

"It is useful to recognize that all parties—policymakers, regulators, banks, and bank customers—are acting rationally, given the distinct pressures and responsibilities they face."¹³⁵

To understand the complexity of the issues surrounding financial access for NPOs, it is critical to appreciate the differing perspectives of the relevant stakeholders: U.S. regulators and policy officials, financial institutions and the nonprofit sector. Over the course of 9 months, a series of meetings, interviews, roundtables and focus groups were organized by C&SN to understand unique viewpoints of each group. Only one of these meetings, organized by the World Bank/ACAMS¹³⁶ in the spring of 2016, involved multiple stakeholders present at the same time.

As problems with financial access for NPOs have come to light over the past several years, there have been limited opportunities for stakeholders to meet and discuss these complicated issues. U.S. government officials have had periodic meetings with NPOs and more regular engagement with FIs in which derisking is discussed, but they have been characterized by multiple participants as sessions in which stakeholders “talk past each other.”

This absence of real dialogue around financial access issues has resulted in an environment of misunderstanding the respective perspectives, as well as reinforced stereotypes. The lack of an overarching process to facilitate collective discussion and responsibility for solutions has contributed to strained relations among stakeholders.

Two overriding impressions resulting from stakeholder meetings are particularly noteworthy. First, there is a sense of frustration among all stakeholders: frustration among NPOs that their problems are not taken seriously and that they are perpetually seen as too risky to bank; frustration among policymakers and regulators that their statements and efforts are not sufficient to address derisking concerns; and frustration within the financial sector for being blamed by both NPOs and government, caught in the middle. The second preponderant view is apprehension: fear to speak out and openly criticize the shortcomings of the current system, given risks of enhanced regulatory scrutiny and potential backlash.

¹³⁵ Matthew Epstein and Howard Mendelsohn, “Here’s How to Solve the De-Risking Riddle,” *American Banker*, May 3, 2016, <http://www.americanbanker.com/bankthink/heres-how-to-solve-the-de-risking-riddle-1080805-1.html>.

¹³⁶ The Stakeholder Dialogue on De-risking, a workshop organized by the World Bank and ACAMS (Association of Certified Anti-Money Laundering Specialists) May 31–June 1, 2016 was the first time that representatives of governments (policy, regulatory and law enforcement authorities), NPOs, academics and think tanks, international organizations and financial institutions had the opportunity to meet and discuss derisking issues. The summary of the meeting is available online. “Stakeholder Dialogue on De-Risking: Findings and Recommendations,” *ACAMS TODAY*, October 11, 2016, <http://www.acamstoday.org/stakeholder-dialogue-on-derisking/>.

The following chapters describe the perspectives and experiences of these three communities, as much as possible, in their own words and through examples of actual occurrences, without commentary.

Chapter 5

REGULATORS AND POLICYMAKERS

The most fundamental task of government is to provide for the security of its citizens. In the aftermath of 9/11, the priorities of the U.S. government shifted to focus on denying terrorist groups (initially al-Qaeda and the Taliban, and now Islamic State/ISIL/ISIS) essential resources to carry out their activities.

Protection of the global financial system from abuse by criminal and terrorist organizations has been and will continue to be an essential element of U.S. national security policy.¹³⁷ Strengthening the international financial system to combat illicit finance, anchored in the FATF, is a key component of multilateral efforts to deter and defeat terrorist threats. In the aftermath of the 2015 Islamic State of Iraq and the Levant (ISIL)/Da'esh bombings in Paris and elsewhere, the international community recommitted to bolstering such efforts through the *G-7 Action Plan on Combatting the Financing of Terrorism*.¹³⁸ Such counterterrorism and CFT initiatives continue to receive widespread political support both in the U.S. and among its allies.

Skeptical View of Derisking

Complaints that AML/CFT regulatory requirements contribute to derisking were initially met with skepticism by policymakers. The then-head of the FATF, Roger Wilkins, told the Financial Times in 2014 that derisking was likely related to rising regulatory capital requirements such as Basel III, and “not so much a function of our standards as a fig leaf for the banks doing what they need to do and are going to do anyway by taking people off their balance sheets.... There is nothing in our standards that requires this ‘blunderbuss’ approach to de-risking.”¹³⁹ In a separate statement, Wilkins noted that, “It is sort of understandable that people working in banks find it easier to say ‘no’ rather than go through a process of understanding the intent and rules involved in a transaction. That of course is unless the customer is wealthy and the transaction is significant.”¹⁴⁰

137 See U.S. National Security Strategy, The White House, February 2015, https://www.whitehouse.gov/sites/default/files/docs/2015_national_security_strategy.pdf.

