

DRUG ENFORCEMENT AND POLICY CENTER

Fair and Square: How to Effectively Incorporate Social Equity Into Cannabis Laws and Regulations

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ABOUT THE AUTHOR

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Shaleen is a frequent lecturer on cannabis policy and has testified in front of governmental bodies around the world about restorative justice in marijuana laws. She has been interviewed by numerous media outlets and she routinely partners with leading drug policy organizations to support drug policy reform. Shaleen holds a business degree, law degree, and graduate degree in accounting.

EXECUTIVE SUMMARY

As states and local jurisdictions implement new laws legalizing marijuana, many have charged regulators with the worthy goal of remedying the injustices of the drug war, a concept known as social equity. Broadly, social equity falls into a few core policy categories: criminal justice reforms, including automatic expungement of past cannabis offenses; reinvesting a percentage of marijuana tax revenue into the most impacted communities; and—the focus of this paper—creating a cohesive cannabis industry licensing framework with special considerations for people affected by the war on drugs.

So far, no program has successfully achieved its social equity goals as originally envisioned. But as each new state studies and incorporates the experiences of those that previously tried, we are seeing remarkable progress with respect to the involvement, inclusion, and support of people who have experienced disproportionate harm from prohibition. This paper is designed to equip readers with practical advice about how to implement social equity. There are three large policy areas regulators have to address as they begin to design a comprehensive social equity policy for their state's cannabis industry: policies around what makes an individual or an entity a social equity applicant, policies around what benefits a social equity applicant should have access to, and licensing policies that will support your community's social equity goals.

I. Who is your social equity program for?

Jurisdictions take varying approaches to who qualifies for social equity programs, but some common themes have emerged.

- **Residence in 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 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, but 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 will need to determine which businesses are eligible, especially when a business is owned by multiple people. 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.

II. What benefits do eligible participants receive?

Social equity programs can provide a range of business benefits including funding, technical and legal assistance, business incubation, and other services. The programs should take into account that participants may be interested in different types of involvement with the cannabis industry beyond ownership and design benefits to address these different needs.

- **Access to capital.** States should provide funds for grants and forgivable loans for social equity businesses. Initial funding must be available *before* applications for licenses are released, to allow for outreach and technical assistance.
- **Access to property.** Regulators should encourage reasonable zoning requirements to avoid unreasonable prices for suitable real estate. Separately, states should allow and incentivize shared commercial kitchens and cultivation spaces for social equity program participants, further reducing barriers to entry.
- **Technical assistance and wraparound benefits, including legal and accounting services.** Social equity programs should offer a variety of technical assistance with applications, compliance, and operation of a business.
- **Workforce development.** Social equity programs should offer different types of workforce training and job placement for workers who are not seeking business ownership.
- **Fee waivers.** Fee waivers/discounts should be available for application fees, licensing fees, software fees, any mandatory inventory tracking fees, site review fees, and background check fees. Given that equity applicants are frequently small businesses, fee discounts can range from smaller discounts to full waivers depending on the size of the business and the type of license being sought.

- **Advantages in the licensing process.** Some states with competitive licensing processes offer social equity applicants additional points when scoring applications. Others offer priority or expedited review of social equity applications. Both can be valuable if they are combined with well-designed licensing policies and other types of assistance.
- **Exclusive access to a pool of licenses or a specific license type.** In some municipalities certain licenses or a portion of certain licenses are reserved for social equity applicants. Such policies mean exclusive access for eligible applicants to certain types of licenses, such as home delivery, until it can be determined that the people most affected by the drug war are meaningfully included in the industry.
- **Design different “tracks” of benefits.** Different applicants may have different interests in the industry, such as ownership, jobs, executive positions, or entrepreneurship in related industries. Coordinate with other parts of government to ensure cannabis tax revenue is used to benefit people in disproportionately harmed communities who are not interested in the cannabis industry.

III. Principles for creating an effective licensing program

- **Hire the right people.** Recognize that regulators, early hires, and municipal officials all play significant roles in equity outcomes. They should be appointed or hired with relevant experience in mind whenever possible and provided with specific guidance and model policies concerning equity.
- **Give yourself time.** Instead of arbitrary deadlines, policymakers should develop timelines based on a thorough understanding and estimate of the work involved, especially the work involved in creating fair access.
- **License sequentially.** Plan to issue licenses sequentially so that a certain number of businesses owned by equity program participants must be open and serving customers before other businesses can open.
- **Limit big business but do not cap the total numbers of licenses available.** Set reasonable limits on how many businesses someone can own or control. This helps prevent large businesses licensed early in the process from dominating the market before others even have a chance to start up. Avoid unnecessary barriers that would hinder social equity businesses more than others.
- **Provide guidance to local governments.** Issue an equitable model ordinance for municipalities as soon as possible. Often, municipal officials make decisions that favor large, wealthy operators out of inertia, not intention. Giving them an easy alternative to adopt could go a long way.
- **Consider alternative enforcement measures for unlicensed operators.** In Los Angeles, municipal laws allow for [utility disconnection](#) and [padlocking or barricading](#) property where unlicensed commercial cannabis activity occurs, as an alternative to criminal enforcement.

