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S. 2860

To create protections for financial institutions that provide financial services to State-sanctioned marijuana businesses and service providers for such businesses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2023

Mr. MERKLEY (for himself, Mr. DAINES, Mr. SCHUMER, Ms. SINEMA, Ms. LUMMIS, Mr. CRAMER, Mr. BOOKER, Mr. SULLIVAN, Mr. MENENDEZ, Mr. KING, Mr. WYDEN, Ms. ROSEN, Mr. FETTERMAN, Ms. WARREN, Mr. TESTER, Ms. CORTEZ MASTO, Ms. DUCKWORTH, Ms. SMITH, Mr. KELLY, Ms. KLOBUCHAR, Mrs. GILLIBRAND, Mrs. MURRAY, and Ms. HIRONO) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

SEPTEMBER 28 (legislative day, SEPTEMBER 22), 2023

Reported by Mr. BROWN, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To create protections for financial institutions that provide financial services to State-sanctioned marijuana businesses and service providers for such businesses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Secure And Fair Enforcement Regulation Banking Act”
4 or the “SAFER Banking Act”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Safe harbor for depository institutions.
- Sec. 4. Protections for providing services to State-sanctioned marijuana businesses.
- Sec. 5. Protections under Federal law.
- Sec. 6. Requirements for filing suspicious activity reports.
- Sec. 7. Guidance and examination procedures.
- Sec. 8. Banking services for hemp-related legitimate businesses and hemp-related service providers.
- Sec. 9. Treatment of income derived from a State-sanctioned marijuana business for qualification for a covered mortgage loan.
- Sec. 10. Requirements for deposit accounts.
- Sec. 11. Annual access to financial services report.
- Sec. 12. GAO study on barriers to marketplace entry.
- Sec. 13. GAO study on effectiveness of certain reports on finding certain persons.
- Sec. 14. Applicability to hemp-related legitimate businesses and hemp-related service providers.
- Sec. 15. *FinCEN testimony*.
- Sec. ~~15~~16. Rules of construction.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) BUSINESS OF INSURANCE.—The term
10 “business of insurance” has the meaning given the
11 term in section 1002 of the Consumer Financial
12 Protection Act of 2010 (12 U.S.C. 5481).

13 (2) CBD.—The term “CBD” means
14 cannabidiol.

15 (3) COMMUNITY DEVELOPMENT FINANCIAL IN-
16 STITUTION.—The term “community development fi-

1 nancial institution” has the meaning given the term
2 in section 103 of the Community Development
3 Banking and Financial Institutions Act of 1994 (12
4 U.S.C. 4702).

5 (4) DEPOSITORY INSTITUTION.—Except where
6 otherwise expressly provided, the term “depository
7 institution”—

8 (A) means—

9 (i) a depository institution, as defined
10 in section 3(c) of the Federal Deposit In-
11 surance Act (12 U.S.C. 1813(c));

12 (ii) a Federal credit union, as defined
13 in section 101 of the Federal Credit Union
14 Act (12 U.S.C. 1752); and

15 (iii) a State credit union, as defined in
16 section 101 of the Federal Credit Union
17 Act (12 U.S.C. 1752); and

18 (B) includes any minority depository insti-
19 tution, as defined in section 308 of the Finan-
20 cial Institutions Reform, Recovery, and En-
21 forcement Act of 1989 (12 U.S.C. 1463 note).

22 (5) FEDERAL BANKING REGULATOR.—The
23 term “Federal banking regulator” means each of the
24 Board of Governors of the Federal Reserve System,
25 the Bureau of Consumer Financial Protection, the

1 Federal Deposit Insurance Corporation, the Federal
2 Housing Finance Agency, the Office of the Comp-
3 troller of the Currency, the National Credit Union
4 Administration, the Department of the Treasury (in-
5 cluding the Financial Crimes Enforcement Network
6 and the Office of Foreign Assets Control), or any
7 Federal agency or department that regulates bank-
8 ing or financial services, as determined by the Sec-
9 retary of the Treasury.

10 (6) FINANCIAL PRODUCT OR SERVICE.—The
11 term “financial product or service” has the meaning
12 given the term in section 1002 of the Consumer Fi-
13 nancial Protection Act of 2010 (12 U.S.C. 5481).

14 (7) FINANCIAL SERVICE.—The term “financial
15 service”—

16 (A) means—

17 (i) a financial product or service, re-
18 gardless of whether the customer receiving
19 the product or service is a consumer or
20 commercial entity; or

21 (ii) a financial product or service, or
22 any combination of products and services,
23 permitted to be provided by—

1 (I) a national bank or a financial
2 subsidiary pursuant to the authority
3 provided under—

4 (aa) the paragraph des-
5 igned as the “Seventh” of sec-
6 tion 5136 of the Revised Statutes
7 (12 U.S.C. 24); or

8 (bb) section 5136A of the
9 Revised Statutes (12 U.S.C.
10 24a);

11 (II) a Federal credit union, pur-
12 suant to the authority provided under
13 the Federal Credit Union Act (12
14 U.S.C. 1751 et seq.); or

15 (III) a community development
16 financial institution; and

17 (B) includes—

18 (i) the business of insurance;

19 (ii) whether performed directly or in-
20 directly, the authorizing, processing, clear-
21 ing, settling, billing, transferring for de-
22 posit, transmitting, delivering, instructing
23 to be delivered, reconciling, collecting, or
24 otherwise effectuating or facilitating the
25 payment of funds that are made or trans-

1 ferred by any means, including by the use
2 of credit cards, debit cards, other payment
3 cards, or other access devices, accounts,
4 original or substitute checks, or electronic
5 funds transfers;

6 (iii) acting as a money transmitting
7 business that directly or indirectly makes
8 use of a depository institution in connec-
9 tion with effectuating or facilitating a pay-
10 ment for a State-sanctioned marijuana
11 business or service provider in compliance
12 with section 5330 of title 31, United
13 States Code, and any applicable State or
14 Tribal law; and

15 (iv) acting as an armored car service
16 for processing and depositing with a depos-
17 itory institution or a Federal reserve bank
18 with respect to any monetary instruments,
19 as defined in section 1956(c)(5) of title 18,
20 United States Code.

21 (8) HEMP.—The term “hemp” has the meaning
22 given the term in section 297A of the Agricultural
23 Marketing Act of 1946 (7 U.S.C. 1639o).

24 (9) HEMP-RELATED LEGITIMATE BUSINESS.—
25 The term “hemp-related legitimate business” means

1 a manufacturer, producer, or any person or company
2 that—

3 (A) engages in any activity described in
4 subparagraph (B) in conformity with the Agri-
5 culture Improvement Act of 2018 (Public Law
6 115–334; 132 Stat. 4490), amendments made
7 by that Act, and the regulations issued to im-
8 plement that Act by the Department of Agri-
9 culture, where applicable, and the law of a
10 State, an Indian Tribe, or a political subdivision
11 of a State; and

12 (B) participates in any business or orga-
13 nized activity that involves handling hemp,
14 hemp-derived CBD products, and other hemp-
15 derived cannabinoid products, including culti-
16 vating, producing, extracting, manufacturing,
17 selling, transporting, displaying, dispensing, dis-
18 tributing, or purchasing hemp, hemp-derived
19 CBD products, and other hemp-derived
20 cannabinoid products.

