

REGULATORY ALERT

NATIONAL CREDIT UNION ADMINISTRATION
1775 Duke Street, Alexandria, VA 22314

DATE: August 2019

NO: 19-RA-02

TO: Federally Insured Credit Unions

SUBJECT: Serving Hemp Businesses

Dear Board of Directors and Chief Executive Officer:

On December 20, 2018, President Trump signed into law the Agriculture Improvement Act of 2018 (2018 Farm Bill).¹ The 2018 Farm Bill made a number of changes to how hemp is treated under federal law.²

The NCUA is sending this Regulatory Alert to update federally insured credit unions about changes in federal law and regulation related to hemp. This alert serves as interim guidance, and will be updated as needed and once forthcoming regulations and guidelines are finalized by the United States Department of Agriculture (USDA).³

Some credit unions have lawfully operating hemp businesses within their fields of membership. Businesses dealing with hemp and hemp-derived products include manufacturing, distribution, shipping, and retail, among others. With recent changes in federal law, more hemp-related businesses may be founded, and existing ones may expand.

Growth in hemp-related commerce could provide new economic opportunities for some communities, and will create a need for such businesses to be able to access capital and financial services.⁴ Credit unions may provide the customary range of financial services for business accounts, including loans, to lawfully operating hemp related businesses within their fields of membership. The information in this alert is intended to help credit unions better understand what they should consider in providing financial services to lawfully operating hemp businesses.

¹ Pub. L. 115-334.

² Unless otherwise specified, this document uses the term “hemp” as defined in the 2018 Farm Bill: “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 concentration of not more than 0.3 percent on a dry weight basis.”

³ This document summarizes certain laws, regulations, and guidance related to credit unions that provide services to hemp businesses. This alert is not a substitute for these laws, regulations, and guidance. Credit unions that serve hemp businesses need to review the applicable laws, regulations, and guidance, and should seek the advice of qualified legal counsel when warranted.

⁴ The global market for hemp consists of more than 25,000 products in nine submarkets: agriculture, textiles, recycling, automotive, furniture, food and beverages, paper, construction materials, and personal care. “Hemp as an Agricultural Commodity,” Congressional Research Service report RL32725, July 9, 2018.

Summary of Legal Status

As of December 20, 2018, hemp is no longer a controlled substance at the federal level. The 2018 Farm Bill removed hemp from Schedule I of the Controlled Substances Act. However, hemp may not yet be produced lawfully under federal law unless it is produced under the industrial hemp⁵ pilot provisions of the Agricultural Act of 2014 (2014 Farm Bill).⁶

For hemp production to be legal under federal law beyond the 2014 Farm Bill pilot, the USDA must first promulgate regulations and guidelines to implement the hemp production provisions of the 2018 Farm Bill.⁷ The implementing regulations and guidelines will address (a) USDA approval of any State⁸ and Indian Tribe⁹ plans to regulate the production of hemp, and (b) USDA licensing and regulation of hemp producers in a State or territory of an Indian Tribe for which a State or Tribal plan has not been approved by the USDA. The USDA has issued a legal opinion interpreting the 2018 Farm Bill and is working on implementing regulations and guidelines.¹⁰

The production or possession of hemp may remain illegal under some State or Tribal laws. In addition, States and Indian Tribes may more strictly regulate its production than the forthcoming implementing USDA regulations and guidelines. However, States and Indian Tribes may not prohibit the interstate transportation or shipment of hemp or hemp-derived products lawful pursuant to the 2018 Farm Bill or the 2014 Farm Bill.¹¹

In addition, other hemp-related businesses such as manufacturers, distributors, shippers, and retailers of hemp-derived products, and the products themselves, may now or in the future be subject to other federal and state laws and regulations that govern their production, distribution, sale, and use. In particular, the 2018 Farm Bill did not affect or modify the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act. It also did not affect or modify the authority of the Secretary of Health and Human Services or the Commissioner of Food and Drugs to promulgate Federal regulations and guidelines that relate to hemp under the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act.

⁵ The 2014 Farm Bill defines industrial hemp as “the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.”

