

Five Federal Financial Agency Heads Issue Letters Regarding Provision of Financial Services to the Hemp Industry

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As this article was being prepared for publication, the National Credit Union Administration issued a Regulatory Alert providing additional "interim guidance" regarding the service of hemp businesses by federally insured credit unions. [Click here to learn more about the NCUA's latest Regulatory Alert.](#)

The heads of five federal financial agencies have issued letters in response to a request from Sen. Michael Bennet (D-Colo.) for guidance related to the financial services sector's ability to serve the hemp industry. Although the agencies largely demurred, their responses nevertheless provide some useful information and may provide some measure of comfort to both hemp companies and the financial institutions with which they seek to partner. To begin with, each of the chairpersons agreed on a few things, including that the 2018 Farm Bill "removed hemp from the federal list of controlled substances, affirming hemp as a legal agricultural commodity, and authorizing the production, consumption, and sale of hemp and hemp-derived products in the United States," as stated by Comptroller of the Currency Joseph Otting. Each letter also noted that the determination whether to work with any particular customer is a "bank business decision[]" that must be made according to each financial institution's identification and assessment of the attendant risks associated with the proposed customer relationship, and, in the words of Mr. Otting, is a "matter[] of banker judgement." Federal Reserve Chairman Jerome Powell cited the Bank Secrecy Act in support of the Board's expectation that banking organizations will apply their own "adequate policies, procedures, and processes to address appropriately the risks associated with the particular relationship." As such, the regulators refused to provide advance guidance essentially preclearing financial institutions to service any and all hemp businesses. However, the letters also made it clear that the financial industry should not write off the hemp industry as a whole, implying that the provision of financial services to legally operated businesses will not raise compliance issues. As Federal Deposit Insurance Corporation Chairwoman Jelena McWilliams put it, the FDIC "encourages financial institutions to assess the risk posed by individual customer relationships on a case-by-case basis,

rather than declining to provide banking services to entire categories of customers." Farm Credit Administration Acting Chief Executive Officer Jeffery Hall adverted to an earlier FCA guidance letter to all FCA System institutions regarding hemp. In that April 11, 2019, letter, the FCA stated that institutions should "develop policies and procedures for financing hemp production or processing," including, at a minimum, an analysis of the following:

- Applicable federal and state law
- Hemp production conditions
- Hemp crop marketing opportunities
- Appropriate underwriting standards, such as the creditworthiness and experience of the producer or processor

National Credit Union Administration Chairman Rodney Hood stated that he "shares" Sen. Bennet's concern "that hemp farmers and processors may lack access to the financial services system. Full access to the system will better enable these farmers and processors across the country to make investments in their businesses and create jobs." Chairwoman McWilliams stated that the FDIC has "taken a number of steps to inform financial institutions and our examiners" regarding the legal changes made by the 2018 Farm Bill and specifically the legalization of hemp at the federal level. She noted that she discussed the changes with community bankers during the March 28, 2019, meeting of the Advisory Committee on Community Banking and that she continues to personally discuss the issue with bankers during outreach events. According to Chairwoman McWilliams's letter, the FDIC's continued training of its examiners includes instructions that the suspicious activity reporting requirements imposed by the Financial Crimes Enforcement Network for cannabis do not apply to hemp. Several letters referred to the fact that the 2018 Farm Bill charged the U.S. Department of Agriculture with implementing the new federal regulatory program for hemp. Per NCUA Chairman Hood, "Unfortunately, until the Department of Agriculture completes their regulations and guidelines for this program, the uncertainty for financial institutions will likely remain." Each of the agency heads committed to continue to monitor the issue and to provide additional guidance as necessary. In the meantime, financial institutions are advised to recognize that the hemp industry is now legal under federal law and, as such, there is no categorical prohibition on their provision of lending services to hemp industry businesses. Rather, per Comptroller Otting, financial institutions should simply apply their own "policies, procedures, and practices" to "identify and assess the risks associated with each customer relationship and design and implement appropriate controls to manage those risks effectively."

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