



True Parties of Interest for Retail Tier Licenses

Guidance & Frequently Asked Questions

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 indirect interest in a licensee authorized for the supply tier (nursery, cultivation, processing, distribution, cooperative, microbusiness, Registered Organization with Dispensing (ROD), and Registered Organization Non-Dispensing (ROND)) are prohibited from holding any direct or indirect 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 an Article 3 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 adult-use retail dispensary applicants and licensees, who may use it as they finalize the ownership composition of their license and plan for parties receiving or holding interests in their license. Licensees are responsible for remaining compliant with this guidance and any future guidance, laws, and regulations governing licenses. The Office has also made available on its website, guidance for [supply tier licenses](#).



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 New York State Department of Financial Services.

Financial interest means any actual or future right to ownership, inclusive of all restricted stock units, options, warrants, or any other interest that can be converted into a share of voting stock or equity investment, or compensation arrangement with another person, either directly or indirectly, through business, investment, spouse, domestic partner, parent or child; provided however, that with respect to a compensation arrangement the compensation, over the course of a calendar year, exceeds the greater of: (i) 10% of revenue, (ii) 50% of net profit, or (iii) \$250,000. A person with a financial interest does not include a passive investor or salaried employee earning income in excess of the compensation limits set herein.

Financier means any person, other than financial institution, that provides capital as a gift, provides a grant, or lends capital pursuant to a secured or unsecured financing agreement. Agreements will be assessed based on current and future right to ownership or interest on the licensee, including, but not limited to, interest in the event of default, bankruptcy, or reorganization. A financier may not receive an ownership interest; control of the business; gross profits or net profits; a profit-sharing interest; a percentage of the profits in exchange for a gift, grant, or loan; or a share of revenue in excess of the greater of the following over a calendar year: (i) 10% of gross revenue, (ii) 50% of net profit, or (iii) \$250,000.

Exempt services provider means any person, who is **not** a TPI, but provides services that do not inherently introduce a risk of that service provider unduly influencing across the tiers. Exempt services include providers of:

- 1) General goods and services (accounting, license application preparation, record-keeping, cleaning and janitorial, leasing equipment, architect services, security, legal services, government relations (registered lobbyist), construction, heating, ventilating, air conditioning, refrigeration, plumbing, lighting, office supplies, and provision of non-cannabis goods from unlicensed persons);
- 2) Landlords; and,
- 3) Financiers and financial institutions.

Non-exempt services provider means any person is **not** a TPI but provides services that could inherently introduce a risk of that service provider unduly influencing across the tiers. Non-exempt services include: consulting, advisory, or strategic services related to the licensee's cultivation, processing, distributing, or selling of cannabis or cannabis products.



Passive Investor means a person that is a true party of interest of a licensee with an ownership interest of no more than 5% percent of the outstanding shares or interest of an applicant or licensee whose shares are publicly traded, 10% of the outstanding shares or interest of a non-publicly traded ROD license and microbusiness license, or 20% of the outstanding shares or interest of any other entity, as well as any person who guarantee a lease.

True Parties of Interest (TPI)

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

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

TPIs of applicants or licensees include persons who:

- are sole proprietors, partners (limited or general), LLC members, LLC managers, holders of shares or interests in a licensed entity, or spouses of any of the foregoing;
- exercise control over a licensee, including management services providers;
- hold an actual or future right to ownership or investment, including by stock, convertible bond, note, warrant, option, SAFE (simple agreements for future equity), 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 from a licensee, as part of goods and services agreement or a risk sharing agreement, that exceed **the greater of:**
 - ten percent (10%) of gross revenue;
 - fifty percent (50%) of net profit of a licensee; or
 - \$250,000;
- assumes responsibility for the debts of a 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.

2. What is control over a licensee?

Control means the authority to order or direct the management, operation, managers, or policies of a person, including, but not limited to, the ability or authority, expressed or reserved, to:

- i. amend or change the corporate or operating identity (e.g., joint venture agreement or unincorporated business status) of a person;
- ii. approve operating and capital budgets for the person;



- iii. adopt, approve, or direct fiscal operating policies and procedures;
- iv. approve debt necessary to finance the person's costs of compliance with operational or facility standards required by law;
- v. approve contracts for management of facility services;
- vi. hire or dismiss executive personnel;
- vii. maintain and control the books and financial records of the person, including, but not limited to, co-signing bank accounts and the power to authorize capital outlays and spending;
- viii. encumber the assets of the person by way of mortgage or other indebtedness; and
- ix. dissolve the person or arrange for sale or transfer of the person to new ownership or control.