Jurisdictions with social equity programs must continuously assess their programs’ results and consider participant feedback in order to determine areas of success and opportunities for adjustment. Approaches used in other jurisdictions should be investigated as part of a regular review and adjustment process.

INTRODUCTION: HOW WE GOT HERE

As states and local jurisdictions implement new laws legalizing marijuana, many have charged regulators with the worthy goal of remedying the injustices of the war on drugs—a concept known within the cannabis industry as social equity. So far, no program, including the one I worked on as a Massachusetts cannabis commissioner, has successfully achieved its social equity goals as envisioned by the people we serve. But as each new state studies and incorporates the experiences of those that previously tried, we are seeing remarkable progress with respect to the involvement, inclusion, and support of people who have been harmed by the war on drugs. This paper aims to provide policymakers and other readers with practical advice on how to construct effective social equity policies for their cannabis industries.

When I was appointed to the Massachusetts Cannabis Control Commission in 2017, I was charged with leading the development of policies and programs generally referred to as “social equity.” Social equity has various definitions, but in marijuana policy specifically, the term refers to attempts to acknowledge the harm done by the war on drugs to certain communities—most often Black and brown communities—and the various programs and provisions intended to address that harm. Broadly, social equity falls into three core policy categories: criminal justice reforms, including automatic expungement of past cannabis offenses; reinvesting a percentage of marijuana tax revenue into the most impacted communities; and—the focus of this paper—creating a cohesive cannabis industry licensing framework with special considerations for people affected by the war on drugs.

The purpose of this paper is to share lessons learned from my tenure on the commission and to equip citizens and policymakers with better tools to analyze, plan, and implement workable policies around equity and cannabis. These policies have the most impact when they're enacted early in the process, yet there is little broad familiarity with the policies currently in place and even less understanding of the results they're producing. Moreover, there is still no standard model that meets the typical objectives of policymakers charged with shaping these fledgling programs.

The following recommendations are mine alone, based on my experience as a cannabis commissioner in Massachusetts as well as my close contact with policymakers and people directly affected by social equity policies around the country. A note about the limited value of personal reflection: it quickly becomes clear to anyone who attempts to research social equity programs that such programs vary wildly in approach, goals, implementation, and—maybe most importantly—data collection and evaluation. Officials and the public need better information to make the most informed and effective decisions. This will require an interstate investment in collecting and sharing uniform, consistent data on cannabis policies and outcomes. Personal reflections and recommendations have value, but they are not a replacement for objective, comparable data that policymakers need in order to consider how different experiments in legalization are actually turning out.

GROUNDING PRINCIPLES FOR LAUNCHING AN EQUITY PROGRAM

Though the majority of this paper focuses on social equity policy framework for the cannabis industry with a special attention to licensing considerations, that is only one of the key foundational ideas that should inform an approach to social equity. Below are a few principles in which policymakers and regulators should ground their social equity programs:

- A. Acknowledge government's role** – Begin by acknowledging that government policies created the harms associated with the war on drugs and thus it is the responsibility of government to repair them. Legalization alone does not solve the problem and expecting private companies to address these harms is unrealistic and misplaced.
- B. Social equity is everyone's responsibility** – Recognize the responsibility of people in government to educate themselves about the war on drugs and its lasting impacts on affected communities. Leaders who neglect to educate themselves on these issues, or who set aside racial justice for one department or one group (usually a group of people of color) to work on, create a recipe for failure.
- C. Listen to impacted communities** – Listen to people from the impacted communities. Center efforts around their priorities initially and respond to their feedback over time. Building effective social equity policies is an iterative process, not a onetime fix.
- D. Address continuing disparities in cannabis arrests** – Take steps to identify whether racial disparities in cannabis arrests continue after legalization and how to minimize them.
- E. Expunge records** – Make expungement of past cannabis offenses as effortless as possible, better yet, advocate for making it automatic. Expungement of criminal records is key to minimizing the collateral consequences of past convictions. (The Collateral Consequences Resource Center has an [overview](#) of marijuana expungement laws across the country¹ and finds [California's](#) program most notable.²)
- F. Invest part of marijuana revenue in impacted communities** – Designate a percentage of marijuana tax revenue to the most impacted communities and develop a fair and transparent way to appropriate and distribute it regardless of their interest in becoming part of the cannabis industry. ([Illinois](#),³ [New York](#),⁴ and [New Jersey](#)⁵ have dedicated 25%, 40%, and 70%, respectively, of their marijuana tax revenue to harmed communities.⁶)

¹ Schlüssel, David. "Marijuana expungement accelerates across the country." Collateral Consequences Resource Center, November 20, 2020. <https://ccresourcecenter.org/2020/11/20/marijuana-expungement-accelerates-across-the-country/>.