21 (10) HEMP-RELATED SERVICE PROVIDER.—The
22 term “hemp-related service provider”—

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

1 (i) sells goods or services to a hemp-
2 related legitimate business; or

3 (ii) provides any business services, in-
4 cluding the sale or lease of real or any
5 other property, legal or other licensed serv-
6 ices, or any other ancillary service, relating
7 to hemp, hemp-derived CBD products, or
8 other hemp-derived cannabinoid products;
9 and

10 (B) does not include a business, organiza-
11 tion, or other person that participates in any
12 business or organized activity that involves han-
13 dling hemp, hemp-derived CBD products, or
14 other hemp-derived cannabinoid products, in-
15 cluding cultivating, producing, manufacturing,
16 selling, transporting, displaying, dispensing, dis-
17 tributing, or purchasing hemp, hemp-derived
18 CBD products, and other hemp-derived
19 cannabinoid products.

20 (11) INDIAN TRIBE.—The term “Indian Tribe”
21 has the meaning given the term “Indian tribe” in
22 section 102 of the Federally Recognized Indian
23 Tribe List Act of 1994 (25 U.S.C. 5130).

1 (12) INSURER.—The term “insurer” has the
2 meaning given the term in section 313(r) of title 31,
3 United States Code.

4 (13) MANUFACTURER.—The term “manufac-
5 turer” means a person who manufactures, com-
6 pounds, converts, processes, prepares, or packages
7 marijuana or marijuana products.

8 (14) MARIJUANA.—The term “marijuana” has
9 the meaning given the term “marihuana” in section
10 102 of the Controlled Substances Act (21 U.S.C.
11 802).

12 (15) MARIJUANA PRODUCT.—The term “mari-
13 juana product” means any article that contains
14 marijuana, including an article that is a concentrate,
15 an edible, a tincture, a marijuana-infused product,
16 or a topical.

17 (16) PRODUCER.—The term “producer” means
18 a person who plants, cultivates, harvests, or in any
19 way facilitates the natural growth of marijuana.

20 (17) SERVICE PROVIDER.—The term “service
21 provider”—

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

24 (i) sells goods or services to a State-
25 sanctioned marijuana business; or

1 (ii) provides any business services, in-
2 cluding the sale or lease of real or any
3 other property, legal or other licensed serv-
4 ices, or any other ancillary service, relating
5 to a State-sanctioned marijuana business;
6 and

7 (B) does not include a business, organiza-
8 tion, or other person that participates in any
9 business or organized activity that involves han-
10 dling marijuana or marijuana products, includ-
11 ing cultivating, producing, manufacturing, sell-
12 ing, transporting, displaying, dispensing, dis-
13 tributing, or purchasing marijuana or mari-
14 juana products.

15 (18) STATE.—The term “State” means each of
16 the several States, the District of Columbia, the
17 Commonwealth of Puerto Rico, and any territory or
18 possession of the United States.

19 (19) STATE-SANCTIONED MARIJUANA BUSI-
20 NESS.—The term “State-sanctioned marijuana busi-
21 ness” means a manufacturer, producer, or any per-
22 son that—

23 (A) engages in any activity described in
24 subparagraph (B) pursuant to a law established
25 by a State, an Indian Tribe, or a political sub-

1 division of a State, as determined by such
2 State, Indian Tribe, or political subdivision; and

3 (B) participates in any business or orga-
4 nized activity that involves handling marijuana
5 or marijuana products, including cultivating,
6 producing, manufacturing, selling, transporting,
7 displaying, dispensing, distributing, or pur-
8 chasing marijuana or marijuana products.

9 **SEC. 3. SAFE HARBOR FOR DEPOSITORY INSTITUTIONS.**

10 (a) PROHIBITION.—A Federal banking regulator may
11 not—

12 (1) terminate or limit the deposit insurance or
13 share insurance of a depository institution under the
14 Federal Deposit Insurance Act (12 U.S.C. 1811 et
15 seq.) or the Federal Credit Union Act (12 U.S.C.
16 1751 et seq.) or take any other adverse action
17 against a depository institution under the Federal
18 Deposit Insurance Act (12 U.S.C. 1811 et seq.) or
19 the Federal Credit Union Act (12 U.S.C. 1751 et
20 seq.) solely because the depository institution pro-
21 vides or has provided financial services to a State-
22 sanctioned marijuana business or service provider;

23 (2) prohibit a depository institution from pro-
24 viding, or penalize a depository institution for pro-
25 viding, financial services to—

1 (A) a State-sanctioned marijuana business
2 or service provider solely because the business
3 or service provider is a State-sanctioned mari-
4 juana business or service provider; or

5 (B) a State, an Indian Tribe, or a political
6 subdivision of a State solely because that entity
7 exercises jurisdiction over State-sanctioned
8 marijuana businesses;

9 (3) recommend, incentivize, or encourage a de-
10 pository institution not to offer financial services to
11 an account holder, or to downgrade or cancel the fi-
12 nancial services offered to an account holder, solely
13 because—

14 (A) the account holder is a State-sanc-
15 tioned marijuana business or service provider,
16 or is an employee, owner, or operator of a
17 State-sanctioned marijuana business or service
18 provider;

19 (B) the account holder later becomes an
20 employee, owner, or operator of a State-sanc-
21 tioned marijuana business or service provider;
22 or

23 (C) the depository institution was not
24 aware, after conducting sufficient risk-based
25 customer due diligence in accordance with ap-

1 plicable requirements, that the account holder is
2 an employee, owner, or operator of a State-
3 sanctioned marijuana business or service pro-
4 vider;

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

7 (A) a State-sanctioned marijuana business
8 or service provider, solely because the business
9 is a State-sanctioned marijuana business or
10 service provider;

11 (B) an employee, owner, or operator of a
12 State-sanctioned marijuana business or service
13 provider, solely because the employee, owner, or
14 operator is employed by, owns, or operates a
15 State-sanctioned marijuana business or service
16 provider, as applicable; or

17 (C) an owner or operator of real estate or
18 equipment that is leased to a State-sanctioned
19 marijuana business or service provider, solely
20 because the owner or operator of the real estate
21 or equipment leased the equipment or real es-
22 tate to a State-sanctioned marijuana business
23 or service provider, as applicable; or

24 (5) prohibit a depository institution (or entity
25 performing a financial service for or in association

1 with a depository institution) from, or penalize a de-
 2 pository institution (or entity performing a financial
 3 service for or in association with a depository insti-
 4 tution) for, engaging in a financial service for a
 5 State-sanctioned marijuana business or service pro-
 6 vider solely because the business or service provider
 7 is a State-sanctioned marijuana business or service
 8 provider.

