

# NCUA LETTER TO CREDIT UNIONS

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

DATE: June 2020 LETTER NO: 20-CU-19  
TO: Federally Insured Credit Unions  
SUBJ: BSA/AML

Dear Boards of Directors and Chief Executive Officers:

In August 2019, the NCUA issued NCUA Regulatory Alert, 19-RA-02, [Serving Hemp Businesses](#), to provide interim guidance related to the passage of the Agriculture Improvement Act of 2018 (2018 Farm Bill). This letter's purpose is to provide additional information for credit unions that are serving, or considering serving, legal hemp-related businesses, as they, too, have been affected by the COVID-19 pandemic. Like 19-RA-02, this letter is advisory and provides no new expectations or requirements for credit unions.

The [2018 Farm Bill](#) removed hemp from Schedule I of the Controlled Substances Act and directed the U.S. Department of Agriculture (USDA) to establish a national regulatory framework for hemp production in the United States. In response, USDA established the U.S. Domestic Hemp Production Program through an [interim final rule](#),<sup>1</sup> which outlines provisions for the USDA to approve plans submitted by states and Native American tribes for the domestic production of hemp, and outlines minimum requirements that all hemp producers must meet, including:

- licensing requirements;
- maintaining information on the land on which hemp is produced;
- procedures for testing delta-9 tetrahydrocannabinol (THC) concentration levels;
- procedures for disposing of non-compliant plants;
- compliance provisions, and
- procedures for how to handle violations of the production requirements.

While USDA must approve state or tribal plans before they are implemented, the interim final rule does not preempt or limit any law of a state or Native American tribe that regulates the production of hemp and is more stringent than the 2018 Farm Bill. The rule also establishes a federal plan to license, monitor, and regulate hemp production in states or territories of Native American tribes that do not prohibit hemp production and do not have their own USDA-approved plan.

It is important that credit unions stay current with the federal, state and Native American tribal laws and regulations that apply to any hemp-related businesses they serve. The information in this letter is not an interpretation of the USDA's interim final rule or other applicable federal or state laws, and does not provide definitive guidance related to the various legal requirements applicable to credit unions that want to provide financial services to hemp-related businesses. The inclusion or exclusion of various matters does not signify their importance.

If you have legal questions about a hemp-related business, we encourage you to consult qualified counsel and the appropriate federal and state authorities. To stay current on the latest from the USDA, you can [subscribe to the USDA mailing list for updates](#).

The following are responses to some frequently asked questions.

**1. What is the status of the USDA's interim final rule on hemp production?**

On October 31, 2019, the USDA issued its [interim final rule](#) on hemp production and it went into effect immediately. In the preamble to the interim final rule, the USDA stated that it will publish a final rule within two years.<sup>2</sup>

A portion of the USDA's website is dedicated to [hemp-related resources](#). The USDA also has a [webpage dedicated to rulemaking documents](#), including the interim rule and a legal opinion on hemp production and transportation authorities.

**2. Does the interim rule mean that hemp can be legally produced in every state?**

No. The 2018 Farm Bill did not preempt state or tribal laws regarding the production of hemp that are more stringent than federal law. Further, hemp may be produced only under the 2018 Farm Bill with a valid USDA-issued license or under a USDA-approved state or tribal plan.

Besides production authorized by licenses granted under the 2018 Farm Bill for the 2020 growing season, hemp may also be produced pursuant to research and development initiatives authorized by the Agricultural Act of 2014 (2014 Farm Bill). This authority expires one year after the effective date of the USDA interim final rule (November 1, 2020). A number of [states](#) have opted to permit hemp production under the 2014 Farm Bill authorities for the 2020 growing season.

**3. How can I determine if a state or Native American tribe has submitted a hemp production plan to the USDA for approval?**

The USDA provides [detailed information on the status of state and tribal hemp production plans submitted for approval](#), including notes about plans that are in development, states and Native American tribes that plan to operate under the 2014 Farm Bill for the 2020 growing season, and a list of approved plans. Copies of approved plans can be downloaded from the USDA site.<sup>3</sup>

**4. What if the state or tribal territory we serve has not had a hemp production plan approved by the USDA?**

A hemp producer that does not have a license pursuant to a USDA state or tribe approved plan has two options to receive authorization to produce hemp.

