

Congressman Earl Blumenauer

Third District of Oregon

MEMORANDUM

To: House Democratic Leadership
From: Earl Blumenauer
Re: Blueprint to Legalize Marijuana in the 116th Congress

National support for federal marijuana legalization is at an all-time high, and trends show that support will continue to grow. [Polling](#) shows that 69% of registered voters “support the legalization of marijuana,” and 73% support expunging the records of those previously convicted of marijuana-related offenses. Additionally, more than 20% of Americans live in states that permit the adult use of marijuana, and more than 97% of Americans live in a state that has legalized some form of cannabis. These numbers are expected to increase with legalization initiatives on the ballot in several states.

Congress is out of step with the American people and the states on cannabis. We have an opportunity to correct course if Democrats win big in November. There’s no question: cannabis prohibition will end. Democrats should lead the way. If we fail to act swiftly, I fear as the 2020 election approaches, Donald Trump will claim credit for our work in an effort to shore up support—especially from young voters. Democrats must seize the moment.

This memo outlines actions that a newly-elected Democratic Majority should take immediately in the 116th Congress to achieve these desperately-needed reforms by the end of 2019.

OUR TIMELINE FOR SUCCESS

January 2019-March 2019: For too long, under Republican leadership, these issues have not been allowed to be fully debated. We must change that approach. Almost every standing House committee has jurisdiction over some aspect of marijuana policy. Within the first six months of the new Congress, these committees should hold hearings, bring in experts, and discuss potential policy fixes. Below are examples of hearings that should be scheduled early next year:

- **House Judiciary Committee** hearing on descheduling marijuana;
- **House Veterans Affairs Committee** hearing on safe and equal access to medical marijuana for veterans;
- **House Energy and Commerce** hearing on marijuana research;
- **House Financial Services Committee** hearing on barriers to the safe access of banking services and capital as well as unnecessary and unwise barriers to banking services for state legal marijuana businesses;

- **House Ways and Means Committee** hearing on the unequal and unfair taxation of marijuana businesses;
- **House Natural Resources Committee** hearing on marijuana and tribal sovereignty, along with environmental damage to public lands from illegal black market growing;
- **House Oversight and Government Reform Committee** hearing on access to federal government jobs for veterans who use marijuana in compliance with their state laws;
- **House Administration Committee** hearing on access to financial services for candidates who support marijuana legalization; and
- **House Education and Labor Committee** hearing on access to higher education loans for students who have been convicted of marijuana possession.

April 2019-June 2019: In addition to continuing the work needed to once and for all legalize marijuana at the federal level (*options for legalization below*), committees should start marking up bills in their jurisdiction that would responsibly narrow the marijuana policy gap—the gap between federal and state marijuana laws—before the end of the year. These policy issues (*specific legislative options listed below*) should include:

- Restorative justice measures that address the racial injustices that resulted from the unequal application of federal marijuana laws;
- Equal access to pain and PTSD cannabis treatments for our veterans through the Department of Veterans Affairs (VA);
- Protection of state marijuana laws;
- Removal of barriers to marijuana research;
- Protection of private property from civil asset forfeiture;
- Protections of employment of opportunities;
- Access to financial services; and
- Equal taxation for marijuana businesses.

By August 2019: House passage of a package of marijuana reform bills addressing the issues above.

September 2019-December 2019: With the marijuana policy gap diminished, after months of hearings and markups, the House should pass a full descheduling bill and work with Senate allies to guide the bill through Senate passage. Our chances in the Senate depend on both the November elections and increased public pressure following House passage. While the Senate has been slower on marijuana policy reform than the House and the American people, it now has almost 20 introduced bills in an effort to catch up with the House. We must build on this momentum.

By the end of 2019: Marijuana will be legal at the federal level, and states allowed to responsibly regulate its use. The federal government will not intergere with state efforts to responsibly regulate marijuana use within their borders.

NOW IS THE TIME FOR ACTION

This movement is cresting.

Over the last decade, I've worked to build understanding and consensus on the need for reform. We've organized a bipartisan coalition in Congress to support our efforts. The public is demanding action. Even Donald Trump has indicated that he would support a state-regulated approach. The only obstacle standing in our way is Republican leadership in Congress.

Now is our moment.

