



State of West Virginia
Office of the Attorney General

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January 11, 2019

The Honorable Roger Hanshaw
Speaker of the West Virginia House of Delegates
State Capitol Building 1, Room M-228
1900 Kanawha Blvd. East
Charleston, WV 25305

The Honorable John Perdue
West Virginia State Treasurer
State Capitol Building 1, Room E-145
1900 Kanawha Blvd. East
Charleston, WV 25305

Dear Speaker Hanshaw and Treasurer Perdue:

You have each asked for an Opinion of the Attorney General concerning legal risks the financial services industry may face as West Virginia implements its medical cannabis law. This Opinion is issued pursuant to W. Va. Code § 5-3-1, which provides that the Attorney General “shall give written opinions and advice upon questions of law, . . . whenever required to do so, in writing, by . . . the treasurer . . . or any . . . state officer.” To the extent this Opinion relies on facts, it is based solely on the factual assertions in your correspondence with the Office of the Attorney General.

With the enactment of 2017’s Medical Cannabis Act, West Virginia joined the growing majority of States—currently 33 plus the District of Columbia, Guam, and Puerto Rico—that have legalized marijuana for medical use. *See* S.B. 356, 2017 Reg. Sess., *codified at* W. Va. Code § 16A-1-1, *et seq.* You have each raised questions about the intersection of the Medical Cannabis Act with federal drug laws, specifically the potential legal consequences for financial institutions that provide services to marijuana-related businesses, and whether the State can take steps to minimize these concerns.

Your letter raises the following legal question:

Can the State safeguard financial institutions that provide services to entities operating pursuant to the Medical Cannabis Act from potential liability under federal law?

We conclude that, notwithstanding West Virginia law, marijuana's federal status as a controlled substance makes it very difficult for medical marijuana businesses to operate in a way consistent with current federal law, and that by extension financial institutions providing services to these entities may be at risk of federal civil or criminal liability. Nevertheless, we are aware of no federal enforcement actions for services related to the marijuana industry in States where medical marijuana is legal, and "safe harbors" against federal enforcement have existed for the past several years. Thus, although States cannot fully mitigate the risk where financial institutions serve the medical marijuana industry—and although there is no guarantee the federal government will continue its current non-enforcement policies—States can help lessen the concerns you identified by designing medical cannabis regulations with a goal toward helping financial institutions comply with the existing safe harbor provisions. Ultimately, however, this issue implicates federal law and criminal statutes, and any permanent fix must come from the federal government.

Discussion

I. Challenges For Financial Institutions Under Federal Law

Under the federal Controlled Substances Act ("CSA"), marijuana is a Schedule I controlled substance, which means it is a crime to manufacture, distribute, dispense, or possess marijuana for either recreational or medical purposes. 21 U.S.C. §§ 812(b)(1), (c), 841(a)(1), 844(a). Because the Supremacy Clause of the U.S. Constitution provides that federal law shall prevail if there is any direct conflict between federal and state law, marijuana possession—even "in accordance with state law"—remains a federal crime. *Gonzales v. Raich*, 545 U.S. 1, 29 (2005).

Financial institutions accordingly face a complex series of hurdles when providing services to businesses that operate pursuant to state cannabis laws. It is illegal for banks to aid and abet a cannabis business. *See, e.g.*, 18 U.S.C. § 2; 21 U.S.C. § 841. Therefore, banks and their officers could be liable for indirectly participating in or facilitating conduct that federal law classifies as illegal. Additionally, federal forfeiture statutes could put bank assets at risk of confiscation to the extent they are deemed proceeds of a crime or otherwise associated with criminal conduct, banks providing services to cannabis businesses could potentially be deemed in violation of anti-money laundering statutes, and an aggressive interpretation of the Racketeer Influence & Corrupt Organizations Act ("RICO") could subject these financial institutions to criminal liability as participants in a criminal enterprise.

There is thus no question about the status of serving marijuana-related businesses under federal law. Unless and until federal law changes, it will be impossible to limit all risk as States continue to enter this arena. Nevertheless, there are several additional factors that should also be considered in an assessment of potential state solutions.

