

## Banking the Cannabis Industry – Is It SAFE?

By Madison Lisotto Whalen

Congress recently took a key first-step to allow banks to provide financial services to cannabis-related people and businesses (CRBs). Under current law, banks could face civil and criminal liability for banking with CRBs.

The Secure and Fair Enforcement (SAFE) Banking Act of 2019, [H.R. 1595](#), introduced by Representatives Denny Heck (D-WA) and Ed Perlmutter (D-CO) passed out of the House Financial Services Committee with a 45-15 vote. The most recent impetus for this legislation was a February hearing before the Subcommittee on Consumer Protection and Financial Institutions at which testimony was given on the cannabis industry's need for greater access to the federal banking system.

The bill would prevent federal regulators from:

- (1) terminating/limiting deposit insurance if a depository institution provides services to cannabis-related legitimate businesses;
- (2) prohibiting a depository institution from offering financial services to such businesses;
- (3) recommending or encouraging a depository institution to not offer financial services to an account holder solely because the account holder is affiliated with such a business; and,
- (4) taking adverse/corrective supervisory action on a loan because the person owns such a business or owns real estate/equipment leased or sold to such a business.

Medical marijuana is now legal in 33 states and the District of Columbia, and recreational marijuana is legal in 10 states plus D.C. This large and ever-growing business segment can be forced to operate on a cash-only basis because many financial institutions are hesitant to deal with CRBs since marijuana is still considered illegal at the federal level. An all-cash business creates obstacles including difficulty paying taxes and paying employees, and impediments obtaining loans and generally managing cash flow.

Proponents of the legislation argue that the SAFE Banking Act will enable those in the industry to get bank accounts, accept credit card payments, and operate safely, transparently, and subject to regulation. Opponents note that this type of legislation has been defeated before, including a 2017 bill with the same name, and that H.B. 1595's prospects are unclear. Some members of Congress and the public point out that this legislation is premature, as marijuana is still classified as a Schedule 1 drug.

Financial institutions are understandably interested in the lucrative cannabis market, but are looking for protection from punishment resulting from dealing with CRBs. Industry advocates see the progress of the SAFE Banking Act as an unprecedented positive move forward and a reaction to increasingly positive public sentiment towards cannabis, but H.R. 1595's prospects for passage are still unclear.

If you have questions regarding this topic, please contact any of the attorneys listed below.

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