



March 4, 2016

Mary H. Gottlieb
Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
Attn: 1557-0231
400 7th Street, SW
Suite 3E-218, Mail Stop 9W-11
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Re: Agency Information Collection Activities; Information Collection Extension With Revision; Comment Request; Bank Secrecy Act/Money Laundering Risk Assessment

Dear Ms. Gottlieb:

The Clearing House Association L.L.C. (“**TCH**”)¹ appreciates the opportunity to comment on the Office of the Comptroller of the Currency’s (“**OCC**”) proposal to revise and extend its continuing information collection entitled “Bank Secrecy Act/Money Laundering Risk Assessment” (“**Proposal**”), also known as the Money Laundering Risk (“**MLR**”) System. The Proposal would, for the very first time, expand the scope of banks subject to MLR System reporting from the community banks to which it has historically applied to include all OCC-supervised institutions, including large and midsize banks.

➤ **There is no prudential or supervisory benefit to requiring the use of the MLR System for large or midsize banks that have full-time, embedded examiners on site.**

The Clearing House believes that the Proposal’s expansion of the MLR System reporting requirement to all OCC-supervised institutions is unnecessary and inappropriate. Although the MLR System may be a useful tool for OCC supervisors in setting examination priorities for small community banks, we do not believe that there would be any prudential or supervisory benefit to requiring the use of the MLR System for large or midsize banks that have full-time, embedded examiners on site and are already subject to a significantly larger, more comprehensive and more robust supervisory and

¹ The Clearing House is a banking association and payments company that is owned by the largest commercial banks and dates back to 1853. The Clearing House Payments Company L.L.C. owns and operates core payments system infrastructure in the United States and is currently working to modernize that infrastructure by building a new, ubiquitous, real-time payment system. The Payments Company is the only private-sector ACH and wire operator in the United States, clearing and settling nearly \$2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume. Its affiliate, The Clearing House Association L.L.C., is a nonpartisan organization that engages in research, analysis, advocacy and litigation focused on financial regulation that supports a safe, sound and competitive banking system.

examination framework. Subjecting large and midsize banks to the MLR System requirement would impose new and needless burdens on those banks and provide little, if any, countervailing benefit.

➤ **The Proposal significantly underestimates the burden that will actually be imposed on financial institutions if the OCC were to act on its Proposal.**

Expanding the scope of the MLR System’s application would require new reporting entities to develop and/or revise specific information collection and reporting systems, processes, and controls to comply with the new reporting requirements. We believe that the burden of doing so is significant, and well in excess of the burden estimates for large banks provided by the OCC in the Proposal. The expenditure of finite anti-money laundering and counter-terrorist financing (“**AML/CFT**”) resources on such efforts would not appear to enhance large or midsize bank compliance with either the Bank Secrecy Act and its implementing regulations and guidance (“**BSA/AML**”) or the Office of Foreign Assets Control (“**OFAC**”) sanctions programs, nor does it appear to assist law enforcement in combating financial crimes or terrorism. In addition, it is unlikely that this Proposal would enhance the OCC’s supervisory understanding of these institutions, and would instead only divert finite resources from current AML/CFT compliance programs.

➤ **Expanding the MLR System’s “one-size-fits all” information collection requirement to large and midsize banks is inconsistent with the OCC’s tailored supervisory approach to identifying BSA/AML risks and the uniform, risk-based framework for addressing BSA/AML risks established by the federal banking agencies and FinCEN.**

Finally, expanding the MLR System’s “one-size-fits all” information collection requirement to large and midsize banks is inconsistent with the OCC’s tailored supervisory approach to identifying BSA/AML risks and the risk-based framework established by the federal banking agencies and FinCEN for addressing these risks. Similarly, because the Proposal would apply only to OCC-supervised institutions, it is also inconsistent with the stated policy of the federal banking agencies and FinCEN as set forth in the FFIEC BSA/AML Examination Manual, which establishes a uniform approach among the agencies “to ensure consistency in the application of the BSA/AML requirements.”² Expanding the scope of the MLR System’s application will disadvantage all OCC-regulated national banks, as similarly-situated state-chartered banks would not be subject to similar requirements by their primary federal regulators or the significant new burdens those requirements would impose.