² "California becomes third state to adopt 'clean slate' record relief." Collateral Consequences Resource Center, October 10, 2019. <https://ccresourcecenter.org/2019/10/10/california-becomes-third-state-to-adopt-clean-slate-record-relief/>.

³ Restore, Reinvest, and Renew (R3) Program. Illinois Justice Project. <https://www.iljp.org/r3program>.

⁴ "What is in the Law: Social and Economic Equity." New York Office of Cannabis Management. https://cannabis.ny.gov/system/files/documents/2021/09/cannabis-management-fact-sheet-9-21-social-equity-04_0.pdf.

⁵ Amol Sinha, "Finally, Marijuana Is Legal! Now, Let's Build an Equitable and Inclusive Market." NJ.com, February 22, 2021, <https://www.nj.com/opinion/2021/02/finally-marijuana-is-legal-now-lets-build-an-equitable-and-inclusive-market-opinion.html>.

⁶ The same type of policy can be implemented at the city level; [Evanston](#), IL, explicitly uses its local cannabis taxes for reparations and Portland, OR, has awarded over \$1.5 million to nonprofit initiatives through its [SEED Grant Fund](#).

Evanston Local Reparations. City of Evanston. <https://www.cityofevanston.org/government/city-council/reparations>.
SEED Initiatives. City of Portland Cannabis Program. <https://www.portland.gov/civic/cannabis/seed>.

CREATING A COMPREHENSIVE SOCIAL EQUITY FRAMEWORK FOR CANNABIS INDUSTRY

There are three large policy areas regulators have to address as they begin to design a comprehensive social equity policy for their state's cannabis industry: policies around what makes an individual or an entity a social equity applicant, policies around what benefits a social equity applicant should have access to, and licensing policies that will support your community's social equity goals. But before we address these three policy areas in turn, there is one additional consideration that is key to a successful implementation of social equity policy for cannabis industry: hiring the right team for the job.

Every regulating agency is given wide authority to carry out the corresponding cannabis statutes. The type of person in government who reads this—and that of their legal counsel—will determine how this authority is interpreted. You can decide your jurisdiction ends at rubber-stamping perfect license applications, or you can interpret it to mean you will set up all necessary structures to ensure impacted communities are included in the industry. Or anything in between. That is why it is important to advocate for bold and culturally competent regulators, including people from impacted communities or with experience serving them. It is also why I tell new regulators that the most important and impactful choices they will make in their first year is their top staff hires. General counsel, human resources directors, outreach directors, chiefs of staff, directors of licensing—these positions hold enormous power over the success of an equity program, and they face only a fraction of public scrutiny that people in elected or appointed positions receive. It is important for members of the public who care about racial justice to pay attention to these hiring decisions and convey their importance to officials.

Who is your social equity program for?

Typically, social equity programs aim to benefit people or communities “disproportionately harmed by the war on drugs.” Who is that? There is not one universally correct answer to that question, but there are common ways to approach it. Current programs typically define eligibility through a combination of factors seeking to determine whether a person was disproportionately harmed by the war on drugs:

- **Residency⁷ in certain geographic areas** – A common factor considered in eligibility determinations is residence in a geographic area found to be overpoliced based on disproportionately high numbers of arrest or other factors. The geographic areas vary in size. I recommend using census tracts, but local districts might have their own considerations. Regulators should take care to watch the latest legal developments on residence requirements for cannabis businesses.
- **Past drug arrest or conviction** – Other common eligibility criteria is a past drug arrest or conviction, either on the individual's record or that of a parent, child or spouse.
- **Income limitations** are sometimes included, although they can be restrictive in practice 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. Our commission raised the income limit significantly after the first year based on feedback.
- **Public school attendance and housing loss through eviction or foreclosure** is included as an eligibility criteria in [San Francisco](#),⁸ CA, based on public feedback.
- **Race** – Existing research shows that Black and Latinx people, and in some regions Indigenous people, are the most disproportionately affected by drug laws and enforcement.⁹ But using racial preferences in awarding licenses warrants caution.¹⁰ A state may have a stronger case to use race-based criteria if it relies on data on the racial makeup of the cannabis industry rather than arrest data. A less risky option could also be to consider race as one of many qualifying criteria, so that people of any race can potentially qualify for equity status (see [Massachusetts](#) economic empowerment criteria¹¹ for an example).

⁷ Given the rapid changes that tend to take place in overpoliced areas due to gentrification, many equity programs allow flexibility in residency (for example, requiring residency in an area for 5 of the previous 10 years).

⁸ Equity Applicant. San Francisco Office of Cannabis. <https://officeofcannabis.sfgov.org/equity/applicant>.

⁹ “A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform.” American Civil Liberties Union, 2020.

https://www.aclu.org/sites/default/files/field_document/marijuanareport_03232021.pdf.

¹⁰ In [PharmaCann Ohio, LLC v. Ohio Department of Commerce](#) (2018), a court held that Ohio's quota setting 15% of licenses for minority-owned businesses was unconstitutional.

PharmaCann Ohio, LLC v. Ohio Department of Commerce (Court of Common Pleas, Franklin County, Ohio, 2018), 17CV010962.

