



SBA Information Notice

TO: All SBA Employees and SBDC Lead Centers, WBCs,
SCORE Headquarters

CONTROL NO.: 6000-19005

SUBJECT: Guidance on Grantees Providing
Assistance to Marijuana-Related Businesses

EFFECTIVE: August 2, 2019

Recently, SBA has received several requests from the Agency's resource partners seeking additional guidance regarding whether Agency grantees may assist businesses that derive revenue from marijuana-related activities. In addition, certain changes to Federal law have occurred in the past year that directly impact this area. As a result, SBA has prepared the following clarification, which will provide SBA grantees with an updated explanation of how they must treat marijuana-related businesses.

The governmentwide grants regulations published by the Office of Management and Budget require SBA under 2 C.F.R. § 200.300 to manage and administer all of the Agency's financial assistance awards "in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements." Moreover, the standard terms and conditions used for all SBA grants and cooperative agreements stipulate that businesses engaged in illegal activities are ineligible to receive SBA-funded technical assistance provided by the Agency's resource partners.

Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, businesses that derive revenue from marijuana-related activities or that support the end-use of marijuana may be ineligible for SBA-funded technical assistance. The question of whether a particular business is eligible for assistance under an SBA program must be determined on an annual, case-by-case basis and depends upon the nature of the business' specific operations.

Firms that are classified as either Direct Marijuana Businesses or Indirect Marijuana Businesses under the definitions spelled out below are ineligible for SBA-funded assistance.

A Direct Marijuana Business is a business that grows, produces, processes, distributes, or sells marijuana or marijuana products, edibles, or derivatives, regardless of the amount of such activity. This applies to recreational use and medical use even if the business is legal under local or state law where the applicant business is or will be located.

An Indirect Marijuana Business is a firm that derived any of its gross revenue for the previous business year (or, if the firm is a start-up, projects to derive any of its gross revenue for the next business year) from sales to Direct Marijuana Businesses of products or services that could reasonably be determined to aid in the use, growth, distribution, enhancement or other development of marijuana. Examples of Indirect Marijuana Businesses include firms that:

- Provide marijuana product testing services (strength, purity, etc.);
- Sell or install grow lights or hydroponic or other specialized growing equipment to Direct Marijuana Businesses;
- Sell smoking devices, pipes, bongs, inhalants, or other products primarily designed, intended, or marketed to facilitate marijuana consumption; and
- Advise or counsel Direct Marijuana Businesses on the specific legal, financial/accounting, policy, regulatory or other operational issues specifically associated with establishing, promoting, or operating a Direct Marijuana Business.

In contrast, businesses that merely provide general goods or services to Direct Marijuana Businesses but do not provide the types of goods or services that specifically aid in the use, growth, enhancement or other development of marijuana would not be considered Indirect Marijuana Businesses. For example, SBA would not consider a plumber who fixes a sink for a Direct Marijuana Business or a tech support company that repairs a laptop for such a business to be aiding in the use, growth, enhancement or other development of marijuana and thus both of these firms would be eligible for technical assistance under SBA programs.

With regard to the issue of businesses that produce or sell hemp and hemp-derived products, the recently enacted Agriculture Improvement Act of 2018 (Public Law 115-334) changed the Federal government's legal treatment of hemp and hemp products. As a result of this legal change, a business that grows, produces, processes, distributes or sells products made from hemp (as defined in section 297A of the Agricultural Marketing Act of 1946) would not be considered a Direct Marijuana Business and would therefore be eligible to receive SBA-funded technical assistance if it is a legal business under state law and is not aiding in the use, growth, distribution, enhancement or other development of marijuana.

Finally, as to the issue of Cannabidiol (CBD) and products containing CBD, in practice CBD may be derived from either marijuana or hemp. When CBD is derived from marijuana, it is a Schedule 1 controlled substance under the Controlled Substances Act (21 U.S.C. § 801 et seq.).

This means that firms, that develop or market CBD and CBD products derived from marijuana, would be considered Direct Marijuana Businesses as defined above and would thus not be eligible to participate in SBA technical assistance programs. However, when CBD is derived from hemp (as defined in section 297A of the Agricultural Marketing Act of 1946), it is not a controlled substance, and firms that develop or market CBD and CBD products derived from hemp would not be considered Direct Marijuana Businesses. The firm would be eligible to participate in SBA technical assistance programs, if the business and its products are legal under state law and comply with all applicable federal, state, and local laws and regulations.

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