138 See G-7 Action Plan on Combatting the Financing of Terrorism, May 20-21, 2016, http://www.g7sendai2016.mof.go.jp/summary/pdf/g7_action_plan_on_cft_en.pdf.

139 Martin Arnold, “Financial task force warns on banks’ approach to de-risking,” Financial Times, November 13, 2014, <https://www.ft.com/content/087afe70-66bc-11e4-91ab-00144feabdc0>.

140 *Remarks of FATF President Roger Wilkins delivered at the 6th Annual International Conference on Financial Crime and Terrorism Financing*, “The danger of driving both illicit markets and financial exclusion,” Kuala Lumpur, October 8, 2014, <http://www.fatf-gafi.org/publications/fatfgeneral/documents/danger-illicit-markets-financial-exclusion.html>.

The undertone of skepticism as to whether derisking is a serious problem, and if so, how relevant it is for U.S. policy, has characterized U.S. government statements since the issue first emerged. In 2015, Treasury Under Secretary David Cohen stated,

“I have put ‘de-risking’ in quotes because there does not appear to be either a uniform understanding about what the term means or a consensus that a serious ‘de-risking’ trend is underway [...] It is not the closing or restricting of an account because a financial institution, applying an appropriately designed risk-based analysis, determines that it cannot manage the risk of illicit activity associated with a particular client. When that happens, a financial institution is doing precisely what the BSA and the FATF standards demand—applying a risk-based approach to its decision-making and saying “no” to some customers. A financial institution that refuses to do business with customers that present a risk profile that the institution cannot manage is doing the right thing. That is not “de-risking.” And it is not a problem. In fact, we have seen the termination of some customer relationships—as well as the threat of termination—spur jurisdictions and institutions to step up their AML/CFT practices... So, is ‘de-risking’ actually occurring? The evidence is decidedly mixed.”¹⁴¹

Acting Treasury Under Secretary Adam Szubin amplified this definitional concern most recently stating, “The term ‘de-risking’ has come to mean different things to different people, and is not consistently used by various stakeholders. We prefer to focus the term more precisely on what we view as problematic, which are reports of financial institutions indiscriminately terminating or restricting broad classes of customer relationships without a careful assessment of the risks and the tools available to manage and mitigate those risks” (emphasis added).¹⁴²

This view among policymakers and regulators—that FIs’ reviews and account closures are appropriate reassessments of risk—persists. In September 2016, Thomas Curry, Controller of the Currency, stated,

“...it is not surprising that some banks have chosen to reduce their risks and shrink their exposure and international business portfolios. That choice is the result of what has been pejoratively labeled ‘de-risking.’ These withdrawals, particularly in regions subject to terrorism, drug trafficking, and other illicit activity, have been the subject of a good deal of publicity and, in some cases, have caused outcry both here and abroad. The process that has resulted in these decisions is better described as risk reevaluation. It’s the process in which institutions review the risks they face on a continual basis and ensure they have systems in place that can identify and adequately address those risks. The actual process of regularly reevaluating risk is a critical and expected part of the BSA/AML regulatory regime.”¹⁴³

¹⁴¹ *Remarks by Under Secretary David Cohen at the ABA/ABA Money Laundering Enforcement Conference*, November 10, 2014, <https://www.treasury.gov/press-center/press-releases/Pages/jl2692.aspx>.

¹⁴² *Remarks by Acting Under Secretary Adam Szubin at the ABA/ABA Money Laundering Enforcement Conference*, November 14, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0608.aspx>. U.S. policymakers generally characterize derisking in narrow terms, affecting entire categories of customers, products or business lines, or threatening the stability of the global financial system overall.