➤ **At a minimum, should the OCC intend to expand the MLR System to large and midsize institutions, TCH urges the OCC to propose such expansion through a public notice and comment process that would explain the reasons for and attempt to justify the costs and burden of the expansion of the system.**

² See FFIEC Bank Secrecy Act/Anti-Money Laundering Examination Manual, 2014, “Introduction,” p. 1.

For all of these reasons, we respectfully request that the OCC revise the Proposal to eliminate any expansion of the information collection requirements set forth therein beyond its current scope of application. At a minimum, if the OCC does choose to continue to consider expanding the MLR System reporting requirement to large and midsize banks, we believe that the OCC should propose and seek comment on this expansion through a public rulemaking or other notice that (i) explicitly states that the Proposal would for the first time expand the scope of banks subject to MLR System reporting from the community banks to which it has historically applied to include all OCC-supervised institutions and (ii) provides and seeks public comment on the OCC's rationale for the proposed expansion and the costs and benefits thereof, none of which are addressed in the pending Proposal.

I. Background

The MLR System is a tool that the OCC has utilized for many years to ensure BSA/AML/OFAC compliance among community banks. The Proposal states, in part, that “the MLR System . . . is an important tool for the OCC's Bank Secrecy Act/Anti-Money Laundering/OFAC supervision activities because it allows the agency to better identify those institutions, and areas within institutions, that pose heightened risk and allocate examination resources accordingly. This risk assessment is critical in protecting U.S. financial institutions of all sizes from potential abuse from money laundering and terrorist financing.”³

Comptroller Curry has made public statements lauding the efficacy of this system. In July 2012, Comptroller Curry testified before the Senate Permanent Subcommittee on Investigations that the OCC's MLR database includes a detailed inventory of the products and services offered by each community bank so that the OCC can assess the BSA/AML risks within each particular institution for use in scoping and staffing examinations,⁴ and in March 2013, before the Senate Committee on Banking, Housing & Urban Affairs (“**Senate Banking Committee**”), he stated that the MLR System is used by the OCC “to identify potentially high-risk banks and activities that warrant increased scrutiny and supervisory resources.”⁵ He noted at that time that the OCC was considering expanding the application of the MLR System to large and midsize banks, but he provided no details regarding the possible benefits of such expansion for either the agency, law enforcement, or those institutions.

Indeed, the OCC has previously considered expanding the MLR System to large and midsize banks. In March 2013, the OCC noticed a proposal to extend its continuing information

³ See 81 Fed. Reg. 143 (Jan. 4, 2016).

⁴ See Comptroller Curry's Testimony before the Senate Homeland Security Permanent Subcommittee on Investigations, *available at* <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/us-vulnerabilities-to-money-laundering-drugs-and-terrorist-financing-hsbc-case-history> (July 17, 2012).

⁵ See Comptroller Curry's Testimony before the Senate Banking Committee, *available at* <http://www.banking.senate.gov/public/index.cfm/hearings?ID=66D5F8E5-2EA1-48E1-ADB6-5B514960BA8D> (March 7, 2013).

collection through the MLR System and to expand the requirements thereunder to the large and midsize institutions under its jurisdiction. While the information collection extension was finalized, the proposal to extend the MLR System to large and midsize banks was not finalized. Therefore, those institutions have not previously been, and are not currently, subject to the MLR System information collection requirement. Through the Proposal, the OCC seeks once again to extend the MLR information collection system to large and midsize banks, although the Proposal does not make this intent explicit, nor does it include any discussion or explanation whatsoever of its rationale for doing so.

II. There is no prudential or supervisory benefit to requiring the use of the MLR System for large or midsize banks that have full-time, embedded examiners on site.

