



Oregon Liquor and Cannabis Commission

# Oregon Needs to Modernize Cannabis Laws to Help Grow the State's Economy and to Ensure Equitable Opportunities and Benefits for all Communities

April 2023  
Report 2023-15



Secretary of State  
Shemia Fagan



Audits Director  
Kip Memmott

# Audit Highlights

Oregon Liquor and Cannabis Commission

Oregon Needs to Modernize Cannabis Laws to Help Grow the State's Economy and to Ensure Equitable Opportunities and Benefits for all Communities

## Why this audit is important

- The Oregon Liquor and Cannabis Commission (OLCC) regulates recreational cannabis businesses; a billion-dollar industry that generated \$311 million in tax revenues during the 2019-21 biennium.
- Cannabis tax revenues are used to support a variety of key state programs and services.
- Oregon's climate and agricultural prowess positions the state to maximize cannabis as an agricultural commodity, as it does in the case of the timber, wine, and micro brewing industries, to grow and expand the state's economy.
- Many state and local governments are acknowledging responsibility for the harms of racial discrimination in the cannabis industry and committing to address them through the development of social equity programs.

## What we found

1. Oregon's cannabis industry is subject to some regulations that when coupled with the current licensing moratorium, federal restrictions on interstate commerce, banking and taxation create burdens the alcohol industry does not face. These regulations are not clearly based on a robust risk assessment, or the test of real-world effectiveness. ([pg. 12](#))
2. Instead of ensuring the state's cannabis industry receives similar supports provided to other industries that help bolster the economy, many of Oregon's cannabis regulations are based on repealed federal guidance and are largely in place to prevent federal intervention in Oregon's legal cannabis system, a concern that no longer carries the same significance, risk, or likelihood. ([pg. 13](#))
3. Oregon should adopt creative strategies to mitigate risks caused by existing federal cannabis laws and related barriers. ([pg. 15](#))
4. Government support of businesses, especially newer industries and smaller businesses is critical for promoting business equity and enhancing the state economy; however, Business Oregon, the state's economic development agency, will not work with cannabis businesses due to concerns over losing its federal funding and criminal liability. This situation is especially problematic as other state agencies provide services and supports to the cannabis industry, including OLCC. ([pg. 19](#))
5. Oregon did not consider or include targeted equity provisions when developing the recreational cannabis program. Although the state is considering options for an equity program, there are limitations and barriers preventing significant progress. ([pg. 20](#))
6. OLCC's current licensing system is not capable of tracking demographic data, hindering efforts to mitigate the disproportionate impacts experienced in communities targeted by the War on Drugs. ([pg. 28](#))

## What we recommend

We made three recommendations to OLCC, and two recommendations to the Governor and Legislature. OLCC agreed with all of our recommendations. The response can be found at the end of the report.



# Introduction

As states across the country have begun legalizing cannabis for recreational use, the sale and distribution of cannabis has swelled to a multi-billion-dollar industry. According to MJBizDaily, an online industry trade publication, the total U.S economic impact from cannabis sales in 2022 alone is expected to reach \$99 billion; by 2026, it is expected to grow to upwards of \$155 billion.<sup>1</sup> In 2021, Oregon recreational cannabis sales hit a record high of \$1.18 billion.<sup>2</sup> The Oregon Economic and Revenue Forecast predicted increases in cannabis sales and tax collections in the years ahead due to the state's growing population and incomes.<sup>3</sup>

Tax revenue from recreational cannabis sales in Oregon reached \$311 million during the 2019–21 biennium. Among other programs, this revenue goes toward providing critical drug prevention, treatment and recovery services, funding for cities and counties, and funding for Oregon schools through the State School Fund.

While cannabis is still federally illegal, Oregon voted to legalize medical cannabis in 1998 for patients with a qualifying medical condition; the Oregon Health Authority (OHA) is responsible for regulating this form of cannabis. Voter legalization of recreational cannabis in 2014 created an entirely new regulated market in Oregon. The Oregon Liquor and Cannabis Commission (OLCC), known as the Oregon Liquor Control Commission until August 2021,<sup>4</sup> is charged with regulating recreational cannabis in Oregon, including licensing recreational cannabis growers, processors, wholesalers, testing laboratories and retail shops.

The audit had two primary objectives: first, to identify business equity challenges in Oregon's existing cannabis regulatory framework and how the state can address those challenges; and second, to determine how Oregon may address social equity issues within the Oregon cannabis industry.

## Cannabis Definition: Marijuana vs. Hemp

- ➔ Marijuana refers to a cannabis plant that has more than 0.3% THC.
- ➔ Hemp refers to a cannabis plant that contains 0.3% or less THC.

For the purposes of this audit, our use of the word cannabis refers to marijuana.

## Cannabis remains federally classified as a controlled substance, but the majority of states have legalized some form of cannabis usage

Despite cannabis's status as an illegal and controlled substance at the federal level, many states, including Oregon, have legalized it for recreational or medical use or both. Currently, all but three states have adopted some form of legal cannabis. Since 2009, various federal administrations have taken different stances for enforcing federal cannabis statutes, but none have changed its status in federal law. As a result, Oregon, and other states with legal cannabis, have been placed in a challenging position

<sup>1</sup> MJBizDaily, <https://mjbizdaily.com/marijuana-industry-will-add-nearly-100-billion-to-us-economy-in-2022/>.

<sup>2</sup> OLCC Statewide Sales Market [Data](#).

<sup>3</sup> Oregon Office of Economic Analysis, [Oregon Economic and Revenue Forecast December 2022](#).

<sup>4</sup> In 2021, [House Bill 2111](#) changed OLCC's name.

from both governmental and business perspectives in terms of regulating and promulgating the industry.

Based on this dichotomous situation, Oregon lacked guidance and models for establishing a cannabis regulatory structure. While the audit includes recommendations for modernizing the state's regulatory approach, it is important to recognize the state's challenging position in standing up a regulatory structure within the historical and current context of this federal versus state law dichotomy. Oregon adopted a substantial licensing system in support of the emergent cannabis industry in the state since the passage of Measure 91 in 2014. As federal guidance and regulations around cannabis shift, OLCC has initiated reforming some of its regulations.

### Most states have legalized cannabis for recreational or medical use or both

Since 1970, the Federal Controlled Substances Act has placed cannabis, along with opioids, morphine, and hallucinogens such as LSD, under Schedule I, the most restrictive of five categories of substances deemed to have a high potential for abuse and no accepted medical use.

Starting in 1998, almost 25 years ago, Oregon joined a handful of states in legalizing medical cannabis programs through ballot initiatives. These programs allow patients with qualifying medical conditions to grow, possess, and use their own cannabis. In 2012, Colorado and Washington became the first states to allow cannabis use in a recreational form. With the passage of Measure 91 in 2014, Oregon voters approved the legalization of cannabis for recreational use by people ages 21 and older.

#### Measure 91 (2014)

- Eliminates the prohibition and uncontrolled manufacture, delivery, and possession of cannabis within Oregon.
- Permits licenses to legally manufacture and sell cannabis to persons 21 years and older.
- Empowers OLCC to regulate the purchase, sale, production, processing, transportation, and delivery of cannabis items.

As of November 2022, 37 states and the District of Columbia have approved comprehensive medical cannabis programs,<sup>5</sup> while 21 states and the District of Columbia have legalized small amounts of cannabis for adult recreational use.<sup>6</sup> Of the remaining thirteen states, ten of them have limited access to cannabis products, such as low THC (below 3%) or high CBD (cannabidiol) available through registration cards, educational medical trials, or physicians and pharmacies cannabidiol drug permits for qualified patients. Three states, Idaho, Nebraska, and Kansas do not have public access to cannabis.

As states have moved toward cannabis legalization, presidential administrations have taken different positions on enforcement of the federal ban. Under the Obama Administration, enforcement policy shifted from the stricter stance held by most prior administrations that would have blocked cannabis legalization efforts to a stance that would not block these efforts if states met certain conditions.<sup>7</sup> In

---

<sup>5</sup> [Per the National Conference of State Legislatures](#), "comprehensive" includes protection from criminal penalties, access to cannabis, products with more than "Low THC," allows cannabis product use, and not a limited trial program.

<sup>6</sup> [National Conference of State Legislatures](#).

<sup>7</sup> While the executive branch has not challenged state-level laws that violate federal drug laws, the branch can influence and impact the federal enforcement of cannabis regulations.



U.S. Attorney Billy Williams issued five new priorities for enforcement of federal laws involving cannabis in Oregon. These priorities closely mirrored those from the Cole memo.

#### Diversion as defined by the Cole Memo

A key federal enforcement priority identified by the memo included: “Preventing the diversion of [cannabis] from states where it is legal under state law in some form to other states.”

On October 6, 2022, new federal guidance was provided as President Joe Biden announced a pardon of all prior federal offenses for simple possession of cannabis. The President urged all Governors to do the same with state offenses. In November 2022, Oregon Governor Kate Brown pardoned about 47,000 people previously convicted for possession of cannabis in the amount of one ounce or less. The President also asked the U.S. Secretary of Health and Human Services and the U.S. Attorney General to initiate the administrative process to review how cannabis is scheduled under federal law. This reform was an effort to remove barriers to employment, housing, and educational opportunities of those with a criminal record for cannabis possession.

Even with this softening stance towards cannabis, illegal cannabis grows in Southern Oregon have troubled law enforcement, businesses, and people residing in that area. In 2021, the illegal cultivation and distribution of cannabis prompted Oregon lawmakers to appropriate an additional \$20 million for the Illegal Marijuana Enforcement Grant Program Fund, increasing the fund to \$26 million overall. The fund is intended to assist cities and counties with costs incurred by law enforcement and district attorneys in enforcement efforts against illegal cannabis grows and distribution operations. The Legislature is considering additional action to address this issue during the 2023 legislative session. While the impacts of illegal cannabis growth and distribution are notable for their effect on those in Southern Oregon, illegal cannabis operations are not addressed within the scope of this audit engagement, which is focused on legally licensed cannabis businesses regulated by OLCC.

#### Oregon’s history of cannabis legalization has affected the state’s ever-changing regulatory framework

Since the 1970s, Oregon has slowly moved toward decriminalizing cannabis. In 1973, Oregon was the first state to decriminalize small amounts of cannabis possession. Oregon voters approved two measures to legalize cannabis: Measure 67 in 1998 legalized cannabis for medical use for registered patients and caregivers, and Measure 91 in 2014 legalized recreational cannabis.

When Oregon voters approved recreational cannabis, OLCC was tasked with regulating a brand-new industry. The agency was given the responsibilities and requirements to develop a regulatory framework in a short period of time, including the creation and adoption of administrative rules, licensing, and compliance systems. As shown in Figure 2, OLCC’s regulatory structure includes five different types of cannabis licenses.

**Figure 2: There are five major types of licenses in Oregon's system**

License type	Definition
Producer	Also known as a grower; may grow cannabis outdoors, indoors, or both outdoors and indoors
Processor	A business that transforms the raw cannabis into another product (topicals, edibles, concentrates, or extracts)
Wholesaler	A business that buys in bulk and sells to licensees rather than to consumers
Retailer	A business that sells directly to consumers
Laboratory	A lab that tests cannabis based on rules established by OHA and is accredited by the Oregon Environmental Laboratory Accreditation program. All labs licensed in Oregon are private-sector businesses

Source: OLCC

Each year following legalization, subsequent legislation was enacted that further defined, expanded, and changed the scope of regulation, all the while evaluating a greater number of applications due to a greater-than-anticipated demand for licenses. Along with lawmakers, OLCC has established a cannabis business framework, bringing hundreds of millions of dollars in commerce and tens of thousands of jobs into legal and innovative enterprises across the state.

As Oregon's cannabis industry grew larger and generated substantial revenues, public companies sought out cannabis business opportunities around the country. As a result, the cannabis industry has gone through consolidation, with larger companies buying up smaller producers and retailers. The idea of entering the recreational cannabis industry was also popular with medical cannabis dispensaries, as OLCC told auditors most dispensaries applied for recreational licenses in 2016. As a result, there are now only two medical cannabis dispensaries in Oregon. The reduction of dedicated dispensaries has not negatively impacted medical cannabis patients since recreational cannabis stores can sell medical grade cannabis products to patients along with regular cannabis products tax free. As the industry changes, so do licensees, who continue to adjust their business plans, ownership structures, and footprints to respond to changing market dynamics.

As the number of licenses in the state skyrocketed, the supply of cannabis in the market began to outstrip demand. Fearing that excess cannabis and dropping prices would tempt licensees to divert cannabis illegally, triggering a federal response, the Oregon Legislature in 2019 passed Senate Bill 218, which placed a two-year moratorium on processing new producer licenses.<sup>9</sup> During the 2022 legislative session, the Legislature passed House Bill 4016, which essentially enacted an extension and expansion to the 2019 moratorium bill by placing a licensing moratorium on production, processing, wholesale, and retail license issuance until the bill is repealed on March 31, 2024.<sup>10</sup> The existing cannabis industry seems to have supported these policies, as they prevent new competition from entering the marketplace.

