



Conditional Adult-Use Retail Dispensary (CAURD)

True Parties of Interest (TPI)

Guidance & Frequently Asked Questions

Date: September 16, 2022

The [New York State Cannabis Law](#) sets out restrictions for individuals and entities with interests 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 indirect interest in a licensee authorized on the supply tier (cultivation, processing, distribution) are prohibited from holding any direct or indirect interest in a licensee on the retail tier (retail dispensary, on-site consumption, delivery), and vice versa. The Cannabis Law also includes prohibitions for individuals or entities with a direct or indirect interest in a registered organization or laboratory testing permit holder.

In contrast to the prohibition on holding any direct or indirect interest in licensed entities 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 which are designed to increase access, competition, and diversity of business ownership in the industry. The two-tier market structure fulfills the Cannabis Law's intent preventing conflicts of interest, undue influence, and market concentration from taking root in the New York cannabis industry, and allows the New York cannabis market to develop around strong, independent licensing tiers, instead of the centralization and consolidation that has created barriers to entry in other legal markets for small and medium sized entrepreneurs, legacy operators, and other individuals and communities lacking access to capital.

The Office of Cannabis Management is tasked by the Cannabis Law to ensure compliance with the restrictions outlined above. It does so by requiring the disclosure of individuals and entities having certain interests in licensees. These disclosures are required when applicants apply for a license and when existing licensees make changes to their license.

The Office is issuing this guidance for conditional adult-use retail dispensary (CAURD) applicants and licensees, who should use it for planning purposes as they finalize the ownership composition of their license and plan for parties receiving or holding interests in their license. As part of the application process, applicants will be required to upload the required Personal and Entity History Disclosure forms for all True Parties of Interest and, in certain circumstances, financiers in the applicant before receiving a license.

Licensees are responsible for remaining compliant with this guidance and all other applicable guidance, laws, and regulations. More information on CAURD eligibility requirements and the CAURD application is available at cannabis.ny.gov/CAURD.

[DOCUMENT CONTINUES ON NEXT PAGE]

Definitions

For the purpose of this Guidance, the following definitions, consistent with Part 116 of Chapter II of Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, apply, in relevant part:

Aggregate Ownership Interest means the total ownership interest held by the following, or any combination of the following:

- (a) a legal entity and any legal entity or individual in its multilevel ownership structure; or
- (b) an individual and the spouse, domestic partner, civil union partner, child, sibling, or parent of such individual.

Control means the power to order or direct the management, managers, or policies of a person.

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 that is also a True Party of Interest in a licensee is not considered a financier to that licensee.

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

Sole Control means the ability to exert business decision making authority over the strategic priorities of the entity, capital allocations, acquisitions, and divestments; the right to execute significant or exclusive contracts; the absence of timed or triggered recusal provisions related to the individual with sole control; and the absence of another person or persons in the aggregate who may exercise or have the ability to control the majority of voting rights, appoint or remove the majority of directors or their equivalent, or corporate officers or their equivalent.

Stockholder means any person holding an actual or future right to ownership or investment, or 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.

True Party of Interest

(a) includes:

1. the applicant or licensee's sole proprietor, partner (whether limited or general), member, manager, president, vice president, secretary, treasurer, officer, board member, trustee, director, or any person with an equivalent title to each of the foregoing;¹
2. a stockholder of the applicant or licensee, other than a person owning 5% or less in the aggregate of a publicly traded company;¹
3. each person that makes up the ownership structure of each level of ownership for an applicant or licensee that has a multilevel ownership structure;¹
4. each person with a right to receive some or all of the revenue, gross profit, or net profit from the licensed entity during any full or partial calendar or fiscal year;
5. each person with a financial interest in the applicant or licensee;
6. each person that has authority to or exercises control over the applicant or licensee;
7. each person that has membership rights in the applicant or licensee in accordance with the provisions of any articles of incorporation, bylaws, limited liability corporation agreements, partnership agreements or operating agreement; or
8. each person that assumes responsibility for the debts of the applicant or licensee.

(b) ***does not include a person that:***

1. receives payment for rent on a fixed basis under a lease or rental agreement relating to applicant or licensee. The Office may investigate a landlord in situations where a rental payment has been waived or deferred;
2. receives a bonus or commission from the applicant or licensee based on the individual's sales, so long as the commission does not exceed ten percent of the sales of the applicant or licensee in any given bonus or commission

period, unless otherwise determined by the Office. Commission-based compensation agreements must be in writing;

3. contracts with the applicant or licensee to receive a commission for the sale of the business or real property;
4. consults receiving a flat or hourly rate of compensation from the applicant or licensee under a contractual agreement;
5. has a contract or agreement for non-management or advisory related services with an applicant or licensee, as long as the applicant or licensee retains the right to and controls the business;
6. is a financial institution;
7. is a financier; or
8. others as may be determined by the Office.

1. The spouse of any individual who is a TPI in the applicant or licensee identified in this provision is also considered a TPI in the applicant or licensee.

