



Outline of Equity Goals in Cannabis Regulation

The Cannabis Freedom Alliance (CFA) seeks here to outline its policy goals for ensuring successful second chances and a vibrant and competitive U.S. cannabis marketplace.

This paper expands on the “Recommendations for Federal Regulation of Legal Cannabis” CFA published earlier this year, wherein the Cannabis Freedom Alliance identified four primary goals for any successful federal cannabis reform legislation:

1. Establish a regulatory framework that promotes public safety while allowing innovation, industry, and research to thrive;
2. Ensure individuals previously involved in the illicit market can effectively secure a second chance and contribute to the legal market;
3. Create low barriers to entry and non-restrictive occupational and business licensing so that large companies and new entrepreneurs can compete on a level playing field; and
4. Impose a total tax burden – federal, state, and local combined – that does not incentivize the continuation of gray or illicit markets and ensures competitive global footing for a vibrant, novel U.S. industry.

We thank policymakers for their attention to these issues.

HISTORICAL HARMS AND EFFECTS

The American War on Drugs has [failed to reduce drug-related disease or deaths](#), but it has caused harm to millions of individuals. Although the genesis of the drug war is often cited as 1970—the year Congress passed the Controlled Substances Act—it actually [began early in the Twentieth Century](#). States first became concerned about opium dens in large cities like San Francisco and New York and began to pass state laws banning opium and other narcotic substances in the first years of the Twentieth Century. Although marijuana was not considered a dangerous drug during this early wave of prohibition, policymakers began to be concerned with it when the Mexican Civil War began to displace many refugees into the Western United States. These immigrants and figures of the Harlem Renaissance were identified with the habit of smoking marijuana, which provided pretext for the ire of

public officials. This eventually culminated in state prohibitions on marijuana and the federal Marihuana Tax Act of 1937, which taxed all forms of cannabis so prohibitively that it essentially precluded a legal, commercial trade in cannabis products.

It was only after the Marihuana Tax Act was declared unconstitutional by the U.S. Supreme Court in 1969 that Congress agreed to launch the modern drug war with passage of the Controlled Substances Act, which imposed an outright federal ban by classifying marijuana as a Schedule I substance under the Act.

In both 1937 and 1970, expressly racist and xenophobic rationales were used to justify the federal drug war. As director of the Federal Bureau of Narcotics in the Roosevelt administration, Harry Anslinger [warned](#) that marijuana use could lead to interracial relations between men and women. Officials within the Nixon administration have infamously [admitted similar motives](#) to its renewal of the drug war in 1970. Statistics further reveal that the drug war has been administered in a manner that has produced staggering racial and economic disparities. Although [usage rates differ only slightly](#) across racial groups, [arrest rates](#) for certain minority groups are substantially higher than for White Americans. In [one Virginia county](#), for instance, a Black American was more than 40 times more likely to be arrested for marijuana possession than a White American.

Cannabis prohibition enforcement has had disproportionate impacts on certain communities of color, and has severely impacted all individuals who have suffered unjust damages at the hands of their government under this policy. Liberalization of marijuana laws in the several states and prospectively at the federal level offer an opportunity to address these multifaceted issues but merely ending criminalization will not remedy all of these past harms.

ENSURING SUCCESSFUL SECOND CHANCES FOR THOSE HARMED

We consider here the various groups impacted by the drug war and how best to offer a redress of grievances:

1. **Directly Impacted Individuals.** Individuals who were arrested for marijuana-related offenses suffer a range of negative outcomes. In some cases, these individuals may have been forced to surrender their liberty and become incarcerated for a period of time. In these cases, a person was deprived of precious time as well as the ability to earn an income to support their families. This means the children and other family of an incarcerated person have also suffered direct harm from the drug war. In other cases, individuals may have been forced to pay fines or other monetary assessments. Even in cases where an arrest or conviction did not result in incarceration or fines, [the conviction itself](#) can prevent a person from engaging in socially productive and healthy

behaviors such as seeking higher education, applying for a business loan or even seeking some types of employment. Restorative justice implies that measures should be taken to ease these burdens on directly impacted individuals. These should include the following:

a. *Expungement of criminal records and commutation of sentences:* In several states, the actions for which some individuals carry criminal records or have been incarcerated are no longer crimes under state law. All such records should be automatically expunged and sentences for these offenses commuted, provided the conviction was not compounded by more serious, violent offenses.

