



**Testimony of**

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**Executive Director**

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**Before the**

**United States House of Representatives**

**Committee on Financial Services**

**Subcommittee on Consumer Protection and Financial Institutions**

**Hearing on**

**“Small Businesses, Big Impact: Ensuring Small and Minority-Owned Businesses Share in  
the Economic Recovery”**

**February 17, 2022**



## Executive Summary

Chair Perlmutter, Ranking Member Luetkemeyer, and other Members of the Subcommittee:

Thank you for the opportunity to testify at today's hearing. My name is Amber Littlejohn; I am the Executive Director of the Minority Cannabis Business Association (MCBA). The MCBA is the largest national trade association dedicated to serving the needs of minority cannabis businesses and our communities. We represent minority and allied cannabis businesses, aspiring entrepreneurs, and advocates who share our vision of an equitable, just, and responsible cannabis industry.

I am pleased to appear before you on behalf of MCBA to discuss the challenges shared by small businesses as we continue to grapple with the global COVID-19 pandemic and the uncertain economic outlook. For many minority businesses, including minority-owned cannabis businesses, the outlook is dire. As the nascent cannabis industry takes shape, we see a common tale of small businesses struggling to enter and sustain themselves because of extraordinary barriers to entry and limited access to capital. We see a common cycle of minority entrepreneurs seeking to shake the economic consequences of systemic inequities, only to suffer at the hands predatory investors and partners who seek to profit from injustice.

In my testimony, I will touch on four issues about this cycle, how the COVID-19 pandemic has exacerbated it, and some of the potential solutions. Despite the limited scope of this testimony, there are many issues the Subcommittee should continue to explore to ensure small and minority-owned businesses can share in the economic recovery. I offer myself and the MCBA as an ongoing resource on these issues.

First, the COVID-19 pandemic and resulting economic uncertainty have been particularly difficult for small businesses, but especially for minority-owned and operated cannabis businesses, because minority-owned and operated cannabis businesses were shut out from the federal government's pandemic relief programs. Despite many states deeming legal cannabis businesses "essential" during the early stages of the pandemic, all plant-touching and ancillary cannabis businesses were deprived access to federal relief to help small businesses survive the closures and economic downturn, including the Paycheck Protection Program. Even small businesses who could access federal relief were unable to access adequate support. As a result, Black businesses



closed at more than twice the rate of white-owned firms and experienced declines in cash balances nine times as high as nonminority firms since the pandemic began.<sup>1</sup>

Second, the financial challenges small and minority-owned cannabis businesses face have been exacerbated by the pandemic, but they were not created by it. Despite accounting for 12.4% of the U.S. population,<sup>2</sup> African-Americans constitute just 2% of the owners of our nation's 30,000 legal plant-touching cannabis businesses.<sup>3</sup> This low representation is due to staggering costs small and minority-owned and operated cannabis businesses incur in order to operate lawfully. In competitive markets, the pre-application and application costs for small cannabis businesses commonly exceed millions of dollars, especially in states that require hopeful licensees to secure a "green zone"<sup>4</sup> premise or show proof of capital in order to apply. As I will discuss, obtaining adequate capital is quite difficult and often forces entrepreneurs to accept exploitive contracts from private investors.

Third, state social equity programs designed to promote ownership of legal cannabis business among the individuals most impacted by cannabis prohibition are critical to the long-term success of minority-owned cannabis business. However, the programs are failing to adequately support small and minority-owned cannabis businesses. Currently only 15 of 37 states with legal adult use and/or medical cannabis programs have implemented a social equity program.<sup>5</sup> Of the 15, only six provide direct funding to social equity applicants and operators. None provide timely and adequate funding to offset the extraordinary cost of submitting a competitive application.

To understand the range of expenses, consider Connecticut. Applicants for a cultivation or processor license for Connecticut's adult-use market must pay \$3,000,000<sup>6</sup> or try their luck securing one of the 56 licenses available in the lottery (only half of which are social equity

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<sup>1</sup> Misera, Lucas, *An Uphill Battle: COVID-19's Outsized Toll on Minority-Owned Firms*. Federal Reserve Bank of Cleveland, October 8, 2020, <https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx>.

<sup>2</sup> Jones, Nicholas, Rachel Marks, Roberto Ramirez and Merarys Rios-Vargas, "Improved Race Ethnicity Measures Reveal United States Population Much More Multiracial, Census.gov § (2021), <https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html>.