9 (b) **SAFE HARBOR APPLICABLE TO DE NOVO INSTI-**
 10 **TUTIONS.**—Subsection (a) shall apply to an institution ap-
 11 plying for a depository institution charter to the same ex-
 12 tent as such subsection applies to a depository institution.

13 **SEC. 4. PROTECTIONS FOR PROVIDING SERVICES TO**
 14 **STATE-SANCTIONED MARIJUANA BUSI-**
 15 **NESSES.**

16 For the purposes of sections 1956 and 1957 of title
 17 18, United States Code, and all other provisions of Fed-
 18 eral law, the proceeds from marijuana-related activities of
 19 a State-sanctioned marijuana business or service provider
 20 that conducts all of its marijuana-related activity in com-
 21 pliance with the marijuana-related law of the State, Indian
 22 Tribe, or political subdivision of the State shall not be con-
 23 sidered proceeds from an unlawful activity solely be-
 24 cause—

1 (1) the transaction involves proceeds from a
2 State-sanctioned marijuana business or service pro-
3 vider; or

4 (2) the transaction involves proceeds from—

5 (A) marijuana-related activities described
6 in section 2(19)(B) conducted by a State-sanc-
7 tioned marijuana business; or

8 (B) activities described in section 2(17)(A)
9 conducted by a service provider.

10 **SEC. 4. PROTECTIONS FOR PROVIDING SERVICES TO**
11 **STATE-SANCTIONED MARIJUANA BUSI-**
12 **NESSES.**

13 *For the purposes of sections 1956 and 1957 of title 18,*
14 *United States Code, and all other provisions of Federal law,*
15 *the proceeds from a transaction conducted by a State-sanc-*
16 *tioned marijuana business or service provider shall not be*
17 *considered proceeds from an unlawful activity solely be-*
18 *cause—*

19 (1) *the transaction involves proceeds from a*
20 *State-sanctioned marijuana business or service pro-*
21 *vider; or*

22 (2) *the transaction involves proceeds from mari-*
23 *juana-related activities described in section 2(19)(B)*
24 *conducted by a State-sanctioned marijuana business*
25 *pursuant to the marijuana-related law of the applica-*

1 *ble State, Indian Tribe, or political subdivision of a*
2 *State.*

3 **SEC. 5. PROTECTIONS UNDER FEDERAL LAW.**

4 (a) IN GENERAL.—With respect to providing a finan-
5 cial service to a State-sanctioned marijuana business
6 (where such State-sanctioned marijuana business operates
7 within a State, an Indian Tribe, or a political subdivision
8 of a State that allows the cultivation, production, manu-
9 facture, sale, transportation, display, dispensing, distribu-
10 tion, or purchase of marijuana pursuant to a law or regu-
11 lation of such State, Indian Tribe, or political subdivision,
12 as applicable) or a service provider (wherever located), a
13 depository institution, an entity performing a financial
14 service for or in association with a depository institution,
15 a community development financial institution, or an in-
16 surer that provides a financial service to a State-sanc-
17 tioned marijuana business or service provider, and the of-
18 ficers, directors, employees, and agents of that depository
19 institution, entity, community development financial insti-
20 tution, or insurer may not be held liable pursuant to any
21 Federal law or regulation—

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

23 or

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

1 (b) PROTECTIONS FOR FEDERAL RESERVE BANKS
 2 AND FEDERAL HOME LOAN BANKS.—With respect to
 3 providing a service to a depository institution that pro-
 4 vides a financial service to a State-sanctioned marijuana
 5 business (where such State-sanctioned marijuana business
 6 operates within a State, an Indian Tribe, or a political
 7 subdivision of a State that allows the cultivation, produc-
 8 tion, manufacture, sale, transportation, display, dis-
 9 pensing, distribution, or purchase of marijuana pursuant
 10 to a law or regulation of such State, Indian Tribe, or polit-
 11 ical subdivision, as applicable) or service provider (wher-
 12 ever located), a Federal reserve bank or Federal Home
 13 Loan Bank, and the officers, directors, and employees of
 14 the Federal reserve bank or Federal Home Loan Bank,
 15 may not be held liable pursuant to any Federal law or
 16 regulation—

- 17 (1) solely for providing such a service; or
 18 (2) for further investing any income derived
 19 from such a service.

20 (c) PROTECTIONS FOR INSURERS.—With respect to
 21 engaging in the business of insurance within a State, an
 22 Indian Tribe, or a political subdivision of a State that al-
 23 lows the cultivation, production, manufacture, sale, trans-
 24 portation, display, dispensing, distribution, or purchase of
 25 marijuana pursuant to a law or regulation of such State,

1 Indian Tribe, or political subdivision, as applicable, an in-
2 surer that engages in the business of insurance with a
3 State-sanctioned marijuana business or service provider or
4 that otherwise engages with a person in a transaction per-
5 missible pursuant to a law (including regulations) of such
6 State, Indian Tribe, or political subdivision related to
7 marijuana, and the officers, directors, and employees of
8 that insurer, may not be held liable pursuant to any Fed-
9 eral law or regulation—

10 (1) solely for engaging in the business of insur-
11 ance; or

12 (2) for further investing any income derived
13 from the business of insurance.

14 (d) FORFEITURE.—

15 (1) DEPOSITORY INSTITUTIONS AND COMMU-
16 NITY DEVELOPMENT FINANCIAL INSTITUTIONS.—A
17 depository institution or community development fi-
18 nancial institution that has a legal interest in the
19 collateral for a loan or another financial service pro-
20 vided to an owner, employee, or operator of a State-
21 sanctioned marijuana business or service provider, or
22 to an owner or operator of real estate or equipment
23 that is leased or sold to a State-sanctioned mari-
24 juana business or service provider, shall not be sub-
25 ject to criminal, civil, or administrative forfeiture of

1 that legal interest pursuant to any Federal law sole-
2 ly for providing such loan or other financial service.

3 (2) FEDERAL RESERVE BANKS AND FEDERAL
4 HOME LOAN BANKS.—A Federal reserve bank or
5 Federal Home Loan Bank that has a legal interest
6 in the collateral for a loan or another financial serv-
7 ice provided to a depository institution that provides
8 a financial service to a State-sanctioned marijuana
9 business or service provider, or to an owner or oper-
10 ator of real estate or equipment that is leased or
11 sold to a State-sanctioned marijuana business or
12 service provider, shall not be subject to criminal,
13 civil, or administrative forfeiture of that legal inter-
14 est pursuant to any Federal law for providing such
15 loan or other financial service.

16 (3) FEDERAL NATIONAL MORTGAGE ASSOCIA-
17 TION, FEDERAL HOME LOAN MORTGAGE CORPORA-
18 TION, *FEDERAL HOME LOAN BANKS*, AND FEDERAL
19 AGENCIES MAKING, INSURING, OR GUARANTEEING
20 MORTGAGE LOANS OR SECURITIES.—The Federal
21 National Mortgage Association, the Federal Home
22 Loan Mortgage Corporation, *any Federal Home*
23 *Loan Bank*, and any Federal agency that has a legal
24 interest in the collateral for a residential mortgage
25 loan, including individual units of condominiums and

1 cooperatives, provided that the collateral is a prop-
2 erty designed principally for the occupancy of 1 to
3 4 families and underwritten, in whole or in part,
4 based on income from a State-sanctioned marijuana
5 business or service provider, shall not be subject to
6 criminal, civil, or administrative forfeiture of that
7 legal interest pursuant to any Federal law for pro-
8 viding, insuring, guaranteeing, purchasing,
9 securitizing, or guaranteeing payments from a secu-
10 rity based on such loan.