- a. Until November 1, 2020, [states](#) may allow hemp production under the research and development initiatives permitted by the 2014 Farm Bill.
- b. Hemp producers in states and tribal territories that do not prohibit hemp and that do not intend to develop and submit a plan to the USDA can also [apply](#) for a hemp production license under the USDA's hemp production program.<sup>4</sup>

**5. Who is responsible for ensuring that hemp producers comply with a state, Native American tribe, or USDA-approved hemp production plan?**

According to USDA, for the states and tribal territories with approved plans, the state and tribal governments will be responsible for ensuring that hemp producers abide by the approved plans regulating hemp production. Producers licensed by USDA in states and tribal areas without a USDA-approved production plan will be subject to regulation and licensure by the USDA (provided the state

or tribal government has not prohibited hemp production) and may also be subject to additional, stricter state regulatory restrictions around production that are not otherwise codified in a USDA-approved plan.

In developing the compliance requirements of state and tribal plans, USDA recognized that there may be significant differences in how states and Native American tribes administer their respective hemp programs. Accordingly, as long as the requirements of the 2018 Farm Bill are met (at a minimum), states and Native American tribes are free to determine if a licensee under their applicable plan has taken reasonable steps to comply with plan requirements. As noted previously, USDA will be regulating and overseeing hemp producers licensed by the USDA in states and tribal areas without a USDA-approved state or tribal production plan.

**6. Aside from hemp production, does the USDA interim final rule cover other hemp-related businesses such as manufacturing, processing, distribution, shipping, and retail?**

No. The USDA rule only sets forth the requirements for engaging in hemp production as authorized by the 2018 Farm Bill. While the USDA notes that the rule “...will also provide sorely needed guidance to the many stakeholders whose coordinated efforts are critical to the success of the domestic hemp production economy...” there is no uniform state or federal system of regulations, plans, or licenses that applies to other hemp-related businesses at this time.

While states do impose requirements on certain other types of hemp-related businesses, absent a uniform system, credit unions must be aware of the rules that apply in the individual states or tribal territories in which they serve other hemp-related businesses.

In addition, as noted in [NCUA’s August 2019 Regulatory Alert](#), other hemp-related businesses may now, or in the future, be subject to other federal and state laws and regulations that govern the production, distribution, sale, and use of hemp products. In particular, the 2018 Farm Bill did not affect or modify the [Federal Food, Drug, and Cosmetic Act](#) (FD&C 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. The U.S. Food and Drug Administration (FDA) has published [substantial resources](#) addressing hemp.

**7. Where can I learn more about FDA requirements applicable to cannabis-derived products, including cannabidiol (CBD)?**

The FDA has noted that it is aware of the significant interest in cannabis-derived products and has published a number of [resources that address cannabis and cannabis-derived products, such as CBD](#).

Despite the passage of the 2018 Farm Bill and despite the fact that certain states permit and regulate businesses that manufacture and sell cannabis-derived products, including CBD, the FDA has reaffirmed that the legality of the sale of CBD products “depends, among other things, on the intended use of the product and how it is labeled and marketed.”<sup>5</sup> The FDA has also reiterated that “[e]ven if a CBD product meets the definition of ‘hemp’ under the 2018 Farm Bill..., it still must comply with all other applicable laws, including the FD&C Act.”<sup>6</sup>

Further, depending on the type of CBD product at issue, the nature of claims made about CBD products by businesses (including medical claims) and whether businesses infuse CBD into food and beverages or dietary supplements will determine whether or not the subject businesses are violating the FD&C Act and other applicable federal regulations around consumer products and consumer safety.

**8. Has the Financial Crimes Enforcement Network (FinCEN) provided any guidance related to hemp?**

Yes. FinCEN, along with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, in consultation with the Conference of State Bank Supervisors, issued a [joint statement on the provision of financial services to customers engaged in hemp-related businesses](#). The statement was issued “to provide clarity regarding the legal status of commercial growth and production of hemp and relevant requirements for banks under the Bank Secrecy Act (BSA) and its implementing regulations.”

The joint statement aligns with the information the NCUA provided in its [2019 Regulatory Alert](#). It also confirmed that FinCEN will issue additional guidance after further reviewing the USDA interim rule.

**9. Will NCUA examinations conducted in 2020 cover hemp?**

In 2020, NCUA examiners will be collecting data through the examination process concerning the types of services credit unions are providing to hemp-related businesses. This data collection is intended only to help the agency better understand how it can assist credit unions serving hemp-related businesses.

**10. Does the NCUA prohibit credit unions from providing services to hemp-related businesses?**

No. Many credit unions have a long and successful history of providing services to the agriculture sector. 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. 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 hemp-related businesses.

