SAFE Banking Act Letter - Senate

COMMENT LETTER

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May 25, 2022
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Dear Senators Schumer, McConnell, Brown, and Toomey:

On behalf of the Conference of State Bank Supervisors (CSBS)1, I write to request that you retain the Secure and Fair Enforcement Banking Act of 2021, the SAFE Banking Act, in the conference agreement of the America COMPETES Act. By granting a safe harbor for financial institutions, Congress can bring regulatory clarity to the financial services industry, address public safety concerns and ensure access to financial services for state-compliant marijuana and marijuana-related businesses. I further ask for the safe harbor be extended to all financial services, including money transmission, as the adverse impact of the current inconsistency in state and federal law is not limited to depository institutions.

Marijuana is now legal in some form in most of the United States. Thirty-seven states and the District of Columbia allow marijuana for medical purpose. Eighteen states and the District of Columbia allow marijuana for recreational use as well. However, due to legal and regulatory risks associated with the contradictory federal and state laws, many financial institutions remain reluctant to conduct business with cannabis-related businesses.

As a result, cannabis-related businesses are blocked by federal law from accessing financial services such as bank deposits, loans, money transmission and accepting credit cards for payment. This leaves marijuana businesses – legal under state law – operating largely as cash-only operations. In recent weeks, we have seen increased violent crime at cannabis businesses as criminals know these businesses keep large quantities of cash on hand.

Passage of the bi-partisan SAFE Banking Act would reduce the risk associated with large cash-and-carry operations and increase public safety. Enacting the SAFE Banking Act would also support economic development in states that have legalized cannabis, while enhancing safety for industry employees and the public alike. Tax collection, consumers and the financial system will remain at risk until financial institutions can serve the industry without concern of violating federal law. Clarity between state and federal law is needed to allow state-compliant cannabis businesses to access financial services without the risk of federal penalty.

Clarity between federal and state law would also benefit the regtech companies operating in this space to assist with anti-money laundering requirements. Banking marijuana businesses necessitates enhanced Bank Secrecy Act/Anti-Money Laundering compliance requirements. FinCEN guidance, last updated in 2014, established three categories of marijuana suspicious activity reports (SARs) that created considerable ongoing burden for financial institutions. Adding to the burden and uncertainty is that the U.S. Department of Justice Cole Memorandum underlying the 2014 guidance was rescinded in January 2018 and has not been replaced with new guidance. Safe harbor legislation could provide needed relief from regulatory uncertainty for institutions working to adhere to anti-money laundering requirements while still addressing necessary protections.

Additionally, state-regulated money transmitters play an important role in the servicing of small businesses across the country by receiving funds from one party and transferring those funds to another party. Leaving money transmitters out of the safe harbor provisions will perpetuate regulatory uncertainty and the public safety issues associated with cash-only operations.

In summary, state bank regulators support retention of the SAFE Banking Act as part of the conference report of the America COMPETES Act. Additionally, we encourage the Senate to provide a safe harbor for money transmitters to protect all industry participants by allowing them to use safe, regulated and verifiable money services. State banking regulators look forward to working with you toward passage of this important legislation.

Sincerely,

James M. Cooper

Acting President & CEO

Cc: Senators Cantwell; Menendez; Wyden; Peters; Murray; Brown; Warner; Kelly; Warnock; Hickenlooper; Tester; Heinrich; Baldwin; Wicker; Crapo; Risch; Burr; Portman; Grassley; Shelby; Toomey; Barrasso; Capito; Cornyn; Young; and Moran.

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1 The Conference of State Bank Supervisors (CSBS) is the national organization of bank regulators from all 50 states, American Samoa, District of Columbia, Guam, Puerto Rico and U.S. Virgin Islands. State regulators supervise 79% of all U.S. banks and a variety of non-depository financial services. CSBS, on behalf of state regulators, also operates the Nationwide Multistate Licensing System to license and register non-depository financial service providers in the mortgage, money services businesses, consumer finance and debt industries.

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