



September 1, 2021

Senate Majority Leader Chuck Schumer
322 Hart Senate Office Building
Washington, DC 20510

Senator Cory Booker
717 Hart Senate Office Building
Washington, DC 20510

Senator Ron Wyden
221 Dirksen Senate Office Building
Washington, DC 20510

Re: Comments in Response to the Cannabis Administration and Opportunity Act (CAOA)

Dear Senators Schumer, Booker, and Wyden:

The Marijuana Justice Coalition thanks you for your efforts to end the prohibition of cannabis at the federal level and to undo the criminalization that has inflicted harm on communities of color in the United States for decades. The Marijuana Justice Coalition is a broad coalition of national advocacy organizations, convened by the Drug Policy Alliance, who have joined forces to advocate for federal cannabis reform through a racial and economic justice lens.

It is time for Congress to act to end the War on Drugs, to halt the federal government's failed approach to cannabis, and to repair the harm caused to individuals and communities. We appreciate the opportunity to comment on the CAO A discussion draft and look forward to meeting and working with the sponsoring offices to build upon this effort.

Below are our comments in response to the discussion draft:

Overall Framing and Approach

The regulatory approach taken by the CAO A is generally modeled on the federal approach taken to regulate alcohol and tobacco. While the CAO A includes critical elements to end federal criminalization and to undo and repair many of the harms resulting from criminalization, it seeks to regulate cannabis like a vice, meaning a consumer product with potential harms to public health and huge economic potential.

We recommend an approach that does not just include reparative justice, health equity, and community reinvestment as a subset of a larger policy reform, but rather an approach where these components are the *primary* goal. Cannabis is not alcohol or tobacco. It is something

different. Its health profile is different. The harm caused by decades of prohibition is different. And the complexity of state policy that must align with federal reform in a workable fashion is different. While there are important lessons to draw from the regulation of alcohol and tobacco, this is an opportunity to build a new model for cannabis; to create a better approach.

There is no reason why federal cannabis reform must allow for unrestrained commercial opportunity, unlimited commercialization, and unrestricted interstate commerce. The goals for federal reform should be clearly articulated--health, equity, economic justice, community reinvestment--and the policy design should be primarily focused on achieving these goals.¹

Decriminalization of Cannabis, Recognition of State Laws Controlling Cannabis

Descheduling (Sec. 101)

- We support the removal of cannabis from the Controlled Substances Act and the transfer of jurisdiction away from the DEA to the FDA, TTB, and other federal agencies as appropriate.
- We support making all the changes in the CAO A retroactive.

Special Rule for Federal Employee Drug Testing (Sec. 101(e))

- We oppose the continued inclusion of cannabis for the purpose of drug testing federal employees and recommend the removal of this provision. This policy unfairly and unnecessarily harms law abiding federal employees, harms federal agencies by depriving them of otherwise qualified, high performing employees, and lacks any evidentiary basis.

Agency Function (Sec. 102)

- We recommend the creation of a central office that oversees the entire federal cannabis regulatory program that is focused on ensuring equity and that is responsible for evaluating outcomes. The role of the Cannabis Justice Office that is created in Sec. 110 to oversee the Community Reinvestment Grant program could be expanded to oversee and coordinate the role of all the relevant federal agencies in implementing the CAO A so that justice and equity are centered and initially considered in all aspects of reform.
- The mission and directive of all federal agencies should be realigned to achieve the goals of the CAO A, including the Office of National Drug Control Policy and all other agencies that touch or enforce existing cannabis laws and regulations in any manner.

¹ In 2021, the Drug Policy Alliance convened a working group made up of current and former cannabis regulators, public health professionals, criminal justice reform advocates, and social equity industry leaders in order to determine what federal cannabis regulations grounded in justice and social equity should look like. The working group released its *Principles for Federal Cannabis Regulations & Reform* in April 2021. Separate recommendations from the working group are forthcoming. You can learn more here: <https://drugpolicy.org/press-release/2021/04/federal-cannabis-regulations-working-group-releases-its-principles-federal>.

States' Rights (Sec. 111)

- We support the recognition of state law as controlling.
- We recommend increased deference to state law in terms of state law protections for personal possession, home cultivation, and medical cannabis use. We support decriminalizing personal possession and policies that allow for home cultivation and robust medical cannabis programs at the state level.
- We recommend a framework that allows state programs to foster and grow small businesses and social equity programs.

