

## **Advancing An Equitable, Safe, and Profitable Cannabis Regulatory Framework in New Mexico**

Addressing the social and racial inequities of the War on Drugs is one of the primary motivations for adopting comprehensive cannabis policy reforms. Given the profound damage cannabis prohibition laws have had on minority communities in the United States, the passage of adult-use cannabis policies provides a unique opportunity for advancing social justice, social equity, and community reinvestment goals.

With the passage of HB 2, New Mexico is on track to create one of the strongest, most progressive adult-use cannabis marketplaces in the United States. Among other policies, the inclusion of delivery, reasonable tax rates, microbusinesses, retail consignment, and a lack of artificial caps on licenses will help ensure a thriving, diverse cannabis industry in the state. Building off the excellent foundation established by HB 2, we offer the following recommendations and examples to further advance an equitable, safe, and profitable cannabis industry in New Mexico.

### **Social Equity, Diversity, and Inclusion**

Under HB 2, the Cannabis Control Division (CCD) is tasked with developing rules to promote diversity and inclusion in the cannabis industry. An equitable cannabis industry is not created with a single measure, but instead is accomplished through a coalescence of multiple equity-conscious policies. As the CCD considers different proposals to promote a diverse cannabis industry, we recommend the following:

- Create a formal definition of “social equity” that includes those communities disproportionately harmed by cannabis-related enforcement, including rural and tribal communities, to help facilitate cannabis business ownership.
- Include a variety of license types with lower barriers of entry to facilitate a diverse and inclusive cannabis marketplace. These licenses can include microbusinesses, non-storefront retailers, and cannabis consumption lounges.
- Provide culturally competent technical assistance to social equity applicants.
- Provide financial assistance in the form of fee waivers, low-interest or no-interest loans, and grants to ensure social equity operators have adequate access to capital to run a successful business.
- Publish an annual report on the demographics of cannabis license ownership and other equity indicators related to the cannabis industry.
- Create an incubator or accelerator program to support social equity applicants and licensees through mentorship with other businesses.

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### Examples and Best Practices from Other Markets

#### Creating a Formal Definition of “Social Equity”

##### Objective

The State should establish a formal social equity definition to determine who qualifies to receive benefits from the social equity program. Eligibility qualifications should aim to include those disproportionately impacted by cannabis criminalization. “Disproportionately Impacted” should be defined in terms of socio-economic factors and areas of concentrated over-policing based on outdated cannabis enforcement policies.

##### Examples

Example 1: Los Angeles, California (Local) - [L.A. Municipal Code, Ch. 10, Art. 4, Sec. 104.20](#)

The Cannabis Social Equity Program adopts a three-tier licensing framework and sets forth the following criteria, obligations, and benefits for each tier:

“Tier 1” applicants must be either low income and have a prior California cannabis conviction or, low income and have resided for at least five years in a disproportionately impacted area and own at least 51% equity share of the business. Tier 1 participants receive business, licensing, and compliance assistance; expedited renewal processing; program site specific conditions; the potential for fee deferrals if the City adopts a fee deferral program; and access to an Industry Investment Fund, if established.

“Tier 2” applicants must be either low income and have resided for at least five years in a disproportionately impacted area or, have resided for at least ten years in a disproportionately impacted area. Tier 2 participants must own at least 33 1/3 % equity share of the business and must enter into a Social Equity Agreement with the City to provide business, licensing, and compliance assistance to Tier 1 participants. Tier 2 participants receive business, licensing, and compliance assistance; expedited renewal processing; and program site specific conditions.

“Tier 3” applicants must enter into a Social Equity Agreement with the City to provide capital, leased space, and business, licensing, and compliance assistance to a Tier 1 or Tier 2 applicant. Tier 3 participants receive expedited renewal processing.

The City of Los Angeles defines a “disproportionately impacted area” by examining two criterias within Police Reporting Districts that have both:

- greater number of cannabis arrests than the City overall and
- 60 percent of low income households

Example 2: New York - [Senate Bill 854](#)

New York’s “social and economic equity plan” has not officially launched but is already a strong model to look towards because of their ambitious goals of having 50% of licenses go to eligible social equity applicants.

