American Bankers Association
Building Success. Together.

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Legislative and Regulatory Activities Division
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Re: Bank Secrecy Act/Money Laundering Risk Assessment, OMB Control No. 1557-0231

Dear Sir or Madam:

The American Bankers Association[1] appreciates this opportunity to comment on the proposed changes to the Money Laundering Risk Assessment (MLR). The MLR is used by the Office of the Comptroller of the Currency (OCC) when examining national banks and federal thrifts for compliance with Bank Secrecy Act (BSA) and anti-money laundering (AML) regulations. Community national banks have been required to complete the form for a number of years but the OCC now proposes to apply the data collection more broadly, expanding it to all OCC-supervised institutions.

On January 4, 2016, the OCC issued a 60-day Paperwork Reduction Act (PRA) notice in the *Federal Register* soliciting comments on a proposal to update and expand the use of the MLR. ABA filed comments (attached), questioning the agency's use of the PRA process to effect such a significant change and the practical utility of the proposed data collection.[2] On August 8, as

[1] The American Bankers Association is the voice of the nation's $16 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $12 trillion in deposits and extend more than $8 trillion in loans.
[2] *See* Letter from Robert Rowe, Am. Bankers Ass'n, to OCC (March 4, 2016), http://www.aba.com/Advocacy/commentletters/Documents/OCCBSAAMLcommentQualityofRiskSummaryForm030416.pdf

required by the PRA process, the OCC published its second request for comment in the *Federal Register.*[3]

On a number of occasions, including our comments filed earlier this year, ABA has raised concerns about the utility of the MLR data collection. Fundamentally, ABA believes that, as currently structured, compiling the data and completing the form is a time-consuming and burdensome process that does little to help national banks or examiners identify BSA/AML risks. The costs and burdens are not justified by the benefits, which have never been clearly demonstrated by the OCC. Indeed, compilation of MLR data consumes resources that would be more productively assigned to efforts to combat money laundering and terrorist financing. Moreover, ABA believes that the burdens imposed may contribute to "de-risking."[4]

Prior ABA Comments

As noted above, this is the second step of the PRA review process. At this stage, the agency is charged with responding to comments and demonstrating to the Office of Management and Budget (OMB) that the collection of information is necessary for the proper performance of the functions of the agency; in particular, the OCC must establish that the information has practical utility.

In ABA's initial comments on the proposed changes, we raised a number of concerns that have not been fully addressed by the agency, which we re-iterate here:

1. The form should be readily accessible to the public to permit feedback (the only form, which takes some effort to locate and presents challenges to download, is the 2012 version and not the current MLR).
2. The OCC has offered no evidence to validate how the tool is used to identify and quantify risks.
3. Because the MLR is applied only to national banks and Federal thrifts, it is inconsistent with the interagency approach to uniform BSA examinations.
4. The OCC's burden estimates are inconsistent with industry estimates; they vastly underestimate the resources needed to collect the data and complete the form. Community banks currently subject to the MLR report that it is both time consuming and burdensome with almost no offsetting benefit for the bank.
5. The proposed expansion merits a full Notice of Proposed Rulemaking and not a simple PRA notice.

De-Risking and Correspondent Banking

The PRA was enacted "to ensure the greatest possible public benefit from and to maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government" and "to improve the quality and use of Federal information to strengthen decision making, accountability, and openness in Government and society."[5] Judged by these standards, the OCC's PRA approval request should be rejected. Not only has the agency

[3] Agency Information Collection Activities: Information Collection Extension With Revision; Submission for OMB Review; Bank Secrecy Act/Money Laundering Risk Assessment, 81 Fed. Reg. 52521 (Aug. 8, 2016)

[4] De-risking is often defined as closing accounts, refusing to do business with certain customers or eliminating products and services due to the regulatory burden associated with compliance.

[5] 44 U.S.C. §3501.

understated the burden imposed by the data collection requirements; the extension of the MLR to all OCC-supervised institutions threatens to accelerate de-risking.

