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SAFE BANKING ACT OF 2019

JUNE 5, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Ms. MAXINE WATERS of California, from the Committee on Financial Services, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1595]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1595) to create protections for depository institutions that provide financial services to cannabis-related legitimate businesses and service providers for such businesses, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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89–006

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; PURPOSE.

(a) SHORT TITLE.—This Act may be cited as the "Secure And Fair Enforcement Banking Act of 2019" or the "SAFE Banking Act of 2019".

(b) PURPOSE.—The purpose of this Act is to increase public safety by ensuring access to financial services to cannabis-related legitimate businesses and service providers and reducing the amount of cash at such businesses.

SEC. 2. SAFE HARBOR FOR DEPOSITORY INSTITUTIONS.

(a) IN GENERAL.—A Federal banking regulator may not—

(1) terminate or limit the deposit insurance or share insurance of a depository institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), the Federal Credit Union Act (12 U.S.C. 1751 et seq.), or take any other adverse action against a depository institution under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) solely because the depository institution provides or has provided financial services to a cannabis-related legitimate business or service provider;

(2) prohibit, penalize, or otherwise discourage a depository institution from providing financial services to a cannabis-related legitimate business or service provider or to a State, political subdivision of a State, or Indian Tribe that exercises jurisdiction over cannabis-related legitimate businesses;

(3) recommend, incentivize, or encourage a depository institution not to offer financial services to an account holder, or to downgrade or cancel the financial services offered to an account holder solely because—

(A) the account holder is a cannabis-related legitimate business or service provider, or is an employee, owner, or operator of a cannabis-related legitimate business or service provider;

(B) the account holder later becomes an employee, owner, or operator of a cannabis-related legitimate business or service provider; or

(C) the depository institution was not aware that the account holder is an employee, owner, or operator of a cannabis-related legitimate business or service provider;

(4) take any adverse or corrective supervisory action on a loan made to—

(A) a cannabis-related legitimate business or service provider, solely because the business is a cannabis-related legitimate business or service provider;

(B) an employee, owner, or operator of a cannabis-related legitimate business or service provider, solely because the employee, owner, or operator is employed by, owns, or operates a cannabis-related legitimate business or service provider, as applicable; or

(C) an owner or operator of real estate or equipment that is leased to a cannabis-related legitimate business or service provider, solely because the owner or operator of the real estate or equipment leased the equipment or real estate to a cannabis-related legitimate business or service provider, as applicable; or

(5) prohibit or penalize a depository institution (or entity performing a financial service for or in association with a depository institution) for, or otherwise discourage a depository institution (or entity performing a financial service for or in association with a depository institution) from, engaging in a financial service for a cannabis-related legitimate business or service provider.

(b) SAFE HARBOR APPLICABLE TO DE NOVO INSTITUTIONS.—Subsection (a) shall apply to an institution applying for a depository institution charter to the same extent as such subsection applies to a depository institution.

SEC. 3. PROTECTIONS FOR ANCILLARY BUSINESSES.

For purposes of sections 1956 and 1957 of title 18, United States Code, and all other provisions of Federal law, the proceeds from a transaction conducted by a cannabis-related legitimate business or service provider shall not be considered as proceeds from an unlawful activity solely because the transaction was conducted by a cannabis-related legitimate business or service provider, as applicable.

SEC. 4. PROTECTIONS UNDER FEDERAL LAW.

(a) IN GENERAL.—With respect to providing a financial service to a cannabis-related legitimate business or service provider within a State, political subdivision of a State, or Indian country that allows the cultivation, production, manufacture, sale, transportation, display, dispensing, distribution, or purchase of cannabis pursuant

to a law or regulation of such State, political subdivision, or Indian Tribe that has jurisdiction over the Indian country, as applicable, a depository institution, entity performing a financial service for or in association with a depository institution, or insurer that provides a financial service to a cannabis-related legitimate business or service provider, and the officers, directors, and employees of that depository institution, entity, or insurer may not be held liable pursuant to any Federal law or regulation—

(1) solely for providing such a financial service; or

(2) for further investing any income derived from such a financial service.

(b) PROTECTIONS FOR FEDERAL RESERVE BANKS.—With respect to providing a service to a depository institution that provides a financial service to a cannabis-related legitimate business or service provider (where such financial service is provided within a State, political subdivision of a State, or Indian country that allows the cultivation, production, manufacture, sale, transportation, display, dispensing, distribution, or purchase of cannabis pursuant to a law or regulation of such State, political subdivision, or Indian Tribe that has jurisdiction over the Indian country, as applicable), a Federal reserve bank, and the officers, directors, and employees of the Federal reserve bank, may not be held liable pursuant to any Federal law or regulation—

(1) solely for providing such a service; or

(2) for further investing any income derived from such a service.

(c) FORFEITURE.—

(1) DEPOSITORY INSTITUTIONS.—A depository institution that has a legal interest in the collateral for a loan or another financial service provided to an owner, employee, or operator of a cannabis-related legitimate business or service provider, or to an owner or operator of real estate or equipment that is leased or sold to a cannabis-related legitimate business or service provider, shall not be subject to criminal, civil, or administrative forfeiture of that legal interest pursuant to any Federal law for providing such loan or other financial service.

(2) FEDERAL RESERVE BANKS.—A Federal reserve bank that has a legal interest in the collateral for a loan or another financial service provided to an owner, employee, or operator of a depository institution that provides a financial services to a cannabis-related legitimate business or service provider, or to an owner or operator of real estate or equipment that is leased or sold to such a depository institution, shall not be subject to criminal, civil, or administrative forfeiture of that legal interest pursuant to any Federal law for providing such loan or other financial service.

SEC. 5. RULE OF CONSTRUCTION.

Nothing in this Act shall require a depository institution, entity performing a financial service for or in association with a depository institution, or insurer to provide financial services to a cannabis-related legitimate business or service provider.

SEC. 6. REQUIREMENTS FOR FILING SUSPICIOUS ACTIVITY REPORTS.

Section 5318(g) of title 31, United States Code, is amended by adding at the end the following:

"(5) REQUIREMENTS FOR CANNABIS-RELATED LEGITIMATE BUSINESSES.—

"(A) IN GENERAL.—With respect to a financial institution or any director, officer, employee, or agent of a financial institution that reports a suspicious transaction pursuant to this subsection, if the reason for the report relates to a cannabis-related legitimate business or service provider, the report shall comply with appropriate guidance issued by the Financial Crimes Enforcement Network. The Secretary shall ensure that the guidance is consistent with the purpose and intent of the SAFE Banking Act of 2019 and does not significantly inhibit the provision of financial services to a cannabis-related legitimate business or service provider in a State, political subdivision of a State, or Indian country that has allowed the cultivation, production, manufacture, transportation, display, dispensing, distribution, sale, or purchase of cannabis pursuant to law or regulation of such State, political subdivision, or Indian Tribe that has jurisdiction over the Indian country.

"(B) DEFINITIONS.—For purposes of this paragraph:

"(i) CANNABIS.—The term 'cannabis' has the meaning given the term 'marihuana' in section 102 of the Controlled Substances Act (21 U.S.C. 802).

"(ii) CANNABIS-RELATED LEGITIMATE BUSINESS.—The term 'cannabis-related legitimate business' has the meaning given that term in section 11 of the SAFE Banking Act of 2019.

"(iii) INDIAN COUNTRY.—The term 'Indian country' has the meaning given that term in section 1151 of title 18.

"(iv) INDIAN TRIBE.—The term 'Indian Tribe' has the meaning given that term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

"(v) FINANCIAL SERVICE.—The term 'financial service' has the meaning given that term in section 11 of the SAFE Banking Act of 2019.

"(vi) SERVICE PROVIDER.—The term 'service provider' has the meaning given that term in section 11 of the SAFE Banking Act of 2019.

"(vii) STATE.—The term 'State' means each of the several States, the District of Columbia, Puerto Rico, and any territory or possession of the United States.".

SEC. 7. GUIDANCE AND EXAMINATION PROCEDURES.

Not later than 180 days after the date of enactment of this Act, the Financial Institutions Examination Council shall develop uniform guidance and examination procedures for depository institutions that provide financial services to cannabis-related legitimate businesses and service providers.

SEC. 8. ANNUAL DIVERSITY AND INCLUSION REPORT.

The Federal banking regulators shall issue an annual report to Congress containing—

(1) information and data on the availability of access to financial services for minority-owned and women-owned cannabis-related legitimate businesses; and

(2) any regulatory or legislative recommendations for expanding access to financial services for minority-owned and women-owned cannabis-related legitimate businesses.

SEC. 9. GAO STUDY ON DIVERSITY AND INCLUSION.

(a) STUDY.—The Comptroller General of the United States shall carry out a study on the barriers to marketplace entry, including in the licensing process, and the access to financial services for potential and existing minority-owned and women-owned cannabis-related legitimate businesses.

(b) REPORT.—The Comptroller General shall issue a report to the Congress—

(1) containing all findings and determinations made in carrying out the study required under subsection (a); and

(2) containing any regulatory or legislative recommendations for removing barriers to marketplace entry, including in the licensing process, and expanding access to financial services for potential and existing minority-owned and women-owned cannabis-related legitimate businesses.

SEC. 10. GAO STUDY ON EFFECTIVENESS OF CERTAIN REPORTS ON FINDING CERTAIN PERSONS.

Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall carry out a study on the effectiveness of reports on suspicious transactions filed pursuant to section 5318(g) of title 31, United States Code, at finding individuals or organizations suspected or known to be engaged with transnational criminal organizations and whether any such engagement exists in a State, political subdivision, or Indian Tribe that has jurisdiction over Indian country that allows the cultivation, production, manufacture, sale, transportation, display, dispensing, distribution, or purchase of cannabis. The study shall examine reports on suspicious transactions as follows:

(1) During the period of 2014 until the date of the enactment of this Act, reports relating to marijuana-related businesses.

(2) During the 1-year period after date of the enactment of this Act, reports relating to cannabis-related legitimate businesses.

SEC. 11. DEFINITIONS.

In this Act:

(1) BUSINESS OF INSURANCE.—The term "business of insurance" has the meaning given such term in section 1002 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5481).

(2) CANNABIS.—The term "cannabis" has the meaning given the term "marihuana" in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(3) CANNABIS PRODUCT.—The term "cannabis product" means any article which contains cannabis, including an article which is a concentrate, an edible, a tincture, a cannabis-infused product, or a topical.

(4) CANNABIS-RELATED LEGITIMATE BUSINESS.—The term "cannabis-related legitimate business" means a manufacturer, producer, or any person or company that—

(A) engages in any activity described in subparagraph (B) pursuant to a law established by a State or a political subdivision of a State, as determined by such State or political subdivision; and

(B) participates in any business or organized activity that involves handling cannabis or cannabis products, including cultivating, producing, manufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing cannabis or cannabis products.

