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May 7, 2019

Re: H.R. 2514

Dear House Financial Services Committee Members,

I am writing on behalf of the Charity & Security Network to comment on the recently introduced Bank Secrecy Act Reform bill, H.R. 2514 (the “COUNTER Act of 2019”). We agree that the Bank Secrecy Act and related laws (BSA) are outdated and need to be modernized to keep pace with changes in the global financial system and technological advances.

The Charity & Security Network is a resource center for diverse nonprofits stakeholders that support 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.

Derisking: Drivers, Impacts and Definition

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. This trend has well-documented, widespread effects on a variety of stakeholders, including nonprofit organizations (NPOs) that operate international programs and money service businesses, as well as on correspondent banking relationships (see below).

The need to address this issue is pressing. 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.

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. 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 Section 111(a) to address both the *drivers* and adverse consequences of de-risking. While the adverse consequences 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 Section 111(a)(1) directs the report to study 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. In contrast, the bill’s definition of derisking in Section 111(c)(1) is a more accurate description, and we ask the committee to align Section 111(a)(1) with the definition in (c)(1).

Bank Examiner Training

We are also pleased with the new requirement for annual bank examiner training that includes training on derisking. We hope that the committee will also 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 to its Recommendation 8.² 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.

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>

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.”

Innovation and Due Diligence

We encourage the committee to consider enabling language to encourage 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 committee 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,

A handwritten signature in blue ink that reads "Andrea J. Hall". The signature is written in a cursive style with a horizontal line above it.

Andrea Hall, Policy Counsel