Guidance

All True Parties of Interest (TPI) in one licensing tier (for example, the supply tier) are strictly prohibited from holding any direct or indirect interest in another licensing tier (for example, the retail tier). This is known as a vertical ownership restriction.

Additionally, all licensees and their TPI are subject to horizontal ownership restrictions with respect to certain interest they can have in licenses within a particular tier. Horizontal restrictions vary by license type. For CAURD (or retail dispensary) licenses, the following horizontal restrictions apply.

A TPI in a CAURD license that has equal to or greater than 20% ownership or profit distribution percentage, considered a form of controlling interest, may only have such interest in up to three (3) retail dispensary licenses. However, a TPI in a CAURD license with under a 20% ownership or profit distribution percentage, may have such interest in more than three (3) retail dispensary licenses.

More generally, with respect to the True Parties of Interest definition above, the following rules apply:

- **Landlords**
 - A lease entitling the landlord to a percentage of the tenant's licensed business does not make the landlord a TPI in the tenant-licensee if the percentage does not exceed 10% of the business' revenues and the lease does not otherwise make the landlord a TPI in the licensed business.
 - A landlord who is a TPI is subject to the horizontal and vertical license ownership restrictions of the tier of license for which they are a TPI.
 - A person who is only a landlord without becoming a TPI in any license may be a landlord across tiers.

- **Salespersons and Real Estate Brokers**
 - Individuals who are compensated through a bonus or commission from the applicant or licensee, based on the individual's sales, are not a TPI, so long as the payment is less than ten percent (10%) of the revenues of the applicant or licensee in any given bonus or commission period.
 - Individuals or entities earning commission for the sale of the business or real property are not a TPI, so long as the payment is less than ten percent (10%) of the revenues of the applicant or licensee in any given bonus or commission period.
 - Commission-based compensation agreements must be in writing.

- **Consultants**
 - Persons, regardless of their TPI status, are prohibited from providing management services, including but not limited to agreements, services, and licenses for intellectual property, strategy, branding, or other related services across multiple license tiers.
 - The provision of non-management services is exempt from the cross-tier prohibition, unless such services or arrangements create undue influence or otherwise qualify the consultant as a True Party of Interest. Such services may include accounting, record-keeping, 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.
 - Under no circumstances may a CAURD licensee or a TPI of a CAURD have a branding or consulting agreement with a licensee, TPI of a licensee, or management services consultant in another tier.

- **10%, 50%, \$100,000 Rule**
 - For purposes of determining True Parties of Interest under sections (a)(4), (a)(5), and (b)(1), (b)(4), and (b)(5), persons become a TPI in a license if,

over the course of a calendar year, they receive the right to or actual payment from a licensee exceeding the greatest of the licensee's:

- 10% of gross revenues;
- 50% of net profits; or
- \$100,000.

Required Personal and Entity History Disclosures

All TPIs in an applicant and the applicant entity itself must submit Personal or Entity History Disclosure forms for all Parties of Interest in the prospective licensee before receiving a final license.

- [Personal History Disclosure Form](#)
- [Entity History Disclosure Form](#)

If the TPI in the applicant is an entity and for the applicant itself, you must include in your application:

- a CAURD True Party of Interest Entity History Disclosure (OCM-06003) for that entity and for any entities that are TPIs within that entity's TPI structure based on the definition of TPI at the top of this page (with the applicable entity substituted in place of references to "applicant" or "licensee" within such definition);
- a CAURD True Party of Interest Personal History Disclosure (OCM-06004) for all individual TPIs in that entity and for all individuals that are TPIs of all entities that are within the TPI structure of such entities based on the definition of TPI at the top of this page (with each applicable entity substituted in place of references to "applicant" or "licensee" within the TPI definition); and
- a NYS Department of Tax and Finance Clearance Form (OCM-06002) for each individual and entity for which you must submit a disclosure form.

If the TPI in the applicant is an individual, then you must include in your application:

- a CAURD True Party of Interest Personal History Disclosure (OCM-06004) for that individual, and
- a NYS Department of Tax and Finance Clearance Form (OCM-06002) for that individual

If you are selected for licensure, any TPI listed in items (1), (2), or (3) of the True Party of Interest definition in this document will be required to submit fingerprints, on a form and in such a manner as specified by the Office, for purpose of obtaining a criminal history report from the Division of Criminal Justice Services. This will not be required in your initial application but will be required before a final license can be issued. Upon receipt of the completed criminal history report, the Office will provide a copy of the

background investigation to the individual via certified mail. Provisional licensees will be given an opportunity to add to and revise their True Parties of Interest before final licensure and will have an ongoing obligation to keep up to date with the Office all TPI in the licensee.

A financier who does not qualify as a financial institution or lends more than 10% of a licensee's operating expenses will be required to complete a Personal or Entity History Disclosure Form.

Frequently Asked Questions

1. 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.

2. 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.

