



The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, DC 20515

The Honorable Charles Schumer  
Minority Leader  
United States Senate  
Washington, DC 20515

The Honorable Nancy Pelosi  
Speaker  
United States House of Representatives  
Washington, DC 20515

The Honorable Kevin McCarthy  
Republican Leader  
United States House of Representatives  
Washington DC, 20515

**April 13, 2020**

**Re: SBA Policy Depriving Certain Professionals from CARES Act Relief**

Dear Senators McConnell and Schumer and Representatives Pelosi and McCarthy,

We, the International Cannabis Bar Association (INCBA), a coalition of more than 700 business attorneys and firms that serve clients in state-legal cannabis industries throughout the United States, are writing to request clarification on access to CARES Act funds for the legal community, which has been called into question due to an administrative overreach by the federal Small Business Administration (SBA). In Drafting SOP 50 10 5(K)<sup>1</sup>, the SBA has deemed certain professional service providers, including lawyers, accountants and many others, “Indirect Marijuana Businesses,” which could be interpreted to deprive broad swaths of the US economy from much-needed financial relief that Congress has allocated to these small businesses in this unprecedented time.

We write today to respectfully request that you:

- Direct the SBA to remove any reference in SOP 50 10 5(K), and any other active guidance, to so-called “Indirect Marijuana Businesses,” as defined by the SBA;
- Include an amendment in the next funding bill that exempts from the ineligibility requirements otherwise lawful businesses that derive revenue from Direct Marijuana Businesses as defined in SOP 50 10 5(K); and
- Take any further action required to make emergency relief available to so-called “Indirect Marijuana Businesses” that provide legal and other professional services in compliance with their state’s legal and ethical requirements.

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<sup>1</sup> <https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs>



The cannabis industry (which makes up a portion of our members' collective client base) generated an estimated \$1.3 billion in tax revenue from legal cannabis sales in 2018, and consumer spending in the industry is expected to pass \$23 Billion in 2022. As of February of this year, the industry employed over 243,000 individuals, and as of this writing, cannabis businesses have been declared "essential services" by the governors of several states, including California, Colorado, Illinois, Nevada, Washington, Minnesota, and in Washington D.C. The negative impact of depriving this booming economic force of "Direct Cannabis Businesses"—as defined by the SBA—from federal emergency funding is substantial and has been adequately addressed in a multitude of other pleas addressed to this body and others.

**This 'direct' economic damage is, however, dwarfed by the damage potentially wrought by the SBA's apparent denial of economic aid to so-called "Indirect Cannabis Businesses."** The SBA, *without a legislative directive*, appears to have deemed that *any business that has derived any income from a "Direct Cannabis Business"* be excluded from the economic life support offered by the CARES Act. The number of businesses in this so-called "Indirect" economy is many times over the size of the "Direct" cannabis market, and this guidance will undoubtedly cause substantial and lasting economic harm to the small business communities across the country and frustrate the stated purpose of the CARES Act.

The term "Indirect Cannabis Business" appears to originate in 13 CFR § 120.110,<sup>2</sup> which prohibits loans administered by the SBA from going to "businesses engaged in illegal activity." On April 3, 2018, the SBA issued a Policy Notice<sup>3</sup> that significantly expanded the scope of this prohibition, interpreting that provision to include any business "that derived **any** of its gross revenue for the previous year from sales to Direct Marijuana Businesses of products or services that could reasonably be determined to aid in the use, growth, enhancement or other development of marijuana." That Policy Notice was ultimately incorporated into the 2019 SBA SOP 50 10 5(K), despite the apparent conflict between this guidance and existing guidance applicable to banking institutions under FinCEN's BSA Expectations Regarding Marijuana-Related Businesses,<sup>4</sup> which provides a roadmap for banks to serve the cannabis industry and the professionals that operate with varying degrees of proximity to that industry.

As applied, this "Indirect Cannabis Business" exclusion is untenably broad because it excludes businesses from CARES Act relief that are not "engaged in illegal activity," as required by 13 CFR § 120.110. Rather, the SBA has unilaterally prevented law firms and countless other professionals, which would otherwise qualify for financial assistance under the Economic Injury Disaster Loan (EIDL) and Paycheck Protection Loan (PPP) programs, from accessing much-needed financial assistance intended to save the very types of jobs we are now losing.

While we hope that congress considers CARES Act relief for "Direct Cannabis Businesses" in light of their "essential" designation in many jurisdictions, **we implore you to mandate that the SBA repeal any active guidance that references the term "Indirect Marijuana Businesses," including, among others, SOP 50 10 5(K).** The economic life support authorized by the CARES Act is essential to the professional communities that provide legal, accounting, insurance, and other professional services, and the US economy will continue to suffer without granting this vast swath of professionals access to CARES Act relief.

Sincerely,  
Christopher J. Davis, Executive Director, INCBA  
On Behalf of the INCBA Community

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<sup>2</sup> <https://www.law.cornell.edu/cfr/text/13/120.110>

<sup>3</sup> [https://www.sba.gov/sites/default/files/resource\\_files/SBA\\_Policy\\_Notice\\_5000-17057\\_Revised\\_Guidance\\_on\\_Credit\\_Elsewhere\\_and\\_Other\\_Provisions.pdf](https://www.sba.gov/sites/default/files/resource_files/SBA_Policy_Notice_5000-17057_Revised_Guidance_on_Credit_Elsewhere_and_Other_Provisions.pdf)

<sup>4</sup> <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>