

INTRODUCTION

Criminal Conduct Undermines Public Confidence

The public's confidence in the banking system is undermined when insured institutions are the victim of fraudulent and dishonest conduct, which, through fidelity insurance premiums, raise overall costs in the banking system. Confidence is especially harmed by insider abuse and fraud, which have been major contributing factors in a significant number of bank failures. When this occurs, the FDIC deposit insurance fund can suffer significant losses.

If allegations of wrongdoing come to the Corporation's attention, a prompt response is warranted. The scope of the response will vary based upon the source and credibility of the information, as well as the specificity of the allegations and documentation provided. Therefore, discretion and judgment are needed when determining an appropriate response.

BANK MANAGEMENT'S ROLE

Bank Management is Responsible for Preventing and Detecting Fraud and Insider Abuse

The primary responsibility to prevent fraud and insider abuse rests with the board of directors and senior management. To properly execute their fiduciary duties, management must implement internal controls and other safeguards to prevent fraud and theft whether internally or externally perpetrated. But, even the best safeguards can be circumvented; therefore, systems also must be designed to detect suspicious activities. Once detected, suspicious activities must be reported.

Suspicious Activity Reports

Part 353 of the FDIC Rules and Regulations requires insured nonmember banks to report suspicious activities to the Financial Crimes Enforcement Network (FinCEN). The primary purpose of the reporting requirement is to assure that the information needed by investigators and prosecutors is provided in an orderly and timely fashion. Additionally, the reports enhance the FDIC's ability to monitor and act to reduce losses suffered by insured nonmember banks as a result of suspicious activity.

This report is to be made on a standard form used by all federally insured financial institutions called a Suspicious

Activity Report (SAR). The SAR is designed to elicit the type of information deemed most important to law enforcement and bank regulatory agencies in assessing the activities and their effects.

Preparing and Filing the Suspicious Activity Report

Instructions for preparing the SAR are contained on the form itself and in Part 353. SARs shall be filed in the following situations:

- Insider abuse involving any amount.
- Transactions aggregating \$5,000 or more where a suspect can be identified.
- Transactions aggregating \$25,000 or more regardless of potential suspects.
- Transactions aggregating \$5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.

Financial institutions are required to file the SAR within 30 days of detecting the criminal activity; however, if management is unable to identify a suspect within 30 days, reporting may be delayed an additional 30 days or until a suspect is identified, whichever is sooner. In no case shall the reporting of a known or suspected crime of an unidentified suspect exceed 60 days from the detection date.

Copies of related supporting documentation must be maintained by the institution and made available to law enforcement authorities upon request. A copy of the SAR and supporting documentation should be retained for five years.

Management must notify the board of directors of any SAR filed in accordance with Part 353. In addition, the Board must record such notification in the minutes of the directors' meetings.

"Safe Harbor" and Filing of Suspicious Activity Reports

Federal law (31 U.S.C. 5318(g)(3)), provides that a financial institution, and its directors, officers, employees, and agents are provided protection from civil liability for reports of suspicious activities (including supporting documentation) made to appropriate authorities, regardless of whether such reports are filed pursuant to the SAR requirements or are filed voluntary on an alternative basis. Once a bank has filed a SAR, the related documentation is deemed filed with the SAR and may be made available to

law enforcement agencies upon request without the need for a subpoena.

THE EXAMINER'S ROLE

Examiners are responsible for evaluating the bank's internal controls and management systems. Therefore, it is essential that examiners remain alert for irregular or unusual activity. Explanations by bank officers that appear unreasonable should not be accepted without being fully investigated. The examiner should be concerned with suspicious activities involving insiders and others. (The Bank Fraud and Insider Abuse section contains warning signs of fraud and investigative alternatives.) Early detection of suspicious activities may reduce the potential for monetary loss, as well as other types of harm, such as the unauthorized disclosure of confidential customer information.