11 (4) OTHER PARTIES TO MORTGAGE LOANS.—A
12 nondepository lender that makes a covered mortgage
13 loan, as defined in section 9(a), and any person who
14 otherwise has a legal interest in such a loan or in
15 the collateral of the loan, including individual units
16 of condominiums and cooperatives, provided that the
17 collateral is a property designed principally for the
18 occupancy of 1 to 4 families and underwritten, in
19 whole or in part, based on income from a State-
20 sanctioned marijuana business or service provider,
21 shall not be subject to criminal, civil, or administra-
22 tive forfeiture of that legal interest pursuant to any
23 Federal law for providing, purchasing, securitizing,
24 accepting, and making payments related to such cov-
25 ered mortgage loan solely because loan payments or

1 underwriting are based on income that is in whole
2 or in part from a State-sanctioned marijuana busi-
3 ness or service provider.

4 (5) DEFINITION.—In this subsection, the term
5 “collateral” does not include marijuana or a mari-
6 juana product.

7 **SEC. 6. REQUIREMENTS FOR FILING SUSPICIOUS ACTIVITY**
8 **REPORTS.**

9 Section 5318(g) of title 31, United States Code, is
10 amended—

11 (1) by redesignating paragraph (11) as para-
12 graph (12); and

13 (2) by inserting after paragraph (10) the fol-
14 lowing

15 “(11) REQUIREMENTS FOR STATE-SANCTIONED
16 MARIJUANA BUSINESSES.—

17 “(A) IN GENERAL.—With respect to a fi-
18 nancial institution, or any director, officer, em-
19 ployee, or agent of a financial institution, that
20 reports a suspicious transaction pursuant to
21 this subsection, if the reason for the report re-
22 lates to a State-sanctioned marijuana business
23 or service provider, the report shall comply with
24 appropriate guidance issued by the Secretary of
25 the Treasury. Not later than the end of the

1 ~~180-day~~ *1-year* period beginning on the date of
2 enactment of the Secure And Fair Enforcement
3 Regulation Banking Act, the Secretary shall
4 amend the February 14, 2014, guidance titled
5 ‘BSA Expectations Regarding Marijuana-Related
6 Businesses’ (FIN–2014–G001) or issue
7 new guidance to ensure consistency with the
8 purpose and intent of the Secure And Fair En-
9 forcement Regulation Banking Act, and the
10 amendments made by that Act, and that such
11 guidance ensures that a financial institution,
12 and any director, officer, employee, or agent of
13 a financial institution, continues to report sus-
14 picious transactions pursuant to this subsection,
15 as applicable, relating to State-sanctioned mari-
16 juana businesses and service providers to pre-
17 serve the ability of the Financial Crimes En-
18 forcement Network to prevent and combat illicit
19 activity.

20 “(B) DEFINITIONS.—In this paragraph:

21 “(i) FINANCIAL SERVICE; SERVICE
22 PROVIDER; STATE; STATE-SANCTIONED
23 MARIJUANA BUSINESS.—The terms ‘finan-
24 cial service’, ‘service provider’, ‘State’, and
25 ‘State-sanctioned marijuana business’ have

1 the meanings given the terms in section 2
2 of the SAFER Banking Act.

3 “(ii) INDIAN COUNTRY.—The term
4 ‘Indian country’ has the meaning given the
5 term in section 1151 of title 18.

6 “(iii) INDIAN TRIBE.—The term ‘In-
7 dian Tribe’ has the meaning given the
8 term ‘Indian tribe’ in section 102 of the
9 Federally Recognized Indian Tribe List
10 Act of 1994 (25 U.S.C. 5130).

11 “(iv) MARIJUANA.—The term ‘mari-
12 juana’ has the meaning given the term
13 ‘marihuana’ in section 102 of the Con-
14 trolled Substances Act (21 U.S.C. 802).”.

15 **SEC. 7. GUIDANCE AND EXAMINATION PROCEDURES.**

16 (a) UNIFORM GUIDANCE AND EXAMINATION PROCE-
17 DURES.—Not later than 1 year after the date of enact-
18 ment of this Act, the Federal Financial Institutions Ex-
19 amination Council, in consultation with the Department
20 of the Treasury, shall develop uniform guidance and exam-
21 ination procedures for depository institutions that provide
22 financial services to State-sanctioned marijuana busi-
23 nesses and service providers.

24 (b) LEGACY DEPOSITS.—The guidance and examina-
25 tion procedures described in subsection (a) shall permit

1 a depository institution to accept a deposit of currency
2 from a State-sanctioned marijuana business if—

3 (1) the business received the currency during
4 the 90-day period ending on the date on which the
5 business commenced its relationship with the depository
6 institution;

7 (2) the business provided the depository institution
8 with records sufficient to demonstrate the
9 source of the currency being deposited by the business;
10

11 (3) the amount of the currency is reasonable in
12 light of the expected revenue of the business, as determined
13 by the depository institution consistent
14 with the risk-based procedures for ensuring compliance
15 with the section 5318(h) of title 31, United
16 States Code, and any applicable regulations implementing
17 that section; and

18 (4) the depository institution complies with any
19 other applicable reporting requirements pursuant to
20 subchapter II of chapter 53 of title 31, United
21 States Code, and any applicable regulations implementing
22 that subchapter.

1 **SEC. 8. BANKING SERVICES FOR HEMP-RELATED LEGITI-**
2 **MATE BUSINESSES AND HEMP-RELATED**
3 **SERVICE PROVIDERS.**

4 (a) FINDINGS.—Congress finds that—

5 (1) section 12619 of the Agriculture Improve-
6 ment Act of 2018 (Public Law 115–334; 132 Stat.
7 5018) legalized hemp by removing it from the defini-
8 tion of marihuana under section 102 of the Con-
9 trolled Substances Act (21 U.S.C. 802);

10 (2) despite the legalization of hemp, some hemp
11 businesses (including producers, manufacturers, and
12 retailers) continue to have difficulty gaining access
13 to banking products and services; and

14 (3) businesses involved in the sale of hemp-de-
15 rived CBD products are particularly affected, due to
16 confusion about the legal status of such products.

17 (b) DEFINITION.—In this section, the term “financial
18 institution”—

19 (1) has the meaning given the term in section
20 5312(a) of title 31, United States Code; and

21 (2) includes a bank holding company, as de-
22 fined in section 2(a) of the Bank Holding Company
23 Act of 1956 (12 U.S.C. 1841(a)).

