



**Banking Cannabis Related Businesses – Is It Worth the Risk?**

MSCUA CEO Dialogue  
November 2, 2022

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**Disclaimer**

This program is designed to provide accurate and authoritative information. It is done with the express understanding that Aux and its employees are not engaged in rendering legal advice. If legal advice is required, consult an attorney. Information may have changed since this presentation was prepared. This information is intended as a summary and is not intended to be all inclusive.



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**Agenda**

- Background information on cannabis and Cannabis Related Businesses (CRBs)
- Cannabis legislation
- Risk considerations in serving CRBs
- Banking CRBs Risk Assessment
- Planning for banking CRBs



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## Background Information on Cannabis and CRBs



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## Cannabis Is Umbrella Term

- Marijuana
  - THC > 0.3%
  - Psychoactive
  - Recreational and medical uses
- Hemp
  - THC ≤ 0.3%
  - Non-psychoactive
  - Numerous industrial uses
- CBD
  - May have trace amounts of THC
  - Non-psychoactive
  - Evolving uses



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## Serving Cannabis Related Businesses

### Reasons To Serve CRBs

- Community safety
- Underserved business community
- Grow deposits
- Make money
  - Fees
  - Potential loan interest income

### Reasons Not To Serve CRBs

- Federal illegality of certain products
- Compliance failure risks
- Program costs
  - Initial set up
  - Ongoing monitoring
- Reputational risks



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### Cole Memo

- Priorities of federal government related to distribution and sale of marijuana
  - Preventing distribution to minors
  - Preventing sales revenue from going to criminal enterprises, gangs, and cartels
  - Preventing diversion of marijuana from states where it is legal under state law to other states
  - Preventing state-authorized marijuana activity from being used as cover to traffic other drugs/illegal activity



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### Cole Memo, continued

- Priorities of federal government related to distribution and sale of marijuana
  - Preventing violence/use of firearms in cultivation and distribution
  - Preventing drugged driving/other public health consequences
  - Preventing growing marijuana on public lands
  - Preventing marijuana possession/use on federal property



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### Joint Statement on Risk-Based Approach to CDD

- NCUA Letter to Credit Unions 22-CU-08
- Reiterates need for CDD
  - Understand nature of business and build risk profile
  - Ongoing monitoring
- Refrain from blanket “we won’t serve THIS TYPE of business” statements in policies



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A slide titled "Cannabis Legislation" featuring an image of a gavel, a cannabis plant, and an American flag. The slide includes the AUX logo in the bottom right corner and a small number "10" in the bottom left corner.

**Cannabis Legislation**

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A slide titled "Marijuana Legislation in Congress" with a bulleted list of legislative acts. The slide includes the AUX logo in the bottom right corner and a small number "11" in the bottom left corner.

**Marijuana Legislation in Congress**

- Secure and Fair Enforcement (SAFE) Banking Act
  - Provides "safe harbor" for depository institutions to serve "cannabis-related legitimate businesses"
  - Passed in House in February 2022

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A slide titled "Marijuana Legislation in Congress" with a bulleted list of legislative acts. The slide includes the AUX logo in the bottom right corner and a small number "12" in the bottom left corner.

**Marijuana Legislation in Congress**

- Marijuana Opportunity Reinvestment and Expungement (MORE) Act
  - Decriminalizes marijuana at federal level
- Strengthening the Tenth Amendment Through Entrusting States (STATES) Act
  - Gives each state freedom to determine how to address commercial cannabis

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## Marijuana Legislation in Mississippi

- Legal for medicinal use, effective February 2, 2022
- Mississippi Medical Cannabis Act
- Mississippi Department of Health to issue licenses for dispensaries
- No limitation on number of dispensary licenses to be issued

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## Hemp Legislation

- Federal level
  - Industrial hemp legalized as part of 2018 Farm Bill
  - Gave responsibility to states to develop plan to monitor and regulate hemp production
  - State plans must be approved by USDA
- State level
  - Hemp farming legal since 2020
  - License to grow comes from USDA

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## Risk Considerations in Banking CRBs

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**Risk Considerations in Serving CRBs**

- Legislation
  - Federal
  - State
- Regulation
  - Federal
  - State

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**Risk Considerations in Serving CRBs**

- Reputation
  - Board
  - Employees
  - Field of membership
  - Community

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**Risk Considerations in Serving CRBs**

- Types of CRBs credit union will serve
  - Tier I
    - Manufacture/grow, distribute, dispense/sell
  - Tier II
    - Provide products/services to Tier I businesses
  - Tier III
    - Professional service firms