To illustrate this, it helps to consider recent interagency guidance. On August 30, the OCC, the Department of the Treasury, the other federal banking agencies, and the National Credit Union Administration, issued a Fact Sheet on correspondent banking.[6] The Fact Sheet responds to recent criticism and concern that correspondent banking relationships are being terminated due to regulatory expectations for BSA/AML compliance. The MLR data collection, we believe, exemplifies a regulatory demand that encourages banks to re-evaluate decisions to maintain correspondent accounts and related services.

Our members report that compiling data on remittances, money transmittals and correspondent accounts required for the MLR is among the most burdensome and time consuming process of the entire exercise. In part, this is due to the expectation for data to be submitted by country, which often requires manual computation and adjustment to information from a variety of datasets, particularly since the information typically comes from outside sources such as correspondent banks or third-party data processors.

For example, when a bank sends only a small number of transactions to another country or where the income from those transactions is minimal, instead of trying to track and report that information, bank management may conclude that eliminating those transactions and the concurrent reporting for the MLR would improve efficiency. In other words, by excluding certain jurisdictions from wire transfer activity, it eliminates data that needs to be tracked and compiled for the MLR which in turn means that the MLR may be contributing to de-risking**.** This undermines the utility of the data collection and importantly, calls into question whether the burdens associated with the collection have been accurately reflected or considered by the OCC.

The Rationale for the MLR

According to the agency, "The MLR System enhances the ability of examiners and bank management to identify and evaluate any Bank Secrecy Act (BSA)/Money Laundering (ML) and Office of Foreign Asset Control (OFAC) sanctions risks associated with the banks' products, services, customers, and locations."[7] This is a premise that ABA has questioned on more than one occasion.

When we commented earlier this year, ABA reported on the general consensus of bankers that the MLR is not useful to their own risk assessments. In fact, our members report that the design of the form is fundamentally incompatible with their own risk assessment process and they only complete the form to comply with the OCC requirements. The product and service descriptions used in the MLR are misaligned with specific bank offerings[8] and the required reporting time

[6] Board of Governors of the Fed. Reserve System, Fed. Deposit Insurance Corp., Nat'l Credit Union Admin., Office of the Comptroller of the Currency, U.S. Dep't of the Treasury, Joint Fact Sheet on Foreign Correspondent Banking: Approach to BSA/AML and OFAC Sanctions Supervision and Enforcement (Aug. 30, 2016), *available at* https://www.treasury.gov/press-center/press-releases/Documents/Foreign%20Correspondent%20Banking%20Fact%20Sheet.pdf

[7] Bank Secrecy Act/Money Laundering Risk Assessment, *supra* n. 2

[8] One banker from a community bank explained that the bank adapted its own products and services to become compatible with the OCC's product descriptions. However, that bank was the exception to the rule and, if the OCC's product descriptions mandate product design, it validates ABA's concern that the form is inconsistent with the flexibility that underlies the risk-based approach to AML compliance management.

period does not align with the calendar year used by most banks. This misalignment undermines OCC assertions that MLR data can be produced by a simple data download from bank systems. Fundamentally, this is an exercise that fits squarely into the delta that the former director of FinCEN was working to eliminate: the gap between regulatory requirements and combatting money laundering and terrorist financing.[9]

While the agency acknowledges a number of the concerns about the usefulness of the form in the August 8 *Federal Register* notice, it summarily dismisses the concerns with the following statement, "Collecting data from all supervised banks will yield substantial information that will provide a high degree of utility for the OCC in meeting its supervisory obligations under applicable statutes and regulations." Nothing in this conclusory statement, however, explains how it meets those needs, especially in face of the many objections raised by commenters.[10] It also fails to account for the fact that, no other agency has seen the need or the benefit of initiating a similar BSA/AML data collection process to identify risk.

Moreover, assuming that the MLR allows the OCC to identify BSA/AML risk, it only identifies *absolute* risk—not the real or actual risk that confronts a national bank or federal thrift. The process completely fails to take into account a critical element of risk management: controls designed to mitigate risk. One of the fundamental elements of an AML management program is to control risks. By failing to take this into account, the MLR only does half the job and fails to identify residual risk, or the BSA/AML risk that really matters in the fight against money laundering and terrorist financing.

