

Consortium for Financial Access

June 2019

BANKING NONPROFIT ORGANIZATIONS – THE WAY FORWARD

Executive Summary

The Consortium for Financial Access¹, recognizing that non-profit organizations (NPOs) continue to experience difficulties in obtaining and maintaining bank accounts with financial institutions (FIs), as well as moving their funds internationally, has developed this guidance document, which we believe will begin to reverse the current climate of restricting financial access to NPOs.

NPOs, by their nature, provide assistance to those in need, sometimes in or near conflict zones. Rather than considering these activities as creating insurmountable risks to banking relationships, FIs should recognize that NPOs undertake considerable efforts to protect their organization, donors, programs, partners and recipients and to prevent abuse by terrorists and criminals. Therefore, FIs should apply a risk-based approach to banking NPOs in order to properly identify and manage potential risks.

It is important to note that FIs should understand and recognize that NPOs are not uniformly high-risk. As stressed by the United States Department of the Treasury in its the most recent National Terrorist Financing Risk Assessment:

[T]he U.S. government does not view the charitable sector as a whole as presenting a uniform or unacceptably high risk of being used or exploited for money laundering, terrorist financing, or sanctions violations.

FIs should be careful to not require excessive or unnecessary information from NPOs and should ensure that all information collected from NPOs is relevant to the stated purpose, remembering that NPOs have legal and ethical obligations to protect the privacy of their donors, beneficiaries and members. To assist both NPOs and FIs in establishing and maintaining banking relationships, we are providing NPOs with guidance on the types of information and documentation that FIs require from NPOs to establish banking relationships. Similarly, we are

providing guidance to FIs with regard to the NPO community and the operation of NPOs. In addition, to better assist both NPOs and FIs, we have included recommendations for governments and financial regulators that are intended to address the difficulty NPOs have in establishing and maintaining banking relationships.

To effectively engage with FIs, NPOs should understand the necessary steps FIs must take to manage various risks and comply with applicable laws and regulations. In this regard, FIs must:

- Obtain information about the nature and prospective use of FI accounts and services;
- Conduct an assessment of each prospective customer, including an understanding of potential money laundering and terrorist financing risks presented by the customer and the customer's transactions; and
- Monitor transactions and account activity for unusual and suspicious activity and report such activity, as appropriate.

In addition, to establish and maintain successful banking relationships, NPOs should consider providing FIs with:

- Requested information that is non-proprietary and not private, including the nature and purpose of the NPO and the projected use of the requested account;
- An explanation of the regulatory oversight of the NPO, as well as the internal controls, good governance and due diligence the NPO employs;
- Periodic updates of anticipated changes in information related to the NPO, or anticipated transactions not consistent with prior activity; and
- Information on specific transactions that, without an explanation, might create concerns for the FI.

ACAMS[®]

1. The Consortium for Financial Access is the outgrowth of a multi-year effort by a committee of various stakeholders, including the Charity & Security Network, a number of large multi-national financial organizations, community banks, money services businesses, security firms, credit unions, charities, law enforcement, regulators, advisory firms and academics, who all originally came together under a "stakeholder dialogue" organized by the Association of Certified Anti-Money Laundering Specialists and the World Bank. This "dialogue" centered on the many unfortunate challenges faced by the charitable sector in gaining and retaining financial services. The Consortium has drafted this paper after the lengthy consultation with the representatives mentioned above.

**CHARITY &
SECURITY
NETWORK**

While our intention for this guidance is to address concerns of both NPOs and FIs and assist in improving financial access for NPOs, governments and financial regulators have the ability to promote the safe and sound inclusion of NPOs into the financial sector by:

- Emphasizing that NPOs are not inherently risky and that, with appropriate due diligence, FIs should be able to engage with NPOs;
- Clarifying that the policy objectives of combatting illicit finance (financial integrity) and promoting humanitarian

and development assistance (financial inclusion) are complementary goals; and

- Issuing policy statements stressing governments' support for the NPO sector and its humanitarian and developmental efforts.

Establishing and maintaining NPO-FI relationships is a goal we should all share and support. We encourage NPOs, FIs and governments to use this guidance as a way forward for establishing and maintaining bank accounts for NPOs, while appropriately managing risks and meeting regulatory requirements.

Introduction

For a number of years, there has been global confusion on how nonprofit organizations (NPOs) can best obtain and maintain traditional banking relationships at financial institutions (FIs). NPOs continue to experience difficulties in obtaining and maintaining bank accounts and moving their funds internationally. This has become known as de-risking. And, for many NPOs, the problem is worsening.

The Consortium for Financial Access² was established to identify potential solutions for addressing perceived risks associated with providing banking services to NPOs. We believe that the guidance included here can serve as a resource and reference document for NPOs and FIs, as well as governments, in an effort to dramatically improve financial access for NPOs by reversing the trend of de-risking.

