AMLA

The Department of the Treasury's De-risking Strategy

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EXECUTIVE SUMMARY

For this study, Treasury focuses on "de-risking" as the practice of financial institutions terminating or restricting business relationships indiscriminately with broad categories of clients rather than analyzing and managing the risk of clients in a targeted manner. Such a practice is not consistent with the risk-based approach that is the cornerstone of the Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) regulatory framework for U.S. financial institutions under the Bank Secrecy Act (BSA) and implementing regulations.

As detailed in this strategy, de-risking undermines several key U.S. government policy objectives by driving financial activity out of the regulated financial system, hampering remittances, preventing low- and middle-income segments of the population, as well as other underserved communities, from efficiently accessing the financial system, delaying the unencumbered transfer of international development funds and humanitarian and disaster relief, and undermining the centrality of the U.S. financial system. As such, the strategy aims to provide potential solutions to promote financial inclusion by reducing barriers to the legitimate use of financial services as much as possible, while supporting efficient, safe, and affordable domestic and cross-border transactions.

The Anti-Money Laundering Act of 2020 (AMLA) mandated that the U.S. Department of the Treasury (Treasury), in consultation with federal and state banking regulators and appropriate public- and private-sector stakeholders, conduct a formal review of financial institution reporting requirements and develop a strategy to address the issue of de-risking. The AMLA further provided that Treasury's review should rely substantially on information obtained by an analysis of de-risking undertaken by the Government Accountability Office (GAO). As such, Treasury engaged in extensive consultation with the public and private sector to develop the foregoing strategy to address de-risking.[1] The strategy identifies the key customer categories that are impacted most often by de-risking, the top causal factors behind de-risking, and recommended policy options for combatting the phenomenon.

During the review, Treasury conducted consultations, primarily consisting of interviews, with more than three dozen public- and private-sector stakeholders, including Non-Profit Organizations (NPOs), financial institutions, and regulators, related to their experience and knowledge of de-risking and other factors that may present obstacles to obtaining and maintaining bank accounts. Treasury also conducted an extensive literature review and drew on Treasury's existing work on de-risking as well as the GAO de-risking analysis. Based on this research, Treasury concluded that a range of customers continue to experience challenges related to obtaining and maintaining bank accounts and other financial

1 Anti-Money Laundering Act of 2020, Pub. L. No. 116–283, Div. F, Title LXII, Sec. 6215(c)(1) (Jan. 1, 2021) ("AMLA"). In January 2021, Congress passed the AMLA, which required U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) (in consultation with federal functional regulators and relevant state financial regulators) to promulgate AML/CFT regulations. Due to the addition of the CFT, FinCEN is generally now using the term AML/CFT instead of BSA/AML.

services.[2] The strategy focuses on three customer categories in particular. First, small- and medium-size Money Service Businesses (MSBs), which are often used by immigrant communities in the United States to send remittances abroad, are highly vulnerable to de-risking. Second, NPOs operating abroad in high-risk jurisdictions face substantial de-risking challenges that can interfere with their operations meeting the basic human needs of extremely vulnerable populations. Finally, broad de-risking measures also impact foreign financial institutions with low correspondent banking transaction volumes. The problem is particularly acute for those operating in financial environments characterized by high Money Laundering/ Terrorism Financing (ML/TF) risks.

The review identifies profitability as the primary factor in financial institutions' de-risking decisions. However, the review also finds that profitability is influenced by a range of factors, such as a financial institution's available resources and the cost of implementing AML/CFT compliance measures and systems commensurate with the risk posed by a customer. The perceived potential for AML/CFT failures to result in fines also affects the profitability calculus. Other factors causing de-risking include reputational risk, risk appetite, a lack of clarity regarding regulatory expectations, and regulatory burdens, including compliance with sanctions regimes.

In the end, the U.S. government has limited authority to effectively address some drivers of de-risking, especially those related to business decisions of financial institutions. This strategy focuses on proposals that offer the potential for positive impact that outweigh the assessed risk and where Treasury has direct policy levers, even where that leads to some recommendations addressing secondary causes of the underlying problem. No individual recommendation is likely to be transformative on its own. The recommendations also reflect consideration of regulatory burdens. This report recommends that policymakers:

- Promote consistent supervisory expectations, including through training to federal examiners, that consider the effects of de-risking, as mandated by Section 6307 of the AMLA;
- Analyze account termination notices and notice periods that banks give NPO and MSB customers, and identify ways to support longer notice periods where possible;
- Consider proposing regulations pursuant to Section 6101 of the AMLA that require financial institutions to have reasonably designed and risk-based AML/CFT programs supervised on a risk basis, possibly taking into consideration the effects of financial inclusion;
- Consider clarifying and revising or updating AML/CFT BSA regulations and guidance for MSBs;
- Bolster international engagement to strengthen the AML/CFT regimes of foreign jurisdictions;
- Expand international cooperation and consider creative options, such as regional consolidation projects, with international counterparts to address the decline in correspondent banking relationships, especially for small foreign banks;
- Support efforts by international financial institutions (IFIs), including the International Monetary Fund

2 It is important to note that decisions to open, close or maintain accounts are made by banks based on a variety of factors including safety and soundness, AML/CFT, and other legitimate business considerations. The federal functional regulators generally do not direct banks to make these decisions but encourage banks to manage customer relationships and mitigate risks based on customer relationships, rather than decline to provide banking services to entire categories of customers. *See, e.g.*, Board of Governors of the Fed. Reserve System, Fed. Deposit Ins. Corp., FinCEN, Nat'l Credit Union Admin., Off. of the Comptroller of the Currency, "Joint Statement on the Risk-Based Approach to Assessing Customer Relationships and Conducting Customer Due Diligence" (Jul. 2022); Off. of the Comptroller of the Currency, "OCC Risk Management Guidance on Foreign Correspondent Banking: Risk Management Guidance on Periodic Risk Reevaluation of Foreign Correspondent Banking" (Oct. 2016).

(IMF) and Multilateral Development Banks (MDBs), to address de-risking through related projects and technical assistance;

- Continue to assess the opportunities, risks, and challenges of innovative and emerging technologies for AML/CFT compliance solutions, such as the development and implementation of government- and private sector-provided digital identity solutions that comply with applicable technical standards, to enable appropriate, risk-based customer identification and authentication, and encourage the adoption of these digital identity solutions by banks and MSBs;
- Build on Treasury's work to modernize the U.S. sanctions regime and its recognition of the need to specifically calibrate sanctions to mitigate unintended economic, political, and humanitarian impacts, as outlined in *The Treasury 2021 Sanctions Review*.[3]
- Reduce burdensome requirements for processing humanitarian assistance;
- Track and measure aggregate changes in banking relationships with respondent banks, MSBs, and NPOs; and
- Encourage ongoing public and private sector engagement with MSBs, NPOs, banks and regulators (federal and state), including to provide greater clarity on risk-focused BSA/AML supervision and regulatory requirements and to encourage information exchange.

1. THE PROBLEM OF DE-RISKING

a. The AMLA

On January 1, 2021, Congress enacted the AMLA to modernize and strengthen the U.S. AML/CFT framework. In the AMLA, Congress instructed the Comptroller General, through the GAO, to submit a report to Congress on the issue of de-risking of financial services. In addition, and after the analysis by GAO, Congress directed Treasury, in consultation with the federal functional regulators, state bank supervisors, state credit union supervisors, and appropriate public- and private-sector stakeholders, to complete a formal review of the financial institution reporting requirements related to BSA regulations and consider a range of factors related to the drivers and adverse consequences of de-risking.[4] Under the AMLA, the review should "propose changes, as appropriate, to those requirements…to reduce any unnecessarily burdensome regulatory requirements and ensure that the information provided fulfills the purpose described in [the Bank Secrecy Act]."[5] Section 6215 of the AMLA (Section 6215) requires that the formal review rely substantially on information obtained through the de-risking analysis conducted by the Comptroller General ("the GAO Report").[6] Finally, Section 6215 directed Treasury to develop a strategy to mitigate financial sector de-risking and the adverse effects of de-risking. This report reflects Treasury's formal review and includes the strategy.

b. What is De-risking?