The Paperwork Reduction Act (PRA) expresses the national commitment to minimizing information collection burdens and improving the quality of information collected while ensuring the greatest possible benefit to the public. This commitment takes on added significance in light of Executive Order 13563 which emphasizes the importance of – and President Obama's commitment to – reducing regulatory burdens and costs. We urge OMB to require the OCC to offer more than conclusory statements and to substantiate that the risk identification value it provides outweighs the burdens imposed. If the agency cannot do so, OMB should deny the data collection approval request.

The Failure of Transparency

As discussed in our March 4 comment letter, the agency has not made the form available to stakeholders, as required by federal law. Prior to commenting in March, ABA submitted a Freedom of Information Act (FOIA) request to the OCC for a copy of the current MLR; we have yet to receive a response from the agency. It is also worth noting that neither the current form nor the request for comment is readily accessible on the agency's own website. In this PRA Notice, the agency states that the form is available through a link in the notice, but, as noted, it is not the current version of the form, nor is the link compatible with all internet browsers. The linked form is the *2012 version of the form*. The failure to make the current form available undermines the PRA review process.

One of the complaints that national banks have raised is that the form and the descriptions used to identify reportable data change regularly with little or no notice, making it difficult to automate

[9] See, e.g., Remarks Of Jennifer Shasky Calvery, FinCEN Director, Am. Bankers Ass'n /Am. Bar Ass'n Money Laundering Enforcement Conference, November 13, 2012, *available at* https://www.fincen.gov/news_room/speech/html/20121113.html

[10] It is worth noting that, as with past notices to solicit feedback, the minimal notice and failure to use a well-published notice minimize the number of comments received.

the process to collect data. This is contrary to OCC assertions that automation should make it easier to complete the MLR. Moreover, because the form has not been designed in consultation with bankers, it mandates data collections that frequently are inconsistent with bank systems, causing bankers to have to pull together information from multiple sources, including outside vendors and other third parties, and manually tabulated.

Conclusion

ABA urges OMB to reject the proposed renewal and expansion of the MLR data collection. Conclusory statements about the utility of the data combined with unsubstantiated assumptions about data collection burdens do not satisfy the PRA's goal to maximize the utility of an information collection while minimizing burden. Without evidence to substantiate the utility of the data and how it serves the purpose of detecting and deterring money laundering and terrorist financing, the MLR is a regulatory exercise that consumes resources that could be better allocated. Moreover, expansion of the system to all OCC-supervised banks may contribute to the exclusion of certain customers and markets from the mainstream financial sector that undermines efforts against money laundering and terrorist financing.

Thank you for the opportunity to comment.

Sincerely,

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American Bankers Association
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Dear Sir or Madam:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the Paperwork Reduction Act (PRA) request for approval of its updated "BSA/AML Quantity of Risk Summary Form" (Form), a form that serves as the foundation for the Bank Secrecy Act /Money Laundering Risk Assessment (MLR) program used by the Office of the Comptroller of the Currency (OCC) to identify Bank Secrecy Act (BSA), money laundering, and Office of Foreign Asset Control (OFAC) risks associated with banks' products, services, customers, and locations In addition, the OCC announces its intent to require that all institutions it supervises complete the form annually [2]

At the outset, ABA opposes the process used to extend the MLR, which had been a supervision tool applicable only to community banks and thrifts, to all institutions supervised by the OCC. In particular, we challenge the agency's "announcement" of this change through the PRA approval process.

Before OCC takes such a significant step, ABA believes that OCC must clearly demonstrate that the costs and burdens associated with the MLR do not outweigh its benefits. In 2013, the Comptroller of the Currency, Thomas J. Curry, testified that, "banks, thrifts, and other financial institutions have had to devote increasingly larger amounts of resources to maintain effective [BSA/AML] programs, and the OCC has likewise significantly increased its attention in this area."[3] ABA agrees that BSA/AML compliance consumes extensive and ever-increasing resources, but we are concerned that many requirements and mandates, including the MLR, are being used and expanded without sufficient validation of their usefulness or success. This is especially important when both the Department of the Treasury Office of Terrorism and Financial Intelligence and the Financial Crimes Enforcement Task Force have been undertaking parallel comprehensive reviews of the BSA system to ensure that it is meeting its goals to protect national interests and the international financial system.

