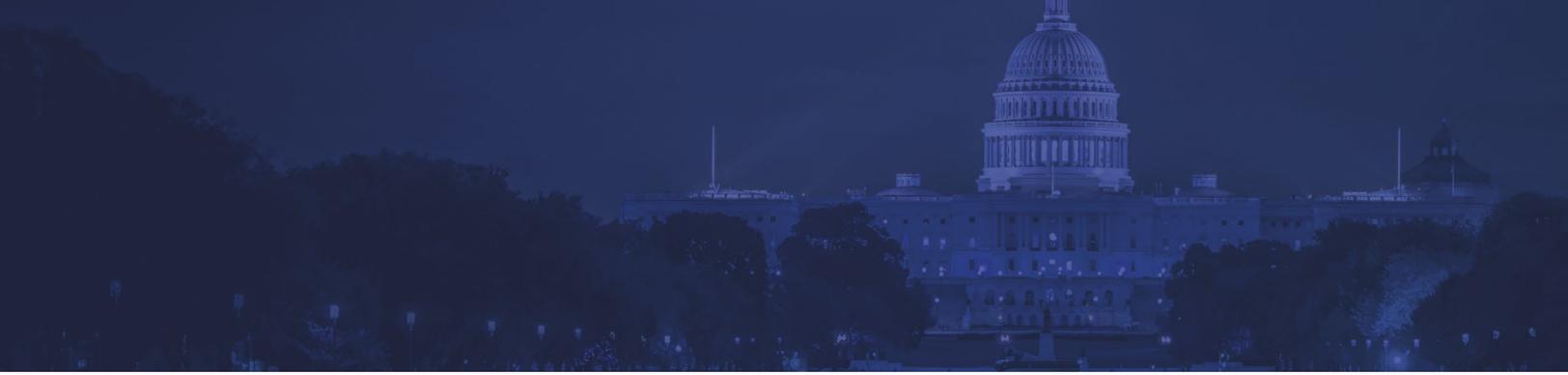




Comments on the *Cannabis Administration and Opportunity Act* discussion draft.



# Introduction

We at the **Coalition for Cannabis Policy, Education, and Regulation (“CPEAR”)** appreciate the leadership and the comprehensive work U.S. Senators Cory Booker (D-NJ), Ron Wyden (D-OR), and Chuck Schumer (D-NY) (collectively referred to herein as the “Sponsoring Offices”) have put into crafting the Cannabis Administration and Opportunity Act (“CAOA”).

As stakeholders in the emerging cannabis industry, CPEAR has crafted the following comments in response to questions proposed in the CAOA discussion draft. We believe this approach prioritizes science and data while making substantial progress on the following issues of vital importance:

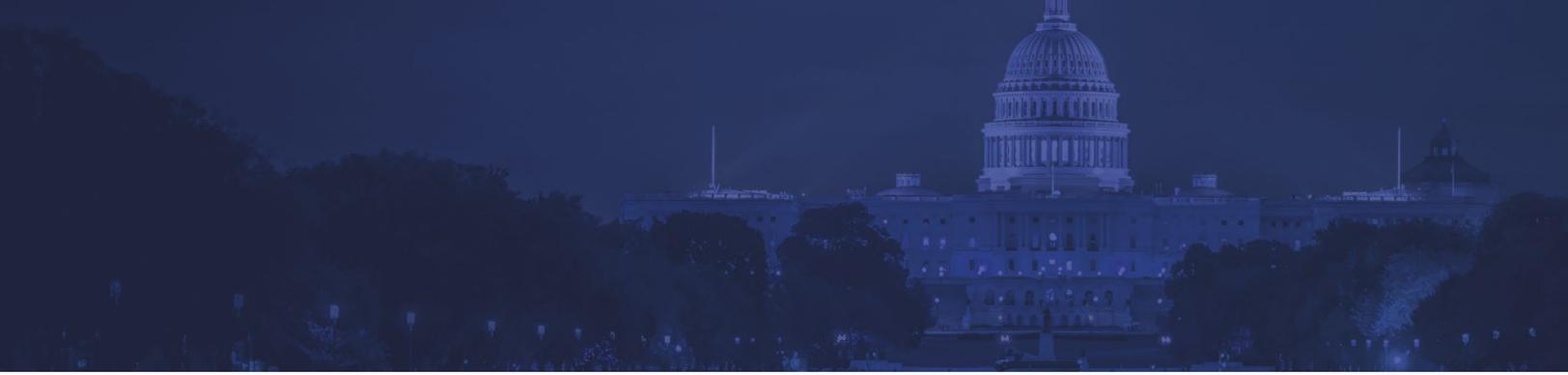
- Removing criminality that currently keeps consumers and businesses in legal peril.
- Creating a national cannabis economy that will create new jobs and revenue.
- Providing substantial opportunities for small and minority-owned businesses.
- Providing consumers and patients with tested, well-manufactured products.
- Creating a regulatory approach focused on responsible use, legitimate medical use, treating substance abuse, and preventing underage use.
- Supporting science and research that can address issues related to driving, workplace safety, public health, and medical benefits.

Our recommendations seek to address the key challenges to achieving these goals, including:

- Positioning the new federal legal marketplace to capture currently illicit sales.
- Respecting the state systems.
- Evolving the federal regulatory system based on science, data, and best practices.
- Providing meaningful economic opportunities for small and minority-owned businesses.

The mission of CPEAR is to advance a comprehensive federal regulatory framework for cannabis. CPEAR strives to be a trusted, science-driven resource for lawmakers and the larger stakeholder community to develop responsible policies that provide access to cannabis products pursuant to science-based standards that protect consumers and patients, prevent underage use, uphold public health and safety, and promote equity.





# The Center of Excellence

Our business members bring immense experience in consumer package goods and possess resources that can help to advance the goals of all stakeholders. But properly regulating cannabis is complex and requires a broad array of social, cultural, economic, and scientific expertise. We have established a multi-stakeholder advisory board to ensure that all voices important to getting this right are represented. The Center of Excellence is composed of individuals who can lend their expertise to CPEAR's deliberations over the best way to regulate cannabis at the federal level. The Center of Excellence includes a diverse set of experts from academia, policy think tanks and public health and safety institutions, small and minority business advocates, environmental specialists, and other experts devoted to the cause of getting cannabis policy right. These advisers have extensive experience with current state-legalized cannabis systems in the United States and thus a unique perspective on what it would take to establish a highly regulated cannabis system at the federal level.

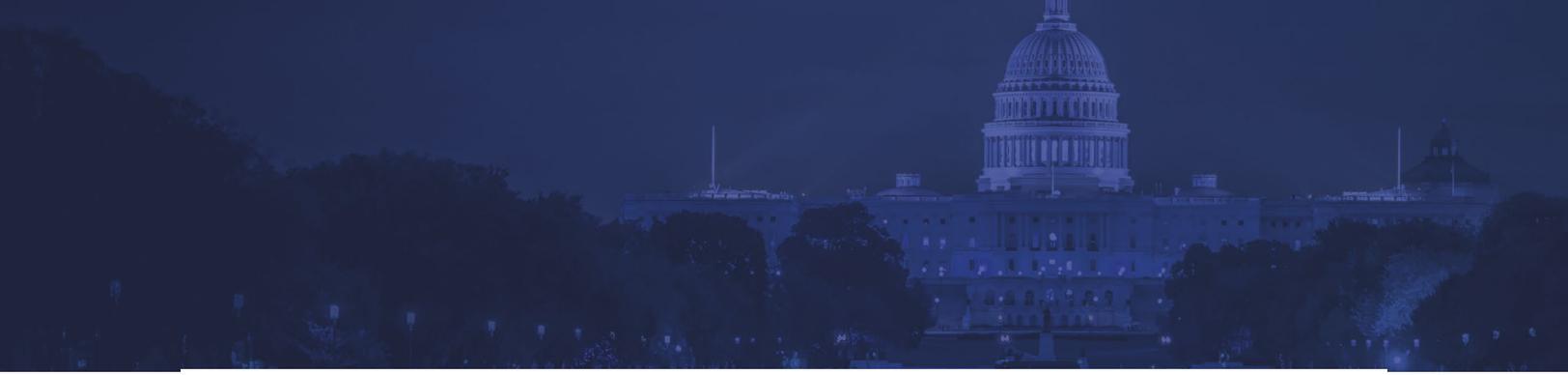
Membership in the Center of Excellence by an individual issue expert does not denote endorsement by any organization. Support for cannabis legalization is not a requirement for Center of Excellence members, and neither the Center as a whole nor individual members are expected to endorse cannabis legalization in general or support any policy solutions presented here or elsewhere.

## Areas of Focus

CPEAR's Center of Excellence is composed of leaders from the United States who are experts on a broad array of issues that will be affected by federal cannabis legalization, including:

- Data and research
- Product composition
- Product delivery
- Driving under the influence of drugs
- Regulatory enforcement
- Criminal justice reform
- Youth prevention
- Mental health treatment and prevention
- Substance abuse treatment and prevention
- Public safety issues
- Legacy and state systems
- Social equity and financing
- Marketing and advertising
- Patient access and medical benefits
- Environmental sustainability

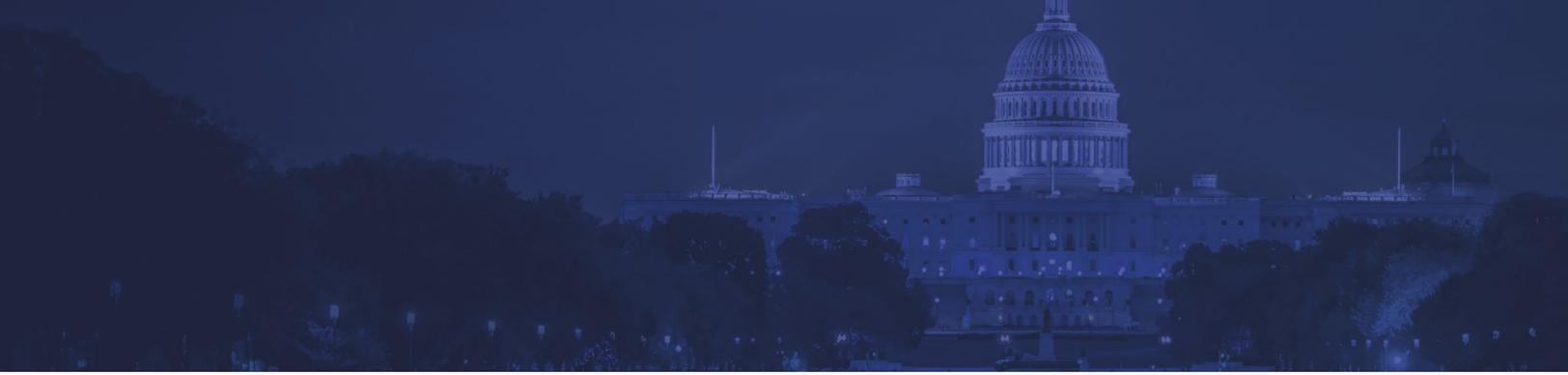
The Center of Excellence seeks to analyze and understand the effect federal cannabis legalization would have on these policy areas and how they should be integrated into a national legal framework.



## Principles

The principles formulated by the Center of Excellence provide an intellectual framework for creating a thoughtful and comprehensive federal regulatory model for cannabis. They include:

- **Good Governance:** The regulatory system should contain only laws, rules, and regulations that are predictable, equitable, achievable, internally consistent, and enforceable. The cannabis industry shall comply with an inventory control, quality control, and quality assurance program. Good governance should include open lines of communication, and constant coordination between all levels of governance throughout the cannabis industry.
- **Youth Use Prevention:** All adult-use cannabis should be limited to those 21 and older. Legalization should draw upon all available best practices for youth use prevention efforts focused on alcohol, tobacco, opioids, and other substances to prevent non-medical underage cannabis use.
- **Substance Use Disorder Treatment and Prevention:** Legalization should draw upon all available best practices for the prevention and treatment of cannabis use disorder, functional substance abuse, and misuse that has a deleterious effect on a consumer's quality of life.
- **Criminal Justice Reform:** We support cannabis legalization approaches that acknowledge and meaningfully address the disproportionate harm criminal prohibition has had, especially on people of color and their communities. We support those who call for the expungement of non-violent, non-cartel-related cannabis criminal records. This approach should exclude automatic expungements of records belonging to repeat violators of impaired driving laws.
- **Social Equity and Inclusion:** We support approaches that provide communities that have borne the cost of criminalization with real access to a legalized cannabis market. And we support the investment of tax revenues generated from a legalized industry into those very communities. We support approaches that remove explicit barriers to entry into the industry that have affected minority communities.
- **Small Businesses:** We support approaches that promote and ensure market access for small businesses in the industry and provides restorative opportunities for communities in which they reside.
- **Promote Research:** Legalization policies should be designed to promote significant growth in properly designed clinical and non-clinical research studies: (1) Cannabis policy should underscore the importance of and expedite critical research required to understand the benefits and harms of cannabis use. (2) Where avoidable harm is demonstrated, the cannabis regulatory system should do whatever is practicable to mitigate that harm. (3) Regulation and incentives should facilitate the development of FDA-approved cannabis and cannabis-derived drugs (e.g., an expedited FDA review process for novel treatments and waiver of requirements that are not necessary to protect public health) while prohibiting



the marketing of cannabis products with medical claims that are not supported by requisite FDA approval.

- **Patient Access:** Patients should not be denied the opportunity to try cannabis because of limited research resulting from decades of federal inaction. However, the industry must guard against unscrupulous actors who may prey on vulnerable patients. Further, a federal framework should ensure that doctors may make appropriate treatment recommendations.
- **Sound Tax Policy:** The cannabis market requires regulation, and that regulation should be funded with reasonable taxes imposed on cannabis and cannabinoid products. But tax policy should strike a balance between generating new revenue and encouraging a responsible and legal industry. Taxes should be set at levels that do not perpetuate the illicit market.
- **Environmental Sustainability:** Legalization regulations should address environmental concerns by promoting sustainable production and water usage, as well as promoting growing practices in a manner that does not lead to negative outcomes for poorer communities. An approach to environmental sustainability should consider the relationship between climate change and economic development and support innovations that promote sustainability.
- **Impaired Driving:** Legalization must include a holistic plan to deal with impaired driving. A federal framework must also include approaches to filling current gaps in impaired driving data with appropriate research studies and fund the development and use of technology for detecting and measuring impairment.

