

Cannabis Banking Update Q1 2021

Federal Legalization and the SAFE Banking Act

The Controlled Substances Act (CSA) makes cannabis illegal under federal law. While many have theorized that a Democratic-controlled House and Senate would result in a swift policy change to legalize cannabis at the federal level, that does not appear to be an immediate priority of the new chair of the Senate Banking Committee, Sen. Sherrod Brown, a Democrat from Ohio. Unlike some of his Democratic colleagues, Senator Brown has never introduced or co-sponsored a bill to legalize cannabis. He has voted in support of floor amendments to bar the Department of Justice from spending money on enforcement against state-compliant medical cannabis related businesses (CRBs) and, in more recent years, he's spoken in favor of removing criminal penalties for low level cannabis possession, but he has historically expressed a reticence to endorse full legalization.

In January of this year, Senator Brown did indicate a willingness to consider the SAFE Banking Act, a bill protecting financial institutions that service state-legal CRBs, but only if the Senate Judiciary Committee takes up sentencing reform for drug offenders on a parallel track. "I am willing to look at moving on the SAFE Act, but with it needs to come sentencing reform. I don't think we move on legalization the way that Colorado and some other states want us to, unless we really look more seriously at who's in prison for how long for those kinds of offenses and we don't do one without the other" said Brown in a Cleveland.com article published on Feb. 5, 2021.

The SAFE Banking Act, which previously passed in the House in 2019 but stalled in the Republican-controlled Senate, wouldn't remove cannabis from Schedule I of the CSA but it would allow CRBs to access banking services and bar federal regulators from cancelling deposit insurance or otherwise sanctioning financial institutions that provide services to state-law compliant CRBs.

For now, [Senator Brown advises](#) that helping the nation cope with the coronavirus pandemic will be his Committee's top priority.

California Financial Institution Safe Harbor

In September of 2020, California enacted [Assembly Bill 1525](#), which is a state-law version of the SAFE Banking Act. It provides a safe harbor for California financial institutions that provide banking services to CRBs. It states that such institutions do not violate California law merely as a result of their provision of banking services to California CRBs. The new law also allows California CRBs to give permission to state and local cannabis regulatory authorities to share "application, license, and other regulatory and financial information" with a specified financial institution, thus making it easier for financial institutions

to determine whether they are banking CRBs that are compliant with state and local licensing schemes. The goal of the California law is to increase access to banking services and make it easier for financial institutions to bank the cannabis industry. Only time will tell whether California's state-law analog to the SAFE Banking Act will encourage state-chartered institutions to offer greater banking services to legally compliant CRBs.

FinCEN Update on SARs filed through Dec. 21, 2020

Suspicious Activity Report (SAR) filings have declined since December 2019. [FinCEN reports](#) that the decline may be attributable to several factors, including (i) the release of new guidance dispensing with the requirement to make SAR filings for hemp businesses, which are now federally legal, (ii) closures of some recreational cannabis businesses as a result of pandemic-related quarantine restrictions, and (iii) pandemic-related staffing shortages at some financial institutions resulting in late SAR filings.

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