Title: Bond-Funded State Cannabis Loan Underwriting Can Increase Competition While Reversing Race Bias

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I. Introduction

Cannabis regulation may well be the most persuasive illustration of Justice Brandeis' famed observation that states, when sufficiently courageous, can serve as laboratories for experimentation in democracy.[1] This is necessarily an iterative process. As the market continues to grow and mature, we find ourselves with extraordinary opportunities to foster healthy and diverse competition. This moment is unique in history, as sufficient data exists to indicate that, with bold enough vision, we stand poised not just to build viable long-term economic structures in this sector but to develop models that may ultimately inform shifts in other industries toward more pro-competitive and broadly inclusive paradigms. By providing bond-financed guarantees, governments can cushion risk for lenders supporting small cannabis businesses and marginalized entrepreneurs. In so doing, states can subvert–and to a certain extent, mitigate–past bias harms, support local development, and work toward building and maintaining robust, diversified, and resilient marketplaces at the regional and national levels.

II. The Business of Risk

Business lending necessitates risk evaluation. Lenders have long sought to maintain credit portfolios that maximize potential return on invested capital in light of expected losses.[2] In the regulated banking industry, many federally insured depository institutions are required to employ risk-weighting methodologies to confirm sufficient capital availability for ongoing operations.[3] As anyone who has checked their personal credit score before seeking a mortgage or car loan is aware, a portion of that risk may be factored and assessed back to the borrower in the form of interest rate calculation, a practice known as "risk-based pricing." Higher probabilities of default are typically correlated with higher interest rates.[4] Conversely, competition among lenders is the primary factor mitigating risk-based pricing strategies for business lending. When borrowers have a relatively wide pool of lenders to choose from, loan availability and interest rates drive lender competition, and lenders may substantially reduce both interest rates and overall risk sensitivity. This phenomenon was dramatically illustrated by the subprime mortgage lending crisis of 2008.[5]

At present, competition among cannabis lenders is relatively low, and the risks associated with cannabis entrepreneurship are high. By the end of 2022, increased costs and decreasing prices led to an estimated 42% of cannabis businesses reporting profitability.[6] Competition from the illicit market continued to exert pressure, while new state markets were challenged by, *inter alia*, increased financing costs and competition from the illicit market.[7] The result has been debt so expensive that it freezes out many competent entrepreneurs, with few lifelines for distressed businesses hoping to survive competition until tax relief rewrites projections or consolidation, leaving only a few highly efficient players standing in marketplaces bereft of meaningful competition.[8] Overall, uncertainty in the financial sector has exacerbated the issue, and cannabis industry lending rates can be five times higher than traditional business loans.[9]

III. Heightened Challenges for Minority Borrowers

For cannabis entrepreneurs of color, the landscape is even more bleak, and chances of receiving sufficient capital are disproportionately low. In theory, a substantial number of small business loans (across all industries) fall under the purview of the Equal Credit Opportunity Act ("ECOA"),[10] which prohibits creditors from discriminating against applicants based on membership in a protected class, receipt of income from a public assistance program, or exercising a right under the Consumer Credit Protection Act. Yet in 2021, among small businesses outside the cannabis industry, 35% of white business loan applicants received the total amount of financing requested, compared to only 15% of Asian applicants,[11] 16% of Black applicants, and 19% of Hispanic applicants.[12]

This data is unsurprising to many business owners of color. Given long histories of experienced prejudice in lending, many prefer Internet-based, algorithmically evaluated borrowing opportunities over in-person applications that allow lenders to express personal bias.[13] Even with "guaranteed" financial assistance associated with the COVID-19 pandemic, business owners of color were more likely to need, yet less likely to receive, business loans or lines of credit.[14]

With limited access to traditional bank lending, private funding sources present the most opportunity, yet access to startup capital is often a significant hurdle for entrepreneurs of color, even when considering lower-risk industries. The U.S. Small Business Administration's (SBA) SCORE program, which offers business mentoring to non-cannabis entrepreneurs in the U.S., reports that between 2007 and 2017, minority-owned small businesses experienced a growth rate ten times faster than small businesses generally but received less than one percent of venture capital.[15] Startup businesses owned by Black women received only 0.006% of such financing.[16]

The phenomenon is exacerbated in the cannabis industry, where access to low-interest startup capital has been ranked as the single highest barrier to entry among minority entrepreneurs.[17] The SBA 7(a) loan program,[18] which guarantees loans to bank lenders in order to incentivize loans to higher-risk borrowers, refuses to back bank loans or even offer informational resources to businesses that "support the end use of marijuana." In compiling aggregate information on U.S. entrepreneurship, the agency excludes data on cannabis businesses.[19]

