



1120 Connecticut Avenue, NW  
Washington, DC 20036

1-800-BANKERS  
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**Richard R. Riese**  
Director  
Center for Regulatory  
Compliance  
Phone: 202-663-5051  
[Riese@aba.com](mailto:Riese@aba.com)

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Delivered via e-mail

Communications Division, Office of  
the Comptroller of the Currency, Public  
Information Room, Mailstop 1-5,  
Attention: 1557-0231,  
250 E Street, SW  
Washington, DC 20219  
[regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov)

Re: "Bank Secrecy Act/Money Laundering Risk Assessment;"  
Federal Register 73326; December 9, 2005

Please accept this letter as the American Bankers Association's (ABA) response to the Comptroller of the Currency's (OCC) request for comments in connection with the request for three year renewal of the Agency Information Collection Activity titled Bank Secrecy Act/Money Laundering Risk Assessment.

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.

ABA and its members recognize the value of conducting self-assessments of Bank Secrecy Act/Anti-Money Laundering (BSA/AML or BSA) risk of a bank's products, services, customers and locations as a basis for establishing and maintaining appropriate internal controls for a suitable BSA/AML compliance program. In addition, we welcome the OCC's acknowledgement that such a risk assessment imposes a paperwork burden that constitutes an agency information collection activity. Our goal is to derive as much practical utility from the risk assessment process while minimizing unnecessary burden. We believe this is best accomplished by providing regulatory guidance to improve bank choice of available assessment tools without mandating one-size fits all reporting formats.

After due consideration of the attributes and limitations of the Money Laundering Risk (MLR) System that constitutes this information collection, ABA has reached the view 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 risk.

We recommend that the system not be renewed; but should the Office of Management and Budget decide otherwise, it should renew the information collection for no more than one year.

We comment on this notice as follows:

### **Utility of Information Collection**

#### **--Mandatory format**

ABA believes a BSA risk assessment has practical utility and is related to the agency's oversight of BSA compliance. We reach this conclusion with the caveat that no single format for this information collection should be prescribed for all institutions. As the risk profile of banks vary, so do the means for assessing their BSA risk and articulating that assessment. Some institutions can perform this task in a shorter period than others and by collecting and evaluating less information using a more simplified approach than undertaken by banks offering more complex financial services to riskier market segments. A single format approach will surely result in information requirements inconsistent with the particular operations, markets, activities, nature, condition, etc., of any number of banks and thereby impose avoidable compliance costs while also yielding information in some ways distorted to meet the reporting format.

On the one hand, OCC describes the MLR System as “designed to quantify money laundering risk by utilizing an automated approach” and yielding reports for OCC management and examiners “detailing risk areas and specific bank risks for evaluation and comparison.” On the other hand, OCC acknowledges that the MLR System and its Risk Summary Form (RSF) is 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.” Nevertheless, the data collection is mandatory; even if a bank has prepared an appropriate risk assessment without calculating the specific data required in the reporting format.

We note further that the MLR System does not, as part of its “automated” approach, take into account the risk variation within data categories. For example, while insisting on the number of accounts for check cashing money service businesses—MSBs—and the sum of outstanding balances of those accounts, the MLR System does not provide a means for distinguishing those check cashing operations that are low risk from those that are high risk consistent with the reality recognized by the April 2005 Interagency Interpretive Guidance on MSBs. This flaw is repeated throughout the system, thereby obscuring real risk distinctions within categories and suggesting the wrong picture of an institution's overall risk profile.

#### **--Annual reporting**

It is also the case that many banks do not undergo the frequency of operational changes that warrant an annual BSA risk assessment. As has been endorsed during the Interagency BSA/AML Exam Manual Outreach programs, many small institutions can conduct adequate risk assessments on an exam cycle basis—meaning

a longer than annual interval. The OCC should not impose an annual risk assessment on all banks as an inflexible examination or supervisory standard, but should allow the leeway articulated during the outreach meetings for banks with modest and relatively static risk profiles.

### **--Oversight limits**

Furthermore, OCC claims that the data collected will have supervisory benefits beyond assisting individual institution risk assessment, such as apportionment of 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 and combine estimated data with accurate actual transaction or account information. There is a significant likelihood that the aggregate data generated by the system will be misinterpreted by those obtaining reports from such a database. Discrepancies between an examiner's endorsement of a bank's overall risk assessment that properly balances qualitative and quantitative customer risk distinctions and an OCC oversight body's (e.g., quality assurance group, Ombudsman, IG, GAO or Congressional committee) interpretation of the raw numbers produced by the MLR system will lead to burdensome efforts to correct misguided analyses.