If suspicious activities surface during the course of an examination, the examiner should immediately notify the supervisory Regional Office. This is paramount when senior management is suspected, or when losses attributable to the activity imperil the continued bank operation. The Regional Office may instruct examiners to prepare and file suspicious activity reports directly with FinCEN if the financial institution's referral is deemed inadequate, or the activity discovered by the FDIC has not been reported by the bank. Otherwise, the examiner should submit the SAR directly to the Regional Office as soon as practicable. Following Regional Office review of the document, the SAR will be forwarded to FinCEN.

The fact that a SAR has been filed does not prevent the examiner from making a more detailed written report. If necessary, the examiner may need to gather the facts to support corrective actions, which may include recommendations for removal and prohibition.

Notifying Bank Officials

The examiner must consult with the supervisory Regional Office before informing the bank's board of directors or anyone associated with the bank of the suspicious activity. Generally, apparent criminal violations that are detected by examiners should be brought to management's attention; the examiner should present the facts but avoid any conclusions as to the particular individuals. Bank officials should be apprised of the requirements of Part 353. However, under certain circumstances, it may be unwise or inappropriate to notify management or other bank officials; for example, when senior bank officials are implicated in the suspicious activity or if the examiner has reason to

believe that a bank official or officials might flee, warn the target, destroy evidence or otherwise jeopardize an investigation.

Disclosure Issues

An examiner may disclose confidential information obtained during the course of an examination to law enforcement authorities after obtaining permission from the DSC Director, or his designee, pursuant to Part 309 of the FDIC Rules and Regulations.

Additionally, details relating to customer financial records can be discussed with law enforcement officials after a FDIC official, (Regional Director or designee), has certified that there is reason to believe that the records may be relevant to a violation of Federal criminal law; and the records were obtained in the exercise of the FDIC's supervisory or regulatory functions. Refer to the Right to Financial Privacy Act for more information and specific requirements.

INTERAGENCY COOPERATION

The FDIC, the other Federal banking regulators, and various other agencies have agreed to cooperate and exchange information where necessary to address suspicious activity affecting insured financial institutions.

Fraud Section Assistance

Staff of the Fraud Section of the Department of Justice in Washington is available to assist the local prosecutor in handling significant cases. In unusual cases, such as a scheme to defraud several banks located in more than one jurisdiction. FDIC requests for assistance, however, should be made by the Washington Office upon request of the Regional Director. The staff of the Fraud Section and FBI can assist the U.S. Attorneys in their evaluation, investigation, and/or prosecution of significant cases and, where appropriate, will coordinate multi-jurisdictional cases. The Fraud Section also may supply prosecutorial staffing to aid the appropriate U. S. Attorney's office.

Communication and Points of Contact

After being authorized by the Regional Director, the examiner may communicate the SAR details directly to Federal law enforcement agents or the U.S. Attorney's office. Coordination and cooperation during the investigative stage between the local FDIC offices and prosecutors and local Federal law enforcement agents can

have a positive effect on the outcome of the prosecution. Local working groups comprised of examiners, prosecutors, FBI agents and other Federal investigators have been organized in many areas to resolve communication problems and exchange information to assist in preventing crimes against banks.

Parallel Proceedings

The referral of suspicious activity to the Department of Justice (DOJ) does not restrict the FDIC from continuing its own examination or investigation into the same conduct in order to carry out its regulatory responsibilities, unless requested to cease or suspend such activity by the DOJ in connection with an ongoing criminal investigation or prosecution. Nevertheless, the U.S. Attorney should be kept informed of the progress of any parallel civil investigation with a view toward reaching a cooperative solution, as appropriate. This type of cooperation might lead to a demand for restitution and stipulation to a prohibition from future employment in the banking industry being included in a criminal plea agreement or pre-trial diversion arrangement.

Coordination with the Office of Inspector General (OIG)

Various procedures have been established for communications between DSC and the OIG with respect to investigations involving operating institutions. Refer to outstanding guidance for specific information, responsibilities, and action required.