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

Yes. A CAURD 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 CAURD licensee and a cultivator). However, if the financier or financial institution giving such a gift, grant, or

loan receives an ownership interest (whether current or future), control of the business, a share of revenue or net profits in exchange for the gift, grant, or loan, they become a TPI in the license and are subject to prohibitions on their vertical and horizontal interests. Moreover, a licensee or TPI in a supply tier license is prohibited from being a financier to a CAURD license.

4. Can a management services provider to a CAURD also provide services to a cultivator, processor, distributor, or registered organization?

No. Consultants, as referenced in the 'Guidance' section above, are prohibited from providing such services across the tiers and cannot simultaneously service a CAURD and a cultivator, processor, distributor, cooperative, microbusiness, nursery, or registered organization.

5. Can I be a TPI in multiple CAURD licensees?

Yes, a person may be a TPI with a direct or indirect financial or controlling interest, in up to three CAURD licensees. A TPI with fewer than 20% of current and future shares in an individual CAURD license is not considered to have a controlling interest in such license, so long as that person does not otherwise qualify as a TPI otherwise.

Therefore, a person holding less than 20% of current and future shares in a CAURD license may not be limited to the three retail license limit. However, these persons and all other TPI are subject to vertical prohibitions, restricting them from simultaneously holding any direct or indirect interest in a CAURD and having an interest in a cultivator, processor, distributor, cooperative, microbusiness, nursery, registered organization, or a permitted laboratory.

6. Can a CAURD licensee gift, grant, or lend to another licensee pursuant to a traditional 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 a CAURD licensee, or a TPI in a CAURD, be a financier to a licensee authorized to cultivate, process, or distribute cannabis (including nurseries, cooperatives, microbusinesses), a Registered Organization, or a cannabis testing laboratory or permittee. However, a CAURD licensee and its TPI may be a financier for another adult-use retail dispensary, delivery, or social-consumption licensee. However, if a financier becomes a TPI in any license, they will be subject to limits on vertical and horizontal interests for that license tier. The Office reserves the right to review all agreements entered into by the licensee for compliance with the Cannabis Law, rules, regulations, and guidance.

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

A CAURD licensee may enter into a management services agreement or goods and services agreement with another CAURD. Management services agreements must be based on a flat fee and may not result in a transfer of control from the licensee seeking the services or otherwise trigger TPI rules, to avoid the services provider from becoming a TPI in the license for which services are being provided. Where any agreement exceeds the greater of 10% of a licensee's gross revenue, 50% of a licensee's net profit, or \$100,000, the services provider becomes a TPI in the licensee to whom they are providing services.

No CAURD licensee, nor its TPIs, can have a management services agreement with a licensee authorized to cultivate, process, or distribute cannabis (including nurseries, cooperatives, microbusinesses), a Registered Organization, or a cannabis laboratory or permittee. Further, as stated in question 4, a management services provider is prohibited from providing such services across the two tiers and cannot simultaneously service a CAURD and a cultivator, processor, distributor, cooperative, microbusiness, nursery, or registered organization.

8. Can a TPI in a CAURD be a landlord to other licensees?

Under no circumstances may a TPI in a CAURD be a landlord to a cultivator, processor, distributor, nursery, microbusiness, Registered Organization licensee, or a laboratory or sampling permittee.

However, a TPI in a CAURD may be a landlord to other licensees in the retail tier, including other retail dispensary and delivery licensees.

9. Can a person be a landlord to more than three CAURD?

Yes, a person may be a landlord to more than three CAURD, provided that such landlord relationships do not result in that landlord becoming a TPI in more than three CAURD licensees.

10. Can a person be a landlord to both a CAURD and an AUCC?

A person may be a landlord across the tiers, provided they are not a TPI in any licensee.

Therefore, if the terms of such agreements do not make the landlord a TPI in either entity, and that landlord is not a TPI in any other entity, they may be a landlord to both a CAURD and an AUCC.

11. Can a CAURD, or their TPIs, have a revenue sharing agreement with another licensee?

Under no circumstances may a CAURD, nor its TPIs, have a revenue sharing agreement with a licensee authorized to cultivate, process, or distribute cannabis, a Registered Organization, a cannabis testing laboratory or permittee, or any TPI of those licenses. However, a CAURD and its TPI may have a revenue sharing agreement with another adult-use retail dispensary licensee and/or delivery licensee. A person with a revenue sharing agreement with a licensee becomes a TPI in that license if a licensee's payments to them in a calendar year exceed the greater of 10% of the licensee's gross revenue, 50% of the licensee's net profit, or \$100,000. Persons entering such agreements should remain careful not to violate prohibitions on horizontal and vertical interests.

12. How are changes made to a license's ownership?

Any proposed changes to a license's ownership must comply with requirements and procedures set by the Office or in future regulations. CAURD licensees must remain compliant with ownership thresholds and eligibility standards determined in Part 116 of Chapter II of Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Contact the Office

I have a question about CAURD True Party of Interests that is not answered here. Who can I contact?

If your question is not answered here, view the [CAURD TPI Homepage](#) . If your question is not answered there—contact the Office at licensing@ocm.ny.gov or call 1-888-OCM-5151 (1-888-626-5151).