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Mitigating Financial Access Challenges

Proposals from the CSIS Multi-stakeholder Working Group on Financial Access

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A Report of the CSIS Humanitarian Agenda

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INTERNATIONAL STUDIES



USAID
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Abbreviations

ACAMS Association of Certified Anti-Money Laundering Specialists

AEDPA Antiterrorism and Effective Death Penalty Act

AML Anti-money laundering

AML Act Anti-Money Laundering Act of 2020

BSA Bank Secrecy Act

CFT Countering the financing of terrorism

Covid-19 Coronavirus disease 2019

CT Counterterrorism

CSIS Center for Strategic and International Studies

FATF Financial Action Task Force

FDIC Federal Deposit Insurance Corporation

Federal Reserve Board of Governors of the Federal Reserve System

FI(s) Financial institution(s)

FinCEN Financial Crimes Enforcement Network

FTO Foreign Terrorist Organization

GL General license

HSC Human Security Collective

IEEPA International Emergency Economic Powers Act

MSWG Multi-stakeholder Working Group

NPO(s) Nonprofit organization(s)

OCC Office of the Comptroller of the Currency

OFAC U.S. Department of the Treasury's Office of Foreign Assets Control

TMNL Transaction Monitoring Netherlands

TRAC Transaction Record Analysis Center

UNSC United Nations Security Council

UNSCR United Nations Security Council Resolution

USAID U.S. Agency for International Development

Executive Summary

U.S. nonprofit organizations (NPOs) operating in countries and regions subject to sanctions, or in areas with the presence of designated terrorist organizations, have experienced significant difficulties in transferring funds in support of humanitarian and peacebuilding activities and other international development programs. Financial access challenges, including those related to “de-risking” by financial institutions (FIs), have been documented with increased frequency by NPOs in recent years.¹ FIs often choose to forego transactions for nonprofit customers due to concerns about compliance with anti-money laundering (AML), combating the financing of terrorism (CFT), and sanctions regulations, thereby avoiding, rather than managing, risks associated with nonprofit clients. In other instances, FIs impose severe delays on these transactions, resulting in the delay or cancellation of programs serving some of the world’s most vulnerable people.

The UN Office for the Coordination of Humanitarian Affairs (OCHA) estimates 306 million people require humanitarian assistance or protection globally.² The United States remains the single largest contributor to global humanitarian assistance, yet the unintended consequences of de-risking affect the ability of humanitarian actors to provide urgent and timely assistance.³ Lack of financial access and delays in NPOs’ ability to provide services has ripple effects on vulnerable populations, delaying or limiting access to critical lifesaving services. De-risking also undermines NPOs’ efforts to disrupt “conditions conducive to terrorism,” which is a mutual goal for the NPO, governmental, and banking sectors.⁴ In areas where remittances help sustain populations, de-risking harms civilians by cutting off financial lifelines.

Regulatory authorities emphasize that de-risking is a misapplication of the risk-based approach, is inconsistent with official guidance, and is driven as much by concerns about profitability as it is by law or policy.⁵ FIs argue there is an absence of clear policies and instructions, a disconnect between

regulatory and oversight agencies, a lack of incentives to bank NPOs, and little guidance delineating the extent of FIs' due diligence obligations. As a result of this disconnect, account closures, delays, and cancellations of international wire transfers continue, affecting humanitarian activities.

A core challenge in addressing de-risking is reconciling the knowledge, awareness, and interests of key stakeholders—NPOs, the financial sector, and U.S. policymakers (particularly regulators, donors, and oversight officials). To promote sustained engagement among stakeholders, the Humanitarian Agenda at CSIS convened the Multi-stakeholder Working Group (MSWG) on Financial Access to build a shared understanding of the various regulatory, compliance, and risk-related issues and explore practical solutions to promote financial access for NPOs carrying out vital programming. The establishment of the MSWG reflects a specific recommendation made by the CSIS Task Force on Humanitarian Access.⁶

This report begins with a background on the MSWG. It then summarizes the financial access challenges with indicative examples from contemporary humanitarian crises. The report highlights efforts already taken by the U.S. government and other key donors, along with multilateral efforts to address these concerns. It summarizes similar stakeholder processes and innovative technical solutions. The report concludes with a wide-ranging set of proposals for all stakeholders, reflecting the dialogue within the MSWG and drawing from existing work on this critical issue.

An abbreviated summary of the proposals follows; the complete and detailed list of recommendations can be found in Chapter 4.

The U.S. government should:

- Take proactive steps to safeguard NPOs' access to financial services by providing regulatory clarity and guidance and reforming licensing procedures.
- Implement humanitarian exemptions from sanctions and counterterrorism (CT) measures under the International Emergency Economic Powers Act (IEEPA) and propose such exemptions at the United Nations.
- Develop new administrative procedures such as a global general license.
- Issue guidance that NPOs receiving funding from the U.S. government have met due diligence requirements and clarify expectations for FIs banking NPOs.
- Create incentives for FIs to bank NPOs, pilot a safe harbor program for those with rigorous compliance systems, and promote risk-sharing measures among donors and recipients.
- Develop safe payment channels for humanitarian transfers to high-risk jurisdictions and explore alternative measures for situations FIs will not service.
- Promote technological solutions and fund innovative proposals.
- Organize international dialogues on financial access to collectively explore measures to limit de-risking.

U.S. FIs should:

- Enhance their understanding of, communications with, and commitment to work with NPOs on financial access challenges.
- Provide upfront guidance on necessary documentation and risk requirements with NPO customers as part of FIs' risk-based approach to assessing clients.

- Develop special internal procedures for the sector to address issues that arise.
- Engage at senior levels with humanitarian groups to understand better NPOs' financial access challenges.
- Develop new data to assess de-risking and promote innovative methods for risk management to focus on actual risk rather than compliance.

NPOs should:

- Establish clear and transparent policies, procedures, and systems for managing risk and explain them as part of building and maintaining relations with FIs.
- Enhance data and information on the impact of AML/CFT/sanctions measures on NPO operations and share with the U.S. government.
- Ensure larger NPOs with established due diligence and compliance systems support and mentor NPOs lacking capacity through training and the adoption of measures to identify and manage risks.

FIs and NPOs collaboratively should:

- Develop a best practice guide to assist NPOs in meeting regulatory requirements.
- Create a checklist of documents and information FIs require.
- Explore a repository of NPO information to reduce compliance costs for FIs and burdens on NPOs.
- Develop new payment platforms and technology solutions to financial access challenges.

Some of these recommendations may prove challenging to implement; nonetheless, now is a propitious time for progress. The Biden administration has demonstrated commitment to addressing financial access concerns and has engaged constructively with NPOs. These are challenging issues, but if all stakeholders strive to implement proposed measures, financial access difficulties can be managed more effectively to promote humanitarian and peacekeeping objectives while also ensuring illicit finance and CT concerns are addressed.

The CSIS Multi-stakeholder Working Group on Financial Access

The Humanitarian Agenda at the Center for Strategic and International Studies (CSIS) facilitated the Multi-stakeholder Working Group on Financial Access (MSWG) to promote collaborative dialogue to better understand and address the impacts of de-risking and identify actionable proposals. The MSWG, consisting of U.S. government officials and representatives from nonprofit organizations (NPOs) and financial institutions (FIs), endeavored to build a shared understanding and promote trust among stakeholders. Open dialogue among stakeholders is a critical step to address financial access challenges. The MSWG focused on practical options to minimize de-risking and increase financial access. This included discussions on risk sharing among stakeholders, development of guidance clarifying compliance obligations, incentives for FIs to bank NPOs, and exploring viable and transparent payment channels in support of international humanitarian activity involving sanctioned entities and jurisdictions.

Open dialogue among stakeholders is a critical step to address financial access challenges.

The multi-stakeholder process commenced in September 2021 and built on a World Bank and Association of Certified Anti-Money Laundering Specialists (ACAMS) initiative from 2016 to 2018. It also coincided with significant developments related to sanctions and financial access. In 2021, the Biden administration undertook a comprehensive review of the impact of sanctions on humanitarian action in response to Covid-19, and the Treasury Department initiated a Sanctions Strategy Review.⁷



Afghan money changers wait for customers at the currency exchange Sarayee Shahzada market in Kabul on December 17, 2015.

Photo by Wakil Kohsar/AFP/Getty Images

The Anti-Money Laundering Act of 2020 mandated the U.S. Government Accountability Office (GAO) to report on the impacts of de-risking and required the Treasury Department to carry out an internal review and develop a de-risking strategy.⁸ In addition, the United Nations Security Council (UNSC) adopted a humanitarian exemption (UNSCR 2615) for the Taliban sanctions regime, and the Financial Action Task Force (FATF) conducted a review of the unintended consequences of anti-money laundering (AML)/countering the financing of terrorism (CFT) measures. The MSWG was intended to complement these processes and inform continued action on the issue.

The MSWG met five times, with a focus on developing practical solutions for addressing the challenges NPOs face in delivering assistance abroad, in line with U.S. foreign policy objectives. The objectives of the MSWG initiative included the following:

- Promote greater understanding and trust among NPOs; donor, policy, and regulatory agencies of the U.S. government; and FIs.
- Provide a forum for stakeholders to identify and discuss practical options to manage risk associated with operating in high-risk jurisdictions.

- Develop proposals for all stakeholders that enable principled humanitarian, peacebuilding, and development programs to flourish while managing risks associated with terrorism financing, export control, and sanctions risks.
- Enable the longer-term development of shared knowledge and promote best practices for advancing a more inclusive and transparent global financial system.

The MSWG was comprised of approximately 80 representatives from the nonprofit and financial sectors and the U.S. government. Additional individuals were invited to brief the working group on specific issues. CSIS facilitators also convened sessions with each sector to explore in-depth issues of concern and to discuss specific proposals. All discussions took place under the Chatham House Rule and through virtual or hybrid format meetings at CSIS's headquarters in Washington, D.C.

In addition to the meetings, two concurrent workstreams were created:

- The **Due Diligence and Risk Guidance Workstream** was established to promote understanding between FIs and NPOs on due diligence and risk requirements as well as engagement with regulatory and supervisory authorities for risk-sensitive approaches to regulation and on-site supervision.
- The **Stakeholder Collaboration and Risk-Sharing Workstream** was initiated to promote greater collaborative risk sharing among stakeholders. This workstream evaluated past models of risk sharing, potential incentives for FIs to bank NPOs, multilateral opportunities to share best practices among national multi-stakeholder dialogues, and proposals to promote risk-sharing arrangements between FIs and governments.

