From: A Mizrahi [amizrahi@socal.rr.com]
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To: regs.comments@federalreserve.gov; comments@fdic.gov; regs.comments@occ.treas.gov; Comments, Regs
Subject: EGRPRA

I realize the May 4th comment deadline has come and gone, but quite frankly I have been so busy with BSA/AML and Compliance issues from our regulatory agency, that I have not had the time to sit down and write a proper comment letter.

Since I will not have the time to run this through the normal channels at my employer, I will submit this comment letter as a private citizen who has worked in this area for many years. I am the Compliance Officer for a national bank with just under $2 million in assets. I will address the items stated in the Federal Register on February 3, 2005.

A. Need for Statutory Change
The biggest need for a statutory change is to eliminate the Currency Transaction Report (CTR) form for cash deposits and withdrawals to deposit accounts at financial institutions. The CTR form and reporting threshold was developed over 30 years ago. At that point in time, $10,000 was a huge sum of money. Also, at that point in time, SQL database and computer technology was in its infancy. However, we still have that same threshold, and the same basic form with many parts and boxes to cover any number of anticipated scenarios. However, no matter how carefully the form is designed, it can still be difficult to properly fill out the boxes to fit an unusual situation. If the incorrect boxes are completed, the financial institution is at risk of a regulatory violation not because the institution does not intend to comply with the law, but because the CTR can be almost as complex to fill out as an individual tax return. Yet, this form must be completed thousands of times each day in financial institutions across the country.

Given the technology that exists today, it would be far simpler for banks to submit a monthly report of all deposit accounts that had an aggregate cash in and/or cash out of $10,000 for the month. The report can be a simple electronic file that consists of:

1.. Account name
2.. Account number
3.. Taxpayer Identification Number
4.. Account address
5.. Total cash in
6.. Total cash out

This reporting format would then eliminate thousands of man hours expended by financial institutions in completing individual CTR for everyday cash deposits and withdrawals. This would also eliminate the need to file Suspicious Activity Reports (SAR) for deposit account cash transactions just under $10,000. The current system in effect today results in essentially the same information as the above proposed report, but reduces the amount of time and effort involved, and produces a database that law enforcement can more efficiently query to look for address duplications across multiple financial institutions, and other statistical anomalies in trends of cash transactions. Any cash transactions over $10,000 are reported on a CTR (with the exception of a handful of exempted customers), and many cash transactions under $10,000 are now filed on a Suspicious Activity Report because banks feel they must now file a SAR for these transactions as a defensive measure against examiner criticism that can now carry sever enforcement actions.

Banks now receive an aggregate monthly cash transaction report which must be reviewed for any missed CTR reportable transactions, and any "structuring" patterns that would necessitate a SAR. It would not take a great deal of effort to transform the aggregate monthly cash transaction report into a simple electronic file to be submitted monthly.

One benefit to the monthly account reporting by all banks would be ability for law enforcement to review aggregate cash patterns by address or common location. I can only hope that law enforcement is “geo-coding” reported addresses to look for “clusters” of activity among different demographic criteria. This is something that banks have been doing from a Fair Lending analysis perspective, and the analysis of activity can be quite illuminating.

The report can be much simpler and more efficient that the cumbersome CTR filing, and remove all necessity to bother with exemptions. Most banks have found that even under the “new” exemption rule, the risk of examiner criticism, and the cost to maintain additional due diligence and monitoring far outweigh any benefit that a CTR exemption may provide.

This would eliminate the thousands of CTR filings done each and every day. It would eliminate the need to look for structured deposits. It would eliminate the fear of identity theft that employees of retail stores have because they don’t feel comfortable giving their Drivers License number and Social Security Number to a bank for a transaction that is not their own. The only "structuring" would be if a customer opens up several accounts and deposits just under $10,000 A MONTH to each account. Most banks now have systems that would easily catch that kind of activity, and that WOULD be the type of structuring that would be better indicative of money laundering efforts. (As opposed to the liquor store owner who deposits $9,500 because his insurance won't cover a loss involving more than $10,000 cash.)

