

BUILDING AN EQUITABLE LICENSING PROCESS FOR MINNESOTA CANNABIS



“Building an Equitable Licensing Process for Minnesota Cannabis” is a guideline co-authored by Ashley Picillo, Katelyn Coskey, Dakota Fischer and Tim Berggren (Point Seven Group, www.pointsevengroup.com), with strategic and editorial support from Minnesota Marijuana Association (MMA) Board of Directors (sotacann.org/about) and the MMA Governmental Affairs Committee Members.

The Minnesota Marijuana Association advocates for and supports businesses and workers who are involved in Minnesota’s marijuana industry. The association provides reliable public information, education, business support, governmental affairs and community outreach.

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A close-up photograph of several green cannabis leaves, showing their serrated edges and intricate vein patterns. The leaves are vibrant green and appear to be part of a healthy plant.

FOREWORD

The information and recommendations contained within this guideline are the work product of the Minnesota Marijuana Association (MMA) and primary author, MMA Board Member Ashley Picillo and her team at Point Seven Group (Point7), with additional input provided by members of the MMA and its Government Affairs Committee.

The drafters of this document have decades of combined experience supporting social equity applicants and commercial applicants throughout the United States, as well as governing authorities responsible for enacting policies and programs within the cannabis sector. Dozens of references are cited throughout, including recommendations from former regulators, operators, analysts and policymakers.

The purpose of this guideline is to provide Minnesota's Office of Cannabis Management (OCM), legislators and other interested parties with actionable information that may be referenced as the OCM determines how to successfully implement the legislation passed in 2023 – the centerpiece of which is a merit-based licensing system. Additionally, this guideline explains how to strengthen the statute with additional legislation, affording Minnesota the opportunity to develop our Country's most equitable licensing program and regulatory framework, truly capable of addressing the generational effects of The War on Drugs.

The Minnesota Marijuana Association believes that Minnesota has the opportunity to build a cannabis industry that creates equity and opportunity for communities impacted by the harms of prohibition, while also acknowledging the unique challenges related to standing up a legal cannabis industry. We carefully evaluated countless markets throughout the United States, studying each market's successes, failures and shortcomings, as well as related legal matters.

Extensive consideration was given to the perceived risks of enacting various licensing models, in an effort to guide the OCM through the development of a program that reduces Minnesota's risk of litigation. Legal challenges not only harm the State, but all market participants who inevitably experience commerce delays due to ongoing lawsuits, potentially putting undercapitalized companies at risk of closure before they even have a genuine opportunity to begin operations.

Further, given that the OCM and the State are serving as a market regulator, consideration must be given to the Dormant Commerce Clause and whether or not the State's program, if deemed discriminatory, is valid because it is the only reasonable means to advance a legitimate local purpose. This is a critically important consideration as it pertains to enacting residency requirements, which are being upheld (and struck down) throughout the U.S.

Finally, it is the belief of the Minnesota Marijuana Association that for the cannabis industry to thrive in Minnesota, it is essential that social equity and commercial applicants work together toward the shared goal of creating a vibrant industry that provides opportunity for its participants as well as safe, high-quality products for consumers.

HOW TO BUILD A SUCCESSFUL LICENSING PROGRAM FOR SOCIAL EQUITY, AND NON-SOCIAL EQUITY APPLICANTS

Social equity programs have failed across the country for a myriad of reasons. Most of the following actions have been taken in at least one comparable U.S. cannabis market. Minnesota has a unique opportunity to develop a groundbreaking licensing model that borrows attributes from successful programs, while eliminating time-tested licensing activities that consistently result in delays, litigation and a lack of equity.

1. Establish clear social equity program participation criteria and carefully evaluate in-state residency requirements.

In her policy paper entitled “Fair and Square: How to Effectively Incorporate Social Equity into Cannabis Laws and Regulations,” Shaleen Title describes some of the common themes considered when a State is developing a social equity program, advising jurisdictions to clearly define who the social equity program is for and how an individual can qualify. She lists the following themes:

- ***Residence in a specific geographic area*** – The most common practice is to use objective research to identify discrete geographic areas as disproportionately harmed by the drug war. Regulators should take care to watch the latest legal developments on residence requirements for cannabis businesses.
- ***Other possible criteria*** – Often, programs use a combination of a number of possible criteria to help them determine an applicant’s eligibility, such as their and their close family members’ past drug arrests or convictions, attendance of public school, or housing loss or eviction.
- ***Race*** – Criteria based on race itself may be legally risky. Still, the risk can be reduced by using race as one of many eligibility factors and by relying on data that demonstrate racial disparities in the marijuana industry.
- ***Set firm ownership requirements*** – A social equity program must determine which businesses are eligible, especially when multiple people own a business. Only businesses controlled by and with majority ownership by people who qualify for the social equity program should be eligible for program benefits.
- ***Be careful with income limitations*** – Income limitations can be restrictive, given how expensive it is to launch a cannabis business. If you decide to impose income limitations, implement a regular review to ensure the limits are working as desired.

Title is the co-founder of Parabola Center, which describes itself as: a nonprofit think tank of legal professionals and drug policy experts coming together to protect people, not corporations. Our mission is to provide everyone with the education, access and expertise to support cannabis legalization policies that put people and small businesses first. Parabola Center for Law and Policy is a 501(c)(3) tax-exempt organization, ID# 87-3636074. Parabola Center developed a "[Cheat Sheet: Eligibility for Social Equity Programs](#)," which expands on the previous page.

More About Residency Restrictions

Residency restrictions are commonly introduced when a State discusses social equity programs (or cannabis regulations in general). While, in many cases, this idea is well-intentioned, the reality is that residency restrictions can be challenged on the basis of the Dormant Commerce Clause.

As Minnesota begins the process of regulating cannabis businesses, we need to realize that program delays are extremely damaging to all cannabis businesses — especially those who identify as a social-equity-owned company. At all costs, we must ensure that regulations and licensing frameworks are carefully thought out and, where possible, evaluate court cases related to social equity, licensing in general and the enactment of residency restrictions.

Background and Examples

According to Richard Juang, Legal Director of the Parabola Center, [residency restrictions in cannabis are being challenged in Federal Court](#).² These restrictions have been upheld in Washington State and Oklahoma, while in Michigan, Missouri, and Maine, these restrictions were ultimately struck down. A separate case in Illinois was not fully litigated.

In Maine, the State's Attorney General conceded that there might be a substantial constitutional problem and ultimately settled with Wellness Connection (the cannabis entity that brought the suit against Maine) by agreeing not to enforce the residency restriction. The case was voluntarily dismissed by the Parties without prejudice, allowing the case to be brought again. The City of Portland, Maine, however, upheld the residency restriction. Wellness Connection brought the suit against the City. The case against the City of Portland was fully litigated, and the Judge in that case struck down the residency restriction, stating that the restriction violated the Dormant Commerce Clause. According to Juang, the restriction was an unconstitutional interference with interstate commerce. The State had overstepped its powers and was engaged in a form of excessive state economic protectionism. When the Wellness Connection suit is brought forth against the State a second time, the State of Maine strikes down the residency restrictions, finding (same as the Portland case) that this restriction violates the commerce clause.

² "Richard Juang, 'Residency Restrictions in Cannabis Challenged in Federal Court,' YouTube video, posted by [The Ohio State University Moritz College of Law, @OhioStateLaw, Dec 6, 2021]" Accessed February 15, 2024. <https://www.youtube.com/watch?v=Anb5uDWpTsg&t=1534s>.

- **Regulation:** 19 CSR 30-95.025(4)(a)(1): Authorization to operate as a business in Missouri;
 - (4)(a)(2): That the entity is majority owned by natural persons who have been residents of Missouri for at least one (1) year;

2. Consider the risks associated with lotteries and replace them with a thoughtful, no-cap licensing model.

The New York State Office of Cannabis Management developed a comprehensive “Social and Economic Equity Plan” (2023)⁶ that does a great job of describing the various licensing schemes enacted in other states.

“The qualified lottery process allows the random distribution of licenses to applicants who meet a set of minimum requirements but excludes any evaluation of a given applicant’s ability to operationalize a license. In a lottery licensing scheme, states have either given social equity applicants more chances to win in a predetermined lottery round or have created social equity exclusive lottery pools to achieve the same objective.”

Lotteries are challenging for an entire marketplace. These processes incentivize capitalized groups to pay for as many ‘entries’ into a process as they can and sometimes incentivize operators who are not able to ‘pay-to-play’ and take this level of risk without any control over their destiny or the process.

States may choose lotteries because they believe they’ve de-risked the State by removing subjective scoring. While this is true, we believe that this is shortsighted thinking and that while the State is removing subjectivity, they are also removing entrants’ preparation process — which will result in the State receiving entries and awarding entries to groups that have completed zero preparation. Lottery models typically give entrants a period of time to advance to the next phase of licensure. Without preparation, most groups will need a full year to organize and set up for operations. The quality of these operators will not be what it could be with a thoughtfully introduced licensing process.

3. Prioritize social equity in the licensing process and license businesses based on function of the license type.

We recommend that the OCM endeavor to create a licensing process that prioritizes: 1) Social equity applicants submitting an application for any license type; and 2) Supply chain licenses (specifically cultivation and processors) to ensure that retailers have adequate product supply before they become operational. Markets that have licensed retail license holders too early experienced supply chain challenges due to lack of product on store shelves.