Available at <https://cdn.vanderbilt.edu/vu-my/wp-content/uploads/sites/2523/2018/11/14143008/Pharmacann-Ohio-v.-Ohio-Dept-Commerce-Summary-Judgment-Ruling.pdf>.

¹¹ Equity Programs: Certified Economic Empowerment Priority Applicants. Massachusetts Cannabis Control Commission.

<https://masscannabiscontrol.com/equity-programs/#economic-empowerment-applicants>.

A crucial consideration in social equity program eligibility is who runs these businesses. Eligibility factors typically apply to individuals but benefits like access to licenses or technical assistance apply to businesses, not individuals. Therefore, a social equity program will need to determine which businesses are eligible, especially when a business is owned by multiple people. I recommend significant benefits¹² only apply to businesses controlled by and with majority ownership by people who qualify for the social equity program. If a program allows benefits for companies merely 51% “owned” by social equity participants, that can let in companies that are technically owned by social equity participants but in fact channel revenue to another party who controls the business in practice.¹³ And if a program awards benefits to companies for merely hiring people from disproportionately harmed communities as low-wage employees, that may defeat the purpose of having a social equity program.

Ultimately, transparency and documentation are key. Many communities feel that they have faced significant consequences of targeted, unfair drug laws and policing practices. It is crucial that everyone has the opportunity to be heard and considered. One of the most beneficial initial steps jurisdictions can take is to commission an independent study to identify which communities throughout that jurisdiction have been disproportionately harmed by prohibition (often called an “impact study”).¹⁴ There’s no need to wait until a law passes to do that, and in fact, such a study can inform the law and encourage citizens from identified communities to become engaged earlier. No matter what eligibility criteria a program chooses, it will face pushback from those who disagree. Transparency and documentation are important tools in preparation for potential lawsuits filed to undermine or delay implementation of social equity programs.

What benefits do eligible participants receive?

In addition to designing effective licensing policies as will be discussed later on in this paper, social equity programs can provide a range of other business benefits including funding, technical and legal assistance, business incubation, and other services. The programs should take into account that participants may be interested in different types of involvement with the cannabis industry beyond ownership and design benefits to address these different needs.¹⁵ The below listed benefits should be taken as a whole—just one missing element can negatively impact a program’s success.

- **Access to capital.** With cannabis federally illegal, even state-legal businesses are unable to obtain loans through traditional methods. This means operators with existing wealth or connections are more likely to obtain a license and open a successful business. States should address this directly by creating grants and forgivable loans for social equity businesses. Initial funding must be available *before* applications for licenses are released, to allow for outreach and technical assistance.¹⁶ States should keep capital costs fair by keeping the barriers to entry low, including designing the application process to avoid making applicants pay rent before the business is building out or operating.¹⁷ This is important—deciding whether a location is required in order to receive a provisional license could

¹² Less significant benefits, such as expedited review, can be offered to companies at least 10% owned by social equity program participants to incentivize ownership as compensation.

¹³ You can get a sense of the common forms of control that attempt to circumvent ownership limits in a Massachusetts [fraud warning memo](#) issued in 2019. Or just ask a social equity participant in any jurisdiction about the predatory offers they have received. The approaches change frequently and require constant diligence by regulators and a culture in which participants feel safe reporting attempts to circumvent ownership and control limits.

Memorandum: Fraud Considerations. Massachusetts Cannabis Control Commission, November 19, 2019. <https://mass-cannabis-control.com/wp-content/uploads/Considerations-for-SEP-and-EE-members.pdf>.

¹⁴ For examples of what studies on geographic disproportionately impacted areas might look like, you can look at the initial [study](#) identifying cities and towns in Massachusetts, a follow-up [study](#) identifying census tracts within the biggest cities, and ongoing discussion regarding a more thorough study.

Gettman, Jon B. “The Impact of Drug and Marijuana Arrests on Local Communities in Massachusetts.” *Massachusetts Cannabis Control Commission, December 8, 2017.* <https://masscannabiscontrol.com/wp-content/uploads/2017/12/Impact-of-Drug-and-Marijuana-Arrests-on-Local-Communities-in-Massachusetts.pdf>.

Gettman, Jon B. “The Impact of Drug and Marijuana Arrests Within the Largest Cities of Massachusetts.” *Massachusetts Cannabis Control Commission, January 8, 2018.* <https://masscannabiscontrol.com/wp-content/uploads/2018/01/010918CNB-Impact-Arrests-Largest-Cities-MA.pdf>.

Cannabis Control Commission head presses to add Lawrence as area disproportionately impacted by marijuana prohibition.” *State House News Service, September 17, 2021.* <https://whdh.com/news/cannabis-control-commission-head-presses-to-add-lawrence-as-area-disproportionately-impacted-by-marijuana-prohibition/>.

¹⁵ In our initial listening sessions in Massachusetts, we learned we needed to add a fourth track for people who wanted to own ancillary businesses not licensed by the commission.