<sup>3</sup> BaileyLe, Janessa, "Seeds of Change: Strategies to Create an Equitable Cannabis Industry," Leafly.com, 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>.

<sup>4</sup> A "green zone" is real estate that can be used for commercial cannabis activities as permitted by local zoning and land use laws. Many cities and counties prohibit the use of real estate in most or all of their jurisdiction to be used for cannabis commerce, which increases the cost of available real estate for cannabis entrepreneurs.

<sup>5</sup> Littlejohn, Amber, and Eliana Green, *MCBA National Equity Report*. Minority Cannabis Business Association & The Arcview Group, February 2022, <https://minoritycannabis.org/equitymap/>.

<sup>6</sup> See Connecticut Public Act 21-1.



licenses).<sup>7</sup> Applicants seeking a cultivation or processor license in Pennsylvania’s medical cannabis program must prove they have \$2,000,000 in capital and pay a \$210,000 application fee.<sup>8</sup> These are just two examples. By and large, these programs provide too little funding and their implementation has been too rocky to provide social equity licensees the opportunity to participate and compete.

Fourth, small and minority-owned cannabis businesses cannot access the traditional financial services they need to survive, let alone thrive. Many of MCBA’s members and similar business cannot access core banking services, such as deposit accounts, loans, treasury management, and electronic payments simply because they are in the cannabis industry. As of June 30, 2021, only 706 of the approximately 10,000 federally-insured banks and credit unions in the United States actively provide some type of banking service to all cannabis business, including the largest operators.<sup>9</sup> Until small and minority-owned and operated cannabis businesses can access financial services on a fair, competitive basis, they will continue to be left behind as other sectors of our economy recover. Thus, they will continue to fall behind much larger competitors who do not face these challenges to a similar extent.

To address these issues, I encourage Congress and the Administration to consider a wide-range of options, including enacting the “Secure and Fair Enforcement (SAFE) Banking Act” this Congress; collecting demographic data about the availability of financial services (particularly loans) to small and minority-owned and operated business; conducting a disparity study to ensure any comprehensive legalization efforts address the disparate impact of the enforcement of cannabis laws; supporting CDFIs and other institutions more likely to lend to small cannabis businesses; and calling for updated guidance for financial institutions doing business with cannabis firms.

### **Minority Cannabis Business Association**

Founded in 2015, the Minority Cannabis Business Association is the largest national trade association dedicated to serving the needs of minority cannabis businesses and our communities. MCBA represents minority and allied cannabis businesses, aspiring entrepreneurs, and supporters who share a vision of an equitable, just, and responsible cannabis industry. Our mission is to create equal access for cannabis businesses and economically empower communities of color through

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<sup>7</sup> “Consumer Protection Announces Date for First Application Period for Adult-Use Cannabis Licenses.” *Portalct.gov*. Connecticut Department of Consumer Protection, January 4, 2022. Connecticut Department of Consumer Protection, <https://portal.ct.gov/DCP/News-Releases-from-the-Department-of-Consumer-Protection/2022-News-Releases/Adult-use-cannabis-applications>.

<sup>8</sup> “Growers Processors FAQs.” *Healthpa.gov*. Pennsylvania Department of Health (2022), <https://www.health.pa.gov/topics/programs/Medical%20Marijuana/Pages/Growers-Processors.aspx>.

<sup>9</sup> “Marijuana Banking Update, Depository Institutions (by type) Providing Banking Services to Marijuana-related Business,” Financial Crimes Enforcement Network (as of June 30, 2021), [https://www.fincen.gov/sites/default/files/shared/303751\\_MJ%20Banking%20Update%203rd%20QTR%20FY2021\\_Public.pdf](https://www.fincen.gov/sites/default/files/shared/303751_MJ%20Banking%20Update%203rd%20QTR%20FY2021_Public.pdf).



policy, programming, and outreach initiatives to achieve equity for the communities most impacted by the War on Drugs. This mission is carried out by a 15-member Board of Directors comprised of diverse industry veterans, medical and legal professionals, advocates, and community leaders.

To promote this mission, MCBA focuses on promoting equity in four key areas:

- Equitable INDUSTRY: Ensure the inclusion and success of minorities in the cannabis industry through equitable policy and equitable access to opportunities and resources.
- Equitable COMMUNITIES: Empower and support the communities most impacted by cannabis prohibition by promoting meaningful community reinvestment and corporate responsibility initiatives.
- Equitable JUSTICE: Promote policies that reduce arrests and imprisonment for non-violent cannabis offenses and restore basic rights of citizenship to individuals with non-violent cannabis offenses.
- Equitable ACCESS: Drive policy and education initiatives to increase access to safe and effective medicine and ensure the health and wellbeing of minority communities.