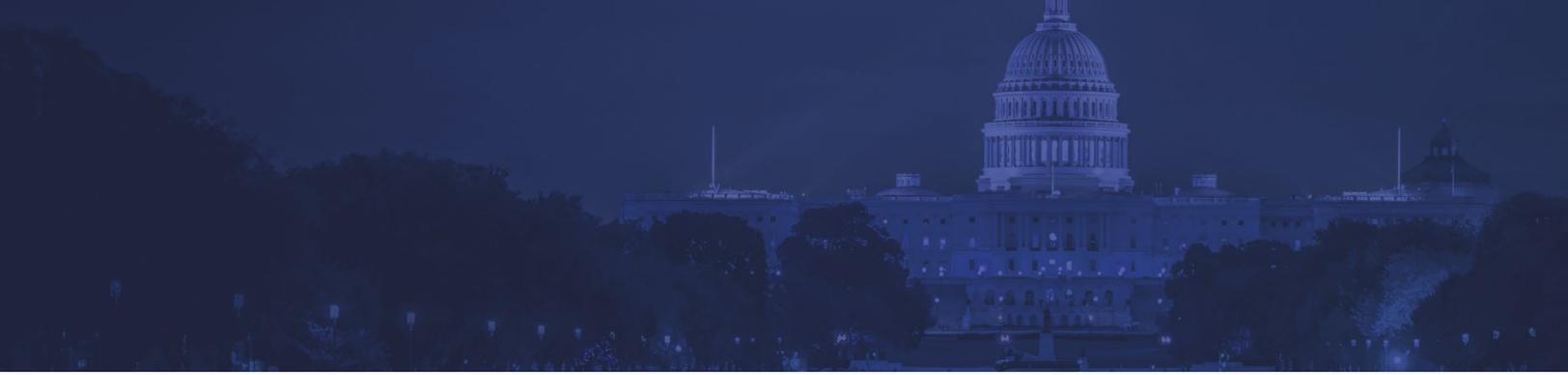
## Building a Responsible Framework

At CPEAR, we believe the foundation of any regulatory structure must be rooted in science, evidence, and data to inform a responsible marketplace and utilize reasonable guardrails. Responsible regulatory frameworks use all available data and science to inform their practices, accelerate future scientific and data research, and reiterate and evolve rules and regulations based on new information.

We believe that this discussion draft makes substantial progress in pursuit of establishing this responsible framework.

We are particularly grateful for the thoughtful draft that the Sponsoring Offices have put forward to form the basis of a national conversation on how best to responsibly oversee a nationwide cannabis industry.

We believe this approach prioritizes science and data while making substantial progress on the following issues of vital importance:

- 
- Removing criminality that currently keeps consumers and businesses in legal peril.<sup>1</sup>
  - Creating a national cannabis economy that will create new jobs and revenue.<sup>2,3</sup>
  - Providing substantial opportunities for small and minority-owned businesses.
  - Providing consumers and patients with tested, well-manufactured products.<sup>4</sup>
  - Creating a regulatory approach focused on responsible use, legitimate medical use, treating substance abuse, and preventing underage use.
  - Supporting science and research that can address issues related to driving, workplace safety, public health, and medical benefits.

Our below recommendations seek to bolster this progress. As the drafters have recognized, proper cannabis regulation will require creating and adopting a regulatory system that can overcome four key challenges.

## Key Components of a Responsible Federal Framework

### 1. It must capture sales currently in the illicit market.

At a fundamental level, cannabis legalization will not be successful if it does not capture sales currently in the illicit market. Capturing illicit market sales is more difficult than many casual observers assume. The illicit market has some significant advantages, amongst them: no taxes, no regulatory costs, existing supply chains, and an existing customer base. Over time, the regulated industry will have its advantages including capturing scale, branding, and safer access for consumers. But the illicit market has proven to be stickier than anticipated. In Canada, a fully legalized country, the illicit market still accounted for roughly half of all cannabis sales in 2020.<sup>5</sup> In California, the illicit cannabis market accounted for \$8.7 billion in sales, while the legal market accounted for \$3.1 billion in 2019.<sup>6</sup> If the regulated market fails to capture the illicit market in a reasonable timeline, the regulatory system will be critically undermined, and unable to accomplish any of its goals.

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<sup>1</sup> Marijuana Policy Project: [Cannabis Legalization is Criminal Justice Reform](#) (2020)

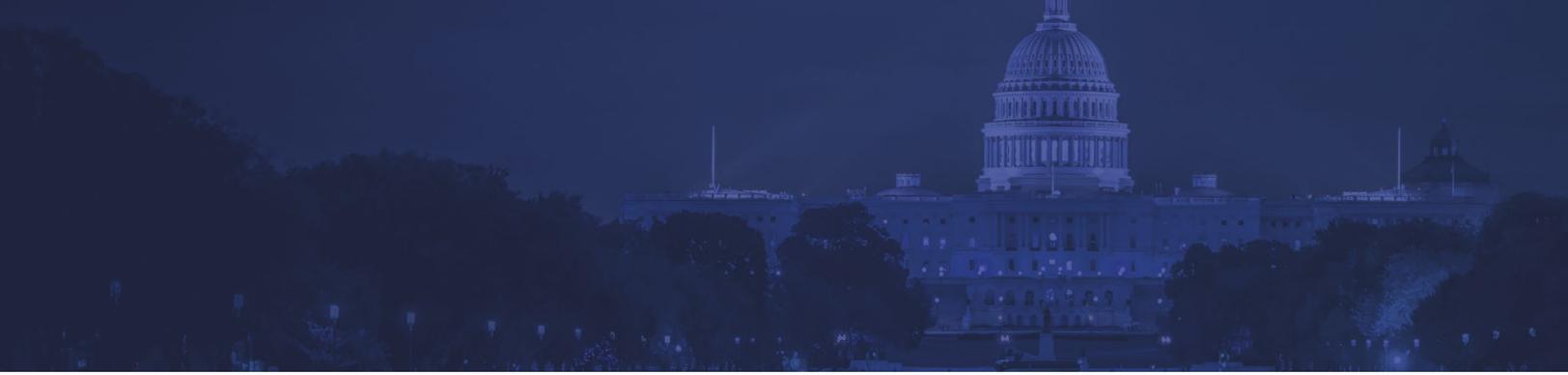
<sup>2</sup> Marijuana Moment: [Marijuana Industry Sees Record Jobs Gains In 2020 Despite Pandemic, New Report Shows](#) (2021)

<sup>3</sup> Marijuana Moment: [Legal Marijuana States Have Generated Nearly \\$8 Billion In Tax Revenue Since Recreational Sales Launched, Report Finds](#) (2021)

<sup>4</sup> The Cannabis Industry: [The Illicit Cannabis Market Puts Consumers At-Risk and Is an Existential Threat to the State-Legal Cannabis Industry](#) (2020)

<sup>5</sup> Marijuana Business Daily: [Canada's legal cannabis market continues to erode illicit market's share](#) (2021)

<sup>6</sup> Statista: [Legal vs Illicit cannabis sales in California, U.S. 2019-2024](#) (2020)



## 2. It must respect the states.

As the Sponsoring Offices of this discussion draft are aware, the current state-legal cannabis economies already account for \$17.5 billion in annual sales.<sup>7</sup> Entire economic and consumer ecosystems have come to rely on local and state laws.<sup>8</sup> Congress must bear in mind these existing systems when implementing a federal cannabis framework. Wherever consistent with public health and social justice goals, Congress should defer to those state systems. Any laws or regulations that substantially restrict current regulatory marketplaces from acting in the manner they have come to rely upon risks both expanding the illicit market and potentially establishing an unenforceable federal mandate such as exists for CBD products that are technically banned but widely available. These systems must also strike the balance of promoting a competitive retail landscape that promotes participation by all categories of retailers that can comply with sales and marketing laws. Moreover, many of the states have created regulatory systems that are uniquely tailored to meet the needs of their communities. Federal government regulations should aid these state systems, particularly when dealing with the safety of products as they reach consumers, but it should also be respectful of the states that have legalized cannabis.

## 3. It must be nimble enough to evolve based on science, data, and best practices.

Federal efforts to support cannabis research will provide valuable new findings and data. The federal cannabis regulator must be able to utilize this knowledge to advance a marketplace that promotes product safety and responsible marketing practices.

Over time, scientific evidence will inform updated approaches to product safety, marketing, and other practices. The federal government must implement new marketplace guardrails iteratively and, while prioritizing public health demands, seek to minimize unnecessary conflicts with the existing market.

## 4. It must create a national market that provides meaningful economic opportunities for small and minority-owned businesses.

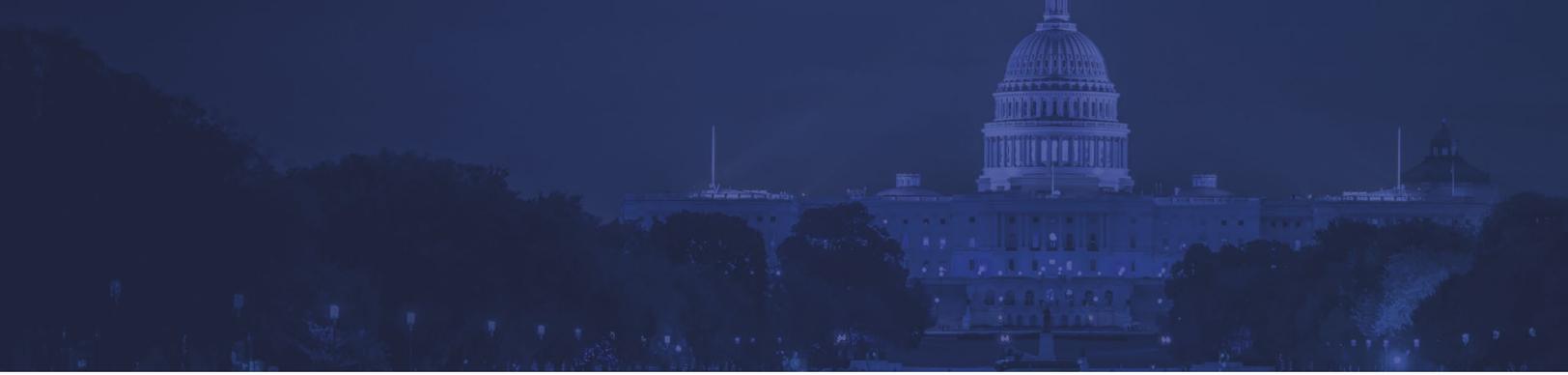
Today, the cannabis marketplace is largely represented by small businesses that operate within their communities.<sup>9</sup> Federal legalization and the resulting interstate market will provide businesses of all sizes access to the products, standards, and market efficiency that will allow them to operate with necessary clarity while also capturing otherwise illicit sales. Small businesses, however, are unique and cannabis entrepreneurs especially cannot access the financial and regulatory resources to navigate a regulated marketplace. To ensure that all operators are operating under a framework that is centered on safety and consistency, policymakers must provide a pathway for these businesses to successfully navigate and comply in a nationwide cannabis

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<sup>7</sup> Forbes: [U.S. Cannabis Sales Hit Record \\$17.5 Billion As Americans Consume More Marijuana Than Ever Before](#) (2021)

<sup>8</sup> United States Census Bureau: [First 202 Census Data Release Shows U.S. Resident Population of 331,449,281](#) (2021)

<sup>9</sup> CPEAR: [Cannabis and the Economy](#) (2021)



market. We have [previously written a paper](#) on this exact topic and urge the Sponsoring Offices to use it as a resource.<sup>10</sup>

## Summary

Navigating these principles, which at times may appear in tension with one another, requires a thoughtful and balanced approach. We believe that a responsible and successful framework will help establish a viable regulatory system that includes components that are self-enacting and enforceable upon bill passage, paired with product registration providing marketplace transparency to promote product safety and consistency. This framework should be designed to preserve most presently available products and thereby reflect appropriate deference to regulated state marketplaces and allow for the legal incorporation of previously illicit sales. Following enactment, evolving regulations that are based on science and evidence may inform marketplace evolution and best practices.

Taken together, these approaches may establish an appropriately regulated federal marketplace driven by science, data, and best practices. Our recommendations balance the need for a federal marketplace that displaces the illicit market while offering significant opportunities for small and minority-owned businesses.

# Recommendations

**The Sponsoring Offices request comment on: agency responsibilities including the appropriate division of responsibilities between FDA, TTB, and ATF.**

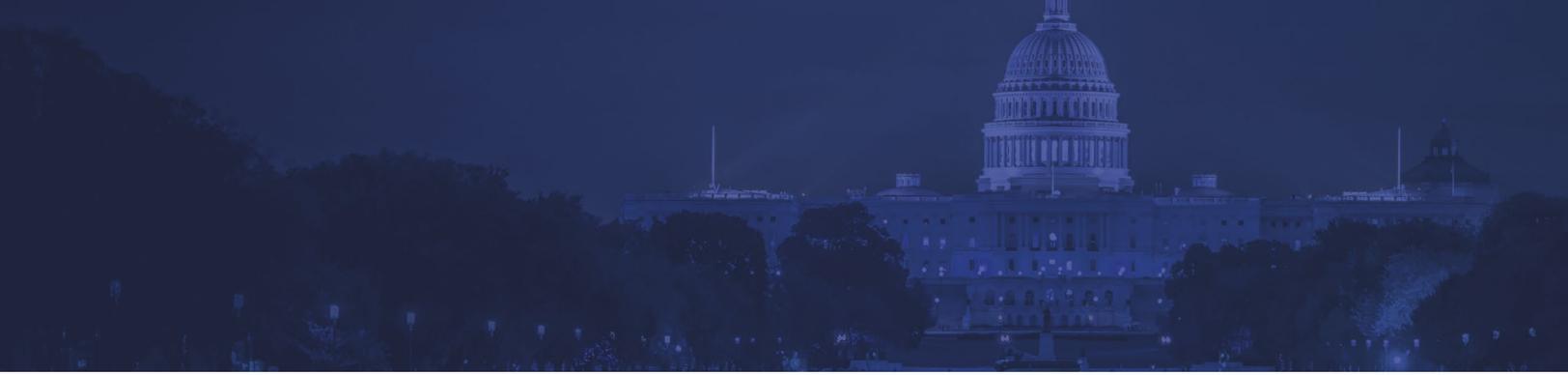
A federal regulatory system underpinning a nationwide cannabis market should employ the capabilities of federal agencies best suited for the oversight requirements of the multifaceted industry.

We believe there are a set of core issues that will benefit most from a federal leadership role. These include:

- Cannabis product specifications.
- Good Agricultural and Manufacturing Practices (GAP) (GMP).
- Packaging, labeling, marketing standards.
- Product testing standards.
- Facilitating scientific research/Leadership on key scientific pursuits.
- Regulation of cannabis-derived drugs.
- Policies regarding underage cannabis access prevention.

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<sup>10</sup> CPEAR: [Opportunity, Ownership, and Empowerment: A Federal Cannabis Framework for Small and Minority-Owned Businesses](#) (2021)

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- Science-based approach for identifying, assessing, and preventing cannabis-impaired driving.
  - Leading nationwide data collection and public health surveillance.

A successful federal regulatory framework must similarly highlight the unique role of state systems. This could be accomplished through:

1. Demonstrating a preference to defer to state authority when not in conflict with broader public health and social justice goals.
2. Explicitly confirming areas of state regulator primacy including state licensing as well as time, place, and manner restrictions on sales and distribution.
3. Implementing a limited approach to federal preemption, reserved for issues on topics like packaging, labeling, marketing, and manufacturing, while allowing states to exceed federal standards on other issues.
4. Issuing annual reports summarizing best practices from state systems to ensure federal regulators incorporate the learnings of their state peers.