24 (c) FEDERAL BANKING REGULATORS’ HEMP BANK-
25 ING GUIDANCE.—Not later than the end of the 180-day
26 period beginning on the date of enactment of this Act,

1 each Federal banking regulator shall update guidance, as
 2 in effect on the date of enactment of this Act, regarding
 3 providing financial services to hemp-related legitimate
 4 businesses and hemp-related service providers to ad-
 5 dress—

6 (1) compliance with obligations of financial in-
 7 stitutions, as of the date of enactment of this Act,
 8 under Federal laws (including regulations) deter-
 9 mined relevant by the Federal banking regulator and
 10 the Department of the Treasury, including sub-
 11 chapter II of chapter 53 of title 31, United States
 12 Code, and its implementing regulation in conformity
 13 with this Act and the regulations relating to domes-
 14 tic hemp production under part 990 of title 7, Code
 15 of Federal Regulations; and

16 (2) best practices for financial institutions to
 17 follow when providing financial services, including
 18 processing payments, to hemp-related legitimate
 19 businesses and hemp-related service providers.

20 **SEC. 9. TREATMENT OF INCOME DERIVED FROM A STATE-**
 21 **SANCTIONED MARIJUANA BUSINESS FOR**
 22 **QUALIFICATION FOR A COVERED MORTGAGE**
 23 **LOAN.**

24 (a) DEFINITION.—In this section, the term “covered
 25 mortgage loan” means any loan secured by a first or sub-

1 ordinate lien on residential real property, including indi-
2 vidual units of condominiums and cooperatives, designed
3 principally for the occupancy of 1 to 4 families that is—

4 (1) insured by the Federal Housing Administra-
5 tion under title I or title II of the National Housing
6 Act (12 U.S.C. 1702 et seq., 1707 et seq.);

7 (2) insured under section 255 of the National
8 Housing Act (12 U.S.C. 1715z–20);

9 (3) guaranteed under section 184 or 184A of
10 the Housing and Community Development Act of
11 1992 (12 U.S.C. 1715z–13a, 1715z–13b);

12 (4) guaranteed, insured, or made by the De-
13 partment of Veterans Affairs;

14 (5) guaranteed, insured, or made by the De-
15 partment of Agriculture;

16 (6) purchased or securitized by the Federal
17 Home Loan Mortgage Corporation or the Federal
18 National Mortgage Association; or

19 (7) acquired or purchased by a Federal Home
20 Loan Bank or pledged as collateral for an advance
21 from a Federal Home Loan Bank.

22 (b) TREATMENT OF INCOME.—

23 (1) IN GENERAL.—Income derived from a
24 State-sanctioned marijuana business that operates
25 within a State, an Indian Tribe, or a political sub-

1 division of a State that allows the cultivation, pro-
2 duction, manufacture, sale, transportation, display,
3 dispensing, distribution, or purchase of marijuana
4 pursuant to a law or regulation of the State, Indian
5 Tribe, or political subdivision, as applicable, or a
6 service provider (wherever located), shall be consid-
7 ered in the same manner as any other legal income
8 for purposes of determining eligibility for a covered
9 mortgage loan for a 1- to 4-unit property that is the
10 principal residence of the mortgagor.

11 (2) LIABILITY.—The mortgagee or servicer of a
12 covered mortgage loan described in paragraph (1),
13 or any Federal agency, the Federal National Mort-
14 gage Association, *any Federal Home Loan Bank*, or
15 the Federal Home Loan Mortgage Corporation, may
16 not be held liable pursuant to any Federal law or
17 regulation solely for—

18 (A) providing, insuring, guaranteeing, pur-
19 chasing, or securitizing a mortgage to an other-
20 wise qualified borrower on the basis of the in-
21 come described in paragraph (1); or

22 (B) accepting the income described in
23 paragraph (1) as payment on the covered mort-
24 gage loan.

1 (c) IMPLEMENTATION.—Not later than 180 days
2 after the date of enactment of this Act—

3 (1) the Federal Housing Administration shall
4 implement subsection (b)—

5 (A) by notice or mortgagee letter for loans
6 insured under title I, title II, or section 255 of
7 the National Housing Act (12 U.S.C. 1702 et
8 seq., 1707 et seq., 1715z–20); and

9 (B) by lender letter for loans guaranteed
10 under section 184 or 184A of the Housing and
11 Community Development Act of 1992 (12
12 U.S.C. 1715z–13a, 1715z–13b);

13 (2) the Department of Veterans Affairs shall
14 implement subsection (b) by circular or handbook
15 for loans guaranteed, insured, or made by the De-
16 partment;

17 (3) the Department of Agriculture shall imple-
18 ment subsection (b) by bulletin for loans guaranteed
19 or made by the Department;

20 (4) the Federal Home Loan Mortgage Corpora-
21 tion shall implement subsection (b) by updating its
22 Single-Family Seller/Service Guide for loans pur-
23 chased or securitized by the Corporation; and

24 (5) the Federal National Mortgage Association
25 shall implement subsection (b) by updating its Sin-

1 gle Family Selling Guide for loans purchased or
2 securitized by the Association; *and*

3 (6) *each Federal Home Loan Bank shall imple-*
4 *ment subsection (b) by updating its selling guidelines*
5 *for loans purchased.*

6 **SEC. 10. REQUIREMENTS FOR DEPOSIT ACCOUNTS.**

7 (a) SENSE OF CONGRESS.—It is the sense of Con-
8 gress that—

9 (1) appropriate Federal banking agencies have
10 a duty to ensure that the depository institutions su-
11 pervised by those agencies—

12 (A) are operating in a safe and sound
13 manner; and

14 (B) have processes and procedures in place
15 to identify fraudulent or illegal activity, whether
16 activity occurs at a depository institution or
17 through vendors or customers with which a de-
18 pository institution has a relationship;

19 (2) the duty described in paragraph (1) rests on
20 laws and regulations, not on personal beliefs or polit-
21 ical motivations;

22 (3) undue pressure and coercion designed to re-
23 strict access to financial services for lawful busi-
24 nesses have no place at any appropriate Federal
25 banking agency;

1 (4) depository institutions should provide bank-
2 ing services in the communities in which those insti-
3 tutions serve while carrying out customer identifica-
4 tion, risk-based customer diligence, and suspicious
5 activity monitoring and reporting obligations under
6 subchapter II of chapter 53 of title 31, United
7 States Code (referred to in this section as the “Bank
8 Secrecy Act”), with respect to the customers of
9 those institutions;

10 (5) despite the fact that individual customers of
11 depository institutions within broader customer cat-
12 egories present varying degrees of risk, all deposit-
13 ory institutions should take a risk-based approach
14 in assessing individual customer relationships rather
15 than decline to provide banking services to cat-
16 egories of customers without regard to the risks pre-
17 sented by an individual customer or the ability of the
18 depository institution to manage the risk;

19 (6) depository institutions that properly manage
20 customer relationships and risks are neither prohib-
21 ited nor discouraged from providing services to cus-
22 tomers that are operating in compliance with appli-
23 cable Federal and State law; and

24 (7) each depository institution is responsible for
25 determining whether providing services to any par-

1 ticular customer is consistent with the business plan,
 2 risk profile, and management capabilities of the de-
 3 pository institution.