<sup>9</sup> The bill made an exception for those who applied prior to June 15, 2018, and was to sunset January 2, 2022.

<sup>10</sup> The bill went into effect April 4, 2022, however, was made retroactive to January 2, 2022.

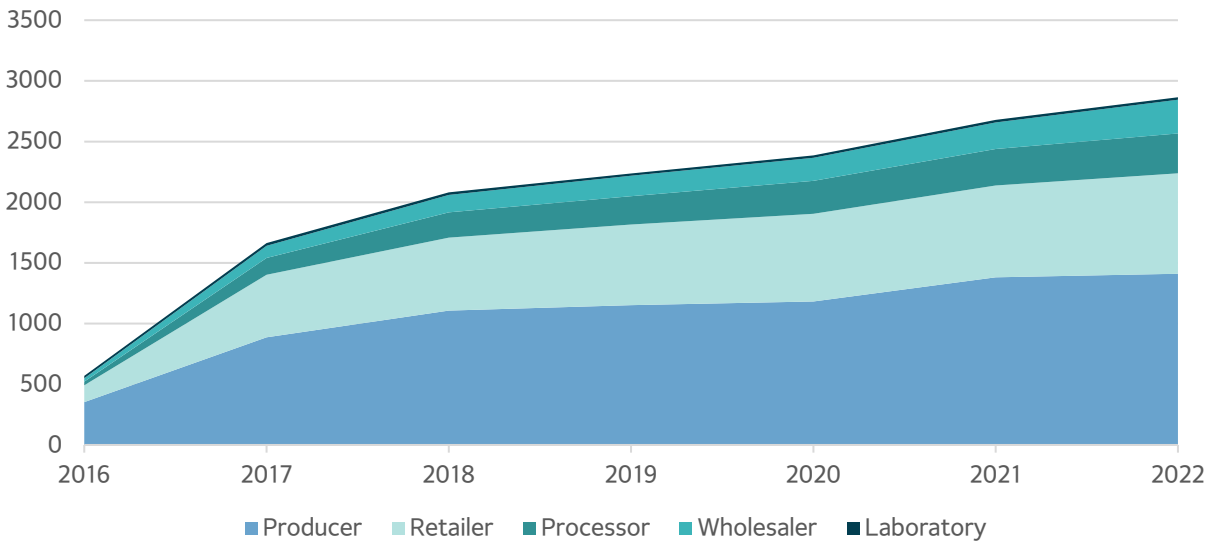
**Figure 3: The cannabis industry has experienced many significant milestones in the last 50 years**



Since it first began issuing licenses, OLCC had reported increasing demand for licenses, however, in the years since instituting the licensing moratoria, growth has slowed considerably. Producer licenses are the largest category licensees, while retailers are the second-largest category of licensees.



**Figure 4: Producer licenses account for nearly half of all licenses issued between 2016 and 2022**

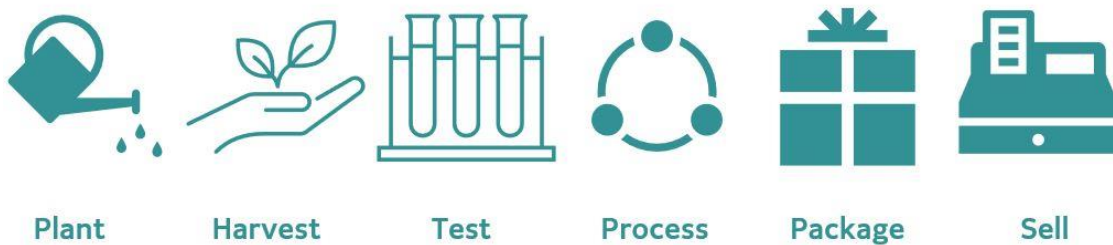


Source: OLCC Marijuana License Applications Report.

Note: Annual reports for 2021 and 2022 were generated in October of those years.

Statute requires the tracking of all recreational cannabis legally produced in Oregon.<sup>11</sup> Currently, OLCC uses METRC, a proprietary “seed to sale” system that captures data showing the entire “chain of custody” of a cannabis plant from when it was still a seed through the final retail sale to consumers. In 2018, the Oregon Audits Division released an information technology audit of OLCC’s licensing and cannabis tracking systems, finding that monitoring and security enhancements were needed for those systems.<sup>12</sup> This virtual tracking, combined with identification tags on the cannabis itself, camera coverage of licensed facilities, and OLCC inspections to verify inventory levels, is primarily intended to help prevent diversion by accounting for cannabis at all stages of production.

**Figure 5: Oregon tracks cannabis from seed to sale**



Other states — such as Colorado, Nevada, and Maryland — also require their licensees to track their cannabis products, and many of them also use METRC. This tracking system allows OLCC to see the origin and destination of all cannabis in the recreational system. Gaps or anomalies in a licensee’s tracking data could indicate product that has been diverted out of the regulated system.

<sup>11</sup> [ORS 475C.177](#) Duty to develop and maintain system for tracking transfer of [cannabis] items.

<sup>12</sup> [Report 2018-07](#): Oregon Liquor Control Commission: Cannabis Information Systems Properly Functioning but Monitoring and Security Enhancements are Needed.

## State laws are based on federal guidance that has since been repealed

OLCC's cannabis regulatory system is governed by Oregon Revised Statute 475C. This statute outlines the general powers and duties of OLCC including issuing, renewing, suspending, revoking, or refusing to issue or renew licenses for the production, processing or sale of cannabis items, or other licenses related to cannabis, and to permit the transfer of a license between persons. OLCC has the authority to investigate and discipline licensees and permit holders, using regulatory specialists who conduct inspections and investigations, make seizures, aid in prosecutions, and issue citations.

The guidelines codified in ORS 475C are the primary points outlined in the Cole Memo; meaning Oregon's regulatory system, based on guidance from the federal government which prohibits cannabis, conflicts with a core tenet of the statute, which is to "eliminate the problems caused by the prohibition and uncontrolled manufacture, delivery and possession of [cannabis] within this state." We discuss the challenges with this approach later in the report.

### The Cole Memo: Eight Federal Enforcement Priorities

1. Preventing the distribution of [cannabis] to minors.
2. Preventing revenue from the sale of [cannabis] from going to criminal enterprises, gangs, and cartels.
3. Preventing the diversion of [cannabis] from states where it is legal under state law in some form to other states.
4. Preventing state-authorized [cannabis] activity from being used as a cover or pretext for the trafficking of other illegal drugs or illegal activity.
5. Preventing violence and the use of firearms in the cultivation and distribution of [cannabis].
6. Preventing drugged driving and the exacerbation of other adverse public health consequences association with [cannabis] use.
7. Preventing the growing of [cannabis] on public lands and the attendant public safety and environmental dangers posed by [cannabis] production on public lands.
8. Preventing [cannabis] possession or use on federal property.

When the people of Oregon passed Measure 91, they, in effect, authorized the creation of a \$500 million industry overnight. Over the three years following the issuance of the first recreational licenses, Oregon's recreational cannabis sales topped over \$1.7 billion, and the state had a new source of significant tax revenues which are funding several key public programs and services.

The inclusion of federal enforcement priorities in statute was done not only to demonstrate to the federal government that Oregon officials were trying to comply with the priorities laid out in the Cole Memo, but also to prevent federal interference in Oregon's otherwise legal system. OLCC representatives told the audit team they were unaware of any instances where the federal government has taken legal action against the state or licensees after the legalization of recreational cannabis.

Given the action taken by President Biden in October 2022, and congressional discussion on the future of cannabis in the United States, there is a tremendous opportunity for OLCC and Oregon to begin undertaking serious reform in preparation for a future where cannabis may be legalized at the federal level.

## OLCC is charged with regulation and support of Oregon's cannabis industry

OLCC is the name of both the agency and its board of commissioners; the agency's mission is to "support businesses, public safety, and community livability through education and the enforcement of liquor and [cannabis] laws." The agency oversees Oregon's alcohol and cannabis industry through licenses and regulations for businesses operating throughout the state. OLCC's recreational cannabis program is solely funded by fees and has around 2,800 active cannabis licenses.

### OLCC oversees four major programs including recreational cannabis

The Governor-appointed, seven-person citizen board of commissioners is responsible for helping set policy for OLCC. Commissioners are appointed to four-year terms, subject to Senate confirmation, with each representing a state congressional district. One commissioner must come from the food and beverage industry. Board members may re-apply for a second term.

OLCC is responsible for regulating the sale and service of alcoholic beverages in Oregon by administering the state's Liquor Control Act and regulating the production, processing, and sale of recreational cannabis through the Control, Regulation and Taxation of Marijuana and Industrial Hemp Act. The agency also regulates the production, processing and sale of medical grade products sold to OHA Oregon Medical Marijuana Program cardholders in OLCC-licensed cannabis retail shops. OLCC does not receive funding from the taxpayer General Fund — its budget consists solely of revenues from the sale of distilled spirits, alcohol and cannabis license fees and fines, privilege tax paid on sales of beer, cider and wine, and other miscellaneous revenue sources.

**Figure 6: OLCC's operations will cost \$163.5 million during the 2021-23 biennium**

OLCC Programs	2019-21 Other Funds	2019-21 FTEs	2021-23 Other Funds	2021-23 FTEs
Distilled Spirits	\$35,570,857	79.00	\$67,641,936	77.00
Public Safety Services	\$28,276,763	116.00	\$30,904,753	114.58
Administration & Support Services	\$28,787,509	76.00	\$34,087,172	90.33
Recreational Marijuana	\$20,503,077	68.29	\$24,591,056	79.25
Medical Marijuana - Tracking	\$5,755,989	23.00	\$6,270,575	21.00
Store Operating Expenses	\$144,100,000	0.00	\$166,885,952	0.00
Capital Improvements & Construction	\$377,943	0.00	\$145,902,793*	0.00
<b>Total</b>	<b>\$263,372,138</b>	<b>362.29</b>	<b>\$476,284,237</b>	<b>382.16</b>

Source: 2019-21 and 2021-23 Legislatively Approved Budgets

Note: The increase in funding for capital improvements and construction is partially due to a new Distilled Spirits warehouse facility and IT modernization paid for via the issuance of bonds.

The agency is comprised of four major operational programs: the Distilled Spirits Program, the Recreational Marijuana Program, the Public Safety Program, and the Medical Marijuana Program.<sup>13</sup> All four programs are supported by the Administration, Financial Services, and Support Services divisions. Revenue generated from these programs helps support other state and local government programs,

<sup>13</sup> OLCC's Medical Marijuana Program administers the tracking of cannabis sale production by OHA medical cannabis licensees.

such as the mental health alcoholism and drug services account. For the 2021-23 biennium, the Recreational Marijuana Program's budget is almost \$24.6 million with 79.25 Full-time Equivalent (FTE) staff to run the program.

OLCC's Recreational Marijuana Program is exclusively authorized to make recreational- and medical-grade cannabis available to consumers and licensed businesses through retail cannabis stores. The program also tracks the growing, transporting, processing, and selling of recreational cannabis products. The Public Safety Program is responsible for licensing and regulating the operation of the recreational cannabis industry in Oregon.

Oregon's medical cannabis program involves two agencies with separate responsibilities. OLCC is responsible for tracking any medical cannabis producer that is registered to produce cannabis for three or more patients, processing sites, and dispensaries. The OHA administers the Oregon Medical Marijuana Program and issues medical cannabis licenses.

The recreational program is solely funded with revenues generated from licenses, applications, renewal fees, and fines for cannabis-related businesses; these revenues go into the Marijuana Control and Regulation Fund created by 2015 House Bill 3400. This fund is established in the State Treasury, separate and distinct from the General Fund. Funds are continuously appropriated to OLCC for program administration and enforcement.