¹⁶ This initial funding can eventually be paid back with cannabis tax revenue but waiting until cannabis tax revenue is available defeats the purpose of the program and will cost far more in the long run.

¹⁷ For examples, see the West Hollywood, CA, local licensing process, “conditional” licensing in New Jersey, or delivery “pre-certification” licensing in Massachusetts.

Cannabis Business License Types and Screening Application. City of West Hollywood. <https://www.weho.org/home/showpublisheddocument/35305/636498937479570000>.

mean the difference between a business's success or failure.

- **Access to property.** The struggle to obtain property is consistently one of the most difficult barriers for small entrepreneurs in the cannabis sector. Regulators should encourage reasonable zoning requirements to avoid unreasonable prices for suitable real estate. As the cartoonist Box Brown describes it in his comic [Legalization Nation](#), “Because of the limited availability and zoning laws, the properties and licenses are now worth a lot of money . . . the profit made on these sales dwarfs cannabis sales. The money companies receive from patients and consumers is chump change, totally superfluous to their business plan.”¹⁸ This situation can be avoided if local officials have access to reliable data and model zoning ordinances that allow zoning in the same business zones as other businesses¹⁹ and encourage equity²⁰. Separately, states should allow and incentivize shared commercial kitchens and cultivation spaces for social equity program participants, further reducing barriers to entry.
- **Technical assistance and wraparound benefits, including legal and accounting services.** Social equity programs offer a variety of technical assistance with applications, compliance, and operation of a business. Ideally, the assistance will be provided by companies with expertise in the subject matter and experience working with disadvantaged people. Many social equity programs partner with local law school [clinics](#) and business schools²¹ to offer technical assistance to participants while allowing students to gain valuable supervised experience. Governments may need to select a variety of vendors in an open bidding process and should take care that the vendors are not in business relationships with participants. If that is not possible, officials must require all relationships are disclosed to avoid conflicts.
- **Workforce development.** Social equity programs should offer different types of workforce training and job placement for workers who are not seeking business ownership. One innovative and impactful model is the [Oakland Workforce Development Grant Program](#), which provides up to \$50,000 for each equity applicant that recruits, trains, and retains a qualified and diverse workforce.²² Such model benefits the people who want to be entrepreneurs as well as the workers who want adequate training and fair pay.
- **Fee waivers.** All social equity programs I know include some type of an application fee waiver or discount. This is a concrete benefit, especially considering that typical application fees are prohibitively high. But application fee is just a small percentage of total capital requirements for most operators. Fee waivers/discounts should thus be available for application fees, licensing fees, software fees, any mandatory inventory tracking fees, site review fees, and background check fees. Given that equity applicants are frequently small businesses, fee discounts can range from smaller discounts to full waivers depending on the size of the business and the type of license being sought.
- **Advantages in the licensing process.** Some states with competitive licensing processes offer social equity applicants additional points when scoring applications.²³ Others offer priority or expedited review of social equity applications. Both can be valuable if they are combined with well-designed licensing policies and other types of assistance.
- **Exclusive access to a pool of licenses or a specific license type.** In Oakland and Boston, 50% of dispensary permits are reserved²⁴ for social equity applicants. These policies reflect what is referred to as a one-to-one ratio

Summary of Initial Rules for the Personal-Use of Cannabis. New Jersey Cannabis Regulatory Commission.

<https://www.nj.gov/cannabis/documents/rules/Final%20Rule%20Summary.pdf>.

Guidance on Licensure. Massachusetts Cannabis Control Commission, January 2020. https://mass-cannabis-control.com/wp-content/uploads/200825_Guidance_on_Licensure.pdf.

¹⁸ Brown, Brian Box. *Legalization Nation*, May 18, 2021. <https://twitter.com/boxbrown/status/1394709620728467459>.

¹⁹ For example, see [marijuana zoning bylaws and table of use regulations](#) in Uxbridge, MA.

Zoning Bylaws. Town of Uxbridge. https://www.uxbridge-ma.gov/sites/g/files/vyhlf3971f/uploads/zbl10.23.2018_2.pdf.

²⁰ For example, see [ordinance](#) initially limiting cannabis business permits to certain priority groups in Cambridge, MA. Ordinance No. 1409. City of Cambridge.

https://www.cambridgema.gov/~media/Files/CDD/EconDev/Cannabis/190923_cannabisbusinesspermittingordinance1409.pdf.

²¹ For example, see Boston University's "Marketing and Social Equity in the Cannabis Industry" Cross-College Challenge [course](#).

Cross-College Challenge (XCC). BU Hub. Boston University. <https://www.bu.edu/hub/cross-college-challenge-xcc/>.

²² Workforce Development Grant Program. City of Oakland. <https://www.oaklandca.gov/services/workforce-development-grant-program>.

²³ Many states also offer additional points for diversity in ownership or employment, but such policies are outside the scope of this paper as representation and diversity are distinct from social equity programs that specifically seek to repair the harms of the war on drugs. For example, diversity programs rightfully encourage hiring women and Asian-Americans, but there is no statistical evidence that women or Asian-Americans have been disproportionately harmed by the drug war relative to other populations.