⁶ Under the 2018 Farm Bill, this pilot program terminates one year after USDA establishes a plan for issuing licenses. 7 U.S.C. 5940.

⁷ 7 U.S.C. 1639r(a)(1)

⁸ The 2018 Farm Bill defines “State” as a State, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

⁹ The 2018 Farm Bill defines “Indian Tribe” as the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

¹⁰ See <https://www.ams.usda.gov/sites/default/files/HempExecSumandLegalOpinion.pdf> and <https://www.ams.usda.gov/publications/content/hemp-production-program-questions-and-answers>.

¹¹ The USDA legal opinion acknowledges, however, that this conclusion related to the 2014 Farm Bill is in tension with a recent federal court decision. *Big Sky Scientific LLC v. Idaho State Police et al.*, No. 19-cv-0040 (D. Idaho Feb. 19, 2019).

Considerations for Credit Unions Serving Hemp-Related Businesses

Credit unions need to be aware of the Federal, State and Indian Tribe laws and regulations that apply to any hemp-related businesses they serve. Credit unions that choose to serve hemp-related businesses in their field of membership need to understand the complexities and risks involved.

While it is generally a credit union's business decision as to the types of permissible services and accounts to offer, credit unions must have a Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) compliance program commensurate with the level of complexity and risks involved. In particular, credit unions need to incorporate the following into their BSA/AML policies, procedures, and systems:

- Credit unions need to maintain appropriate due diligence procedures for hemp-related accounts and comply with BSA and AML requirements to file Suspicious Activity Reports (SARs) for any activity that appears to involve potential money laundering or illegal or suspicious activity. It is the NCUA's understanding that SARs are not required to be filed for the activity of hemp-related businesses operating lawfully, provided the activity is not unusual for that business. Credit unions need to remain alert to any indication an account owner is involved in illicit activity or engaging in activity that is unusual for the business.
- If a credit union serves hemp-related businesses lawfully operating under the 2014 Farm Bill pilot provisions, it is essential the credit union knows the state's laws, regulations, and agreements under which each member that is a hemp-related business operates. For example, a credit union needs to know how to verify the member is part of the pilot program. Credit unions also need to know how to adapt their ongoing due diligence and reporting approaches to any risks specific to participants in the pilot program.
- When deciding whether to serve hemp-related businesses that may already be able to operate lawfully—those not dependent on the forthcoming USDA regulations and guidelines for hemp production—the credit union needs to first be familiar with any other federal and state laws and regulations that prohibit, restrict, or otherwise govern these businesses and their activity. For example, a credit union needs to know if the business and the product(s) is lawful under federal and state law, and any relevant restrictions or requirements under which the business must operate.¹²

Lending to a lawfully operating hemp-related business is permissible. Any such lending credit unions engage in must be done in accordance with NCUA's regulations for lending, in particular Part 723 Member Business Loans; Commercial Lending.¹³ Credit unions also need to ensure such lending is conducted safely and soundly, consistent with sound commercial lending practices. This includes appropriate underwriting standards that consider the borrower's

¹² For example, certain hemp-derived products may now or in the future be regulated by state health departments and/or the U.S. Food and Drug Administration.

¹³ Federally insured state-chartered credit unions would also need to comply with applicable state law and regulation. In states that have a member business loan rule approved by the NCUA Board, federally insured state-chartered credit unions would be subject to that rule and not Part 723 of NCUA's rules and regulations.

management ability and experience with this line of business, the financial condition of the borrower, and the borrower's ability to meet all obligations and service the debt.¹⁴

Conclusion

Many credit unions have a long and successful history of providing services to the agriculture sector. Hemp provides new opportunities for communities with an economic base involving agriculture. The NCUA encourages credit unions to thoughtfully consider whether they are able to safely and properly serve lawfully operating hemp-related businesses within their fields of membership.

The NCUA will issue additional guidance on this subject once the USDA's forthcoming regulations and guidelines are finalized.

Sincerely,

Rodney E. Hood
Chairman

¹⁴ Credit unions should also consider the risk certain hemp-related businesses with business models heavily dependent on products subject to federal or state health related laws and regulations could be affected by any new restrictions imposed in the future.