Sole Control also includes:

- i. the right to execute any material contracts;
- ii. the ability to exercise the authority to materially influence the day-to-day business decisions, operations, strategic priorities, capital allocations, acquisitions and divestments;
- iii. the ability to direct decisions, voting or otherwise.

3. Is anyone who has entered an arrangement with a licensee considered a TPI?

No. A person may be a goods and services provider to a licensee without becoming a TPI, so long as the arrangement does not exceed the following control thresholds:

An exempted service provider (which includes landlords and financiers among others) becomes a TPI in a license if that service provider exceeds the 10%/50%/\$250K thresholds defined in the TPI definition above. Therefore, if an exempted service provider receives payment in a calendar year in excess of the greater of 10% of revenue, 50% of net profit or \$250,000, that person will be considered a TPI.

For a non-exempted services provider:

A non-exempted services provider must follow the same rules as the exempted services provider, with the additional restriction that any person that has a non-flat fee (for example, a revenue or profit based) non-exempted services arrangement with a licensee may not provide services across the two-tiers and may only provide services to other licensees within one tier. A non-exempted services provider may only provide services to licensees in multiple tiers if all arrangements are exclusively for a flat fee.

In addition to the above, licensees and their goods and service providers should be aware that all arrangements between parties shall be viewed as a single arrangement, and the combined agreement shall be held to the stricter of the combined prohibitions of each of those individual agreements. Further, any agreement imparting control or otherwise creating a true party of interest relationship, as outlined in question one,



would make the goods and services provider a true party of interest in the licensee receiving the goods or services.

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

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

You must be a US citizen or a person lawfully admitted for permanent residence in the United States to obtain a cannabis license or become a TPI in a license.

If you are a corporation, then each of the principal officers and more than one-half of its directors must be citizens of the United States or personal lawfully admitted for permanent residence in the United States.

For purposes of citizenship, the Office interprets the citizenship requirement to extend eligibility to any individual who is:

- A citizen of the United States;
- An alien lawfully admitted for permanent residence in the United States;
- Foreign nationals from reciprocal treaty countries set forth in a list maintained by the U.S Department of State. That list may be found at [the State Department website](#).
- Foreign nationals from any other country who can satisfy the Authority that his/her country has a treaty with the United States that permits citizens of both countries to engage in trade with and/or work in each other's country on a reciprocal basis.

Please note that a citizen of another nation that qualifies under this section is not required to be physically present in the United States to obtain a license. However, if such an individual intends to work at the licensed premises, it will be necessary for the person to demonstrate that he/she has the appropriate visa to enter and work in the United States. ALL TPI must meet all other requirements to be eligible to hold the license being sought.

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

Yes. Applicants will be required to disclose all TPI listed below. An applicant's disclosable TPI must submit a personal or entity history disclosure to the Office for review. Unless otherwise approved by the Office, all required TPI disclosures must be received and reviewed before a license will be issued.

The Office will only consider for full license applicants whose ownership structure does not violate any of the rules and requirements under the Cannabis Law and applicable regulations.

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.



6. Which TPI of an applicant are required to be disclosed?

An applicant must disclose the following TPI:

- Any TPI with a non-ownership interest listed in question one (1), such as executive officers, other persons with control over the applicant;
- If the applicant is a privately held entity, any owner TPI with a proportional ownership stake over 10%; and
- If the applicant is a publicly traded entity, any owner TPI with a proportional ownership stake over 5%; and
- Any other TPI as determined by the Office.

Note: If a TPI qualifies as both a non-owner TPI and an owner TPI (for example, a company President who owns 12% of the company's shares), they must be disclosed per the non-ownership disclosure rules.

7. How will the Office calculate the stake or 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 the contingent or future shares owned by persons whose financial or controlling interest in an entity is active. Only the *current* stake of a direct or indirect financial controlling interest will be included in the calculation of fully diluted share counts for the purposes of calculating a TPI's ownership interest.

8. Can a management services provider to a cultivator, processor, distributor, cooperative, microbusiness, ROD or ROND also provide services to a retailer, delivery, on-site consumption licensee, laboratory permittee, or medical-only registered organization?