⁶ New York State Office of Cannabis Management, “Social and Economic Equity Plan,” September 2023.” Accessed February 15, 2024. <https://cannabis.ny.gov/system/files/documents/2023/09/nys-see-plan-english.pdf>.

Importance of Licensing Supply Chain First: Cultivators and processors should be licensed prior to consumer-facing licenses, such as dispensary and delivery. Social equity and commercial applicants applying for cultivation and processing licenses will apply at the same time, though we recommend that social equity applicants are evaluated first.

We recommend that supply chain applicants (cultivation, processing) apply at the same time by the same stated deadline. While we do recommend reducing, or eliminating, capital requirements for social equity groups (and, as such, removing proof of capital as a scored consideration for social equity groups) we do believe all supply chain applicants should have suitable real estate for proposed cultivation and processing operations.

License Testing Facilities: Testing facilities should be licensed early in the process so they may effectively test processors and cultivators. Model testing application after successful testing applications in other markets.

All supply chain applicants must demonstrate site control by providing either: 1) A deed; 2) Lease; or 3) A conditional lease, that would require the tenant to move forward with the property if a license is awarded, but release the tenant from the terms of the lease if a license is not awarded; or 4) A conditional purchase agreement that would require the buyer to move forward with the transaction if awarded a license, but release the buyer from the transaction if a license is not awarded.

License Event Organizers: Licensing event organizers may provide them with an opportunity to produce events that support cultivators and processors until retail opens (Case Study: New York State Cannabis Grower Showcases³). The process for event organizers should be paperwork heavy, which would require the applicant to demonstrate that they can navigate the complexities of event production as it relates to contracts, insurance, permitting, etc.

Applicants must provide all non-subjective requirements (paperwork primarily) as well as a background check, evidence of a bank account, a business plan, a compliance plan, an insurance plan, and an SOP for producing events, ensuring that the event organizer is able to demonstrate their understanding of event compliance.

³ 'Cannabis Growers Showcase: Highlighting New York State's Budding Industry,' The Cannabis Watcher, <https://thecannabiswatcher.com/pages/articles/industry/2023/9/9/cannabis-growers-showcase-highlighting-york-state-budding-industry>."

Submit at the Same Time: Cultivation and processing applicants would apply at the same time, irrespective of status as a social equity applicant or a commercial applicant. The same would be true for retail submissions, though we recommend that the retail application and licensing process happen last.

The OCM would be required to evaluate all supply chain application submissions within a designated period of time, with clear “not to exceed” language designed to prevent unnecessary delays. Social equity applicants would be evaluated first. The health of the entire marketplace rests on the OCM licensing supply chain license holders first so there is an adequate supply of product when retail operations commence. Based on our experience in other states it is understood that a successful supply chain will be a mix of social equity and commercial operators.

Evaluate Social Equity: States have attempted to allocate a certain percentage of cannabis licenses to social equity groups, yet these initiatives have frequently faced challenges or have been completely contested. A more effective strategy has emerged, which involves the evaluation of social equity applicants first, providing these groups with a head start over commercial applicants while avoiding a sizable delay between SEA and commercial licensing applicants. This approach is bolstered by granting social equity applicants extra points during the licensing evaluation process, ensuring a more equitable opportunity for these groups.

4. Mindfully implement real estate requirements to create meaningful opportunity for social equity applicants.

In markets where real estate is not required for a social equity applicant, the barrier to entry is certainly reduced during the licensing process, while a larger problem develops down the road: ***once these teams are licensed, there is often a shortage in viable real estate and many of these groups never operationalize their license as a result.*** To combat this, we recommend a more nuanced real estate requirement process depending on license type.

The following process is non-lottery and does not contemplate a licensing cap.

- Retail will be capped via congressional districts as described below.
- Cultivation and manufacturing will likely be capped naturally based on available properties in the State.

Delivery, wholesaler and transporter businesses may experience market saturation initially, but the belief is that the market will correct for this naturally without government intervention.

A) Introduce one class of licensing for cultivation, manufacturing, wholesaler, transporter: a Real Estate License Class (RELC).

1. Applicants applying for cultivation, processing and distribution licenses must be in control (deed, lease, or binding-LOI) of their real estate in order to apply.
2. These applicants will complete the R.E. License Application described below.

B) Introduce two classes of licensing for retail, micro, delivery and mezzo applicants: Non-Real Estate License (NRE License) and RELC.

- NRE applicants do not have real estate.
- RELC applicants are in control of their real estate (deed, lease or binding LOI).
- ***Example New Jersey***
 - 17:30-7.3(c): A license applicant shall disclose and submit, as part of the conditional license application, the following submissions relating to qualification, pursuant to N.J.A.C.
 - (c)(2): A list of the owners of the license applicant who have resided in this State for at least two years as of the date of the application, and documentation of such residency.
 - For individuals who made under \$200,000 a year and resided in N.J., they had a "conditional" licensing pathway available to them which excluded a real estate requirement.

C) All applicants will complete an application. NRE applicants will submit fewer deliverables than RELC applicants but will complete all application components prior to receiving a final license.

- Applicants must complete subjective sections and non-subjective sections.
- Subjective sections will require substantial ownership paperwork requirements.
- Applicants in the NRE class will be scored separately from RELC applicants as they will submit different deliverables.

D) Application Process for NRE Applicants

- NRE applicants will complete an application unique for this class of license.
- The application will have subjective sections as well as non-subjective sections.
 - Non-subjective sections assess that the applicant's ownership is compliant and that all required paperwork is in place.
 - Social equity groups may be exempt from specific paperwork requirements as determined by the OCM.
- Once an NRE applicant has submitted their application, they will be notified of any deficiencies and given a 30-day cure period.
- Once they have been issued a conditional license, the applicant must secure real estate and submit the next batch of required application materials.
- A provisional license will be issued once the NRE Applicant has submitted the remaining application requirements, including proof of controlled real estate.
- A FINAL license is issued once the Applicant has met all requirements set forth by the inspection process.

E) Application Process for RELC Applicants

- RELC applicants will complete an application unique for this class of license.
- The application will have subjective sections as well as non-subjective sections.
 - Non-subjective sections will be reviewed first, and deficiency notices will be mailed to applicants who have a 30-day cure period. These applications will be moved to the back of the scoring queue once the requested deliverables are received.
 - Subjective application requirements will be reviewed for groups that do not receive a deficiency. These sections will be scored using a clearly defined rubric.
 - Social equity groups will receive points for their status as a social equity-qualified group.
- Social equity applicants and commercial applicants will submit their applications by the same deadline. Social equity applicants will be reviewed first, beginning with non-subjective criteria. Those that are missing information will receive a deficiency notice and cure period. Those that meet all criteria will then advance to the evaluation period, whereby subjective/merit-based components of the application are evaluated. Commercial applicants will follow the same process, and will be reviewed following the social equity applicants.

F) Regional retail license allocation and retail endorsement process.

A local government unit that issues cannabis retailer registration under section 342.22 may, by ordinance, limit the number of licensed cannabis retailers, cannabis mezzobusinesses with a retail operations endorsement, and cannabis microbusinesses with a retail operations endorsement to no fewer than one registration for every 12,500 residents.

We recommend starting with the language in statute (1 per 12,500) and that the State licenses dispensaries with an initial allocation of 7 licenses per State Senate district (67 districts), or 57 per congressional district (8 districts). 30% of such allocations should not be awarded in the non-conditional round and instead be held back/reserved for a period of 18 months. This would allow conditional licensees to find locations in these districts and not be excluded due to limited available properties.

- Regions will be determined using the 2022 Minnesota Congressional Map.
 - There are eight congressional districts (aka “Regions”).
- Each region will be allocated 57 retail dispensary licenses (the equivalent of one per 12,500 residents).
- 70% of each region’s allocation (40 licenses) will be awarded to RELC licensees, while the remaining 30% (17 licenses) will be held for NRE licensees.
 - This allocation ensures that there is not an oversaturation of the market and that viable properties are still available to NRE applicants looking for real estate.
- Each region will have a separate licensing pool where the top 40 scoring RELC applicants will receive licenses.
 - This process will encourage applicants to apply in more rural areas, ensuring that retail licenses are spread out across the State.
- State regulators work with local cities/counties to support flexible zoning and increase access to viable properties with a public database.

5. Begin by examining the risks and concerns most commonly associated with ‘merit-based’ licensing processes. Develop a no-cap licensing program with merit-based components that includes: a) non-subjective criteria; b) restrictions designed to limit monopolies; and c) clear subjective criteria, accompanied by a rubric.

A) Established clear, non-subjective minimum criteria for all license holders.

Merit-based processes are the strongest option for an Office looking to qualify operators, ensuring that operators have completed the preparation necessary to run a compliant and safe business. Removing merit-based components from a licensing process may, in the short term, reduce a State’s risk of litigation (because the State would not be responsible for ‘evaluating’ anyone). That said, in non-merit-based markets States often contend with a different challenge: a marketplace that is composed of many unqualified operators that have not been required to understand the business, industry, regulations or safety requirements.

“In contrast, merit-based scoring relies on a single rubric to evaluate applicants against one another, ultimately awarding licenses to the applicant with the greatest overall score. Applicants with the most capital or relevant operational experience are most often favored in merit-based selection procedures. In several states, merit-based scoring systems afford social equity applicants additional points on their license application for their designation.”

