

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

June 11, 2019

Mr. Chris Pilkerton
Acting Administrator and General Counsel
United States Small Business Administration
409 3rd Street, SW
Washington, DC 20416

Mr. Pilkerton:

We are writing as Members of the House Committee on Small Business to inquire regarding SOP 50 10 5(K) issued earlier this year and SBA Policy Notice 5000-17057 issued last year. Specifically, we are writing regarding the SBA's policy making Direct and Indirect Marijuana Businesses ineligible from receiving SBA financial assistance, including but not limited to the SBA 7(a) and 504 loan programs.¹ Currently, SBA policy defines an Indirect Marijuana Business as "a business that derived *any* of its gross revenue for the previous year ... from sales to Direct Marijuana Businesses that could reasonably be determined to aid in the use, growth, enhancement, or other development of marijuana" (emphasis added).²

SBA policy states that a borrower of an SBA loan may not lease space to a Direct or Indirect Marijuana Business.³ Other Indirect businesses prohibited from utilizing SBA assistance include businesses that advise or counsel Direct Marijuana Businesses on specific legal, financial/accounting, policy, or other issues associated with establishing, promoting, or operating a Direct Marijuana Business.⁴ However, for purposes of illustration, SOP 50 10 5(K) states that SBA does not consider a plumber who fixes a sink for a Direct Marijuana Business or a tech support company that repairs a laptop for such a business to be aiding in the use, growth, enhancement, or other development of marijuana.⁵

We are concerned about the prospect of confusion around what SBA considers an Indirect Marijuana Business. Any such confusion results in the exclusion of legitimate small businesses from SBA's loan programs, which carries with it potentially severe unintended consequences for America's small business sector. Current policy applies to any business that generated *any* of its gross revenue from a sale of a good or service that could be reasonably determined to aid in the

¹ U.S. Small Bus. Admin., Office of Fin. Assistance, SOP 50 10 5(K); *see also* SBA Policy Notice 5000-17057.

² U.S. Small Bus. Admin., Office of Fin. Assistance, SOP 50 10 5(K), p. 107, 290.

³ SBA Policy Notice 5000-17057, p. 2.

⁴ U.S. Small Bus. Admin., Office of Fin. Assistance, SOP 50 10 5(K), p. 107-08, 290.

⁵ U.S. Small Bus. Admin., Office of Fin. Assistance, SOP 50 10 5(K), p. 108, 290-91.

development of marijuana.⁶ This policy could bar SBA lending to a large number of small firms whose business with Direct Marijuana Businesses could be *de minimis*.

Under this policy, small businesses in states with legal marijuana are effectively forced into making the unfair choice between being able to access SBA-backed lending or conducting business with a large and growing sector of local economies in states with legal marijuana. If SBA's stated mission is to "aid, counsel, assist and protect the interests of small business concerns," we are concerned this policy would do more to harm small businesses than it would assist or protect them and create more confusion for entrepreneurs than clarity.

For these reasons, we are requesting that the SBA revise this SOP to address these matters and ensure that small businesses are not unnecessarily barred from using the agency's programs due to *de minimis* marijuana-related revenue. Furthermore, we are requesting SBA provide clear guidance to all of its resource partners, including those involved with the Office of Entrepreneurial Development, clarifying they may provide services to Indirect Marijuana Businesses.

As increasingly more states legalize marijuana and Congress, states, and regulators continue recognizing the legitimacy of the industry, it will be important for Congress and the agencies it oversees to work cooperatively to further ease policies on Direct and Indirect Marijuana Businesses where appropriate. We therefore look forward to working with you to find solutions that will minimize burdens and maximize access to capital for small businesses looking to engage in this emerging industry.

Sincerely,



Jared Golden
Member of Congress



Nydia M. Velázquez
Member of Congress



Jason Crow
Member of Congress



Dwight Evans
Member of Congress



Judy Chu
Member of Congress



Antonio Delgado
Member of Congress



Adriano Espaillat
Member of Congress

⁶ U.S. Small Bus. Admin., Office of Fin. Assistance, SOP 50 10 5(K), p. 107-08, 290-91.