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August 31, 2021

The Honorable Chuck Schumer  
Majority Leader  
U.S. Senate  
Washington, DC 20510

The Honorable Ron Wyden  
Chairman  
U.S. Senate  
Washington, DC 20510

The Honorable Cory Booker  
U.S. Senate  
Washington, DC 20510

U.S. Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510-6200

Comments on the *Cannabis Administration and Opportunity Act* Discussion Draft

***Via Electronic Mail:*** [Cannabis\\_Reform@finance.senate.gov](mailto:Cannabis_Reform@finance.senate.gov)

Dear Senator Schumer, Senator Wyden, and Senator Booker:

Thank you for the opportunity to comment on the *Cannabis Administration and Opportunity Act* discussion draft. DC Fiscal Policy Institute (DCFPI) is a nonprofit organization that promotes budget and policy choices to address DC's racial and economic inequities and to build widespread prosperity in the District of Columbia, through independent research and policy recommendations.

DCFPI developed three principles to guide DC's path toward the complete legalization of its recreational cannabis industry with a reparative focus on Black and brown communities most harmed by criminalization and the failed War on Drugs. These principles are to address historic and current harm; design a cannabis industry that fosters racial inclusion; and devote cannabis tax revenue to build community wealth.<sup>1</sup> These principles should also apply to federal legislation.

While there are components of the discussion draft that DCFPI supports—most notably the removal of cannabis as a Schedule I substance under the Controlled Substances Act, which should allow DC to move forward with recreational cannabis sales and regulations—DCFPI encourages the sponsoring offices to incorporate several improvements based on our principles.

**Address Historic and Current Harm:**

The legacy of the failed War on Drugs has resulted in innumerable harms to generations of families throughout the U.S. – in particular, to low-income people and Black and brown communities.<sup>2</sup>

Because of this, decriminalization and legalization efforts must seek sufficient redress for both current and generational harm caused by cannabis criminalization.

Several provisions within the discussion draft fail to sufficiently address the level of harm resulting from the War on Drugs. First among them, the discussion draft should establish an automatic expungement process for those *formerly* incarcerated and/or arrested for federal, nonviolent cannabis-related offenses. Currently, the discussion draft language only establishes an automatic expungement process for those currently convicted and arrested for federal, non-violent cannabis-related offenses. Rather than making expungement automatic, it requires that those currently under a criminal justice sentence file a petition for expungement. Filing an expungement petition is not only cost-prohibitive for many individuals, but this process is often a lengthy process – requiring individuals to wait months before they receive a decision regarding their petition, which can ultimately be denied.<sup>3</sup>

Additionally, a finalized version of this bill should ensure access to federal public benefits for those who were arrested, yet not convicted, of a federal, nonviolent cannabis-related offense. As it is currently drafted, only those convicted on the “basis of use or possession of cannabis” are protected from being denied federal public benefits. This is particularly concerning given that individuals who are merely arrested – but not convicted – are often barred from receiving federal public benefits (such as public housing) for a period of time following their arrest.<sup>4</sup> Similarly, the discussion draft provides that the Comptroller General compile accurate demographic data on cannabis-related convictions yet does not require this data for cannabis-related arrests. Given the lasting harm of cannabis criminalization imposed on those convicted *and* arrested for nonviolent, cannabis-related offenses, this measure should also require the Comptroller General to collect comprehensive data related to federal, nonviolent cannabis-related arrests.

In drafting cannabis reform provisions, the legalization of the cannabis market alone is not enough to address the harms of cannabis criminalization. Thus, a restorative approach must be a leading component within federal comprehensive cannabis reform, even prior to full legalization.

### **Design a Cannabis Industry that Fosters Racial Inclusion:**

Given the recognition of harm inflicted upon Black and brown communities through cannabis prohibition, states that choose to transition to a legalized cannabis industry should take a restorative approach to ensure that those most harmed by the failed War on Drugs have the greatest opportunity to succeed in the legal market. This is particularly important given the extremely high barriers to entry within the legal cannabis industry. For example, in Pennsylvania, potential cannabis growers must pay a \$10,000 non-refundable application fee, along with a \$200,000 deposit just to apply.<sup>5</sup> Financial barriers such as these are even more restrictive for Black and brown communities given that the median wealth for white families is nearly 13 times the median wealth of Black families and 10 times that of Hispanic families in the United States.<sup>6</sup>

The proposed Equitable Licensing Program provides incentives to states and localities that implement provisions to reduce barriers to entry for communities disproportionately impacted by cannabis prohibition, but it lacks more direct measures to eliminate barriers to entry for these communities. For example, the federal government could adopt a strategy similar to New York’s, which requires half of all cannabis licenses to be granted to those disproportionately harmed by

cannabis criminalization (also known as social equity applicants).<sup>7</sup> Stronger mandates such as this would help ensure the legalized industry is racially inclusive.

### **Devote Cannabis Tax Revenue to Build Community Wealth:**

The federal government should explicitly use cannabis tax revenue to administer the new law and benefit individuals and communities disproportionately targeted and harmed by criminalization and the War on Drugs. The discussion draft includes potential support for the Community Reinvestment Grant Program, grants and loans to socially and economically disadvantaged individuals and individuals adversely affected by the War on Drugs, and potential research funds for Historically Black Colleges and Universities. However, it does not stipulate that these programs will be funded with federal cannabis tax revenue, nor are these programs sufficient direct support for Black and brown communities.