Here are a few suggestions:

Missouri Example: Does any principal officer or manager have any delinquency in the filing or payment of any state income tax, sales tax, personal property tax, municipal tax or real property tax, either individually or for a business in which the principal officer or manager has an ownership interest? If yes, explain.

a. Explanation: Individuals with a history of struggling to pay taxes in sectors outside cannabis might face greater challenges due to the complexities of Internal Revenue Code Section 280E, which significantly impacts taxation in the cannabis industry.

i. This section disallows deductions for ordinary business expenses for entities involved in the trafficking of Schedule I or II controlled substances, which includes cannabis businesses. Consequently, cannabis businesses face higher effective tax rates, as they can only deduct the cost of goods sold and not other common expenses like salaries or rent.

Alabama Tax Delinquency Case Study

Medical Cannabis Applications Reveal Hidden Problems, Missing Info⁴

“And then there are the lawsuits. According to a lengthy description outlining what AMCC commissioners can consider when evaluating licenses, a considerable amount of time is spent covering the impact that ongoing or recent litigation – particularly litigation regarding the business practices of applicants – would have on the process.”

Specifically, the AMCC’s guide for integrated license applicants says the Commission will consider:

“g. Whether the Applicant has been served with a complaint or other notice filed with any court or public agency regarding payment of any tax required under federal, state or local law that has been delinquent for one or more years.

“h. Whether the Applicant has a history of noncompliance with any regulatory requirements in this state or any other jurisdiction.

“i. Whether at the time of application, the Applicant is, or in the past 10 years has been, a defendant in litigation involving its business practices.”

Those considerations would seem to be particularly problematic for Verano, Trulieve, Southeast Cannabis Company and 3 Notch Root.

Trulieve is being sued by the mother of an employee who died as a result of “occupational asthma,” according to the Centers for Disease Control. The lawsuit claims the company’s HVAC system didn’t work properly, causing mold, and the continued inhalation of the mold caused the employee’s death.

⁴ Moon, Josh. “Opinion | Medical cannabis applications reveal hidden problems, missing info.” *Alabama Political Reporter*, 4 Dec. 2023. Retrieved on 15 Feb. 2024, from: <https://www.alreporter.com/2023/12/04/opinion-medical-cannabis-applications-reveal-hidden-problems-missing-info/>.

Alabama Tax Delinquency Case Study cont.

In another lawsuit, which Trulieve filed claiming Harvest Ohio owed more than \$23 million in unpaid loans, the owners of Harvest counterclaimed, alleging that Trulieve conspired to take over Harvest by issuing predatory loans and misleading Harvest's owners.

Trulieve has also filed suit against several former employees, claiming that they participated in a kickback scheme with certain vendors, selling shelf space to the vendors for certain products.

Verano, which was rated the top scorer in the AMCC licensing process, has faced its own legal challenges. In 2019, it faced a \$135 million lawsuit for allegedly cutting its Nevada business partners out of new licenses. In 2020, it faced wild allegations of a former employee transporting marijuana illegally to Arkansas in Whole Foods salad containers. In 2021, Verano settled racial discrimination claims that included allegations it illegally transported marijuana onto military bases. Earlier this year, a female employee in New Jersey filed suit claiming sexual harassment, gender discrimination and retaliation by the company.

According to Verano, all lawsuits have been dismissed. The RICO suit all dismissed with prejudice, and Verano was awarded nearly \$100,000 in attorney's fees in the arbitration. The Nevada suit was also dismissed.

Another source talks about blocked dispensary licenses but doesn't mention tax delinquency.⁵

⁵ "Medical marijuana dispensary licenses blocked in Alabama amid dispute over selection process." AP News, 29 Dec. 2023. Retrieved on 15 Feb. 2024, from: <https://apnews.com/article/alabama-medical-marijuana-selection-dispute-9f872a8cb4f016e61ca9640aaec72790>

Examples of Non-Subjective Questions

We have hundreds of examples of non-subjective questions that could be asked to create a tedious part I of the application process. Questions of this nature (derived from Missouri) are the type of questions we're thinking about for this section.

1. Has any principal officer or manager ever been, or has such person been a principal officer or manager of any business entity when such entity has been, the subject of an action resulting in suspension or revocation of a registration, license, provisional license, or any other authorization to cultivate, process, or dispense medical marijuana in any state? If "Yes", provide the following: Respondent/Defendant, Name of Case and Docket Number, Nature of Charge or Complaint, Date of Charge or Complaint, Disposition, and Name and Address of the Administrative Agency or Court (Specify Federal, State and/or Local Jurisdictions).
2. Has any principal officer or manager ever been convicted of, or plead guilty or nolo contendere to, any felony offense under state or federal law, whether or not a sentence has been imposed relating to the principal officer's or manager's practice of any profession or occupation? If yes, provide the following: Defendant, Name of Case and Docket Number, Nature of Charge or Complaint, Date of Charge or Complaint, Disposition, and Jurisdictional Court (Specify Federal, State, and/or Local Jurisdictions).
3. Has any principal officer or manager ever been convicted of, or plead guilty or nolo contendere to, any felony offense (not including any offense related to the practice of their profession or occupation) under state or federal law, whether or not a sentence has been imposed? If yes, please provide the following: Defendant, Name of Case and Docket Number, Nature of Charge or Complaint, Date of Charge or Complaint, Disposition, and Jurisdictional Court (Specify Federal, State, and/or Local Jurisdictions).
4. Has any principal officer or manager ever been, or has such person been a principal officer or manager of any business entity when such entity has been denied a license or registration by the Drug Enforcement Administration, the State Bureau of Narcotics and Dangerous Drugs, or other appropriate controlled substance licensing/registration body of any state? If yes, provide the name of the controlled substance licensing/registration body, the date and the reason for the denial.
5. Has any principal officer or manager ever had, or has such person been a principal officer or manager of any business entity when such entity had, a license, permit, or registration to practice any profession or occupation, disciplined, revoked or denied by any state or federal licensing body? If yes, state the date, the name of the licensing body, and the reason for the action taken.

6. Has any principal officer or manager ever had, or has such person been a principal officer or manager of any business entity when such entity had, any final adverse or disciplinary action taken against them by the United States Food and Drug Administration in relation to the production or distribution of any food, drug, medication or dietary/herbal supplement? If yes, state the date and the reasons for the adverse or disciplinary action.
7. Has any principal officer or manager ever been, or has such person been a principal officer or manager of any business entity when such entity has been excluded from participation in any state or federally funded health care program such as Medicare, Medicaid or MO HealthNet for fraud, abuse, or submission of any false or fraudulent claim, payment or reimbursement request? If yes, state the date and the reasons for the exclusion.
8. Will the business have professional liability insurance for its principal officers? If yes, provide documentation of the anticipated insurer, policy terms and limits.
 - a. We recommend that the OCM is thoughtful about insurance requirements so applicants are not required to get a policy prior to license issuance. Requiring operators to do this can create an unintended barrier to entry. This recommendation applies to all insurance prompts.
9. Will the business have product liability insurance? If yes, provide documentation of the anticipated insurer, policy terms and limits.
10. Will the business have business interruption insurance? If yes, provide documentation of the anticipated insurer, policy terms and limits.
11. Will the business have property insurance, not including insurance to cover marijuana loss? If yes, provide documentation of the anticipated insurer, policy terms and limits
12. Will the business have property insurance to cover marijuana loss? If yes, provide documentation of the anticipated insurer, policy terms and limits.
13. Failure to include all required application components.
14. Previous cannabis license revoked in another regulated market or license violations in similarly regulated industries
 - a. A history of violations or revocations of professional or business licenses, especially in regulated industries, can be a red flag.

Recommendation for Non-Subjective Questions Related to Social Equity.

These are points awarded to teams that are social equity qualified. Consider a sliding scale based on the % of the Company that is owned by individuals who qualify under the social equity program.

Example: Illinois Department of Commerce and Economic Opportunity (DCEO) supports Social Equity Applicants by providing eligibility to receive 50 points (out of a possible total of 250) from IDFP on dispensary license application score or receive 200 points (out of a possible total 1,000) from Illinois Department of Agriculture on their craft grower, infuser or transporter license application score.

Points Allocated for Non-S.E. Teams Committing to S.E. Efforts.

Most people familiar with merit-based licensing processes understand that well-capitalized teams will hire attorneys and consultants to support them in developing a competitive application. While there is “merit” to a merit-based process, namely that nearly all teams applying will be far more prepared than a group ‘throwing their hat in the ring’ during a lottery process, it is important to understand that merit-based processes favor larger companies and/or companies with the financial ability to hire.

For teams that do not qualify as a social equity-owned company, it is still critical to the health of the industry that these teams indicate during the application process how their proposed business will support communities, specifically those harmed by The War on Drugs, and how the business seeks to uplift individuals who were personally harmed. Many, MANY non-social equity owned companies want to see the social equity program succeed.

That said, it is very difficult to objectively score long-form narratives describing various mechanisms for creating and implementing programs that benefit a State’s social equity program. Instead of asking non-social equity teams to present written narratives describing their social equity plans/commitments, require companies to select from a list of predetermined commitments (each with associated score/value).

The following are various commitments a non-social equity group (AND qualified social-equity-owned groups, if desired) could commit to making.

Based on the level of complexity, amount of funding needed, and/or longevity of the commitment, the OCM can assign points to commitments such as these.

Once a conditional license is awarded, the company would need to provide documentation of these programs (including how and when they will be implemented receiving OCM sign-off prior to receiving the final license). The OCM must be prepared to evaluate progress toward, or completion of, these commitments prior to issuing the final license (and during renewal periods) to hold companies accountable. If this accountability measure is known at time of application submission, applying companies may be less likely to document commitments knowing that these must be carried out and the OCM is licensing based on these commitments.