Each workstream met four times, with additional sessions with each stakeholder group organized separately. Following each round of discussions, summaries of key points and information and next steps were shared among participants.

Update of Financial Access Challenges

In 2013, initial reports began appearing that confirmed de-risking as a sustained trend, as opposed to natural fluctuations in the risk appetite of the banking sector.⁹ The frequency and magnitude of financial access problems have increased in recent years as conflict and humanitarian crises intensified in countries such as Afghanistan, Yemen, Syria, and Somalia, where governments are subject to sanctions regimes or where groups designated as terrorists operate or control territory.¹⁰ Humanitarian actors have documented the numerous and ongoing impacts of sanctions and counterterrorism (CT) measures on principled humanitarian action. In some cases, humanitarian organizations have been prevented from carrying out activities in a manner consistent with international humanitarian law, leaving populations in situations of increased vulnerability and undermining principled humanitarian action. In other instances, humanitarian organizations fear that activities and diversion of benefits to sanctioned entities may expose them and their staff to criminal prosecution or penalties, possibly resulting in liability, reputational harm, and loss of funding.

The frequency and magnitude of financial access problems have increased in recent years as conflict and humanitarian crises intensified in countries such as Afghanistan, Yemen, Syria, and Somalia, where governments are subject to sanctions regimes or where groups designated as terrorists operate or control territory.

Numerous reports document how sanctions and CT measures impact humanitarian action, both directly and indirectly, including by

- limiting or preventing principled humanitarian action;
- criminalizing humanitarian action, including medical assistance;
- restricting access to financial services for humanitarian operations; and
- constraining the ability of humanitarian actors to engage with groups and persons permitted under international humanitarian law.¹¹

The “chilling effect” resulting from the complex regulatory CT and sanctions framework is the most cited concern of NPOs. These requirements have multifaceted impacts on their organizations, limiting their ability to “implement programmes according to needs alone, and oblig[ing] them to avoid groups and agendas,” especially those areas controlled by groups designated by the UNSC 1267 (al Qaeda/Islamic State in Iraq and the Levant) regime, which the International Committee of the Red Cross estimates includes more than 60 million people.¹² Fear of running afoul of national laws and regulations related to sanctions and CT measures has led some humanitarian actors to be overly cautious, at times choosing to limit their activities beyond what is required. FIs, reluctant to transfer funds into higher-risk jurisdictions, have closed bank accounts of NPOs or denied or delayed financial transfers. Some humanitarian groups complain that programmatic decisions are based on where banks will transfer funds rather than solely being based on need. NPOs report the termination of programs in areas where designated groups have a significant presence, resulting in populations entitled to humanitarian assistance being denied critical aid. Humanitarian actors have also witnessed increasing conditions and funding restrictions in donors’ contractual clauses in grant agreements, which have the effect of offloading risk onto NPOs. Additionally, humanitarian organizations are routinely asked for detailed and intrusive information regarding program beneficiaries, which puts beneficiaries at increased risk, impacts trust between humanitarian organizations and beneficiaries, and causes program implementation to be delayed or canceled if these issues cannot be swiftly resolved.

Data on Financial Access

In 2017, the first empirically based data on financial access challenges faced by U.S. NPOs was released. The Charity & Security Network’s *Financial Access for U.S. Nonprofits* and several other reports attempted to quantify the impact of AML/CFT regulations on NPOs domestically and internationally.¹³ The growing body of empirical research and the scale of challenges found by these reports suggest little improvement in NPO financial access challenges, indeed indicating a worsening trend over recent years.

In late 2020, a study conducted by Yale University found that while the general proportion of U.S. NPOs experiencing financial access challenges has remained consistent (approximately two-thirds of surveyed NPOs), the frequency with which NPOs experience these problems nearly tripled from 2017 to 2020.¹⁴ Additionally, more than 40 percent of survey respondents reportedly faced several challenges simultaneously, such as delays and denials of fund transfers, inability to open accounts, account closures, and increased documentation requests. These findings suggest that while the overall percentage of NPOs facing financial access challenges remains constant, NPOs are encountering a broader range of difficulties than previously indicated. Furthermore, a joint Duke Law and Women Peacemakers Program report found that these challenges have gendered outcomes, disproportionately

impacting women's organizations.¹⁵ The Yale study demonstrated the continuing impact of CT measures and sanctions on the delivery of aid due to delays and denials of transfers by FIs. Beyond delays in life-saving humanitarian interventions, respondents suggested that this interference often leads to increased operating costs for NPOs, with the foremost impact of these challenges being the slowed or prevented delivery of assistance.

Some NPOs have been able to resolve issues in cooperation with FIs, yet chronic financial access challenges have forced many to rely on alternative workarounds for transferring funds. For example, 89 percent of NPOs citing financial access dilemmas reported reliance on alternative means of moving funds, such as carrying cash and utilization of *hawala*.¹⁶ Due to the informality, poor transparency, and risk of using cash, these findings are troublesome for humanitarian as well as security and CT objectives.

Despite growing recognition of NPO financial access challenges, this data shows that the scale and scope of systematic difficulties have continued to worsen over the last several years. Such evidence speaks to the need to reform current practices to facilitate NPO access to secure financial services. While sanctions and CT measures are not solely to blame, they are currently a significant factor in FIs' willingness to support humanitarian transfers. De-risking and financial access for NPOs constitute critical challenges impeding NPOs' activities in areas most in need and require concerted action by all stakeholders to resolve.

Regulatory Concerns

U.S. federal banking agencies promote a risk-based approach to AML/CFT compliance consistent with Financial Action Task Force (FATF) guidance and the Bank Secrecy Act (BSA). Still, there is often a disconnect between regulatory policy and how examiners operate, which has the effect of discouraging FIs from banking NPOs. "Regulator risk" or excessive examiner scrutiny of NPOs remains a serious factor for FIs. Measures that signal federal banking regulators' support are needed, as well as corresponding regulatory and policy updates for serving these customers in accordance with a risk-based approach to BSA/AML compliance.

The Treasury Department's Office of Foreign Assets Control (OFAC) has endorsed a risk-based approach to compliance with U.S. sanctions requirements through *guidance*, but its *regulations* are generally silent on this point. In practice, the bank examination process administered by federal banking agencies focuses the attention of FIs on their customers perceived to be highest risk and the negative consequences that might ensue from servicing them, without regard to the important national and public interests served by their inclusion in the formal financial system. As a result, clarifying and ensuring that regulatory examiners adhere to a risk-based approach to AML/CFT reviews is important, as FIs should identify risks and take steps to mitigate them. Developing a regulatory standard codifying the principles of risk-based compliance for sanctions would align OFAC's compliance expectations with the evaluative standards of banking agencies to whom FIs are answerable.

Current policy statements that NPOs are not, by definition, high-risk customers are useful but not sufficient for banks to change their risk assessment of NPOs, or to encourage them to provide services for NPOs working in high-risk jurisdictions. FIs need a better understanding of where the outer limit of their due diligence responsibilities lies and are seeking additional guidelines clarifying due diligence expectations for FIs banking NPOs. Outdated perceptions persist that all NPOs are high risk and that high risks cannot be managed through responsible, enhanced due diligence.

Likewise, clarity is needed to prevent FIs from gathering excessive information about NPOs that is not valuable to their risk assessment, but which increases compliance costs and is often invasive for NPOs and recipients of their programs. NPOs receiving U.S. government funds to provide humanitarian assistance abroad already undergo comprehensive reviews of their due diligence and internal control procedures. FIs need not replicate this process in conducting their own compliance reviews. Clarification that implementing partners of U.S. government programs have met required due diligence and risk mitigation requirements could help encourage FIs to handle such transactions. Guidance for operational NPOs that do not receive U.S. government funding should also be provided, and these NPOs should communicate these due diligence and risk mitigation requirements with FIs so that they are encouraged to handle such transactions.

Lack of Payment Channels into Higher-Risk Jurisdictions

Given the high-risk regions where NPOs operate—in conflict zones or areas where groups designated as terrorists control territory—there are times when commercial institutions either are unable to conduct adequate due diligence on their NPO accounts or are unwilling to shoulder the legal and reputational burdens of doing so. In such situations of market failure, alternative payment mechanisms to facilitate the transfer of funds into such areas are necessary. The United States bears a unique responsibility to consider such alternatives due to its role as a de facto global standard setter; it is a business imperative for many foreign FIs to maintain correspondent banking relationships in the United States to access U.S. dollars.

The need for safe banking and payment channels into countries such as Afghanistan and Syria has increased in recent years. However, few specific proposals have been seriously explored, and even fewer have been implemented.¹⁷ Potential solutions include the development of exchange facilities, creation of a “safe harbor” program, identification of approved private banks to receive humanitarian-related funds, and transfer of humanitarian funds through in-country embassies. All are complicated in terms of ensuring compliance with sanctions and preventing diversion, though all would appear to be preferable to the alternatives of financial exclusion or the utilization of unregulated, informal channels to transfer cash.¹⁸ It remains the most likely means of facilitating humanitarian assistance to conflict-impacted areas where needs are greatest but where banks will not go without special assurances. International institutions such as the United Nations and World Bank, central banks, or even national embassies in conflict-impacted regions, where feasible and appropriate, represent potential channels for securely delivering humanitarian funds.

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For NPOs that have lost their accounts entirely, a public entity, such as a government body or a regional or international development bank, could establish a means of facilitating the movement of funds into higher-risk areas. Other ideas include the possibility of using special banks devoted to charities (such as the Charities Aid Foundation [CAF] Bank in the United Kingdom, owned and operated by a charity for NPOs) or the possibility that certain FIs could specialize in banking NPOs that implement programs in high-risk jurisdictions.

Absence of Incentives and Assurances for FIs to Bank NPOs

Incentives are necessary to encourage FIs to reevaluate their engagement with the nonprofit sector.¹⁹ Monetary inducements need to be explored and developed, such as tax credits and reputational incentives in the form of public recognition of FIs who develop unique and inclusive approaches to managing risks of NPOs. NPOs also might consider consolidating accounts in certain FIs committed to the sector to reward and make NPO business more profitable for FIs.

In its congressionally mandated 2021 report on this issue, the Government Accountability Office (GAO) noted that examination credit, as provided for in the Community Reinvestment Act, could encourage FIs to bank NPOs or money remitter customers, but no serious proposals as to how this could be applied to NPOs have been developed. Such ideas should be explored.

