

May 2, 2023

The Honorable Charles Schumer  
Senate Majority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Kevin McCarthy  
Speaker of the House  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Mitch McConnell  
Senate Minority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Hakeem Jeffries  
House Minority Leader  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Sherrod Brown  
Chairman  
Committee on Banking, Housing, and Urban  
Affairs  
United States Senate  
Washington, D.C. 20510

The Honorable Patrick McHenry  
Chairman  
Committee on Financial Services  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Tim Scott  
Ranking Member  
Committee on Banking, Housing, and Urban  
Affairs  
United States Senate  
Washington, D.C. 20510

The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
United States House of Representatives  
Washington, D.C. 20515

Dear Speaker McCarthy, Majority Leader Schumer, Minority Leaders McConnell and Jeffries, Chairmen Brown and McHenry, and Ranking Members Scott and Waters:

On behalf of the American Bankers Association (ABA), I am writing to express our strong support for H.R. 2891 /S. 1323, the Secure and Fair Enforcement Banking Act (SAFE Banking Act) of 2023 sponsored by Senators Jeff Merkley (D-OR) and Steve Daines (R-MT) and Representatives Dave Joyce (R-OH-14) and Earl Blumenauer (D-OR-03). This important legislation would help bring certainty to an important issue that has become a challenge for so many of our nation's communities and the banks that serve them.

The SAFE Banking Act is an urgently needed, and widely supported, bipartisan solution that will allow banks to handle not only the proceeds from both state-licensed cannabis businesses and the ancillary businesses—accountants, skilled trades, landlords, law firms, and other service providers—those businesses rely upon to operate, but also accept deposits from and make loans to employees of those businesses. Federal law currently prevents banks from banking cannabis businesses and these ancillary businesses, without fear of federal sanctions. As a result, this

industry is operating primarily in cash, which is not only a public safety risk, but also undermines the ability for regulators, tax collectors, and law enforcement to monitor the industry effectively.

Financial institutions must adhere to stringent anti-money laundering and counter-terrorist financing reporting requirements, so bringing this industry into the regulated banking system will provide much-needed visibility into its financial activity. Processing transactions through bank accounts instead of in cash would ensure that regulators and law enforcement have the necessary tools to identify bad actors and also enhance tax collection and financial transparency in the thirty-seven states where cannabis is now legal at the state level.

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

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 or ancillary business, even when operating in compliance with state law, are unlawful 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. Thus, banking cannabis businesses, or any of the non-cannabis focused vendors or businesses that serve them, places banks in the untenable position of dealing with these state-authorized businesses at significant risk of regulatory sanction, loss of access to the payments system or even the potential loss of the bank charter itself.

Currently, the only directive 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 anti-money laundering obligations. However, it merely creates a system for reporting activity that is illegal under federal law but otherwise legal under state law and does not create a safe harbor or otherwise modify federal law to protect banks from criminal and civil liability for providing financial services to state-sanctioned cannabis businesses.

The bipartisan, bicameral, SAFE Banking Act would provide that legal and regulatory clarity for banks and help facilitate access to financial services for state-sanctioned cannabis businesses while strengthening the ability of financial institutions and law enforcement to detect unlawful activity.

The bill specifies that proceeds from a state-sanctioned cannabis business would not be considered unlawful under federal money laundering statutes or any other federal law, which is necessary to allow the provision of financial services to state-sanctioned cannabis businesses as well as any ancillary businesses that derive some portion of their income from those 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 state-sanctioned cannabis businesses. Explicit, consistent direction from federal financial regulators will provide needed clarity for banks and help them better evaluate the risks and supervisory expectations for cannabis-related customers.

This legislation has garnered strong bipartisan support in both the House and Senate, and ABA urges all Members of Congress to please join in cosponsoring the SAFE Banking Act. ABA also requests swift consideration of these bills in both the Senate Banking and House Financial Services Committees, through regular order, and further advocates for swift passage by Congress.

Sincerely,



cc: Members of the U.S. Senate  
Members of the U.S. House of Representatives