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July 11, 2019

Re: Discussion Draft – ILLICIT CASH Act

Dear Senators Cotton, Jones, Rounds and Warner,

I am writing on behalf of the Charity & Security Network to comment on the discussion draft of the Bank Secrecy Act reform bill known as the ILLICIT CASH Act. We agree that the Bank Secrecy Act and related laws (BSA) are outdated and need to be modernized to keep pace with changes in the global financial system and technological advances. We commend this bipartisan effort to address this pressing need.

The Charity & Security Network is a resource center representing more than 500 diverse nonprofit stakeholder members supporting legal frameworks that protect their ability to provide essential services around the world. We see this mission as complementary to anti-money laundering and counterterrorist financing (AML/CFT) goals.

Over the past decade, nonprofit organizations (NPOs) have increasingly found it difficult to open and maintain bank accounts and to send program funds internationally. The need to address “derisking,” caused by a combination of factors including lack of clarity on regulatory expectations for banks and enforcement action under the current system, is now urgent. Customers that lose accounts or are unable to move money through the regulated financial system are forced to use less transparent, safe and regulated channels, undermining AML/CFT goals.

Derisking: Drivers, Impacts and Definition

We appreciate your attention to derisking in this bill, particularly as it relates to charities and other NPOs. Given the central role the U.S. financial system and its impact on the global financial system, the U.S. is in a unique position to take action that will reverse the derisking trend.

Specifically, we applaud the draft bill’s emphasis on the use of a risk-based approach (RBA) in counter-terrorism financing. The application of a RBA, at both the country and financial institution level, has been identified as a possible way to ease derisking. While the Financial Action Task Force’s (FATF) original Recommendation 8 (R8) on nonprofits used sweeping generalizations to paint the entire nonprofit sector as high-risk, that body in 2016 revised R8 to paint a more accurate picture of the sector and to emphasize a RBA and proportionality. Unfortunately, the FATF’s new R8 language has not been fully implemented in the U.S. The RBA language throughout this draft bill will create a big step forward in that endeavor.

We urge the committee to broaden its discussion of BSA modernization and take a comprehensive approach that will address the derisking problem and provide relief to both banks and their customers.

In this regard, we ask the committee to expand the report language in Sections 203 and 309 to address both the *drivers* and effects of de-risking. While the effects of derisking are now established and well-documented¹, the drivers of this trend have not been adequately studied. If Congress intends to address derisking as part of its Bank Secrecy Act reform efforts, understanding the forces that are driving it will be crucial.

In addition, although Sections 203(b)(6) and 309(2) direct reports to look at how to address the adverse consequences of derisking “entire categories of relationships,” derisking can occur with a single account, when a financial institution avoids rather than manages risk by closing customer accounts or refusing to send an international wire transfer. This is often the case for NPOs that operate international programs.

No-Action Letters

We are pleased that the Senators included a section on No-Action Letters in the discussion draft. As has been mentioned in media reports, this is a practical way to reduce derisking by alleviating financial institutions’ fears around banking certain clients or correspondent banks.

To make this section more clear regarding who would be covered by a No-Action Letter, we suggest changing all references to “person” in this section to “person or group” and adding “or any financial institution dealing with such person or group,” before “with respect to such conduct” at the end of paragraph 303(j)(1).

Bank Examiner Training

We urge the Senators to include a requirement for annual bank examiner training that includes training on derisking, as is done in the current version of H.R. 2514 (The COUNTER Act), which passed favorably out of the House Financial Services Committee on May 9. As we wrote to that committee regarding that bill language, we would also like to see Congress direct the federal financial regulators to update the sections of the Bank Examination Manual that refer to nonprofit organizations, to bring it in line with the Financial Action Task Force’s 2016 revision

¹ Charity & Security Network, “Financial Access for U.S. Nonprofits” 2017 Available online at www.charityandsecurity.org/FinAccessReport; World Bank/ACAMS “Stakeholder Dialogue on De-risking: Findings and Recommendations” 2016 Available online at <http://files.acams.org/pdfs/2016/Derisking-Final.pdf>, Center for Global Development, “Unintended Consequences of Anti-Money Laundering Policies for Poor Countries” 2015 Available online at <https://www.cgdev.org/sites/default/files/CGD-WG-Report-Unintended-Consequences-AML-Policies-2015.pdf>, Global Center for Cooperative Security and Oxfam America, “Understanding Bank De-risking at Its Effects on Financial Inclusion” 2015 Available online at <http://www.globalcenter.org/wp-content/uploads/2015/11/rr-bank-de-risking-181115-en.pdf>

to its R8.² That revision shed the perception of nonprofits as uniformly vulnerable to terrorist abuse and emphasized the importance of a risk-based approach. These changes were echoed in U.S. Treasury's 2018 update to its National Terrorist Financing Risk Assessment.³

A group of nonprofit organization and financial institution representatives met in 2017 to rewrite the NPO sections in the Bank Examination Manual. Those suggested changes were submitted to regulators in October 2017 but have not yet been implemented.

Innovation and Due Diligence

We encourage the Senators to consider enabling language to facilitate innovation in the realm of bank customer due diligence. This could include a centralized repository of due diligence information items and some level of assurance that financial institutions could rely on this repository to satisfy their due diligence obligations.

Conclusion

In updating the BSA, we encourage the Senators to take a comprehensive approach that establishes a framework based on a proportionate, risk-based approach that facilitates use of transparent and regulated financial channels while minimizing the risk of derisking.

We stand ready to engage with the committee to provide additional information, answer questions and work cooperatively toward a constructive outcome.

Yours truly,



Andrea Hall, Policy Counsel

² FATF, "International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation" Available online at <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf> p. 11, Interpretive Note to Recommendation 8 at p. 52.

³ U.S. Treasury Department, "National Terrorist Financing Risk Assessment" 2018 Available online at <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>. That update stated that "the vast majority of charities fully comply with the law and properly support only charitable and humanitarian causes." As a result, the U.S. "does not view the charitable sector as a whole as presenting a uniform or unacceptably high risk be being used or exploited for money laundering, terrorist financing, or sanctions violations."