Because the cannabis industry is broadly perceived as high risk regardless of operator, private small business investment for entrepreneurs of color is even less common. Private investors have little exposure to ECOA or other protected class scrutiny, and even where investment is available, regulators have had to amend cannabis laws after widespread instances of usury.[20] Venture capital and private equity firms "dominate" cannabis startup funding, with some lending and financing provided through angel investors and personal relationships with well-resourced individuals,[21] to whom minority and low-resourced entrepreneurs often lack even introduction, let alone consideration.[22]

IV. Barriers to Extant Social Equity Programs

Recognizing the exigency of addressing the historical marginalization of minorities in past cannabis law enforcement, at least sixteen states have adopted some form of social equity initiative.[23] These programs vary in scope and efficacy, particularly regarding their ability to provide access to funds. In one example, before the institution of a "Social Equity Fund" for grants and loans to eligible applicants,[24] 46.7% of eligible Massachusetts individuals who applied for preferential consideration but did not ultimately apply for licensing stated that "difficulty raising funds or capital" was the primary reason they did not seek licensure.[25] A number of states attempted to address the gap through direct grants or low-interest loans for seed capital,[26] however, the intent to make these resources available through associated excise tax income clashed with the timing of licensure in license-capped jurisdictions, such that available licenses (or first-mover advantages) were distributed to better-resourced applicants before the programs could get off the ground.

Maryland's cannabis legalization bill specifically provides guaranteed lending through a "Capital Access Program," available to cannabis and other industry entrepreneurs. While funded partly by cannabis tax dollars, it is available to most "small, minority-owned, and women-owned" businesses to borrow up to $250,000 from lenders enrolled in the program.[27] Eligible borrowers pay 0% to 7% of the loan amount into a loss reserve account, with lenders contributing at least 2% and the state Department of Commerce matching the aggregate contribution of the borrower and lender. If the borrower defaulted, the lender could withdraw funds to cover those losses.[28] While cannabis market participation in that program appears to have been limited, presumably by the availability of qualified lenders, it has subsequently been supplemented by the institution of direct lending through the Cannabis Business Assistance Fund.[29]

New York's lending model takes an inverse approach. In seeking to address capital access issues among historically disadvantaged entrepreneurs, Governor Hochul proposed partnering with private underwriters to generate $150 million of the $200 million intended for cannabis social equity loans and outsourcing management of the resulting fund to a third party working in coordination with the Office of Cannabis Management–which would retain control over social equity eligibility standards and other licensing qualifications.[30] While some licensees have secured financing under the scheme, implementation has been imperfect. One recent report asserts that interest rates, while under industry norms, remain substantially above those of other business types, exacerbated by lending provisions that require commitments to lease and renovate specific retail outlets pursuant to property development deals that purportedly inflate relevant costs over typical market rates. The supposition is that these challenging conditions resulted from limited partner-lender enthusiasm. While lending rates are higher than some expected, borrowers who default have no personal liability but surrender the relevant lease.[31]

V. The Role of Bonds

While private lender risk concern as to any particular borrower, or a pool of high-risk borrowers, is understandable, states are uniquely positioned both to predict and capture extraordinary levels of funding from excise tax, such that their own risk evaluations can factor for the health of the industry as a whole, rather than one specific borrower group, and determine acceptable losses accordingly. The overall income can rapidly become self-sustaining in lending, rather than grant, contexts. Recent data from the U.S. Census Bureau shows that in the fourth quarter of 2023, the quarterly tax revenue from cannabis sales constituted more than 1% of overall revenue for four states, with four additional states receiving more than 0.5% of overall revenue from cannabis tax. In total, the regulated cannabis market generated more than $3 billion.[32] States already deploy statistical modeling to determine retail sales projections.[33] While no industry is entirely predictable, the transition to a regulated and taxed market makes nearly real-time cannabis consumer demand easier to quantify and evaluate and informs a host of considerations–including providing target market size rationalization for anti-competitive license cap schemes. In light of the availability and quality of this data, states can realistically raise initial funds to subsidize lending through bond issuance, which represents a far lower-risk investment for third parties given the government backing. Municipal bonds also enjoy broader investment markets, as they are exempt from registration with the Securities and Exchange Commission and typically offer investors exemption from tax. Because the investments are in government bonds rather than directly in the cannabis industry, they may also open access to a broader range of both individual and institutional investors.[34] Connecticut has authorized up to $50 million in such general obligation bonds to provide seed and working capital to cannabis entrepreneurs through direct lending and technical assistance resources.[35]

VI. How Subsidized Lending Can Solve Social Equity's Constitutional Problem

Initial rollouts of social equity programs have been repeatedly hampered by challenges based on their contextualization of eligible applicants. Race-based preferences have been struck down as violations of the Equal Protection Clause, and place-based provisions have been challenged under the Dormant Commerce Clause. Race bias, however, has demonstrably existed in lending for most of U.S. history and, as discussed above, continues to be implicitly exercised.

