

Western Bankers Association

Regulatory Compliance Conference and Cannabis Forum

How Risky Is Cannabis Banking?

Presenter: Julia A. Gutierrez

Agenda

- Define Cannabis
- What is a cannabis business or MRB?
- Risks of Banking Cannabis Businesses
- Mitigating and Managing the Risk
- Marijuana Banking Update



Cannabis, Marijuana, CBD, Hemp

- **Cannabis (aka Marijuana)**—psychoactive drug from the Cannabis plant used for medical or recreational purposes
 - Dried leaves, flowers, stems and seeds
 - Contains THC
 - Marijuana extracts
- **CBD (Cannabidiol)**—non-psychoactive chemical compound from marijuana (cousin to THC)
- **Hemp**—strain of Cannabis sativa plant with industrial uses (fibers, fabrics, paper, etc.)

What is a Cannabis or Marijuana Related Business?

No clear definition which can cause:

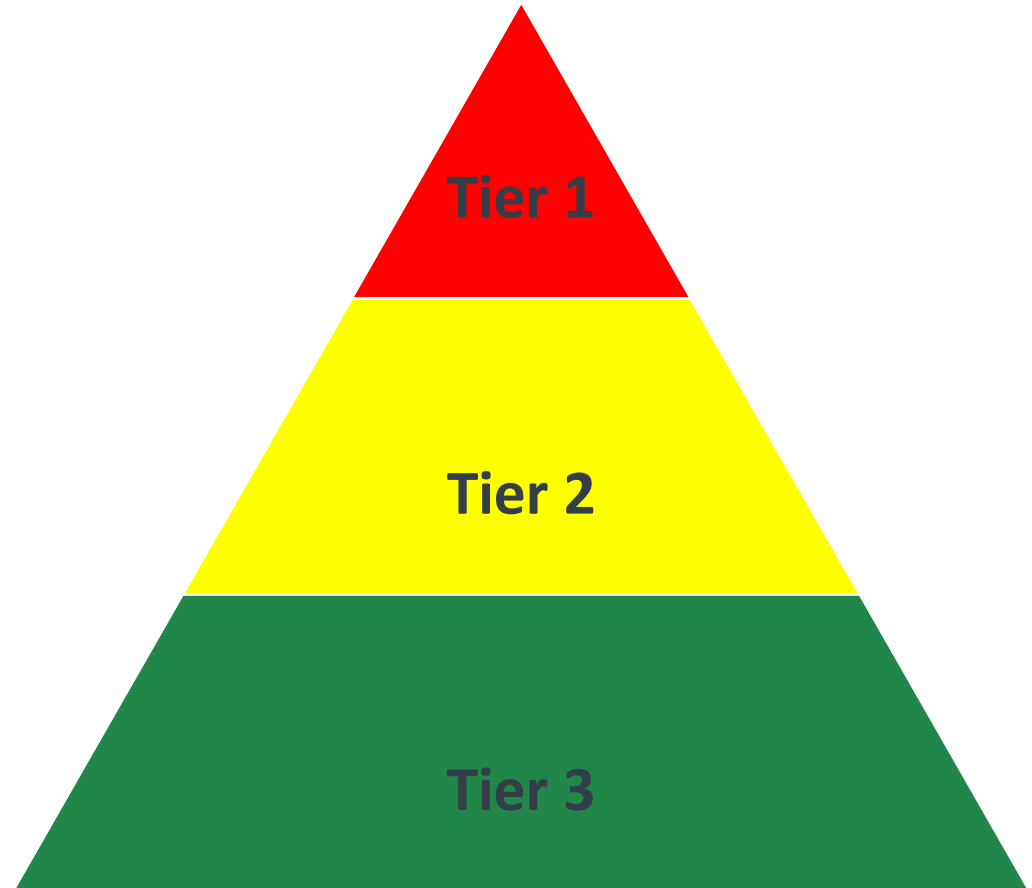
- Regulatory Risk
- Legal Risk
- Compliance Risk

Developed risk-based tier system based on:

- The degree to which a business literally touches marijuana
- The degree to which a business interacts with MRBs

3 Tier Risk Levels

- **Tier 1-** riskiest because they literally touch marijuana at some point along the supply chain; most clearly “manufacture, distribute or dispense marijuana.”
- **Tier 2-** middle of the road; do not directly “manufacture, distribute or dispense marijuana” and are typically not licensed by a state as a “marijuana business” but are focused on providing products and services to Tier I MRBs
- **Tier 3-** are not a marijuana business in the strictest sense; not specifically focused on selling to Tier I MRBs or the marijuana industry and if so, selling is only incidental to their overall business and revenues



Cannabis Business: Guidance

Cole Memo

Sessions Memo

FinCEN Guidance

State VS Federal

The Risks of Cannabis Banking

State VS. Federal

Potential conflict between state and federal law which cause confusion for financial institutions



Cole Memo 2009-2014



- Literal memorandums sent between 2009-2014 sent to all United States Attorneys
- Reconcile state laws with Controlled Substance Act (CSA)
- 8 Enforcement Priorities
 - ✓ Minors
 - ✓ Crime/Gangs/Drug Cartel
 - ✓ Interstate sales (Legalized to Non-Legalized States)
 - ✓ Legalized marijuana as a front of trafficking of illegal drugs or crime
 - ✓ Violence and use of weapons/guns for growing/farming marijuana
 - ✓ Driving Under the Influence
 - ✓ Use/Possession on Federal Land
 - ✓ Possession/Growth on Public Land

Sessions Memo 2018



U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

February 14, 2014

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole 
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Related Financial Crimes

RESCINDED

- Rescinded Cole Memo
- Announced return to the rule of law: Controlled Substances Act
 - ✓ Prohibited cultivation, distribution and possession of marijuana
 - ✓ Those activities may serve as the basis for prosecution of other crimes (money laundering statutes, unlicensed money transmitter statute and BSA)

FinCEN Guidance

Guidance—Trying to find a happy medium under BSA

- CDD
- SAR filing structure
- MRB red flags
- MRB SARs still required

2014

Update—FinCEN expects banks to continue to follow original Cole Memoranda guidance

Mar. 2018

How Risky Is Cannabis Banking?

- Regulatory Risk
- Legal Risk
- Operational
- Compliance Risk



How Risky Is Cannabis Banking?

- Money Laundering – any money traced back to cannabis operations even in states where cannabis operations are legal
 - Legal Risk
 - Operational
 - Regulatory Risk
- Legal Risks – associated with providing financial services, directly or indirectly, to the cannabis related industry
- Compliance and Regulatory Risks – associated with “unknowingly” banking cannabis businesses

How Risky Is Cannabis Banking?



- Increased Regulatory Scrutiny
- Criminal Risk or Liability
- Loss of access to a Federal Reserve master account due to legal complications
- Strategic Risk
- Reputational Risk
- Transactional Risk
- Turning down customer relationships

Risks of Cannabis Banking: The Activity of the Business

- Money Laundering
- Violating Cole Memo Priorities
- Violating State Law
- Illegal Activity
- Vehicle or Front for Other Illegal Activity

The Risks of Cannabis Banking: Expectations

- Robust BSA/AML Program
- No major findings from recent audits or exams
- Effective System of Internal Controls
- Understanding of State Laws
- Effective Processes and Procedures

