



# FEDERAL POLICY OVERVIEW

## BANKING, TAXES, and DOJ PROTECTIONS

### THE BANKING CRISIS

Current laws create public safety hazards by discouraging financial institutions from working with legal cannabis businesses by denying or closing bank accounts, thus forcing cannabis businesses to operate entirely in cash.

Guidance was issued by the Department of Justice on February 14, 2014, regarding the conditions under which financial institutions may work with cannabis-related businesses. Some credit unions and regional banks have begun providing limited financial services to some cannabis industry clients.

*FEDERAL SOLUTION:* During the 115<sup>th</sup> Congress, Rep. Ed Perlmutter (D-CO) and Sen. Jeff Merkley (D-OR) have introduced H.R. 2215 and S. 1152 respectively, both of which are known as the **SAFE Banking Act (Secure and Fair Enforcement)**. The bills would provide a legal safe harbor for financial institutions working with cannabis businesses.

### UNFAIR TAX BURDENS

Section 280E of the Internal Revenue Code prohibits businesses involved in “drug trafficking” from deducting normal business expenses when filing their federal taxes. Because cannabis is still listed as a Schedule I drug, even state-legal cannabis businesses pay 50-70% of their net income to the federal government. Others have been audited by the IRS and then forced to shut down. Sec. 280E threatens the viability of state-licensed cannabis providers, potentially leading to the loss of valuable jobs and tax revenue.

*FEDERAL SOLUTION:* Companion legislation that would address this issue has been introduced in the 115<sup>th</sup> Congress by Rep. Carlos Curbelo (R-FL) and Sen. Ron Wyden (D-OR). **The Small Business Tax Equity Act (H.R. 1810, S. 777)** would allow state-regulated businesses to take ordinary business deductions.

### THE COLE MEMO

On January 4th, Attorney General Jeff Sessions announced the Department of Justice’s move to rescind the ‘Cole Memo’ and two additional memos related to marijuana enforcement policy. These memos, issued in 2013 and 2014, have helped to clarify the Department’s response to state-legal cannabis activity. The rescission of the memo, however, does not necessarily mean that any major change in enforcement policy is on the horizon. This has, and still will be, a matter of prosecutorial discretion.

*FEDERAL SOLUTION:* Encourage Congress to protect state-legal medical cannabis programs through **appropriations bills** or, preferably, through **stand alone legislation**.

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