EXAMINER ASSISTANCE TO FEDERAL LAW ENFORCEMENT AUTHORITIES

Examiners may be requested to provide expertise to law enforcement agents investigating suspicious activity or prosecuting a criminal case, usually in connection with bank fraud or money laundering cases. The assistance is most often needed for the following reasons:

- To interpret subpoenaed documents obtained from the bank;
- To explain document flow and processing;
- To determine whether the documents are relied upon by FDIC examiners, bank auditors, or managers to formulate business decisions or opinions as to the condition of the bank; or
- To provide information concerning banking policies and banking practices in general.

At other times, more specific assistance is desired; this may include testimony at trial or before a Federal grand jury.

DSC personnel will cooperate to the fullest extent possible in honoring reasonable requests for assistance. The Regional Office will supply the examiner with specific guidance governing each assignment. A written agreement may be necessary for long-term assignments. The following broad guidelines apply to most requests for examiner assistance.

- The request for assistance must be for a legitimate law enforcement purpose within the jurisdiction of the requesting agency;
- The information requested, or that which the examiner has been asked to review, must be relevant to a legitimate law enforcement inquiry;
- The suspicious activity should involve an FDIC insured bank, its directors, officers, employees, agents or customers;
- If the bank itself is not under investigation, the targets of the investigation should be specified and should be associated with the bank as directors, officers, employees, agents or customers;
- Compliance with all applicable provisions of the Right to Financial Privacy Act covering disclosures of information derived from bank customer records must be assured;
- The examiner should be instructed that while assisting the law enforcement authorities, he or she will be acting solely as a representative of the law enforcement authority, will not represent the FDIC in any way, and should not assert or exercise any authority as an FDIC examiner; and
- If the examiner accompanies law enforcement agents onto the bank's premises for the purpose of gathering records, bank management must be apprised that the examiner is assisting the law enforcement authority in an investigation and does not represent the FDIC in any supervisory or regulatory capacity.

FEDERAL GRAND JURY SUBPOENAS

A Federal grand jury subpoena is an important investigatory tool used to build the prosecution's case without compromising the privacy of investigation targets or prematurely revealing their investigatory directions. Rule 6(e) of the Federal Rules of Criminal Procedure requires that grand jury proceedings are to be kept secret to the fullest extent practicable. Grand jury secrecy is maintained principally:

- To encourage witnesses to come forward and to testify freely and confidentially;
- To minimize the risks that prospective defendants will flee or use corrupt means to thwart investigations and escape punishment;
- To safeguard the grand jurors themselves and the proceedings from extraneous pressures and influences;
- To avoid unnecessary disclosures that may make persons appear to be guilty of misconduct without their being afforded adequate opportunity to challenge the allegations; and
- To prevent information adduced under compulsion and for purposes of public justice from being used for insubstantial purposes, such as gossip, to the detriment of the criminal justice system.

An exception to Rule 6(e)(2) non-disclosure of grand jury information and provides that on the motion of an attorney for the government and a finding of substantial need, a court may direct disclosure of matters occurring before a grand jury concerning banking law violations to a Federal financial institution regulatory agency for use in relation to any matter within the jurisdiction of the agency. The possession of grand jury documents and/or testimony requires great care in order to comply with the secrecy requirements of Rule 6(e) of the Federal Rules of Criminal Procedure.

The Corporation's General Counsel has the delegated authority to authorize an examiner to appear and testify before the grand jury or at a criminal trial. The examiner may be directed to contact the prosecutor or investigator either before or after a grand jury subpoena is issued to assist in identifying and gathering the documents that are pertinent to the investigation. The examiner will be provided with appropriate counsel before testifying.

SAFEGUARDING AND DOCUMENTING EVIDENCE

Copies of the SAR and all supporting evidentiary documents should be segregated and stored to ensure that they are readily retrievable and can be provided to law enforcement officials if needed.

