



October 30, 2020

Gov. J.B. Pritzker, Illinois State Senate and General Assembly, and Illinois Department of Financial and Professional Regulation:

The National Cannabis Industry Association (“NCIA”) is the most influential trade association to promote the development of a responsible, legitimate, and thriving cannabis industry. By our dedicated advocacy, NCIA intends to advance a more favorable social, economic, and legal environment for the cannabis industry to flourish in the United States.

Comprising our Diversity, Equity, and Inclusion Committee (“DEIC”) are experienced professionals representing a diverse range of backgrounds. In response to the early results of the Illinois Adult Use Dispensary application process, and with the interest of supporting Illinois’ Social Equity efforts, we feel compelled to reach out.

While the creation of the Social Equity Program in the Cannabis Regulation and Tax Act and Illinois Department of Financial and Professional Regulations (“IDFPR”) implementation of the licensing scheme was well meaning and intentioned, the recent litany of lawsuits and outcry from advocacy groups following Illinois’ inaugural issuance of cannabis licenses indicates heavy criticism. As demonstrated thus far, the Social Equity Program appears limited in its ability to capture a sufficient representation of persons most harmed by the War on Drugs in Illinois in business licensure and ownership, or to generate the opportunities for restorative justice and building generational wealth for such persons as hoped.

Our intention with this letter is to state our express desire to lend the expertise and resources of NCIA’s DEIC to support Illinois legislators in crafting Illinois’ licensing and regulatory systems in a manner that reflects the Social Equity Program’s laudable mission of reducing barriers to cannabis business ownership, and establishing a legal cannabis industry that is equitable and accessible to those most harmed by the disparate enforcement of drug-related laws in Illinois. Furthermore, we hope to lend support to local organizations building toward that same goal, and to form a coalition as we all strive to rectify the harmful effects of prohibition and the War on Drugs.

At this time, and pending further collaboration with local officials, NCIA's DEIC makes the following recommendations for your consideration. For further understanding of the analysis supporting these recommendations, please see the attached report.

For IDFPR to move forward with license scoring and issuance as soon as possible, we suggest the following:

- Removing the required possession of premises and overhead to hold onto property (not required of dispensary applications and may bankrupt existing applicants awaiting results)
- Ensuring oversight of KPMG (the 3rd-party firm hired by the State of Illinois to score the applications) by persons of color and social equity representatives
- Allowing for a documented appeals process internally with KPMG results before issuing them to all applicants
- Scrutinizing Operating Agreements in the rubric and gradient to ascertain and avoid predatory or straw-man agreements

Moving forward, reasonable transparency would include knowing what the makeup and process was for KPMG in making their first evaluations, and what the process will look like for the re-scoring to avoid conflicts of interest. Specifically, IDFPR can ensure transparency by making the following information public:

- Evaluation Rubric
- Composition of the Reviewers
- Scoring Process and Determination of Grading
- Frequency of KPMG Meetings
- KPMG Public Relations Contact
- Timeline of Events During the Scoring Process
- Lessons Learned and Plan for Improvement on Future Scoring Rounds

For future rounds of applications, we offer these recommendations:

- Pre-qualifying social equity applicants for state funding to ensure economic empowerment in the application process
- Providing a path forward for those who are not (yet) qualified to operate a cannabis business, but are qualified as social equity applicants
- Allowing for 100% Social Equity Applicant owned businesses to qualify for cannabis experience points without partnering with a multi-state operator ("MSO")
- Issuing delivery licenses for social equity operators

We also express our support for the recommendations made by the Cannabis Business Association of Illinois' Minority Access Committee, in their October 5, 2020, letter to Governor Pritzker. ([see here](#))

Finally, we appreciate the efforts taken by Governor Pritzker, the Illinois legislature, and IDFPR thus far to address disparities in the application process and commend Governor Pritzker for taking leadership on this important issue. Allowing this first generation of applicants to address deficiencies in their applications, as it was originally intended to allow them to do, offers another opportunity to enter the lottery system, which we recognize and appreciate.

Additionally, the commission of a disparity study is commendable and should prove helpful in understanding what went wrong and how to improve. If anything, we hope our expertise and professional experience will assist in this process and in the effort to improve upon the mistakes of the past to achieve a more diverse, inclusive, and socially equitable future.

