

May 11, 2023

Chairman Sherrod Brown  
Ranking Member Tim Scott  
U.S. Senate Committee on Banking, Housing and Urban Affairs  
Washington, DC 20510

Re: Statement for the record for hearing on Examining Cannabis Banking Challenges of Small Businesses and Workers

Dear Chairman Brown and Ranking Member Scott,

Americans for Financial Reform, Consumer Action, Consumer Federation of America, National Association of Consumer Advocates, National Consumer Law Center (on behalf of its low-income clients), and National Consumers League submit this statement for the record in connection with the May 11, 2023 hearing on Examining Cannabis Banking Challenges of Small Businesses and Workers. We write to express our concern that Section 10 of S.1323, the Secure and Fair Enforcement (SAFE) Banking Act of 2023, could inhibit efforts to stop payment fraud.

We do not have a position on the Act overall or on access by cannabis businesses to banking and financial services. However, we are concerned that Section 10 is overbroad, with potential repercussions far beyond cannabis banking. That section imposes onerous requirements triggered if a bank regulator, formally or informally, discourages a depository institution from entering into or maintaining a banking relationship with a specific customer or group of customers. The section could be construed to apply if a bank regulator warns a financial institution about red flags that a customer or group of customers are engaged in unlawful activity, including receiving or laundering stolen funds. The provision could hinder efforts by bank regulators to address payment fraud and the use of bank accounts by fraudsters to receive money stolen in hacks and scams.

Our concerns are discussed in greater detail in our previous opposition letter to H.R. 2706 in the 115th Congress.<sup>1</sup> Our concerns are even greater today in light of the explosion of payment fraud. Nearly \$9 billion in fraud losses were reported to the Federal Trade Commission (FTC) in 2022, a 46% increase over 2021.<sup>2</sup> FTC data shows that “bank transfer or payment” is the largest method, in total dollars, used by criminals to receive fraudulent funds, exceeding even crypto-

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<sup>1</sup> See Letter from Americans for Financial Reform, Center for Responsible Lending, Consumer Action, Consumer Federation of America, National Association of Consumer Advocates, National Consumer Law Center, New Economy Project, Public Citizen, Woodstock Institute and U.S. PIRG to Rep. Blaine Luetkemeyer re H.R. 2702 (Oct. 11, 2017), <https://www.nclc.org/wp-content/uploads/2023/05/HR-2706-Luetkemeyer-oppose-final.pdf>.

<sup>2</sup> See <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/PaymentContactMethods>.

assets.<sup>3</sup> New technology has made bank wire transfers and person-to-person transfers through Zelle faster and easier, making fraud faster and easier for criminals as well.

In order to stem this tide of payment fraud and to prevent fraudsters from opening and using bank accounts to receive stolen funds, it is critical that bank regulators ensure that financial institutions comply with their know-your-customer and anti-money laundering requirements and require institutions to take swift action if a customer is using an account for unlawful purposes. Accordingly, if the Committee takes action on S. 1323, we urge you to remove Section 10 or to limit it to cannabis businesses that are engaged in lawful activity.

Thank you for considering this issue. If you have any questions, please contact Lauren Saunders at [lsaunders@nclc.org](mailto:lsaunders@nclc.org).

Sincerely,

Americans for Financial Reform  
Consumer Action  
Consumer Federation of America  
National Association of Consumer Advocates  
National Consumer Law Center (on behalf of its low-income clients)  
National Consumers League

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<sup>3</sup> In 2022, for the 17% of fraud reports that included information on payment method, \$1.6 billion was through bank transfer or payment, \$1.4 billion was through crypto-assets, and the next highest category, nonbank wire transfer, was \$311 million. See <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/PaymentContactMethods>.