

Keeping Your Accounts Safe & Sound: A Guide to Selecting a Financial Institution with a Strong Cannabis Banking Program

The establishment of a relationship with a financial institution is not a decision that should be taken lightly, given it is difficult to unwind. Choosing the right bank is a very relationship-driven decision so it is important to have a comfort level with the financial institution. This is even more important when the banking relationship centers around high-risk activity, such as state legal cannabis operations, that requires full transparency, honesty and trust, and active due diligence from both parties.

At the time of this document's publication, 38 U.S. states, three territories, and the District of Columbia have established legal cannabis programs. While conflicts between federal and state cannabis policies remain, some financial institutions have chosen to offer banking services to state-legal cannabis related businesses (CRBs). If done properly, in a highly compliant manner in accordance with Financial Crimes Enforcement Network (FINCEN) guidance and in open cooperation with financial regulators, financial institutions can permissibly serve the state legal cannabis industry without adverse action or enforcement. Given the continued growth of state legal cannabis operations and the importance of CRBs having access to banking services for safety and soundness, this document seeks to help CRBs understand the requirements financial institutions have in place if servicing businesses and individuals involved, either directly or indirectly, in the state legal cannabis industry to:

- 1) Better assess financial institutions offering cannabis banking services to understand the importance of working with institutions that have established and compliant programs; and
- 2) Better understand the Banking Secrecy Act (BSA) requirements and compliance costs associated with servicing this unique industry faced by financial institutions and the importance of providing required documentation for both onboarding and continued monitoring for maintaining a banking relationship that is highly compliant, which is essential for both the financial institution and the client.

I. Understanding the Risks and Compliance Costs Facing Financial Institutions

First and foremost, a potential client must understand the inherent risks and compliance costs financial institutions (FIs) incur if they choose to bank CRBs, as this informs why the onboarding process for such clients is time, cost, and documentation intensive. For those FIs that have chosen to establish cannabis banking programs and service the state legal industry, there remains the risk of facing federal enforcement actions, even with strict compliance and enhanced due diligence measures in place. This includes but is not limited to Know Your Customer (KYC) procedures, Anti-Money Laundering (AML) requirements, and Suspicious Activity Reports (SARs) that require both software as well as dedicated and knowledgeable staff. Although FINCEN guidance exists relating to the filing of SARs, this guidance does not prevent prosecution for violations of federal law.

KEY TIP: Consider engaging associations like CFIG and state regulators for a list of respected financial institutions with existing cannabis programs in the area.

For more on Cannabis Banking Program Standards, see CFIG's July 2023 document [HERE](#).

II. Asking the Right Questions

Now that the risks and compliance costs facing FIs servicing CRBs are better understood, it is important to also look at each FI's specific cannabis program and whether the specific offerings align with your needs. Just like no two states' cannabis programs are the same, neither are any two CRB-serving FIs' cannabis programs. The following questions at a minimum should be asked by potential clients when assessing cannabis banking options:

- **Does the FI service your business type?** Not all FIs serve all types of cannabis-related businesses, and often fee structures differentiate based on the level or risk and due diligence required based on business type, which often are categorized as: "Tier 1" direct businesses that are plant touching; "Tier 2" indirect businesses that are not plant touching but that derive more than 50 percent income from the industry; "Tier 3" indirect businesses that derive less than 50 percent of income from Tier 1; and hemp-related businesses. FIs typically also differentiate between the *type* of Tier 1 business (i.e., cultivation vs. retail).
- **Does the FI's market cover your operations?** Some FIs will bank businesses that are multi-state while others only bank businesses located within a state's borders or a specific jurisdiction.
- **Does the FI have an existing cannabis banking program with "green" compliance in place?** The onboarding process for cannabis banking is time intensive due to the need for enhanced due diligence, and if a bank does not yet have an established program with compliance mechanisms and staff in place, this can create a longer timeline for onboarding. Additionally, potential clients may ultimately be turned away if the FI no longer wishes to establish a program as the full scope of costs and risks become known during this onboarding process. Furthermore, if an FI does move forward with a client before compliance mechanisms are in place, the client is at risk of their funds not being appropriately handled that could threaten their operations, licenses, and ultimately, legality. Without proper programs in place, banks run the risk of commingling funds, opening them up to potential implications of money laundering and asset forfeiture.
- **How long has the FI's cannabis banking program been in place?** Established cannabis banking programs have standard operating procedures in place that allow the onboarding process to move more efficiently (as long as all required documentation is provided in a timely and transparent manner to the FI).
- **Has the FI gone through a regulatory exam and what was the outcome?** Bank examiners evaluate the safety and soundness of the operations of the financial institution to ensure compliance with regulations and that excessive risks are not being taken. Just as the FI wants to know your house is in order before engaging with your business, a successful exam demonstrates that the FI has their house in order. For FIs with cannabis banking programs that have undergone exams by their financial regulators, it demonstrates their adherence to the enhanced due diligence required of this industry that protects not only the FI, but also all their clients.
- **What services does the FI offer to your employees?** It is not just cannabis businesses that struggle with banking access, but also those individuals working in the state legal industry. Make sure your FI relationship also extends to your employees and that they will also have access to financial resources from payroll to checking accounts to personal loans that are too often denied to workers that receive a paycheck tied to cannabis.

KEY TIP: Utilizing a financial institution with an existing cannabis banking program with established compliance mechanisms should allow for smoother and more timely onboarding. Further, FIs that have gone through the exam process have demonstrated the compliance strength of their program vital for CRBs to remain in good standing with state regulators.

III. Onboarding: Are You Being Asked the Right Questions?

Just as a financial institution does not want the business of a client that cannot or will not provide the information to demonstrate their house is in order, CRBs should not enter into a banking relationship with an FI that does not engage in such due diligence as that program is most likely not on the up-and-up – exposing you and your business to serious risks should the financial regulator tell it to stop banking cannabis due to inadequate policies, procedures, and staffing. At a minimum, the FI should ask you for the following documentation:

- **State-issued cannabis license.** This license should be active and current. An expired license or a provisional license that has a defect that prevents conversion could significantly delay approval. FIs will also want to know if you are in the process of applying for, but not yet received, any licenses.
- **Business documentation,** including tax ID, articles of incorporation, and certificate of good standing.
- **Financial documentation,** including balance sheets, income statements, and tax returns.
- **Operational information,** including corporate structure/organizational chart, payroll list, property title or lease agreement, statement of ownership, and proof of insurance.

KEY TIP: *Be prepared for onboarding to help expedite the process. Most of this information is similar to that provided to state regulators, so provide all requested materials in a timely and transparent manner and be open and honest with the FI to address any potential concerns before they arise to mitigate delays.*

IV. Ongoing Monitoring

As with any other relationship, the work does not stop once it is started and requires ongoing cooperation to maintain. The most important part of an FI's cannabis banking program is ensuring it remains transparent and complies with all relevant laws and regulations on an ongoing basis. This means FIs must ensure SARs are accurate and filed on time, which will require continual documentation provided by clients as it pertains to financial documents, annual tax filings, updated payroll lists, and any changes to ownership, location, and/or license status.

KEY TIP: *Submit all required compliance information to your FI in a complete and timely manner. If you fall out of compliance with their cannabis banking requirements, you may find yourself having to then go through the time and cost intensive onboarding process again.*

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 December 5, 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 24 of those states legalizing cannabis consumption for all adults. 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 those with direct or indirect ties to state legal cannabis operations to be better informed in choosing a financial institution.*

The **Cannabis Financial Industry Group (CFIG)** 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.

Acknowledgements: We thank our CFIG members for sharing their expertise for the creation of this important document to help guide CRBs in making an informed decision when choosing a financial institution. You may also be interested in CFIG's Cannabis Banking Program Standards released in July 2023, which you may access [HERE](#).

