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February 14, 2005

Information Collection Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G St., N.W.  
Washington, D.C. 20552

Submitted via [infocollection.comments@ots.treas.gov](mailto:infocollection.comments@ots.treas.gov)

Re: Comment Request—Procedures for Monitoring Bank Secrecy Act  
OMB 1550-0041

Dear Agency Staff:

On December 15, 2004 OTS published a notice seeking comment on its renewal estimate of a Paperwork Reduction Act “information collection requirement” burden estimate titled “procedures for Monitoring Bank Secrecy Act” deriving from 12 CFR 563.177. The request for comment under the Paperwork Reduction Act seeks to ascertain the burdens associated with the OTS obligation “to determine whether a savings association has implemented a program reasonably designed to assure and monitor compliance with the currency recordkeeping and reporting requirements established by Federal Statute and the U.S. Department of Treasury regulations.”

The ABA 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. Moreover, ABA is an active participant in the Bank Secrecy Act Advisory Group and has worked diligently to bring a spirit of constructive cooperation to the efforts of the industry and the agencies in meeting their obligations to combat money laundering and terrorism financing. We appreciate the opportunity to contribute to a realistic estimate of the burdens associated with BSA compliance by banks and thrifts.

### Background

By its terms 12 CFR 563.177 requires savings associations to establish and maintain procedures reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements of statutory and regulatory mandates commonly known as the Bank Secrecy Act (as amended by subsequent anti-money laundering and counter terrorism financing laws.) The contents of the BSA compliance program are by this regulation required to contain provisions:

1. for a system of internal controls to assure ongoing compliance;
2. for independent testing for compliance to be conducted by in-house personnel or by an outside party;
3. designating individual(s) responsible for coordinating and monitoring day-to-day compliance; and
4. for training appropriate personnel.

This program is to be in writing, approved by the board of directors and reflected in minutes of the association. Since the last estimate, section 563.177 was amended to specifically require the “BSA compliance program” to contain and implement the requirements of the customer identification program promulgated pursuant to USA PATRIOT Act regulations. See, 12 CFR 563.177(b)(2).

The OTS regulation conforms to the parallel requirements of the other banking agencies: 12 CFR 21.21 (OCC), 12 CFR 208.63 (FRB) and 12 CFR 326.8 (FDIC).

Allowing for the fact that SAR and CTR filings that are performed in accordance with an institution’s BSA compliance procedures are covered under other regulatory paperwork reduction estimates and that the CIP recordkeeping was estimated in the Treasury rule issued May 2003, ABA asserts that the creation, maintenance and regular verification of the fundamental BSA compliance program entails obligations amounting to information collections within the scope of the Paperwork Reduction Act that substantially exceed 2 hours a year.

#### *Changes since the Last Estimate*

The banking industry has more than a generation of experience complying with the Bank Secrecy Act of 1970. Although BSA compliance obligations have grown over the interim, a certain degree of maturity and standardization characterized compliance management up until the events of September 11, 2001.

Whatever the reasonableness of past estimates of time spent on the maintenance of a BSA compliance program by OTS institutions, the current circumstances for what it takes for an institution to maintain a written, board approved program is substantially different from three years ago. Consider the following developments that have intervened since the prior OTS estimate:

- The USA PATRIOT Act introduced substantive regulatory changes to the BSA compliance program requirement with implications for each of its four mandatory components. As Attachment 1 to CEO Letter 175 states, “The OTS will expect institutions to review their business operations and to incorporate a CIP that addresses the identified risks. The CIP must be incorporated into a thrift’s anti-money laundering program, which must be approved by the thrift’s board of directors. The CIP should encompass all activities of the thrift and its subsidiaries to the same extent as existing BSA compliance program requirements. Thrifts should incorporate their CIP into an overall BSA program, which must include (1) internal policies, procedures, and controls to ensure ongoing compliance; (2) designation of a BSA compliance officer; (3) an ongoing employee training program; and (4) an independent audit process to test programs.” (See also, CEO Letter 166.)