The State of New York defines a social and economic equity applicant as

- individuals from communities disproportionately impacted by the enforcement of cannabis prohibition;
- minority-owned businesses;
- women-owned businesses;
- minority and women-owned businesses
- distressed farmers, and
- service-disabled veterans.

The state intends to give licensing priority to New York residents that demonstrate that an applicant:

- A. is a member of a community disproportionately impacted by the enforcement of cannabis prohibition;
- B. has an income lower than eighty percent of the median income of the county in which the applicant resides; and
- C. was convicted of a marihuana-related offense prior to the effective date of this chapter, or had a parent, guardian, child, spouse, or dependent, or was a dependent of an individual who, prior to the effective date of this chapter, was convicted of a marihuana-related offense.

Example 3: San Francisco, California (Local) - [SF Police Code, Art. 16, Sec. 1604](#)

The Equity Program sets forth equity criteria, half of which Equity Applicants must satisfy. The equity criteria include:

1. Have a household income below 80% of the average median income (AMI) in San Francisco for 2018. This amount is calculated based on how many people are in your household;
2. Have been arrested for or convicted of the sale, possession, use, manufacture, or cultivation of cannabis (including as a juvenile) from 1971 to 2016;
3. Have a parent, sibling or child who was arrested for or convicted of the sale, possession, use, manufacture, or cultivation of cannabis (including as a juvenile) from 1971 to 2016;
4. Lost housing in San Francisco after 1995 through eviction, foreclosure or subsidy cancellation;
5. Attended school in the San Francisco Unified School District for a total of 5 years from 1971 to 2016;
6. Have lived in San Francisco census tracts for a total of 5 years from 1971 to 2016 where at least 17% of the households had incomes at or below the federal poverty level.

## Include a Variety of License Types with Lower Barriers to Entry

### Objective

To promote a diverse and inclusive cannabis marketplace, New Mexico regulators should consider adopting a non-storefront retail license and reserving licenses for social equity qualified applicants. Non-storefront retailers store their inventory in depot-like headquarters and sell cannabis to consumers exclusively via delivery. Because non-storefront retailers do not need to maintain a public-facing storefront, the start-up costs are lower. License models that require lower start-up costs, such as microbusinesses, non-storefront retailers, and cannabis consumption lounges, make it easier for less-capitalized entrepreneurs to participate in the cannabis market. To further ensure diversity in cannabis business ownership, New Mexico regulators should consider reserving a set percentage of non-storefront retail licenses for social equity applicants or adopting an exclusivity period, where all non-storefront licenses are reserved for social equity applicants for a set amount of time.

Example 1: California - [Cannabis Retailer \(Non-Storefront\) Fact Sheet](#)

**Retail Non-Storefront License:** Sells cannabis goods to customers exclusively through delivery. A retailer non-storefront must have a licensed premises to store the cannabis goods for delivery. The premises of a non-storefront retailer shall not be open to the public.

Example 2: Massachusetts- [3-Year exclusivity period on delivery licenses for social equity applicants](#)

#### (11) Marijuana Delivery Operator.

(d) Delivery Operator Licenses shall be limited on an exclusive basis to businesses controlled by and with majority ownership comprised of Economic Empowerment Priority Applicants or Social Equity Program Participants for a period of 36 months from the date the first Delivery Operator Licensee receives a notice to commence operations; provided, however, that the Commission may vote to extend that period following a determination that the goal of the exclusivity period to promote and encourage full participation in the regulated Marijuana industry by people from communities that have previously been disproportionately harmed by Marijuana prohibition and enforcement of the law has not been met; and the Commission may vote to expand eligibility for Delivery Licenses during the exclusivity period pursuant to 935 CMR 500.050(11)(d)4.

Example 3: Nevada - AB 341 - [Cannabis Consumption Lounge Licenses: Mandates that half of all independent cannabis consumption lounges be awarded to qualified social equity applicants.](#)

“Cannabis consumption lounge” means:

1. A retail cannabis consumption lounge; or
2. An independent cannabis consumption lounge.

“Independent cannabis consumption lounge” means a business that:

1. Is licensed by the Board pursuant to NRS 678B.250;
2. Is not attached or immediately adjacent to an adult-use cannabis retail store; and
3. Allows single-use cannabis products or ready-to-consume cannabis products to be consumed on the premises of the business by persons 21 years of age or older.