Section 6215 defines the term "de-risking" to mean actions taken by a financial institution to terminate, fail to initiate, or restrict a business relationship with a customer, or a category of

3 *See generally* U.S. Dep't of the Treasury, *The Treasury 2021 Sanctions Review* (Oct. 2021), https://home.treasury.gov/system/files/136/Treasury-2021-sanctions-review.pdf.
4 AMLA, Sec. 6215(a)(4).
5 *Id.*
6 GAO, "Views on Proposals to Improve Banking Access for Entities Transferring Funds to High-Risk Countries," GAO-22-104792, 16 (Dec. 16, 2021), https://www.gao.gov/assets/gao-22-104792.pdf ("GAO Report").

customers, rather than manage risk associated with that relationship consistent with risk-based supervisory or regulatory requirements. A financial institution may de-risk due to drivers such as profitability, reputational risk, lower risk appetite, regulatory burdens or unclear expectations, or sanctions regimes.[7] However, the term is frequently used to mean different things by different observers. For the purposes of this study, Treasury is concerned primarily with the phenomenon of financial institutions making wholesale, indiscriminate decisions about broad categories of customers, rather than assessing and mitigating risk in a targeted way, and this is where our analysis and this strategy focus. The analysis and recommendations in this study focus on indiscriminate and overly broad policies that restrict access to services rendered by financial institutions. This approach is distinct from categorizing all decisions not to provide services on the basis of risk as de-risking because it recognizes that some financial institutions may reasonably conclude that they lack the ability to mitigate the risk of a particular customer. Financial institutions have different business models and different levels of capacity to mitigate risks. This inevitably leads to different conclusions about what customers a given financial institution can handle. The strategy does not treat this kind of considered, risk-based decision about what risks a customer poses and what mitigation a bank can pursue to be de-risking. Rather, as contemplated in this strategy, de-risking refers to wholesale, indiscriminate decisions that lump together broad categories of customers without careful consideration of their risks and the ability of the financial institutions to mitigate those risks.

c. Why De-risking Matters

Treasury is charged with protecting the U.S. financial system pursuant to its statutory authority under the BSA. The Secretary of the Treasury has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations.[8] The BSA requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering and terrorist financing.[9] To carry out these purposes, the BSA, as implemented by regulations issued by FinCEN, requires financial institutions to implement and maintain AML/CFT programs, keep records, and file reports (e.g., Suspicious Activity Reports (SARs)) in certain circumstances.[10] The BSA and implementing regulations also require certain non-financial trades and businesses to keep records and file certain reports, when, for example, such a business engages in transactions involving more than $10,000 in currency.[11] Treasury also imposes sanctions through its

7 AMLA, Sec. 6215(c)(1).

8 Treasury Order 180–01 (Jan. 14, 2020); *see also* 12 U.S.C. §§ 1818(s) & 1786(q) (governing the statutory requirements for compliance programs by the FBAs).

9 The BSA exists to obtain required reports or records that are "highly useful" in "criminal, tax, or regulatory investigations, risk assessments, or proceedings;" or "intelligence or counterintelligence activities . . . to protect against terrorism;" to "prevent the laundering of money and the financing of terrorism through the establishment by financial institutions of reasonably designed risk-based programs to combat money laundering and the financing of terrorism;" to "facilitate the tracking of money that has been sourced through criminal activity or is intended to promote criminal or terrorist activity;" to "assess the money laundering, terrorism finance, tax evasion, and fraud risks to financial institutions, products, or services;" and to "establish appropriate frameworks for information sharing among financial institutions, their agents and service providers, their regulatory authorities, associations of financial institutions, the Department of the Treasury, and law enforcement authorities[.]" 31 U.S.C. § 5311(1)–(5).

10 31 U.S.C. §§ 5318(h)(1), 5318(l)(1), 5318(g)(5). AML/CFT programs for financial institutions generally include the following pillars: (1) internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. *See* 31 U.S.C. § 5318(h)(1). The four core elements of customer due diligence (CDD) are: "(1) customer identification and verification, (2) beneficial ownership identification and verification, (3) understanding the nature and purpose of customer relationships to develop a customer risk profile, and (4) ongoing monitoring for reporting suspicious transactions and, on a risk-basis, maintaining and updating customer information." *See* 81 FR 29397, 29398 (Jul. 11, 2016).

11 31 C.F.R. § 1010.330(a)(1)(i); *see also* 31 U.S.C. § 5331; 26 U.S.C. § 7701(a)(1).

Office of Foreign Assets Control (OFAC) pursuant to other legal authorities to advance a variety of U.S. foreign policy goals. Sanctions are a critical lever in U.S. national security and foreign policy.

De-risking can harm Treasury's mandate to protect the U.S. financial system. BSA tools work best when funds exist within the regulated financial system. De-risking can increase the use of financial services that exist outside of that regulated financial system,[12] undermining the purposes of the BSA by making it harder to detect and deter illicit finance. The marginalization of certain categories of customers through de-risking also raises the specter of sanctions evasion. Increased reliance on unregistered financial mechanisms by customers excluded from the regulated financial system can create a potential profit center for criminals. De-risking could also lead to an erosion of the centrality of the United States in the international financial system. Accordingly, addressing the phenomenon of de-risking can improve the integrity as well as the stability of the U.S. financial system.

Moreover, de-risking hampers the unencumbered flow of development funding, as well as humanitarian and disaster relief. As detailed below, de-risking can prevent NPOs from carrying out activities critical to the provision of legitimate humanitarian assistance. De-risking by U.S. financial institutions can also cause economic damage in strategically important regions if such measures prevent individual remittances from flowing efficiently.

2. ILLICIT FINANCE RISKS AND REGULATORY OVERVIEW OF MSBS, NPOS, AND FOREIGN RESPONDENT BANKS

In considering the decisions banks face as they determine whether to grant access to certain kinds of customers, it is important to keep AML/CFT risks in mind. While this review concludes that profitability constitutes the main driver of de-risking, the very real illicit finance risks posed by the kinds of customers most affected by de-risking are often a key factor in whether accounts can be maintained on a profitable basis. These risks create important context for the decisions made by correspondent banks, regulators, supervisors, and customers themselves. Moreover, the risks must be kept in mind as Treasury crafts a strategy to address the negative impacts of de-risking.

As Treasury details below, MSBs, NPOs with international operations, and foreign respondent banks have the potential to present high illicit finance risks, especially when operating in high-risk jurisdictions for money laundering, terrorist financing, and proliferation financing activity. Non-transparent customer identification and similar practices, as well as fragmented or inadequate ML/TF regulation and supervision in certain foreign jurisdictions may contribute to these risks, and in some cases, the risk is not sufficiently mitigated by due diligence policies.

Since 2015, Treasury has identified money laundering, terrorist financing, and proliferation financing risks and vulnerabilities associated with the kinds of entities most vulnerable to de-risking, including foreign banks involved in correspondent services, MSBs, and NPOs operating in high-risk jurisdictions. While risk profiles vary, Treasury has identified illicit finance abuse impacting each of these entities across its national risk assessments. As U.S. banks have an obligation to protect the security of the

12 This includes Informal Value Transfer Systems (IVTS). *See* FinCEN, *Informal Value Transfer Systems* (Mar. 2003), https://www.fincen.gov/sites/default/files/advisory/advis33.pdf (defining IVTS as "any system, mechanism, or network of people that receives money for the purpose of making the funds or an equivalent value payable to a third party in another geographic location, whether or not in the same form…outside of the conventional banking system").

U.S. financial system by maintaining strong AML/CFT compliance and sanctions programs, they may hesitate to serve these entities, in part due to the identified illicit finance risks.