### **Effects of the COVID-19 Pandemic on Small and Minority-owned Cannabis Businesses**

Prior to the COVID-19 pandemic, minority-owned and operated businesses and small businesses were making important strides, albeit more work was needed. According to the U.S. Census Bureau, minorities make up approximately 40 percent of the U.S. population or nearly 130 million Americans. Between 2010 and 2019, the Latino, Asian, and African-American populations grew by 19.4 million people. During this decade, the number of minority businesses in the United States also grew at a rapid rate. While the strides these businesses as a whole were making were important welcome, minority-owned businesses remain underrepresented as a share of the total U.S. business ownership. Moreover, these businesses typically have fewer employees and lower revenues than their non-minority counterparts.

The COVID-19 pandemic has been a major setback for small and minority-owned and operated businesses. Before the pandemic, minority businesses were some of the fastest growing businesses in the nation. Now, there are fewer minority owned companies and many have fewer employees and operate under a more precarious financial condition. According to a study by all 12 Federal Reserve Banks, “firms owned by people of color, both small employer firms and non-employer firms, were among the firms most likely to experience financial and operational



challenges stemming from the pandemic.”<sup>10</sup> Per the study, “declines in revenue and employment between 2019 and 2020 were most severe for firms owned by people of color” and “[f]irms owned by people of color were more likely to report that they reduced business operations in response to the COVID-19 pandemic.”<sup>11</sup>

Many minority businesses’ inability to access or receive adequate support from federal COVID-19 relief programs compounded these financial setbacks. Despite bearing disproportionately large challenges and harms, minority-owned businesses, especially small businesses, did not receive adequate assistance. For instance, “[w]hile 79% of white-owned firms received all of the PPP funding they sought, that share dropped to 43% for Black-owned firms. Black-owned applicant firms were five times as likely as white-owned firms to receive none of the PPP funding for which they applied (20% compared to 4%).”<sup>12</sup> As a result, Black businesses closed at more than twice the rate of white-owned firms and experienced declines in cash balances nine times as high as nonminority firms since the pandemic began.<sup>13</sup>

These struggles were amplified among minority-owned and operated cannabis businesses. Despite many states deeming legal cannabis businesses “essential” during the early stages of the pandemic, all plant-touching and ancillary cannabis businesses were deprived access to federal relief to help small businesses survive the closures and economic downturn and adapt to new ways of doing through improvements to operations, technology, and infrastructure. Under a 2018 Policy notice, the Small Business Administration (SBA) held that marijuana related businesses, plant touching and some non-plant touching business, are ineligible for SBA loans.<sup>14</sup> When the federal government provided relief during the COVID-19 Pandemic, SBA reiterated this policy and held that even state legal cannabis companies were ineligible for relief under the Paycheck Protection and Economic Injury Disaster Loan Programs.<sup>15</sup> This policy stance was followed by the Federal Reserve in its administration of the Main Street Lending Program.<sup>16</sup> Although the SBA would later

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<sup>10</sup> “Small Business Credit Survey, 2021 Report on Firms Owned by People of Color, Federal Reserve Banks, <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Misera, Lucas. Rep. *An Uphill Battle: COVID-19’s Outsized Toll on Minority-Owned Firms*. Federal Reserve Bank of Cleveland (Oct. 8, 2020), <https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx>.

<sup>14</sup> “Revised Guidance on Credit Elsewhere and Other Provisions in SOP 50 10 5(J).” SBA Policy Notice: 5000-17057, April 3, 2018. <https://www.sba.gov/document/policy-notice-5000-17057-revised-guidance-credit-elsewhere-other-provisions-sop-50-10-5j>. See also “Guidance on Grantees Providing Assistance to Marijuana-Related Businesses.” SBA Information Notice: 6000-19005, August 2, 2019. <https://sbdctampabay.com/wp-content/uploads/2019/09/SBA-Marijuana-Policy.pdf>

<sup>15</sup> SBA Pacific NW. Twitter Post. March 23, 2020, 7:09pm.

<sup>16</sup> Main Street Lending Program For-Profit FAQs, <https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm>



make an exception for businesses that produce or sell hemp or hemp-derived products, cannabis companies remained ineligible for federal relief.