¹⁴³ *Remarks by Thomas J. Curry at the ACAMS 15th Annual AML and Financial Crime Conference*, September 28, 2016, <http://>

In conversations with U.S. officials, several specifically mentioned the low profitability of higher-risk accounts as a likely reason why many FIs may have chosen and continue to choose to exit business relationships.

Another point emphasized among some officials is a clear aversion to the use of the term “derisking.” In addition to being used in a pejorative way, interviewees noted misunderstandings as to what derisking is and is not. “It is not derisking if a financial institution cannot assure itself that they can effectively manage risks associated with specific clients. Certain clients, such as service NPOs operating in geographical areas of higher risk, require greater scrutiny and may therefore fall out of FI’s risk appetite, which is appropriate,” said one government representative.

Government officials also noted the difficulty of drawing conclusions from individual cases, as each case is unique. Some expressed doubt as to whether problems with financial access constitute a trend or are just reports of a series of individual cases.

Need for More Information/Data

In repeated discussions with government policymakers, Congressional staff and others, there was widespread realization of the need for data. Specifically referring to correspondent banking, Acting Under Secretary Adam Szubin noted that, “...even after these initial surveys, we don’t have a complete picture quite yet. We still need more and better data to help us measure changes in the correspondent banking environment, and to better understand the extent to which de-risking is happening and why.... We need sound, comprehensive data before deciding broad financial and regulatory policy.”¹⁴⁴

In interviews, there was tacit agreement on the need for more information regarding the nature of NPOs’ problems with financial access. Cautionary comments were also offered regarding “the difficulty of feeling comfortable with data on such complicated issues.” All agreed that the integrity of and confidence in the unbiased nature of the data is important.

Reaffirmation of the U.S. AML/CFT Approach

In both public statements and interviews, government officials reiterated the importance of the risk-based approach for effective AML/CFT implementation. In fact, officials claimed that the RBA was the cornerstone of U.S. policy for combatting illicit finance because it enables the government and FIs to focus efforts on those entities most at risk of terrorist abuse: “Our risk-based approach is a road map for financial institutions seeking to evaluate and manage risk, not an off-ramp for financial institutions seeking to avoid it. The key, at this point, is to help financial institutions navigate that road map.”¹⁴⁵

www.acamstoday.org/remarks-by-thomas-j-curry/.

144 *Remarks by Acting Under Secretary Adam Szubin at the ABA/ABA Money Laundering Enforcement Conference*, November 16, 2015, <https://www.treasury.gov/press-center/press-releases/Pages/jl0275.aspx>.

145 *Ibid.*

Moreover, U.S. government officials have been clear that it is critical to “stay the course,” even if derisking may be the result of the current approach:

“We believe that we cannot address this complex issue by relaxing the prudential requirements that have made our financial system more stable or the AML/CFT rules that have made it safer. Rather, we must ensure that the global standards in place are well understood and implemented consistently and effectively, and in doing so we will enhance financial transparency and subsequently improve financial access.”¹⁴⁶

While reassuring Persian Gulf nations concerned about losing their banking relationships with the U.S., Treasury Assistant Secretary Daniel Glaser indicated in 2015 that despite “quiet calls in some circles for scaling back regulations and tamping down enforcement, we are not going to loosen laws or lower global standards, and we are not going to walk away from supervising our financial institutions or enforcing our laws.”¹⁴⁷

Furthermore, some regulators are sensitized to actions that could be perceived as “going easy” on banks. Through Senator Levin’s investigation into money laundering activities of HSBC, the OCC in particular came under harsh condemnation for showing too much deference to the financial institutions it regulates.¹⁴⁸ In general, government policymakers are concerned about potential criticism from Congress and the public for not being “tough enough” on banks in the aftermath of the 2008 financial crises.

Financial Access Is a Commercial, Not Policy, Decision

When asked about financial access problems, government officials have consistently indicated that closing customer accounts is a business decision of financial firms and that it is not the government’s place to interfere with banks’ assessment of risk. “Treasury cannot direct any bank to open or maintain a particular account or relationship—such decisions must be made by banks themselves,” according to U.S. Treasury’s Jennifer Fowler.¹⁴⁹ Acting Under Secretary Szubin reiterated this point recently by saying, “While the U.S. government cannot instruct the private sector on who to bank, we encourage you to continue to take the time and effort to assess your controls and the risks presented by individual clients and, where you cannot manage effectively that risk, make conscientious decisions.”¹⁵⁰

146 Szubin remarks, November 14, 2016.

147 Ian McKendry, “Treasury to Banks: Derisking Is Your Problem to Solve,” *American Banker*, November 13, 2015, <http://www.americanbanker.com/news/law-regulation/treasury-to-banks-de-risking-is-your-problem-to-solve-1077844-1.html>.