Ready-to-consume cannabis product” means an adult-use edible cannabis product that is:

1. Prepared on the premises of a cannabis consumption lounge;

2. Presented in the form of a foodstuff or beverage;
3. Sold in a heated or unheated state; and
4. Intended for immediate consumption.

“Retail cannabis consumption lounge” means a business that:

1. Is licensed by the Board pursuant to NRS 678B.250;
2. Is attached or immediately adjacent to an adult-use cannabis retail store; and
3. Allows single-use cannabis products or ready-to-consume cannabis products to be consumed on the premises of the business by persons 21 years of age or older.

“Single-use cannabis product” means a type of cannabis or adult-use cannabis product, other than a ready-to-consume cannabis product, that the Board has determined to be appropriate for consumption in a cannabis consumption lounge.

## Providing Technical Assistance to Social Equity Applicants and Licensees

### Objective

Given the cannabis industry's high level of regulatory oversight, entering the industry as either a license holder or employee is incredibly burdensome. Offering technical assistance and other services throughout the application process is critical for expanding market participation. More generally, state and local governments should make intentional efforts to simplify and streamline application processes as well as provide ongoing support for social equity operators. Such efforts will broaden market participation and remove duplicative regulatory hurdles that can severely undermine the establishment of a regulated cannabis market.

### Examples

Example 1: Massachusetts - [935 CMR 500](#)

Massachusetts' adult-use laws state that the Social Equity Program established by the Cannabis Control Commission must provide training and technical assistance to eligible applicants and licensees which may include, but is not limited to:

1. Management, recruitment and employee trainings;
2. Accounting and sales forecasting;
3. Tax prediction and compliance;
4. Legal compliance;
5. Business plan creation and operational development;
6. Marijuana industry best practices; and
7. Assistance with identifying or raising funds or capital.

Example 2: Los Angeles, California (Local) - [City of Los Angeles Municipal Code, Ch. 10, Art. 4, Sec. 104.20](#)

California provides local jurisdictions with funding for social equity programs that provide technical assistance for eligible applicants. Los Angeles' Department of Cannabis Regulation mandates that their social equity program provide business, licensing and compliance assistance.

"The Department Cannabis Regulation shall provide Business, Licensing and Compliance Assistance through programming and curriculum development and training in the areas of state and local licensing requirements, commercial cannabis regulations, general business development, cannabis-specific business development and workforce development."

## Providing Financial Assistance in the Form of Fee Waivers, Low-Interest or No-Interest Loans, and Grants

### Objective

The capital requirements to run a cannabis business are often the biggest hurdle to overcome for prospective social equity operators. The highly regulated cannabis industry has unique compliance needs, numerous licensing and application fees, costly security and ventilation requirements, and more - all the while without access to traditional banking and financial services.

Applicants face significant financial hurdles to starting a cannabis business, from high application and license fees to costly security and ventilation requirements. Further, cannabis businesses lack access to traditional banking and financial services due to cannabis' status as an illegal Schedule I substance on the federal Controlled Substances Act. Providing social equity operators with financial assistance, such as fee waivers and no-interest loans, in lieu of traditional investors and loans is an essential part of leveling the playing field for social equity operators.

#### Example 1: Oakland California (Local) - [Workforce Development Grant Program](#)

The City of Oakland advances workforce development opportunities in the cannabis industry for those most harmed by the war on drugs through \$1,000,000 in grant funds received from the State's Bureau of Cannabis Control (BCC) and the Governor's Office of Business and Economic Development (Go-Biz). Specifically, the Cannabis Workforce Development Grant Program will provide up to \$50,000 for each equity applicant that recruits, trains, and retains a qualified and diverse workforce. This program can serve as a win-win for equity business owners and employees by:

- Supporting equity business owners as they grow their business; and
- Offering equity employees with the training and experience needed to place them on the path to high-quality, well-paying jobs. within the cannabis industry or in other industries beyond the one-year grant period.
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#### Example 2: New York - [Marihuana Regulation and Taxation Act](#)

##### § 10. Powers and duties of the cannabis control board.

The cannabis control board or "board" shall have the following functions, powers and duties as provided for in this chapter:

To advise the office of cannabis management and/or urban development corporation in making low interest or zero-interest loans to qualified social and economic equity applicants as provided for in this chapter.