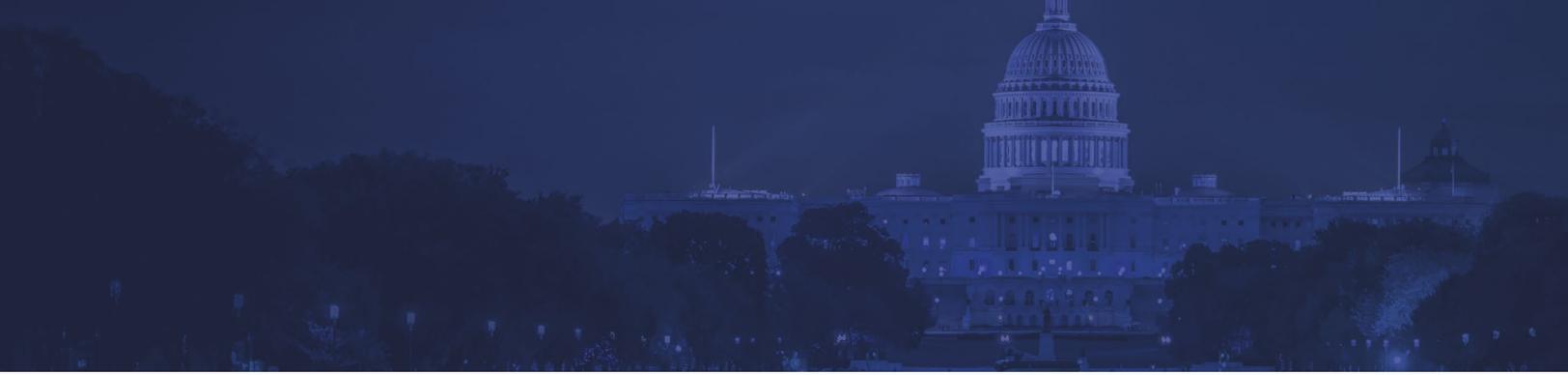
As the Sponsoring Offices craft a framework to achieve these goals, they should:

- Make clear that federal regulatory actions should be based on science and evidence with a clear aim of addressing public health concerns.
- Provide adequate funding for industry oversight responsibilities.
- Provide robust enforcement authorities.

As CAOAs evolve, we look forward to discussing how the regulatory governing system can most effectively achieve its goals while protecting consumers and patients, providing clear rules and even enforcement to industry, and avoiding excessive burdens for small businesses.

**The Sponsoring Offices request comment on: whether some or all cannabis products should be required to undergo premarket review before marketing and, if so, which cannabis products and the evidentiary standards for any proposed premarket review pathways.**

The legal nationwide cannabis market framework should be focused on shaping a responsible marketplace that addresses product safety and underage concerns. One approach, elucidated here, is to create product standards in CAOAs to form the basis of the national marketplace. If the Sponsoring Offices choose to pursue product standards, these standards must be based on science and evidence and designed and implemented in a way that will allow responsible small businesses to comply without facing undue costs or burdens.



We believe that science-backed standards that are clearly communicated and supported through federal regulator outreach, business training, and additional support programs will provide a foundation for the long-term success of the legal cannabis market and promote greater opportunities for small business owners to succeed. At the outset of federal legalization, these standards should also demonstrate a preference to preserve certain categories of existing products while regulators evaluate emerging science and lead additional research to inform future rules.

Data-backed, responsibly-implemented product standards will render burdensome, expensive, and time-consuming premarket authorization unnecessary while achieving the same goal – a marketplace reflecting safety and responsibility concerns.

There is currently a patchwork of state regulatory approaches, with some states implementing more stringent regulations restricting or limiting the types of products to which their respective residents have access, and others pursuing a less restrictive approach.<sup>11</sup> A federal regulatory framework is appropriate to harmonize regulations, including product standards, and bring about a responsible, nationwide marketplace. In addition, the new cannabis regulator should advance good practices for cannabis agriculture and manufacturing as well as product standards that will benefit product safety, prevent/protect against underage use, and reflect rapidly emerging cannabis science.

While advancing product safety, policymakers must also consider the practical implications of product regulations for the array of current responsible market participants, including many small businesses. Research has shown that compliance costs rank very high on the list of risks for most small businesses.<sup>12</sup> These costs pose a barrier to small and minority-owned businesses that may lack the resources or expertise to meet burdensome compliance obligations.

To reflect the learnings of the current state-regulated market, policymakers should allow certain categories of currently available products sold legally in compliance with state regulations to remain on the market initially upon federal legalization. Moving forward, the FDA should be granted authority to implement science-based cannabis product standards with twin the goals of advancing product safety and discouraging underage use.

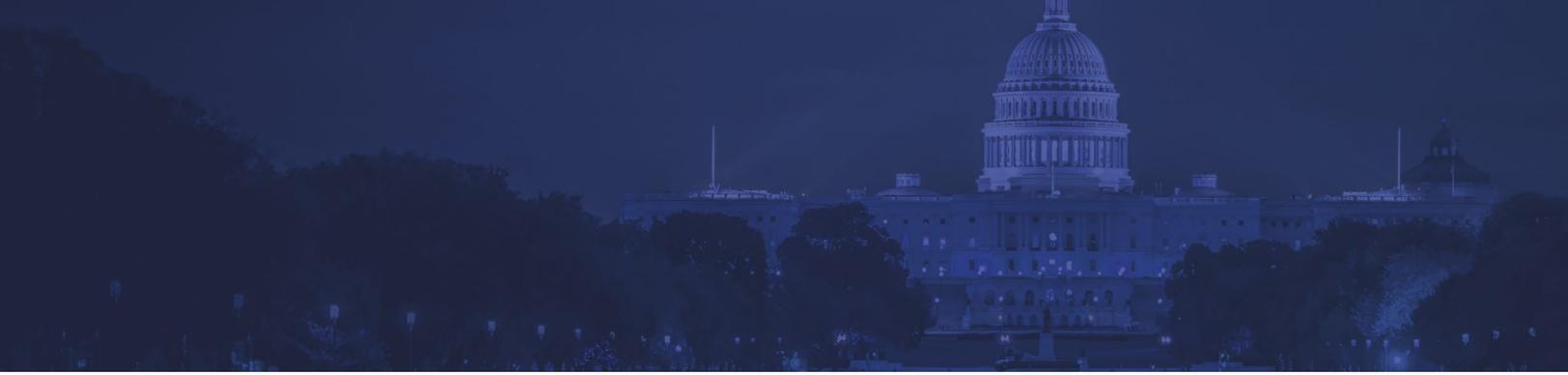
Based on current regulated state markets, we anticipate an interstate marketplace including cannabis flower, extracts, products for aerosolization, and ingestibles (including in the form of liquids).

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<sup>11</sup> O. Berk: [Marijuana Laws by State in 2021: A Legal Weed Map and Short Guide to Regulation](#) (2021)

<sup>12</sup> Babson College. (2016). The State of Small Business in America. <https://www.babson.edu/media/babson/site-assets/content-assets/images/news/announcements/goldman-10ksb-report-2016.pdf>





The above product categories should adhere to the following product labeling and packaging standards:<sup>13</sup>

- Must be packaged in a child-resistant container.
- Labeled with a standardized symbol denoting cannabis.
- Must include a health warning.
- Must include a detailed description of the ingredients, dosage with recommended consumption instructions.
- Must include the expiration date with substantiated stability.

All allowable forms must also meet the below criteria:

- Edibles prohibited that are shaped like a human, animal, or fruit:
  - The distinct shape of a human, animal, or fruit; or
  - A shape that bears the likeness or contains characteristics of a realistic or fictional human, animal, or fruit, including artistic, caricature, or cartoon renderings.<sup>14</sup>
- Cannot be appealing to children or youth.<sup>15</sup> Market participants should consider whether the use of any of the following categories renders their products appealing to underage users when crafting marketing materials for products:<sup>16</sup>
  - Symbols
  - Language
  - Music
  - Gestures
  - Entertainers or celebrities
  - Cartoon Characters
  - Groups or organizations
- Cannot imitate packaging for food products that are often marketed and appeal to youth, such as cereal and soda, or feature kid-friendly cartoon characters such as unicorns.
- Cannot be on a stick.
- Must never be combined or intended to be combined with alcohol or tobacco.
- Must be shelf-stable.

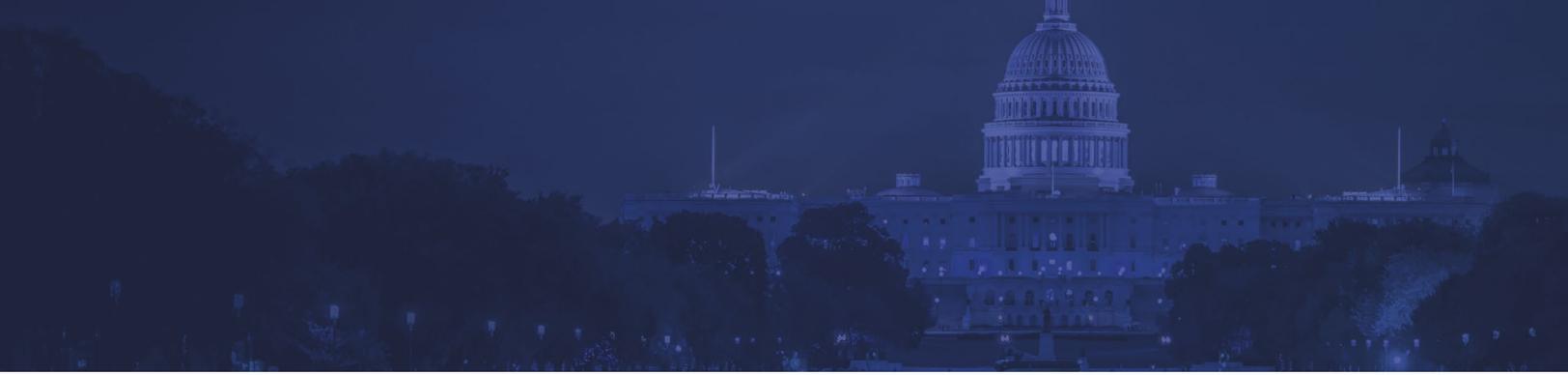
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<sup>13</sup> Government of Canada; Packaging and Labelling Guide for Cannabis Products; [Requirements Under the Cannabis Act and the Cannabis regulations](#).

<sup>14</sup> Code of Colorado Regulations; Department of Revenue: Marijuana Enforcement Division: [Colorado Marijuana Rules](#)

<sup>15</sup> For examples of criteria potentially used in this assessment, see: “[P]roduct that is targeted to minors or whose marketing is likely to promote use...by minors” discussion here: [Enforcement Priorities for Electronic Nicotine Delivery System \(ENDS\) and Other Deemed Products on the Market Without Premarket Authorization](#) (2020)

<sup>16</sup> Beer Institute: [Advertising/Marketing Code and Buying Guidelines](#). (2018)

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- Cannabis products should not be made to resemble other existing commercial products such as Skittles, Oreos, or Sour Patch Kids.<sup>17</sup>

Regarding the use of the “appropriate for the protection of the public health” (“APPH”) standard for product regulation, we agree that any standard must prioritize public health concerns. However, the bill as drafted currently lacks the clarity, foundational direction, and context needed to direct Agency decision-making.

At a minimum, three things are needed to provide sufficient direction for a public health-focused regulatory standard: (1) direction on the baseline marketplace Congress wishes to preserve from which public health costs and benefits can be assessed; (2) an explicit commitment to science and evidence-based decision making, with direction on the nature of the science to be considered; and (3) a clearly stated expectation of the public health benefits required to satisfy APPH scrutiny.

For example, in the 2009 Family Smoking Prevention and Tobacco Control Act Congress established a grandfathered marketplace and provided specific examples of science and evidence included in an Agency APPH assessment. In the subsequent 12 years, though, neither Congress nor FDA has provided clear direction on the threshold to definitively assess whether a proposed Agency action is “appropriate” under the standard. As stated by FDA, “APPH is a complex determination.”<sup>18</sup>

The Sponsoring Offices should seek to directly address this “complexity” when establishing a cannabis regulatory standard. Under the draft bill, though, a newly established federal cannabis regulator will inherit an illicit federal marketplace and lack clear direction on the type of information to consider in a standard application or the scale of benefit required to satisfy an APPH assessment.

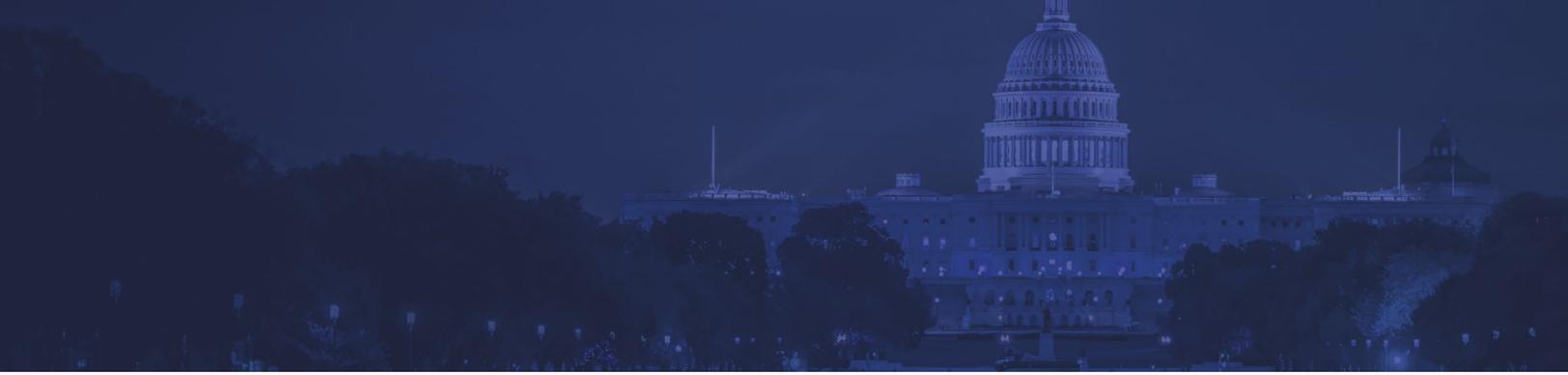
If the APPH standard is ultimately part of a federal cannabis regulatory framework, sponsors must provide these essential elements.

In addition to establishing science-based product standards to shape the marketplace, we believe the regulator should have the required tools to monitor marketplace trends to inform Agency actions and rulemakings. This approach could include coordination on existing federal health and behavior surveys, development of new surveys as needed, and requirements for marketplace participant reporting. In this way, any threats to a safe and responsible cannabis marketplace can be identified and addressed promptly through Agency guidance and rulemaking.

