



TESTIMONY OF AARON SMITH

EXECUTIVE DIRECTOR

NATIONAL CANNABIS INDUSTRY ASSOCIATION

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON SMALL BUSINESS

UNLOCKED POTENTIAL? SMALL BUSINESSES IN THE CANNABIS INDUSTRY

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Introduction:

Members of the Committee, I am Aaron Smith, Executive Director and Co-Founder of the National Cannabis Industry Association (NCIA), the largest national trade association dedicated to protecting state-regulated cannabis businesses, and advancing policy reforms needed to harmonize federal marijuana law with the successful medical and adult-use state cannabis programs that exist throughout the country. On behalf of our diverse membership, we thank you for the opportunity to discuss our support for legislation that expands access to affordable capital, including traditional business loans and lending programs facilitated by the Small Business Administration (SBA), to state-licensed cannabis cultivators, processors, and other entrepreneurs throughout the country.

Founded in 2010, NCIA represents nearly 2,000 cannabis-related member-businesses, and tens of thousands of cannabis professionals across the United States.

Currently, our industry supports hundreds of thousands of jobs, tens of millions in tax revenue, and billions in economic activity. From November 2018 to March 2019, it is estimated that seven states that had taxed and regulated adult-use cannabis sales (Alaska, California, Colorado, Massachusetts, Nevada, Oregon, and Washington) collected more than \$1 billion in state tax revenue. The majority of the tax revenue was generated from small businesses, as small businesses are the backbone of the cannabis industry. Tax revenues derived from the regulated cannabis industry are used to fund a number of state and local priorities, such as: education (i.e. hiring more teachers and school infrastructure); mental health and substance abuse services; transportation/infrastructure projects; and law enforcement initiatives aimed at more serious issues like the opioid crisis. In addition, these small businesses are creating thousands of new and coveted jobs that continue to grow the American economy and provide additional tax revenue. Because these small businesses have robust state-mandated security requirements, we have actually seen property crimes decrease in the vicinity of medical and recreational dispensaries. But, notwithstanding the significant economic and related contributions being delivered by these small businesses, company owners are also facing fierce headwinds. These headwinds are no different in the cannabis industry than those facing other state-legal small business owners. In addition to trying to make payroll and provide health insurance to their employees, trying to keep compliant with state laws and regulations, and finding monies to re-invest in the business, access to capital (and even rudimentary banking services) remains the most significant challenges facing most cannabis-related small businesses.

Because cannabis remains a Schedule I drug under the federal Controlled Substances Act, additional economic opportunity for states and localities is currently obstructed or has been lost to the illicit cannabis market. As a result, state-licensed cannabis businesses, as well as ancillary entities that serve cannabis-related businesses, are often blocked from accessing basic banking and payment processing services and are sometimes even forced to operate in an all cash environment, creating a public safety risk for employees, consumers, and local law enforcement. Additionally, while state-licensed cannabis businesses pay upwards of an 80% effective tax rate to the federal government, they are not eligible to receive SBA small business and commercial loans, credit assistance, or

technical assistance to spur economic development. We are seeing this not only with businesses producing or selling cannabis under state laws, but also with other traditional businesses providing products and services to the cannabis industry.

Companies that are transparent about servicing the industry have experienced their banking and payment processing shut off, notwithstanding the fact that they don't operate "plant-touching" businesses. This even extends to law firms, CPA firms, and other professional organizations. In addition, other professionals like electricians, contractors and plumbers are also at risk of losing their bank accounts for accepting payment from small cannabis businesses. Other companies may be forced to choose between taking a job and generating revenue for their small business and doing business with a cannabis-related entity solely based on their geographic location. For instance, a plumbing company in Denver, Colorado may be called and offered a job to service a cannabis cultivation facility's water system. That plumbing company now faces a choice: service a cannabis related business and risk losing SBA backed-loans -- or lose the revenue from that job. Given a majority of states have some form of legalized medical or adult-use cannabis, this is a large customer base and revenue source that is not available to these small businesses. This situation is untenable and unfair for small businesses in states that have chosen to legalize cannabis in some form and the issue can only be corrected at the federal level.

When Congress created the SBA, it was intended to support small business and encourage lenders to offer loans, such as the 7(a) loan guaranty program, the 504/Certified Development Company loan guaranty program, and the Microloan program, to business operators that otherwise may not be able to access affordable capital programs. These programs were specifically designed to stimulate economic activity and create jobs through small-business enterprises. Offering funding to the emerging regulated cannabis industry, which is mostly comprised of small businesses, would perfectly align with SBA's primary objective to maintain and strengthen the Nation's economy. Passing legislation that will close the gap between federal and state cannabis laws to increase financial assistance for entrepreneurial development, empower minority and women-owned businesses, and balance the competitive playing field for future generations will allow small businesses to thrive in the state-legal market.

Expanding Access of Capital to Cannabis and Cannabis-Related Ancillary Companies:

To date, forty-seven states and the District of Columbia, as well as Guam, the Northern Mariana Islands, and Puerto Rico have passed legislation authorizing some form of cannabis for regulated medical or adult-use purposes and thirty-three states have enacted laws regulating the commercial production and sale of medical or adult-use marijuana. Despite significant legal developments and advancement of the status of medical and adult-use cannabis across the country, SBA's loan guaranty and venture capital programs to enhance small business access to capital are blocked off to state-legal cannabis businesses seeking to serve or revitalize urban and rural communities.