At the FATF, updated guidance is needed indicating that NPO account closures or prevalent de-risking within national jurisdictions are not consistent with the implementation of the risk-based approach. The FATF assessed the “unintended consequences” of AML/CFT measures in 2021 and 2022 and is revising its 2015 *Best Practices Paper*, which could possibly result in the revision of Recommendation 8.²⁰ FATF mutual evaluations should consider the lack of financial access for NPOs in reviewing national effectiveness and exploring why de-risking occurs. Greater FATF attention to financial inclusion—together with the mandate for an intergovernmental body to focus on financial access—could encourage regulatory officials to communicate guidance and expectations at the national level to correspondent banks, money services businesses, and NPOs.

To provide assurances to NPOs regarding inadvertent violations of sanctions, OFAC adopted a policy in 2014 recognizing the inherent risks that humanitarian actors face operating in conflict areas: “In circumstances involving a dangerous and highly unstable environment combined with urgent humanitarian need, OFAC recognizes that some humanitarian assistance may unwittingly end up in the hands of members of a designated group. Such incidental benefits are not a focus for OFAC sanctions enforcement.”²¹ Such guidance, however, does not have the force of law nor does it appear to apply to FIs transferring funds in support of humanitarian activities. Formalizing and extending OFAC’s non-enforcement policy could encourage FIs to bank NPOs.

Most FIs indicate that a “safe harbor” would be of greatest benefit and make the biggest difference in their risk calculus regarding NPO transfers to higher-risk jurisdictions. Specific measures should be explored and prioritized whereby FIs banking NPOs in good faith and meeting certain criteria would be held harmless if funds inadvertently end up in the wrong hands. Such measures would provide banks confidence that they can do business with customers operating in higher-risk environments if they maintain rigorous risk-mitigation controls recognized by regulators. Reducing the threat of prosecution or limiting financial fines could have a significant impact on FIs’ cost-benefit calculus in servicing the

humanitarian sector. Various formulations of a limited safe harbor could be developed on a trial basis, such as a global license for FIs facilitating international transfers on behalf of humanitarian groups with robust due diligence and compliance procedures; temporary waiver of sanctions enforcement; or limited safe harbor from regulatory actions for all but willful violations. Banks utilizing the protections would be incentivized to have effective compliance controls, take on NPO clients, and engage in additional information sharing with law enforcement and regulators.

Challenges in Syria and Afghanistan

SYRIA

Since 2011, the government of President Bashar al-Assad and its allies have been subjected to extensive economic sanctions by the European Union and the United States that have limited the operation of Western banks and imposed strict controls on exports. The Caesar Syria Civilian Protection Act in 2019 imposed further sanctions in response to war crimes against the Syrian population. Outside areas of government control, banking systems have largely been destroyed, and the shifting control of territory by the Islamic State and the al Qaeda-linked al-Nusra Front have resulted in additional CT financing concerns.

These regulatory restrictions, intended to counter financial crime and atrocities against civilians, have created immense difficulties for humanitarian NPOs in Syria. U.S. general licenses (GLs) and EU measures permit humanitarian activities, but navigating complex regulatory requirements is difficult. For organizations operating in Syria, due diligence and screening obligations to ensure that assistance is not directly or indirectly providing support to the Syrian government, have made Syria one of the most challenging countries in terms of financial access for NPOs.

Sanctions have isolated Syria's government-owned banks, including the largest FIs, effectively limiting options for transferring funds into Syria; even non-sanctioned banks have some affiliation or Syrian government investment.²² The lack of reliable payment options, risks associated with sanctions violations, and low profitability of NPO accounts have discouraged FIs from processing financial transfers into Syria, which has impacted the ability of NPOs to pay local staff and purchase essential supplies for humanitarian operations. As some government-controlled areas have become inaccessible and response capabilities are limited, some NPOs have been forced to change programming to focus on areas in the northeast and northwest of the country where they are allowed to operate, rather than where need is most acute, leaving populations without assistance.

NPOs have used informal systems such as *hawala* or carrying cash with increasing frequency, creating their own risks and limiting traceability of transactions. One NPO described the challenges of navigating OFAC sanctions when providing aid to Syrian refugees on the Turkish border: wire transfers are routinely flagged and delayed *even when transaction information indicates the purpose is for humanitarian assistance*, if the transaction includes the term or relates to "Syria." Despite humanitarian exemptions, NPOs' financial transfers to—or for—Syria are automatically flagged and held under compliance review, requiring an extra three to five months to be completed. Although efforts such as the Syrian Compliance Dialogue and practical solutions such as Amanacard have sought to support NPOs, FIs, and national authorities in facilitating the transfer of funds, risk-related compliance concerns continue to impede humanitarian assistance to Syria.²³

AFGHANISTAN

Financial access challenges for international NPOs have been exceptionally difficult in Afghanistan since the Taliban took power in August 2021. Forty-one UN-sanctioned individuals hold de facto cabinet or senior-level positions in the Taliban administration, and the freezing of \$9 billion in Afghan Central Bank assets by the United States and United Kingdom has created a liquidity crisis, pushing the Afghan economy to near collapse.²⁴ The cessation of international assistance, which accounted for 45 percent of Afghanistan's GDP and 75 percent of public spending, resulted in a rapid deterioration of public services and the closure of Afghan banks for months, with the Taliban imposing strict controls on withdrawals of funds.²⁵ Most international FIs ceased operations, with few willing to transfer funds in or out of Afghanistan. NPOs have been left with few options for getting money into the country, with most shipping cash or using *hawala* (and paying significantly increased fees).

The financial crisis and concurrent challenges for NPOs in getting funds into Afghanistan coincides with growing humanitarian needs. Afghanistan is facing its worst drought in 37 years, a public health crisis due to measles and acute watery diarrhea, the aftermath of a devastating earthquake this summer, and a chronic malnutrition crisis, with a million children under five at risk of death without urgent humanitarian assistance.²⁶ More than 22 million people are at risk of starvation. OFAC has issued a series of GLs clarifying and broadening the scope of permissible activity, yet significant delays and increased costs in transferring funds remain obstacles to delivering assistance.²⁷ Recent survey data indicates that the ease of transferring funds has improved somewhat since November 2021 due in part to additional GLs and OFAC guidance. However, secure and consistent movement of funds through correspondent banks at adequate scale has yet to be reestablished.²⁸ Due to reputational risks and profitability factors, many FIs remain unwilling to process transactions into Afghanistan. Instead, NPOs rely primarily on *hawala* or cash movements—informal financial mechanisms that can complicate humanitarian responses but need to be recognized as legitimate for moving funds.

CHILLING EFFECT ON HUMANITARIAN ACTION

Humanitarian and peacebuilding efforts frequently require incidental transactions and direct engagement with designated groups to facilitate humanitarian assistance and support peace processes, which current CT measures limit. While GLs enable continued humanitarian assistance in sanctioned countries, the patchwork of CT legal prohibitions results in uncertainty and confusion for NPOs, affecting delivery of services and placing them in untenable situations. Without changes by Congress and greater use of executive exemptions in the interim, CT measures will continue to impede humanitarian action and peacebuilding programming.

The Antiterrorism and Effective Death Penalty Act (AEDPA) and the International Emergency Economic Powers Act (IEEPA) make it unlawful to knowingly provide “material support” to designated Foreign Terrorist Organizations (FTOs) and an extensive list of terrorist entities and individuals designated by the State Department.²⁹ The Immigration and Nationality Act establishes additional restrictions on material support that may implicate domestic NPO operations related to the treatment and support of asylum seekers and migrants.³⁰ These broadly defined prohibitions on “material support or resources” have had chilling effects on NPOs operating in areas controlled by designated groups.³¹ Humanitarian actors are at risk of criminal prosecution or civil penalty for activities, and NPOs providing training, expert advice including relating to compliance with international law, and other assistance aimed at building peace, reducing conflict, and preventing extremism are similarly prohibited.³²

Such prohibitions have tangibly undermined the work of humanitarian and peacebuilding NPOs and even U.S. foreign policy initiatives. In Colombia, following the 2016 peace agreement between the government and Revolutionary Armed Forces of Colombia, the barring of U.S. peacebuilding organizations presented a barrier to managing and reengaging dissident members of the FTO-designated group in the peace process.³³ In Nigeria, the material support prohibition has prevented or delayed interventions to rescue individuals kidnapped by Boko Haram or Islamic State-affiliated groups on several occasions.³⁴ The most recent example of the adverse impacts of the material support prohibition was the FTO designation of the Yemeni Houthis in the final days of the Trump administration.³⁵ Although broad OFAC licensing sought to preserve peacebuilding and humanitarian operations in Yemen, under the AEDPA the group's designation transferred the discretion of criminal prosecution to the Department of Justice.³⁶ While NPOs stated their willingness to navigate this difficult legal terrain in order to continue to provide life-saving assistance, they were not assured of being able to transfer cash into the country; meanwhile, the availability of agricultural and medical supplies—covered under OFAC's GLs—had begun to decline as a result of the heightened risks and uncertainty. The Biden administration quickly reversed the designation, but its impact could have had devastating consequences on one of the world's worst humanitarian crises.³⁷

Under the Immigration and Nationality Act, several situational and group-based exemptions to material support prohibitions have been established for immigration purposes; however, Congress has yet to develop such exemptions under the AEDPA. While Congress explicitly prohibited blocking of “donations of food, clothing, and medicine, intended to be used to relieve human suffering” in IEEPA, successive presidents have routinely waived the humanitarian exemption in executive orders establishing national emergencies, effectively prohibiting humanitarian activities and the transactions necessary to support them under U.S. sanctions.³⁸ Guidance issued by the Department of Justice has sought to clarify the exclusion of “legitimate, independent efforts to counter violent extremism” from the obligations of material support statutes, but confusion persists and the potential liabilities of NPOs remain.³⁹ Moreover, USAID routinely requires recipients to sign the “Standard Provision on Preventing Transactions with, or the Provision of Resources or Support to, Sanctioned Groups and Individuals,” which perpetuates uncertainty.⁴⁰ The inconsistency and ambiguity surrounding the scope and definition of material support prohibitions for NPOs needs to be addressed by Congress.

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Furthermore, since sanctions are strict liability offenses, anyone providing funds or making them available to potential terrorists commits a criminal offense, regardless of intent. The EU Counter Terrorism Directive includes express safeguards for humanitarian action related to criminal CT measures, while Australia, Switzerland, and the United Kingdom, among other countries, have adopted legislation to exclude humanitarian action from the scope of CT criminal measures. The U.S. Congress

should adopt similar safeguards. Models such as the UK Bribery Act—in which a company connected to an act of bribery is not guilty if it can show it had adequate procedures in place to prevent persons associated with it from undertaking the act—should be explored and adopted.