As TCH asserted in response to the OCC's 2013 proposal to expand the MLR System reporting requirement to large and midsize banks, those institutions are already subject to a significantly larger, more comprehensive and more robust supervisory and examination framework. Large and midsize banks have on-site OCC examination teams that have timely access to bank management and information, thereby providing the OCC with the information necessary to conduct BSA/AML/OFAC supervisory and examination activities with respect to those institutions and assess those institutions' BSA/AML/OFAC risks. This continues to be the case. The Proposal does not provide any analysis as to how extending the MLR System to all institutions subject to OCC supervision, including large and midsize institutions, would enhance "the ability of examiners and bank management to identify and evaluate BSA/AML and sanctions risks associated with banks' products, services, customers, and locations" or how information provided through the system would assist law enforcement in combating financial crimes or terrorism. Although the OCC currently has access in real-time to BSA/AML/OFAC-related information about large and midsize banks through its on-site examination teams, the Proposal does not explain how BSA/AML/OFAC risk assessment information provided through the MLR System would enhance the OCC's understanding of such risks at those institutions or why this information is necessary for the OCC to address supervisory concerns about those institutions.

Additionally, BSA/AML/OFAC information about large and midsize banks is available to on-site examiners in real-time throughout the year, thereby making an annual reporting requirement providing primarily comparable information even more unnecessary. The OCC has access to this information on a dynamic basis, allowing it to assess an institution's BSA/AML/OFAC risks and compliance efforts at any time. The OCC has not explained why an annual filing by these institutions of information generally already available to the OCC, whereby information could be stale by the time it is received by the OCC, would assist either the agency, law enforcement, or the regulated institutions themselves in identifying suspicious activity or combating financial crimes or terrorist activities. Therefore, there does not appear to be any benefit to imposing this burdensome information requirement on this population of banks. We believe that it is unnecessary to expand the scope of application of this information collection system to large and midsize banks, as comparable information is already available to the OCC through the supervisory and examination process.

III. The Proposal significantly underestimates the burden that will actually be imposed on financial institutions if the OCC were to act on its Proposal.

The Proposal's estimates assume that large and midsize banks currently have the data required by the MLR System readily available and in a format compatible with reporting in the requested manner. While these institutions generally have the underlying data collected through the MLR System, there are a number of changes that large and midsize banks would have to make to their data collection systems and operations to implement the OCC's proposed MLR System revisions, and in some instances, institutions may resort to manually obtaining the required data.⁶ These changes would require banks to incur significant human capital and operational costs. Therefore, while, it is difficult to estimate the exact number of hours it would take for large and midsize financial institutions to implement new systems or amend existing systems to collect the MLR System information in the required format, TCH believes that the initial implementation burden would be substantial and that the ultimate data collection system requirements could result in an annual burden for large banks exceeding the 2013 Proposal's estimated 100 hours and the 2016 Proposal's estimated 80 hours.⁷

IV. Expanding the MLR System's "one-size-fits all" information collection requirement to large and midsize banks is inconsistent with the OCC's tailored supervisory approach to identifying BSA/AML risks and the uniform, risk-based framework for addressing BSA/AML risks established by the federal banking agencies and FinCEN.

In March 2015, Comptroller Curry testified before the Senate Banking Committee that the "OCC seeks to tailor the application of our supervisory standards and expectations to the size and complexity of each individual bank."⁸ Yet, the Proposal would unnecessarily, and without explanation, extend a uniform information collection requirement currently applicable only to smaller institutions to assist the OCC in assessing the BSA/AML/OFAC risks at individual institutions for use in "scoping and staffing examinations" and "to identify potentially high-risk banks and activities that warrant increased scrutiny and supervisory resources" to institutions that are already subject to a significantly larger, more comprehensive and more robust supervisory and examination framework and that have full-time, embedded examiners on site with access to virtually all BSA/AML/OFAC-related information at those

⁶ In some cases, implementing the MLR System may involve hiring additional full-time programming employees to develop new or significantly modify existing programming routines for systems or processes that are either maintained in-house or managed by vendors.

⁷ We assume that the estimated 2016 burden has been reduced from the estimated 2013 burden because the "2015 format has a fully automated format that makes data entry quick and efficient and provides an electronic record for all parties." However, no explicit reason is given as to why the burden estimate in the Proposal is lower than the estimated burden from 2013.

