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National Association of Federally-Insured Credit Unions

July 22, 2019

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

The Honorable Sherrod Brown  
Ranking Member  
Committee on Banking, Housing,  
& Urban Affairs  
United States Senate  
Washington, DC 20510

**RE: Tomorrow's Hearing: "Challenges for Cannabis and Banking: Outside Perspectives"**

Dear Chairman Crapo and Ranking Member Brown:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in conjunction with tomorrow's Committee 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 117 million consumers with personal and small business financial service products. NAFCU and our members appreciate the Committee's focus on this important and challenging topic.

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 that their members, or potential members, that have a small business in, or serving, the legal cannabis industry in their state are approaching them to seek banking services for their small 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 Guidance can be rescinded at any time and in fact, former Attorney General Jeff Sessions took action in 2018 to essentially rescind the "Cole Memo."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. We urge the Committee to use this hearing to examine legislation such as the *Secure and Fair Enforcement of Banking Act* and the *STATES Act* and how they will address these concerns.

Thank you for your attention to this important issue. We look forward to continuing to work with the Committee on this and other issues of importance to credit unions. Should you have any questions or require any additional information, please contact me or Max Virkus, NAFCU's Associate Director of Legislative Affairs, at (703) 842-2261 or [mvirkus@nafcu.org](mailto:mvirkus@nafcu.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Thaler", with a long horizontal flourish extending to the right.

Brad Thaler  
Vice President of Legislative Affairs

cc: Members of the Senate Banking Committee