A customer (R) waits to collect money at the Juba Express money transfer company in Mogadishu on February 12, 2015.

Photo by Mohamed Abdiwahab/AFP/Getty Images

Measures to Address Financial Access Problems

Over the past five years, information and data regarding the impact of sanctions and CT measures on the ability of NPOs to operate in countries subject to sanctions or in areas controlled by designated terrorist groups have increased significantly. Growing recognition by the U.S. government, especially under the Biden administration, has resulted in efforts to reconcile humanitarian access issues through a variety of executive branch actions. Numerous initiatives have been undertaken at the United Nations and by national governments to expand the use of humanitarian exemptions and establish multi-stakeholder dialogues to address aspects of financial access issues. Additionally, new technological approaches have been explored.

U.S. Government Responses

In January 2021, National Security Directive 1 directed the Treasury Department to review the impact of U.S. and multilateral sanctions on Covid-19 response capabilities.⁴¹ As the Covid-19 pandemic exacerbated inequalities among the world's most vulnerable communities, the administration sought recommendations to ensure that existing sanctions would not unduly hinder global health responses and related humanitarian relief efforts.

In response, OFAC issued supplemental guidance and three GLs in June 2021, expanding existing humanitarian exemptions to authorize and facilitate Covid-19-related transactions and activities in sanctioned jurisdictions.⁴² The GLs and guidance outlined relevant authorizations supporting the provision of humanitarian assistance, personal protective equipment, and other medical assistance under Iranian, Venezuelan, and Syrian sanctions programs.⁴³

Early in the Biden administration, the Treasury Department announced that it was conducting a review of U.S. sanctions policies; released in October 2021, the review explicitly recognized the need to address humanitarian concerns. The report stated:

Treasury must address more systematically the challenges associated with conducting humanitarian activities through legitimate channels in heavily sanctioned jurisdictions. Where possible and appropriate, Treasury should expand sanctions exemptions to support the flow of legitimate humanitarian goods and assistance and provide clear guidance at the outset when sanctions authorities are created and implemented, particularly related to vulnerable populations. Going forward, Treasury will continue to review its existing authorities to consider the unintended consequences of current sanctions regimes on humanitarian activity necessary to support basic human needs, as well as potential changes to address them while continuing to deny support to malicious actors. We believe this effort is worthy of significant time and effort to ensure the world understands that the provision of legitimate humanitarian assistance reflects American values.⁴⁴

While some NPOs were disappointed the review did not announce specific policy reforms and failed to address the interrelated NPO missions of peacebuilding, human rights, governance, and development assistance, the Biden administration has underway a sanctions modernization initiative to implement elements of the sanctions strategy. Further announcements by the Treasury Department are expected in fall 2022, along with the release of the required response to the GAO de-risking report.

ILLICIT FINANCE STRATEGY AND TERRORIST FINANCING RISK ASSESSMENT

The Treasury Department's May 2022 *National Strategy for Combating Terrorist and Other Illicit Financing* reflected the importance of initiatives such as the CSIS MSWG and its predecessor World Bank and ACAMS process through its recommendation of a "working group of policymakers, NGOs, and financial institutions to discuss banking access and humanitarian-assistance-related issues" as a benchmark for progress on financial access issues.⁴⁵ Under Supporting Action 11 on strengthening the implementation of global AML/CFT standards, the 2022 strategy articulated for the first time a U.S. government position on the relationship of de-risking to financial inclusion and access priorities.⁴⁶ This marks a notable shift from previous statements characterizing risk tolerance as solely an issue for individual FIs. Within the strategy, the Treasury Department recognizes de-risking practices as detrimental to AML/CFT measures, international efforts to promote financial inclusion, and critical humanitarian efforts.

As a result, the Treasury Department included the objective of engaging both domestically and internationally to strengthen risk-based approaches in compliance with AML/CFT, focusing on supporting FIs engaged with humanitarian assistance activities. Furthermore, the Treasury Department defined the promotion of responsible financial inclusion as a critical component in preparing the mandated strategy on de-risking from the Anti-Money Laundering Act of 2020.⁴⁷ While there was minimal engagement by the Treasury Department with NPOs in developing the 2022 strategy, the commitment to strengthening risk-based approaches and supporting financial access is significant.⁴⁸

In March 2022, the Treasury Department also released the *2022 National Terrorist Financing Risk Assessment*. This periodic review of terrorist financing risks further reinforced the minimal risk of financial exploitation by terrorist groups of legitimate humanitarian NPOs, noting the most risk occurs

when terrorist supporters set up sham charities that do not actually provide any charitable services but serve as a cover for raising funds for a foreign terrorist group.⁴⁹

REVISION OF BANK SECRECY ACT/ANTI-MONEY LAUNDERING EXAMINATION MANUAL

The Financial Crimes Enforcement Network (FinCEN) and other federal banking regulators traditionally issue guidance to banks to clarify expectations of FIs. The Federal Financial Institutions Examination Council engaged in a comprehensive review of the Bank Secrecy Act/Anti-Money Laundering Examination Manual from 2017 to 2021 to improve transparency of examination processes and support risk-focused examinations.⁵⁰ Following this review, updates to the manual's guidance were issued, including on the examination of charities and NPOs in November 2021.⁵¹ For the first time, the update included explicit examiner guidance that the charitable sector does not present unacceptably high risk of being used or exploited for money laundering, terrorism financing, or sanctions violations. In revisiting the evaluation of risk factors and risk mitigation, the update and related training module for examiners, reflecting these changes, are essential in helping to dispel the notion of NPOs as inherently high-risk customers and affirming the importance of banks providing services to NPOs.

EXPANSION OF OFAC GENERAL LICENSES

In the past two years, OFAC has expanded GLs exempting certain humanitarian assistance and support from obligations in sanctioned realms of critical humanitarian need. These licenses encompass a range of activities supporting FIs and commercial entities supplying humanitarian and NPO activities. GLs for Syria, Yemen, Myanmar, Ethiopia, and Afghanistan have authorized FIs to transfer funds to sanctioned areas on behalf of the U.S. government and NPOs in support of humanitarian projects.⁵² In the case of Syria GL 22 and Ethiopia GL 3, licenses also preserve essential economic sectors or critical industries, such as agriculture, telecommunications, power, finance, health services, and education, ensuring that the economic impact of sanctions does not undermine humanitarian activities.⁵³

Furthermore, the Executive Order on Imposing Sanctions on Certain Persons with Respect to the Humanitarian and Human Rights Crisis in Ethiopia represented the first time the president explicitly stated his intent “to ensure that appropriate personal remittances to non-blocked persons and humanitarian assistance to at-risk populations can flow to Ethiopia and the greater Horn of Africa region through legitimate and transparent channels.”⁵⁴

The number of GLs issued in response to global humanitarian challenges during the last two years reflects the administration's commitment to reconciling financial access challenges. The precedence demonstrates the important contribution of such measures in advancing the Treasury Department's agenda to preserve humanitarian relief without undermining AML/CFT efforts. Case-by-case licensing, however, continues to slow the speed at which humanitarian resources reach and reduce the suffering of populations in need.

OFAC's expansion of GLs and guidance (such as FAQs and fact sheets) for countries in need of humanitarian assistance (e.g., Yemen, Myanmar, Ethiopia, Afghanistan, and Syria) are critical, but these actions alone have not been sufficient to address growing challenges. Specific licenses (for activities falling outside of existing GLs) often require months to process. Even when issued, some banks have refused to transfer funds to countries considered “too risky.” Likewise, only larger NPOs have the financial, legal, and personnel capacity to apply for such specific licenses or absorb the additional cost of the delays they entail, leaving smaller NPOs behind and creating impediments to

actualizing the United States' localization agenda and the UN 2030 Agenda commitment to "Leave No One Behind."⁵⁵

Evolution of Afghan General Licenses

Following the Taliban's return to power, there was an urgent need for new OFAC licensing measures to support the delivery of humanitarian assistance due to uncertainty about the implications of sanctions on Taliban members in the new government, the near collapse of the financial system due to the cessation of external assistance and frozen central bank assets, and historic drought conditions contributing to widespread food insecurity.

On September 24, 2021, OFAC issued two GLs authorizing transactions necessary to enable certain humanitarian activities in Afghanistan: GL 14 authorized the U.S. government and its contractors, the United Nations, and various FIs to carry out transactions necessary to the provision of humanitarian assistance with the Taliban and Haqqani Network. GL 15 authorized incidental transactions by U.S. individuals related to the trade of agricultural, medical, and technological components.⁵⁶ Other important programs, however, such as support to education, were not covered.⁵⁷

In December 2021, OFAC issued four additional GLs expanding the coverage of engagement to include activities related to personal remittances, U.S. government business, and international organizations. GL 19 expanded the categories of permissible activities NGOs may support that are ordinarily incident and necessary to humanitarian activities (bringing the exemption in line with previous humanitarian GLs for Yemen, Ethiopia, and Myanmar; the more limited scope in GLs 14/15 was criticized by NPOs). However, it did not include protections for peacebuilding or human rights work.⁵⁸

In late February 2022, a full six months after the Taliban takeover, OFAC released GL 20, which authorized all other previously prohibited transactions involving Afghanistan and its governing institutions—apart from financial transfers to the Taliban or Haqqani Network.⁵⁹ It expanded authorizations for commercial and financial transactions in Afghanistan, including with its governing institutions, in order to ensure that U.S. sanctions do not prevent or inhibit transactions and activities needed to provide aid to and support the basic human needs of the people of Afghanistan. OFAC also updated 17 FAQs and released 7 new FAQs clarifying the scope of GL 20, representing clear and comprehensive guidance for the range of permissible humanitarian-related payments to facilitate humanitarian access in Afghanistan.

Although issuance of these GLs was helpful to enable transactions necessary for NPO programming in Afghanistan, the gradual approach and delayed implementation of comprehensive measures failed to preempt widespread de-risking by FIs. In the months following the Taliban takeover, reputational and compliance risk associated with the heavily sanctioned government and the withdrawal of international assistance contributed to the departure of most major international FIs. While Afghanistan's currency exchange rate has begun to recover with the influx of trade enabled by these licenses, the reestablishment of financial channels for humanitarian transactions has been less successful.