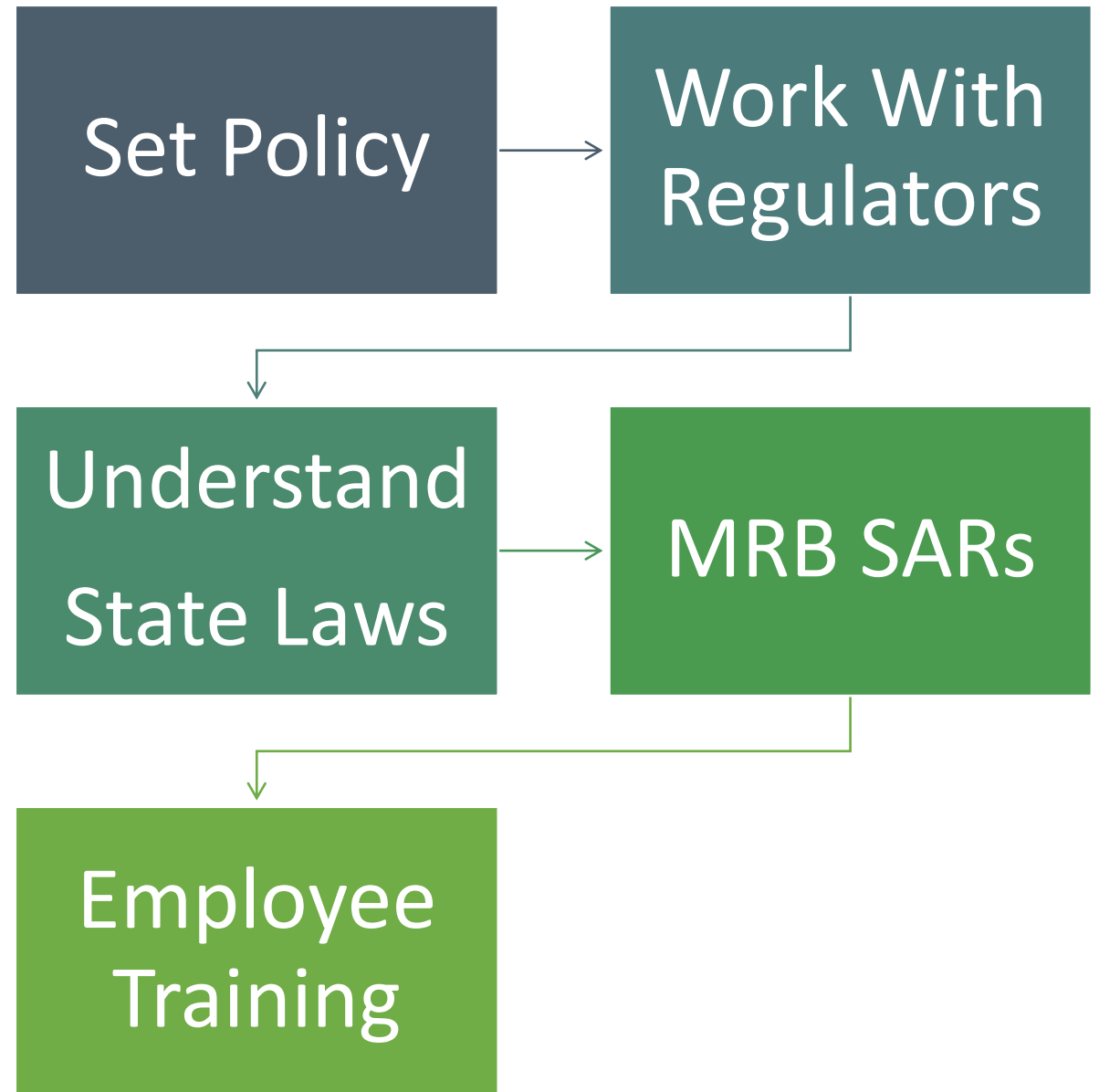
How Risky Is Not Cannabis Banking?

- Ancillary businesses violating federal law by providing goods, services, real estate, etc. to cannabis businesses
- Large amounts of unknown, unreported amounts of cash floating around
- No way to monitor compliance with banking regulations, tax laws, suspicious activity, illegal activity



