

April 8, 2013

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
Attention: 1557-0231
400 7th Street, SW
Suite 3E-218
Mail Stop 9W-11
Washington, DC 20219

Bank Secrecy Act/Money Laundering Risk Assessment (MLR)

Dear Sir or Madam:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the proposed expansion of the Money Laundering Risk Assessment (MLR) which the Office of the Comptroller of the Currency (OCC) uses in Bank Secrecy Act (BSA) examinations. The request, submitted under the Paperwork Reduction Act (PRA), would continue the use of the information collection but possibly expand it from smaller institutions to all commercial banks supervised by the OCC.

Before OCC takes such a significant step, ABA believes a clear demonstration is needed to show that costs and burdens associated with the MLR do not outweigh its benefits. Recently, Comptroller Curry testified that, "banks, thrifts, and other financial institutions have had to devote increasingly larger amounts of resources to maintain effective programs, and the OCC has likewise significantly increased its attention in this area."² ABA agrees whole-heartedly that Bank Secrecy Act (BSA) compliance requires 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 or 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 are currently 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 important to demonstrate how a program, especially one which consumes significant resources, effectively combats money laundering and terrorist financing.

ABA is concerned about the proposal since many community banks which have been subjected to the MLR for a number of years have raised serious concerns about the program. Therefore, before expanding the MLR to the entire universe of national banks, ABA believes that several key issues must be addressed.

¹ABA represents banks of all sizes and charters and is the voice for the nation's \$14 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than \$165 million in assets.

²Testimony 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

- First, the mandatory imposition of the MLR is limited to use by national banks and therefore is inconsistent with the *interagency approach* to uniform examinations for BSA compliance established in 2005.³
- 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) sanctions risks associated with banks’ products, services, customers, and locations,”⁴ there is no evidence presented to validate how the tool is used to identify and quantify risks.
- Third, community banks currently subjected to the MLR report that it is both time-consuming and burdensome with no offsetting benefit for the bank.
- Fourth, there is nothing to indicate how or if the MLR is coordinated or connected with a bank’s own risk assessment, suggesting it may possibly be a redundant exercise.
- Fifth, the burden estimates are completely inconsistent with the experience of community banks, and the estimated amounts in the PRA notice completely understate the resources needed to complete the MLR.
- And finally, since the proposal would expand the use of the program to all national banks, it merits a full Notice of Proposed Rulemaking and not a simple PRA notice.

The MLR is inconsistent with the FFIEC BSA/AML Exam Manual

According to the FFIEC exam manual, “[t]here 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. Whatever format management chooses to use for its risk assessment, it should be easily understood by all appropriate parties.”⁵

When the first Manual was introduced in 2005, 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. In fact, when the manual was introduced to bankers through a series of training sessions across the United States in 2005, examiners from different agencies were trained simultaneously to ensure that all examiners from the different supervisory agencies heard the same message. In fact, only last month the Comptroller testified that, “[t]he publication of the Interagency BSA/AML Examination Manual (Manual) in 2005 effectively standardized examination procedures for the federal banking agencies.”⁶

If one agency departs from this approach, it undermines the goal of consistency that was the foundation for the Manual. In fact, last summer, the OCC was criticized during a Senate Hearing for approaching BSA differently from the other agencies by conducting BSA evaluations

³ In 2005, the agencies of the Federal Financial Institutions Examination Council introduced the Bank Secrecy Act/Anti-Money Laundering Examination Manual. Last updated in April 2010, the manual has been welcomed as a model of interagency cooperation and consistency for oversight.

⁴ 78 *Federal Register*, March 8, 2013, p. 15122.

⁵ FFIEC BSA/AML Examination Manual, April 2010, p. 22.

⁶ Senate Banking hearing testimony, March 7, 2013, p. 5

as part of the compliance examination.⁷ As a result, the OCC has restructured its approach to BSA evaluations to be consistent with the other agencies.⁸ Since it was only recently that the OCC took a major step towards consistency with the other banking supervisory agencies, it seems inappropriate to maintain inconsistency with the MLR.

