

Sessions Jeopardizes Safe Haven for Cannabis Industry

On January 4, Attorney General Jeff Sessions rescinded the Obama-era protection that has allowed the cannabis industry to flourish despite marijuana being illegal under federal law. In 2013, then-Deputy Attorney General James M. Cole issued a memo stating that the Obama administration would not create obstacles for states that wanted to legalize marijuana, so long as the states took steps to prevent the drug from reaching children, gangs, or entering states where it remained illegal (the Cole Memo). Sessions' memo rescinded the Cole Memo, returning to federal prosecutors the discretion to prosecute marijuana offenses to the full extent of the law, including under money laundering statutes, the unlicensed money transmitter statute, and the Bank Secrecy Act.

Sessions' directive comes only days after California legalized the sale of recreational cannabis.

Without the assurances and protection of the Cole Memo, all cannabis-related businesses, as well as banks, insurance companies, and lessors who transact business in the industry, are now potentially at risk of prosecution, regardless of compliance with state law. The move also threatens to cut off access to vital banking and insurance options, as these traditionally risk-averse institutions may no longer view the business as worth the risks. Additionally, the Cole Memo was the foundation of Treasury Department's Financial Crimes Enforcement Network (FinCEN) guidance that banks and other lending institutions relied on as an assurance that mitigated the risk of providing financial support to cannabis-related businesses. Generally, the FinCEN guidance outlined terms under which the banking system may serve the legal cannabis industry, including without limitation, by requiring banks to perform extra due diligence on legal cannabis business clients and to consider whether such clients' business implicates one of the Cole Memo priorities or violates state law. The Treasury Department has not announced a change in policy or an amendment to its guidance at this time. FinCEN guidance is available [here](#).

In the wake of this move by the Department of Justice, a number of open questions remain. It is unclear whether certain types of businesses will be targeted going forward, or whether federal prosecution of marijuana businesses operating in compliance with state law will increase. It is also unclear whether Sessions' memo is a sign of more aggressive enforcement action to come.

Numerous U.S. Senators, both Democrat and Republican, have issued statements or comments against Sessions' actions.

It is too early to tell what practical effect Sessions' memo will have on the cannabis industry. U.S. Attorney for the Western District of Pennsylvania Scott W. Brady has reportedly indicated that his office intends to vigorously enforce federal law, including with respect to offenses related to marijuana. Conversely, U.S. Attorney for the Western District of Washington Annette L. Hayes has issued a statement indicating intent to continue to focus on marijuana-related crimes that pose the greatest threat to public safety, as consistent with the Sessions memo. The statement is available [here](#). Statements such as U.S. Attorney Hayes' may be the only "assurances" marijuana-related business will have to rely on moving forward. We will continue to monitor developments as they become available.

For more information on the FinCEN guidance and the Cole Memo, please see the previous Alert on the topic.

If you want to learn more about the issues discussed in this Alert, please contact a member of Cozen O'Connor's Cannabis Industry Team.



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Industry Sectors

- Cannabis

Marijuana is still classified as a Schedule I controlled substance by the U.S. Drug Enforcement Agency, and as such it remains a federal crime to grow, sell and/or use marijuana. Any content contained herein is not intended to provide legal advice to assist with violation of any state or federal law.