



March 3, 2016

Via email: prainfo@occ.treas.gov

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
Attention: 1557-0231
400 7th Street SW
Suite 3E-218, Mail Stop 9W-11
Washington, DC 20219

Re: OMB Control Number 1557-0231 – Information Collection Extension Bank
Secrecy Act/Money Laundering Risk Assessment

Dear Sir or Madam:

BankUnited (“the Bank or BankUnited”)¹ appreciates the opportunity to comment on the Office of the Comptroller of the Currency’s (“OCC”) proposed expansion of the Bank Secrecy Act/Money Laundering Risk Assessment, also known as the Money Laundering Risk (“MLR”) System, to include information collected from midsize and large bank populations.²

BankUnited supports the notion of modernization of the information technology (“IT”) infrastructure within the OCC in much the same way as FinCEN updated its IT infrastructure over the past several years in order to enable it to analyze the suspicious activity report (“SAR”) data it receives from domestic financial institutions. Conceptually, the ability of the OCC to receive standardized MLR data from a broader set of institutions will enable it to perform its oversight responsibilities in a more sophisticated manner and, in turn, provide feedback to the financial institutions it regulates in a more meaningful way. As has been discussed previously in the ongoing public-private sector dialogues, for example, in the context of optimization of transaction monitoring systems to reduce the number of false alerts, obtaining the correct data so as to enable robust interrogation is a critical success factor. Unfortunately, the present MLR system is unsuited for this type of enhanced data analysis and is, therefore, unequipped to provide meaningful feedback that would advantage either the OCC or OCC-regulated financial institutions on an enterprise basis. Until such time as the IT infrastructure of the OCC is modernized (via software and data structure improvement) and the type of data it seeks to receive is enhanced, expanding the MLR system beyond those institutions currently covered creates no advantage to the OCC nor the financial institutions it regulates and adds an additional layer of cost and effort redundancy that is disadvantageous to all stakeholders.

¹ BankUnited is BankUnited, N.A., a national bank and wholly-owned subsidiary of BankUnited, Inc. (NYSE: BKU), is headquartered in Miami Lakes, Florida with nearly 100 branches throughout Florida and six banking centers in the New York metropolitan area. The Bank is ranked third on Forbes Magazine's list of "Best Banks in America 2015," and one of the largest independent depository institutions headquartered in Florida by assets.

² Information Collection Extension With Revision; Comment Request; Bank Secrecy Act/Money Laundering Risk Assessment, 81 Fed. Reg. 143, 143 (notice and request for comment, Jan. 4, 2016).



As a threshold matter, we believe the OCC should undertake the enhancements to the MLR system set out in subparagraph (a) below. Once this enhanced system is built, the OCC should consider beta testing it with a representative group of financial institutions to refine the system to maximize its value to the OCC and the financial institution community it regulates (BankUnited would be happy to be part of such a beta testing team and assist with coordination in that regard). Thereafter, the OCC should roll out the system sequentially across segments of its regulated community on a risk-based basis until it is fully operational.

- a. In order for the MLRA to be an effective utility that scales across a diverse array of financial institutions, the OCC should consider designing a custom and flexible, cloud-based architecture within a secure data center.³ Financial institutions should be given the option to transmit MLR data to this secure environment via multiple channels (similar to the current FinCEN e-filing methods) in a manner that best suits their current technical capabilities. Each institution will be given a baseline data dictionary which corresponds to the minimum level of required data mapping to support file creation. Mature institutions with robust risk assessments should experience minimal levels of additional effort to comply with this new process as they could quickly modify their existing risk assessment logic in order to conform to the new standardized file transmission requirements. This effort would not appear to be more burdensome than the production of ad-hoc data requests that are required under the current targeted exam process. Institutions with less robust data environments will have the option to use alternative data delivery methods designed by the agency and/or administrator.

As data is sourced to the MLR platform, the agency/administrator will perform the data extraction and transformation exercises needed to create a unique multi-dimensional representation of each institution's risk profile. This effort would also permit the agency/administrator to create multiple 'views' of the data. One view would be dedicated to private internal analytics by the OCC (or its administrator) for purposes of risk targeting, exam planning and resource planning while the other view would be provisioned as a critical feedback mechanism whereby data would be sanitized and shared with the bank community as a whole via the OCC's BankNet portal. By aggregating and dimensioning the risk data associated with these institutions, the OCC will benefit not only from its own analytics, but will also gain significant economies of scale by sharing sanitized profile data with the user community. This would lead to better-focused private sector analysis and innovation thereby improving data analysis without a substantial increase in the overall burden on bank resources.