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 a result, two significant efforts were announced at the American Bankers Association/American Bar Association *Money Laundering Enforcement Conference* last November⁹ by the Treasury Under Secretary for Terrorism and Financial Intelligence and the Director of FinCEN, that their respective offices were undertaking comprehensive reviews of the BSA and its effectiveness. As the Director of FinCEN stated, “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.”

Before proceeding with expanding the use of the MLR, ABA believes it is extremely important for the OCC to explain how the MLR 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 MLR needs a careful cost-benefit analysis

In the current environment, and as noted by the Comptroller in his Senate testimony on March 7, the need for effective use of resources is critical. One of the key concerns the Comptroller raised in his 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.

In conversations with community banks that have been subjected to the MLR for several years, the uniform response has been that it is extremely time-consuming to complete. Unfortunately, even though some of the information in the form is available to examiners through other channels, completing the information in the format required is a labor-intensive and manual process. Community banks have also expressed frustration at being asked for much information that is irrelevant to their own operations but that must be validated and completed. Moreover, the uniform data required by the MLR seem inconsistent with the independent risk assessments that each national community bank does to comply with the requirements of the FFIEC manual, and community banks have expressed frustration that it is in some ways redundant and other ways irrelevant to their own risk assessments. Few have seen the benefit that it is claimed to provide.¹⁰

⁷ Senate Permanent Subcommittee on Investigations hearing on July 17, 2012, <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/us-vulnerabilities-to-money-laundering-drugs-and-terrorist-financing-hsbc-case-history>

⁸OCC 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>

⁹<http://www.hsgac.senate.gov/subcommittees/investigations/hearings/us-vulnerabilities-to-money-laundering-drugs-and-terrorist-financing-hsbc-case-history> and http://www.fincen.gov/news_room/speech/html/20121113.html

¹⁰ At a recent ABA visit with 175 bankers attending a state association compliance seminar, only two out of 30 national banks indicated they found enough value in the MLR to continue to use it if it were a voluntary rather than mandatory report.

One of the fundamental flaws with the current MLR process is that community banks are only given a summary analysis of the results, and community banks report that it fails to provide any real benefit in their own risk assessment process. From published information, the information is not used to benchmark institutional risk for either bankers or examiners.

Community banks that have been subject to the MLR for some time report they are unable to rely on the MLR for their own risk assessment. If, as the OCC suggests, the MLR is an adequate tool for risk assessment, then it should be unnecessary for any national bank to conduct a separate and independent risk assessment using its own analysis. However, the MLR on its own is an inadequate risk assessment. Many more factors that comprise the state of a bank's BSA risk such as staffing, audit processes, whether manual or software systems are used, whether the institution is in a HIDTA or HIFCA, and a myriad of other considerations need to be included in a risk assessment. The MLR is simply a quantitative summary which does not provide context or reflect the qualitative elements that are vital for a proper risk assessment. 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 the unique elements of a customized risk-based analysis that focuses on the unique attributes of individual financial institutions, the MLR appears to revert to a one-size fits all cookie cutter approach to analysis, which is inconsistent with the FFIEC manual.

One problem with the MLR is how banks are directed to round up to "1" in the fields that are used. For example, when a bank is recording countries where it sends wire transfers, the bank is required to average the total number of wires over the past year and divide by the number of actual banking days. For a smaller institution, 10 wires might be sent over the course of one year to China. This results in a figure of .04, (10 divided by the # of business days of 250), which is required to be rounded up to "1". The result is that, in this example the MLR shows "Average Daily Volume" for wires to China as one per day, when in fact, there were only 10 in the entire year. This required process to report results in inaccurate and misleading information about a bank's risk, which in turn prevents the MLR results from being useful for the bank to assess risk,

A second problem with the MLR is the timing for reporting information. The schedule for the MLR is inconsistent with most bank operations since the MLR data are compiled as of September 30 while many 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 to fit the MLR. It also means that the information is incompatible with the bank's own risk assessments. OCC examiners reportedly have explained to community banks that the timing for the MLR data is for the convenience of the examination process only. If that is true, then it undermines any relevance for the bank.