Diversion of Cannabis (Sec. 112)

- We oppose the creation of a federal offense for activities related to 10 pounds or more of cannabis without state authorization with a penalty of 5 years and \$10,000. The creation of a new criminal offense will lead to increased rates of criminalization and incarceration and there lacks any evidence that criminalizing this activity will achieve an identified outcome. We recommend considering civil penalties instead of criminal penalties.
- We recommend robust consideration and exceptions from regulatory track, trace, and taxation requirements for noncommercial cultivation allowed under state laws and state medical cannabis programs. This issue is alluded to in Sec. 112(b)(6) but these activities need to be more concretely and comprehensively protected.

Research, Training, and Prevention

Social Impact of Cannabis Legalization Study (Sec. 201)

- We support the intention to collect data and study the outcomes of federal cannabis law reform. However, the scope should be more expansive and study a broader range of issues. The evaluation should include outcomes related to:
 - Law enforcement spending and policing practices
 - Disparate impact in enforcement, school discipline, and health outcomes
 - Social equity program outcomes
- We recommend that DUI research include clarity and direction as to how impaired driving data is compiled and that an assessment of impaired driving is scientifically established rather than equating impairment with a positive test for THC.
- We recommend that baseline data is collected and produced by relevant agencies prior to the implementation of federal reform.
- We recommend that the required report under Sec. 201(b) be made available and accessible to the public.

Public Health Research (Sec. 202)

- We recommend that the required report under Sec. 202(d) be made available and accessible to the public.

Cannabis-Related Highway Safety Research (Sec. 203)

- We support comprehensive DUI research but it must include clarity and direction as to how impaired driving data is compiled and that an assessment of impaired driving is

scientifically established rather than equating impairment with a positive test for THC. “Cannabis-related motor vehicle accident” should not include an accident where the only evidence that cannabis was involved is a positive THC test as that indicates only that the driver consumed cannabis in the previous days or weeks, not that the driver was impaired at the time of the accident.

- Baseline data should be collected and produced by relevant agencies prior to the implementation of federal reform.

Restorative Justice and Opportunity Programs

Opportunity Trust Fund Program (Sec. 301)

- We support expanding the role of the Cannabis Justice Office (Sec. 110) to oversee and coordinate the implementation and administration of the CAO across all federal agencies to ensure justice and equity are centered throughout.

Comprehensive Opioid, Stimulant, and Substance Use Disorder Program (Sec. 302)

- We support increased funding for opioid use disorder and substance use disorder. However, these funds should not be used to divert more people into the criminal justice system, including drug courts. Rather, funds under this program should be limited to supporting education and health services. For instance, we support limiting funding under this program specifically for the purposes set out in 34 US Code § 10701 (3) to provide training and resources for first responders on carrying and administering opioid overdose reversal drugs and (5) to develop, implement, and expand medication-assisted treatment programs.

Demographic Data of Cannabis Business Owners and Employees (Sec. 304)

- We recommend that the Bureau of Labor Statistics also collect data on the applications for cannabis business licenses so that the issuance and denial of licenses in terms of demographics can be properly evaluated.

Resentencing and Expungement (Sec. 311)

- We recommend that in addition to receiving notification of expungement, each individual should receive a certificate of expungement so that the individual has a formal record of what occurred.
- We recommend that the sentencing review and expungement should apply to all cannabis convictions and adjudications, not just those that are “non-violent.” (Sec. 311(b)).
- We recommend making resentencing hearings automatic rather than upon motion from the individual seeking relief. (Sec. 311(b)(1)).
- The CAO does not address relief for individuals whose prior cannabis convictions and adjudications were used to increase statutory penalties for non-cannabis offenses. We recommend that these individuals should have an opportunity to seek a reduced sentence.