As an initial matter, we are not aware of any federal prosecutions or enforcement actions against entities providing financial services to cannabis businesses in States where marijuana is legal. One reason for this lack of an enforcement track record is that for five years, U.S. Department of Justice (“DOJ”) policy provided that “the primary means of addressing marijuana related activity” in States that allowed marijuana use was “enforcement by state and local law enforcement and regulatory bodies”—not by federal authorities. Memorandum from James M. Cole, Deputy Attorney General, U.S. Department of Justice, to All United States Attorneys (Aug. 29, 2013) (“Cole Memorandum”). On January 4, 2018, however, DOJ rescinded that policy. See Memorandum from Jefferson B. Sessions, Attorney General, U.S. Department of Justice, to All United States Attorneys (Jan. 4, 2018). Yet since DOJ formally rescinded its non-enforcement policy, additional States have legalized marijuana for some or all purposes, and as of last fall nearly 500 banks and credit unions nationwide serve marijuana-related businesses. See U.S. Dep’t of Treasury, Financial Crimes Enforcement Network, *Marijuana Banking Update 2* (Oct. 2018), available at https://www.fincen.gov/sites/default/files/shared/Marijuana_Banking_Update_September_2018.pdf. Regardless of future changes in federal policy, West Virginia would not be alone if it continues to implement its medical marijuana laws.

Further, for the past four years Congress has independently restricted federal law-enforcement agencies from interfering with state-sanctioned medical marijuana businesses. Specifically, a restriction in the Department of Justice’s annual appropriation states that “[n]one of the funds” given in that law “may be used to prevent [States] from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.” Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, H.R. 1625, Sec. 538 (2018). The annual appropriations subject to this restriction finance most forms of federal criminal law enforcement, including the Drug Enforcement Administration, the Federal Bureau of Investigation, and the offices of all United States Attorneys. *Id.* at 65-68.

Although this funding restriction is expressed in terms of interference with *States* “implementing their own laws,” the one federal appellate court to address this restriction has interpreted it as protecting *private* conduct as well. In *United States v. McIntosh*, 833 F.3d 1163 (9th Cir. 2016), the Ninth Circuit held that “[i]f the federal government prosecutes” individuals who are operating in compliance with a State’s laws, then the federal government “has prevented the state from giving practical effect to its law providing for non-prosecution of individuals who engage in the permitted conduct.” *Id.* at 1176-77. To be sure, *McIntosh* involved defendants who produced and sold marijuana directly, *id.* at 1168-69, but its rationale would also very likely protect financial institutions that serve medical marijuana businesses. These services would also be “conduct permitted by the State Medical Marijuana Laws” that “fully compl[y] with such laws,” *id.* at 1177, and prosecuting a bank would impede the “practical effect” of state law just the same as prosecuting a medical marijuana business directly.

The DOJ appropriations restriction thus provides expansive protection for entities operating consistent with state medical marijuana laws. It has also been renewed annually since it first went into effect in December 2014, see, e.g., Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No 113-235, 128 Stat. 2130, 2217, Sec. 538 (2014), and that

trend may well continue. Nevertheless, there is no guarantee that Congress will keep including the restriction in future appropriations bills. And if it removes the restriction, the consequences could be significant: There would likely be no retroactive protection for conduct that occurred while the restriction was in effect. DOJ would have discretion to prosecute conduct extending back in time, through the full limitations period under the CSA. *McIntosh*, 833 F.3d at 1179 n.5.

With respect to financial institutions, specifically, federal regulators have similarly promulgated “safe harbor” policies that—while not permanent—currently protect entities in States where marijuana is legal.

One of the most important laws affecting financial services institutions in this context is the Bank Secrecy Act (“BSA”). As all transactions involving medical marijuana are illegal under federal law, financial institutions must report them in accordance with the BSA’s anti-money laundering requirements. Whether chartered under federal or state law, all banks and credit unions must report “suspicious transactions” to the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”). 31 C.F.R. §§ 1010.100(d), 1020.320(a). “Suspicious transactions” include those that “involve[] funds derived from illegal activities” or that have no “business or apparent lawful purpose.” *Id.* § 1020.320(a)(2)(i), (iii). FinCEN applies this requirement to every transaction conducted by a “marijuana-related business,” regardless of the legal status of marijuana in the State where the transaction occurs. *See* U.S. Dep’t of the Treasury, FinCEN, *BSA Expectations Regarding Marijuana-Related Businesses* 1, FIN-2014-G001 (Feb. 14, 2014), available at <https://www.fincen.gov/sites/default/files/guidance/FIN-2014-G001.pdf> (“FinCEN Guidance”).

