

LEGAL ALERT

Marijuana-Related Businesses Ineligible for SBA Financial Assistance

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Effective April 3, 2018 the Small Business Administration issued guidance regarding financing for businesses engaged with cannabis. The guidance, found in SBA Policy Notice 5000-17057, elaborates on 13 CFR § 120.110(h), 13 CFR § 120.13 and details how businesses engaged with cannabis are to be treated under SBA regulations.

SOP 50 10 5(J), Chapter 2, Paragraph III.A.8 (page 101) provides that any business engaged in illegal activity as defined in 13 CFR § 120.110(h) is ineligible for SBA financing, whether it be for 7(a) or 504 loans. The guidance further applies this provision of the SOP to “marijuana-related businesses.” Under the new guidance, most marijuana-related businesses would be ineligible for SBA financing because federal law prohibits the sale and distribution of marijuana and financial transactions involving such businesses would invariably involve funds from illegal activity. Marijuana-related businesses are divided into three categories: direct marijuana business; indirect marijuana business; and hemp-related business.

A direct marijuana business 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.” No distinction is made between recreational use and medical use even where such business is legal under local or state law.

An indirect marijuana business is “a business that derived any of its gross revenue for the previous year (or if a start-up, projects to derive any of its gross revenue for the next year) from sales to direct marijuana businesses of products or services that could reasonably be determined to support the use growth, enhancement, or other development of marijuana.” The guidance provides some examples of such businesses, including: businesses that sell hydroponic equipment to direct marijuana businesses; businesses that sell grow lights to direct marijuana business; or businesses that sell pipes, bongs, or inhalants that are intended, designed, or marketed for use in connection with marijuana.

A hemp-related business is “a business that grows, produces, processes, distributes or sells products purportedly made from ‘hemp’.” These businesses are ineligible unless their activities are legal under federal and state law, such as manufacturing hemp clothing or selling hemp paper.

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The guidance further elaborates on the SOP's regulations in Chapter 2, Paragraph V.F.1.g (page 131). The SOP, drawing from 13 CFR § 120.13, states that for the life of the loan, borrowers cannot lease real estate to businesses engaged in illegal activity. The new guidance explicitly extends this to include ineligible marijuana-related businesses. A lender should consult the SBA District Counsel in the event a borrower leases space to an ineligible marijuana-related business.

This guidance applies equally to Certified Development Companies as it does to lenders.

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