
- b. Risk Limits: Has the board ascertained the level of potential fines / legal penalties the institution could absorb without sacrificing safety and soundness, and established appropriate limits?

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- c. Liquidity (Cash) Considerations
  - i. Determine if management and the board considered the practicalities of cash management, including capacity and security issues. associated with handling cash considerations.
  - ii. Ensure the credit union has sufficient liquidity to meet its needs in the event the credit union terminates its relationships with MRBs, or otherwise needs to rapidly exit the product/portfolio.
  - iii. Evaluate strategies to segregate or flag the funds from MRB accounts from other member deposits, given the volatility of and uncertainty of MRB deposits.
  - iv. Ensure concentration limits have been established.
- d. Determine if the institution has adjusted their Risk Assessment to include MRBs.
- e. Is there an ongoing system in place to monitor changes in the legal environment, and a system in place to adapt to such (including a detailed exit strategy)?
- f. Monitoring of Reputation Risk
  - i. Has management ascertained the impact on staff who engage in the activity (essentially money laundering), while the activity remains a federal crime
  - ii. Has management ascertained the impact on membership perception and membership satisfaction as a whole
  - iii. Has management ascertained the impact on the willingness of all third parties to continue association and/or their business relationship with the credit union

#### **4. Other Infrastructure**

- a. Initial and Ongoing Training: Evaluate whether the Board of Directors, management and staff have received sufficient training related to marijuana banking to make informed decisions about how to proceed, or not proceed, in offering services to MRBs.
  - i. Impact to interest rate risk prospects
  - ii. Impact to liquidity risk prospects
  - iii. Impact of legal ramifications
- b. Legal Review: Review the credit union's documentation from legal counsel on applicable federal and state laws, which should include:
  - i. Potential seizure of property and forfeiture/subordination of collateral
  - ii. Review of all related contracts (performed by an attorney and/or firm well-educated and experienced with the MSB and MRB relationships as they relate to both federal and Michigan statutes.)
  - iii. The degree to which this activity needs to be disclosed to employees, members, and third parties.
  - iv. Ascertain if contracts have been executed to facilitate financial institution review of appropriate licensing information.

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- c. Assess the reasonableness of supplemental security measures.
  - i. Cameras
  - ii. Security Guards
  - iii. Armored Cars
- d. Evaluate if the institution's current technology is sufficient to effectively monitor and manage MRB activity.
- e. Determine if the institution's bond insurer requires MRB customer relationships be disclosed to the bond insurance provider. Verify all required disclosures have been made.
- f. Third-Party Vendor Review
  - i. Determine if management has confirmed with each impacted third-party provider, they will service such MRB program (i.e. armored car company, depository, ATM servicer, shared branching networks, VISA, etc.).
  - ii. Each third-party vendor should have an executed contract with the credit union. The nature of the relationship should be reviewed by the credit union's legal representative (that is knowledgeable in MRB activity and legalities).
  - iii. Determine if any of the third-party vendors is operating as a Money Services Business (MSB).
    - 1. If so, they must possess a Money Transmitter license with DIFS' Office of Consumer Finance.
    - 2. A legal review should be obtained by the credit union of the relationship between the MSB, the MRB and the credit union.
    - 3. The Board must determine if they can and/or will allow the MSB to be a member or vendor. Examiners should be able to review this decision in the board minutes and the board approved policy.
  - iv. Evaluate credit union's monitoring of any third party used in administering the program. Evaluate if management and the board understand they retain all responsibilities for compliance and soundness, regardless of the use of any third party.

## **5. Other Compliance**

- a. Evaluate compliance with membership requirements under the Michigan Credit Union Act (MCUA) and Bylaws.
  - i. Update of Bylaws
  - ii. Qualification of membership under Section 353 of the MCUA
  - iii. Non-member deposit relationship(s)
- b. Verify FinCEN and BSA/AML requirements are met.
  - i. Consider whether the credit union's policy standards meet the priorities per FIN-2014-G001.
  - ii. Review related Currency Transaction Report (CTR) procedures.

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- iii. Review compliance with Suspicious Activity Report (SAR) filing requirements.
- iv. The obligation to file a SAR is largely unaffected by a state law that legalizes marijuana activity. (Likewise, in this space, CTR exemptions are likely unavailable.)
- c. Verifying with the appropriate state authorities whether the MRB is duly licensed and registered, and in good standing. (Reviewing ongoing information being gathered about the licensing and enforcement of the MRB and related parties.)

#### **6. Lending Activities (if applicable)**

- a. Management must perform pre-program analysis to evaluate the risks of lending to MRBs, including obtaining an appropriate legal review. The legal review must address the potential impact of the Federal drug seizure laws, including, but not limited to, forfeiture and subordination of collateral position, and current case law.
- b. The Board of Directors must formally approve this type of lending and should establish a Board approved policy specific to lending to MRBs. The policy should establish:
  - i. Prudent lending limits
  - ii. Pricing commensurate with the risk level
  - iii. Appropriate customer due diligence requirements (both upfront and ongoing)
  - iv. Prudent and appropriate underwriting standards for this type of lending (above and beyond what the credit union's member business lending standards are)
  - v. Identification of red flags/significant risk indicators consistent with the FinCEN Guidance.
- c. Establish procedural guidance for how this type of lending will be administered, monitored and reported
- d. Consideration of loan guarantees and collateral not related to marijuana
- e. Collection Procedures
- f. Internal or External process to validate that the program is being administered according to policy standards and procedural guidance.
- g. Procedures and standards for reserving for marijuana-related business loans.