4 (b) CONDITIONS FOR TERMINATION.—

5 (1) IN GENERAL.—An appropriate Federal
 6 banking agency may not request or require a deposi-
 7 tory institution to terminate a specific deposit ac-
 8 count or group of deposit accounts ~~(including, but~~
 9 ~~not limited to, any deposit account of any customer~~
 10 ~~that is a State-sanctioned marijuana business or~~
 11 ~~service provider), unless—~~

12 (A) there is a valid reason for that request
 13 or requirement, as described in paragraph (2);
 14 and

15 (B) reputational risk is not the dispositive
 16 factor for that request or requirement.

17 (2) VALID REASONS.—

18 ~~(A) IN GENERAL.—To establish a valid~~
 19 ~~reason for a request or requirement under para-~~
 20 ~~graph (1), the appropriate Federal banking~~
 21 ~~agency shall document that the agency—~~

22 (i) has reasonable cause to believe
 23 that the applicable depository institution or
 24 any institution-affiliated party has en-

1 gaged, is engaged, or is about to engage
2 in—

3 (I) an unsafe or unsound practice
4 in conducting business;

5 (II) a violation of an applicable
6 law, rule, regulation, order, condition
7 imposed in writing, formal or informal
8 enforcement action, or written agency
9 formal or informal guidance, which
10 shall include the priorities for anti-
11 money laundering and countering the
12 financing of terrorism policy estab-
13 lished by the Secretary of the Treas-
14 ury under section 5318(h)(4) of title
15 31, United States Code, or otherwise
16 operating in a manner that is incon-
17 sistent with requirements of the Bank
18 Secrecy Act; or

19 (III) any activity, conduct, or
20 condition that could lead to, or has
21 led to, the issuance of a matter re-
22 quiring attention, a matter requiring
23 immediate attention, a matter requir-
24 ing board attention, a document of

1 resolution; or a supervisory rec-
2 ommendation; or

3 (ii) has another reason, determined to
4 be valid in the discretion of the agency, for
5 making that request or imposing that re-
6 quirement.

7 (A) *IN GENERAL.*—*To establish a valid rea-*
8 *son for a request or requirement under para-*
9 *graph (1), the appropriate Federal banking*
10 *agency shall document that valid reason, which*
11 *may include that the agency has reasonable*
12 *cause to believe that the applicable depository in-*
13 *stitution or any institution-affiliated party has*
14 *engaged, is engaged, or is about to engage in—*

15 (i) *an unsafe or unsound practice in*
16 *conducting business;*

17 (ii) *a violation of an applicable law,*
18 *rule, regulation, order, condition imposed in*
19 *writing, formal or informal enforcement ac-*
20 *tion, or written agency guidance, which*
21 *shall include the priorities for anti-money*
22 *laundering and countering the financing of*
23 *terrorism policy established by the Secretary*
24 *of the Treasury under section 5318(h)(4) of*
25 *title 31, United States Code, or otherwise*

1 *operating in a manner that is inconsistent*
2 *with requirements of the Bank Secrecy Act;*
3 *or*

4 *(iii) any activity, conduct, or condi-*
5 *tion that could lead to, or has led to, the*
6 *issuance of a matter requiring attention, a*
7 *matter requiring immediate attention, a*
8 *matter requiring board attention, a docu-*
9 *ment of resolution, or a supervisory rec-*
10 *ommendation.*

11 (B) TREATMENT OF NATIONAL SECURITY
12 AND ILLICIT FINANCE THREATS.—If an appro-
13 priate Federal banking agency has reasonable
14 cause to believe that a specific customer or
15 group of customers is, or is acting for or on be-
16 half of, an entity that—

17 (i) poses a threat to national security;

18 (ii) is involved in terrorist or other il-
19 licit financing;

20 (iii) is an agent of the Government of
21 Iran, North Korea, Syria, *the People's Re-*
22 *public of China, the Russian Federation,* or
23 any country listed on the State Sponsors of
24 Terrorism list;

1 (iv) is in, or is subject to the jurisdic-
2 tion of, any country ~~described in clause~~
3 ~~(iii)~~ *listed on the State Sponsors of Ter-*
4 *rorism list*;

5 (v) does business with any entity de-
6 scribed in clause (iii) or (iv), unless the ap-
7 propriate Federal banking agency deter-
8 mines that the customer or group of cus-
9 tomers has conducted due diligence to
10 avoid doing business with any entity de-
11 scribed in clause (iii) or (iv); or

12 (vi) is engaged in—

13 (I) any other illicit conduct di-
14 rectly or indirectly supporting a
15 transnational criminal organization,
16 drug trafficking organization, or
17 money laundering organization; or

18 (II) any other criminal activity,
19 such belief shall satisfy the conditions permit-
20 ting action by the appropriate Federal banking
21 agency under paragraph (1).

22 (c) NOTICE REQUIREMENT.—If an appropriate Fed-
23 eral banking agency requests or requires a depository in-
24 stitution to terminate a specific deposit account or a group

1 of deposit accounts under subsection (b), the agency
2 shall—

3 (1) provide such request or requirement to the
4 institution in writing; and

5 (2) accompany such request or requirement
6 with the valid reason for the request or requirement,
7 as described in subsection (b)(2).

8 (d) CUSTOMER NOTICE.—

9 (1) NOTICE REQUIRED.—Except as provided in
10 paragraph (2), or as otherwise prohibited from dis-
11 closure by law, if an appropriate Federal banking
12 agency requests or requires a depository institution
13 to terminate a deposit account under subsection (b),
14 the depository institution shall notify in writing the
15 specific customer or group of customers, the deposit
16 account of which is being terminated, of the valid
17 reason for that termination, as determined under
18 subsection (b)(2).

19 (2) NOTICE PROHIBITED.—

20 (A) NOTICE PROHIBITED IN CASES OF NA-
21 TIONAL SECURITY AND LAW ENFORCEMENT IN-
22 VESTIGATIONS.—

23 (i) IN GENERAL.—Neither a deposi-
24 tory institution nor an appropriate Federal
25 banking agency may provide the applicable

1 customer or group of customers with the
2 notice required under paragraph (1) if—

3 (I) a Federal law enforcement
4 agency or an element of the intel-
5 ligence community advises the deposi-
6 tory institution or the appropriate
7 Federal banking agency that the no-
8 tice—

9 (aa) may interfere with a
10 matter of national security;

11 (bb) involves a matter de-
12 scribed in subsection (b)(2)(B);
13 or

14 (cc) may interfere with a
15 law enforcement investigation,
16 criminal prosecution, or civil ac-
17 tion brought by a government
18 agency; or

19 (II) the depository institution or
20 appropriate Federal banking agency
21 knows or should know that, with re-
22 spect to that customer or group of
23 customers, a criminal prosecution or a
24 law enforcement investigation is pend-
25 ing.