- ❑ Coincident with the publication of the CIP rule, OTS issued industry guidance suggesting institutions ADAPt their BSA/AML compliance program to the USA PATRIOT Act requirements including elements deriving from sections 314, 319 and 326 of the Act. The ADAPt approach recommends that institutions follow a series of steps—analyze, develop, apply and test—to update their BSA programs. (See, Attachment 2 to CEO Letter 175)
- ❑ OTS launched a new set of examination procedures beginning in the fall of 2003 for examining for compliance with BSA standards that emphasized the significance of risk assessment in BSA compliance program scope, the conduct of periodic reviews of its program and the confirmation of the continuing adequacy of an institution’s controls. In fact, another set of comprehensive BSA examination procedures are being prepared on an interagency basis—an event that will demand additional adjustments and training for all parts of the association.
- ❑ OTS has published new enforcement guidelines emphasizing the significance of BSA programmatic compliance and resurrecting the specter of 1818(s) C&D remedies for deficiencies of an institution’s BSA program. Among the factors to be considered in taking enforcement action is “whether the thrift identified the [program] weaknesses itself through its BSA testing, audit or self-evaluation efforts and the thrift has independently instituted timely and adequate corrective action.” (See, RB-18-6.)
- ❑ OTS testified in June 2004 that “all thrifts, regardless of size, must have BSA compliance programs that address all regulatory requirements and are appropriate to the BSA risk attributable to their operational complexity and market circumstances.” OTS has backed up that message by issuing seven formal enforcement actions requiring corrective action including development of effective BSA/AML programs and demonstrating that BSA officers are provided sufficient resources to execute program responsibilities.

These factors anticipate a much more involved process for management and the board to maintain or verify the adequacy and integrity of its written BSA compliance program—independent of the execution of the procedures as part of one’s day-to-day operations. Consequently, the current level of supervisory expectation is demonstrably higher than prevailed at the time of the prior estimate.

The ADAPt approach described in Director Gilleran’s testimony in June 2004 encompasses a litany of questions that institutions should respond to in determining whether their BSA/AML programs are adequate to the task of managing the money laundering and terrorism financing risks implicated by an institution’s business operations. New OTS BSA procedures require examiners to take the following steps when determining the adequacy of an institution’s BSA compliance program:

- ❑ Review and analyze management’s anti-money laundering (AML) risk assessment of all major business lines that should include association size, location, market and services with particular emphasis on certain at-risk activities.
- ❑ Determine whether the association conducts periodic reviews that evaluate the adequacy of the components of its BSA compliance program and confirms the adequacy of its controls.

- ❑ Determine whether senior management and board are presented written reports of the association’s compliance review, internal audit and recommendations for corrective action.
- ❑ Evaluate board efforts to hold management accountable for BSA compliance by considering frequency and thoroughness of reports, board understanding of said reports and the board’s provision of adequate resources for compliance consistent with the institution’s BSA risk profile.

The requirement for conducting a risk assessment of business operations to evaluate the BSA/AML implications of those activities in order to appropriately tailor one’s AML program is a substantial new duty. It is also an obligation that is being featured prominently in all banking agency enforcement orders.

Given these oversight expectations, the undertaking associated with the institution’s maintenance of a written, Board approved program—again, entirely independent of SAR or CTR recordkeeping or reporting—encompasses extensive information and risk analysis, report writing, executive debate and informed board deliberation before an institution can satisfactorily confirm the adequacy of its BSA compliance program. The board minutes may be succinct, but the work that goes into a compliant board minute is considerable from both a practical and a Paperwork Reduction Act perspective.

What role do customer identification program requirements have with respect to arriving at a sound paperwork reduction estimate of the obligations of 563.177? An inspection of the paperwork estimate published with the Treasury rule in 2003 reveals that it limited its calculations to identity verification recordkeeping requirements and customer notification. (See, 68 FR at 25106-08, May 9, 2003) Without countenancing the accuracy of that limited estimate, it is clear no effort was made to estimate the paperwork burden associated with the risk-assessment process necessary to devise and maintain the customer identification program as a component of the bank’s overall BSA compliance program. Presumably that portion was left to the estimation of the burden of amended 563.177 which would be conducted at the next triennial review.

