



# National Cannabis Industry Association

## Executive Summary of the Cannabis Administration And Opportunity Act Discussion

### Draft

Published on September 1, 2021

For almost a century, the United States government has criminalized the production, distribution, and sale of cannabis. However, the era of prohibition continues to crumble in the face of voter and, increasingly, legislative revolt. Even as federal law remains unchanged, 47 states have legalized some form of cannabis, while 19 states and the District of Columbia have approved laws to regulate adult-use cannabis in a manner similar to alcohol. Moreover, in 2018, Congress removed hemp (and any cannabinoids derived therefrom) from the Controlled Substances Act (CSA), legalizing a subset of cannabis plants and derivatives that contain less than 0.3% Delta-9 THC. With momentum building and public [support](#) ever-increasing, the critical question has shifted from “Should cannabis be legalized?” to “How will we regulate the commercial cannabis market at the federal level?”

On July 14, 2021 Senate Majority Leader Chuck Schumer (D-NY), Senate Finance Committee Chair Ron Wyden (D-OR), and Senator Cory Booker released a [discussion draft](#) of the Cannabis Administration and Opportunity Act (CAOA), proposed language that would remove cannabis from the federal list of controlled substances and empower states to implement their own cannabis laws. In addition, these Senate offices solicited public comment on this language to “spur a robust discussion among stakeholders in order to inform Sponsoring Offices as they work to craft a final legislative proposal.”

Founded in 2010, the National Cannabis Industry Association ([NCIA](#)) is the oldest, largest, and only full-service trade association serving the entire legal cannabis industry. Our membership is composed of several hundred businesses and tens-of-thousands of cannabis professionals from across the United States. For the past decade, NCIA has been leading the charge to protect the legal cannabis industry, defend state laws, and advance federal policy reforms. We applaud these three Senate pioneers for their courage and leadership on this important issue. The future of the CAO A will mark the moment when cannabis reform at the federal level took its next great leap; creating the next great American industry while also providing restorative justice to those most harmed by the racist war on drugs.

In order to offer the most comprehensive and inclusive feedback possible, we worked diligently with a multitude of stakeholders that comprise our association. This included soliciting feedback from our board

of directors, all levels of membership, fourteen sector committees, and dozens of members representing various state and local organizations as well as social equity programs. All told, we have collected and synthesized [a vast body of feedback](#) across all stakeholders in the legal cannabis industry to inform our comments and recommendations. As a result, the feedback represents the input from companies of all sizes across nearly every vertical of the legal industry in the U.S, including cannabis cultivators, manufacturers, distributors, retailers, equity operators, and innumerable ancillary businesses providing support services to these businesses.

Read our [full summary of questions and responses](#).

The intended goal of cannabis reform legislation, at any level of government, should be to create a diverse, equitable, sustainable, profitable, and responsible cannabis industry that can replace illicit markets. This includes implementing a robust regulatory regime that protects public health, ensures opportunity for all communities, and decreases the harms associated with unregulated markets. We outlined these ideas in our October 2019 white paper titled “[Adapting A Proven Regulatory Framework for the Cannabis Industry](#).”

Comprehensive cannabis reform at the federal level will be a momentous undertaking for policy makers, and a great deal of work remains before we see the end of prohibition. But, at a minimum, comprehensive reform should address the following issues:

- **Descheduling, Not Rescheduling** – the first and most important step of reform involves removing cannabis from the Controlled Substances Act entirely, rather than moving it to a different schedule.
- **Support Small Businesses** – federal policy-makers must understand the importance of protecting this nascent industry and establishing tax and regulatory schemes that minimize industry consolidation and prioritize small business entrepreneurship.
- **Social Equity** – the end of cannabis prohibition at the federal level should right past wrongs and ensure that the benefits of legalization flow to communities that bear the brunt of prohibitionist policies.
- **Restorative Justice** – legislation should work to repair the racially and economically disparate harms caused by prohibition, including but not limited to facilitating expungement/resentencing of cannabis convictions and reinvestment in disproportionately impacted communities.
- **Federal Regulatory Oversight** – any discussion of cannabis policy is not complete without sensible and equitable regulatory oversight that balances state-level cannabis regulation programs with robust federal regulatory guidance and oversight.
- **Research** – removing current barriers to cannabis research would facilitate research on both the benefits as well as potential harms associated with cannabis consumption.