148 Report of the U.S. Senate Permanent Subcommittee on Investigations, of the Homeland Security and Governmental Affairs Committee, “U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History,” released July 17, 2012, <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/us-vulnerabilities-to-money-laundering-drugs-and-terrorist-financing-hsbc-case-history>.

149 Jennifer Fowler, “Treasury Efforts to Protect and Support the Charitable Sector,” Treasury Notes Blog, April 28, 2016, <https://www.treasury.gov/connect/blog/Pages/Treasury-Efforts-to-Protect-and-Support-the-Charitable-Sector.aspx>.

150 Szubin, remarks, November 14, 2016.

Exaggerated Concerns for Enforcement Actions

As previously mentioned, the significant and increasing penalties levied against FIs in recent years have been cited as reasons for their reduced risk appetite. U.S. regulators and policy officials have repeatedly emphasized that FIs should not be concerned with fines, since most enforcement actions are the result of willful and systematic failure to apply the rules:

“...about 95 percent of AML/CFT and sanctions compliance deficiencies identified by Federal Banking Agencies are resolved through cautionary letters or other guidance by the regulators to the institution’s management without the need for a public enforcement action or penalty. In addition, over 95 percent of OFAC sanctions investigations are closed with administrative actions that do not rise to the level of a monetary penalty or other public enforcement response. The rare cases of large monetary penalties or settlements for AML/CFT and sanctions violations have generally involved a sustained pattern of reckless or willful behavior over a period of multiple years and a failure by the banks’ senior management to respond to warning signs that their actions were illegal.”¹⁵¹

Strengthening Global AML-CFT

One of the oft-cited goals of U.S. policy is to encourage other countries to enhance their implementation of AML-CFT measures. American FIs’ reassessments of risks and decisions to terminate certain banking relationships, therefore, have had the positive impact of motivating some countries to enhance their own systems. In doing so, countries and financial institutions address deficiencies in their AML/CFT compliance and enforcement regimes, thereby strengthening the implementation of global system.

“There are often very real concerns about the risks presented by anti-money laundering and countering the financing of terrorism (AML/CFT) compliance. While ‘regulatory risk’ and fear of fines has been cited by some, the core issue here relates to poor and uneven implementation of global AML/CFT standards—either by individual foreign banks or by jurisdictions as a whole. The fact is that some countries lag in the effective implementation of global AML/CFT standards and have not taken the necessary steps to implement the proper legal, regulatory, and supervisory frameworks to adequately counter illicit finance.”¹⁵²

151 Ibid.

152 Ibid.

Acknowledgement of Derisking and Response¹⁵³

Over the past several years, there has been a growing recognition of the problems with financial access, especially in the correspondent banking sector. Several former U.S. government officials noted the seriousness of the derisking dilemma and the need to address it. Former Chairman of FDIC Bill Isaac blogged:

“This situation is creating extreme hardship for countries, organizations and people least able to cope with it.... We have moved from a system that was designed to track the movement of money to a system that is forcing money out of the legitimate banking system and into the shadows, where it is almost impossible to track.... It’s long past time for leading banks and government officials to stop blaming each other and sit down to work out common sense solutions. The solutions won’t be perfect—some funds may well escape the net—but there is no doubt we can do much better than we are doing today.”¹⁵⁴

Michael J. Bresnick, former executive director of President Obama’s Financial Fraud Enforcement Task Force, wrote, “Only when the government truly understands the consequences of its actions (especially the unintended consequences), acknowledges those concerns to those directly affected, and works closely with them to address the challenges they face, can we expect that the multitude of good actors who desperately want to avoid the last resort of de-risking will be able to do so with relative comfort.”¹⁵⁵