- The CAO A does not address relief for persons convicted of non-cannabis offenses whose prior cannabis convictions and adjudications were used to inflate the Criminal History Category under the Federal Sentencing Guidelines. We recommend that these individuals should have an opportunity to seek a reduced sentence.
- We recommend that persons convicted of non-cannabis offenses should have an opportunity to seek a reduced sentence if their sentencing range was increased under the Federal Sentencing Guidelines based on uncharged cannabis-related conduct.
- We recommend adding a provision to the section on the effect of expungement that prohibits the government from using information contained in a person's expunged record to deny a Federal public benefit and adding a provision that states that a record that is subject to expungement under the CAO A cannot be considered accurate or reliable. (Sec. 311(c)).
- We recommend not excluding individuals who received an aggravating role adjustment pursuant to the United States Sentencing Guideline 3B1.1(a) in relation to a federal cannabis offense conviction from eligibility for expungement of that conviction. (Sec. 311(d)). It is a misconception that individuals who receive this adjustment are necessarily part of a large-scale drug trafficking operation. The aggravating role adjustment encompasses operations where as few as five participants are involved in the activity.
- We recommend that the required report and demographic study on individuals convicted of federal cannabis offenses be made publicly available. (Sec. 311(g)).
- We recommend that individuals who resentence and expunge their convictions pursuant to this bill be refunded all fines and fees associated with the convictions.
- We appreciate that the CAO A does not impose criminal penalties for minors in possession. State and federal governments have reduced tobacco use by minors without imposing criminal penalties. Cannabis retailers have a much better underage ID check compliance rate than tobacco retailers. Ultimately, we believe that the responsibility to prevent underage cannabis use should continue to fall on cannabis retailers rather than on individuals.

No Discrimination in the Provision of a Federal Public Benefit on the Basis of Cannabis (Sec. 312)

- We recommend that the language clarify that the protection for federal benefits applies retroactively and include past cannabis use and convictions prior to the enactment of the CAO A and that the CAO A prevents the denial of benefits based on state law cannabis convictions (in addition to federal cannabis convictions.) (Sec. 312(a)).
- We recommend stating that individuals who were denied federal benefits in the past based on cannabis can now re-apply with no penalties.

No Adverse Effect for Purposes of the Immigration Laws (Sec. 313)

- We recommend clarifying that this section is retroactive and also explicitly including a vehicle (i.e. a special motion to reconsider a removal order) for immigrants to clear past cannabis-related removal orders. Thus, someone who has already been ordered removed or denied entry based on cannabis-related conduct or a cannabis-related conviction prior to the enactment of the CAO A would now have their cases decided

under the CAO. If already deported, they would have an opportunity to be permitted to re-enter.

Taxation of Cannabis

Imposition of Tax (Sec. 5901)

- We support the scaling of the tax over the first years of implementation and the reduced rate of tax for the first \$20 millions in sales. We recommend a further reduction in the rate of tax using this same formula.
- We also encourage the use of taxes to support state social equity programs, small businesses, innovative approaches that reduce commercialization, and alternative ownership models, including for example:
 - A new tax based on dollars spent on advertising and marketing
 - A tax on interstate commerce
 - A corporate surtax on profits
 - A reduced tax for state-run establishments and other alternative ownership models, such as worker cooperatives

Exceptions from the Tax (Sec. 5902)

- We support the exception for the definition of “producer” to create a “personal use exception” to the taxation and registration requirements. (Sec. 5902(b)(2)(B)). The non-commercial production of cannabis should be protected. However, we recommend deferring to state law guidelines for what constitutes non-commercial home cultivation in states that have chosen to protect this activity. The exception should apply to the parameters and allowable amounts set under state law in states where those limits exceed the amount set by the Secretary.
- We recommend additional exceptions to the federal tax requirements for state medical cannabis programs, especially those providing cannabis at reduced cost to low income patients. Nonprofit groups, collectives, and cooperatives that are providing medical cannabis consistent with state regulatory programs should be exempted from the tax in order to protect the important role these entities play in providing medical cannabis to low income people. (Sec. 5904).
- We recommend that patients be able to deduct their medical cannabis expenses from their taxes. The federal government should encourage health insurers to provide reimbursements and should cover medical cannabis under Medicare and Medicaid.

Exemptions from the Bond Requirement (Sec. 5911)

- There also must be exceptions to the bond requirements for personal production and state medical cannabis programs, especially those providing cannabis at reduced cost to low income patients. Nonprofit groups, collectives, and cooperatives that are providing medical cannabis consistent with state regulatory programs should be exempted from the bond requirements in order to protect the important role these entities play in providing medical cannabis to low income people. (Sec. 5904).

- At a minimum, businesses should have at least two years after the effective date of the bill to meet any bonding requirements.

Civil Penalties (Sec. 5931) and Criminal Penalties (Sec. 5932)

- We recommend that tax penalties should be targeted at the largest actors in the unregulated market and not used as a mechanism to add enforcement and criminal penalties to low level activity that remains prohibited by the states and remains subject to enforcement by the states.
- We recommend that tax penalties involve administrative sanctions and civil fines, but not incarceration.

