



Adult-Use Conditional Cultivator (AUCC) and Adult-Use Conditional Processor (AUCP)

Guidance & Frequently Asked Questions

True Parties of Interest

The [New York State Cannabis Law](#) provides a statutory framework for individuals and entities with an interest in businesses licensed by the Office of Cannabis Management (Office). The Cannabis Law creates a two-tier market structure for the Adult-Use Cannabis Program, whereby individuals or entities having any direct or interest in a licensee authorized for the supply tier (cultivation, processing, distribution) are prohibited from holding any direct or interest in a licensee on the retail tier (dispensing, on-site consumption, delivery) of the market and vice versa. The Cannabis Law also includes prohibitions for individuals or entities with an interest in a registered organization or laboratory testing permit holder.

In contrast to the absolute prohibition on holding any direct or indirect interest vertically across the two tiers, the Cannabis Law allows for an individual or entity to have an interest in multiple licenses within the same tier, albeit with several significant restrictions designed to ensure increased competition and access to the industry.

The Office is issuing this guidance for conditional cultivator and processor licensees to provide additional information as they continue to grow their licensed businesses. Licensees are responsible for remaining compliant with this guidance and any future guidance, laws, and regulations governing conditional licenses. The Office reserves the right to review all agreements entered into by licensees.



Definitions

For the purpose of this FAQ, the following definitions shall apply:

Person means an individual, institution, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

Financial institution means any bank, mutual savings bank, consumer loan company, credit union, savings and loan association, trust company, or other lending institution under the jurisdiction of the Department of Financial Services.

Financier means any person, other than a financial institution or government or governmental subdivision or agency, that provides capital as a gift, provides a grant, or lends capital pursuant to a secured or unsecured financing agreement. A financier may not be a true party of interest in the licensee to which it is a financier.

True Parties of Interest (TPI)

1. What is a True Party of Interest (TPI)?

True Parties of Interest are those persons (whether individuals and entities) who have an interest in a cannabis license.

TPIs of Adult-Use Conditional Cultivators and Adult-Use Conditional Processors include persons who:

- are sole proprietors, partners, LLC members, LLC managers, shareholders of a licensed entity, or their spouses;
- exercise control over a licensee;
- hold an actual or future right to ownership or investment, or are the spouse of someone who holds such a right, including by stock, convertible bond, note, warrant, option, SAFE, or equity swap agreements over a licensee;
- serve in a leadership, senior, or control position, such as a manager, president, vice president, secretary, treasurer, officer, board member, trustee, director, or a person with an equivalent title or position in a licensee, or are the spouse of a person who holds one of these roles or titles;
- receive aggregate payments in a calendar year, as part of a flat fee consulting agreement or risk sharing agreement, that exceed **the greater of:**
 - ten percent (10%) of gross revenue;
 - fifty percent (50%) of net profit of a licensee; or
 - \$100,000;
- guarantee the debts of the licensee; or
- make up, or are the spouse of a person who makes up, the ownership structure of each level of ownership of a licensee that has a multilevel ownership structure.



Not all arrangements with a licensee make a person a TPI. Certain landlord relationships, realtors, consultants compensated with a flat fee, goods and services contractors, financial institutions, and financiers may not be TPIs in an applicant IF the arrangement does not cause the person to meet the TPI definition above.

Common consulting agreements or management service agreements include the provision of management, advisory, consultant, intellectual property, or other related services to assist in the growing, processing, distributing, or selling of cannabis or cannabis products under a licensee's authorization. For purposes of this FAQ, services agreements shall not include agreements procuring services exclusively for the following exempted services: accounting, recordkeeping, non-cannabis materials and goods from unlicensed persons, office supplies, leasing equipment, architect services, construction, heating, ventilating, air conditioning, refrigeration, plumbing, cleaning and janitorial, lighting, security, legal services, government relations (registered lobbyist), and license application preparation.

