

Issue Update

Thirty-nine states have legalized cannabis for medical purposes and 24 states have approved adult-use. Nevertheless, federal law (namely, the Controlled Substances Act (21 U.S.C. §801 et seq.)), still classifies cannabis as an illegal drug and prohibits its use for any purpose. For banks, that means that all proceeds generated by a cannabis-related business operating in compliance with state law are still unlawful, and that any attempt to conduct a financial transaction with that money (including simply accepting a deposit), is considered money-laundering. This remains true even if cannabis is reclassified from its current classification as a Schedule 1 drug to a Schedule 3 drug as proposed on May 16, 2024 by the U.S. Drug Enforcement Administration (DEA), as all banks, whether state or federally chartered, are subject to federal anti-money laundering laws.

In fact, the consequences extend beyond cannabis growers and shops to any person or business that derives revenue from a cannabis firm – including employees, real estate owners, security firms, utilities and other vendors. Despite years of non-enforcement by the Department of Justice and attempts by financial regulators to advise banks on best practices to identify and report cannabis money, federal law has not changed. That means banks remain in the untenable position of violating federal law or refusing financial services to a legal sector of their local economies.

Why It Matters

Leaving the cannabis industry unbanked is not a viable option. Cannabis businesses, which are legally permitted under state law in most states, are forced to handle increasingly large amounts of cash because of their exclusion from the banking system. Cash-intensive businesses are difficult to monitor for compliance with tax laws or irregular financial activity and are themselves ripe targets for violent crime. These businesses will be safer and better regulated with greater access to the banking system, which will increase the transparency and accountability of the industry and better protect our communities.

Only Congress can resolve the divide between state and federal law. Without a change in federal law, neither the federal banking agencies nor state governments can remove the legal restrictions on providing banking services to cannabis-related businesses. Similarly, moving cannabis from a Schedule I to a Schedule III controlled substance would not resolve the banking challenges – current state cannabis programs would continue to run afoul of federal law and complicate the ability of banks to provide financial services.

Recommended Action Items

Urge Congress to move quickly to enact the Secure and Fair Enforcement Regulation (SAFER) Banking Act, which passed the Senate Banking Committee with bipartisan support last Congress and enjoys support from the Administration. A previous version of the bill, the SAFE Banking Act, passed the House seven times with broad bipartisan support. The bill would:

- Allow banks to serve cannabis-related businesses in states where the activity is legal;
- Specify that handling proceeds from cannabis-related businesses' legitimate transactions is not money laundering and does not violate any provision of federal law; and
- Require federal banking regulators to provide explicit, clear, and uniform expectations regarding the treatment of all cannabis-related accounts.