With a reporting threshold of $10,000 a month, and a recommendation or requirement that banks review cash activity below that threshold for common beneficial ownership, a money launderer would be hard pressed to launder any significant activity at a clip of less than $10,000 a month per financial institution. Since most banks check a customer ID database, even for business account signers and owners, and the more commonly used databases inform banks of prior inquiries within a certain time frame, it would be quite difficult for a person to open up accounts at several institutions without a red flag popping up somewhere along the way.

Eliminating the need to constantly file thousands of "structuring" SARs, banks would be able to concentrate on truly suspicious activity and perhaps be able to focus on activity indicative of terrorist financing.

B. Need and Purpose of the Regulations

The need and purpose of the regulations is still quite real as the flow of illicit money has not seen a downward trend. More could be said about the status of certain drug policies as providing an obscene profit motive that results in this amount of illicit money, but this regulatory review is outside of those policy considerations.

C. General Approach/Flexibility

Two of the biggest areas that need a better general approach and flexibility are: 1) Money Services Business as Bank Customers; and 2) The trend for defensive SAR filing.

1) Money Services Business as Bank Customers

At some point in time, banks found themselves as the unofficial regulator of Money Service Businesses (MSB) which imposed a burden so great on banks that the only clear, risk based solution was to close these accounts. This has set off a huge problem for MSB's, many of which are long time local merchants in their community servicing a low- to moderate-income clientele. These services for low- and moderate-income residents are now threatened by these fear induced closures. However, from the bank perspective, the regulatory and reputation risk are too costly to mitigate to justify retaining these accounts. As one banker expressed it "The examiners have spoken loud and clear. They do not like these businesses, and they do not like to see us bank these businesses." While the official opinions expressed at the top are entirely different, many banks have heard the message loud and clear from their examiners to get rid of these accounts or face extreme examiner scrutiny and potential enforcement actions and civil money penalties.

2) The trend for defensive SAR filing

This trend is also known under the examiner code word "Zero tolerance." Again, while the official tone at the top says "Zero tolerance" is not a policy, the experience of banks during a BSA exam is entirely different. The trend has gotten out of hand and is taking on the chilling aspects of the very worst nightmare to be found in Orwell's 1984 or Levin's This Perfect Day. I know of a SAR filing involving an elderly woman who deposited $6,000 one day, and $5,000 a few days later. There was no unusual activity before or since, but in this day of SAR-induced paranoia, the officer felt a SAR needed to be filed for "structuring." My apologies for stating this, but at what point do we start calling one another "comrade" and ask when the next party meeting is to be held? This type of spying on citizens is exactly the type of stuff that constituted anti-communist lectures I heard in Junior High School government class. Are there any ex-KGB agents who would like to become BSA Officers?

It was this type of intrusive reporting that resulted in the huge public outcry over the official "Know Your Customer" proposed regulations. The regulations were quickly scrapped, and instead the banking industry wound up with "Privacy" regulations in the form of Title V of Gramm-Leach-Bliley. Or as I would summarize this privacy regulation, it is "freedom from marketing", but actual privacy is still very much at risk.

D. Effect of the Regulations on Competition

Depending on the geographic area, one regulatory agency may be much stricter than another, thus creating an imbalance between different types of insurance financial institutions. I would be very curious to compare the Bank Secrecy Act examination for a credit union against one of a commercial bank.

E. Reporting, Recordkeeping and Disclosure Requirements.

This was covered under point A which called for the elimination of CTRs on deposit accounts to be replaced with a streamlined monthly reporting.

F. Consistency and Redundancy

This again will be a very simple point. The SARs filed for structured transactions are simply a redundancy of CTRs for non-structured transactions. Either way, cash over $10,000 is reported, and cash under $10,000 is reported.

The only difference is the form number and which boxes get checked. The current reporting system is antiquated and grossly inefficient.