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<sup>17</sup> <https://www.nytimes.com/2021/05/22/style/edibles-marijuana.html>

<sup>18</sup> 84 Fed. Reg. at 50,618.



**The Sponsoring Offices request comment on: the operation of the permitting transition rule for entities already in operation as well as those that may commence business shortly after enactment. Transition rules to address cannabis products that already exist in the marketplace or those introduced in the marketplace, including before TTB and FDA issue regulations or other guidance, Consideration of transition rules and effective dates.**

Under CAOA, it will certainly take some time to establish and populate a new regulatory center at FDA. Once established, it will take some time to promulgate initial regulations.

Businesses, too, will need some time to achieve compliance with the new statute with progeny guidance, rules, and regulations.

This timeline, though, must be reconciled against Congressional expectation of a marketplace that reflects product safety and responsible marketing concerns in the short term.

For this reason, the federal government must launch a regulatory program that reasonably provides for the safety of consumers upon enactment.

CPEAR is suggesting the following actions be taken *upon enactment* of CAOA:

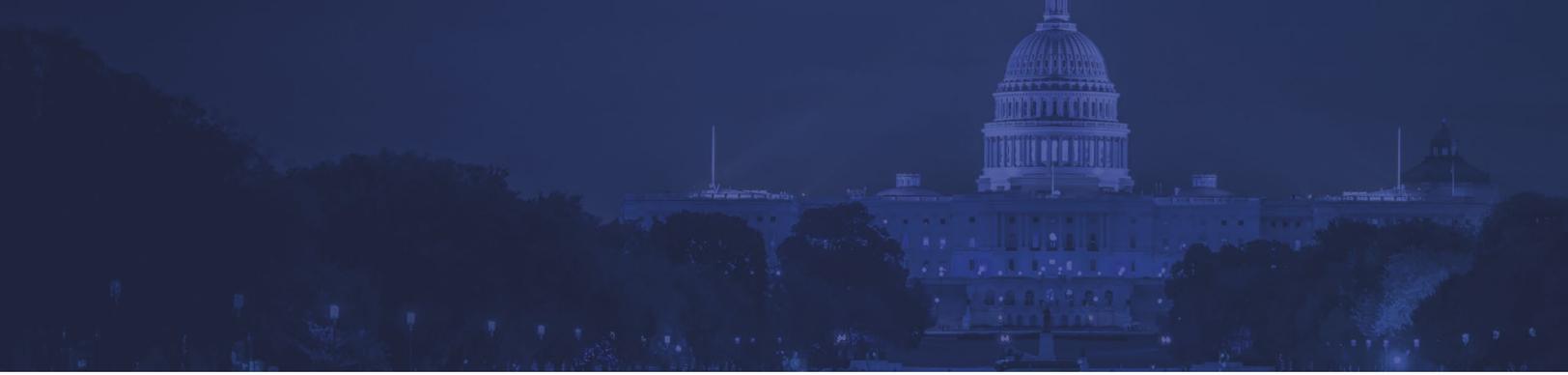
- All cannabis products sold must be tested and cleared by state-certified labs.
- All cannabis products must meet any product standards put forward in the bill.
- All cannabis operators must be licensed by their respective state or states.
- State and federal regulators must ensure that cannabis products not marketed as drugs (or in some cases, dietary supplements) do not make any health claims.
- State and federal regulators must ensure that no marketing practice targets underage use.

CPEAR suggests the following actions be taken *180 days after enactment* of the bill:

- Finalization and enactment of all rules stipulated in the bill.

CPEAR suggests the following actions be taken *365 days after enactment* of the bill:

- Licensees are expected to comply with all laws and regulations under CAOA.
- Federal agencies may delay the deadline for small business compliance with non-health and safety-related regulations. The extended compliance deadline could apply to businesses with up to \$10 million in revenue.
  - For example, an allowance may be made to delay protocols to achieve a specified environmental standard for up to a year, but no allowance would be made to meet health or



safety protocols for food storage. The ability to delay certain regulations would apply to businesses with up to \$10 million in revenue (matching the standard set-in tax law).

- Alternatively, Congress could also provide sufficient resources to fund systems to support small business compliance obligations.

**The Sponsoring Offices request comment on: Expansions similar to those proposed in the House bill to include SBA technical assistance and loans to socially and economically disadvantaged business owners outside of the cannabis industry; Grants to certain business owners to offset administrative and compliance costs associated with the provisions of this Act; Additional opportunities to expand restorative justice and access to capital for historically disadvantaged entrepreneurs.**

A federal regulatory framework must reflect the significant role small businesses have played as pioneers of the cannabis economy and a new, national marketplace ought to reflect that contribution. We envision a nationwide economic ecosystem underpinned by small and minority-owned businesses where entrepreneurs have a fair on-ramp to grow their investments in the marketplace. A federal cannabis framework for small and minority-owned businesses must include the following:

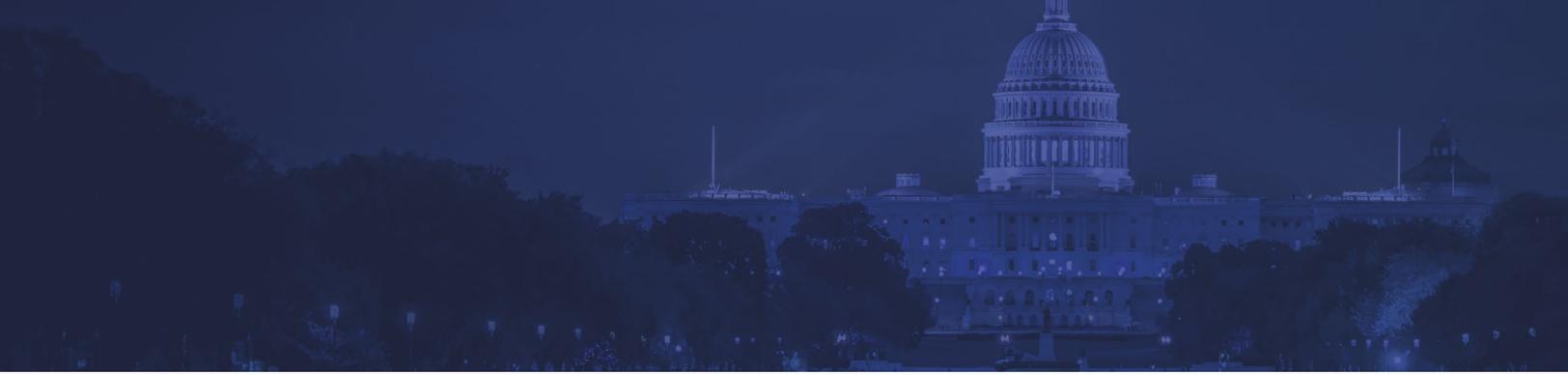
- Access to capital from international financial institutions and financial institutions focused on serving underserved/underbanked communities including community banks, Community Development Financial Institutions (“CDFIs”), credit unions, and U.S. Small Business Administration lending programs.
- Early market access for small and minority-owned businesses.
- Aiding state and local level programs that have proven and effective evidence of benefitting small and minority-owned cannabis businesses.
- A regulatory system that assures public safety while facilitating small business participation through robust technical and compliance assistance programs.
- Promotes/Protects/Permits meaningful partnerships between businesses of all sizes.

Cannabis companies face several hurdles compared to companies from other highly regulated industries because of their inability to raise capital, deposit funds, and utilize other services provided by traditional financial institutions. This is because current anti-money laundering (“AML”)<sup>19</sup> regulations deem funds related to cannabis as “specified unlawful activity” (“SUA”); thus, financial institutions may be held liable for working with any state-legal cannabis business. The differences between the state laws and federal law have hamstrung the growth of the small and minority-owned cannabis businesses and the industry at large because of (1) a lack of access to liquidity to weather economic downturns, and/or expand operations; (2) limitations to other financial services, which has downstream costs related to the use of security personnel to secure large volumes of cash;

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<sup>19</sup> FINRA: [Anti Money Laundering Rules](#) (2021)





and (3) increased barriers to entry for small and minority-owned businesses who have fewer options compared to a deep-pocketed business owned with access to extensive networks.<sup>20</sup>

Language included in the Secure and Fair Enforcement (“SAFE”) Banking Act of 2021<sup>21</sup> sought to improve the market environment by explicitly (1) prohibiting federal banking regulators from penalizing depository financial institutions for offering services to state-legal cannabis businesses, including by bringing asset forfeiture actions against a depository institution’s assets; (2) establishing that proceeds generated from cannabis-related businesses are no longer considered unlawful, and thus do not violate AML regulations; (3) prohibiting banking regulators from ordering depository financial institutions to terminate a customer's account based solely on its affiliation with a cannabis company.

In its current form, the CAO A lacks the level of clarity found in the SAFE Banking Act of 2021 because it makes no mention of whether depository or non-depository financial institutions can provide services to the cannabis industry, nor does it provide a schedule for or provide conditions for engagement with the industry. CPEAR recommends that language from the SAFE Banking Act of 2021 be included in CAO A to provide some clarity to depository financial institutions. Furthermore, CPEAR encourages the Sponsoring Offices to include language covering other types of financial institutions that were not covered in the SAFE Banking Act.<sup>22</sup>

Adding this clarity will not only lead to improved market conditions for the cannabis industry, doing so also will improve public safety and enhance tax collection efforts that have so far been characterized by the need for high security to protect large volumes of cash.

**The Sponsoring Offices request comments on: Ways to reduce compliance costs for small businesses while ensuring that market participants comply with necessary labeling and trade practice rules.**

Policies governing a federal cannabis market should be centered on and influenced by science, innovation, consumer protection, and public health. All products available to consumers should be produced using the most rigorous standards. Onerous regulatory requirements from states and the federal government, however, can be a barrier to market access for most businesses, but especially small and minority-owned businesses that already lack accessible financing. Reducing compliance costs for small businesses while ensuring that market participants comply with applicable regulations depends on a federal framework that includes increased access to regulatory and compliance tools. These tools include, but are not limited to, wraparound services and technical assistance to growers, manufacturers, distributors, and storefront operators. Furthermore, potential

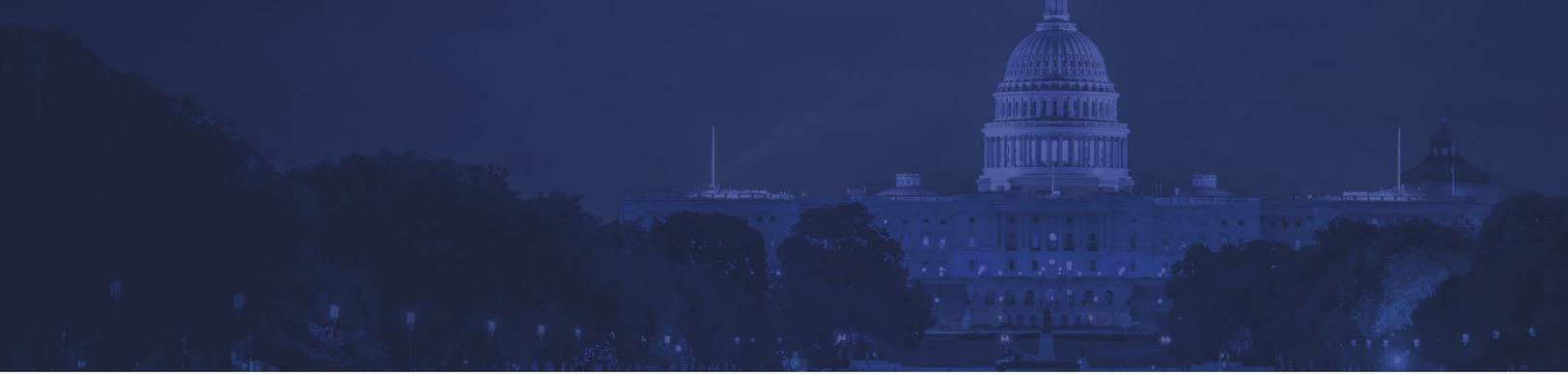
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<sup>20</sup> Forbes: [Minority Entrepreneurs Face Uphill Battle To Enter Legal Marijuana Market](#) (2021)

<sup>21</sup> 117<sup>th</sup> U.S. Congress: [Secure and Fair Enforcement \(SAFE\) Banking Act of 2021](#)

<sup>22</sup> Reed Smith LLP: [What would the SAFE Banking Act actually do for the cannabis industry?](#) (2021)





solutions should involve partnerships with state authorities to clarify regulations or extend timelines for compliance for small and minority-owned as well as other eligible businesses.

**The Sponsoring Offices request comment on: The interaction between the definition of “cannabis,” “cannabis product,” and FDCA drugs containing cannabis; The appropriate classification and regulation of synthetically derived THC.**

As FDA has stated, synthetic THC products “pose significant health concerns” including those marketed as “K2” and “Spice.”<sup>23</sup> Policymakers should regulate and take enforcement actions against these products. As part of this, policymakers should also clearly define “synthetic” to capture designer drugs produced using man-made chemicals.

Products like synthetic THC, though, differ greatly from cannabinoids that happen to be derived through alternative means from a safety, chemical, and policy implication perspective. Legislators should demonstrate flexibility as it relates to cannabinoid derivation processes that yield cannabinoids that are chemically identical to those occurring in the cannabis or hemp plant. Indeed, there are many examples of biosynthetically produced components of FDA regulated products including Omega-3 fatty acids in fish food and valencene – a citrus flavor isolated from orange peels.

The legal cannabis marketplace is still in its nascency. Cannabinoid derivation technology, both agricultural and non-agricultural, will continue to evolve. While research is still emerging, it seems likely that different means of cannabinoid derivation present drastically different resource demands and environmental footprints.<sup>24</sup> Legislation and regulation should focus on the molecules and not their production methods.

Additionally, while the draft bill addresses only two cannabinoids, THC and CBD, legislators should encourage research and establish a clear path to the market for products containing other cannabinoids – an area of policymaking that requires an open mind regarding the manner of cannabinoid derivation. Research suggests there may be benefits associated with certain cannabinoids that occur only in trace amounts in cannabis plants. Market access for these products may depend entirely on alternative methods of cannabinoid derivation.