It is well known that the nonprofit sector provides essential services to assist those in need, often in high-risk areas, conflict zones and inaccessible regions. NPOs' efforts frequently complement the activity of government and business sectors. Many NPOs play a crucial role in fighting conditions conducive to terrorism, reducing the appeal of violence by building social structures and by increasing intercommunity dialogue and understanding³.

NPOs need financial services in order to operate. Funds must be transferred, often internationally, from donors to organizations, and then to partners, employees and service providers. The inability to do so can significantly delay or cancel lifesaving programs, endanger staff, hinder relationships and trust with vendors and partners, and put the well-being of aid beneficiaries at risk. It can also force money into unregulated, less transparent, financial channels, which poses additional risks.

This document – the result of extensive collaboration with NPOs, the financial sector and government stakeholders, collectively, and under the auspices of the World Bank/ACAMS Multi-stakeholder Dialogue on Financial Access for Nonprofit Organizations – is designed to provide relevant information in the way that NPOs operate and how they work to prevent diversion of assets, both in the U.S. and globally. Specifically, this document provides an overview of the NPO sector, including the government regulation and oversight of NPOs and the good governance and due diligence NPOs employ. This document also seeks to explain some important distinctions between nonprofit and commercial FI customers, and seeks to provide an understanding of the application of the risk-based approach to NPOs and information collection by FIs in their effort to comply with AML/CFT obligations. In addition, this document provides NPOs with information on steps they can take to facilitate obtaining adequate access to financial services. Similarly, this document provides some information to the financial sector on the NPO community so that FIs can be better equipped to respond to regulatory supervisors on how and why the FIs have provided financial access to NPOs. Last, this document sets forth some recommendations for governments and financial regulators with regard to steps they can take to increase financial access for NPOs.

We consider this to be an evolving document, given all of the global challenges we face, and, therefore, the document will be updated, as necessary and appropriate, as the legislative, regulatory, charitable and/or banking landscapes evolve.

PART ONE: What governments and financial institutions need to know about nonprofit organizations

A. Overview of the Nonprofit Sector

A nonprofit organization (NPO), also known as a nongovernmental organization (NGO), is a group organized for purposes other than generating profit and “in which no part of the organization’s income is distributed to its members, directors or officers.”⁴ It uses its funds to further its nonprofit goals and/or to advocate for change, rather than distributing its funds to directors or shareholders.

The number of NGOs worldwide is estimated at 10 million.⁵ If NGOs were a country, they would have the 5th largest economy in the world.⁶ The number of people worldwide donating money to NGOs increased from 1.2 billion in 2011 to 1.4 billion

in 2014. By 2030, the number is expected to grow to 2.5 billion.⁷

The U.S. nonprofit sector consists of 1.8 million organizations and contributes approximately \$905.9 billion to the U.S. economy, or 5.4% of the country’s gross domestic product (GDP).⁸ U.S. NPOs range from the very small, with assets of less than \$500,000⁹ (86% of all NPOs fall into this category) to the very large, such as the Bill & Melinda Gates Foundation or the McArthur Foundation. About 8,665, or less than 1%, of U.S. charities operate abroad.¹⁰ Some of these organizations operate in conflict zones or in proximity to listed terrorist groups.

B. Distinguishing NPOs from Commercial Customers

Commercial enterprises and NPOs are legally and operationally different. Most fundamentally, NPOs have a public service mission that is supported by all of the NPOs’ expenditures. In addition, NPOs do not have owners or shareholders. Instead, they have donors, which can be individuals, companies or foundations. Last, NPOs do not have customers. Rather, they have beneficiaries – people who benefit from their charitable programs.

Consequently, FIs should tailor their questions and requests of NPOs in a way that is mindful of these differences and that reflects a risk-basis approach. In addition, FIs should be aware that a transaction that might trigger a red flag in connection with a commercial enterprise may not constitute a red flag for an NPO, given the different kinds of transactions conducted by the two different types of entities.

- **NPO transaction patterns**

NPO activities and fundraising programs dictate their banking

transaction patterns. NPOs receive funds from numerous sources and donors and may pay funds out in large amounts on an infrequent basis. Contributions to NPOs may come in sporadically as the result of fundraising campaigns or end-of-year charitable contributions. For example, an NPO may host an annual dinner to raise funds, and might make a large cash deposit the next day. There may be no such deposits for the rest of the year. Another NPO may hold a board meeting where a number of projects to be carried out by partner NPOs are approved. After the meeting, there might be a series of higher-than-usual transfers to send the funds to the local partners, all made within a short space of time.

Accordingly, FIs should ensure that their review of an NPO’s activities, fundraising efforts and banking patterns take these attributes into consideration. Most of the information necessary to perform the required due diligence about an NPO’s activities should be readily available from public sources or easily obtained from the NPO.

C. Regulation and Oversight of NPOs

There is no global regulator for NPOs: each country has its own regulatory regime. Given the diverse array of regulation across the globe, it is not possible to provide an outline of the laws governing NPOs in every country. However, various countries’ regulatory regimes mostly revolve around examining the NPOs’ methods of raising and spending money; accounting for funds;

and protecting the public from fraud, money laundering and terrorist financing. Because most international fund transfers involving NPOs take place in U.S. dollars or pass through the United States, the focus below is on U.S. regulation of NPOs – after a brief discussion of NPO regulation in general.