(5) DEPOSITORY INSTITUTION.—The term "depository institution" means—

(A) a depository institution as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

(B) a Federal credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752); or

(C) a State credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(6) FEDERAL BANKING REGULATOR.—The term "Federal banking regulator" means each of the Board of Governors of the Federal Reserve System, the Bureau of Consumer Financial Protection, the Federal Deposit Insurance Corporation, the Financial Crimes Enforcement Network, the Office of Foreign Asset Control, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Department of the Treasury, or any Federal agency or department that regulates banking or financial services, as determined by the Secretary of the Treasury.

(7) FINANCIAL SERVICE.—The term "financial service"—

(A) means a financial product or service, as defined in section 1002 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5481);

(B) includes the business of insurance;

(C) includes, whether performed directly or indirectly, the authorizing, processing, clearing, settling, billing, transferring for deposit, transmitting, delivering, instructing to be delivered, reconciling, collecting, or otherwise effectuating or facilitating of payments or funds, where such payments or funds are made or transferred by any means, including by the use of credit cards, debit cards, other payment cards, or other access devices, accounts, original or substitute checks, or electronic funds transfers;

(D) includes acting as a money transmitting business which directly or indirectly makes use of a depository institution in connection with effectuating or facilitating a payment for a cannabis-related legitimate business or service provider in compliance with section 5330 of title 31, United States Code, and any applicable State law; and

(E) includes acting as an armored car service for processing and depositing with a depository institution or the Board of Governors of the Federal Reserve System with respect to any monetary instruments (as defined under section 1956(c)(5) of title 18, United States Code.

(8) INDIAN COUNTRY.—The term "Indian country" has the meaning given that term in section 1151 of title 18.

(9) INDIAN TRIBE.—The term "Indian Tribe" has the meaning given that term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

(10) INSURER.—The term "insurer" has the meaning given that term under section 313(r) of title 31, United States Code.

(11) MANUFACTURER.—The term "manufacturer" means a person who manufactures, compounds, converts, processes, prepares, or packages cannabis or cannabis products.

(12) PRODUCER.—The term "producer" means a person who plants, cultivates, harvests, or in any way facilitates the natural growth of cannabis.

(13) SERVICE PROVIDER.—The term "service provider"—

(A) means a business, organization, or other person that—

(i) sells goods or services to a cannabis-related legitimate business; or

(ii) provides any business services, including the sale or lease of real or any other property, legal or other licensed services, or any other ancillary service, relating to cannabis; and

(B) does not include a business, organization, or other person that participates in any business or organized activity that involves handling cannabis or cannabis products, including cultivating, producing, manufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing cannabis or cannabis products.

(14) STATE.—The term "State" means each of the several States, the District of Columbia, Puerto Rico, and any territory or possession of the United States.

PURPOSE AND SUMMARY

On March 7, 2019, Reps. Ed Perlmutter (D–CO), Denny Heck (D–WA), Warren Davidson (R–OH–08) and Steve Stivers (R–OH–15) introduced H.R. 1595, the "Secure and Fair Enforcement (SAFE) Banking Act of 2019," which would allow cannabis-related legitimate businesses, along with their service providers, to access banking services and products, as well as insurance. Furthermore, the SAFE Banking Act seeks to harmonize federal and state law by prohibiting federal banking regulators from engaging in certain actions against financial institutions, such as discouraging, prohibiting, or penalizing depository institutions that serve cannabis-related legitimate businesses. Additionally, any depository institution or employee of the institution would be exempt from federal prosecution or investigation solely for providing banking services to a cannabis-related legitimate business. The legislation provides a safe harbor for financial institutions to offer their products and services to cannabis-related legitimate businesses and adds protections for ancillary businesses, specifies how businesses on tribal land could qualify for the safe harbor provision, and requires the Federal Financial Institutions Examination Council (FFIEC) to develop uniform guidance and exam procedures to help financial institutions lawfully serve cannabis-related legitimate businesses. In addition, the SAFE Banking Act requires reports to Congress on access to financial services and barriers to marketplace entry for potential and existing minority-owned and women-owned cannabis-related legitimate businesses.

BACKGROUND AND NEED FOR LEGISLATION

Today, 47 states, the District of Columbia, and four U.S. territories have passed laws and adopted policies allowing for some cultivation, sale, distribution, and possession of cannabis for adult recreational or medical purposes, including cannabidiol—all of which are in conflict with the Controlled Substances Act of 1970 (CSA).[1] Cannabis is currently considered illegal under this Act, and therefore, financial institutions providing banking services to legitimate cannabis businesses licensed under state law are subject to criminal prosecution and civil and regulatory action. Since state and federal law are in conflict on this issue, legal and legitimate cannabis businesses are forced to operate on a cash-only basis creating a serious public safety risk for employees, businesses, and communities, as well as providing an opportunity for tax evasion, money laundering and other white-collar crimes.

In response to ongoing state cannabis legalization efforts, both the Department of Justice (DOJ) and the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) have issued various memos and guidance on cannabis banking. For example, in an August 29, 2013 memorandum, former Deputy Attorney General James Cole stated that while marijuana remains an illegal substance under the CSA, DOJ would focus its resources on the "most significant threats in the most effective, consistent, and rational way." The memo outlined eight enforcement priorities for DOJ, including preventing the distribution of marijuana to minors;

[1] 21 U.S.C. 801 et.seq.

preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; and preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity.[2] In a February 14, 2014 memorandum, Deputy Attorney General Cole further reiterated these enforcement priorities, specifically as they relate to the prosecution of marijuana-related financial crimes. The memo directed the U.S. Attorneys that "in determining whether to charge individuals or institutions with . . . [certain financial] offenses based on marijuana-related violations of the CSA, prosecutors should apply the eight enforcement priorities described in the August 29 guidance."[3]

FinCEN issued its own guidance with respect to cannabis-related financial crimes on February 14, 2014.[4] This guidance provides a roadmap for financial institutions seeking to comply with suspicious activity reporting requirements when providing financial services to state authorized cannabis-related legitimate businesses, while also alerting FinCEN to transactions that might trigger federal enforcement priorities. Specifically, the FinCEN guidance states that:

> "[b]ecause federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, a financial institution is required to file a SAR on activity involving a marijuana-related business (including those duly licensed under state law) in accordance with this guidance and [FinCEN regulations]."

FinCEN advised financial institutions that, in providing services to a cannabis-related business, they must file one of three types of special SARs:

1. *Cannabis Limited SAR:* The cannabis limited SAR is seen to be appropriate when the bank determines, after the exercise of due diligence, that a customer is not engaged in any activities that violate state law or implicate the investigation and prosecution priorities in the Cole Memorandum;[5]
2. *Cannabis Priority SAR:* A cannabis priority SAR must be filed when the financial institution believes a customer is engaged in activities that implicate DOJ's investigation and prosecution priorities; and,
3. *Cannabis Termination SAR:* A financial institution is instructed to file a cannabis termination SAR when it finds it necessary to sever its relationship with a customer to maintain an effective anti-money laundering program.

FinCEN also provides examples of "red flags" that may indicate that a cannabis priority SAR is appropriate. On January 4, 2018, then Attorney General Jeff Sessions issued a new DOJ memo on

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[2] "Guidance Regarding Marijuana Enforcement," U.S. Department of Justice, August 29, 2013, available at: https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf.

[3] "Guidance Regarding Marijuana Related Financial Crimes," U.S. Department of Justice, February 14, 2014, available at: https://dfi.wa.gov/documents/banks/dept-of-justice-memo.pdf.

[4] "BSA Expectations Regarding Marijuana-Related Business," U.S. Department of the Treasury, Financial Crimes Enforcement Network, FIN-2014-G001, February 14, 2014, available at: https://www.fincen.gov/sites/default/files/shared/FIN-2014-G001.pdf.

[5] "Guidance Regarding Marijuana Enforcement," U.S. Department of Justice, August 29, 2013, available at: https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf.

marijuana enforcement, effectively rescinding the memoranda written by former Deputy Attorney General Cole on the topic. However, after Reps. Perlmutter, Heck, Young and other Members of Congress wrote a letter urging FinCEN to maintain their 2014 guidance, the Treasury Department responded that the FinCEN guidance would remain in place.

Notwithstanding the FinCEN guidance remaining valid, many financial institutions remain reluctant to serve cannabis-related legitimate businesses, and many of those businesses continue to have little to no access to traditional banking services. As a result, many of these businesses operate as purely cash businesses, unable to accept credit cards, deposit their profits or write checks to pay employees or taxes. As such, cannabis-related legitimate businesses have been described as a "soft target" for being robbed and assaulted, having their stores broken into, and having cash and cannabis products stolen. For example, Travis Mason, a security guard and former Marine, was killed in 2016 during a robbery at dispensary in Aurora, Colorado.[6] Additionally, employees are often paid in cash, creating soft targets for criminals. Furthermore, there are related challenges experienced by ancillary businesses that provide various products and services to cannabis-related businesses, such as electricians, plumbers, insurance providers, and landlords. Even though these businesses do not work directly with cannabis, maintaining a checking account or utilize payment processors can prove challenging.[7]

The SAFE Banking Act would address this conflict by clarifying that state-authorized and regulated cannabis businesses, along with their service providers, may access the banking system, in part by creating a safe harbor for banks and credit unions to provide such services to these businesses. With access to banking services, cannabis-related legitimate businesses would no longer need to operate as a cash only business, which could promote public safety and improve the efficiency of collecting taxes and fees from these businesses. The legislative framework builds upon existing guidance from FinCEN and it preserves the banks' and credit unions' regulatory responsibilities to, among other things, know their customers and avoid illicit money laundering. Additionally, the legislation maintains prudential banking regulators' existing authority to use their supervisory and enforcement toolkit to monitor and address safety and soundness concerns for depository institutions.

On February 13, 2019, the Subcommittee on Consumer Protection and Financial Institutions held a hearing during which the legislation was considered. Executives from members of the Credit Union National Association and Independent Community Bankers of America spoke in support of the bill. Neill Franklin, a retired po-

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[6] Tom McGhee and Kieran Nicholson, "Slain pot dispensary security guard dreamed of becoming a police officer," The Denver Post (June 20, 2016), https://www.denverpost.com/2016/06/20/green-heart-marijuana-dispensary-security-guard-killed/.

