

Three Reasons to Support the Secure and Fair Enforcement Banking Act



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This spring, Senator Jeff Merkley (D-OR) and Representative Ed Perlmutter (D-CO) introduced the *Secure and Fair Enforcement (SAFE) Banking Act*—offering a much-needed solution to the conflict between state and federal laws that discourages banks from working with marijuana-related businesses, even in states where those businesses are legal. Because marijuana use or sale for any purpose is illegal under federal law, any bank or credit union that provides banking services to a marijuana-related business could potentially be prosecuted for money laundering, aiding and abetting, or conspiracy, even if that business is legal under the laws of the state in which it operates. That means any marijuana-related businesses—be they recreational or medical—are largely left without access to banking services in the eight states (and D.C.) where recreational use and 29 states (and D.C.) where medical use have been legalized. Businesses at every stage of the distribution process (from growers to producers to dispensaries) are often forced to operate on an all-cash basis, a situation which invites both violent and financial crimes.

Though two years ago the Obama Administration took steps to alleviate this conflict through guidance issued by the Department of Justice and Financial Crimes Enforcement Network (FinCEN), it could not change the underlying federal laws that open banks up to risk of prosecution. And how long this guidance will continue to stay in effect under the new Trump Administration is unknown, given that Attorney General Jeff Sessions has made no secret of his opposition to marijuana reform and has launched a task force to review the current policies. That's why the *SAFE Banking Act* is necessary. It would provide banks with the permanent protections from criminal and civil liability that they need to serve marijuana-related businesses that are legal in their states, ensure that banks that choose to do so won't be punished by federal regulators, and allow states that are moving in this direction to tax and regulate legal marijuana effectively—regardless of the fate of the current guidance. Congress should act now to pass the *SAFE Banking Act* for three reasons: it would improve public safety, establish responsible rules for marijuana-related businesses, and because Americans overwhelmingly support it.

1. Improving Public Safety

All-cash businesses are bad for public safety. When a marijuana dispensary is forced to operate in only cash, that means it not only conducts sales strictly in cash, but it pays its employee salaries, rent, and taxes in cash—bags and bags of it. No bank account means more than no checks—it means nowhere to deposit and store profits or the money that will pay the electric bill. When marijuana dispensaries are doing more than a billion dollars in business annually, like they did in Colorado in 2016, all that cash adds up—and becomes a magnet for crime.¹ The fact that marijuana-related businesses are so flush with cash and have nowhere to put it is not lost on criminals, and that puts employees, customers, and neighbors of marijuana-related businesses at risk of being targeted for violent crime every single day. Just last summer, a 24-year-old security guard tragically lost his life when he was shot and killed during an attempted robbery at a

dispensary in Aurora, Colorado.² And not only are these businesses and their communities targets for crime, but the lack of oversight could also attract a criminal element looking to traffic drugs or launder money. So long as marijuana-related businesses are forced to operate outside of traditional banking and without financial oversight or any eyes on their books, criminal syndicates and gangs have the opportunity and incentive to use them for their own purposes, increasing the risk of both violent and financial crimes.

The *SAFE Banking Act* would improve public safety by radically transforming the relationship between banks and marijuana-related businesses in legal states. The bill grants banks in states where marijuana is legal a safe harbor from criminal and civil prosecution for transacting with legitimate marijuana-related businesses. That means if a marijuana-related business is legal in the state in which it operates, it will be able to open and use a bank account like any other legal, taxpaying business. Federal banking regulators will not be able to threaten or terminate a banking institution's deposit insurance, penalize or prohibit banks from opening accounts or offering loans, or force accounts to be closed. Banks and their employees will be protected from federal investigation or prosecution for doing their jobs. And no bank will be required to work with marijuana-related businesses if it doesn't want to do so.

Access to banking services doesn't just make it easier to run a business—it means less cash, and therefore less crime, on our streets and in our neighborhoods.

2. Establishing Rules for Marijuana-Related Businesses

Under the bill, legitimate marijuana-related businesses adhering to the laws in their states will be treated like every other business—if they follow the rules, they get to operate in the light of day without penalty. They'll be able to open bank accounts, accept credit card transactions, pay taxes, rent, and salaries with checks, and have access to loans. But

the *SAFE Banking Act* is not a blank check or a free-for-all— instead, it establishes responsible rules for marijuana-related businesses.

Banks will still have to abide by rules for handling marijuana-related businesses' account laid out in the 2014 FinCEN guidance. That guidance requires banks to file Marijuana Limited Suspicious Activity Reports identifying the accounts of marijuana-related businesses, and to flag any suspect activity so the federal government can know where those businesses are operating and how they're handling their money. Some institutions are already following this guidance now, despite the potential risk in doing so, because they feel a responsibility to protect the public safety of their communities.³ This bill would give all banks in states where marijuana is legal the security they need to do the same, should they choose to do so. In return for access to banking, marijuana-related businesses will be subject to the same sort of financial oversight that other businesses are—making it easier to ensure they are following the laws and paying their taxes.