Since a shared data model is used across institutions, banks would be able to build analytics to support risk decisions in a manner that does not exist today. Similarly, it would also permit the banks to leverage peer statistics to more proactively dimension

³ The data center could be managed and maintained by an independent third party administrator with the requisite knowledge, skills, and abilities associated with both the BSA and data analytics or, if the budget, expertise, and headcount are available within the OCC, it could be managed internally or outsourced to FinCEN. Such a decision would, of course, be up to the OCC.



the risk of a new product or service ensuring proper attention and resources are applied to the underlying control environment in a manner consistent with leading practices.

Finally, we believe such an analytics environment would not only benefit the risk assessment process, but would also be scalable enough to potentially standardize the BSA model risk management examination efforts by enabling both the OCC and peer institutions to analyze and compare transaction monitoring model performance on a horizontal basis.

If the OCC is unable or unwilling to undertake the type of IT modernization envisioned above *before* expanding the reach of the MLR, BankUnited believes that the OCC should not expand the MLR system because there is no apparent benefit to anyone in the bank regulatory ecosystem.

To aid the OCC in evaluating the cost-benefit of the proposed expansion, BankUnited has the following specific observations based on our own experience and from informal feedback we received from several peer institutions.⁴

1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility

It is difficult to assess how the information collected is necessary to the proper performance of the oversight functions of the OCC without greater transparency into the use the OCC presently makes of the data from the banks currently subject to the MLR System. Although the OCC has suggested that the MLR tool is important in identifying and quantifying risks, we can find no publically available evidence to validate how the MLR System accomplishes this objective. Until there is greater clarity on this point it makes little sense to expand it to a broader set of financial institutions.

Indeed, the collection of raw numbers without the context of the risk surrounding those numbers would appear to be an exercise of limited analytic value. That is, the MLR System uses the Quantity of Risk Summary Form (“RSF”) to collect data from banks regarding its different products, services, customers, and geographies using data entry and drop-down data fields.⁵ Unless this inherent risk data is benchmarked against peer banks with similar footprints, it is difficult to understand how this would help the OCC properly perform its oversight functions. For example, raw data numbers provided without context of the type of customer or geography associated with those numbers offers no real insight into the inherent risk associated with those numbers. Again, we can find no public evidence that this kind of benchmarking/horizontal review is being undertaken. Certainly, none of our peer banks receive feedback from the OCC containing this kind of data analysis.

Finally, this one-size fits all approach to evaluating a bank’s risk is at odds with the FFIEC BSA/AML Examination Manual, the OCC’s own statements, as well as global standards for risk

⁴ OCC mid-size bank peer group dialogue

⁵ Office of the Comptroller of the Currency, Money Laundering Risk System User Guide for Banks 3 (2015).

assessments published by the Wolfsberg Group.⁶ According to the FFIEC Manual, “[t]here are many effective methods and formats used in completing a BSA/AML risk assessment; therefore, examiners should not advocate a particular method or format. Bank management should decide the appropriate method or format, based on the bank’s particular risk profile.”⁷ John C. Dugan, then Comptroller of the Currency, supported an individualized approach to risk assessment in 2007 when he disapproved of a “one size fits all” approach, stating that the OCC has “long applied a risk-based approach to supervision.”⁸ To the extent the MLR System is an effort to impose a single method for conducting a risk assessment without a full explanation as to how this will advantage OCC regulatory oversight; it would not appear to be a worthwhile undertaking. The effort required to convert a bank’s customized risk assessment (already received by the OCC during the examination process) into a minimally useful standard set of data points will require the devotion of time and resources that could be better spent attending to the business of AML compliance. The current proposal would appear to require the use of the MLR in addition to the individualized risk assessment already required to be submitted by covered banks without articulation of the benefit of such apparent redundancy.

2. The accuracy of the agency’s estimate of the burden of the collection of information

The OCC estimates that the annual burden for midsize banks will be 1,175 hours, or 25 hours per bank. The OCC bases this estimate on an estimated number of 47 midsize banks. While we believe that the work load for us would generally fall within the OCC estimates wholesale estimates are difficult to make. Indeed, some peer banks have estimated it will take 40 to 50 hours for their bank and will require a team effort from different segments of their bank. What is clear is that the cost estimates vary greatly depending on the size, structure, reporting format currently utilized, and technological resources available to each bank. Basing a rule-making on a “guesstimate” is problematic. More concrete data should be obtained.