[7] Testimony of Gregory S. Deckard, President, CEO and Chairman, State Bank Northwest, on behalf of Independent Community Bankers of America, before the Subcommittee on Consumer Protection and Financial Institutions hearing entitled, "Challenges and Solutions: Access to Banking Services for Cannabis-Related Businesses," (Feb. 13, 2019), https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=402094. Also see Tina Reed, "When your business is serving cannabis companies, just keeping a bank account is tricky," Washington Business Journal (Apr. 18, 2017), https://www.bizjournals.com/washington/news/2017/04/18/when-your-business-is-serving-cannabis-companies.html.

lice officer explained how cannabis businesses operating solely with cash, "leave legitimate businesses vulnerable to theft, robbery, and the violence that accompany those crimes." Corey Barnette, an owner of a D.C.-based cannabis dispensary, described how the lack of access to banking services has served as a barrier to entry and "hits especially hard to small and minority-owned business operators." The California State Treasurer, Fiona Ma, discussed her state's exploration of a range of local options in recent years while noting they found that, "the only truly durable solution was for the federal government to act."

In a May 8, 2019, letter supporting the SAFE Banking Act, a bipartisan group of 38 State and territory Attorneys General wrote, "[R]egardless of how individual policymakers feel about states permitting the use of medical or recreational marijuana, the reality of the situation requires federal rules that permit a sensible banking regime for legal businesses."[8] Additionally, in testimony before the Committee on February 6, 2018, Treasury Secretary Steven Mnuchin stated, "[W]e do want to find a solution to make sure that businesses that have large access to cash have a way to get them into a depository institution for it to be safe," in response to a question from Rep. Perlmutter on cannabis and banking.[9]

The SAFE Banking Act is supported by the National Association of Attorneys General (NAAG), the Credit Union National Association (CUNA), the Independent Community Bankers Association (ICBA), the America Bankers Association (ABA), the Mid-size Bank Coalition of America (MBCA), the Electronic Transaction Association (ETA), the Law Enforcement Action Partnership (LEAP), The Real Estate Roundtable (RER), the Safe and Responsible Banking Alliance (SARBA), the American Land Title Association (ALTA), the American Property Casualty Insurance Association (APCIA), The Council of Insurance Agents and Brokers (CIAB), Reinsurance Association of America (RAA), the Independent Insurance Agents and Brokers of America (Big "I"), the Wholesale and Specialty Insurance Association (WSIA), the Rural County Representatives of California (RCRC), The Brink's Company, the National Cannabis Industry Association (NCIA), the National Cannabis Roundtable (NCR), the Minority Cannabis Business Association (MCBA), and the Cannabis Trade Federation (CTF). Additionally, 25 State and territory financial regulators[10] and 17 State Treasurers have endorsed the legislation.[11]

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; purpose

Subsection (a) provides that the short title of the act is the "Secure and Fair Enforcement (SAFE) Banking Act of 2019,"

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[8] National Association of Attorneys General, "AGs Urge Congress to Pass the SAFE Banking Act," (May 8, 2019), https://www.naag.org/naag/media/naag-news/ags-urge-congress-to-pass-the-safe-banking-act.php.

[9] Transcript of Committee on Financial Services hearing entitled, "The Annual Report of the Financial Stability Oversight Council," (Feb. 6, 2018), https://www.govinfo.gov/content/pkg/CHRG-115hhrg31345/html/CHRG-115hhrg31345.htm.

[10] Pennsylvania Secretary of Banking and Securities, "State Regulators Appeal to Congress on Marijuana Banking Fix," (Apr. 15, 2019), https://www.media.pa.gov/pages/banking_details.aspx?newsid=279.

[11] Rep. Ed Perlmutter Press Release, "Nation's Attorneys General, Treasurers Support and Urge Passage of SAFE Banking," (May 8, 2019), https://perlmutter.house.gov/news/documentsingle.aspx?DocumentID=4500.

Subsection (b) provides that the purpose is to improve public safety by ensuring access to financial service to cannabis-related legitimate businesses and service providers and reducing the amount of cash at such businesses. This subsection is intended to make a clear statement to regulators that the changes they make to implement the bill should be geared toward expanding access to basic banking services for such businesses.

Section 2. Safe harbor for depository institutions

This section creates a multi-pronged safe harbor to ensure that regulators cannot prohibit, penalize or otherwise discourage banks or credit unions from serving cannabis-related legitimate businesses solely because they are cannabis-related legitimate businesses. This safe harbor extends to depository institutions that serve ancillary businesses that provide products and services or otherwise interact with cannabis-related legitimate businesses.

Subsection (a) provides that the safe harbor has five components: (1) regulators cannot close a bank or credit union by pulling its charter or its deposit/share insurance, because it serves cannabis-related legitimate businesses or ancillary businesses; (2) regulators cannot impose lesser penalties (i.e. short of closing the institution) to discourage depository institutions from serving cannabis-related legitimate businesses or ancillary businesses or state, local and tribal governments that regulate and tax cannabis-related legitimate businesses; (3) regulators cannot provide incentives to not serve cannabis-related legitimate businesses; (4) regulators cannot take any adverse or corrective supervisory action on loans made to cannabis-related legitimate businesses, ancillary businesses, or people associated with cannabis-related legitimate businesses, solely because the loan involves—directly or indirectly—a cannabis-related legitimate businesses; and (5) regulators cannot prohibit, penalize or otherwise discourage depository institutions, or any entity performing a financial service (e.g. insurance companies, payment processors, armored car services, etc.) for or in association with a depository institution to cannabis-related legitimate businesses or ancillary businesses.

Subsection (b) provides that the safe harbor in the section applies to any entity that applies for a depository institution charter, and such application cannot be denied solely on the basis that the depository institution would serve a cannabis-related legitimate business.

Furthermore, the Committee emphasizes that the safe harbor in this section, or any other provisions of this Act, does not diminish prudential regulators ability to supervise depository institutions for safety and soundness. The Committee also emphasizes that the safe harbor in this section, and other provisions of this Act, are intended to cover all persons affiliated with a legitimate, state-regulated cannabis business or ancillary businesses, including employees, owners and operators of the business.

Section 3. Protections for ancillary businesses

This section creates a safe harbor from 18 USC 1956 (Laundering of financial instruments) and 18 USC 1957 (Engaging in monetary transactions derived from specified unlawful activities) for transactions with a cannabis-related legitimate business and

any entity handling such proceeds regardless of whether or not they transact directly with the cannabis-related legitimate business. Because Federal law criminalizes cannabis, entities that conduct business with cannabis-related legitimate business are handling the proceeds of criminal activity and are exposed to federal criminal and civil legal risks under money laundering, racketeering and other laws. In theory, the criminal and civil legal risks follow the money to businesses who may be two and three degrees removed from the cannabis-related legitimate business. The Committee emphasizes that this section's protection for ancillary businesses is intended to cover not only proceeds that come from a cannabis-related legitimate business, but also other businesses or persons who give money to such a business (e.g. someone who subleases space).

Section 4. Protections under Federal law

Subsection (a) of this section creates a safe harbor for banks, credit unions, money transmitters, payment processors and insurance companies serving cannabis-related legitimate businesses and ancillary businesses. Unlike section two, which is a safe harbor from regulatory action, this subsection is a safe harbor from criminal or civil penalties.

Subsection (b) protects Federal reserve banks from consequences under federal law for serving banks and credit unions that have cannabis-related legitimate business accounts. Federal Reserve Banks play an essential role in the payment system, and this provision was added to help facilitate electronic transactions.

Subsection (c) limits the ability to use asset forfeiture laws to seize property of people who own or work at cannabis-related legitimate business or ancillary businesses. This provision will protect owners, operators and employees' ability to get mortgages, car loans, etc.

Section 5. Rule of construction

This section underscores the Committee's intent that the legislation does not in any manner mandate a depository institution, insurer or any other entity to provide a financial service or product to a cannabis-related legitimate business.

Section 6. Requirement for filing suspicious activity reports

This section amends section 5381(g) of title 31 (part of the Bank Secrecy Act) by adding a new paragraph that requires banks and credit unions serving cannabis-related legitimate businesses to comply with FinCEN's guidance on cannabis banking. The provision added by this subsection also requires FinCEN to ensure that its guidance, and any new guidance that it may issue, be consistent with the purpose of this bill, expanding access to banking and reducing the prevalence of cash. The provision also contains relevant definitions drawn from section 10 of this Act.

Section 7. Guidance and examination procedures

This section provides that not later than 180 days after the enactment of this Act, the federal banking regulators, acting through the Federal Institutions Examination Council, are required to develop uniform guidance and examination for relevant depositary in-

stitutions. This section is designed to address any fragmentation between federal regulators to ensure they engage with depository institutions to help clarify how such institutions can serve cannabis-related legitimate businesses and ancillary businesses, if they choose to do so.

Section 8. Annual diversity and inclusion report

This section provides that the federal banking regulators are to report each year on the access to banking services and barriers to entry for minority- and women-owned cannabis-related legitimate businesses and recommend solutions on how to improve access to banking services and reduce barriers to entry.

Section 9. GAO study on diversity and inclusion

This section provides that the Government Accountability Office (GAO) is to conduct a study on minorities' and women's access to owning cannabis-related legitimate businesses as well as on the access to banking services for those businesses and provide recommendations on how to improve representation in both.

Section 10. GAO study on effectiveness of certain reports

This section provides that not later than two years after enactment of this Act, the GAO shall carry out a study on the effectiveness of SARs filed in finding individuals or organizations suspected or known to be engaged with transnational criminal organizations in a State or related jurisdiction that allows, among other things, the cultivation of cannabis. The Committee emphasizes the language about "whether any such engagement exists" in this section to ensure that GAO does not prejudge any correlation between State-authorized and regulated cannabis-related legitimate businesses, and unrelated individuals or organizations known to be engaged with transnational criminal organizations.

Section 11. Definitions

This section provides for definitions of certain terms used in the Act.

Paragraph (1) defines the business of insurance.

Paragraph (2) defines Cannabis.

Paragraph (3) defines Cannabis Product.

Paragraph (4) defines Cannabis-Related Legitimate Business. The Committee intends that this term covers all state-regulated cannabis businesses. The Committee intends that the scope of this provision includes any grower, processor and dispensary, and it would also cover cannabis testing labs in states that set up and regulate those. These businesses must be operating pursuant to state law, so any criminal drug cartel of any type will fail to qualify. The determination of whether the businesses are operating pursuant to state law is delegated to the states, so businesses that lose their license or run afoul of their state cannabis regulator will also fall out of the definition.

Paragraph (5) defines Depositary Institutions.

Paragraph (6) defines "Federal Banking Regulator" broadly to include not just NCUA, FDIC, OCC and Fed but also CFPB and FinCEN because Sections 2(5) and 4(a) deal with payment proc-

essors and money transmitters who are not directly regulated by the four prudential banking regulators.

Paragraph (7). The definition for "Financial Service" mostly uses the definition from the Consumer Financial Protection Act, so it covers all manner of traditional banking services (e.g. checking and savings accounts, loans) but not capital markets activity. In addition, we specify that payment processing and armored car services are included in this definition to make sure the bill covers those necessary services.