1 (ii) CONSULTATION AND REC-
2 OMMENDATIONS.—An appropriate Federal
3 banking agency and depository institution
4 shall consult with, and follow the rec-
5 ommendations of, a Federal law enforce-
6 ment agency or element of the intelligence
7 community, as applicable, regarding wheth-
8 er the notice described in paragraph (1) is
9 required under that paragraph or prohib-
10 ited under clause (i) of this subparagraph.

11 (B) NOTICE PROHIBITED IN OTHER
12 CASES.—If an appropriate Federal banking
13 agency requests or requires a depository institu-
14 tion to terminate a specific deposit account or
15 a group of deposit accounts under subsection
16 (b), neither the depository institution nor the
17 appropriate Federal banking agency may notify
18 the customer or group of customers of the jus-
19 tification for that action, if—

20 (i) that notice may—

21 (I) disclose the existence of a re-
22 port on suspicious transactions filed
23 under section 5318(g) of title 31,
24 United States Code; or

1 (II) reveal confidential super-
2 visory information or a concern of an
3 appropriate Federal banking agency
4 relating to an internal control of a de-
5 pository institution; or

6 (ii) the appropriate Federal banking
7 agency has reasonable cause to believe that
8 the depository institution or any institu-
9 tion-affiliated party has engaged, is en-
10 gaged, or is about to engage in—

11 (I) a violation of an applicable
12 law, rule, regulation, order, enforce-
13 ment action, condition imposed in
14 writing, or formal or informal written
15 agency guidance; or

16 (II) an unsafe or unsound bank-
17 ing practice relating to that customer
18 or group of customers.

19 (e) REPORTING REQUIREMENT.—Each appropriate
20 Federal banking agency shall—

21 (1) submit to the Committee on Banking,
22 Housing, and Urban Affairs of the Senate and the
23 Committee on Financial Services of the House of
24 Representatives an annual report stating—

1 (A) the aggregate number of specific de-
2 posit accounts that the agency requested that a
3 depository institution terminate, or required a
4 depository institution to terminate, during the
5 previous year; and

6 (B) the legal authority on which the agen-
7 cy relied in making each request and require-
8 ment under subparagraph (A) and the fre-
9 quency on which the agency relied on each such
10 authority; and

11 (2) before submitting each report required
12 under paragraph (1), provide the Inspector General
13 of the agency with an opportunity to conduct an
14 evaluation or review of the activity described in that
15 report, which the Inspector General shall submit to
16 the committees described in paragraph (1) concur-
17 rently with the submission of the report under para-
18 graph (1).

19 ~~(f) INCREASING ACCESS TO DEPOSIT ACCOUNTS FOR~~
20 ~~BUSINESSES AND CONSUMERS.—~~

21 ~~(1) IN GENERAL.—~~Not later than 2 years after
22 the date of enactment of this Act, the appropriate
23 Federal banking agencies, in consultation with appli-
24 cable State bank supervisors, the Secretary of Com-
25 merce, and the Secretary of the Treasury, shall col-

1 lectively promulgate rules or guidance to increase ac-
2 cess to deposit accounts for businesses and con-
3 sumers.

4 (2) STANDARDS.—The rules or guidance pro-
5 mulgated under paragraph (1) shall include stand-
6 ards for—

7 (A) entering into and maintaining indi-
8 vidual consumer relationships and relationships
9 with categories of consumers;

10 (B) increasing access to deposit accounts—

11 (i) in the communities in which depos-
12 itory institutions serve, including rural
13 communities and low- and moderate-in-
14 come communities, which may be tailored
15 to account for the business models of com-
16 munity banks and credit unions; and

17 (ii) for Tribal communities, including
18 by overcoming historical barriers to au-
19 thenticating the identities of individuals
20 and other challenges to obtaining deposit
21 accounts;

22 (C) depository institutions to use innova-
23 tive technologies to increase access to deposit
24 accounts while maintaining appropriate third-
25 party risk management and oversight; and

1 ~~(D)~~ features of a deposit account that are
 2 responsive to the needs of an unbanked busi-
 3 ness ~~of consumer.~~

4 ~~(e)~~*(f)* BIENNIAL FDIC *AND* NCUA SURVEY ~~AND RE-~~
 5 ~~PORT~~ ON ACCESS TO DEPOSIT ACCOUNTS BY SMALL AND
 6 MEDIUM-SIZED BUSINESSES.—

7 (1) IN GENERAL.—The Federal Deposit Insur-
 8 ance Corporation *and the National Credit Union Ad-*
 9 *ministration* shall conduct a biennial survey on the
 10 efforts of depository institutions to provide greater
 11 access to deposit accounts to small and medium-
 12 sized businesses that may have encountered difficul-
 13 ties in accessing or maintaining deposit accounts.

14 (2) CONSIDERATIONS.—In conducting each sur-
 15 vey required under paragraph (1), the Federal De-
 16 posit Insurance Corporation *and the National Credit*
 17 *Union Administration* shall consider what issues and
 18 barriers most frequently prevent small and medium-
 19 sized businesses from accessing or maintaining de-
 20 posit accounts that are necessary to operate those
 21 businesses.

22 ~~(h)~~*(g)* RULE OF CONSTRUCTION.—Nothing in this
 23 section may be construed to limit or restrict the authority
 24 of an appropriate Federal banking agency to—

1 (1) identify or discuss potential supervisory
2 findings with the staff or management of a deposi-
3 tory institution, including findings involving finan-
4 cial condition, governance, consumer protection, in-
5 ternal controls, or unsafe or unsound conditions; or

6 (2) identify or discuss deficiencies in compliance
7 or risks associated with the Bank Secrecy Act, in-
8 cluding anti-money laundering or countering the fi-
9 nancing of terrorism practices.

10 ~~(i)~~(h) DEFINITIONS.—In this section:

11 (1) APPROPRIATE FEDERAL BANKING AGEN-
12 CY.—The term “appropriate Federal banking agen-
13 cy” means—

14 (A) the appropriate Federal banking agen-
15 cy, as defined in section 3 of the Federal De-
16 posit Insurance Act (12 U.S.C. 1813); and

17 (B) the National Credit Union Administra-
18 tion, in the case of an insured credit union, *as*
19 *defined in section 101 of the Federal Credit*
20 *Union Act (12 U.S.C. 1752).*

21 (2) DEPOSITORY INSTITUTION.—The term “de-
22 pository institution” means—

23 (A) a depository institution, as defined in
24 section 3 of the Federal Deposit Insurance Act
25 (12 U.S.C. 1813); and

1 (B) an insured credit union, *as defined in*
 2 *section 101 of the Federal Credit Union Act (12*
 3 *U.S.C. 1752).*

4 (3) INTELLIGENCE COMMUNITY.—The term
 5 “intelligence community” has the meaning given the
 6 term in section 3 of the National Security Act of
 7 1947 (50 U.S.C. 3003).