Thank you for your time and attention to this matter. Please let us know if we can assist in any way.

Sincerely,

The National Cannabis Industry Association
Diversity, Equity, and Inclusion Committee

NCIA DEIC Report and Analysis of Illinois Social Equity Application Process

Analysis:

Initially, everyone pioneering this issue was extremely hopeful that Illinois, as the first state to create a social equity program through legislation, would create a social equity licensing regime worthy of respect and dignity. Certainly, the advocacy and participation in the process were alive and robust during the legislation, regulation, and application phases of this program.

The DEIC believes that social equity in the cannabis industry should strive to provide restorative justice and professional opportunities to individuals who were most harmed by the War on Drugs and who are systemically denied access to full participation in society, including the ability to generate wealth, obtain a quality education, and take on fulfilling business opportunities. The mission of Illinois' social equity program is: "***reducing barriers to cannabis business ownership, and establishing a legal cannabis industry that is equitable and accessible to those most harmed by the enforcement of drug-related laws in Illinois.***" Despite Illinois' good faith efforts, its initial implementation of the social equity program and award of licenses has not yet shown sufficient levels of representation in cannabis license ownership among individuals most harmed by the War on Drugs as expected, and the failure to do so has created an additional barrier for such individuals to build new generational wealth and overcome societal barriers to earn their foothold in this burgeoning industry.

As evidenced by widespread criticism and pending lawsuits, it appears that Illinois can and should revise their systems to enable more individuals adversely impacted by the War on Drugs and other societal and historical injustices to take advantage of exciting new opportunities in cannabis and to begin earning generational wealth for their families and communities.

Missteps in the Scoring Process:

By only qualifying "perfect scores" from the applications, a mere 5% made the cut. Out of this 5% of overall applicants, the top 10 companies have an 85% chance of winning the available licenses in the lottery. Fundamentally, this flaw means applicants with more financial resources can stack the deck in their favor.

Though the legislation creates a licensing limit of 10 licenses statewide for any one operator, wealthy operators who do not represent the struggles of social equity applicants can pay to monopolize the system, and were allowed dozens of applications despite the overall license limit. With more balls in the lottery, monopolization simply wins out over creating as much new generational wealth as possible for communities disproportionately impacted by prohibition.

For those applicants not even considered, the state gathered millions in application fees, spent millions on KPMG to review the applications, and in the end, will give the lower 10 “perfect score” applicants only a 15% chance of winning. In some cases, these “perfect” applicants only have a 0.3% chance of their winning ball coming up in the lottery at all. Everyone else who applied and paid their fees but didn’t qualify as a “perfect score” applicant, has a 0% chance of winning anything.

Furthermore, the legislation allowed for a tiebreaker in its community engagement plan (Exhibit L) worth two points. These points did not seem to be scored on a gradient rubric either. Instead, they were awarded seemingly automatically, as there were only two points to determine what was considered “perfect”.

This flaw in the process cannot allow for true customization of each community’s needs in the plan for the applicant’s engagement. Logically, there would not be enough differentiation between dozens of applications by the same applicant to be nuanced enough to each community to warrant “perfect scores,” especially given the application deadline and the likelihood this section was copied and pasted between all applications by the applicant.

Other sections that would be more nuanced such that a “copy and paste” is unlikely to result (or shouldn’t result) in a perfect score would include “Exhibit F - Business Plan” and “Exhibit O - Financials” as variables differ between each BLS Region being applied for.

Possible Comparison

Other states normally do not operate using a “perfect score”. Instead, a rubric helps evaluators measure and grade applications on more of an even distribution of the mean. While a few applicants may be outliers with higher or lower scores, other programs more evenly distribute the merit-based points to allow for more diversity and inclusion in the licensing process. Simply put, the top 20% (rather than the top 5%) may be awarded licenses without a lottery as the primary outcome. Instead, the lottery becomes a tool to use in a true “tie-breaker” between equal applications with the exact same score.

Lack of Support for Social Equity Applicants

The process also missed the mark as it forced MSOs and Social Equity partnerships early on with no real path forward for a 100% social equity owned business to have a fair shot at new generational wealth.

It is conceivable that, if qualified for the state loan program, a sole social equity applicant would have been able to finance and structure a team that could be competitive. However, the loan program was not available prior to the dispensary application deadline, creating another hurdle.

