

RUTGERS UNIVERSITY Guidance Memo

DATE: September 4, 2020

To: Vice Presidents and Directors for Research and/or Research Administration/Development, Research Compliance personnel, Contracts and Grants Directors

Subject: Information for Researchers about accepting funding from entities involved in the medical or recreational cannabis (marijuana) industry

Purpose

This Guidance Memorandum is intended to provide information for Rutgers University researchers and research administrators regarding accepting funding from entities that make their money from the sale of cannabis or marijuana* to support research, education or any other type of activity at the university.

**Note:*

The federal law, according to the Controlled Substance Act, defines marijuana ('marihuana') to mean "all parts of the plant Cannabis sativa L., whether growing or not; including the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin." While the term 'cannabis' can be applied to both marijuana and industrial hemp, for the purposes of this Guidance Memo, the term 'cannabis' is intended to refer to all parts of the Cannabis sativa L. plant according to this federal definition (e.g., marijuana) and excludes industrial hemp. 21 U.S.C. § 802.

Background

The legal and regulatory landscape related to cannabis research and cannabis-related funding is a dynamic and complex subject. The dilemma is that while some states are liberalizing the use of cannabis both for medical and recreational purposes, federal law has not followed the same trend. As the cannabis industry develops there is increased interest in issues such as its possible therapeutic benefits. The cannabis industry has shown considerable interest in funding research in these and other, related, areas.

Federal Regulation

According to the U.S. Department of Justice Drug Enforcement Administration's passage of Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, also known as the Controlled Substances Act, botanical cannabis or marijuana, parts of the *Cannabis sativa L.* plant containing Δ^9 -tetrahydrocannabinol (THC) and other cannabimimetic compounds (e.g., spice), are recognized as Schedule I controlled substances. They are defined as having high potential for abuse, having no currently accepted uses in medical treatments in the United States and having a lack of acceptable safety data for uses in treatments under medical supervision (U.S. Department of Justice 1970). In accordance with federal regulations, the use, production, processing, sale, or growth of cannabis (marijuana) is not permitted, except with limited exceptions for research.

Industrial hemp, defined as cannabis (*Cannabis sativa L.*) and derivatives of cannabis with extremely low (no more than 0.3% by dry weight) concentrations of the psychoactive compound THC, was removed from the definition of marijuana included in the Controlled Substances Act (CSA). Accordingly, regulation of industrial hemp cultivation is under purvey of the US Department of Agriculture and New Jersey Department of Agriculture.

State Regulation

On January 18, 2010, Gov. Jon Corzine signed into law the Compassionate Use Medical Marijuana Act, permitting patient access to cannabis for debilitating medical conditions with oversight by a licensed physician. This law was subsequently revised and replaced by the Jake Honig Compassionate Use Medical Cannabis Act, signed into law by Gov. John Murphy on July 2, 2019. The dispensation of medical cannabis in New Jersey, at present, is under the guidance of the New Jersey Department of Health's Medicinal Marijuana Program.

Guidance

Additional guidance on cannabis research for Rutgers University faculty, students and staff may be found in the accompanying FAQ document. This guidance specifically concerns issues regarding receipt of funding from the cannabis industry, though research on cannabis use and funding for cannabis research often overlaps.

Research, Education or Program Funding

Rutgers University researchers may wish to pursue funding opportunities related to cannabis research. For funding opportunities with extramural sponsors that do not receive their funding from the cultivation, sale or distribution of cannabis, the campus Office of Research and Economic Development is authorized to submit or negotiate proposals to external sponsors for possible contracts, grants or cooperative agreements. The units within this office ensure that each proposal meets the requirements of the University, sponsor and applicable federal and state rules and regulations. For gift funding, researchers should work with Rutgers University Foundation.

In addition to the standard issues that may arise for any funded research (e.g., intellectual property rights), the following issues should be considered and addressed before applying for or accepting cannabis-related funding:

a. **Research, education or program activities:** Under the federal Safe and Drug-Free Schools and Communities Act and Drug-Free Workplace Act, institutions of higher education have an obligation to comply with federal drug laws as a condition of receiving grant funding or other financial assistance under any federal program.

Consequently, conducting unapproved cannabis-related research could adversely affect an institution's ability to seek federal research funding or federal financial aid. As such, research, education or program activities concerning cannabis must comply with the guidelines and procedures described by the state and federal government.

Because some parts of the cannabis industry are engaged in activities (e.g., sale, cultivation, distribution) that are criminally prohibited under federal law, there are concerns about conducting transactions, including unfunded collaborations, with this industry. As such, before conducting work for or with

cannabis entities, researchers must consult with the Rutgers University Chancellor's Office to seek advice as needed.

b. Outside work and consulting: Rutgers University faculty and staff may be asked, or may seek opportunities, to engage in paid outside research or other work for the cannabis industry, in a private consulting capacity. Examples might include, but are not limited to, business consulting, advisory board participation, data analysis, agricultural research/advice on how to improve cannabis cultivation. Paid outside work related to cannabis must comply with standard Rutgers University policies and procedures governing these activities. Additionally, because of the University's obligation to comply with federal law, University faculty and staff engaging in activities that do not comply with the federal law should make no use of University resources for these activities. University faculty or staff should make it clear to all parties that they are conducting such activities as private citizens, not University representatives, faculty or staff. Though they may identify themselves as having a University position, there should be a clear and consistent statement such as, "This work was performed as a private individual, not as a Rutgers University faculty/staff member. No Rutgers University resources, facilities, or funds were used. No University employees or students participated in this work in their roles as a University employee or student."

c. Source of funding: Potential sponsors of cannabis-related research may include federal or state agencies, non-profit organizations, industry and private individuals. Because the cannabis industry consists of entities or individuals that conduct cannabis-related activities that are illegal under federal law, there are concerns about accepting funding from/conducting transactions with members of this industry. Possible legal risks of accepting such funding from cannabis entities include charges of money laundering, charges of aiding and abetting violations of the Controlled Substances Act and the possibility of civil forfeiture. There are also reputational risks of working with an individual/entity engaged in illegal activities. Although the practical risk of enforcement may be low, accepting gifts, grants or funding under other mechanisms from members of the cannabis industry could:

- Open an institution of higher education to federal criminal charges of money laundering or aiding and abetting violations of the Controlled Substances Act;
- Entail a risk of federal forfeiture (i.e., funds that are determined to be the proceeds of criminal activities, which could apply if funds donated to a university were derived from the donor's sale or distribution of cannabis, and can be seized by the federal government); and
- Subject institutions to allegations that they have violated the Drug Free Schools Act and/or the Drug Free Workplace Act, which could put their federal funding at risk.
- **To ensure consistency across Rutgers University, campuses may not accept donations, grants or other funding from entities or individuals known to directly derive most or all of their funding from conducting cannabis-related activities that are illegal under federal law (e.g., sale, cultivation, distribution).** This includes grants that are earmarked specifically for the study of the impact of cannabis directly from companies that distribute or manufacture cannabis products or foundations that are created by such companies.

This guidance applies to all salaried (e.g., full-time, part-time, adjunct) and volunteer Rutgers University faculty and staff members. This guidance is also subject to change as the federal regulations continue to evolve.

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