According to one survey, the most common concern cited by small, minority owned and social equity designated cannabis businesses was the ability “to survive financially given the broad economic impact of COVID-19.”<sup>17</sup> Small businesses already struggling with profit margins of zero<sup>18</sup> to 4.5%<sup>19</sup> had to secure personal protective equipment (PPE), COVID-19 tests, cover increased cleaning and sanitation costs, and making efforts to secure access to technology to increase customer safety in an industry without ready access to touchless payments.

COVID-19 also delayed the implementation of much needed social equity programs. In March 2020, there were 30 state cannabis reform proposals, including six with social equity provisions.<sup>20</sup> Three of the states with equity provision stalled as legislative priorities shifted to states’ immediate COVID-19 response.<sup>21</sup> Shifting priorities and limited resources contributed to delays in the rollout of equity programs in Illinois and Los Angeles of 21 months<sup>22</sup> and over two years<sup>23</sup> respectively. Meanwhile existing Illinois cannabis businesses comprised primarily of large multistate operators (MSOs), who gained early access to the market,<sup>24</sup> saw record sales of \$1.38 billion dollars, more than doubling since 2020.<sup>25</sup>

### **Irrespective of COVID-19, Small and Minority-owned and Operated Cannabis Businesses Struggle to Thrive Given the Significant Costs of Operating as a Lawful Cannabis Business**

The financial challenges small and minority-owned and operated cannabis businesses have faced were exacerbated by the pandemic, but they were not created by them as small and minority-

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<sup>17</sup> Berman, Douglas, Jana Hrdinová, Mark Pauley, and Dexter Ridgway. Rep. *Struggling Through the Pandemic: Cannabis Social Equity During COVID-19*. Moritz College of Law Drug Enforcement and Policy Center (June 2020).

<sup>18</sup> According to interviews with MCBA members, many social equity operators state they regularly break even or run at a loss.

<sup>19</sup> <https://nstarfinance.com/cannabis-dispensary-profit-margin-insight/>

<sup>20</sup> Berman, Douglas, Jana Hrdinová, Mark Pauley, and Dexter Ridgway, *Struggling Through the Pandemic: Cannabis Social Equity During COVID-19*. Moritz College of Law Drug Enforcement and Policy Center, June 2020, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3628533](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3628533).

<sup>21</sup> Id.

<sup>22</sup> Robert McCoppin, *Craft Cannabis Applicants Fighting Court Injunctions Against New Licenses in Illinois*, (Dec. 9, 2021), <https://www.chicagotribune.com/marijuana/illinois/ct-illinois-marijuana-craft-license-injunction-20211210-j37i4y3mhja2be5pxczu5ko2vm-story.html>.

<sup>23</sup> Chris Casacchia, *Handful of Cannabis Retailers Finally Open Under L.A. Social Equity Program*, MJ Biz Daily (Dec. 17, 2021), <https://mjbizdaily.com/some-cannabis-retailers-finally-open-under-los-angeles-social-equity-program/>.

<sup>24</sup> Littlejohn, Amber, and Eliana Green, *MCBA National Equity Report*. Minority Cannabis Business Association & The Arcview Group (Feb. 2022), <https://minoritycannabis.org/equitymap/>.

<sup>25</sup> <https://www.chicagotribune.com/business/ct-biz-illinois-cannabis-sales-record-20220104-5y2qd2wnlvfrpm25ibgohje3m-story.html>.



owned cannabis businesses face extraordinary barriers to entry and incur staggering costs in order to operate lawfully. To date, only 15 of the 37 states with legal cannabis programs have measurable social equity programs to support minority ownership in the face of staggering barriers to entry.

As of today, 18 states have legalized adult use and medical cannabis; another 19 states regulate comprehensive medical cannabis markets; and 10 states have implemented a limited medicinal market.<sup>26</sup> However, due to continuing federal cannabis prohibition, most cannabis businesses are initially self-funded or funded by contributions from friends and family.<sup>27</sup> Prevailing wealth disparities<sup>28</sup> that commonly hinder minority entrepreneurs are exasperated in states where social equity licensees must meet income and residential criteria intended to identify the individuals suffering the greatest economic impacts of cannabis prohibition and the broader War on Drugs.<sup>29</sup>

Administrative and compliance costs associated with starting and operating a cannabis business are among the first of many barriers to minority ownership. Application fees for a cannabis license range from \$250 to \$125,000 per application.<sup>30</sup> Moreover, many states impose pre-application premise requirements that force applicants to shoulder the cost of high rent commercial real estate, rent that increases before applicants can sell any products because the property appreciates in value by virtue of being located in a cannabis friendly “green zone”.<sup>31</sup> Currently, twenty-three states require applicants or licensees to acquire a premise prior to obtaining a license.<sup>32</sup> When social equity programs are delayed due to legal or administrative challenges, then the timeline for holding real estate prior to obtaining a license (or commencing operations) increases significantly. To be eligible simply to apply for a license, one Los Angeles business owner and community leader began paying \$12,000 per month for property to open a dispensary that she continued to pay until she became one of the fortunate few to be awarded a license and

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<sup>26</sup> State Medical Cannabis Laws, National Conference of State Legislatures (as of Feb. 2, 2022).