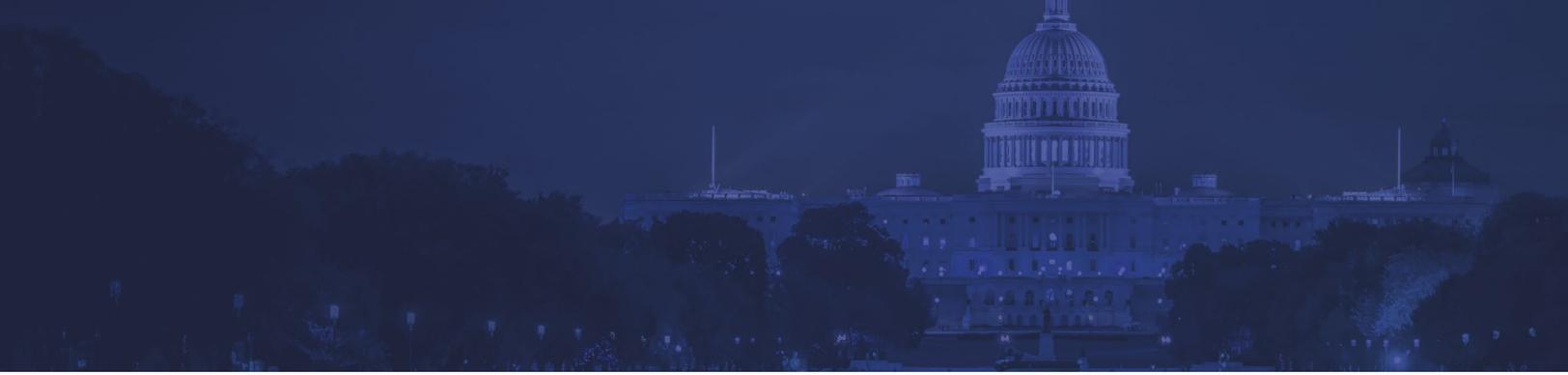
However derived, cannabinoids should be subject to regulatory oversight. A science-based regulator with product standard authority will be well-positioned to address concerns on a case-by-case basis that control for risk while preserving the potential benefits of alternative approaches to cannabinoid derivation.

Finally, the differentiation between cannabis products and drug products is critical to preventing cannabis companies from making unsubstantiated medical claims thereby defrauding would-be consumers. It’s an

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<sup>23</sup> Centers for Disease Control: [How harmful is K2/Spice \(synthetic marijuana or synthetic cannabinoids\)?](#) (2018)

<sup>24</sup> Labroots: [Bioengineers Create Environmentally-Friendly Cannabinoids from Yeast](#) (2020)



important first step to preserve this differentiation, but FDA also must have the resources and direction from Congress necessary to enforce the distinction.

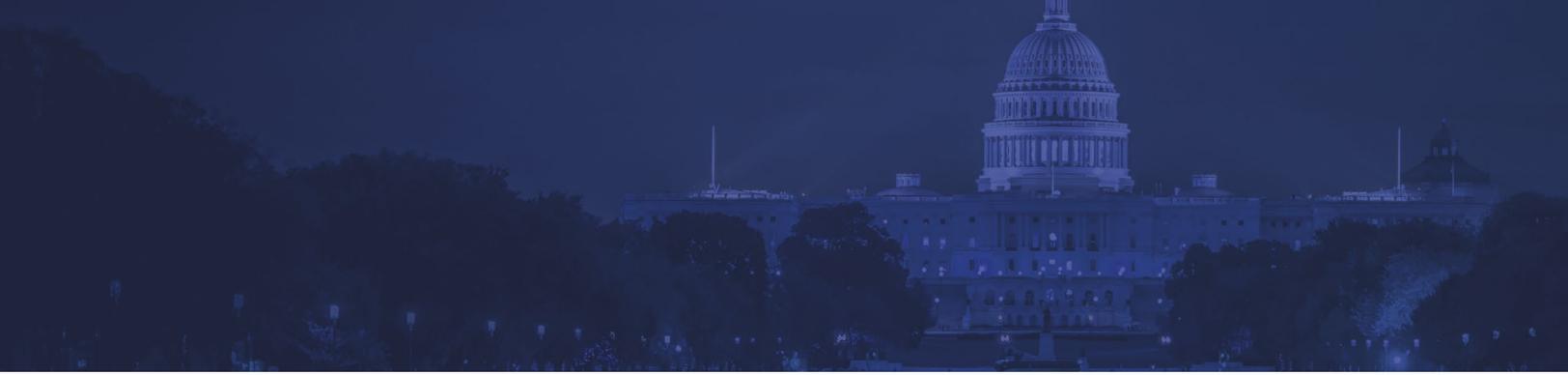
**The Sponsoring Offices request comment on: The appropriate quantitative thresholds regarding contraband cannabis; The appropriate penalties for violations of anti-diversion provisions; Effective coordination between federal and state law enforcement and tax administrators relating to diverted cannabis; The appropriate balance to strike between reducing barriers to entry while preventing illegal operations that may engage in cannabis diversion, tax evasion, or threaten public health and safety.**

Caregivers and co-operative systems constitute a substantial portion of the existing state-led cannabis markets today. These types of growth operations should be considered “non-conforming state systems.” As states have legalized cannabis, they have allowed these operations to exist because, in theory, they only serve their respective communities without any incentives to make substantial profits off their products. Given the relatively small section of the industry, such operations would potentially occupy under a federal framework, non-conforming state-based systems should be permitted to continue operating in a nationwide cannabis industry if they submit to the following conditions:

- Non-conforming systems must adhere to federal and state public health and safety standards for the cultivation and sale of cannabis.
- The systems meet all state and local laws.
- The systems must adopt protocols that would ensure that their products are not diverted into the illicit market nor sold to individuals under the age of 21. This includes the use of an electronic age verification system that can verify age eligibility in real-time.
- Non-conforming systems cannot introduce their products into interstate commerce or any commercialized setting.

Importantly, state regulators will continue to have the authority to determine the size of these operations and the tax rates at which these non-conforming systems will be liable.

**The Sponsoring Offices request comment on: The interaction between state primacy regarding cannabis regulation, and the need for interstate consistency for product standards and regulation, including any responsibilities that should be reserved explicitly for states or the federal government; and Rules relating to interstate commerce involving cannabis, including state-level taxation and interactions with state-level distribution systems.**



States have regulated cannabis production and sales for over 25 years. The National Conference of State Legislatures (NCSL)<sup>25</sup> has strong policy language regarding how the federal government should treat cannabis regulations:

- Congress should amend the Controlled Substance Act (CSA) to remove cannabis as a Schedule I drug.
- State cannabis laws and regulations should be respected and not preempted by federal law. Meaningful federal consultation with states before the issuance of any federal regulations should occur pursuant to Executive Order 13132, the Executive Order on Federalism.
- An appropriate role for the federal government, after cannabis is removed from the CSA is to facilitate legitimate businesses' access to financial institutions that provide capital security, efficiency, and record-keeping.

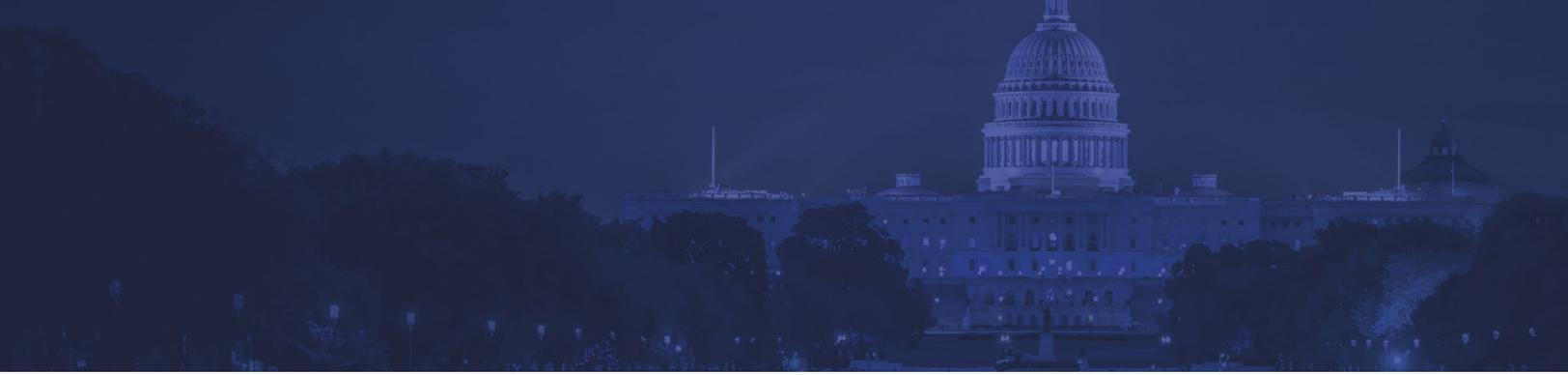
We believe that well-resourced, science-based, federal regulatory leadership should shape the nationwide market. There are certain issues for which this leadership role should be explicitly protected. We recognize, though, the unique role of state cannabis regulatory systems, and we anticipate states will utilize both their traditional powers of licensing and reasonable sales restrictions as well as powers reserved to states under the framework that will allow jurisdictions to exceed the floor established by federal regulations on some issues, including the availability of specific products in their communities.

**The Sponsoring Offices request comment on: Whether additional programs or resources are needed to aid states in enforcing minimum age requirements or quantitative retail limitations; The interaction between state minimum age laws and use of medication containing cannabis by minors; Guidance on existing best practices by cannabis-legal states regarding minimum age enforcement; The interaction between state minimum age laws and limitations regarding non-face-to-face transactions (discussed further in Sec. 501 of the draft); and The appropriate quantitative thresholds regarding the limit on retail sales of cannabis.**

Underage individuals should not use or have access to non-medicinal THC products. All stakeholders, including manufacturers, retailers, state and local legislators, and regulators must work together to prevent underage THC use. CPEAR endorses the efforts from cannabis legal states to prevent underage use, including the sale of cannabis on premises accessible to individuals 21 and over.

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<sup>25</sup> As noted elsewhere, the presence of the National Conference of State Legislature's name is not intended to denote its endorsement of either CAOAs, or CPEAR's comments in general.



We believe that there are best practices to draw from originating in other regulated product categories and that the software and technology exist in current state cannabis marketplaces to address underage use.

This includes widely used systems that facilitate the verification of a customer's minimum age during transactions. TruAge, a digital ID verification solution, is one such example of a system that state-legal dispensaries should use. The digital ID platform was created by the National Association of Convenience Stores ("NACS") to facilitate age verification at all retail points of sale for adult-use products. TruAge is already used by 130 retail companies that represent 22,000-plus convenience store locations across the United States and four industry point-of-sale (POS) providers.<sup>26</sup>

Recognizing that the technology already exists and is widely used across the country, CPEAR would recommend requiring retailers to use electronic age verification systems. An eligible system should have the following capabilities:

- Scan and authenticate government-issued identification to determine age eligibility and case-by-case eligibility by checking information against a government database in real-time.
- Block a transaction at a point-of-sale system if eligibility is not confirmed.
- Provide training resources for dispensary employees.

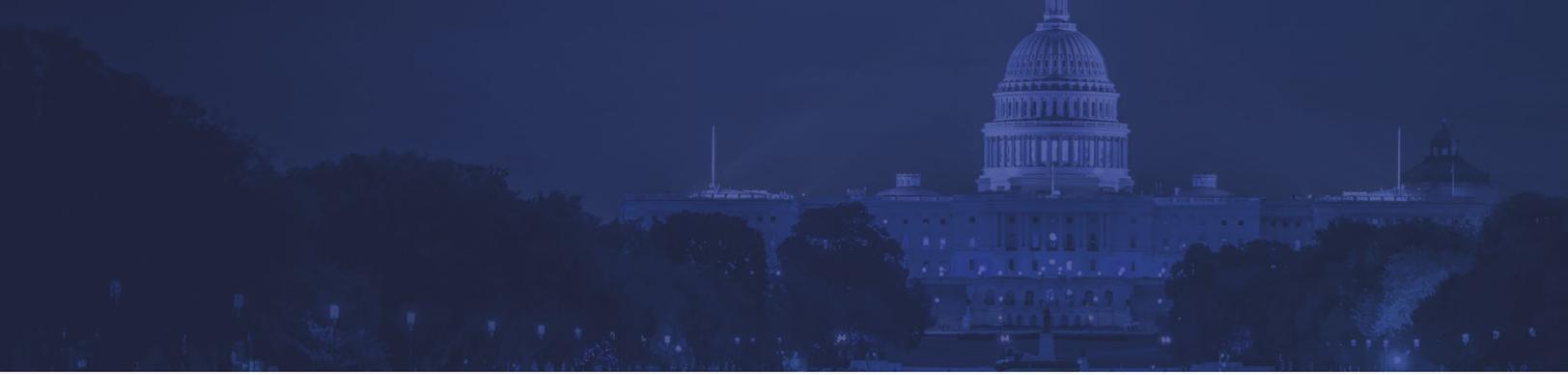
**The Sponsoring Offices request comment on: research, training, and prevention, including— The annual and long-term funding needs for such efforts; Whether programs can be designed to steer research dollars to Historically Black Colleges and Universities and other institutions associated with historically disadvantaged communities; and additional areas that may benefit from research, including agriculture, environmental protection, worker health and safety, and other areas.**

Cannabis research is critical to ensuring public health and safety, yet for the last 50 years has been impeded by federal restrictions. After years of historical underinvestment, steering research dollars to Historically Black Colleges and Universities ("HBCUs"), Hispanic Serving Institutions ("HSIs"), Tribal Colleges ("TCs"), other institutions serving historically excluded groups, and community colleges should be a priority, as roadblocks to rigorous studies of cannabis and possible drug development are lifted. Black people have been historically and are still disproportionately targeted for incarceration at disproportionate rates for involvement with cannabis. An American Civil Liberties Union (ACLU) report finds that a Black person is 3.64 times more likely to be arrested for cannabis possession than a white person, even though Black and white people use cannabis at similar

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<sup>26</sup> BusinessWire: [NACS Announces TruAge™ Digital ID Verification Solution](#) (2021)





rates.<sup>27</sup> The targeting of Black people for cannabis arrests should be answered with a systematic targeting of Black people for economic opportunity in the potential emerging market.

The Drug Enforcement Administration (“DEA”) is in the process of registering several U.S. companies to produce cannabis for medical and scientific purposes, creating a new, federally sanctioned pipeline for more products and strains of cannabis for researchers. A federal program in partnership with HBCUs/HSIs/TCs to register minority, small and social equity cultivators to increase supplier diversity would also allow for accelerated improvement to cannabis research related to agriculture, environmental protection, worker health, and safety. Companies have been partnering with larger universities and HBCUs/HSIs/TCs to create and grow infrastructure at HBCUs/HSIs/TCs that has allowed them to independently seek research funding, making HBCUs/HSIs/TCs ideal for cannabis research, education, and training.<sup>28,29</sup> Federal legalization should be coupled with programs that encourage partnership models, such as that of Illera Holistic Healthcare and Southern University, to ensure that the cannabis industry takes advantage of the infrastructure and talent pipeline of HBCUs/HSIs/TCs while also promoting economic opportunities for communities that have been most impacted by federal prohibition.

