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VIA FEDERAL ERULEMAKING PORTAL

The Honorable Jovita Carranza, Administrator
U.S. Small Business Administration
409 3rd St, SW
Washington DC 20416
Fax: 202-205-7722

**Re: [Docket No. SBA-2020-0015]
Comments of Focal PLLC to 13 CFR Part 120 Business Loan Program Temporary
Changes; Paycheck Protection Program / RIN 3245-AH34**

We are a small law firm in Seattle, Washington. We write regarding the Interim Final Rule issued by the Small Business Administration on April 2, 2020 (IFR) under Section 1114 of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, which references the SBA’s most recent Standard Operating Procedure (50 10 5 (K)) (Effective: 2019-04-01). We submit comments to clarify an apparent prohibition by the CARES Act and most recent SOP on law and accounting firms that provide legal and financial advisory services state-licensed cannabis businesses.

Specifically, we write regarding the SOP’s apparent prohibition on businesses that “advise or counsel” cannabis-related businesses on legal and regulatory compliance from receiving governmental relief. Section III, 8, b, ii. b) contains the following language purporting to describe an “indirect marijuana business”:

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 Marijuana Business.

A “direct marijuana business” in turn is defined as a business “that grows, produces, processes, distributes, or sells marijuana or marijuana products, edibles, or derivatives, regardless of the amount of such activity.”

Read literally, the SOP’s description of an indirect marijuana business would encompass any law or accounting firm that advises (to any extent) any direct marijuana business in a state where marijuana has been declared legal under state law subject to strict state regulatory frameworks.

The SBA issued a policy pronouncement regarding marijuana-related businesses in SBA Policy Notice 5000-17057. In that policy notice, the SBA issued “guidance regarding businesses that are involved with cannabis and their eligibility for SBA financial assistance.” The definition of an “indirect marijuana business” in Policy Notice 5000-17057 did not reference businesses that “advised or counseled” a “direct marijuana business.” SOP 50 10 5 (K) stated that it was incorporating “policy changes issued in SBA Policy Notice 5000-17057 concerning the eligibility of marijuana-related businesses.” However, SOP 50 10 5 (K) appeared to add a new limitation that appears to reach legal service providers.

Perhaps this was an inadvertent addition. Long-held American traditions counsel against imputing any negative intent or alleged unlawful activities of clients to their lawyers. In any event, there are good

reasons to include legal and accounting firms who advise cannabis-businesses as part of their clientele (along with non-cannabis businesses) among the small businesses eligible for government relief. Most significantly, such firms are typically advising companies on compliance with legal rules, and thus encouraging and assisting companies on being compliant with state law. A rule that excludes businesses providing legal advisory services from the scope of government relief operates as a powerful disincentive to such law and accounting firms from providing necessary services. Moreover, excluding such businesses from government relief will necessarily impact their ability to provide legal services to companies that have no connection to direct marijuana businesses by threatening their ability to maintain their operations in these extraordinary times.

As a small business, we anticipate that the COVID pandemic will have a material negative impact on our business. We employ 10 full-time employees; each receiving salaries, IRA matching and health benefits. We fear that without assistance from the CARES Act and Payment Protection Plan we'll need to make downward compensation adjustments, or worse, lay-offs. We'd hope that legal service providers receive the same assistance that other small businesses receive from COVID-related regulations and not be penalized for doing our jobs - namely, advising companies on complex legal issues.¹

We write to respectfully seek clarification on this issue. Thank you for your attention to this matter.

Please feel free to contact me at venkat@focallaw.com or 206-718-4250 if you have any questions or comments.

Sincerely,

Focal PLLC

s/ Venkat Balasubramani

Venkat Balasubramani

cc: The Honorable Maria Cantwell
The Honorable Pramila Jayapal
The Honorable Patty Murray
US Small Business Administration Region X

¹ It is our understanding that a number of law firms that have advised cannabis clients have petitioned for relief under the Payment Protection Plan. In the interest of caution we have not done so, however, we'd appreciate a quick response as we understand there are limited funds available.