As it relates to regulatory burdens or unclear expectations, interviewed industry participants highlighted that they were unsure as to what types and level of activity federal or state examiners may deem higher risk and thus could cause additional and unwanted scrutiny and inquiry during an examination. Representatives of financial institutions stated that, in their view, the scrutiny of certain activities went beyond routine examination questions at times and reflected an unspoken belief on the part of regulators that they should not be engaging in such business based on examiner expectations. The perceived potential for added scrutiny was cited by numerous financial institutions interviewed as a reason they may choose not to bank or service certain accounts. Federal regulators noted that asking about perceived high risk activity is a normal part of the examination process, including safety and soundness as well as AML/CFT and this approach is central to effective bank supervision.

a. Money Services Businesses

MSBs offer foreign currency exchange, prepaid access, check cashing, money transmission, and issuance and sale of travelers checks and money orders, among other services. These are critically important services to underserved populations, and Treasury has consistently noted that banks should assess all customers on a case-by-case basis, and no individual type of customer, including MSBs, should be considered uniformly high risk.[13] At the same time, Treasury's national risk assessments have noted that MSBs are vulnerable to misuse by criminal organizations for illicit purposes.

In Treasury's National Money Laundering Risk Assessments (NMLRA) and National Terrorist Financing Risk Assessments (NTFRA), Treasury noted that MSBs can be exploited for illicit purposes. In particular, MSBs are vulnerable to misuse by criminal organizations, including drug trafficking organizations and terrorist financing groups.[14] The 2022 NMLRA emphasized several examples of the heightened risk posed by MSBs, especially with respect to "high-risk cross-border corridors," such as U.S. financial transfers to China, and "weak AML/CFT compliance practices in small MSB providers servicing international corridors in general."[15] In the 2018 and 2022 NTFRAs, Treasury identified MSBs as having been used by certain terrorist groups, including Al-Shabaab and other Al-Qaeda affiliates.[16]

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13 *See* Board of Governors of the Fed. Reserve System, Fed. Deposit Ins. Corp., FinCEN, Nat'l Credit Union Admin., Off. of the Comptroller of the Currency, Off. of Thrift Supervision, "Joint Statement on Providing Banking Services to Money Services Businesses," 1 (Mar. 30, 2005), https://www.fincen.gov/sites/default/files/guidance/bsamsbrevisedstatement.pdf; Board of Governors of the Fed. Reserve System, Fed. Deposit Ins. Corp., FinCEN, Nat'l Credit Union Admin., Off. of the Comptroller of the Currency, "Joint Statement on Risk-Based Approach to Assessing Customer Relationships and Conducting Customer Due Diligence," 1 (Jul. 6, 2022), https://www.fincen.gov/sites/default/files/2022-07/Joint%20Statement%20on%20the%20Risk%20Based%20Approach%20to%20Assessing%20Customer%20Relationships%20and%20Conducting%20CDD%20FINAL.pdf.

14 U.S. Dep't of the Treasury, *National Money Laundering Risk Assessment 2015*, 22 (2015), https://home.treasury.gov/system/files/246/National-Money-Laundering-Risk-Assessment-06-12-2015.pdf ("*NMLRA 2015*"); U.S. Dep't of Treasury, *National Money Laundering Risk Assessment 2018*, 33 (2018), https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf ("*NMLRA 2018*").

15 U.S. Dep't of the Treasury, *National Terrorist Financing Risk Assessment 2022*, 53 (2022), https://home.treasury.gov/system/files/136/2022-National-Terrorist-Financing-Risk-Assessment.pdf ("*NTRFA 2022*").

16 U.S. Dep't of the Treasury, *National Terrorist Financing Risk Assessment 2018*, 20 (2018), https://home.treasury.gov/system/files/136/2018ntfra_12182018.pdf ("*NTFRA 2018*"); *NTFRA 2022* at 18.

Treasury risk assessments have also identified that significant vulnerabilities are presented by unregistered MSBs. According to the 2022 NMLRA, "[t]he United States continues to see cases of MSBs which operate without required registration or licensing and therefore fall outside the state and federal AML/CFT regulation and supervision."[17] In addition, complicit employees or owners that facilitate terrorist financing activities and the use of foreign agents, who are often less well supervised than MSB principals, present risks.[18]

MSBs are subject to many different regulatory regimes, including both state and federal regimes. States examine MSBs for prudential concerns and compliance with AML and consumer protection laws and regulations. There are currently over 50 distinct licensing, examination, and supervisory regimes for MSBs in the United States, as most states,[19] Washington, D.C., and U.S. territories have oversight processes for MSBs.[20] In addition to distinct oversight regimes, the laws relevant to MSBs in each state, district, and territory also differ.

Since 2004, state legislators and bank regulators have attempted to harmonize the varying regulatory frameworks and standardize the financial institution examination process across regulatory regimes. In 2004, the Uniform Law Commission[21] amended the Uniform Money Services Act (UMSA), which created a safety and soundness framework for certain MSBs, including check cashers, money transmitters, and currency exchangers. Twelve jurisdictions, including states and territories, have enacted the USMA, though differences between the 12 persist.[22]

More recently, in August 2021, the Board of Directors of the Conference of State Bank Supervisors (CSBS) approved and published the "Model Money Transmission Modernization Act" (Model Law), to harmonize state laws and regulatory regimes.[23] According to CSBS, the Model Law provides "a single set of nationwide standards and requirements created by industry and state experts."[24] The Model Law includes a reference point for state regulators to establish common regulations, definitions, and safety and soundness requirements, among other standardization practices. Some states have adopted the Model Law in its entirety, while other states have sought to amend existing laws and regulations to

17 U.S. Dep't of the Treasury, *National Money Laundering Risk Assessment 2022*, 26 (Feb. 2022). https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf ("*NMLRA 2022*").

18 *NTFRA 2022* at 22.

19 Montana's Banking & Financial Institutions website indicates that "[t]here is currently no legislation from the Montana Division of Banking (Division) regulating Money Service Businesses" and that MSBs do not need to be licensed with the Division to operate their businesses in Montana. The MSBs must, however, register as a business with the Montana Secretary of State. There is one exception related to MSB activities concerning escrow transactions, as defined by statute. Mont. Code Anno. § 32-7-102.

20 Conf. of State Bank Supervisors (CSBS), *CSBS 2021 Annual Report* (Apr. 2022), https://www.csbs.org/sites/default/files/2022-05/CSBS%20Report%202021%20Final_0.pdf. State-licensed MSBs handled approximately $2.6 trillion in transactions in the U.S. in 2020, according to the CSBS 2021 Annual Report.

21 The Uniform Law Commission is a non-profit unincorporated association that provides U.S. states with "rules and procedures that are consistent from state to state." It is represented by individuals who are members of the state bar associations including judges, legislators, law professors, and legislative staff, appointed by state governments, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Uniform L. Comm'n, "About Us," (2023), https://www.uniformlaws.org/aboutulc/overview.

22 CSBS, "Reengineering Nonbank Supervision, Chapter One: Introduction to the Nonbank Industry," (2020), https://www.csbs.org/sites/default/files/chapter_one_-_introduction_to_the_nonbank_industry_cover_footer_1_v2.pdf; *id.* at "Chapter Two: Overview of Nonbank Supervision," https://www.csbs.org/sites/default/files/chapter_two_-_overview_of_state_nonbank_supervision_2.pdf.

23 CSBS is a nonprofit association with a mission to "support state regulators in advancing the system of state financial supervision by ensuring safety, soundness, and consumer protection" while promoting "economic growth" and "fostering innovative, responsive supervision." CSBS, "About CSBS," (2023), https://www.csbs.org/about#contact CSBS.

24 CSBSs, "The Model Money Transmission Modernization Act, Frequently Asked Questions," (2021), https://www.csbs.org/sites/default/files/2021-09/Money%20Transmitter%20Model%20Law%20FAQs_091621.pdf.

reflect a similar set of definitions, as set forth in the Model Law.[25]

In addition to the Model Law, CSBS introduced networked supervision, which allows state regulators to access and connect to a multistate "State Examination System." This system allows state regulators to securely share information and employ a single comprehensive exam.[26] According to the CSBS 2021 annual report, 29 states also implemented the standardized licensing process for managing state licensing authority through the Multistate MSB Licensing Agreement, and 74 companies that operated in 40 or more states were examined through the multi-state examination program.[27]

At the federal level, MSBs must register with FinCEN and satisfy certain AML/CFT requirements. As such, MSBs are required to maintain an effective AML/CFT program reasonably designed to prevent illicit activity, including money laundering and terrorist financing. Pursuant to federal AML/CFT laws and regulations, MSBs are obligated to have a written AML/CFT program that includes policies, procedures, and internal controls reasonably designed to ensure compliance. In addition, an AML/CFT program should include a designated BSA compliance person, provide for education and training of staff, and conduct an independent review of its AML program "to monitor and maintain an adequate program."[28] The "scope and frequency of the review shall be commensurate with the risk of the financial services provided."[29] MSBs must request and verify customer identification information,[30] retain records, and report certain cash transactions and suspicious activity. MSBs must also file Reports of Foreign Bank and Financial Accounts (FBARs) and Reports of International Transportation of Currency or Monetary Instruments (CMIRs), as appropriate, and maintain records of monetary instruments transactions.[31] Currently, although MSBs are required to obtain customer identification information for certain activity, they do not have a requirement to conduct customer due diligence. They also have no obligation to share with banks the specific identification information concerning their customers.

