
Secure and Fair Enforcement Banking Act of 2019

Need for Legislation

While cannabis use is illegal under Federal law, 11 states have approved adult use of cannabis and 33 states have approved medical use. The conflict between state and federal law has created significant legal and compliance concerns for banks that wish to provide banking services to cannabis-related businesses in jurisdictions where cannabis is legal, known as cannabis-related legal businesses (CRLBs), as well ancillary businesses that provide services to CRLBs. Recognizing the need for a legal and regulatory safe harbor for banks that serve CRLBs and their service providers, ICBA was the first national banking trade association to endorse the SAFE Banking Act.

State of Play

- The SAFE Banking Act (H.R. 1595) was introduced by Rep. Ed Perlmutter (D-CO) and passed the House on September 25 with broad bipartisan support by a vote of 321-103.
- A companion bill (S. 1200) has been introduced in the Sen. by Senator Jeff Merkley (D-OR) and has 33 cosponsors.
- Senate Banking Committee Chairman Mike Crapo (R-ID) has stated that he intends to consider some form of safe harbor legislation.

Key Provisions of the SAFE Banking Act

- Prohibits federal banking regulators from taking certain actions against a depository institution that provides financial services to CRLBs or service providers. These include threatening or limiting a bank's deposit insurance, downgrading a loan, prohibiting or discouraging the provision of banking services, or taking any other prejudicial action solely because a bank customer is a CRLB or service provider to a CRLB.
- Provides protection from liability under any federal law for providing financial services to CRLBs and from forfeiture of collateral for loans to such businesses or to owners of real estate or equipment leased to CRLBs.
- Clarifies that the SAFE Act does not impose a new obligation to provide financial services to CRLBs.
- Amends the Bank Secrecy Act to require financial institutions to comply with guidance issued by FinCEN when filing suspicious activity reports (SARs) related to CRLBs.
- Promotes access to banking services for hemp businesses and businesses that sell CBD products by requiring the Federal banking regulators to issue guidance that confirms the legality of hemp and CBD products and to recommend best practices for banking such businesses.
- Provides liability protections for Federal Reserve Banks and Federal Home Loan Banks that serve institutions that serve CRLBs and ancillary businesses.
- Enacts "chokepoint" provisions that prevent a bank regulator from ordering or otherwise pressuring a bank to close a customer account without a valid reason unrelated to "reputational risk." If a bank regulator requests closure of a customer account, it must provide a written justification for the request, including any specific laws which the regulator believes the customer to have violated.