While, as a society, we have both a moral imperative and economic incentive to repair these harms, cannabis small business loans cannot turn that tide alone. What they can do, however, is reverse the effect within the specific industry by making preferential interest rates available to high-risk borrowers when evaluated along traditional, implicitly biased lending models coupled with Constitutionally permitted eligibility classifications. In effect, states can induce lenders to use their extant race biases as a force for good by subsidizing the inversion of lending criteria and interest rates. Such a scheme is not incompatible with more extensive social progress. Fewer eligible candidates from high-risk pools represent the program's success and make way for either rate adjustments or the inclusion of additional promising entrepreneurs whose lived experiences present lending barriers, notwithstanding other demographic criteria. In such an approach, adjustments to lending practices associated with the ECOA and broader reforms resulting in more favorable lending perceptions do not disadvantage minority borrowers as a class, as more appropriate creditworthiness evaluations in the broader lending marketplace will represent an opportunity for lenders with more equitable policies to compete for risk-recategorized loan applicants.

VII. Subsidized Lending Examples from Related Federally-Legal Industries

The use of subsidized lending to expand market participation and serve the needs of high-risk borrowers is not unprecedented. Government guarantees of private loans are not new and have generally positively impacted stakeholders.[36] In these frameworks, the relevant government body does not lend directly but guarantees repayment of some or all of the relevant private loan in the event of default, offsetting risk to the private lender and driving down interest rates. With the knowledge that money is inbound, government bodies that formed uneven playing fields are positioned to level it at a relatively low cost by underwriting a portion of the associated risk. In so doing, they stand to advance policy objectives, justify existing practices- and perhaps make money. While Maryland may have been the only program to attempt such an endeavor in the cannabis space, there are far more mature examples of success at the federal level.

A. USDA Guaranteed Loans

Although adult-use cannabis producers are ineligible for federally guaranteed assistance due to prohibition, analogies with a strong historical basis can nonetheless be found by reviewing support available to relevant non-cannabis business enterprises. The U.S. Department of Agriculture ("USDA") instituted its first direct lending programs in 1937 and began insuring farm mortgages in 1946.[37] The USDA's current budget includes $3.5 billion in guaranteed operating loans estimated to support 6,000 farmers and a further $3.5 billion for guaranteed farm ownership loans to 12,000 farmers.[38] The agency additionally underwrites a substantial number of guaranteed and direct loans for specific programs and constituencies, including historically underrepresented groups, young farmers, infrastructure development, and enhanced sustainability initiatives.[39] These programs are distinct from more controversial commodity subsidies.[40]

Of course, USDA lending policy has not been without controversy. Notably, race bias in the agency coupled with unchecked agricultural consolidation historically facilitated the expulsion of minority farm operators from the industry,[41] and disparate lending continued at least through 2022.[42] Yet the underlying financial proposition, with appropriate bias checks, remains sound. The U.S. Budget reports lending "subsidy rates," representing the anticipated cost of a loan or loan guarantee to the government on a net present value basis, including defaults, payments, and profit on the relevant financial mechanism.[43] The most recent budget reflects predicted subsidy rates of -0.46% for guaranteed farm ownership loans and 0.07% for operating loans, dropping to -0.54% and -0.20% for fiscal year 2025.[44] That is, in combination, USDA guarantees on private loans are projected to return a small profit to the government, even though the median income of farm households actually generated by farming activity is anticipated to decrease to -$1,198 in 2024, with most such households relying primarily on off-farm income.[45] Direct loan subsidy rates in these categories are higher, representing small losses,[46] and necessitate competition with private lenders[47] that may prove difficult to exit or ameliorate without substantial market upheaval.[48] While these lending programs alone have not been sufficient to stanch the consolidation of American farming in light of other market forces,[49] critiques of USDA farm lending have rested mainly on uneven access rather than lack of benefit.[50]

