

GUIDANCE ON REQUIRED POSITIVE IMPACT PLANS AND DIVERSITY PLANS

(REVISED 12/13/18)

OVERVIEW

PURPOSE

The purpose of this amended guidance is to assist applicants with additional clarity and information on the Cannabis Control Commission (“**Commission**”) requirements to submit a plan to positively impact areas of disproportionate impact and, separately, a diversity plan. This guidance is not legal advice. If you have questions regarding the legal requirements for licensure and renewal in the Commonwealth, you are encouraged to consult an attorney.

BACKGROUND

The Commission is charged by state law to adopt procedures and policies to promote and encourage full participation in the regulated cannabis industry by individuals from communities disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities. M.G.L. c. 94G, § 4. State law specifically requires the Commission to “provide meaningful participation of communities disproportionately affected by cannabis prohibition and enforcement, including minority business enterprises, women business enterprises, and veteran business enterprises.” St. 2017, c. 55, § 77.

As part of its mandate, *the Commission requires every applicant applying for any Marijuana Establishment license to provide in its Application of Intent packet “a plan by the marijuana establishment to positively impact areas of disproportionate impact, as defined by the Commission.”*¹

Pursuant to its mandate to promote equity in the adult-use marijuana industry, *the Commission also requires the applicant to provide in its Management and Operations Profile packet a diversity plan “to promote equity among minorities, women, veterans, people with disabilities, and people of all gender identities and sexual orientation.”*²

¹ 935 CMR 500.101(1)(a)(11); 935 CMR 500.101(2)(b)(10)

² 935 CMR 500.101(1)(c)(7)(k); 935 CMR 500.101(2)(e)(8)(k)

ELEMENTS OF EACH PLAN

Every applicant seeking licensure or must submit the two plans:

1. plan to positively impact areas of disproportionate impact as defined by the Commission; and
2. a diversity plan.

As part of an extensive review of application materials, the Commission will scrutinize each plan separately to make sure it includes the following:

1. Goals: one or more desired outcomes of the plan;
2. Programs: detailed actions, activities, or processes that will be utilized or implemented to achieve the outlined goals; and
3. Measurements: specific metrics that will be implemented to assess the progress and success of the programs.

Each plan should follow this format to be considered compliant with the Commission's regulations. Miscellaneous, extraneous, or additional information unrelated to the goals, programs, and measurements of each plan is not necessary and should not be included in the submission.

The following sections will provide guidance on the Commission's expectations, examples, and additional state requirements that should be included in each plan. The examples provided below are not an exhaustive list and applicants are encouraged to be innovative while remaining compliant with the Commission's regulations and requirements and any other applicable laws.

PLAN TO POSITIVELY IMPACT AREAS OF DISPROPORTIONATE IMPACT

Prior to drafting this plan, the applicant must understand who the plan is intended to affect and tailor the goals, programs, and measurements to a specific group. The Commission has identified populations falling within areas of disproportionate impact (the groups a plan is intended to impact) as the following:

1. Past or present residents of the geographic "areas of disproportionate impact," which have been defined by the Commission and identified in its [Guidance for Identifying Areas of Disproportionate Impact](#). The designation of these areas will be re-evaluated periodically;
2. Commission-designated Economic Empowerment Priority applicants;
3. Commission-designated Social Equity Program participants;
4. Massachusetts residents who have past drug convictions; and
5. Massachusetts residents with parents or spouses who have drug convictions.

This plan should only be tailored to positively impact one or more of the groups identified above.

GOALS (POSITIVE IMPACT PLAN)

Each applicant should establish specific goals to make a positive impact on areas of disproportionate impact, and clearly list and describe these goals in its plan. Some possible goals that could be utilized include the following:

1. Reducing barriers to entry in the commercial adult-use cannabis industry;
2. Providing mentoring, professional, and technical services for individuals and businesses facing systemic barriers;
3. Promoting sustainable, socially and economically reparative practices in the cannabis industry in Massachusetts; and
4. Providing business assets (time, organization skills, finances) towards endeavors in a geographical location designated as a disproportionately impacted area that will have a positive impact on the members of that community or the community as a whole.