The recreational program regulates cannabis products to ensure public safety and consumer protection while encouraging economic development. The program also has the following responsibilities:

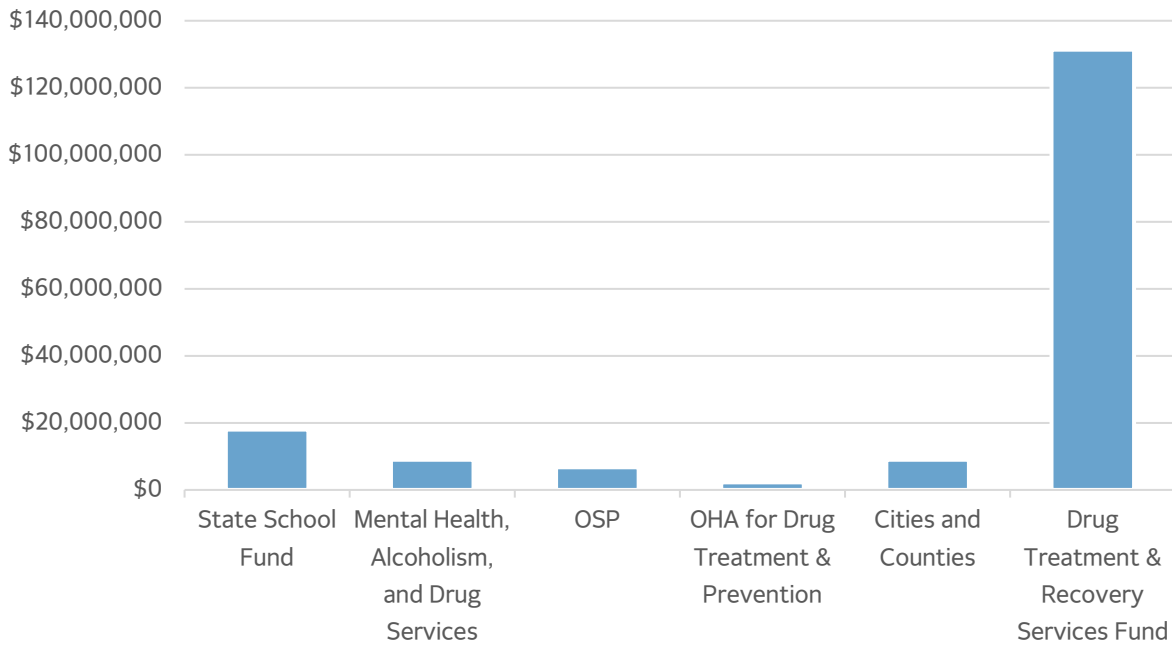
- Adopt and enforce regulations relating to growers, wholesalers, processors, and retailers.
- Ensure utilization and reporting through a product tracking system which must be used by licensees when transferring cannabis-related products.
- Process permits for workers in cannabis businesses.
- Conduct inspections, seizures, citations, and exercise arrest authority for recreational cannabis facilities.
- Regulate cannabis concentrates and extracts in products.
- Oversee OLCC Medical Marijuana Program staff who work with the OHA to incorporate medical cannabis growers, producers, and dispensaries into tracing technology.
- Oversee testing requirements and standards for product testing, packaging, and labeling of cannabis items.
- Work with the Department of Revenue to reconcile product movement with taxes paid.

The number of licensed cannabis businesses in Oregon has grown by 114% since the inception of the program in 2017. As of June 30, 2022, there were 2,797 active cannabis licenses with 63,604 active cannabis worker permits. OLCC anticipates 2,921 active cannabis licenses by the end of fiscal year 2025. If this estimate continues to hold, then current license fees will cover 2023-25 program expenses. The program is expected to generate \$361.8 million in tax revenue during the 2023-25 biennium. Figure 7 provides an example of how the state started distributing cannabis tax revenue in 2021.<sup>14</sup>

---

<sup>14</sup> 2021 Measure 110 changed how the state distributes cannabis tax revenue. [Report 2023-03: Too Early to Tell: The Challenging Implementation of Measure 110 Has Increased Risks, but the Effectiveness of the Program Has Yet to Be Determined](#)

**Figure 7: Cannabis tax revenue is distributed primarily to drug treatment and recovery services**



Source: Oregon Department of Revenue data

### OLCC's strategic plan includes goals to position Oregon as a national leader

As part of OLCC's strategic plan, the agency includes four agencywide imperatives to promote its mission:

- Foster a hospitality economy of equitable prosperity while ensuring public safety, with a focus on customer service.
- Position Oregon as a national leader.
- Identify and align strategic investments.
- Create a Commission culture that is resilient, and adaptable and flexible to a changing economy and industry trends.

The first two imperatives are directly related to this audit. Fostering a hospitality economy of equitable prosperity, ensuring public safety, and focusing on customer service includes objectives like keeping the customer impact at the center of decision-making, supporting cannabis entrepreneurs in increasing the quantity and diversity of Oregon products, and sustaining and monitoring safe sales and consumption. Positioning Oregon as a national leader includes the objective to increase progress toward a nationwide framework for cannabis regulation. See [Appendix A](#) for complete list.

In compliance with auditing standards, we assessed internal controls related to OLCC's objectives. Our overall assessment of internal controls found OLCC had not appropriately designed internal controls as it has not identified and documented risks that would prevent it from achieving the objectives in its strategic plan. Further we concluded OLCC's objectives were not designed in measurable terms so that it may assess performance in achieving its objectives.

# Audit Results

OLCC has a stated strategic goal of fostering a hospitality economy of equitable prosperity where customer impact is at the center of decision-making, positioning Oregon as a national leader, and ensuring the agency culture is flexible to the changing economy and industry needs.

However, some aspects of Oregon's recreational cannabis regulatory framework work in opposition to these imperatives, creating business inequities for current licensees, and hindering the state from developing regulations that create and enhance economic opportunities for the people of Oregon. Oregon cannabis businesses are subject to some regulations that when coupled with the current licensing moratorium, federal restrictions on interstate commerce, banking and taxation create burdens that the alcohol industry, (also regulated by OLCC) does not face. These additional regulations increase operating costs, decrease competition and business diversity, and leave many cannabis startups underserved and overlooked. Though some of these requirements were initially put in place to minimize risk of federal intervention in Oregon's system, the lack of federal intervention in Oregon's system to date, the changing social and political environments, and increasing number of draft federal bills focused on cannabis reform led auditors to conclude the risk of federal intervention is increasingly unlikely.

As long as cannabis remains illegal under federal law, cannabis businesses will lack access to traditional sources of capital for business startups, banking, and tax breaks. Business Oregon, the state's economic development agency, is ideally positioned to make its programs available to cannabis businesses but does not work with cannabis businesses over concerns it will lose federal funding and that its employees will be exposed to federal criminal liability, yet auditors did not find any instances of this occurring in any state where cannabis is legal.

When developing its cannabis law, procedures, and regulations, Oregon failed to consider or include significant social equity provisions and is now struggling to address in a meaningful and impactful way. To curb oversupply and potential black-market sales, the Legislature enacted a licensing moratorium in 2019 that directly hinders equity by preventing any new applicants from entering the industry. The only option for new cannabis industry entrepreneurs is to purchase a license from an existing licensee, who can charge any amount they want as the sale of a cannabis business is not regulated. While most states have included social equity language in their cannabis laws and created programs or license types to reduce barriers to entry for populations most adversely affected by past cannabis criminalization, Oregon has no statutorily defined social equity programs or licenses.

## **Oregon's current cannabis system creates regulatory disparities when compared to the alcohol industry**

When Oregonians voted to legalize recreational cannabis and lawmakers went to work putting the regulatory structure together, they were tasked with establishing a brand-new industry as quickly as possible. However, due to cannabis's federal status as an illegal controlled substance, the risk of federal intervention and enforcement was a dominant consideration and component in the state's cannabis statutory framework and regulatory approach. The focus on federal intervention risk mitigation as opposed to economic opportunity has had detrimental impacts on the industry and, therefore, the state economy and had reduced equitable opportunities for some communities to participate in the

industry. The effectiveness of this federal risk mitigation strategy is unclear as, while it is true that the federal government has not intervened in Oregon’s cannabis industry, it also has not done so in any other state.

### **Some cannabis regulations are only in place solely to prevent federal intervention**

There are many common laws, rules, and regulations — covering human resources, taxes, licenses, the Americans with Disabilities Act, and more — that all businesses operating in Oregon must comply with or be at risk for legal consequences. Additionally, nearly every business has regulations specific to their industry. For example, while dairy farmers must comply with common regulations around labor and worker safety, they must also comply with specialized regulations like the Pasteurized Milk Ordinance enforced by the Food and Drug Administration, or sections of the Clean Water act enforced by the Environmental Protection Agency. Oregon cannabis businesses also have industry-specific regulations, but the primary purpose for some of these are to avoid federal intervention in the state’s cannabis industry.

While OLCC has recently assumed regulatory control of recreational cannabis, it has a much longer history with liquor and non-distilled alcohols including beer, wine, and cider, dating to 1933. OLCC’s liquor program includes regulations for each product under the agency’s oversight. Each of these regulations serves a purpose, such as preventing minors from accessing alcoholic beverages, preventing false or misleading information about alcohol, and ensuring the health of the consumer.

Though Oregon has enacted regulations which are only applicable to the alcohol industry, some of OLCC’s requirements for cannabis businesses would typically be decisions made by the business owner instead of being conditions for licensure, i.e., if or how they desire to protect their business. While no two regulatory programs are perfectly comparable, when state policymakers first developed the cannabis regulations, instead of starting from scratch — they used the same post-prohibition framework that was used to develop the regulatory structure for liquor, with different results. Figure 8 provides some examples of regulatory differences between these industries. Some of these differences create inequities that need to be continually assessed to ensure they are not obstructive for cannabis businesses, especially considering the dynamic landscape of the cannabis industry.

While some may argue regulations applicable only to the cannabis industry are simply the cost of doing business, these regulations can be quite costly, detrimental, or even disastrous to current and aspiring cannabis business owners. For example, a cannabis licensee may be fined thousands of dollars if their security system fails, or they fail to properly track a product. According to one cannabis licensee, a downed section of a fence on their property resulted in a violation of OLCC’s regulations that cost their business thousands of dollars.

The security requirement of steel doors and frames, intended to serve as one of OLCC’s “adequate safeguards against theft or diversion of [cannabis] items,” is not clearly based on a robust risk assessment, or the test of real-world effectiveness. A steel door cannot prevent someone from purchasing cannabis legally in Oregon and taking that cannabis out of the state. Though required for all Oregon cannabis licensees, steel doors have not been proven to significantly deter theft or crimes against cannabis businesses and their employees during business hours, but instead may deter theft or crimes when a store is closed, as is the case with any other retail operation in the state, including liquor

businesses, which do not require steel doors for licensure; the impacts of cannabis crimes and their primary cause is covered later in this report.

**Figure 8: Cannabis and liquor are regulated differently with more requirements for cannabis**

	Cannabis	Liquor
OLCC License	✓	✓
ODA License	Some Businesses	Some Businesses
Oregon OSHA Laws	✓	✓
Clean Water Act	✓	✓
Pesticides Regulations	Some Businesses	Some Businesses
Steel Framed Doors	✓	-
Start to Finish Product Tracking	✓	-
Video Surveillance System	✓	-
Business Property Location Prior to Licensing	✓	✓
Vertical Integration Allowed <sup>15</sup>	✓	-
License Approval Based on Morality and Character Judgements	✓	✓
Product is State Owned or Bonded	-	✓

A video surveillance system may discourage diversion if the system is properly installed and operating as intended; however, a deeper examination of this security requirement is necessary to understand whether it is needed. No other industry regulated by OLCC is required to maintain a 24-hour video surveillance system. The existence of this requirement implies that video surveillance is necessary to stop legally operating cannabis businesses and their employees from engaging in illegal behavior — reinforcing negative historical stereotypes. Video surveillance does not inherently prevent diversion but allows OLCC to detect diversion after the fact and punish those responsible, and like steel doors, once cannabis product leaves the licensed premises, the video surveillance system has no ability to prevent diversion or keep product out of the hands of minors.

Product tracking through METRC, the seed to sale system, is required for all cannabis products. Though this system allows OLCC or a licensee to trace products if there is a need to issue a recall for consumer safety, the original intent of the system was to discourage the diversion of cannabis out of Oregon’s cannabis industry and to prevent unapproved cannabis from entering Oregon’s industry. By preventing this, Oregon officials assumed the federal government would have less reason to get involved with Oregon’s cannabis industry.

However, this system is very expensive for licensees. METRC is operated by a vendor who has a contract with the state to provide access to and support of the system, and while the state pays for the use of METRC, the system requires licensees to purchase one-time use radio frequency identification tag for each plant or product. One licensee we spoke with estimated they can spend up to \$100,000 per year using these tags and have asked OLCC to allow batch tagging. OLCC has been

<sup>15</sup> Vertical Integration occurs when a business controls more than one phase of production in a specific industry. A fully integrated Oregon cannabis business would control all aspects of the process from seed to sale.



receptive to this request, and in December of 2022, OLCC held a rulemaking public meeting to discuss batch tagging, which would lower the costs of compliance with seed to sale requirements. Though OLCC may be supportive of this change, it is limited in what it can do by its current contract for METRC. OLCC has worked with METRC to improve the functionality over time and is currently taking steps to work on the batch tagging change. OLCC leadership shared that it is considering replacing METRC as the state's seed to sale system at the conclusion of its contract in 2025.

Another regulation compels aspiring cannabis licensees to acquire property, either through purchase or rental, from where they will conduct their business prior to being considered for a license. The risk with this regulation is that should that prospective licensee not be approved for a license, the individual is left with no business or revenue stream to help pay for the cost of acquiring said property.

