

Statement for the Record

On behalf of the

American Bankers Association

before the

Consumer Protection and Financial Institutions Subcommittee

of the

Financial Services Committee

United States House of Representatives

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Chairman Meeks, Ranking Member Luetkemeyer and Members of the Subcommittee, the American Bankers Association (ABA) is pleased to submit this statement for the record on the challenges of banking cannabis-related businesses and to share our views on the recently released discussion draft of the SAFE Banking Act. The ABA is the voice of the nation's \$17 trillion banking industry, which is composed of small, mid-size, regional and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits and extend more than \$9 trillion in loans.

Since 1996, beginning with California, voters across the country have determined that it is appropriate to allow their citizens to use cannabis for medical purposes and, since 2012, for adult use. Despite that, current federal law prevents banks from safely banking these businesses. Leaving this industry unbanked is no longer a viable option – thirty-three states covering 68 percent of the nation's population have now legalized cannabis for medical or adult-use and that number is only expected to grow.

ABA does not take a position on the legalization of cannabis. However, our member banks find themselves in a difficult situation due to the conflict between state and federal law, with local communities encouraging them to bank cannabis businesses and federal law banning it.

Since these businesses find it difficult to access banking services, many operate on an all-cash basis. These stockpiles of cash become attractive targets for armed robbers; just last month, someone was shot inside a cannabis dispensary in East Los Angeles. Operating on an all-cash basis

also means that these businesses often remit payments for taxes and licensing fees to the states in cash while the states would prefer to use more modern payment methods. Moreover, operating on an all-cash basis means that there are no paper trails for auditors to follow. To address these problems, ABA supports a banking-specific solution that would address the reality of the current marketplace and allow banks to serve cannabis-related businesses in states where the activity is legal.

Critically, that solution must come from Congress.

The Controlled Substances Act (21 U.S.C. §801 et seq.) classifies cannabis as an illegal drug and prohibits its use for any purpose. For banks, that means that all proceeds generated by a cannabis-related business, even when it is operating in compliance with state law, are unlawful proceeds under federal law, and so any attempt to conduct a financial transaction with that money (including simply accepting a deposit) is considered money-laundering. All banks, whether state or federally chartered, are subject to federal anti-money laundering laws. And, all banks must have access to the federal payment system to operate, which is under the purview of federal authority.

Currently, the only direction available to financial institutions in connection with cannabis-related accounts comes from guidance issued by the Financial Crimes Enforcement Network in 2014. That guidance, which references a now rescinded memorandum from the U.S. Department of Justice (the “Cole Memo”), describes how financial institutions can report cannabis-related business activity consistent with their Bank Secrecy Act obligations. It does not create a safe harbor or otherwise modify federal law to protect banks from criminal and civil liability for money laundering. The FinCEN guidance is designed to help banks report suspicious activity that is legal under state law but illegal under federal law. While banks often turn to the federal banking regulators for guidance, the federal banking agencies have not taken an official position, constrained by the restrictions of federal law. In fact, no federal banking regulator has the authority to advise the financial institutions that they supervise on how to break federal money laundering statutes, or absolve them from the potential consequences of doing so.

Although a small number of financial institutions have weighed the prevailing climate of non-enforcement and have decided to shoulder the risk in order to serve the needs of their communities, the majority of financial institutions will not take the legal, regulatory, or reputational

risk associated with banking cannabis-related businesses without congressional action. As a result, state-legal businesses are excluded from the mainstream financial system.

The problems, though, are not limited to those businesses which have direct contact with the marijuana plant, such as growers and dispensaries. The impact of the divide between state and federal law extends to any person or business that derives revenue from a cannabis firm – including real estate owners, security firms, utilities, vendors and employees of cannabis businesses. In a recent survey of ABA member banks, 75% of respondents reported having to close an existing account, terminate a banking relationship or turn away a potential customer because of the customer's association with cannabis. Many of the examples provided by our members are related to customers with indirect connections to the cannabis industry – such as small businesses and entrepreneurs who lease space or sell their goods and services to dispensaries or growers. As the legal state-cannabis industry continues to grow, the indirect connections to cannabis revenues will also continue to expand. Without a change to federal law, that entire portion of economic activity in legal cannabis states will continue to be marginalized from the banking system.

Cannabis businesses will be safer and better regulated if they are permitted to use the banking system, which would increase the transparency and accountability of the industry and better protect our communities. Offering deposit and payroll services would help reduce the amount of cash being held on-hand, which would in turn reduce the risk of theft and violent crime. Moving proceeds of cannabis businesses into banks would also strengthen the ability of state and federal government to detect suspicious activity and ensure compliance with tax laws. Simply excluding legal state cannabis activity from the banking sector has not prevented the growth and spread of this industry, but providing access to the banking system could help facilitate public safety, streamline tax payments, and enable effective oversight in the states where voters have chosen to embrace cannabis legalization.

As released, the discussion draft of the SAFE Banking Act would be an important first step toward enabling financial services for cannabis-related businesses. The bill specifies that proceeds from a legitimate cannabis business would not be considered unlawful under federal money laundering statutes or any other federal law, which is necessary to allow services to cannabis businesses as well as any ancillary businesses that derive some portion of their income from cannabis businesses. The bill would also direct FinCEN, and the federal banking regulators through the

FFIEC, to issue guidance and exam procedures. Explicit, consistent direction from federal financial regulators will provide needed clarity for banks and help them to better evaluate the risks and supervisory expectations for cannabis-related customers. The SAFE Banking Act is not a cure all for the cannabis banking challenge, and many financial institutions will undoubtedly decide that the industry is still too high risk for their bank. Nevertheless, the bill will give some added clarity and legal protection for banks that choose to directly or indirectly do business with cannabis-related businesses.

We thank you for holding today's hearing and advancing the important discussion about banking cannabis-related businesses. If these businesses are to be brought into the mainstream financial sector, Congress must provide a path for that to happen. We urge the House Financial Services Committee to consider Representatives Perlmutter, Heck, Stivers and Davidson's bipartisan SAFE Banking Act, which will improve the ability of banks to meet the needs of their local communities.