

## Written Testimony of Cat Packer

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Before the Senate Committee on Banking, Housing and Urban Affairs  
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Dear Members of the Senate Committee on Banking, Housing and Urban Affairs,

I urge you to support several recommendations offered to improve the SAFE Banking Act, especially to ensure that cannabis banking is fair -- which is what the F in SAFE stands for.

The Secure and Fair Enforcement Act of 2023, or “SAFE Banking Act, includes new provisions to ensure timely and more comprehensive data collection and reports that are inclusive of the hemp industry, veteran-owned businesses and small businesses. These are changes the Drug Policy Alliance (DPA) and the Cannabis Regulators of Color Coalition (CRCC) fought to include. Additional positive changes to the bill include granting marijuana workers access to federal mortgage loans and explicitly extending the bill’s protections to Community Development Financial Institutions (CDFIs), another provision DPA, CRCC and our allies advocated for.<sup>1</sup>

These new, common-sense provisions focused on promoting fairness are an encouraging sign that the bill is headed in the right direction. However more can, and should, be done to ensure that all communities have the opportunity to benefit from this limited but critical reform. Fortunately, with a few additional minor and technical amendments the SAFE Banking Act could be a significantly improved means to promote fair access to banking for those participating in the hemp and cannabis market.

This letter details technical amendments to SAFE’s existing provisions regarding updated guidance from federal banking regulators and studies and reports on diversity and inclusion that seek to promote fair access to cannabis banking.

### **Recommendations to Promote Fairness in Updated Guidance**

#### Past Cannabis Criminal Records As Red Flags

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<sup>1</sup> <https://drugpolicy.org/press-release/2023/04/statement-reintroduction-safe-banking-act-congress>

The SAFE Banking Act would require federal banking regulators to provide updated guidance to financial institutions regarding the provision of financial services to the cannabis and hemp industry. However, without additional provisions to ensure fairness, updated guidance may fail to adequately address access.

My top priority is to ensure that past cannabis criminal records are not considered “red flags” or an automatic indication that a business may be engaged in unlawful activity.

Existing guidance considers criminal records to be a “red flag” or information that serves as an automatic indication that a business may be engaged in illegal activity.<sup>2</sup> Although the guidance doesn’t make specific reference to cannabis criminal records, I am concerned that past cannabis criminal records, especially those that have been expunged or are for activity that has been pardoned or is no longer prohibited under state law, will be considered automatically be considered information that serves as an automatic indication that a business may be engaged in illegal activity.

Without proper context or consideration of state laws, failure to address this issue is likely to result in discriminatory practices against state-sanctioned cannabis businesses. I understand the importance of protecting financial institutions from involvement in illegal activities, but I also recognize that many individuals have been unfairly impacted by cannabis criminalization, particularly those in marginalized communities. Fortunately, existing guidance clarifies that future guidance can update what’s considered a red flag and the SAFE Banking Act’s existing requirement for updated guidance provides a timely and meaningful opportunity to address this issue.

Many states have changed their laws and established programs to remove barriers associated with past cannabis criminal records including through expungement or licensing opportunities for cannabis businesses. At least 25 states have pardoned or expunged past cannabis criminal records, either for some or all types of offenses.<sup>3</sup> And at least 15 states have laws that allow individuals with past cannabis criminal records to participate in state-legal markets.<sup>4</sup> Moreover, in order to ensure that future guidance does not interfere with related state and local interests, I recommend that the SAFE

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<sup>2</sup> <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>

<sup>3</sup> Arizona, California, Colorado, Connecticut, District of Columbia, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Missouri, Montana, North Dakota, New Hampshire, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, Virginia and Washington

<https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-marijuana-legalization-expungement/>

<sup>4</sup> Arizona, California, Colorado, Illinois, Massachusetts, Michigan, Nevada, New Jersey, New Mexico, New York, Rhode Island, Oregon, Vermont, Virginia and Washington

Banking Act ensure that updated guidance from federal banking regulators clarifies that state that cannabis criminal records that have been expunged or those that are associated with activity that has been pardoned or is no longer prohibited under state law will not automatically be considered as red flags.

By doing so, we can ensure that financial institutions have clear guidelines to follow when serving the cannabis industry, and that individuals who have been impacted by past cannabis criminalization are not unfairly penalized. Without this type of change, cannabis criminal records will continue to be a significant barrier towards participation in state-legal marijuana industries, disproportionately impacting Black and Brown entrepreneurs and undermining state efforts to address barriers associated with cannabis criminal records.

### Best Practices to Promote Fairness

Although the SAFE Banking Act has provisions to study barriers to access to financial services for those in the hemp and cannabis industry, it lacks measures to proactively promote fairness in access to banking.

The SAFE Banking Act inexplicably requires that federal banking regulators' guidance for financial institutions servicing the hemp industry include best practices for financial institutions but includes no corresponding requirement for best practices within the requirements for updated guidance for the cannabis industry. Moreover, it's important that fairness be a primary goal of best practices.

As such, I recommend that the SAFE Banking Act be amended to ensure that updated guidance from federal banking regulators includes best practices for financial institutions to follow, including best practices to promote fairness, when providing financial services, including processing payments, to state-sanctioned marijuana businesses and hemp-related legitimate businesses.

### Information Sharing With Regulators

For many state and local regulators the cannabis and hemp industry's ability to access financial services provides an opportunity for greater insight into their market and a means for increased regulatory oversight. However, although financial institutions and regulators already regularly share information back and forth, both could benefit from an established process that is consistent, transparent and fair.