Therefore, it is imperative that the OCC demonstrate how a program, especially one that consumes significant resources, effectively combats money laundering and terrorist financing.

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[1] The American Bankers Association is the voice of the nation's $16 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $12 trillion in deposits and extend more than $8 trillion in loans.

[2] https://www.federalregister.gov/articles/2016/01/04/2015-33023/agency-information-collection-activities-information-collection-extension-with-revision-comment

[3] Testimony of Thomas J. Curry, Comptroller of the Currency, before the Committee on Banking, Housing, & Urban Affairs of the U.S. Senate, March 7, 2013, p. 2

To do so, ABA strongly urges the OCC, at a minimum, to initiate an Administrative Procedure Act rulemaking to ensure it receives and considers a wide range of stakeholder comments – and conducts a rigorous analysis of costs and benefits – on the expansion of the MLR

In addition, ABA believes that the OCC's failure to make the updated Risk Summary Form (Form) publicly available undermines the PRA review process. The PRA was enacted to "ensure the greatest possible public benefit from and to maximize the utility of information collected by the Federal government, and to improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society."[4] Moreover, one of the hallmarks of the AML process is transparency. The failure of the OCC to release the Form with its submission to the Office of Management and Budget (OMB) limits the public's ability to comment and undercuts effective regulatory oversight by OMB. Both seriously undermine transparency and accountability and increase the risk that important information will be left out of regulatory policy decisions.[5]

Before the OCC moves forward with its PRA request for approval of the updated Form and extension of the MLR to all OCC supervised institutions, ABA believes that several key issues must be addressed:

- First, the Form used to conduct the MLR should be made public so that affected financial institutions can evaluate the data collection process and comment.

- Second, although the OCC states that, "[t]he MLR System enhances the ability of examiners and bank management to identify and evaluate Bank Secrecy Act/Money Laundering and Office of Foreign Asset Control (OFAC) sanction risks associated with banks' products, services, customers, and locations,"[6] there is no evidence presented to validate how the tool is used to identify and quantify risks.

- Third, since the MLR is applied only to national banks and Federal thrifts, it is inconsistent with the interagency approach to uniform examinations for BSA compliance established in 2005.[7]

- Fourth, the OCC's burden estimates are inconsistent with the experience of community banks; they vastly understate the resources needed to complete the Form.

- Fifth, community banks currently subjected to the MLR report that it is both time consuming and burdensome with almost no offsetting benefit for the bank. There is nothing to indicate how or if the MLR is coordinated or connected with a bank's own risk assessment, suggesting it is a redundant exercise.

[4] Paperwork Reduction Act of 1995, Public Law 104-13, Section 3501

[5] ABA has submitted a Freedom of Information Act request to obtain the Form, but a final determination on our FOIA request is still pending and is unlikely to be answered before the comment deadline. In addition, we made several informal requests for the Form, and the agency furnished a link to the Form approved in 2012, not the current Form.

[6] *Federal Register,* volume 81, Monday, January 4, 2016, p. 143

[7] In 2005, the agencies of the Federal Financial Institutions Examination Council introduced the Bank Secrecy Act/Anti-Money Laundering Examination Manual. Last updated in November 2014, the manual has been welcomed as a model of interagency cooperation and consistency for oversight.

- And finally, if the OCC intends to expand the use of the program to all national banks and federal thrifts, that expansion merits a full Notice of Proposed Rulemaking and not a simple PRA notice.

Failure to Make the Form Available to the Public

One of the most troubling aspects of this process is that, even though the OCC has been using the MLR for more than ten years to supervise community national banks, the Form has not been made available to interested stakeholders nor was it published for this PRA approval request. The MLR requires banks to respond in writing to identical questions, which OMB regulations expressly include as "information" subject to the PRA review process when it is sought from 10 or more persons or entities.[8] Nothing in the PRA suggests that Congress contemplated an exemption for information collections made pursuant to a banking agency's supervisory authority.[9]

Federal guidelines implementing the PRA require the submission of a draft information collection as part of a PRA approval request to increase the opportunity for public feedback. Guidelines issued by the Administrator of OMB's Office of Information and Regulatory Affairs state that the "PRA requires that the agency publish a 60-day notice in the *Federal Register* to obtain public comment on the proposed collection, prior to submitting the information collection to OMB. *At the time this notice is published, agencies must have at least a draft survey instrument available for the public to review.*"[10] (Emphasis added). Accordingly, the OCC should not withhold the form or survey instrument until a later date.

