SAFE Banking Act of 2023 (H.R.2891 and S.1323) – Public Comment Letter
Minorities for Medical Marijuana (M4MM)

We at Minorities for Medical Marijuana (M4MM) are excited to see the reintroduction of the SAFE Banking Act, as this is a step towards treating the $30 Billion Dollar Commercial Cannabis Industry in its proper role, as the newest entry into the legal pharmaceutical and healthcare industry. The path of racial, social, and economic empowerment through the Federal and State level legalization of Medical and Adult-Use Recreational Cannabis requires intentionality, policy, and broad economic considerations. The SAFE Banking Act of 2023 (H.R. 2891 and S. 1323) has marched down the path of Congressional adoption in the 116th and 117th Congress and now is achieving another important milestone along the journey, a public hearing in the Senate Banking, Housing and Urban Affairs committee. This step is valuable for all impacted Commercial Cannabis stakeholders:

- Patients' health care access
- Diverse and disproportionately impacted community licensed businesses
- Local, State specific small businesses
- Corporate stakeholders
- Employees, Vendors and Suppliers to State-Level licensed businesses
- Financial institutions

If each step is structured in the correct and inclusive way. Our approach at M4MM is to bring our public policy statutory, administrative and appropriative language recommendations to establish opportunities for social equity and broaden that scope to include economic inclusion, employment expansion and career mobility, supplier diversity and community investment through both Federal policy and within each State that has enabled or are considering enabling Commercial Medical and/or Adult-Use Recreational Marijuana.

The issue of banking and access to services beyond the basic banking services offered to under the current 2014 FINCEN Treasury guidelines for banking Marijuana-related businesses and 2015 Federal Reserve depository guidelines for Marijuana-related businesses, which provides a loose and unequitable capital system for a maturing Commercial industry. The challenge of inequitable capital access negatively impacts efforts to increase the diversity of ownership and executive level leadership and can institutionalize disenfranchisement without intentional Federal and State policy correction through amendment of existing statutory law or in adopting new Statutes to drive inclusion.

We at Minorities for Medical Cannabis (M4MM) believe in applying a detailed policy approach to social equity and broadening the scope to include economic inclusion, employment expansion and career mobility, by which the SAFE Banking Act can positively impact.

In our response to the introduction of this historic legislation, we ask for the following structural pillars be addressed to ensure equitable opportunity and impact of opportunity for persons from communities disproportionately impacted by the enforcement of previous Cannabis prohibition laws:

- **Licensing Structure and Process.**
- **Increasing the share of Minority Owner-Operator's licensees.**
- **Economic Inclusion and Expansion.**
- **Employment and Professional Mobility.**
- **Supplier Diversity & Revenue Opportunity.**
- **Improving Health Outcomes.**
- **Social Justice Impacts.**

Minorities for Medical Cannabis recommends the following additions and revisions to the SAFE Banking Act to drive inclusion, address socioeconomic and racial disparities, increase entry to and opportunities in the Legal Commercial Cannabis market by members of impacted communities and maintain economic, social, and healthcare sustainability for diverse minority and social equity applicants, Medical Cannabis patients and casual adult Cannabis Users.

Recommendation #1 -
Amend SAFE Banking Act (H.R.2891 and S.1323) to include Sec. 2 (Permitting Access To Community Development, Small Business, Minority Development, And Financial Institution Capital For Investment In And Financing Of State-Sanctioned Marijuana Business And Their Service Providers) and Sec 3 (Safe Harbor For National Securities Exchanges) of the Capital Lending and Investment for Marijuana Businesses Act" or the "CLIMB Act" (H.R. 8200) in a new Sec. 4 and Sec. 5 of S. 1323):

- M4MM supports the general policy direction of both H.R.2891 and S.1323, yet we believe it is critical to adopt statutory language to provide capital access opportunities beyond debt instrument lending products as currently structured. We believe amending SAFE by adding revised language from Sec. 2 and Sec. 3 from the CLIMB Act (H.R. 8200) is critical to expanding capital access opportunities for small businesses, diverse and disproportionately impacted communities. Our proposed language from the CLIMB Act is structured to amend any applicable Federal law to provide safe harbor and hold harmless access to community development, small business, minority development, and any other public or private financial capital sources for investment in and financing of State-Sanctioned Marijuana Business, and to amend the Securities Exchange Act of 1934 to create a safe harbor for investment vehicles and national securities exchanges to list the securities of issuers that are State-Sanctioned Marijuana Business. Please see our proposed substitute language for Sec. 4 and 5.