B. SBA Small Business Guaranteed Loans

Since its creation in 1953,[51] the SBA has guaranteed small business loans in non-cannabis industries. Contemporary guaranteed lending, notably under the Small Business Act[52] Section 7(a) (often called "7(a) loans"), has been a powerful driver of small business entrepreneurship and employment growth and has simultaneously driven the growth of small banks originating them.[53] The SBA specifically targets a 0% subsidy rate for 7(a) loans, which it reports achieving in 2023 and anticipates achieving in 2024 and 2025.[54] While, as noted above, the SBA's failures to hold lenders accountable for race bias have led to rightful criticism,[55] failures of equitable administration, rather than the underlying financial data, should not reduce the substantial opportunity these programs provide for those able to avail themselves of them. In recent years, the SBA has taken affirmative steps toward greater transparency and reduced lending bias, including modernizing eligibility determination, expanding the

7(a) lender pool, and instituting a "Community Navigator Pilot Program" to facilitate business lending in underserved communities.[56]

VIII. The Role of State-Subsidized Loans Post-Legalization

As the cannabis industry continues to evolve and federal legalization becomes increasingly likely, it is crucial to consider the role of state-subsidized loans in the post-legalization landscape. With 88% of U.S. adults supporting some form of cannabis legalization and only 11% preferring complete prohibition,[57] federal legalization is an inevitability subject only to timing. Presumably, even absent passage of the SAFER Act, USDA and SBA support will become available to cannabis market participants, as it is for other vice crops like wine grapes.[58] Importantly, the availability of interstate commerce–and potentially international commerce–are highly likely to lead to substantial market adjustments across the national industry. Canada, which legalized nationally in 2018, currently struggles with oversupply,[59] with 709 licensed producers[60] supporting a population of around 39 million, and rapidly increasing export revenue.[61] The U.S. population is roughly 8.6 times larger than Canada[62] but had 18.75 times more licensed cultivators in 2022[63] (prior to state legalization in Rhode Island, Delaware, Maryland, Minnesota, Ohio, and Missouri[64]). Cannabis usage rates between the countries are similar (45% vs. 42% respectively[65]), although federal legalization may increase U.S. consumption.

Against that backdrop, market corrections are inevitable, and the role of state-subsidized lending is likely to turn from stimulating markets to seeking competitive advantage for in-state businesses. While overall prices are likely to drop closer to other agricultural products (and federally-supported farmers may benefit from increased diversification), states with less optimal growing and retail markets may use loan subsidies to support regional economic development–potentially bolstered by federal support for such activities.[66]

The state-regulated cannabis industry currently supports 417,493 full-time equivalent jobs, with a reduction of 2% in 2023 following five years of growth that dramatically outpaced any other U.S. industry.[67] By value, state-regulated cannabis was the 6th largest cash crop in the U.S. in 2022.[68] Even following contraction and potential price pressure from international imports, employment rates, and economic impact are likely to be substantial enough to warrant recruiting–which, when programs are carefully designed and implemented, can return substantial benefit to at-risk communities.[69] Prudent administration of state loan subsidies can be a cost-effective mechanism for incentivizing regional economic growth,[70] and near real-time cannabis sales data can help administrators dynamically adjust rates to meet appropriate available metrics even in times of long-term economic uncertainty. Space exists within those models to prioritize the inclusion of historically disregarded borrowers, retain unique innovations,[71] and ultimately build cannabis markets that are profitable, competitive, and highly diverse.

IX. Conclusion

Market participants in the state-regulated cannabis industry have long grappled with outsized financial challenges associated with the high costs of entry and compliance, federal prohibitions on traditional lending products, and effective tax rates as high as 70%. The inherent risk of federal prohibition, combined with sales channels restricted to intrastate commerce, is heightened by those commonly faced by traditional agricultural firms, vice-oriented businesses, and competition from illicit channels. The result is continually rising tension between a general perception of small business as the lifeblood of the national economy and the realities of seeking profitability where the news of the day can cause stakeholder objectives to vacillate between unprecedented success and sheer survival.

Many eagerly (and appropriately) await what appears to be the pending rescheduling of cannabis under the Controlled Substances Act, with the attendant reduction in tax burden associated with Internal Revenue Code Section 280E, and hold out hope as the SAFER Banking Act continues its years-long journey in building bipartisan support toward increased access to banking and insurance products. Ultimately, however, the long-term health and viability of the U.S. cannabis market may depend in large part on the willingness of government bodies to underwrite private loans for cannabis entrepreneurs–both before and after reforms.