FinCEN has also promulgated unofficial guidance clarifying “how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations”—which effectively provides a safe harbor for banks serving marijuana-related businesses. FinCen Guidance at 2. This guidance incorporates the enforcement priorities discussed in the Cole Memorandum that was in effect before DOJ rescinded that policy early last year; although the broader DOJ policy no longer controls, FinCEN’s position is that the “reporting structure laid out in the 2014 guidance remains in place.” *See* U.S. Dep’t of the Treasury, FinCEN, *Marijuana Banking Update* 4 (Oct. 2018), available at https://www.fincen.gov/sites/default/files/shared/Marijuana_Banking_Update_September_2018.pdf. Under this guidance, a financial institution may satisfy its duty under federal law to file “suspicious activity reports” (“SARs”) by filing a special “Marijuana Limited SAR.” FinCEN Guidance at 3-4. This report requires the financial institution to provide only the identifying information of the marijuana-related business, and to state that “no additional suspicious activity has been identified.” *Id.* A bank may file the Marijuana Limited SAR whenever it “reasonably believes, based on its customer due diligence” that a marijuana business does not violate state law or one of the core priorities DOJ identified in the Cole Memorandum: avoiding “the distribution of marijuana to minors,” preventing “revenue from the sale of marijuana from going to criminal enterprises,” and minimizing “violence and the use of firearms in the cultivation and distribution of marijuana.” Cole Memorandum at 1-2.

If, by contrast, certain “red flags” are present, then the financial institution must file a more extensive “Marijuana Priority SAR.” FinCEN Guidance at 4. Red flags include a business’s inability “to produce satisfactory documentation or evidence to demonstrate that it is duly licensed and operating consistently with state law”; “negative information, such as a criminal record,” from “[r]eview of publicly available sources and databases about the business [or] its owner(s)”; and information showing that the business or “other related parties are, or have been, subject to an enforcement action by the state or local authorities responsible for administering or enforcing marijuana-related laws or regulations.” *Id.* at 5-6. Nevertheless, wherever these red flags are absent, financial institutions are able to submit the streamlined form.

Many entities within the financial services industry are already set up to comply with the FinCEN Guidance. FinCEN receives marijuana-related SARs from filers in all 50 States. U.S. Dep’t of the Treasury, FinCEN, *Marijuana Banking Update 2* (July 1, 2018), *available at* <https://www.fincen.gov/sites/default/files/shared/3rd%20Q%20MJ%20Stats.pdf>. And as of September 30, 2018, a total of 486 financial institutions were providing services to marijuana-related businesses consistent with the FinCEN Guidance reporting framework. U.S. Dep’t of the Treasury, FinCEN, *Marijuana Banking Update 2* (Oct. 1, 2018), *available at* https://www.fincen.gov/sites/default/files/shared/Marijuana_Banking_Update_September_2018.pdf. This system is similar to the DOJ appropriation restriction in that it currently allows entities to operate consistent with state medical marijuana laws, yet could be rescinded in the future with little warning—particularly because the FinCEN Guidance is only informal.

Another area where banks serving marijuana-related businesses may face potential liability is their continued eligibility for federal deposit insurance. All depository institutions in West Virginia, whether chartered under state or federal law, must maintain federal deposit insurance. *See* 75 Fed. Reg. 31,382, 31,328 (Jun. 4, 2010) (“Under existing law, all federally chartered and most state-chartered depository institutions must have federal deposit insurance.”); W. Va. Code §§ 31A-1-6, 31C-6-9(a) (requiring federal deposit insurance for all state-chartered credit unions and banks “except banks that do not accept deposits and offer only trust or other nondepository services”). Credit unions are insured by the National Credit Union Association (“NCUA”), while banks are insured by the Federal Deposit Insurance Corporation (“FDIC”). NCUA relies on the FinCEN Guidance to determine whether insured credit unions are in compliance with agency regulations, so continued eligibility for NCUA insurance may rise or fall with the FinCEN “safe harbor.” *See* Letter from Larry Fazio, Director, Office of Examination and Insurance, NCUA, to Scott Jarvis, Director, Washington State Department of Financial Institutions (July 18, 2014), *available at* <http://www.dfi.wa.gov/documents/banks/ncua-marijuana-letter.pdf>.