SEC. 4. PERMITTING ACCESS TO COMMUNITY DEVELOPMENT, SMALL BUSINESS, MINORITY DEVELOPMENT, AND FINANCIAL INSTITUTION CAPITAL FOR INVESTMENT IN AND FINANCING OF STATE-SANCTIONED MARIJUANA BUSINESSES AND THEIR SERVICE PROVIDERS.

(a) PROSCRIPTION AGAINST FEDERAL AGENCY ACTION.—No agency of the Federal Government shall—

(1) initiate or otherwise support bringing civil, criminal, regulatory or administrative actions that would disqualify any business person or governmental authority from holding or obtaining any charter, license, registration, or official status, from maintaining, applying for or receiving funding, appropriations, grants, contracts, or other forms of monetary or non-monetary assistance from a governmental authority, or from marketing, offering, or selling any security, banking, or insurance or other financial services product, because such business or person—

(A) provides business assistance to a State-Sanctioned Marijuana Business or service provider; or

(B) receives cash or other compensation for providing business assistance to a State-Sanctioned Marijuana Business or service provider which cash or other compensation is generated from or is proceeds of the business operations of a State-Sanctioned Marijuana Business or service provider.

(b) DEFINITIONS.—

(1) BUSINESS ASSISTANCE.—The term "business assistance" means—

(A) provision of financial services including but not by way of limitation, commercial banking, deposit-taking, trust services, capital raising, lending, brokerage, prime brokerage, securities finance services, investment banking, custody services, credit card services, money transfer services, securities underwriting and investment advisory services;

(B) sale of insurance or surety products;

(C) providing debt or equity capital, including bonds, debentures and notes, and the receipt of dividends, interest, or distributions of that capital;

(D) provision or accounting services;

(E) sale, leasing, or renting of real estate;

(F) provision of equipment, parts, substances or testing services needed to produce marijuana, hemp or extracts therefrom and to comply with the law, rules and regulations for testing in the applicable U.S. State, commonwealth, Washington, DC, Indian Tribe, or U.S. Territory;

(G) provision of advertising or marketing services;

(H) provision of management consulting services;

(I) provision of legal services or compliance services;

(J) provision of information technology, software and communications services;

(K) provision of packaging, transportation, or other logistics services; and

(L) underwriting, dealing, placement or public distribution of securities issued by a State-Sanctioned Marijuana Business, including the listing of any such securities on any exchange or trading venue, or any provision of services related to the foregoing.

(2) GOVERNMENTAL AUTHORITY.—The term "governmental authority" means any Federal, State, municipal, national, local, tribal, or other governmental department, court, commission, board, bureau, agency, or instrumentality or political subdivision thereof, or any entity or officer exercising executive, legislative, or judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case, whether of the United States or a State, territory or possession thereof, a foreign sovereign entity or country or jurisdiction or the District of Columbia.

(3) PERSON.—The term "person" means an individual, a partnership, a corporation, a limited liability company, a business trust, a joint stock company, a trust, an unincorporated association, a joint venture, a governmental authority, or any other entity of whatever nature.