Government actors have obligations to eradicate illicit trade, foster healthy competition, and ensure that present regulatory schemes neither disproportionately exclude entrepreneurs from historically disadvantaged backgrounds nor lead to anti-competitive price distortion that incentivizes monopolistic practices. Developing risk-cushioning support for reduced lending rates–subject to evaluative criteria that support broader policy goals–can develop cannabis markets that are more stable and better reflect the entrepreneurial landscape for which we should strive.

The cannabis industry stands at a turning point, which, if properly navigated, holds the potential to create more equitable and sustainable markets that benefit a wide range of stakeholders. By leveraging the power of state-subsidized lending, we can build a stronger, more resilient cannabis economy that reflects our shared values and aspirations. However, the window for action is limited. As federal legalization approaches the horizon, it is crucial that we act now to establish a strong foundation for the industry's future.

[1] *New State Ice Co. v. Liebmann*, 285 U.S. 262, 285 (1932)

[2] *See* U.S. Federal Reserve System Task Force on Internal Credit Risk Models, *Credit Risk Models at Major U.S. Banking Institutions: Current State of the Art and Implications for Assessments of Capital Adequacy* (May 1998) at 11, https://www.federalreserve.gov/boarddocs/staffreports/study.pdf

[3] *See e.g.*, 12 C.F.R. § 324.1(c)(3)(requiring specific risk-weighting methodologies for banks insured by the Federal Deposit Insurance Corporation); 12 C.F.R. § 702(requiring "complex" credit unions to calculate risk-based capital ratios); *but see* generally Andrew P. Scott and Marc Labonte, *Bank Capital Requirements: A Primer and Policy Issues*, Congressional Research Service R47447 (March 9, 2023), https://crsreports.congress.gov/product/pdf/R/R47447 (clarifying that smaller institutions may apply a "leverage ratio" analysis that is less granular regarding risk).

[4] *See e.g.,* Carola Müller, Ragnar Juelsrud, et al., *Risk-Based Pricing in Competitive Lending Markets*, 4 (May 26, 2022), https://ssrn.com/abstract=4120047 (this clearly-written article describes the phenomenon as it relates to banks in Norway, however has been well documented in general. *See e.g.,* Cassandra Jones Havard, *Post-Racial Lending?*, KAN. J.L. & PUB. POL'Y, FALL 2014, AT 176, 179 (describing competition-driven reduction of risk evaluation relative to minority home borrowers prior to the 2008 economic crisis).

[5] *Id.* at 25.

[6] Beau Whitney, *Business Conditions Survey Report Q4 2022* at 8 (Whitney Economics, June 2023).

[7] *Id.* at 38.

[8] *See* Paul Demko, *Why Weed Companies Can't Make Any Money* (POLITICO, September 4, 2022).

[9] Mrinalika Roy, *High & Dry: Banking Crisis to Further Choke Funding for Cannabis Sector* (Reuters, March 24, 2023), https://www.reuters.com/business/high-dry-banking-crisis-further-choke-funding-cannabis-sector-2023-03-24/

[10] Discussed below. 15 U.S.C. § 1691 *et seq.*

[11] While historically Asian business applicants have had substantially higher levels of application success, it is theorized that anti-Asian rhetoric espoused by President Trump and others in relation to the COVID-19 pandemic, compounded with higher Asian entrepreneurship in hospitality and leisure sectors impacted by "stay at home" orders, may have contributed to business failures. *See* Cheng, Alycia et al., *Asian American Businesses: The Impacts of Anti-Asian Racism, 2021*, UCLA Center for Neighborhood Knowledge (2021), https://knowledge.luskin.ucla.edu/wp-content/uploads/2021/12/CNK-AASC-ABA_Survey-Brief_2021-1.pdf.

[12] Federal Reserve Bank, *Small Business Credit Survey: 2022 Report on Employer Firms* at 18, (reissued May 6, 2022), https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/2022-sbcs-employer-firms-report (reporting on survey of 10,914 employer small businesses).

[13] Howell, Sabrina T. et al*., Automation and Racial Disparities in Small Business Lending: Evidence from the Paycheck Protection Program*, National Bureau of Economic Research Working Paper 29364, 3 (May 2022 revision), https://www.nber.org/papers/w29364 ("Black ownership is associated with a 5.5 percentage point higher probability of obtaining a PPP loan through a fintech lender, conditional on controls.")

[14] Howell, Sabrina T. et al*., Automation and Racial Disparities in Small Business Lending: Evidence from the Paycheck Protection Program*, National Bureau of Economic Research Working Paper 29364, 3 (May 2022 revision), https://www.nber.org/papers/w29364 ("Black ownership is associated with a 5.5 percentage point higher probability of obtaining a Paycheck Protection program loan through a fintech lender, conditional on controls.")

