

Proposed Federal Marijuana Reform: Financial Services Industry Primer

April 08, 2022

On Friday, April 1, 2022, the House of Representatives passed the [Marijuana Opportunity, Reinvestment, and Expungement \(MORE\) Act](#) for the second time in two years, with 220 votes in favor and 204 votes in opposition. The MORE Act is one of at least three pieces of offered legislation that legalizes, or partially legalizes, marijuana at the federal level. After an hour of debate, the House also adopted two amendments aimed at assuaging Republican concerns about impaired driving and workplace safety. All three proposed laws expressly address some financial institutions' ability to operate in this emerging market.

The MORE Act not only removes marijuana from Schedule I under the Controlled Substances Act (CSA), but it ushers in a regulatory framework for taxing the sale of cannabis products and using the tax receipts to fund a number of equity and economic programs for those adversely impacted by the War on Drugs. The MORE ACT also will authorize expansive research on cannabis and the impact of the War on Drugs, and it will create a process for expungements of non-violent federal marijuana convictions across the country.

Related Legislation

The Senate must now decide whether to adopt the MORE Act or one of the other two bills: the [Cannabis Administration and Opportunity Act \(CAOA\)](#), proposed, but not yet filed, by Sen. Chuck Schumer (D-NY), and Rep. Ed Perlmutter's (D-CO) [Secure and Fair Enforcement Banking \(SAFE\) Banking Act](#), which was most recently passed by the House in 2021.

The CAOA is expected to have many of the same features as the MORE Act, including (most fundamentally) delisting marijuana from Schedule I under the CSA. It is also expected to:

- Transfer jurisdiction over cannabis to the Food and Drug Administration (FDA), the Alcohol and Tobacco Tax and Trade Bureau (TTB) and the Bureau of Alcohol, Tobacco and Firearms (ATF) within the Department of Justice (giving cannabis a status similar to alcohol and tobacco);
- Introduce a federal regulatory apparatus;
- Direct proceeds of a new federal excise tax to individuals and communities most affected by the War on Drugs;
- Provide for expungement of federal non-violent marijuana convictions; and

- Provide for reforms to the treatment of marijuana-related activities or convictions in federal immigration policy.

Unlike the MORE Act or CAO A, the SAFE Banking Act does not remove marijuana from CSA’s Schedule I. While the MORE Act and CAO A focus on comprehensive legislation, the SAFE Act is a more modest and more focused piece of legislation, which aims to protect banking institutions—as well as their insurers—that choose to offer services to a legitimate cannabis-related business operating in accordance with their respective state laws. The bill generally offers protection from penalties of a federal banking regulator against a depository institution for offering services to cannabis-related businesses. Transactions involving activities with a legitimate cannabis-related business would no longer be considered as generating proceeds from unlawful activities, and depository institutions would no longer be liable or subject to any federal law or regulation for providing services to the cannabis industry.

Schedule I Classification

Removing marijuana from the CSA’s list of dangerous “drugs with no currently accepted medical use and a high potential for abuse” would almost certainly lead to an exponential increase of commerce in the cannabis space. It would allow depository institutions to take deposits from cannabis-related businesses, allow payment processors and credit card companies to engage in marijuana-related transactions, encourage the development of more reliable insurance coverage for cannabis-related businesses, and permit financial institutions to more easily loan money—including loans secured by marijuana IP, lines of credit, agricultural loans, and most other commercial lending products available to growers, processors, manufacturers, and retailers of more traditional products—to marijuana-related businesses. Consumers would also benefit from a predictable, safe, and enforceable payment system. That is all to say nothing of the cascading effects such legalization would have on job creation, tax collections, and public health as the black market is (perhaps slowly) replaced with regulated commercial activity.

The Political Horizon

It is not clear whether Sen. Schumer has the votes necessary to carry the CAO A through the Senate, as at least one or two Democratic votes against passage (based on the breadth and scope of the legislation, as well as taxation and disposition of funds in “equitable” ways) are likely, and might be enough to offset the handful of Republican Senators who may vote for passage.

While passage of the MORE Act or CAO A in the Senate before the November general election is uncertain, the Senate does appear to have enough votes to pass the SAFE Act, due to strong support throughout the financial services industry and on both sides of the aisle. One potential issue with the SAFE Act—at least for lenders—is that while it expressly permits depository institutions to accept deposits from marijuana-related businesses, it does not necessarily cure some of the problems that limit commercial lending activity. For example, it does not carve marijuana out of the CSA’s list of dangerous drugs. This circumstance means, among other things, that bankruptcy protection will remain unavailable to marijuana-related borrowers. Mastering 50 state law alternatives to a debtor’s bankruptcy might therefore weigh against a lender’s decision to enter into a national market.

That said, the cannabis industry itself, along with the finance industry and powerful corporate interests (such as retailer Amazon) have lined up behind the SAFE Act. The consensus seems that industry does not wish a search for the perfect solution (i.e. full-scale decriminalization and regulation) to get in the way of the good (i.e. allowing a fuller range of financial services for marijuana-related businesses). While passage of the SAFE Act seems increasingly likely as a middle ground between current policy and the aims of the MORE Act and CAO, Congress may still iron out some of the defective limitations in the SAFE Act through the reconciliation process.

As Congress moves on this issue with relative haste before the extended summer campaigning recesses, McGlinchey's [Cannabis team](#) is following these developments very carefully on behalf of our bank, lender, and financial institution clients. When the time comes to enter this new commercial space, you can trust McGlinchey for answers.

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