Paragraphs (8), (9), (10), (11) and (12), define Indian Country, Indian Tribe, Insurer, Manufacturer and Producer, respectively.

Paragraph (13) defines Service Provider, and addresses ancillary businesses related to this Act. This definition covers any business, organization or other person that provides goods or services to a cannabis-related legitimate business, but we exclude anyone who physically handles cannabis. Any businesses that handles cannabis will have to qualify as a "Cannabis Related Legitimate Business," or CRLB. The principal distinction between CRLBs and Service Providers is that CRLBs have to be operating pursuant to state law, but service providers are not.

Paragraph (14) defines "State" to include the District of Columbia, Puerto Rico, and any territory or possession of the United States.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 for the 116th Congress, the Committee on Financial Services' Subcommittee on Consumer Protection and Financial Institutions held a hearing to consider H.R. 1595 entitled "Challenges and Solutions: Access to Banking Services for Cannabis-Related Businesses" on February 13, 2019. Testifying on the first panel was the Honorable Ed Perlmutter, Member of Congress, who serves as one of the coauthors of the SAFE Banking Act. Testifying on the second panel was: Honorable Fiona Ma, California State Treasurer; Maj. Neill Franklin(Ret.), Baltimore City & Maryland State Police Departments, and Executive Director, Law Enforcement Action Partnership (LEAP); Ms. Rachel Pross, Chief Risk Officer, MAPS Credit Union, on behalf of Credit Union National Association (CUNA); Mr. Gregory Deckard, President, CEO and Chairman, State Bank Northwest, on behalf of Independent Community Bankers of America (ICBA); Mr. Corey Barnette, Owner, District Growers Cultivation Center & Metropolitan Wellness Center; and Mr. Jonathan Talcott, Chairman, Smart Approaches to Marijuana (SAM).

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on March 26–28, 2019 and ordered H.R. 1595 to be reported favorably to the House with an amendment in the nature of a substitute by a recorded vote of 45 yeas and 15 nays, a quorum being present. A number of amendments were adopted by voice vote, including an amendment by Representative Porter related to ensuring that an entity applying to be a depositary institution should be afforded the protection of the Act (section 2(b)) and an amendment by Rep-

resentative Stivers that expanded the protections of the Act to insurer and insurance services.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 1595:

Present	Representatives	Ayes	Nays
	Ms. Waters, *Chairwoman*		X
	Mrs. Maloney		X
	Ms. Velázquez		X
	Mr. Sherman		X
	Mr. Meeks		X
	Mr. Clay		X
	Mr. Scott		X
	Mr. Green		X
	Mr. Cleaver		X
	Mr. Perlmutter		X
	Mr. Himes		X
	Mr. Foster		X
	Mrs. Beatty		X
	Mr. Heck		X
	Mr. Vargas		X
	Mr. Gottheimer	X	
	Mr. Gonzalez (TX)		X
	Mr. Lawson		X
	Mr. San Nicolas		X
	Ms. Tlaib		X
	Ms. Porter		X
	Ms. Axne		X
	Mr. Casten		X
	Ms. Pressley		X
	Mr. McAdams		X
	Ms. Ocasio-Cortez		X
	Ms. Wexton		X
	Mr. Lynch		X
	Ms. Gabbard		X
	Ms. Adams		X
	Ms. Dean		X
	Mr. Garcia (IL)		X
	Ms. Garcia (TX)		X
	Mr. Phillips		X
34			
	Mr. McHenry, *Ranking Member*	X	
	Ms. Wagner	X	
	Mr. King	X	
	Mr. Lucas	X	
	Mr. Posey	X	
	Mr. Luetkemeyer	X	
	Mr. Huizenga	X	
	Mr. Duffy	X	
	Mr. Stivers	X	
	Mr. Barr	X	
	Mr. Tipton	X	
	Mr. Williams	X	
	Mr. Hill	X	
	Mr. Emmer	X	
	Mr. Zeldin	X	
	Mr. Loudermilk	X	
	Mr. Mooney	X	
	Mr. Davidson	X	
	Mr. Budd	X	
	Mr. Kustoff	X	
	Mr. Hollingsworth	X	
	Mr. Gonzalez (OH)	X	
	Mr. Rose	X	
	Mr. Steil	X	
	Mr. Gooden	X	
	Mr. Riggleman	X	
26			

Committee on Financial Services
Full Committee
116th Congress (1st Session)

Date: 3/27/2019

Measure __ H.R. 1595

Amendment No.: 1c.

Offered by: Barr

Agreed To	Yes	No	Prsnt	Wdrn
		X		
Voice Vote	Ayes		Nays	

Record Vote	FC
	27 Ayes - 33 Noes

Present	Representatives	Ayes	Nays
	Ms. Waters, *Chairwoman*		X
	Mrs. Maloney		X
	Ms. Velázquez		X
	Mr. Sherman		X
	Mr. Meeks		X
	Mr. Clay		X
	Mr. Scott		X
	Mr. Green		X
	Mr. Cleaver		X
	Mr. Perlmutter		X
	Mr. Himes		X
	Mr. Foster		X
	Mrs. Beatty		X
	Mr. Heck		X
	Mr. Vargas		X
	Mr. Gottheimer	X	
	Mr. Gonzalez (TX)		X
	Mr. Lawson		X
	Mr. San Nicolas		X
	Ms. Tlaib		X
	Ms. Porter		X
	Ms. Axne		X
	Mr. Casten		X
	Ms. Pressley		X
	Mr. McAdams		X
	Ms. Ocasio-Cortez		X
	Ms. Wexton		X
	Mr. Lynch		X
	Ms. Gabbard		X
	Ms. Adams		X
	Ms. Dean		X
	Mr. Garcia (IL)		X
	Ms. Garcia (TX)		X
	Mr. Phillips		X
34			
	Mr. McHenry, *Ranking Member*	X	
	Ms. Wagner	X	
	Mr. King	X	
	Mr. Lucas	X	
	Mr. Posey	X	
	Mr. Luetkemeyer	X	
	Mr. Huizenga	X	
	Mr. Duffy	X	
	Mr. Stivers	X	
	Mr. Barr	X	
	Mr. Tipton	X	
	Mr. Williams	X	
	Mr. Hill	X	
	Mr. Emmer	X	
	Mr. Zeldin	X	
	Mr. Loudermilk	X	
	Mr. Mooney	X	
	Mr. Davidson	X	
	Mr. Budd	X	
	Mr. Kustoff	X	
	Mr. Hollingsworth	X	
	Mr. Gonzalez (OH)	X	
	Mr. Rose	X	
	Mr. Steil	X	
	Mr. Gooden	X	
	Mr. Riggleman	X	
26			

Committee on Financial Services
Full Committee
116th Congress (1st Session)

Date: 3/27/2019

Measure _ H.R. 1595

Amendment No.: 1d.

Offered by: Rose

Agreed To	Yes	No	Prsnt	Wdrn
		X		
Voice Vote	Ayes		Nays	

Record Vote	FC
	27 Ayes - 33 Noes

Present	Representatives	Ayes	Nays
	Ms. Waters, *Chairwoman*		X
	Mrs. Maloney		X
	Ms. Velázquez		X
	Mr. Sherman		X
	Mr. Meeks		X
	Mr. Clay		X
	Mr. Scott		X
	Mr. Green		X
	Mr. Cleaver		X
	Mr. Perlmutter		X
	Mr. Himes		X
	Mr. Foster		X
	Mrs. Beatty		X
	Mr. Heck		X
	Mr. Vargas		X
	Mr. Gottheimer	X	
	Mr. Gonzalez (TX)		X
	Mr. Lawson		X
	Mr. San Nicolas		X
	Ms. Tlaib		X
	Ms. Porter		X
	Ms. Axne		X
	Mr. Casten		X
	Ms. Pressley		X
	Mr. McAdams		X
	Ms. Ocasio-Cortez		X
	Ms. Wexton		X
	Mr. Lynch		X
	Ms. Gabbard		X
	Ms. Adams		X
	Ms. Dean		X
	Mr. Garcia (IL)		X
	Ms. Garcia (TX)		X
	Mr. Phillips		X
34			
	Mr. McHenry, *Ranking Member*	X	
	Ms. Wagner	X	
	Mr. King	X	
	Mr. Lucas	X	
	Mr. Posey	X	
	Mr. Luetkemeyer	X	
	Mr. Huizenga	X	
	Mr. Duffy	X	
	Mr. Stivers	X	
	Mr. Barr	X	
	Mr. Tipton	X	
	Mr. Williams	X	
	Mr. Hill	X	
	Mr. Emmer	X	
	Mr. Zeldin	X	
	Mr. Loudermilk	X	
	Mr. Mooney	X	
	Mr. Davidson	X	
	Mr. Budd	X	
	Mr. Kustoff	X	
	Mr. Hollingsworth		X
	Mr. Gonzalez (OH)	X	
	Mr. Rose	X	
	Mr. Steil	X	
	Mr. Gooden	X	
	Mr. Riggleman	X	
26			

Committee on Financial Services
Full Committee
116th Congress (1st Session)

Date: 3/27/2019

Measure _ H.R. 1595

Amendment No.: 1f.

Offered by: Duffy

Agreed To	Yes	No	Prsnt	Wdrn
		X		
Voice Vote	Ayes		Nays	

Record Vote	FC
	26 Ayes - 34 Noes

Present	Representatives	Ayes	Nays
	Ms. Waters, *Chairwoman*		X
	Mrs. Maloney		X
	Ms. Velázquez		X
	Mr. Sherman		X
	Mr. Meeks		X
	Mr. Clay		X
	Mr. Scott		X
	Mr. Green		X
	Mr. Cleaver		X
	Mr. Perlmutter		X
	Mr. Himes		X
	Mr. Foster		X
	Mrs. Beatty		X
	Mr. Heck		X
	Mr. Vargas		X
	Mr. Gottheimer		X
	Mr. Gonzalez (TX)		X
	Mr. Lawson		X
	Mr. San Nicolas		X
	Ms. Tlaib		X
	Ms. Porter		X
	Ms. Axne		X
	Mr. Casten		X
	Ms. Pressley		X
	Mr. McAdams		X
	Ms. Ocasio-Cortez		X
	Ms. Wexton		X
	Mr. Lynch		X
	Ms. Gabbard		X
	Ms. Adams		X
	Ms. Dean		X
	Mr. Garcia (IL)		X
	Ms. Garcia (TX)		X
	Mr. Phillips		X
34			
	Mr. McHenry, *Ranking Member*	X	
	Ms. Wagner	X	
	Mr. King	X	
	Mr. Lucas	X	
	Mr. Posey	X	
	Mr. Luetkemeyer	X	
	Mr. Huizenga	X	
	Mr. Duffy	X	
	Mr. Stivers		X
	Mr. Barr	X	
	Mr. Tipton	X	
	Mr. Williams	X	
	Mr. Hill		X
	Mr. Emmer		X
	Mr. Zeldin	X	
	Mr. Loudermilk	X	
	Mr. Mooney	X	
	Mr. Davidson		X
	Mr. Budd	X	
	Mr. Kustoff	X	
	Mr. Hollingsworth		X
	Mr. Gonzalez (OH)		X
	Mr. Rose	X	
	Mr. Steil		X
	Mr. Gooden	X	
	Mr. Riggleman		X
26			

Committee on Financial Services
Full Committee
116th Congress (1st Session)

Date: 3/27/2019

Measure _ H.R. 1595

Amendment No.: 1g.