[15] Nahla Davies, *Why Black Entrepreneurs Struggle to Secure and Receive Funding and Investment Grants*, SBA SCORE (September 14, 2020), https://www.score.org/blog/why-black-entrepreneurs-struggle-secure-and-receive-funding-and-investment-grants, *citing* Jared Weitz, "Why Minorities Have So Much Trouble Accessing Small Business Loans," Forbes (Jan 22, 2018), https://www.forbes.com/sites/forbesfinancecouncil/2018/01/22/why-minorities-have-so-much-trouble-accessing-small-business-loans/.

[16] *Id.*, *citing* Anne Kniggendorf, "The Barriers to Funding Equality Persist for Black Women," Ewing Marion Kauffman Foundation (May 2, 2019), https://www.kauffman.org/currents/barriers-to-funding-equality-persist-for-black-women/.

[17] *See e.g.,* Ca. Office of Bus. and Econ. Development, *Cannabis Equity Grants Program for Local Jurisdictions Annual Report to Legislature* at 229 (Jul. 2021), https://static.business.ca.gov/wp-content/uploads/2021/07/Cannabis-Equity-Grants-Program-for-Local-Jurisdictions-Annual-Report-to-the-Legislature-7-1-2021v2.pdf.

[18] 15 U.S.C. § 636(a) Section 7(a)

[19] SBA, "Revised Guidance on Credit Elsewhere and Other Provisions in SOP 50 10 5(J)," Control No. 5000-17057 (April 3, 2018), https://www.sba.gov/sites/default/files/resource_files/SBA_Policy_Notice_5000-17057_Revised_Guidance_on_Credit_Elsewhere_and_Other_Provisions.pdf.

[20] *See e.g.*, Or. Admin. R. 845-025-1015(15)(a) (requiring disclosure of lender identity and precluding lending at a "commercially unreasonable rate").

[21] *See* Lizbelle Taveras, *Remedying the Underbanked Cannabis Industry: Prospects of Federal Banking Reform*, 39 REV. BANKING & FIN. L. 147, 152 (2019) (generally describing "sources of financing options" for cannabis companies).

[22] Berke, Jeremy and Lee, Yeji Jesse, *Top Executives at the 14 Largest Cannabis Companies are Overwhelmingly White Men, an Insider Analysis Shows*, Business Insider (Jun 30, 2021), https://www.businessinsider.com/cannabis-industry-diversity-executives-are-white-male-insider-inequity-analysis-shows-2021-6.

[23] Minority Cannabis Business Association, *State Equity Data* (2022) https://minoritycannabis.org/equitymap/ plus

[24] Mass. Gen. Laws ch. 94G § 14A

[25] Mass. Cannabis Control Comm., *A Baseline Review and Assessment of Cannabis Use and Public Safety* (20 Apr. 2019), https://mass-cannabis-control.com/wp-content/uploads/2019/04/1.-RR2-94C-Violations-FINAL.pdf.

[26] *See e.g.,* IL 410 ILL. COMP. STAT. ANN. 705/7-10(c), *IL* 410 ILL. COMP. STAT. ANN. 705/7-15 (initially allocating $12 million for a variety of uses, including social equity grants); Ca. Office of Bus. and Econ. Development, Cannabis Equity Grants Program for Local Jurisdictions Annual Report to Legislature at 229, (Jul. 2021), https://static.business.ca.gov/wp-content/uploads/2021/07/Cannabis-Equity-Grants-Program-for-Local-Jurisdictions-Annual-Report-to-the-Legislature-7-1-2021v2.pdf (directing funding to local jurisdictions for grantmaking or other activities in support of social equity applicants).

[27] Maryland SB 0516 (2023)

[28] M.D. Dept of Comm., *Capital Access Program*, https://commerce.maryland.gov/fund/programs-for-businesses/maryland-capital-access-program.

[29] M.D. Chapters 245 & 255, Acts of 2023

[30] New York Dormitory Authority, *New York Social Equity Cannabis Investment Fund Request for Proposal,* RFP #7585 (May 12, 2022), https://www.dasny.org/sites/default/files/rfp-documents/2022-05/New%20York%20Social%20Equity%20Cannabis%20Investment%20Fund%20RFP%207585.pdf.

[31] Rosalind Adams, *How Private Equity Trumped Social Equity in State Cannabis Deal*, THE CITY (April 24, 2024), https://www.thecity.nyc/2024/04/24/cannabis-fund-social-equity-dispensary/.