²⁴ Jurisdictions use different methods to award licenses reserved for social equity applicants. Some use a competitive process, some award licenses on a first-come first-served basis, and some use a lottery. At this time, I haven't seen evidence that one method leads to better results than another, but in a year that may change.

licensing policy.²⁵ In Cambridge, MA, 100% of retail approvals for a certain period are issued only to economic empowerment (similar to social equity) applicants. In Massachusetts, Los Angeles, and Denver, delivery licenses for a certain period are reserved for participants in equity programs, known as exclusivity.²⁶ It is too early to make any conclusions about effectiveness, as most of these rules are new and being implemented during the COVID-19 pandemic. But to me, leveling the playing field this way is a primary purpose of a social equity program.

A list of program benefits should never be considered complete or static. In Washington state, Oregon, and Colorado, which legalized marijuana without many intentional equity measures, officials are revamping their programs to be more equitable. In Rhode Island, activists are [pushing](#) for a percentage of social equity licenses to be set aside for worker-owned cooperatives.²⁷ Their sound reasoning is that allowing a large number of people of color, working-class, or formerly incarcerated individuals to collectively own a marijuana dispensary delivers far greater benefits than come from a single person of any background running a conventional private business. Jurisdictions that are constantly assessing and revising their programs appear to have the best results.

Principles for creating an effective licensing program

Because licensing provisions ultimately determine the flow of billions of dollars in profit and the future of the legal market, they are worth examining closely. Licensing also tends to be the area where cannabis regulators have the most control and influence. Below, I introduce the most important technical concepts that need to be considered when designing an equity program.

Reasonable timelines for licensing awards

The social equity licensing programs in Massachusetts, Illinois, and Los Angeles are some of the most robust on paper, but so far we have not seen state-designated social equity businesses opening in the numbers that we had hoped for. There are many reasons for this development, but one that is shared among these three jurisdictions is the imposed timeline for licensing awards. Their experience highlights the importance of launching an equity program with both quality and speed. Existing medical dispensary operators were approved to begin sales quickly, while social equity businesses and other marginalized operators faced long waits for approval. The reasons might have varied from coast to coast, but the results are disappointingly consistent.

Typically, state regulators are charged with implementing new marijuana programs both equitably and very quickly. This is unrealistic. Decisionmakers and people seeking to influence them should understand that as timelines for regulators become tighter, they are forced to seek shortcuts. Unrealistic deadlines for regulators have led to complex regulations that are copied from previous states and released without proper deliberation, public input, or guidance. Such regulations are only workable for bigger businesses that have the resources to quickly comply with them. Instead of arbitrary deadlines, policymakers should develop timelines based on a thorough understanding and estimate of the work involved, especially the work involved in creating fair access.

Sequential licensing: who gets licensed first?

Once regulators begin implementing a new marijuana law, the clearest and most important recommendation is for them to issue licenses sequentially, starting with the most marginalized groups. In New York, for example, where regulators have been [tasked](#) with awarding 50% of all adult-use licenses to social and economic equity applicants, regulators should implement this goal by ensuring that those applicants are issued licenses and begin operating first. Only when one equity applicant is operating should a non-equity applicant be able to move forward. This one-to-one opening ratio should be maintained on an ongoing basis: for example, only when ten equity applicants are operating should a tenth non-equity applicant be able to enter the market.

The precise point at which an applicant is considered to be approved or operating for the purposes of a ratio may seem minor or technical, but it has significant practical implications. In Massachusetts in 2017, our commission voted to alternate our

²⁵ One caution with respect to one-to-one ratios is that they can result in a false equivalency between two very different data points; an ongoing conversation in Boston, for example, highlights that a small courier service and a massive downtown dispensary are currently considered equivalent for the purposes of the local ratio requirements.

²⁶ For sample language, see [adult-use regulations](#) 935 CMR 500.050(11)(d) from Massachusetts. *Adult Use of Marijuana. Massachusetts Cannabis Control Commission.* https://masscannabiscontrol.com/wp-content/uploads/2021/05/210416_Adult_Use_Regulations.pdf.

²⁷ Dicupe, Kinverly and Tyler Brown. "Opinion: Marijuana legalization and the case for worker cooperatives." The Providence Journal, March 2, 2021. <https://www.providencejournal.com/story/opinion/columns/2021/03/02/opinion-dicupe-and-brown-marijuana-legalization-and-case-worker-cooperatives/6807824002/>.

review of economic empowerment (similar to social equity) applicants and our pre-approved medical operators, both of which had equal priority in our enabling statute. However, virtually zero economic empowerment applicants were able to take advantage of that benefit. The “priority” review they received by law concluded that they did not have the capital, property, local approval, or other required elements to proceed in time to gain a first-mover advantage. Meanwhile, dozens of existing medical operators used the process to move rapidly through licensing within the first two years. On paper, the two categories of applicants had equal priority, but in practice, the group of pre-approved operators had an enormous advantage over the economic empowerment group.