- **Regulation of NPOs in general**

Many countries require NPOs to register, submit periodic reports, make their filings publicly available, and/or submit to inspections or audits. It is common for a patchwork of laws to govern NPOs, from specific measures on the formation and registration of organizations and tax laws to laws governing specific activity, such as those of museums, hospitals, etc.¹¹

Commonly, NPOs are formed as either associations or foundations (although there may be sub-types of each), and many countries have laws governing these formations.¹² Many countries impose periodic reporting requirements on NPOs, whether for taxation or other purposes.¹³ It is common for countries to exempt NPOs from income, sales and other taxes, as well as to grant tax credits or deductions for contributions made to those organizations. Some laws require NPOs to make an application for a permit or registration, and to pay a fee.¹⁴ Laws prohibiting any benefit going to an NPO's trustees, directors or members are common. In most cases, distribution of income to these parties can result in the loss of an organization's tax-exempt status.¹⁵ There are also laws governing NPO fundraising activities, as well as their advocacy rights. Some countries impose limits or outright prohibitions on foreign sources of funding.¹⁶

- **U.S. Regulation of NPOs**

NPOs in the U.S. are subject to a complex system of regulation and oversight that combines registration, reporting and monitoring at the federal, state and local levels. NPOs are subject to a variety of regulatory structures, depending on their jurisdiction. Federal regulation of NPOs primarily focuses on exemption from taxation and is administered by the Internal Revenue Service (IRS).

To become tax-exempt, an organization must apply to the IRS, providing extensive details on governance, finances and how its activities will meet an exempt purpose. Once approved, charitable organizations and private foundations must file annual information returns with the IRS (Forms 990 and 990PF), including information on donors. Charities with international activities must include Schedule F with their Form 990 submissions, describing their activities and expenses. NPOs must also make their tax-exempt status application and Form 990 available to the public. These are available in a searchable database through Guidestar.¹⁷

Nonprofits that receive federal grants must undergo additional detailed reviews by the grantmaking agency and must submit to audits that meet the standards set by OMB Circular A-133.

U.S. nonprofits incorporate at the state level by filing articles of incorporation and by-laws that set out their governance structure and procedures. Most NPOs must file reports with state regulatory authorities on an annual basis. Additional state and local rules apply to fundraising from the general public.

D. Nonprofit Good Governance and Due Diligence

In addition to requirements imposed by governments, NPOs voluntarily adhere to a host of due diligence, oversight and transparency mechanisms. These measures are designed to ensure that funds are spent solely for charitable/nonprofit purposes.

NPOs undertake considerable efforts to protect themselves from potential terrorist abuse, instituting internal controls and due-diligence procedures. NPOs themselves have the most to lose if problems arise, with significant ramifications in terms of donor funding, access to financial services and the risk of civil or criminal penalties. Robust due diligence procedures by NPOs serve to protect the organization, its donors, programs, partners and recipients, as well as to prevent abuse from terrorists and criminals. Because of the diversity of the nonprofit sector, there is no one-size-fits-all approach to due diligence, so most NPOs employ a variety of methods to implement measures appropriate to the range of activities in which they engage.

Risk assessment by legitimate NPOs takes a variety of forms, depending on many variables. These include an assessment of geographic location, type of activity and the history of engagement in the area. Recipients of NPO funds, including vendors, are screened against sanction lists. In addition, humanitarian organizations have developed internal policies and practices in line with humanitarian principles to help ensure that aid and assistance reaches the intended beneficiaries. NPOs receiving USAID funds engage in an additional vetting program.

The board of directors of an NPO has the ultimate responsibility for ensuring that the NPO uses its resources exclusively for its charitable or other public purpose. Associations of NPOs provide a plethora of resources on good governance for their members. Examples of NPO associations, umbrella groups, and due-diligence resources and programs can be found in Appendix A.

11. In Nigeria, for example, there are 13 laws governing NPOs, including those on taxes, criminal activity and terrorism (www.cof.org/content/Nigeria); in Australia, NPOs are governed by eight commonwealth laws, as well as four to eight specific laws in each territory (www.cof.org/content/Australia).

12. Uganda's NGO Act, for example, defines an organization as a "legally constituted non-governmental organization . . . which may be a private voluntary grouping of individuals or associations established to provide voluntary services to the community or any part, but not for profit or commercial purposes" (<https://www.cof.org/content/Uganda#Tax>).

13. In Canada, for example, NPOs must register and file annual reports in order to maintain their charitable status (<http://afaccounting.ca/charitable-organizations-canada-revenue-agency/>). In Hong Kong, NPOs must apply for a license (<http://app1.hkicpa.org.hk/APLUS/0704/44.pdf>).