UN Action: Humanitarian Carve-Outs

Within UN bodies, there is growing acknowledgment of the adverse effects of CT measures and sanctions on NPOs. Numerous meetings at the United Nations have been organized and reports issued calling for the enhancement of protections for humanitarian actors and action.

Currently humanitarian exemptions are only available in the Somalia and Taliban sanctions regimes. Adoption of a standing humanitarian exemption from all UNSC sanctions would help to safeguard humanitarian action in national legislation and within the European Union. In addition, it would help to encourage necessary efforts to harmonize regulatory and licensing approaches with key partners (e.g., the European Union, United Kingdom, and Australia) and other states to reduce confusion and risk for NPOs and private actors as well as to promote consistent implementation across national boundaries.

AFGHANISTAN EXEMPTION

As a result of the Taliban's takeover of Afghanistan on August 15, 2021, the primary locus of discussions within the UNSC of humanitarian carve-outs shifted to the 1988 (Taliban) regime. More than three dozen Taliban members subject to long-standing UN sanctions under the 1988 regime became governing officials, raising questions as to whether ministries they controlled were also sanctioned.⁶⁰ The complications UN sanctions posed for the delivery of urgent humanitarian assistance focused the UNSC's attention on the need for an exemption to the financial sanctions. While many NPOs continued providing assistance in Afghanistan, the uncertainty and complications of sanctions became overwhelming. By late fall 2021, the U.S. government proposed language creating a carve-out (as it had in the Somalia regime in 2011 in response to a famine declaration) and pushed other UN member states to support it.

On December 22, 2021, the UNSC unanimously adopted UNSCR 2615, which created a standing exemption for humanitarian assistance and other activities that support basic human needs in Afghanistan.⁶¹ The carve-out is essential in providing legal protection for humanitarian activities in Afghanistan and significant in explicitly permitting "the processing and payment of funds, other financial assets or economic resources, and the provision of goods and services necessary to ensure the timely delivery of such assistance or to support such activities."⁶² Even with adoption of UNSCR 2615, however, many FIs remain reluctant to process payments to and from Afghanistan, highlighting that more must be done.

1267 CT SANCTIONS

Despite the precedence of such exemptions, the UNSC 1267 (al Qaeda/ISIL) sanctions regime continues to significantly complicate humanitarian activities in countries where these terrorist groups operate or control territory. In late 2021, the UNSC had opportunities to adopt new measures protecting humanitarian activities in various resolutions. Mandates of the 1267 (al Qaeda/ISIL) sanctions, the 1267 and 1988 (Taliban) Monitoring Teams, and the Counter-Terrorism Executive Secretariat were up for renewal; some member states proposed humanitarian measures, including an exemption in the 1267 regime, but no significant measures were adopted in December 2021.⁶³ Negotiations on the regime's renewal saw nearly half of the members indicate support for a humanitarian carve-out, but it was not ultimately included in final resolution language.

As recognition grows of the problems experienced by humanitarian organizations due to sanctions and CT measures, NPOs have called for the adoption of a standing humanitarian exemption from

all UNSC sanctions modeled on UNSCR 2615. The 2015 High-Level Review of UN Sanctions noted the difficulties faced by humanitarian actors attributed to UN sanctions and recommended the adoption of a standing exemption for humanitarian actors across all regimes. Although a standardized humanitarian exemption has yet to be adopted, the U.S. government announced its intention to propose a cross-regime humanitarian exemption at the UNSC in fall 2022.⁶⁴

Multi-stakeholder Initiatives

In recognition of the financial access challenges experienced by NPOs, several national-level stakeholder dialogues have been established over the past five years. These initiatives promote engagement among NPOs, FIs, and national officials in developing greater understanding and responses to address de-risking. These national dialogues have the potential to inform one another, but to date no formal collaboration among them has been established.

THE UNITED KINGDOM'S TRI-SECTOR GROUP

The United Kingdom's Tri-sector Group (TSG) was established on the recommendation of the UK independent reviewer of terrorism that a dialogue be initiated between NPOs, government agencies, and FIs to explore how the objectives of anti-terrorism law can be promoted without unnecessarily prejudicing the ability of NPOs to deliver humanitarian aid, capacity building and peacebuilding in parts of the world where designated and proscribed groups are active.⁶⁵ The TSG convenes quarterly meetings to share information, identify new and emerging issues, foster partnership and advance best practices among stakeholders, and develop potential solutions to financial access challenges. It is jointly hosted by the UK Home Office and the Foreign, Commonwealth & Development Office (FCDO); additional participants include the UK Counter-Terrorism Unit, Office of Financial Sanctions Implementation, the Charity Commission, representatives of FIs led by UK Finance, and NPO representatives and their umbrella body, Bond. The secretariat serves as a point of contact for the three sectors and meetings of the core group.

The TSG created five thematic workstreams: research and innovation; legislative guidance; operational guidance; communications; and other topics. Working groups within these workstreams meet on a sporadic basis, and additional working groups may be created for ad hoc periods to address new questions or developments. Information from the working groups is shared with the wider membership by the secretariat and at quarterly TSG meetings to facilitate further discussion on developing de-risking, financial access, and humanitarian and peacekeeping solutions. An annual meeting reflects on progress and new and emerging issues, as well as connecting with other multistakeholder dialogues.

The TSG has enabled the various agencies, organizations, and institutions to build relationships of trust and develop understanding of the issues within and across their different institutions. The TSG demonstrates the importance and value of working cooperatively to address accountability and complex financial access challenges. By making it a shared endeavor, NPOs and FIs have found they can promote a common objective through the strength of a collective voice. Over time, the dialogue has started to produce tangible results, including publicly available guidance for NPOs and FIs operating within CT law and sanctions.⁶⁶

THE DUTCH ROUNDTABLE

Since 2014, the Human Security Collective (HSC) in the Netherlands has been facilitating meetings to discuss the experiences and concerns of Dutch NPOs and FIs and explore possible solutions. The

dialogue was established in 2017 to facilitate discussion on CT developments and humanitarian financial access restrictions. In 2019, it was formalized as the Roundtable on De-Risking and Access to Financial Services for Non-Profit Organizations under an agreement between the HSC, the Dutch Ministry of Finance and Ministry of Foreign Affairs, and the Dutch Association of Banks.

The Dutch roundtable is based on a confidential consultation structure that enables stakeholders to share information, making it distinct from other national dialogues in its “bottom-up” approach. The roundtable is owned and facilitated by NPOs. Although the government is present in these discussions, it is neither a financier nor a co-convenor of the working group. In directing this initiative, NPOs have created a platform to communicate with banking and government officials to help them understand the severity of challenges faced. This has enabled a gradual change in discourse among the Dutch sectors. The focus on a solution-oriented strategy results in enhanced understanding of the interrelated management of political and financial policies. Under this strategy, NPOs’ direct engagement with the government has enabled progress in the development of useful solutions. Furthermore, by communicating directly with FIs regarding the humanitarian consequences emerging from financial access constraints, NPOs have been able to create an enhanced sense of responsibility among banks on the issue of de-risking as a human rights obligation.

In working around the absence of political buy-in in this process, the roundtable has established several initiatives to reconcile the impact of political and legislative constraints. The stakeholders also have launched several research projects to advance the normative perception of enabling humanitarian financial access as a human rights standard and to evaluate de-risking opportunities.

FRENCH PROCESS

While president of the Council of the European Union during the first half of 2022, France supported the European Humanitarian Forum as well as a session advancing considerations of the impact of sanctions on humanitarian aid and the issue of bank de-risking.⁶⁷ The French government committed itself to hosting a tripartite dialogue between the French Ministries of Finance and Foreign Affairs and five NPOs.⁶⁸ Following the December 2020 Humanitarian Conference, President Emmanuel Macron announced that practical solutions would be advanced within six months, including guidelines on “good banking practices” and procedures for requesting exemptions so that “the NGOs and the banks’ compliance departments can stabilize, structure and secure these financing channels without putting the NGOs and the banks at risk.”⁶⁹ While numerous meetings have been held with government funded NPOs and some FIs, banks remain reluctant to address financial access challenges, and progress has been limited.

U.S. MULTI-STAKEHOLDER DIALOGUE

In the United States, the World Bank and ACAMS organized the Stakeholder Dialogue on De-Risking from 2016 to 2018. The dialogue convened participants from the U.S. government, international organizations, FIs, and NPOs to encourage enhanced understanding and cooperation between the sectors. The goal was to establish new mechanisms for information sharing; standardize due diligence requirements among FIs; clarify regulatory requirements and risk guidance; and foster the development of new technologies to minimize banking costs. Although the process yielded early successes in enhancing understanding and cooperation, especially among NPOs and banks, the initiative was eventually abandoned due to a lack of engagement by U.S. government agencies.

Ongoing concerns about NPOs' financial access challenges and an interest in the issue by the Biden administration led to the establishment in fall 2021 of the CSIS MSWG. This dialogue has worked to promote trust and understanding among stakeholders and to develop proposals for all stakeholders to address these issues (see Chapter 4).

Discussions regarding the potential establishment of stakeholder engagements are ongoing within the European Union in Brussels and the United Nations' headquarters in New York. Additional, smaller-scale dialogues have taken place or are being planned in Germany, Sweden, and the Czech Republic.

Technological Approaches

Technological developments have the potential to play an important role in lowering banks' compliance costs and facilitating NPOs' access to financial services. Some blockchain and other fintech solutions to secure transactions and ensure that funds reach their intended destinations are already being deployed and hold promise for lessening compliance burdens on both NPOs and FIs.

New payment platforms and technologies can increase the efficiency, transparency, and effectiveness of AML/CFT compliance by FIs. Know-your-customer utilities, blockchain, e-credits, legal entity identifiers, and biometrics may help promote NPOs' transfers to areas of higher risk through lowering compliance costs associated with banking NPOs. In recognition of the important potential of the growing field, FinCEN hosts monthly discussions on new technology related to BSA/AML solutions. Several technology-based initiatives have been developed to address challenges surrounding humanitarian transactions as well as due diligence and risk management requirements.

However, technology is not a "quick fix," nor can it substitute for the need to reform underlying regulatory requirements. New technological approaches are not feasible in all contexts, especially in some underdeveloped areas of persistent conflict; they can also be prohibitively expensive in addition to presenting privacy issues and other unique challenges.

