Congressional Budget Office
Cost Estimate

September 27, 2024

At a Glance

S. 2860, SAFER Banking Act

As reported by the Senate Committee on Banking, Housing, and Urban Affairs on September 28, 2023

By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	0	17	63
Revenues	0	0	-2
Increase or Decrease (-) in the Deficit	0	17	65
Spending Subject to Appropriation (Outlays)	0	-171	not estimated

Increases *net direct spending* in any of the four consecutive 10-year periods beginning in 2035?	< $2.5 billion	Statutory pay-as-you-go procedures apply?	Yes
		Mandate Effects	
Increases *on-budget deficits* in any of the four consecutive 10-year periods beginning in 2035?	< $5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold

The bill would
- Prohibit certain federal actions against state-sanctioned marijuana businesses
- Require federal mortgage programs to treat income earned from state-sanctioned marijuana businesses identically to any other legal source of income reported on residential mortgage applications
- Require certain federal agencies to issue guidance and reports
- Increase the cost of an existing private-sector mandate if federal financial regulators increase annual fees to offset the cost of implementing the bill

Estimated budgetary effects would mainly stem from
- Increased receipts from federal housing programs
- Changes in the amount of federally insured deposits
- Increased administrative costs for financial regulators

Areas of significant uncertainty include
- Anticipating the terms of guidance to be issued by federal financial regulators
- Projecting changes in deposits and resulting costs for deposit insurance funds
- Predicting the responses of financial institutions and state-sanctioned marijuana businesses
- Projecting the change in mortgage originations for federal programs that would occur under the bill

Detailed estimate begins on the next page.

See also
CBO's Cost Estimates Explained, *CBO Describes Its Cost-Estimating Process*, *Glossary*

Bill Summary

S. 2860 would prevent federal agencies from taking action against financial institutions or insurers that serve marijuana businesses and would prohibit action against marijuana service providers that engage in activity that is legal under state laws.[1] The bill also would prohibit federal regulators from limiting access to deposit insurance or financial services solely because of an account holder's connection to a state-sanctioned marijuana business and would require income derived from such businesses to be considered the same as any other legal income for the purpose of determining eligibility for a residential mortgage.

Additionally, the bill would require Fannie Mae, Freddie Mac, the Federal Housing Administration (FHA), the Rural Housing Service (within the Department of Agriculture), and the Department of Veterans Affairs (VA) to update their guidance to allow income from state-sanctioned marijuana businesses to be treated as legal income for determining eligibility for residential mortgages.

S. 2860 would direct the Federal Financial Institutions Examination Council (FFIEC) and the Financial Crimes Enforcement Network (FinCEN) to issue guidance and examination procedures for financial institutions. Among the members of the FFIEC are the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Board of Governors of the Federal Reserve System.

Finally, the bill would require certain federal financial regulators and the Government Accountability Office to report to the Congress about access to financial services, barriers to marijuana marketplace entry, and the effectiveness of suspicious-activity reports.

Estimated Federal Cost

The estimated budgetary effect of S. 2860 is shown in Table 1. The costs of the legislation fall within budget functions 370 (commerce and housing credit) and 700 (veterans benefits and services).

1. Under S. 2860, those entities are manufacturers, producers, or any person or business that participates in handling, cultivating, producing, manufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing marijuana or marijuana products. Service providers include businesses, organizations, and people who sell goods or services to state-sanctioned marijuana businesses. For this estimate, state-sanctioned marijuana businesses include service providers.

Table 1.
Estimated Budgetary Effects of S. 2860

	By Fiscal Year, Millions of Dollars												
	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2024-2029	2024-2034
Increases in Direct Spending													
Estimated Budget Authority	0	1	2	4	5	5	7	6	9	12	12	17	63
Estimated Outlays	0	1	2	4	5	5	7	6	9	12	12	17	63
Decreases in Revenues													
Estimated Revenues	0	0	0	0	0	0	-1	*	*	*	-1	0	-2
Net Increase in the Deficit From Changes in Direct Spending and Revenues													
Effect on the Deficit	0	1	2	4	5	5	8	6	9	12	13	17	65
Decreases in Spending Subject to Appropriation													
Estimated Authorization	0	-26	-29	-32	-40	-44	n.e.	n.e.	n.e.	n.e.	n.e.	-171	n.e.
Estimated Outlays	0	-26	-29	-32	-40	-44	n.e.	n.e.	n.e.	n.e.	n.e.	-171	n.e.

n.e. = not estimated; * = between -$500,000 and zero.