The FDIC has not spoken directly to this issue. Institutions insured by the FDIC can be penalized for “unsafe and unsound banking practices,” 12 U.S.C. § 1818, with penalties ranging from a cease and desist order to termination of insurance, *id.* § 1818(a)(2)(A)(i), (b)(1). The agency has also interpreted “unsafe and unsound banking practices” to include “violations of law,” although not every practice that violates federal law is “necessarily unsafe or unsound in every instance or when considered in light of all relevant facts pertaining to that situation.” FDIC, *RMS Manual of Examination Policies* 15.1-4 to -5 (June 2016), *available at* <https://www.fdic.gov>.

gov/regulations/safety/manual/section15-1.pdf. Significantly, the FDIC has also acknowledged publicly that some FDIC-insured banks participate in the FinCEN reporting framework for marijuana-related businesses, suggesting that the agency likely does not, at least under the current political and legal climate, view providing services to these businesses as a *per se* disqualifying banking practice. See Minutes of The Meeting of the Advisory Committee on Community Banking of the FDIC Held in the Board Room FDIC Building, Washington, D.C. 251, 264-266 (Apr. 9, 2014), available at <https://www.fdic.gov/communitybanking/2014/2014-04-09-minutes.pdf>.

In short, because marijuana is illegal under federal law, providing banking services to cannabis businesses carries some inherent risk of federal civil or criminal action even in States where medical marijuana is legal. The current state of federal law and agency guidance creates a safe harbor for financial institutions to provide these services in States like West Virginia, but the potentially temporary nature of these protections must be factored into any assessment of enforcement risk.

II. Viability Of Potential State Responses

The legal uncertainty for financial institutions serving marijuana-related businesses stems from federal drug law, which makes no exceptions for cannabis use that is fully authorized under state law. We are aware of no practices in other States that have legalized medical marijuana, nor any legal theory, that would allow a State to completely shield financial institutions from the potential consequences of serving entities that federal law deems to be engaged in criminal activity.

Where banks and other traditional financial institutions are hesitant to provide services to marijuana-related businesses, the alternative for these entities often becomes processing all transactions—sales, payroll, operating expenses, and taxes alike—in cash. This cash-based approach avoids the issues related to federal banking regulations discussed above, and it appears that predominantly cash-based systems are somewhat common across the country as no State has resolved the issue of access to traditional banking in this area. Nevertheless, leaving marijuana-related businesses to operate on a cash basis in the absence of traditional banking options can create separate concerns for both the businesses themselves and for the State. Operating entirely or predominantly in cash creates logistical bottlenecks, as payroll and tax payments must be calculated and dispersed manually rather than electronically. Holding large quantities of cash for long periods of time can expose businesses to security risks. It is also harder for States to monitor compliance with state laws and tax obligations without traditional banking records.

Accordingly, the majority of States that have legalized medical or recreational marijuana focus on removing as many hurdles as possible to encourage banks to provide services to marijuana-related businesses. This most often takes the form of designing regulations that make it easier to demonstrate where marijuana-related businesses are in compliance with state law, and thereby help banks serving these businesses comply with the FinCEN Guidance. Filing a marijuana-related SAR under the FinCEN Guidance requires banks to verify that their clients comply with state law. FinCEN Guidance at 5-6. Therefore, regulatory systems that make it easier

to obtain relevant information about marijuana businesses can help reduce the administrative burdens for financial institutions that offer services to these entities. For example, Rhode Island requires all marijuana-related businesses to participate in a centralized “seed-to-sale” tracking system. This system monitors all sales of marijuana, as well as compliance with “dispensing limits,” “inventory supply tracking,” “restrictions on third party supply,” and “all testing compliance.” 230-80.5 R.I. Code R. § 1.4(A). In Maryland, banks use daily logs from a similar “seed-to-sale” system in order to streamline the SAR filing process. See Aaron Gregg, *How a Maryland Bank is Quietly Solving the Marijuana Industry’s Cash Problem* (Jan. 2, 2018), available at https://www.washingtonpost.com/local/md-politics/how-a-maryland-bank-is-quietly-solving-the-marijuana-industrys-cash-problem/2018/01/02/a6317088-e0ec-11e7-bbd0-9dfb2e37492a_story.html. Similarly, Washington “has helped banks and credit unions monitor marijuana-related customers by collecting and publishing extensive data on monthly sales and legal violations to the liquor and cannabis control board’s website.” Sophie Quinton, *Why It’s Getting Easier For Marijuana Companies To Open Bank Accounts* (Dec. 6, 2017), available at https://www.huffingtonpost.com/entry/why-its-getting-easier-for-marijuana-companies-to_us_5a28015de4b0cd6fb5ee8bb7. West Virginia could consider a similar option to help banks comply with the FinCEN Guidance’s reporting safe harbor.

