

July 17, 2024

The Honorable Anne Milgram
Administrator
U.S. Drug Enforcement Administration
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Notice of Proposed Rulemaking, Drug Enforcement Administration, Department of Justice, Schedules of Controlled Substances: Rescheduling of Marijuana; Docket No. DEA-1362 (5/21/2024)

Dear Administrator Milgram:

As a leading representative and advocate on behalf of America's 33 million small businesses, Small Business Majority writes to provide feedback on the proposed rule to reschedule marijuana under the Controlled Substances Act.

Small Business Majority is a national small business organization that empowers America's diverse entrepreneurs to build a thriving and equitable economy. From our nine offices across the country, we engage our network of more than 85,000 small businesses and 1,500 business and community organizations to deliver resources to entrepreneurs and advocate for public policy solutions that promote inclusive small business growth. Our work is bolstered by extensive research and deep connections with the small business community that enable us to educate stakeholders about key issues impacting America's entrepreneurs, with a special focus on the smallest businesses and those facing systemic inequities. Our state offices serve business communities in states that have taken major steps to reform marijuana laws including California, New Mexico, Colorado, Illinois, New York, Pennsylvania, North Carolina, and Washington, D.C., where many legally owned and registered cannabis businesses reside.

Cannabis businesses are small businesses. Despite the strong, whole of government dedication to supporting small companies, cannabis firms are overlooked compared to other small businesses in federal programs and conversations.

As we are the voice of very small and underserved businesses, we understand that small businesses and entrepreneurs conducting business in the cannabis and hemp industries are vastly overlooked and underserved when it comes to obtaining federal support and technical assistance. Due to the current federal regulatory regime on marijuana, small businesses in the cannabis industry are unable to access key tax deductions, seek government-backed financing, work with many banks or access services at federal small business resource partners (including the U.S. Small Business Administration). As the cannabis industry continues to expand in states across the country, according to the Cannabis Related Business Monitor as of June 2024, there are nearly 82,000 cannabis businesses nationwide.¹ Most of these businesses are small businesses by SBA standards; as of 2022, only 13 companies operating in the cannabis space reported employing over 500 individuals, which separates these companies from the vast array of small operators across the country.² Despite their presence in legal states, these businesses are

¹ "CRB Monitor Weekly Update: June 22-June 28, 2024," CRB Monitor, July 2024, <https://www.crbmonitor.com/resources/crb-monitor-weekly-update-june-22-june-28-2024>

² "Employee numbers up at some cannabis MSOs despite challenging conditions," MJBizDaily, April 2023, <https://mjbizdaily.com/employee-numbers-up-at-some-cannabis-msos-despite-challenging-conditions/>

simply forgotten about in many federal programs and conversations that were designed to support America's smallest innovators.

As small businesses seek opportunity in growing industries, cannabis reforms provide more opportunity for cannabis and hemp-based entrepreneurs.

The cannabis and hemp industries are quite lucrative and ripe with opportunity for burgeoning small firms both in the business and state revenue-raising context. Revenue from the licensed and legal marijuana industry is projected to increase to \$30 billion by 2025.³ Despite this, small businesses in these states are struggling to reinvest into their businesses, and when small growers and sellers cannot profit from their operations, they risk falling behind those of consolidated, larger operations in legal states.

As the retail price of cannabis continues to decrease drastically, with average prices dropping 32% since 2021, smaller dispensaries are struggling to meet rising demand compared to their larger, multi-state competitors that can afford to lower prices for their customers.⁴ Furthermore, continued legalization efforts at both the federal and state levels may encourage larger farmers and businesses to enter the cannabis market, which could drive smaller firms to consolidate or close their doors. Monopolization across all industries has a profound impact on small businesses, making it nearly impossible to keep up with big companies that can afford to drop prices to drive out competition. These market realities are compounded by growing consolidation in the industry, with the largest cannabis businesses holding more than 100 licenses each and having operations in as many as 22 states.⁵ This is significant, as certain legal states apply caps to how many cannabis-business licenses are allowed, pointing toward an even greater need to support small operators in their endeavors to succeed.⁶

Implications for racial equity and workforce development

The war on drugs, and more specifically the war on marijuana, has had disproportionate and grave impacts on minority communities nationwide. In fact, an analysis by the American Civil Liberties Union (ACLU) found that Black communities face higher arrest rates than white communities for marijuana possession in every state, and on average, a Black person is 3.64 times more likely to be arrested for marijuana possession than a white person.⁷ Prior marijuana convictions and costly licensing requirements have also disproportionately prohibited people of color from entering the cannabis industry. Due to this, only 2% of America's cannabis businesses are Black-owned.⁸ This is a concerning statistic given the fact that the recent small business boom has been fueled by minority entrepreneurs, which points to the depth of the barriers minority communities face when trying to break into the cannabis industry.