Generally, copies of documents must be made during the examination. The copies should be initialed and dated by the examiner in case the originals are misplaced or destroyed.

In addition to photocopying documents, the examiner should document the flow of funds, approvals and employees responsible for handling each transaction. Flow

charts or similar methods may be appropriate for documenting complex transactions. The following questions are provided as an example of the line of inquiry an examiner may follow in deciding how to review and document a particular circumstance:

- What is the bank's policy for handling this type of transaction?
- Was there deviation from the policy?
- Who handled this transaction?
- Who had knowledge?
- Who benefited ultimately from the transaction?
- What knowledge did the bank's directors have?
- What was the credit quality at the time of making a loan and what it is now?
- Was the documentation adequate at inception?
- Was collateral value adequate at inception?
- Are there presently any credit or legal problems?
- Is the bank facing possible risk or damage other than financial loss?

Examiners should consult the Regional Office regarding necessary documentation.

NOTIFICATION TO THE BONDING COMPANY

The FDIC has a mutual interest with management of each insured bank to be certain that all of a bank's employees are protected by a fidelity bond. When a bank files a SAR involving an employee, it normally will be required to notify its fidelity insurer of the subject activity. However, a bank may not provide a copy of the SAR to the insurer.

The notification requirement is usually among the terms of the insurance contract and is not dependent upon the filing of a claim against the insurance coverage. The standard financial institutions bond contains a termination clause which automatically cancels coverage of any employee as soon as there is knowledge of any dishonest or fraudulent act on the part of such employee. The insurer need not give notice of such termination; in fact, the decision of the insurer may be made at a subsequent date. In the rare case in which a bank official has knowledge of a suspicious act on the part of an employee and yet the bank wishes to continue to employ that person, it is very important for the bank to obtain either an assurance in writing from the main office (agents generally are not so empowered) of the insurer that such person is still covered under the bond, or a new bond covering that person. Also refer to the Fidelity and Other Indemnity Protection section of the Manual.

OTHER MATTERS OF IMPORTANCE

Examiners occasionally receive information about alleged misconduct by a bank, its officers, employees or directors and are requested to protect the informant's identity. When this happens, the examiner should advise the informant that the FDIC will try to protect the identity of the informant. However, prior to receiving the information, the examiner should advise the informant of the following facts:

- Mere inquiry into the situation may cause bank employees to deduce the informant's identity.
- The information may be referred to another agency, such as the Department of Justice, which may request the informant's identity to continue or complete an investigation.
- If the information becomes the basis for a criminal prosecution, the court may order disclosure of the informant's identity to the defendant.

CRIMINAL STATUTES

The Federal criminal statutes that an examiner might encounter are generally contained in Title 18 of the United States Code. Most of these laws are included in the Prentice-Hall volumes with only the major sections discussed below.

18 U.S.C. Section 215 - Bank Bribery

Anyone who corruptly gives, offers, or promises anything of value with intent to influence or reward an officer, director, employee, agent or attorney of a financial institution in connection with any business or transaction or any bank official who receives or corruptly solicits such things of value would violate this statute.

Banks are encouraged to prohibit bank officials from self-dealing or otherwise trading on their positions with the bank; or accepting from one doing or seeking to do business with the bank, a business opportunity not generally available to the public. In this regard, the bank's code of conduct or policies should require that its officials disclose all potential conflicts of interest, including those in which they have been inadvertently placed due to either business or personal relationships with customers, suppliers, business associates, or competitors of the bank.

18 U.S.C. Section 471 – Counterfeiting and Forgery

This statute applies to persons who falsely make, forge, counterfeit, or alter any obligation or other security of the United States with intent to defraud.

18 U.S.C. Section 472 – Counterfeiting and Forgery

This statute applies to persons who intentionally defraud, pass, utter, publish, or sell, the items contained in Section 471 above. It also includes those persons who attempt to do so, or those who keep in their possession or conceal any such items.