In instances like this, the needs of Oregon cannabis business owners and the OLCC's goal to foster equitable economic prosperity are at odds with the federal priorities communicated in the Cole Memo. It appears that in some areas of Oregon's cannabis regulatory system, the priority to support state cannabis businesses took a backseat to policies designed to deter federal intervention.

According to OLCC and lawmakers, some regulations and security measures help to reduce the risk that minors acquire cannabis products. However, this is also a risk within the liquor industry, as alcohol is illegal for minors to possess and consume, yet a number of these preventative requirements apply only to cannabis businesses and not liquor businesses — maintaining a video surveillance system with 90 days' worth of footage stored, a steel door with a steel frame, and use of an expensive product tracking system.

While the risk of diversion and subsequent federal involvement in Oregon's legal cannabis industry is still present, it is less likely than in the past. Since most states in the nation now have some form of legalized cannabis, the risk of cannabis diverted from legal Oregon businesses to other states or to the black market is likely decreasing, however this risk does not account for the cannabis that is grown and diverted from the black market. The federal government continues to develop legislation aimed at preparing for a future where cannabis is decriminalized, allowing for medical cannabis research, and seeking to mitigate some of the past harms of the War on Drugs by pardoning federal convictions for cannabis possession.

## **Cannabis's status as a federally controlled substance creates more barriers for Oregon cannabis businesses**

The continued federal status of cannabis as an illegal drug — along with the initial enforcement guidance provided by the Federal government and the emphasis that Oregon's decision-makers have placed on avoiding federal intervention — has caused many additional challenges for those participating in the industry. As federal guidance and regulations shift, OLCC has started reforming the state's regulatory system.

Due to federal restrictions, cannabis businesses are the only industry that cannot access most banking services; meaning among other challenges, cannabis businesses do not have access to traditional sources of financing. As a result, these businesses must also use and accept cash, almost exclusively, leading to safety risks and increased costs. Though these businesses cannot take typical federal business tax deductions, the state has created systems to reduce their tax liability and increase

profitability; however, the state can do more to facilitate cannabis business's ability to pay equitable taxes.

As the state's economic development agency that invests in Oregon businesses, Business Oregon, with its various grant, loan, tax incentive, and other programs, is the most logical agency suited to assist and establish the cannabis industry in Oregon but has taken the stance that doing so will violate federal law, thus threatening its federal funding sources and exposing its employees to legal liabilities.

### **Oregon does not provide access to banking and has not taken action to reduce safety risks for cannabis businesses**

In June 2022, the former OLCC Board Commission Chair sent a letter to Oregon congressional representatives urging them to support cannabis banking and treat the issue as a public safety concern. In this letter the former chair points out “while cannabis businesses are providing the state with valuable tax income [\$600 million], criminals are targeting them for robbery… because they are known as cash-transaction only businesses without access to financial services.” Also highlighted in the letter was how Oregon “enacted legislation allowing financial institutions to enter into financial compliance verification agreements… so qualified banks and credit unions can provide banking services to licensees.” However, as the former chair pointed out, these agreements are often limited and come with “extraordinary fees.”

If federal laws continue to remain restrictive, entities like financial institutions, and service providers (e.g., insurers), will likely avoid doing business with cannabis businesses due to concerns over federal prosecution and negative impacts to their businesses. As a result, cannabis businesses in Oregon have very limited banking options — they are unable to access startup capital through bank loans and lines of credit with attractive rates and must either have the savings and capital to fund their venture themselves, borrow through private lenders that charge higher interest rates, or start their business with a group of investors — all of which come with their own additional risks.

The banking system is largely regulated by the Federal government, though states do have some regulations as well. The largest barrier hindering cannabis businesses' access to banking is the Federal Deposit Insurance Corporation (FDIC). This entity is an independent agency created by Congress to maintain stability and public confidence in the nation's financial system. The FDIC insures deposits; examines and supervises financial institutions for safety, soundness, and consumer protection; and makes large and complex financial institutions resolvable. Since cannabis is still a controlled substance under federal law, banks generally will not accept deposits or offer services to cannabis businesses due to concerns they may lose their deposit insurance provided by the FDIC.<sup>16</sup>

Oregon has considered creating a state bank with which cannabis businesses could engage; however, any state bank would still have to interact with the federal system, under which all the previous restrictions apply. Due to these banking restrictions, cannabis businesses are forced to deal primarily in cash, and face increased theft and security risks as a result. In March 2021, Willamette Week published an article highlighting the impacts of robberies at cannabis dispensaries.<sup>17</sup> In 2020 alone, there were

---

<sup>16</sup> Businesses whose operations solely involve hemp can access banking services.

<sup>17</sup> Willamette Week, <https://www.wweek.com/news/courts/2021/03/03/for-nearly-a-year-teenagers-have-been-robbing-portland-dispensaries-then-somebody-shot-a-budtender/>

more than 100 combined robberies, burglaries, and reported looting incidents. In one year, cannabis businesses in Portland reported more than \$580,000 in cash and product taken.

Beyond the monetary value, these crimes increase the risk to public safety and the lives of business owners. Owners and employees of these businesses have experienced physical assault, including being held at gun point, and in one account an employee was shot and killed by a burglar.

While Oregon has not yet been able to effectively address this public safety risk, it has taken some steps to help cannabis businesses reduce tax liability and increase profits.

### **In contrast to the federal government, Oregon has taken action to reduce the tax burden on cannabis businesses, but can do more to facilitate an efficient and secure tax payments process**

Tax benefits can be significant source of revenue for a small business. Tax deductions allow a business to reduce their taxable income (the base amount taxed), while tax credits reduce a business's tax liability (the amount they owe). Both can allow a business to increase its profitability and ensure the business can continue operations. However, like banking, tax credits and deductions are not available to cannabis businesses. The IRS tax code states "no deduction or credit shall be allowed in running a business that consists of trafficking a controlled substance."<sup>18</sup> There is one exception: cannabis businesses can deduct the cost of goods sold (i.e., the cost of their inventory).

These federally imposed limitations are discriminatory against cannabis businesses, inhibit their profitability, and create confusion and poor public messaging about a government system that has declared a substance is illegal but still levies and collect taxes from those businesses and relies on these revenues to provide services and to support the federal government budget. Figure 9 provides an example comparing the tax liabilities for a cannabis business to that of a non-cannabis business.

**Figure 9: Cannabis businesses pay much higher taxes than similar earning businesses**

	<b>Non-Cannabis Business</b>	<b>Cannabis Business</b>
<b>Retail Yearly Revenue</b>	\$5,000,000	\$5,000,000
<b>Cost of Goods Sold</b>	\$2,500,000	\$2,500,000
<b>Ordinary and Necessary Expenses<sup>19</sup></b>	\$1,500,000	\$1,500,000
<b>Pre-Tax Profit</b>	\$1,000,000	\$1,000,000
<b>Taxable Profit</b>	\$1,000,000	\$2,500,000
<b>Federal Tax (21%)</b>	\$210,000	\$525,000
<b>Effective Tax Rate</b>	21%	53%
<b>Net Annual Profit (before state and local tax)</b>	\$790,000	\$475,000

Oregon's taxation of cannabis is far more equitable to these businesses than the federal government. Instead of taxing the revenues of a cannabis business, state law imposes a 17% tax on retail sales, and retailers are allowed to retain 2% of that amount to offset the expenses incurred in collecting the taxes.<sup>20</sup> Retailers may also be required to charge an additional 3% tax or fee on behalf of local governments.<sup>21</sup> These taxes are charged directly to the consumer at the time of a retail sale, but

<sup>18</sup> Internal Revenue Code Section 280E.

<sup>19</sup> Cannabis businesses cannot deduct expenses incurred by operating their business.

<sup>20</sup> ORS 475C.674

<sup>21</sup> ORS 475C.453. These must be voted on by each local jurisdiction.

neither of these taxes are applicable to medical cannabis registry cardholders. Additionally, Oregon allows cannabis businesses to deduct the business expenses that IRS code 280E disallows.

Despite these more equitable state cannabis tax policies, there is one remaining barrier in Oregon unique to the cannabis industry. Because of the federal prohibitions, cannabis businesses may not have access to traditional banking services, and generally only credit unions provide these services. If a business does not have a business account, or the owner does not have an account, the department accepts cash or money orders. If the taxpayer does have access to banking services they can pay with a check, cashier's check, cash, money order or through electronic transfer on the Department of Revenue's website.<sup>22</sup> Department of Revenue management told auditors that approximately 1/3 of tax payments are paid in cash which must be made in person by appointment only in Salem — meaning for those cash payments, business owners as far away as Eastern Oregon must drive to Salem every month with large quantities of cash in tow to pay their taxes. According to the Department of Revenue, staffing levels and the cost to the state for cash counting machines and banking centers have prevented the state from providing additional payment locations for cannabis taxpayers making cash payments.

### **Oregon can do more to prepare for federal legalization of cannabis**

Even though Oregon adapted its regulations to provide tax breaks, and has explored banking options, some industry stakeholders agree the only real solution to many of the issues facing the cannabis industry is federal reform. There has been some movement in this area in recent years. In April 2021, the U.S. House of Representatives passed the Secure and Fair Enforcement Banking (SAFE) Act. The purpose of SAFE was to “increase public safety by ensuring access to financial services to cannabis-related legitimate businesses and service providers and reducing the amount of cash at such businesses.” The bill was received by the U.S. Senate but died in committee.

Beyond SAFE banking, there have been other efforts to decriminalize cannabis at the federal level. In March 2022, the House passed the Marijuana Opportunity Reinvestment and Expungement (MORE) Act. Among the various policy changes included in MORE, cannabis would be decriminalized and descheduled under federal law. This would open banking options and allow interstate commerce for the cannabis industry. MORE was sent to the Senate, and like SAFE, it was referred to a committee, where it died at the conclusion of that Congress.

As the federal government is considering cannabis reform, it is crucial Oregon begin preparations for a future where cannabis is legal nationwide. OLCC and industry advocates believe Oregon products will be in high demand in an open market. However, the transition from isolated state systems to open market, interstate commerce will likely present regulatory challenges, as many states have developed systems applicable only to their state. OLCC leadership has discussed the need to explore conversations with neighboring states to develop consensus on things like packaging requirements, taxation, and product tracking. OLCC leadership started discussing these challenges as a founding member of the National Cannabis Regulators Association (CANNRA), which was formally founded in 2020.

---

<sup>22</sup> Updated in November 2023 to reflect Department of Revenue's acceptance of non-cash payment.

Members of Congress see the value in preparation for potential legalization as well. In 2022, lawmakers introduced the Preparing Regulators Effectively for a Post-Prohibition Adult Use Regulated Environment (PREPARE) Act in both the House and the Senate. These mirrored pieces of legislation would direct the U.S. Attorney General to establish a “Commission on the Federal Regulation of Cannabis” to advise on developing a regulatory framework modeled after existing federal and state regulations for alcohol. This framework would have to account for the unique needs, rights, and laws of each state, as well as include ways to remedy the disproportionate impact cannabis prohibition has on minority, low-income, and veteran communities; encourage research and training access by medical professionals; encourage economic opportunity for individuals and small businesses; and develop protections for the hemp industry. Further, President Biden’s directive that key personnel in the federal government review expeditiously how cannabis is scheduled under federal law in October of 2022 indicates that federal cannabis policy reform is a priority within both the federal executive and legislative branches.

As the legal landscape is shifting both at the federal and state level towards full decriminalization of cannabis, OLCC has begun undertaking some reforms to the state’s regulatory structure. For example, the agency streamlined its application process, shifting some previously up-front requirements to a post-license issuance checklist that inspectors used to verify compliance after a business is up and running. OLCC has also reduced financial background checks and revised the penalty system used for violations of the administrative rules. However, as noted above, there are still regulations in place whose primary purpose is to discourage the federal government from taking legal action against Oregon cannabis businesses. OLCC has the opportunity to review its current system to identify and eliminate those regulations that serve no public benefit in preparation for federal legalization.

### **Business Oregon can help OLCC reduce one of the primary barriers for cannabis entrepreneurs**

The State of Oregon has already established agencies and programs for the sole purpose of assisting business owners. For example, the Secretary of State houses the Office of Small Business Assistance, which helps small businesses that have a question or concern about state or local government. Among the resources this office has developed is a guide on how to start a business. These programs help Oregon’s businesses, particularly small and new businesses to succeed and, thereby, contribute to the state economy and provide tax revenues for government operations and services. Oregon state government relies on cannabis tax revenues heavily to support several key programs and services.

However, the state has not adopted a uniform and cohesive communication strategy and approach for interacting with the cannabis industry. As a result, some state agencies such as OLCC and SOS engage with cannabis businesses but another key state agency, Business Oregon, has opted not to interact with cannabis businesses based on a risk management strategy of deterring federal intervention. In addition to possible gaps and redundancies, the lack of a cohesive and consistent state position and strategy results in a mixed and unclear messaging from the state vis-à-vis the industry, causing unnecessary confusion and instability, and could expose the state to legal risks.