Opportunity Trust Fund (Sec. 9512)

- We recommend that the required study concerning the characteristics of the cannabis industry be made publicly available. (Sec. 9512(c)).

Public Health, Cannabis Administration, and Trade Practices

Cannabis Products Advisory Committee (Sec. 1111)

- We recommend that the membership of the cannabis products advisory committee be racially, culturally, and regionally diverse, and include representation from those with expertise in medical cannabis as used under existing state medical cannabis laws.

Amendments to the Federal Food, Drug, and Cosmetic Act (Sec. 502)

- These amendments prohibit the sale of cannabis to anyone under the age of 21. (Sec. 502(b)). We recommend providing an exception to this age restriction for medical cannabis patients under the age of 21 who are using cannabis in accordance with state law. There will be many desperate families and children cut off from the medicine they are currently using to manage a range of serious medical conditions if an exception to the age restriction is not included. Adults 18 and older, but under 21, who have a physician's recommendation should be able to purchase medical cannabis without a parent or guardian. Along these lines, the federal government should not require parents of minors to get recommendations from more than one doctor, as it prevents patient access especially for low income families.

Federal Cannabis Administration

Procedure for Issuance of Cannabis Permits (Sec. 302)

- A violation of Federal or State criminal law related to cannabis is a disqualification to federal permitting if the violation occurred after the date of the CAO A enactment and within the past 3 years of application. (Sec. 302(a)(2)). We recommend that this disqualification be limited to more serious cannabis offenses and particularly that it exclude low level cannabis offenses in states where cannabis remains illegal under state law. One of the most effective mechanisms for reducing the illicit cannabis market is to bring as many people as possible under the umbrella of legal regulation. Denying a

permit is an invitation for an individual to keep operating illegally. Granting a permit is an invitation to join the legal, regulated system to the benefit of everyone.

- Businesses with existing state licenses should have two-year grace period after the date of enactment.

Finally, while not directly addressed in this public draft, the Marijuana Justice Coalition stands behind ensuring fair labor practices and environmental responsibility in the emerging cannabis industry. More than 321,000 individuals are already a part of this multi-billion dollar industry and that number is sure to grow when cannabis is no longer prohibited at the federal level. The CAO must ensure that all cannabis jobs throughout the industry classify their workers as employees with the full rights and protections of the National Labor Relations Act (NLRA) and Fair Labor Standards Act (FLSA), including the right to join a union as well as wage and hour protection. It must make cannabis industry apprenticeships eligible for federal funding, giving the industry a skilled and well-trained workforce with the opportunity for advancement. These apprenticeship programs must also support the inclusion of individuals most impacted by cannabis prohibition.

The Environmental Protection Agency should have authority to apply and enforce existing rules and regulations when it comes to environmental practices of the cannabis industry. Federal incentives for registrants who adopt beneficial environmental approaches, such as solar energy, should be created. At a minimum, energy efficiency and environmental tax credits made available to non-cannabis businesses that either have already expired or will expire prior to the enactment of CAO should be offered to cannabis businesses for a period of two years after enactment.

As we move forward, it is necessary that the Senate work alongside the House, as well as the Marijuana Justice Coalition and other key stakeholders, to ensure we build a bill that is greater than the sum of our parts. We encourage the Senate to hold a hearing on the issue of federal cannabis reform this year in order to inform our work on this bill moving forward.

Thank you for the opportunity to review and provide feedback on this discussion draft. We look forward to working with your offices to develop a just and equitable path forward. For questions about anything contained in this letter, please contact Maritza Perez, Director of the Office of National Affairs of the Drug Policy Alliance, at mperez@drugpolicy.org.

Sincerely,

American Civil Liberties Union
Center for American Progress
Doctors for Cannabis Regulation
Drug Policy Alliance
Human Rights Watch
Immigrant Defense Project

Immigrant Legal Resource Center (ILRC)
JustLeadershipUSA
Minorities for Medical Marijuana
MoveOn
The National Council for Incarcerated and Formerly Incarcerated Women and Girls
National Immigration Project of the National Lawyers Guild
NORML
Students for Sensible Drug Policy
UFCW
Veterans Cannabis Coalition

CC:

House Judiciary Committee
House Energy and Commerce Committee
House Ways and Means Committee
House Agriculture Committee
House Education and Labor Committee
House Small Business Committee
House Natural Resources Committee
House Oversight and Reform Committee
House Transportation and Infrastructure Committee