Additionally, our Center of Excellence recently provided comments on the application of equity by the Office of National Drug Control Policy (“ONDCP”) that were specific to improving stakeholder engagement and data monitoring. Recommendations included engaging a task force dedicated to researching the impacts of state-led drug policies and their effect on local communities, reforming the High-Intensity Drug Areas (“HIDTA”) Program’s Cannabis Impact Reporting, and engaging in real-time data monitoring. The ONDCP will play a large role in the ongoing evolution of cannabis policy taking place in Congress and across the country.<sup>30</sup>

**The Sponsoring Offices request comment on: Considerations related to the non-application IRC 280E, including transition rules and interactions with tax incentives for activities that may have occurred while a business was subject to the limitation on credits and deduction; Additional conforming amendments to other parts of tax law, including the definition of tobacco rolling papers tubes and interactions with the alcohol and tobacco tax regimes. The appropriate entity and methodology for measuring the prevailing price of cannabis for purposes of setting annual rates of tax; Whether certain**

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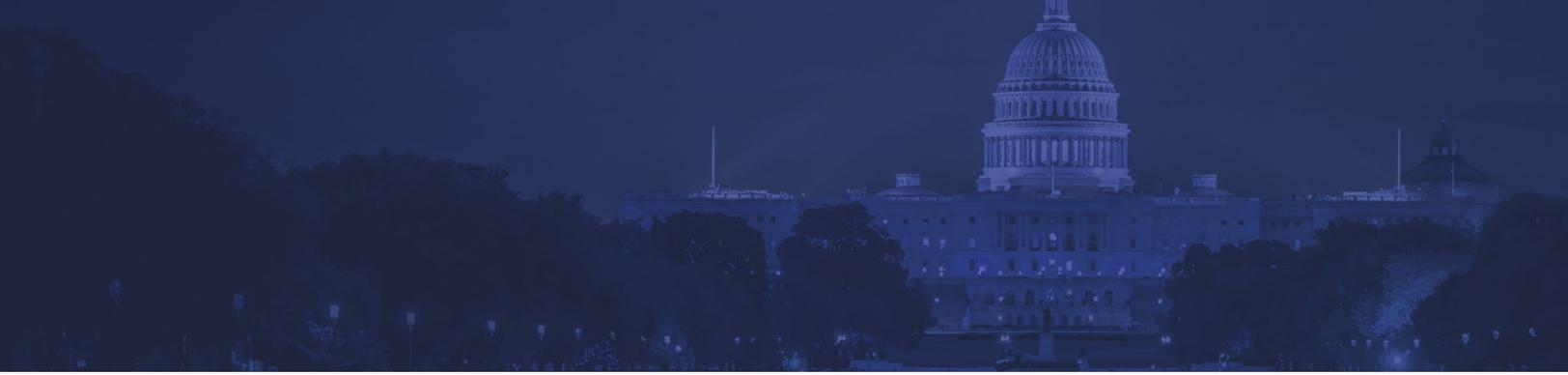
<sup>27</sup> ACLU: [A Tale of Two Countries: Racially Targeted Arrests in The Era of Marijuana Reform](#) (2020)

<sup>28</sup> Southern University and Agriculture & Mechanical College: [Southern Plants First Seeds in Medical Marijuana Venture](#) (2019)

<sup>29</sup> WGNO New Orleans: [Inside the Marijuana Growing Facility of a Historically Black University](#) (2021)

<sup>30</sup> CPEAR: [Comments Re: Doc FR 35828 Application of Equity in U.S. National Drug Control Policy](#) (2021)





**small producers should be eligible for quarterly or annual tax payments, similar to the rules applicable to small alcohol producers.**

As drafted, CAO A standardizes tax practices and establishes an excise tax on cannabis.

### **1. Standardizes Cannabis Businesses**

CAOA removes cannabis from the Controlled Substances Act. This action ends the long and disparate treatment of cannabis companies that have faced excessively high tax rates. The action would standardize the tax treatment of cannabis businesses so that they are no longer denied deductions and credits for amounts paid under the Internal Revenue Code (IRC) Section 280E.

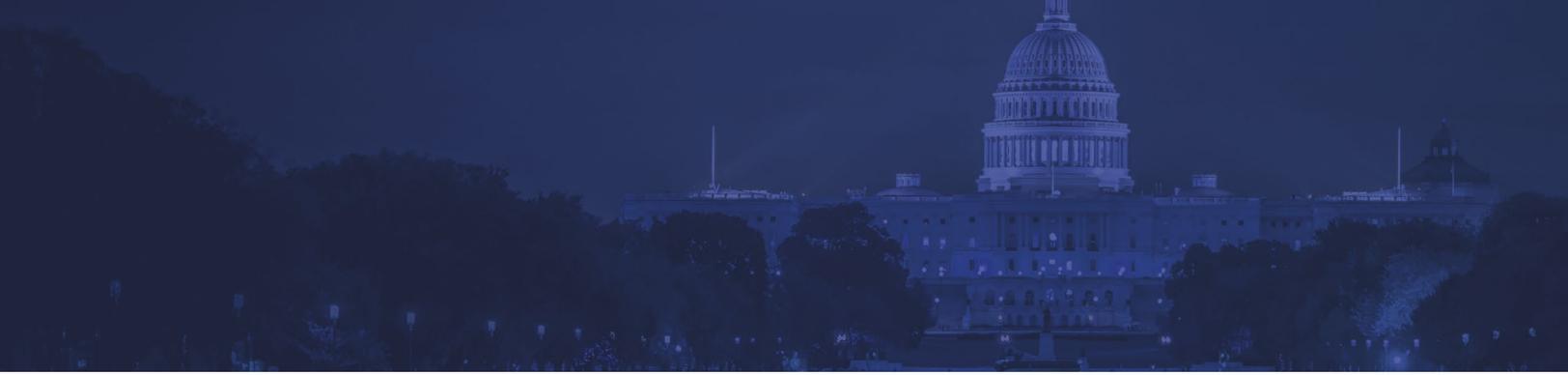
### **2. Establishment of an Excise Tax**

CAOA establishes an excise tax with a rate of 10% in the first year, growing to 25% in the fifth year based on the removal price (cost at producer level or removal from bonded premises). Beginning in the sixth year, the taxation structure changes, and products are taxed based on the THC content.

Countries, states, and localities have adopted a range of different approaches to cannabis taxation – in terms of both structure and rate. As the learnings of those early adopters continue to evolve, federal tax policy must be flexible to both adapt to those learnings and to the continued innovation that will continue to occur in the cannabis marketplace. We look forward to continuing to work with lawmakers as all stakeholders share their experiences – including those who are operating in today’s cannabis marketplace and those who have similar experiences in other regulated consumer products.

In addition to establishing a tax program that is administrable, a key objective for cannabis tax policy is to ensure that the legal marketplace can reduce the prevalence of the illicit market. Tax rates are a critical component of whether that metric can be achieved. High taxes contribute to higher prices. Higher prices lead individuals to either seek out a product that is tested, reliable and regulated – or to go to the illicit market where a product is cheaper but that often lacks the safety features present in a regulated marketplace like testing and inspection. Excessively high taxes may prolong the illicit market and lead to significant threats to public safety.

Tax methods and rates should not be overly onerous to encourage further growth in the illicit marketplace but instead should encourage current illicit market participants to move into the legal marketplace.



**The Sponsoring Offices request comment on: Roles and responsibilities of the Advisory Committee, Criteria for Advisory Committee membership to ensure diverse viewpoints and policy priorities are properly represented; The role of the Advisory Committee in agency consultation, including the administrative and rulemaking process.**

CPEAR believes that any cannabis product standards must be anchored in science and evidence and insulated from political considerations. To that end, the Advisory Committee must be positioned to analyze emerging product science.

The members of the Advisory Committee should have expert knowledge substantially similar to that of the Center of Excellence, in the following:

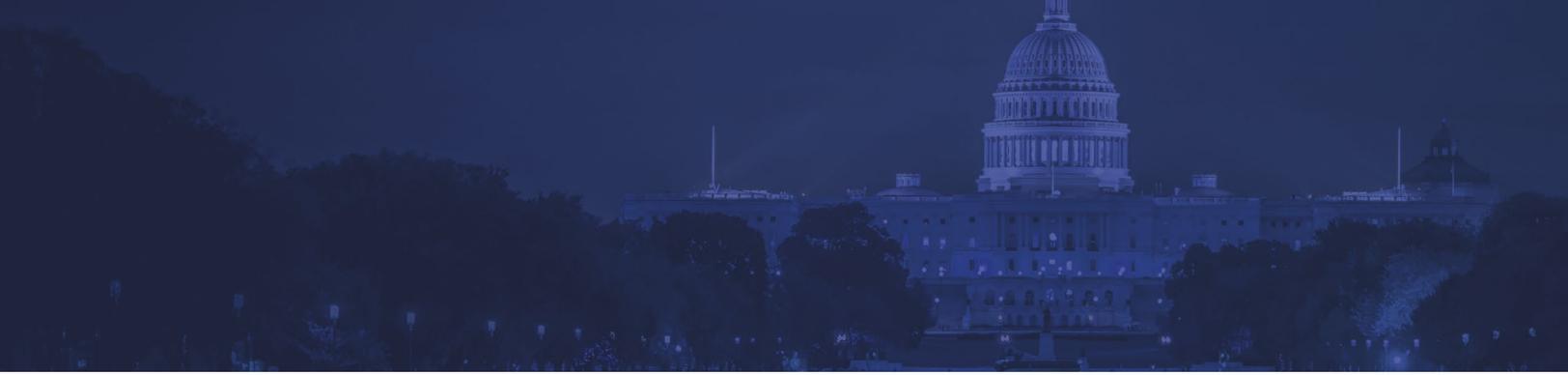
- Data and research
- Product format
- Driving under the influence of drugs
- Regulatory enforcement
- Criminal justice reform
- Youth prevention
- Mental health treatment and prevention
- Substance abuse treatment and prevention
- Public safety issues
- Legacy and state systems
- Social equity and financing
- Marketing and advertising
- Cannabinoid pharmacology, potential medical benefits, drug development, and patient access
- Environmental sustainability

Additionally, the Advisory Committee should be equipped to advise on the key challenges to successful legalization. To do so, the committee will need representatives with:

1. An understanding of what actions will allow the legal market to capture the illicit market, and which actions will increase illicit market sales.
2. Expertise in state markets, so that the federal government can initially meeting the state systems where they are.
3. Experience in evolving federal regulatory systems based on science, data, and best practices.
4. An economic background and knowledge regarding how to create a national market while providing meaningful economic opportunities for small and minority-owned businesses.

As it relates to underage use prevention, the Advisory Committee should work with federal health agencies to develop best practices on underage use prevention. These best practices should be based on learnings drawn from other highly regulated industries with products that have inherent risks. Stakeholders in those industries have spent time researching and implementing science-based solutions aimed at increasing avenues for underage





use prevention. The National Institute on Drug Abuse,<sup>31</sup> Center for Substance Abuse Prevention,<sup>32</sup> and state agencies that have been performing research and designing policy as it relates to underage use prevention are among the plethora of government agencies that can be used as a resource to ensure that federal and state regulators implement guardrails on the industry upon enactment of the bill.

Investing in proven, effective direct service programming, such as coordinating investments in positive youth development, will emphasize protective factors in kids' lives. An effective positive youth development approach ensures that young people have access to positive relationships and resources such as access to high quality out of school time programming and supports for academic success that contributes to reducing risk factors, and help kids make healthy decisions and resist a broad range of risky behaviors, including using products intended for adults 21+.

Specifically, the approach should include programming that:

- Provides parents with tools to help them raise kids who do not use products intended for adults 21+.
- Invests in direct service, positive youth development programs, and organizations focused on positively influencing kids' decisions not to engage in risky behaviors like using products intended for adults 21+.
- Invests in evidence-based youth use prevention and youth cessation direct service programs.
- Issues retailer training best practices, establishes authorized training programs, and supports retailer training that helps prevent underage access to cannabis products, including addressing social access.
- Implements appropriate regulations to limit the reach of marketing materials to unintended audiences across all cannabis product categories.

Furthermore, learnings from past successful underage alcohol abuse or underage tobacco use campaigns should inform efforts to prevent underage cannabis use and craft marijuana cessation programs. One example is SAMHSA's "Talk. They Hear You." campaign to prevent underage drinking.<sup>33</sup> This campaign, along with several other adapted strategies, has been used by the Colorado School Safety Resource Center to curb underage cannabis use within the state.<sup>34</sup>

Comprehensive afterschool programs and summer enrichment programs are deeply grounded in positive youth development practices, which have long been recognized as playing a key role in reducing risk factors and increasing the protective factors that can prevent substance use. Before-school, afterschool, and summer

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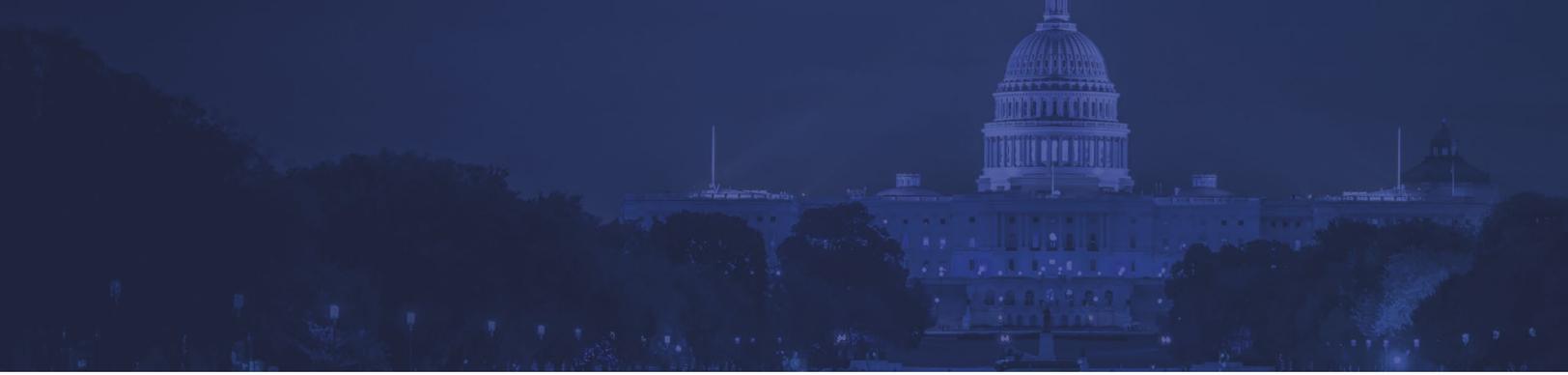
<sup>31</sup> National Institute of Drug Abuse: [Using Alcohol and Marijuana Together Exacerbates Negative Consequences in Young Adults](#) (2021)

<sup>32</sup> Substance Abuse and Mental Health Services Administration: [Tips for Teens: The Truth About Marijuana](#) (2019)

<sup>33</sup> Substance Abuse and Mental Health Services Administration: [Underage Drinking: Myths vs. Facts](#) (2021)

<sup>34</sup> Colorado School Safety Resource Center: [Preventing Youth Marijuana Use in Colorado: Information for Schools](#)





enrichment programs foster protective factors in two primary ways. First, programs provide supports that are a protective factor in and of themselves, such as access to caring mentors and a safe and supportive environment. Second, during the critical time of adolescent development, participation in afterschool programs helps to develop protective factors among young people at the individual level—factors that positively promote one’s health and well-being—including positive self-concept, competence, self-efficacy, agency, self-regulation, problem-solving and decision making, interpersonal skills, and belonging and connectedness. Protective factors are linked to fewer problem behaviors, reduced substance misuse, and improved academic performance.