⁸ See Comptroller Curry's Testimony before the Senate Banking Committee, *available at* <http://www.occ.gov/news-issuances/congressional-testimony/2015/pub-test-2015-39-written.pdf> (March 19, 2015).

institutions. Indeed, this on-site examination framework already provides examiners with access to the information needed to assess large and midsize bank's BSA/AML/OFAC risks and to determine what aspects of a large or midsize bank they will examine, which the MLR System information will not alter in any meaningful way. Rather, the information provided thereunder will likely simply be redundant with information already available to the OCC.

Further, the blanket application of the MLR System to all OCC-supervised institutions is inconsistent with the federal risk-based framework for addressing BSA/AML/OFAC risks. Indeed, AML/CFT compliance at any given institution is dependent on the firm's structure, risk assessment and risk-based design, as specified by the FFIEC exam manual, which states that "a banking organization has discretion as to how to structure and manage its BSA/AML compliance program."⁹ The OCC does not explain how the collection of the data required by the MLR System at all OCC-supervised institutions is consistent with this risk-based framework or how this data collection would help those banks carry out an institution-specific risk-based analysis of their businesses and activities, which all banks in the United States are required to conduct in designing BSA/AML/OFAC compliance programs under federal law and guidance.

The OCC also does not provide an explanation as to why it is deviating from the multi-agency agreed-upon uniform BSA/AML examination approach set forth in the FFIEC BSA/AML Examination Manual.¹⁰ Expansion of the MLR System could result in incongruous BSA/AML/OFAC supervision and examination practices among the various agencies responsible for implementing and enforcing the BSA and its implementing regulations and guidance and OFAC sanctions programs, contrary to the uniform approach established by the banking agencies and FinCEN. Further, we believe that the MLR System could disadvantage OCC-regulated national banks, as state-chartered banks are not subject to similar requirements by their primary federal regulators. Compliance with the MLR System requirement would likely cause OCC-regulated institutions to expend finite AML/CFT resources on efforts to comply with the Proposal, which would divert these finite resources from current AML/CFT compliance programs without enhancing BSA/AML or OFAC compliance or assist law enforcement in combating financial crimes or terrorism.

- V. At a minimum, should the OCC expand the MLR System to large and midsize institutions, TCH urges the OCC to propose such expansion through a public notice and comment process that would explain the reasons for and attempt to justify the costs and burden of the expansion of the system.**

⁹ See FFIEC Bank Secrecy Act/Anti-Money Laundering Examination Manual, 2014, "BSA/AML Compliance Program Structures: Overview," pp. 155-160. In addition, the Federal Reserve Board's Supervisory Guidance set forth in SR08-08 and FinCEN's "Culture of Compliance" memorandum indicate that senior management is ultimately responsible for compliance.

¹⁰ See FFIEC Bank Secrecy Act/Anti-Money Laundering Examination Manual, 2014, "Introduction," p. 1.

If the OCC intends to expand the MLR System to large and midsize banks, TCH respectfully requests that the OCC propose such expansion through a public rulemaking or other notice that (i) explicitly states that the Proposal would for the first time expand the scope of banks subject to MLR System reporting from the community banks to which it has historically applied to include all OCC-supervised institutions and (ii) seeks public comment on the Proposal and explains the reasons for and attempts to justify the costs and burdens of the expansion of the system, rather than seeking to implement such expansion through an information collection extension request that, without explanation, would expand the collection of information through the MLR System to all OCC-supervised institutions, including large and midsize banks. This would provide affected institutions appropriate notice of the OCC's Proposal as well as the time and opportunity to further evaluate and provide substantive comment on the OCC's Proposal and would be consistent with the requirements of the Administrative Procedure Act.

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We would welcome the opportunity to provide you with any assistance or input that you might find helpful. Should you have any questions or need further information about any of the matters discussed in this letter, please do not hesitate to contact me at 202-649-4608 or angelena.bradfield@theclearinghouse.org.

Respectfully submitted,



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cc:

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