



SAFE or UN-SAFE? U.S. House Committee Hears Testimony on Proposed Secure and Fair Enforcement Banking Act

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"Duffel bags and sometimes suitcases of cash would arrive quarterly at some of our designated offices and some business owners had to drive 350 miles to pay their taxes." That was the testimony of Fiona Ma, California's State Treasurer, regarding the difficulties legal cannabis-related businesses and state officials have in paying and collecting taxes given the dearth of legitimate financial services available to such businesses. Ma and others were testifying before the U.S. House Committee on Financial Services: House Consumer Protection and Financial Institutions Subcommittee on February 13, 2019 regarding the Secure and Fair Enforcement Banking Act (the "SAFE Banking Act").

The SAFE Banking Act was initially proposed six years ago, but languished in the U.S. House. After the 2018 elections, the Act has received new life. The Act would: (1) provide a safe harbor for depository institutions who provide financial services to legal cannabis-related businesses by precluding federal banking regulators from inhibiting or discouraging those services; (2) no longer treat the proceeds of transactions conducted by legal cannabis-related businesses as proceeds from an unlawful activity for purposes of taxation; (3) immunize employees of depository institutions that provide services to legal cannabis-related businesses from being held liable under any Federal law or regulation; and (4) amend the requirements under which depository institutions must provide suspicious activity reports related to legal cannabis-related businesses.

The testimony received by the Subcommittee was largely in support of the Act:

- Treasurer Ma testified that the lack of bank access inhibits tax revenue collection and causes unnecessary financial problems for employees of legal cannabis-related businesses; this testimony is not surprising given California's failure to collect as much marijuana tax revenue as originally anticipated, as we discussed [here](#).
- Retired police officer Major Neill Franklin presented a public safety argument on behalf of the Law Enforcement Action Partnership, noting that the lack of bank-access means legal cannabis-related businesses operate in all cash and are prime targets for violent assaults and robberies.
- Rachel Pross, the chief risk officer of Maps Credit Union of Oregon, testified on behalf of the Credit Union National Association. Ms. Pross contended that credit unions that have taken the risk to serve legal cannabis-related businesses have (1) increased public safety by removing cash from the streets; (2) enhanced tax collection by bringing legal cannabis-related businesses into the "financial mainstream;" and (3) gathered information about cannabis activity that is valuable to federal and state law enforcement. She concluded that these public policy and public safety benefits could be further advanced by passage of the SAFE Banking Act, which would allow more risk-averse entities to enter the field.
- Gregory S. Deckard, Chairman, President and CEO of State Bank Northwest of Washington, testified on behalf of the Independent Community Bankers of America and echoed Ms. Pross's testimony, noting that his bank does not serve legal cannabis-related businesses because of the legal risks. He also echoed the sentiment of Major Franklin, testifying that keeping cannabis-related businesses outside of the financial system results in a cash-rich industry that is a magnet for violent crime.
- Corey Barnette, owner of District Growers, LLC & Metropolitan Wellness Center, Inc. in Washington D.C., testified that the lack of financial services was crippling for his legal



cannabis-related businesses because it increases safety risks, makes paying taxes difficult, and precludes employees from obtaining basic financial services.

Not all the testimony was in favor, however. Jonathan H. Talcott, Chairman of the Board of SAM, Inc. (d/b/a Smart Approaches to Marijuana, Inc.) vigorously opposed the Act. Talcott first argued that the Act would be of limited utility because it “does nothing to address the illegal nature of all marijuana-related activities under the [Controlled Substances Act] or the threat of prosecution by the [Department of Justice].” Talcott also argued that in opening up the financial industry to marijuana, the “SAFE Act would introduce existing criminal elements into the banking system.” Talcott’s final—and perhaps overarching point—was that the SAFE Banking Act is yet another attempt to legitimize marijuana despite the serious societal ills that it causes. He concluded by saying “federal legalization is a tragedy that will bring in more drugged driving deaths, opioid use, and psychosis and violent crime. I ask that you not pass this UN-SAFE Banking Act.”

Despite Mr. Talcott’s impassioned plea, it does appear that the SAFE Banking Act is gaining support in the U.S. House; in the Subcommittee, the bill has bipartisan support. Treasury Secretary Mnuchin has also signaled support for a safe harbor provision, although it is not clear if he supports the SAFE Banking Act itself. The key stumbling block at the moment is the U.S. Senate. Senator Mike Crapo of Idaho chairs the Senate Banking Committee, and would need to move a corresponding bill forward. Thus far, there is no indication that Senator Crapo has plans to do so.

Allowing legal cannabis-related companies to access the banking industry would be a massive victory for the cannabis industry, and ease many of the most pressing problems facing industry participants. The hearings on the SAFE Banking Act at least suggest policymakers are paying attention to the issue. Whether attention turns into action remains to be seen. We will be closely tracking any developments.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors.

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