The available data from Los Angeles and Illinois, and corresponding experiences from intended beneficiaries of those programs, show worryingly similar patterns. In Los Angeles, roughly 200 qualified social equity applicants are poised to receive retail permits but have yet to be approved due to bureaucratic obstacles. In Illinois, the amount of tax revenue received by the state since it legalized in 2019 has broken records—already surpassing that of [alcohol](#)—but so far operators from the existing medical program account for 100% of legal sales. No social equity businesses are currently operating.

The disparity is not for lack of trying. The social equity programs in all of these places have been led by qualified, culturally competent regulators (in full disclosure, we founded an [organization](#) together²⁸). What these programs have lacked instead is systemic support. They also need time to adjust their processes based on initial data. In the past year, in response to feedback, Massachusetts and Los Angeles have expanded their programs to include groundbreaking provisions granting home delivery licenses exclusively to social equity businesses. These are important steps, but it is too early²⁹ to make conclusions about their impact. Jurisdictions should formally recognize and address the concern that it hurts social equity program participants when other operators are able to move forward while the program is starting up.

Restrictions on big corporations

When I became a cannabis regulator, I believed there was room in the legal industry for businesses of all sizes. I figured it would be similar to sectors like beer, which include both large producers and craft brewers. My initial decisions were in line with that philosophy. I still believe that but I have concluded that currently, the only way to ensure participation by small operators is by initially designing and imposing restrictions to keep big corporations from dominating the market.

The advantages held by large operators are undeniable. In addition to every type of systemic privilege that big corporations in other industries enjoy, they also have the money to leverage the rules unique to cannabis. Typically, they buy up the limited real estate options in zones where marijuana businesses can operate, so that no one can open except them. As legalization spreads and matures, big corporations are now hiring former regulators. These sets of visible and behind-the-scenes advantages seem to grow with every new state expansion. Without painting all big businesses with too broad of a brush, it is notable that large marijuana corporations in many states are responsible for efforts to grow these advantages and to undermine the will of voters. In Massachusetts, large marijuana operators have sued the state and at least one city to invalidate its equity policies. The lawsuits have all either failed in court or been dropped due to public backlash, but they nevertheless delayed the programs and caused real harm. Similar lawsuits have plagued many other states.

There are also consistent efforts from large corporations to pass laws and rules that provide them with an unfair market advantage. In Massachusetts, existing medical operators pushed for a provision that would have prioritized fewer than 20 existing medical marijuana companies, concentrating control of the market among just a handful of businesses. In North Carolina, a medical marijuana bill initially [included a provision](#) that would have created an unnecessary barrier requiring five years of experience with state-legal marijuana,³⁰ clearly designed to exclude new entrants from the industry.

In every state that considers legalization, we see similar efforts from existing operators. They seek to be grandfathered in, given priority, secure exclusivity, or invent terms for what is essentially an oligopoly. Both consumers and legislators are beginning to see what a significant problem this is becoming, not just for social equity but also for product quality and consumer choice. Activists in a growing number of states considering legalization, including [Connecticut](#)³¹ and [Delaware](#),³² are fighting against protectionist measures for existing operators.

²⁸ Cannabis Regulators of Color Commission. <https://www.crc-coalition.org>.

²⁹ The first Massachusetts cannabis delivery business began operating in [May 2021](#). *Massachusetts Cannabis Control Commission*. *Twitter*, May 28, 2021. https://twitter.com/MA_Cannabis/status/1398376509187006470.

³⁰ Jaeger, Kyle. "North Carolina Senators Approve Medical Marijuana Legalization Bill In Committee." *Marijuana Moment*, August 24, 2021. <https://www.marijuanamoment.net/north-carolina-senators-approve-medical-marijuana-legalization-bill-in-committee/>.

³¹ CT United for Reform and Equity (CURE CT). *Facebook*. <https://www.facebook.com/CURECT/>.

³² Delaware NORML, Inc. *Facebook*. <https://www.facebook.com/DENORML/>.

My suggestion is simple: do not implement any equity program without including a clear limit on how many licenses one person or entity may own or control, as well as a way to enforce that limit. I would recommend a limit of three licenses of any type as seen below:

No person or entity shall own or control more than 3 marijuana retailer licenses, 3 marijuana producer licenses, 3 marijuana cultivator licenses limited to a total of 100,000 square feet of Canopy. (This is an adapted and combined version of the Massachusetts legalization statute, Section 16 of Chapter 55 of the Acts of 2017, and regulations, 935 CMR 500.050(b)(5).)*

Without a limitation like this, big corporations will obtain multiple licenses, take up limited real estate, begin operating, and dominate the market before most social equity applicants even receive provisional approval. In Massachusetts the state's limit of three licenses per owner succeeded in keeping big companies from dominating the market, giving a chance to the smaller operators that are just now opening. It is one of the few measures that I witnessed working precisely as intended.