Basis of Estimate

For this estimate, CBO assumes that S. 2860 will be enacted by the end of calendar year 2024.

Budgetary Treatment

CBO estimates that enacting the bill would affect spending for the federal housing programs, including Fannie Mae and Freddie Mac, as well as for the FDIC and NCUA. The federal housing programs are treated differently in the budget than are most other federal programs.

Budgetary Treatment of Federal Housing Programs. The Federal Credit Reform Act of 1990 (FCRA), requires the costs of most federal housing loan and loan guarantee programs, including those of FHA, the Government National Mortgage Association (GNMA), the Rural Housing Service, and VA to be estimated on the basis of the loans' net present value.[2] Those costs are recorded as single values in the years in which the loans are originated.

2. A present value is a single number that expresses a flow of current and future payments or receipts in terms of an equivalent lump sum paid or received at a specific time. The value depends on the rates of interest, known as discount rates, used to translate future cash flows into current dollars. FCRA specifies those discount rates as the rates on Treasury securities with similar terms to maturity. See Congressional Budget Office, *Estimates of the Cost of Federal Credit Programs in 2025* (August 2024), www.cbo.gov/publication/60517.

Budgetary Treatment of Fannie Mae and Freddie Mac. In CBO's judgment, Fannie Mae and Freddie Mac are effectively part of the government, and in its 10-year baseline budget projections, CBO treats the operations of those government-sponsored enterprises (GSEs) the same way it treats the operations of federal agencies.[3] Beyond the current year, CBO accounts for the cost of the GSEs' mortgage guarantees on a fair-value basis, rather than on a cash or FCRA basis. The fair value of a liability, such as a loan guarantee, is the market price—the amount that would be needed to induce a private-sector financial institution to assume the liability.

Budgetary Treatment of the FDIC and NCUA. CBO anticipates that, under S. 2860, banks, credit unions, and other financial institutions would insure additional deposits from marijuana-related businesses. Those deposits would increase federal liability in the event of an institution's failure, thereby increasing the costs of resolution, relative to CBO's baseline.

CBO's estimate of increased resolution costs is based on assumptions and analyses that underlie its June 2024 baseline projections for financial resolution programs. The projections for the FDIC and NCUA, which include the likelihood of various economic scenarios, incorporate the estimated costs of institutional failures.

Direct Spending

CBO expects that enacting S. 2860 would affect direct spending in three areas:

- Mortgage programs, stemming from increased volume in federal housing programs that issue or guarantee home loans;
- Insured deposits, stemming from increased deposits federally insured by the FDIC and NCUA; and
- Administrative costs, stemming from additional requirements for agencies whose costs are classified as direct spending.

Using information from the affected agencies, CBO estimates that enacting the bill would increase net direct spending by $63 million over the 2024-2034 period (see Table 2).

Mortgage Programs. For mortgage programs, the bill's budgetary effects would stem primarily from the increased number of newly eligible borrowers for mortgages that are directly issued, insured, or guaranteed by federal housing programs. Under current law, some financial institutions are willing to lend to employees of marijuana-related businesses but acquiring those mortgages is often costly and cumbersome, and borrowers are typically approved for smaller borrowing amounts. CBO expects that because of those challenges, borrowers from marijuana-related businesses will shift from private lenders to loans backed

3. See Congressional Budget Office, *Accounting for Fannie Mae and Freddie Mac in the Federal Budget* (September 2018), www.cbo.gov/publication/54475.

by the federal government, including the GSEs. (Under current law, Fannie Mae and VA already accept some of those loans.)