A similar option that a number of States have considered is a “closed-loop” system, which circumvents traditional banking methods by conducting all financial transactions involved in a state-legalized marijuana industry through a separate, state-managed portal. This portal could be operated directly by a state agency or by contract with a separate entity, and could track, process, and record all marijuana sales. Consumers could make purchases by first loading money onto a debit-style card, and providers could receive payment through deposits to their account on the portal. This type of system could also assess and collect state taxes, then place that money in the State’s general revenue fund. See 26 C.F.R. § 1.61-14(a) (explaining that, for tax purposes, even “[i]llegal gains constitute gross income”).

Although a handful of States are considering some version of a closed-loop system, it appears that this option has not been implemented in any States to date. Further, to the extent the goal of a closed-loop system is to avoid the problem of traditional banks being unwilling to serve marijuana-related businesses, it offers at best only a partial solution. Because money must eventually leave the system, the banking laws and regulations discussed above would be implicated at the point a marijuana business withdraws revenue from the closed-loop system and tries to deposit it with a traditional financial institution. California recently released a feasibility study analyzing potential solutions to lack of access to traditional banking services for marijuana businesses that reached the same conclusion: Although a closed-loop system “offers an initial impression of solving the problem,” “the fundamental problem is unchanged and unsolved” because “ultimately the money needs to cross the network boundaries into the traditional banks and payment processing systems. At that point all of the problems the [banking] industry is currently experiencing will limit the usefulness of the solution.” Level 4 Ventures, Inc., et al., *State-Baked Financial Institution Serving the Cannabis Industry: Feasibility Study Report 12* (summary report) (Dec. 24, 2018) (“Feasibility Study Report”).

A closed-loop system also carries potential risk and cost for the State itself, or any entity the State contracts with to implement the program. One of the benefits of a closed-loop system is that it allows a State to maintain close oversight of the marijuana industry. This supervision can help prevent tax evasion and money laundering, and help ensure that businesses and individuals involved in the distribution chain are appropriately vetted and monitored for compliance with state laws. This benefit, however, may be marginal compared to those associated with inventory tracking systems similar to those many States use. A State's creation and supervision of a closed-loop system could also be viewed as participation in or facilitation of conduct federal law considers criminal. This enhanced potential for state liability could be somewhat minimized to the extent that a closed-loop system operates wholly intrastate: Although the Supreme Court has rejected an argument that in-state marijuana possession consistent with state laws exceeds Congress's Commerce Clause powers, *see Raich*, 545 U.S. 1, federal authorities may view such a system as a lower enforcement priority than an inter-state business.

A third potential solution is a state-run bank. As with a closed-loop system, the law in this area is untested because this option has mostly remained in the theoretical stage in States where medical marijuana is legal. North Dakota is the only State that currently operates a state bank, but it was established in 1919, well before any concerns to implement a state-legalized marijuana regime. *See Fox v. United States*, 397 F.2d 119, 121 (8th Cir. 1968). In fact, it appears that the Bank of North Dakota may not be involved in the medical-marijuana industry at all (or at least does not provide public information on this issue). Some potential benefits of a state-run bank are that its implementing legislation could remove the requirement to obtain federal deposit insurance, and that there is a plausible argument it would fall outside the definition of "Bank" for purposes of the BSA and its reporting regulations. *See* 31 C.F.R. § 1010.100(d) (including, *inter alia*, commercial and private banks and banks organized under state law, but not expressly listing banks operated by a State). Nevertheless, a state-run bank is a "financial institution" under the BSA, 31 U.S.C. § 5312(a)(2)(W), and thus could be required to file SARs if directed to do so by the Secretary of the Treasury, 31 U.S.C. § 5318(g). If any account holder at a state-run bank were a "non-United States person, including a foreign individual visiting the United States," the bank would also be required to file SARs. 31 U.S.C. § 5318(i)(1), (2)(B)(ii).