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FINANCIAL PAYMENT PLATFORMS

Fintech for International Development is a recent UK-based social enterprise developed through the cooperation of Barclays, Standard Chartered, and Save the Children.⁷⁰ It is a closed-loop voucher system accessible via cellphone for the processing of transactions and payments within difficult operating jurisdictions. It recently launched its first product, known as Lotus 20, which utilizes encrypted and consciously engineered biometric data to enable merchants and aid agencies to create a highly detailed digital record of the disbursement and delivery of humanitarian resources. The anonymized use of Lotus 20 allows recipients to receive automated and secure payments directly through their bank accounts or mobile wallets. It promises to ease the challenge of reporting and enhance transparency, enabling efficient and timely operations in high-risk jurisdictions. The data-based platform alleviates one component of logistical operations through an automated due diligence

process. The open platform provides a transparent ledger with detailed information on the provision of humanitarian aid, which can enable FIs to feel more confident that due diligence requirements are being met.

UK-based Amanacard is a social impact enterprise founded in 2016 to support organizations in high-risk jurisdictions minimize the cash footprint created by cash-based programming while simultaneously ensuring the delivery of critical cash payments via vetted networks of merchants that operate a verifiable end-to-end money transfer service. To date, Amanacard has supported over 200,000 beneficiaries, independently verifying transactions exceeding \$200 million to families in need of assistance, local businesses, and the staff and suppliers of hospitals, schools, and charity field offices. The model was originally tested in Syria and has since been replicated in other countries, including most recently in Afghanistan, where Amanacard has made possible the delivery of over \$10 million in aid to end recipients that otherwise would not have reached them.⁷¹

NPO REPOSITORY

In 2012, TechSoup Global and the Council on Foundations piloted NGO Source, a project to establish a repository of vetted NPOs as a resource for establishing trusted in-country partners or grant recipients. NGO Source streamlined donor and international grantmaking processes through establishment of a database of “equivalency determinations” meeting U.S. Internal Revenue Service requirements for public charities. Like SWIFT’s Know-Your-Customer Registry, NGO Source is a fee-based service that allows users to conduct due diligence procedures quickly and cost-effectively. NGO Source developed the Strengthening and Tiered Evaluation Process (STEP), an approach to compliance and risk management that provides a complete analysis of an NPOs’ governance, risk management, and due diligence systems. NGO Source could adapt its technology and approach to the financial services context by providing assessments of NPOs’ risk management procedures to enable FIs to conduct due diligence, and by creating a repository of information FIs need from NPOs.⁷²

ONLINE RESOURCES FOR NPOS

As an extension of the Dutch roundtable, the Dutch banks ABN AMRO and Rabobank and the HSC have begun developing an online portal for use by NPOs. As gatekeepers in preventing financial crime, the banks recognize the impact AML/CFT measures and related bank processes have on NPOs. By partnering with the HSC in the development of an information portal, they hope to assist the NPO sector in carrying out its responsibility to mitigate risks related to financial crimes while efficiently processing humanitarian transactions.

The portal, which will be hosted by ABN AMRO bank and Rabobank, is intended to ease roadblocks for humanitarian assistance-related transactions by providing a central source of information on guidance, processes, and standards. In accordance with relevant national and EU-level standards, resources and guidance will be developed based on risk assessment standards for Dutch FIs, as outlined by the central bank of the Netherlands.⁷³ The portal will also include advice columns and a library of FAQs regarding financial risks for civil society organizations. By enhancing transparency surrounding common Dutch banking standards, the portal should enhance the ability of NPOs to effectively meet due diligence standards and avoid transaction delays.

GOVERNMENT FUNDING OF TECHNOLOGY TOOLS

To encourage development of tools to address financial access issues, government funding will be

necessary. FinCEN hosts discussions regarding new tech approaches, but seed money is important to encourage investment from FIs to address de-risking. Of note is a recent EU initiative to support the development and implementation of sanctions information technology tools.⁷⁴ The program, with a budget of €450,000 (\$450,990), will support technology to provide information on EU sanctions and tools to allow secure information exchanges between EU member states, stakeholders, and the European Commission.

Proposals to Address Financial Access Challenges

This section lays out a wide array of proposals to address financial access challenges experienced by NPOs resulting from discussions of the CSIS MSWG. Countering the financing of terrorism and other illicit financial crimes is an important national security and foreign policy objective, as is the provision of life-saving humanitarian assistance to populations in need. The growing body of evidence and research demonstrating how AML/CFT/sanctions measures have adversely affected principled humanitarian action demands urgent action. The following proposals (without rank ordering) are offered for consideration by U.S. policymakers and other stakeholders. No single response will resolve the range of complex financial access challenges; rather, a multifaceted approach incorporating multiple elements will be necessary to address the severe and systemic financial access problems faced by NPOs.

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Part 1: U.S. Government

I. Elevate attention to financial access issues and institutionalize multi-stakeholder processes.

Because de-risking and financial access cut across a broad swath of complex issues—sanctions, AML/CFT, illicit finance, financial inclusion/exclusion, foreign/humanitarian/peacebuilding/development assistance, and security—as well as numerous U.S. government agencies, there is no official or body responsible for these topics. While understandable given the multifaceted nature of financial access challenges, the result has been a lack of sustained attention to the issues, with no individual or part of the government responsible for leading the effort. And even when parts of the government addressed various issues within U.S. policy circles, not all of the relevant government stakeholders were included, let alone external stakeholders such as FIs and NPOs.

All stakeholders must engage to effectively address financial access challenges, but until recently there was no U.S. multistakeholder process. The clear consensus of MSWG participants was the need for a structured sustained process to continue, as well as a desire to engage with other national initiatives. Several suggestions were made as to how engagement with other multistakeholder processes could usefully take place.

Moreover, there was interest in adding financial access issues to the agendas of relevant international organizations. Some international bodies have addressed de-risking, such as the Financial Stability Board, World Bank, the FATF, and the G20. However, there is no forum, other than the FATF, for policymakers and regulators to address balanced approaches to the range of issues and ensure that the views of all stakeholders are considered in the development of international standards and guidance. These forums exclusively operate through the lens of their respective mandates, resulting in comparatively little dialogue focused on increasing access to financial services through formal channels. A global approach that aligns international initiatives on both de-risking and financial inclusion is necessary.

The U.S. government should:

- **Establish a standing senior interagency committee on financial access** comprised of the Department of the Treasury (including OFAC), regulatory agencies, the Department of State, USAID, and other relevant agencies—to promote closer coordination between all U.S. government stakeholders on the impact of AML/CFT/sanctions (including strict liability and compliance-related issues) on principled, timely, and effective humanitarian assistance and to explore underlying causes, address impediments, and reconcile conflicting policy outcomes.
- **Create a formal advisory group** (e.g., under the Federal Advisory Committee Act) on financial access issues, with broad interagency participation.
- **Continue and formalize the U.S. multi-stakeholder process** to build trust and relations by actively engaging with FIs and NPOs through multi-stakeholder initiatives, including with the U.S. government's explicit endorsement and participation to feed into the interagency committee and processes addressing these issues.
- **Promote an international dialogue among multi-stakeholder initiatives.**
- **Enhance consideration of financial access in international fora** and encourage greater linkages to share best practices among donors, policymakers, regulators, FIs, NPOs, and other stakeholders

to develop harmonized international approaches to financial access challenges. Promote greater discussion of solutions to interrelated issues of sanctions, AML/CFT, de-risking, and financial inclusion in international fora (e.g., the United Nations, FATE, the European Union, the G20, and the G7). Create an ongoing information-sharing system to liaise among national initiatives and develop focused subgroups (e.g., on topics such as donors' due diligence guidance, risk management and risk sharing, and challenges with downstream correspondent banks).

- **Expand stakeholder initiatives** to countries and contexts in the Global South where the impacts of financial exclusion and de-risking are felt most acutely. This expansion would be consistent with USAID's localization goals and Grand Bargain commitments.

II. Modernize licensing and implement exemptions to safeguard humanitarian and peacebuilding activities.

A more simplified and streamlined U.S. system should rely and build upon the exemption for humanitarian activities in the core statute, IEEPA, recognizing the realities of humanitarian operations. Future executive orders should restore this exemption as a minimum threshold. Moreover, U.S. "material support" prohibitions have a chilling effect that impedes humanitarian action in the regions in greatest need of assistance. In many cases this prohibition also directly impacts the good-faith engagement necessary for humanitarian, peacebuilding, and conflict resolution activities.

Humanitarian exemptions at the U.S. and UN levels should be broadly adopted and applied to systematically safeguard humanitarian and peacebuilding action; in cases where licensing is necessary, measures to make the process more efficient and consistent are essential.

The U.S. government should:

- **Restore the IEEPA humanitarian exemption** and limit the waiver to provide consistency and certainty to the range of NPOs, FIs, and private sector actors essential to procuring and delivering humanitarian assistance.
- **Clarify that the statutory exemption applies to financial and commercial transactions** supporting humanitarian and peacebuilding activities and all activities considered humanitarian and peacebuilding in nature (not just food, clothing, and medicine).
- **Propose a humanitarian exemption for all UN sanctions regimes**, ideally through an across-the-board resolution exempting principled humanitarian action and the necessary financial and commercial organizations and activities to support them (e.g., UNSC Resolution 2615) from the scope of all UN sanctions and CT measures. This would provide the legal basis for UN member states to implement the derogations and exemptions necessary to facilitate unfettered humanitarian assistance consistent with UN obligations. In the absence of UNSC sanctions (for example, in the case of sanctions on Russia), increased alignment among member states on the scope and language of humanitarian exemptions is important for enabling international NPOs to operate in a parallel fashion.
- **Modernize licensing and administrative procedures and increase utilization of existing authorities to facilitate and safeguard NPO activities.** While systemic reform of such a complicated regulatory system progresses, there are near-term measures that can be undertaken to streamline administrative measures to clarify and harmonize standards for NPOs and FIs.

- **Create a global GL covering transactions ordinary, incident, and necessary to meet basic needs**, including processing and payment of funds.
- **Develop project licenses for NPO activities and programs** that may not meet the criteria for global GLs.
- **Address gaps in the existing humanitarian carve-outs in federal statutes and underutilization of existing authorities**, which impede humanitarian and peacebuilding action.⁷⁵
- **Harmonize OFAC and Bureau of Industry and Security licensing policies** so that exports, re-exports, and transfers of items for humanitarian purposes under OFAC authority are automatically permitted under Export Administration Regulations (subject to end-use/end-user monitoring requirements).

III. Provide regulatory clarity and guidance.

The U.S. government should develop guidance to clarify expectations of FIs banking NPOs under the risk-based approach, including due diligence expectations indicating that genuine risks can be managed through responsible, enhanced due diligence.