The costs of the GSEs' and VA's mortgage programs, which are recorded in the budget as direct spending, are discussed here. The costs for the loans and loan guarantees of FHA, GNMA, and the Rural Housing Service are recorded as discretionary spending. Those costs are discussed in "Spending Subject to Appropriation."

Table 2.
Estimated Increases and Decreases (-) in Direct Spending Under S. 2860

	By Fiscal Year, Millions of Dollars												
	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2024-2029	2024-2034
Mortgage Programs													
Department of Veterans Affairs													
Estimated Budget Authority	0	1	2	4	5	5	6	6	8	9	10	17	56
Estimated Outlays	0	1	2	4	5	5	6	6	8	9	10	17	56
Government-Sponsored Enterprises													
Estimated Budget Authority	0	*	*	1	1	1	1	1	2	3	3	3	13
Estimated Outlays	0	*	*	1	1	1	1	1	2	3	3	3	13
Insured Deposits													
Estimated Budget Authority	0	0	-1	-1	-1	-1	-1	-1	-1	-1	-1	-4	-9
Estimated Outlays	0	0	-1	-1	-1	-1	-1	-1	-1	-1	-1	-4	-9
Administrative Costs													
Estimated Budget Authority	0	*	1	*	*	*	1	*	*	1	*	1	3
Estimated Outlays	0	*	1	*	*	*	1	*	*	1	*	1	3
Total Changes													
Estimated Budget Authority	0	1	2	4	5	5	7	6	9	12	12	17	63
Estimated Outlays	0	1	2	4	5	5	7	6	9	12	12	17	63

* = between zero and $500,000.

Under S. 2860, income derived from a legally operating state-sanctioned marijuana business would be viewed as the same as any other legal income listed on a residential mortgage application. The bill provides "safe harbor" so that federal insurers, guarantors, banks, mortgagors, and servicers would not be held liable under any federal law or regulation solely for accepting that income on the covered mortgage loan application.

CBO's analysis is based on data from the Bureau of Labor Statistics and FHA as well as research on growth in the cannabis industry. Based on the projection of total loan volume that underlies CBO's baseline and data from VA, CBO expects that enacting the bill would, on average, increase the number of VA loan guarantees by about 950 and increase loan volume by about $450 million a year over the 2024-2034 period. Similarly, CBO estimates that enacting the bill would, on average, increase the number of loans guaranteed by the GSEs by about 350 and increase loan volume by $150 million a year over the same period. On that basis, CBO estimates that enacting S. 2860 would increase direct spending for VA by $56 million and for the GSEs by $13 million over the 2024-2034 period.

Insured Deposits. The bill's budgetary effects for banking agencies would stem primarily from the small increase in deposits insured by the FDIC through its Deposit Insurance Fund and by the NCUA through its Share Insurance Fund. Outlays from each fund for resolutions of failed institutions are recorded in the budget as direct spending. Those costs would be offset by additional premiums charged by the FDIC and by capital deposits paid to the NCUA, which are recorded in the budget as offsetting receipts—that is, as reductions in direct spending.

Under S. 2860, depository institutions; entities or insurers associated with depository institutions; and officers, directors, or employees of those entities would not be subject to federal liability solely for providing services to a marijuana-related business. The bill also would eliminate penalties for investing any income derived from such financial services and would prohibit criminal, civil, or administrative forfeiture of collateral for loans or other financial services provided to marijuana-related businesses.

CBO expects that enacting S. 2860 would increase insured deposits by bolstering legal certainty for institutions that provide services to marijuana-related businesses. Based on research on the cannabis industry and using data from the FDIC and NCUA, CBO estimates that in 2026, insured bank deposits would increase by about $1.5 billion and those at credit unions would increase by about $125 million. Those amounts would rise to $2.9 billion and $475 million, respectively, by 2034.[4]

CBO estimates that those additional deposited amounts would increase direct spending by $7 million to resolve potential future bank failures—an amount that would be more than offset by $16 million collected by the FDIC (in premiums) and NCUA (in capital deposits). CBO thus estimates that enacting S. 2860 would decrease net direct spending by $9 million over the 2024-2034 period for the FDIC and NCUA.