Banking Cannabis Customers

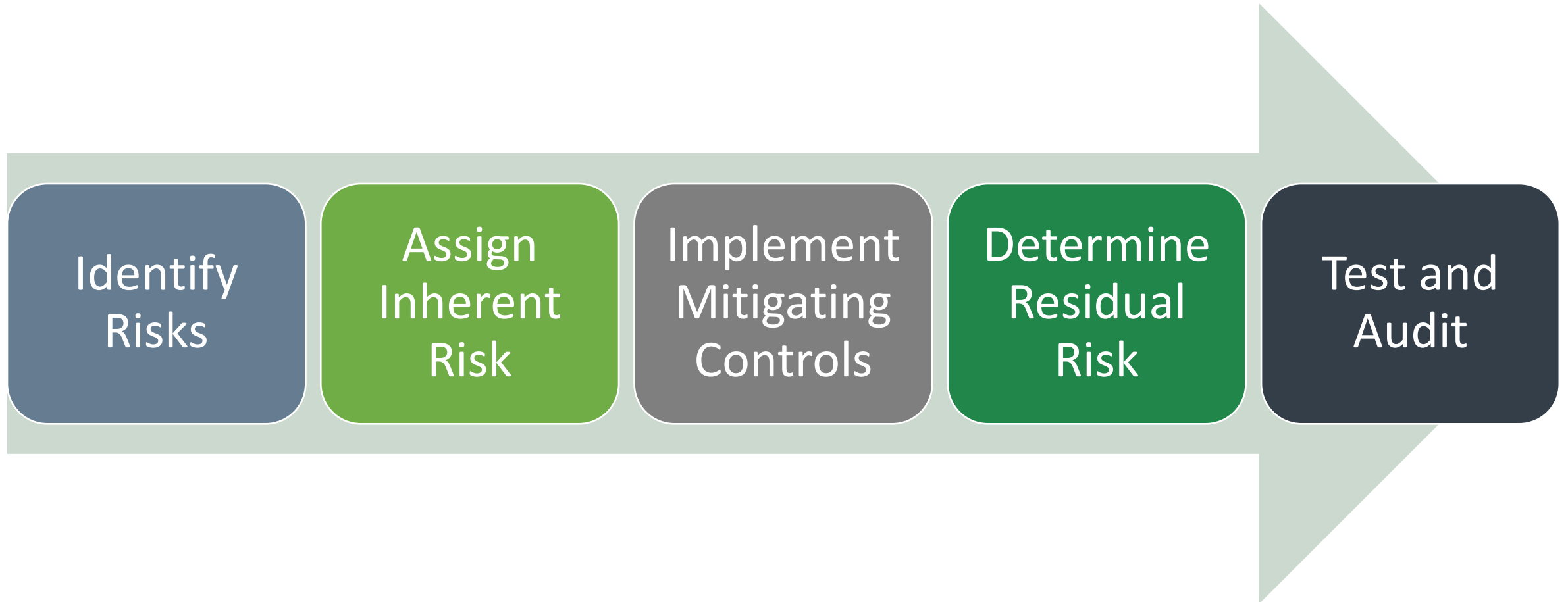
Action Plan to Bank MRB's



Assessing the Risk

- Does this align with the bank's risk profile and strategic goals?
- Is the business licensed or registered with the state?
- What does the ownership and control structure look like?
- Do we thoroughly understand the state laws?
- Do we have the resources to effectively manage these relationships?
- Do we have a compliant and effective BSA/AML Program?

Developing a Risk Assessment



Examples of Mitigating Controls



On-site visits



Requiring licenses at
account opening and
periodically thereafter



Request financial
information about the
business



Onboarding
questionnaire



Trained staff

Develop Policy and Procedures

- Create a Policy specifically designed for serving these businesses.
- There's no such thing as a “proven” MRB banking policy template—even if you use one, it should only serve as a framework
- Banking MRBs is so unique—must have a detailed, dedicated policy, not a tweak to a current BSA/AML policy.
- Updating of procedures and banking technology platforms
- Must address how the bank will fill in the gaps between the capabilities of your current banking systems and the requirements of banking MRBs.

