Office of Thrift Supervision
Department of the Treasury

Acting Executive Director, Supervision

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6853

April 15, 1998

MEMORANDUM FOR: Chief Executive Officers

FROM: John E. Ryan
Acting Executive Director, Supervision

SUBJECT: "Safe Harbors" and the Filing of Suspicious Activity Reports

The Office of Thrift Supervision and the other federal financial institutions' supervisory agencies are issuing the attached Interagency Advisory concerning two recent federal court decisions that have raised concerns as to the breadth of the "safe harbor" protection afforded to financial institutions, and their employees, for referring suspicious or potentially criminal activity to the appropriate authorities.

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
National Credit Union Administration
Office of the Comptroller of the Currency
Office of Thrift Supervision

March 23, 1998

Interagency Advisory

"SAFE HARBOR" AND THE FILING OF SUSPICIOUS ACTIVITY REPORTS

As a result of two recent court cases, some concerns have been raised as to the breadth of the "safe harbor" protection afforded to financial institutions, and their employees, for referring suspicious or potentially criminal activity to the appropriate authorities. The guidance set forth herein is intended to explain the concerns that have been raised and clarify any confusion that may exist. Despite these decisions, we believe that the "safe harbor" provides complete immunity to any financial institution that reports a potential crime by filing a Suspicious Activity Report ("SAR") in accordance with the instructions on the SAR form, or by reporting through other means in accordance with applicable agency regulations.

In 1992, the Annunzio-Wylie Anti-Money Laundering Act, which contained a specific provision that provided a "safe harbor" for financial institutions and their employees, was passed by Congress. The "safe harbor" provision, which was codified in 31 U.S.C. 5318(g)(3), provided for complete immunity from civil liability for the reporting of known or suspected criminal offenses or suspicious activity by the use of a Criminal Referral Form, and then its replacement, a SAR, or by reporting through other means.

In the current cases, involving two separate banks, bank customers from each bank claimed that the banks improperly disclosed customer account information to federal law enforcement authorities. In both cases, the courts ' opinions stated that the banks had not made a good faith determination as to whether suspicious activity had occurred, which would warrant the disclosures made by the banks. It is important to note that, while these court opinions are troubling, in neither case has there been a final decision. All that has happened to date is a determination by the court that there are claims that merit further review. It is entirely possible that, as the cases proceed, the banks will introduce evidence that brings them within the "safe harbor."

In one of the cases, based on an oral request from federal law enforcement authorities, the bank provided access to the contents of two wire transfers. The court, in ruling that the "safe harbor" would not apply, found that there was no evidence that the bank had a "good faith

or which seeks guidance on establishing a process for providing information to law enforcement agencies. Any institution that has a question or a problem in this area should contact its appropriate federal regulatory agency.