Administrative Costs. S. 2860 would require the FFIEC to develop uniform guidance and examination procedures for depository institutions that provide financial services to

4. Those estimates equal an increase of about 1 basis point in insured deposits relative to CBO's current baseline for each program. A basis point is one one-hundredth of a percentage point.

marijuana-related businesses and to report annually on recommendations regarding access to those services—particularly by minorities, veterans, women, and tribal communities as well as by state-sanctioned marijuana businesses.

Administrative costs for the CFPB, FDIC, NCUA, and OCC are classified as direct spending in the federal budget. Using information from several federal banking regulators, CBO estimates that enacting those provisions would increase direct spending for those agencies by about $6 million over the 2024-2034 period. The NCUA and OCC are authorized to collect premiums and fees from the institutions they regulate to cover their costs. Because those collections are recorded in the budget as offsets to direct spending, CBO estimates that the net increase in direct spending would be $3 million over the 2024-2034 period.

Revenues

Enacting S. 2860 also would increase administrative costs for the Federal Reserve for its role in the FFIEC. Costs incurred by the Federal Reserve would reduce remittances to the Treasury, which are recorded in the budget as revenues. CBO estimates that enacting the bill would decrease those revenues by $2 million over the 2024-2034 period.

The bill would provide protections from certain federal enforcement actions against financial institutions or insurers that serve marijuana businesses and for marijuana service providers that engage in activity that is legal under state laws. The bill also would provide liability protections for individuals and businesses that invest income derived from marijuana-related businesses. Some of the penalties that apply under current law are treated as revenues in the budget. CBO estimates the amount of such penalties collected under current law are small, and any reduction in the collection of those penalties under the bill would be insignificant over the 2024-2034 period.

Spending Subject to Appropriation

Costs for federal housing loans and loan guarantees issued by FHA, GNMA, and the Rural Housing Service are recorded in the budget as discretionary spending. CBO estimates that implementing S. 2860 would, on net, reduce spending subject to appropriation by $171 million over the 2024-2029 period, assuming appropriation actions consistent with that estimate (see Table 3).

Federal Housing Administration. In CBO's estimation, the net present value of federal receipts from FHA's housing loan guarantee program are greater than payments made by the federal government to mortgage lenders. Those receipts are classified in the budget as offsetting collections that reduce spending subject to appropriation. CBO estimates that implementing S. 2860 would, on average, increase the number of loans that FHA guarantees annually by 3,600 and increase annual volume by $1.5 billion over the 2024-2029 period. On that basis, CBO estimates that implementing the bill would decrease spending subject to appropriation for FHA by $147 million over the 2024-2029 period.

Table 3.
Estimated Decreases in Spending Subject to Appropriation Under S. 2860

	By Fiscal Year, Millions of Dollars						
	2024	2025	2026	2027	2028	2029	2024-2029
Federal Housing Administration							
Estimated Authorization	0	-23	-25	-28	-34	-37	-147
Estimated Outlays	0	-23	-25	-28	-34	-37	-147
GNMA							
Estimated Authorization	0	-3	-4	-4	-5	-6	-22
Estimated Outlays	0	-3	-4	-4	-5	-6	-22
Rural Housing Service							
Estimated Authorization	0	*	*	*	-1	-1	-2
Estimated Outlays	0	*	*	*	-1	-1	-2
Total Changes							
Estimated Authorization	0	-26	-29	-32	-40	-44	-171
Estimated Outlays	0	-26	-29	-32	-40	-44	-171

GNMA = Government National Mortgage Association; * = between -$500,000 and zero.

Implementing S. 2860 also would increase spending subject to appropriation by less than $500,000 for additional reporting requirements, CBO estimates.