Applicants and licensees should be aware that any agreement that procures services beyond the scope of the exempted services listed above may be subject to TPI restrictions. In other words, any agreement combining elements of exempted and non-exempted services may be viewed by the Office as non-exempted in its entirety.

The Office reserves the right to review all agreements entered into by licensees.

2. Can a foreign national be a TPI in an adult-use license?

Yes, a foreign national can be a TPI. However, pursuant to Section 137 of the New York State Cannabis Law, the following must be US citizens or permanent residents:

- all members of a partnership; or
- if a corporation, each principal officer and more than one half of the directors.

3. Will the Office collect and review information about conditional licensees' TPI?

Yes. The Office plans on providing conditional licensees with a *Personal Disclosure Questionnaire* that will be required to be completed identifying all TPIs of the licensee at the time the conditional licensee applies to convert their conditional license to a full (non-conditional) cultivator or processor license.

The Office will only consider for a full license, applicants whose ownership structure does not violate any of the rules under the Cannabis Law, regulations, guidance, or FAQs, and that otherwise meets all regulatory requirements.

Conditional licensees are reminded that they risk losing their ability to continue their licensed activity upon the expiration of their conditional license period if their ownership structure is not fully compliant with all required ownership restrictions. Licensees are recommended to consult with their own legal counsel before entering into any agreements that may, for example, create TPI relationships, violate ownership rules, and result in denials of full licensure.



4. How will the Office calculate the percentage of shares that a TPI holds in a license?

The Office will consider a person's share in a license to be the greatest of that person's percentage share of:

- Current voting shares;
- Future voting shares;
- Current equity shares; or
- Future equity shares.

For the purposes of determining the total shares outstanding for future ownership, the Office will use a modified definition of fully diluted share count, calculating a TPI's future ownership interest based on the entity's fully diluted share count (inclusive of all restricted stock units, options, warrants, or any other units of ownership that can be converted into a share of voting stock or equity), LESS contingent or future shares owned by persons whose financial or controlling interest in an entity is active.

5. Can a licensee receive a gift, grant, or loan pursuant to a financing agreement from a financier or financial institution?

Yes. A licensee may borrow capital and enter into a financing agreement with a financier or financial institution. A financier or a financial institution may also give a gift, grant, or loan to **licensees across multiple tiers** (e.g. a cultivator and a retail dispensary). However, if the financier or financial institution giving such a gift, grant, or loan receives an ownership interest, control of the business, a share of revenue or net profits that exceeds the allowable thresholds (see question one) in exchange for the gift, grant, or loan, they become a TPI in the license and are subject to ownership prohibitions.

6. Can a management services provider to an AUCC or AUCP also provide services to a retailer, laboratory or registered organization?

No. Such a management services provider is prohibited from providing such services across the two tiers and cannot simultaneously service an AUCC or AUCP and an adult-use retail dispensary, delivery, on-site consumption, laboratory, or registered organization.

Adult-Use Conditional Cultivator

7. Can I be a TPI in multiple Adult-Use Conditional Cultivator (AUCC) licenses?

No, a person may not be a TPI in more than one AUCC license.

8. As a TPI in an AUCC, can I invest in other types of adult-use cannabis licenses?

It depends. Under no circumstances may a TPI in an AUCC have a direct or indirect interest in a license authorized to sell cannabis at retail (including retail dispensaries,



delivery, and on-site consumption), a Registered Organization, or a cannabis laboratory or permittee. Such prohibited interests shall include lending, lease holding, or management services agreements. This means that a TPI in an AUCC may not, for example, be a landlord, lender, or consultant to a licensee authorized to sell cannabis at retail.

However, a TPI in an AUCC may invest in or have other arrangements with entities holding processor or distributor license and may enter into certain agreements with other cultivators.

No person may be a TPI in more than one cultivator license. Therefore, AUCC and their TPI should proceed with caution to ensure they are compliant with guidance, rules, and regulations when investing in other licenses and should maintain copies of all agreements for review by the Office.

For more information on Adult-Use Conditional Processors (AUCP) and their TPI, please see the section below.