14. In Argentina, most nonprofit entities are exempt from taxation, but they must apply for this benefit – it is not automatic (<https://www.cof.org/content/Argentina>).

15. In Mexico, for example, an organization "must devote its assets exclusively to the purposes for which it was organized (LISR Article 82(IV)). It may not disburse assets to any individual or entity except as payment for services rendered or transfers to other organizations with authorized donee status (LISR Article 82(IV))." (<https://www.cof.org/content/Mexico>)

16. In Hungary, organizations that receive more than 7.2 million HUF (approximately \$27,600) in a tax year from foreign sources (individuals, foundations, governments or agencies) must notify a court in order to be registered as an "organization supported from abroad." (<https://www.cof.org/content/Hungary>) FIs should be aware that a handful of repressive countries might try to use their regulation of NPOs to bolster or protect their repressive regimes. (Along these lines, some studies have documented the occurrence, over the past decade, of governments using regulation of the nonprofit sector to suppress political dissent.) This should in no way keep FIs from doing business with NPOs or from asking NPOs for needed information and documents, but it is a potential problem that FIs should be aware of.

17. www.guidestar.org

E. Applying a Risk-Based Approach to NPOs

- **NPOs are not uniformly high-risk**

Given that many NPOs work in conflict zones around the world, and some of them in proximity to listed terrorist groups, it is understandable that there has been concern about the possibility of terrorist abuse of NPOs. However, the perception of NPOs as conduits for terrorist funding is based on flawed and incomplete information. NPOs, in fact, agree with the goal of eliminating terrorism and preventing money from being funneled to these groups. Nowhere is this better understood than among the many NPOs that have staff working in countries threatened by terrorism.

The U.S. Treasury's most recent National Terrorist Financing Risk Assessment confirms this view:

[T]he U.S. government does not view the charitable sector as a whole as presenting a uniform or unacceptably high risk of being used or exploited for money laundering, terrorist financing, or sanctions violations.¹⁸

The U.S. Risk Assessment adds that the terrorist financing risk for charitable organizations in the U.S. can vary dramatically depending on the operations, activities, leadership and affiliations of the charitable organization.

Those who manage and staff NPOs that work in foreign countries are highly trained individuals. To ensure that an organization, its staff and beneficiaries are protected, the NPO must possess expertise in a wide range of areas, including U.S. and foreign government regulation, foreign policy, cultural norms and evolving dangers in program areas. In other words,

F. Distinguishing Sham v. Real NPOs

Typically, there are three different types of terrorism-related risks pertaining to NPOs:

- Terrorist organizations posing as charitable entities (aka "sham charities");
- Terrorists exploiting legitimate entities to create conduits for terrorist financing; and
- Concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organizations.¹⁹

Terrorist financing risk associated with NPOs often turns out

the nonprofit sector must be aware of the various risks it faces and take efforts to reduce, mitigate and otherwise address these risks.

It is, of course, necessary for FIs to apply a risk-based approach in order to identify and manage risks associated with a charity's transactions or accounts. Much of the information that FIs should collect in order to identify possible risks is publicly available through an NPO's filed Form 990, available in a searchable database on Guidestar.

FIs are not expected to know the identity of each individual donor for most charities; however, they are expected to conduct enhanced due diligence for those accounts that the FI considers high-risk, and to evaluate large contributors or grantors in those instances. FIs are expected to understand the funding and disbursement criteria (including basic information on the types of beneficiaries receiving funds) for their charity accounts, as called for in the Federal Financial Institutions Examination Council (FFIEC) Bank Secrecy Act/Anti-Money Laundering Examination Manual, which is used by bank examiners in their review of FIs' internal controls and procedures.

The comprehensive regulation of NPOs and NPOs' own due diligence efforts have led to a low probability that terrorist financing will occur in well-managed NPOs. However, no NPO or government can guarantee that charitable aid handled by NPOs will never be diverted. Conflict areas are complex, and NPOs operating in these difficult environments do everything they can to minimize the risk that aid or funds fall into the wrong hands.

to involve sham or front organizations, rather than legitimate organizations that are recognized by their respective governments.²⁰ The first line of defense against sham NPOs and fraudulent fundraising is effective government implementation and enforcement of rules and regulations governing the sector. Sham organizations do not comply with government regulation. Publicly available information on NPOs, from the government or from organizations that fill a "watchdog" function, including programs that certify or rate NPOs on whether they meet specific standards, can help distinguish between legitimate and sham NPOs.

G. Information Collection

- **Determining what is relevant**

Regulatory uncertainty, along with law enforcement announcements on charities being high-risk in certain situations, has contributed to FIs requesting more and more information from NPOs, increasing compliance costs for all parties and raising concerns associated with privacy and proprietary information. To avoid these problems, FIs should ensure that all information collected from NPOs is relevant to the stated purpose, whether for opening an account or making an international transfer. To determine what is relevant, FIs can refer to the regulatory purpose of the information collection and see whether the information request has a direct connection and is necessary, in light of other information at hand, and is not unduly intrusive or violative of private rights.

