



January 10, 2020

The Honorable Michael Crapo  
Chairman  
U.S. Senate Banking, Housing and Urban Affairs Committee  
Washington, D.C. 20510

Dear Chairman Crapo,

On behalf of Ohio's 385 financial institutions, collectively represented by the Ohio Bankers League (OBL) and Ohio Credit Union League (OCUL), thank you for giving us the opportunity to provide feedback to your December memo regarding S. 1200 and H.R. 1595. These two legislative proposals represent a narrowly tailored bipartisan solution to address the federal prohibition on banking cannabis-related funds.

Cannabis became legally available to purchase for medicinal use in Ohio in January 2019. State regulators announced medical marijuana dispensaries sold 7,008 pounds of product in 2019, with sales totaling nearly \$58.3 million. It is no exaggeration to say that such an expansive movement of hard currency has created a public safety concern for Ohio communities.<sup>1</sup>

OBL and OCUL appreciate your dedication to carefully craft legislation that would ensure both public safety and robust government oversight of the cannabis industry through the banking system. We believe it is crucial that the bill provide the Financial Crimes Enforcement Network (FinCEN) and the prudential federal banking regulators the authority to publish guidance and outline necessary changes to the Bank Secrecy Act (BSA). OBL and OCUL members are accustomed to following guidance from their regulators but need additional clarity to help navigate safely serving the industry while focusing on preventing bad actors from illegally laundering funds. Without further action or clarity from Congress, there is currently little preventing bad actors from operating in Ohio.

We appreciate that none of this exists in a vacuum; there are significant issues surrounding cannabis Congress will debate over the coming years. While these issues are important and deserve consideration on their own merits, we continue to urge the Committee's consideration of this narrowly tailored bill as a pathway to ensure all the outstanding issues surrounding cannabis can be debated with a safer and more responsible cannabis industry.

**Issue 1: Options for addressing public health and safety concerns.**

We agree that there are public policy questions relating to public health and safety and the legalization of cannabis. The SAFE Banking Act is not the appropriate vehicle to address these concerns. Any attempt to

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<sup>1</sup> <https://www.medicalmarijuana.ohio.gov/programupdate>

regulate the state cannabis industry through its banking relationship is a dangerous precedent that is unlikely to work.

The Ohio Medical Marijuana Control Program has a robust licensing and regulatory regime tracking every product from seed to sale. They, along with law enforcement and public health entities, are not only the appropriate entities to address important concerns but are also better equipped and have the expertise to accomplish your priorities.

Financial Institutions in the Buckeye State should be focused on the responsible banking needs of their community and ensuring their institution's safety and soundness, not testing the quality of their customer's products.

### **Issues 2 and 3: Options for addressing legacy cash and money laundering.**

Again, we agree with your position that FinCEN needs to deliver clear direction regarding financial services provided to cannabis-related and ancillary businesses. OBL member banks and OCUL member credit unions cannot safely address the financial services needs of their communities if they do not have clarity in this important area.

The SAFE Banking Act codifies a critical change to federal law that is necessary to permit banks and credit unions serve cannabis-related businesses by ensuring the proceeds of state authorized cannabis-related businesses do not violate federal anti-money laundering statutes, or any other provision of federal law. Without that change to federal law, FinCEN lacks the authority to provide banks and credit unions guidance on how to serve state-sanctioned cannabis businesses.

The current FinCEN guidance, for example, is limited in its ability to assist banks and credit unions in complying with responsibilities associated with reporting suspicious activities in instances where an activity conflicts between state and federal law. While these guidelines are useful for financial institutions that have independently made the decision to provide services to cannabis-related businesses, the lack of clarifying guidance discourages many financial institutions from entering the cannabis-related market. More importantly, the FinCEN guidance, which is the only prevailing guidance available to banks and credit unions, does not outline how financial institutions can address the money laundering and terrorist financing risks associated with banking legal cannabis. At the same time, as a result of the discord between state and federal law, banks and credit unions adhering to the existing FinCEN guidance tend to over-report information because each transaction is inherently suspicious by federal law definitions. This over-reporting is counter-productive for law enforcement, a conflict the SAFE Banking Act enables FinCEN to address.

The SAFE Banking Act also outlines the examination procedures for serving the cannabis industry. This will help alleviate current confusion that exists due to the lack of formal regulatory guidance.

### **Issue 4: Options for addressing interstate commerce and banking.**

The SAFE Banking Act clearly establishes that a transaction conducted by a legitimate cannabis-related business or service provider shall not be considered as proceeds from an unlawful activity. As a result, the protections of the act extend only to transactions conducted within a state with legalized cannabis, in accordance with the laws of that state. The SAFE Banking Act does not facilitate interstate commerce of cannabis. Any licensed and regulated cannabis business is prohibited from selling cannabis outside of

Ohio. Sections 3 and 4 of the legislation would ensure transactions from a cannabis business are treated as a transaction from any other legal business.

Both OBL and OCUL are willing to work with your office to strengthen the language in the SAFE Banking Act concerning interstate commerce.

#### **Issue 5: Options for addressing hemp provisions and “Operation Choke Point”**

Ohio banks and credit unions face some unique challenges in financing hemp and hemp-derived products. Recently, federal financial institution regulators and FinCEN issued interagency guidance to help both banks and credit unions serve hemp growers and producers. Nevertheless, there remains concern for financial institutions in connection with hemp exceeding the 0.3% THC threshold, as well as the expectations surrounding businesses selling CBD products. Even though the interagency guidance indicated that FinCEN would provide additional clarity in the coming weeks, we believe including the House approved hemp provision in the Senate bill will help ensure that banks and credit unions receive the clarity and certainty they need in order to fully serve the hemp industry.

The proposed amendments to the Financial Institution Customer Protection Act, as passed in the House, are more than adequate to curb potential future choke point scenarios. While we are not aware of instances where “Operation Choke Point” was implemented or ever progressed beyond the administrative stage and put into operation through financial institution exams, the added language codifies existing practice at the federal banking agencies to ensure that regulators do not inappropriately limit access to vital financial services for specific customers or groups of customers. Both OBL and OCUL support any provision that allows Ohio banks and credit unions to decide who they want to do business with based on their business model and risk tolerance.

We thank you for your leadership in addressing these difficult questions and the opportunity to comment on your concerns. In the 130 years the Ohio Bankers League has been representing the Ohio banking industry, and nearly 86 years the Ohio Credit Union League has served credit unions, we rarely see complete legislation and the SAFE Banking Act is no exception. However, we believe this is an important first step to ensure the legal cannabis is brought into the banking system which allows federal regulators to supervise the industry and ensure proper tax collection and remittance.

Sincerely,



Michael J. Adelman  
President and CEO, OBL



Evan Kleymeyer  
VP External Relations, OBL



Paul L. Mercer  
President, OCUL



Emily C. Leite  
SVP Advocacy, OCUL