



September 26, 2023

The Honorable Sherrod Brown
Chairman
Committee on Banking, Housing & Urban Affairs
Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Tim Scott
Ranking Member
Committee on Banking, Housing &
United States Senate
Washington, DC 20510

Dear Senators Brown and Scott,

On behalf of the Conference of State Bank Supervisors (“CSBS”), I write to request your support and passage of the Secure And Fair Enforcement Regulation Banking Act of 2023, the SAFER Banking Act^[1], scheduled to be considered soon by the Senate Banking, Housing & Urban Affairs Committee. By granting a safe harbor for financial institutions, Congress can bring regulatory clarity to the financial services industry, address public safety concerns, and ensure access to financial services for state-compliant marijuana and marijuana-related businesses. I further ask that the safe harbor provision in the bill be extended to state-licensed money services businesses as the adverse impact of the current inconsistency in state and federal law is not limited to depository institutions.

Marijuana is now legal in some form in most of the United States. Thirty-eight states and the District of Columbia allow marijuana for medical purposes.^[2] Twenty-three states and the District of Columbia also allow marijuana for recreational use.^[3] However, due to legal and regulatory risks associated with the contradictory federal and state laws, many financial institutions remain reluctant to provide services to marijuana-related businesses.

As a result, federal law blocks marijuana-related businesses from accessing financial services such as bank deposits, loans, money transmission, and accepting credit cards for payment. This leaves marijuana businesses – legal under state law – operating largely as cash-only operations. For years, we have seen increased violent crime at marijuana businesses as criminals know these businesses keep large quantities of cash on hand.

Passage of the bi-partisan SAFER Banking Act would reduce the risk associated with large cash-and-carry operations and increase public safety. Enacting the SAFER Banking Act would also support economic development in states that have legalized marijuana, while enhancing safety for industry employees and the public alike. Tax collection, consumers and the financial system will remain at risk until financial institutions can serve the industry without concern of violating federal law. Clarity between state and federal law is needed to allow state-compliant marijuana businesses to access financial services without the risk of federal penalty.

The SAFER Banking Act would also benefit the regtech companies operating in this space to assist with anti-money laundering requirements. Banking marijuana businesses necessitates enhanced Bank Secrecy Act/Anti-Money Laundering compliance requirements. The Financial Crimes Enforcement Network (“FinCEN”) guidance, last updated in 2014, established three



categories of marijuana suspicious activity reports (“SARs”) that created considerable ongoing burden for financial institutions.^[4] Adding to the burden and uncertainty is that the U.S. Department of Justice Cole Memorandum underlying the 2014 guidance was rescinded in January 2018 and has not been replaced with new guidance.^[5] Safe harbor legislation could provide needed relief from regulatory uncertainty for institutions working to adhere to anti-money laundering requirements while still addressing necessary protections.

State-regulated money transmitters play an important role in the servicing of small businesses across the country by receiving funds from one party and transferring those funds to another party. Leaving money transmitters out of the safe harbor provisions will perpetuate regulatory uncertainty and the public safety issues associated with cash-only operations. Furthermore, money transmitters provide services to the consumers of these small businesses and are supervised by the states for compliance with Bank Secrecy Act/Anti-Money Laundering requirements and prudential standards.

In summary, state bank regulators support the passage of the SAFER Banking Act. Additionally, we encourage the Senate to provide a safe harbor for money transmitters to protect all state-compliant marijuana industry participants by allowing them to use safe, regulated, and verifiable money services. State banking regulators look forward to working with you toward passage of this important legislation.

Sincerely,

James M. Cooper
President & CEO

Cc: Members of the Senate Committee on Banking, Housing, & Urban Affairs

^[1] Secure And Fair Enforcement Regulation Act of 2023. <https://www.democrats.senate.gov/imo/media/doc/ehf23835pdf.pdf>

^[2] National Conference of State Legislatures, April 24, 2023. <https://www.ncsl.org/health/state-medical-cannabis-laws#anchor8842>

^[3] Id.

^[4] BSA Expectations Regarding Marijuana-Related Businesses. Financial Crimes Enforcement Network, February 14, 2014.

<https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>

^[5] Justice Department Issues Memo on Marijuana Enforcement. The United States Department of Justice, January 4, 2018.

<https://www.justice.gov/opa/pr/justice-department-issues-memo-marijuana-enforcement>