The federal government is uniquely positioned to explore the issuance of reparations in the form of direct assistance to Black and brown people for the harms caused by targeted criminalization and associated collateral consequences that have reduced people's abilities to be hired for a job, secure housing, and receive federal financial aid, among other opportunities, throughout and beyond the failed War on Drugs. DCFPI applauds creative efforts like those in Evanston, Illinois where policymakers are attempting to administer reparative measures on the local level; however, scholars like Dr. William Darity, Jr. and A. Kirsten Mullen have made the case that only the federal government is capable of fully paying for reparations, which would require some \$14 trillion.<sup>8</sup> The federal government can devote revenue generated through the *Cannabis Administration and Opportunity Act* to communities most harmed. The profits of a legal cannabis industry that yielded over \$17.5 billion in sales in 2020, should be used to repair harms at both the federal and state levels.<sup>9</sup>

The discussion draft proposes an excise tax on cannabis products of 10 percent for the year of enactment and the first full calendar year after enactment. This rate eventually increases to 25 percent by the fourth calendar year. This rate is substantially higher than the cannabis tax that would be imposed by the U.S. House of Representative's proposed *Marijuana Opportunity Reinvestment and Expungement Act*. The House bill would levy a 5 percent tax for the first two years after enactment and increase to just 8 percent over time.<sup>10</sup> The discussion draft's proposed rates are also higher than many states with existing tax rates. The DC Council is proposing a cannabis sales tax rate of 13 percent.<sup>11</sup>

DCFPI cautions the sponsoring offices from setting an unnecessarily high federal cannabis tax rate that would force states to lower their rates and make it harder for them to collect the revenue needed to effectively execute their social equity cannabis programs. The federal government can consider including a credit for states levying their own taxes as a way to mitigate the potential harm of setting a high federal tax rate.

### **Additional Considerations:**

In addition to the aforementioned reforms, there are a number of measures not mentioned within the discussion draft that deserve consideration. Notably, there is no reference to public consumption of cannabis at the federal level. Cannabis-related arrests and convictions data demonstrate that the prohibition of public consumption is among the many pillars which uphold racial disparities within the cannabis industry – even after legalization. For example, four years after legalizing cannabis in DC, 84 percent of all arrests for public consumption were among African-Americans.<sup>12</sup> In

eliminating the racist criminalization within the cannabis industry, the federal government should also explore permitting the use of public cannabis consumption explicitly within the drafting of this legislation.

Additionally, employer mandated cannabis testing continues to serve as a barrier to employment for individuals – even those in states which have a fully legalized market. Currently, there is no reliable test for cannabis impairment as urinalysis measures presence of cannabis – not impairment, frequency, nor amount of use. Many employers continue to use the flawed urinalysis cannabis tests as a condition of employment.<sup>13</sup> While some states and localities have drafted and implemented legislation to prohibit any adverse employment effects for employees who use or possess cannabis outside of work, the bill should also explore employment protections for workers at the federal level.

We thank you again for the opportunity to submit these comments. Please do not hesitate to contact us ([dcrawford@dcfpi.org](mailto:dcrawford@dcfpi.org) and [mjohnson@dcfpi.org](mailto:mjohnson@dcfpi.org)) with any questions.

Sincerely,

*Doni Crawford*

*Michael Johnson, Jr.*

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<sup>1</sup> Doni Crawford, [First in Line: Why the District Must Take a Reparative Approach to Recreational Cannabis Policy for Black and Brown Communities](#), DC Fiscal Policy Institute, February 16, 2021.

<sup>2</sup> Ibid.

<sup>3</sup> David Schlüssel, [Marijuana Legalization and Expungement in Early 2021](#), Collateral Consequences Resource Center, May 5, 2021.

<sup>4</sup> “[No Second Chance](#)”, Human Rights Watch, November 2004.

<sup>5</sup> Rose Hackman, [A billion-dollar industry, a racist legacy: being black and growing pot in America](#), The Guardian, June 15, 2017.

<sup>6</sup> Rakesh Kocchar and Richard Fry, “[Wealth inequality has widened along racial, ethnic lines since end of Great Recession](#),” Pew Research Center, December 2014.

<sup>7</sup> Sabina Morris et. al, [State cannabis reform is putting social justice front and center](#), Brookings, April 16, 2021.

<sup>8</sup> William Darity, Jr. and A. Kirsten Mullen, [Opinion: Evanston, Ill., approved ‘reparations.’ Except it isn’t reparations](#), The Washington Post, March 28, 2021.

<sup>9</sup> Will Yacowicz, [U.S. Cannabis Sales Hit Record \\$17.5 Billion As Americans Consume More Marijuana Than Ever Before](#), Forbes, March 3, 2021.

<sup>10</sup> U.S. House of Representatives, [The MORE Act](#), H.R. 3617 - Re-introduced May 28, 2021

<sup>11</sup> Council of the District of Columbia, [Comprehensive Cannabis Legalization and Regulation Act of 2021](#), B24-0118, Introduced March 1, 2021.

<sup>12</sup> Paul Schwartzman and John D. Harden, [D.C. legalized marijuana, but one thing didn’t change: Almost everyone arrested on pot charges is Black](#), Washington Post, September 15 2020.

<sup>13</sup> Crawford, [First in Line](#), 2021.