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. Over time banks have developed procedures and reporting routines customized and adapted 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 categories of information for banks to report. Updates, fields, new products and services to

be covered and other new information requests are provided only when the information data collection starts with no prior notice. Not only does this present an additional burden to banks, it also highlights the fact that much of the data required do not exist in normal course of business and must be customized and manually collated solely to complete the MLR and then are not otherwise useful to the bank.

The burden estimates are inconsistent with community bank experience

According to the March 8 *Federal Register* notice there are 1,792 national community banks which take a total of 10,752 hours annually on the MLR. Therefore, the average time that a community bank needs to complete the MLR would be 6 hours according to the OCC filing. This average is unchanged from prior estimates.¹¹

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

Not only is the report time-consuming to produce, the OCC often contacts banks to ascertain why certain activity changed from one year to the next. This requires a bank to compile and maintain all supporting information related to the MLR in order to respond to questions, which in turn increases the burden. In addition, banks have reported that the OCC's own analysts easily can be misled by the risk profile of a bank given how results are reported. For example, in the preceding example using wires sent to China, the bank must explain to OCC that it did not send one wire per day to China but that the report produces that result due to how the OCC's instructions are written.

Also contributing to the inaccuracy of the static estimate are the changes in the reporting requirements (described above) that OCC has introduced in successive reporting years without ever seeking OMB clearance for such form amendments. ABA believes that OCC has failed to satisfy its obligations to maintain the MLR in the form it was approved, which further fails to satisfy the Congressional mandate of the Paperwork Reduction Act. ABA also questions whether applying the MLR form to all banks under the OCC's jurisdiction inappropriately side-steps the call report amendment process.

When it comes to larger institutions, the OCC estimates that it would take only 100 hours annually to comply. However, even though larger banks can rely on automated systems to a greater extent and even though larger institutions have larger staffs to comply with these requirements, the need to coordinate and adjust system reports to enter the data into the MLR is likely to far exceed what the OCC estimates. Again, ABA suspects that the estimates provided do not begin to reflect the burden and time that will be needed if the MLR is expanded.

Although we are unable to compile better statistics in the short 30 days allowed for comment, ABA believes far more research is needed to validate the figures estimated for burden

¹¹ When the OCC renewed the MLR three years ago, it had the same burden estimate despite the fact that the data collected has changed in the past three years. *Federal Register*, Vol. 75, No. 11, Tuesday, January 19, 2010, p. 2929.

estimates, since the figures in the *Federal Register* notice are inconsistent with all the comments from bankers who have been using the MLR.

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. For example, recently, FATF issued guidance that governments should take with respect to development of national risk assessments.¹² This underscores the importance of risk-assessment methodologies 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.

Conclusion

ABA welcomes tools and resources that the agencies provide to assist banks with their compliance needs. But as the FFIEC BSA exam 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 carefully consider the costs and benefits whenever these tools are mandated, and to ensure that all regulators take a consistent approach to compliance. ABA looks forward to working with the OCC to help meet these goals.

If you have any questions or need additional information, please contact me at 202-663-5029 or by e-mail at rrowe@aba.com.

Sincerely,



Robert G. Rowe, III
Vice President & Senior Counsel

CC: OCC Desk Officer, 1557-0231
U. S. Office of Management & Budget
725 17th Street, NW #10235
Washington, DC 20503

¹² <http://www.fatf-gafi.org/topics/methodsandtrends/documents/nationalmoneylaunderingandterroristfinancingriskassessment.html>