- **Access by Minors** – reform at the federal level should include incentives for states to establish a minimum adult purchase age.
- **Labeling/Advertising/Testing** – reform at the federal level must include clear and accurate guidelines to inform consumers.
- **Respecting State Cannabis Programs** – any federal regulatory scheme should aim to provide uniformity and should also complement existing state cannabis programs which have successfully protected public health and safety.
- **Minimizing the Unregulated Market** – any tax imposed should not be so high that the legal industry is unable to effectively compete against the existing unregulated market.
- **Veterans** – federal policy-makers must support programs that allow hundreds of thousands of veterans who wish to access medical cannabis as a treatment for various medical conditions, whether through the Veterans Affairs or through a private provider.
- **Establishing Appropriate Cannabinoid Definitions And Regulatory Paths** – with hundreds of identified cannabinoids and increasing innovation in isolation and isomerization, policy-makers must clarify and adopt regulations separating psychotropic and non-psychotropic cannabinoids and develop pathways to regulate novel cannabinoids sensibly and effectively.

**NCIA’s comments on the CAO A discussion draft are consistent with the above principles.**

Former Chief Justice of the Supreme Court John Marshall once opined, “the power to tax involves the power to destroy.” When crafting a taxing regime for the cannabis industry, Congress must understand the nuances of an emerging industry, learn the lessons of ill-fated tax structures implemented at the state level, and ensure that its proposed tax structure allows for small businesses to thrive and industry entrepreneurs to participate. Otherwise, the unregulated market will remain active. NCIA Chief Economist Beau Whitney analyzed the tax provisions of CAO A, [which can be found in this paper](#).

Our concerns regarding the tax provisions of CAO A include:

- Although the punitive tax code IRC280E would no longer apply, the proposed tax structure would increase taxes on the cannabis industry overall. This tax increase disproportionately impacts small and minority-owned businesses and increases consolidation, and decreases opportunities for small craft operators.
- Eliminates opportunities to grow and scale via vertical integration, impacting small operators and craft suppliers.
- Creates disincentives to lower costs and drive innovation due to taxes based on prices from the prevailing year.
- Presents barriers to interstate commerce due to lack of harmonized standards across state jurisdictions.

- Does **not** account for current operators currently in arrears on federal taxes (280E penalty), and would favor new entrants.
- Increases compliance costs, with possibility of two separate tracking systems (state and federal).
- Puts domestic operators at a competitive disadvantage to other global suppliers.
- Potentially has a harmful environmental impact and disincentivizes technology-driven efficiencies.
- Does **not** include tax provisions for medical patients, increasing cannabis-based healthcare costs.

As currently drafted, we are very concerned with various tax provisions included in the CAO, for the reasons previously noted. Any federal taxation regime should encourage entrepreneurship without undermining the legal cannabis industry. Unlike other legal and regulated industries, Congress must remember that the underground market has a 50-year head start on the regulated cannabis industry. The federal government must heed the lessons from state legalization and regulatory efforts, which demonstrate that high compliance costs and taxes preserve the unregulated market as a viable option for consumers and undermine legal cannabis businesses and entrepreneurs.

NCIA is committed to creating a vibrant legal industry that can sustain hundreds of thousands of well-paying jobs and become a major economic engine for America in the decades ahead. We are confident that congressional offices share this commitment with NCIA and trust they will seriously consider this feedback and that of our advocacy and industry allies.

Given the nuances and complexities involved in some of the issues addressed by this draft legislation, there are some areas where NCIA stakeholders did not reach consensus or where we have been unable to complete a thorough analysis at the present time. In these cases, we have included these viewpoints as viable advisory options and look forward to working with stakeholders and sponsoring offices to determine the best path forward on those issues where agreement does not yet exist. As has been stated previously, NCIA supports – and advocates for – comprehensive reform at the federal level that addresses all of these topics. In addition, we accept that comprehensive federal reform is complex and requires more consensus. In the interim, incremental reform – including the SAFE Banking Act – can provide small businesses with the immediate relief they need today while improving public health and safety. Colorado Governor Jared Polis sent a letter to Senator authors espousing this [position](#).

It is clear that the era of prohibition is coming to a close. It is now incumbent on the federal government to catch up with voters and state policy-makers, although there still remains a lot of work to be done. We applaud Senators Schumer, Wyden, and Booker for leading this discussion and soliciting comments. After a failed century of prohibition, the public deserves and demands safe access to appropriately regulated cannabis products. We look forward to working with congressional offices to develop policies that promote the growth of a responsible, sustainable, and inclusive cannabis industry and work for a favorable social, economic, and regulatory environment for that industry throughout the United States.