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To: Board of Governors of the Federal Reserve System,
Federal Deposit Insurance Corporation,
Financial Crimes Enforcement Network,
National Credit Union Administration, &
Office of the Comptroller of the Currency

cc: U.S. Department of Treasury

c/o: Lisa Arquette (FDIC)

Re: Joint Fact Sheet on Bank Secrecy Act Due Diligence Requirements for Charities and Non-Profit Organizations

Dear Regulators,

On behalf of the more than 200 nonprofit organization members of the Charity & Security Network, we thank you for coordinating and publishing a Joint Fact Sheet on banking charities and nonprofit organizations (NPOs). Your continued emphasis on the risk-based approach moves us closer to ensuring that NPOs are not perceived as uniformly high-risk, a view that is consistent with the Financial Action Task Force's Recommendation 8 (R8) on NPOs.

We also welcome the new language in the Fact Sheet pointing out that NPOs are subject to "internal controls required by donors and others," as well as bullet points suggesting that banks could find it useful to collect general information about donors and beneficiaries. These points are significant, as we continue to hear from our members that banks are asking them to submit specific information about individual donors and/or the final recipients of humanitarian aid.

While the Fact Sheet may be a helpful resource to banks, we hope that it is just one part of a broader strategy to help educate banks on the NPO sector and clarify that risks should be managed rather than avoided. On the December 4 video call, we were encouraged to hear that examiners will be trained on the recommendations and principles included in this Fact Sheet.

We would like to highlight a number of continuing concerns:

1. **The need for guidance, and the need to consult banks as well as NPOs in developing it.** As noted in the Fact Sheet, charities have faced "difficulty in obtaining and maintaining access to financial services, jeopardizing the important contributions charities make to the most vulnerable." Because the document is non-binding and was not issued as guidance, it may not provide the level of assurance that banks have been

seeking in order to shift from avoiding to managing actual risks. We suggest that the text of the Fact Sheet be incorporated into all guidance. We also encourage the bank regulators to seek feedback from banks as to whether they believe this Fact Sheet and any future guidance will, in fact, help them move away from derisking NPOs and towards the risk-based approach.

2. **The importance of distinguishing “legitimate” from sham charities.** We agree that it is important to distinguish “legitimate” from criminal fronts posing as charities or other sham operations. However, banks need guidance on what this means. It is becoming easier for political adversaries to de-legitimize charities through disinformation.¹ Politically motivated actors have masqueraded as journalists or think tanks. The disinformation they produce creates false positive “hits” for counter-terrorist financing in online searches as well as in commercial data aggregator and compliance databases.² It is therefore extremely difficult for banks conducting negative media searches to weed out fact from fiction.

Increased clarity around what is “legitimate,” or a neutral and inclusive standard for legitimacy, would be helpful for banks. We suggest, as a starting point, that any charity that is registered as a 501(c)(3) and that annually files the IRS Form 990 is de facto legitimate.

3. **There remains an urgent need to update the NPO language in the Bank Examination Manual.** We continue to hear from our colleagues in the banking sector that there is a disconnect between the statements made by Treasury about the NPO sector and what they hear from bank examiners. Three years after a group of banks and NPOs submitted proposed changes to the NPO sections of the manual, what has been referred to as “the Bible of bank examinations” still reflects the outdated perception that NPOs are uniformly vulnerable to terrorist abuse. Until these changes are made, banks will continue to follow the lead of the examiners.

Thank you again for the opportunity to engage with you on effective ways to address the challenges our member organizations face. We look forward to continued collaboration and dialogue with Treasury and you, as well as USAID and the State Department, on these crucial issues. Please reach out to us at any time.

¹ “Disinformation is false or misrepresented information that is created and used exclusively to malign a person or group. It is often made up of half-truths and things that sound plausible but are, nonetheless, not factual. Disinformation attacks have become more significant in recent years, especially among groups that target organizations based on where they deliver aid and who they are attempting to aid.” See InterAction, Countering Disinformation in the NGO Space: A Together Project Initiative (Fact Sheet).

² A 2020 survey of financial services and other professionals seeking AML or Know Your Customer (KYC) data found that 85% use Google for due diligence or risk investigations, and 49% said that false positives remain a challenge. See Arachnys AML/KYC Data Survey Report, March 2020, pp. 8-9, at <https://bit.ly/3k4dzeM>. See also International Broadcasting Trust, *Faking It: Fake News and How It Impacts the Charity Sector* (2018), p. 8, at <https://ibt.org.uk/reports/faking-it/>

Sincerely,

A handwritten signature in blue ink that reads "Andrea Hall". The signature is written in a cursive style with a light blue background behind the text.

Andrea Hall, Policy Counsel
On behalf of Charity & Security Network

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