REFERENCE ADDITIONAL INFORMATION

TOP PRIORITY: LEGALIZE (DESCHEDULE) MARIJUANA

By the end of the 116th Congress, we must federally deschedule marijuana. Similar to the end of alcohol prohibition, state and local marijuana laws would not be affected. These four bills are examples of comprehensive legislation to deschedule marijuana at the federal level, leaving the brunt of marijuana regulation to the states:

- The [Marijuana Revenue and Regulation Act](#), introduced by Senator Ron Wyden and Rep. Earl Blumenauer would federally legalize, regulate, and tax marijuana, similar to the treatment of alcohol. States would still be able to regulate marijuana within their borders.
- The [Marijuana Freedom and Opportunity Act](#), introduced by Democratic Leader Schumer, would (1) decriminalize marijuana by removing it from the list of scheduled substances under the U.S. Controlled Substances Act of 1970; (2) protect children from marijuana advertising by maintaining the Department of Treasury's authority to regulate marijuana advertising in the same way it does tobacco advertising to ensure that marijuana businesses aren't allowed to target children in their advertisements; and (3) incentivize record sealing and expungement programs by creating a grant program to encourage state and local governments to administer, adopt, or enhance expungement or sealing programs for marijuana possession convictions.
- The [Ending Federal Marijuana Prohibition Act](#), introduced by Reps. Tulsi Gabbard and Tom Garrett, would take cannabis off the federal controlled substances list and remove criminal penalties for importing, exporting, manufacturing, distributing or possessing marijuana with the intent to distribute. This would put states in full control of marijuana policy and regulation within their borders.
- The [Marijuana Justice Act](#), introduced by Sen. Cory Booker and Rep. Barbara Lee, would (1) remove marijuana from the U.S. Controlled Substances Act, thereby ending the federal criminalization of cannabis; (2) incentivize states to mitigate existing and ongoing racial disparities in state-level marijuana arrests; (3) expunge federal convictions specific to marijuana possession; (4) allow individuals currently serving time in federal prison for marijuana-related violations to petition the court for resentencing; and (5) create a community reinvestment fund to invest in communities most impacted by the failed War on Drugs.

OTHER OPPORTUNITIES FOR ACTION

As mentioned in the timeline, if full legalization cannot be enacted immediately, the House should responsibly close the marijuana policy gap—the gap between federal and state marijuana laws.

- Senator Ron Wyden and Rep. Earl Blumenauer introduced a bill—the [Responsibly Addressing the Marijuana Policy Gap Act](#)—that would comprehensively tackle this issue.
- There are also standalone bills that are drafted and ready for quick House consideration to lessen the burden that marijuana prohibition has placed on patients, including veterans, businesses, and those hit hardest by the failed War on Drugs.

Criminal Justice and Equity

Decades of failed drug policy have disproportionately impacted [communities of color](#). African Americans are arrested for violating marijuana possession laws at nearly four times the rate of white Americans, yet, both groups consume marijuana at roughly the same rates.

- Provisions in the [Marijuana Justice Act](#), introduced by Sen. Cory Booker and Rep. Barbara Lee, would (1) incentivize states to mitigate existing and ongoing racial disparities in state-level marijuana arrests; (2) expunge federal convictions specific to marijuana possession; (3) allow individuals currently serving time in federal prison for marijuana-related violations to petition the court for resentencing; and (4) create a community reinvestment fund to invest in communities most impacted by the failed War on Drugs. (Note: The bill would also deschedule marijuana. More information about the bill is listed above.)
- The [Realizing Equitable & Sustainable Participation in Emerging Cannabis Trades \(RESPECT\) Resolution](#), introduced by Rep. Barbara Lee, would show congressional support for equity in the cannabis industry, seeking both economic and reparative justice that ensures that disenfranchised communities will be able to benefit equally in the emerging legal and regulated cannabis industry.

Access to Care For Our Veterans

Currently, the Department of Veterans Affairs (VA) specifically prohibits its health care providers from completing forms brought by their patients seeking recommendations or opinions regarding participation in a state-legal medical marijuana program, forcing military veterans to seek the advice of a private, out-of-network physician.

- The [Veterans Equal Access Act](#), introduced by Rep. Earl Blumenauer, would authorize VA physicians and other health care providers to provide recommendations and opinions regarding the use of medical marijuana to veterans who live in medical marijuana states.

Protect State Marijuana Laws

Forty-six states have cannabis laws that conflict with federal prohibition cannabis laws. Congress has enacted an appropriations amendment—the Rohrabacher-Blumenauer or Leahy amendment—that prevents the federal government from interfering with state medical cannabis laws. We must expand this amendment to address state adult-use cannabis laws and to codify it so that protections do not rely on the annual appropriations process.

- **[Strengthening the Tenth Amendment Through Entrusting States \(STATES\) Act](#)**, introduced by Sens. Elizabeth Warren and Cory Gardner and Reps. Earl Blumenauer and Dave Joyce, would amend the U.S. Controlled Substances Act to allow each state or tribe to determine how best to address commercial cannabis activity within its own borders. Additionally, state-approved commercial cannabis activity will cease to be considered drug trafficking, and proceeds from and assets used in legal cannabis operations would not be subject to forfeiture by the Department of Justice.
- **[Restraining Excessive Federal Enforcement & Regulations of Cannabis Act \(REFER\) Act](#)**, introduced by Rep. Barbara Lee, would prohibit the federal government from intrusion in states and municipalities that have updated their laws regarding cannabis use, possession, cultivation, and distribution.