*Paperwork Reduction Act Scope*

Under the Paperwork Reduction Act of 1995, the following types of activities are among those that constitute burden to be estimated in connection with a covered information collection:

1. Design, procurement and operation of data *collection*, data *management*, data *reporting* systems necessitated by the collection of information.
2. Responding to changes in the requirements of an existing collection of information where such collection requires different or more detailed information, redefines terms or concepts or alters in any way the consequences of responding in the same manner as before.
3. Training staff or other agents about how to comply with the collection, including whatever time or money resources are necessary to ensure staff understands enough about the nature of the program and policy context to respond to the collection.

4. 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. Effort to certify compliance with any statutory or regulatory provision represents paperwork burden, generally requires intensive scrutiny by senior officers, cannot be delegated and generally entails a comprehensive audit. Such certification burden should be evaluated with the context of the legal consequences to respondent for improper certification.
5. Time, effort and other resources devoted to transmitting the collection of information to the federal agency or a third party.

(These factors are described in The Paperwork Reduction Act of 1995: Implementing Guidance for OMB Review of Agency Information Collection, August 16, 1999 (Draft by Office of Information and Regulatory Affairs, OMB) at pp. 45 – 48.)

If one considers “the collection of information” to be the preparation, maintenance or verification of the written, board approved BSA compliance program, it is apparent from the above guidance that it encompasses a broad range of activities beyond those obligations contained in existing recordkeeping and reporting estimates. In particular, it needs to estimate the time and expense incurred in responding to changes in the requirements that have taken place in the period since the last estimate.

#### Estimating the Burden

ABA recognizes that precise estimates of time spent are difficult to quantify. There are a number of variables that can differ across institutions. In order that OTS can understand the components that the industry believes make up the overall burden encompassed by the obligation to have a risk-based board approved comprehensive BSA/AML compliance program we attempt to describe the impact of these variables and supply separate good faith estimates for the different components.

As with all Paperwork Reduction estimates, time spent generally varies by institution size and complexity of operations. By using an average number of hours across all institutions, this variation in burden is often lost. Nevertheless, it must be clear from the analysis conducted by the Inspector General and OTS’ response to his report, that small community thrifts as well as larger institutions must conduct a BSA risk analysis of their operations and devise an appropriate compliance program meeting all four regulatory requirements for such a program. In view of recent enforcement orders imposed by OTS on community thrifts, it is clear that establishing compliant programs is not a two hour effort even for smaller banks. It is counterintuitive that two hours effort by a small institution could prevent a formal enforcement action. Certainly outside consultants retained to assist a small thrift in updating its program charge more than two hours time to perform that task.

ABA urges OTS to draw on the experience of its examiners in working with institutions and its supervisory personnel who monitor the effort expended in thrift remedial efforts to achieve compliance to provide the agency with a better estimate of Paperwork Reduction Act burden in connection with 12 CFR 563.177.

### *Fundamental Elements of Burden For Maintaining or Verifying a BSA Program*

For its part ABA identifies the following building blocks that should be included in arriving at the aggregate estimate attributable to the maintenance of a written, board approved BSA/AML compliance program under 563.177. We present this information in a range to reflect the relative difference between traditional community-based operations and larger more complex institutions:

- *Time spent on revising the institution's BSA compliance program in order to address regulatory changes issued during 2002-04.* As noted in the Implementing Guidance, effort spent in responding to regulatory changes to an existing information collection including those that redefine terms or concepts "or alters in any way the consequences of responding in the same manner as before," is appropriately included in burden estimates. The substantial changes in BSA compliance program changes wrought by USAPA and OTS supervisory interpretation of the impact of those changes has materially altered the obligations expected of management and the board in assuring maintenance of a thrift's BSA compliance program. The modifications to internal controls, audit, BSA officer duties and training content are substantial for community and large banks. Considering each of the following tasks, we estimate the total will be in the range of 42 – 250 hours.
  - Time expended on performing a risk assessment for the purposes of updating your BSA compliance program. Even in the small community thrifts this generally involves some brainstorming by 3 or 4 people at a meeting and then separate reflection before drafting an overall assessment and confirming the result. 8 - 60
  - Time spent on following the ADAPt program to incorporate USA PATRIOT Act regulations and particularly addressing 563.177(b)(2)'s mandate to include a CIP in the overall program. (Not counting time spent in performing customer identity verifications, keeping verification records or preparing and providing customer notices of CIP implementations.) Devising one's compliant CIP and integrating it with the rest of the BSA compliance program is the most demanding part of this task, but it also includes establishing the controls for being able to fulfill 312, 314 and 319 obligations among others. 20 - 120
  - Time expended for changes to independent testing protocols in order to review new internal controls. 4 - 20
  - Time spent on training staff responsible so they could understand the new regulatory requirements sufficiently to prepare BSA program updates. 10 – 50
  - ABA's estimates for the above conform to information received from its members including, for example, one community thrift with assets under \$250 million that expended a total of 60 hours in the aggregate on its efforts to revise its BSA program consistent with the steps expected by OTS guidance.
- *Time spent to conduct risk assessments for annually certifying that the thrift has a comprehensive compliance program tailored to the BSA risk arising from the business operations of the institution.* The work involved in taking stock of operational

changes and verifying prior apportionment of customers, products, geographies and distribution channels between ordinary and enhanced due diligence within your compliance program requires a conscientious and comprehensive re-inventory of your business activities. Even for the small community bank, this will take the responsible BSA officer the better part of a day. In larger institutions, more coordination is required and time and input from different offices is demanded thereby involving hours out of multiple employees' schedules. *Estimated range: 6 – 50 hours.*

- *Time spent on conducting independent testing or auditing of the BSA compliance program* in the course of a normal year including doing transaction testing of program controls, preparing a report and making any required changes to the program so that the board can make an informed judgment that the institution is maintaining compliance with 563.177. Annual testing and auditing of the BSA compliance program is a fundamental part of how the institution and its board assure or verify that the thrift's program is designed and functioning adequately to manage the institution's risk. Operational complexity, organizational divisions and transaction volume are factors that cause the amount of time spent by each bank to vary. Conducting the review is followed by discussions of findings with management, development of correction actions, and report writing. *Estimated range: 12 – 80 hours.* ABA is aware of small thrifts where this annual audit process took no less than 16 hours.
- *Time spent on board consideration and approval of BSA compliance program.*
  - Preparation/compilation of reports to board or committees thereof (not including the actual audit or test process and its reports estimated elsewhere). This ministerial task tends to vary the least, but even so the frequency of meetings and the materials to be compiled for board consideration does relate somewhat to size and complexity. *Estimated range: 3 – 10 hours.*
  - Consideration and deliberation by board or committees thereof. With the proliferation of formal enforcement orders comes an increased visibility of BSA issues in the board room. Five minute items once a year are a thing of the past. Institution boards of all size need to spend appropriate time to assure that they understand their institution's BSA risk profile and appreciate the compliance program devised to deal with that profile. Given the number of directors, this time adds up. Obviously more complex thrifts will have committee work and more frequent reports than traditional community thrifts. *Estimated range: 10 – 40.* For example, ABA has spoken with one thrift member under \$100 million who points out that the time spent by just its three independent directors to read necessary reports to make an informed judgment about the institution's BSA program, deliberate with the full board and then approve the program totaled 15 hours.
- *Time spent on keeping training curriculum current to meet 563.177(c)(4) requirements.* The times when BSA training was largely static and forms underwent little change are over. Each year new regulations and new processes are being introduced requiring changes to each institution's training curriculum. This estimate only involves designing and making the changes to training

curriculum, not conducting the actual classes to maintain staff expertise. *Estimated range 4 – 30.* For example, one large thrift has informed ABA that just the design of the curriculum for training its staff on their BSA compliance responsibilities amounted to 30 hours.

- The experience of ABA members under \$250 million are in line with these annual task estimates—as we have had reported to us, small thrifts have spent 40 hours or more keeping their program current and approved by the board each year.

