



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

Federal Financial Institutions Examination Council  
Attention: Lisa Arquette  
L. William Seidman Center  
Mail Stop B-7081a  
3501 Fairfax Drive  
Arlington, VA 22226-3550

Via email

April 23, 2020

**An open letter to the Federal Financial Institutions Examination Council (FFIEC):**

On behalf of our 253 member organizations, we are writing to urge you to immediately update and publish the nonprofit section of the FFEIC's *Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual* (Manual) and retrain examiners on the risk-based approach, beginning with updated standards for assessing and moving towards mitigating the terrorism financing risk for nonprofit clients.

Three years after the publication of our empirical study, *Financial Access for U.S. Nonprofits*, nonprofit organizations (NPOs) continue to struggle to maintain bank accounts and send program funds abroad in a timely manner. The continuing difficulties with financial access mean that NPOs cannot prevent, mitigate and respond to conflict, disaster and disease quickly enough. Today, it is hindering the rapid response demanded by situations such as Covid-19.

We gratefully acknowledge the recent Manual update issued on April 15. The new emphasis on a risk-based approach is a welcome revision. However, the Manual does not reflect the 2016 update to Financial Action Task Force (FATF) Recommendation 8 on Nonprofit Organizations. It also does not align with a risk-based approach to anti-money laundering and countering terrorism financing in the United States. As the Treasury Department's 2018 National Terrorist Financing Risk Assessment said "the vast majority of charities fully comply with the law and properly support only charitable and humanitarian causes." Critically, the manual does not recognize the vital work NPOs carry out abroad and how such work complements U.S. policy goals.

The absence of updated NPO language in the Manual has been identified as a major contributor to financial access challenges for NPOs. Examiners continue to use outdated instructions and guidance that portray NPOs as uniformly high-risk. Our 2017 study found that the work of bank examiners is often intrusive, second guessing financial institutions' (FI) due diligence processes. Examiners apply pressure that increases compliance costs and discourages banks from serving their NPO customers. Furthermore, the study found that regulatory oversight often varies by examiner and the inconsistency adds to FI uncertainty.

To address this, a group of NPOs and financial institutions (FIs) convened under the auspices of the World Bank/ACAMS Multi-Stakeholder Dialogue on financial access and drafted proposed revisions to the NPO sections of the Manual. These were then submitted to you in October 2017. More than two and a half years later, the NPO sections remain unchanged and woefully out of date.

We understand that the FFEIC's intention is to publish updates of the manual in the order in which it is currently printed, and we note the positive changes to the front sections of the Manual released April 15. However, delaying revision of the NPO sections during the Covid-19 crisis will likely exacerbate the impacts to beneficiaries stemming from well-documented financial access problems NPOs are experiencing. We are already witnessing dire consequences of COVID-19, as the world struggles to respond to the global pandemic.

NPOs serve as the first line of response in times of crisis, and must move quickly to provide relief in places already facing conflict, migration, food insecurity and other challenges. For example, in one [refugee camp in Greece](#), more than 6,000 people now occupy a space intended for 1,000. [Doctors Without Borders](#) says that Idlib was already a humanitarian emergency, and that "the Covid-19 pandemic has added another layer of complexity to a situation that was already catastrophic." [Abby Maxman, president of Oxfam America, said](#), "While the reach of Covid-19 may be universal, the impacts will not be experienced equally." Adding further complexity to these crises, NPOs repeatedly state that [banks are often unwilling to transfer funds](#).

As NPOs begin to address this dire situation, they need to rapidly move funds from the United States to hard-hit areas and protect against further deterioration that can have long-lasting impacts on security, development, and human well-being. The ability of NPOs to do so hinges on having access to steady, reliable, and timely financial services. With [2/3 of U.S.-based NPOs working abroad facing financial access difficulties](#), delays in revising the Manual could very well contribute to breakdowns in the global response to COVID-19.

This extraordinary time calls for extra effort from all parties, and by revising the NPO sections of the Manual, the FFEIC can help reduce the challenges facing NPOs that are working to prevent and mitigate global disasters, including COVID-19.

On April 1, the FATF [issued a statement](#) on Covid-19 stating "At a time when critical relief is needed in-country and beyond, effective implementation of the FATF Standards fosters greater transparency in financial transactions, which gives donors greater confidence that their support is reaching their intended beneficiaries." The FATF is encouraging governments to work with FIs and stating, indicating that:

*"The aim of the FATF Standards is not to prevent all financial transactions with jurisdictions where there may be high ML/TF risks, but rather to ensure these are done through legitimate and transparent channels and money reaches its legitimate intended recipient. National authorities and financial institutions should apply a risk-based approach to ensure that legitimate NPO activity is not unnecessarily delayed, disrupted or discouraged. FATF encourages countries to work with relevant NPOs to ensure that much needed aid is getting to its intended recipients in a transparent manner." (emphasis added)*

We encourage you to make full use of the draft revision to the NPO section of the Manual, submitted by the World Bank/ACAMS multi-stakeholder dialogue in October 2017. New language suggested by our group clarifying that banks may provide services to NPOs operating in higher-risk jurisdictions by implementing mitigation measures, and that financial institutions are not expected to conduct “Know Your Customer’s Customer” due diligence is desperately needed to set the appropriate tone regarding NPOs.

Revision of the nonprofit section would be consistent with the excellent July 22, 2019, [Joint Statement on Risk-Focused BSA/AML Supervision](#) and the FFIEC’s intention to reflect a risk-based approach to banking NPOs in the Manual, as well as to clarify that not all NPOs are at risk. This is consistent with FATF’s R8. Additional analysis such as the 2018 [Terrorist Financing Risk Assessment](#), [FATF Terrorist Financing Risk Assessment Guidance](#), and [stakeholder reports and papers](#) provide updated information helpful in understanding and assessing risk associated with the charitable sector and may usefully be referenced in the Manual.

We hope that you expedite the revision of the Manual’s NPO sections and immediately thereafter use the virtual tools available to us to retrain the examiners on these changes. We stand ready and able to work with you on the BSA/AML revisions as well as NPO-related training for examiners. It is in our collective interest to do everything possible to facilitate financial access for NPOs and assist the response to this viral outbreak, wherever it may present itself.

With best regards,

Handwritten signatures of Kay Guinane and Andrea Hall in blue ink.

Kay Guinane and Andrea Hall for the Charity & Security Network