Since the formation of the 7(a) loan guaranty program, the 504/Certified Development Company loan guaranty program, and the Microloan program, SBA has been able to leverage billions of dollars in economic development by providing loan guarantees for small businesses that cannot obtain credit elsewhere. The SBA also provides much-needed access to capital for early-stage businesses located in economically underdeveloped areas, including entrepreneurs with little or no borrowing history, and women and minority-owned and operated businesses. These financial tools have helped aspiring businesses build new construction projects, modernize existing commercial or residential facilities, purchase machinery and equipment, reduce greenhouse emissions, and acquire more resilient construction materials -- many of the same types of projects the regulated cannabis industry is seeking to finance. There is no doubt that if state-licensed businesses and support businesses could receive working capital through SBA, the American economy would benefit significantly.

In a blow to the burgeoning legal cannabis industry, SBA issued guidance to lenders in April 2018 (*Revised Guidance on Credit Elsewhere and Other Provisions in SOP 50 10 5(J)*; Notice 5000-17057) regarding eligibility

for SBA financial assistance for businesses involved in cannabis. Under that guidance, activities that are considered illegal under federal, state, or local law are ineligible for SBA business loans because, regardless of state law, federal law prohibits the distribution and sale of cannabis. Under this guidance, cannabis-related businesses in compliance with state and local law, as well as indirect marijuana-related businesses such as property owners, equipment manufacturers, or security providers, are all ineligible for receiving SBA loans. Affordable capital provided by SBA should play an essential part in the regulated cannabis industry. Unfortunately, the guidance issued last year is in direct conflict with the interests of small businesses, as well as other existing federal guidance.

Since 2014, the U.S. Department of the Treasury's Financial Crime Enforcement Network (FinCEN) has maintained guidance regarding the conditions under which financial institutions may work with cannabis-related businesses. These conditions include a bevy of federal requirements financial institutions must meet in order to provide banking services to licensed cannabis-related business. However, the number of banks working with cannabis-related businesses remains marginal in the current context of an emerging global industry. Moreover, permitted cannabis-related businesses are always under threat of having their bank accounts and payment processing services closed without warning. Additionally, a cannabis-related business might be charged \$10,000 to \$1,000,000 annually for compliance and regulatory costs required for a financial institution to successfully follow obligations under federal anti-money-laundering laws. These excessive annual compliance fees could be otherwise invested to enhance business operations and expansion through programs such as those provide by the SBA.

Earlier this year, Treasury Secretary Steve Mnuchin confirmed that the Department is reviewing existing FinCEN guidance and does not want to rescind the current guidance without having a replacement policy to address public safety concerns. Additionally, before the House Committee on Financial Services last month, the Treasury Secretary testified that banking regulators are currently constrained by conflicts between federal and state cannabis law and encouraged Congress to find a legislative solution. NCIA and its members appreciate the Secretary's decision to preserve FinCEN's 2014 guidance as the regulated cannabis industry continues to grow.

I also hope Members of this Committee will support Rep. Ed Perlmutter's (D-CO) cannabis-related banking bill H.R. 1595 – the *Secure And Fair Enforcement (SAFE) Banking Act*. The bill, which currently has over 200 bipartisan cosponsors, would allow cannabis-related businesses in states with existing regulatory structures to access the banking system, combating the illicit marketplace.

To operate safely and successfully, cannabis-related businesses must have access to working capital like any other legal enterprise in the United States. The regulated cannabis industry should also have full access to all federal resources, including SBA loans. By denying these basic financial services, we run the risk of hampering future economic development and job growth, including in areas that have been rejuvenated by the cannabis industry, and where tax revenue generated by the industry has helped fund infrastructure and transportation projects, expand education programs, and support public services. Without access to working capital, business owners may struggle to retain workforce talent and may be unable to create good-paying jobs in communities where they are needed most.

Looking Ahead:

BDS Analytics and Arcview Market Research project that the U.S. sales of cannabis and hemp-derived CBD products are expected to surge to \$20 billion by 2024 with the possibility of employing one million individuals. However, the U.S. illicit cannabis market is currently estimated to be valued near \$30 billion. This adverse ratio between the legal and illegal cannabis marketplace is a direct result of outdated federal policy toward a responsible industry operating at the state and local level.

In April, before the Senate Appropriations Committee, Attorney General William Barr indicated that, as the legal cannabis industry expands at the state level, he would prefer Congress enact legislation that would allow states to make their own decisions within the framework of federal law, rather than continuing the current approach. However, until the United States establishes a permanent solution, permitted cannabis-related businesses and ancillary businesses will not have access to loans authorized by SBA.

Entrepreneurship and small businesses owners are essential to America's ingenuity. These businesses enable economic development, provide high-quality jobs, and spur significant product innovation. SBA's loan programs serve a unique and essential role, ensuring that the country remains highly competitive in the global economy. Addressing the challenges created by conflicting federal and state laws will allow state-compliant entities to operate in a fully regulated environment and encourage the expansion of regulated markets, increase consumer safety standards, reduce availability to minors and combat illegal trafficking throughout the country.

Conclusion:

In conclusion, the cannabis industry has evolved into a national commercial enterprise and NCIA expects to see more states enact and expand cannabis laws in the coming year and beyond. State laws that have replaced the criminal markets with systems that provide for tightly regulated production and sale of cannabis to patients and adults over 21 are improving public safety and increasing tax revenue -- but, the unnecessary financial burdens caused by outdated federal borrowing and lending policies must be resolved to benefit our communities' entrepreneurs and small businesses.

I want to thank the Chair, Ranking Member, and the Committee for your time to discuss expanding access to SBA's loan programs for the regulated cannabis industry. This topic is important to members of NCIA and to the entire legal cannabis industry. On behalf of NCIA, I encourage Congress to update and develop federal policies that allow SBA to provide the regulated cannabis industry with the vital capital necessary to increase economic development and facilitate job creation.

I again thank the committee for the opportunity to submit testimony today and I look forward to your questions.