

Federal Cannabis Legislation Approved by House Financial Services Committee

April 1, 2019

On March 28, 2019, a bipartisan majority of the House Financial Services Committee (“HFSC”) voted to pass the Secure and Fair Enforcement Banking Act of 2019 (the “SAFE Banking Act” or the “bill”). The bill, which represents the most significant congressional action on drug policy in a generation, will now move to consideration by the full U.S. House of Representatives. The bill is expected to pass the House, given that it garnered 152 co-sponsors from both sides of the aisle. However, the legislation’s prospects in the U.S. Senate are less certain.

Debevoise & Plimpton

The bill passed by the HFSC contains key differences from earlier versions, including an extension of the bill’s safe harbor provisions to insurance companies. This Debevoise Update details the amendments made to the SAFE Banking Act since the version considered by the HFSC in February, outlines the implications for financial institutions, and analyzes the bill’s prospects for enactment.

Revisions to the SAFE Banking Act. As originally proposed, the SAFE Banking Act would have provided depository institutions and related parties seeking to serve cannabis businesses in states where cannabis is legal with a safe harbor from enforcement, adverse supervisory action, and other adverse action under federal law. The bill also would have revised federal money laundering statutes to clarify that funds derived from transactions involving a cannabis-related business in a state that has legalized cannabis do not constitute proceeds of an unlawful activity solely because of the business’s involvement in cannabis. To implement these changes, the bill would have directed the Federal Financial Institutions Examination Council (“FFIEC”) to develop, within six months, uniform guidelines for examining depository institutions that provide financial services to legitimate cannabis-related businesses.¹

¹ For additional information about the SAFE Banking Act’s original language, see our prior [Debevoise Update](#) analyzing its first legislative hearing.

The HFSC passed the SAFE Banking Act in substantially the same form as it was introduced, but with the following key changes.²

- The scope of the amended bill is expanded beyond depository institutions to include entities “performing a financial service for or in association with a depository institution.” This addition provides protection from federal banking regulators that may attempt to prohibit provision of services to cannabis businesses and from enforcement under federal law for providing services to cannabis businesses.
- The amended bill adds protection for Federal Reserve Banks and their officers, directors, and employees from being held liable under federal law for providing services to depository institutions that engage with the cannabis industry. It also protects from forfeiture Federal Reserve Banks’ interests in loan collateral exposed to the cannabis industry.
- The amended bill strikes language that would have required federal banking regulators to adopt guidance developed by the FFIEC. It is not clear what prompted this change, although the principal sponsor of the bill, Rep. Ed Perlmutter (D-CO), noted during the March 27 markup that regulators were consulted and their input was incorporated into the amended bill.
- The amended bill adds two sections focused on diversity and inclusion in the provision of financial services to the cannabis industry. The first requires the federal banking regulators to issue an annual report to Congress regarding access to financial services for minority- and women-owned cannabis businesses. The second requires the Comptroller General of the United States to conduct a study and report to Congress on the barriers to marketplace entry for minority- and women-owned cannabis businesses.
- The amended bill expands the definition of “financial service” to include an extensive list of payment-related activities, acting as a money transmitting business, and acting as an armored car service for depository institutions or Federal Reserve Banks. Together with the language noted above that expands the scope of the bill’s safe harbors, this change would appear to help protect nonbanks engaging in such financial activities from liability for serving cannabis businesses.
- The definition of federal banking regulator was expanded to include the Financial Crimes Enforcement Network, the Office of Foreign Assets Control, and the

² Rep. Ed Perlmutter’s amended version of the SAFE Banking Act is available [here](#); this version does not yet include the two floor amendments noted below.

Department of the Treasury. This change was intended to ensure that the bill's safe harbor provisions would be effective with respect to all financial regulators.

Finally, two floor amendments that were not included in Rep. Perlmutter's compiled revisions also were passed by the HFSC.

- Rep. Steve Stivers (R-OH) introduced an amendment that would protect insurance companies from liability under federal law for providing financial services to cannabis businesses and for further investing any income derived from the provision of such services by adding them to the list of covered entities in section 4(a) of the bill.
- Rep. Katie Porter (D-CA) introduced an amendment that would ensure that new financial institutions that want to do business with cannabis companies would not be denied deposit insurance, a master account from the Federal Reserve, or other services necessary to conduct the business of banking. The original version of the SAFE Banking Act only included protections for existing institutions.

Prospects for Enactment. It appears increasingly likely that the SAFE Banking Act will pass in a vote by the full House of Representatives as soon as early May. House Democrats have voiced strong support for the bill, and even a party-line vote would command a majority in favor of enactment there.

The prospects for passage of the legislation are less certain in the Republican-controlled Senate, where the bill could face filibuster. Despite some bipartisan support, only 12 Republicans have signed on as co-sponsors in the House and many members of the Republican Party have continued to signal reluctance to approving such a major change in drug policy. Further, a companion bill has yet to be introduced in the Senate, although members of Rep. Perlmutter's staff have indicated that this will occur in the coming weeks. Given the vocal support of numerous politically powerful groups, it seems likely that the Senate will at least consider the SAFE Banking Act.

There is additional uncertainty around whether and how the SAFE Banking Act will continue to be amended prior to its floor vote in the House. HFSC members noted several times during the March 27 markup hearing that they would like to continue to advocate for and debate amendments, considering that the vast majority of those proposed during the hearing failed to pass. In particular, Rep. Perlmutter has committed to use his membership on the House Rules Committee to help facilitate such amendments. Also of interest to financial institutions may be Rep. Stivers' commitment to advocate for providing regulatory relief to cannabis-related capital markets activities.

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We will continue to monitor developments in this fast-paced area and analyze them as they occur. Please do not hesitate to contact us with any questions.

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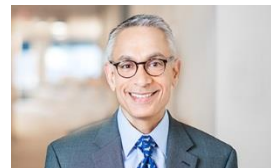


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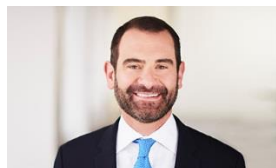


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