The OCCs decision to withhold publication of the MLR form undermines the PRA review process. As noted previously, the PRA was enacted to "ensure the greatest possible public benefit from and maximize the utility of information" collected by the Federal government[11] and to "improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society."[12] Accordingly, OMB requires publication of the draft Form at the time of the first submission because such publication maximizes the opportunity for public comment as well as the agency and OMB's consideration of those comments.

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[8] OMB regulations state, "The PRA applies to collections of information using identical questions posed to, or reporting or recordkeeping requirements imposed on, 'ten or more persons.'" Cass R. Sunstein, Admin., Office of Information & Regulatory Affairs, Office of Management and Budget, Executive Office of the President, Information Collection Under the Paperwork Reduction Act 2 (Apr. 7, 2010), *available at* https://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf (quoting 44 U.S.C. § 3502(3)(A)(i))).

[9] *See* 5 C.F.R. 1320.4 (listing collections of information to which OMB regulations do not apply). We note that the Bureau of Consumer Financial Protection must have concluded that there is no such exclusion. When it used its supervisory authority to gather information and transaction level data on the overdraft practices of institutions subject to its supervisory authority, the Bureau required only nine banks to respond to identical questions and data requests. Similarly, when the Bureau used its information gathering authority under Dodd-Frank Act section 1022, it ordered only nine institutions to respond to questions about debt collection and debt sale practices.

[10] John D. Graham, Admin., Office of Info. & Regulatory Affairs, Office of Mgmt. & Budget, Exec. Office of the President, Guidance On Agency Survey & Statistical Info. Collections 3 (Jan. 20, 2006) ("OMB Memorandum"), *available at* https://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/pmc_survey_guidance_2006.pdf

[11] Paperwork Reduction Act of 1995, Pub. L. No. 104-13 (codified at 44 U.S.C. § 3501(2)).

[12] *Id.* (codified at 44 U.S.C. § 3501(4)).

If, as here, the OCC withholds publication of the draft Form until after the first round of comments is received, the OCC will limit the public's and OMB's ability to assist the OCC in producing a Form that will yield information of sufficient quality for its intended purpose. As OMB notes in its guidance, the PRA review process is intended, in part, to ensure that "the proposed collection of information will result in information that will be collected, maintained, and used in a way consistent with the OMB and agency information quality guidelines, or they should not propose to collect the information."[13]

Therefore, ABA urges the OCC to re-submit its PRA request for approval to OMB, submit a draft Form with its information collection request, and re-start the comment deadline to provide the public with the full 60-day comment period afforded by the first round of the PRA review process.

The Benefits of the MLR Should Be Validated

There is a growing concern that the many requirements for BSA compliance may not be the most efficient or effective use of resources available. As recognized by the Director of FinCEN, "I know your institutions are spending a great deal of time and money on compliance programs. I think it is worth it. But we need to pay attention and ask ourselves if the money you are spending is being spent in the right ways."[14] ABA questions whether the MLR assessment satisfies this expectation or attains the effectiveness that the OCC contends that it does. Therefore, before proceeding with continued or expanded use of the MLR, ABA believes it is extremely important for the OCC to explain how the MLR assessment is used, how it is effective, how it supports the examination process, why an independent tool used by only one agency is necessary, and what unique benefits it provides to assist examiners and banks.

The OCC asserts, "The MLR system enhances the ability of examiners and bank management to identify and evaluate Bank Secrecy Act/Money Laundering and Office of Foreign Asset Control (OFAC) sanctions risks associated with banks' products, services, customers, and locations."[15] However, the application of the MLR system, which imposes a one-size-fits-all risk analysis on national banks, is inconsistent with the *FFIEC BSA/AML Examination Manual*. The manual clearly states that, "There 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."* [16]