FIs should also be aware that NPOs have legal and ethical obligations to protect the privacy of their donors, beneficiaries and members. The U.S. Supreme Court has held that that a state cannot compel a nonprofit to turn over its membership

list, ruling that it is protected by the First Amendment's freedom of association.²¹ Given that the government cannot compel this information, FIs should consider whether such information is necessary to conduct appropriate due diligence. Reliance on the NPO's ability to provide appropriate oversight of its donors, beneficiaries and members should be sufficient in assessing the NPO.

In addition, the European Union's new General Data Protection Regulation (GDPR), designed to protect privacy, affects most NPOs, regardless of where they are based. A similar law recently took effect in California and is under consideration in other states. Under these rules, which apply to NPOs as well as for-profit enterprises, organizations must protect the personal information of individuals.²²

Consequently, FIs should be mindful of the need to request information that will help them assess risk without delving into material that should be protected by privacy concerns.

H. Conducting Due Diligence Carefully

In conducting due diligence on NPOs, similar to due diligence FIs conduct on any customer, FIs should only use trusted and reliable sources. Should an FI encounter negative information on an NPO that seems contrary to the FI's understanding of the NPO, the FI should engage with the NPO to discuss the contrary information and assess its accuracy.

Especially with NPOs that are providing assistance in repressive

or conflict geographies, there is a tendency for negative reporting and disinformation by those that may have political disagreements with the groups providing assistance or with the assistance itself. Such reporting may find its way into well-known and used services that provide due diligence information to FIs. For this reason, among others, it is important for FIs to be willing to review contrary information with NPOs.

I. Communication Is Key

Many of the difficulties seen in NPO-FI relationships can be averted through communication and, where possible, transparency. To the extent feasible, it may be helpful for an FI to establish a point of contact within the FI for NPO customers in order to better manage these unique relationships.

PART TWO: What NPOs need to know about FIs and banking relationships

A variety of forces shape the complex environment in which FIs operate, affecting how they deal with the needs of their NPO customers whose work requires transferring funds to staff,

partner NPOs and vendors in other countries. These forces include the regulatory structure for both FIs and NPOs, U.S. AML/CFT policies, and enforcement actions.

A. Legal Authorities

The U.S. maintains an extensive system of sanctions on various countries and non-state armed groups in an effort to counter terrorism, narcotics trafficking and human rights abuses, among other purposes, and FIs, of course, must comply with all of these restrictions. When a group or country is sanctioned, their assets that are subject to U.S. jurisdiction are frozen. All transactions with them are prohibited.²³ The Treasury Department administers sanctions programs, and the Office of Foreign Assets Control

(OFAC), within the Department of the Treasury, can issue licenses that permit otherwise-banned transactions. Sanctions add to the compliance burdens on FIs and NPOs and can have a compounding effect to AML/CFT requirements. In addition, the criminal prohibition against providing material support to Foreign Terrorist Organizations has been incorporated into the sanctions regime through Executive Order (EO) 13224.

B. Managing an NPO-FI Relationship

There are some steps an NPO can take to help facilitate a good working relationship with an FI and to reduce the amount of staff time needed to fulfill information collection requests.

- **Things NPOs should understand about FI operations**

As an NPO looks to establish a new account with an FI, or send wire transfers abroad, there are a number of things the NPO should understand about the way FIs operate and the steps FIs must take to comply with applicable laws:

- **FIs must obtain information about the nature and prospective use of FI accounts and services.** This is part of the normal account opening process an FI must conduct. The more an FI knows about the NPO, the better it will be able to service the account. The more forthcoming the NPO can be, the better. Thus, the NPO should inform the FI about the NPO's past and anticipated patterns of receiving and disbursing funds, information about wire transfer counterparties, etc.
- **FIs must conduct an AML/CFT risk assessment of each account holder, anticipated use of account and prospective transactions.** This enables the FI to determine whether or not it can manage or mitigate any risks posed by the NPO account or transactions.
- **FIs must monitor transactions and account activity for unusual and suspicious activity.** When an FI conducts these reviews, the NPO should recognize that the FI might ask questions about the account activity or specific

transactions. These questions should be answered truthfully and completely.

- **FIs must file Suspicious Transaction Reports (STRs) upon discovery of unusual or suspicious activity.** If the FI determines that something needs to be reported to FI regulators and law enforcement, the NPO should understand that this is required by regulations and that it is a confidential process that the FI cannot divulge to the NPO or anyone else outside of government.
- **Steps NPOs can take to promote successful banking relationships**

There are some concrete steps an NPO can take to help facilitate the opening and maintenance of accounts, and transmittal of wire transfers. To begin with, the NPO should provide the FI with requested information that is non-proprietary and not private. For this purpose, it is helpful for the NPO to have a "portfolio" of information about its organization ready to give the FI. This information should include anything that the NPO can communicate to the FI and that establishes that the NPO is a legitimate organization with good governance. This information should include:

- **The history of the NPO** – including when, how and why it was formed.
- **The size of the NPO** – and how it has grown, the total amount of funds it collects and disburses annually, the number of employees, volunteers, etc.

