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Submitted via regs.comments@occ.treas.gov

Communications Division, Office of the Comptroller of the Currency
Public Information Room
Mailstop 1-5
Attention: 1557-0231
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Attention: MLR Comments— Federal Register 44920; August 9, 2007

Ladies and Gentlemen:

The American Bankers Association (ABA) files this letter in response to a notice and solicitation for comments published by the Office of the Comptroller of the Currency (OCC) on August 7, 2007, proposing an extension without change of the Bank Secrecy Act Money Laundering Risk Assessment (MLR), pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A). The MLR intends to enhance the ability of examiners and bank management to identify and evaluate any Bank Secrecy Act/Anti-money Laundering (BSA/AML) risks associated with the bank's products, services, customers and locations.

The American Bankers Association, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks--makes ABA the largest banking trade association in the country.

Summary of ABA Comments

ABA and its members strongly believe in the value and utility of performing a risk assessment and its purpose as the foundation for a safe and sound Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) program. However, we believe that the MLR process is redundant and expends the limited resources of institutions that are already developing and implementing their own risk assessment programs. Additionally, we welcome the joint agencies' recommendation in the 2007 FFIEC BSA/AML Examination Manual that a risk assessment be tailored by the institution's management, rather than MLR's one-size fits all approach.

After due consideration of the attributes and limitations of the MLR system that constitutes this information collection, ABA has determined that system reporting should not be mandatory, should not be expected to be conducted annually, and should not be the source of a data aggregation project that purports to represent accurately individual or industry BSA/AML risk. Accordingly, we urge the OCC to weigh the utility and burden of the information being provided through the Risk Summary Form (RSF) against the

existing internal risk assessment performed by financial institutions. We recommend that the OCC not renew the system; but should the Office of Management and Budget (OMB) decide otherwise, it should renew the information collection for no more than one year.

Utility of Information Collection

ABA believes a BSA/AML risk assessment has practical utility not only for an institution in identifying areas of risk and risk mitigation factors, but also for the regulatory agency's BSA/AML oversight. We believe and support the relevant statement made in the revised 2007 FFIEC's BSA/AML Examination Manual: "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." Continuing to require OCC regulated institutions to complete a generic template risk assessment when an institution-specific assessment is also being performed is not only duplication of efforts but a depletion of valuable resources that can be better used for other compliance purposes.

Additionally, the RSF information provided is based on estimated volumes of transactions and dollar amounts of activity leading to development of generalizations on risk. The concern is between taking such an approach as opposed to a more detailed risk assessment performed by the institution, following the FFIEC's two prong approach to assess specific products, services, customers, entities and geographic location. The OCC has acknowledged that the MLR system and the RSF are only a "first step" in the assessment of an institution's BSA risk profile and that the RSF "is by no means the only way in which a financial institution can conduct a risk assessment." In an effort to increase efficiencies and reduce burdens on strained resources of financial institutions, the OCC should identify opportunities to leverage existing information and reports, such as a detailed and customized risk assessment, to gather information and scope for examinations rather than creating duplicative information.

The OCC also contends that this information is entered into a database to obtain trends and statistics, to identify risk areas of institutions, and enable the agency to appropriately allocate examination resources. ABA questions whether these supervisory goals can be achieved by relying on analysis of aggregated MLR system data that do not account for qualitative risk distinctions within data categories. There is a significant likelihood that the aggregate data generated by the system will be misinterpreted by those obtaining reports from such a database. Allowing the institution to customize a risk assessment also enables it to quantify and distinguish inherent and residual risk to develop internal controls appropriately tailored for their needs.

Burden Estimates

ABA believes that the OCC has greatly underestimated the burden of compliance. Consideration needs to be given to the process followed in gathering, formulating and responding to the RSF. This process also entails training staff to gather the appropriate information, implementing a data collection process, and developing a submission and report review process for information submitted to and received from the OCC. The estimated annual burden provided by the OCC averages that of the 1,750 respondents each spends approximately eight hours. This time is severely underestimated and is perhaps limited to completion and submission of the form with no provisions for the time spent training staff, gathering and organizing the information and subsequently document retention, audit and review processes.