Offered by: Barr #7

Agreed To	Yes	No	Prsnt	Wdrn
		X		
Voice Vote	Ayes		Nays	

Record Vote	FC
	18 Ayes - 42 Noes

Present	Representatives	Ayes	Nays
	Ms. Waters, *Chairwoman*		X
	Mrs. Maloney		X
	Ms. Velázquez		X
	Mr. Sherman		X
	Mr. Meeks		X
	Mr. Clay		X
	Mr. Scott		X
	Mr. Green		X
	Mr. Cleaver		X
	Mr. Perlmutter		X
	Mr. Himes		X
	Mr. Foster		X
	Mrs. Beatty		X
	Mr. Heck		X
	Mr. Vargas		X
	Mr. Gottheimer		X
	Mr. Gonzalez (TX)		X
	Mr. Lawson		X
	Mr. San Nicolas		X
	Ms. Tlaib		X
	Ms. Porter		X
	Ms. Axne		X
	Mr. Casten		X
	Ms. Pressley		X
	Mr. McAdams		X
	Ms. Ocasio-Cortez		X
	Ms. Wexton		X
	Mr. Lynch		X
	Ms. Gabbard		X
	Ms. Adams		X
	Ms. Dean		X
	Mr. Garcia (IL)		X
	Ms. Garcia (TX)		X
	Mr. Phillips		X
34			
	Mr. McHenry, *Ranking Member*	X	
	Ms. Wagner		X
	Mr. King	X	
	Mr. Lucas	X	
	Mr. Posey	X	
	Mr. Luetkemeyer	X	
	Mr. Huizenga	X	
	Mr. Duffy	X	
	Mr. Stivers	X	
	Mr. Barr	X	
	Mr. Tipton	X	
	Mr. Williams	X	
	Mr. Hill	X	
	Mr. Emmer	X	
	Mr. Zeldin	X	
	Mr. Loudermilk	X	
	Mr. Mooney	X	
	Mr. Davidson	X	
	Mr. Budd	X	
	Mr. Kustoff	X	
	Mr. Hollingsworth	X	
	Mr. Gonzalez (OH)	X	
	Mr. Rose	X	
	Mr. Steil	X	
	Mr. Gooden	X	
	Mr. Riggleman	X	
26			

Committee on Financial Services
Full Committee
116th Congress (1st Session)

Date: 3/27/2019

Measure __ H.R. 1595

Amendment No.: 1i.

Offered by: Huizenga #9

Agreed To	Yes	No	Prsnt	Wdrn
		X		
Voice Vote	Ayes		Nays	

Record Vote	FC
	25 Ayes - 35 Noes

Present	Representatives	Ayes	Nays
	Ms. Waters, *Chairwoman*	X	
	Mrs. Maloney	X	
	Ms. Velázquez	X	
	Mr. Sherman	X	
	Mr. Meeks	X	
	Mr. Clay	X	
	Mr. Scott	X	
	Mr. Green	X	
	Mr. Cleaver	X	
	Mr. Perlmutter	X	
	Mr. Himes	X	
	Mr. Foster	X	
	Mrs. Beatty	X	
	Mr. Heck	X	
	Mr. Vargas	X	
	Mr. Gottheimer	X	
	Mr. Gonzalez (TX)	X	
	Mr. Lawson	X	
	Mr. San Nicolas	X	
	Ms. Tlaib	X	
	Ms. Porter	X	
	Ms. Axne	X	
	Mr. Casten	X	
	Ms. Pressley	X	
	Mr. McAdams	X	
	Ms. Ocasio-Cortez	X	
	Ms. Wexton	X	
	Mr. Lynch	X	
	Ms. Gabbard	X	
	Ms. Adams	X	
	Ms. Dean	X	
	Mr. Garcia (IL)	X	
	Ms. Garcia (TX)	X	
	Mr. Phillips	X	
34			
	Mr. McHenry, *Ranking Member*		X
	Ms. Wagner		X
	Mr. King		X
	Mr. Lucas		X
	Mr. Posey		X
	Mr. Luetkemeyer		X
	Mr. Huizenga		X
	Mr. Duffy		X
	Mr. Stivers	X	
	Mr. Barr		X
	Mr. Tipton	X	
	Mr. Williams		X
	Mr. Hill	X	
	Mr. Emmer	X	
	Mr. Zeldin		X
	Mr. Loudermilk	X	
	Mr. Mooney	X	
	Mr. Davidson	X	
	Mr. Budd		X
	Mr. Kustoff		X
	Mr. Hollingsworth	X	
	Mr. Gonzalez (OH)	X	
	Mr. Rose		X
	Mr. Steil	X	
	Mr. Gooden		X
	Mr. Riggleman	X	
26			

Committee on Financial Services

Full Committee
116th Congress (1st Session)

Date: 3/27/2019

Measure: Final passage of H.R. 1595, as amended

Agreed To	Yes	No	Prsnt	Wdrn
	X			

Voice Vote	Ayes	Nays

Record Vote	FC
	45 Ayes - 15 Noes

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 1595 is to align federal and state laws on the issue of cannabis banking and reduce public safety risk for communities.

NEW BUDGET AUTHORITY AND CBO ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for H.R. 1595 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 24, 2019.

Hon. MAXINE WATERS,
Chairwoman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MADAM CHAIRWOMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1595, the SAFE Banking Act of 2019.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

KEITH HALL,
Director.

Enclosure.

At a Glance

H.R. 1595, SAFE Banking Act of 2019

As ordered reported by the House Committee on Financial Services on March 28, 2019

By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	-2	-3
Revenues	0	*	-1
Deficit Effect	0	-2	-2
Spending Subject to Appropriation (Outlays)	0	*	n.e.

Pay-as-you-go procedures apply?	Yes	**Mandate Effects**	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	< $5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Cannot Determine Costs

n.e. = not estimated; * = between -$500,000 and $500,000.

The bill would:

- Prevent the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA) from taking action against banks or credit unions that serve cannabis-related businesses
- Prevent those regulators from limiting access to financial institutions by cannabis-related businesses
- Require the Financial Crimes Enforcement Network (FinCEN) and the Federal Financial Institutions Examination Council (FFIEC) to issue guidance for institutions that provide services to cannabis-related businesses
- Require reporting by financial regulators and the Government Accountability Office
- Impose or increase the cost of private-sector mandates on financial institutions and remove a private right of action against financial institutions

Estimated budgetary effects would primarily stem from:

- Increases in insurance premiums collected by the FDIC and in capital deposits collected by the NCUA
- Increases in losses from the FDIC's Deposit Insurance Fund and from the NCUA's Share Insurance Fund

Areas of significant uncertainty include:

- The terms of the guidance issued by FinCEN and FFIEC
- Responses of financial institutions and cannabis-related businesses
- Changes in reporting on existing insured deposits from cannabis-related businesses
- The amount of new insured deposits that would result from the bill's enactment

Bill Summary

H.R. 1595 would prevent federal entities from taking action against financial institutions or insurers that serve cannabis-related businesses and service providers that engage in activity that

is legal under state laws.[1] It also would prohibit federal regulators from limiting access to deposit insurance or financial services solely because of an account holder's connection to a cannabis-related business. The bill would direct the Financial Crimes Enforcement Network and the Federal Financial Institutions Examination Council (a formal interagency body whose members include the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency (OCC), and the Board of Governors of the Federal Reserve System) to issue guidance and examination procedures to financial institutions. In addition H.R. 1595 would require federal banking regulators and the Government Accountability Office (GAO) to report on the outcomes of the legislation.

Estimated Federal Cost

The estimated budgetary effect of H.R. 1595 is shown in Table 1. The costs of the legislation fall within budget function 370 (commerce and housing credit).

Basis of Estimate

This cost estimate is based on analyses underlying CBO's May 2019 baseline budget projections for federal financial resolution programs. That baseline incorporates estimated costs of future failures of financial institutions that are calculated using a weighted probability of various outcomes. For this estimate, CBO assumes that H.R. 1595 will be enacted near the end of fiscal year 2019.

Under guidance issued by FinCEN, H.R. 1595 would change federal policies governing services currently offered to cannabis-related businesses by banks and credit unions.[2] CBO anticipates that as a result of the bill's enactment, financial institutions would accept additional deposits from cannabis-related businesses. In doing so, those deposits would increase federal liability for failed financial institutions, thereby increasing resolution costs relative to CBO's current-law baseline.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 1595

	By fiscal year, millions of dollars—												
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019–2024	2019–2029
Increases or Decreases (−) in Direct Spending [a]													
Insured Deposits:													
Estimated Budget Authority	0	0	0	−2	−1	*	*	*	*	*	*	−3	−4
Estimated Outlays	0	0	0	−2	−1	*	*	*	*	*	*	−3	−4
Administrative Costs:													
Estimated Budget Authority	0	*	*	*	*	*	*	*	*	*	*	1	1
Estimated Outlays	0	*	*	*	*	*	*	*	*	*	*	1	1
Total:													
Estimated Budget Authority	0	*	*	−2	*	*	*	*	*	*	*	−2	−3
Estimated Outlays	0	*	*	−2	*	*	*	*	*	*	*	−2	−3
Decreases in Revenues													
Estimated Revenues	0	*	*	*	*	*	*	*	*	*	*	*	−1

[1] Under H.R. 1595, those entities are manufacturers, producers, or any person or company that participates in handling, cultivating, producing, manufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing cannabis or cannabis products. Service providers include businesses, organizations, and people who sell goods or services to cannabis-related businesses. For this estimate, cannabis-related business includes service providers.

[2] There were 438 banks and 113 credit unions offering such services as of December 2018.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 1595—Continued

	By fiscal year, millions of dollars—												
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019–2024	2019–2029
Net Increase or Decrease (−) in the Deficit From Changes in Direct Spending and Revenues													
Effect on the Deficit	0	*	*	−2	*	*	*	*	*	*	*	−2	−2

Components may not sum to totals because of rounding; * = between −$500,000 and $500,000.
[a] Implementing H.R. 1595 also would increase spending subject to appropriation by less than $500,000.