Business Oregon serves as the state's economic development agency.<sup>23</sup> Its mission is to invest in "Oregon businesses, communities, and people to promote a globally competitive, diverse, and inclusive economy," and in its strategic plan, Business Oregon highlights five priorities, including:

- Innovating Oregon's economy.
- Growing Oregon's small and middle-market companies.
- Cultivating rural economic stability.
- Advancing economic opportunity for underrepresented people.
- Ensuring an inclusive, transparent, and fiscally healthy agency.

While Business Oregon emphasizes its commitment to furthering economic development, as noted, the agency does not work with the cannabis industry. In the recent past, OLCC pursued a legislative concept that would have required OLCC and Business Oregon to coordinate in establishing a Cannabis Social Equity Program. This program would have provided grants to eligible applicants to cover expenses related to cannabis business commencement and operation. However, when OLCC approached Business Oregon about this concept, the agency felt it could not pursue the concept due to the federal illegality of cannabis. Agency leadership communicated to auditors however, that the agency would be open to conversations about providing incentives or other assistance to cannabis businesses if the federal legality of cannabis changes.

In the absence of a clear state directive on how state agencies should interact with cannabis businesses and due to fear of federal intervention, Business Oregon defers to federal guidance. Agency leadership expressed the concern that working with cannabis businesses might violate federal grant agreements, thus threatening the \$122 million in federal funds it received for its 2021-23 budget. This amounts to 5.7%% of its \$2.1 billion budget for this biennium. Agency leadership also expressed the concern that employees would be at risk of committing a federal crime by providing assistance to cannabis businesses regardless of whether the funding source is state or federal due to the federal illegality of cannabis.

Other state agencies who also receive federal funding, like the OHA which has administered the state's Medicinal Marijuana Program for almost a decade, face the same theoretical risk. The OHA, one of the largest agencies in Oregon government, received nearly \$18 billion in federal funding for the 2021-23 biennium, yet, OHA has not lost any federal funding due to involvement with the cannabis industry.<sup>24</sup> Per OLCC, and our research, we are unaware of any major federal enforcement actions taken against states or the loss of federal grant funds to states with legalized cannabis.

Business Oregon's refusal to work with cannabis businesses results in cannabis entrepreneurs or potential entrepreneurs not having equal access to state economic development programs that could help offset the financial challenges associated with starting their businesses. This lack of equal market access is especially problematic for communities of color.

---

<sup>23</sup> Business Oregon is the assumed business name for the Oregon Business Development Department.

<sup>24</sup> This amount comes from the Legislatively Adopted Budget for 2021-23.

## Oregon did not consider or include targeted equity provisions when developing the state recreational cannabis regulatory structure

When voters in Oregon legalized recreational cannabis sales, lawmakers and regulators were primarily concerned with how legalization would impact public health and safety and were focused on diversion prevention. Most early-to-legalize states like Oregon, Colorado, and Washington State did not include any equity provisions in their original cannabis laws and rules, and regulators did little to ensure the opportunities legalization created would be distributed equitably.

While Oregon's Legislature ensured cannabis license application fees were low (OLCC rules currently set the license application fee to an affordable \$250), allowed an uncapped, open licensing system, and included provisions that would allow qualifying applicants with certain cannabis related convictions to own a cannabis business, a targeted social equity program was not considered. Many equity advocates argue that an open licensing system with no caps promotes social equity – and while Oregon initially had an open system like this, the enactment of several licensing moratoria since June 2018 has hindered efforts to provide an open and equitable system; it is difficult to further equity in cannabis licensing when there are no opportunities for licensure. However, it is possible that an open system with no restrictions hinders equity by allowing those who have the most capital and resources to take over the market. Legislative efforts to establish a social equity cannabis program have failed.

### Legislative options for cannabis equity programming have been proposed, but have yet to be enacted

In the 2020 legislative session, House Bill 4088 would have, among other things, directed OLCC to establish a Cannabis Social Equity Program and create a task force to promote social equity in the cannabis industry; however, the bill failed. In 2021, the Cannabis Equity Act (House Bill 3112)<sup>25</sup> proposed investments of cannabis tax revenue in specific areas related to economic mobility and stability, reducing hurdles to licensing, and creating an exclusive special license type for equity applicants, but this bill also failed.

However, while not focused on the cannabis industry specifically, the Equity Investment Act, House Bill 1579, was successfully enacted in the 2022 legislative session. This bill directs Business Oregon to “develop and implement an Economic Equity Investment Program to award grants to organizations that provide culturally responsive services to support economic stability, self-sufficiency, wealth building and economic equity among disadvantaged individuals, families, businesses and communities in Oregon.” The Legislature appropriates money to the Economic Equity Investment Fund to assist Business Oregon in administering the program and becomes operational January 1, 2023. However, if Business Oregon continues to adhere to a position of not engaging with cannabis businesses, any potential grants or funding from this program will not be awarded to disadvantaged cannabis industry entrepreneurs.

While legislation explicitly mandating the creation of a cannabis social equity program have failed, one bill that passed could allow OLCC to create such a program. In July 2022, the Legislature enacted House Bill 4016, which allows OLCC to adopt rules to establish a license reassignment program that may be

---

<sup>25</sup> [Cannabis Equity Act \(HB 3112\)](#), Oregon Legislative Information System.

used for equity applicants.<sup>26</sup> There is no directive that mandates this program be used for the creation of a social equity licensing program, but the statute is broad enough that OLCC could use the license reassignment program for that purpose. OLCC leadership have indicated they are considering using this license reassignment program in this capacity. If it does, existing cannabis licenses that have expired, been revoked, or surrendered would be reassigned to new applicants. Leadership indicated they may need to do a disparity study before deciding on how best to administer this program.

House Bill 4016 also established a retroactive cannabis licensing moratorium (to January 2, 2022) and authorized OLCC to refuse the issuance of cannabis production, processing, wholesale, and retail licenses. Before commencing with rulemaking for this program, the agency worked with the Department of Justice and the Governor's Office to confirm applicants can obtain licenses through this reassignment program during the current moratorium. OLCC was directed to go forward with administrative rulemaking for this program, but the agency is anticipating bills in the 2023-25 legislative session to provide funding or additional regulatory authority for this program.

### **Oregon has fallen behind most recreational-legal states that have social equity cannabis programs in statute**

As more states legalize cannabis for recreational use, almost all have included a social equity initiative, including early adopter states such as Colorado and Washington.<sup>27</sup> Oregon, Maine, Montana, and Alaska are the only states that do not have a cannabis social equity program in statute. Though public safety and diversion prevention continue to be a priority for state cannabis agencies, many states have been proactive in establishing equity initiatives. Oregon lags behind most recreational legal states that have prioritized strategic equity advancements in cannabis policy reform and has yet to establish a statewide program in statute.

Because cannabis businesses are prevented from utilizing federal resources available to other types of small businesses, many states have worked to implement comprehensive support systems to help reduce barriers to entry including but not limited to financial assistance, legal assistance, educational programming, and workforce development. There is no one-size-fits all approach to addressing equity and diversity in the cannabis industry, and states implementing social equity programs are approaching this issue in a variety of ways. As should be expected, none of these models are perfect — each approach comes with its own set of unique, sometimes insurmountable, challenges.

As many of these programs are still being developed, it is too soon to assess what impact they may have. However, most states have sought to address disparities by implementing the following strategies promoting equitable access to the industry.

**Reparatory/preferential licensing programs:** A certain number or percentage of licenses are set aside exclusively for equity applicants. Connecticut reserves 50% of all cannabis licenses for equity applicants. Some states like Virginia and Washington State direct licenses that have been subject to forfeiture, revocation, or cancellation to be reissued to an equity applicant. Other states create special license types that are only offered to equity applicants, such as California, Colorado, Massachusetts, and Nevada. Massachusetts has a cannabis delivery license

---

<sup>26</sup> [House Bill 4016, 2022 regular session](#), Oregon Legislative Information System.

<sup>27</sup> Both Maryland and Missouri legalized recreational cannabis use in November 2022 and are not included in this assessment.



that is only available to equity applicants. Licensing fees can be prohibitively expensive, so some states and jurisdictions have either partially or entirely waived these fees. Oregon does not offer any special license types or waived annual fees to social equity licensees.

**Eligibility criteria/requirements:** States vary in the criteria used to determine who can qualify for these programs as social equity applicants. Many states with social equity programs require individuals to meet certain harm-related criteria, such as: low-income status, prior cannabis arrests or convictions, residency in a particular geography associated with households that are disproportionately low-income, etc. Some jurisdictions have structured their program eligibility criteria to require residency in an area determined to be disproportionately impacted by cannabis enforcement to target communities that were overpoliced and experienced a disproportionate number of cannabis arrests. Some states also determine shareholder or ownership and transferability requirements, i.e., how much of the business must be controlled by the equity applicant, and how long an equity applicant must hold on to the license before having the option to sell or transfer. Oregon does not have any such requirements.

**Waived application fees, loans, and grants fast-tracked or priority processing, and technical assistance:** Social equity applicants often do not have access to traditional banking loans, so many jurisdictions are providing waivers and loans or grants to help cover startup costs. Availability of waivers and zero interest business loans are important for social equity applicants, as it protects them from relying on the aggressive lending practices of private lenders with high interest rates. For example, New York established a Social Equity Cannabis Investment Program to finance the leasing and equipping of up to 150 adult-use dispensaries. Colorado provides microloans and grants between \$25,000 and \$50,000 for startup and business growth, and Vermont provides \$50,000 low-interest loans and grants to equity applicants.

While Oregon does not offer waived application fees, it does have one of the lowest application fees in the country at \$250. Application fees can cost as much as \$3,000 in Michigan. Some states offer technical assistance in the form of training and education on the licensing process and requirements, guidance throughout the application process, and provision of free legal services, consulting, and document review. Other states provide educational services and outreach in the form of financial and business education.

**Community reinvestment programs:** Some states and jurisdictions have opted to financially invest in communities most impacted by disproportionate cannabis enforcement using tax revenue generated from the sales of legal cannabis. The City of Portland passed a measure in 2016 that established a 3% tax on adult use sales and established a tax fund “to repair the disproportionate harm cannabis prohibition has caused for Black, Latinx, and Indigenous communities.” The City of Portland uses these funds to offer grants to organizations that provide education, entrepreneurship and economic development services, and social justice programming (criminal justice reform, legal services, case management, re-entry services, etc.)

While Oregon’s Measure 110 (approved by voters in November 2020) diverted cannabis tax revenue to a program that provides grants for people with substance abuse disorders, none of these funds are specifically set aside for reinvestment in communities most impacted by

disproportionate cannabis enforcement. The OHA administers these grants and announced in September 2022 the first round of grants totaled \$302 million. Oregon cannabis industry stakeholders are eager for some of these tax dollars to go toward assisting minority-owned cannabis businesses and entrepreneurs.

**Decriminalization:** Each state has the authority to establish its own laws that pertain to the use, manufacture, and distribution of drugs. Decriminalization means possession of a small amount of cannabis carries no threat of arrest, prison time, or a criminal record. Oregon decriminalized the personal possession of cannabis in November 2020, with the passage of Measure 110. At least 31 states and the District of Columbia have also decriminalized possession of small amounts of cannabis.

**Expungement:** Some states have enacted legislation explicitly permitting or facilitating the process of having specific types of cannabis convictions expunged, vacated, otherwise set aside, or sealed from public view. The way in which these actions are handled varies from state to state. For instance, in states like Washington State and Colorado, expungement is only available to those where their conviction is no longer classified as a crime and individuals must petition for expungement, while other states like California and New York make cannabis-related convictions eligible for automatic expungement. In 2019, Oregon Governor Kate Brown signed legislation (Senate Bill 420) that allows those previously found guilty of low-level (up to one ounce) cannabis possession offenses to file a motion with the court to have their convictions expunged.<sup>28</sup> In November 2022, Governor Brown issued a sweeping pardon for Oregonians convicted of possessing small amounts of cannabis (less than 1 ounce) before 2016. These pardons will benefit an estimated 45,000 people in Oregon.

Some jurisdictions provide one or more of these services and each of these approaches comes with their own set of challenges. For example, in Arizona and Illinois, the lack of constraints on the transferability of the licenses created unintended consequences for equity applicants. Industry participants and investors engaged in predatory practices to take advantage of equity applicants for their own benefit. Investors who would not otherwise be able to obtain a license due to statewide license caps were circumventing the equity program by targeting qualifying applicants to obtain a license. In exchange for funding their venture, investors would gain the license and strike one-sided deals where the full benefits or profits from the company would not be shared with the equity applicant. Other equity licensees sold their licenses for \$10 to \$20 million on the open market.

