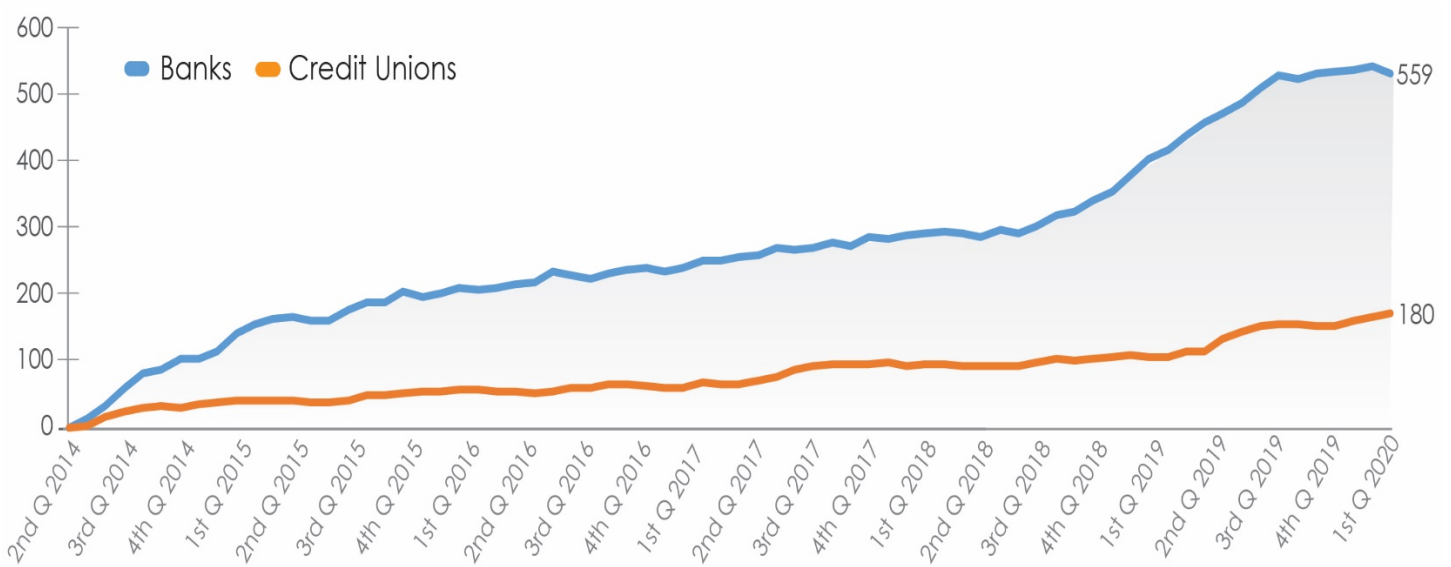




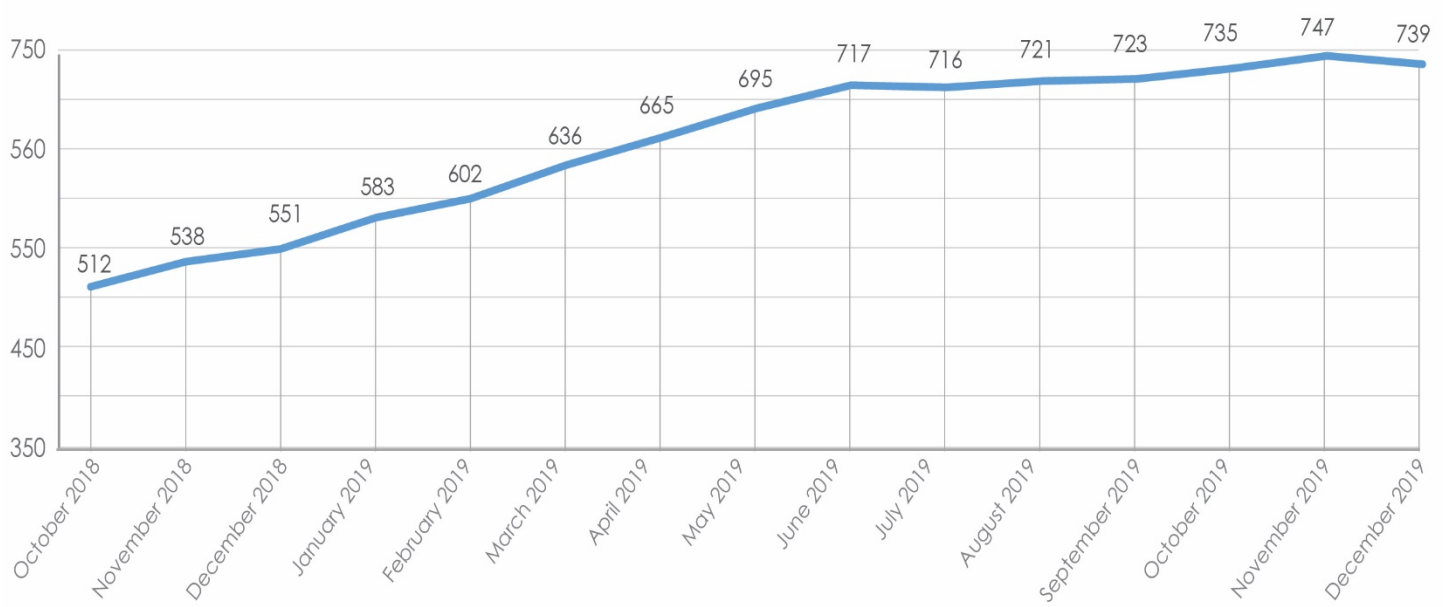
## Marijuana Banking Update

### Depository Institutions (by type) Providing Banking Services to Marijuana-Related Businesses<sup>1</sup> (SARs filed through 31 December 2019)



Short-term declines in the number of depository institutions actively providing banking services to marijuana-related businesses (MRBs) may be explained by filers exceeding the 90 day follow-on Suspicious Activity Report (SAR) filing requirement. Several filers take 180 days or more to file a continuing activity report. After 90 days, a depository institution is no longer counted as providing banking services until a new guidance-related SAR is received.

## Marijuana-Related Businesses in the United States (Reported in SARs)



As of 31 December 2019, FinCEN had received a total of 114,859 SARs using the key phrases associated with MRBs. Several of the SARs contain more than one key phrase, which accounts for the numbers for each key phrase being greater than the total.

- FinCEN received 85,193 SARs from filers using the key phrase “Marijuana Limited.”
- FinCEN received 8,795 SARs from filers using the key phrase “Marijuana Priority.”
- FinCEN received 28,025 SARs from filers using the key phrase “Marijuana Termination.”

## Effect of Hemp Legalization on MRB SAR Filings

The Agriculture Improvement Act of 2018 removed hemp<sup>2</sup> as a Schedule I controlled substance and authorized the United States Department of Agriculture (USDA) to issue regulations governing among other things, domestic hemp production. On December 3, 2019, FinCEN and several banking regulators issued clarifying guidance to banks following the USDA's October 2019 interim final rule that established the regulatory program for legalized hemp production. The guidance states that because hemp is no longer a controlled substance under federal law, banks are not required to file SARs on these businesses solely because they are engaged in the growth or cultivation of hemp in accordance with applicable laws and regulations. The guidance further notes that for hemp-related customers, banks are expected to follow standard SAR procedures, and file a SAR if indicia of suspicious activity warrants.<sup>3</sup>