Direct Spending

The bill's budgetary effects would stem primarily from the small increase in deposits insured by the FDIC through its Deposit Insurance Fund (DIF) and by the NCUA through its Share Insurance Fund (SIF). Spending by each fund for resolution costs is recorded in the budget as direct spending. Those costs would be offset by additional premiums charged by the FDIC and capital deposits paid to the NCUA, which are recorded in the budget as reductions in direct spending.

Insured Deposits. Under H.R. 1595, depository institutions; entities or insurers associated with depository institutions; and officers, directors, or employees of those entities would not be subject to federal liability solely for providing services to a cannabis-related business. The bill also would eliminate penalties for investing any income derived from such financial services and would disallow criminal, civil, or administrative forfeiture of collateral for loan or other financial services provided to cannabis-related businesses.

Because of changes that would be made by the bill, CBO expects that enacting H.R. 1595 would increase insured deposits by bolstering legal certainty for institutions that provide affected services and estimates that beginning in 2022 insured deposits at banks would increase by about $1.2 billion and at credit unions by about $200 million. Those amounts would rise to $2.1 billion and $350 million, respectively, by 2029.[3] In total, CBO estimates, future direct spending for resolving bank failures would increase by $5 million.

However, those costs would be offset by assessments levied on insured financial institutions; those assessments would total $9 million, CBO estimates. As a result, CBO estimates, H.R. 1595 would decrease net direct spending by $4 million over the 2019–2029 period.

Administrative Costs. H.R. 1595 would require the FFIEC to develop uniform guidance and examination procedures for depository institutions that provide financial services to cannabis-related businesses and to report annually on recommendations regarding access to those services—in particular by minority- or women-owned businesses.

Using information from several federal banking regulators, CBO estimates that enacting those provisions would increase direct spending by about $3 million over the 2019–2029 period. However, the OCC and the NCUA are authorized to collect premiums and fees from the institutions they regulate to cover direct spending costs. Because those collections are recorded in the budget as off-

[3] Those amounts equal an increase of about 1 basis point in insured deposits relative to CBO's current baseline for each program. A basis point is one one-hundredth of a percentage point.

sets to direct spending, CBO estimates, that the net increase in direct spending would be $1 million over the 2019–2029 period.

Revenues

Costs incurred by the Federal Reserve to implement the bill would reduce remittances to the Treasury, which are recorded in the budget as revenues. CBO estimates that enacting the bill would decrease those revenues by $1 million over the 2019–2029 period.

Spending Subject to Appropriation

H.R. 1595 would require several federal banking regulators that are funded through annual appropriations to issue guidance and contribute to producing the FFIEC's annual report. CBO estimates that implementing that provision would cost less than $500,000 over the 2019–2024 period; any spending would be subject to the availability of appropriated funds.

H.R. 1595 also would require GAO to study barriers to market entry and financial services for potential or existing minority- or women-owned cannabis-related businesses and to publish studies on the effectiveness of report filings of suspicious transactions. CBO estimates that those requirements would cost less than $500,000 annually over the 2020–2024 period.

Uncertainty

This cost estimate has several noteworthy areas of uncertainty:

- The guidance provided by the FinCEN and the FFIEC could be stricter or more lenient than current guidance, which would directly affect the decisions of financial institutions and cannabis-related businesses offering or seeking financial services. Those decisions would affect the amount of new insured deposits.
- The limited data on the amount of cannabis-related deposits in financial institutions—including amounts from activity that may not be classified as such—could mean that new insured deposits could be greater or smaller than estimated.
- If changes in insured deposits are higher or lower than CBO estimated, costs for the DIF and the SIF could be higher or lower depending on the amount of premium collections and capital deposits and on changes in the resolution costs for financial institutions.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those procedures are shown in Table 2.

TABLE 2.—CBO'S ESTIMATE OF PAY-AS-YOU-GO EFFECTS OF H.R. 1595

	By fiscal year, millions of dollars—												
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019–2024	2019–2029
Net Decrease in the Deficit													
Statutory Pay-As-You-Go Effect	0	0	0	−2	0	0	0	0	0	0	0	−2	−2

Increase in long-term deficits: CBO estimates that enacting H.R. 1595 would not increase on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2030.

Mandates: H.R. 1595 contains private-sector mandates as defined in the Unfunded Mandates Reform Act. However, CBO cannot determine whether those mandates would exceed the 2019 threshold of $164 million, adjusted annually for inflation.

Under current law, banks and credit unions may offer services to cannabis-related businesses under FinCEN's guidance. If new uniform guidance and examination procedures from FinCEN and the FFIEC under H.R. 1595 are more stringent than current regulations, the costs of a private-sector mandate on financial institutions would increase. That cost would be the additional expenses incurred by those institutions. CBO cannot anticipate the differences from current law under the new guidelines and thus cannot determine whether the costs would exceed the private-sector threshold.

H.R. 1595 would impose an additional mandate by removing a private right of action. The bill would limit a plaintiff's right to file suit against a financial or depository institution that provides certain services to cannabis-related businesses. The cost of the mandate would be the forgone net value of awards and settlements that would have been granted for such claims in the absence of the bill. Because CBO cannot estimate either the number of precluded lawsuits or the amount of potential forgone settlements, we cannot determine whether the mandate's cost would exceed the annual private-sector threshold.

Finally, if federal banking regulators increased fees or premiums to offset the costs of implementing the bill, the cost of an existing private-sector mandate to pay those fees also would increase. Using information from federal banking regulators, CBO estimates that the increase would total about $2 million over the 2019–2024 period.

Estimate prepared by: Federal Costs: Stephen Rabent; Mandates: Rachel Austin.

Estimate reviewed by: Kim Cawley, Chief, Natural and Physical Resources; Susan Willie, Chief, Mandates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 1595. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act, which is attached.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the Congressional Budget and Impoundment Control Act (as amended The Committee adopts as its own the estimate of federal mandates regarding H.R. 1595, as

amended, prepared by the Director of the Congressional Budget Office.

ADVISORY COMMITTEE

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

JERROLD NADLER, New York
CHAIRMAN

COMMITTEE CORRESPONDENCE

DOUG COLLINS, Georgia
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515–6216
One Hundred Sixteenth Congress

May 3, 2019

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Waters:

This is to advise you that the Committee on the Judiciary has now had an opportunity to review the provisions in H.R. 1595, the "Secure And Fair Enforcement Banking Act of 2019," that fall within our Rule X jurisdiction. I appreciate your consulting with us on those provisions. The Judiciary Committee has no objection to your including them in the bill for consideration on the House floor, and to expedite that consideration is willing to waive sequential referral, with the understanding that we do not thereby waive any future jurisdictional claim over those provisions or their subject matters.

In the event a House-Senate conference on this or similar legislation is convened, the Judiciary Committee reserves the right to request an appropriate number of conferees to address any concerns with these or similar provisions that may arise in conference.

Please place this letter into the *Congressional Record* during consideration of the measure on the House floor. Thank you for the cooperative spirit in which you have worked regarding this matter and others between our committees.

Sincerely,

Jerrold Nadler
Chairman

c: The Honorable Douglas Collins, Ranking Member
The Honorable Thomas J. Wickham, Jr., Parliamentarian

MAXINE WATERS, CA
CHAIRWOMAN

PATRICK MCHENRY, NC
RANKING MEMBER

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

May 7, 2019

The Honorable Jerrold Nadler
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515-6415

Dear Mr. Chairman:

I writing to acknowledge your letter dated May 3, 2019, responding to our request to your Committee that it waive any jurisdictional claims over the matters contained in H.R. 1595, the "Secure and Fair Enforcement Banking Act of 2019" that fall within your Committee's Rule X jurisdiction. The Committee on Financial Services confirms our mutual understanding that your Committee does not waive any jurisdiction over the subject matter contained in this or similar legislation, and your Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues within your jurisdiction.

I will ensure that this exchange of letters is included in the *Congressional Record* during Floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process.

Sincerely,

MAXINE WATERS
Chairwoman

Cc: The Honorable Patrick McHenry

APPLICATION OF LAW TO LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the Congressional Accountability Act, Pub. L. No. 104 1, H.R. 1595, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1595 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 1595 establishes or reauthorizes a program of the Federal Government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 1595, as reported, are shown as follows:

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 31, UNITED STATES CODE

* * * * * * *

SUBTITLE IV—MONEY

* * * * * * *

CHAPTER 53—MONETARY TRANSACTIONS

* * * * * * *

SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

* * * * * * *

§ 5318. Compliance, exemptions, and summons authority

(a) GENERAL POWERS OF SECRETARY.—The Secretary of the Treasury may (except under section 5315 of this title and regulations prescribed under section 5315)—

(1) except as provided in subsection (b)(2), delegate duties and powers under this subchapter to an appropriate supervising agency and the United States Postal Service;

(2) require a class of domestic financial institutions or nonfinancial trades or businesses to maintain appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter or to guard against money laundering;

(3) examine any books, papers, records, or other data of domestic financial institutions or nonfinancial trades or businesses relevant to the recordkeeping or reporting requirements of this subchapter;

(4) summon a financial institution or nonfinancial trade or business, an officer or employee of a financial institution or nonfinancial trade or business (including a former officer or employee), or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (b);

(5) exempt from the requirements of this subchapter any class of transactions within any State if the Secretary determines that—

(A) under the laws of such State, that class of transactions is subject to requirements substantially similar to those imposed under this subchapter; and

(B) there is adequate provision for the enforcement of such requirements;

(6) rely on examinations conducted by a State supervisory agency of a category of financial institution, if the Secretary determines that—

(A) the category of financial institution is required to comply with this subchapter and regulations prescribed under this subchapter; or

(B) the State supervisory agency examines the category of financial institution for compliance with this subchapter and regulations prescribed under this subchapter; and

(7) prescribe an appropriate exemption from a requirement under this subchapter and regulations prescribed under this subchapter. The Secretary may revoke an exemption under this paragraph or paragraph (5) by actually or constructively notifying the parties affected. A revocation is effective during judicial review.

(b) LIMITATIONS ON SUMMONS POWER.—

(1) SCOPE OF POWER.—The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection (a) only in connection with investigations for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National

Housing Act, or chapter 2 of Public Law 91–508 (12 U.S.C. 1951 et seq.) or any regulation under any such provision.

(2) AUTHORITY TO ISSUE.—A summons may be issued under subsection (a)(4) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

(c) ADMINISTRATIVE ASPECTS OF SUMMONS.—

(1) PRODUCTION AT DESIGNATED SITE.—A summons issued pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the financial institution or nonfinancial trade or business operates or conducts business in the United States.

(2) FEES AND TRAVEL EXPENSES.—Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States.