In this case, transferability requirements may have prevented investors from exploiting equity applicants. With inadequate restrictions on ownership and transferability, cannabis industry monopolies may be more likely to occur. Other issues with eligibility criteria have occurred in some states where the criteria are either too broad, too narrow, easy to circumvent, or unintentionally target non-equity applicants.

Legal challenges are also a risk for these social equity programs. Illinois' program scored each application and placed qualifying applicants into a lottery system, which has since been the subject of multiple lawsuits. Lawsuits allege the criminal history record criteria were too narrow, and applicants

---

<sup>28</sup> As of 2021, less than 200 cannabis-related expungements had been processed since the passage of Senate Bill 420.

challenged the initial requirement that they obtain a perfect score to enter the lottery. While the state addressed these issues through a rule change, other states looking to use this approach could learn from these lessons.

One racial equity goal listed in the State of Oregon Diversity, Equity, and Inclusion plan is to “strengthen public involvement through transformational community engagement, access, and information and decision-making opportunities.” Any type of equity initiative should be responsive to the needs of the individuals and communities targeted by or participating in these programs. As the Legislature and OLCC continue to consider various approaches addressing inequities in the cannabis industry, they should continue to engage community stakeholders and community-based organizational partners in the decision-making process.

2021 State of Oregon Diversity, Equity, and Inclusion (DEI) Action Plan, Racial Equity Goal #3...

“Strengthen public involvement through transformational community engagement, access to information, and decision-making opportunities.”

“Community Engagement means sharing power by proactively working with community stakeholders and building meaningful partnerships to inform decision-making.”

### **Racial disparities in cannabis possession arrests and convictions in Oregon have widespread effects in the industry**

Lack of ready capital in communities of color and the absence of a state effort to increase business diversity in the cannabis industry has denied equitable access to the cannabis marketplace. As the legal cannabis industry has grown to a multibillion-dollar industry, federal and state policies that continue to cause disproportionate harm necessitates strategic public policy and management that is accountable for promoting racial justice and fairness.

In February 2020, Leafly, an online cannabis guide, ranked Oregon fourth in the nation in cannabis industry jobs, and estimated there were 18,274 jobs in the legal cannabis industry. In 2021, Oregon recreational cannabis sales hit a record high of \$1.2 billion.<sup>29</sup> With this expansion, however, comes increased awareness that the benefits and financial profits of the legal cannabis industry are not flowing to communities disproportionately harmed by past drug policies.

According to a 2017 survey from Marijuana Daily Business, only 4.3% of legal cannabis businesses were Black-owned or founded and only 5.7% were owned or founded by people identifying as Hispanic/Latino, even though these groups together represent approximately 33% of the U.S. population.

People of color have been disproportionately impacted by cannabis prohibition and enforcement. From the inception of the United States, government at the local, regional, state, and federal level has played a role in creating and maintaining racial inequity. In 1971, President Richard Nixon launched the “War on Drugs” and moved to classify cannabis as a Schedule I drug.<sup>30</sup> The War on Drugs facilitated U.S. law

---

<sup>29</sup> OLCC Statewide Sales Market [Data](#)

<sup>30</sup> US Drug Enforcement Administration [“Schedule I drugs, substances, or chemicals are defined as drugs with no currently accepted medical use and a high potential for abuse.”](#)

enforcement’s intentional targeting of communities of color, creating a legacy of profiling and disproportionate punishment for Black, Hispanic, Latino, and Indigenous cannabis users and sellers.

When President Ronald Reagan took office in 1981, he greatly expanded the reach of the drug war and his focus on criminal punishment over treatment led to a massive increase in state and federal prison incarcerations. Prison populations increased from just over 329,000 in 1980 to over 883,000 by 1992. By 1990, an estimated 32% of all new court commitments were for drug offenders, more than any other type of offense. The number of drug offenders entering state prisons alone increased over 11-fold from 1980 to 1990.

From 1979 to 1991, the percentage of Black people in the U.S. arrested for drug offenses almost doubled from 22% to 41% of the total. According to a Racial and Ethnic Impact Statement provided by the Oregon Criminal Justice Commission (CJC), Oregon’s prison population both historically and presently shows an overrepresentation of Oregon’s minority groups. The incarceration rate for Black people living in Oregon was 470% higher than the statewide rate in 2013.

**Figure 10: Black Oregonians are overrepresented in statewide cannabis arrest data**

Race/Ethnicity	Cannabis Arrests (Possession, Delivery, Manufacture)		Percent of Total Oregon Population
Black	1,249	6%	2%
Native American	291	1%	2%
Hispanic	1,693	8%	14%
Asian	351	2%	5%
White	16,971	83%	86%

Source: Cannabis arrest data from Oregon Criminal Justice Commission (CJC) Legislative Request, September 2020. Percent of total Oregon population from U.S. Census Bureau American Community Survey 2020 5-year estimates.

Note: The American Community Survey and the CJC use different race categories and sub-groups. CJC relies on third-party reported race, which may result in discrepancies in the race variable. Not all Census race categories are listed on this table. On U.S. Census surveys, people may choose to report more than one race to indicate their racial mixture, resulting in totals not equal to 100%.

While it is likely that legalizing recreational cannabis reduces cannabis-related violations for all racial and ethnic groups, racial disparities persist. As shown in Figure 10, while Black Oregonians represent around 2% of Oregon’s total population, they represented 6% of all arrests for cannabis possession, delivery, and manufacturing in Oregon between 2006 and 2020. Nationally, Black, and Latino/Hispanic cohorts are arrested for drug offenses at higher rates than White cohorts. Despite similar usage rates, Black people in the U.S. were 3.64 times more likely than White people to be arrested for cannabis possession. In some states, Black people were 10 times more likely to be arrested for cannabis possession.<sup>31</sup>

There are long-term, multi-generational consequences from the prohibition of cannabis. Past drug convictions have adverse effects on employment, which may be compounded for people of color. While

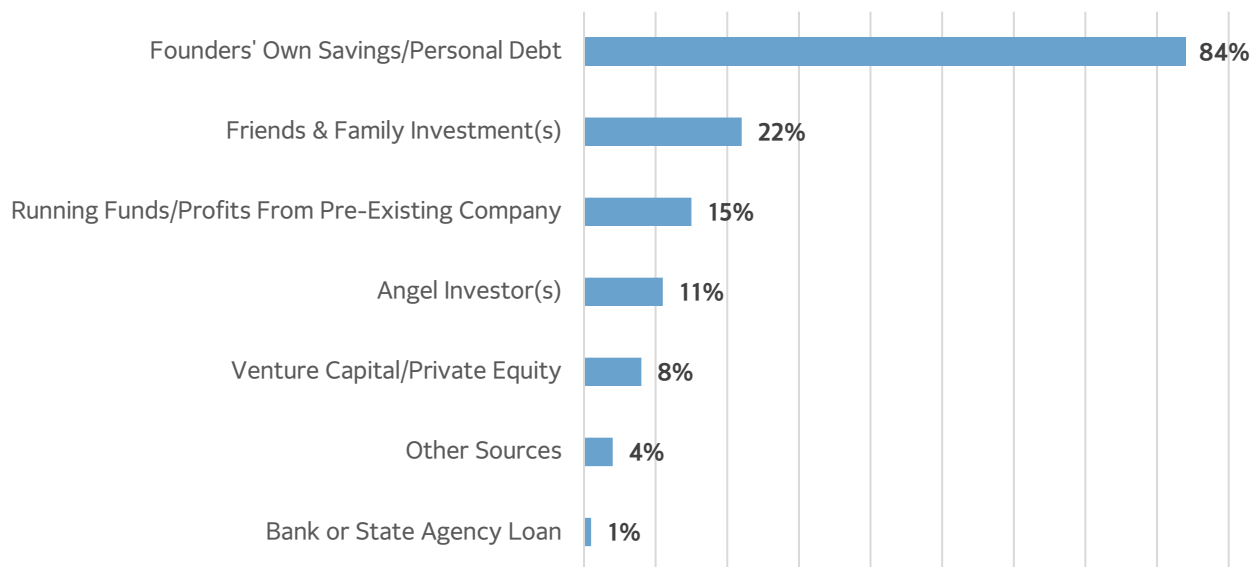
<sup>31</sup> [American Civil Liberties Union, ACLU Research Report: A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform \(2020\)](#). “Montana, Kentucky, Illinois, West Virginia, and Iowa were the states with the highest racial disparities in [cannabis] possession arrest rates (9.62, 9.36, 7.51, 7.31, and 7.26 respectively).”

some states like Oregon make exceptions for certain types of cannabis convictions, all states restrict who will be issued a cannabis business license based on criminal conviction history to some degree.<sup>32</sup> In some states, individuals with cannabis-related convictions may be barred from entering the cannabis industry.<sup>33</sup> People of color with cannabis related convictions have a difficult time entering the cannabis industry due to issues like lack of capital, or a lack of technical support and compliance assistance.

Past and present policies at both the federal and state level have suppressed wealth-building opportunities for communities of color. As White Americans had opportunities to build wealth and pass it on to future generations, Black Americans have not equally benefited from those opportunities due to historic denial of home mortgages through redlining, exclusion from the job market, and other discriminatory practices. In 2019, the U.S. Federal Reserve reported the median net worth of a White family was \$188,200, while the median net worth of a Black family was \$24,100 and Hispanic families' median net worth was \$36,100.

The Oregon Cannabis Association estimates it requires a minimum of \$400,000 in startup capital to open a plant-touching cannabis business. Most cannabis businesses are self-funded, with 84% of businesses relying on the cumulative wealth or savings of the owner to launch their business, while only 1% of businesses were able to obtain a loan with a bank or state agency. This issue is compounded for people of color, who are historically less likely to be approved for any type of business loan, as well as lines of credit.<sup>34</sup>

**Figure 11: Source of capital to launch operational cannabis business based in U.S.**



Source: [Marijuana Business Daily Factbook](#) 2019, Cannabis Business Funding and Investing.

<sup>32</sup> Oregon Cannabis Business Owner Restrictions: Convictions for marijuana manufacturing or delivery to persons 21 and older may not be considered if the conviction is from two years prior or there is only one conviction. Marijuana possession convictions may also not be considered.

<sup>33</sup> In 2019, the Drug Enforcement and Policy Center reported that 22 states place barriers on licensing for cannabis businesses based on a criminal record and 14 states place barriers on industry employment based on criminal record.

<sup>34</sup> [2020 US Federal Reserve data](#) reveals that while Black-owned firms were most likely to have applied for bank financing, less than 47% of these applications were fully funded, a rate twice as high as White business owners.

## Debate over the inclusion of race-based language is slowing the deployment of social equity programs

Debates about how far the government and institutions should go to repair the harm caused by racial discrimination are ongoing. Many governments establishing social equity programs have avoided using race as a part of their cannabis program eligibility criteria to avoid legal challenges under the U.S. Constitution's Equal Protection Clause of the 14th Amendment.

For example, in December 2020, Oregon faced a lawsuit when civic leaders earmarked \$62 million of its \$1.4 billion in federal COVID-19 relief money to provide grants to Black residents, business owners, and community organizations enduring pandemic-related hardships. Business owners sued the state, arguing the fund discriminated against them as non-Black residents. There is concern among some states that adding race-specific language to eligibility criteria for cannabis social equity programs will lead to similar lawsuits.

In July 2022, the Washington State Liquor and Cannabis Board heard testimony from prominent affirmative action and social equity commentator Collette Holt that any program containing explicit preference on the basis of race would almost certainly result in legal challenges and rulings against it. Holt further said a program that faces legal challenges may keep the state from addressing equity in any form and recommended proxy language for where the state would like funding to go instead of using race-based criteria.

However, in legislative testimony for the Cannabis Equity Investment Act in 2021, Oregon State Representatives and industry leaders asserted that Black Americans were the intended primary beneficiaries of the Equal Protection Clause and should therefore be guaranteed certain protections guaranteed under this clause. They further argued race-neutral proxies such as “resident of disproportionately impacted area” and “low income” do not accurately reflect the groups most disproportionately impacted by cannabis prohibition by failing to consider factors such as gentrification, housing instability, and racial disparities in wealth.

Going forward, the state will have to determine how to best navigate the tension between ensuring the target group or area is not so broad that the state awards finite funding to unintended applicants; and ensuring the target group is not so narrowly defined to cause concern over potential legal challenges.

## Data collection gaps prevent greater understanding of racial disparities in cannabis licensing

The legalization of recreational cannabis sales creates more jobs, business, and wealth, which is why it is critical for state agencies like OLCC to be intentional in ensuring disproportionately harmed individuals and communities can participate in the cannabis industry and progress is tracked toward achieving racial inclusion.

One key strategy outlined in the State of Oregon's Diversity, Equity and Inclusion Action Plan is that agencies “ensure that data-informed decisions and resources are dedicated to mitigating the disproportionate impacts experienced in communities” through collecting, reviewing, and analyzing demographic data.

