

September 7, 2016

Via Electronic Mail

Office of the Comptroller of the Currency
Legislative and Regulatory Activities Division
Attn: 1557-0231
400 7th Street, SW
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Washington, DC 20219

Re: Agency Information Collection Activities; Information Collection Extension With
Revision; Submission For OMB Review; Bank Secrecy Act/Money Laundering Risk Assessment

Ladies and Gentlemen:

The Clearing House Association L.L.C.¹ welcomes the opportunity to offer additional comments on the Office of the Comptroller of the Currency's second notice on revising and extending its continuing information collection entitled "Bank Secrecy Act/Money Laundering Risk Assessment," ("**Second Notice**") also known as the Money Laundering Risk ("**MLR**") System. If approved, the Second Notice would "expand the MLR reporting requirement to the OCC's midsize, large bank and Federal branches and agencies populations."²

TCH shares the views of the OCC, FinCEN, and the other federal banking agencies regarding the fundamental importance of preventing money laundering ("**AML**") and countering the financing of terrorism ("**CFT**"). To that end, financial institutions have spent decades working to comply with the Bank Secrecy Act, its implementing regulations and Office of Foreign Assets Control sanctions programs ("**BSA/AML/OFAC**"). While we remain wholeheartedly committed to working with the public sector to combat money laundering 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 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. Its affiliate, 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.

² See 81 Fed. Reg. at 52525.

terrorist financing, we are concerned that the establishment of a new, static reporting requirement, which would be layered on top of an already-robust BSA/AML/OFAC regulatory framework that facilitates the collection of such information via other existing channels, would unnecessarily burden large and midsize institutions with little if any benefit to supervisors or other stakeholders. In addition, requiring institutions to devote new resources to establishing systems to collect information through the MLR System would divert resources and focus from their existing and substantial efforts to identify and combat money laundering, terrorist financing, and other crimes.

In March 2016, TCH submitted initial comments on the OCC's first notice of the proposed expansion of the MLR System.³ While the OCC in the Second Notice has acknowledged many of the concerns expressed by TCH regarding this proposed expansion, TCH does not believe that the OCC has sufficiently demonstrated its rationale for the proposed expansion and the costs and benefits thereof and believes that: (i) expanding the MLR System's "one-size-fits-all" information collection requirement to large and midsize banks is unlikely to benefit, and could actually undermine, collective efforts to detect and combat money laundering and terrorist financing; (ii) expanding the MLR System's "one-size-fits-all" information collection requirement to large and midsize banks is unnecessary as such institutions already have full-time, embedded on-site examiners; (iii) the notice significantly underestimates both the standalone and cumulative burden that will be imposed on financial institutions if the MLR System is expanded to large and midsize banks; and (iv) if the OCC does proceed with expanding the MLR System, a minimum implementation period of 24 months is necessary for large and midsize banks to comply with this reporting requirement.

I. Expanding the MLR System's "one-size-fits-all" information collection requirement to large and midsize banks is unlikely to benefit, and could actually undermine, collective efforts to detect and combat money laundering and terrorist financing.

The OCC has adopted a tailored supervisory approach to identifying BSA/AML risks consistent with the risk-based framework established by the federal banking agencies and FinCEN for addressing these risks. This framework allows the OCC and the other agencies to assess and address an institution's unique potential BSA/AML and sanctions vulnerabilities on a dynamic basis as threats and technologies evolve. This approach is particularly appropriate for large and midsize institutions, which are generally more complex than smaller institutions. Currently, large and midsize financial institutions operate extensive and robust BSA/AML/OFAC risk assessment processes. These assessments are tailored to an institution's business model, with scheduled and thorough reviews of quantitative and qualitative data, generally held by the various business lines, and further analyzed for multiple aspects of risk management, including the quality of controls used to mitigate risk. This dynamic process provides a flexible and holistic framework for evaluating institutional BSA/AML/OFAC risk. By contrast, the MLR data would simply provide transaction, customer, and other data that

³ The Clearing House Association, *Agency Information Collection Activities; Information Collection Extension With Revision; Comment Request; Bank Secrecy Act/Money Laundering Risk Assessment* (March 4, 2016).

would in no way enhance the OCC's or the institution's ability to assess the institution's unique BSA/AML/OFAC risks, as such risks are assessed through the collection and analysis of data that better reflects each institution's individual BSA/AML/OFAC risk profile. In a survey of TCH banks, respondents indicated that while their risk reviews assess product, service, customer and geographic factors, in no case is the data compiled in a manner identical to the information requested by the MLR System, and, in some cases, the MLR data requested is not currently collected. Use of MLR system data to identify and assess BSA/AML and OFAC sanctions risks and to develop examination strategies and prepare examination scoping would replace a dynamic and tailored approach with a uniform and static framework. This could hinder the OCC's ability to identify and assess specific AML and terrorist financing threats at large and midsize institutions.

