



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

May 25, 2004

Mr. Hugo Teufel
Associate General Counsel (General Law)
Department of Homeland Security
Office of the General Counsel
Washington, DC 20528

Re: RIN 1601-AA14

Dear Mr. Teufel:

The Office of the Comptroller of the Currency (OCC) is filing this letter in response to the request of the Department of Homeland Security (DHS) for comments on the interim rule entitled "Procedures for Handling Critical Infrastructure Information."

To encourage voluntary submission of information to prevent terrorism, the interim rule establishes security procedures to protect confidential information submitted by the public to the DHS that relates to the security of critical infrastructure systems. Such information is referred to as "critical infrastructure information" or "CII." The DHS has invited specific comments regarding whether to revise the rule to extend its protections to information submitted indirectly to the DHS through another Federal agency. This revision would permit the national banks that the OCC supervises to submit CII directly to the OCC. We, in turn, would forward that information to the DHS.

We object to revisions in the interim rule that would permit the indirect submission of CII to the OCC. Being placed in the position of acting as an intermediary for the transmittal of this type of information to the DHS could result in substantial confusion regarding the permitted use of this information that could hamper our supervision of national banks. In particular, the restrictions on an agency's use of CII and the potentially severe penalties for misuse may impede or delay our ability to take supervisory or enforcement action. Moreover, it is more efficient for a special submission of this nature to be made directly to the DHS.

The Critical Infrastructure Information Act of 2002 (the CII Act) and the interim rule state that they do not limit or affect a Federal agency's ability to obtain information pursuant to applicable authority. At the same time, however, the OCC is precluded from using CII and information derived from CII for regulatory purposes without the written consent of the submitter bank. Moreover, information submitted as protected CII, including notes of conversations between the bank staff and OCC staff, would be presumed to be protected CII unless and until the DHS Program Manager makes a contrary determination. An OCC employee who knowingly discloses

protected CII without authority shall be fined, imprisoned for not more than one year, or both, and shall be removed from employment.

Information that a national bank identifies as CII and voluntarily submits to the OCC is likely to be duplicative of information that the OCC has obtained or could obtain through our supervisory processes and authority. Thus, substantial confusion and potential impediments to our ability to take supervisory or enforcement actions could arise if we seek to use such information, which also has been submitted to us as CII, for regulatory and enforcement purposes. The potential severe penalties for misuse of CII and the presumption that information submitted as protected CII is in fact protected CII will make it essential for the OCC to be able to show that we obtained the information in question on the basis of our supervisory authority, independent of the CII Act and the DHS regulation. Questions about the basis on which we obtained the information could lead to delay in our ability to take regulatory or supervisory action. Delay may continue pending either the OCC's receipt of permission from the submitter bank to use the information for regulatory purposes or a determination by the DHS Program Manager that the information is not protected CII. Under these circumstances, the OCC's ability to take prompt and effective supervisory action may be seriously compromised.

The OCC recommends that the final rule, like the interim rule, limit the submission of CII to the DHS and not extend the protections of the CII Act to information submitted indirectly to the DHS through another Federal agency, such as the OCC. We recognize that the DHS may provide protected CII to the OCC in the interest of protecting the critical infrastructure, and we raise no objection to this, as receipt of such information from the DHS would not adversely affect the OCC's supervision of national banks.

Sincerely,

Ralph E. Sharpe
Deputy Comptroller