

March 7, 2019

The Honorable Ed Perlmutter
Member of Congress
Washington, D.C. 20515

The Honorable Denny Heck
Member of Congress
Washington, D.C. 20515

The Honorable Steve Stivers
Member of Congress
Washington, D.C. 20515

The Honorable Warren Davidson
Member of Congress
Washington, D.C. 20515

Dear Representatives Perlmutter, Heck, Stivers and Davidson:

On behalf of the American Bankers Association (ABA), I am writing to express our support for H.R. 1595, the Secure and Fair Enforcement Banking Act (SAFE Banking Act) of 2019. We would like to thank you for your efforts to address this important issue that has become a challenge for many of our nation's communities and the banks that serve them.

Since 1996, 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. Currently, thirty-three states covering 68 percent of the nation's population have legalized cannabis for medical or adult-use and that number is only expected to grow. Despite that, current federal law prevents banks from banking cannabis businesses, as well as the ancillary businesses that provide them with goods and services.

As a result, a majority of states are struggling to address the significant challenges to public safety, as well as regulatory compliance and tax compliance that go hand-in-hand with cash-reliant businesses. Providing a mechanism for the cannabis industry to access the banking system would help those communities reduce cash-motivated crimes, increase the efficiency of tax collections, and improve the financial transparency of the cannabis industry. It would also subject cannabis businesses to increased oversight of their financial activities, since bank accounts are monitored in accordance with existing anti-money laundering and Bank Secrecy Act requirements which help law enforcement to identify suspicious transactions – an opportunity that is not available in an all-cash environment.

While ABA does not take a position on the legalization of marijuana, we respect the decisions made by voters in the states where it has been legalized. Those voters had weighed the societal and cultural issues that come with legalization, and they made their decision. Our member banks, however, 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. Because Congress has banned cannabis, whether for medicinal or adult use, it will require action by Congress to resolve the conflict between state and federal law.

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) can be 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. Thus, banking entities related to the cannabis business can pose significant regulatory sanction risk, loss of access to the payments system and the potential loss of the bank charter itself. This places banks in an untenable position in dealing with these state-authorized businesses.

Currently, the only direction available to financial institutions in connection with cannabis-related accounts comes from guidance issued by the Financial Crimes Enforcement Network (FinCEN) 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. It merely creates a system for reporting activity that is illegal under federal law but otherwise legal under state law.

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 being 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, law firms and employees of cannabis businesses, as well as investors. As the legal state-cannabis industry continues to grow, the indirect connections to cannabis revenues will also continue to expand. Without greater clarity, that entire portion of economic activity – estimated by some to be in the *tens of billions of dollars* – in legal cannabis states will continue to be marginalized from the banking system.

The bipartisan SAFE Banking Act would be an important 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 financial 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 Federal Financial Institutions Examination Council, to issue guidance and exam procedures for banks doing business with cannabis related legitimate businesses. 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 for all cannabis banking challenges, but it is an important measure that helps clarify many issues for the banking industry and regulators.

ABA is pleased to support the SAFE Banking Act and would urge the House Financial Services Committee to consider this legislation.

Sincerely,

A handwritten signature in black ink that reads "BOB NICHOL". The signature is written in a cursive, slightly stylized font.

cc: Members of the House Financial Services Committee