No. Management services providers are assumed to hold a financial or controlling interest and are therefore considered a TPI of the licensee. As such, they are prohibited from having an interest in another tier.



Adult-Use Retail Dispensaries

9. Can I be a TPI in multiple Adult-Use Retail Dispensary licensees?

While a person can be a passive investor in an unlimited number of retail dispensary licenses, a person may only have a financial or controlling interest in three retail dispensary licenses. All true parties of interest, except passive investors, are considered to have a financial or controlling interest.

10. As a TPI in a retail dispensary license, can I invest in other types of adult-use cannabis licenses?

It depends. Under no circumstances may a TPI in a retail dispensary have a direct or indirect interest in a supply-side license (which includes nurseries, cultivators, co-ops, microbusinesses, processors, distributors, RODs or RONDs), a medical-only Registered Organization, or a cannabis laboratory or permittee. Such prohibited interests shall include exempt and non-exempt goods and services agreements. This means that a TPI in a retail dispensary may not, for example, be a landlord or lender to a supply-side licensee.

No person may be a TPI with a financial or controlling interest in more than three retail dispensary licenses. However, a TPI in up to three retail dispensaries may invest in or have other arrangements with entities holding retail tier licenses (which include delivery and on-site consumption) and may enter into goods and services agreements with other retail dispensary licensees, provided those agreements do not make them a TPI in more than three retail dispensary licenses.

Therefore, retailers and their TPIs 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.

11. Can a retail dispensary 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 a retail dispensary licensee, or a TPI of a retailer, be a financier to a supply-side licensee (which includes nurseries, cultivators, co-ops, microbusinesses, processors, distributors, RODs or RONDs), a medical-only Registered Organization, or a cannabis testing laboratory or permittee.

However, a retail dispensary licensee or their TPI may be a financier for any licensee on the retail tier, including to other retail dispensary, delivery, and on-site consumption licensees. Financiers should be careful not to exceed the annual 10%/50%/\$250k payment thresholds (see question 1) to avoid becoming a true party of interest in the borrowing licensee.



13. Can a retail dispensary licensee lease space from a landlord who also leases space to a supply-side licensee (nurseries, cultivators, co-ops, microbusinesses, processors, distributors, RODs or RONDs) , and receives a percentage of that supply side licensee’s revenue? Can the retailer’s lease payments to such landlord include a percentage of its revenue?

Yes, the retail dispensary could rent space from this landlord, provided that:

- The landlord is **not** a TPI in the supply tier lessor by any means, including by receiving aggregate payments that exceed the greater of 10% of revenue, 50% of net profit, or \$250,000 per year;
- The landlord is not a TPI in any other supply-tier licensee; and
- The landlord would not become a TPI in the retailer

Under no circumstances may a retail dispensary licensee lease from a supply-tier licensee, or their TPI.

14. Can a retail dispensary licensee have any interest in a Registered Organization or ROD?

No. Pursuant to the Cannabis Law, no retail dispensary licensee, nor their TPI, may have any interest, direct or indirect, in a Registered Organization authorized under Article 3 (“Medical Only RO”) or any supply-side licensee, including an ROND and an ROD.

15. Can a person with an interest in a supply-side license in another State or Country be a TPI in, or have a goods and services agreement with, a retail dispensary?

No. Pursuant to the Cannabis Law, no retail dispensary licensee, nor their TPI, may have any interest, direct or indirect, in any supply-side licensee. That includes anybody authorized for cannabis cultivation, processing, or distribution outside of New York State.

This prohibition extends to goods and services providers. As a result, a processor in California could not have an intellectual-property agreement with a Retail Dispensary licensee, or their TPI.

16. Can a person with an interest in a retail-only (no cultivation, processing or distribution) license in another State or Country be a TPI in a retail dispensary?

Yes! There is no restriction on people who are interested in a retail dispensary (that does not hold any supply-side licenses) in another State having an interest in a New York retailer.

17. Do these rules apply to Conditional Adult-Use Retail Dispensary (CAURD) licensees as well?

Yes, CAURD licensees are governed by the same rules and restrictions as other adult-use retail dispensary licensees unless otherwise specified.



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.

Contact the Office

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

If your question is not answered here, view the [Adult-Use Licensing Homepage](#) . If your question is not answered there—contact the Office at info@ocm.ny.gov.