From: Kathy Knapp [kathy.knapp@gbmail.com]
Sent: Wednesday, May 04, 2005 12:46 PM
To: Comments, Regs
Subject: ATTN: NO. 2005-02

Kathy Knapp
4000 West Brown Deer Road
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May 4, 2005

James M. Gilleran
Office of Thrift Supervision
1700 G. Street, NW.
Washington, DC 20552

Dear Mr. Gilleran:

Guaranty Bank FSB, $2 billion, 124 branches in 4 states - Wisconsin, Illinois, Minnesota and Michigan. We appreciate the opportunity to comment on the proposed rule issued by the Office of Thrift Supervision and the other Federal financial institution regulatory agencies concerning outdated, unnecessary, or unduly burdensome regulatory requirements pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).

This letter primarily offers comments in the area of money laundering, as our costs for compliance in this area have increased $118,000. This cost is a result of adding an additional person and purchasing of Anti Money Laundering software. Money Laundering Regulations:

Our bank strongly supports the goals of the Bank Secrecy Act (BSA) and its related regulations and recognizes the significant value these rules provide in the fight against the financing of terrorism and other illicit enterprises. The decision by the Agencies to address the many issues associated with BSA and anti-money laundering (AML) compliance is encouraging news to the industry. We understand that addressing the issues raised by BSA and AML compliance cannot necessarily be resolved in a brief period of time. Nonetheless, we strongly believe there are recommendations that can be implemented in a relatively short period of time so as to provide much needed and more immediate regulatory relief in this particular area of compliance.

We encourage the Agencies to reconsider certain rules relating to Currency Transaction Reports (CTRs), Suspicious Activity Reports (SARs), and Money Service Businesses (MSB). One of the major concerns we share with the Agencies is the massive volume of reporting and the clogging effect it has on the system. First and foremost, the $10,000 threshold for CTRs should be increased. This threshold has not been adjusted for inflation since first introduced. At a minimum, the increase should reflect inflationary pressures in effect since its introduction in 1979. Considering the frequency of transactions in this range nowadays, failing to adjust this figure will only contribute to the clogging of the filing and reporting system and the dilution of the quality and value of information the government receives.

Additionally, this low CTR threshold has the effect of artificially increasing the number of SAR filings. To illustrate, a customer deposits, deliberately or inadvertently, an amount of cash below but close to the $10,000 threshold. The deposit could conceivably be deemed to be an attempt to circumvent reporting requirements by structuring cash transactions. This would be considered suspicious and would trigger a SAR filing. Thus, a low CTR threshold amount artificially increases the number of SAR filings. The effect of a low CTR threshold and its impact on SAR filings is equivalent to the effect defensive SAR filings have. Of course, the artificial increase in SAR filings means that bankers are now obligated to fulfill other due diligence, reporting, and recordkeeping requirements. Financial institutions are expected to file SARs every 90 days after the initial SAR filing. This requirement should be relaxed so that a SAR filing every 90 days is necessary only if suspicious activity is believed to be taking place, not just as a matter of course. To be consistent, an increase in the CTR threshold should be accompanied with an increase in the SAR filing threshold. From a more general standpoint, the purpose for the filing and reporting requirements pursuant to CTRs and SARs ought to have a wider rather than narrower focus. In other words, we argue that a better approach is one not focused on a cash transaction event on any given date, but one where the focus is on the cash transactions over a relatively longer period of time. We further argue that it is easier to detect a pattern of potentially illegal or improper activities when data is analyzed over an extended period of time, such as biweekly or monthly. This will also decrease the volume of filings and resources spent by financial institutions and the Agencies alike.

With regard to MSBs, the filing requirements are triggered when an individual conducts $1,000 or more in money services on any given date. For small accounts or an account where this event is rather sporadic, filing and recordkeeping requirements can be burdensome. This is especially true for smaller financial institutions. We strongly encourage the Agencies to change the language in this rule such that the triggering event is one where the $1000 or more threshold in money services is a standard practice.

As stated above, other BSA and AML issues are more complex and require a long-term approach. First and foremost, we strongly believe that BSA and AML efforts ought to be centralized. The Agencies, and the government in general, should assume a more proactive approach to this very important issue of money laundering and terrorist financing. Section 314(a) of the USA PATRIOT Act is a case on point.

Section 314(a) requires the Secretary of the Treasury to adopt regulations to encourage regulatory authorities and law enforcement authorities to share with financial institutions information regarding individuals, entities, and organizations engaged in or reasonably suspected, based on credible evidence, of engaging in terrorist acts or money laundering activities. Section 314(a) enables federal law enforcement agencies, through FinCEN, to reach out to 41,530 points of contact at more than 20,000 financial institutions to locate accounts and transactions of persons that may be involved in terrorism or money laundering.