[32] U.S. Census Bureau, *Cannabis Excise Sales Tax* (March 14, 2024). https://www.census.gov/library/visualizations/interactive/cannabis-excise-sales-tax.html.

[33] *See e.g.,* Michael Sofis & Mackenzie Slade, *Future Adult Use Cannabis Demand & Predictive Modeling: A Behavioral Economic Study*, Maryland Dep't of Legis. Svcs (Jan. 5, 2023), https://mgaleg.maryland.gov/meeting_material/2023/scr%20-%20133174234517847255%20-%20Market%20Study%20Report_01052023.pdf; State of Vermont Cannabis Control Board, *Updated Market Analysis* (August 2022), https://ccb.vermont.gov/reports.

[34] *See* Mengqi Sun, *Marijuana Laws Create Compliance Quandary for U.S. Broker-Dealers* (Wall Street Journal, Nov. 4, 2019)(describing how direct investment in cannabis companies is not prohibited, but unclear guidance from the Securities and Exchange Commission and the Financial Industry Regulatory Authority has led to conservatism).

[35] Connecticut Public Act 21-1

[36] See, e.g. Joowon Jeong, *Do Government Guaranteed Small Business Loans Increase Employment? Evidence From US Counties, 2010-2016.* Journal of Policy Studies, 38(2), 11–21 (2023), https://doi.org/10.52372/jps38202 (correlating availability of subsidized small business loans with employment increases in low-income U.S. counties).

[37] In the Farmers Home Administration Act, 7 U.S.C. § 1981 (1946).

[38] U.S. Dep't Agriculture, *FY 2024 Budget Summary*, 23. https://www.usda.gov/sites/default/files/documents/2025-usda-budget-summary.pdf.

[39] *Id.* at 25

[40] *See* Chris Edwards, *Cutting Federal Farm Subsidies*, CATO Institute Briefing Paper No. 162 (August 31, 2023)(criticizing commodity subsidies for price distortion and perverse production incentives); Courtney G. Lee, *Racist Animal Agriculture*, 25 CUNY L. REV. 199 (2022)(asserting, *inter alia*, that commodity subsidies contribute to environmental injustice, food apartheid, disenfranchisement of farmers of color and perpetuation of unhealthy U.S. eating behaviors).

[41] *See* Jonathan Coppess, *The History and Development of USDA Farm Loan Programs, Part 3: 1946 to 1961.* farmdoc daily (11):46, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign (March 25, 2021), https://farmdocdaily.illinois.edu/2021/03/the-history-and-development-of-usda-farm-loan-programs-part-3-1946-to-1961.html.

[42] See Ximena Bustillo, *In 2022, Black Farmers Were Persistently Left Behind From the USDA's Loan System*, NPR (February 19, 2023). https://www.npr.org/2023/02/19/1156851675/in-2022-black-farmers-were-persistently-left-behind-from-the-usdas-loan-system (noting both ongoing issues and the $2.2 billion allocation intended to address past harms found in the Inflation Reduction Act, 22007 INFLATION REDUCTION ACT OF 2022, PL 117-169, August 16, 2022, 136 Stat 1818 (August 16, 2022).

[43] U.S. Office of Management and Budget, *Credit Supplement, Budget of the U.S. Government Fiscal Year 2025* (2024), https://www.whitehouse.gov/wp-content/uploads/2024/03/cr_supp_fy2025.pdf.

[44] *Id.* at 5

[45] U.S. Department of Agriculture, Economic Research Service, *Farm Household Well-being: Farm Household Income Forecast* (2024, February 7), https://www.ers.usda.gov/topics/farm-economy/farm-household-well-being/farm-household-income-forecast/.

[46] U.S. Office of Management and Budget at 1.

[47] As has at times been the case with lending through the Farm Credit System, a government-supported enterprise. *See generally*, Julie Andersen Hill, *Bailouts and Credit Cycles: Fannie, Freddie, and the Farm Credit System*, 10 Wis. L. Rev. 1 at 26 (2010).

[48] *See, e.g.* Bradley R. Finney, *Weaning United States Agriculture Off Government Money by Following Australia's Successful Example*, 57 WAKE FOREST L. REV. 1131, 1137 (2022)(making the apparently serious proposal that the U.S. should, *inter alia* buy out distressed producers, replace lending with tax incentives, issue a moratorium on foreclosure and substitute Chapter 12 bankruptcy with informal alternatives).

[49] James M. MacDonald, *Consolidation in U.S. Agriculture Continues*, U.S. Dep't Ag. Economic Research Service Amber Waves Magazine (February 3, 2020), https://www.ers.usda.gov/amber-waves/2020/february/consolidation-in-u-s-agriculture-continues/.