Creating an MRB Banking Policy

Two Schools of Thought:

1. A stand-alone MRB Policy
2. An addendum to your existing BSA/AML Policy

Before participating in MRB banking:

- Ensure you have a strong BSA/AML program with experienced compliance staff
- Have a program with a history of examinations without any significant findings
- BSA deficiencies are rectified prior to initiating your MRB program



Develop An Enhanced Monitoring Program



VERIFY



REVIEW



REQUEST



UNDERSTAND

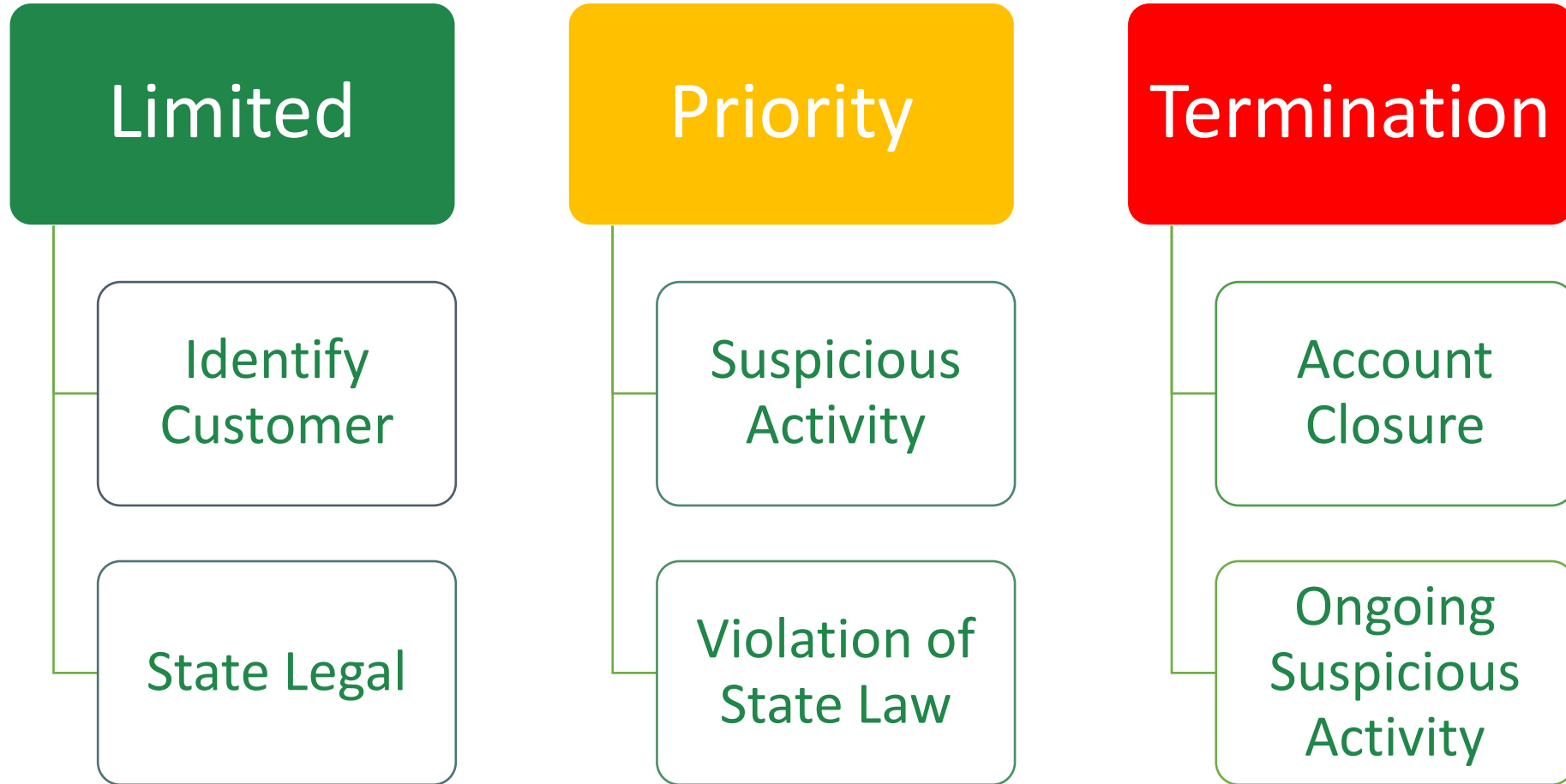


MONITOR



TRAINING

Suspicious Activity Reporting



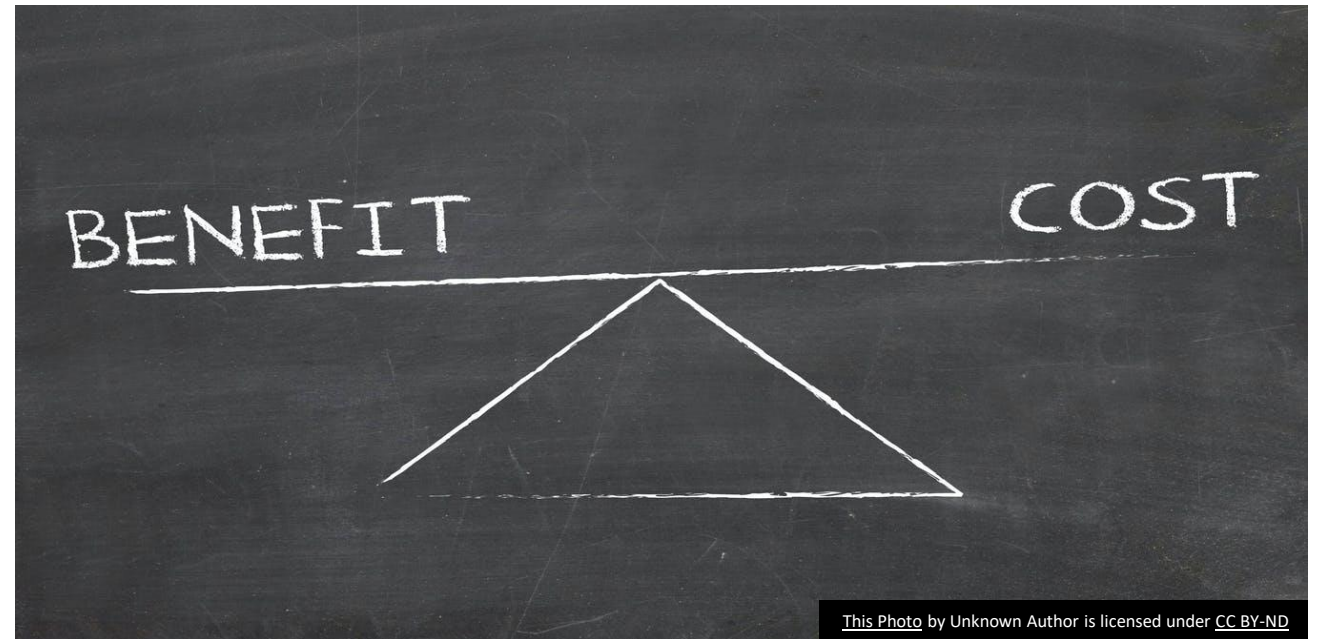
Examples of Red Flags

- Unexplained Revenue
- Sudden Increase
- Competitor Discrepancy
- Rapid Transfers
- Third Party Activity
- Structuring
- Intermingling
- Discrepancy in Financials
- Too Much Cash
- International or Interstate



