

SAFER Banking Act

The Secure and Fair Enforcement Regulation Banking Act (SAFER) Banking Act would ensure that all businesses—including State-sanctioned cannabis businesses—have access to deposit accounts, insurance and other financial services. The legislation also creates common-sense standards for banks and credit unions to maintain customer relationships and to expand access to deposit accounts for underbanked groups.

Over the last decade, forty-seven states, four U.S. territories, and the District of Columbia have legalized some form of medical or recreational cannabis—despite its classification as an illegal drug under the Controlled Substances Act (21 U.S.C. § 801 *et seq.*). Due to the conflict between Federal and State laws, many financial institutions remain reluctant to conduct business with legitimate, State-sanctioned entities. As a result, these businesses and their employees are blocked from accessing deposit accounts, securing lines of credit and other financial services—including commercial and residential mortgages, and accepting credit and debit cards while operating a retail business.

The SAFER Banking Act would resolve these issues by providing a safe harbor for banks, credit unions, other financial institutions, and payment processors that provide services to these State-sanctioned businesses, allowing them to operate in the financial mainstream. By shifting these businesses and their employees away from cash-reliant businesses and into the financial mainstream, this bill helps to promote public safety for the communities in which these businesses operate.

This legislation builds upon existing federal guidance from FinCEN and current agency practice at the OCC, FDIC, and Federal Reserve to ensure that banks and credit unions are operating in a safe and sound manner, including having processes and procedures to identify fraudulent or illegal activity—without placing pressure on the bank or credit union restrict access to deposit accounts for political reasons, including through use of reputation risk. At the same time, through tailored rulemaking conducted by the Federal banking regulators, the bill will expand access to deposit accounts in the communities in which banks and credit unions serve, and to consumers and business owners from all backgrounds.

Section-by-Section

Section 1. Short title, table of contents

Section 2. Definitions

This section provides for definitions of certain terms used in the Act, including depository institution, Federal banking regulator, financial product or service, and service provider.

Section 3. Safe harbor

This section creates a safe harbor to ensure that regulators cannot prohibit, penalize, or otherwise discourage depository institutions from serving State-sanctioned cannabis businesses.

Section 4. Protections for providing services to State-sanctioned cannabis businesses

This section creates a safe harbor from Federal law for transactions with a State-sanctioned business and any entity handling proceeds of such businesses—whether or not they transact directly with the state-sanctioned business.

Section 5. Protections under Federal law

This section creates a safe harbor from criminal and civil prosecution for depository institutions and financial service providers who serve State-sanctioned businesses. It also immunizes the Federal Reserve Banks, Federal Home Loan Banks, and insurers from criminal and civil prosecution for serving State-sanctioned businesses.

Section 6. Requirements for filing suspicious activity reports

This section amends 31 U.S.C. § 5381(g) (Bank Secrecy Act) by adding a new paragraph which requires depository institutions to comply with FinCEN guidance related to State-sanctioned cannabis businesses. It also requires that within 180-days after enactment, FinCEN shall amend its previous guidance in accordance with this Act, or any amendments to Federal law made by this Act, so that depository institutions are able to prevent and combat illicit activity.

Section 7. Guidance and examination procedures

This section provides that not later than 1 year after enactment, the Federal Financial Institutions Examination Council, is required to develop uniform guidance and examination procedures—including legacy cannabis-related deposits.

Section 8. Banking services for hemp-related legitimate businesses and hemp-related service providers

This section recognizes that despite hemp’s removal from the Controlled Substances Act, producers, manufacturers, and retailers have difficulty gaining access to bank accounts and insurance. It requires that no later than 180-days after enactment, that the Federal banking regulators shall update guidance related to hemp-related businesses and service providers.

Section 9. Treatment of income derived from a State-sanctioned cannabis business for qualification for a covered mortgage loan

This section provides that income derived from a State-sanctioned cannabis business shall be treated equally with any other legal income for purposes for determining eligibility for residential mortgages and provides a safe harbor for Federal insurers, guarantors, and banks. It requires that no later than 180-days after enactment, the Federal Housing Administration, Department of Veterans Affairs, Department of Agriculture, Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association update its guidance to permit equal treatment of income from State-sanctioned cannabis businesses.

Section 10. Requirements for deposit accounts

Subsection (a) provides that while Federal banking agencies have a duty to ensure that banks and credit unions are operating in a safe and sound manner, personal beliefs or political motivations used to restrict access to financial services for lawful businesses have no place at a Federal banking regulator. It emphasizes that banks and credit unions should provide banking services in the communities in which they serve to the fullest extent possible, while still carrying out required customer identification, risk-based customer diligence, and suspicious activity monitoring and reporting obligations.

Subsection (b) provides that federal banking regulators cannot request or require termination of a deposit account, unless there is a valid reason (as defined in this section) for that termination and reputation risk is not the dispositive factor for the termination.

Subsection (c) requires that a Federal banking regulator provide written notice to a bank or credit union stating the valid reason (as defined in this section) for a request or requirement to close a deposit account.

Subsection (d) provides that if a Federal banking regulator requests or requires the termination of a deposit account, that the depository institution must notify the customer in writing of the valid reason (as defined in this section) for the account termination—unless it would interfere with national security or a law enforcement investigation.

Subsection (e) requires that the Federal banking regulators provide the relevant Congressional committees with an annual report on the number of deposit accounts requested or required to be terminated, and the legal basis for the account terminations. This report will be accompanied by a concurrent review by the Inspectors General of the Federal banking regulators.

Subsection (f) provides that no later than two years following enactment, that the Federal banking regulators, in consultation with State banking supervisors, the Secretary of Commerce, and the Secretary of the Treasury, promulgate tailored rules or guidance to increase access to deposit accounts for businesses and customers and to enable banks and credit unions to more effectively maintain customer relationships—especially for those in rural, low-and moderate-income areas, Tribal communities, and unbanked businesses and consumers.

Subsection (g) provides that the FDIC conduct a biennial survey and report to identify barriers to accessing deposit accounts for small-and medium-sized businesses.

Subsection (h) establishes a rule of construction that does not limit the ability of a Federal banking regulator from identifying or discussing issues with a depository institution's financial condition, governance, consumer protection, internal controls, unsafe or unsound conditions, the Bank Secrecy Act, anti-money laundering or countering the financing of terrorism.

Section 11. Annual access to financial services report

This section provides that the Federal banking regulators shall submit a report to Congress regarding access to financial services for businesses owned by minorities, veterans, women and Tribal communities, as well as State-sanctioned cannabis businesses.

Section 12. GAO study on barriers to cannabis marketplace entry

This section provides that the Comptroller General shall conduct a study and issue a report on barriers to cannabis marketplace entry, including the licensing process and access to financial services for potential and existing businesses owned by minorities, veterans and women, as well as State-sanctioned cannabis businesses.

Section 13. GAO study on effectiveness of suspicious activity reports

This section provides that not later than two years after enactment, that the GAO shall carry out a study on the effectiveness of suspicious activity reports (SARs) filed in association with individuals or organizations suspected or known to be engaged with transnational criminal organizations in a State that allows the cultivation of cannabis.

Section 14. Applicability to hemp-related legitimate businesses and hemp-related service providers

This section states that with the exception of sections 6 and 13, the provisions of this Act shall apply to State-sanctioned hemp businesses.

Section 15. Rules of construction

This section underscores that this legislation does not require a bank or credit union, insurer or any other entity to provide a financial service or product to a State-sanctioned cannabis business.