EXAMPLE FOR ILLUSTRATIVE PURPOSES

Commitment	Description	Points
Employee stock ownership plans and/or conversion into a worker-owned cooperative	Programs that enable employees to acquire ownership stakes in the company, promoting their financial involvement and commitment to the business's success.	10 (example for illustration purposes only)
Community benefit agreements	Contracts with local communities to ensure that the business provides tangible benefits, such as job creation or community services, thereby enhancing local socio-economic conditions.	7 (example for illustration purposes only)
HR and internal training	Comprehensive training programs for employees, focusing on enhancing their skills and knowledge in compliance, industry standards, and internal procedures, contributing to overall business efficiency and regulatory compliance.	5 (example for illustration purposes only)
Wraparound service provisions for victims of the War on Drugs	Offering a range of supportive services, like legal assistance, counseling, and job training, to individuals adversely affected by previous drug policies, aiding in their rehabilitation and reintegration into society.	TBD
C-Suite Directors of CSR & DE	High-level executives appointed specifically to oversee and implement strategies in Corporate Social Responsibility and Diversity & Equity, ensuring these principles are integrated into all business practices.	TBD
Transparent supply chains, with staffers tasked with diversifying them	Efforts to make the company's supply chain transparent and accountable, coupled with dedicated personnel focusing on diversifying suppliers to include minority and socially responsible vendors.	TBD
A stated, publicly available, Social Responsibility Program	Developing a clear and accessible social responsibility strategy and making it available publicly, demonstrating the company's commitment to ethical, socially responsible business practices.	TBD
Commit X% of shelf space to products cultivated or produced by a social equity-owned business	Commitment to purchasing a certain % of products from social equity cultivators and social equity manufacturers; (NOTE: without the accountability system described above, submitting teams will likely commit to unreasonable percentages in order to reach a higher score).	TBD
Share Services	Partnering with a third party (OR developing your own program) designed to centralize core business services for social equity businesses;	TBD
Share Press	If/when you are approached for media coverage, consider including social equity suppliers or retailers to join you for the interview;	TBD
Establish Meaningful Marketing Programs	1. Dedicated web page(s) featuring social equity businesses that you have partnered with; 2. Features on social media; 3. Loyalty programs (designed to teach customers about social equity and how to identify social equity-owned retailers);	TBD

Commitment	Description	Points
Support S.E. Fundraising	Bringing necessary financing to the table by way of making introductions between S.E. teams and real estate investment groups and/or investors looking to make funding placements in the industry.	TBD
Develop or Support Grants/Micro Loans	Partnering with a third-party company to make micro-loans accessible/known to S.E. teams or developing some sort of grant program.	TBD
Centralize Cannabis Training:	Partnering with a third-party group to train retailers in the space. Point7 is in discussions with a possible JV partner to develop an online training and compliance program. More to come here, but this would cut costs substantially for S.E. groups by ensuring that: 1) retail employees do not violate rules/regulations, resulting in penalties or loss of licensure; 2) retailers remain compliant; 3) retailers have the best customer service training available, resulting in higher average transaction sizes/increased profitability.	TBD
Facilitate Product Training:	Teaching S.E. groups about one another, about products being made by other S.E. teams, and cross-marketing these companies/brands.	TBD
Establish DE&I Hiring Practices	Employ people harmed by The War on Drugs. Actively recruit individuals who have been incarcerated because of the cannabis plant. Make this known by marketing open roles and publicly discussing your hiring practices. Offer extensive training to all employees to ensure success, and refrain from discounting individuals who may not have “the right experience,” remembering that some people could not accrue meaningful work experience because of the inequities that exist for individuals post-jail time.	TBD
Engage a Diversity, Equity & Inclusion Consultant	While we can offer plenty of ideas, you may want to consider engaging a consultant who can help you understand diversity and inclusion better, especially as it pertains to social equity.	TBD
Establish Vendor Selection Criteria	Establish criteria for all suppliers and vendors (both in the cannabis industry and outside of the cannabis industry) and require all vendors and suppliers to have a social equity program of their own (does not necessarily need to mirror yours). Examples could be: point-of-sale systems; security providers, construction teams, designers, landscapers, architects, plumbers, HVAC/other equipment, etc. An example of criteria could be: 1. All vendors/suppliers must have a documented social equity program; 2. All vendors/suppliers must have an established diversity and inclusion program; 3. All vendors/suppliers must donate a portion of profits and/or revenue towards social justice-focused non-profits or projects; 4. Engage vendors/suppliers that are certified as a small, diverse business whenever possible.	TBD

B) Restrict monopolies via tight ‘True Parties of Interest’ regulations.

According to the “[Cannabis Regulators of Color Coalition \(CRCC\)](#)”¹³ the Prevention of Monopolies and Oligopolies is essential to the mission of equity. “Concentrating control of the cannabis market among a few big businesses is counter to the aims of equity. The number of business licenses any one entity may own or control must be limited. To ensure operators take these limits seriously, regulators must clearly and consistently impose meaningful consequences for anti-competitive activity. To prevent abuse of equity policies, regulators must invest appropriate resources into sufficient examination and investigation to ensure that companies are being controlled by the same people on paper and in practice.”

Additional Example: In NY State, the OCM prevents “True Parties of Interest” from owning or controlling businesses in more than one tier (e.g., a cultivation, processor or distribution business owner cannot own a retail license). This limitation applied to NY businesses and to owners who hold equity positions in other States (e.g., someone with an ownership position in a cultivation business in Oklahoma cannot own a retail business in New York).

Mechanism in Place to Stress Test Parties of Interest

While ultimately not successful, NY engaged Google to build a database that could be instantly cross-checked, allowing the OCM to understand in real-time who owns which license (individuals and entities, and owners of Holding Co’s).

Preventing Opportunity for Predatory Practices Without Government Overreach

In addressing the critical issue of preventing predatory practices in the cannabis industry, the New York State Office of Cannabis Management provides valuable insights in their “Social and Economic Equity Plan.”⁶ The following excerpt highlights the challenges and potential solutions:

¹³ Cannabis Regulatory Compliance Coalition, “Principles,” accessed March 05, 2024, <https://www.crc-coalition.org/principles>.

⁶ New York State Office of Cannabis Management, “Social and Economic Equity Plan,” September 2023.” Accessed February 15, 2024. <https://cannabis.ny.gov/system/files/documents/2023/09/nys-see-plan-english.pdf>.

Derived from the NY S.E.E. Report

Social equity licenses are often targeted by speculative capital due to the lack of accessible capital from traditional financial institutions. Investors, funds and large businesses actively seek out social equity licensees for acquisition in jurisdictions where these licenses can be easily transferred. To prevent predatory recruitment, certain states, including New York, have rules that limit the sale or transfer of social equity licenses.

Some exploitative efforts have included partnership or management agreements with terms that:

- Severely dilute the applicant's or owner's ownership stake
- Reserve management rights and decisions exclusively for the equity partner or management company, as opposed to the equity owner
- List inequitable profit distribution and exorbitant above-line fees and rents
- Contain forced sale provisions that trigger the sale of the business to an equity partner for a predetermined amount of money, which is frequently significantly less than the business's actual value
- Demand supermajorities for key decisions, thereby stripping the equity owner of management control
- Divest the social equity individual or individuals of any intellectual property created during the partnership for the management company's benefit
- Mandate that the financial partner holds the lease, allowing the partner to evict the equity owner.

However, predatory acquisition schemes are not the only questionable activity that has undermined the goals of social equity programs. Federal law enforcement officials on both coasts have acted in response to alleged pay-to-play schemes involving cannabis business licenses. In California, where cannabis licensing corruption has been a problem since the rise of storefronts, many officials have called for the formation of a statewide task force to investigate extortion and bribery. Municipalities with fewer licenses and additional business restrictions are more likely to engage in pay-to-play schemes. Local retail cannabis bans in the majority of California jurisdictions are believed to have encouraged pay-to-play schemes in neighboring jurisdictions.

C) Develop subjective scoring criteria (narratives, SOPs, diagrams) with corresponding rubrics.

Subjective scoring presents the greatest risk to a governing authority charged with evaluating and scoring submissions without bias. Subjective scoring is used for non-standardized things such as diagrams; written procedures; biographies and resumes; and narrative descriptions of the operator's intended process and business model. While rubrics are put in place to guide the scoring process, remaining objective is difficult.

At the same time, licensing models that do not require written processes, financial models, business plans or procedures present a different set of challenges — namely that the applicant will be far less prepared for operations than they would if preparation materials were required. In working with hundreds of operators, we recognize that the preparation process can be costly (from a time and dollars perspective). That said, preparing materials for the application does prepare the applicant for downstream operations, as the standard operating procedures and written descriptions guide the future operators.

Rubric Example:

We have compiled dozens of rubrics from various State and local licensing processes (which we will gladly make available upon request). It is imperative that a rubric be developed in alignment with subjectively scored sections. Ideally, the OCM is able to award points on a scale based on what was included within the subjective submission. In New Jersey, applicants submitted 20+ narratives with fixed page limits. Applicants were able to cure deficiencies within a predetermined period of time if information was not found within the submission.