As of December 2019, of the 739 DIs currently banking MRBs, 203 DIs indicated that they were providing banking services to hemp-related businesses (HRBs), identified by the inclusion of the word "hemp" in the SAR narrative as part of the description of the business or product. Of these 203 DIs, 142 filed additional SARs that did not contain the word "hemp," indicating that they were providing banking services to marijuana-related businesses, leaving 61 DIs that appear to have been servicing HRBs only.

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<sup>1</sup> FinCEN's 2014 guidance specifies three phrases for describing a financial institution's relationship to MRBs in SARs:

- The **Marijuana Limited** filing means the financial institution's due diligence indicates that the MRB does not raise any of the red flags as defined in the Cole Memo and is compliant with the appropriate state's regulations regarding marijuana businesses. The financial institution is providing banking services to the MRB.
- The **Marijuana Priority** filing means the financial institution's due diligence indicates that the MRB may raise one or more of the red flags as defined in the Cole Memo or may not be fully compliant with the appropriate state's regulations regarding MRBs. The financial institution is providing banking services to the MRB while further investigation is being conducted.
- The **Marijuana Termination** filing means the financial institution's due diligence indicates that the MRB raises one or more of the red flags as defined in the Cole Memo, or is not fully compliant with the appropriate state's regulations regarding MRBs, or has decided not to have marijuana related customers for business reasons, and the financial institution has decided to terminate its relationship with the MRB.

Note: The SAR reporting structure laid out in the 2014 guidance remains in place. FinCEN will continue to work closely with law enforcement and the financial sector to combat illicit finance, and we will notify the financial sector of any changes to FinCEN's SAR reporting expectations.

<sup>2</sup> The term "hemp" is defined in the 2018 Farm Bill as "the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol [THC] concentration of not more than 0.3 percent on a dry weight basis." 7 U.S.C. 1639o(1).

<sup>3</sup> Joint Guidance on Providing Financial Services to Customers Engaged in Hemp-Related Businesses issued on 3 December 2019, <https://www.fincen.gov/sites/default/files/2019-12/Hemp%20Guidance%20%28Final%2012-3-19%29%20FINAL.pdf>.