

January 30, 2020

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

Dear Chairman Crapo:

On behalf of the Electronic Transactions Association (ETA), we appreciate the opportunity to respond to your request for feedback on concerns related to cannabis banking legislation. Cannabis banking policy is a topic of genuine concern for ETA members, especially those that operate in the 47 states and the District of Columbia that allow for some level of cannabis use. With widespread business activity generated by the legal use of cannabis, lack of access to the electronic payments ecosystem and proper banking services is an issue that simply cannot be ignored any longer.

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services; its membership spans the breadth of the payments industry to include independent sales organizations, payments networks, financial institutions, transaction processors, mobile payments products and services, payments technologies, equipment suppliers, and online small business lenders.

ETA wants to make it clear that we take no position on the legalization or decriminalizing of cannabis at the state or federal level for medicinal or recreational uses. However, ETA does support legislation that would resolve the conflict between state and federal laws to allow financial institutions and other business entities that facilitate the operation of the electronic payments ecosystem to service cannabis businesses to serve cannabis related businesses in states where these businesses are legal under state law.

The SAFE Banking Act introduced by Senators Jeff Merkley and Cory Gardner (S. 1200) and the recently passed House version (H.R. 1595) represents a narrowly tailored bipartisan solution to address that conflict that is necessary to allow to ETA members serve cannabis related businesses by providing that the proceeds of state authorized cannabis-related businesses do not violate any provision of federal law. The bill would not change the status of cannabis at the federal level but, would allow legitimate cannabis businesses to access the safety and security of the banking and electronic payments ecosystem in states that have legalized cannabis. Having access to the banking and electronic payments system makes it easier for businesses to track revenues for taxation purposes, decreases a the public safety risk as cash intensive businesses are often targets for criminal activity, and allows for better transparency in tracking of finances for their Bank Secrecy Act (BSA) obligations and anti-money laundering compliance.

We do not believe the SAFE Banking Act is the proper forum to address concerns of public health policy challenges due to the precedent that could be set by attempting to control non-

industry related activities. However, we do see passage of the SAFE Banking Act as a path to allowing local businesses who have chosen to participate, where it is legal, to access the electronic payments ecosystem and financial system and thus reducing unnecessary, violent crime.

We do not anticipate the SAFE Banking Act to be an enabler of interstate commerce or forcing states who do not wish to participate in cannabis commerce into such participation. ETA cautions that it is also important to recognize that the electronic payments ecosystem is highly dependent on the efficient transfer of data into and through a variety of entities – merchant/acquiring processors, card networks, issuer processors - which entities may be located in jurisdictions that do not permit any form of cannabis-related business. Consequently, it is imperative that any provisions respecting the rights of non-cannabis do not present opportunities for local interference or disruption of the ecosystem.

We also share the common goal of preventing bad actors from accessing the financial system. In the wake of the shift in federal cannabis enforcement policy, financial institutions have been left to speculate the risk in offering financial services to cannabis related businesses. While the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) issued guidance in 2014 that laid out a process for financial institutions to open accounts for cannabis related businesses, that guidance was premised on the enforcement priorities of the Cole Memo issued by the department of Justice in 2013. After the rescission of the Cole Memo, financial institutions have been patiently waiting for any guidance from FinCEN as to how to proceed with providing financial services to marijuana and cannabis related businesses.

This inconsistency leads to the filing of cannabis priority suspicious activity reports when a Cole Memo priority is violated, though these priorities are no longer in force. For this reason, ETA agrees that clear direction from FinCEN regarding the provision of financial services to cannabis related businesses and ancillary businesses is a necessary step in offering safe and secure financial services products and services.

ETA has long been opposed to Operation Choke Point and was encouraged to see language added to the House passed SAFE Banking Act. ETA is supportive of strengthening the language to end that conduct while preventing similar, choke point scenarios in the future. The additional language codifies existing practice at the federal agencies to ensure that regulators do not inappropriately limit access to vital financial services for specific customers or groups of customers.

We appreciate your leadership on this important issue. While there are a number of public policy concerns related to cannabis, we strongly urge the Committee to address the conflict between federal and state laws to allow financial institutions and the broader ETA membership to serve cannabis related businesses in states where these businesses are legal under state law. We look forward to working with your office and the rest of the Committee to address any remaining concerns with the legislative language and ask that this legislation remain a priority for quick movement in the Committee.

If you have any questions, please feel free to contact me directly at stalbott@electron.org.

Sincerely,



Scott Talbott
Senior Vice President of Government Affairs
Electronic Transactions Association