In addition, the MLR system collects data only from national banks and many large and midsize institutions are part of larger banking organizations with numerous affiliates. By collecting data only from the national bank, the OCC would not be able to holistically evaluate a banking organization's potential risks, which could result in an incomplete or inaccurate assessment of an organizations' BSA/AML and sanctions related risk profile. This could lead to the imposition of ineffective or inappropriate supervisory measures to address those perceived risks.⁴

Furthermore, the OCC in its Second Notice states that "[t]he purpose of the MLR System is to support the OCC's supervisory objectives by allowing for the identification and analysis of BSA/ML and OFAC sanctions risks across the population of all OCC-supervised banks..." Yet, expanding the MLR data collection to include large and midsize banks could undermine the utility of data currently collected by the OCC from smaller institutions for its own BSA/AML/OFAC supervisory and examination purposes.

- First, important data from smaller institutions may get lost in the sheer volume of data that the OCC would collect from large and midsize banks were the MLR requirement to be expanded.
- In addition, with respect to transactions conducted by smaller institutions that are processed through one or more large or midsize institutions, such as, for example, a wire transfer processed by one or more correspondent banks, a single transaction may be reported by each institution involved in the transaction, which would result in a large volume of duplicative data being reported to the OCC. This redundant reporting would serve to further increase the volume of data through which the OCC would have to sort, thereby increasing the chances that important information provided by community banks could get overlooked.

⁴ Indeed, the Federal Reserve Board has recognized the importance of consolidated supervision with respect to large complex banking organizations. See, e.g., Federal Reserve Supervisory Letter SR 08-9/CA 08-12, "Consolidated Supervision of Bank Holding Companies and the Combined U.S. Operations of Foreign Banking Organizations," (October 16, 2008).

As the MLR information collection framework may be amended only after public notice and comment, any changes to such information collection requirements would necessarily lag behind changes in the BSA/AML and OFAC sanctions threat landscape, which could result in potential threats being undetected for some period of time by both the OCC and banks. Indeed, the OCC noted that “the MLR data can be used by banks as the first step in the two-step process of the banks’ BSA and OFAC risk assessments,” which is to gather data that is “substantially similar to information needed to perform those internal bank analyses of BSA and OFAC risks.” Directing banks of all sizes to use a uniform data collection template to engage in the first step of their internal assessments of potential risks could limit banks’ review of data that could reveal possible threats and potentially enable criminal activity to go undetected. In addition, the use of MLR System data to scope examinations may lead to a one-size-fits-all approach to examinations of large and midsize institutions rather than the current risk-based, targeted approach designed around an institution’s particular business lines, activities, customers, and geographies and the relevant risks related thereto. Furthermore, in the case of large institutions with diverse business lines and large quantities of data, there is less utility in comparing such data amongst “peers” as (i) changes in the data can result from changes in the business rather than risk factors and (ii) the presentation and comparison of such data will likely lessen the precision of the information provided under the current system.

Finally, 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. Furthermore, 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 assisting law enforcement in combating financial crimes or terrorism. While the OCC acknowledged that this objection had been raised by commenters, the OCC did not respond to this comment or attempt to describe how the benefits of the proposed expansion of the MLR System to all OCC-regulated institutions would outweigh these disadvantages.

II. Expanding the MLR System’s “one-size-fits-all” information collection requirement to large and midsize banks is unnecessary as such institutions already have full-time, embedded on-site examiners.

As TCH asserted in response to the OCC’s 2013 proposal to expand the MLR System reporting requirement to large and midsize institutions, and again in response to the OCC’s January 2016 proposed expansion, large and midsize banks are already subject to a significantly more complex, comprehensive and robust supervisory and examination framework than community institutions. 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. As explained

by the OCC's *Comptroller's Handbook on Large Bank Supervision*, this on-site examination structure "enables the OCC to maintain an ongoing program of risk assessment, monitoring, and communications with bank management and directors."⁵ Yet, with this proposal, the OCC seeks to depart from its existing risk assessment efforts, which are tailored to the business models and structures of OCC-supervised institutions, and impose a burdensome and universal reporting requirement on such institutions.