For social equity communities, education and information to effectively compete in the process was also not widely available. Closely scrutinizing operating agreements for predatory elements such as clauses that allow non-social-equity partners to leverage or otherwise disempower social equity partners could have supported the policy objective of ensuring social equity applicants are given a fair chance to compete with better-resourced entities. Given the sheer volume of applications, the probability distribution, and funding behind the top 10 “perfect score” applications, this scrutiny does not seem likely in the rubric KPMG used.

Where KPMG Went Wrong

Finally, the choice of using KPMG, which is a multi-billion dollar, Netherlands-based accounting firm - without an RFP - seems to have resulted in fundamental conflicts of interest that were not vetted as well as poor distribution of merit-based points by KPMG scorers. It begs the question, how many of KPMG’s reviewers were people of color or people disproportionately impacted by the War on Drugs? Inclusiveness and representation is important in social equity and perhaps lacking in this process as well.

In summary of our critique, we wish to address these flaws in the hope that under the resubmission process outlined by Governor Pritzker, these disparities may be addressed and improved upon. It is the desire of the committee to outline our recommendations and solutions for the re-scoring process and for the future processes Illinois will undertake in issuing cannabis licenses.

Solutions:

We believe that, for the expense of seven million dollars, taxpayers should immediately have the transparency to know what the makeup and process was for KPMG and what the process will look like for the re-scoring. Specifically, the following should be made public:

- KPMG Evaluation Rubric
- KPMG Composition of the Reviewers
- KPMG Scoring process and determination of grading
- Frequency of KPMG meetings
- KPMG Public Relations Contact
- Timeline of events during the scoring process
- KPMG Lessons Learned and Plan for Improvement on future scoring rounds

We believe Illinois must move forward with grower, infuser, and transporter license scoring and issuance as soon as possible, integrating lessons learned, to avoid stretching the supply chain thin and forcing new dispensary licenses to have empty shelves. We believe this process may be improved by:

- Ensuring the primary objective to create more opportunities for the most social equity applicants as possible to create new generational wealth

- Exempting the required possession of premises and overhead to hold onto property which was not required of dispensary applications and which may bankrupt existing applicants still waiting on results
- Distributing a more evenly distributed grading system and rubric to avoid “perfect score” lottery system and to more adequately award more licenses based on merit than on copy/paste replication and deck-stacking
- Ensure oversight of KPMG work and results by persons of color and social equity representation. Allow for a documented appeals process internally with KPMG results before issuing them to all applicants.
- Scrutinizing Operating Agreements in the rubric and gradient to avoid “predatory partnerships”

Beyond immediately improving the scoring system for grower, infuser, and transporter licenses, we believe that Illinois could also improve its licensing system for future rounds by doing the following:

- Issuing an RFP process to best define Illinois policy objectives and to determine the optimal third-party application scorers
- Pre-qualifying social equity applicants for state funding so that those qualified to operate a cannabis business can be on equal negotiation with wealthy partners who may approach them OR so that they can have the economic opportunity to participate on their own and hire the expertise they need prior to applying for a license
- Providing a path forward for those that are not (yet) qualified to operate a cannabis business but are qualified as social equity applicants. This path forward should include:
 - Providing training and resources to communities disproportionately impacted by the War on Drugs in cannabis business, operating agreements, regulation, and the application process PRIOR to opening up new application processes
 - Promising trained and certified social equity applicants the ability to pre-qualify for state funding upon completion of state-provided education and resources
 - Ensuring that grant funding to community educators does not include barriers to ancillary cannabis companies with expertise toward this path forward
 - Leveraging existing business resources at a state level including minority business resources including those in major cities for application writing, business planning, and education to assist these applicants on the path forward
- Providing the ability and option to NOT partner with MSO's by allowing a path forward that allows a 100% Social Equity Applicant owned business to build their own team on their own terms and still qualify for points under sections related to cannabis experience.
- Issuing delivery licenses which require less overhead for social equity operators and increases market inclusiveness and participation in new generational wealth

Additionally, the commission of a disparity study is admirable in understanding what went wrong and how to improve. If anything, we hope our expertise and professional experience will assist in this process and in effort to improve upon the mistakes of the past to achieve a more diverse, inclusive, and socially equitable future.

Thank you for your time and attention to this matter.

Please let us know if we can assist in any way.