I believe that a multifaceted approach to a financial institution’s review of the section 314(a) list is necessary to allow for more expeditious and efficient handling of such requests. We strongly encourage that the

Agencies allow key data processing vendors to have access to the section 314(a) list directly on behalf of their financial institution clients. In that way, a review of the list is accomplished with a mainframe data processing solution, much like OFAC reviews are accomplished.

Moreover, the rules should be harmonized and promulgated by one body. Currently, there is one body of BSA and AML law but several different regulatory agencies imposing similar but sometimes different standards, interpretations, and examination procedures. For instance, a SAR must be filed when there is (a) money laundering or BSA violations involving amounts of $5,000 or more; (b) insider abuse regardless of the dollar amount; (c) a federal crime conducted through the institution or that affects the institution, with a known suspect, involving the $5,000 threshold; (d) and if there is no known suspect, the threshold jumps to $25,000. Notice, however, that (a) above is a requirement imposed by the Department of the Treasury (Treasury). The other requirements are imposed by the Agencies. This is extremely important because if a financial institution fails to report a case of structuring, for instance, both the Treasury and our institution's primary Federal regulatory agency may properly cite our institution.

There can be no question that this lack of a unified approach to BSA and AML compliance, and lack of concrete guidance by the Agencies and the government alike, has contributed to confusion in the industry. For example, more guidance is needed to help bankers understand when to file a SAR. Currently, the rules are such that it requires a banker to use law enforcement techniques, subjective judgment, and sometimes detailed knowledge about allegedly suspicious customers to determine if a SAR should be filed. SAR reporting essentially turns financial institutions into criminal investigation bureaus.

Unfortunately, it has been well documented that a very small fraction of SAR filings receive follow up by the appropriate agencies. We strongly encourage the Agencies to coordinate training and guidance with other government agencies, such as the FBI, that are better equipped to provide specific guidance and direction as to what is adequate, complete, and useful information that will minimize the volume of filings but increase the frequency of investigations by the Agencies or other governmental bodies. Perhaps issuing a publication on a regular basis that highlights elements, events, or circumstances that prompted further investigation by the investigating governmental body would be helpful to the industry. Out of so many filings, knowing what exactly made certain filings worthy of further investigation will benefit the industry and perhaps reduce the volume of filings.

In addition, a safe harbor or clear guidance is needed addressing Regulation B concerns when attempting to comply with BSA's Customer Identification Program (CIP) requirements. On the one hand, many institutions' CIP policies require the copying of a photo ID in order to verify the identity of the customer. Yet, on the other hand, the Agencies frown on this practice indicating it could easily result in a Regulation B violation of illegal discrimination in lending.

Also, financial institutions need better, and more reasonable guidance with respect to "politically exposed persons." Treasury issued a regulation implementing Section 312 of the USA PATRIOT Act, which requires U.S. financial institutions to guard against accepting the proceeds of

foreign corruption from kleptocrats, their families, and other associated "politically exposed persons." For this deterrence policy to effectively work, we believe that better guidance is needed on what is really expected when transacting with "politically exposed persons." Limiting the scope of individuals who are covered will result in greater efficiencies for the Agencies and the financial institutions charged with monitoring and reporting on these individuals.

Another unresolved issue more appropriately addressed by a unified approach deals with whether or not the disclosure of SAR information to the institution's board of directors should eliminate the protections afforded by SAR safe-harbor rules. We argue that if the institution's policies allow for the sharing of SAR information to board members and the information is not disclosed or shared with others outside the board of director's meeting, then this sharing should absolutely fall within the protection of the safe-harbor rules.

Appraisal Standards for Federally Related Transactions
Much like CTRs and SARs, Safety and Soundness rules are primarily contingent on a rigid monetary threshold and should be revised to be more representative of today's economy and better reflect its realities. Hence, we strongly encourage the Agencies to increase the $250,000 appraisal threshold to reflect historical and current inflationary pressures and to routinely make cost-of-living adjustments. In 1994, the Agencies issued the Interagency Appraisal and Evaluation Guidelines to primarily foster prudent appraisal and evaluation policies, procedures, practices, and standards. Since then, however, the $250,000 threshold has not been adjusted.

Conclusion:

I appreciate the opportunity to comment and make recommendations concerning this most recent review of money laundering and other rules. While the review of such rules pursuant to EGRPRA will take a long time, we strongly encourage the Agencies not to overlook short-term approaches to provide some much needed regulatory relief, particularly in the area of money laundering rules. Given the costs incurred by our financial institution to comply with these rules, more specific guidance resulting in a reduction in the volume of filing is needed. Thank you for your consideration of our comments.

Sincerely,

Kathy Knapp, VP Branch Admin
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