Over 26,000 MSBs are registered with FinCEN.[32] FinCEN delegated its examination authority of MSBs to the Small Business/Self Employed Division of the Internal Revenue Service (IRS). The IRS examines MSBs for compliance with the BSA on a periodic basis. Due to resource constraints, some MSBs may not be subject to frequent or routine examinations to assess compliance with relevant state and federal laws and regulations. In some cases, the federal government may rely on states to conduct examinations. According to the Money Remittances Improvement Act,[33] Treasury may, under certain

25 West Virginia and Arizona incorporated most of the Money Transmitter Model Law, as provided by CSBS, in updating their respective money transmission laws, as provided in Ariz. Stat. Ann. § 6-1201 and W. Va. Code § 32A-2-8a & W. Va. Code § 32A-2-8b, respectively. South Dakota enacted some amendments to its codified money transmitter laws, including adding and amending definitions to incorporate examinations where the "director may utilize multistate record production standards and examination procedures" as well as "the director may participate in multistate supervisory processes established between states and coordinated through the [CSBS], Money Transmitter Regulators Associations, and affiliates and successors thereof for all licensees in this state and other states." S.D. Codified Laws §§ 51A-17-27, 51A-17-51. Also, the Nevada Financial Institutions Division introduced a bill on September 16, 2022, to adopt the Money Transmitter Model Law.

26 CSBS, "Networked Supervision," https://www.csbs.org/networked-supervision.

27 *CSBS 2021 Annual Report* at 29.

28 31 C.F.R. § 1022.210(d)(4); 31 U.S.C. § 5318(h)(1).

29 31 C.F.R. § 1022.210(d)(4).

30 MSBs are required to collect customer information for funds transfers of $3,000 or more.

31 *See generally* 31 C.F.R. Subpart C.

32 FinCEN, "MSB Registrant Search," https://www.fincen.gov/msb-registrant-search.

33 Money Remittances Improvement Act of 2014, Pub. L. No. 113-156 (2014).

circumstances, "rely on examinations conducted by a State supervisory agency"[34] for examinations, among others, of "a licensed sender of money or any other person who engages as a business in the transmission of currency, funds, or value that substitutes for currency."[35]

In addition, the Consumer Financial Protection Bureau (CFPB) conducts examinations of non-depository remittance transfer providers that are defined as larger participants[36] under federal consumer financial laws. Among other things, the CFPB conducts examinations to assess consumer disclosures, error resolution, and cancellation rights.[37] Under the Consumer Financial Protection Act, the CFPB has enforcement authority for violations of the Remittance Rule, in addition to potential unfair, abusive, and deceptive acts and practices committed by remittance transfer providers.

b. Non-Profit Organizations

U.S.-based tax-exempt charitable organizations are essential to providing humanitarian aid and other assistance to vulnerable populations in the United States and internationally. As previously indicated in Treasury's risk assessments, the U.S. government "does not view the charitable sector as a whole as presenting a uniform or unacceptably high risk of being used or exploited for money laundering, terrorist financing or sanctions violations," but has recognized that "U.S. charities that operate abroad, provide funding to, or have affiliated organizations in conflict regions, can face potentially higher risks."[38] The 2022 NTFRA found that most charities in the United States operate and comply with U.S. laws, not all charitable organizations "present the same level of [TF] risks," and the majority of charities that operate in the United States face little risk of TF abuse.[39]

Charitable organizations in the United States can be structured as a "corporation, trust or unincorporated association."[40] Further, to qualify under 501(c)(3) tax-exempt status, charitable organizations must be organized and operate under an exempt purpose. Tax-exempt charitable organizations file annual exempt organization returns with the IRS on Form 990. Charitable organizations that conduct activities outside of the United States, including "grants and other assistance; program-related investments; fundraising activities; unrelated trade or business; program services; investments; or maintaining offices, employees, or agents for the purpose of conducting any such activities in regions outside the United States,"[41] must file a Schedule F to Form 990. Charities have certain licensing requirements with state and local governments that vary depending on the purpose of the charitable organization and the licensing standards in each jurisdiction. Additionally, all charities are required to comply with U.S. sanctions regulations, which often contain general licenses or exceptions to facilitate humanitarian activity under certain circumstances. However, charities have no mandatory AML/CFT obligations.

Treasury's 2022 NMLRA highlighted that NPOs can be vulnerable to abuse. In many cases, the abuse takes the form of fraudulent or sham charitable organizations. For example, the 2022 NMLRA specifically

34 31 U.S.C. § 5318(a)(6).
35 *Id.* § 5312(a)(2).
36 12 C.F.R. § 1090.
37 *Id.* § 1005.
38 *NTFRA 2018* at 23.
39 *NTFRA 2022* at 24.
40 I.R.S. Pub. 4220, 3 (Rev. 3-2018); *see also* IRS, "Applying for 501(c)(3) Tax Exempt Status," https://www.irs.gov/pub/irs-pdf/p4220.pdf.
41 IRS, "2022 Instructions for Schedule F (Form 990)," 1 (Jul. 13, 2022), https://www.irs.gov/pub/irs-pdf/i990sf.pdf.

referenced an instance in which a Russian telecommunications company and its Uzbek subsidiary used legal entities, including shell companies and purported charities, to pay approximately $420 million in bribes to an Uzbek official via the U.S. financial system. The 2022 NTFRA also documented the threat of TF abuse of the NPO sector. Some terrorist supporters have engaged in fraudulent fundraising efforts under the auspices of charitable activity. In certain cases, Treasury identified instances in which legitimate charitable donations were diverted to terrorist groups or where a charitable organization knowingly or intentionally provided logistical or recruitment services to support terrorist groups. Treasury's 2015 and 2018 NTFRAs also highlighted real world examples of TF abuse of the NPO sector. Those risk assessments identified eight designated charities as supporting terrorist organizations under Executive Order 13224. At least some of these instances led to indictments and convictions. In addition, Treasury identified sham charitable organizations that purported to provide financial support to fund schools and orphanages, but in reality, the funds were directed to terrorist activities.

Importantly, the vast majority of U.S.-based tax-exempt charitable organizations face little risk of TF abuse. Treasury's assessments note that the NPO sector as a whole has greatly improved risk mitigation measures.[42] Treasury recognizes that U.S. charities "increasingly utilize a range of risk mitigation measures to limit and manage possible TF risks, including governance, transparency, accountability, and due diligence measures."[43] Further, Treasury highlights that organizations that receive funding from the U.S. Agency for International Development (USAID), which plays a central role in U.S. international development and humanitarian efforts, for activities in "high-risk environments" must implement certain due diligence and risk mitigation measures that ensure compliance with U.S. sanctions.[44]

c. Correspondent Banking Relationships with Foreign Financial Institutions

U.S. correspondent banks that provide large dollar-clearing services play an important role in facilitating international trade and finance. Foreign financial institutions establish relationships with U.S. correspondent banks to access the U.S. financial system for cross-border transactions and to support international trade and development, remittances, and humanitarian aid.[45] U.S. correspondent banks provide depository, payments, and other financial services for foreign financial institutions to facilitate access to the U.S. financial system.[46] The U.S. correspondent bank may provide these services to foreign financial institutions through a traditional correspondent banking relationship where the U.S. correspondent bank provides services directly to the foreign respondent bank, based on an agreement. U.S. correspondent banks can facilitate services for customers that have a relationship with the foreign financial institution. This occurs when the foreign respondent bank maintains the relationship with its customers that conduct business through the correspondent account,[47] also referred to as a nested correspondent account. At the same time, Treasury has