PROGRAMS (POSITIVE IMPACT PLAN)

Each applicant should develop specific programs to effectuate its stated goals to positively affect areas of disproportionate impact, and clearly describe the proposed programs in its plan. Some possible programs that could be implemented include the following:

1. Giving hiring preference to individuals that fall under the Commission's definition of disproportionately impacted areas. If choosing to implement this type of program, the program must affirmatively identify the specific disproportionately impacted area and the intended ways to reach that community for hiring or other purposes;
2. Incubator or accelerator programs that seek to aid start-up companies owned by disproportionately harmed communities, including but not limited to:
 - a. Grants;
 - b. Access and introductions to potential sources of capital;
 - c. Cultivation, manufacturing, or retail space;
 - d. Management training or other forms of industry-specific technical training;
 - e. Mentorship from experts;
 - f. Formation of peer support groups; and
 - g. Other benefits that do not violate the Commission's regulations with respect to limitations on ownership and control.
3. Providing debt and/or equity funding to help businesses founded by individuals previously or currently residing in disproportionately impacted areas with limited net worth and access to traditional sources of capital to meet start-up and working capital needs. This funding may take the form of investment vehicles including, but not limited to: standard debt instruments; convertible debt instruments; or equity investment pools with other enterprises; which:
 - a. Provide access to capital to those applicants previously or currently residing in communities that have previously been disproportionately harmed by marijuana prohibition who wish to enter the adult-use cannabis industry; and

- b. Allow the individuals receiving the funding assistance to be charged a reasonable interest rate on the equity the individuals contribute.
4. Providing assistance to named non-profits and charities whose missions are improving one of the disproportionately impacted areas. The name and mission of a listed non-profit or charity should be included in the plan. NOTE: Applicants that intend to make a monetary donation to non-profits/charities that serve individuals under the age of 21 are advised to perform due diligence and obtain written correspondence certifying that the non-profit/charity will accept the donation prior to including it as a component of a Positive Impact Plan ;
5. Community “clean-up” initiatives in an area of disproportionate impact;
6. Providing or creating assistance programs for the elderly in disproportionately impacted areas; and
7. Raising and/or donating money to initiatives with goals to improve disproportionately impacted areas.

MEASUREMENTS (POSITIVE IMPACT PLAN)

Each applicant must disclose the specific measurement metrics that will be used in measuring the success of its programs. This is important as every licensee, upon renewal, will need to demonstrate that the identified programs in the plan led to measurable success of the licensee’s goals.³

This section of the plan should include both qualitative and quantitative measures that demonstrate the progress or success of the plan. Metrics should have an identified data source and method for tracking that data.

The applicant is responsible for disclosing and tracking the intended measurement metrics. Depending on the stated goals and programs, measurement metrics will vary. Some examples of metrics that could be utilized include the following:

1. Number of employees hired, retained, or promoted that come from disproportionate impacted areas;
2. Number and subject matter of trainings offered and performed, and to whom;
3. Specific financial data and/or employee hours showing donations to or investments in to specific causes;
4. Number of businesses that obtained training or assistance from the programs;
5. Number of businesses or individuals participating in and successfully paired with the employer through the Commission's Social Equity Program; and
6. Number and types of jobs created in the adult-use cannabis industry in geographic areas of disproportionate impact.

DIVERSITY PLAN

³ 935 CMR 500.103(4)(a)

Prior to drafting this plan, the applicant must understand who the plan is intended to affect and tailor its goals, programs, and measurements to that demographic. The Commission has specifically stated in its regulations that this plan should promote equity among the following demographics:

1. Minorities;
2. Women;
3. Veterans;
4. People with disabilities; and
5. People of all gender identities and sexual orientations.⁴

GOALS (DIVERSITY PLAN)

Each applicant should establish specific goals to promote equity for the above-listed groups in the operations of the Marijuana Establishment. “Operations of the Marijuana Establishment” means to attract, contract, hire, promote, and retain board members, contractors, executives, employees, managers, and service providers. Please note that this plan should not be tailored to address equality (which may be required under law and is laudable) but to, in fact, promote equity. *Equity is providing everyone with the tools or opportunities they need to be successful and leveling the playing field. Equality is simply treating everyone the same.*

Some possible goals that could be included in this plan include the following:

1. Increasing the number of individuals falling into the above-listed demographics working in the establishment and providing tools to ensure their success;
2. Increasing the number of individuals falling into the above-listed demographics in management and executive positions in the establishment and providing tools to ensure their success;
3. Providing access for and assisting individuals falling into the above-listed demographics to achieve their goal of entering the adult-use marijuana industry; and
4. Increasing the number of businesses owned by individuals falling into the above-listed demographics that can contract or otherwise do business with Marijuana Establishments.

