SECTION FOUR OBSERVATIONS & RECOMMENDATIONS

Chapter 8
OBSERVATIONS

This situation is creating extreme hardship for countries, organizations and people least able to cope with it. 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.[227]

Previous chapters endeavored to present the results of this investigation without significant editorializing or commentary; Section Two described the results of the random sample survey, and Section Three portrays the views of various stakeholders as reflected in focus groups, interviews and public statements. This chapter offers observations and findings that form the basis for the recommendations to address problems of financial access for NPOs found in the final chapter.

There Is a Problem

Until now, there have been no data indicating the scope and type of difficulties U.S. NPOs might be experiencing. In the absence of information, a hesitancy to act is understandable. This research initiative was undertaken to inform policy discussions with solid empirical data.

With this report, the question as to whether financial access is a problem for NPOs has now been answered: it definitively is. Years of anecdotal evidence reported by NPOs regarding difficulties with financial services are now confirmed through the random sample survey that is discussed in this report.

The scope of financial access difficulties, affecting 2/3 of U.S.-based NPOs and programs in all parts of the world, constitutes a serious and systemic challenge. As a result, financial access for NPOs must be recognized as a problem that needs to be addressed, on par with correspondent banking and MSB issues. It is time to move beyond discussions of whether there is a problem,

227 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 6, 2015, at: https://www.americanbanker.com/opinion/bank-de-risking-hurts-charities-and-increases-risk-of-laundering.

arguments over definitions and the finger-pointing that have characterized the issue to date. Now is the time to seek solutions.

The primary difficulties NPOs face include delays in funds transfers (experienced by 36.7% of NPOs), excessive requests for information (26.2%) and increased fees (32.6%), rather than account closures (6.3%) or refusals (9.5%). As such, it is more appropriate to characterize the issue as NPOs' difficulties accessing financial services rather than an issue of "derisking." The problem is less "NPOs having access to bank accounts" and more "being unable to transfer funds to high-risk jurisdictions."

NPOs are routinely treated as high risk, which results in delayed wire transfers and requests for additional documentation. This forces them to move money through less-transparent, traceable and safe channels. In the face of these difficulties, charities must find ways to deliver vital assistance to war-torn regions suffering humanitarian crises. According to the survey, the most common way of dealing with financial access problems is by carrying cash (41.7% of NPOs report doing this). This increases risk for NPOs and their beneficiaries. Moreover, increased use of cash and unregulated MSBs push funds into opaque channels, undermining the AML/CFT objectives of keeping money out of the hands of terrorists and criminals. Humanitarian relief and development initiatives are impacted when program money cannot make its way to its intended recipients.

As NPOs' ability to access the financial system has been hampered, the level of humanitarian need worldwide has reached all-time highs. Refugees fleeing war, climate disasters or political repression make up the largest number of displaced persons since World War II, making the programs U.S. NPOs operate in other countries even more important in saving lives and preventing the further erosion of democracy and human rights.

The Drivers of Narrowing Financial Access for NPOs Are Complex

There is no simple or singular reason why NPOs are having financial access problems, and this study does not contend that all decisions by FIs to terminate NPO accounts or delay wire transfers are attributable exclusively to AML/CFT concerns. However, interviews for this report, as well as regular surveying of the financial industry, consistently demonstrate that FIs' compliance-related concerns are among the primary reasons for derisking. A multiplicity of factors has resulted in serious unintended consequences that limit financial access for NPOs.

As discussed throughout this report, increased compliance costs, record penalties, fear of regulatory criticism and personal liability for compliance officers have resulted in a "perfect storm," causing FIs to reduce their risk appetite. For many FIs, decisions to withdraw or decline the request for financial services are based on the perceived notion that some customers, such as NPOs, are higher risk, and that certain countries (often where humanitarian assistance and development NPOs work) are higher-risk jurisdictions. The routine second-guessing of FIs' decisions and treatment of certain clients as categorically high risk by bank examiners require FIs to undertake extensive and expensive steps to mitigate those risks, tipping the risk-reward scale toward exiting such relationships. Despite reassuring statements from government officials, FIs perceive a clear disconnect between what policy officials say and what happens at the individual bank examination level, resulting in inconsistency among examiners.

Implementation of the Risk-Based Approach Remains Problematic

Government attempts to mitigate FIs' concerns by clarifying that regulators do not expect perfection have failed to provide the assurances necessary to tip the balance in favor of banking customers and countries perceived to be higher risk. The perception remains that regulators have zero tolerance for ML/TF risks. Without concrete action to provide greater certainty, the situation will continue unabated.

To overcome these concerns, FIs expressed the need for clear and specific guidance, flexibility to manage their risk-based programs without second-guessing and assurances that inadvertent mistakes will not result in significant enforcement actions. A safe harbor (protection from enforcement liability for FIs that meet certain conditions) has been advanced as the type of assurance and incentive to maintain such relationships. Guidance should support the risk-based approach, as well as reflect current realities by acknowledging that despite robust due diligence, there may be residual risk.

Barriers to Action Must Be Acknowledged and Dismantled

There has been little recognition by U.S. officials that financial access is a problem for NPOs, in contrast to the public acknowledgement of derisking in the context of correspondent banking and MSBs. U.S. policymakers and regulators appear reluctant to take NPOs' concerns seriously or to address these issues. Skepticism, along with long-held attitudes that the sector is high risk, pervades many discussions, from the policy levels down to individual examiners. FIs are likewise reluctant to devote resources to address the issues that regulators do not treat as a priority.