The following rubric is borrowed from the Missouri licensing process in 2019¹⁸:

Evaluation Criteria Scoring Table	
Answer	Points
Question on 0–10 Point Scale	
Unsatisfactory – Response fails to meet minimum expectations; has significant weaknesses and lacks detail and/or clarity; little or no confidence in the proposed approach or ability to fulfill claims.	0
Satisfactory – Response meets minimum expectations; offers no significant benefits beyond the minimum expectations; no significant weaknesses exist; reasonable confidence in the proposed approach or ability to fulfill.	4
Superior – Response offers some benefits beyond the minimum expectations; no material weaknesses exist; confidence in the proposed approach or ability to fulfill claims.	7
Distinctive – Response promises significant benefits beyond the minimum expectations; answer presents innovative, and/or best-in-class solutions; high confidence in the proposed approach or ability to fulfill claims.	10
Satisfactory / Unsatisfactory	
Satisfactory – Response meets minimum expectations; no significant weaknesses exist; reasonable confidence in the proposed approach or ability to fulfill claims.	10
Unsatisfactory – Response fails to meet minimum expectations; has significant weaknesses and lacks detail and/or clarity; little or no confidence in the proposed approach or ability to fulfill claims.	0
Yes / No	
Yes (when a preferred response) – Response indicates assent or agreement.	10
No (when an undesirable response) – Response indicates negation, dissent, or denial.	0
No / Yes	
No (when a preferred response) – Response indicates negation, dissent, or denial.	10
Yes (when an undesirable response) – Response indicates assent or agreement.	0

Example: How to objectively evaluate a team's 'Experience in Cannabis' and why emphasis of this question can result in a less-equitable process.

Typical merit-based processes award more points to teams with cannabis experience (and sometimes other related experiences including healthcare or work within highly regulated industries. This requires most companies to either 1) Hire staff prematurely with this experience or 2) Hire consultants with this experience, effectively representing their experience, which is not (for many groups) indicative of the ultimate licensed team's experience.

Example questions from the 2019 Medical Missouri Round (there were dozens of experience questions in total):

*Describe how your previous business experience will contribute to the success of your business.
List the legal business name and address of each business you operated or managed.*

The bottom line is this: we need to develop a rigorous process for all applicants — social equity and non social equity, but be mindful about the standards set forth for each pool of applicants. Operating a cannabis business requires a substantial amount of effort — irrespective of capital position or background — and a rigorous process **can be meaningful** in terms of requiring all applicants to think through their respective business proposition and the requirements to run such a business. That said, we must recognize that many social equity applicants will not be able to meet certain standards set forth in other markets, such as Missouri, that required applicants to demonstrate professional, academic, medical and cannabis experience throughout the application. For well capitalized teams, this often results in hiring consultants to “fill roles,” as discussed previously.

Every requirement poses an opportunity for applicants to prepare, or a barrier to apply. Thoughtful wording, and a concentrated effort understanding why the OCM is asking any given question in the first place is critical to building a truly equitable licensing process.

6. Fairly tax all applicants & offer fee reductions to social equity-owned companies.

Fair Taxation for All.

According to The Cannabis Regulators of Color Coalition (CRCC), fair taxation is necessary to achieve a successful social equity program. “While revenue from legal cannabis can help fuel community reinvestment and other public programs, certain tax schemes can act as barriers to entry into the legal industry that puts equity applicants at a disadvantage. Too high a tax rate, for example, tends to favor bigger, better-connected companies, reinforcing institutional racism and other structural inequities. Disbursement of revenue should promote fairness, with tax money flowing only to jurisdictions that implement equitable policies.”

Tax Rebate for Social Equity Maintained Capitalization Tables.

To combat predatory practices that remove social equity individuals from the capitalization table within a year or so of license issuance, perhaps a tax rebate (or similar economic incentive) can be issued to companies that maintain the ownership % for the social equity owner(s) above a specified threshold.

Waived Application Fees for Social Equity Businesses.

Waive application fees for qualified social equity groups. The OCM could also consider a tiered solution whereby a full fee reduction is reserved for 100% owned and controlled social equity groups, and the fees change/are differentiated by tier from there (e.g., 80% social equity owned would enjoy an 80% fee reduction, 60% social equity owned would enjoy a 60% fee reduction, etc.) down to a 51% threshold.

Waived Licensing Fees for Social Equity Businesses Until 12 Months from 'Doors Open' Date.

Recognizing that many cannabis license holders, both social equity and non-social equity, require time to identify suitable real estate, build the operation, and raise capital, it would be wise to waive licensing fees until twelve months from the date the operation has “opened its doors” versus a specified time period beginning with the date of license issuance.

- Waive licensing fees for S.E. businesses.
- Waive application fees for S.E. businesses in a tiered manner.
- Examine markets, like NY and California, where tax rates are dismantling the legal market, encouraging (or forcing) operators to continue operating illicit businesses.
 - **Example:** Illinois Department of Commerce and Economic Opportunity (DCEO) provides eligibility to pay reduced license and application fees for qualifying social equity businesses.
 - **Example:** Portland Cannabis Reduced Fee Program Case Study.

Example: Portland Cannabis Reduced Fee Program Case Study¹⁴

On Sept. 26, 2018, the City of Portland voted to create a Reduced Fee Program to help small cannabis businesses and those directly impacted by cannabis prohibition. Businesses that qualify will receive a fee reduction when paying for their City of Portland Marijuana Regulatory License.

Qualifying businesses will receive benefits based on their number of up to three (3) qualifying factors.

All license types can qualify for a City of Portland Marijuana Regulatory License (MRL) fee reduction applied at the time they are licensed.

Processors and Producers can also qualify for reimbursements for costs incurred at the Bureau of Development Services related to Early Assistance or Preliminary Life Safety meetings. This reimbursement will be applied to their MRL fee.

Those with 1 Qualifying Factor* will receive 15% off their license fee and up to \$750 of early assistance reimbursement. Those with two or three Qualifying Factors will receive 25% off their license fee and up to \$1,500 of early assistance reimbursement.

*Qualifying Factors are outlined in the “Who is eligible” section below.

Who is eligible?

Qualifying businesses will receive benefits based on their number of up to three (3) qualifying factors:

1) Small Businesses (Less than \$750,000 annual total income in the preceding calendar year, and no more than two other cannabis businesses)

Less than \$750,000 annual total income in the preceding calendar year

Combined total income in the previous calendar year of the business entity applying, and all business entities (including any parent companies, associate companies, subsidiaries, or affiliates) with ownership interests of 10% or greater.

Combined total income must match the sum of the “Total Income” line reported on all Internal Revenue Service (IRS) tax return forms for each entity (Form 1120 for corporations; Form 1120S for S corporations; Form 1120, Form 1065, or Form 1040 for LLCs; Form 1065 for partnerships; Form 1040 for other sole proprietorships).

AND

The business entity and its owners have no more than a total of two other state recreational or medical cannabis licenses pending or obtained.

Total includes ALL recreational or medical cannabis licenses from all states.

This includes the total number of licenses of the business entity seeking the license and all individuals and entities with 10% or greater ownership interest, including any parent companies, associate companies, subsidiaries or affiliates of business entity owners.

Does NOT include individuals' medical cards issued for personal medical purposes.

2) Small Business with MWESB-Certified Ancillary Industry Vendors – BOTH of the following must be true for this Qualifying Factor:

Meets the Small Business qualifications above

AND

Contracts with an ancillary industry vendor(s) MWESB-certified by the State of Oregon and listed on the State's Certified Vendor Directory as an Emerging Small Business, Minority Business Enterprise, Service-Disabled Veteran Business Enterprise or Women Business Enterprise.

If the application is for a new license, the entity seeking the license must have paid the vendor(s) a total of at least \$30,000 during the 24 months immediately preceding license issuance for expenses directly related to the marijuana business seeking the license.

If the application is for a renewal license, the entity seeking the license must have paid the vendor(s) a total of at least \$30,000 during the most recent licensing period for expenses directly related to the marijuana business seeking the license.

The marijuana business, or any owners, including any parent companies, associate companies, subsidiaries, or affiliates, must not have any shared ownership with the ancillary industry vendor(s) or its parent companies, associate companies, subsidiaries or affiliates.

3) Owners or Staff with Prior Cannabis Conviction(s)

25% or greater of ownership or 20% or greater of staff hours are represented by individuals with a federal or state conviction for a criminal offense committed prior to July 1, 2015, in which possession, delivery or manufacture of marijuana or marijuana items is an element, whether misdemeanor or felony.

7. Ensure Office-wide and Council-wide understanding of the most common barriers and challenges faced by Social Equity Applicants.

While absolutely not exhaustive, here are some of the challenges we've become aware of in working with social equity teams/individuals in the cannabis space:

1. Barriers to entry during the licensing process:

- Real estate requirements
- Capitalization requirements
- High licensing fees and/or application fees
- Renewal fees prior to operations
- Expensive application processes without supporting technical assistance programs
- Lack of familiarity with the regulatory system/process (often, these companies do not have the institutional knowledge/connections to engage with regulators)
- Lack of political power (often, these companies do not have the ability to pay high-priced lobbyists who can advocate for an industry that supports their growth)
- Lack of industry knowledge, including tax codes such as 280E.

2. Limited resources post-licensure:

- Lack of access to capital for real estate
- Lack of access to capital (operations)
- Lack of collateral for property purchases/negotiations
- Challenges in marketing and brand development within a competitive landscape.
- Operational difficulties, including supply chain management and maintaining product quality.
- Lack of industry best practices operational knowledge

3. General challenges:

- "Paycheck-to-paycheck" growth (meaning, a company can't scale the business as readily as other companies because the business is bootstrapping its growth strategy.
- Ongoing compliance with frequently changing regulations, often demanding significant resources.
- Struggling to gain a foothold in a market dominated by established companies.