18 U.S.C Section 500 – Counterfeiting and Forgery

This statute applies to persons who intentionally defraud, falsely make, forge, counterfeit, engrave, or print any order in imitation of or purporting to be a blank money order. It also applies to those who receive or possess any such money order with the intent to convert it for their own use or gain, knowing that it has been embezzled, stolen or converted.

18 U.S.C. Section 656 - Theft, Embezzlement, and Misapplication of Funds

This statute prohibits the theft, embezzlement, or misapplication of bank funds, willfully by an officer, director, agent, or employee of a bank, with intent to injure or defraud the bank. Intent can be inferred from the fact of injury or from acts knowingly done in reckless disregard for the interests of the bank.

Three types of activity are proscribed: embezzlement, abstraction, and misapplication. Embezzlement is the unlawful taking of monies by a person or conversion to his or her own use. Embezzlement cannot be charged if funds have been converted to a third party. Abstraction is the wrongful taking or withdrawing of funds with the intent to injure or defraud the bank or some other person without the knowledge or consent of the bank or its board of directors. Misapplication means willful and unlawful misuse of bank funds to the benefit of the wrongdoer or some person other than the bank. Some examples are:

- Loans granted by a bank officer to fictitious borrowers;

- Bad loans granted on inadequate or valueless collateral if the loan officer benefited personally or acted in reckless disregard of the bank's interests;
- Brokered loans where deposits are provided for a fee to fund a loan that is worthless from its inception.

18 U.S.C. Section 657 - Theft, Embezzlement, and Misapplication of Funds

This statute requires that any officer, agent or employee of or connected in any capacity with the FDIC, et al, embezzles, abstracts, purloins or willfully misapplies any moneys, funds, credits, securities, or other things of value belonging to an insured institution will be fined.

18 U.S.C. Section 658 – Property Mortgaged or Pledged to Farm Credit Agencies

This statute applies to persons who intentionally defraud, knowingly conceal, remove, dispose of, or convert to their own use, or to that of another, any property mortgaged or pledged to, or held by, the Farm Credit agencies.

18 U.S.C. Section 664 – Theft or Embezzlement from Employee Benefit Plans

This statute applies to persons who intentionally embezzle, steal, or unlawfully and willfully abstract or convert to their own use or to the use of another, any of the monies, funds, securities, premiums, credits, property, or other assets of any employee welfare benefit plan or employee pension benefit plan, or of any fund connected therewith.

18 U.S.C. Section 709 - False Advertising or Misuse of FDIC Name

This statute covers false advertising or representations, misuse or unauthorized use of words such as national, reserve, Federal deposit, or deposit insurance, or misuse of names such as FDIC, to convey the impression of Federal agency affiliation.

18 U.S.C. Section 1001 - False Statements or Entries

This statute generally covers oral or written false statements that are knowingly or willingly made, or concealment of a material fact, for the purpose of influencing a determination of any Federal department or agency. It is not necessary to show that the governmental body was actually influenced thereby.

The following is an example of the application of Section 1001: A real estate broker who loaned to purchasers the down payment for obtaining an FHA loan and who submitted to a bank, which acted as agent for the FHA, forms disclosing that the purchaser had paid the down payment in cash, violated Section 1001.

18 U.S.C. Section 1005 - False Entries

This statute covers false entries and reports or statements, including material omissions, made by an officer, director, agent or employee of an insured bank with intent to injure or defraud the bank, or to deceive the FDIC or other individuals or companies. This section also prohibits any such person from issuing or putting forth in circulation any notes of the bank or making, drawing, issuing, or assigning any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond or other obligation, or mortgage, judgment or decree. The crime may be committed personally or by direction (e.g., an officer directing the making of false entries).

