CHARITY & SECURITY NETWORK

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Rep. Blaine Luetkemeyer, Chairman
Rep. Wm. Lacy Clay, Ranking Member
Financial Institutions and Consumer Credit Subcommittee
Financial Services Committee
U.S. House of Representatives
4340 Thomas P. O'Neill, Jr. Federal Office Building
Washington, DC 20024

RE: Financial Institutions and Consumer Credit Subcommittee Hearing on Bank Derisking, February 15, 2018

Dear Chairman Luetkemeyer, Ranking Member Clay, Chairman Hensarling and Ranking Member Waters,

I am writing on behalf of the Charity & Security Network to submit comments for the record for the February 15, 2018 hearing "Examining De-risking and its Effect on Access to Financial Services." We appreciate your attention to the important issue of bank derisking, a problem that has had significant, well-documented and widespread effects on a variety of stakeholders, including nonprofit organizations (NPOs) that operate international programs.

Nonprofits share the U.S. government's goal of protecting the financial system, and they depend on banking services in order to operate their programs. The Charity & Security Network, a resource center for diverse nonprofits supporting legal frameworks that protect their ability to provide essential services around the world, sees this mission as complementary to anti-money laundering and counterterrorist financing (AML/CFT) goals. But a combination of factors, including lack of clarity on regulatory expectations for banks and enforcement action under the current system, has contributed to the global trend of "derisking," the practice of financial institutions limiting or ending their relationships with customers due to perceived risk of AML/CFT sanctions.

In recent years, "derisking" has made access to financial services increasingly difficult for NPOs that must conduct international financial transactions in order to operate overseas, often in places where their work is needed most. Financial institutions may delay, or refuse to make, transfers between organizations. Sometimes, NPOs are turned away as customers or have their accounts closed. A Charity & Security Network (C&SN) report, published in February 2017, established that these financial access problems are systemic, global and require urgent action by government, financial institutions and NPOs.[1] The need to address this issue is pressing, as it is resulting in significant delays and cancellations of vital humanitarian and other programming abroad.

Past statements from regulatory authorities have classified NPOs as being "particularly vulnerable" to terrorist abuse, although such abuse is extremely rare. Although the Financial Action Task Force (FATF), a global standard setting body for AML/CFT laws, eliminated such language from its recommended anti-terrorist financing policy for NPOs in June 2016, this outdated view persists in the U.S. Bank Examination Manual. Because most NPOs requiring international banking services are small and do not represent a significant source of income for banks, the risk-benefit calculation is heavily weighted in favor of dropping these clients or requesting additional documentation that causes significant delays in transactions.

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. There is widespread recognition that this problem needs to be addressed, with the Financial Action Task Force (FATF) making inappropriate derisking a priority.[2] Given the central role of 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 globally, and Congress is the only body that can comprehensively address the drivers of this trend. We urge the Financial Services committee to broaden its present discussion of BSA modernization and take a thorough approach -- including consideration of the sanctions regime and the bank examination process -- in order to address the derisking problem in a way that will provide relief to both banks and their customers.

The negative impact of derisking

U.S. NPOs that operate internationally have been hard hit by derisking, to the detriment of their programs, especially those that provide life-saving assistance to civilians affected by conflict and

[1] Sue Eckert, Kay Guinane and Andrea Hall, "Financial Access for U.S. Nonprofits," Charity & Security Network February 2017 Available online at https://www.charityandsecurity.org/FinAccessReport. Previous reports on the problem include 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-derisking-181115-en.pdf.

[2] "De-risking has been a priority for the FATF since 2014 and it has completed substantive work on the topic, such as guidance to clarify the risk-based approach, including for the money and value transfer services. The FATF will look at the use being made of its guidance by national supervisors and the financial sector. Delegates discussed recent developments in de-risking, including access to banking services by the remittances sector. The FATF is working closely with the Financial Stability Board, IMF and other relevant organisations to tackle this issue." FATF Plenary Outcomes June 2017 http://www.fatf-gafi.org/publications/fatfgeneral/documents/outcomes-plenary-june-2017.html#dr.

disaster. Our 2017 report is the first empirical study[3] of the financial access problems U.S. nonprofits are experiencing, using IRS data and responses to a statistical scientific sample survey. The results, accurate within a 5.4% margin of error, show that:

- 2/3 of all U.S. nonprofits that work abroad are having financial access difficulties

- Delays in wire transfers, which can last up to several months, are the most common problem, affecting 37% of nonprofits

- 15% of nonprofits report having these problems constantly or regularly

- Transfers to all parts of the globe are impacted; the problem is not limited to conflict zones or fragile and failing states

- When money cannot be transmitted in a timely manner, 42% of nonprofits report that they carry cash.