##### § 16-ee. Loans to social and economic equity applicants.

The corporation is authorized, on the recommendation of the state cannabis control board, to provide low interest or zero-interest loans to qualified social and economic equity applicants and to provide funds necessary for the provision of such loans.

Example 3: Washington - [RCW 43.330.540](#)

1. The marijuana social equity technical assistance competitive grant program is established and is to be administered by the department.
2. The marijuana social equity technical assistance competitive grant program must award grants on a competitive basis to marijuana retailer license applicants who are social equity applicants submitting social equity plans under RCW 69.50.335. The department must award grants primarily based on the strength of the social equity plans submitted by applicants but may also consider additional criteria if deemed necessary or appropriate by the department. Technical assistance activities eligible for funding under the marijuana social equity technical assistance competitive grant program include, but are not limited to:
  - A. Assistance navigating the marijuana retailer licensure process;
  - B. Marijuana-business specific education and business plan development;
  - C. Regulatory compliance training;
  - D. Financial management training and assistance in seeking financing; and
  - E. Connecting social equity applicants with established industry members and tribal marijuana enterprises and programs for mentoring and other forms of support approved by the [Washington state liquor and cannabis] board.
3. Funding for the marijuana social equity technical assistance competitive grant program must be provided through the dedicated marijuana account under RCW 69.50.540. Additionally, the department may solicit, receive, and expend private contributions to support the grant program.
4. The department may adopt rules to implement this section.

Example 4: Michigan - [Regulation and Taxation of Marijuana Act \(MRTMA\) Section 8](#)

The State's social equity program provides eligible applicants with various fee reductions throughout the application process and for license renewals.

- Residency – 25% fee reduction for residency in a disproportionately impacted community for at least 5 cumulative years of the last 10 years.
- Marijuana-Related Conviction – 25% fee reduction for having been convicted of a marijuana-related misdemeanor OR 40% fee reduction or having been convicted of a marijuana-related felony.
- Caregiver – 10% fee reduction for registration as a primary caregiver under the Michigan Medical Marijuana Act for at least 2 years between 2008-2017

Applicants/licensees who qualify for the maximum fee reduction receive a 75% reduction in their application and annual licensing fees. An applicant can meet any of the above criteria and be eligible for the associated fee reduction, regardless of where they reside in Michigan.

## Publish an Annual Report on the Demographics of Cannabis License Ownership

### Objective

As a starting point, it is incredibly important to mandate that the regulatory body overseeing a new cannabis market records data on who is participating in the industry—both at the licensee level and the employee level. New Mexico already mandates within House Bill 2 that the Cannabis Control Division annually publishes a report on the demographics of license applicants. The data from these reports can help identify barriers for market participation, adopt diversity licensing goals, and ultimately broaden participation in the legal market from these underrepresented groups.

### Examples

Example 1:

#### SECTION 3.F. DIVISION, POWERS AND DUTIES -- RULEMAKING--ADVISORY COMMITTEE--CREATED--MEMBERSHIP DUTIES

The division shall promulgate rules that are consistent with industry standards relating to cannabis training and education programs, including:

The division shall collect and publish annually on the division's website, and present to the appropriate interim committee of the legislature, a report describing demographic data on license applicants, controlling persons and employees of cannabis establishments, including race, ethnicity, gender, age, residential status and whether the applicants, persons, employees or the locations where the cannabis products are produced, manufactured, sold, tested or researched are located in an underserved rural community, including tribal, acequia, land grant-merced or other rural historic communities.