42 *NTFRA 2018* at 22.
43 *NTFRA 2022* at 23.
44 USAID, *Risk Assessment and Management Plan for High Risk Environments*, Annex I (Nov. 2022).
45 Cong. Rev. Serv., *Overview of Correspondent Banking and "De-Risking" Issues*, IF10873 (Apr. 8, 2022), https://crsreports.congress.gov/product/pdf/IF/IF10873/3.
46 31 C.F.R. § 1010.605(c)(1)(i).
47 Another correspondent banking relationship includes a payable through account where "the respondent bank allows its customers to directly access the correspondent account," without the respondent bank facilitating the transactions. *See* Bank for Int'l Settlements (BIS), Comm. on Payments and Market Infrastructure, "Correspondent Banking," 11 (Jul. 2016), https://www.bis.org/cpmi/publ/d147.pdf.

identified correspondent banking as a key vulnerability in its 2022 "National Strategy for Combating Terrorist and other Illicit Financing" report (Illicit Finance Strategy).[48]

As previously noted in Treasury's risk assessments, the AML/CFT laws and regulatory requirements and controls as well as record keeping requirements and supervisory regimes in foreign jurisdictions vary significantly. In jurisdictions with weak AML/CFT supervision, U.S. correspondent banks could be exposed to potential illicit activity, including terrorist financing and money laundering. In addition, cross-border transfers through foreign financial institutions could be extended through intermediary accounts at other financial institutions, which can exacerbate challenges relating to the transparency of the transactions that ultimately go through the correspondent account. As noted in the Illicit Finance Strategy, "[w]hen U.S. banks receive funds or instructions for a funds transfer from a foreign respondent, it is unlikely they have an account relationship with the originator of the payment, who is either a direct or an indirect client of the respondent,"[49] and therefore the correspondent bank has limited information about the transaction. As such, Treasury's 2022 NMLRA noted the risks posed by correspondent accounts in certain higher risk jurisdictions and referenced several civil penalties associated with failures of customer due diligence practices by financial institutions in such jurisdictions.[50]

Treasury has also identified instances in which terrorist groups may have facilitated funds transfers through correspondent accounts. In Treasury's 2018 NTFRA, U.S. authorities "identified instances where ISIS operatives routed transactions through third parties" and directed "financial activity through neighboring localities"[51] to avoid detection. Treasury's 2022 NTFRA further emphasized the threat of ISIS creating shell companies and other legal entities and employing operatives to route transactions through complicit individuals, including "complicit employees facilitating TF activity," which can lead to correspondent banks unwittingly processing transactions related to terrorist groups or organizations.[52] Moreover, correspondent banking relationships continue to be used for proliferation financing, as provided in Treasury's National Proliferation Financing Risk Assessments (NPFRA). The 2022 NPFRA noted that the size of the U.S. financial system and the centrality of the U.S. dollar in payments exposes U.S. banks that operate internationally to illicit use for proliferation financing.[53] Proliferation networks' use of "opaque corporate entities to engage with the U.S. financial system" for what appears to be legitimate commercial activities, could indirectly operate through correspondent banking networks.[54] This same activity has been identified in previous NPFRAs.

48 U.S. Dep't of the Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing 2022*, 15 (May 2022), https://home.treasury.gov/system/files/136/2022-National-Strategy-for-Combating-Terrorist-and-Other-Illicit-Financing.pdf.

49 *Id*.

50 *NTFRA 2022* at 51–52, 54.

51 *NTFRA 2018* at 9.

52 *NTFRA* 2022 at 7.

53 U.S. Dep't of the Treasury, *National Proliferation Financing Risk Assessment 2022*, 15–17 (Feb. 2022), https://home.treasury.gov/system/files/136/2022-National-Proliferation-Financing-Risk-Assessment.pdf ("*NPFRA 2022*").

54 *Id*. at 17.

3. BANK REGULATORY REQUIREMENTS

U.S. banks have an obligation to assist in protecting the integrity of the U.S. financial system and safeguarding U.S. national security by complying with BSA requirements to identify customers and the nature of their activity, including implementing reasonably designed AML/CFT programs that guard against potential money laundering, terrorist financing, or other illicit financial activity. U.S. banks are required to implement various programmatic, reporting, and recordkeeping obligations to prevent facilitating money laundering or terrorist financing and to identify suspicious financial activity. U.S. banks are also subject to extensive regulatory oversight and may face civil or criminal fines and forfeitures for significant failures. Implementing a reasonably designed AML/CFT program may lead banks to close accounts or restrict access to individuals or entities who may pose a risk they cannot effectively mitigate for legitimate reasons. As noted above, different business models and differences in AML/CFT capacity naturally lead to differences in the kinds of customers a financial institution can accept. This would not be considered a de-risking concern if it is done pursuant to a targeted assessment of risk and possible mitigation; on the contrary, the U.S. AML/CFT regime is underpinned by the assessment and management of risk.

Banks have specific AML/CFT program requirements. Banks are required to maintain internal policies, procedures, and controls to identify customers and the nature of their activities, undergo independent testing, designate a person responsible for AML monitoring and compliance, train staff, and maintain "[a]ppropriate risk-based procedures for conducting ongoing customer due diligence" in line with Customer Due Diligence (CDD) Rule requirements.[55] Regarding the latter, U.S. banks must at a minimum: "(1) identify and verify the identity of customers; (2) identify and verify the identity of the beneficial owners of companies opening accounts; (3) understand the nature and purpose of customer relationships to develop customer risk profiles; and (4) conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, maintain and update customer information."[56] Further, as part of a bank's obligations, banks must implement a written Customer Identification Program (CIP).[57] Banks must maintain the identifying information collected for five years after the account is closed. Additionally, banks are required to confirm whether the customer "appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with Federal functional regulators."[58]

FinCEN, in consultation with the federal functional regulators, issued guidance in the form of FAQs on July 19, 2016, April 3, 2018, and August 3, 2020 concerning CDD requirements.[59] In July 2022, FinCEN, in coordination with the Federal Banking Agencies (FBAs), issued a joint statement in regard to conducting a risk-based approach and conducting CDD for customer relationships.[60] Further,

55 31 C.F.R. § 1020.210(a)(2)(v).

56 *Id.*; 31 C.F.R. § 1020.210 (b)(2)(v).

57 31 C.F.R. § 1020.220(a).

58 *Id.* § 1020.220(a)(4).

59 FinCEN, "Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions," FIN-2016-G003 (Jul. 19, 2016), https://www.fincen.gov/sites/default/files/2016-09/FAQs_for_CDD_Final_Rule_%287_15_16%29.pdf ; FinCEN, "Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions," FIN-2018-G001 (Apr. 3, 2018), https://www.fincen.gov/sites/default/files/2018-04/FinCEN_Guidance_CDD_FAQ_FINAL_508_2.pdf, FinCEN, "Frequently Asked Questions Regarding Customer Due Diligence (CDD) Requirements for Covered Financial Institutions," FIN-2020-G002, (Aug. 3, 2020), https://www.fincen.gov/sites/default/files/2020-08/FinCEN_Guidance_CDD_508_FINAL.pdf.

60 Board of Governors of the Fed. Reserve System, Fed. Deposit Ins. Corp., FinCEN, Nat'l Credit Union Admin., Off. of the Comptroller of the

covered financial institutions[61] have a regulatory obligation to conduct enhanced due diligence (EDD) concerning correspondent accounts for foreign financial institutions and private banking accounts established for non-U.S. persons who are direct or beneficial owners of the account.[62] In addition, if due diligence or EDD cannot be performed for a foreign correspondent account, then the covered financial institution "should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account."[63]

In addition to the EDD requirements for correspondent accounts and private banking accounts, Treasury requires U.S. banks to take "[s]pecial measures for jurisdictions, financial institutions or international transactions of primary money laundering concern."[64] The identified jurisdictions, financial institutions, or international transactions are provided on FinCEN's site and titled "311 Special Measures," and include the title of the entity, jurisdiction, transaction or financial institution, as well as the findings, relevant notice of proposed rulemaking, final rule, and whether the rule was rescinded.[65] As a result of identification by the Treasury, banks may be required to take special measures relating to the jurisdiction, entity, or transaction, such as certain recordkeeping and reporting requirements, including for transactions outside the United States, and maintain beneficial ownership information. In addition, banks that maintain payable-through accounts and correspondent accounts with customers that involve the jurisdictions identified may be required to further identify each customer that uses the account "or whose transactions are routed through"[66] such account and obtain certain records.