- **The location of the NPO** – including where it has offices domestically and internationally and where it provides services; this should include an analysis of whether any of these locations are in conflict areas, or an area with terrorist activity or under terrorist control.
- **Names and addresses of trustees/board members** – to the extent that this is not confidential information.
- **A description of the specific NPO sector or area the NPO serves.**
- **The nature of the NPO's purpose and activity.**
- **The nature and purpose and projected use of the requested account** – including a description of the projected size of the account; how that might fluctuate; how it will be used; the volume and frequency of activity; who will have authority over the account; and how it will be monitored by the NPO to ensure it is used appropriately.
- **The nature and size of the NPO's projected transaction activity** – including the types and nature of prospective transactions, such as use, amount and frequency of cash transactions; use, frequency and size of domestic and international wires; anticipated location and type of wire transfer recipients; and other transactions that could go through the account.
- **A summary description of the NPO's due diligence** – of its own operations and activity, as well as its vendors and partners, and general information about its program beneficiaries.
- **A summary of the NPO's basic internal controls** – with regard to how the NPO attempts to verify that funds get to the appropriate beneficiaries; this can include a description of the NPO's training programs, audits or financial statements, visits to program sites, etc.
- **AML/CFT procedures** – to the extent not covered in the summary of internal controls, an explanation of how the NPO complies with safe and sound practices and AML/CFT laws and regulations.

The NPO should provide the FI with periodic updates of anticipated changes in the above information or when it anticipates that the account activity will veer outside of its usual pattern. In addition, the NPO should notify the account manager at the FI in advance to explain the nature of any unusual transaction. Also, the NPO should give the FI advance notice of changes in key personnel, such as the Treasurer or a Director. The NPO should try to ensure that the FI is not caught unawares, which could result in the FI determining that the changes represent suspicious activity.

In addition, to the extent that any of the above information is publicly available, the NPO should explain that to the FI so that it can conduct its own, independent research of the NPO.

- **Additional considerations for NPOs in maintaining good banking relationships**

- **Maintaining an account**

To maintain an existing FI account, larger NPOs may want to designate one person in the organization to coordinate relations with the FI. That person should ask for periodic meetings with the FI account manager to keep him/her up to date about the NPO's activities, any changes in programming, etc.²⁴ FIs that have a charity division and/or underscore social responsibility principles like sustainable banking and adherence to human rights may be more open to posting AML/CFT and sanctions regulatory obligations FAQs for NPOs on their website or offering other assistance to smaller NPOs.

If the NPO believes that it or any of its key personnel has been falsely accused of financial crimes, or has been confused with someone listed in a terrorist database, the NPO should let the FI know before the FI uncovers the problem on its own. In addition, the NPO should provide the FI with all documentation necessary to prove its case.

- **Making international transfers**

The very nature of wire transfers makes them complicated, especially given the fact that, once sent, the funds can rarely be retrieved. When an NPO is preparing to send an international wire transfer, it is important for the NPO to send all of the accompanying information to its FI up-front, both to ensure that the wire is transmitted smoothly, and to avoid any accusations of "wire stripping" or "scrubbing."²⁵

An NPO should not wait until there is a problem with a transfer before sending additional, relevant information. For large transfers, or those out of the NPO's usual pattern of activity, the NPO should notify the FI ahead of time regarding the timing, amount and purpose of the transfer. In addition, the NPO should ask the FI what additional information it might need to send the funds.

The NPO should provide enough detail about the transfer recipient to enable the FI to eliminate a false positive hit if the name comes up in its automated screening process. For example, for individuals, the NPO should give a birth date and address; for an organization, the NPO should give the registration information, address or other information to make it quickly identifiable.

PART THREE: What governments and financial regulators can do to increase financial access for NPOs

There are a number of actions that governments and banking regulators can take to address the issue of de-risking and to encourage FIs to consider providing financial services to NPOs. The following is a list of suggestions:

A. Emphasize that NPOs are not inherently risky and that, with appropriate due diligence, FIs should be able to engage with NPOs, similar to the way they deal with their other customers

Too often, governments and banking regulators have been silent or equivocal in their statements about the riskiness of NPOs. This understandably creates a hesitancy on the part of FIs to do business with NPOs. This can be addressed by more straight-forward, emphatic statements by governments and banking agencies to the effect that only a small minority of

NPOs are unduly risky and that, in the words of FATF, “not all NPOs are inherently high risk (and some may represent little or no risk at all).”²⁶ As stated above, with appropriate due diligence, with vetting of the NPOs and with the implementation of reasonable efforts to mitigate risk, FIs should be able to serve most NPOs in a safe and sound manner.