b. *Do not impose barriers to engagement with the legal industry.* Sometimes, the most knowledgeable individuals in the cultivation and marketing of legal marijuana products are those who hold experience from the illicit market. Further, the burdens faced by individuals previously engaged in the illicit market were fundamentally unjust because they were neither based in solid evidence nor administered equitably. For these reasons, individuals who were directly impacted by marijuana prohibition should not be excluded from either employment or entrepreneurship within the legal, regulated industry.

2. **Indirectly Impacted Individuals.** The drug war has been historically prosecuted in ways that disproportionately affected communities of color. Legalization provides an opportunity for states to make amends with these communities by using a portion of marijuana-related tax revenues to finance broad-based public benefits programs. Such programs can provide critical services that promote upward mobility or crime reduction through counseling, career services, job training, and youth engagement.

PITFALLS AND LESSONS FOR SOCIAL EQUITY PROGRAMS

1. License caps and restrictions are the quickest way for a state to undermine its own social equity goals. Indeed, CFA encourages states to adopt reforms that place no limits on the number of licenses granted or unnecessary licensing fee-barriers. Such policies prevent many individuals previously harmed by prohibition from entering the cannabis industry. The greatest way to create opportunities for the greatest number of individuals is to maintain a free and open market that imposes no artificial caps on the number of marijuana licenses available and holds licensing fees to a minimum. In this environment, licensing preferences are unneeded because anyone and everyone will be able to freely benefit from this new, innovative market.

2. Some states have moved beyond broad-based programs to create licensing preferences for directly impacted individuals or members of indirectly impacted communities. This approach has the laudable goal of creating ownership interests for directly impacted individuals and seeking to flow benefits of legalization to indirectly impacted individuals. Many directly impacted individuals have a felony conviction, employment gaps, lack of access to funding, and other barriers to entry unique to prohibition policies that must be accounted for in policy. One of the challenges to this approach is that access to traditional finance sources, in addition to ancillary legal, investment, commercial development and construction, food-grade processing, supply chain management, accounting, cash and risk management, and operational services, is patchwork for cannabis industry actors. The successful entrepreneur is expected to be knowledgeable in multiple fields ranging beyond marijuana regulation itself as part of managing the team of professionals necessary for running a cannabis business. Licensing programs seeking to accomplish the goal of ensuring successful second chances should aim to pair beneficiaries with entrepreneurial incubation tools to help alleviate the informal barriers to profitability.
3. Licensing preferences in many localities and states have been criticized for inviting unscrupulous actors to “game the system” by recruiting a front man to benefit from the licensing preference even if that person is neither the functional operator of the business nor the person who will benefit most for the firm’s economic success. Some programs have imposed rules for participation in that particular license program such as limited “restraints on alienation” or a temporary “lock-up” of 51% of ownership to a directly impacted individual in order to ensure that the benefits flow to the appropriate individual and communities. States and localities engaging in such programs should explore ways to further ensure that social equity licensees do not serve as a “straw man” for a transaction that is not the goal of such policies.
4. Lawmakers need to beware of crafting these broad-based programs with “narrowly tailored means” to address a “compelling governmental interest.” Programs crafted too broadly or with dubious nexus between the goal of addressing historical harms and the actual content of the program could run afoul of the Fourteenth Amendment’s equal protection clause jurisprudence—and indeed, some programs enacted by the states have been challenged under Fourteenth Amendment scrutiny already. States can avoid these pitfalls by crafting these programs so there is a clear nexus between direct harm from prohibition and the mechanisms utilized by the program. Properly and thoughtfully crafting such a policy nexus at the outset avoids the delay or disruption inherent with litigation that can dampen time-critical success for these programs.