Banks are also subject to certain reporting requirements including filing reports related to currency transactions,[67] suspicious activity,[68] and foreign transactions with foreign financial agencies.[69] In addition to filing these reports, banks must maintain the reports and supporting documentation and maintain records pertaining to funds transfers of $3,000 or more.[70] Also, banks must provide information to government law enforcement agencies when requested, based on "credible evidence concerning terrorist activity or money laundering."[71] Banks may also "transmit, receive, or otherwise share information with any other financial institution or association of financial institutions…for purposes of identifying and, where appropriate, reporting activities that the financial institution or association suspects may involve possible terrorist activity or money laundering."[72]

Finally, to remain compliant with sanctions regulations, "OFAC strongly encourages organizations

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Currency, "Joint Statement on the Risk-Based Approach to Assessing Customer Relationships and Conducting Customer Due Diligence," (Jul. 6, 2022), https://www.fincen.gov/sites/default/files/2022-07/Joint%20Statement%20on%20the%20Risk%20Based%20Approach%20to%20Assessing%20Customer%20Relationships%20and%20Conducting%20CDD%20FINAL.pdf.

61 31 C.F.R. § 1010.605(e)(1). Covered financial institutions includes a bank, broker/dealer, futures commission merchant or introducing broker required to be registered with the Commodity Futures Trading Commission, and a mutual fund required to have an AML compliance program.

62 31 C.F.R. §§ 1010.610 & 1010.620.

63 *Id.* § 1010.610(d).

64 *Id.* § 5318A, implemented through Section 1010(f).

65 FinCEN, "FinCEN 311 Special Measures," https://www.fincen.gov/resources/statutes-and-regulations/311-special-measures.

66 31 U.S.C. § 5318A(3)–(4).

67 *Id.* §§ 1010.310 & 1010.311.

68 *Id.* § 1010.320

69 *Id.* § 1010.360

70 *Id.* § 1020.410(a)

71 *Id.* § 1010.520(b)

72 *Id.* § 1010.540(b).

subject to U.S. jurisdiction…to employ a risk-based approach to sanctions compliance by developing, implementing, and routinely updating a sanctions compliance program."[73] The sanctions compliance program, at a minimum, should include "(1) management commitment; (2) risk assessment; (3) internal controls; (4) testing and auditing; and (5) training."[74] In addition, OFAC's guidance provides that there should be adequate resources, including, for example, a "dedicated OFAC sanctions compliance officer," trained and knowledgeable staff, and sufficient controls.[75] The program should assess the risks related to customers, products and services offered, and geographic locations. Additionally, risk assessments should be conducted regularly based on the potential risk posed by "customers, products, services, supply chain, intermediaries, counter-parties, transactions, and geographic locations, depending on the nature of the organization."[76]

While FinCEN administers the BSA, it delegates its examination authority to the FBAs for federal bank AML/CFT examinations. FBAs, including the Federal Reserve Board, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the National Credit Union Administration (NCUA), supervise certain banks for safety and soundness and compliance with BSA/AML, fair lending, and consumer protection laws. FBAs also rate banks for their performance under the CRA. Additionally, state-chartered banks are supervised and examined by their respective state supervisor. The FBAs use a risk-focused approach and are required to examine banks on a periodic basis to determine whether the banks are operating in compliance with BSA/AML law and regulations in accordance with the requirements set out in 12 U.S.C. § 1820, "Administration of Corporation," and § 1818, "Termination of status as insured depository institution." The FBAs issue regulations, provide joint statements and guidance, and publish examination procedures for the entities that they regulate.

To address the risks related to MSBs and in recognition that remittances and other financial services that MSBs provide require legitimate and transparent channels, FinCEN and the FBAs as early as 2005 issued interagency interpretive guidance on providing banking services to MSBs operating in the United States. This same guidance remains in effect and is currently cited in the Federal Financial Institution Examination Council BSA/AML Examination Manual for bank examiners (FFIEC Manual).[77] Further, according to this guidance, banks are directed to file a suspicious activity report (SAR) if the bank becomes aware that an MSB "customer is operating in violation of the registration or state licensing requirement."[78] Banks' perceptions are further impacted by the direction in the 2005 MSB guidance as well as the requirement to file a SAR, if the MSB does not meet one of the customer due diligence steps. These additional requirements and expectations only apply to MSBs and not to any other category of customer.

To address NPO-related concerns, FinCEN in coordination with the FBAs issued a fact sheet providing clarity on how banks should apply the risk-based approach to NPO accounts. The fact sheet included

73 U.S. Dep't of the Treasury, Off. Foreign Assets Control, "A Framework for OFAC Compliance Commitments," https://home.treasury.gov/system/files/126/framework_ofac_cc.pdf.
74 *Id.*
75 *Id.*
76 *Id.*
77 FFIEC, *BSA/AML Examination Manual*, https://bsaaml.ffiec.gov/manual.
78 FinCEN, Board of Governors of the Fed. Reserve System, Fed. Deposit Ins. Corp., Nat'l Credit Union Admin., Off. of the Comptroller of the Currency, Off. of Thrift Supervision, "Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States," 8 (Apr. 2005), https://www.fincen.gov/sites/default/files/guidance/guidance04262005.pdf.

guidance on how to apply a risk-based approach to CDD[79] and examples of information that banks can collect as part of their due diligence requirements.[80] The FFIEC manual also provided updates to remind examiners that AML/CFT compliant banks that reasonably manage and mitigate risks related to their customers are neither "prohibited nor discouraged from providing accounts or services to any specific class or type of customer."[81] The updates to the FFIEC manual include understanding the risk profile of the NPO as well as information that an examiner might expect to see in a NPO customer file.[82]

Despite the guidance and defined BSA regulatory requirements, banks continue to report "uncertainty regarding regulatory expectations around the complex risk assessments and due diligence needed on [high-risk] accounts [which] has contributed to [banks] decisions to limit or terminate [these customer accounts]."[83] This uncertainty suggests the need for further engagement and guidance, in some form, on these points because in the absence of a feeling of clarity, banks will often choose to de-risk. While supervisors have undertaken significant efforts in this regard already, banks often express that they still do not feel comfortable or fully understand the requirements.

4. FACTORS CONTRIBUTING TO DENIAL OF ACCESS BY FINANCIAL INSTITUTIONS

The many factors that go into a customer access decision, including de-risking, are complex and interlocking. AMLA Section 6215(b)(2)(B) directs the analysis undertaken by the Comptroller General to consider the many drivers of de-risking, as defined by the Financial Action Task Force (FATF), the global standard-setter for combating money laundering and the financing of terrorism and proliferation. These drivers include profitability, reputational risk, lower risk appetites of banks, regulatory burdens and unclear expectations from regulators, and sanction regimes. Treasury's review corroborated that these same drivers influence financial institutions decisions concerning the type of customers and transactions they choose to service.

a. Profitability

Treasury assesses that profitability is the predominant consideration for financial institutions in choosing whom to service when considering business customer relationships. This assumes, however, that a certain basic threshold for risk has not been met. For instance, persons subject to sanctions will not routinely get access to account services no matter how profitable they are. Profitability is influenced by a range of inputs such as the volume and nature of transactions conducted by a customer and the associated costs incurred by a financial institution to conduct those transactions. Other factors include their associated revenue; a financial institution's available resources and the cost of implementing compliance measures and systems commensurate with the risk posed by a

79 31 C.F.R. §§ 1010, 1020.210, 1023.210, 1024.210, 1026.210; *see also* "Customer Due Diligence Requirements for Financial Institutions," https://www.govinfo.gov/content/pkg/FR-2016-05-11/pdf/2016-10567.pdf.

