

Congressional Funding Bill Pursues Approval of Financial Services for Marijuana Industry Through the (Temporary) Backdoor

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As we have [blogged](#), there is perplexing, significant and ongoing uncertainty regarding just how federal criminal and Bank Secrecy Act laws will be – or will not be – enforced against financial institutions providing banking services to marijuana-related businesses (“MRBs”). As our blog has discussed, recent bipartisan efforts in the 116th Congress to provide a level of federal protection to financial institutions providing MRBs access to the banking system have been potentially promising and intriguing – but, ultimately, also very uncertain.

The most recent effort in this ongoing saga is the FY2020 spending bill drafted by the House Appropriations Committee’s Subcommittee on Financial Services and General Government. The [draft](#), which passed markup unchanged [last night](#) and was formally reported to the full committee, includes the following language:

SEC. 633. None of the funds made available in this Act may be used to penalize a financial institution solely because the institution provides financial services to an entity that is a manufacturer, a producer, or a person that participates in any business or organized activity that involves handling marijuana, marijuana products, or marijuana proceeds, and engages in such activity pursuant to a law established by a State, political subdivision of a State, or Indian Tribe: *Provided*, That the term “State” means each of the several States, the District of Columbia, and any territory or possession of the United States.

This language provides protections similar to those in Section 2(2) of the [Secure and Fair Enforcement Banking Act of 2019 \(“SAFE Banking Act”\)](#), which is currently [working its way](#) through the House. Further, the proposed language addresses the primary practical problem facing financial institutions, which is the institutions’ regulators, rather than federal prosecutors.

The protections in this draft spending bill are much more limited than those proposed by the SAFE Banking Act because of the nature of an appropriations bill: the restrictions only apply to financial regulators whom the bill funds, i.e. those under the aegis of the Treasury, and not to investigators in the Department of Justice (“DOJ”). Perhaps more importantly, given the fact that the DOJ already is precluded under current spending limitations from spending enforcement dollars on pursuing state-compliant MRBs, this proposed provision would apply only to fiscal year 2020. However, if the SAFE

Banking Act is passed this year, its protections for financial institutions would encompass and expand upon those offered by this appropriations bill.

Nevertheless, the fact that such language made it through markup [without even a raised eyebrow](#) from ranking Republican member Rep. Tom Graves (R – GA) is suggestive of the success that Democratic lawmakers have had in the first half of 2019 in following the [comprehensive approach](#) to federal legalization of marijuana laid out in October 2018 by Rep. Earl Blumenauer (D – OR), an approach which we [previewed](#) earlier this year. Likewise, to the extent that this process involves continued incremental changes to expectations and widely-held norms regarding the acceptability of the marriage of cannabis and financial services, even “just” a year of protections could make a significant impact.

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