Overall, the absence of genuine engagement around financial access issues has resulted in the misunderstanding of the respective stakeholders' perspectives. The lack of a process to facilitate collective discussion and responsibility for solutions has contributed to strained relations among all parties.

This has led to frustration and a sense of apprehension among all stakeholders. NPOs are discouraged that their problems are not taken seriously and that they are seen as too risky to bank. At the same time, they are fearful of speaking out on the issue. Policymakers and regulators feel that their attempts to reassure banks that there is no zero-tolerance policy for inadvertent AML/CFT violations should be sufficient, yet they are also concerned about potential criticism from legislators for "going easy" on FIs or appearing to retreat from strict CFT policies. Banks do not want to be viewed as abandoning charitable organizations, yet they feel abandoned themselves by the lack of adequate guidance or the ability to manage risk without being second-guessed. Many FIs are also fearful of openly criticizing the shortcomings of the current system, given risks of enhanced regulatory scrutiny and potential backlash.

Action Is Needed

To effectively address the problems of derisking/financial access, all stakeholders must work together in a concerted effort. Solutions will only be found if the problem is approached as a shared responsibility. Characterization of these issues as solely "commercial decisions" by policymakers ignores reality and is a recipe for continued derisking and all of its consequences.

Currently, there is a clear lack of leadership and accountability on derisking issues, as noted in previous reports.[228] Government points to the private sector, banks point at regulators, and NPOs are left frustrated and without adequate financial services. The most promising avenue for action is the dialogue sponsored by the World Bank and ACAMS.

All parties would benefit from solutions to these financial access issues, but the associated cost makes it unlikely that any individual group can or will undertake it alone. Therefore, the ideal solution is collective action so that the cost is shared. This collective action requires leadership from policymakers and regulators, starting with an acknowledgment of the seriousness of the issue and moving to action to clarify regulatory expectations and articulate a coherent policy.

Importantly, the human costs of NPOs' financial access difficulties and continued inaction must be recognized. When programs are delayed or canceled because of the inability to transfer funds, peace is not brokered, children are not schooled, staff is not paid, hospitals lose power, the needs of refugees are not met and, in the worst cases, people die. Maintaining the current policies in the face of overwhelming evidence of the negative humanitarian consequences of such policies is not only harmful, it is inconsistent with American values.

Inaction Is Costly to Security

As noted previously, there are multiple interests at stake in the derisking crisis. In this context, broader foreign policy and security concerns appear to be underappreciated. The goals of financial inclusion and financial integrity have been characterized as incompatible, but both can be achieved. Ironically, current policy has created unintended consequences that increase the risk of illicit finance. Because these problems are not being effectively managed, U.S. policy objectives of development, humanitarian assistance and even countering terrorism and violent extremism are negatively impacted. Pursuit of multiple goals requires greater openness, a willingness to let go of entrenched positions to work together and the recognition that U.S. policy goals are equally valuable and compelling.

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. But a key component of P/CVE initiatives is the ability of civil society organizations to engage and support local populations where terrorism takes root. NPOs play a vital role in this effort. However, according to recent assessments, the international AML/CFT regime continues to have a "chilling effect on the ability of civil society organizations to support P/CVE work."[229]

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228 Tracey Durner and Liat Shetret, Understanding Bank De-risking and Its Effects on Financial Inclusion, Oxfam and Global Center on Cooperative Security, November 2015, http://www.globalcenter.org/wp-content/uploads/2015/11/rr-bank-de-risking-181115-en.pdf.

229 Royal United Services Institute and The Prevention Project, "CVE Practitioner Workshop: Opportunities and Challenges for

The U.S. government process to address financial access issues, however, remains heavily weighted to illicit finance concerns, with the range of other agencies and interests not playing a commensurate role. Failure to involve all relevant agencies, coordinated by the National Security Council, means that broader security, foreign policy and humanitarian assistance perspectives are not adequately represented.

Ultimately, even AML/CFT objectives are not promoted when financial access to NPOs is restricted. Excessive regulatory requirements and enforcement push money into opaque channels, where it is more likely to fall into the wrong hands. Fear of compliance failures results in a vacuum that is likely to be filled by less transparent and accountable financial institutions, undermining the integrity of the global financial system and U.S. security. Recent Congressional inquiries noted that, "Implementation of federal anti-money laundering efforts must be pursued with an eye towards avoiding unnecessary and unintended impacts to law-abiding citizens and businesses. It is important to recognize that the loss of financial access can actually subvert anti-money laundering efforts by driving certain financial activities into untraceable banking alternatives."[230]

There is an urgent need for all stakeholders to collaboratively reassess the existing policies to prevent illicit finance and address the serious and systemic problems hindering financial access for U.S. nonprofits.

Civil Society in Pushing Back Against Violent Extremism," July 26-27, 2016, http://www.organizingagainstve.org/wp-content/uploads/2016/08/Formatted-CVE-Practitioner-Conference.pdf.

230 Congressional letter to the Comptroller of the Currency on de-risking (lead signatories Senators Jeff Flake and John McCain), May 26, 2016, http://www.flake.senate.gov/public/_cache/files/647cddc2-d848-4a65-a2a1-03a128d6f859/signed-may-26-derisking-letter-to-occ.pdf.