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**National Association of Federally-Insured Credit Unions**

May 10, 2023

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

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

**RE: Tomorrow's Hearing: "Examining Cannabis Banking Challenges of Small Businesses and Workers."**

Dear Chairman Brown and Ranking Member Scott:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in conjunction with tomorrow's Committee hearing, "Examining Cannabis Banking Challenges of Small Businesses and Workers." NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 135 million consumers with personal and small business financial service products. With the recent introduction of the bipartisan and bicameral S. 1323, the Secure and Fair Enforcement (SAFE) Banking Act of 2023, we are pleased to see the Committee moving forward on this important issue.

As the Committee is 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 the Financial Crimes Enforcement Network (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 Guidance can be rescinded at any time, and, in fact, former Attorney General Jeff Sessions took action in 2018 to essentially rescind the Cole Memo.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 extend to requirements related to proper

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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 to any degree at the federal or state level. However, we do support Congress taking the steps found in S. 1323, the SAFE Banking Act of 2023, 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 2023 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 the SAFE Banking Act of 2023 and advance it in the Senate.

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 Amber Milenkevich, NAFCU's Senior Associate Director of Legislative Affairs, at [amilenkevich@nafcu.org](mailto:amilenkevich@nafcu.org).

Sincerely,



Brad Thaler  
Vice President of Legislative Affairs

cc: Members of the Senate Banking, Housing, and Urban Affairs Committee