B. Clarify that the policy objectives of combatting illicit finance (financial integrity) and promoting humanitarian and development assistance (financial inclusion) are complementary goals

Governments and banking regulators should explain and emphasize that the goal of combatting illicit finance in general, and terrorist financing specifically, is not at odds with the goal of providing humanitarian or development relief. In fact, it should be stressed that the goals are complementary in that

many NPOs serve those adversely affected by terrorism and corruption. This mutual goal of counter-terrorism and anti-corruption should unite the NPO sector and the financial sector – not drive them apart.

C. Establish due diligence expectations

Governments and banking regulators should establish or clarify the due diligence expectations for FIs dealing with NPOs. Specifically, it should be set out in guidelines or policy

statements that due diligence for NPOs, similar to due diligence for all customers, is risk-based and NPOs should not all be categorized as high-risk.

D. Provide information on the diversity of the NPO sector, the regulation and oversight NPOs are subject to, and the voluntary standards and self-regulatory mechanisms engaged in by NPOs

As part of implementing FATF’s Recommendation 8 and reviewing the local laws and regulations, governments and financial regulatory agencies should provide information to the financial sector with regard to the diversity and risk of the NPO sector, the oversight the sector is subject to and any voluntary

standards and self-regulatory mechanisms engaged in by NPOs. This information should better inform FIs of the nature of the operations and purpose of various NPOs and the risk that they might represent.

E. Issue policy statements stressing governments' support for the NPO sector and its humanitarian and developmental efforts

Governments should issue policy statements stressing their support of the goals and aspirations of the NPO sector in providing support and assistance to needy individuals and entities throughout the world. This would tend to legitimize

the existence of the NPO sector as a whole. Further, it would provide an undercurrent of support for the NPO sector in general, as well as for NPOs specifically, even those that operate in proximity to active terrorist threats and sanctioned countries.

F. Modernize the FFIEC Bank Examination Manual and training

a. Amend the current FFIEC Bank Examination Manual to emphasize that not all NPOs are unduly risky

The current FFIEC Bank Examination Manual incorrectly states that NPOs are “susceptible to abuse by money launderers and terrorists.”²⁷ This needs to be amended to stress, in the view of the U.S. Treasury, that “the charitable sector as a whole [does not present] a uniform or unacceptably high risk of being used to exploited for money laundering, terrorist financing, or sanctions violations.”²⁸ Other sections of the Manual pertaining to NPOs reflect outdated information. These too should be updated in line with a risk-based approach.

b. Train examiners to understand that not all NPOs are unduly risky and instruct them to not tell FIs – or imply to FIs – that banking NPOs or executing financial transactions for them is unduly risky

As part of the effort to send an appropriate message with regard to the amount of due diligence necessary for the appropriate review of NPOs, banking regulatory agencies should improve the training of their bank examiners to ensure that they do not convey the message – either explicitly or implicitly – that

de-risking is appropriate or that all – or even many – NPOs are unduly risky and should not be allowed to become or remain customers of FIs.

The U.S. Congress is currently considering a measure that would, among other things, require additional training for federal examiners. The pertinent provision would ensure that one element of examiner training includes the issue of de-risking and its effect on the provision of financial services. Regardless of whether this bill becomes law, regulatory supervisors should educate examiners on the importance of the NPO/financial sector environment.

Due diligence measures by financial institutions should be commensurate with the level of risk of the NPO. Accordingly, if an FI's assessment of a particular NPO indicates a lower risk of illicit activity, the FI should not be expected to perform further due diligence beyond minimum expectations. However, if the potential for heightened risks of money laundering or terrorist financing exists, the FI should conduct further due diligence to determine whether the NPO has processes and mechanisms in place to deal with the risks.

G. Institute safe harbors, affirmative defenses or other protections for FIs based on their good faith and/or the rigorousness of their program

Governments and banking regulators might want to consider the implementation of safe harbors or affirmative defenses for FIs, based on their established good faith and/or the

rigorousness of their BSA/AML policies and procedures, to further allay their concerns about receiving fines or other administrative actions when dealing with NPOs.

Conclusion

Establishing and maintaining a good NPO-FI relationship is a goal we should all share and support. FIs should assess each NPO client on an individual basis; use a risk-based approach to gauge each organization's risk; seek out reliable sources of information; understand what is truly necessary to meet regulatory requirements; and avoid requesting proprietary or private information.

NPOs should be proactive, letting their FI know if and when they expect unusual activity or changes within the organization, and providing all necessary and appropriate pieces of information as soon as possible. NPOs should provide FIs with all information necessary to enable the FI to understand that they are a legitimate, tax-exempt organization with strong due diligence

and risk mitigation measures in place.

Governments and banking regulators should focus on ways they can send an appropriate message that not all NPOs are high-risk and that, with proper due diligence, FIs can open bank accounts for NPOs and provide them with banking services.

Although not every banking difficulty can be foreseen or prevented, transparency and communication from both the FI and the NPO can go a long way to helping maintain a relationship. It should be remembered that NPOs are focused on serving those in need. Any time an NPO is left without financial services, programs might be delayed or canceled, meaning that the ultimate impact is on the beneficiary.