Beginning in late 2015, Treasury officials responsible for illicit finance began to acknowledge that certain sectors—correspondent banking and MSBs—are indeed experiencing difficulties in accessing financial services, even while reiterating the appropriateness of the RBA in addressing illicit finance risk on a client-by-client basis. Officials also noted that FIs are not infallible and that “none of this means zero tolerance, zero failure, or zero risk.”¹⁵⁶

In a September 2016 speech, Comptroller of the Currency Thomas Curry discussed the increase in derisking of foreign correspondent banks. After noting that stopping the financing of terrorists is important, he observed, “It cannot be our only goal. A banking system that’s truly safe and sound is also one that meets the legitimate needs of its customers and communities. Ensuring fair access to financial services while also combating threats to the system’s integrity is surely one of the great challenges that regulators and financial institutions face today.”¹⁵⁷

153 Recognition of the derisking problem has been limited to the correspondent banking and MSBs sectors; there have been no public statements addressing financial access problems of NPOs.

154 Bill Isaac, former chairman of the FDIC, comment post in response to Andrea Hall, “Bank De-Risking Hurts Charities and Increases Risk of Laundering,” *American Banker*, November 5, 2015, <https://www.americanbanker.com/opinion/bank-de-risking-hurts-charities-and-increases-risk-of-laundering>.

155 Michael J. Bresnick, “How Regulators Can Fight De-Risking,” *American Banker*, April 7, 2016, <http://www.americanbanker.com/bankthink/how-regulators-can-fight-de-risking-1080297-1.html>.

156 Szubin remarks, November 16, 2015.

157 *Remarks by Thomas J. Curry, Comptroller of the Currency, Before the Institute of International Bankers*, March 7, 2016, <https://www.occ.gov/news-issuances/speeches/2016/pub-speech-2016-25.pdf>.

Efforts to Clarify Regulatory Expectations

U.S. efforts to clarify regulatory expectations have taken place through the Financial Stability Board and the FATF.¹⁵⁸

In August 2016, several U.S. banking regulators issued a “Joint Fact Sheet on Foreign Correspondent Banking,” intended to dispel myths about U.S. supervisory expectations, including the belief that banks should conduct due diligence on the individual customers of foreign financial institutions (a practice referred to as “know your customer’s customer,” or KYCC).¹⁵⁹ For the first time, Treasury officials also penned an accompanying blog, *Complementary Goals – Protecting the Financial System from Abuse and Expanding Access to the Financial System*, providing additional guidance.¹⁶⁰

In October 2016, the OCC also issued guidance concerning expectations for banks to reevaluate risk in their foreign correspondent banking relationships but did not create any new supervisory expectations. Rather, it reiterates current expectations that banks assess these risks as part of their ongoing risk management and due-diligence practices and provides “best practices” for banks to consider when conducting their reevaluations.¹⁶¹

In addition to further regulatory guidance, U.S. officials’ statements have emphasized that the U.S. government “has never advocated a standard of perfection” since “it would promote neither efficiency nor transparency.”¹⁶² Moreover, Treasury officials have expressed a desire and willingness to work with the financial sector to address concerns, as “...we have a shared responsibility to expand access to the financial system while protecting it from illicit activity, and to ensure that our collective efforts result in a well-functioning, transparent, resilient, safe, and sound financial system.”¹⁶³

158 See FATF, *Guidance on Correspondent Banking*, October 2016, <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-Correspondent-Banking-Services.pdf>; FATF, *Guidance for a Risk-Based Approach: Money or Value Transfer Systems*, February 2016, <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-money-value-transfer-services.pdf> and Financial Stability Board, “Report to the G20 on actions taken to assess and address the decline in correspondent banking,” November 6, 2015. www.fsb.org/wp-content/uploads/Correspondent-banking-report-to-G20-Summit.pdf.

159 See August 30, 2016, “Joint Fact Sheet on Foreign Correspondent Banking” by Treasury and regulators clarifying U.S. government’s approach to supervision and enforcement and describing expectations of U.S. regulators, the supervisory examination process, and the use of enforcement actions. U.S. Department of Treasury & Federal Banking Agencies, “Joint Fact Sheet on Foreign Correspondent Banking,” August 30, 2016, <https://www.treasury.gov/press-center/press-releases/Documents/Foreign%20Correspondent%20Banking%20Fact%20Sheet.pdf>. While characterized by the government as “clarifying” regulatory expectations, many FIs consulted viewed it as restatement of existing standards without providing any new guidance.