Government National Mortgage Association. GNMA is a federal government corporation that guarantees mortgage-backed securities, backed mostly by single-family mortgages originated through FHA, the Rural Housing Service, and VA. As the volume of those programs increases, GNMA's volume will increase as well. In CBO's estimation, the net present value of federal receipts from GNMA's mortgage-backed securities program is greater than federal payments made to lenders. Those receipts are classified in the budget as offsetting collections that reduce spending subject to appropriation. CBO estimates that implementing S. 2860 would increase the volume of mortgages guaranteed by GNMA by $1.5 billion annually over the 2024-2029 period. On that basis, CBO estimates that implementing the bill would decrease spending subject to appropriation for GNMA by $22 million over that same period.

Rural Housing Service. The Rural Housing Service issues direct loans and loan guarantees. In CBO's estimation, the agency's loan guarantees result in savings to the federal government because CBO expects the net present value of federal receipts from the guarantees to be greater than their costs. Conversely, subsidies for most direct loan programs are positive. CBO expects the net present value of the federal receipts from direct loans to be less than the program's costs. Because the increase in volume of guarantees would be greater than the increase in direct loans under the bill, CBO estimates that implementing S. 2860 would increase the number of loans that the Rural Housing Service guarantees annually by about 180, on average, and would increase the agency's annual loan volume by approximately $70 million, on average, over the 2024-2029 period. On that basis, CBO estimates that implementing the bill would decrease spending subject to appropriation for the Rural Housing Service, on net, by $2 million over the 2024-2029 period.

Other Costs. S. 2860 would require several federal banking regulators, including FinCEN and the Office of Foreign Assets Control, which are funded through annual appropriations, to issue guidance and contribute to annual reporting by the FFIEC. CBO estimates that implementing that provision would cost less than $500,000 over the 2024-2029 period; any related spending would be subject to the availability of appropriated funds.

S. 2860 would require the Government Accountability Office to study barriers to market entry and to report on the effectiveness of report filings for suspicious transactions that are potentially associated with criminal activity. CBO estimates that meeting those requirements would cost less than $500,000 annually over the 2024-2029 period.

Uncertainty

This cost estimate is subject to several areas of uncertainty:

- The guidance provided by the FFIEC and FinCEN could be stricter or more lenient than current guidance, which would directly affect the decisions of financial institutions and marijuana-related businesses offering or seeking financial services. Those decisions would affect the amount of new insured deposits.
- The limited data on the amount of marijuana-related deposits in financial institutions—including amounts from activity that may not be classified as such—could mean that new insured deposits could be larger or smaller than CBO estimated.
- If changes in insured deposits are larger or smaller than CBO estimates, costs for the FDIC and NCUA could be higher or lower depending on related premium collections and capital deposits and on changes in the resolution costs for financial institutions.
- If changes in mortgage volume are larger or smaller than CBO estimates, receipts for federal housing programs could be higher or lower.

Pay-As-You-Go Considerations

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in Table 4.

Table 4.
CBO's Estimate of the Statutory Pay-As-You-Go Effects of S. 2860, the SAFER Banking Act, as Reported by the Senate Committee on Banking, Housing, and Urban Affairs on September 28, 2023

	By Fiscal Year, Millions of Dollars												
	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2024-2029	2024-2034
	Net Increase or Decrease (-) in the Deficit												
Pay-As-You-Go Effect	0	1	2	4	5	5	8	6	9	12	13	17	65
Memorandum:													
Changes in Outlays	0	1	2	4	5	5	7	6	9	12	12	17	63
Changes in Revenues	0	0	0	0	0	0	-1	0	0	0	-1	0	-2

Increase in Long-Term Net Direct Spending and Deficits

CBO estimates that enacting S. 2860 would not increase net direct spending by more than $2.5 billion in any of the four consecutive 10-year periods beginning in 2035.

CBO estimates that enacting S. 2860 would not increase on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2035.

Mandates

If federal financial regulators increase annual fees to offset the costs of implementing the bill, S. 2860 would increase the costs of an existing private-sector mandate on entities required to pay those fees. CBO estimates that the incremental cost of the mandate would be small and would fall well below the annual threshold established in the Unfunded Mandates Reform Act (UMRA) for private-sector mandates ($200 million in 2024, adjusted annually for inflation).

The bill contains no intergovernmental mandates as defined in UMRA.

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