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National Association of Federally-Insured Credit Unions

May 18, 2022

The Honorable Charles Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, DC 20515

Re: Support for *SAFE Banking Act of 2021*/TITLE XIV—SAFE BANKING in the *America COMPETES Act of 2021* to be included in the Jobs and Competitiveness Legislation Conference Report

Dear Leader Schumer, Speaker Pelosi, Leader McConnell, Leader McCarthy, and House and Senate Conferees:

I write to you today as a conferee for the *America COMPETES Act of 2021* on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in support of TITLE XIV—SAFE BANKING in the *America COMPETES Act of 2021*, which includes the *SAFE Banking Act of 2021*. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 130 million consumers with personal and small business financial service products.

As you are aware, the vast majority of states have authorized varying degrees of marijuana use, ranging from limited medical use to decriminalization and recreational use at the state level. NAFCU has heard from a number of our member credit unions in these states that they are being approached by their members, or potential members, that have a small business in or are serving the legal cannabis industry in their state and are seeking banking services for their small business.

As the cultivation, sale, distribution, and possession of marijuana remains illegal at the federal level under Schedule I of the *Controlled Substances Act*, the majority of credit unions remain hesitant to provide financial services to these members and their small businesses. While the 2013 memo from U.S. Deputy Attorney General James M. Cole (“Cole Memo”) and the 2014 guidance from FinCEN have attempted to provide clarity to financial institutions, uncertainty remains for financial institutions in this area. Guidance can be rescinded at any time, and, in fact, former Attorney General Jeff Sessions took action in 2018 to essentially rescind the “Cole Memo.” For financial institutions, such as credit unions, there are additional regulatory challenges that compound the uncertainty of providing financial services to state-authorized marijuana-related businesses (MRBs). These go beyond just concerns about criminal or civil penalties, but also

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extend to requirements related to proper Suspicious Activity Report (SAR) and anti-money laundering (AML) filings as required under the *Bank Secrecy Act*, access to federal deposit insurance and a Federal Reserve master account, and even potential issues with the Internal Revenue Service (IRS). Missteps in these areas could prove devastating to an institution. It should be noted that these risks also exist when providing financial services to ancillary businesses that provide products and services to MRBs and fall within the credit union's field of membership, even if the state-authorized MRB does not.

NAFCU does not have, and is not taking, a position on the broader question of the legalization or decriminalization of marijuana at any degree at the federal or state level. However, we do support Congress taking the steps found in the *SAFE Banking Act of 2021* to provide greater clarity and legal certainty at the federal level for credit unions that choose to provide financial services to state-authorized MRBs and ancillary businesses that may serve those businesses in states where such activity is legal. While the *SAFE Banking Act of 2021* does not address every issue on this front, it seeks to provide a safe harbor for financial institutions that wish to serve such businesses and would be an important step towards improving clarity and addressing what is often perceived as misalignment between federal and state laws. It is with this in mind that NAFCU urges you to support and include TITLE XIV—SAFE BANKING of the *America COMPETES Act of 2021* in the jobs and competitiveness legislation final conference report.

Thank you for your attention to this important issue. We look forward to continuing to work with you on this and other issues of importance to credit unions. Should you have any questions or require any additional information, please do not hesitate to contact me or Jake Plevelich, NAFCU's Associate Director of Legislative Affairs, at jplevelich@nafcu.org.

Sincerely,



Brad Thaler
Vice President of Legislative Affairs

cc: House and Senate Members on Jobs and Competitiveness Legislation Conference Committee