

January 29, 2016

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency

Attn: 1557-0231

400 7th Street, S.W., Suite 3E-218

Mail Stop 9W-11

Washington DC 20219

Subject: Bank Secrecy Act/Money Laundering Risk Assessment – a.k.a. Money Laundering Risk (MLR) System

This letter is in response to the Office of the Comptroller of the Currency's (OCC) request for comment on the agency's proposal to collect MLR information from all financial institutions supervised by the OCC, on an annual basis. I appreciate the OCC's request for public comment. I fully support the agency's quest to combat money laundering, terrorist financing, and other illicit activity.

The OCC invites comments on the following:

1. Whether the collection of the proposed information is necessary for the proper performance of the OCC and whether the information has practical utility
2. The accuracy of the OCC's estimate of burden
3. Ways to enhance the quality, utility and clarity of the information
4. Ways to minimize burden on respondents via the use of technology

I will comment on items #1, #2, and #4.

#1. OCC NEED FOR THE INFORMATION AND ITS PRACTICAL UTILITY

The proposed collection of information has *no practical utility*.

SAM SYSTEMS

OCC examiners currently require Large and Midsize Banks to maintain automated Suspicious Activity Monitoring (SAM) Systems. These automated software applications, which operate daily, evaluate *transaction data*, looking for indicators of suspicious or unusual activity. If the automated system detects suspicious activity, it will alert the bank's BSA Officer who will investigate. The OCC regularly examines SAM systems for adequacy and effectiveness and the agency writes about it in OCC Reports of Examination and Supervisory Letters.

It is difficult to understand how receiving *aggregated data on an annual basis* (i.e., MLR information) enhances the OCC's ability to identify high-risk institutions and allocate resources in Large and Midsize banks when the OCC already has ready access to SAM systems and *granular* transaction data.

In the final rulemaking, the OCC should explain how receiving abstract aggregated data on annual basis is an improvement to the transaction data and SAM system information the OCC already reviews via its *resident* examination staff (in Large Banks) and Midsize bank examiners.

BE CONSISTENT IN YOUR THINKING

In the OCC's Annual Report for Fiscal Year 2014, the agency writes (page 34), "In 2014, the OCC took several enforcement actions against banks that failed to maintain effective BSA/AML programs and file complete, timely and accurate suspicious activity reports (SAR)." *Hmmm?* In 2014, the OCC initiated 252 enforcement actions against banks and institution-affiliated parties but only 16 of them dealt with BSA/AML.¹ And OCC data on trends in BSA/AML-related enforcement actions has remained steady since 2010 (See OCC Semiannual Risk Perspective, Fall 2015).

Further, in the 2014 annual report, the OCC writes:

"... the number of BSA-related enforcement actions declined overall, and, in fact, the vast majority of OCC supervised banks were found to have programs in place that meet requirements of the BSA. OCC examiners are increasingly seeing stronger commitment from senior bank management to resource these functions adequately, empower and pay BSA staff accordingly, and, when mistakes – in advertent or deliberate – occur, hold the responsible party or parties accountable."

Additionally, in the OCC's Semiannual Risk Perspectives (Fall 2015), page 33, the OCC discloses that less than 10% of all "Matters Requiring Attention" relate to BSA/AML. This means that 90% of all OCC concerns are in *other areas – not BSA*.

Given the above facts, the OCC should explain in its final rulemaking why collecting rudimentary MLR summary data is needed when there are *relatively* few BSA enforcement actions, few MRAs, and a noticeably strong commitment by bank management to BSA.

#2 THE ACCURACY OF THE OCC'S ESTIMATE OF BURDEN

The OCC's burden estimate is too low.

In its final rulemaking, the OCC should explain how it estimated burden on the Midsize and Large Bank populations, the accuracy or margin of error around its estimate, and whether the agency considered the hours and cost necessary to develop programs to compile information from systems into a format compatible with the updated Risk Summary Form (RSF). If the OCC did not survey Large and Midsize Banks when developing the estimates, the OCC should explain why it did not survey such institutions.

#4 WAYS TO MINIMIZE BURDEN ON RESPONDENTS

The OCC should use information it already gathers. Much of the MLR information proposed to be collected should be duplicative and redundant from information the OCC already gathers in the normal course of bank supervision. The OCC has examined these banks for years (since 1864), with *resident*

¹ See OCC Annual Report Fiscal Year 2014, Section Four: Licensing and Enforcement Measures. Also, see OCC Semiannual Risk Perspective, Fall 2015.

examination staff that live in Large Banks. The OCC should already have this information – *and more* – recorded in OCC systems of record.

The OCC's final rulemaking should explain why annual MLR information is not *duplicative* and *redundant* from the information the OCC already gathers in the normal course of supervision.

PLEASE CONSIDER ALL PUBLIC COMMENTS

The OCC improves the quality, utility and clarity of information when it attentively responds to all significant public comments before finalizing rules.

Presidential Executive Order 13563 (January 18, 2011) sets forth the general principles of regulation. Section 2 of the Order requires regulations to be adopted through a process involving public participation. To that end, regulations are to be based, to the extent feasible, on the open exchange of information and perspectives among affected stakeholders and the public. Federal agencies are to base their reasoning and conclusions on the rulemaking record, consistent of the comments, scientific data, expert opinions, and facts accumulated during the pre-rule and proposed rule stages.²

If the OCC and American people are to benefit from a process of public comments, it is important for the public to know whether the OCC considered all comments, and if the views or evidence presented was accepted or rejected by the agency. When the OCC leaves unclear whether it considered comments, the public record is incomplete and the OCC creates the perception that it makes final decisions on rules without considering the data, views, and arguments of others. The opportunity to comment on proposed regulation is meaningless unless the OCC responds to germane points raised by the public.

I appreciate the opportunity to comment on the OCC's proposal. I wish the agency the best of luck.

Sincerely,

Sandra A. Holly
Hyattsville, MD

² If the rulemaking record contains persuasive new data or policy arguments, or contains difficult questions, there is a presumption that the agency will amend aspects of the rule to reflect these new issues, or terminate the rulemaking.