As recommended by the *BSA/AML Examination Manual*, most banks have developed their own methodology to identify and assess risks. Bankers who are familiar with the process report that completion of the Form is solely for the convenience of the examiners and that it does not adequately apply to their own circumstances. Instead, bankers use their own risk assessments, *as encouraged by the interagency guidelines*, to identify and manage BSA risk. Bankers report that the only reason they complete the Form is because it is required by the agency. Bankers report that it is not particularly helpful for identifying risks, because the form uses elements and parameters that do not mesh with

[13] OMB MEMORANDUM, *supra* note 2, at 14.
[14] Remarks Of Jennifer Shasky Calvery, Director of FinCEN, to the American Bankers Association/American Bar Association Money Laundering Enforcement Conference, November 13, 2012, Washington, DC
[15] *Federal Register*, volume 81, Monday, January 4, 2016, p. 143
[16] *FFIEC BSA/AML Examination Manual,* 11/17/2014, p. 18

bank procedures and, as discussed more fully below, uses a timeline inconsistent with the calendar year followed by most banks. Therefore, it is singularly inappropriate to suggest it benefits banks.

The MLR is Inconsistent with the *FFIEC BSA/AML Exam Manual*

As ABA has noted on several occasions, the use of the MLR system is inconsistent with the overall premise and foundation underlying the adoption and use of the interagency *BSA/AML Examination Manual.* When it was introduced on June 30, 2005, the OCC issued a Transmittal Letter to introduce both the manual and the interagency collaboration that produced it. Along with the other agencies, the OCC stated that, "The Manual is the result of a collaborative effort of the federal banking agencies and the Financial Crimes Enforcement Network (FinCEN), *to ensure consistency in BSA/AML examinations*."[17] (Emphasis added). However, the use of a form to conduct examinations that is by only one agency belies this intention that there be consistent approaches to the examination process.

When the first Manual was introduced, it was seen as a model of interagency cooperation. One of the goals at that time was to ensure that all agencies approached BSA compliance consistently. As the manual was introduced to bankers through a series of training sessions across the United States, examiners from different agencies also were trained simultaneously to ensure that all examiners from the different supervisory agencies heard the same message. In fact, the current Comptroller testified in 2013 that, "[t]he publication of the Interagency BSA/AML Examination Manual (Manual) in 2005 effectively standardized examination procedures for the federal banking agencies."

If one agency departs from this approach, it undermines consistency. We note that in 2012 the OCC was criticized during a Senate Hearing for approaching BSA differently from the other agencies by conducting BSA evaluations as part of the compliance examination rather than as part of the safety-and-soundness exam.[18] As a result, the OCC restructured its approach to BSA evaluations to be consistent with the other agencies.[19] In light of this experience it seems inappropriate for the agency to stray again from the path of uniformity by requiring national banks and federal thrifts to use the MLR.

Moreover, the effort undertaken by bankers compelled to use the MLR applies a quantification process that is designed to permit comparison between banks, even though the FFIEC manual specifically states that, "Examiners should exercise caution if comparing information between banks…."[20] A quantification of different categories also fails to identify critical elements of the process, especially the analysis of mitigating factors that have been applied to address risks.[21] And, it imposes a quantification on what is intended to be a qualitative analysis.

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[17] http://www.occ.gov/news-issuances/news-releases/2005/pub-other-state-2005-64a.pdf

[18] Senate Permanent Subcommittee on Investigations hearing on July 17, 2012, http://www.hsgac.senate.gov/subcommittees/investigations/hearings/us-vulnerabilities-to-money-laundering-drugsand-terrorist-financing-hsbc-case-history

[19] OCC Bulletin 2012-30, *Consideration of Findings in Uniform Rating and Risk Assessment Systems*, issued September 28, 2012 http://www.occ.gov/news-issuances/bulletins/2012/bulletin-2012-30.html

[20] *FFIEC BSA/AML Examination Manual*, 11/17/2014, p. 25.

[21] As stated in the manual at p. 25, "…the examiner should assess whether the controls of the bank's BSA/AML program are appropriate to manage and mitigate its BSA/AML risks."

Limited Resources Must be Used Effectively

In the current environment, and as noted by the Comptroller in Congressional testimony, the need for effective use of resources is critical.[22] One of the key concerns the Comptroller raised in that testimony was the danger presented when resources for compliance are reduced inappropriately. ABA is concerned that re-allocation of resources to the MLR may aggravate instead of alleviate these concerns.

