
June 5, 2020

Secretary Steven T. Mnuchin
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Administrator Jovita Carranza
U.S. Small Business Administration
409 Third Street, SW
Washington, DC 20416

RE: SBA Paycheck Protection Program Interim Final Rules
Docket No. SBA-2020-0015

Dear Secretary Mnuchin and Administrator Carranza:

On behalf of the American Bar Association (ABA) – the largest voluntary association of lawyers and legal professionals in the world – I write to request SBA to clarify eligibility under the business loan program to allow access to the Coronavirus Aid, Relief, and Economic Security (CARES) Act funds through the Paycheck Protection Program (PPP) for lawyers and law firms that provide services to cannabis businesses operating legally under applicable state laws.

Specifically, we urge you to amend or clarify the Small Business Administration’s (SBA) general Standard Operating Procedure (SOP) 50 10 5(k) for purposes of the PPP to help fulfill Congress’ intent to provide broad relief, beyond companies traditionally eligible for the SBA 7(a) program, to assure continued employment in the face of the economic uncertainty created by COVID-19 that, for some businesses, makes necessary this temporary government support. The ABA supports amending federal law to ensure that lawyers do not face the threat of criminal charges when they represent clients in states that have legalized marijuana. Even before those changes are made to federal law, lawyers should also not be penalized for providing legal services to cannabis-related businesses that comply with state laws.

Most law firms qualify as small businesses, falling within the congressional CARES Act intent to cover all businesses with less than 500 employees. However, SOP 50 10 5(k) creates uncertainty regarding the application of the PPP program to lawyers and law firms who have provided professional services to businesses that operate in the state-legalized marijuana market. We urge you to provide further guidance that confirms the SBA PPP will not treat otherwise eligible businesses, including law firms, as disqualified from the program based solely on having provided legal, financial/accounting, policy, or regulatory advice to a Direct Marijuana Business.

Although 13 C.F.R. § 120.110 states that only “businesses engaged in illegal activity” are ineligible, examples given in SOP 50 10 5(k) greatly extend this threshold to “businesses that *advise or counsel Direct Marijuana Businesses* on the specific legal, financial/accounting, policy, regulatory or other issues associated with establishing, promoting, or operating a Direct

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Marijuana Business.”¹ Moreover, the SOP guidance is overly broad and establishes a very low standard for ineligibility, including “a business that derived *any of its gross revenue for the previous year*” from such services. Thus, a law firm where a single lawyer provided advice to a single marijuana business client on legal issues for a nominal fee would arguably be ineligible under this language for the SBA PPP loan program.

Excluding lawyers and law firms serving clients in cannabis-related businesses from PPP eligibility has the potential to cause extensive, unintended economic harm. Of the 1.3 million attorneys practicing in the United States in 2019, nearly 78% are in jurisdictions where marijuana sales are permissible under state law.² Under the current guidance, many of these lawyers and their firms could be disqualified from receiving PPP assistance.

We urge SBA to provide further guidance that it will not treat otherwise eligible businesses, including law firms, as disqualified from the PPP program based solely on having provided legal, financial/accounting, policy, or regulatory advice to a Direct Marijuana Business. If you have any questions, please contact ABA Governmental Affairs Legislative Counsel David Eppstein at 202-662-1766, David.Eppstein@americanbar.org.

Sincerely,



Judy Perry Martinez

cc: Nydia Velazquez
Chairwoman, House Committee on Small Business

Steve Chabot
Ranking Member, House Committee on Small Business

Marco Rubio
Chairman, Senate Committee on Small Business and Entrepreneurship

Ben Cardin
Ranking Member, Senate Committee on Small Business and Entrepreneurship

¹ This particular sentence was added to the manual with no public notice or comment. Indeed, the language about advice work was not part of the policy as promulgated in February 2019, and its source is unclear. See SBA Policy Notice 5000-17057 (omitting the language about “businesses that advise or counsel . . .”); SOP 50 10 5(k) (attributing the new language to Policy Notice 5000-17057). SBA thus created this rule without receiving public input on the nuances involved with a broad rule against advice work involving the cannabis industry.

² https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-by-state-2019.pdf for state-by-state statistics on where lawyers live and practice. Thirty-three states, plus the District of Columbia, have authorized, under state or local law, sale of either medical or recreational marijuana, representing a wide cross-section of the United States from Alaska, Arizona, and Arkansas to Utah, Washington, and West Virginia.