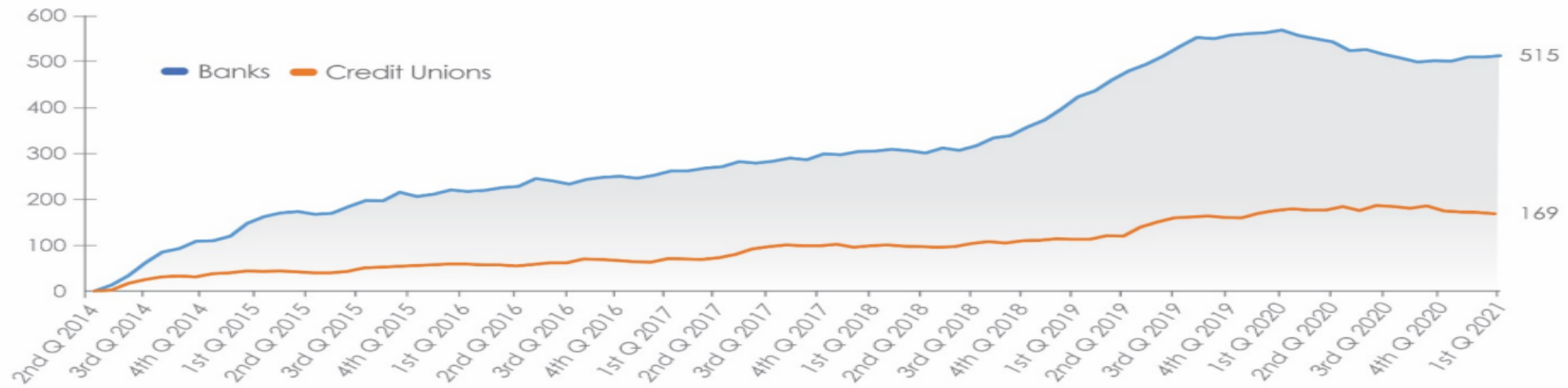
The Cost of Cannabis Banking

- Compliance Costs
- Legal Costs
- Educational Costs
- Logistical Costs
- Reputational Costs



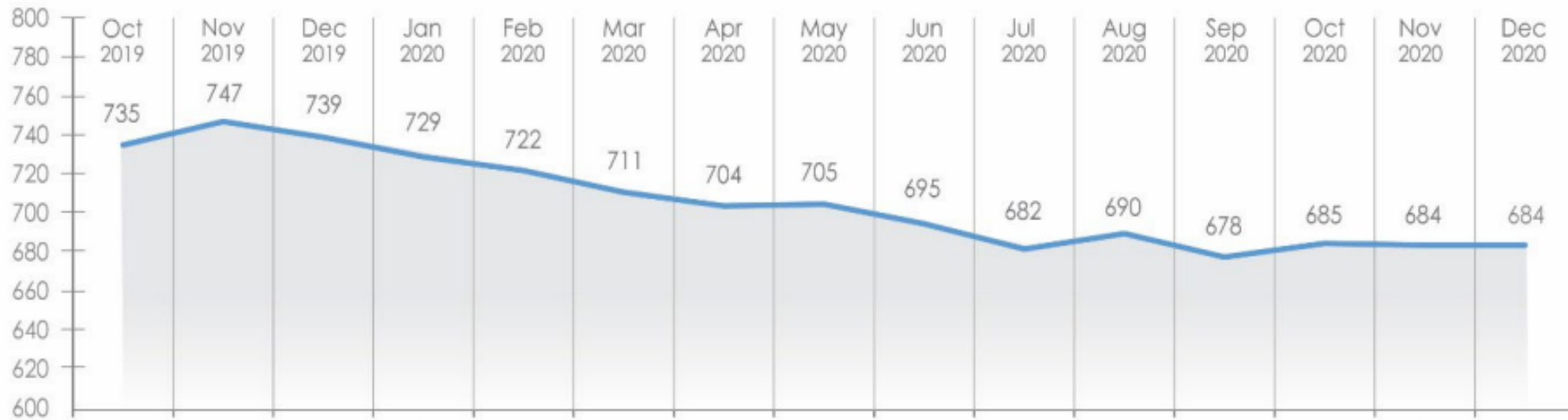
Marijuana Banking Update

Depository Institutions (by type) Providing Banking Services to Marijuana-Related Businesses¹
(SARs filed through 31 December 2020)



FinCEN SAR Filing Data in 2020

Number of Depository Institutions Actively Banking Marijuana-Related Businesses in the United States (Reported in SARs)



Key Takeaways



Determine the risk



Assess the risk



Make a decision

Questions?

Thank you for your participation!
We hope you found value in today's presentation.

If you have any additional questions,
contact Compliance Alliance at 888-353-3933.