160 Nathan Sheets, Adam Szubin, and Amias Gerety, “Complementary Goals - Protecting the Financial System from Abuse and Expanding Access to the Financial System,” Treasury Blog, August 30, 2016, <https://www.treasury.gov/connect/blog/Pages/Complementary-Goals---Protecting-the-Financial-System-from-Abuse-and-Expanding-Access-to-the-Financial-System.aspx>.

161 See OCC BULLETIN 2016-32, *Risk Management Guidance on Periodic Risk Reevaluation of Foreign Correspondent Banking*, October 5, 2016, <https://www.occ.gov/news-issuances/bulletins/2016/bulletin-2016-32.html>.

162 Szubin remarks, November 16, 2015.

163 Szubin remarks, November 14, 2016.

Engagement with NPO Sector

As NPOs' problems have grown and they approached the U.S. government for help, officials' statements have emphasized recognition and support for the critical role charities play globally, especially in conflict regions. Treasury's Jennifer Fowler said, "We take seriously recent concerns from the charitable sector about delayed transactions to intended recipients and claims of indiscriminate bank account closures, the former of which seem to be more prevalent. We are committed to ongoing dialogue with relevant stakeholders on these issues."¹⁶⁴

As noted previously, the Treasury has conducted outreach to the nonprofit sector and organized meetings to facilitate a dialogue on banks' expectations. These sessions brought together representatives from charities, banks, financial supervisors and government to discuss issues that banks face regarding NPO accounts, including delays in financial transactions and banking access challenges.

In general, however, relations with the NPO sector have been challenging. "It hasn't been an easy relationship" is how one policymaker characterized the situation. Recognizing the frustration of many NPOs in not knowing why accounts have been closed or transfers denied, U.S. officials unfortunately are not in a position to be able to provide such information or remedy the situation. As they have repeatedly stated, the government cannot "tell banks what to do." NPOs have pushed back but have left dissatisfied and critical of informational sessions unable to move the dialogue forward. This has led to a general sense of frustration among all participants, including policymakers.

Importantly, the Treasury Department has emphasized that it "does not view the charitable sector as a whole as presenting a uniform or unacceptably high risk of money laundering, terrorist financing, or sanctions violations. However, charities delivering critical assistance in high-risk conflict zones have been, in some cases, exploited by terrorist organizations and their support networks. Protecting the charitable sector from terrorist abuse using a risk-based approach and promoting access to financial services are complementary goals that we all share."¹⁶⁵

Comments on NPO Issues

While recognizing the NPOs' frustrations when FIs give no reason or information related to account closures or transfer problems, government representatives expressed the view that most problems occur with smaller NPOs that are less sophisticated in dealing with regulatory and compliance requirements. They also noted that there are often conflicting accounts of financial access problems when NPOs and FIs are questioned. "When transactions are dissected, there are often differing stories, making it hard to get a straight answer," said one government representative. Government officials indicated that in querying FIs about NPO problems, banks' decisions seem to be thoughtful and specific to the relationship.

¹⁶⁴ Jennifer Fowler, "Treasury Efforts to Protect and Support the Charitable Sector," Treasury Notes Blog, April 28, 2016, <https://www.treasury.gov/connect/blog/Pages/Treasury-Efforts-to-Protect-and-Support-the-Charitable-Sector.aspx>.

¹⁶⁵ Ibid.

Based on discussions with FIs, officials also noted that most problems appear to be related to delays rather than account closures. They noted that delays usually get resolved and that a new account is often opened. Officials also expressed the view that most delays relate to questions or concerns from correspondent banks, not the originating U.S. institution.

When asked what NPOs need to do to address financial access problems, the response was that they needed to provide more information to FIs and be more transparent. “NPOs need to understand that they are no different than other customers—banks’ expectations and requests are the same as for any other customer,” government representatives said. U.S. government representatives also said that NPOs need to understand that they are not being singled out but that they do need to do more to demonstrate steps being taken to mitigate risk and implement compliance measures.