9. Can an AUCC licensee gift, grant, or lend to another licensee pursuant to a financing agreement?

Any person giving a gift, grant, or loan to a licensee in which they are not a TPI is a financier.

Under no circumstances may an AUCC licensee, or a TPI in an AUCC, be a financier to a licensee authorized to sell cannabis at retail (including retail dispensaries, delivery, and on-site consumption), a Registered Organization, or a cannabis testing laboratory or permittee.

However, an AUCC licensee may be a financier for another cultivator, processor, or distributor licensee, as long as the AUCC does not become a TPI in the other licensee they are financing. The Office reserves the right to review all agreements entered into by the licensee for compliance with the Cannabis Law, rules, regulations, and guidance.

10. If I am an AUCC licensee, can I enter into a management service agreement or a goods and services agreement with another AUCC licensee?

An AUCC may enter into a management services agreement or goods and services agreement with another AUCC. However, a management services agreement must be based on a flat fee and may not result in a transfer of control from the licensee seeking the services. If the fee on a non-exempted services agreement exceeds, in a calendar year, the greater of: (1) \$100,000, (2) 10% of the gross revenue of the licensed entity, or (3) 50% of net profit of the licensed entity, then the services provider becomes a TPI in the licensee.

No AUCC licensee, or its TPIs, can have a management services agreement with a licensee authorized to sell cannabis at retail (including retail dispensaries, delivery,



and on-site consumption), a registered organization, or a cannabis laboratory or permittee.

11. Can an AUCC minimally process and distribute other peoples' cannabis products?

Yes, a conditional cultivator can minimally process and distribute other AUCCs cannabis products until June 1st, 2023. After that date, an AUCC is entitled to apply for and obtain an adult-use cannabis distributor license and will only be able to distribute its own products. However, any arrangement that would make a service provider a TPI in multiple AUCC licenses would not be allowed.

12. Can an AUCC rent space from another AUCC that also provides trimming and harvesting services? Can the AUCC pay for the space and services with a mix of cash and cannabis when harvested?

Yes, this agreement is allowed. A conditional cultivator licensee may rent space to another conditional cultivator licensee. In such a situation, the conditional cultivator landlord is permitted to include services in the terms of the agreement for a flat fee. As long as the conditional cultivator landlord is not taking on ownership or equity in the licensee, receiving a share of revenue or profit in excess of the thresholds described in question one, or controlling the tenant licensee, the conditional cultivator landlord is not a TPI in the conditional cultivator tenant. Payment to the landlord may be paid in cash or any legal alternative form of compensation, provided that such alternate forms of payment are valued at fair market value for the purposes of the transaction.

13. Can an AUCC have any interest in a Registered Organization?

No. Pursuant to the MRTA an AUCC or a TPI of an AUCC may not have any interest, direct or indirect, in a Registered Organization. In addition, an AUCC may not be a landlord or financier to, or enter into a management services agreement with, a Registered Organization.

Similarly, a Registered Organization may not be a landlord or financier to, nor may they enter into a management services agreement or similar agreement with, an AUCC.

Not all services agreements between AUCC and Registered Organizations are prohibited. For example, a Registered Organization holding a license pursuant to section 68-a or 68-b of the Cannabis Law may enter into a flat-fee for service agreement to process, manufacture and package cannabis for an AUCC.

Adult-Use Conditional Processor

14. Can I be a TPI in multiple Adult-use Conditional Process (AUCP) licenses?

Yes, a person may be a TPI in more than one AUCP license.



15. As a TPI in an AUCP, can I invest in other types of adult-use cannabis licenses?

An investor in a licensee is a TPI in that licensee. A TPI in an AUCP license may also be a TPI in other entities holding cultivation, processing, or distribution license. However, TPIs should be aware of prohibitions on other licensees. For instance, the Cannabis Law allows a person to have a financial or controlling interest in **only one** cultivation license. If a person is an investor in an entity with a financial or controlling interest in, or that is holding both an AUCP and AUCC license, then they are a TPI in both license types and cannot be a TPI in another AUCC license.