80 Board of Governors of the Fed. Reserve System, Fed. Deposit Ins. Corp., FinCEN, Nat'l Credit Union Admin., Off. of the Comptroller of the Currency, "Joint Statement on the Risk-Based Approach to Assessing Customer Relationships and Conducting Customer Due Diligence," (Jul. 6, 2022), https://www.fincen.gov/sites/default/files/2022-07/Joint%20Statement%20on%20the%20Risk%20Based%20Approach%20to%20Assessing%20Customer%20Relationships%20and%20Conducting%20CDD%20FINAL.pdf.

81 FFIEC, "Federal and State Regulators Release Updates to the BSA/AML Examination Manual" (Dec. 1, 2021), https://www.ffiec.gov/press/pr120121.htm.

82 FFIEC, "Charities and Non-profit Organizations," FFIEC BSA/AML Examination Manual (Nov. 2021), https://www.ffiec.gov/press/PDF/Charities-and-Nonprofit-Organizations.pdf.

83 GAO, "Views on Proposals to Improve Banking Access for Entities Transferring Funds to High-Risk Countries," GAO-22-104792, 17 (Dec. 16, 2021), https://www.gao.gov/assets/gao-22-104792.pdf.

customer; the hiring, training, and retention of knowledgeable and experienced compliance staff; the cost imposed on a bank to successfully initiate and maintain the customer relationship, to include conducting legal obligations such as due diligence upon onboarding, as well as other costs that must be weighed against the income that a customer may generate for a bank. A recent FATF survey suggested that financial institutions find divergent AML/CFT requirements across jurisdictions and the lack of a risk-based approach and implementation in many jurisdictions worldwide to be major drivers of cost.[84] Further, the cost of sanctions compliance may be significant. A 2015 survey showed that 82% of the respondents, who represented a variety of industries with over half representing financial services companies, reported sanctions compliance costs increases, and 43% of the responders indicated that expanded sanction programs contributed to the increased costs.[85]

Money Services Businesses

The GAO Report also cites profitability and AML/CFT compliance costs as a factor that affects financial institutions' decisions to serve MSBs. According to the GAO Report, "the high cost of conducting the necessary due diligence and account monitoring for…money transmitters transferring funds to recipients in high-risk countries often outweighs the revenue"[86] generated by these accounts. For money transmitter customer accounts, "banks weigh profitability considerations more heavily for money transmitters than for [NPOs]" and there are associated high due diligence costs associated with MSB accounts that include on-site company visits "which increases the cost of banking these customers."[87]

During consultations, several mid-sized banks noted the difficulty of hiring staff with sufficient knowledge and expertise to properly evaluate the risks of certain classes of customers, such as MSBs. They viewed compliance costs for managing the risks of certain customers as prohibitively high due to having to "conduct additional due diligence, such as on-site company visits, which increases the cost of banking [these MSBs]."[88] Participants in prior consultations for the GAO Report further noted that this assessment is based on their perception that there is a lack of sufficient guidance as to what a "risk-based approach" means, and that they err on the side of caution by taking a risk-averse approach with respect to certain customer types.

Non-Profit Organizations

The GAO Report indicated that interviewed participants "cited high due diligence costs associated with facilitating money transmitter and nonprofit transfers to recipients in countries that lack adequate frameworks for countering money laundering and terrorist financing or that have limited governance capacity."[89] Further, bank participants interviewed by Treasury indicated that completing due diligence efforts for NPO accounts requires many resources and is often not profitable. According

84 FATF, "Cross Border Payments: Survey Results on Implementing of the FATF Standards," 24 (Oct. 2021), https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/Cross-Border-Payments-Survey-Results.pdf

85 Deloitte, "Managing sanctions compliance is complex Are you up to the challenge?" (May 2015), https://www2.deloitte.com/content/dam/Deloitte/us/Documents/finance/us-fas-sanctions-infographic-052215.pdf.

86 GAO, "Views on Proposals to Improve Banking Access for Entities Transferring Funds to High-Risk Countries, GAO-22-104792, 15 (Dec. 16, 2021), https://www.gao.gov/assets/gao-22-104792.pdf.

87 *Id.*

88 *Id.* at 16.

89 *Id.*

to the GAO Report, members of a prominent industry association and an academic expert "said that banks that provide services to nonprofits are not necessarily looking to generate large amounts of revenue and income, but instead may provide services out of a sense of corporate responsibility."[90]

Correspondent Banking Accounts with Foreign Financial Institutions

According to a joint report on correspondent banking by the Bank for International Settlements (BIS), an international financial institution that is owned by 63 central banks and supports central banks' pursuit of monetary and financial stability through international cooperation,[91] and the Committee on Payments and Market Infrastructures (CPMI), a "global standard setter" that "promotes the safety and efficiency of payment, clearing settlement and related arrangements, thereby supporting financial stability and the wider economy,"[92] correspondent banks have adopted a more cautious global business strategy focusing on core business opportunities over the past decade compared to their stance before the 2008-2009 financial crisis, and the customers who are less profitable and less consistent with the banks' focus areas, are affected.[93] During Treasury's consultations, correspondent bank participants noted that most of the large-scale account losses for respondent banks occurred after the financial crisis, and that some jurisdictions are still affected. Participants attributed this to the high cost of compliance to maintain relationships with respondent banks in certain jurisdictions and a rethinking by banks of their previous strategy of expanding relationships as much as possible. Banks also cited a renewed focus on ensuring profit justifies each relationship. For instance, large banks often consider revenue and profit thresholds for onboarding or maintenance of new customers. This consideration impacts bank willingness to offer or maintain relationships with customers or jurisdictions that may generate insufficient revenue or profit. Large banks may apply this criteria broadly, without a targeted analysis of individual customers. Additionally, this kind of analysis is separate from bank scrutiny of AML/CFT risks. As a result, correspondent loss is particularly acute for smaller and more isolated economies, as well as for smaller institutions and customers, and appears to rely more heavily on broad generalizations instead of individualized assessments.

Based upon Treasury's review of CPMI data, interviews, and other research, the correlation between lack of potential profit and de-risking appears stronger than the correlation between AML/CFT compliance and de-risking, although the BIS and other research does suggest that AML/CFT concerns contribute to de-risking. Treasury's consultations with private sector banks confirmed profit potential was a primary concern. Further, the CPMI report concerning correspondent banking revealed that "[o]ne of the main drivers seems to be the growing tendency for banks to assess the profitability of their business lines, customers and even jurisdictions in a world where the cost of correspondent banking has increased and capital and liquidity are scarcer and more expensive."[94] In addition, examination of recent data on the most de-risked jurisdictions in the world reveals that having low financial volumes and relatively low likely profitability was a more significant risk factor for de-risking than high illicit

90 *Id.*

91 BIS also provides data and analysis, provides a forum for dialogue, and facilitates international cooperation among "policy makers, to foster monetary and financial stability," and offer financial services to central banks for "management of their foreign exchange assets." Bank for Int'l Settlements, "Profile," 2 (Jul. 2022), https://www.bis.org/about/profile_en.pdf.

92 Bank for Int'l Settlements, "Charter," Comm. on Payments and Market Infrastructure (Sep. 2014), https://www.bis.org/cpmi/charter.pdf.

93 Bank for Int'l Settlements, "Correspondent Banking," Comm. on Payments and Market Infrastructure, 12 (Jul. 2016), https://www.bis.org/cpmi/publ/d147.pdf.

