

Hemp Headaches?

We have been dealing with states beginning to legalize marijuana for several years and now with the passage of the 2018 Farm Bill, the hemp industry has begun to bloom as various states are already issuing licenses for growers, processors and distributors. The Farm Bill states that any plant of cannabis sativa L below .3% THC is hemp and not marijuana, which helps to clarify things since some varieties of marijuana and all industrial hemp are sourced from the same plant species. However, the Farm Bill directs each state to develop their own laws and processes around hemp and states have rushed to do this as quickly as possible. Many states are already issuing licenses to growers and plants are already in the ground es, even though the United States Department of Agriculture has not formally approved any plans to date. Additionally, the Cannabidiol (CBD) industry has expanded rapidly and now CBD can be found in almost every town and in all types of forms from oils to gummies, from pills to ointments and everything else you can imagine.

With the Food and Drug Administration (FDA) warning that anything indigestible is under their jurisdiction and providing no guidance to clarify their position, what are financial institutions supposed to do? Do you bank the farmers growing it or the tobacco shop selling CBD? What about current customers that have been with you for years and step into the industry? You can't get rid of everyone, but who do you keep and why?

On July 22, 2019, a joint statement was issued by FinCEN and the regulatory bodies entitled a ["Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision"](#). This statement did not provide new guidance, but reinforced long-standing guidance that BSA/AML programs should be based on customer relationship and the risks posed by those relationships. They also stated that "Banks that operate in compliance with applicable law, properly manage customer relationships and effectively mitigate risks by implementing controls commensurate with those risks are neither prohibited nor discouraged from providing banking services." However, when state laws conflict with federal law and what is permissible under those laws is extremely confusing.

You should consider these guidelines to help you determine the direction your financial institution should take on CBD and Hemp. First, get to know the hemp program of the state(s) you are doing business in either directly or indirectly. The state's Department of Agriculture should have all the details regarding the state's program and licensing. This will give you the information you need to advise the Board on the risks and to develop your customer identification, customer due diligence, and enhance due diligence programs. You will need to make appropriate adjustments depending on your Board's decision to bank or not bank hemp and or CBD related accounts.

As you design your program, your main goal is to identify and track your customers. Your hemp related business will likely be using some of the same vendors as marijuana related businesses, especially if they are processing CBD oil from the hemp. Separating hemp activity from

marijuana activity will be key to maintaining an efficient program. You want to know who your hemp related customers are buying from and selling to so you can appropriately monitor the transactions. If your customer is a farmer, you will want to know the source of the seed and to whom they are selling the crop. If they are a manufacturer, you should know where their hemp is coming from and what products they will be producing. You may have to make a risk-based decision on what sectors of the hemp market you have the capacity to bank.

This doesn't just affect the BSA department. Many banks are currently lending to hemp related businesses. Despite the Farm Bill, your options may be limited since lending to industrial hemp growers is still not allowed under any Small Business Administration (SBA) loan program. If you decide to lend to hemp related business just be aware of the risks. For example, crops testing higher than .3% THC need to be destroyed, resulting in lost revenue. If you are considering lending, get results of their independent testing for THC content so you can determine your appetite for the risk.

As you are designing your program, you must also consider the staffing requirements to implement that program. With additional monitoring, training, site visits, etc., you may need additional staff to cover the regulatory expectations. While some of this may seem excessive it is important to remember that until the USDA approves your state's hemp program, those licenses provide no federal protection to the crops. Hopefully, the USDA issues specific guidance soon so the states and farmers will have guidance for the 2020 growing season. Similarly, the FDA has stated that any CBD edibles and some cosmetics are illegal but has not issued any useful guidance for banks.

In conclusion, it is wise to keep up with the news. On June 24th, the American Bankers Association issued a letter to the heads of the financial regulatory agencies calling for greater clarification on how banks may serve businesses dealing with hemp. There is a great deal of pressure on the federal government from all types of people with a vested interest in this issue to clarify the regulations and assist business and financial institutions in servicing this industry. When and how regulatory clarification happens remains to be seen, but Compliance Anchor will assist you in staying on top of the changes.

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