Example 2: New York - [Marihuana Regulation and Taxation Act](#)

§ 10.17: Powers and duties of the cannabis control board. The cannabis control board or "board" shall have the following functions, powers and duties as provided for in this chapter:

To draft and provide an annual report on the effectiveness of this chapter. The annual report shall be prepared, in consultation with the division of the budget, the urban development corporation, the department of taxation and finance, the department of health, department of agriculture and markets, office of addiction services and supports, office of mental health, New York state police, department of motor vehicles and the division of criminal justice services. The report shall provide, but not be limited to, the following information:

- (a) the number of registrations, licenses, and permits applied for by geographic region of the state; the number of registrations, licenses, and permits approved or denied by geographic region of the state;
- (b) the economic and fiscal impacts associated with this chapter, including revenue from licensing or other fees, fines and taxation related to the cultivation, distribution and sale of cannabis for medical and adult-use and cannabinoid hemp and hemp extract in this state;
- (c) specific programs and progress made by the cannabis control board and the office of cannabis management in achieving the goals of the social and economic equity plan, and other social justice goals including, but not limited to, restorative justice, minority- and women-owned businesses, distressed farmers and service disabled veterans;

- (d) demographic data on owners and employees in the medical cannabis, adult-use cannabis and cannabinoid hemp and hemp extract industry;
- (e) impacts to public health and safety, including substance use disorder;
- (f) impacts associated with public safety, including, but not limited to, traffic-related issues, law enforcement, under-age prevention in relation to accessing adult-use cannabis, and efforts to eliminate the illegal market for cannabis products in New York;
- (g) any other information or data deemed significant; and
- (h) the board shall make recommendations regarding the appropriate level of taxation of adult-use cannabis, as well as changes necessary to: improve registration, licensing and permitting; promoting and encouraging social and economic equity applicants; improve and protect the public health and safety of New Yorkers; improve access and availability for substance abuse treatment programs; and any other recommendations deemed necessary and appropriate. Such a report shall be published on the office's website and presented to the governor, the majority leader of the senate and the speaker of the assembly, no later than January first, two thousand twenty-three and annually thereafter.

## Establishing an Incubator or Accelerator Program

### Objective

Incubator and accelerator programs can potentially offer prospective social equity operators with mentorship opportunities from experienced business owners, technical assistance to run a successful and compliant business, and cost-savings on office and administrative needs. Few jurisdictions have attempted to create incubator programs as a tool to provide resources for social equity applicants to thrive in the already competitive cannabis market.

#### Example 1: Colorado - [Code of Colorado Regulations](#)

HB 1424 enables a social equity licensee to participate in the state's accelerator program which is managed by the Colorado Office of Economic Development and International Trade. Colorado's accelerator program pairs low-income social equity applicants with existing cannabis businesses to provide them with support services, mentorship programs and financial incentives/waivers. The state's accelerator program provides new licensees with financial incentives and pairs them with established businesses for education and mentorship.

#### Example 2: New York - [Senate Bill 854](#)

§ 87. Social and economic equity, minority and women-owned businesses, distressed farmers and service-disabled veterans; **incubator program**. The board, in consultation with the chief equity officer and executive director, and after receiving public input shall create and implement a social and economic equity plan and actively promote applicants from communities disproportionately impacted by cannabis prohibition, and promote racial, ethnic, and gender diversity when issuing licenses for adult-use cannabis related activities, including mentoring potential applicants, by prioritizing consideration of applications by applicants who are from communities disproportionately impacted by the enforcement of cannabis prohibition or who qualify as a minority or women-owned business, distressed farmers, or service-disabled veterans. Such qualifications shall be determined by the board, with recommendations from the state cannabis advisory board, the chief equity officer and executive director, by regulation.

#### \*Example 3: Oakland, California - [Cannabis Ordinance 5.80 and 5.81](#)

The city of Oakland allows for an existing cannabis business to serve as an Equity Incubator by providing free real estate or rent to an Equity Applicant who obtains a cannabis permit. Oakland's cannabis regulations reward General applicants that provide this space and "incubate" Equity applicants with technical assistance. In return, the established businesses receive renewal priority over other general applicants as well as some financial incentive from the Office of Economic Development and International Trade.

#### \*Lessons Learned:

Although Oakland attempted to provide technical assistance through the creation of an incubator program, Oakland applicants are now facing issues pertaining to the rollout of the program. Some applicants have reported predatory practices, high interest loans, and a lack of office space after the agreements between incubator businesses have expired. It is vital for lawmakers to be aware of these issues and to provide culturally competent technical assistance with state oversight and reasonable protections for social equity applicants.