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National Association of Federally-Insured Credit Unions

February 12, 2019

The Honorable Greg Meeks
Chairman
Subcommittee on Consumer Protection and
Financial Institutions
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Ranking Member
Subcommittee on Consumer Protection and
Financial Institutions
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Re: Tomorrow's Hearing: "Challenges and Solutions: Access to Banking Services for Cannabis-Related Businesses"

Dear Chairman Meeks and Ranking Member Luetkemeyer:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in conjunction with tomorrow's Subcommittee hearing on access to banking services for cannabis-related businesses, also known as marijuana-related businesses (MRBs). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 115 million consumers with personal and small business financial service products. NAFCU and our members appreciate the Subcommittee's focus on this important and challenging topic.

As the Subcommittee 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 small businesses that are in, or that serve, the legal cannabis industry in their state in order to obtain banking services for those businesses.

As the cultivation, sale, distribution and possession of marijuana remains illegal at the federal level under Schedule I of the *Controlled Substances Act*, almost all 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 Guidance can be rescinded at any time, and in fact, former Attorney General Jeff Sessions took action in 2018 to essentially rescind the "Cole Memo."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 MRBs. These go beyond just concerns about criminal or civil penalties, but also 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 examining what legislative steps can be taken 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 not a total solution, a strong safe harbor for financial institutions that wish to serve such businesses would be one step towards improving clarity and addressing what is often perceived as misalignment between federal and state laws. While the discussion draft of the *SAFE Banking Act of 2019*, which is before the Subcommittee at this hearing, is an important step toward this goal, NAFCU believes that there are additional issues that the legislation may not address and should be examined.

Thank you for your attention to this important issue. We look forward to continuing to work with the Subcommittee on this and other issues of importance to credit unions. Should you have any questions or require any additional information, please contact me or Alex Gleason, NAFCU's Associate Director of Legislative Affairs, at 703-842-2237 or agleason@nafcu.org.

Sincerely,



Brad Thaler
Vice President of Legislative Affairs

cc: Members of the House Financial Services Committee