Community banks that have been subjected to the MLR for several years uniformly report that the Form is extremely time-consuming to complete. Providing the information in the format required is a labor-intensive and manual process and one that does not add value to the exam process because the information and data are available to examiners, albeit in a different form. Community banks also express frustration at being asked for much information that is irrelevant to their own operations but must be validated and completed nevertheless. For example, one large bank reports that it takes between five and six months annually to update its risk assessment process at a cost of $150,000 to $200,000 when based on the number of employees involved in the process; based on the bank's comments, use of the MLR would only add to this expense since they already have a comprehensive program in place that has been approved by examiners on more than one occasion. Application of the MLR would only add to the costs and resources consumed by AML compliance efforts without any commensurate benefit.

Community banks also report they are unable to rely on the MLR for their own risk assessment. If, as the OCC suggests, the MLR is a useful tool for identifying risk, then it should be unnecessary for any national bank or thrift to conduct an independent risk assessment. However, the MLR is an inadequate risk assessment. In fact it *omits* many of the factors that impact a bank's BSA/AML risk such as implementation of controls, staffing, audit processes, manual processes or software systems used, whether the institution is located in a HIDTA or HIFCA, and a myriad of other factors. The MLR is simply a quantitative summary that does not provide context or reflect the qualitative elements that are vital for an accurate assessment risk. Given the need for a complete and accurate picture of an institution's BSA risk, the MLR simply becomes a time-consuming exercise with little or no benefit for the bank as it documents its BSA risk assessment.

The MLR Imposes a Rigid Reporting Standard that Is at Variance with its Utility

Contrary to a customized risk-based analysis that focuses on the unique attributes of individual financial institutions and the appropriate controls used to mitigate those risks, the MLR reverts to a one-size fits all approach to analysis.

One problem with the MLR is that it uses categories for products that do not mesh with the banks' actual products and services. As a result, community banks report that it takes considerable time and effort and a labor-intensive process to adjust the bank information to fit within the parameters imposed by the Form. This disparity also handicaps the utility of the Form for the bank's risk assessment.

[22] Testimony Of Thomas J. Curry, Comptroller Of The Currency, before the Committee On Banking, Housing, & Urban Affairs Of The U.S. Senate, March 7, 2013
http://www.occ.treas.gov/news-issuances/congressional-testimony/2013/pub-test-2013-41-written.pdf

A second problem with the MLR is the timeframe used to report information. The schedule for the MLR is inconsistent with most bank operations, since MLR data are compiled as of September 30 while most, if not all, banks operate on a calendar year. As a result of this inconsistency, community banks are unable to pull data easily, adding to the burden, since it requires manual adjustments of information. It also means that the information compiled is incompatible with the bank's own risk assessment.[23]

A third problem with the MLR exists when the OCC develops new categories of activity that the bank must report that were not reported in prior years or that apply different parameters and definitions from those used previously. Over time banks have developed procedures and reporting routines customized to complete the MLR, and the necessary data are accumulated during the year. When the MLR instructions are released in the summer for the report due less than 90 days later, it is not unusual for the OCC to include new or revised categories of information for banks to report with no prior notice. Not only does this present additional burden, it highlights the fact that data required for the Form do not exist in the normal course of business and must be customized and manually collated.

The Burden Estimates are Inconsistent with Community Bank Experience

According to the January 4 *Federal Register* notice there are 1,450 national community banks, which take a total of 8,700 hours annually to complete the MLR. Therefore, the average time that a community bank needs to complete the MLR would be six hours according to the OCC filing. This average is unchanged from prior estimates.[24] The fact that the OCC has failed to reassess or re-evaluate the time needed to complete the form calls into question whether the agency has undertaken a proper evaluation of the burden. Certainly, comments from ABA members that must use the form suggest that the time estimated by the OCC grossly under-estimates what banks must do to complete the MLR.

Because it is a labor-intensive, manual process, ABA has heard anecdotal evidence from members that suggest it easily can take two weeks for one employee to compile the necessary information. Even conservatively, that is far greater than the OCC estimate. ABA believes that, at a bare minimum, a more accurate assessment of the time required would be ten to twelve times what the OCC estimates for community banks.