(4) "QUALIFIED INSTITUTIONAL INVESTOR" the team "qualified institutional investor" means:

(A) A bank as defined in Section 3(a) (6) of the Federal Securities Exchange Act of 1934, as amended;

(B) An insurance company as defined in Section 2(a) (17) of the Investment Company Act of 1940, as amended;

(C) An investment company registered under Section 8 of the Investment Company Act of 1940, as amended;

(D) An investment adviser registered under Section 203 of the Investment Advisers Act of 1940, as amended;

(E) Collective trust funds as defined in Section 3(c) (11) of the Investment Company Act of 1940, as amended;

(F) An employee benefit plan or pension fund that is subject to the Employee Retirement Income Security Act of 1974, as amended, excluding an employee benefit plan or pension fund sponsored by a licensed or an intermediary or holding company licensee which directly or indirectly owns five percent or more of a licensee;

(G) A state or federal government pension plan; or

(H) A group comprised entirely of persons specified in (a) through (g) of this definition.

(5) QUALIFIED INVESTOR.—

(A) DEFINITION.— Except as provided in subparagraph (B), for purposes of this title, the term ''qualified investor'' means—

(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;

(ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940;

(iii) any bank (as defined in paragraph (6) of this subsection), savings association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);

(iv) any small business investment company licensed by the United States Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958;
(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser;
(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;
(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;
(viii) any associated person of a broker or dealer other than a natural person;
(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978);
(x) the government of any foreign country;
(xi) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than $25,000,000 in investments;
(xii) any natural person who owns and invests on a discretionary basis, not less than $25,000,000 in investments;
(xiii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than $50,000,000 in investments; or
(xiv) any multinational or supranational entity or any agency or instrumentality thereof.

SEC. 5. SAFE HARBOR FOR NATIONAL SECURITIES EXCHANGES.

Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

"(m) SAFE HARBOR FOR STATE-SANCTIONED MARIJUANA BUSINESSES AND SERVICE PROVIDERS.—

"(1) DEFINITIONS.—In this subsection—

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

"(B) MARIJUANA PRODUCT.—The term 'Marijuana product' means any article that contains Marijuana, including an article that is a concentrate, an edible, a tincture, a Marijuana-infused product, or a topical.

"(C) STATE-SANCTIONED MARIJUANA BUSINESS.—The term 'State-Sanctioned Marijuana Business' means an issuer that—

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

(ii) participates in any business or organized activity that involves handling marijuana or marijuana products,

including cultivating, producing, manufacturing, selling, transporting, displaying, dispensing, distributing, or purchasing marijuana or marijuana products. "(ii) engages in the activity described in clause.

"(D) MARKET PARTICIPANT.—The term 'market participant' means any broker dealer, underwriter, clearing agency or clearinghouse, securities depository, credit rating agency, alternative trading system, investment adviser, investment company, investment banking, qualified investor, qualified institutional investor, self- regulatory organization, or transfer agent.

"(E) SERVICE PROVIDER.—The term 'service provider' means— "(i) an issuer that—

"(I) sells or otherwise provides goods or services to a State-Sanctioned Marijuana Business; or

"(II) provides any business service relating to Marijuana or Marijuana product, including without limitation—

"(aa) legal, compliance, or accounting services;

"(bb) sale, leasing, or renting of real estate or equipment;

"(cc) provision of parts, substances, or testing services needed to produce marijuana, hemp, or extracts therefrom and to comply with the law, rules, and regulations for testing in the applicable U.S. State, commonwealth, Washington, DC, Indian Tribe, or U.S. Territory;

"(dd) advertising or marketing services;

"(ee) management consulting services;

"(ff) information technology, software, and communications services; and

"(gg) packaging, transportation, or other logistics services; and

"(ii) is not a State-Sanctioned Marijuana Business.

"(F) STATE.—The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the territories and possessions of the United States.

"(2) SAFE HARBOR.—Notwithstanding section 32 of this Act, the Controlled Substances Act (21 U.S.C. 801 et seq.), or any other Federal law, it shall not be unlawful for a national securities exchange registered pursuant to subsection (a) or any market participant to have listed, list, or intend to list, or permits the trading, or facilitates the offering, listing, or trading on a national securities exchange, of the securities of a State-Sanctioned Marijuana Business or a service provider.".