### **Burden Estimate**

ABA believes that the burden estimate is too low. Under the Paperwork Reduction Act of 1995, "burden" constitutes a much wider range of activities than simply completing the form and associated recordkeeping.<sup>1</sup> Burden also encompasses:

1. Training personnel to properly collect the information and to understand the complexities of money laundering and terrorist financing.
2. Design, procurement and operation of data collection, data management, data reporting systems necessitated by the collection of information.
3. Time, effort and other resources to perform all required tasks, including completion and fulfillment of the information request, as well as to certify the accuracy and/or reliability of information provided.
4. Transmitting or otherwise disclosing the information to the federal agency requesting the information.

While the User Guide states that OCC is "interested in obtaining as accurate information as possible," it further states that estimated responses are acceptable. OCC expects that "estimated information will become verified over time either by the bank or through the course of an examination." Whatever this expectation translates to in terms of conducting examinations or otherwise assuring data accuracy, it is clearly an aspect of burden as the OMB Paperwork Implementing Guidance state: "All time, effort and other resources which need to be expended to certify the accuracy and/or reliability of information developed [or] submitted ...represent paperwork burden."<sup>2</sup>

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<sup>1</sup> See, Office of Mgmt. & Budget, The Paperwork Reduction Act of 1995: Implementing Guidance for OMB Review of Agency Information Collection 44 – 53 (Aug. 16, 1999)("Paperwork Implementing Guidance".)

<sup>2</sup> See, Paperwork Implementing Guidance, *Id.* at p. 48.

While it represents an average across a broad risk range, we believe that the 6 hours selected to represent the time spent by 1,789 community banks significantly underestimates the time associated with fulfilling all countable tasks related to understanding the User Guide, obtaining data, completing the form, verifying estimates, undergoing examination on response accuracy and transmitting the RSF. Many institutions do not have the information requested stored in their systems in the format requested. Bankers have even characterized this requirement as the most onerous information reporting burden since the Call Report. Small community banks have experienced between 25 – 90+ hours for preparing for, collecting data and filing the RSF.

### **Means of Improving the Collection**

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 Interagency 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. In addition, the agencies should promote joint examiner/industry training, so that both sides receive the same message and that regional supervisory applications do not deviate from intended Washington interpretations.

ABA supports an agency providing analytical risk assessment tools that banks may voluntarily adopt to conduct an assessment of BSA risk. We applaud OCC's effort to provide a "first step" to aide its community and mid-size banks in evaluating their risk profiles. However, we believe that the true value of the RSF lies in it being an option or a model, not a mandate.

### **Use of Technology in Connection with Collection**

The chief means of reducing burden for this collection is to apply technology where warranted and not to impose it where its expense exceeds its value. Even the apparently simple RSF prepared by OCC calls for excessive quantitative data that is not necessary for many smaller institutions to specify in reaching a sound risk assessment using, for instance, Appendix J of the Interagency Exam Manual. The RSF should not be mandatory. Rather it should only be an available tool that a bank can—but need not—use in arriving at an acceptable risk assessment.

### **Operating and Maintenance Costs of Responding to Collection**

ABA believes that for all institutions, risk assessment processes incur significant start-up costs, operating costs 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. It is no wonder that some bankers

have compared the MLR system to the Call Report—and pointed out that there was no similar period of advance notice of its collection or no appreciable opportunity for industry comment before it was imposed as an emergency collection. In addition, in view of the fact that independent auditing or testing of BSA compliance controls is a statutory requirement, we anticipate that audit of this new risk assessment reporting process will be a further burden incurred by the community and mid-size banks covered by this collection.

### **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 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 risk. For these reasons and as more fully explained above, we recommend that the subject information collection not be renewed.

If the Office of Management and Budget chooses to approve the renewal of this information collection, it should do so for no more than one year—requiring the agency to demonstrate more accurately in the interim the full amount of paperwork burden under the OMB Implementation Guidelines connected with system reporting, the reliability of the resulting data for supervisory or oversight purposes and the superiority of the system as a mandatory basis for institutional risk assessment over acceptable alternative assessment approaches.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Richard R. Riese".

Richard R. Riese

cc: OCC Desk Officer