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January 13, 2020

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

Dear Chairman Crapo:

On behalf of community banks across the country, with more than 52,000 locations, I write in response to your request for feedback on concerns related to cannabis banking legislation. Cannabis banking policy is a topic of genuine concern for community banks, especially those that operate in the 33 states that have legalized cannabis for adult recreational or medical use. With widespread business activity generated by the legal use of cannabis, the proper financial banking of associated revenues is an issue that simply cannot be ignored any longer. It is an important public safety concern and a matter of legal and compliance risk for community banks that inhibits their ability to effectively serve their communities. Thank you again for convening a hearing on cannabis banking last July. We were pleased to submit a statement for the record, and we look forward to continuing to work with you to craft effective cannabis banking legislation that addresses your concerns.

ICBA Supports the SAFE Banking Act

At the outset, we wish to clarify that ICBA's support for a safe harbor must not be interpreted as support for legalization of cannabis for any use. ICBA makes no moral or scientific judgments with regard to cannabis use. We merely recognize the reality that many cannabis-related businesses (CRBs) operate in compliance with state law and require access to basic deposit, payment, cash management, credit and other banking services. It is in no one's interest to allow these businesses to continue to operate in cash, a practice that creates an obvious public safety hazard.

A federal safe harbor for banks that offer direct or indirect services to CRBs that comply with state law is a narrowly crafted solution to this growing problem. This is the approach embodied in the SAFE Banking Act (S. 1200), introduced by Senators Jeff Merkley and Cory Gardner. ICBA prefers the House-passed version of the SAFE Banking Act (H.R. 1595) which we believe addresses many of the concerns expressed in your request for comment.

In particular, the House-passed SAFE Banking Act provides that:

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- Federal banking regulators would be prohibited from taking certain actions against a depository institution that provides financial services to cannabis-related legitimate businesses. These include threatening or limiting a bank's deposit insurance, downgrading a loan, prohibiting or discouraging the provision of banking services, or taking any other prejudicial action solely because a bank customer is a CRB.
- The safe harbor would be extended to ancillary businesses that provide services to CRBs by clarifying that the proceeds from the transactions of a CRB or a service provider to a CRB are not considered proceeds of an unlawful activity.
- Banks would be protected from liability under any federal law for providing financial services to cannabis-related legitimate businesses and from forfeiture of collateral for loans to such businesses or to owners of real estate or equipment leased to cannabis-related legitimate businesses.
- Banks are not subject to a new obligation to provide financial services to cannabis-related legitimate businesses.
- The Bank Secrecy Act is amended to require financial institutions to comply with guidance issued by the Financial Crimes Enforcement Network (FinCEN) when filing suspicious activity reports (SARs) related to CRBs. (As described below, we believe this provision should be refined to reflect the rescission of the Cole Memo.)
- The legality of hemp and hemp-derived cannabidiol products and the legality of providing banking services in connection with these products is confirmed. This provision will help dispel confusion about the legal status of these products following their legalization in the Agriculture Improvement Act of 2018. Further, H.R. 1595 would require the federal banking regulators to recommend best practices for financial institutions that provide services in connection with these products.
- Banking regulators would be barred from ordering or pressuring a bank to close a customer account based solely on "reputational risk." This provision would finally end the intrusive and abusive Operation Choke Point and prevent similar, future agency initiatives.

These provisions will ensure community banks can serve their communities and promote public safety without fear of legal and compliance risk. In addition, they address many of the concerns expressed in your request for comment such as the vulnerability of CRBs to money laundering, the legal status of hemp, and the abuses of Operation Choke Point.

Bank Secrecy Act Amendments Should Be Consistent with Current Federal Policy

Your request for comment asked for recommendations with regard to a FinCEN rulemaking regarding the provision of financial services to legitimate CRBs and ancillary businesses. We note that the guidance that is in effect today does not reflect the rescission of the Cole Memo

issued by the Department of Justice in 2013. This inconsistency leads to the filing of cannabis-priority SARs when a Cole Memo priority is violated, though these priorities are no longer in force. For this reason, ICBA recommends that the SAFE Banking Act be amended to ensure that any new FinCEN guidance is updated accordingly.

We urge you to bring H.R. 1595 before the Banking Committee at your soonest convenience. We support legislation to provide needed solutions and certainty that will allow community banks to best serve their consumer and small business customers.

Thank you for your consideration.

Sincerely,

/s/

Rebeca Romero Rainey
President & CEO

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