Under no circumstances may a TPI in an AUCP have a direct or indirect interest in a license authorized to sell cannabis at retail (including retail dispensaries, delivery, and on-site consumption), a Registered Organization, or a cannabis laboratory permittee.

16. Can an AUCP licensee gift, grant, or lend to another licensee pursuant to a financing agreement?

Any person giving a gift, grant, or loan to a licensee in which they are not a TPI is a financier.

Under no circumstances may an AUCP licensee or its TPIs be a financier to a licensee authorized to sell cannabis at retail (including retail dispensaries, delivery, and on-site consumption), Registered Organization, or a cannabis laboratory or permittee.

However, an AUCP licensee may be a financier to a cultivator, processor, or distributor licensee, so long as the AUCP does not become a TPI in multiple cultivator licenses.

17. If I am an AUCP licensee or a TPI on an AUCP license, can I enter in a management services agreement or other similar agreement with another AUCP licensee?

Yes, an AUCP licensee or its TPI may enter into a management services agreement with other AUCP licensees.

However, an AUCP should be aware that while a person may be a TPI in multiple AUCPs, no person may be a TPI in multiple AUCC. As a result, an AUCP should be cautious in entering agreements with an entity holding both AUCC and AUCP licenses.

18. If I am an AUCP licensee or a TPI in an AUCP licensee, can I have a management service agreement or other similar agreement with an AUCC licensee?

An AUCP and its TPIs may enter into a management services agreement with an AUCC. However, any such agreement that qualifies the AUCP as a TPI in multiple AUCC licenses would not be permitted.



An AUCP should refer to the TPI definition in question one for more information on the types of arrangements that would qualify them as a TPI in an AUCC.

19. If I am an AUCP licensee or a TPI in an AUCP licensee, can I have a risk sharing agreement with an AUCC licensee? Am I able to enter into risk sharing agreements with multiple AUCC licensees?

An AUCP licensee or its TPI may enter into a risk sharing agreement with an AUCC licensee.

While an AUCP and its TPI may enter into risk sharing agreements with multiple AUCCs, the conditions of such agreements may qualify that AUCP as a TPI in those licensees. As a person may only be a TPI in a single AUCC, an AUCP should be cautious when entering risk sharing agreements with multiple AUCC licensees.

An AUCP should refer to the TPI definition in question one for more information on the thresholds that would qualify them as a TPI in an AUCC.

20. If I am an AUCP licensee, can I distribute other peoples' cannabis products to adult-use retailers?

Yes, an AUCP may distribute other peoples' cannabis products until June 1st, 2023. After that date, an AUCP is entitled to apply for and obtain an adult-use cannabis distributor license and will only be able to distribute its own products.

21. AUCC A and AUCC B form a joint venture (with a 50/50 percentage split of ownership), and acquire an AUCP license together, forming AUCP C. AUCP C buys biomass from both AUCC A and AUCC B. As part of those purchasing agreements, AUCP C agrees to pay AUCC A and AUCC B a percentage of its revenue on those products. Is this arrangement allowed?

Assuming that there is no transfer of control, yes, this agreement is allowed. The ownership structure makes both AUCC TPI in the AUCP. Because the AUCCs are not sharing their revenue with the AUCP, the AUCP is not a TPI in either AUCC, and this arrangement would be allowed.

22. Using the same facts as above in question 20, if a fund purchases a stake in AUCC A, is the fund now a TPI in AUCP C?

Yes, the fund is a TPI in AUCP C.

AUCP C lists the Joint Venture between AUCC A and AUCC B as its 100% owner, which in turn lists AUCC A as its 50% owner. Therefore, OCM would go up the chain of ownership in AUCC A. Since the fund holds an interest in AUCC A, that fund's investors would be the natural persons that end the ownership chain. Such natural persons would be considered TPIs of AUCP C.



Question Not Answered Here?

If your question is not answered here, please contact the Office of Cannabis Management by e-mail at licensing@ocm.ny.gov.