8. Provide technical assistance and funding resources to social equity groups.

Technical Assistance

State-sponsored programs that prepare social equity applicants for the process are critically important; however, these programs have not been made equally. The establishment of a successful social equity program requires an understanding of the issues that communities of color encounter when entering a highly regulated industry. A successful social equity program addresses these issues, while providing social equity applicants with the assistance needed to succeed.

Services to assist social equity applicants could include:

- Providing free or reduced-cost legal counsel and other professional services to social equity applicants, either through group workshops, 1:1 sessions, or other combination of support;
- Waiving/Reducing application/licensing fees to qualifying applicants;
- Providing regulatory compliance training and education services to social equity applicant owned businesses;
- Waiving/Reducing the need to show proof of capital for social equity applicants;
- Low-interest loans and lines of credit, or special-use grants, to ensure social equity owned businesses are not diluted and can become operational;
- Agreeing to provide products at a reduced cost or on consignment.
- Implementing a lower tax structure for Social Equity applicants.

Examples of Technical Assistance Programs

Illinois: The Illinois Department of Commerce and Economic Opportunity (DCEO) develops accessible opportunities for technical assistance and access to capital for social equity-qualified persons seeking to participate in the Illinois cannabis business industry. These programs include providing technical assistance¹⁶ and individualized support through their partner network for pre—and post—licensing, legal assistance and loan application assistance.

Massachusetts¹⁶: The Cannabis Control Commission's (CCC) Social Equity Program (SEP) is a free, statewide technical assistance and training program to provide qualifying participants with education, skill-based training, and tools for success in the industry across four areas: 1) entrepreneurship, 2) managerial-level workforce development, 3) re-entry and entry-level workforce development, and 4) ancillary business support. SEP benefits include: 1) Free technical assistance and training through vendors certified by the Commission and 2) Expedited license application review for SEP individuals who maintain 10% ownership in the business.

¹⁶ "Equity Programs," Massachusetts Cannabis Control Commission, accessed March 4, 2024. <https://masscannabiscontrol.com/equity/>

New York: Per the New York Office of Cannabis Management, “the Cannabis Compliance Training and Mentorship (CCTM) Program is a 10-week virtual training program designed to train three cohorts of trainee/mentees: legacy cultivators, traditional farmers, and a combined cohort of legacy processors and traditional food and beverage processors. Licensed cultivators and processors serve as mentors for 241 participants under a curriculum developed by the Office in collaboration with SUNY Morrisville and Cornell University professors, and the curriculum is rounded out with lectures from accountants and attorneys with cannabis experience. The CCTM program is intended to expand and diversify the pipeline of cultivators and processors preparing to participate in the New York cannabis market. This training program began in January of 2023.

The courses and technical trainings are supported by the State University of New York, SUNY Morrisville, Cornell University, the Office, holders of Adult-Use Conditional Cultivator (AUCC) and Adult-Use Conditional Processor (AUCP) licenses (as part of the requirements of their conditional license to assist in the creation of a pathway into the cannabis industry). Each participant will complete 17–21 webinars with topics ranging from Cannabis Business Accounting, Labor Laws, Agricultural Human Resources, and Environmental Controls to Plant Genetics, Plant Pathology, Track and Trace, Lab Testing, Recall Plans and Good Manufacturing Practices. In addition, each CCTM participant has been paired with an AUCC or AUCP so they can engage on a more personal level and achieve deeper learning about establishing a business in a regulated marketplace.⁶

Previous Programs Aiming to Provide Access to Funding, Loans & Grants

Access to funding throughout the pre-licensing and post-licensing process, as well as access to grants/loans during operations. Examples include:

Illinois: The Illinois Department of Commerce and Economic Opportunity (DCEO) develops accessible opportunities for social equity cannabis businesses, providing access to low-interest capital for starting and operating a cannabis-related business.⁷

⁶ “New York State Office of Cannabis Management, ‘Social and Economic Equity Plan,’ September 2023.” Accessed February 15, 2024. <https://cannabis.ny.gov/system/files/documents/2023/09/nys-see-plan-english.pdf>.

⁷ Illinois Department of Commerce and Economic Opportunity, ‘Social Equity Cannabis Loan Program One-Pager,’ July 19, 2021.” Accessed February 15, 2024. https://dceo.illinois.gov/content/dam/soi/en/web/dceo/cannabisequity/documents/socialequitycannabisloans-one-pager_final-7-19-21.pdf.

New York: Social Equity Cannabis Investment Fund: Per the New York Office of Cannabis Management, “In 2022, Governor Hochul proposed, and the Legislature enacted, the NY Social Equity Cannabis Investment Fund. The Fund, a public-private partnership, provides much-needed start-up support for justice-involved cannabis dispensary licensees. The \$200 million fund is seeded with \$50 million in State funds, to be repaid from tax revenue generated by cannabis sales, and \$150 million in private investment. Limited access to capital for cannabis dispensary licensees has proven to be a significant stumbling block in this nascent industry, especially for social equity cannabis entrepreneurs.

In New York State, justice-involved licensees, disproportionately impacted by the draconian Rockefeller Drug Laws, have an opportunity to receive the necessary support in the acquisition and build-out of dispensaries. With little to no start-up capital, participating CAURD licensees receive a turn-key cannabis dispensary in an optimum retail location. The licensee pays back the Fund’s investment over time. This approach is intended to provide participating CAURD licensees with the best possible opportunity to succeed, overcome the unjust treatment of the past, and create generational wealth. Learning from other states’ experiences, the Governor created the Fund and leveraged the finance, procurement, design, and construction expertise of the Dormitory Authority of the State of New York (DASNY) to help manage the process.”⁶

New York Loans & Grants: Per the New York Office of Cannabis Management, “as long as cannabis remains illegal under federal law, the industry faces obstacles in obtaining loans and utilizing conventional banking services. Most financial institutions are unwilling or unable to assume the risks associated with lending capital to cannabis-related businesses. These risks fall into two broad categories: unease regarding federal oversight and concern regarding the default of loans made to under-collateralized businesses in emerging markets. This makes it difficult for business owners with fewer assets to obtain debt at competitive interest rates. Social equity applicants are forced to use high-interest lenders or forgo capital improvements, leaving low-income entrepreneurs to pay exorbitant interest.

⁶ “New York State Office of Cannabis Management, ‘Social and Economic Equity Plan,’ September 2023.” Accessed February 15, 2024. <https://cannabis.ny.gov/system/files/documents/2023/09/nys-see-plan-english.pdf>.

However, the government can mitigate some of the risks financial institutions face when investing in the sector. New York regulators can lead the way in developing innovative solutions for this market. The Office is addressing small, NYSEE-owned cannabis businesses' banking issues by encouraging banks and credit unions to enter the legal cannabis market to increase competition, lower costs, and improve services for cannabis-related businesses (CRBs). The Office has met with financial institutions for several months to provide clarity and resources for entering the legal cannabis market. Consequently, several banks and credit unions have begun accepting CRB customers. To reduce financial institution risk and encourage commercial loans to NYSEE-owned businesses, the Office is drafting proposals for underwriting loans for qualified NYSEE applicants. Following 2023 development, comprehensive loan programs are expected to launch in 2024.”⁶

Capital Acquisition — A Perspective from the NY State OCM S.E.E. Plan

An insightful perspective on the challenges of capital acquisition for cannabis businesses and their impact on achieving social equity is provided in the New York State Office of Cannabis Management's "Social and Economic Equity Plan." They state:

"The inability of licensees and applicants to obtain capital from traditional financial institutions is a significant barrier to achieving social equity. Due to federal prohibition, commercial banks and lending institutions have been extremely hesitant to provide standard cannabis business services. While there have been a few success stories, the cost of establishing compliance systems to reduce exposure has resulted in financial institutions directing their limited services available to the more well-resourced cannabis businesses. While many financial institutions have flatly refused to serve the industry, an increasing number have declared their intention to fully enter the cannabis market and invest heavily in operations and systems to serve cannabis customers. However, in the absence of clear federal government guidelines on how financial institutions can provide services, the industry will continue to be underserved relative to other sectors of the economy. Legal cannabis markets, including New York, have made efforts to encourage state-chartered banks to carry the load, and cannabis industry operators have worked to alleviate these institutions' concerns.

⁶ "New York State Office of Cannabis Management, 'Social and Economic Equity Plan,' September 2023." Accessed February 15, 2024. <https://cannabis.ny.gov/system/files/documents/2023/09/nys-see-plan-english.pdf>.