OLCC's current cannabis licensing system does not require and is not capable of tracking demographic data entry for licensees and permittees. As a result, the state does not have the necessary data by which to benchmark diversity among Oregon's cannabis licensees, to better understand the obstacles and create harm reduction strategies, and to evaluate the efficacy and outcomes of its regulatory efforts. OLCC is in the process of developing and replacing its current licensing system and should consider collecting these data in the future.

# Recommendations

When preparing for the future expansion of the adult recreational cannabis industry and to further Oregon's equity goals, OLCC should:

1. Identify and reform its rules which are in place primarily to avoid federal intervention, and which presume cannabis businesses will engage in illegal activity, specifically:
  - a. Reevaluate the public purpose and economic impact of regulations like the requirements for steel doors and 24-hour video surveillance.
  - b. Implement seed to sale batch tagging to balance accountability for reporting and compliance with lower costs for producer licensees and medical growers required to report in METRC.

To better understand the obstacles of past cannabis prohibition for people of color and create harm reduction strategies, and ensure programming, services, laws, and rules related to cannabis are aligned with the diversity, equity, and inclusion values of the state, OLCC should:

2. Ensure its replacement cannabis licensing system has the capacity to gather demographic data and generate reports encouraged in Oregon's DEI Action Plan.
3. As part of the annual reporting required by House Bill 4016, OLCC should include as assessment of the impact the moratorium has on those most negatively impacted by the prohibition of cannabis.

To mitigate the legal risks associated with breaking federal law, the risk of loss of potential revenue and inequitable, inefficient, and ineffective service delivery and enforcement actions for the cannabis industry, the Governor and the Legislature should:

4. Work with the Oregon Department of Justice to develop clear guidance and expectations for how state agencies should interact with cannabis businesses.
5. Direct Business Oregon to make its programs available to all legal Oregon businesses and ensure Business Oregon takes its operating directions from the Legislature and the Governor regarding provision of services to cannabis businesses.



# Objective, Scope, and Methodology

## Objective

The objectives of this audit were to identify business equity challenges within Oregon’s existing cannabis regulatory framework and how the state can address those challenges and determine how Oregon may address social equity issues within the Oregon cannabis industry.

## Scope

The audit focused on OLCC and Oregon’s regulation of cannabis businesses when compared with other legal industries in the state. The audit also included efforts to assess how Oregon compares nationally in its efforts to implement social equity elements intended to counteract the negative impacts of disproportionate cannabis regulation.

## Methodology

To address our audit objectives, auditors used a methodology that included, but was not limited to, interviews with key staff, reviewing relevant laws, rules, OLCC-generated analyses, and other documentation. Auditors also reviewed criteria regarding regulatory and social equity measures in the cannabis industry nationally.

To learn about the views, opinions, and perspectives of the auditee and stakeholders, we conducted interviews with staff at OLCC, the Governor’s Office, members of the Oregon Legislature, Business Oregon, cannabis licensees or their legal representatives, and cannabis industry groups.

We also documented and analyzed relevant statutes, administrative rules, legislative hearings and testimony, budgets, public reports, and OLCC licensing data.

## Internal control review

We determined the following internal controls were relevant to our audit objective.<sup>35</sup>

- Risk Assessment
  - We considered whether management identified, analyzed, and responded to risks related to achieving the defined objectives.
  - We evaluated whether management identified, analyzed, and responded to significant changes that could impact the internal control system.
- Control activities
  - We evaluated whether management designed control activities to achieve objectives and respond to risks.
  - We evaluated whether management has implemented control activities through policies.
- Information and communication

---

<sup>35</sup> Auditors relied on standards for internal controls from the U.S. Government Accountability Office, report [GAO-14-704G](#).

- We evaluated whether management has externally communicated the necessary quality information to achieve the entity’s objectives.
- Monitoring activities
  - We evaluated whether management has established and operated monitoring activities to monitor the internal control system and evaluate the results.
  - We evaluated whether the agency regularly reviews its training and policies, procedures, statutes, and administrative rules.

Deficiencies with these internal controls were documented in the results section of this report.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We sincerely appreciate the courtesies and cooperation extended by officials and employees of OLCC during the course of this audit.

#### Audit team

Olivia Recheke, MPA, Audit Manager

Andrew Love, CFE, Audit Manager

Kyle Rossi, Principal Auditor

Hillary Hahn, MPP, Staff Auditor

Nicole Barrett, MPA, Staff Auditor

Kathy Scott, DrPH, CAPM, Staff Auditor

Bill Newell, Staff Auditor

#### About the Secretary of State Audits Division

The Oregon Constitution provides that the Secretary of State shall be, by virtue of the office, Auditor of Public Accounts. The Audits Division performs this duty. The division reports to the elected Secretary of State and is independent of other agencies within the Executive, Legislative, and Judicial branches of Oregon government. The division has constitutional authority to audit all state officers, agencies, boards and commissions as well as administer municipal audit law.

# Appendix A: Imperatives, Objectives, and Initiatives from OLCC’s 2021-25 Strategic Plan

Imperatives	Objectives	Initiatives
<p>Foster a hospitality economy of equitable prosperity while ensuring public safety, with a focus on customer service</p>	<ul style="list-style-type: none"> <li>• Increase customer participation in all programs, keeping the customer impact at the center of decision making.</li> <li>• Support Oregon alcohol and cannabis entrepreneurs in increasing the quantity and diversity of Oregon products.</li> <li>• Sustain and monitor safe sales and consumption of regulated substances.</li> </ul>	<ul style="list-style-type: none"> <li>• Retail expansion and meeting growing demand for distilled spirits consumption in Oregon.</li> <li>• Modernize liquor and cannabis compliance while balancing industry needs.</li> <li>• Continue to use an “education-first” approach to compliance and enforcement actions among our alcohol and cannabis licensees.</li> <li>• Banning risky substances with proven, adverse effects when combined with alcohol and [cannabis].</li> <li>• Continue both state-to-state and local-level engagement with the nine federally recognized tribes in Oregon.</li> </ul>
<p>Position Oregon as a national leader</p>	<ul style="list-style-type: none"> <li>• Increase number of speaking engagements at national conferences.</li> <li>• Increase state-wide convening meetings.</li> <li>• Increase progress toward a nationwide framework for cannabis regulation.</li> </ul>	<ul style="list-style-type: none"> <li>• Deepen engagement and improve regulatory consistency for public safety, public health and livability within Oregon, as an example for the nation.</li> <li>• Coordinate and streamline our system so the hospitality industry can achieve results more efficiently.</li> <li>• Modernize educational materials across the Public Safety Program.</li> <li>• Continue to achieve nation-leading breakthroughs in cannabis regulation related to public safety, health and consumer protection.</li> <li>• Continue to operate the nation’s first and leading Bottle Bill Program.</li> </ul>
<p>Identify and align strategic investments</p>	<ul style="list-style-type: none"> <li>• Increase efficiency of program policy and operations across the agency.</li> <li>• Increase warehouse capacity with new technologies and the future-build of the new warehouse.</li> <li>• Increase partnership quality with public health and public safety agencies at the state and local level.</li> </ul>	<ul style="list-style-type: none"> <li>• Obtain and steward effectively resources from the legislature to meet the agency’s strategic objectives.</li> <li>• Establish inter-agency resource sharing agreements to ensure a seamless service delivery system for the hospitality industry and the Oregonians they serve.</li> <li>• Plan and implement new warehouse plan to capture projected revenue growth over the next 30 years.</li> <li>• Implement new licensing and compliance software solution for alcohol and cannabis programs.</li> </ul>

		<ul style="list-style-type: none"> <li>• Research new technologies that will increase capacity and create supply chain efficiencies.</li> </ul>
<p>Create a Commission culture that is resilient, and adaptable and flexible to a changing economy and industry trends</p>	<ul style="list-style-type: none"> <li>• Increase managerial effectiveness.</li> <li>• Increase staff retention.</li> <li>• Increase recruitment of top talent from industry and leaders in public service across Oregon’s diverse communities.</li> </ul>	<ul style="list-style-type: none"> <li>• Invest in existing staff to retain them and encourage their career professional development.</li> <li>• Create succession plans and execute leadership development initiatives to ensure transfer of knowledge in the long-run.</li> <li>• Continue to advocate for staff using workforce models and forecasting and include in future Agency Request Budgets.</li> <li>• Continue to improve our own effectiveness in inclusion, diversity, equity, and access using the Governor’s Equity Framework, as the State of Oregon continues to recover from the Covid-19 pandemic.</li> </ul>

Source: OLCC 2021-25 Strategic Plan



# Oregon

Tina Kotek, Governor

## Liquor & Cannabis Commission

9079 SE McLoughlin Blvd.  
Portland, Oregon 97222-7355  
503-872-5000  
800-452-6522  
[www.oregon.gov/olcc](http://www.oregon.gov/olcc)

March 23, 2023

Kip Memmott, Director  
Secretary of State, Audits Division  
255 Capitol St. NE, Suite 180  
Salem, OR 97310

Dear Mr. Memmott,

This letter provides a written response to the Audits Division's final draft audit report titled: "Oregon Needs to Modernize Cannabis Laws to Help Grow the State's Economy and to Ensure Equitable Opportunities and Benefits for all Communities."

Thank you for the opportunity to provide a response and share more about the agency's successes and deep expertise as a national leader in the cannabis regulatory space—all of which are relevant to the findings in this audit.

The mission of the OLCC is to support businesses, public safety, and community livability through education and the enforcement of liquor and marijuana laws. Since Oregon voters legalized recreational marijuana in 2014 with Measure 91, the OLCC has been dedicated to building a regulatory system that is highly adaptable to the changing needs of the burgeoning marijuana industry while protecting consumers. To that end, agency staff worked closely with legislators and industry for nine years on appropriate and necessary adaptations to prepare the state for opportunities and respond to emerging issues. Agency leadership is dedicated to continuing along this trajectory as well as taking an open posture to new policy concepts and regulatory approaches.

As noted in the audit report, the Cole Memorandum has been rescinded. However all of the points addressed in the memo remain in ORS 475C, the Oregon state law that directs the agency's work. Put differently, the Cole Memorandum guidance and regulatory framework therein remains the backbone of Oregon's recreational marijuana laws. Thousands of collaborative conversations with industry stakeholders, legislators, and other jurisdictional authorities as well as partner agencies formed the basis of the OLCC's comprehensive regulatory framework for adult-use marijuana. The commission continues to engage licensees and other stakeholders in annual revisions to our rules and policies to better support licensees, their businesses, and Oregonians. Whether or not the current federal government administration considers the Cole Memo regulatory guidance a guiding light, it remains OLCC's responsibility to maintain a regulated system. Moreover, as the audit identifies, marijuana

businesses, through no fault of their own, face unique public safety and security risks that no other industry faces. These concerns must also be front and center in OLCC's considerations so that all participants in the industry – owners, employees, and customers – are safe and secure. The agency set a strong policy, business process, and technology foundation through administrative rulemaking and worked closely with legislators to develop approaches and systems that support the industry in maturing in a free-market economy. In fact, the agency's success in cooperation with the industry and legislature is evidenced by avoidance of federal prosecution when the Cole Memorandum was in effect. Together with the legislature and industry partners, OLCC policy is regularly emulated by other U.S. states that are initiating or revising their marijuana policy.

In preparation of the Federal government potentially allowing for interstate commerce of cannabis products, the OLCC anticipates that only the highest quality products from well-regulated systems, that have recognized testing, packaging, labeling, and traceability standards, will be allowed for sale into other states. These standards enable consumer protection, which has been an executive branch priority for state agencies, including OLCC for the past two administrations and the current one. For nine years, the OLCC has been able to effectively walk the line between support for industry, so that they can thrive and prepare for expansion, while minimizing public health and consumer protection tragedies. Feedback the agency received from other state agencies that regulate marijuana agree that Oregon's regulatory system is optimally supportive of industry. Agency leadership is dedicated to supporting and preparing Oregon businesses so they are ready to successfully transition from a closed state system to an open national market. OLCC believes it will be successful, as legislators and industry members collaborate together with the agency on planning and plan execution in the coming years.

Below is our detailed response to each recommendation in the audit.

When preparing for the future expansion of the adult recreational cannabis industry and to further Oregon's equity goals, OLCC should:

**RECOMMENDATION 1**

Identify and reform its rules which are in place primarily to avoid federal intervention, and which presume cannabis businesses will engage in illegal activity, specifically:

- a. Reevaluate the public purpose and economic impact of regulations like the requirements for steel doors and 24-hour video surveillance.
- b. Implement seed to sale batch tagging to balance accountability for reporting and compliance with lower costs for producer licensees and medical growers required to report in METRC.