8 **SEC. 11. ANNUAL ACCESS TO FINANCIAL SERVICES RE-**
 9 **PORT.**

10 The Federal banking regulators shall submit to Con-
 11 gress an annual report containing—

12 (1) information and data on the availability of
 13 access to financial services for minority-owned, vet-
 14 eran-owned, women-owned, Tribal community-
 15 owned, and small State-sanctioned marijuana busi-
 16 nesses; and

17 (2) any regulatory or legislative recommenda-
 18 tions for expanding access to financial services for
 19 minority-owned, veteran-owned, women-owned, Trib-
 20 al community-owned, and small State-sanctioned
 21 marijuana businesses and hemp-related legitimate
 22 businesses.

1 **SEC. 11. ANNUAL ACCESS TO FINANCIAL SERVICES RE-**
2 **PORT.**

3 (a) *FEDERAL BANKING REGULATORS.*—*The Federal*
4 *banking regulators shall submit to Congress an annual re-*
5 *port containing information and data on the availability*
6 *of access to financial services for minority-owned, veteran-*
7 *owned, women-owned, Tribal community-owned, and small*
8 *State-sanctioned marijuana businesses.*

9 (b) *GAO.*—*The Comptroller General of the United*
10 *States shall submit to Congress an annual report that,*
11 *based on the information contained in the report submitted*
12 *under subsection (a) for the applicable year, contains regu-*
13 *latory or legislative recommendations for expanding access*
14 *to financial services for minority-owned, veteran-owned,*
15 *women-owned, Tribal community-owned, and small State-*
16 *sanctioned marijuana businesses.*

17 **SEC. 12. GAO STUDY ON BARRIERS TO MARKETPLACE**
18 **ENTRY.**

19 (a) *STUDY.*—*The Comptroller General of the United*
20 *States shall conduct a study on the barriers to market-*
21 *place entry, including in the licensing process, and the ac-*
22 *cess to financial services for potential and existing minor-*
23 *ity-owned, veteran-owned, women-owned, and small State-*
24 *sanctioned marijuana businesses and hemp-related legiti-*
25 *mate businesses.*

1 (b) REPORT.—Not later than 2 years after the date
2 of enactment of this Act, the Comptroller General of the
3 United States shall submit to Congress a report con-
4 taining—

5 (1) all findings and determinations made in
6 conducting the study required under subsection (a);
7 and

8 (2) any regulatory or legislative recommenda-
9 tions for removing barriers to marketplace entry and
10 success, including in the licensing process, and ex-
11 panding access to financial services for potential and
12 existing minority-owned, veteran-owned, women-
13 owned, and small State-sanctioned marijuana busi-
14 nesses and hemp-related legitimate businesses.

15 **SEC. 13. GAO STUDY ON EFFECTIVENESS OF CERTAIN RE-**
16 **PORTS ON FINDING CERTAIN PERSONS.**

17 (a) IN GENERAL.—Not later than 2 years after the
18 date of enactment of this Act, the Comptroller General
19 of the United States, in consultation with the Attorney
20 General, shall conduct a study on—

21 (1) the effectiveness of reports on suspicious
22 transactions filed pursuant to section 5318(g) of
23 title 31, United States Code, at finding individuals
24 or organizations suspected or known to be engaged
25 with transnational criminal organizations; and

1 (2) whether any engagement described in para-
2 graph (1) exists in a State, an Indian Tribe, or a
3 political subdivision of a State that allows the cul-
4 tivation, production, manufacture, sale, transpor-
5 tation, display, dispensing, distribution, or purchase
6 of marijuana.

7 (b) REQUIREMENTS.—The study required under sub-
8 section (a) shall examine reports on suspicious trans-
9 actions—

10 (1) relating to marijuana-related businesses, as
11 described in the guidance entitled “BSA Expecta-
12 tions Regarding Marijuana-Related Businesses”,
13 published by the Financial Crimes Enforcement Net-
14 work of the Department of the Treasury on Feb-
15 ruary 14, 2014, during the period beginning on Jan-
16 uary 1, 2014, and ending on the date of enactment
17 of this Act; and

18 (2) relating to State-sanctioned marijuana busi-
19 nesses during the period beginning on January 1,
20 2014, and ending on the date that is 1 year after
21 the date of enactment of this Act.

1 **SEC. 14. APPLICABILITY TO HEMP-RELATED LEGITIMATE**
 2 **BUSINESSES AND HEMP-RELATED SERVICE**
 3 **PROVIDERS.**

4 The provisions of this Act (other than sections 6 and
 5 13) shall apply with respect to hemp-related legitimate
 6 businesses and hemp-related service providers in the same
 7 manner as such provisions apply with respect to State-
 8 sanctioned marijuana businesses and service providers.

9 **SEC. 15. FINCEN TESTIMONY.**

10 *Not later than 1 year after the date of enactment of*
 11 *this Act, and annually thereafter, the Director of the Finan-*
 12 *cial Crimes Enforcement Network of the Department of the*
 13 *Treasury shall testify before the Committee on Banking,*
 14 *Housing, and Urban Affairs of the Senate and the Com-*
 15 *mittee on Financial Services of the House of Representa-*
 16 *tives regarding anti-money laundering efforts.*

17 **SEC. 1516. RULES OF CONSTRUCTION.**

18 (a) NO REQUIREMENT TO PROVIDE FINANCIAL
 19 SERVICES.—Nothing in this Act shall require a depository
 20 institution, an entity performing a financial service for or
 21 in association with a depository institution, a community
 22 development financial institution, or an insurer to provide
 23 financial services to a State-sanctioned marijuana busi-
 24 ness, service provider, or any other business.

25 (b) GENERAL EXAMINATION, SUPERVISORY, AND
 26 ENFORCEMENT AUTHORITY.—Nothing in this Act may be

1 construed in any way to limit or otherwise restrict the gen-
2 eral examination, supervisory, and enforcement authority
3 of the Federal banking regulators (including the Depart-
4 ment of the Treasury), provided that any supervisory or
5 enforcement action is not being taken solely because *of* the
6 provision of financial services to a State-sanctioned mari-
7 juana business or service provider.

8 (c) BUSINESS OF INSURANCE.—Nothing in this Act
9 shall interfere with the regulation of the business of insur-
10 ance in accordance with the Act entitled “An Act to ex-
11 press the intent of the Congress with reference to the reg-
12 ulation of the business of insurance”, approved March 9,
13 1945 (commonly known as the “McCarran-Ferguson
14 Act”; 15 U.S.C. 1011 et seq.), and the Dodd-Frank Wall
15 Street Reform and Consumer Protection Act (12 U.S.C.
16 5301 et seq.).

17 (d) LAW ENFORCEMENT AUTHORITY.—Nothing in
18 this Act shall restrict or limit the ability of Federal law
19 enforcement agencies to investigate and prosecute money-
20 laundering crimes involving proceeds of illegal activity
21 other than marijuana-related activities conducted in com-
22 pliance with the law of the State, Indian Tribe, or political
23 subdivision of a State by a State-sanctioned marijuana
24 business or service provider.

Calendar No. 215

118TH CONGRESS
1ST Session
S. 2860

A BILL

To create protections for financial institutions that provide financial services to State-sanctioned marijuana businesses and service providers for such businesses, and for other purposes.

SEPTEMBER 28 (legislative day, SEPTEMBER 22), 2023
Reported with amendments