“However, due to fear of federal scrutiny, financial institutions do not publicly advertise their services and provide little, if any, information on their websites. Because customers have limited ability to compare costs, banks can charge vastly different rates. Some banks charge more than \$1,200 per month for a deposit account, while others charge a fraction of that amount. Some states have addressed banks’ reluctance to participate in the cannabis space by developing programs that provide targeted grants, low-interest loans, or loan underwriting to social equity licensees. Below are some examples of these programs: California allocated \$15 million to help cities and counties implement social equity initiatives at the local level, with a portion of the funding going directly to licensees in the form of loans and grants and the remainder to training programs and technical assistance. As part of the Social Equity Cannabis Business Development Fund, social equity applicants in Illinois may apply for a low-interest loan to assist with the costs of launching and operating a cannabis business. The City of Oakland has established the ‘Elevate Impact Oakland’ program that provides grants and 0% interest four-year loans to Oakland Verified Equity Applicants who meet the program criteria.”⁶

Workforce Development — A Perspective from the NY State OCM S.E.E. Plan

An insightful perspective on the importance of an impactful workforce development plan for cannabis businesses is provided in the New York State Office of Cannabis Management’s “Social and Economic Equity Plan.” They state:

“Workforce development programs provide individuals with the skills and training they need to access good jobs in growing sectors. As the cannabis industry continues to grow, related workforce development programs should emphasize career matching, training and education on cannabis skills, and resume development. Many state workforce development programs rely on federal funding, creating a barrier to providing certain cannabis-specific education and job matching. State funding, administered through the Office or other New York agencies, can support the workforce initiative by sponsoring and partnering with cannabis education, career exploration, and skills training nonprofits. The Office has supported the development of the NYS Cannabis Workforce Initiative, a partnership between Cornell University and the Workforce Development Institute that provides cannabis-specific education and training to job seekers.

⁶ “New York State Office of Cannabis Management, ‘Social and Economic Equity Plan,’ September 2023.” Accessed February 15, 2024. <https://cannabis.ny.gov/system/files/documents/2023/09/nys-see-plan-english.pdf>.

This 10-week program, partially funded by New York State, teaches dispensary, processing, and cultivation workers about legal cannabis. The course introduces workers to cannabis opportunities, terminology, and what to expect with daily work in each sector. Programs that expand on these foundational initiatives will further lower the barrier to entry to New York State's cannabis workforce. For example, a robust job matching program can connect employers and future employees and then track their short- and long-term successes. In states with mature cannabis markets, legalization has created an appreciable number of jobs both at licensed businesses and at companies providing ancillary products and services. A 2022 jobs report estimated a total of more than 428,000 jobs in the US were supported by the cannabis industry thus far. With New York's recent launch into the adult-use market, it is anticipated that the legal market will generate 108,000 jobs across the state when cannabis markets are fully established. Additionally, the Office continues to support the New York State Department of Labor's (NYSDOL) Cannabis Employment and Education Development (CEED) Unit, which connects people with cannabis industry jobs and helps businesses thrive in New York. Through Coursera, NYSDOL offers free online courses to unemployed New Yorkers, including many courses that teach skills directly related to the cannabis field. The NYSDOL CEED Unit connects cannabis-trained job seekers to a variety of employment opportunities, including with cannabis licensees. The Office will continue to support NYSDOL's workforce programs, ensuring they meet the needs of cannabis licensees and ancillary businesses throughout the supply chain."

9. Provided guidance for local community leaders.

The cannabis learning curve is steep and, as such, we cannot expect local municipalities to develop thoughtful ordinances without State-issued guidance. Community leaders are trying to learn quickly and understand what the State's jurisdiction is and where a community may be able to have additional influence. We believe that most local municipalities would be interested in at least understanding how an ordinance can hurt or impede social equity programming.

The Minority Cannabis Business Association (MCBA) compiled ten model municipal ordinances¹⁷ to provide a framework at the local level. Minnesota has an opportunity to develop state-specific, thoughtful guidance documents similar in nature to these, and — in tandem with this effort — can provide community leaders with education about cannabis and the State's goals pertaining to social equity.

¹⁷ Minority Cannabis Business Association, "What is a Model Ordinance?," October 2021." Accessed February 15, 2024. https://minoritycannabis.org/wp-content/uploads/2021/10/What-is-a-model-ordinance_.pdf.

In the absence of this guidance, municipalities will (most likely) defer to existing ordinances presented by other states or those developed by larger, well-capitalized cannabis companies.

According to the MCBA⁸:

“An ‘Ordinance’ is a legal term for a municipal policy. A Model Ordinance is a piece of sample policy designed to be used as a starting point for municipalities across the country to build from. Model policies are examples of what is possible, and intended to be tailored to fit the needs of each community. The Model Ordinance is intended to serve as a resource for counties and municipalities seeking to create equity programs as their towns or cities license the commercial production, manufacturing, distribution and sale of cannabis in states that have legalized these activities. The intent of this Model Ordinance is to maximize the ability of communities of color that were disproportionately impacted by cannabis prohibition to benefit from the new industry as owners, investors, managers, and employees. The Model Ordinance specifically provides priority licensing, access to capital, and technical assistance for confirmed equity applicants, as well as general applicants incubating a cannabis business owned by an equity applicant. We also recommend social impact studies which calculate the total cost of the war on drugs on our communities and better inform community reinvestment decisions.”¹¹

10. Extend the timeline for social equity companies to become operational.

Some states require operational readiness within a period of time dating back to the issuance of the provisional license. We recommend extending this timeline so it begins once a business has secured its real estate.

11. Ensure sufficient funding for the OCM for a minimum of three years.

Many governing authorities are pressured to bring capital into the program via fees and licensing, which can put undue pressure on the license holders and the program itself. The reality is that over-taxation and/or egregious licensing and application fees are short-sighted. If companies are forced to make these payments before they experience income, let alone profitability, many licensed businesses will not survive. This is not a problem experienced solely by the operators; this is a problem that the State will need to navigate as well, and if enough businesses do not make it — the State will need to start the licensing process again, which is far more expensive than patiently building this the right way, the first time.

⁸ Minority Cannabis Business Association, “What is a Model Ordinance?,” October 2021.” Accessed February 15, 2024. https://minoritycannabis.org/wp-content/uploads/2021/10/What-is-a-model-ordinance_.pdf.

Further, the OCM **needs** a budget that substantiates sufficient staff to advance not only the licensing process but downstream inspections, etc.. The less funding the OCM is given, the slower licensing will occur and the slower fees/taxes will be benefiting the State. A robust OCM staff is critically important to the success of these businesses, and the success of the program.

Ensure more-than-sufficient funding for the OCM for a period of time that extends beyond the planned licensing timeline and allows the OCM to build a robust team of people who have the time to be formally trained, reducing overhead in the long-term and allowing the OCM to provide the level of service, direction, and support to ALL applicants and future operators.

12. Offer robust, comprehensive education and training for OCM staff.

In so many markets, the individuals working in these offices have not been sufficiently trained. To effectively govern this program, all OCM staff need to be trained about the program, cannabis, the State's goals, and model programs elsewhere (as well as programs that did not succeed). Over and over again, we speak about offering technical assistance to social equity operators (more on this below). However, without this same commitment to the individuals who are responsible for ensuring compliance and supporting teams through the licensing process (and later, operations), the program is at risk. The OCM would benefit substantially from developing a brief RFP to solicit third party training support specifically for the OCM and/or applicants who would benefit from technical assistance.

13. Protect the program. Shut down the illicit market.

The illicit market threatens ALL operators, but most especially those with limited capital to begin with. Having a clear plan for enforcement is critical to the health of the program. Various States have enacted programs or enforcement measures in an effort to shut down illicit cannabis markets.

California

The Eradication and Prevention of Illicit Cannabis (EPIC) program focuses on the investigation and prosecution of civil and criminal cases relating to illicit cannabis cultivation with a focus on environmental and economic harms and labor exploitation. EPIC is a multi-agency collaboration led by DOJ in partnership with the U.S. Department of Agriculture's U.S. Forest Service, the U.S. Department of the Interior's Bureau of Land Management and National Park Service, the California Department of Fish and Wildlife, the U.S. Department of Justice's Drug Enforcement Administration, the California National Guard, Counter Drug Task Force, the Central Valley High-Intensity Drug Trafficking Areas program, California State Parks, and other local law enforcement departments.

Los Angeles: Local laws allow for utility disconnection OR padlocking or barricading of property where unlicensed commercial cannabis activity is occurring instead of criminal enforcement.⁹

New York

As part of the Fiscal Year 2024 Budget, New York's Office of Cannabis Management had instituted fines, asset seizures and other enforcement measures for businesses operating illegally without a license. Penalties include fines of up to \$20,000 per day. While these penalties provided a steep deterrent, they have been insufficient in slowing the proliferation of unlicensed cannabis sales throughout New York.

More recently, Governor Kathy Hochul continued efforts to combat the illicit cannabis market with aggressive enforcement measures.¹⁰ The 2024 strategy involves comprehensive law enforcement measures and public awareness campaigns. Governor Hochul's Executive Budget empowered the OCM's capabilities to more efficiently implement padlocking of illegal cannabis outlets while empowering local authorities to enforce these padlocking orders for rapid shutdown of unlicensed dispensaries and establishing local registries of legally licensed cannabis businesses. These registries are aimed at supporting local governments, including New York City, in utilizing their own laws and resources to clamp down on unlicensed cannabis operations effectively.

⁹ Los Angeles Municipal Code Section 104.15(e) on Utility Disconnection for Unlicensed Cannabis Activities." City of Los Angeles Department of Cannabis Regulation. Accessed Feb 20,2024. [https://cannabis.lacity.gov/compliance/cannabis-activity-complaints/unlicensed-commercial-cannabis-activity#:~:text=LAMC%20Section%20104.15\(e\)%20authorizes,occupied%20by%20an%20Unlawful%20Establishment](https://cannabis.lacity.gov/compliance/cannabis-activity-complaints/unlicensed-commercial-cannabis-activity#:~:text=LAMC%20Section%20104.15(e)%20authorizes,occupied%20by%20an%20Unlawful%20Establishment).