#### *Other Burdens Flowing From 563.177 Obligations*

In presenting these estimates, ABA has been careful to separate out burdens associated with actual SAR form filing and CTR reporting, as well as the recordkeeping entailed by customer identity verification under CIP. Nevertheless, there are additional burdens that are entailed by 563.177 beyond these routine reporting and recordkeeping elements. Perhaps the most significant is the dissemination of staff training required by (c)(4)—a requirement included in many remedial C&Ds. While we have previously estimated the burden entailed by updating the curriculum, the time spent actually conducting the training is a separate burden. This varies with the number of staff and their responsibilities. But there can be no doubt that this entails on the order of an hour or so for each front line customer service employee in the bank. In addition, there are a number of administrative staff and security personnel who undergo more intensive training. Estimating this training burden is difficult. But given the employment ranks of those in banking and the thrift industry's relative portion of that times a per capita training allotment, we suggest an average of *200 man hours* per institution given the industry's size and risk profile is not unreasonable.

For example, ABA has been advised that one bank member of less than \$150 million expended approximately 250 hours to prepare its updated BSA compliance program and train its staff of 35 employees. Other institutions with over \$1 billion in assets have estimated between 3000 and 25,000 hours spent in training time alone.

Another area of regulatory burden when implementing a compliant BSA internal control program under 563.177 is the effort required to perform due diligence obligations both in connection with assuring prudent reliance on third party contractors and in connection with evaluating high risk customers.

Selecting third party vendors to provide systems for executing your BSA/AML controls entails a significant amount of due diligence before regulatory authorities conclude that bank reliance on such service providers is appropriate. Recent FDIC guidance implies that institutions have not been vigilant enough in utilizing software or other vendor systems. Researching options, introductory meetings, checking references, monitoring implementation, conducting dry-runs and testing initial output are tasks that can consume several days time even the smallest banks. Then there is the continuing due diligence that is conducted to support ongoing reliance once a vendor has been selected.

In addition, the requirement to conduct enhanced due diligence when accepting high risk customers is a component of the comprehensive BSA compliance program that imposes considerable work over-and-above the routine process of identity verification recordkeeping and customer notification estimated under the CIP rule. A salient example of this burden is the work involved when a bank has a money services business as a customer. MSBs impose a significant amount of institution oversight far beyond normal customer identification duties.

Whether or not OTS considers these types of due diligence within the purview of this information collection, it cannot be denied that agency supervisors expect this vigilance to be a part of conducting satisfactory BSA programs under 563.177.

Finally, having covered the other three components of basic BSA compliance, it is worth noting that 563.177(c)(3)—designating responsible officials—imposes its own considerable burdens. The process of recruiting, interviewing and placing responsible personnel to coordinate and monitor day-to-day BSA compliance compels a sizeable investment of time by both HR staff and the senior management to whom BSA officers will report. Expanding compliance personnel capacity is a necessary outgrowth of recent OTS emphasis on BSA/AML. Where once part-time staff sufficed, full-time officers are being appointed. Where single BSA officers once served, multi-employee departments are being created. Many thrifts have incurred significant personnel recruitment costs and time outlays, so that even on an industry average basis substantial hours have been expended. Should OTS wish to include this burden in its estimate, ABA is prepared to reach out to its membership for detailed experiences and expenditures.

### Conclusion

ABA understands that the Paperwork Reduction Act parameters for burden estimation do not embrace all the effort banks or thrifts expend on BSA compliance. However, the cornerstone of establishing and maintaining a comprehensive BSA compliance program required by 563.177 is a substantial undertaking that post 9-11 entails extensive work throughout the year to keep controls current, responsible staff positions filled, audits and testing performed and training planned and executed. We recognize that this is the initial solicitation for comments on this information collection renewal and look forward to the agency's own attempt to define its supervisory expectations for achieving and maintaining the required BSA compliance program standards based on its experience in examining and enforcing 563.177 since passage of the USA PATRIOT Act. ABA is prepared to meet and work with OTS, and the other federal banking regulators who have identical requirements, to delineate the appropriate scope of the Paperwork Reduction Act burden estimate and arrive at a reasonably accurate number for the total or its component elements.

Thank you for the opportunity to present our views. If you need additional information, please feel free to contact me at (202) 663-5029.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. Byrne". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John J. Byrne  
Director, Center for Regulatory Compliance