Actions taken by a bank officer or employee to conceal delinquencies, disguise potential lending limit violations, or the recording of securities transactions at values adjusted to hide losses, rather than at the market price, would come under this statute. A false answer to a question on an FDIC Officer's Questionnaire has been held to violate this statute. Entries in minute books are also covered, and the making of unauthorized loans and other unauthorized transactions may come under this statute if the other elements of the statute are met.

18 U.S.C. Section 1007 - Federal Deposit Insurance Corporation Transactions

This statute covers false statements made for the purpose of influencing an action of the FDIC in any way. This includes willfully over-valuing any security for the purpose of obtaining, extending or renewing a loan and statements made to induce the payment of an insured deposit, the purchase of assets, or the payment of any claim by the FDIC. To establish a violation of this statute, it is not necessary to prove loss or damage to the FDIC caused by the falsification. Violations of this section occur when false statements are made to the FDIC in connection with an application for deposit insurance, notice to acquire control of an insured state nonmember bank, or other process in which FDIC is required to take action. False or misleading statements made to an FDIC examiner during an examination would also be covered.

18 U.S.C. Section 1014 - False Statements on a Loan or Credit Application

This statute covers oral or written false statements or misrepresentations made knowingly on a loan or credit application to an insured bank (e.g., willful over-valuing of land, property, securities or other assets or understatement of liabilities). Such statements or misrepresentations must have been capable of influencing the bank's credit decision. Actual damage or reliance on such information is not an essential element of the offense. The statute applies to credit renewals, continuations, extensions or deferments and includes willful omissions as well as affirmative false statements. Obsolete information in the original loan application is not covered unless the applicant reaffirms the information in connection with a renewal request. The application will trigger the statute even if the loan is not made.

18 U.S.C. Section 1028 - Fraud and Related Activity in Connection with Identification Documents, Authentication Features, and Information

This statute applies to persons who knowingly and without lawful authority produce, transfer, or possess with intent to use unlawfully, an identification document, authentication feature, or a false identification document.

18 U.S.C. Section 1029 - Fraud and Related Activity in Connection with Access Devices

This statute prohibits the production, use, and trafficking in counterfeit access devices (credit or debit cards), and the use of unauthorized access devices obtains anything of value aggregating \$1,000 or more during a one-year period knowingly and with intent to defraud.

18 U.S.C. Section 1030 - Computer Fraud

This statute applies to persons who knowingly access a computer without authorization or who, having accessed a computer with authorization, use it for unauthorized purposes (e.g., obtaining information contained in records of financial institutions).

18 U.S.C. Section 1032 – Concealment of assets from FDIC

This statute applies to persons who knowingly conceal or endeavor to conceal an asset or property from the FDIC, acting as conservator or receiver.

18 U.S.C. Section 1341 - Mail Fraud

This statute covers use of the mails in furtherance of a fraudulent scheme. Commonly referred to as the "mail fraud statute," this law was used primarily in check kiting cases before the passage of the general bank fraud provision in Section 1344. Valid mailings which can be used in an indictment include opening the account by mail, mailing of check order forms by the bank to the check printers during the period in which the scheme was being operated, and making deposits by mail. Use of the mail after a scheme to defraud has been completed is not an offense under this statute.

18 U.S.C. Section 1343 - Wire Fraud

This statute applies to a scheme or an artifice to defraud or to obtain property or money through use of wire (telephone), radio or TV transmissions in interstate commerce. "Boiler room" operations and electronic funds transfer frauds are covered by this statute if the "wire" extends beyond the boundaries of one state.

18 U.S.C. Section 1344 - Bank Fraud

The bank fraud statute was modeled directly after the mail fraud statute (Section 1341). It covers the use of a scheme or artifice to defraud an insured bank or to obtain, through misrepresentations, any of the monies, funds, credits, assets, securities, or other property owned by, or under the control of, the institution. It clearly applies to check kites and would appear to apply when a financial institution's property is obtained under false pretenses, such as in advance fee scams and where fraudulent appraisals are used to obtain credit. Misrepresentation of the value of collateral or of third-party guarantees, misrepresentation of terms and conditions of participation loans, and other such devices may violate this statute. To convict, the prosecutor must show intent to defraud but it is not necessary that the scheme be successful or that anyone be actually defrauded by the scheme.