A recent literature review in *Child Trends* identified elements in today’s afterschool programs that provide actionable evidence-informed steps that can build protective factors.<sup>35</sup> Those include intentional organizational practices, high-quality learning environments, supportive and nurturing relationships, and opportunities for staff to focus on youth skill development intentionally and explicitly. These are elements found in programs such as those supported by the federal 21<sup>st</sup> Century Community Learning Centers (“21<sup>st</sup> CCLC”) Program.

Federal funding for 21<sup>st</sup> CCLC is essential, but it is not sufficient. A recent survey of more than 30,000 households nationally found that for every child in an afterschool program, three more would be if programs were available to them.<sup>36</sup> That’s nearly 25 million young people who are missing out on programs that can help them thrive in and out of school. Most troubling is the fact that young people from families with low incomes are most likely to be missing out and they name cost and access as the top barriers to participation.

Approximately half of the states that have legalized adult use of cannabis—including Alaska, California, Colorado, Illinois, New Jersey, New York, and Vermont—are already investing, or have plans to invest cannabis tax revenue, back into youth development programs like comprehensive afterschool and summer enrichment. Ensuring complementary language is included in federal legislation strengthens the commitment to supporting young people, particularly in communities most heavily impacted by the war on drugs.

These best practices and resulting prevention campaigns should be funded by a significant portion of the tax revenue derived from the industry to ensure widespread and consistent adoption. This would likely require deputizing federal agencies that have experience managing drug misuse and overdose issues—such as the aforementioned agencies along with the Centers for Disease Control and Prevention (“CDC”) and Substance Abuse and the Mental Health Administration (“SAMSHA”)—to take the lead in coordinating with the Advisory Committee to develop statewide and nationwide underage prevention campaigns.

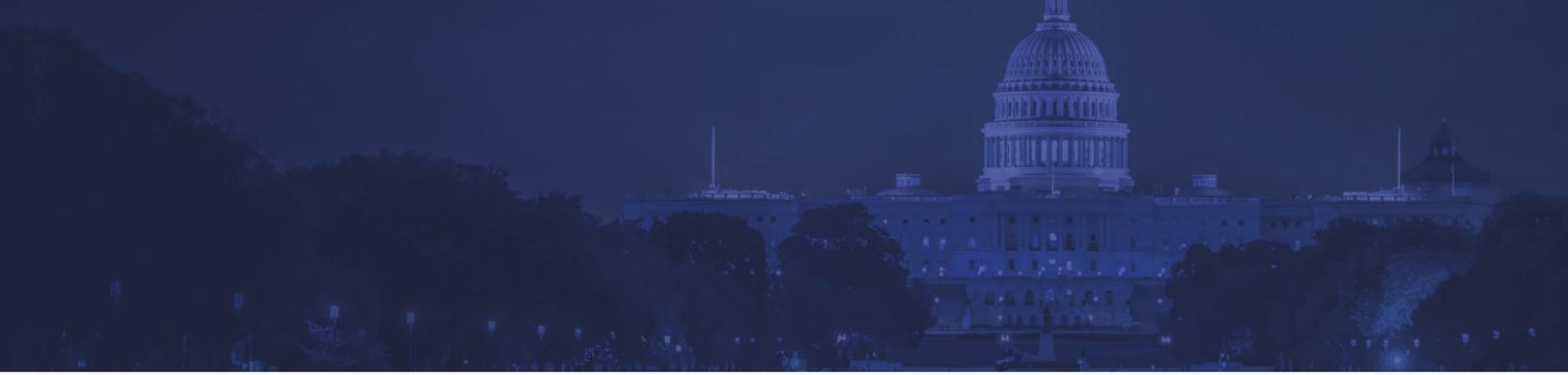
Afterschool is proven to promote positive youth outcomes. Afterschool offers a safe space and time for young people to connect with caring mentors, gain confidence, and develop relationships with peers. Decades of research show that afterschool and summer enrichment programs help youth make gains in reading and math,

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<sup>35</sup> Child Trends: [Building Protective Factors in Afterschool](#) (2019)

<sup>36</sup> Afterschool Alliance: [STEM Learning in Afterschool on the rise](#) (2021)





improve their work habits and school attendance, build social skills, make smart decisions, and graduate. These programs are a lifeline for working parents too, giving them peace of mind that their children are safe and engaged after school hours. Research has found that young people not involved in structured activities between 2 p.m. to 6 p.m. are more likely to engage in risky behaviors, experiment with drugs, and skip school.

## Environmental Sustainability Considerations

CPEAR has worked with the Resource Innovation Institute (RII) to provide the following recommendations to promote environmental sustainability.

### Background

The regulated cannabis industry produces its core product – cultivated flower – in a variety of ways that have environmental impacts, including energy, emissions, water, and waste. The extent of these impacts, however, is largely unstudied and is often misrepresented by the limited studies inaccurately extrapolating the inefficient practices of the illicit market.

Industry experts from throughout the supply chain agree that, because of the variability in production practices, more data are needed to understand resource usage patterns and trends in today’s dynamic, regulated market, which includes outdoor, greenhouse, and indoor production. To date, peer-reviewed research indicates that electricity benchmarks can range from 8 to 894 kBtu per square foot of flowering canopy, depending on cultivation methods.<sup>37</sup> Water benchmarks can range from 11 to 198 gallons per square foot, also depending on the cultivation method.<sup>38</sup> Carbon emissions resulting from cannabis production differ dramatically based on the uses of various sources of energy. When evaluating resource productivity (the amount of product produced per unit of resource consumed) indoor cultivation can yield better results than outdoor. Multi-disciplinary efforts are underway to establish key performance indicators that can guide future research.<sup>39</sup>

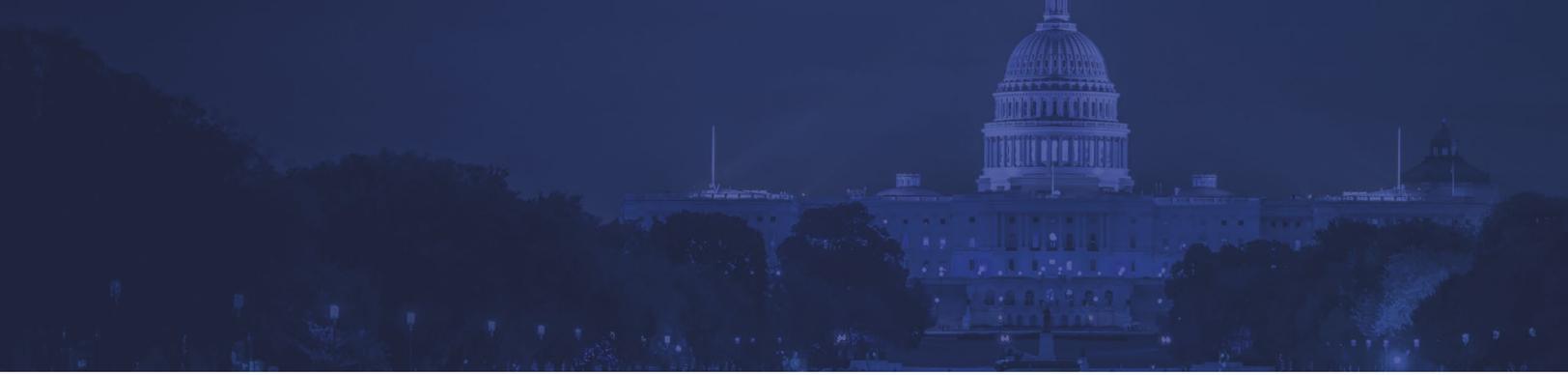
While a full picture is not yet available, what is true of all forms of cannabis cultivation is that they are reliant on natural resources, particularly energy and water. Energy and water are also top expenses for cultivation operations. As is true in other industries, cannabis companies that use their resources wisely have a greater chance to be cost-competitive and win in the marketplace. A U.S. Department of Energy study indicates that

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<sup>37</sup> [The Cannabis Energy Report](#), New Frontier Data and Resource Innovation Institute (2018)

<sup>38</sup> [Cannabis H2O: Water Use & Sustainability in Cultivation](#), New Frontier Data, Resource Innovation Institute and Berkeley Cannabis Research Center (2021)

<sup>39</sup> <https://resourceinnovation.org/press-release/water-working-group-to-research-cannabis-water-impacts/>



indoor horticultural operations can often reduce their energy usage by 50% after they install and properly use efficient technologies such as light-emitting diode (“LED”) horticultural lighting.<sup>40</sup>

On the international stage, the United States will be the market leader if its tax-producing companies win. Therefore, it is in the federal government’s environmental and economic interest to improve the efficiency of its cannabis industry.

The real question then becomes, *what is the most effective role the federal government can play within the landscape of state and local actions on energy and environmental issues?* The balance of these recommendations proposes a broadly supported policy framework on cannabis energy and environmental issues.

## Context

The cannabis industry is nascent, alive with innovation, and increasingly efficient. There are several examples of efficient technologies being developed for, or piloted within, the cannabis industry and then benefiting other agricultural sectors growing food for humans.<sup>41</sup> As was recently reported in POLITICO, the industry’s electricity intensity declined 21% between 2018 and 2020<sup>42</sup> while its electricity productivity more than doubled. There is evidence that further efficiency is on the rise as more and more state governments, energy providers and efficiency programs influence the market with regulation, education, training, and incentives. Production consolidation and shareholder pressure are also forcing operators to reduce cost structures. Yet, despite this positive trend, because of the relative lack of data, there are no clear answers on what the most effective mix of government actions is to accelerate market momentum.

Therefore, our recommendation is that, as federal cannabis regulation is contemplated, the federal government should:

1. Learn from state and local actions to date.
2. Recognize the critical need for data-driven decision-making.
3. Focus on carrots, not sticks.

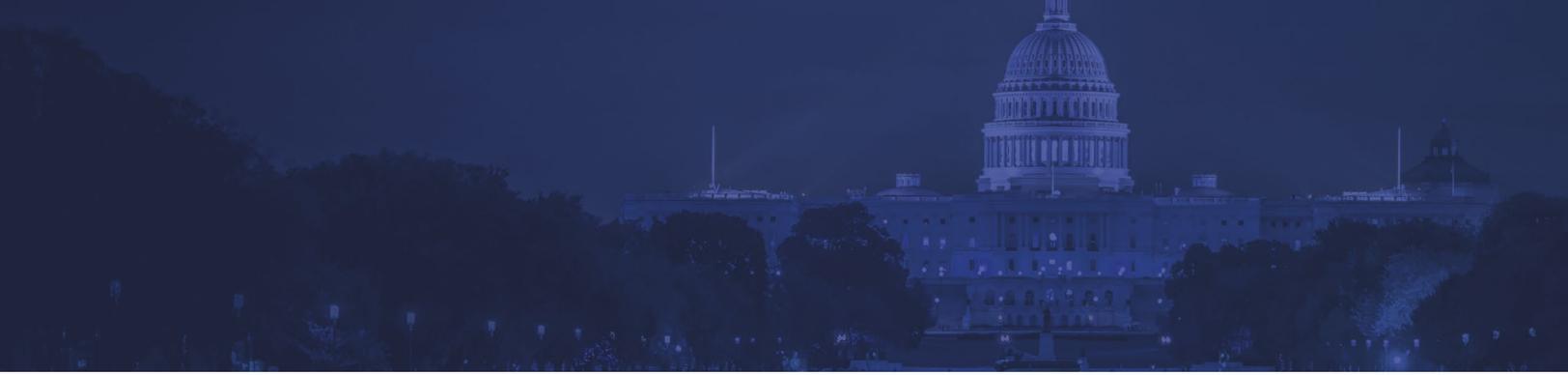
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<sup>40</sup> [https://www.energy.gov/sites/prod/files/2017/12/f46/ssl\\_horticulture\\_dec2017.pdf](https://www.energy.gov/sites/prod/files/2017/12/f46/ssl_horticulture_dec2017.pdf)

<sup>41</sup> Light deprivation curtains for greenhouses are available in many more sizes and at a lower cost than before for commercial producers of all crops because of demand from cannabis producers.  
<https://www.greenhousegrower.com/production/lessons-all-growers-can-learn-from-the-cannabis-gold-rush/>

<sup>42</sup> <https://www.politico.com/news/2021/08/10/weed-cannabis-legalization-energy-503004>





## 1. Learn from State and Local Actions to Date

A variety of codes and regulations have been enacted at the state and local level, and they are close to showing results. For example, Massachusetts began capping energy usage and specifying efficient lighting standards in 2018, and currently has one full year of data because of requiring energy and water reporting of its producers. California, home to 50% of the industry's cultivation, recently adopted energy codes requiring efficient performance of lighting equipment; these codes will take effect in 2023 and will begin showing results in 2024. In 2020, Illinois joined several local jurisdictions across multiple states in banning outdoor cultivation due to constituent concerns about odors, a decision certain to put pressure on electricity grids while licensing is still to reach capacity.

### Recommendations:

- Provide technical assistance on the adoption of codes and standards.
- Support best practices knowledge-sharing, education, and training.
- Encourage consistency in regulations from state to state.

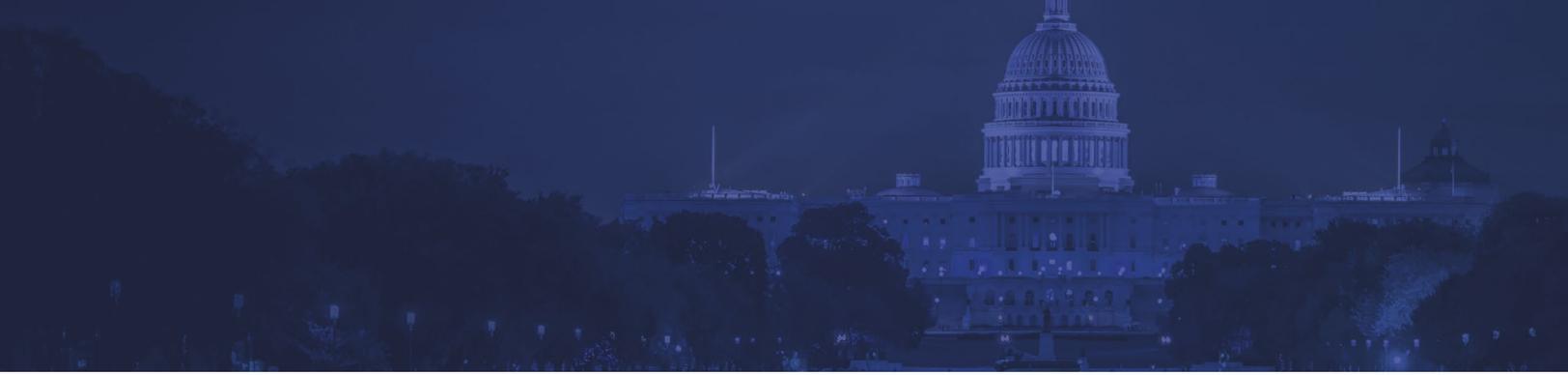
## 2. Recognize the Critical Need for Data-driven Decision-making

There is essentially universal agreement throughout the cannabis supply chain that more data are needed to optimize efficiency in cultivation and other production processes. The environmental issues related to cannabis production are complex and local. For example, growing cannabis outdoors in a hot, arid, drought-plagued environment like the Southwest has a different environmental impact than cultivating indoors in a cold climate like the Northeast. Standardized comparison is required. The PowerScore resource benchmarking platform provided by Resource Innovation Institute is specified by governments, vetted by a variety of stakeholders, and used by hundreds of cultivation operations. As a result, the not-for-profit infrastructure is available to inform data-driven decision-making by the federal government and other stakeholders as additional data is analyzed.