G. Clarity

The biggest area for clarity is for better definitions, or perhaps a regulatory Commentary on definitions of Money Services Business. The following areas are in dire need of clarification:

1. Check Casher due to meeting the $1,000 per day threshold.

Currently the regulations state that a person is a check casher for cashing checks in excess of $1,000 per person per day. Sometimes a business will inadvertently exceed this threshold. Does this mean the business is forever branded an MSB? There must be some way to "unring the bell" so that businesses are not needlessly forced into registration due to a simple oversight. Perhaps a "Statement of Intent" form can be devised that a business can file with FinCEN where they solemnly swear they will never, ever, ever, do such a thing again.

2. Check Casher - Definition exclusions

The definition of a check casher should be revised to exclude the following - A person or business is not check casher simply because they exchange cash for a check that they have written. This would prevent the ludicrous notion that employers, who cash payroll checks for employees, are check cashers. However, given the current status of the definition, that is EXACTLY what will happen. The economic toll on small employers who simply wish to help out their employees is mind boggling. Given the current status of "MSB paranoia", how long will it be before examiners put pressure on banks to close these MSB accounts?

3. Private ATM owners

Are these, or are these not MSB's. I understand there is a real concern that private ATMs are now a source of money laundering. I have also heard that examiners will expect banks to obtain due diligence statements from gas station and convenience store owners about the private ATM owner that is leasing floor space at their business. This is the absurd and places an undue and unfair burden on banks and small business owners. If the government has concerns about private ATM owners, then it should do what it should have done long ago. The government should require all non-financial institution ATM owners to be licensed and subjected to a criminal background check and other licensing requirements. Either that, of the government should simply require that all ATM's must be owned and operated by an insured financial institution.

H. Burden on Small Insurance Institutions

I have never worked at a financial institution of less than $150Million in assets, so I will not leave a comment for this area.

However, in closing I would like to point out two of my largest concerns in the area of Bank Secrecy Act (and Anti-Money Laundering) enforcement.

1. BSA is killing CRA (Community Reinvestment Act)
2. BSA now poses a threat to our country's economic superiority.

In point one, the current regulatory enforcement environment forces many banks to remove resources from Community Reinvestment Act efforts and apply them to BSA compliance efforts. Put it this way, would a bank rather have it's officers out of the office to teach financial literacy, or would it need those officers going around to customers to gather "Know Your Customer" information and perform "Enhanced Due Diligence" investigations. Based on the fines assessed against

Riggs and AmSouth, I would be inclined to say BSA is the top priority, and CRA no longer is. During a recent regulatory exam, after a particularly exhausting interrogation session with our examiners, I made the comment that I still needed to review and file our CRA and HMDA (Home Mortgage Disclosure Act) reports. The examiners rather callous response to me was "Well, I don't have a dog in that fight." Well, thank you. Thank you very much. That told me all I needed to know about the relative importance of CRA in the examiner mindset these days.

The Office of Thrift Supervision was quite blunt in their reason for raising the threshold for the easier "small bank exam." They were concerned that the CRA burden was interfering with smaller institutions BSA compliance efforts.

For point two, I will point out the damage that has already been done to many small business owners who have had bank accounts closed due to examiner pressure. These small business owners typically service low and moderate income areas and low-mod income individuals. This will have a devastating economic impact on these areas. An entire industry is at risk of being put out of business because the businesses cannot operate if they cannot have a bank account. The personal impact on these business owners must also be considered as these individuals may be unable to pay their mortgage or rent or provide for themselves and their families. Banks are spending an enormous amount of money and resources on BSA compliance efforts. As the fear of another September 11th drives examiners to dig deeper and deeper, the financial stranglehold will only get worse.

Let us be honest here. It was not the oversight of the banking industry that precipitated September 11th. It was the lack of the government officials who failed to deport known terrorists and failed to report activities of known terrorists combined with the airline industry's steadfast refusal to reinforce cockpit doors that led to September 11th. And while regulatory agencies are operating in a "CYA" mode to avoid Congressional criticism, we are doing more damage to ourselves than the terrorists ever could. We are sowing the seeds of our destruction while another nation stands poised on the brink of world economic dominance. Yes, it would be the height of irony if over aggressive enforcement of BSA and the USA PATRIOT Act leads to our economic subservience to Communist China.

Bonnie Mizrahi, C.R.C.M.
17172 Armstead St.
Granada Hills, CA 91344