Appendix A:

I. Nonprofit Associations/Umbrella Groups

Associations of NPOs provide a plethora of resources on good governance for their members. These include Independent Sector, a national network of diverse NPOs that provides training as well as a voice for the sector in Washington. Its Principles of Good Governance and Ethical Practice²⁹ sets out “33 principles of sound practice for charitable organizations and foundations related to legal compliance and public disclosure, effective governance, financial oversight, and responsible fundraising.”

The largest network of NPOs is the National Council of Nonprofits, which has over 25,000 organizational members, including 42 state associations of NPOs. In addition to providing background information on the sector to the public and a policy voice for its members, the council “produces and curates tools, resources, and samples for nonprofits.” These

include extensive information for board members on their roles and responsibilities³⁰ and sample policies and procedures on financial management.³¹

The Council on Foundations, the largest association of U.S. grantmakers, also provides extensive resources,³² including many online tools and publications, for its members. These cover governance, management, expenditure responsibility and compliance with legal requirements. For example, the detailed overview on Governance and Compliance Issues for Foundation Financial Management³³ summarizes critical governance issues for foundations at the federal and state levels, explains the role and responsibilities of the investment committees that oversee foundation assets and provides guidelines for board governance and leadership.

II. Examples of NPO due-diligence resources and programs

The NPO sector has created an array of programs and resources for individual organizations looking to establish or enhance their due diligence procedures. Most of these are somewhat generic, but can be tailored to an NPO’s individual needs, risk profile, etc. Below are just a handful of examples of these programs.

- The 2005 “Principles of International Charity”³⁴ includes measures for fiscal responsibility on the part of organizations providing resources to international programs.
- MercyCorps³⁵ has developed a Due Diligence Assessment Tool to manage possible risks that includes questions to evaluate potential clients, review existing relationships before committing to additional projects/assistance, understand existing risks and incorporate corresponding mitigation activities, and discover emerging risks.
- At a global level, the Sphere Project, composed of representatives of various humanitarian agencies, introduced common principles and “universal minimum standards in life-saving areas of humanitarian response.”³⁶
- InterAction’s Private Voluntary Organization (PVO) Standards program³⁷ is a “set of ethical guidelines covering private voluntary organization governance, financial reporting, fundraising, public relations, management practices, human resources and program services.” The standards are regularly updated to reflect best practices.
- Humentum, a capacity building organization serving over 300 members in the international relief and development community, hosts more than 300 training events per year, as well as more than 50 events annually for senior NPO leaders, covering topics such as USAID compliance, financial controls, grant management, human resources and operational effectiveness.
- CAF America, the U.S. branch of the Charity Aid Foundation, “offers global grant-making & philanthropic advisory services to corporations, foundations, and individuals.”³⁸ Its many offerings include the newly published handbook entitled *Cross Border Giving: A Legal and Practical Guide*.³⁹

29. Independent Sector, Principles for Good Governance and Ethical Practice, <https://independentsector.org/programs/principles-for-good-governance-and-ethical-practice/>.

30. Council of Nonprofits, Board Roles and Responsibilities, <https://www.councilofnonprofits.org/toolsresources/board-roles-and-responsibilities>.

31. Council of Nonprofits, Financial Management, <https://www.councilofnonprofits.org/tools-resources/financialmanagement>.

32. Council on Foundations, Resources, <https://www.cof.org/page/resources>.

33. John S. Griswold and William F. Jarvis, “Governance and Compliance Issues for Foundation Financial Management,” https://www.cof.org/sites/default/files/documents/files/COF_WP_GOV.pdf.

34. Council on Foundations and Treasury Guidelines Working Group of Charitable Sector Organizations and Advisors, “Principles of International Charity,” March 2005, at www.foreffectivegov.org/sites/default/files/npa/Treasury%20Principles%20Final%20Document%20.pdf.

35. “Due Diligence Assessment Tool,” Mercy Corps, <https://d2zyf8ayvg1369.cloudfront.net/sites/default/files/Tool%204%20Due%20Diligence%20Assessment.pdf>.

36. www.sphereproject.org/about.

37. InterAction, Standards for Membership, <https://www.interaction.org/membership/standards>.

38. <https://www.cafamerica.org/>.

39. CAF America, June 2018 “Cross Border Giving: A Legal and Practical Guide” <https://www.cafamerica.org/publications/cross-border-giving/>.

- NGO Source is a repository of information on foreign NPOs that U.S. donors can use to make international equivalency determinations for international grantmaking.⁴⁰
- The “Saving Lives Together” Framework (SLT)⁴¹ is an initiative by the UN Security Management System (UNSMS), International Nongovernmental Organisations (INGOs) and International Organisations (IOs) to address common security challenges when operating in volatile environments.
- The UK-based Center for Safety and Development hosts regular security conferences. Its online resources include OpenBriefing⁴² and Aidworkersafety.org, endorsed by InterAction.⁴³ The organization provides online tools, guidelines, training and shared information via country/field level consortia.