Recommendation #2

Providing Directed Capital Access lending for increasing Hemp Processors Licensees via SAFE by amending SEC. 8. Banking Services For Hemp-Related Legitimate Businesses And Hemp-Related Service Providers:

- Amend S. 1323/H.R. 2891. by adding **SEC. 305 Small Business Lending Pilot Program** (title draft - **Creating 420 Industrial Hemp Processors in four years Act) -** Currently, there are only 20 operating Hemp Processors in America, which doesn't the support the

development of Industrial Hemp products for domestic usage and exporting opportunities. Provide funding allocations for lending vehicles through MDI's and CDFI's for capital access for interested Hemp Processors is critical to growing this industry sector.

a. Amend S. 1323/H.R. 2891. by adding **SEC. 305 Small Business Lending Pilot Program** proposed in the Cannabis Administration and Opportunity Act (CAO) of 2021 (which amends Section 7 of the Small Business Act (15 U.S.C. 636)). The pilot program would allocate directed lending activities through CDFI's, MDI's and eligible Non- Profits to offer loans and financial assistance for economically and socially disadvantaged farmers and minority business entities who want to become licensed Hemp Processors. If adopted, we would recommend the following appropriations allocations and lending authorizations (using Sec. 305 (o) amended language

- **Sec. 305. (o)(3)(G)(ii) Maximum Participants And Amounts** – The total appropriated amount should be increased to $600,000,000 from $300,000,000
- **Sec. 305. (o)(4)(B) Loans to Small Business Concerns/Maximum Loan –** M4MM would recommend striking $200,000 and replacing it with $750,000
- **Sec. 305. (o)(5)(A) & (B) Loans to Small Business Concerns/Funding** – M4MM recommends striking $90,000,000 in subsection A and replacing it with $180,000,000 and recommends striking $41,000,000 and replacing it with $81,000,000.

This addresses an important M4MM priority area by creating a lending facility through the 144 MDI's and 177 CDFI's that will help them expand their overall intra-banking portfolio and expand their services to underserved communities. Please see our proposed

SEC. 8. BANKING SERVICES FOR HEMP-RELATED LEGITIMATE BUSINESSES AND HEMP-RELATED SERVICE PROVIDERS.

(a) PILOT PROGRAM FOR HEMP-RELATED LEGITIMATE LICENSED INDUSTRIAL PROCESSOR.

Section 7 of the Small Business Act (15 U.S.C. 636) is amended by adding at the end the following:

"(o) Pilot Program.—

"(1) DEFINITIONS.—In this subsection:

"(A) ELIGIBLE INTERMEDIARY.—The term 'eligible intermediary' means—

"(i) a private, nonprofit entity, including a private, nonprofit community development corporation, a consortium of private, nonprofit organizations or nonprofit community development corporations, and an agency of or nonprofit entity established by a Native American Tribal Government, that—

"(I) seeks or has been awarded a loan from the Administrator to make loans to small business concerns under this subsection; and

"(II) has not less than 1 year of experience making loans to startup or socially and economically disadvantaged small business concerns;

"(ii) a community development financial institution, as defined in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702); and

"(iii) a minority depository institution, as defined in section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 note).

"(B) INDIVIDUAL ADVERSELY IMPACTED BY THE WAR ON DRUGS.—The term 'individual adversely impacted by the War on Drugs' has the meaning given the term.

"(C) PROGRAM.—The term 'Program' means the small business intermediary lending pilot program established under paragraph (2).

"(D) SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERN.—The term 'socially and economically disadvantaged small business concern' has the meaning given the term in section 8(a)(4)(A).

"(2) ESTABLISHMENT.—There is established a 10-year small business intermediary lending pilot program under which the Administrator may—

"(A) make direct loans to eligible intermediaries for the purpose of making loans to startup small business concerns, small business concerns owned and controlled by individuals adversely impacted by the War on Drugs, or socially and economically disadvantaged small business concerns that will establish Hemp-Related Legitimate Licensed Industrial Processor businesses; and

"(B) in conjunction with the direct loans described in subparagraph (A), make grants to eligible intermediaries for the purpose of providing intensive marketing, management, regulatory compliance, and technical assistance to the small business concerns described in subparagraph (A) that receive a loan under this subsection.