<sup>27</sup> See Robison, Frank. “Going Green: Legal Considerations For Marijuana Investors And Entrepreneurs.” *American University Business Law Review* Vol. 6, no. No. 1 (n.d.).

<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1054&context=aubl>; See also Hauser, Marc. “Differences among the Types of Equity Investors in Cannabis (via Passle).” Passle, Reed Smith (Jan, 13, 2020). <https://viewpoints.reedsmith.com/post/102fwt5/differences-among-the-types-of-equity-investors-in-cannabis>.

<sup>28</sup> Aladangady, A. (2021, October 22). *Wealth Inequality and the Racial Wealth Gap*. federalreserve.gov. Retrieved January 27, 2022, from

<https://www.federalreserve.gov/econres/notes/feds-notes/wealth-inequality-and-the-racial-wealth-gap-20211022.htm>

<sup>29</sup> Littlejohn, Amber, and Eliana Green, *MCBA National Equity Report*, Minority Cannabis Business Association & The Arcview Group (February 2022), <https://minoritycannabis.org/equitymap/>.

<sup>30</sup> Montana is the only state that does not require an application fee. Id.

<sup>31</sup> Id.

<sup>32</sup> Id.



commence operations more than two years later.<sup>33</sup> Despite these challenges, no state has provided support for social equity applicants to participate at the inception of a legal market.<sup>34</sup>

Moreover, even if minority cannabis businesses can complete the application(s) process and start operating, they are often at a disadvantage because of their late start and the expense of operating. Many operators lose ground to non-minority counterparts, including multistate operators, who in some states enjoy a head start on access to the market as well as exemptions from local land use restrictions, license caps, and bans on vertical integration.<sup>35</sup> Entering the fight with one hand tied behind their back, navigating the labyrinth of compliance burdens, effective tax rates that can exceed 70%,<sup>36</sup> and volatile industry conditions have many small cannabis operators in constant financial distress. This is especially true of minority operators that are regularly in economic distress due to the high costs of good and services, including inadequate banking services and security expenses related to keeping cash and product on site.

Despite incredible costs associated with entering and sustaining in the cannabis industry, only six states with social equity programs provide funding to social equity participants beyond fee waivers or applications.<sup>37</sup> This of course places additional burdens on minority entrepreneurs lack access loans or deep sources of liquidity including generational wealth or private equity funds. As a result, minority operators suffer from several disadvantages in the cannabis industry. These include lack of startup capital, exhaustive applications process, and high operational costs. Too many operators when faced with these costs are often faced with the decision to either sell interests in their business to outside investors on extremely unequal terms (i.e. high loan fees, forced sale provisions, or rights to seize intellectual property) or sell their licenses completely and exit the industry.

### **Small and Minority-owned and Operated Cannabis Businesses Need Access to Financial Services on a Fair and Competitive Basis**

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<sup>33</sup> Kika Keith is a Los Angeles social equity operator and owner of Gorilla Rx, founder of the Social Equity Owners and Workers Association, and a member of MCBA's board of directors.

<sup>34</sup> While six states provide funding and assistance to social equity applicants and operators, none have provided the funding to enable social equity operators to participate in the first round of licensing for any legal market. See Littlejohn, Amber, and Eliana Green, *MCBA National Equity Report*. Minority Cannabis Business Association & The Arcview Group (February 2022), <https://minoritycannabis.org/equitymap/>.

<sup>35</sup> Littlejohn, Amber, and Eliana Green. *MCBA National Equity Report*. Minority Cannabis Business Association & The Arcview Group. February 2022. <https://minoritycannabis.org/equitymap/>.

<sup>36</sup> Boesen, Ulrik, *Tax Foundation Comments to the Cannabis Administration and Opportunity Act*, The Tax Foundation (Sept. 1, 2021), <https://taxfoundation.org/federal-cannabis-administration-opportunity-act/>.