Since NPOs receiving U.S. government funds already undergo comprehensive reviews of their due diligence and internal control procedures, FIs should not need to replicate this process in conducting their own compliance review. Clarification that implementing partners of U.S. government programs have met required due diligence and risk mitigation requirements for FIs transferring the funds would expedite and encourage FIs to handle such transactions. For operational NPOs not receiving U.S. government funding, policy guidance should be provided, and these NPOs should communicate their due diligence and risk mitigation procedures with FIs so that they are encouraged to handle such transactions.

The U.S. government should:

- **Issue policy guidance clarifying that NPOs receiving funding from U.S. government agencies have already met required due diligence and risk mitigation requirements**, indicating that for purposes of FIs, due diligence requirements have been met.
- **Provide policy guidance for operational NPOs that do not receive U.S. government funding.** These NPOs should communicate their due diligence and risk mitigation processes to FIs so that they are encouraged to handle such transactions.
- **Develop prosecutorial guidance through the Department of Justice regarding humanitarian actors and FIs processing humanitarian payments.**
- **Issue additional guidance by regulatory agencies to bank examiners to correct misperceptions of risks associated with NPOs** and ensure consistent examination procedures and practices, as well as enhanced training on topics such as NPOs and de-risking (required by the Anti-Money Laundering Act of 2020). NPOs should be engaged as partners in the development and delivery of these trainings. Clarify expectations for FIs providing banking services to NPOs operating in higher-risk jurisdictions, building on the previous efforts, and provide guidance for FIs on any relevant typologies.
- **Codify a risk-based approach by OFAC for sanctions compliance**, clarifying that FIs do not need to screen domestic transactions, which the federal banking agencies should explicitly acknowledge.

- **Clarify the scope of prohibitions and apply an “obligations of means” approach requiring recipients to take all reasonable measures to avoid making funds and assets available to designated groups.**⁷⁶

This effort should not include requirements that would result in the exclusion of final beneficiaries or otherwise impair principled humanitarian responses.

IV. Promote safe payment channels for humanitarian transactions.

Discussions on safe banking and payment channels have taken place, but no proposals have been implemented. Creation of humanitarian safe payment channels remains the most likely means of providing humanitarian assistance to conflict areas where needs are greatest but where banks will not go without special assurances.

The U.S. government should:

- **Create pilots for humanitarian transfers into higher-risk jurisdictions, operated by or sanctioned through U.S. government institutions.** Examples that should be explored include the Federal Reserve’s previous transfer of humanitarian funds into North Korea and payments to like-minded states with a diplomatic presence in such jurisdictions for distribution to U.S. implementing partners on the ground when consistent with humanitarian principles.
- **Develop alternative measures to encourage payments into countries that commercial FIs will not service.** This includes measures to indemnify specific FIs, physical transfer of cash (with inherent risk), and utilization of international organizations to transfer and disperse donor funds in countries, among other potential payment channels.

V. Promote risk sharing among donors and recipients.

All stakeholders must recognize humanitarian assistance as a priority and work together for a shared view that ensures a balance between mitigating sanctions and terrorist financing risks and the ability to support the movement of funds necessary to deliver humanitarian assistance. While most stakeholders support risk sharing in theory, few donors have policies or guidelines that promote actual and effective sharing of risks. Rather, risks are borne primarily by NPOs operating in conflict areas. All stakeholders must recognize and be realistic about inherent risks to develop joint strategies to mitigate those risks.

Models of risk sharing are limited but include the Somali Remittances Feasibility Study, the Swiss Humanitarian Trade Arrangement (related to transfers to Iran), and transfers of humanitarian funds into North Korea.⁷⁷ Risk-sharing models such as direct payments to NPOs through embassies and pilot programs creating new payment channels should be explored and, if successful, applied broadly.

The U.S. government should:

- **Convene NPOs and FIs to collectively discuss and devise risk-sharing measures and jointly develop risk-mitigation strategies and guidelines for complying with AML/CFT/sanctions measures.** Sanctions and CT measures should not be so restrictive as to prevent the effective implementation of risk-sharing measures.
- **Conduct a “lessons learned” exercise with stakeholder input to determine why previous models (especially the Swiss Humanitarian Trade Arrangement) did not perform as desired** and whether aspects of these models might play a role in new modes of risk sharing.

VI. Create incentives for FIs to bank NPOs.

Changing the risk calculus of FIs to bank NPOs requires a fundamental change in the mindset and culture of FIs, which will only take place with greater incentives and assurances for FIs.

The U.S. government should:

- **Formalize OFAC's 2014 non-enforcement policy through regulations** and clarify that this policy applies to FIs banking and processing NPO transactions.
- **Create a safe harbor pilot program for FIs with rigorous compliance programs** whereby inadvertent violations related to humanitarian transfers would be exempt from penalties.
- **Establish a “no-action letter” process led by FinCEN to facilitate transactions to high-risk jurisdictions** by allowing FIs to seek assurances that regulators will not act against the institution for NPO-related transactions (with appropriate guardrails).⁷⁸
- **Expand use of the Treasury Department's “comfort letters” and explore other methods to encourage FIs to bank NPOs.** Currently, these letters are only available to non-U.S. entities; expanding the use of these letters or similar confidence building tools to U.S. FIs should be discussed.

VII. Facilitate technological solutions to aid NPO transfers.

Humanitarian groups also are exploring new fintech approaches, including the development of closed-loop voucher systems, to minimize diversions of humanitarian payments. In addition, the concept of creating a specialized NPO utility or repository of comprehensive information on NPOs for use by FIs in due diligence reviews has been proposed.

The U.S. government should:

- **Expand FinCEN's promotion of tech solutions to execute AML/CFT and sanctions regulatory policies.**
- **Provide incentives and seed funding to promote the development of technological approaches to facilitate robust last-mile delivery systems to ensure monitoring and compliance with know-your-customer requirements for NPOs.**
 - Partner with NPOs in the development of these technological approaches and last-mile delivery systems to ensure their efficacy for both parties.
- **Support technological approaches such as the STEP due diligence framework and a global repository of NGOs** that have met due diligence and compliance requirements through U.S. government programs and FIs' charitable foundations.
 - Provide seed funding where necessary.

In addition, the U.S. Congress should:

- **Adopt legislative changes to safeguard humanitarian activities by clarifying the scope and definition of material support prohibitions; humanitarian action should be excluded from the scope of CT criminal measures.**
- **Explore tax incentives** and the applicability of credits under the Community Reinvestment Act for FIs facilitating NPOs' international transfers.

While preceding proposals focus primarily on actions that the U.S. government can take to address de-risking, other stakeholders have critical roles in alignment with the goals of increased risk sharing among all actors. The following proposals relate to measures that FIs and NPOs should consider to enhance financial access, as well as initiatives both stakeholders can undertake together.

Part 2: Financial Institutions

I. Enhance understanding of and communications with NPO customers.

A key takeaway from multi-stakeholder dialogues concerns the considerable misperceptions and lack of knowledge these stakeholders have about each other. FIs have little understanding of the modes of operation and activities of NPOs; likewise, many NPOs have little knowledge of the regulatory requirements FIs must address and become frustrated with repeated requests for detailed information about activities and beneficiaries in higher-risk locations. While banks have different procedures, due diligence requirements and monitoring mechanisms to ensure funds reach intended recipients are similar across FIs. Greater understanding and exchange of information is necessary for both to work together more effectively. The following are examples of information FIs should provide to NPOs to assist them in better understanding specific requirements of FIs, as well as the reasoning for requesting such information.

Financial institutions should:

- **Develop guidance as to specific information and documentation FIs need from NPO clients** to establish new accounts, monitor transactions, and conduct annual reviews.⁷⁹
- **Promote regular dialogue with NPO clients and designate dedicated relations teams** to interface and remain engaged with other departments of the bank (compliance) when issues arise to ensure coherent and consistent internal communication.
- **Share risk requirements up front with clients** and explain in clear terms what FIs need to feel comfortable from a risk standpoint.
- **Provide humanitarian customers with bank policies related to specific high-risk jurisdictions and the processing of NPOs transactions involving these jurisdictions.** Since areas in which NPOs operate are dynamic, FIs need to develop plans for adaptation of bank policies, in cooperation with NPO clients, for when situations arise.
- **Develop resources on regulatory requirements applicable to all bank accounts (e.g., customer identification, due diligence, risk assessment, and mitigation processes) and offer training to NPO clients.**
 - Clarify that there are no unique requirements specific to charitable and NPO customers; risk-based procedures for conducting due diligence can obviate NPOs' concerns of being singled out.
- **Engage with NPO clients when issues arise to provide an opportunity to correct problems (consistent with tipping off prohibitions).** In many cases, red flags may be related to simple misunderstandings.
- **Encourage greater engagement between NPOs and compliance and risk departments within FIs** to explain perspectives and help NPOs better understand how and what information they can provide to expedite transfers.

- **Create an online information resource for NPOs** (modeled on Dutch banks ABN AMRO and Rabobank tool to assist Dutch humanitarian and other groups in complying with due diligence requirements).

II. Promote greater understanding within FIs of the NPO sector and develop internal procedures appropriate to the sector.

Humanitarian and other NPOs differ from most bank customers, and efforts to improve understanding of the sector are necessary. FIs should invest in expertise and cultivate knowledge about the humanitarian and NGO sectors among staff. Regularized engagement will promote awareness of issues and improve risk management. Because humanitarian actors operate in higher-risk locations, often with U.S. government support, it is important for FIs also to understand government funding processes and bring donors into the discussion early to avoid potential problems. FIs should understand U.S. government and donor risk requirements (likely similar to bank requirements) and verify if NPO clients have met the due diligence requirements of the Department of State or USAID, especially if the U.S. government clarifies that such reviews constitute adequate due diligence for regulatory purposes. NPOs not receiving U.S. funding, however, should not be discriminated against; rather, normal due diligence reviews (or enhanced reviews where appropriate) would be conducted on these clients.

