

# Will Proposed Federal Laws Take Cannabis Lending to New “Highs”?



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**C**annabis businesses are just like most businesses out there – they need financing to facilitate growth. However, the cannabis industry has historically faced challenges associated with obtaining financial services, challenges that other industries do not face. Notwithstanding these challenges, and given the current environment, the cannabis industry is hungry for financial services and making loans to businesses in the industry could prove beneficial to both the cannabis industry and lenders who choose to venture into the cannabis lending space.

While the availability of financial services for cannabis businesses was limited earlier in the decade, there has been a significant uptick in the number of financial institutions that are engaging with cannabis business. For example, by the end of June 2019, the Financial Crimes Enforcement Network (“FinCEN”), in a Marijuana Banking Update, reported that 553 banks and 162 credit unions were providing banking services to businesses related to marijuana. Compare those figures with the 438 banks and 113

credit unions providing banking services to such businesses as of December 2018.

As it currently stands, a majority of states have legalized the use of marijuana in some form. However, when considering whether to lend to the cannabis industry, it is important to remember that cannabis remains illegal at the federal level and is classified as a Schedule I drug. Given the conflict between state and federal law, and despite the increase in the number of financial institutions providing financial services to cannabis business, most lenders are understandably hesitant to pursue lending activities in the space.

Filling this vacuum, many private lenders have stepped into the cannabis space, lending these businesses the necessary capital to grow their businesses. If a lender can stomach the risks, lending to the cannabis industry can be very lucrative.

Looking forward, competition for lending in the cannabis industry may significantly increase if the Secure and Fair Enforcement (SAFE) Banking Act passes. The SAFE

Banking Act is pending federal legislation which would provide financial institutions with certain safe harbors and protections if they choose to lend to cannabis companies. The stated purpose of the Act is “to increase public safety by ensuring access to financial services to cannabis-related legitimate businesses and service providers and reducing the amount of cash at such businesses.” The Act would protect depository institutions by prohibiting federal banking regulators from penalizing those institutions for providing financial services to legitimate cannabis-related businesses.

If the Act passes and if traditional financial institutions opt to enter the cannabis space, cannabis businesses could suddenly have access to a wide array of financial services that were previously unavailable. Increased competition from the financial institutions could also significantly reduce private money’s role in the cannabis lending market or, at a minimum, reduce the available return on investment. Only time will tell!

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Financial institution or not, all lenders should take certain precautions when lending to a cannabis business. Many of these precautions are exactly the precautions that lenders already take when making any business loan. Lenders should consider the following, which should not be considered an exhaustive list, when considering whether to make a cannabis business loan:

- Thoroughly evaluate operational history;
- Thoroughly vet the owners of the cannabis business;
- Request financial projections and review the basis for those financial projections;
- Review licensees;
- Request operating agreements;
- Understand the business' outstanding financial obligations;
- Review lease(s);

- Insist on collateral, whether it be real property or personal property; and
- Consider requiring a personal guaranty.

Additionally, before making a cannabis loan, lenders should have policies and procedures in place designed to protect the institution. The lender should also be sophisticated enough to understand the legal obligations related to cannabis lending and to meet those requirements.

Lenders should also remember that, because cannabis is illegal at the federal level, there is the risk that the federal government may seize the product, shut the business down, put the owner/operator/borrower in jail, and/or seize the property. Additionally, and although it seems unlikely at this point in time, the federal government may also pursue lenders making loans to the cannabis industry. These risks increase the chance of default and, in the event of seizure of the property, tie it up thereby

preventing foreclosure. These risks do not make lending to the cannabis industry impossible, but they must be considered and adequately addressed before making a lending decision.

Ultimately, until cannabis is legal in all 50 states and at the federal level, lenders lending to the cannabis industry are going to face certain uncertainties and potential risks. 🌿

If you have any questions about cannabis lending and the SAFE Banking Act, please do not hesitate to contact Leslie Baird at [lbaird@wrightlegal.net](mailto:lbaird@wrightlegal.net) or Robert Finlay at [rfinlay@wrightlegal.net](mailto:rfinlay@wrightlegal.net).

*Disclaimer: The above information is intended for information purposes alone and is not intended as legal advice.*

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