While the OCC in its Second Notice states that "[t]he data collected through the MLR process is not [otherwise] collected by the OCC in any similar format" and argues that such data will allow for the "identification and analysis of BSA/ML and OFAC sanctions risks," the OCC implicitly recognizes that such data is available to the OCC through its on-site examiners and dynamic supervisory framework to which large and midsize banks are subject.

The OCC further states that MLR data "assist[s], across the population of reporting banks, with development of examination strategies, preparation of examination scoping to identify transactions for testing, and meeting the OCC's obligations under applicable statutes and regulations." However, the OCC could obtain the data proposed to be collected through the MLR process as part of pre-examination scoping communications between the OCC and the institutions that it regulates. Therefore, we believe that it is unnecessary to expand the scope of application of this information collection system to all large and midsize banks, as comparable information is already available to the OCC for the development of examination strategies and preparation of examination scoping to identify transactions for testing through the supervisory and examination process.

III. The notice significantly underestimates both the standalone and cumulative burden that will be imposed on financial institutions if the MLR System is expanded to large and midsize banks.

While the OCC's Second Notice acknowledges that "each bank is unique and will have a different MLR reporting experience," it also argues that the "data required for MLR purposes is data that institutions will have readily available and that for the vast majority of banks, will not require substantial investment in technology or systems to collect and report." We respectfully submit that this assertion grossly understates the burden that institutions would face. While these institutions generally have the underlying data that would be collected through the MLR System, the acquisition and aggregation of such customer and transactional data would require large and midsize banks to make a number of changes to their data collection systems and operations to implement the OCC's proposed MLR System revisions, and in some instances, institutions may have to manually obtain the required data.⁶ These changes would require banks to incur

⁵ Office of the Comptroller of the Currency, *Large Bank Supervision – Comptroller's Handbook*, <http://www.occ.treas.gov/publications/publications-by-type/comptrollers-handbook/pub-ch-ep-lbs.pdf>, p. 2, accessed August 15, 2016.

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.

significant human capital and operational costs. Furthermore, as part of the MLR reporting process, institutions will likely have to build in an audit function to allow for the reconciliation of differences in data reported from the various business lines of an institution, thereby further increasing the reporting requirement's burden.

As an initial matter, in light of the complex 58-page user guide that the OCC has published in connection with the MLR system, TCH believes that for many large and midsize banks, simply determining how to comply with the proposal would take at least 80 hours. Further, many of these institutions have dozens of business lines each with their own reporting systems. Reconciling differences in the type of data collected across business lines to comply with the proposed expansion would be extremely time-consuming, as would planning and executing the mapping of multiple systems into one system in order to collect the data in the format required by the MLR system. As a point of comparison, in 2010, FinCEN proposed to issue regulations that would require certain banks and money transmitters to report to FinCEN transmittal orders associated with certain cross-border electronic transmittals of funds (CBETFs), and estimated that the annual reporting burden for "verifying and filing" weekly reports of this information would be 52 hours. The information required to be reported by FinCEN's proposal constitutes only a small subset of the information required to be reported under the MLR system. In addition, as noted, FinCEN's estimate did not include the time required to gather the requested information. Implementation of the MLR system will require banks to gather some of the requested information, which will be extremely time-consuming in certain instances, as discussed throughout this letter. Therefore, the estimate provided by the OCC of 80 hours annually would appear to significantly understate the likely burden associated with the expansion of the reporting requirement to large and midsize institutions.

Further, there are numerous interpretive questions regarding the data to be collected that will inevitably arise as large and midsize banks work to comply with the expanded proposal, if finalized. Indeed, there are a number of items requested in the 70-question information collection form that will have to be further defined or clarified in order for (i) such institutions to consistently report the information requested and (ii) the OCC to be able to meaningfully compare identical data. Below are just a few examples of places where further clarification regarding the OCC's expectations is needed.