Moreover, there is a distinct level of segmentation within the midsize bank group based on the size, structure, level of BSA technological sophistication and access to data utilities. While more technically mature institutions such as BankUnited have developed more efficient and responsive data query utilities, unless the OCC redesigns the MLR program as described above, we believe that for many of our peers the current process as proposed (to the extent we are able to discern it from publicly available information) will consume at least 40 hours per bank to have an FTE manually retrieve data to suit the form’s parameters, validate it, and subsequently key it into a web portal. In short, for many larger midsize banks, a great deal of time will have to spend time transforming automated extracts into a manual and inefficient process which is not only materially more expensive but also redundant.

3. Ways to enhance the quality, utility, and clarity of the information to be collected

⁶ See, e.g., The Wolfsberg Frequently Asked Questions on Risk Assessments for Money Laundering, Sanctions and Bribery & Corruption, located at: <http://wolfsberg-principles.com/pdf/home/Wolfsberg-Risk-Assessment-FAQs-2015.pdf> (“There are many ways to conduct a risk assessment and each FI should implement appropriate methodologies based on a number of different factors, including its size, global footprint, markets, organisation and risk appetite, amongst others.”).

⁷ FFIEC Manual, 18.

⁸ John C. Dugan, Comptroller of the Currency, Remarks Before the Independent Bankers Association of Texas (Oct. 2, 2007), <http://www.occ.gov/news-issuances/speeches/2007/pub-speech-2007-105.pdf>.

We have set out in subparagraph a. above our suggestion for improvement to the MLR System. In its current state, we believe that the collection of data as currently contemplated is not useful, nor is it worth the costs in terms of staff hours, systems modifications, and training. As indicated above, rather than expand a system of limited utility, it is our suggestion that the OCC establish an analytic team⁹ dedicated to importing, extrapolating, and analyzing the data collected from banks. The platform should be designed to be flexible and dynamic to account for the individual bank's size, geography, and business. Once established and beta tested, consideration could be given to rolling it out on a risk-based basis to OCC regulated banks.¹⁰

4. Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology

Certainly, eliminating the requirement to provide duplicative information in a new format, and instead use the risk assessment and associated information already provided to the OCC, would decrease the burden imposed on the regulated financial services community.

The burden could be minimized by integrating the data collection on a rolling basis as part of the OCC exam. While the OCC reviews the bank's risk assessment, it can collaborate with the bank to move the information into the new database. In addition, starting with a pilot group to work through new process would be helpful in streamlining the roll-out to a larger segment of banks. These approaches would serve to provide the OCC with feedback as to whether the MLR System is collecting the correct information in the most efficient fashion, while providing comfort to the bank that it is inputting the requested data in conformance with OCC expectations.

There are also several technical errors that appear in the user guide that should be corrected. Page 7 of the user guide describes a "coding error." Pages 7-8 of the user guide describes an error message that will immediately appear and should be disregarded. On page 9, the user is directed to delete a blank row in order to submit the RSF. These technical defects will only slow down and frustrate the process and should be rectified before the system is rolled out to an increased number of banks.

5. Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information

The cost to implement the MLR System will vary greatly bank to bank depending on the bank's infrastructure, current risk assessment process, and resources. Anecdotal information from the community banks currently subject to the MLR System suggests that they find it to be time consuming and somewhat labor intensive, deriving little value for the work required. The brief conversations we have held among peer institutions support the view that the MLR System will

⁹ Such a team could be created using in-house resources or, as was done in the IT modernization efforts at FinCEN and OFAC, a Request for Proposal could be issued to third-party vendors to work with the OCC to build a smarter MLR System.

¹⁰ Such a risk-based roll out might include removing categories of banks that pose a very low risk for money laundering while including other banks whose money laundering risks are higher.



impose additional costs in terms of dollars spent, training undertaking, system improvements, possible headcount expansion, post data submission validation and independent testing.

Conclusion

BankUnited welcomes process improvements that will enhance and streamline the BSA examination process. Our Bank is committed to public-private sector collaboration. It is in this spirit of constructive dialogue that we offer the process enhancements outlined above. We believe that were such a project undertaken, all stakeholders in the BSA examination process would be advantaged, which is foremost in our mind as we endeavor to create improved systems to assess our residual risks in order to be better able to detect and report suspicious activity. Unfortunately, merely expanding the antiquated MLR System in its current design to a broader set of financial institutions with more complex risk profiles appears to us to be a step in the wrong direction.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Nathan', followed by a horizontal line extending to the right.

Scott Nathan
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