Additionally, estimates only pertain to completion of the RSF and do not factor in the time and resources committed to completing a tailored internal risk assessment program. Often institutions which participate in submission of the RSF also develop and customize

a comprehensive risk assessment pursuant to the outlined parameters of the FFIEC's BSA/AML Examination Manual and the guidelines prescribed by regulatory agencies and examiners. These customized and highly detailed risk assessments are provided to examiners either in advance during the scoping period or on-site at the time of the examination to facilitate discussion of program development and internal controls for risk mitigation. Examiner reliance on information provided through the RSF as opposed to the internally developed risk assessment, leads bankers to a level of confusion as to how examinations are scoped and how the risk assessment are weighed when there is information overlap. Since the RSF submission period does not necessarily align with an institution's examination cycle or their internal risk program review process, information submitted to the OCC may well be outdated or prior estimated figures provided have since been finalized, thereby causing the additional burden of reconciling two risk assessments during the examination.

Lastly, given other reporting priorities of institutions, to mandate an annual submission of the RSF creates additional burdens and expenditure of already tapped resources. It is also the case that many banks do not undergo the frequency of operational changes that warrant an annual BSA/AML risk assessment. Therefore we recommend that the OCC not impose an annual risk assessment on all banks as an inflexible examination or supervisory standard, but should allow the leeway, as provided for in the examination manual, for banks with modest and relatively static risk profiles.

Quality, Utility and Clarity of Information

ABA believes that by making this risk assessment information collection conform to its own mandatory format, OCC has departed from the policy of interagency supervisory consistency and exam uniformity represented by the letter and spirit of the FFIEC's BSA/AML Examination manual. The quality of risk assessments in general and the clarity of agency intentions about how they can be prepared can be enhanced by the OCC working on an interagency basis to provide up-to-date guidance on supervisory expectations that preserves the legitimate latitude for an institution's risk-based judgments.

We note further that the MLR system does not, as part of its automated approach, take into account the risk variation within data categories. The MLR system by asking for quantitative information, such as volume of transactions and sum of outstanding balances, disregards the distinguishing characteristics within the data categories which reduce inherent risk to a lower level of residual risk. This flaw is repeated throughout the system, thereby obscuring real risk and suggesting the wrong picture of an institution's overall risk profile.

Means to Minimize Burdens

The quantitative nature of the MLR system to extract and develop a risk profile causes institutions to often develop automated techniques for data collection, analysis and summary for reporting purposes. This layer of burden is frequently a measure put in place in addition to the data collection used to gather internal risk information as a part of the institution's risk program. The one-size fits all approach to the OCC's MLR causes smaller institutions to go through a data extraction exercise to gather quantitative information which may not necessarily provide useful insight into development of a risk model, but rather be a futile exercise at gathering numbers immaterial to risk and internal controls.

Operating and Maintenance Costs

ABA believes that for all institutions, risk assessment processes incur significant start-up, operating, and maintenance costs.. This is especially true when the data specified by the

MLR system requires a particular degree of detail that has not been previously collected in this manner. To make this annual process mandatory without due consideration to existing processes and information would cause additional measures to be put in place, both manual and automated, for gathering, aggregating and compiling reporting information.

Conclusion

ABA appreciates this opportunity to comment on the renewal of this information collection. In summary, we believe that the risk summary form at the core of the MLR system can be a helpful template for many banks to use or a valuable reference in arriving at their institution's BSA/AML risk assessment. However, we believe that the form should not be mandatory, should not be expected to be prepared annually, and should not be the source of a data aggregation project that purports to accurately represent individual or industry BSA/AML risk. Therefore, we recommend that the OCC not renew the subject information collection.

Accordingly, we hope that through this Paperwork Reduction Act burden evaluation process, the OCC will review the MLR system and evaluate the need for routine collection of this risk information, as opposed to reliance on the detailed risk assessment conducted by the financial institutions. The RSF should not be mandatory, but rather be an available tool that a bank may use in arriving at an acceptable risk assessment.

Respectfully submitted,



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cc: OMB Desk Officer