18 U.S.C. Section 1517 – Obstructing Examination of a Financial Institution

This statute applies to persons who corruptly obstruct or attempt to obstruct any examination of financial institution by an agency of the United States with jurisdiction to conduct an examination. The FDIC has agreed to report any such offense to the Office of the Inspector General (OIG).

18 U.S.C. Section 1708 – Theft or Receipt of Stolen Mail

This statute applies to persons who steal, take, or abstract, or by fraud or deception obtain, or attempts to obtain, from or out of any mail, post office, or station thereof, letter box, mail receptacle, or any mail route or other authorized depository.

18 U.S.C. Sections 1951-1961 - Racketeer Influenced and Corrupt Organizations (RICO)

These statutes are commonly referred to as "RICO" (Racketeer Influenced and Corrupt Organizations). They cover investments in any enterprise impacting interstate commerce if the funds are derived from a pattern of racketeering activity. These activities include murder, drug dealing, bribery, robbery, extortion, counterfeiting, mail fraud, embezzlement from pension funds, wire fraud, obstruction of criminal investigations, and fraud in the sale of securities.

18 U.S.C. Section 1956 - Laundering of Monetary Instruments

This statute makes it illegal to conduct or attempt to conduct a financial transaction knowing that the property involved in the transaction represents the proceeds of some form of illegal activity. There must be intent to promote the continuation of specified unlawful activity or knowledge that the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of unlawful activity or to avoid a transaction reporting requirement under State or Federal law.

The statute also makes it illegal to transport or attempt to transport internationally a monetary instrument or funds with the intent to promote the carrying on of specified unlawful activity or knowing that the monetary instrument or funds constitute the proceeds of some form of illegal activity and knowing that the transportation is designed in whole or part to conceal the nature, location, source, ownership or control of the proceeds, or to avoid a transaction reporting requirement under State or Federal law.

18 U.S.C. Section 1957 - Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity

This statute makes it illegal to engage or attempt to engage in a monetary transaction in property constituting, or derived from, proceeds obtained from a criminal offense knowing that it is criminally derived property and has a value of over \$10,000.

18 U.S.C. Section 2113 - Bank Robbery and Incidental Crimes

In addition to covering theft of bank property by force or violence, this section also covers the entry or attempted entry of a bank with intent to commit any felony affecting any bank and in violation of any statute of the United States, or any larceny. Although this statute has seldom been used to prosecute bank fraud, it has been used successfully in a few major fraud cases. Potential penalties are much stiffer than traditional fraud statutes.

18 U.S.C. Section 2339C – Prohibitions Against the Financing of Terrorism

This statute applies to persons who by any means, directly or indirectly, unlawfully and willfully provide or collect funds with the intention that such funds be used, or with the knowledge that such funds are to be used, in full or in part in order to carry out acts of "terrorism" as defined with this section. It also applies to those persons who knowingly conceal or disguise the nature, location, source, ownership, or control of any material support, resources, or funds used for such acts.

15 U.S.C. Section 78dd - Foreign Corrupt Practices Act of 1977

This statute covers payment of anything of value to any foreign official, foreign political party or candidate or any other person where an American corporation knows or has reason to know something of value was offered.

15 U.S.C. Sections 78ff and 78x - Securities Laws

These statutes covers criminal violations and penalties of securities laws.

31 U.S.C. Section 5311 - Currency Transactions/Bank Secrecy Act - Also 31 C.F.R. Part 103

Refer to the Bank Secrecy Act section of this Manual.

