Cannabis Banking

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Issue Update

Thirty-eight 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, the 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 if they are permitted to use the banking system, which would increase the transparency and accountability of the industry and better protect our communities. Additionally, the federal prohibition on banking is likely to exacerbate barriers to entry for cannabis businesses with unequal access to alternative forms of capital, thereby contributing to inequities in this rapidly growing industry.

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 (S. 2860), which passed the Senate Banking Committee with bipartisan support, or the SAFE Banking Act (H.R. 2891), which has passed the House multiple times in previous sessions of Congress. 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.