¹⁰ "Governor Hochul Stands with Legal Cannabis Retailers, Announce Steps Forward in Shutting Down Illicit Operations." Governor Kathy Hochul, 2024. <https://www.governor.ny.gov/news/governor-hochul-stands-legal-cannabis-retailers-announce-steps-forward-shutting-down-illicit>.

Governor Hochul's administration is further confronting the challenge of illegal cannabis dispensaries in New York, particularly in New York City where these unlicensed vendors are significantly outnumbering legal stores. Highlighting this issue, she noted the prevalence of these illegal dispensaries in online searches on platforms like Google Maps and Yelp.¹¹ Yelp has responded by emphasizing the First Amendment rights of consumers to post and read reviews about all businesses, including unlicensed ones, viewing this as beneficial for public interest and regulatory oversight.

14. Explore what community investment and reinvestment mean and develop subjective and non-subjective application requirements that require all applicants to make firm community investment commitments.

Current and former regulators, industry experts, and most industry operators would likely agree that community investment is necessary to address the substantial harm caused by The War on Drugs. The Cannabis Regulators of Color Coalition (CRCC) advocates for governments to speak directly with harmed communities. "Governments must engage directly with disproportionately harmed communities, speaking with and not merely about the populations most affected by the war on drugs. Budgets should spend at least as much on equity and reinvestment as they dedicate to drug enforcement. In places where commercial cannabis is legal, officials should establish equity-focused licensing and workforce development programs to ensure that the communities most impacted by the war on drugs are equipped to enter and control a fair share of the legal industry."

We recommend that the OCM connect with former and current regulators who have dedicated substantial time and resources to understanding the most effective ways to dedicate the budget to community reinvestment. Ensure that equal funding is available to enforcement and reinvestment in communities impacted by The War on Drugs.

¹¹ Cedar Attanasio and The Associated Press, "New York Governor Bids Google and Yelp to Stop Listing Illegal Weed Shops, Even as Legal Firms Get Delisted," February 29, 2024. Accessed March 4, 2024. <https://fortune.com/2024/02/29/cannabis-legal-weed-google-maps-yelp-new-york-kathy-hochul/>.

SUPPORTING BACKGROUND

A. THE STATE OF SOCIAL EQUITY TODAY MEASURED THROUGH 20 EXISTING CANNABIS OPERATORS

In the fall of 2023, Cameron Gaskin and Justice Wahid-Cotton co-authored Volume 1 of “Social Responsibility in the Cannabis Industry”¹² (excerpts below). Their research methods and subsequent findings highlight the dire lack of meaningful programming that “seeks to address the harm done by the War on Drugs and its negative impact on communities of color.” We decided to include findings from this report to demonstrate how important it is for Minnesota to consider each component of its upcoming licensing program. When we speak about social equity, we often speak about the individuals or social-equity-qualified teams that are planning to apply for a cannabis business license.

That said, we also know that many teams intend to apply without a social equity designation and will, instead, make commitments about the ways in which their cannabis business license will uplift communities, individuals, or social equity-owned cannabis businesses.

As we strive to develop the country’s most thoughtful licensing process and application, we have an opportunity to require that all applicants make commitments that will actually create measurable, genuine impact. Too often, companies develop long-form written narratives describing the many things they intend to do without ever speaking with the community or demographic of people they aim to support. It is vital to take the time to understand what social equity looks like within twenty of the country’s largest and most well-established cannabis environments to establish a meaningful program.

Takeaways:

Although some companies have diversity of ownership, this does not always lead to equitable practices.

The primary form of addressing social responsibility seems to be in the form of partnerships with prominent Black and Brown faces instead of robust internal programs.

There seems to be a Canadian pattern of not addressing social responsibility at all unless a company has a large footprint in the US market.

¹² Cameron Gaskin & Justice Wahid-Cotton, “Social Responsibility in the Cannabis Industry,” Summer/Fall 2023. Accessed February 15, 2024. https://ugc.production.linktr.ee/134e1816-e0c0-456d-a3f6-92a73394bdafa_CFR-Report-FULL-VERSION-Final-Compressed.pdf.

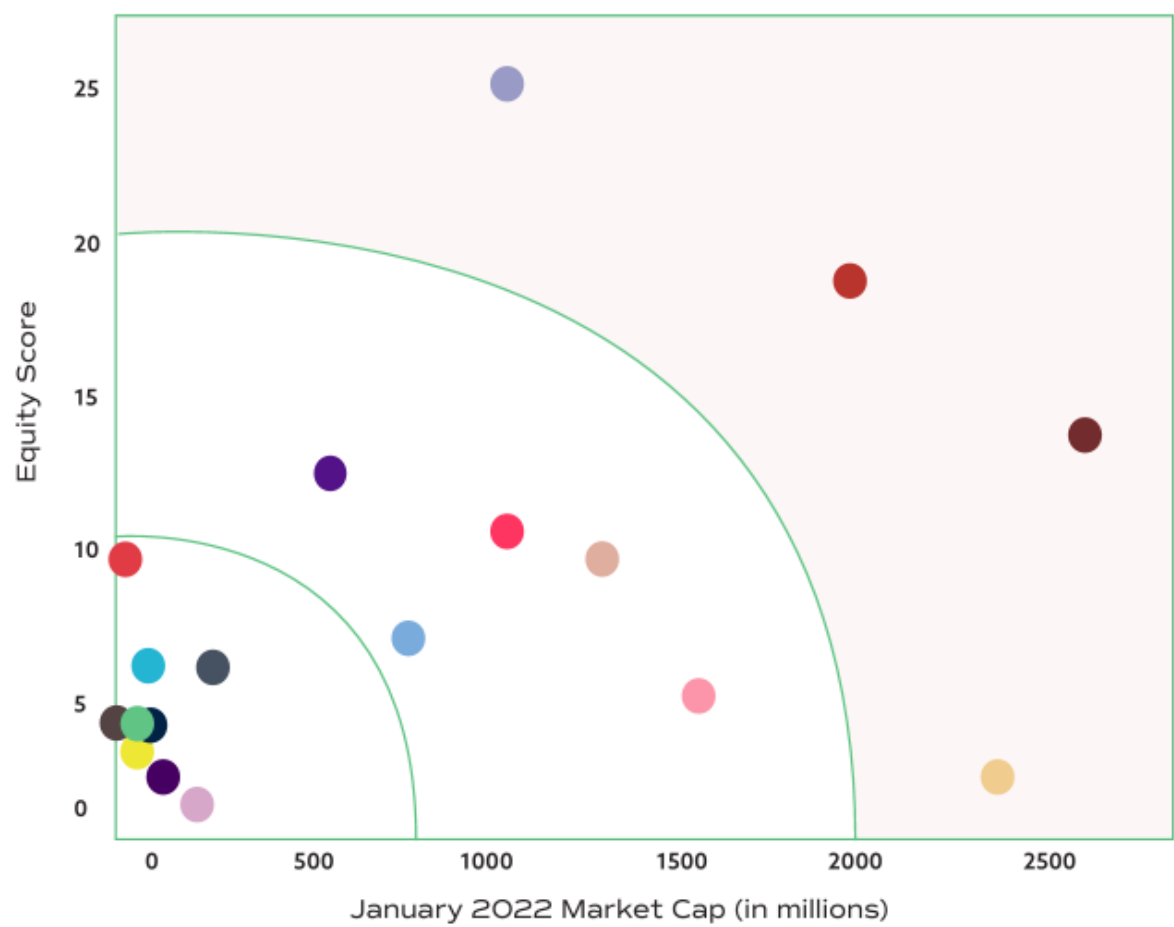
INDUSTRY OVERVIEW

We do not see many robust programs that seek to address the harm done by the War on Drugs and its negative impact on communities of color. It seems that, instead of addressing the problems brought about by the War on Drugs and establishing equitable practices, companies have instead chosen to partner with Black and Brown faces for the benefit of public relations.

METRIC	INDUSTRY MEAN SCORE
Ownership	1.1
Hiring the Formerly Incarcerated	0.5
Investing in BIPOC-owned Business	0.8
Stated Social Responsibility Program	0.9
Support for Expungement	1
Career Development	0.5
Diversity of Supply Chain	0.3
Allow Community Input	0.2
Job Training	0.3
Job Creation & Advancement	1.5
TOTAL	7.1/30

Table: Industry Overview. From Page 8, Cameron Gaskin & Justice Wahid-Cotton, “Social Responsibility in the Cannabis Industry,” Summer/Fall 2023.

MARKET CAP / EQUITY SCORES



Graph Key		
The Green Organic Dutchman	Curaleaf	Green Thumb Industries
Greenlane	Jushi Holdings Inc.	Innovative Industrial Properties Inc.
Charlotte's Web Holdings	Aurora	710 Labs
The Parent Company	Cookies	Dro
Hexo Corp	Cresco Labs Inc.	Hyman Life
High Tide Inc	Tilray	Industry Average
Organigram	Canopy Growth	
	Trulieve	

Table: Market Cap/Equity Scores (and Graph Key. From Cameron Gaskin & Justice Wahid-Cotton, "Social Responsibility in the Cannabis Industry," Summer/Fall 2023.

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The Minnesota Marijuana Association advocates for and supports businesses and workers who are involved in Minnesota's marijuana industry. The association provides reliable public information, education, business support, governmental affairs and community outreach.

Learn more on the MMA website, sotacann.org.

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