- The OCC would need to further define the scope of application of the MLR System requirement, clarifying whether it applies to domestic national banks only or to consolidated organizations, as without such clarification, further confusion could arise around some of the terms utilized by the OCC in its data request (i.e. domestic and international).
- The OCC would need to define its expectations regarding the provision of data around banks' loans to closely held corporations, as in many cases, large institutions that act as corporate trustees may have such loans as assets in a portfolio, but were not the party that originated the loan and therefore do not differentiate between those loans and other loans held.
- The OCC would need to provide additional clarification and guidance around institutions' provision of information on foreign off-shore corporations as outside of

off-shore banks, such information is not generally collected. Therefore, institutions will have to manually review their systems, obtain further clarification and documentation from customers as needed, and could encounter further difficulties in this process, as in some cases, the articles of incorporation of that company or the type of company that is formed could prevent the acquisition of such information.

- The OCC would need to provide further direction around the granularity of the information provided on non-resident alien (“**NRA**”) accounts, as many institutions utilize the IRS definition of such individuals for these purposes, in compliance with Section 312 of the PATRIOT Act, but in other cases, utilize a risk-based framework derived from a multitude of risk factors and definitions, which will therefore require iterative and institution-specific guidance and clarification from the OCC and manual review by institutions.
- The OCC would need to provide additional clarification or guidance in a number of other areas including (i) further defining whether the term “international accounts” should include private banking accounts; (ii) further defining the term “international private banking” and the types of accounts that are covered within that data request; (iii) further defining the term “signatories” as current industry practice may differ when the term is used in wire services that occur through domestic accounts; and (iv) further defining the term “international wire transfers” as used in the OCC’s user guide when discussing cross-border ACH transactions as the term as currently defined lends itself to interpretive differences across institutions.

As discussed throughout this letter and demonstrated above, large and midsize institutions will require significant guidance from the OCC, possibly through the provision of training sessions, the establishment of a hotline for questions, and public-private sector dialogue, with respect to MLR System interpretive issues. In addition, the process of clarifying the data to be collected will likely take many months, if not years, of dialogue between the OCC and these institutions. The time required for this process should be incorporated into the OCC’s assessment of the time required to implement the proposed expansion.

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 continues to believe 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 that greatly exceeds the 2013 proposal’s estimated 100 hours and the 2016 proposal’s estimated 80 hours, particularly if there are significant technological barriers to data automation. In a short survey of TCH members, responses indicated that the annual reporting burden with automation would be in the hundreds of hours. Furthermore, the implementation burden would be in the range of 5000-8000 hours, as institutions would have to draw on staff and resources from multiple business lines, as well as from operations and IT functions to conduct the implementation.

In addition, the notice does not acknowledge or account for the already robust and expansive BSA/AML/OFAC supervisory and examination framework for midsize and large institutions and the additional burden this proposal would impose in addition to the existing

regulatory burden. As mentioned previously, this includes a significant and extensive on-site examination process as well as a number of AML/CFT processes and procedures that encompass virtually all activities of large and midsize financial institutions. As TCH has stated many times before, TCH and its member institutions are committed to working closely with the public sector towards our shared goal of combating money laundering and terrorist financing through compliance with the BSA, its implementing regulations, and OFAC sanctions programs. However, applying a static, community bank information collection rubric to the already robust BSA/AML/OFAC regulatory framework for large and midsize institutions, would not appear to achieve the goal at the heart of the BSA/AML and OFAC sanctions framework – to detect and prevent financial crime and terrorist financing.

In light of the significant burden that the proposed expansion would impose on large and midsize banks, TCH would welcome the opportunity to work with the OCC to help identify data that large and midsize banks could more easily provide to the OCC to meet the OCC's objective – to be able to compare similar data across all OCC-regulated institutions.

IV. If the OCC does proceed with expanding the MLR System, TCH requests that, at a minimum, 24 months be provided to large and midsize banks to implement this reporting requirement.

As discussed above, the expansion of the MLR System to large and midsize banks would require such institutions to (i) undertake significant revisions to their current BSA/AML/OFAC risk assessments in order to fulfill the OCC's extensive information collection request; (ii) require significant investment in technological solutions and human capital as well as a robust testing period in order to fulfill this data collection requirement; and (iii) add to the cumulative BSA/AML/OFAC regulatory burden already placed on these institutions. In addition, such a requirement would divert resources and focus from institutions' ongoing efforts to identify and combat money laundering, terrorist financing, and other crimes. Therefore, TCH requests that if the OCC does proceed with expanding the MLR System to all institutions under its supervision, a minimum of 24 months be provided to such institutions to comply with this extensive information collection requirement.

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We appreciate your consideration of our comments and 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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