<b>Agree or Disagree with Recommendation</b>	<b>Target date to complete implementation activities</b>	<b>Name and phone number of specific point of contact for implementation</b>
Agree	1/1/2024	A. Borup 503-504-3052

**Narrative for Recommendation 1**

The OLCC has already undertaken rulemaking to change from individual plant tags to batch tagging. At the Commission meeting on March 16, 2023 the commission approved the rules, making the rules effective January 1, 2024. Until the effective date, OLCC will be working with the cannabis tracking system (“CTS”) vendor on implementation and will provide guidance to businesses as those changes are made.

The OLCC has modified many of our violations related to security requirements in the past two years and will evaluate steel doors and video camera requirements during the 2023 cycle of rulemaking. That evaluation process will include stakeholders such as licensees and public health and safety partners.

To better understand the obstacles of past cannabis prohibition for people of color and create harm reduction strategies, and ensure programming, services, laws, and rules related to cannabis are aligned with the diversity, equity, and inclusion values of the state, OLCC should:

<b>RECOMMENDATION 2</b>		
Ensure its replacement cannabis licensing system has the capacity to gather demographic data and generate reports encouraged in Oregon’s DEI Action Plan.		
<b>Agree or Disagree with Recommendation</b>	<b>Target date to complete implementation activities</b>	<b>Name and phone number of specific point of contact for implementation</b>
Agree	12/31/2023	A. Borup 503-504-3052

**Narrative for Recommendation 2**

The current OLCC licensing system does not collect demographic data to the level needed to comply with the DEI Action Plan. As a result, the state does not have the necessary data by which to benchmark diversity among Oregon’s cannabis licensees, to better understand the obstacles and create harm reduction strategies, and to evaluate the efficacy and outcomes of its regulatory efforts. OLCC is in the process of developing and replacing its current licensing system, with an implementation of the new system planned for Fall 2023, followed by the collection of this data in the near future. Additionally, the agency acknowledges and deeply values that this data is critical for making the marijuana system a place where all residents may

be included and all feel they can belong within it. Access to opportunity is critical and the agency continues to be dedicated to working with other public sector agencies that offer grant funding to address historical injustices and ultimately overcome continued barriers to equity and access.

<b>RECOMMENDATION 3</b>		
As part of the annual reporting required by House Bill 4016, OLCC should include an assessment of the impact the moratorium has on those most negatively impacted by the prohibition of cannabis.		
<b>Agree or Disagree with Recommendation</b>	<b>Target date to complete implementation activities</b>	<b>Name and phone number of specific point of contact for implementation</b>
Agree	March 20, 2023 and March 20, 2024	A. Borup 503-504-3052

**Narrative for Recommendation 3**

The first report required by HB 4016 is due by March 20, 2023; the agency will include an assessment of the moratorium as it relates to people most negatively impacted by the prohibition of marijuana in the 2023 and 2024 reports.

Please contact Amanda Borup at 503-504-3052 with any questions.

Sincerely,

  
Craig Prins (Mar 24, 2023 08:24 PDT)

Craig Prins  
Executive Director  
Oregon Liquor and Cannabis Commission

cc: Chairman Marvin Revoal, Nathan Rix, Rich Evans, Rosetta Shatkin, Amanda Borup





Secretary of State  
Shemia Fagan



Audits Director  
Kip Memmott

This report is intended to promote the best possible management of public resources.  
Copies may be obtained from:

Oregon Audits Division  
255 Capitol St NE, Suite 180  
Salem OR 97310

(503) 986-2255  
[audits.sos@oregon.gov](mailto:audits.sos@oregon.gov)  
[sos.oregon.gov/audits](http://sos.oregon.gov/audits)

LAVONNE GRIFFIN-VALADE  
SECRETARY OF STATE  
CHERYL MYERS  
DEPUTY SECRETARY OF STATE  
TRIBAL LIAISON



State of Oregon  
900 Court Street NE #136  
Salem, Oregon 97310  
503-986-1500

<http://sos.oregon.gov>

November 20, 2023

## **Post Audit Review**

Oregon Needs to Modernize Cannabis Laws to Help Grow the State's Economy and to Ensure Equitable Opportunities and Benefits for all Communities, April 2023, Report 2023-15

To: Oregon Liquor and Cannabis Commission (OLCC) and other interested parties  
From: Oregon Secretary of State LaVonne Griffin-Valade  
Re: Audit review; appearance of threat to independence

## **Overview**

Both before and after the release of this audit, the Oregon Audits Division became aware of information concerning the former Secretary of State's relationship with La Mota, a business regulated by the OLCC. The auditors appropriately identified this as a threat to independence under auditing standards. The threat to independence was also identified by an independent review of the audit conducted by Sjoberg Evashenk Consulting (Sjoberg) on behalf of the Oregon Department of Justice.

Several entities have reviewed the audit and found that it was conducted correctly under government auditing standards and its findings are sound. Nevertheless, the former Secretary's actions damaged the public perception of the work. In auditing, we call this a threat to independence in appearance. To mitigate this threat, I have undertaken my own review of the audit using the relevant Generally Accepted Government Auditing Standards (GAGAS). As the newly appointed Secretary of State, with 16 years of experience as a government auditor, including serving on the Association of Local Government Auditors' peer review committee, I am well qualified to conduct this review.

Auditors follow GAGAS to conduct their work and evaluate threats to independence. GAGAS require auditors to evaluate threats to their independence during an audit and after its release.

In this case, auditors followed GAGAS to evaluate information of which they were aware during the audit. The auditors' [statement of independence confirmation](#) shows continuous independence checks throughout the audit work, including a check on March 3, 2023 after auditors learned that the former Secretary had entered into a business relationship with a cannabis company. Auditors determined at that time that the Secretary's relationship with a cannabis business did not affect the report's findings, and they completed the report and released it.

After the report was released, auditors and the public received additional information about the former Secretary's relationship with La Mota, her handling of her audit plan, and the impact of that

information on the public's perception of the audit. When such threats are identified after a report's release, [GAGAS 3.34](#) instructs auditors to examine whether the threat would have altered the report had it been known before the report's release.

According to standards, if I now determine that the threat to independence altered the report's findings, auditors should remove the report and consider whether to reissue it with changes. If I do not determine that the report would have been different, auditors must maintain the report as issued.

Based on my review, detailed below, I find that the threat to independence did not affect the findings in the audit report. Therefore, I have instructed auditors to maintain the report as issued.

In my review, I also looked at the actions the Audits Division took to mitigate the loss of public trust in the report as information about the former Secretary emerged. I agree with the independent reviewers that auditors could have done more to mitigate that loss of trust. Consequently, I have directed the Division to make several process changes to clarify its independence and insulate it from the appearance of bias in the future.

### **Assessing the audit based on standards**

In order to determine the impact of the threat to independence on the OLCC audit report, I have reviewed the report and work papers, interviewed the team that conducted the audit, and reviewed the reference materials that support the audit's core findings.

My review determined that the report would not have changed if the auditors were aware of the threat to independence when conducting their work. The audit report relies on hundreds of work papers, more than 30 stakeholder interviews, state and federal laws or memos, and data from the audited agency. It does not rely on any materials related to the former Secretary or La Mota.

The core findings in the report are supported by evidence that is not impacted by the threat to independence. Here are just a few examples of the evidence the report relies on:

- Finding: State cannabis laws are based on federal guidance that has since been repealed. Many aspects of the regulatory system are in place to prevent federal interference in Oregon's otherwise legal system, a concern that no longer carries the same significance, risk, or likelihood.
  - Evidence: Oregon's cannabis regulations [ORS Chapter 475C](#); [USDJ Cole Memorandum 8.29.13](#); [USAOR Billy Williams Memorandum 5.18.18](#); [Statement from President Biden on Marijuana Reform – The White House 10.6.22](#)
- Finding: Oregon's cannabis industry is subject to some regulations the alcohol industry does not face, creating a business equity problem.
  - Evidence: [OAR Ch 845 Div 25, pg 50 R2](#); [OAR Ch 845 Div 25, pg 163 R1](#); [OAR Ch 845 Div 25, pg 52; R1](#); [OAR Ch 845 Div 25, pg 50 R2 pg 20 R1](#); [OAR Ch 845 Div 25, pg 11 R1](#)

- Finding: Some regulations on the cannabis industry, specifically security regulations, are not clearly based on a robust risk assessment or real-world effectiveness.
  - Evidence: [Email interview with Marijuana Policy Analyst at OLCC; For Nearly a Year, Teenagers Have Been Robbing Portland Dispensaries. Then Somebody Shot a Budtender, Willamette Week 3.3.21](#)
- Finding: Oregon has fallen behind most recreation-legal states that have social equity cannabis programs.
  - Evidence: [States social equity program comparison, research based on multiple sources compiled by the Oregon Audits Division](#)
- Finding: OLCC’s current cannabis licensing system does not require and is not capable of tracking demographic data entry for licenses and permittees.
  - Evidence: [Interview with OLCC Marijuana Licensing Technician](#)

In addition to these examples, every sentence of the audit is referenced to work papers that support the report and are not impacted by the threat to independence.

The former Secretary touched the audit on two occasions, first during a kickoff meeting and again during an end of scoping meeting on May 25, 2022. On both occasions, and in email traffic between the Secretary and the auditors, her sole contribution was to suggest an interview with one of the owners of La Mota, Rosa Cazares. As the second largest cannabis retailer in the state, La Mota would likely have been included in the initial interview list regardless of the former Secretary’s request, so it’s not surprising that this didn’t raise any red flags at the time.

Auditors did interview Ms. Cazares, but dismissed her interview as overly “personal,” noting that the interview subject focused primarily on complaints about her interactions with the OLCC.

In my experience as an auditor, interviews of this nature are common, and auditors rarely use them as evidence. [GAGAS 8.90 – 8.94](#) directs auditors to assess the objectivity of testimonial evidence. The auditors working on this report correctly identified the biased nature of the interview and dismissed it. Had that interview never occurred – a likely result of the auditors having been aware of the threat at the time – the audit report would still have arrived at the same conclusions.

Since nothing connected to the threat to independence was used in the audit, according to standards there is no reason to remove the report or consider whether to reissue it with changes.

### **Other independent reviews**

Few audits receive the level of scrutiny this audit has. In addition to my review, the Oregon Audits Division conducted its own review following the former Secretary’s resignation, finding that the report was not impacted by the threat to independence and that the Audits Division maintained independence. Two independent entities have also reviewed the audit. OLCC, in its official response to the audit, agreed with each recommendation and did not dispute any of its findings. Sjoberg’s report

confirmed that the Audits Division conducted its work independently, followed GAGAS standards, and found “no evidence ... that former Secretary Fagan exerted undue influence” on the report.

It's worth noting that after reading pages and pages of media reports on the audit, I can't find one instance where a fact in the report's findings is convincingly questioned.

### **Mitigating harm to public trust caused by the former Secretary**

Sjoberg's report identified actions auditors could have taken during and after the issuance of the report to address public perception of the audit. This is understandable given the difficult situation the former Secretary created, and I agree with the risk identified by Sjoberg. Based on their recommendations, I have taken several steps to improve the processes of the Oregon Audits Division.

Most importantly, I have intervened as an additional reviewer in this particular audit. One of the safeguards Sjoberg recommends based on standards is adding additional reviewers, which is done to ensure that the evidence is sufficient and the auditors followed standards. In my review I examined the Audits Division's efforts to verify its independence during the audit, interviewed the Division's management team, reviewed the responsible officials' (OLCC) comments on the audit, and conducted the evidentiary review outlined in the section above.

With 16 years of experience as a government auditor, including serving on the Association of Local Government Auditors' peer review committee, I am uniquely qualified to oversee the final stages of this report. My independent assessment should reassure the public that the contents of the report are trustworthy.

Sjoberg correctly identified actions auditors could have taken to address the threat to independence as it emerged. In the future, there is more the division can do to prevent a similar situation from occurring again. I have directed the Audits Division to initiate several process improvements that are responsive to the recommendations in the Sjoberg report.

1. The Division will revise its audit process to remove the Executive Office and Secretary from the two scoping meetings attended by former Secretaries. This change will clarify the Secretary's limited role in the audit process and strengthen the Division's independence.
2. The Division will strengthen its independence policy to ensure that threats and conflicts of interest are carefully reviewed and documented at multiple points during each audit engagement.
3. The Division will overhaul its audit plan process to document a standardized, risk-assessment based approach in determining which audit subjects are chosen.
4. The Division will contract with a third-party, independent consultant to develop further improvements to the audit plan risk assessment process.

## **Conclusion**

The public interest is best served in this case by independent auditors providing evidence-supported findings and recommendations to state government. Neither my review nor any other has uncovered a reason to think this report is anything short of that standard.

For that reason, I have instructed the auditors to maintain the report as issued. I encourage the auditee and other state leaders to treat this report with the same high regard they do any other report from the Audits Division.

Sincerely,

A handwritten signature in blue ink that reads "LaVonne Griffin-Valade". The signature is written in a cursive style with a large initial 'L' and 'V'.

LaVonne Griffin-Valade  
Oregon Secretary of State