

Are Bank Regulators "Mellowing Out" on Cannabis?

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Federal bank regulators no longer require banks to submit suspicious activity reports (SARs) for legally authorized hemp business transactions, absent another required circumstance.

Hemp is a form of non-psychoactive cannabis and was removed from the Controlled Substances Act by the 2018 Farm Bill. Consistent with the Farm Bill, the Federal Reserve Board released long-awaited [guidance](#) on December 3, 2019, intended to allow the legal hemp industry to more easily access needed financial services. Notably, every federal banking regulatory agency weighed in on this guidance, not just the Federal Reserve Board, which appears to be the first uniform federal response to financial issues relating to this emerging industry.

By some estimates, [the global industrial hemp market is projected to grow from \\$4.6 billion in 2019 to \\$26.6 billion by 2025](#). These projections reflect exponential growth in the use and sale of hemp products (ranging from CBD oil to textiles), and exponential need for access to financial services.

Hemp's cousin, marijuana (a psychoactive form of cannabis), remains federally illegal, listed as a Schedule I drug under the Controlled Substances Act. While a majority of states have legalized marijuana for medical or recreational use, its continued status imposes upon financial institutions an extra degree of due diligence and special care, including lower-priority SARs in all cases.

Equally noteworthy is what the guidance does not say — it does not mention CBD or the legality of those products. This is a glaring omission considering the status of and reason for excitement about the hemp industry. The financial sector came just as far as the Farm Bill in acknowledging that hemp cultivation and processing is not legal in the United States, but not one step further. While that is certainly progress, lingering issues related to the legality of CBD products remain and will likely not be resolved until the FDA intervenes meaningfully.

In September 2019, the U.S. House of Representatives passed the Secure and Fair Enforcement (SAFE) Banking Act of 2019, which would allow financial institutions and insurance companies to service state-legal marijuana businesses. However, marijuana would remain an illegal controlled

substance. In November 2019, the House Judiciary Committee approved the Marijuana Opportunity Reinvestment and Expungement Act, which would remove marijuana from the Controlled Substances Act and require federal courts to expunge convictions for marijuana offenses. It is unclear whether the U.S. Senate will consider these bills in the near term. We will continue to monitor the legal landscape and provide updates.

Financial institutions that want to service the hemp industry should consider that the cornerstone of compliance is conducting appropriate and complete due diligence before establishing the relationship. To mitigate risk of noncompliance, banks should consider developing a plan and procedures to ensure appropriate due diligence and avoid regulatory risks inherently associated with the cannabis industry.

Carlton Fields advises clients in the cannabis and hemp industry on an array of business and regulatory matters. Attorneys in our national cannabis group have extensive legal knowledge in a multitude of areas that affect cannabis and hemp-related businesses — including banking, financial services, real estate, employment, and products — and work together to analyze issues and create solutions for businesses operating in this space.

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