"(3) LOANS TO ELIGIBLE INTERMEDIARIES.—

"(A) APPLICATION.—Each eligible intermediary desiring a loan under this subsection shall submit an application to the Administrator that describes—

"(i) the type of small business concerns to be assisted;

"(ii) the size and range of loans to be made;

"(iii) the interest rate and terms of loans to be made;

"(iv) the geographic area to be served and the economic, poverty, and unemployment characteristics of the area;

"(v) the status of small business concerns in the area to be served and an analysis of the availability of credit;

"(vi) the marketing, management, regulatory compliance, and other technical assistance to be provided in connection with a loan made under this subsection; and

"(vii) the qualifications of the applicant to carry out this subsection.

"(B) LOAN LIMITS.—No loan may be made to an eligible intermediary under this subsection if the total amount outstanding and committed to the eligible intermediary by the Administrator would, as a result of such loan, exceed $15,000,000 during the length of participation by the eligible private, nonprofit entity, including a private, nonprofit community development corporation, a consortium of private, nonprofit organizations or nonprofit community development corporations, and an agency of or nonprofit entity established by a Native American Tribal Government and exceed $75,000,000 during the first 5 years and exceed $100,000,000 during the final 5 years of participation by the eligible community development financial institutions or minority depository institutions intermediary in the Program..

"(C) LOAN DURATION.—Loans made by the Administrator under this subsection shall be for a term of 20 years.

"(D) APPLICABLE INTEREST RATE.—Loans made by the Administrator to an eligible intermediary under the Program shall bear an annual interest rate equal to the interest rate described in subsection (m)(3)(F)(ii).

"(E) FEES; COLLATERAL.—The Administrator may not charge any fees or require collateral with respect to any loan made to an eligible intermediary under this subsection.

"(F) DELAYED PAYMENTS.—The Administrator shall not require the repayment of principal or interest on a loan made to an eligible intermediary under the Program during the 2-year period beginning on the date of the initial disbursement of funds under that loan.

"(G) MAXIMUM PARTICIPANTS AND AMOUNTS.—During each fiscal years, the Administrator may make loans under the Program—

"(i) to not more than 60 eligible intermediaries; and

"(ii) in a total amount of not more than $600,000,000.

"(4) LOANS TO SMALL BUSINESS CONCERNS.—

"(A) IN GENERAL.—The Administrator, through an eligible intermediary, shall make loans to the small business concerns described in paragraph (2) for eligible uses under subsection (a).

"(B) MAXIMUM LOAN.—An eligible intermediary may not make a loan under this subsection of more than $750,000 to any 1 small business concern.

"(C) APPLICABLE INTEREST RATES.—

"(i) IN GENERAL.—Subject to clause (ii), a loan made by an eligible intermediary to a small business concern under this subsection—

"(I) may have a fixed or a variable interest rate; and

"(II) shall bear an interest rate specified by the eligible intermediary in the application of the eligible intermediary for a loan under this subsection.

"(ii) RESTRICTIONS.—The Administrator may limit the interest rate or provide forbearance or deferment on repayment of a loan made by an eligible intermediary to a small business concern under this section.

"(D) REVIEW RESTRICTIONS.—The Administrator may not review individual loans made by an eligible intermediary to a small business concern before approval of the loan by the eligible intermediary.

"(5) FUNDING.—In addition to amounts otherwise available, there is appropriated, out of any funds in the Treasury not otherwise appropriated, for fiscal year 2024, to remain available until September 30, 2028—

"(A) $180,000,000 to carry out paragraph (2)(A); and

"(B) $81,000,000 to carry out paragraph (2)(B).

"(6) TERMINATION.—The authority of the Administrator to make loans under the Program shall terminate on the date that is 10 years after the date of enactment of this subsection.

"(7) SENSE OF THE SENATE.—It is the sense of the Senate that the Administrator should issue regulations to ensure that the processing and disbursement of loans under this subsection prioritizes individuals adversely impacted by the War on Drugs.".