Other government officials remarked on the similarities of current financial access difficulties with the debanking of foreign missions in the aftermath of the Riggs Bank controversy. They noted the extreme difficulties many countries faced in losing banking services for routine payments of rents, salaries, etc. Only when the issue reached the highest levels of governments and became a crisis in bilateral relations were the matters addressed, and even then, not entirely satisfactorily or definitively.

Foreign Policy and Security Implications of Financial Access Problems

“NPOs are critical in reducing the appeal of terrorism, by building social structures and increasing intercommunity dialogue and understanding. These endeavors can prevent the causes of radical ideology from taking root.”

-U.N Counter-Terrorism Implementation Task Force

While the Treasury Department is the leading agency addressing FIs’ efforts to effectively manage customers, business lines and jurisdictional risks, agencies responsible for national security and counterterrorism are additionally affected by derisking. Foreign policy concerns in promoting global development, humanitarian assistance, financial inclusion and global finance, as well

as managing bilateral relations, are important aspects of the financial access dilemma. However, agencies representing these interests are generally not included in these discussions.

A number of interviewees commented on the implications of NPOs’ difficulties for foreign policy and security interests beyond AML/CFT. Several expressed concern for specific U.S. goals, such as supporting civil society and promoting international development. With the 2014 Presidential Memorandum on Civil Society, the Obama Administration committed to instituting a whole government approach to support civil society abroad, with NPOs playing an important role. Recognition of the significant constraints faced by civil society groups operating in increasingly restrictive environments have made it all the more important to support NPOs’ international engagement. Some governments have even used FATF R8 as a justification to crack down on civil society. Financial constraints on NPOs limit their ability to support American foreign policy objectives, including humanitarian assistance.

Some interviewees commented that the foreign policy aspects of financial access are underappreciated and underrepresented in U.S. government deliberations on the issue. Representatives of the State Department and the U.S. Agency for International Development expressed a desire for greater participation through a coordinating body such as the National Security Council, explaining that there are few opportunities to address financial access on a cross-cutting interagency basis. When it does occur, discussions are often country-specific, such as with transfers to Somalia or correspondent banking problems with Belize.

Representatives of security and counterterrorism agencies expressed concern that narrowing financial access for NPOs is an ineffective way to address AML/CFT concerns, potentially creating more problems than it would solve. Echoing views of the UN CTITF, interviewees noted that NPOs play a crucial part in fighting conditions conducive to terrorism. As stated in a 2009 report from the UN CTITF, “NPOs are critical in reducing the appeal of terrorism, by building social structures and increasing intercommunity dialogue and understanding. These endeavors can prevent the causes of radical ideology from taking root.”¹⁶⁶ Others noted the important role of some NPOs in helping to develop counter-narratives and providing positive alternatives for young people in countries where terrorists operate who might otherwise be drawn to violent extremist propaganda.

Even financial and regulatory policymakers have recognized the potential consequences of reduced financial access and its dangers for AML/CFT objectives. Discussing derisking, David Lewis, executive secretary of the FATF, noted that, “It’s a concern to us, as it undermines transparency within the financial sector and law enforcement’s ability to follow the money.... We are concerned about that, as it reduces transparency in financial transactions. It increases the ML/TF risks we are trying to address.”¹⁶⁷ Comptroller of the Currency Thomas Curry acknowledged the potential danger by noting that, “Transactions that would have taken place legally and transparently may be driven underground.”¹⁶⁸

166 UN Counter-Terrorism Implementation Task Force, “Tackling the Financing of Terrorism,” at 16, October 2009, http://www.un.org/en/terrorism/ctitf/pdfs/ctitf_financing_eng_final.pdf.

167 Mark Taylor, “FATF chief talks de-risking dangers and correspondent banking,” March 29, 2016, <https://www.linkedin.com/pulse/fatf-chief-talks-de-risking-dangers-correspondent-banking-mark-taylor>.

168 Rob Barry and Rachel Louise Ensign, “Losing Count: U.S. Terror Rules Drive Money Underground,” Wall Street Journal, March 30, 2016, <http://www.wsj.com/articles/losing-count-u-s-terror-rules-drive-money-underground-1459349211>.