Financial institutions should:

- **Use a risk-based approach in assessing humanitarian clients** since not all NPOs represent the same level of risk, with most representing little or no risk.⁸⁰
- **Streamline internal processes so the same unit, team, or department within the bank engages with NPO issues**, permitting NPOs to effectively and efficiently address issues that arise. Most banks have numerous departments involved in review and decisions concerning NPO accounts, with no one coordinating. Effective communication between teams involved in the review process is important to resolve issues and report back to the NPO in a timely manner, helping to avoid delays in transferring funds.
- **Ensure that information required of NPOs is relevant to the stated purpose**, whether for opening an account or processing an international transfer. FIs should consider the regulatory purpose of the information and ensure it has a direct connection, is necessary, and is not unduly intrusive or violative of privacy rights.
- **Be aware of pervasive disinformation online about NPOs** and provide opportunities for NPOs to address mis- and disinformation as a first point of action.
- **Help decisionmakers understand the criticality of providing financial services to humanitarian groups.** Risk-related determinations are made by bank officials who may have little understanding of the NPO sector.
 - Promote engagement of senior FI officials (e.g., global heads on financial crime) on a regular basis with leaders of humanitarian groups to discuss financial access challenges.

III. Develop new data on and responses to NPO-related financial access problems.

Other than reports focused on the impact of de-risking on humanitarian and other NGOs, there is little data related to FIs' decisions to decline to provide financial services to NPO clients. It would be helpful for FIs to monitor and assess reasons for declining NPO transfers or services to better understand factors underlying de-risking. Moreover, some FIs are exploring new approaches to managing risk;

instead of the traditional focus on products and services or geographic locations, innovative methods using behavioral modeling are being explored to better understand client behavior as an alternative way to manage risk.

Financial institutions should:

- **Carry out additional due diligence when de-risking occurs but minimize adverse effects on NPOs** and make available effective and timely remedy or redress (where appropriate, for example, in the form of reopening of accounts).
- **Encourage helpful responses to address de-risking** by using corporate social responsibility initiatives to promote access to financial services for humanitarian actors.
- **Develop methodologies to track decisions to decline services or deny transfers related to NPOs.** Include all information for cross-border wire transfers for correspondents, as suggested by FATF Recommendation 16, to avoid problems that occur with downstream correspondent banks during transfers to higher-risk jurisdictions. Ensuring that onward payments contain information on the purpose of payments and license details in relevant fields can minimize delays or denials.
- **Work with NPO customers in especially complex jurisdictions** to build good relations around risk management approaches and available payment routings.
- **Consider banking NPOs as a market niche or specialize in providing financial services to U.S. government-vetted partners**, which could encourage more NPOs to utilize them. Support non-U.S.-government-vetted partners in becoming vetted to ensure equal opportunity to these NPOs in being banked and receiving financial services.
- **Explore innovative methods of risk management**, such as modeling behavior based on extensive data, to focus more on actual risk rather than compliance.

Part 3: Nonprofit Organizations

FIs need clear, consistent understanding of NPO clients, their operations, and the level of sophistication NPOs possess in managing financial crime risks. At times, NPOs have been hesitant to share information for a variety of reasons, including a lack of trust and concerns for the protection of implementing partners and beneficiaries. Lack of adequate information or perceptions that clients are less than forthcoming contribute to FIs' reluctance to take on the additional compliance burdens associated with transfers to higher-risk jurisdictions. To promote effective relationships with FIs, NPOs need to take proactive steps to build and manage relations, as well as to share information with the U.S. government.

I. Invest in relationship building with FIs and provide all relevant information as early as possible.

To promote a positive and trusting relationship with banks, NPOs need to be transparent and responsive. NPOs should engage proactively with their banks to help them understand operations and activities.

NPOs should:

- **Provide comprehensive information to FIs on programs and operations**, setting out locations, objectives, general descriptions of intended beneficiaries and how they were selected, services to be delivered, timelines, partners, purposes of payments, and destinations for funds (including

the scale and frequency of expected transfers). Corporate documents and information on NPO leadership, allocations, and management of funds should also be provided and any developments necessitating changes of previously conveyed information should be relayed to FIs immediately.

- **Establish clear and effective policies, procedures, and systems for managing risk** and explain them to FIs at the outset, including criteria for selecting local partners and how sanctions and AML/CFT risks have been addressed. This enables FI compliance officials to assess the robustness of NPOs' financial crime policies and staff.
- **Establish relationships with local banks and maintain regular contact with managers.** FIs should support the development of these relationships to ensure communication between NPOs and correspondent banks, and NPOs should foster and maintain these relationships.
- **Ensure transparency and conveyance of all relevant information at the outset of discussions with FIs to help to promote trust and avoid delays.**
- **Help encourage productive relations with FIs** through dedicated NPO risk management and compliance staff (some donors, such as USAID, will pay for such costs).
- **Proactively discuss specific mis- and disinformation with FIs.** NPOs should be aware that significant amounts of disinformation exist online regarding NPOs and can negatively impact FIs' willingness to bank NPOs.

II. Enhance information sharing, data collection, and collaboration with other stakeholders.

In addition to continuous communication with FIs, NPOs also need to engage actively with other stakeholders to promote cooperation, share information, and develop new approaches to address financial access challenges.

NPOs should:

- **Systematically collect information and data on the impact of AML/CFT/sanctions measures on their operations and ability to provide humanitarian assistance.** This information must be conveyed to the U.S. government to help inform policymaking. The U.S. government should assist by providing resources to develop data and building out an institutionalized process to share how this information was used and any policy influence the information had.
- **Proactively share with the U.S. government instances of de-risking** that NPOs or partners experience and advocate for a process to respond to such reports within specified timeframes.
- **Share the programmatic impact of delays in receiving responses to licensing requests, as well as denials of license applications from OFAC.**
- **Assess new fintech pilots aimed at know-your-customer utilities, blockchain, e-credits, legal entity identifiers, and biometrics** and explore potential funding sources to further develop successful models. Support smaller NPOs who have more limited funding, resources, and capacity in these endeavors (ideally with U.S. government funding).
- **Explain self-regulatory and voluntary compliance standards** to which NPOs adhere to provide greater comfort to FIs that NPOs implement robust risk assessment and mitigation procedures.
- **Continue and expand self-regulatory approaches to compliance issues and seek U.S. government support for such initiatives.**

- **Provide support and mentorship for smaller NPOs** lacking resources through training and building capacity to implement compliance procedures (ideally with U.S. government funding).
- **Facilitate the adoption of more coordinated approaches to the identification and management of risk within specific contexts**, which would be especially helpful to smaller NPOs. Additionally, urge USAID to provide resources for such efforts, focused on smaller and newer grant recipients.
- **Consider the benefits of consolidating accounts within FIs committed to bank USAID or UN-funded NPOs.**
- **Develop, exchange, and jointly agree upon expanded good practices** that could become sectoral standards, including risk management and due diligence practices as well as measures to comply with AML/CFT/sanctions best practices.⁸¹

III. Build collaborative initiatives among FIs and NPOs.

One of the most promising results of multi-stakeholder dialogues to date is the increased understanding and growing trust between the private and nonprofit sectors. Representatives of FIs and NPOs effectively collaborated to develop proposals for revising the BSA/AML Examination Manual and many of the proposals included in this report. The next phase of the MSWG should include specific joint FI-NPO initiatives to further build trust and promote effective dialogue and collaboration. The following are suggested topics for future joint initiatives.

NPOs and FIs collaboratively should:

- **Co-develop a best practices guide to assist NPOs with developing compliance programs to meet regulatory requirements.**⁸²
- **Co-create a checklist of information and documents that FIs require from NPOs to conduct adequate due diligence.**
- **Co-develop a repository of comprehensive information on NPOs** that FIs could utilize to perform due diligence on NPOs. Similar to SWIFT's Know-Your-Customer Registry, it would provide fee-based services, allowing users to conduct due diligence procedures quickly and cost-effectively, and rely on experts to confirm the veracity of the information.
- **Co-develop new payment platforms and technology solutions to financial access challenges.**

About the Authors

The Honorable Sue Eckert is a former senior fellow with the Humanitarian Agenda at the Center for Strategic and International Studies (CSIS), where she focused on issues related to financial access and the impact of sanctions and counterterrorism measures on humanitarian action. Previously, Ms. Eckert served as assistant secretary of commerce for export administration responsible for dual-use export control and sanctions policies; she also was a former staff member of the House of Representatives' Committee on Foreign Affairs, where she oversaw national security, nonproliferation, international trade, and technology transfer issues. From 1998 to 2016, Ms. Eckert was senior fellow at Brown University's Watson Institute for International and Public Affairs, where she codirected research projects on UN sanctions (coauthoring *Targeted Financial Sanctions: A Manual for Design and Implementation*, the book *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action* [Cambridge University Press, 2016], and a series of three "Watson Reports") and the financing of terrorism (coediting the book *Countering the Financing of Terrorism* [Routledge, 2007]). In 2017, she undertook the first quantitative study, *Financial Access for U.S. Nonprofits*, of the challenges that U.S. NPOs face in transferring funds abroad to support humanitarian programs. Based on this research, she served as a consultant to the World Bank on de-risking and unintended consequences of AML/CFT sanctions policies; she was also a senior adviser to the NY-based International Peace Institute on counterterrorism, sanctions, and humanitarian action. Ms. Eckert works extensively with the U.S. government, the United Nations, and other international organizations and member states, most recently on reform of sanctions to promote humanitarian action in conflict environments.

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Endnotes

- 1 For the full list of reports on the impact of AML/CFT/sanctions policies on humanitarian action, see “Financial Access,” CSIS, <https://www.csis.org/programs/humanitarian-agenda/projects/financial-access>.
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- 10 See Sue E. Eckert, “Counterterrorism, sanctions and financial access challenges: Course corrections to safeguard humanitarian action,” *International Review of the Red Cross* 103, no. 916-917 (2021): 415–458, <https://international-review.icrc.org/sites/default/files/reviews-pdf/2022-02/counterterrorism-sanctions-and-financial-access-challenges-916.pdf>.
- 11 Five reports/resources addressing the impact of sanctions, CT measures, and de-risking were found from 2008 and 2014. That number increased to 12 in 2015, 11 in 2016, 19 in 2017, 18 in 2018, 13 in 2019, 22 in 2020, and 13 in 2021. See list of related CSIS reports/resources at endnote 1.
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- 77 See GAO, *Bank Secrecy Act*.
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and provide avenues for third parties to rely on published letters. While the details of any such program would determine whether an FI would be able to leverage it, in a timely fashion, to facilitate transactions to high-risk jurisdictions, such a process could also assist U.S. government efforts to appropriately balance financial inclusion and national security priorities while also gaining a better understanding of what best practices from this space could be used to further inform other efforts.

- 79 Creation of a standardized list across FIs of necessary information and documentation banks normally require in deciding to provide financial services to NPOs would be helpful. It could be developed by associations of FIs since it would be necessary for FIs to share their internal requirements with a trusted third party.
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