

September 27, 2023

Senate Committee on Banking, Housing and Urban Affairs
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

Dear Chairman Brown and Ranking Member Scott,

As organizations committed to ending marijuana criminalization and its harms, our top priority remains comprehensive and equitable cannabis policy reform. However, as Congress takes steps to advance narrow cannabis legislation focused on protecting banks, the Drug Policy Alliance, Cannabis Regulators of Color Coalition, and Parabola Center for Law and Policy share the belief that if lawmakers are prioritizing cannabis banking, the reform — like every other cannabis policy issue — can *and should* be equity-centered, justice-oriented and designed to promote fairness and designed with the intention of addressing past inequities and preventing future inequities. To that end, we write to you to raise your awareness regarding issues related to cannabis banking that remain unaddressed in the Safe and Fair Enforcement Regulation (SAFER) Banking Act and to highlight the efforts and impact of advocates and policymakers working to ensure cannabis banking is fair.

If left unaddressed, SAFER could result in the continued limitation or denial of banking services to certain owners of state-sanctioned marijuana businesses, particularly those with past marijuana criminal records—addressing this issue remains our top priority. Among the things the SAFER Banking Act would require is an update to the existing FinCEN guidance from 2014. This 2014 guidance lists “red flags” or factors that may “indicate that a marijuana-related business may be engaged in activity that implicates one of the Cole Memo priorities or violates state law.”¹

Among the factors listed as a red flag in the 2014 guidance are criminal records — this broad categorization includes past marijuana criminal records, regardless of whether or not these records have been expunged and irrespective of state laws that allow individuals with past marijuana records to participate in their state regulatory programs. However, since the 2014

¹ *BSA Expectations Regarding Marijuana-Related Businesses*. Financial Crimes Enforcement Network. FIN-2014-G001. Feb. 14, 2014. <https://www.fincen.gov/sites/default/files/guidance/FIN-2014-G001.pdf>.

guidance was adopted, at least 25 states have adopted marijuana expungement policies,² while at least 15 states allow people with previous marijuana convictions to receive marijuana business permits.³ SAFER currently fails to ensure that past marijuana records are not automatically considered a red flag, despite the realities of today's state laws and policies on past marijuana records and despite the fact that the 2014 FinCEN guidance clarified that its list of "red flag" language "may be updated in future guidance."⁴

As this issue has significant implications for individual business owners and state regulatory programs, our organizations remain neutral on this bill and continue to urge reforms to ensure that communities most impacted by marijuana criminalization are not systematically denied access to financial services when seeking to participate in state-sanctioned marijuana activity.

Beyond our efforts to ensure that cannabis banking legislation addresses marijuana criminal records, our organizations have worked to seek additional provisions in cannabis banking legislation that focus on fairness. These efforts led to minor but meaningful amendments to the SAFE Banking Act of 2023 and have been included in SAFER. For example, due to our advocacy efforts and those of other advocates and policymakers, the current legislation includes provisions to ensure timely and more comprehensive data collection and reports that are inclusive of the hemp industry, veteran-owned businesses and small businesses.

Because of collective and unrelenting efforts to prioritize equity, the current bill is undoubtedly better than previous versions of the bill with respect to the issue of cannabis banking. This is a testament that all marijuana policy reforms, including cannabis banking legislation, are an opportunity to promote equity. However, more can and *should* be done to ensure that cannabis banking policy promotes fairness and is not merely protecting banks and increasing banking access for some.

Ongoing opportunities to improve cannabis banking legislation through minor and technical amendments include:⁵

- Ensuring the legislation has a purpose section that includes promoting fairness in the provision of financial services
- Ensuring guidance from federal regulators includes best practices to promote fairness
- Appropriately defining small businesses to ensure related studies and reports are meaningful

² Arizona, California, Colorado, Connecticut, District of Columbia, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Missouri, Montana, North Dakota, New Hampshire, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, Virginia and Washington
<https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-marijuana-legalization-expungement/>

³ Arizona, California, Colorado, Illinois, Massachusetts, Michigan, Nevada, New Jersey, New Mexico, New York, Rhode Island, Oregon, Vermont, Virginia and Washington.

⁴ *BSA Expectations Regarding Marijuana-Related Businesses*. Page 5.

⁵ *The Drug Policy Alliance's Top Recommendations for Improving the SAFE Banking Act of 2023*. Available at: <https://shorturl.at/kptBR>.

- Ensuring that studies and reports on marketplace barriers review state and local strategies
- Limiting the legislation’s safe harbor to financial institutions who can demonstrate compliance with existing anti-discrimination laws

Additionally, we urge the Senate Banking Committee and its members to work with the Treasury Department and FinCEN to update its guidance and policies to reflect these important issues. For example, updates to the 2014 FinCEN guidance could revise its “red flag” provisions to no longer include previous marijuana offenses.

By acknowledging the progress we’ve made and clearly identifying issues that remain unaddressed, we hope to continue to work with Congress and other stakeholders to ensure equity remains the center of marijuana policy reform and thank the ongoing efforts of advocacy organizations and policymakers to ensure that marijuana banking reform is fair.

Sincerely,

Drug Policy Alliance
Cannabis Regulators of Color Coalition
Parabola Center for Law and Policy



Please also consider the following resources for more information on how cannabis banking policy can be improved to promote fairness:

- [Not A SAFE Bet: Equitable Access to Cannabis Banking. An Analysis of the SAFE Banking Act](#)
- [Fair: What the F in SAFE Stands For: An Analysis of the Latest Version of the SAFE Banking Act and Ongoing Efforts to Promote Fairness in Cannabis Banking](#)
- [Parabola Center’s Cheat Sheet: SAFER Banking Act](#)
- [The Role of Small Business in the Evolving Cannabis Industry](#)
- [Written Testimony of Cat Packer at the May 11, 2023 meeting of the Senate Committee on Banking, Housing and Urban Affairs - Examining Cannabis Banking Challenges of Small Businesses and Workers](#)