(3) NO LIABILITY FOR EXPENSES.—The United States shall not be liable for any expense, other than an expense described in paragraph (2), incurred in connection with the production of books, papers, records, or other data under this section.

(d) SERVICE OF SUMMONS.—Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may prescribe by regulation.

(e) CONTUMACY OR REFUSAL.—

(1) REFERRAL TO ATTORNEY GENERAL.—In case of contumacy by a person issued a summons under paragraph (3) or (4) of subsection (a) or a refusal by such person to obey such summons, the Secretary of the Treasury shall refer the matter to the Attorney General.

(2) JURISDICTION OF COURT.—The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which—

(A) the investigation which gave rise to the summons is being or has been carried on;

(B) the person summoned is an inhabitant; or

(C) the person summoned carries on business or may be found,

to compel compliance with the summons.

(3) COURT ORDER.—The court may issue an order requiring the person summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding.

(4) FAILURE TO COMPLY WITH ORDER.—Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(5) SERVICE OF PROCESS.—All process in any case under this subsection may be served in any judicial district in which such person may be found.

(f) WRITTEN AND SIGNED STATEMENT REQUIRED.—No person shall qualify for an exemption under subsection (a)(5) [1] unless the relevant financial institution or nonfinancial trade or business prepares and maintains a statement which—

(1) describes in detail the reasons why such person is qualified for such exemption; and

(2) contains the signature of such person.

(g) REPORTING OF SUSPICIOUS TRANSACTIONS.—

(1) IN GENERAL.—The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

(2) NOTIFICATION PROHIBITED.—

(A) IN GENERAL.—If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—

(i) neither the financial institution, director, officer, employee, or agent of such institution (whether or not any such person is still employed by the institution), nor any other current or former director, officer, or employee of, or contractor for, the financial institution or other reporting person, may notify any person involved in the transaction that the transaction has been reported; and

(ii) no current or former officer or employee of or contractor for the Federal Government or of or for any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

(B) DISCLOSURES IN CERTAIN EMPLOYMENT REFERENCES.—

(i) RULE OF CONSTRUCTION.—Notwithstanding the application of subparagraph (A) in any other context, subparagraph (A) shall not be construed as prohibiting any financial institution, or any director, officer, employee, or agent of such institution, from including information that was included in a report to which subparagraph (A) applies—

(I) in a written employment reference that is provided in accordance with section 18(w) of the Federal Deposit Insurance Act in response to a request from another financial institution; or

(II) in a written termination notice or employment reference that is provided in accordance with the rules of a self-regulatory organization registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission,

except that such written reference or notice may not disclose that such information was also included in any such report, or that such report was made.

(ii) INFORMATION NOT REQUIRED.—Clause (i) shall not be construed, by itself, to create any affirmative duty to include any information described in clause (i) in any employment reference or termination notice referred to in clause (i).

(3) LIABILITY FOR DISCLOSURES.—

(A) IN GENERAL.—Any financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution who makes, or requires another to make any such disclosure, shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as creating—

(i) any inference that the term "person", as used in such subparagraph, may be construed more broadly than its ordinary usage so as to include any government or agency of government; or

(ii) any immunity against, or otherwise affecting, any civil or criminal action brought by any government or agency of government to enforce any constitution, law, or regulation of such government or agency.

(4) SINGLE DESIGNEE FOR REPORTING SUSPICIOUS TRANSACTIONS.—

(A) IN GENERAL.—In requiring reports under paragraph (1) of suspicious transactions, the Secretary of the Treasury shall designate, to the extent practicable and appropriate, a single officer or agency of the United States to whom such reports shall be made.

(B) DUTY OF DESIGNEE.—The officer or agency of the United States designated by the Secretary of the Treasury pursuant to subparagraph (A) shall refer any report of a suspicious transaction to any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.

(C) COORDINATION WITH OTHER REPORTING REQUIREMENTS.—Subparagraph (A) shall not be construed as precluding any supervisory agency for any financial institution from requiring the financial institution to submit any information or report to the agency or another agency pursuant to any other applicable provision of law.

(5) REQUIREMENTS FOR CANNABIS-RELATED LEGITIMATE BUSINESSES.—

(A) IN GENERAL.—With respect to a financial institution or any director, officer, employee, or agent of a financial institution that reports a suspicious transaction pursuant to this subsection, if the reason for the report relates to a cannabis-related legitimate business or service provider, the report shall comply with appropriate guidance issued by the Financial Crimes Enforcement Network. The Secretary shall ensure that the guidance is consistent with the purpose and intent of the SAFE Banking Act of 2019 and does not significantly inhibit the provision of financial services to a cannabis-related legitimate business or service provider in a State, political subdivision of a State, or Indian country that has allowed the cultivation, production, manufacture, transportation, display, dispensing, distribution, sale, or purchase of cannabis pursuant to law or regulation of such State, political subdivision, or Indian Tribe that has jurisdiction over the Indian country.

(B) DEFINITIONS.—For purposes of this paragraph:

(i) CANNABIS.—The term "cannabis" has the meaning given the term "marihuana" in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(ii) CANNABIS-RELATED LEGITIMATE BUSINESS.—The term "cannabis-related legitimate business" has the meaning given that term in section 11 of the SAFE Banking Act of 2019.

(iii) INDIAN COUNTRY.—The term "Indian country" has the meaning given that term in section 1151 of title 18.

(iv) INDIAN TRIBE.—The term "Indian Tribe" has the meaning given that term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

(v) FINANCIAL SERVICE.—The term "financial service" has the meaning given that term in section 11 of the SAFE Banking Act of 2019.

(vi) SERVICE PROVIDER.—The term "service provider" has the meaning given that term in section 11 of the SAFE Banking Act of 2019.

(vii) STATE.—The term "State" means each of the several States, the District of Columbia, Puerto Rico, and any territory or possession of the United States.

(h) ANTI-MONEY LAUNDERING PROGRAMS.—

(1) IN GENERAL.—In order to guard against money laundering through financial institutions, each financial institution shall establish anti-money laundering programs, including, at a minimum—

(A) the development of internal policies, procedures, and controls;

(B) the designation of a compliance officer;

(C) an ongoing employee training program; and

(D) an independent audit function to test programs.

(2) REGULATIONS.—The Secretary of the Treasury, after consultation with the appropriate Federal functional regulator (as

defined in section 509 of the Gramm-Leach-Bliley Act), may prescribe minimum standards for programs established under paragraph (1), and may exempt from the application of those standards any financial institution that is not subject to the provisions of the rules contained in part 103 of title 31, of the Code of Federal Regulations, or any successor rule thereto, for so long as such financial institution is not subject to the provisions of such rules.

(3) CONCENTRATION ACCOUNTS.—The Secretary may prescribe regulations under this subsection that govern maintenance of concentration accounts by financial institutions, in order to ensure that such accounts are not used to prevent association of the identity of an individual customer with the movement of funds of which the customer is the direct or beneficial owner, which regulations shall, at a minimum—

(A) prohibit financial institutions from allowing clients to direct transactions that move their funds into, out of, or through the concentration accounts of the financial institution;

(B) prohibit financial institutions and their employees from informing customers of the existence of, or the means of identifying, the concentration accounts of the institution; and

(C) require each financial institution to establish written procedures governing the documentation of all transactions involving a concentration account, which procedures shall ensure that, any time a transaction involving a concentration account commingles funds belonging to 1 or more customers, the identity of, and specific amount belonging to, each customer is documented.

(i) DUE DILIGENCE FOR UNITED STATES PRIVATE BANKING AND CORRESPONDENT BANK ACCOUNTS INVOLVING FOREIGN PERSONS.—

(1) IN GENERAL.—Each financial institution that establishes, maintains, administers, or manages a private banking account or a correspondent account in the United States for a non-United States person, including a foreign individual visiting the United States, or a representative of a non-United States person shall establish appropriate, specific, and, where necessary, enhanced, due diligence policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts.

(2) ADDITIONAL STANDARDS FOR CERTAIN CORRESPONDENT ACCOUNTS.—

(A) IN GENERAL.—Subparagraph (B) shall apply if a correspondent account is requested or maintained by, or on behalf of, a foreign bank operating—

(i) under an offshore banking license; or

(ii) under a banking license issued by a foreign country that has been designated—

(I) as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member, with which designation the United States representative to the group or organization concurs; or

(II) by the Secretary of the Treasury as warranting special measures due to money laundering concerns.

(B) POLICIES, PROCEDURES, AND CONTROLS.—The enhanced due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution in the United States takes reasonable steps—

(i) to ascertain for any such foreign bank, the shares of which are not publicly traded, the identity of each of the owners of the foreign bank, and the nature and extent of the ownership interest of each such owner;

(ii) to conduct enhanced scrutiny of such account to guard against money laundering and report any suspicious transactions under subsection (g); and

(iii) to ascertain whether such foreign bank provides correspondent accounts to other foreign banks and, if so, the identity of those foreign banks and related due diligence information, as appropriate under paragraph (1).

(3) MINIMUM STANDARDS FOR PRIVATE BANKING ACCOUNTS.—If a private banking account is requested or maintained by, or on behalf of, a non-United States person, then the due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution takes reasonable steps—

(A) to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, such account as needed to guard against money laundering and report any suspicious transactions under subsection (g); and

(B) to conduct enhanced scrutiny of any such account that is requested or maintained by, or on behalf of, a senior foreign political figure, or any immediate family member or close associate of a senior foreign political figure, that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) OFFSHORE BANKING LICENSE.—The term "offshore banking license" means a license to conduct banking activities which, as a condition of the license, prohibits the licensed entity from conducting banking activities with the citizens of, or with the local currency of, the country which issued the license.

(B) PRIVATE BANKING ACCOUNT.—The term "private banking account" means an account (or any combination of accounts) that—

(i) requires a minimum aggregate deposits of funds or other assets of not less than $1,000,000;

(ii) is established on behalf of 1 or more individuals who have a direct or beneficial ownership interest in the account; and

(iii) is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a financial institution acting as a liaison between the financial institution and the direct or beneficial owner of the account.

(j) PROHIBITION ON UNITED STATES CORRESPONDENT ACCOUNTS WITH FOREIGN SHELL BANKS.—

(1) IN GENERAL.—A financial institution described in subparagraphs (A) through (G) of section 5312(a)(2) (in this subsection referred to as a "covered financial institution") shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a foreign bank that does not have a physical presence in any country.

(2) PREVENTION OF INDIRECT SERVICE TO FOREIGN SHELL BANKS.—A covered financial institution shall take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to another foreign bank that does not have a physical presence in any country. The Secretary of the Treasury shall, by regulation, delineate the reasonable steps necessary to comply with this paragraph.

