

# The Secure & Fair Enforcement Regulation (SAFER) Banking Act: What it Means for Your Financial Institution

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## Abstract

The Secure and Fair Enforcement Regulation (SAFER) Banking Act is set to revolutionize banking services for state-sanctioned marijuana and other high risk/complex businesses that traditionally have not had significant access to banking services. This white paper explores the implications of the SAFER Banking Act on the banking industry and introduces the nFiniti.AI system as a comprehensive solution to navigate the evolving landscape.

## SAFER Will Compound Existing Challenges



**Business  
Development**



**Onboarding**



**KYC**



**Compliance  
Monitoring**

## About FinResults & nFiniti.AI

### ***A Fintech with Deep Financial Services Experience***

FinResults, Inc. was established in 2019 and is led by a highly experienced team with over 150 years of combined expertise in Financial Services and Manufacturing executive leadership, as well as technology implementation and innovation. Our team members have held various key positions in the industry, including EVP/Chief Information Officer (CIO), Chief Data Officer (CDO), Consulting Firm Partner, Senior Vice President (SVP), Chief Architect, Certified Public Accountant (CPA), and more.

### ***The nFiniti Solution: Enhancing Cannabis Banking with Advance Features***

Before embarking on the development of the nFiniti platform, we collaborated closely with a bank that boasted one of the largest and most advanced cannabis banking programs in the industry. Despite using one of the more popular dedicated cannabis banking solutions, this bank still encountered challenges with a disjointed process, involving eight different offline systems, multiple compliance personnel, excessive paperwork, manual reviews, and an abundance of emails. Additionally, generating management reports and Key Performance Indicators (KPIs) proved to be cumbersome and time-consuming.

To address these issues, we began by thoroughly documenting the bank's end-to-end process, starting from the moment a lead was identified and following through onboarding, Know Your Customer (KYC)/Extended Due Diligence (EDD), and ongoing compliance monitoring. This process-engineering-first approach led to several eye-opening revelations, and as a result, we integrated numerous advanced features into nFiniti to overcome the challenges faced by banks in servicing MRB customers.

## Introduction

The passing of the SAFER Banking Act promises to bring significant changes to the banking industry. This white paper explores the potential scenarios, implications, and challenges financial institutions may face with the SAFER Banking Act, It does so by spotlighting on a fictional case featuring Susan, a local state-sanctioned marijuana business (SSMB) owner.

### **Susan is Looking for Banking Services**

Let's start with a scenario that could occur for your financial institution on the day following the enactment the SAFER Banking Act. Imagine a prospective customer named Susan.

Susan, the owner of a state-sanctioned local marijuana business (SSMB), walks into your Main Street branch carrying a large shopping bag of cash earned from legal transactions in her business from the last 90 days prior to the passage of the SAFER Act.

With the SAFER Act now in effect, Susan is eager to open a demand account that offers all the standard services available to a typical business customer. She's glad that her growing firm can finally access mainstream banking services.

And Susan wants to discuss the opportunities for merchant payment processing since nearly 99% of her transactions involve cash and her average monthly revenue is around \$300k, which is typical for a cannabis retailer.

Oh, and can she get an application for a business line of credit, as well as one for a home mortgage?




Under SAFER, do you have to provide banking services to Susan? The answer is: it depends.

### **Let's unpack Susan's scenario in light of the SAFER Banking Act provisions:**

- **First of all, it would be a violation of SAFER to tell Susan that your financial institution has a policy to not serve the cannabis market** due to reputational risk and could she and her cash just please leave. That ship sailed with SAFER.
- Under SAFER, **each individual banking relationship must be risk assessed**. The financial institution **cannot** have a policy to refuse services to a particular category of customer.
- **The key language is in Section 10:**

"All depository institutions (DIs) should take a risk-based approach to **assess individual customer relationships rather than decline to provide banking services to categories of customers** without regard to the risks presented by an individual customer."

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- **Your financial institution is not compelled by SAFER** to provide banking services to Susan (Section 15). This decision must be based on your:
    - individual risk assessment of Susan and her business as a potential individual customer and not because of the business she is in.
    - determination of whether serving any individual customer is consistent with the “business plan, risk profile, and management capabilities of your firm.”
  - **This risk assessment process of Susan's business could be a daunting task for your institution.**

Financial institutions that serve the cannabis industry today divide the industry by Tier (1, 2, 3, CBD, Hemp). In our example, Susan would be a Tier 1 Operator.