Promoting Research

Because the federal government classifies marijuana as a Schedule I drug, research on the health effects of cannabis and cannabinoids has been limited in the United States, leaving patients, health care professionals, and policymakers without the information they need to make fully-informed decisions regarding the use of cannabis and cannabinoids. The National Academies of Sciences, Engineering, and Medicine has reported that these barriers “[represent a public health problem](#).”

- **[Medical Marijuana Research Act](#)**, introduced by Reps. Earl Blumenauer and Andy Harris, would remove barriers inhibiting medical marijuana research by creating a new, less cumbersome registration process specifically for marijuana research. It would reduce approval wait times, costly security measures, and additional, unnecessary layers of protocol review and allow for the private manufacturing and distribution of marijuana for research purposes.
- **[VA Medicinal Cannabis Research Act](#)**, introduced by Reps. Tim Walz, David Roe, and Luis Correa, would allow for medical research into the safety and efficacy of medicinal cannabis usage on veterans diagnosed with PTSD, chronic pain, and other illnesses and injuries by specifically authorizing the VA to conduct and support research regarding medicinal cannabis; and (2) require the VA to report to Congress on how it intends to exercise that authority.
- **[Marijuana Data Collection Act](#)**, introduced by Reps. Tulsi Gabbards and Carlos Curbelo, would require the National Academy of Sciences to create a federally

recognized report on the status of state-level marijuana legalization policies, including both medical and non-medical use, and the effects of marijuana legalization on public health, safety, the economy, the criminal justice system, and more.

Respecting Private Property

Civil asset forfeiture laws allow law enforcement to permanently confiscate cash, cars, real estate, and other valuable property without ever charging the owner with a crime. With state-legal cannabis, these laws can be particularly troubling because the Department of Justice uses them as a tactic to crack down on state-legal marijuana dispensaries.

- [**States' Medical Marijuana Property Rights Protection Act**](#), introduced by Rep. Barbara Lee, would prohibit the federal government from seizing the assets of medical marijuana business owners.
- [**Stop Civil Asset Forfeiture Funding for Marijuana Suppression Act**](#), introduced by Reps. Ted Lieu and Justin Amash, would ban the Drug Enforcement Administration from using any federal forfeiture funds to support its Domestic Cannabis Eradication/Suppression Program.

Protecting Employment Opportunities

The federal government requires, as a condition for employment, that all civilian employees in executive branch agencies be prohibited from using federally illegal substances—even if the substance is state-legal and the use is off duty. This requirement means that many Americans including veterans, who use marijuana to treat chronic pain and PTSD in compliance with their state laws, are precluded from employment with the federal government, the nation's largest employer of veterans.

- [**Fairness in Federal Drug Testing Under State Laws Act**](#), introduced by Reps. Charlie Crist and Doug Ferguson, would protect federal employment opportunities and treatment options for veterans and other civilian federal agency employees residing in a state or territory where their use of medical marijuana is legal.

Commonsense Access to Banking Services

Although 31 states have legalized medical marijuana, because it is still a Schedule I drug federally, the majority of traditional banking institutions refuse to work with cannabis-related businesses. These businesses are often forced to operate as cash-only, while at the same time missing out on the traditional financial and lending opportunities available to other businesses. Not only is this bad for business, it is a public safety issue.

- [**Secure And Fair Enforcement \(SAFE\) Banking Act**](#), introduced by Sen. Jeff Merkley and Reps. Ed Perlmutter and Denny Heck, would allow cannabis and cannabis-related businesses that are legal under state law to access financial services in the banking system and give law enforcement the ability to monitor these transactions.

Marijuana Business Tax Equity

Under current law, businesses may generally deduct related business expenses for income tax purposes. In addition, businesses may be eligible to claim certain tax credits as provided by the tax code. Section 280E of the tax code provides that any person who sells Schedule I or Schedule II substances may not claim tax deductions or credits. As such, marijuana businesses operating in compliance with state laws may not deduct the common expenses of running a small business, such as rent, most utilities, and payroll. In addition, these businesses are barred from claiming tax credits, including those intended to incentivize energy efficiency, research and development, or hiring veterans and other disadvantaged groups

- [**Small Business Tax Equity Act**](#), introduced by Sens. Ron Wyden and Rand Paul and Reps. Earl Blumenauer and Carlos Curbelo, would create an exception in the tax code to allow businesses operating in compliance with state law to claim deductions and credits associated with the sale of marijuana like any other legal business.