

## Technical Issues Memo 23-18

**To:** NADCO Members (Please disseminate to all appropriate personnel)

**From:** Rhonda Pointon, SVP of Regulatory Affairs & Training

**Subject:** Revised Guidance on Credit Elsewhere and Other Provisions in SOP 50 10 5(J)

**Date:** April 5, 2018

Today, SBA has released [Policy Notice 5000-17057](#) announcing revised guidance on SBA's policy regarding credit elsewhere, partner buyouts for 7(a), marijuana-related businesses, and other provisions in SOP 50 10 5(J). **These changes are effective immediately.**

Highlight of Changes for the 504 Loan Program:

- **Demonstrate the Need for Desired Credit (Credit not Available Elsewhere) (13 CFR § 120.101)** Chapter 2, Paragraph II.E.2. (page 275)

SBA is increasing the minimum percentage ownership at which owners are subject to personal liquidity consideration **from 10% to 20%**.

- **Businesses Engaged in any Illegal Activity (13 CFR § 120.110 (h))** Chapter 2, Paragraph III.A.8. (page 279)

SBA is issuing additional guidance to specifically address businesses that derive revenue from marijuana-related activities or that support the end-use of marijuana.

Marijuana-Related Businesses:

1. 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 financial assistance.
2. Whether a business is eligible is determined by the nature of the business's specific operations. The following businesses are ineligible:
  - (a) "Direct Marijuana Business" -- 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 personal use and medical use even if the business is legal under local or state law where the applicant business is or will be located.
  - (b) "Indirect Marijuana Business" -- 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. Examples include businesses that provide testing services, or sell grow lights or hydroponic equipment, to one

or more Direct Marijuana Businesses. In addition, businesses that sell smoking devices, pipes, bongs, inhalants, or other products that may be used in connection with marijuana are ineligible if the products are primarily intended or designed for such use or if the business markets the products for such use.

(c) Hemp-Related Business” -- a business that grows, produces, processes, distributes or sells products purportedly made from “hemp” is ineligible unless the business can demonstrate that its business activities and products are legal under federal and state law. Examples of legal hemp products include paper, clothing and rope.

- **Leasing Part of a Building Acquired with Loan Proceeds (13 CFR § 120.131)**  
Chapter 2, Paragraph IV.J.2.a)vii. (page 307)

Lenders are advised that, during the life of the SBA-guaranteed loan, a borrower may not lease space to the ineligible businesses described above because the collateral could be subject to seizure and because payments on the SBA loan would be derived from illegal activity. If a borrower does lease to an ineligible marijuana-related business, SBA District Counsel should be consulted to determine what action should be taken.

SBA has issued this Policy Notice to address lender concerns while SBA continues to review these issues. The SOP will be updated after SBA has concluded its review of these issues and determined whether additional clarifications are needed.

If you would like to access this TI Memo or SBA Policy Notice via the NADCO website, please click below.

TI Memo 23-18  
[SBA Policy Notice 5000-17057](#)