The current system only works for the wrong types of business owners—those willing to lie to their bankers to open or maintain accounts or eager for a way to manipulate the system to avoid regulation, oversight, and taxes. After all, no bank account means no verifiable record of profits. By passing the *SAFE Banking Act*, Congress can set in place responsible rules that close these loopholes, provide an additional layer of oversight, and make sure legitimate business owners—and only legitimate business owners—have an incentive to be in the legal marijuana market.

3. Respecting the Views of Most Americans

The safe harbor from federal prohibition provided by the *SAFE Banking Act* is a policy our public opinion research shows the vast majority of Americans support. Our national poll found 67% of voters—including 54% of Republicans, 74% of

Independents, 64% of women, and 75% of Millennials— support Congress passing legislation to establish a safe haven from the federal prohibition on marijuana that would allow banks, states, and market participants to act without fear of prosecution in states where marijuana is legal. ⁴

Americans realize that public safety and financial oversight are both put at risk under the current policy—even those who live in states where marijuana has not yet been made legal. As one piece of a multi-part public opinion research project, Third Way conducted a three-day intensive online focus group, whose participants identified the banking prohibition as one of the most concerning aspects of the conflict between state and federal laws. ⁵ Not only did they describe the current situation as “scary,” “a joke,” “ridiculous,” and “ludicrous,” but they highlighted public safety and financial oversight as two major areas of concern immediately upon having the situation explained to them.

In reference to the public safety risk the current situation creates, they said:

- “I have concerns about the vendors being safe from theft. The feds are creating conditions that can lead to criminal activity due to the differences in laws.”
- “That policy is just crazy and sets up the business to be robbed having all that cash on hand.”
- “This seems very unsecure and unsafe. Thieves know this then and these businesses seem likely targets for burglaries and robberies.”
- “It offers criminals a foothold for many opportunities.”

And they also recognized the invitation to commit financial crimes:

- “Paying in cash has always been a way for people not to pay taxes. If it was regulated then they would issue checks and employees and vendors would have to pay their fair amount of taxes which goes to improvements for our state. I feel that too many people take advantage of not paying their taxes and this situation would be one that employees and vendors would take advantage of.”
- “The taxes and payroll involved seem like they would not be as accurate.”
- “Who is to say how much money dispensaries are making since it’s cash and can go unreported to the state?”
- “That to me seems like a way to cheat the government. When everything is in cash much ends up under the table.”

One focus group participant summed up the problem and the solution quite succinctly: “It’s stupid really. Why not change this? If you accept the tax money, you should make it easier for these business[es] to function financially.” That’s exactly what the *SAFE Banking Act* would do—make sure that legitimate marijuana-related businesses that are legal in their state have the access to depository institutions and financial services that they need to run their businesses safely. And when they do, the community will benefit—from both safer streets and better oversight.

Conclusion

The *SAFE Banking Act* doesn’t resolve every facet of the conflict between state laws legalizing marijuana and the federal laws prohibiting it. But it does address one of the most pressing and dangerous problems created by this persistent conflict: the inability of marijuana-related businesses that are legal under state law to access banking services. By doing so, it prioritizes public safety by allowing those businesses to come out of the shadows and operate in the light of day like any other legal business, and it establishes responsible rules to ensure appropriate oversight. That’s why Americans

support this solution by a wide margin. The playing field on marijuana policy is changing rapidly nationwide, and Congress has a responsibility to act now to pass the *SAFE Banking Act* to ensure that change can happen in the safest and most responsible way for our communities.

TOPICS

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END NOTES

1. Alicia Wallace, “Colorado Cannabis: \$1.3 Billion Worth of Marijuana Sold in 2016,” *The Cannabist*, February 9, 2017. Accessed May 14, 2017. Available at: <http://www.thecannabist.co/2017/02/09/colorado-marijuana-sales-2016/73415/>.
2. Tom McGhee and Kieran Nicholson, “Slain pot dispensary security guard dreamed of becoming a police officer,” *The Denver Post*, June 20, 2016. Accessed May 14, 2017. Available at: <http://www.denverpost.com/2016/06/20/green-heart-marijuana-dispensary-security-guard-killed/>.
3. “Numerica Credit Union’s Carla Altepeter: Opening Accounts for Marijuana Businesses is ‘In the Best Interests of Our Members and Their Communities’,” Anthem, May 20, 2014. Accessed May 12, 2017. Available at: <http://www.nwcu.org/member-resources/anthem/numerica-credit-union-s-carla-altepeter-opening-accounts-for-marijuana-businesses-is-in-the-best-interests-of-our-members-and-their-communities>.
4. National online poll of 856 registered voters, conducted by Anzalone Liszt Grove for Third Way, October 25 to October 29, 2014. The margin of error is +/- 3.3% at the 95% level of confidence and higher for subgroups.

- 5.** Online focus group (Qualboards) of twenty likely 2014 voters, conducted by Anzalone Liszt Grove for Third Way, August 21 to August 24, 2014. Participants were screened to exclude those who neither strongly supported nor strongly opposed marijuana legalization and those who thought marijuana was immoral.