The trade-offs for these potential benefits, however, are significant. The California feasibility study discussed above analyzes the financial consequences of a state-run bank in great detail. This type of financial and policy analysis is beyond the scope of this opinion letter. Nevertheless, the study's conclusions are relevant to the extent they explain that a bank designed to service the marijuana industry would likely involve significant financial risk—specifically, because of its concentration of services to one industry, and a legally uncertain one at that—to such an extent that it would very likely not be able to qualify for federal deposit insurance or obtain a master account from the Federal Reserve, which is necessary to participate in inter-bank transfers, check-cashing, and other common banking functions. *See Feasibility Study Report* at 8-9.

A state-run bank also cannot eliminate concerns about potential criminal liability and civil-forfeiture actions under federal drug law. As the California Attorney General put it bluntly in the

cover letter accompanying the feasibility study, a proposal for a “state-run or state-backed financial institution designed to provide financial services to cannabis-related businesses . . . presents a high level of legal risk. Such an institution would violate several federal criminal statutes, . . . [which] carry severe potential penalties. The state is not immune under federal law.” Letter from Xavier Becerra, Attorney General of California, to Mark Paxson, General Counsel, State Treasurer’s Office (Dec. 26, 2018). This stark analysis does not account for the current safe harbor and lack of DOJ enforcement funding discussed above, but it accurately reflects the reality that a State-run bank serving the marijuana industry would not be operating consistent with federal law. Unless federal drug law changes, designing an institution for the specific purpose of facilitating banking in the marijuana industry would carry legal risk. A state-run bank thus cannot solve the underlying legal issues that lead to lack of traditional banking options for marijuana businesses; it would simply transfer the risk to a new institution. And because that institution would be specifically created to aid marijuana-related businesses rather than taking on these clients as a small percentage of the bank’s overall portfolio, a state-run bank may in fact increase the risk of federal enforcement.

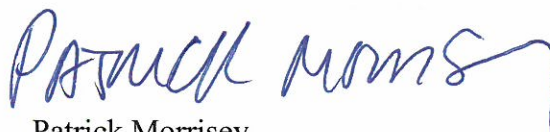
Finally, Colorado has approached this issue by enacting a state law that allows for the creation of “cannabis credit co-ops,” which are not required to maintain federal deposit insurance and are otherwise designed to facilitate banking for marijuana-related businesses outside of traditional financial institutions. Colo. Rev. Stat. § 11-33-106(4)(a)(II)(B). Yet it appears that no co-ops have been formed under this law, suggesting that this option has not proven to be a profitable business model or an otherwise successful solution to the problem of potential federal liability. More importantly, although this approach would resolve the concern about whether the co-op could continue to operate if a federal insurer ever determined that its businesses practices were unsound, it does not remove federal oversight altogether: These co-ops are also required to participate in the federal reserve banking system, *see id.* § 11-33-104(4)(A), and therefore must obtain federal approval from the Federal Reserve Board of Governors.

* * *

Although States have frequently proposed broader solutions to the issue of stable banking services for marijuana-related businesses, it does not appear that any State has found a complete solution. The most effective option for States seeking to facilitate access to banking services for cannabis-related entities may be to design implementing regulations in a way that makes it easier for banks to comply with current federal reporting obligations—as the majority of States to legalize medical marijuana have done. West Virginia could consider similar approaches as it implements the Medical Cannabis Act, with a goal toward making it easier for banks to access the information they need to complete SARs for federal regulators, and to identify “red flags” for entities that are not in full compliance with state law. Other options require weighing the potential benefits against the risk of federal enforcement. Although a lack of enforcement from federal authorities has so far allowed many traditional financial institutions to provide services to marijuana-related entities in States where cannabis is legal for some or all purposes, the supremacy of federal drug law makes the hesitancy some banks have shown to enter this new market in West Virginia understandable.

As the State of West Virginia considers how to implement its medical cannabis law, it must carefully consider how to balance the unambiguous federal criminal statutes implicating cannabis businesses with an equally clear, yet potentially temporary, non-enforcement policy that has accommodated over 30 States. The approaches of these States, and key issues to analyze, are set forth in this opinion letter. Over the long term, however, the concerns that motivated your requests stem from federal law, and a permanent, complete solution will require additional federal action.

Sincerely,

A handwritten signature in blue ink that reads "Patrick Morrissey". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Patrick Morrissey
Attorney General

Lindsay See
Solicitor General

Thomas T. Lampman
Assistant Attorney General