**11. What should a credit union board consider when evaluating whether to provide services to a hemp business?**

Credit unions need to be aware of the federal, state, and Native American tribal laws and regulations that apply to any hemp-related businesses they serve. Credit unions that choose to serve hemp-related businesses in their fields of membership need to understand the complexities and risks involved, and ensure they have the necessary expertise and resources to conduct this activity safely and soundly and in compliance with applicable laws and regulations.

**12. Can a credit union provide loans to a hemp-related business?**

Lending to a lawfully operating hemp-related business is permissible. Any such lending credit unions engage in must be done in accordance with all applicable federal and state laws and regulations for lending (in particular, part 723, [Member Business Loans; Commercial Lending](#), or the state equivalent).

Credit unions must also ensure such lending is conducted safely and soundly, consistent with sound commercial lending practices. This includes appropriate underwriting standards that consider the borrower’s 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.

**13. What is the credit union expected to do to ensure the hemp business is operating lawfully?**

As with any account, credit unions need to maintain appropriate due diligence procedures for hemp-related accounts. The needed level of due diligence is a business decision credit unions must make individually and can vary depending on the product. For example, the level of due diligence needed for a large business loan would likely be higher than what is needed for a deposit received from a

hemp-related business. Credit unions may want to consult with legal counsel when determining the appropriate level of due diligence.

As part of a credit union's overall BSA/AML compliance program, the NCUA expects each credit union to employ sufficient customer due diligence procedures to reasonably ensure that credit union member businesses producing or selling hemp-related products are compliant with applicable laws and regulations. Credit unions should verify that hemp growers possess a valid state or USDA license to grow hemp. However, credit unions are not expected to serve as the enforcement authority tasked with policing the hemp industry for illegal activity.

The NCUA expects credit unions to remain alert to any indication an account owner is involved in any illicit or unusual activities. Credit unions must comply with BSA and AML requirements to file a Suspicious Activity Report (SAR) for any activity that appears to involve potential money laundering or illegal or suspicious activity.

**14. Can a credit union decide not to serve hemp-related businesses?**

While 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 decision to serve any business is made by each individual credit union.

**15. Is there a list of credit unions that serve hemp-related businesses?**

The NCUA does not maintain a list of credit unions serving hemp-related businesses at this time.

**16. Do credit unions need to file marijuana related SARs on legally operating hemp businesses, provided the activity is not unusual for that business?**

No. Provided the credit union reasonably believes they are operating lawfully and the activity is not unusual for that business, marijuana-related SARs are not required to be filed for the activity associated with a hemp-related business. Credit unions must remain alert to any indication an account owner is engaging in illicit or unusual activities and should follow current FinCEN guidance for filing regular SARs when they suspect the business is engaging in illicit, suspicious or unusual activity.

**17. Where can I learn more?**

The USDA has published numerous [resources dedicated to providing further guidance related to hemp](#).

Credit unions with questions regarding state or Native American tribal laws and regulations should contact the state or Native American tribe government. The USDA has provided a [resource page](#) that contains relevant state and Native American tribe contact information.

Credit unions with hemp-related food, drug, and cosmetic questions should contact the [FDA](#) and relevant parties within state and tribal governments.

Lawful hemp businesses provide exciting new opportunities for rural communities, and credit unions should carefully consider whether they can safely and properly serve lawfully operating hemp-related businesses within their fields of membership. To that end, and as described in this letter, credit unions must be aware of the federal, state, and Native American tribal laws and regulations that apply to any hemp-related businesses they serve, as well as the complexities and risks involved.

The NCUA encourages credit unions that are serving, or considering serving, hemp-related businesses to review all available information related to this evolving industry. As more information becomes available, the NCUA will continue to provide additional guidance.

Sincerely,

/s/

Rodney E. Hood  
Chairman

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<sup>1</sup> The interim regulation is effective October 31, 2019 through November 1, 2021. It governs the production of hemp under the 2018 Farm Bill, and does not affect industrial hemp that was or is being cultivated under the 2014 Farm Bill programs (that industrial hemp remains subject to the requirements of the 2014 Farm Bill).

<sup>2</sup> The interim final rule would expire on October 31, 2021, if not replaced by a final rule before then.

<sup>3</sup> The USDA has provided [specific guidance detailing the requirements for state and tribal hemp production plans](#).

<sup>4</sup> States and Native American tribes can place further restrictions on hemp production.

<sup>5</sup> See FDA Regulation of Cannabis and Cannabis-Derived Products, Including Cannabidiol (CBD), Questions and Answers (Question 8), available at <https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-including-cannabidiol-cbd>.

<sup>6</sup> *Id.*

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