- **Document and information requirements are significant**

In our experience working with financial institutions that serve the cannabis industry today, the due diligence required for Susan's business could include up to 50 different documents and about 200+ questions. This is a significant work effort that will require both manpower and systems support (more on that later).
- **A written response with reasons is required if services are denied to Susan**

If banking services are denied or an account is closed for an SSMB, then the customer needs to get a written response from the financial institution stating the reason for the denial of service. Unless it is because there is an ongoing legal investigation or a national security matter is involved.
- **Susan's state-sanctioned cannabis transaction proceeds are federally legal**

SAFER does not resolve the question of federal illegality vs. state legality of cannabis. However, SAFER does state that the proceeds from state-sanctioned cannabis businesses are legal proceeds from a federal perspective. A lot of lawyers are going to be scratching their heads on this one.
- **There are significant legal protections for bankers in SAFER**

SAFER has significant protections for financial institution officers and employees. Bankers cannot be held criminally liable for banking state-sanctioned marijuana businesses.
- **Safe Harbor from Regulatory Penalties**

Regulators are prohibited from penalizing financial institutions for providing services to SSMBs. In fact, they are required to come up with guidance on how to promote banking services to these customer groups and to update examination requirements for the financial institutions that they supervise.

- **Legacy Cash Provision**

SAFER allows a customer to deposit up to 90 days of legacy cash that was from state-legal transactions prior to SAFER being enacted. Many SSMBs have piles of unbanked cash. This is a big problem for the industry, and SAFER makes an effort to address this to some extent.

- **Electronic payments will be needed**

If financial institutions aim to avoid the management of substantial cash volumes on a weekly basis, they should persuade payment processors and major card associations to participate in and serve the SSMB market. The involvement of the payments industry in this sector will contribute positively to public safety, given that numerous SSMBs are vulnerable to cash-related theft.

- **Legitimate income for loan applications**

Since the proceeds from an SSMB are federally illegal, SAFER specifically says that they should be treated as a legitimate income for primary residence mortgage applications or business loans.

- **Monitoring Customer Relationships**

Financial institutions will need to monitor and manage the customer relationships as they progress. The individual needs of the depositors will evolve and grow and banking needs will grow and expand.

**Where does this leave us?** With marijuana legally sanctioned at some level in 45 states, financial institutions will need to create a plan to serve the SSMB industry if SAFER becomes law.

**It will be challenging.** There is still significant black-market business in the SSMB industry. It is estimated that legal and black-market sales of marijuana is around \$80-100b in the US. Bankers will need to be on the lookout for SSMBs that could have mixed clean and dirty money.

**What about Susan's request for banking services?**

What should our response to Susan be? Perhaps it would be something like: this:



“Susan, thanks for coming in! Before we can open an account, we need to conduct our own due diligence and learn more about you and your business. If that process goes well, we’re happy to open an account and explore lending options for both your mortgage and business needs. Afterwards, once you verify that the transactions are from state-sanctioned business activities over the last 90 days, we would be glad to deposit those funds for you.”

## Solution

**We have an integrated system solution, nFiniti.AI, that can support SAFER** and help you address the due diligence, onboarding, and compliance monitoring requirements outlined in the SAFER Act. We worked with leading cannabis financial institutions to develop this system and we think it will be a significant lift to your onboarding process for SSMBs and improve the profitability of your banking program across multiple lines of business.



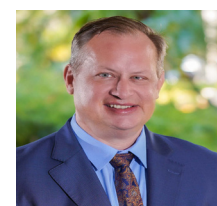
## Conclusion

### Prepare for the Future

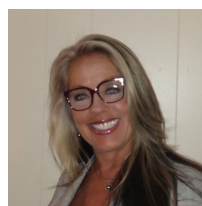
With 45 states having some form of marijuana legalization, financial institutions must develop a program to serve SSMBs if the SAFER Banking Act passes. It will be challenging, given the coexistence of legal and black-market sales. However, with the right systems and processes, institutions can successfully navigate this evolving landscape.

Susan's request for banking services is a testament to the changing times. By embracing due diligence, risk assessment, and compliance monitoring with the nFiniti.AI system, financial institutions can not only meet regulatory requirements, but also tap into the potential profitability of serving SSMBs across multiple lines of business. The SAFER Banking Act is on the horizon, and it's time for the banking industry to prepare for the future.

Let's discuss this topic further! We can be reached at:



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