As noted above, the legal cannabis marketplace is still in its nascency. It is reasonable to expect that emerging science and manufacturing technology may eventually change the way cannabinoids are derived. As technology and science improve, the regulatory system should be nimble enough to embrace these changes.

### Recommendations:

- Encourage resource benchmarking.
- Support and align with state reporting requirements.
- Do not restrict any form of cultivation in the absence of data substantiating such a move.



### 3. Focus on Carrots, Not Sticks

Regulatory actions are extensive throughout state and local cannabis regulation, and those relating to energy and environmental issues are on the rise. Incentives are generally a missing element in the cannabis market, though utility-funded rebates have proven to accelerate the uptake of efficient technologies. At the same time, energy requirements in place in several markets have resulted in reductions of utility incentives. At the end of the day, there should be support for cannabis companies to make environmentally preferable choices, just as companies in other industries.

#### Recommendations:

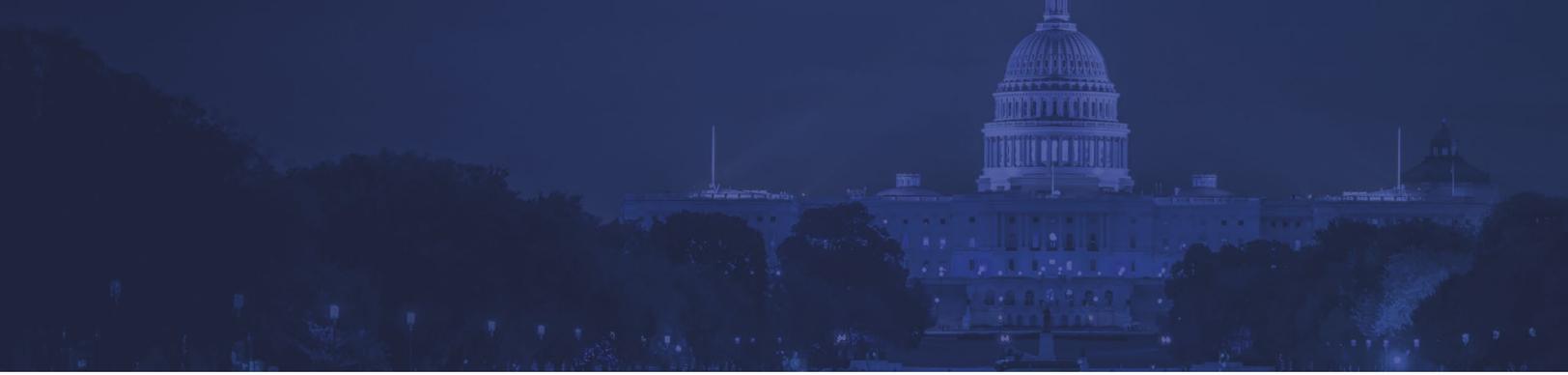
- Encourage utility incentives during periods of code adoption, as is often done in emerging energy-intensive industries.
- Support workforce education, training, and development, including equity programs, for efficiency-related work in indoor agriculture environments.
- Provide credit enhancements to back private financing on energy-efficient technologies.
- Support cannabis-centric voluntary leadership recognition systems that certify facility-level performance.
- Offer grants to support efficiency actions by producers, leveraging existing USDA activities as well as targeted services for cannabis producers.
- Explore opportunities to provide tax relief, expedited permitting, and other incentives based on environmental performance.
- Enable extended timeframes, financing, and technical assistance for small businesses and undercapitalized entrepreneurs.

## Impaired Driving Considerations

These recommendations were prepared by the Foundation for Advancing Alcohol Responsibility and other members of the safe driving community. We thank them for their efforts and support the below recommendations.

#### Context

In 2020 traffic deaths increased seven percent according to the National Highway Traffic Safety Administration (“NHTSA”) preliminary estimates (the largest increase since 2007). Despite a 13% decline in vehicle miles traveled, drivers engaged in risky behaviors on our roadways including speeding, impaired driving, and failure to wear seat belts. What’s more, a NHTSA study of five trauma centers revealed that fatal and serious injuries involving alcohol and cannabis-impaired driving increased and 25% of these drivers had more than one substance in their systems.



In Washington, Colorado, and Oregon, there have been dramatic increases in drug-impaired and multiple substance-impaired driving. Impaired driving involving drugs is far more difficult and costly to detect, prosecute, and prevent than drunk driving. Our nation has more than 70 years of science on the study of alcohol impairment. However, research on defining the standard of impairment for cannabis – or any other drug – is nonexistent.

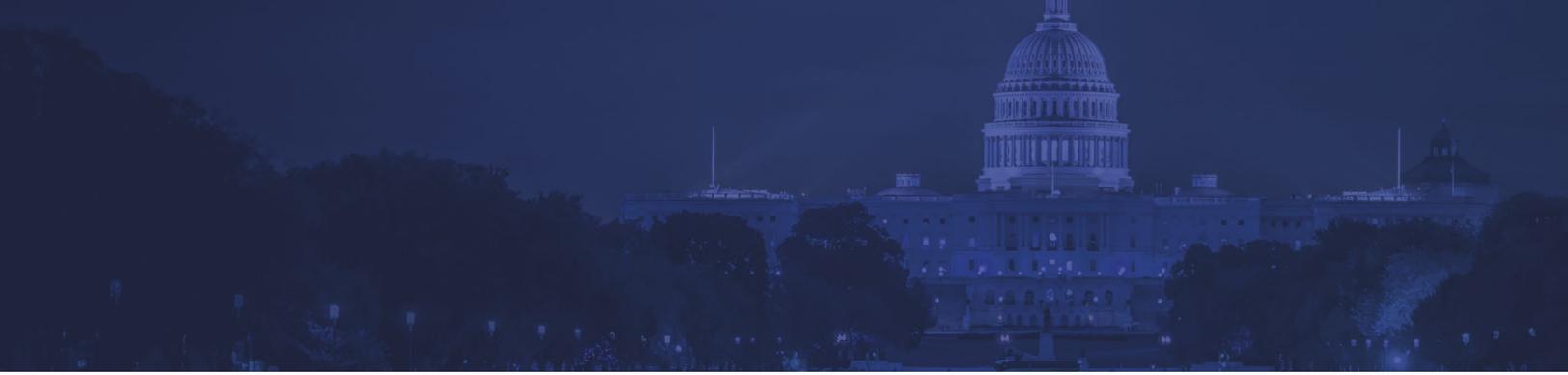
Drugs are metabolized quickly. THC rapidly clears from a person’s blood after smoking cannabis, yet maximum impairment is found 20-40 minutes after smoking. Drug testing among impaired drivers is almost always delayed and is typically administered between 90 and 120 minutes after arrest. Drug testing of injured drivers is done a few hours or even longer after crashes.

The danger of driving while impaired by cannabis is well-established but evidence suggests that many members of the public do not understand the risks.

Cannabis use for anyone under the age of 21 is illegal and potentially harmful to the developing brain and body. The nation needs research on the effect of modern cannabis products on adolescent brains and how they may contribute to addiction and mental health disorders among people under 21.

Some important impaired driving prevention countermeasures are not included in the CAO A discussion draft. **We respectfully recommend the Congress address the complex issue of cannabis-impaired driving by making the following changes to the legislation:**

- Thank you for continuing to allow for drug testing among commercial drivers. However, CAO A should allow employer programs with fleets not covered by the Department of Transportation to do testing for safety-sensitive and safety-related functions for an impairment-free workplace.
- CAO A should provide 8% of the amounts in the fund be made available as such:
  - 2% to the Secretary of Transportation to carry out Section 203 and Section 204 of this Act.
  - 3% to the Secretary of Transportation to carry out Section 205 of this Act.
  - 3% to the Secretary of Transportation to carry out existing impaired driving programs under section 405 (d) of title 23, United States Code, which include programs for officer training and technologies to detect drug-impaired driving, initiatives to expedite impaired driving investigations at the roadside, support forensic toxicology for impaired driving, and provide training to prosecutors, judges, probation officers and toxicologists on best practices.
- Research related to the Section 203 (b) should be primarily the responsibility NHTSA, in consultation with other agencies, as NHTSA already has programs underway related to these purposes.
- CAO A should establish a new National Resource Toxicologist Program to provide expert peer support to other forensic toxicologists involved in impaired driving cases.
- CAO A should create a single competitive grant for states under Section 205 that may be used for a wide range of activities to prevent and measure cannabis-impaired driving. States already have

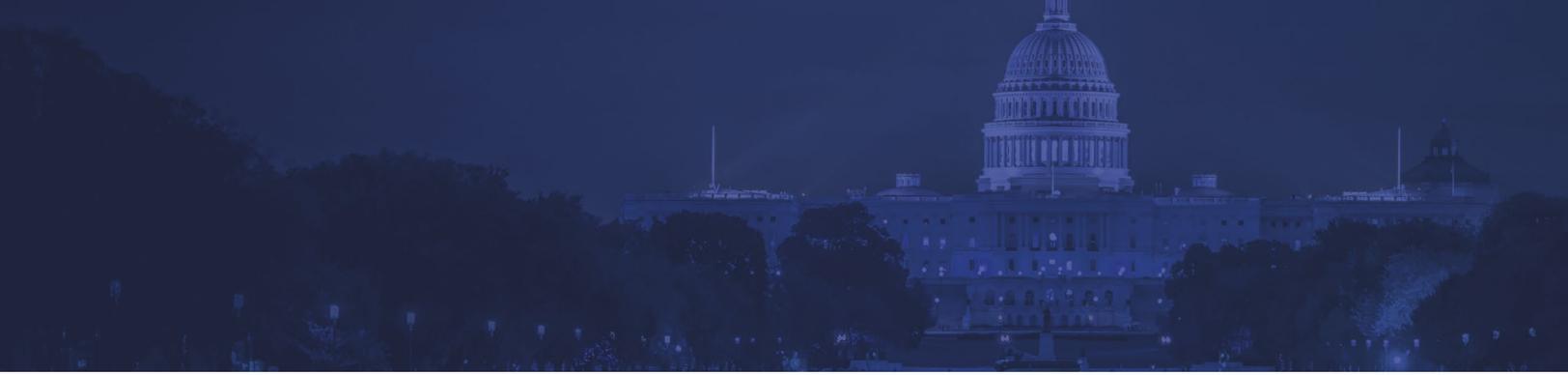


access to grants from NHTSA to address impaired driving and further subjecting states to multiple separate grants would compound application and implementation burdens. Further, many of the allowable uses under this grant should apply to cannabis and other substances as well. State systems to detect, prosecute, adjudicate, and measure impaired driving are set up for any and all impairing substances being used and there is no practical way to use grant funds only for cannabis.

- CAOAs should exempt federal grant fund purchases of toxicology equipment from Buy America requirements. The domestic sourcing of high-quality equipment for use in forensic toxicology labs remains a significant barrier to the use of federal funds to increase drug testing and expand our knowledge of the impact of cannabis-impaired driving.
- CAOA should add DWI treatment courts, DWI/drug hybrid treatment courts to Section 302. An offender driving under the influence of any substance should go to a DWI court – not a drug court that is trained/equipped to handle repeat impaired drivers.
- CAOA should include “Monitoring and Multi-Track” courts in Section 302. This new and innovative model allows judges to suspend jail sentences and monitor impaired drivers at high risk of recidivism but who do not need treatment provided by a traditional DWI court. Additionally, these courts do not apply exclusionary criteria which allows for a more diverse population to be served outside of prison and with a greater chance at rehabilitation. This model exists in California and Missouri with other states lined up to implement this model as well. A longitudinal study on San Joaquin County Superior Court shows compelling effectiveness in reducing recidivism over a six-year period while serving hundreds of offenders. Monitoring courts complement treatment courts and are for repeat offenders without treatment needs.

**Regarding underage cannabis consumption, we respectfully recommend the Congress address underage cannabis consumption by adding these provisions to the CAOA discussion draft:**

- Direct NHTSA and HHS to develop best practices to prevent underage cannabis consumption and impaired driving among people under 21.
- Initiatives to specifically address underage cannabis consumption should be funded from the Opportunity Trust Fund established under Section 9512. The legislation should provide 8% of the amounts in the fund be made available as such:
- Eight percent to SAMHSA to incentivize states to implement programs to prevent underage cannabis consumption to include but not be limited to:
  - Screening and assessment for substance use and mental health disorders when people under 21 purchase, possess, or consume cannabis.
  - Programs to prevent underage sales, such as the use of age verification devices, staff training to identify and manage situations where youth attempt to purchase cannabis, and penalties for using false identification.
  - Programs to prevent adults from knowingly providing cannabis to people under the age of 21; educate parents and children about the risks of underage cannabis consumption.



Any legislation altering the status of cannabis should include robust responsibility measures, such as those listed above, to protect citizens from the harmful effects of impaired driving and underage consumption.

Concerning the language in the CAO discussion draft, we offer the following changes for your consideration as featured below:

Beyond the GAO report listed on pages 31-38, many research reports and projects outlined in the discussion draft affect many agencies. We suggest the establishment of an interagency coordinating committee chaired by HHS but involving all agencies with a role. There is currently an Interagency Coordinating Committee on the Prevention of Underage Drinking that could serve as a model, help agencies collaborate, and charge one agency with compiling data into reports. It would also provide an avenue for stakeholder input which is important.

## Conclusion

The Cannabis Administration and Opportunity Act discussion draft represents a significant step in the direction of the federal legalization of cannabis. The content of the discussion draft is emblematic of a growing recognition of the reality of state-legal cannabis markets, an acknowledgment of the guidance required to ensure public safety, and the research and data collection necessary to adapt to the evolving understanding of the product.

Cannabis holds an important place in American history and society today as much as it will have an important place in the future. It is critical that any attempt to craft and implement federal guidelines is done so with a holistic approach, led by science and data, but considerate of criminal justice, social equity, and public health. CPEAR appreciates the opportunity to be a resource to the Sponsoring Offices as this legislative effort continues to evolve.