<sup>37</sup> *Id.*



In general, minority-owned companies face more significant financial challenges than white-owned businesses as well as face “structural barriers in acquiring capital.”<sup>38</sup> Moreover, they “tend to have weaker banking relationships, experience worse outcomes on credit applications, and are more reliant on personal funds.”<sup>39</sup> The trend is the same for minority-owned and operated cannabis companies. Various studies of small and minority-owned cannabis operators show that access to capital, retaining majority ownership, and having fair partnership and shareholder agreements continue to be these operators’ top concerns.<sup>40</sup> According to one study, access to non-predatory forms of capital is the most commonly cited concern by cannabis operators who were interviewed.<sup>41</sup>

These concerns are unsurprising given how few depository institutions service the cannabis sector at all. According to the Financial Crimes Enforcement Network, only 706 of the approximately 10,000 federally-insured banks and credit unions actively provide banking services to cannabis-related legitimate businesses of any size, let alone small businesses.<sup>42</sup> Moreover, the major credit card networks that most merchants and consumers rely on prohibit their use for electronic payments for cannabis businesses.<sup>43</sup> In this challenging regulatory environment, financial institutions that do service the industry tend to service larger companies. Banks are more willing service large, better capitalized companies in light of the significant compliance costs and risks of banking legal cannabis businesses.

As a result, many small and minority-owned cannabis companies are often left with no options but to operate on an all cash basis, including to pay taxes and employees in cash. During the pandemic, cannabis businesses around the country have experienced repeated robberies from which some could not recover. In fact, without resources to transform their businesses into fortresses with around the clock security, many small cannabis businesses, especially those in communities disproportionately suffering the impacts of the pandemic, have endured repeated robberies.

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<sup>38</sup> “Small Business Credit Survey, 2021 Report on Firms Owned by People of Color, Federal Reserve Banks, <https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color>.

<sup>39</sup> *Id.*

<sup>40</sup> “Social Equity Legislation in Cannabis: A National Study of State and Local Programming,” The Initiative, <https://drive.google.com/file/d/1FnfDxeW91D35iA6CFcx08gHLAfjfdyx/view>.

<sup>41</sup> *Id.*

<sup>42</sup> “Marijuana Banking Update, Depository Institutions (by type) Providing Banking Services to Marijuana-related Business,” Financial Crimes Enforcement Network (as of June 30, 2021), [https://www.fincen.gov/sites/default/files/shared/303751\\_MJ%20Banking%20Update%203rd%20QTR%20FY2021\\_Public.pdf](https://www.fincen.gov/sites/default/files/shared/303751_MJ%20Banking%20Update%203rd%20QTR%20FY2021_Public.pdf).

<sup>43</sup> “‘Cashless ATM’ and Misuse of ATM Transactions Prohibited, Visa Business News (Dec. 2, 2021), <http://click.broadcasts.visa.com/xfm/?58240/0/a974c54c9c6fd5be9dff6b54b2913d0/lonew>.



Oakland’s minority operators were hit repeatedly in 2020 and 2021 by violent, organized, and coordinated criminal operations that left employees and owners in fear and businesses destroyed, some of them repeatedly.<sup>44</sup> One operator watched as thieves armed with semiautomatic rifles hit their business five times in one day during a rash of robberies that decimated Oakland’s minority cannabis businesses that occurred just before Thanksgiving last year. The robbers held them at gunpoint, took their product, and the last time walked out with a safe containing their tax money, payroll, and operational funds. As I prepared this testimony, I received word they would not reopen their doors but instead are seeking a buyer for their license. They are a veteran and engineer, they are businessmen, they did everything right only to be again victimized by unjust cannabis laws.

Oakland is not alone. In the past month there has been more than 30 robberies in Washington dispensaries.<sup>45</sup> Thieves shot guns, pistol whipped employees, and walked out with registers and safes.<sup>46</sup> A spokesperson for the Washington State Liquor and Cannabis Board said, “the root of the problem is that retailers are a cash-only business because Congress has not acted to allow credit and debit card transactions.”<sup>47</sup>

Small and minority-owned businesses in general face similar challenges in obtaining investments. While Black founders receive just 1.2 percent of private equity funds,<sup>48</sup> private equity funding for minority cannabis businesses remains virtually nonexistent. In the cannabis space, this disparity is exacerbated by federal prohibition as many financial institutions will not provide credit or make equity or debt investments because of the regulatory risk.

While some minority-owned and operated cannabis businesses are able to find private investors, the terms offered are often extraordinarily expensive. Such agreements often include interest rates of 20 percent, and as high as 40 percent.