- One-third of NPOs have experienced fee increases, and 26% have faced additional, unusual documentation requests that can significantly delay program delivery.

Since the report was published one year ago, NPOs have provided new examples of derisking difficulties, indicating that within the last several months, the problem has gotten significantly worse. Examples include:

- In April 2017, a wire transfer via Turkey, intended for an Aleppo hospital, was delayed six months. The deadly siege of Aleppo was over by the time the transfer was processed.
- In 2017, a transfer was delayed because additional, confidential information was requested from partner donors. As a result, a health sector program partially funded by the U.S. government was delayed 1 ½ months, and funding gaps had to be plugged by alternative sources, within the NPO, to provide medical supplies to Syria.
- Last year, a large NPO had its U.S. bank account closed after a 23-year relationship. No reason was given, and the NPO was given 30 days to find an alternative bank. The account held huge sums of money used in vital programming.
- In October 2017, a major U.S. credit card company refused to process donations within the U.S. There was no indication from the company, at the point of donation, that these transactions would not be processed.

Additional examples have been documented in published news accounts in the spring and summer of 2017, including stories in The Washington Post and The Economist.[4]

[3] Sue Eckert, Kay Guinane and Andrea Hall, "Financial Access for U.S. Nonprofits," Charity & Security Network February 2017 Available online at https://www.charityandsecurity.org/FinAccessReport.

Contradictory standards: strict liability v. the risk-based approach

Since the 2001 amendments to the BSA, the global regulatory framework for AML/CFT has evolved away from strict liability, check-the-box compliance standards to a risk-based approach. The FATF has been a leader in this change, aiming for greater effectiveness in AML/CFT programs. However, while the BSA incorporates the risk-based approach, sanctions laws use a strict liability standard that, as a practical matter, is at odds with the risk-based approach. In its December 2016 evaluation report on the U.S., FATF has noted that:

> "Measures applied to NPOs are risk-based, and focused on targeted outreach and engagement with NPOs most at risk for abuse by terrorists. Striking the right balance and avoiding the disruption of legitimate NPO activities can be challenging, particularly in higher-risk conflict zones. As violations of TF-related TFS[5] are strict liability offenses, the authorities should continue to work with the NPO community to understand and mitigate the real TF risks that exist, while engaging stakeholders on banking challenges that some NPOs may face when working in conflict zones. The U.S. authorities are aware of the continuing challenges in this difficult area and are encouraged to continue their efforts, including work with the private sector." [paragraph 234][6]

To truly modernize the financial system to address derisking, Congress should clearly incorporate the proportionate, risk-based approach FATF calls for and eliminate strict liability standards. This would not create a loophole or allow intentional or negligent violations of the law. Instead, it would reward good-faith, reasonable due diligence efforts by banks and give greater clarity that would increase their willingness to serve NPO customers.

Solutions in development

Responding to the multiple stakeholders with financial access problems and the frustrations of banks dealing with regulatory uncertainty and often inconsistent messages from bank examiners and policymakers, the World Bank and Association of Certified Anti-Money Laundering Specialists launched a multi-stakeholder dialogue in early 2017 to tackle financial access barriers to NPOs. The effort involves regulators, banks and NPOs and is moving forward. We encourage

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[4] Washington Post, April 19, 2017, "Scrutiny over terrorism funding hampers charitable work in ravaged countries" Available at www.washingtonpost.com/national/scrutiny-over-terrorism-funding-hampers-charitable-work-in-ravaged-countries/2017/04/18/146a585a-1305-11e7-9e4f-09aa75d3ec57_story.html?utm_term=.16b30975a813; The Economist, July 8, 2017, "A crackdown on financial crime means global banks are derisking" Available at www.economist.com/news/international/21724803-charities-and-poor-migrants-are-among-hardest-hit-crackdown-financial-crime-means; The Economist, August 3, 2017, "The unintended effects of rules aimed at stopping financial crimes" Available at www.economist.com/blogs/economist-explains/2017/08/economist-explains-2.

[5] Terrorist financing and Terrorist financing sanctions

[6] Financial Action Task Force, "Mutual Evaluation of the United States" December 2016 Available online at http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-states-2016.html.

the committee members to engage with these stakeholders on the causes of derisking and explore how Congress can be part of the solution.

Conclusion

The empirical data and examples of derisking of NPOs clearly point out the need to address bank derisking in a way that benefits all stakeholders. We encourage the committee to take a comprehensive approach that establishes a proportionate, risk-based legal framework that facilitates use of transparent and regulated financial channels. We stand ready to engage with the committee to provide additional information, answer questions and work cooperatively toward a constructive outcome.

Yours truly,

Kay Guinane

Kay Guinane, Director