In order to facilitate information sharing between financial institutions and regulators, I recommend that the SAFE Banking Act be amended to establish a process for financial

institutions to follow, including best practices to promote fairness, when providing financial services, including processing payments, to state-sanctioned marijuana businesses and hemp-related legitimate businesses.

## **Recommendations to Promote Fairness in Studies and Reports on Diversity and Inclusion**

Although the SAFE Banking Act would allow federal officials to study and report on diversity and inclusion, these studies and reports can be significantly improved with a few technical amendments.

### Study State and Local Strategies to Address Barriers

SAFE would require the GAO to study barriers to marketplace entry and success and barriers to access financial services for potential and existing minority-owned, veteran-owned, women-owned, and small State-sanctioned marijuana businesses and hemp-related legitimate businesses.

It would also require the GAO to report its findings and recommendations to remove barriers and expand access. However, the SAFE Banking Act does not explicitly require the GAO to study or report on existing strategies, including those taken by state and local governments, to remove barriers and expand access. In order to ensure that the GAO report is informed by existing strategies and related lessons learned, I recommend that the SAFE Banking Act be amended to ensure that the GAO report on diversity and inclusion specify that the GAO is required to study and report on strategies, including those taken by state and local governments, to address barriers to market place entry and success, including in the licensing process, and the access to financial services for potential and existing minority-owned, veteran-owned, women-owned, and small State-sanctioned marijuana businesses and hemp-related legitimate businesses.

### Barriers to Marketplace Competition

As mentioned above, SAFE would require the GAO to study and issue a report related to barriers to marketplace entry and success. However, as is the case with all businesses, and especially is the case with cannabis businesses, success is not guaranteed but largely dependent on a businesses' ability to compete. As such I recommend that the SAFE Banking Act be amended to clarify that the GAO's study on diversity and inclusion address barriers to marketplace entry and competition, or at least clarify that barriers to competition should be included in its consideration of marketplace barriers to success.

## Reports and Studies on Diversity and Inclusion Should Promote Fair Access not Expanded Access

In addition to the GAO's report on diversity and inclusion, SAFE also requires a diversity and inclusion report from federal banking regulators. SAFE requires both the GAO and federal banking regulators to specifically make recommendations for "expanding access" to financial services.

A quick example highlights why the SAFE Banking Act should be amended to require federal officials to develop recommendations for promoting fair access to financial services instead.

If Black Americans are 14.2 percent of the population<sup>5</sup>, but found to represent only 2% of those with access to financial services, under a standard of "expanding access" federal officials could simply make recommendations to raise this percentage from 2% to 3%. Without fair access as the standard, minority-owned, veteran-owned, women-owned, and small State-sanctioned marijuana businesses and hemp-related legitimate businesses --- and others will continue to be underserved by cannabis banking.

### **Other Technical Amendments & Recommendations**

#### SAFE's Purpose

Although the 2021 version of SAFE included a purpose section, the 2023 version does not. The purpose within the 2021 version stated "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."

I recommend reinserting a purpose section and amending the purpose of SAFE to read as follows: "The purpose of this Act is to provide protections for financial institutions that provide financial services to State-sanctioned marijuana businesses, hemp related legitimate businesses and related service providers and to promote fairness and safety in the provision of related financial services.

Beyond ensuring that fairness and safety are explicitly stated as priorities, the inclusion of a purpose section is particularly important because SAFE would require that updated guidance from federal banking regulators for financial institutions servicing the cannabis

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<sup>5</sup> <https://www.pewresearch.org/social-trends/fact-sheet/facts-about-the-us-black-population/>

industry “ensure consistency with the purpose and intent” of SAFE. Without a purpose, this requirement is not practicable.

### Legacy Deposits

SAFE includes new provisions that would create restrictions for financial institutions accepting cash deposits, which SAFE refers to as “Legacy Deposits”.

First as a matter of principle, the term legacy within the cannabis and hemp community has come to mean a number of different things, but generally centers around the idea of a longstanding participant in trade and or community. However, the SAFE Banking Act’s use of the term “legacy” in reference to cash deposits, is largely disconnected from how this term is used in the cannabis and hemp trade community, especially considering that it creates a requirement that would likely prevent most legacy operators from accessing banking in that it limits a financial institution’s ability to accept cash from a state-sanctioned marijuana business to a 90-day period. Moreover, these restrictions apply to all cash deposits. And the term legacy here doesn’t add value but may instead cause contention and confusion. Therefore, instead of referring to these deposits as legacy deposits, I recommend that the SAFE Banking Act be amended to strike any reference to the term legacy and simply refer to these deposits as cash deposits.

Moreover, the 90-day period should be reconsidered to specifically assess what impact this limitation has on promoting fair access to financial services for state-sanctioned marijuana businesses.

### Technical Clean Up

Technical Clarification - Sec. 11(1) should be amended to ensure the federal banking regulator’s diversity and inclusion report includes “hemp-related legitimate businesses.”

Technical Clarification - Sec. 12 (a) should be amended to ensure the GAO study on diversity and inclusion includes “removing barriers to marketplace success.”

I urge your consideration of these requests for technical but meaningful improvements to SAFE to promote fairness and for your ongoing efforts to continue to work towards creating a more safe and fair regulatory framework.

Sincerely,

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