

One Minute Memo®



National Credit Union Administration Issues Statement About Serving Hemp Businesses

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Following last year's passage of the 2018 Farm Bill, the National Credit Union Administration (NCUA) issued a [regulatory update](#) in August of 2019 to federally insured credit unions. Citing growth in hemp-related commerce, the NCUA emphasized the need for credit unions to understand the gamut of regulation across jurisdictions in order to lawfully lend to hemp-related businesses. Within its memorandum to members, the NCUA provided: 1) a summary of repercussions generated by the 2018 Farm Bill, 2) specific compliance program concerns with regard to the Bank Secrecy Act (BSA) and Anti-Money Laundering Act (AML), and 3) considerations under existing NCUA regulations for lending.

As to the effects of the 2018 Farm Bill, the NCUA highlighted three points. **First**, as of December 20, 2018, hemp is no longer designated as a federally controlled substance. The industrial hemp pilot provisions under an earlier 2014 Farm Bill govern the lawful production of hemp; noncompliant production remains illegal. Under the 2018 Farm Bill, this pilot program will be terminated one year after the issuance of final hemp regulations and guidelines from the USDA. **Second**, the NCUA cautioned that notwithstanding these federal developments, state and Indian Tribe laws may still prohibit the production or possession of hemp. Yet, it also noted that state and Indian Tribes laws cannot prohibit the transportation of products produced lawfully under federal law. **Last**, the 2018 Farm Bill does not modify other existing statutes, including the Federal Food, Drug, and Cosmetic Act and Public Health Service Act, and existing regulations thereof. Nor does the bill affect the authority of the Health and Human Services Secretary or FDA Commissioner to promulgate new regulations under existing statutory powers.

Apart from the 2018 Farm Bill, state and Indian Tribe laws, the NCUA underscored several compliance program considerations for credit unions stemming specifically from the Bank Secrecy Act (BSA) and Anti-Money Laundering Act (AML). **First**, as it otherwise would with regular accounts, credit unions need to maintain due diligence programs and file statutorily-required Suspicious Activity Reports (SAR) with respect to hemp-related accounts. However, absent unusual or unlawful activity for the account, credit unions need not typically file such reports. The NCUA instead stressed the need for robust compliance systems to detect unusual suspicious activities warranting such filings. **Second**, credit unions that service hemp-related businesses operating under the 2014 Farm Bill pilot provisions need to also understand the state laws, regulations, and agreements under which such businesses operate. For example, credit unions need to verify compliance of hemp businesses to the 2014 Farm Bill pilot program and adapt compliance programs to handle specific risks posed by pilot program participants. **Last**, when deciding whether to serve hemp-related businesses, credit unions also need to consider other applicable federal and state laws. For example, hemp products may soon fall into the purview of forthcoming FDA regulations.

In addition to the federal, state, and Indian Tribe regulatory landscape, the NCUA also stressed that members need to be compliant with internal NCUA regulations, including those on commercial lending and underwriting. For example, the NCUA recognized that credit unions ought to consider the risks posed by businesses that rely on products subject to ever-changing federal and state health-related regulations.

The NCUA's regulatory update serves as yet another reminder of the complexity associated with hemp-related regulations across all levels of government. Seyfarth Shaw's Cannabis Law Practice Group and Consumer Financial Services Practice Group continue to monitor this space and are ready to assist both current and prospective clients with navigating this complicated and dynamic regulatory regime.

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