

# Federal Banking Agencies Open a Pathway to the Provision of Banking Services to Hemp-Related Businesses

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On December 3, 2019, in a rare public statement regarding the provision of banking services to cannabis- or hemp-related businesses, the Federal Banking Agencies, including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, and the Financial Crimes Enforcement Network (“FinCEN”), in consultation with the Conference of State Bank Supervisors, issued joint guidance addressing the legal status of hemp growth and production, the Bank Secrecy Act (“BSA”), and anti-money laundering (“AML”) requirements for banks that provide services to hemp-related businesses.

## De-Scheduling of Hemp

The Interagency Guidance<sup>1</sup> provides banks with an overview of the legal status of hemp in the US. Specifically, it discusses the Agriculture Improvement Act of 2018 (the “2018 Farm Bill”), which removed hemp as a Schedule I controlled substance under the Controlled Substances Act. Since hemp is no longer a controlled substance, its cultivation, production, or sale is no longer a predicate offense to money laundering. This should provide comfort to those banks with concerns that engaging with hemp-related business will draw unwanted attention from the Department of Justice in the wake of the withdrawal of the Cole Memo. As discussed in [our March 2019 publication](#) Cross-Border Cannabis Investment: Managing Money Laundering Risk, non-US investors should nonetheless still exercise care that investments in a licensed US hemp enterprise do not otherwise violate their home country laws. Furthermore, recognizing the legality of certain hemp-related businesses the Interagency Guidance may reduce the overall SAR filing burden for some banks already serving hemp-related businesses and increase the availability of banking services to those businesses.

The guidance notes that a state or tribal government may still prohibit the production of hemp, even though it is legal under federal law. Moreover, the guidance reminds banks that marijuana is still a controlled substance under the Controlled Substances Act.

<sup>1</sup> Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, FinCEN, Office of the Comptroller of the Currency, Conference of State Bank Supervisors, [Providing Financial Services to Customers Engaged in Hemp-Related Businesses](#), December 3, 2019.

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## US Department of Agriculture Regulations

The 2018 Farm Bill directs the US Department of Agriculture (“USDA”), in consultation with the US Attorney General, to regulate hemp production. On October 31, 2019, the USDA issued an interim final rule establishing the domestic hemp production regulatory program to facilitate the legal production of hemp. Under the interim final rule, state departments of agriculture and tribal governments may submit plans for monitoring and regulating the domestic production of hemp to the USDA for approval. The interim final rule establishes a federal licensing plan for regulating hemp producers in states and tribal territories that do not have their own USDA-approved plans.

While a similar regulatory alert on serving hemp businesses was issued by the National Credit Union Administration (“NCUA”) in August 2019,<sup>2</sup> that alert pre-dated the issuance of the interim final rule by the USDA and therefore maintained the position that “hemp may not yet be produced lawfully under federal law unless it is produced under the industrial hemp pilot provisions of the Agricultural Act of 2014 (2014 Farm Bill).” The USDA’s October interim final rule would appear to supersede this interpretation by the NCUA.

## Suspicious Activity Reporting

The Interagency Guidance makes clear that federal regulators still expect banks to follow standard Suspicious Activity Report (“SAR”) procedures. Banks must continue to file SARs if warranted by indicia of suspicious activity in connection with their customers’ hemp-related activities. SAR requirements would apply, for example, if a bank became aware that a hemp-related business provided inaccurate information to a federal regulator, or violated good production practices, record keeping requirements, or license restrictions, as required under the 2018 Farm Bill.

## Risk Management Considerations

The Interagency Guidance makes clear that banks must adjust their BSA and AML compliance programs to capture the unique regulatory considerations confronted by hemp-related businesses. Banks must maintain a BSA and AML compliance program commensurate with the level of complexity and risks involved in the types of services and accounts offered to their customers. This includes requirements related to customer identification, suspicious activity reporting, currency transaction reporting, and risk-based customer due diligence, including the collection of beneficial ownership information for legal entity customers. Banks must also continue to mitigate the potential reputational risks arising from transactions with downstream sellers of hemp-derived products that are subject to US Food and Drug Administration or Federal Trade Commission enforcement actions.

The Interagency Guidance goes on to assert that banks should continue to follow FinCEN guidance on the BSA expectations regarding marijuana-related businesses, which includes the filing of “Marijuana Limited”, “Marijuana Priority”, “Marijuana Termination” SAR filings. Banks should also track recent Congressional attempts to ease access to banking services for cannabis-related businesses, as discussed in [our October 2019 alert](#) *The House Passes Cannabis Banking Legislation: Implications for the Financial Services Industry*.

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<sup>2</sup> NCUA, 19-RA-02, [Regulatory Alert: Serving Hemp Businesses](#), August 2019.

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