



700 12<sup>th</sup> Street Suite 700  
Washington, DC 20005

March 4, 2020

Re: ILLICIT CASH Act (as introduced Sept. 2019)

Dear Senators,

I am writing on behalf of the Charity & Security Network to comment on the ILLICIT CASH Act (S 2563), as introduced in September 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 We agree that the Bank Secrecy Act and related laws (BSA) are outdated and need to be modernized to keep pace with changes in the global financial system and technological advances. 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.

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 trend of “derisking.” Specifically, we applaud the 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 (FI) level, has been identified as a possible way to ease derisking. The RBA language throughout this draft bill will create a big step forward in that endeavor.

### **Nonprofits, Humanitarian Aid and Risk Sharing**

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.

We commend the ILLICIT CASH Act’s authors for the Findings and Sense of Congress language that speaks to the impact of derisking on NPOs, including humanitarian aid programs. We also like the language noting that derisking moves money out of transparent, regulated channels, thus undermining AML/CFT goals, as well as the wording promoting risk sharing among governments, FIs and NPOs. Mechanisms for risk sharing will become imperative to stem the tide of derisking, as current practice is to push risk further downstream, from donors and regulators to FIs and on to charities. Shouldering all of the risk of terrorist financing has

become a burden that charities can no longer bear. We strongly support the Findings and Sense of Congress language in the bill.

### **Derisking: Drivers and Impacts**

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 313 to address both the *drivers* and effects of de-risking. While the effects of derisking are now established and well-documented,<sup>1</sup> 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.

There is good language in Section 111 of the COUNTER Act (HR 2514) that would require Treasury to issue a report on derisking, including the reasons FIs are engaging in this practice, the most appropriate ways to promote financial inclusion, and feedback provided by examiners that may have led to derisking. It would also require the agency to develop a strategy to reduce derisking and its adverse consequences. Such a strategy is an excellent complement to the counter-terrorist financing strategy that Treasury already issues.

### **Bank Examiner Training**

We urge the Senators to include a requirement for annual bank examiner training that includes training on derisking. The COUNTER Act, as introduced, included such language. Although this section was not included in the House-passed version of that bill, we believe this provision would be extremely beneficial.

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.<sup>2</sup> In focus groups convened for our 2017 report on *Financial Access for U.S. Nonprofits*, numerous FIs emphasized

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<sup>1</sup> Charity & Security Network, "Financial Access for U.S. Nonprofits" 2017 Available online at [www.charityandsecurity.org/FinAccessReport](http://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>

<sup>2</sup> "Financial Access for U.S. Nonprofits" at 5

that, “There is a clear disconnect between what policy officials say and what happens at the individual bank examination level, which is where we get hit.”<sup>3</sup>

### **Effectiveness**

As FIs engage in overcompliance and derisking, money moves out of transparent, regulated banking systems into more opaque channels, rendering the banks’ AML/CFT programs ineffective.

The Financial Action Task Force (FATF) has emphasized *effectiveness* as part of its recommendations to prevent money laundering and terrorist financing. When FIs over-comply with counter-terror financing laws and regulations in an effort to avoid potentially massive penalties, it increases the risk that money will fall into the wrong hands. While effectiveness is mentioned in the ILLICIT CASH Act, we recommend that more concrete language be included that would incorporate effectiveness into the bank examination process. For example, bank examiners should cite as ineffective those FIs that fail to follow a RBA and categorically derisk certain sectors such as charities.

### **No-Action Letters**

We are pleased that the bill includes a section on No-Action Letters. As has been mentioned in media reports, this is a practical way to reduce derisking by alleviating FIs’ 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 FI dealing with such person or group,” before “with respect to such conduct” at the end of paragraph 304(g)(1).

### **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 FIs could rely on this repository to satisfy their due diligence obligations.

### **Technical Amendment Needed**

Section 203 of the ILLICIT CASH Act inadvertently included language referring to charities as high-risk. We have spent the past few years working to dispel the myth that the sector can be painted with this broad brush. Leaving this language in (which reflects outdated FATF recommendations) could reverse much of those efforts. This language appears to have been lifted

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<sup>3</sup> “Financial Access for U.S. Nonprofits” at 65

directly from old House bill language from the 115th Congress. The newer House BSA reform bill (the COUNTER Act) removes this "high-risk" language, as does Section 313 of the ILLICIT CASH Act. The language in Section 203 should be corrected in any future version of this or another BSA reform bill.

### **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 and promotes effectiveness while minimizing the risk of derisking.

We will continue to follow BSA reform efforts in Congress and 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 Hall". The signature is written in a cursive style.

Andrea Hall, Policy Counsel