Not only is the Form time-consuming to complete, community banks also report the OCC often contacts them with follow-up questions on the data submitted, such as why certain activity changed from one year to the next. The time needed to research and respond to these questions also increases the burden, particularly since the OCC's own analysts easily can be misled by the risk profile of a bank given how results are reported.

Also contributing to the confusion are changes in the reporting requirements that OCC has introduced in successive reporting years without seeking OMB clearance. ABA believes that OCC

[23] OCC examiners have explained to community banks that the timing for the MLR data is for the convenience of the examination process only, further undermining the OCC's assertion that the MLR is useful for individual banks.
[24] When the OCC renewed the MLR in 2010, it had the same burden estimate despite the fact that the data collected have changed in the past three years. *Federal Register,* Vol. 75, No. 11, Tuesday, January 19, 2010, p. 2929. A similar average was presented in 2013, again despite changes to the form and the format.

has failed to satisfy its obligations to maintain the Form as approved, which further fails to satisfy the Congressional mandate of the Paperwork Reduction Act.

If the OCC expands usage of the MLR to large and mid-size national banks, the estimates provided in the PRA notice for large and mid-size banks are also suspect. For large national banks, the OCC estimates that it would take only 80 hours annually to comply.[25] Although larger banks can rely on automated systems to a greater extent and have larger staffs to comply with these requirements, the need to coordinate and adjust system reports to complete the Form is likely to exceed by far what the OCC estimates. ABA believes that the estimates grossly underestimate the burden imposed by the information collection. For mid-size banks, the estimates are even more absurd, since the agency estimates only 25 hours on average would be needed to complete the form.

In no case – not for community, large or mid-size institutions – does the OCC provide anything to substantiate the estimated burdens, leading ABA to question whether there is any basis in fact to support them. ABA believes far more research is needed to validate the burden estimates. We understand that these data are difficult to obtain, but that difficulty does not excuse its absence from an information collection estimate. Moreover, it should be remembered that the responsibility for calculating burden lies with the regulator, not with the regulated.

The Proposal Should Use a Notice of Proposed Rulemaking

Currently, the Financial Action Task Force (FATF) is undertaking a comprehensive review of the risk assessment process used by different countries, as it has been for several years. This underscores the importance of risk-assessment methodologies both here and abroad. Given the current environment, ABA believes that the OCC would be far better served to ensure full and adequate comment on the proposed expansion of the use of the MLR to all national banks.

To ensure that it is given the attention it merits, ABA believes the full MLR document should be published and made available, and that the proposed expansion be published in the *Federal Register* as a full notice of proposed rulemaking. That will ensure that it does not slip by unnoticed, an important measure of transparency and accountability that the law intends.

Conclusion

ABA welcomes tools and resources that the agencies provide to assist banks with their compliance needs. But as the *FFIEC BSA/AML Examination Manual* notes and the robust vendor market illustrates, there are many ways to evaluate BSA risk successfully. Consequently, bank use of agency tools should be voluntary and not mandatory. With the many demands on resources and particularly the resources needed to comply with BSA requirements, it is important to validate the utility of any tools, to consider carefully the costs and benefits whenever these tools are mandated, and to ensure that all regulators take a consistent approach to compliance.

[25] This is significant less than the 100 hours estimated by the agency in 2013, although there is nothing to explain how it concluded that there would be a significant burden reduction for large institutions. ABA seriously questions the validity of the assertion that the burden would be reduced when all evidence points to the contrary.

As we stated in 2013, ABA firmly believes that use of the Form, which departs from the interagency coordination of BSA compliance, should be discontinued. It does not, as the agency asserts, provide any useful benefit for the industry but is a make-work exercise that homogenizes information for examiners. It is inconsistent with the interagency approach that encourages each bank to develop its own risk profile based on its own unique circumstances. And, while there are no perceived benefits to the use of the MLR for the industry, there are significant costs to recalibrate information to fit the OCC parameters, regardless of bank operations.

In conclusion, ABA believes that the MLR represents the delta that the current Director of FinCEN has identified as the type of regulation that does not support efforts to combat money laundering or terrorist financing.

Sincerely,

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