To survive, many applicants and licensees give up equity to predatory partners that subject them to forced sales for pennies on the dollar of the license value for “failure to perform a lawful

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<sup>44</sup> David DeBolt, *Oakland’s Cannabis Industry Reeling from Car Caravan Burglaries - Again*, The Oaklandsider (Jan. 10, 2022), see also, Zak Sos, *Oakland Cannabis Business Hit Twice in back-to-back Burglaries*, Fox KTVU (Dec. 8, 2021) and *Oakland Cannabis Dispensaries Say They’ve Lost \$5M in Recent Thefts*, ABC 7 (Nov. 29, 2021).

<sup>45</sup> Bart Schaneman, *Rash of Robberies has Washington State’s Cash-only Cannabis Industry on Edge* Feb. 15, 2022), <https://mjbizdaily.com/rash-of-robberies-has-washington-states-cash-only-cannabis-industry-on-edge/#:~:text=A%20total%20of%20154%20robberies,worth%20of%20marijuana%20and%20product>.

<sup>46</sup> Id.

<sup>47</sup> Bart Schaneman, Editor, and John Schroyer, “Rash of Robberies Has Washington State’s Cash-Only Cannabis Industry on Edge.” MJBizDaily, February 15, 2022. <https://mjbizdaily.com/rash-of-robberies-has-washington-states-cash-only-cannabis-industry-on-edge/>.

<sup>48</sup> Marlize van Romburgh and Gene Teare, *Funding to Black Startup Founders Quadrupled in Past Year, but Remains Elusive* (July 13, 2021), <https://news.crunchbase.com/news/something-ventured-funding-to-black-startup-founders-quadrupled-in-past-year-but-remains-elusive/>.



instruction” or “underperformance”.<sup>49</sup> Other equity investors deprive social equity operators of meaningful rights of ownership, including management rights and equitable distribution of profits. Until small and minority-owned and operated cannabis businesses can access financial services on a fair, competitive basis, they will continue to be to be excluded from an industry built on their backs while watching others prosper. Those who endure will be subject to the repeated trauma of violent attacks from organized criminals who target these cash-only businesses without means to fortify their businesses into compounds and employ 24-hour a day security.

### **Congress and the Administration Should Consider A Wide-range of Measures to Support Small and Minority-owned and Operated Businesses**

To address these issues, I encourage Congress and the Administration to consider a wide-range of options, including enacting the “Secure and Fair Enforcement (SAFE) Banking Act” as soon as possible. Fundamentally, so few banks and credit unions provide services to cannabis businesses, particularly small cannabis operators, because federal law would penalize them for doing so. Despite wide-spread legalization at the state level, cannabis remains a Schedule I drug under the Controlled Substances Act. Therefore, financial institutions that provide essential services, such as lending and payments, to state-lawful cannabis businesses are at risk of criminal and civil penalties. I believe many (but not all or necessarily most) more banks, credit unions, payment processors, and similar financial services providers would offer their services to small and minority-owned and operated cannabis companies if Congress provided them the legal protections necessary to do so.

Passing the SAFE Banking Act would help address this core issue by extending a safe harbor to banks, credit unions, certain payment processors and money transmitters, and select other financial entities to offer essential services, including loans, deposit accounts, check cashing, and electronic payments to state lawful cannabis companies. This safe harbor would neutralize the predominate issue limiting access to core financial services: the continued and unjust criminalization of cannabis. Moreover, the SAFE Banking Act would direct FinCEN to update its guidance in order to help reduce the regulatory barriers to serving cannabis businesses. Lowering these barriers will make it easier for small companies to access banking services by reducing the cost of serving them. Enacting the SAFE Banking Act would also reduce the risk of crime against small operators by minimizing their cash on hand. In short, if enacted, small and minority-owned cannabis businesses would be much better protected from crime and would be better able to compete.<sup>50</sup>

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<sup>49</sup> Social Equity Owners and Worker Association, Predatory Practices- City of Los Angeles, 2021.

<sup>50</sup> To hear from minority cannabis operators on the benefits of SAFE Banking, please see the testimonials available on Safe4equity.org: <https://safe4equity.org/>.



There are additional measures that Congress can take to complement the benefits of the SAFE Banking Act. For instance, MCBA believes that nonbank community development financial institutions (CDFIs) can play an important role in extending capital to small and minority-owned and operated businesses, including cannabis companies. Extending the proposed safe harbor under the SAFE Banking Act to nonbank CDFIs could help small and minority-owned cannabis businesses obtain loans and investments that they are unable to access now.