Beyond increasing access to the cannabis industry for small businesses and minority entrepreneurs, continued rescheduling, legalization, and expungement efforts will expand workforce opportunities for the more than 70 million Americans who have a criminal record.⁹ While the stigma of a criminal record still impacts an individual's ability to gain employment, employers who hire justice-impacted workers report their quality of work and contributions are on par with or better than other employees.¹⁰ Small

³ "New Cannabis Report Predicts Legal Sales To Reach Nearly \$30 Billion By 2025," Forbes, September 2019, <https://www.forbes.com/sites/irisdorbjan/2019/09/24/new-cannabis-report-predicts-legal-sales-to-reach-nearly-30-billion-by-2025/>

⁴ "Cannabis Industry Shift: Pricing Compression & Brand Consolidation, September 2023, <https://bdsa.com/cannabis-industry-shift-pricing-compression-brand-consolidation/>

⁵ "How Big Business, Monopolies and Vertical Integration Impact the Cannabis Industry," Cannabiz Media, August 2022, <https://www.cannabiz.media/blog/how-big-business-monopolies-and-stacked-licenses-impact-the-marijuana-industry>

⁶ "License Caps for State Cannabis Programs," Cannabis Public Policy Consulting, 2024, <https://www.cannabispublicpolicyconsulting.com/wp-content/uploads/2024/01/LicenseCapMemo.pdf>

⁷ "A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform," ACLU, April 2020, <https://www.aclu.org/publications/tale-two-countries-rationally-targeted-arrests-era-marijuana-reform>

⁸ "Seeds of Change: Strategies to create an equitable cannabis industry," Leafly, 2021, <https://leafly-cms-production.imgix.net/wp-content/uploads/2021/06/25091621/Leafly-2021-white-paper-Seeds-Of-Change-by-Janessa-Bailey-1.pdf>

⁹ "One Strike and You're Out," Center for American Progress, December 2014, <https://www.americanprogress.org/article/one-strike-and-youre-out/>

¹⁰ "2021 Getting Talent Back to Work Report," Getting Talent Back to Work, 2021, https://www.gettingtalentbacktowork.org/wp-content/uploads/2021/05/2021-GTBTW_Report.pdf

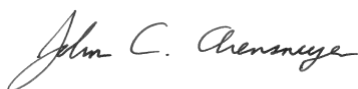
Business Majority research also found that 79% of small business owners agree that removing barriers to employment for people with criminal records will save tax dollars by reducing recidivism and the need for long term government assistance and 84% agree that Clean Slate policies will open up a pool of job applicants that deserve a second chance.

Immediate financial benefits for business owners regarding cannabis reform and next steps Congress can take

While many reforms are needed in this space to bring equity and justice to cannabis-based businesses, the move to reschedule marijuana as a Schedule III substance would substantially benefit small businesses in this space by loosening restrictions on tax deductions that cannabis businesses are currently barred from utilizing. Businesses involved in the sale of Schedule I or II substances are prohibited, through IRC Sec. 280E, from deducting allowable business expenses under IRC Sec. 160A. This means that because they sell cannabis products, they are unable to take simple tax deductions that millions of other businesses enjoy, despite their state laws and regulations. This has a major consequence on small business' bottom lines and their ability to invest into their operations; in 2022 alone, cannabis businesses overpaid more than \$1.8 billion in taxes.¹¹ The current tax system already fails to deliver for small businesses: Small Business Majority research found that 73% of small business owners believe that the current tax system favors big businesses over small businesses.¹² Ensuring that the rescheduling takes place promptly will enable more businesses to compete on a level playing field with the other establishments in their community who enjoy tax breaks and deductions regularly.

The move would also signal to members of Congress and other key decision makers in the federal government that more reforms are welcomed to support legally owned and operated businesses in these highly regulated and complex industries. Some of the reforms we would like to see include an expansion of access to capital for small cannabis businesses through financial and banking reform efforts, like the Secure and Fair Enforcement Regulation Banking Act, which would ensure that all businesses—including state-sanctioned cannabis businesses—have access to deposit accounts, insurance and other financial services.¹³ Other legislation, like the Marijuana Opportunity, Reinvestment and Expungement (MORE) Act, would authorize a sales tax on marijuana products, and promote sensible criminal justice reforms involving marijuana, enabling these businesses to contribute to raising more revenue for federal and state programs, which could be invested back into the community to support justice-impacted equity efforts among affected communities.¹⁴ For these reasons, we wholeheartedly support the DEA in its efforts to downgrade marijuana as a Schedule III substance and recognize the potential for progress to build upon these efforts for cannabis-based businesses in the small business community. Should you have any questions or would like to discuss our feedback further, please contact our Government Affairs Director, Alexis D'Amato at adamato@smallbusinessmajority.org or (202) 967-0995.

Sincerely,



John Arensmeyer
Founder & CEO
Small Business Majority

¹¹ "Economic Analysis Indicates Cannabis Industry Paid \$1.8 Billion in Excess Taxes in 2022," Whitney Economics, May 2023, <https://www.prnewswire.com/news-releases/economic-analysis-indicates-cannabis-industry-paid-1-8-billion-in-excess-taxes-in-2022--301817848.html>

¹² "Opinion Poll: Small businesses share views on proposed tax reforms, workforce shortages," Small Business Majority, August 2021, <https://smallbusinessmajority.org/our-research/small-businesses-views-on-tax-reforms-workforce-shortages>

¹³ "SAFER Banking Act," Senate Democrats, 2023, https://www.democrats.senate.gov/imo/media/doc/safer_section_by_section.pdf

¹⁴ "Nadler, Blumenauer, Lee, Jackson Lee and Velázquez Reintroduce Comprehensive Marijuana Reform Legislation," Congressman Jerry Nadler, September 2023, <https://nadler.house.gov/news/documentsingle.aspx?DocumentID=395069>