[50] *See e.g.,* Cassandra Jones Havard, *African-American Farmers and Fair Lending: Racializing Rural Economic Space*, 12 STAN. L. & POL'Y REV. 333 (2001).

[51] With the Small Business Act of 1953, PL 85-536 (1953).

[52] 15 U.S.C. § 636(a)

[53] Emrehan Katug, Devrim Ikizler, et al., *Effects of Small Loans on Bank and Small Business Growth*, 41, U.S. Small Business Amdinistration Office of Advocacy (March 2020), https://advocacy.sba.gov/wp-content/uploads/2021/03/De-Novo-Bank-Formation.pdf (while the report focuses on the strong impact on loans under $100,000, it notes a correlation to "young and small" firms rather than limited borrowing and clarifies that 72 percent of firms applying for financing with annual revenue under $1 million sought loans under this threshold, *id.* at 36).

[54] U.S. Small Business Administration, *FY 2025 Congressional Budget Justification, FY 2023 Annual Performance Report* (March 2024) at 28, https://www.sba.gov/sites/default/files/2024-03/FY%202025%20SBA%20CBJ%20Final%20Updated.pdf.

[55] *See also* Kacie Goff, *SBA Loan Statistics: Race and Gender*, Bankrate (November 22, 2023), https://www.bankrate.com/loans/small-business/sba-loan-race-and-gender-statistics/.

[56] See U.S. Small Business Administration, *U.S. Small Business Administration Implements Rules to Address Persistent Capital Access Gaps*, Press Release 23-24 (April 12, 2023).

[57] Pew Research Center, *Most Americans Favor Legalizing Marijuana for Medical, Recreational Use* (March 26, 2024), https://www.pewresearch.org/politics/2024/03/26/most-americans-favor-legalizing-marijuana-for-medical-recreational-use.

[58] *See, e.g.* Renee Johnson, *Defining "Specialty Crops": A Fact Sheet*, U.S. Congressional Research Service R44719 (Jan. 9, 2017) at 1 (describing USDA market support eligibility for wine growers); U.S. Small Business Administration *Table of Size Standards* (March 17, 2023) at 7 (describing "Wine" as an eligible lending category and providing qualifying standards for small businesses).

[59] Stephen Andrews, *Canada's Boom in Cannabis Export*, SoftSecrets (Aug. 29, 2023), https://softsecrets.com/en-US/article/canadas-boom-cannabis-export.

[60] Health Canada, *Licensed Cultivators, processors and Sellers of Cannabis Under the Cannabis Act* (April 26, 2024), https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/industry-licensees-applicants/licensed-cultivators-processors-sellers.html.

[61] Andrews, *citing* Health Canada.

[62] U.S. Census, *U.S. and World Population Clock* (April 29, 2024), https://www.census.gov/popclock/.

[63] David Downs, Amelia Williams, *et. al, Leafly Cannabis Harvest Report 2022* (Nov. 4, 2022), https://leafly-cms-production.imgix.net/wp-content/uploads/2022/11/04104710/Leafly-Crops-Report-2022.11.4corrected.pdf.

[64] MJBizDaily, *Where Marijuana is Legal in the United States* (Nov. 13, 2023), https://mjbizdaily.com/map-of-us-marijuana-legalization-by-state/.

[65] Music, J., Sterling, B., Charlebois, S. *et al.* Comparison of perceptions in Canada and USA regarding cannabis and edibles. *J Cannabis Res* **6**, 1 (2024), https://doi.org/10.1186/s42238-023-00213-9.

[66] *See generally,* Julie M. Lawhorn, *Federal Resources for State and Local Development*, Congressional Research Service InFocus (March 22, 2021)(broadly describing federal economic development support opportunities).

[67] Bruce Barcott, Beau Whitney *et. al, Vangst Jobs Report 2023 at 3,* (Vangst 2023)

[68] Downs, Williams et al. at 6

[69] *See* Pew Charitable Trusts, *How States Can Direct Economic Development to Places and People in Need* (February 2021). https://www.pewtrusts.org/-/media/assets/2021/01/how_states_can_direct_economic_development_to_places_and_people_in_need.pdf

[70] Norton Francis, *State Financing Incentives for Economic Development*, Urban Institute & Brookings Institution Tax Policy Center (February 28, 2016). https://www.taxpolicycenter.org/publications/state-financing-incentives-economic-development/full

[71]Such as Vermont's licensure limits as a mechanism to prioritize "craft" producers, 7 V.S.A. 901(3)(a).