

National Credit Union Administration Gives Credit Unions the Green Light to Serve Lawfully Operating Businesses

August 27, 2019

On August 20, 2019, the National Credit Union Administration [issued a regulatory alert](#) to all federally insured credit unions providing "interim guidance" regarding the service of hemp businesses by credit unions. The alert, signed by Chairman Rodney Hood, states that "[c]redit 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." Although the alert recognizes that "[l]ending to a lawfully operating hemp-related business is permissible," the alert provides several legal considerations for credit unions serving hemp-related businesses. Per the alert, credit unions must:

- Maintain appropriate due diligence procedures for hemp-related accounts.
- Maintain an adequate Bank Secrecy Act and Anti-Money Laundering compliance program. The NCUA states its "understanding" that suspicious activity reports (SARs) are no longer required for lawfully operating hemp businesses, so long as the business's activity is not "unusual." However, SARs must still be filed for any activity that appears to involve money laundering or illegal or suspicious activity.
- Understand the state laws, regulations, and agreements governing any hemp business that is lawfully operating under the 2014 Farm Bill pilot provisions, including how to verify that a business is part of the pilot program. Although the 2018 Farm Bill removed hemp from Schedule I of the Controlled Substances Act, hemp may not be produced under that bill until the U.S. Department of Agriculture promulgates implementing regulations required by the bill. As such, hemp may still only be produced under the 2014 Farm Bill pilot program provisions.

- Recognize any other federal and state laws or regulations that may affect these businesses' activities, including whether the business's products are lawful and any relevant restrictions under which the business must operate. For example, hemp-derived products must still comply with applicable federal regulations issued under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act.
- Ensure that lending to hemp businesses is done in accordance with NCUA regulation part 723, "Member Business Loans; Commercial Lending" (unless the credit union is in a state that has a member business loan rule approved by the NCUA in place of part 723).
- Ensure that lending is conducted consistent with sound commercial lending practices, including application of appropriate underwriting standards and consideration of the borrower's management ability, experience, financial condition, and ability to service the debt.

In the alert, the NCUA recognized the rapid and continuing growth of hemp-related commerce and the economic opportunities it creates as well as the need for access to capital and financial services. According to the alert, 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." The "interim guidance" provided by the alert will be "updated as needed and once forthcoming regulations and guidelines are finalized by the [USDA]." The 2018 Farm Bill requires the USDA to issue regulations providing an approval process for state and Indian tribe plans to regulate production of hemp and for the licensing and regulation of hemp producers in states or territories that are not subject to a USDA-approved plan. The USDA is still drafting those regulations.

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