PROGRAMS (DIVERSITY PLAN)

Every applicant should tailor its programs to promoting equity for the identified groups and include them in the operations of its Marijuana Establishment. Strategic planning for diversity is an organization-specific process. Resources are readily available on the topic, as are a variety of consulting services. Examples of some programs that could effectuate the goal of an applicant’s diversity plan include the following:

1. Advertising employment opportunities in diverse publications or other mediums;

⁴ 935 CMR 500.101(1)(c)(7)(k); 935 CMR 500.101(2)(e)(8)(k)

2. Advertising employment opportunities tailored to individuals falling into the above-listed demographics with career centers;
3. Distributing internal workplace newsletters that encourage current employees to recommend individuals falling into the above-listed demographics for employment;
4. Creating a promotion process that employs equity principles for current employees;
5. Providing trainings or mentorship programs for individuals falling into the above-listed demographics to promote their entry into the marijuana industry;
6. Providing recruitment meetings or participating in job fairs with a focus on attracting individuals falling into the above-listed demographics; and
7. Establishing relationships with specific organizations that are diversity-focused for the purposes of:
 - a. Networking with their constituencies for employment purposes;
 - b. Providing information on employment opportunities;
 - c. Providing trainings or informational sessions for individuals falling into the above-listed demographics on the marijuana industry.

MEASUREMENTS (DIVERSITY PLAN)

Each applicant must disclose the specific measurement metrics to be used in measuring the success of its programs. This is important as every licensee, upon renewal, must demonstrate that the identified programs in the plan led to measurable success of the licensee's goals.⁵

This section of the plan should include both qualitative and quantitative measures that demonstrate the progress or success of the plan. Metrics should have an identified data source and method for tracking that data.

The applicant is responsible for disclosing the intended measurement metrics. Depending on the stated goals and programs, measurement metrics will vary. Some examples of metrics that could be utilized include the following:

1. Number of individuals from the above-referenced demographic groups who were hired and retained after the issuance of a license;
2. Number of promotions for people falling into the above-listed demographics since initial licensure;
3. Number of positions created since initial licensure;
4. Number of and type of information sessions held or participated in with supporting documentation;
5. Number of postings in diverse publications or general publications with supporting documentation; and

⁵ 935 CMR 500.103(4)(a)

6. Number and subject matter of trainings held and the number of individuals falling into the above-listed demographics in attendance.

ADDITIONAL REQUIREMENTS PERTAINING TO BOTH PLANS

Both plans have unique requirements and standards that have been discussed above. In addition to those requirements, both plans require the applicant to affirmatively state the following:

1. The applicant acknowledges and is aware, and will adhere to, the requirements set forth in 935 CMR 500.105(4) which provides the permitted and prohibited advertising, branding, marketing, and sponsorship practices of every Marijuana Establishment; and
2. Any actions taken, or programs instituted, will not violate the Commission's regulations with respect to limitations on ownership or control or other applicable state laws.

GENERAL INFORMATION PERTAINING TO BOTH PLANS

When drafting each of these plans, every applicant should be mindful of the following information:

1. The plan to positively impact areas of disproportionate impact and the diversity plan are separate and distinct application requirements. One plan deals with improving areas of disproportionate impact (as defined above) and the other plan deals with promoting equity with respect to diversity (of the groups listed above). ***These two plans should not be blended or submitted as one document or plan.***
2. Applicants may have consented to certain requirements in an executed Host Community Agreement (“HCA”) with the municipality where they will be located. Programs or actions taken under each of these plans should be in addition to any HCA agreement conditions or requirements. ***In other words, please do not include elements of your plans that also are conditions or requirements of your executed HCA.***
3. Applicants should endeavor to disclose only the information necessary to comply with the requirements of the plans. ***These two plans should be no longer than three pages each. Applicants may have appendices; however, this is discouraged.***
4. Progress on these plans will be evaluated upon license renewal. Please ensure that the plans submitted as part of the application are practical and ones that the applicant plans to implement and achieve success. It is recommended that the applicant institute a process to evaluate its plans' progress quarterly in preparation for demonstrating success upon renewal. ***Upon license renewal, the Commission shall evaluate any information deemed necessary to assess the bona fide progress of each plan.***
5. This revised guidance should be utilized immediately. For compliance purposes, Commission staff will begin reviewing all applications not previously reviewed in accordance with this document upon approval by the Commission.