Parabola Center

Cannabis Banking Reform: Not Our Priority, But Nevertheless an Opportunity

As a public policy organization intent on elevating people over profits, Parabola Center would not typically prioritize a bill to protect banks. Ending criminal prohibition and preventing monopolization remain more pressing. Yet with cannabis banking legislation now making its way through Congress, we believe it's crucial that people have an understanding of the limitations of the bill and its potential impacts, both in its current form and with specific amendments focused on fairness. With minor and technical changes, it can advance us toward a fair and equitable industry.

What Is the SAFER Banking Act?

The Secure and Fair Enforcement Regulation (SAFER) Banking Act, previously known as the SAFE Act, is a bill in Congress that would protect federally regulated banks from liability for working with the state-regulated cannabis industry. House lawmakers first passed the legislation in 2019 and introduced an expanded version in April 2023 and the most recent version in September 2023. To be clear, the SAFER Banking Act would not change the legal status of cannabis itself, or the federal criminalization of possession, cultivation, manufacture, or sale.

Currently, one consequence of federal cannabis prohibition is that businesses operating legally under state laws have limited access to basic banking services. Financial institutions risk severe legal and regulatory consequences for working with state-compliant cannabis companies, which remain illegal under federal law. As a result, many businesses come up with complicated workarounds or are forced to handle transactions in cash. Owners and employees of state-legal cannabis businesses have also often experienced problems securing individual loans and financial services such as obtaining personal mortgages or car loans.

Proponents of the SAFER Banking Act say it would also help address safety concerns around businesses holding large sums of cash, which can make them a target for crime. They say it would treat state-legal markets more like other legitimate sectors of the U.S. economy, at least in regards to banking. Some in favor also argue that banking reform would benefit small and minority-owned businesses, which sometimes have difficulty accessing capital. As it stands, however, if the Act passes without further amendments, the wealth gap between large and small businesses is likely to widen.

What's New in the Latest Version of the Act?

The basics of the 2023 SAFER Act mirror the original bill, although some notable changes have already incorporated principles of fair access. Financial institutions that provide banking services to state-sanctioned marijuana and hemp businesses would be shielded from penalties for working with those clients. Federal banking officials would be required to provide necessary guidance, and a variety of studies and reports would track the process.

New additions include special protections for smaller banking institutions that prioritize minorities and community development as well as a deadline for reports concerning small and minority-, veteran- and women-owned businesses. Another change would protect workers in the cannabis industry from being denied a home mortgage loan due to their business. The latest version also requires a biennial survey and report to identify barriers to accessing deposit accounts for small-and medium-sized businesses. The bill is trending in the right direction, but more needs to be done to ensure the spoils don't primarily benefit large corporate actors, which already dominate the industry in many legal states.

How Could the Bill Be Improved?

As they've done with each new version of this Act, lawmakers should continue to refine provisions aimed at ensuring that access to banking services within the cannabis industry remains fair. Of particular importance are areas of the bill dealing with regulatory guidance and diversity reporting.

Guidance from regulators should include best practices for banks on equitable service and lending, with the goal of ensuring that financial services are accessible to all, not only formally but in practice. Without such guidance, real-world matters might be overlooked. People with past cannabis convictions, for instance, might be disqualified from the banking system under so-called "red flag" rules, even if they're operating in compliance with state law.

Thorough tracking of diversity and inclusion data are essential to measuring the impacts of banking reform. While the latest version of the SAFER Act expands reporting requirements, guidance should clarify that the reporting process should take into account state equity programs, including sharing information with program directors and participating businesses.

As for the bill's root protections, the SAFER Act should apply only to banks who demonstrate compliance with anti-discrimination laws, such as the Equal Credit Opportunity Act.

Another valuable suggestion, via the Minority Cannabis Business Association, is to amend the Act to allow small cannabis businesses to access loans from the Small Business Administration.

For More Information

For more details, see the new paper "Fair: What the F in SAFE Stands For: An Analysis of the Latest Version of the SAFE Banking Act and Ongoing Efforts to Promote Fairness in Cannabis Banking" by Cat Packer, our advisor on tax and community investment. In May 2023, Cat testified to the U.S. Senate Committee on Banking, Housing, and Urban Affairs, calling for improvements to the bill to reflect these and other fairness-focused concerns. In addition to giving in-person and written testimony, she submitted her previous paper, Not a SAFE Bet: Equitable Access to Cannabis Banking, co-written by Rafi Aliya Crockett, Dasheeda Dawson, and Shaleen Title. The most recent version of the bill was made available in September 2023 by Marijuana Moment.

While Parabola Center believes in prioritizing efforts to start dismantling federal cannabis prohibition before addressing cannabis banking reform, the consequences of any nationwide reform will be significant and lasting. Our organization remains neutral on the SAFE Act as a whole, but the stakes are too high not to build fairness into the system from the get-go.

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