(3) EXCEPTION.—Paragraphs (1) and (2) do not prohibit a covered financial institution from providing a correspondent account to a foreign bank, if the foreign bank—

(A) is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and

(B) is subject to supervision by a banking authority in the country regulating the affiliated depository institution, credit union, or foreign bank described in subparagraph (A), as applicable.

(4) DEFINITIONS.—For purposes of this subsection—

(A) the term "affiliate" means a foreign bank that is controlled by or is under common control with a depository institution, credit union, or foreign bank; and

(B) the term "physical presence" means a place of business that—

(i) is maintained by a foreign bank;

(ii) is located at a fixed address (other than solely an electronic address) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank—

(I) employs 1 or more individuals on a full-time basis; and

(II) maintains operating records related to its banking activities; and

(iii) is subject to inspection by the banking authority which licensed the foreign bank to conduct banking activities.

(k) BANK RECORDS RELATED TO ANTI-MONEY LAUNDERING PROGRAMS.—

(1) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(B) INCORPORATED TERM.—The term "correspondent account" has the same meaning as in section 5318A(e)(1)(B).

(2) 120-HOUR RULE.—Not later than 120 hours after receiving a request by an appropriate Federal banking agency for information related to anti-money laundering compliance by a covered financial institution or a customer of such institution, a covered financial institution shall provide to the appropriate Federal banking agency, or make available at a location specified by the representative of the appropriate Federal banking agency, information and account documentation for any account opened, maintained, administered or managed in the United States by the covered financial institution.

(3) FOREIGN BANK RECORDS.—

(A) SUMMONS OR SUBPOENA OF RECORDS.—

(i) IN GENERAL.—The Secretary of the Treasury or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank.

(ii) SERVICE OF SUMMONS OR SUBPOENA.—A summons or subpoena referred to in clause (i) may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

(B) ACCEPTANCE OF SERVICE.—

(i) MAINTAINING RECORDS IN THE UNITED STATES.—Any covered financial institution which maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying the owners of such foreign bank and the name and address of a person who resides in the United States and is authorized to accept service of legal process for records regarding the correspondent account.

(ii) LAW ENFORCEMENT REQUEST.—Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained under this paragraph, the covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

(C) TERMINATION OF CORRESPONDENT RELATIONSHIP.—

(i) TERMINATION UPON RECEIPT OF NOTICE.—A covered financial institution shall terminate any correspondent relationship with a foreign bank not later

than 10 business days after receipt of written notice from the Secretary or the Attorney General (in each case, after consultation with the other) that the foreign bank has failed—

(I) to comply with a summons or subpoena issued under subparagraph (A); or

(II) to initiate proceedings in a United States court contesting such summons or subpoena.

(ii) LIMITATION ON LIABILITY.—A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with this subsection.

(iii) FAILURE TO TERMINATE RELATIONSHIP.—Failure to terminate a correspondent relationship in accordance with this subsection shall render the covered financial institution liable for a civil penalty of up to $10,000 per day until the correspondent relationship is so terminated.

(l) IDENTIFICATION AND VERIFICATION OF ACCOUNTHOLDERS.—

(1) IN GENERAL.—Subject to the requirements of this subsection, the Secretary of the Treasury shall prescribe regulations setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution.

(2) MINIMUM REQUIREMENTS.—The regulations shall, at a minimum, require financial institutions to implement, and customers (after being given adequate notice) to comply with, reasonable procedures for—

(A) verifying the identity of any person seeking to open an account to the extent reasonable and practicable;

(B) maintaining records of the information used to verify a person's identity, including name, address, and other identifying information; and

(C) consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list.

(3) FACTORS TO BE CONSIDERED.—In prescribing regulations under this subsection, the Secretary shall take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

(4) CERTAIN FINANCIAL INSTITUTIONS.—In the case of any financial institution the business of which is engaging in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (including financial activities subject to the jurisdiction of the Commodity Futures Trading Commission), the regulations prescribed by the Secretary under paragraph (1) shall be prescribed jointly with each Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act, including the Commodity Futures Trading Commission) appropriate for such financial institution.

(5) EXEMPTIONS.—The Secretary (and, in the case of any financial institution described in paragraph (4), any Federal agency described in such paragraph) may, by regulation or order, exempt any financial institution or type of account from the requirements of any regulation prescribed under this subsection in accordance with such standards and procedures as the Secretary may prescribe.

(6) EFFECTIVE DATE.—Final regulations prescribed under this subsection shall take effect before the end of the 1-year period beginning on the date of enactment of the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001.

(m) APPLICABILITY OF RULES.—Any rules promulgated pursuant to the authority contained in section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b) shall apply, in addition to any other financial institution to which such rules apply, to any person that engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.

(n) REPORTING OF CERTAIN CROSS-BORDER TRANSMITTALS OF FUNDS.—

(1) IN GENERAL.—Subject to paragraphs (3) and (4), the Secretary shall prescribe regulations requiring such financial institutions as the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing.

(2) LIMITATION ON REPORTING REQUIREMENTS.—Information required to be reported by the regulations prescribed under paragraph (1) shall not exceed the information required to be retained by the reporting financial institution pursuant to section 21 of the Federal Deposit Insurance Act and the regulations promulgated thereunder, unless—

(A) the Board of Governors of the Federal Reserve System and the Secretary jointly determine that a particular item or items of information are not currently required to be retained under such section or such regulations; and

(B) the Secretary determines, after consultation with the Board of Governors of the Federal Reserve System, that the reporting of such information is reasonably necessary to conduct the efforts of the Secretary to identify cross-border money laundering and terrorist financing.

(3) FORM AND MANNER OF REPORTS.—In prescribing the regulations required under paragraph (1), the Secretary shall, subject to paragraph (2), determine the appropriate form, manner, content, and frequency of filing of the required reports.

(4) FEASIBILITY REPORT.—

(A) IN GENERAL.—Before prescribing the regulations required under paragraph (1), and as soon as is practicable after the date of enactment of the Intelligence Reform and Terrorism Prevention Act of 2004, the Secretary shall sub-

mit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that—

(i) identifies the information in cross-border electronic transmittals of funds that may be found in particular cases to be reasonably necessary to conduct the efforts of the Secretary to identify money laundering and terrorist financing, and outlines the criteria to be used by the Secretary to select the situations in which reporting under this subsection may be required;

(ii) outlines the appropriate form, manner, content, and frequency of filing of the reports that may be required under such regulations;

(iii) identifies the technology necessary for the Financial Crimes Enforcement Network to receive, keep, exploit, protect the security of, and disseminate information from reports of cross-border electronic transmittals of funds to law enforcement and other entities engaged in efforts against money laundering and terrorist financing; and

(iv) discusses the information security protections required by the exercise of the Secretary's authority under this subsection.

(B) CONSULTATION.—In reporting the feasibility report under subparagraph (A), the Secretary may consult with the Bank Secrecy Act Advisory Group established by the Secretary, and any other group considered by the Secretary to be relevant.

(5) REGULATIONS.—

(A) IN GENERAL.—Subject to subparagraph (B), the regulations required by paragraph (1) shall be prescribed in final form by the Secretary, in consultation with the Board of Governors of the Federal Reserve System, before the end of the 3-year period beginning on the date of enactment of the National Intelligence Reform Act of 2004.

(B) TECHNOLOGICAL FEASIBILITY.—No regulations shall be prescribed under this subsection before the Secretary certifies to the Congress that the Financial Crimes Enforcement Network has the technological systems in place to effectively and efficiently receive, keep, exploit, protect the security of, and disseminate information from reports of cross-border electronic transmittals of funds to law enforcement and other entities engaged in efforts against money laundering and terrorist financing.

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MINORITY VIEWS

H.R. 1595, the SAFE Banking Act, attempts to create a safe harbor for financial institutions to provide financial services to cannabis-related-businesses. The legislation fails to account for the fact that marijuana is classified by the federal government as a Schedule I drug under the Controlled Substances Act (21 U.S.C. § 811). Therefore, regardless of enactment of H.R. 1595, marijuana will remain an illegal drug at the federal level and a high-risk business for any financial institution that decides to bank related businesses.

The SAFE Banking Act fails to contemplate serious questions regarding the security of the U.S. financial system. Further, it fails to comprehensively address how federal financial regulators will enforce banking statutes and regulations, if at all. Prior to the markup of H.R. 1595, Ranking Member Patrick McHenry and Consumer Protection and Financial Institutions Subcommittee (CPFI) Ranking Member Blaine Luetkemeyer sent a letter to Chairwoman Waters and CPFI Chairman Meeks. The letter posed a series of important questions regarding the impact enactment of the legislation would have on compliance and enforcement of the Bank Secrecy Act, Currency Transaction Reports, Suspicious Activity Reports, anti-money laundering regulations, and Know Your Customer rules. The letter also posed questions on the implications for insurance companies, individual and institutional investors of cannabis-related businesses, and coordination between federal, state, and local law enforcement. To date, that letter remains unanswered.

Section 7 of H.R. 1595 outlines guidance and examination procedures for federal bank regulators. The bill mandates that not less than 180 days after the enactment of the legislation, federal regulators shall develop uniform guidance and examination procedures for institutions that provide financial services to cannabis-related-businesses. Committee Republicans believe that this window fails to give sufficient time for all regulators to negotiate and agree on a uniform guidance procedure. Should the safe harbor go into effect before new rules are adopted, Committee Republicans are concerned the existing regulatory regime will be insufficient to address the new paradigm, leaving our financial institutions and system vulnerable. A reasonable amendment was offered to ensure federal regulators had completed joint rulemakings before the safe harbor went into place. That amendment, along with others offered by Committee Republicans, was defeated.

Committee Republicans point to the dichotomy between the privileges granted to cannabis-related businesses in H.R. 1595 and the treatment of licensed businesses operating in accordance with federal law that were driven out of the banking system under Operation Choke Point. Amendments were offered to extend the protections provided under H.R. 1595 to federally-licensed businesses

that could interact with cannabis-related-businesses, but was deemed non-germane by the Democrats.

Despite the many unanswered questions surrounding H.R. 1595, Democrats held only one hearing on the issue before advancing the legislation. There seems to have been little to no coordination with federal financial regulators or other Congressional Committees that have jurisdiction over cannabis or the Controlled Substances Act. To that end, Committee Republicans remain concerned by the expedited timeframe to move such far-reaching and controversial legislation after conducting such little due diligence. Had further hearings and discussions taken place, the final version of H.R. 1595 could have possibly addressed a number of Republican concerns that pertained to implementation, national security, and the security of our financial system.

TED BUDD.
SEAN P. DUFFY.
ROGER WILLIAMS.
JOHN W. ROSE.
LEE ZELDIN.
ANDY BARR.
FRANK D. LUCAS.
ANN WAGNER.
BILL HUIZENGA.
BLAINE LUETKEMEYER.
BILL POSEY.
PATRICK T. MCHENRY.

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