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**Risk Considerations in Serving CRBs**

- Operations
  - Policies and procedures
  - Monitoring
  - SAR filing
  - Documentation

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**Risk Considerations in Serving CRBs**

- Products and services
  - Deposits
  - Loans
  - Debit/credit cards
  - Cash

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**Risk Considerations in Serving CRBs**

- Bank Secrecy Act
  - Suspicious Activity Reports (SARs) for Marijuana Related Businesses
  - Customer Due Diligence
  - Ongoing monitoring

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**CRBs and SARs**

- MRBs
  - Marijuana Limited
  - Marijuana Priority
  - Marijuana Termination
- Hemp-related businesses

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**CDD for CRBs**

- Verify that CRB is registered and licensed
- Review the license application
- Request available info about the CRB from state authorities
- Develop understanding of expected activity for the CRB

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**Ongoing Monitoring**

- Ongoing monitoring for adverse information about CRB
- Ongoing monitoring for suspicious activity
- Refresh information about CRB on periodic basis

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**Risk Considerations in Serving CRBs**

- Staff
  - Additional employees
  - Training
- Costs
  - Automated monitoring
- Net worth
  - Large amounts of deposits will cause decline

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**Risk Considerations in Serving CRBs**

- Partnerships
  - Vendors
  - Other financial institutions
- Bond/Insurance
  - Will bond cover losses?

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**Risk Considerations in Serving CRBs**

- Members who work for CRBs
- Exit strategy

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Banking CRBs Risk Assessment

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This slide features a photograph of an open metal safe. The left door is open, revealing a lush green field of grass inside. The right door is closed, showing the internal mechanical components of the safe. The background of the slide is a light blue gradient with a white geometric shape.

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### Risk Assessment Components

- Legalization
  - Risk components
    - Federal laws, state laws, locality requirements
  - Inherent risk
  - Controls
  - Residual risk
  - Action steps

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This slide has a light blue background with a white geometric shape. It contains a bulleted list of risk assessment components under the heading 'Risk Assessment Components'. The 'Legalization' category includes sub-points for risk components, inherent risk, controls, residual risk, and action steps.

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### Risk Assessment Components

- Opportunities
  - Risk components
    - Competition, revenue potential
  - Inherent risk
  - Controls
  - Residual risk
  - Action steps

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This slide has a light blue background with a white geometric shape. It contains a bulleted list of risk assessment components under the heading 'Risk Assessment Components'. The 'Opportunities' category includes sub-points for risk components, inherent risk, controls, residual risk, and action steps.

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**Risk Assessment Components**

- Defining CRBs
  - Risk components
    - Tiers of CRBs
  - Inherent risk
  - Controls
  - Residual risk
  - Action steps

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**Risk Assessment Components**

- Suitability of your credit union
  - Risk components
    - Regulatory health, audit results, capital levels, expertise and staffing, program components, SARs, CTRs
  - Inherent risk
  - Controls
  - Residual risk
  - Action steps

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**Risk Assessment Components**

- Training
  - Risk components
    - Board, BSA officer, staff
  - Inherent risk
  - Controls
  - Residual risk
  - Action steps

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### Risk Assessment Components

- Audit/review
  - Risk components
    - BSA/AML audit expertise, BSA/AML audit scope, audit frequency, response to audit findings
  - Inherent risk
  - Controls
  - Residual risk
  - Action steps

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### Planning for Banking CRBs

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### Planning

- Research
  - "Must read" documents
    - Cole Memo
    - FinCEN Guidance and Alerts
    - NCUA Guidance
  - State law issues
    - Mississippi Medical Cannabis Program
      - Regulations
      - Licensing

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**Planning**

- Research
  - Talk to other credit unions and banks offering services to CRBs
    - Deposits
    - Loans
    - Other services
  - Review guidance from regulatory authorities
    - FinCEN
    - NCUA

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**Planning**

- Evaluate current infrastructure of credit union
  - Systems
  - Experience with high-risk businesses
  - Staff levels

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**Planning**

- Investigate vendors that can
  - Assist in developing credit union's program
  - Assist in monitoring
  - Assist in training
  - Assist in reviewing credit union's program
  - Provide documentation for accounts, loans, other services

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**Planning**

- Reflect steps in minutes of Board meetings
- Consult legal counsel
- Stay informed regarding legislation and regulations
- Have exit strategy

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**NCUA Cease and Desist Order**

- Live Life Federal Credit Union, February 2021
  - \$69 million CU was providing services to Marijuana Related Businesses and Money Services Businesses without adequate internal controls

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