31 U.S.C. Section 5324 - Structuring Transactions to Evade Reporting Requirement

This statute makes it illegal to cause or attempt to cause a domestic financial institution to fail to file a Currency Transaction Report (CTR), cause or attempt to cause a domestic financial institution to file a CTR that contains a material omission or misstatement of fact, or structure or assist in structuring, attempt to structure or attempt to assist in structuring, any transaction with one or more domestic financial institutions for the purpose of evading the reporting requirements.

Applies only to transactions occurring after January 27, 1987. Intent to evade the reporting requirements is an important element of the criminal offense. Carelessness or oversight would more likely trigger civil penalties. Applies to all persons including financial institutions and their employees.

Other Criminal Statutes18 U.S.C. Section 2 - Aiding and Abetting

Whoever aids, abets, counsels, commands, induces or procures the commission of a Federal offense is punishable as a principal.

18 U.S.C. Section 4 - Misprison of Felony

This statute covers the failure to report a felony. Requires anyone who has knowledge of the actual commission of a felony cognizable by a United States court to report it to any judge or other person in civil or military authority. A financial institution that fails to report an offense of which it is aware can be charged with violating this section.

18 U.S.C. Section 201 - Bribery of Public Officials

This statute proscribes the offering or soliciting of bribes to or by Federal officials, elected representatives, jurors or witnesses in official proceedings with the intent to influence that person's official functions.

18 U.S.C. Section 371 - Conspiracy to Defraud

This statute covers a conspiracy of two or more persons to commit a Federal offense or to defraud the United States or any agency thereof. This statute has been cited when two or more persons willfully ignored the notice requirements of the Change in Bank Control Act.

18 U.S.C. Section 1342 - Fictitious Name or Address

This statute covers the use of a false, assumed or fictitious name, address or title for the furtherance of a fraudulent scheme which is carried out by means of the postal service.

18 U.S.C. Section 2314 - Transportation of Stolen Goods, Securities, etc.

This statute prohibits transportation of stolen goods, securities, moneys or falsely made, forged, altered or counterfeited securities in interstate commerce. Obtaining money from a bank on either a forged check of any amount or a fraudulently obtained check of \$5,000 or more, which is drawn on a bank in another state, comes under this section since it is transported in interstate commerce.

18 U.S.C. Section 2315 - Sale or Receipt of Stolen Goods, Securities, etc.

This statute prohibits receipt, concealment, storage, bartering or selling of stolen goods, securities, moneys, or fraudulent State tax stamps of \$5,000 or more. It prohibits the pledge or acceptance as security for a loan, any such stolen item, \$500 or more in value, moving as foreign or interstate commerce.

2 U.S.C. 441b - Federal Election Campaign Act of 1971

This statute prohibits national and insured state banks from making any contributions to or expenditures on behalf of any candidate for Federal elective office. Insured state nonmember banks may make contributions to or expenditures on behalf of candidates or committees for State or local elective offices so long as the contribution or expenditure is consistent with State or local law. It should be noted that, even where permitted by State law, the contribution or expenditure must satisfy requirements of safety and soundness. A loan is not a contribution if it is made in accordance with applicable banking laws and is made in the ordinary course of business (i.e., on appropriate terms and conditions and on a basis that assures repayment, 11 CFR §100.7(b)(11)).

Improper and Illegal Payments by Banks

The Federal Election Campaign Act and the Foreign Corrupt Practices Act cover improper and illegal payments by banks and bank holding companies.

42 U.S.C. Section 1490s(a) – Equity Skimming

Whoever, as an owner, agent, employee, or manager, or is otherwise in custody, control, or possession of property that is security for a loan made or guaranteed, willfully uses, or authorizes the use, of any part of the rents, assets,

proceeds, income, or other funds derived from such property, for any purpose other than to meet actual, reasonable, and necessary expenses of the property shall be fined or imprisoned.

Identity Theft Penalty Enhancement Act Public Law 108-275

This law enhances the penalties for individuals who knowingly transfer, possess, or use the means of identification of another person to commit a serious Federal predicate offense including various portions of United States Code relating to banking.