To cap or not to cap

An artificially low limit on the number of marijuana business licenses creates a high barrier to entry. When you only issue licenses to a chosen few in a merit-based process, you create a frenzy that raises prices on security, legal services, industry-specific consulting, and all the services necessary to appear as the most qualified applicant. It also puts suitable real estate out of reach for everyone except the wealthiest applicants.

Some jurisdictions, including Arizona and most recently Illinois, have attempted to address this concern by issuing a limited number of licenses by a lottery rather than by a merit-based process. Both states were held up by lawsuits, although, to be fair, merit-based processes are also often held up by lawsuits.

Removing licensing caps altogether may be a better option. There is a convincing argument that jurisdictions that establish no formal social equity program and instead treat cannabis businesses like any other businesses are most successful at including impacted communities in the industry. Oklahoma's medical cannabis industry may be a good example, though the market is still in flux. The state has no limit on the number of dispensaries that can operate, and the application fee and [process](#)³³ are considered by some to be more fair and inclusive than anywhere else in the nation.

I see the situation as another indication that imposing too many hoops to jump through ultimately hinders diverse participation in the industry. With the understanding that we have not yet seen any broadly successful models, perhaps the best bet is to create a program with the lowest possible barriers to entry *and* robust special benefits for impacted communities.

Guidance for local officials

The biggest mistake we made in Massachusetts was allowing municipalities to have control not just over how many cannabis businesses would operate in the community, but also over which businesses would receive local approval. Municipalities became the ultimate decision makers, and somewhere along the way they decided that the state's equity mandate did not apply to them. State regulators and would-be social equity owners from across the country will tell you similar tales.

Taking away municipal control is a political battle that is very difficult to win. In most cases, it is more expedient to pursue three elements of an alternate path:

- In legislation, tie municipal tax revenue to equity goals as clearly as possible. Local governments receive revenue only if they support the legal system, including its equity provisions.
- During implementation, issue an equitable model ordinance for municipalities as soon as possible. This may, but does not necessarily have to, come from an official government source³⁴. A nonprofit or advocacy group³⁵ that provides this guidance early on after a state passes legalization can make a huge impact. Often, municipal officials make decisions that favor large, wealthy operators out of inertia, not intention. Giving them an easy alternative to adopt could go a long way.

³³ Business Application Information. Oklahoma Medical Marijuana Authority. <https://oklahoma.gov/omma/businesses/business-application-information3.html>.

³⁴ For an example, see [Guidance on Equitable Cannabis Policies](#) from Massachusetts. Guidance on Equitable Cannabis Policies for Municipalities. Massachusetts Cannabis Control Commission. https://mass-cannabis-control.com/wp-content/uploads/200825_Guidance_on_Municipal_Equity.pdf.

³⁵ For example, see [model municipal ordinances](#) by the Minority Cannabis Business Association. *Ten Model Municipal Social Equity Ordinances*. Minority Cannabis Business Association, July 1, 2019. <https://minoritycannabis.org/wp-content/uploads/2019/07/July-1-2019-MCBA-s-Ten-Model-Municipal-Social-Equity-Ordinances.pdf>.

- Wherever possible, ensure that any choice that would positively contribute to equity is the municipal default. Reduce the workload and make it easy for a city to allow a reasonable number of cannabis businesses and approve those owned by impacted people first. Make evidence-based zoning ordinances and other equitable policies the local rule by default and allow cities and towns to opt out or adjust if necessary.

CLOSING THOUGHTS

Irrespective of the benefits that an equity program provides to eligible applicants, ongoing communication with participants will be crucial. Equity programs should contain formal mechanisms to at least annually review and adjust the programs based on participant feedback. One way to approach this is to establish cohorts of participants based on when they entered the market. Members of one cohort can share feedback and make suggestions for future cohorts, or they can provide training and mentorship to other participants. People in the Massachusetts social equity program often tell me that membership in a cohort creates a valuable sense of community among the participants.

The success of a social equity program relies largely on the ability of the agency running it to earn and maintain credibility. That can be an uphill battle given the past experience of impacted communities when it comes to government and drugs. Legislators and regulators overseeing social equity programs have to demonstrate—through actions, not just words—that they can be trusted and that their motivations are sincere and lasting.

As you embark on this complicated and fulfilling journey to shape the end of cannabis prohibition, the best advice I can offer is not to go it alone. Policymakers tend to take formal groups and associations more seriously, and it is helpful to work with and talk to other people about this issue. If you are an aspiring entrepreneur, join others and form a trade association. If you are an activist representing consumers, join or start a [NORML](#) chapter and connect with your peers. If you or someone you love is a cannabis patient, join a patient or caretaker group. And if, by some stroke of luck, you're an overwhelmed, under-resourced cannabis regulator of color, join me at the [Cannabis Regulators of Color Coalition](#).

There is power in numbers. Legalization is proof.

If you have educated regulators and local officials designing an evidence-based licensing process that keeps barriers low and delays the participation of large corporations until smaller companies owned by marginalized people are operating first, you have the necessary foundation in place to enact a better social equity program than most that are up and running.