MCBA also believes that increasing capital to MDIs and CDFIs would increase the flow of capital to communities and credit to minority businesses. MDIs and CDFIs have traditionally been sources of capital for minority companies and during times of crisis as well, lending more than \$8 billion in Paycheck Protection Program loans during the pandemic. MDIs and CDFIs need increased lending capabilities in order to meet the growing demand and need for credit of minority-owned and operated companies. MCBA commends Congress for allocating \$12 billion for MDIs and CDFIs, including \$9 billion for the Emergency Capital Investment Program and \$1.75 billion for the Emergency Support and Minority Lending Program, in 2020 as part of its historic efforts to combat the financial crisis caused by the COVID-19 pandemic. Congress should consider allocating additional long term, low-cost capital funding for MDIs and CDFIs through those programs so that those institutions can service the many minority owned businesses operating in and will operate in the cannabis space. These institutions may serve as a natural conduit for minority businesses that need support in the emerging cannabis industry.<sup>51</sup>

Additionally, Congress should consider legislation directing federal financial regulators to develop a plan to increase financial services to small and minority-owned and operated cannabis businesses. Various regulators have worked on plans to promote financial inclusion for a wide range of businesses, such as Project REACH, and to promote MDIs, and to support MDIs, which play a critical role in this process, such as the OCC's Minority Depository Institution Advisory and the FDIC's Mission-Drive Bank Fund. MCBA asks that these regulators extend this work to include initiatives to incentivize financial institutions to offer services to minority cannabis companies. The regulators could also release requests for information to engage with industry and community stakeholders on the best ways of encouraging access to capital for small and minority cannabis businesses. Leveraging these regulators' expertise would help close the gap in financial services for small and historically disadvantaged cannabis businesses.

Congress should also consider legislative proposals to collect demographic data about the availability of financial services (particularly loans) to small and minority-owned and operated business; and conduct a disparity study to ensure any comprehensive legalization efforts addresses

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<sup>51</sup> Shanita Penny and Yaw Thompson, *Opportunity, Ownership, and Empowerment*, Coalition for Cannabis Policy, Education, and Regulation, <https://www.cpear.org/wp-content/uploads/2021/06/210617-CPEAR-Small-Minority-Owned-Business-digital.pdf>.



the disparate impact of the enforcement of cannabis laws. Various states and localities have attempted to remedy the historic harms that cannabis prohibition has caused to communities of color by creating social equity programs with remedial racial classifications (or proxies for race). Many of these programs have faced legal challenges due to the lack of adequate reporting and data collection to support a compelling governmental interest in this remedial action. Other states and localities have avoided using remedial racial classifications in their social equity programs and instead have opted for broadly tailored criteria that has not been effective in remedy past harms. Too often, the programs have served to benefit larger non-minority companies or investors rather than minority businesses or investors. As a result, these programs have been inadequate in addressing the specific harms to minority communities.

Minority cannabis entrepreneurs would benefit from the collection of data not only to understand past and ongoing discrimination within the industry, but it would also serve as a tremendous foundation for crafting programs that can better address the harms inflicted on communities of color because of prohibition. Moreover, although minority cannabis companies are currently unable to access traditional banking services, an existing framework for the collection of demographic data regarding loans to minority companies would be helpful to cannabis companies in this space when they are finally able to access traditional banking services.

## **Conclusion**

Supporting small minority cannabis businesses is not just moral imperative, it makes good economic sense. Despite their struggles, cannabis social equity businesses contribute \$1.2 in social good for every \$1 invested into social equity programs.<sup>52</sup> Without some relief from Congress, minority cannabis businesses will not make it to the day we see federal legalization. Some did not make it to the end of this week. If we believe the cannabis industry should have a place for small businesses, especially those who bore the brunt of enforcement while building the culture, the market, and the political force behind an industry from which others profit, we have to help minority cannabis businesses now.

I and MCBA commend the Subcommittee for holding this hearing. We look forward to discussing these and related topics with the Subcommittee and working together to implement potential solutions so that our small and minority-owned and operated businesses, in all sectors, can thrive. Thank you Chair Perlmutter and Ranking Member Luetkemeyer for inviting me to participate in this hearing. I look forward to your questions.

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<sup>52</sup> Rep. *Supernova Women Social Equity Impact Report*, Supernova Women, 2022, <https://www.supernovawomen.com/news/social-equity-impact-report-2022>.