94 *Id.*

finance risk. While illicit finance and sanctions risks may be aggravating factors for highly de-risked jurisdictions, the list of de-risked jurisdictions consists almost exclusively of small countries with low volumes and does not include any highly profitable countries regardless of AML/CFT risk. For instance, small Pacific Island nations tend to be heavily de-risked while larger, richer countries in the same region do not, despite well-known AML/CFT risks in those countries. The CPMI report also revealed that the pace of de-risking has been consistent over the past decade, which seems to suggest a steady retrenchment of global business strategy and renewed focus on profit for banks, rather than the more uneven trend line AML/CFT-driven decisions would likely create. Finally, BIS data suggests that while the number of correspondent relationships continues to decline, the number of payments and the volume of those payments continues to grow. This trend would make sense in response to profitability concerns because it creates consolidation in a smaller number of higher volume corridors. It is harder to see how such a trend would logically address illicit finance concerns.

b. AML/CFT Concerns, Perceived Regulatory Challenges, and Reputational Risk

According to bank stakeholders, banks' concerns with their ability to manage illicit finance risks play a significant role in de-risking. Banks interviewed by Treasury stated that they are more likely to cease operations in jurisdictions with high illicit finance risks and to exit relationships with classes of customers that they believe present more significant ML/TF risks. Indeed, as noted above, the category of most de-risked countries in the world contains primarily smaller and less profitable countries but is clearly to some extent influenced by AML/CFT concerns, with heavily sanctioned countries and those with pervasive terrorist groups appearing more prominent than their profitability alone might suggest. ML/TF risks manifest themselves in multiple ways. As an example, according to the GAO Report, "some bank representatives…expressed concerns over the adequacy of money transmitters' efforts to conduct due diligence on remittance senders…[and] that banks have little visibility into the individual transactions that are netted and pass through the money transmitters' bank accounts."[95]

Banks that Treasury interviewed stated they tend to avoid certain customers if they determine that a given jurisdiction or class of customer could expose them to heightened regulatory or law enforcement action absent effective risk management. Banks also stated that they fear reputational damage if criminals misuse their services, over and above any tangible penalties. In several cases, bank stakeholders suggested that bank compliance officials believe that the U.S. government or individual regulatory agencies send them implicit signals that they do not want certain jurisdictions or classes of customers to receive services despite a decade worth of public statements to the contrary.

In some instances, the ML/TF risks associated with certain jurisdictions present a challenge due not to the presence of threats but to the weak AML/CFT regulatory framework and governance of the jurisdiction. According to the GAO Report, if "due diligence challenges around regulatory frameworks and governance are severe…there are no means by which banks can overcome the risks of money laundering or terrorist financing."[96] Often, due diligence challenges arise from lack of transparency in these jurisdictions. The GAO Report further indicated that if bank representatives were not able to verify the identities of the recipients in these high-risk jurisdictions, it could limit the potential for due diligence efforts and potentially expose the bank to unacceptable ML/TF risks.

95 GAO, "Views on Proposals to Improve Banking Access for Entities Transferring Funds to High-Risk Countries," 16.

96 *Id.*

Money Services Businesses

Bank representatives expressed concern about managing the ML/TF risks concerning MSB customer accounts. According to bank representatives and the GAO Report's findings, banks have little visibility into MSB transactions.[97] According to the GAO Report, "[s]ome banks deny or limit services to money transmitters and nonprofits transferring funds to recipients in high-risk countries largely because of concerns related to BSA/AML compliance."[98] Large MSBs that service certain high-risk jurisdictions are able to maintain a relationship with their banks mainly due to the size and scale of the MSB's compliance department, which banks feel mitigate some of the ML/TF risks. However, smaller MSBs that service high-risk jurisdictions have limited compliance programs and often do not have the resources that are required to mitigate the ML/TF risks related to servicing high-risk jurisdictions.

Non-Profit Organizations

Bank and NPO stakeholder consultations support the notion that ML/TF risks in high-risk countries and reputational risks, along with banks' ability to mitigate risk, contribute to bank de-risking of NPO customer accounts. Ensuring compliance when dealing with NPOs, especially those transacting in high-risk jurisdictions, can be costly for financial institutions. NPO representatives indicated that banks appear unwilling to take on NPOs that operate in high-risk ML/TF jurisdictions because of the high reputational and financial cost of a potential sanction violation, lack of understanding regarding NPO operations, and additional scrutiny by FBA staff. According to Treasury-led consultations with NPOs, participants often faced significant and expansive due diligence requests from banks. This diligence sometimes leads to closing accounts. The GAO Report also indicated that the lack of transparency in high-risk countries makes it difficult to identify and assess ML/TF risks, which further complicates the due diligence process for financial institutions.[99] Regardless, NPOs are diverse and range in size, mission, and jurisdictions that they serve. As recognized in the 2018 NTFRA, "[t]he vast majority of the approximately one million charitable organizations in the U.S. that have been determined by the IRS to be tax-exempt generally face and present little TF risk."[100]

Correspondent Banking Accounts with Foreign Financial Institutions

According to a joint BIS-CPMI report, increased costs, regulatory requirements, and increased perception of risk reduces the profit margin associated with correspondent banking activity, all of which could make correspondent banking unattractive to banks.[101] Treasury's risk assessments noted that jurisdictions with weak AML/CFT controls could expose correspondent banks with foreign financial institution correspondent accounts to ML, TF, and proliferation financing risks. This conclusion likely influences a bank's decision to establish a customer relationship with certain foreign financial institutions and can exacerbate de-risking. Bank stakeholders suggested that the better the supervision they expect a potential customer to receive from the customer's local authorities, the better the chances that the potential customer can receive and maintain access to banking services. Similarly, according to bank stakeholders, a bank seeking a correspondent relationship is more likely to attain and maintain that relationship if the customer has a strong internal program to mitigate risks.

97 *Id.*
98 *Id.* at 14.
99 *Id.* at 15.
100 *NTFRA 2018* at 23.
101 "Correspondent Banking," Bank for Int'l Settlements, 12.

c. *Perceived Supervisory Expectations*

During consultations with banks, bank stakeholders stated that one of the drivers of de-risking is, based on discussions with examination staff, a perceived lack of consistency in how examiners evaluate banks' AML/CFT programs, particularly with respect to how those programs assess the risks associated with MSB, NPO, and foreign respondent customers.[102] Bank participants saw a disconnect between the message of a "risk-based approach" coming from, on the one hand, the guidance issued by FinCEN (as the administrator of the BSA) and the FBAs compared with, on the other hand, the way that examiners are interpreting the BSA and other regulations. Regardless of whether such perceptions are due to divergent messaging and examination practices among relevant government agencies or misconceptions by examined banks themselves, the fact remains that such perceptions exist and continue to be a proximate cause of de-risking.

The federal and state examination system is highly complex in the United States as it includes both (1) federal examiners from the FBAs, which supervise banks and credit unions, and from the IRS, which supervises MSBs and banks lacking a Federal functional regulator; and (2) examiners from state banking regulators that supervise state-chartered banks, state-chartered credit unions and trust companies, and state-licensed MSBs, including money transmitters. Several participants in the consultations asserted that this complexity creates an inconsistent approach to examination and supervision around the country. According to interviewed industry participants, this perceived lack of consistency among examiners makes banks more risk averse in dealing with customers that they as high-risk by examiners even in cases when the entities operate in jurisdiction with strong AML/CFT controls, the financial institutions' risk assessments deem the customers to be of medium or low risk, or the financial institutions, in their view, have reasonably designed AML/CFT programs to manage the risks.

During the consultations, the FBAs indicated that they have provided significant guidance to examination staff to instruct examiners on how to assess a financial institution during the examination process, using a risk-focused approach. As indicated above, the FBAs and FinCEN have issued guidance related to a risk-focused examination approach and framework. FBAs also noted that asking questions about a compliance program does not indicate any negative judgment and that those discussions rarely result in any public enforcement action. Therefore, financial institutions may be over-interpreting questions that are a normal part of the exam process—treating them as criticism when they are not. Further, according to the FBAs and an association, certain banks and credit unions do not have the necessary experience or adequate systems in place to manage the risk related to certain customers. It is not until the bank has an independent review or an exam that banks become fully aware of the different groups of customers and the different risks involved. Therefore, certain banks and credit unions may be responding to the actual capacity of the bank to take on the potential high risks associated with certain types of transactions or customers that service and transact with jurisdictions with weaker AML/CFT controls.

Despite guidance provided by the FBAs and FinCEN, assessing and mitigating risks related to MSB customer accounts continues to pose a challenge for banks. Based on stakeholder consultations, Treasury found several reasons banks consider MSBs high-risk. Interviewed banks indicated that this perception is based in part on current examination practices and because MSBs are not examined

102 These consultations did not include credit unions.

by the same federal regulators as federally chartered banks. Based on interviews with banks, and findings of the GAO Report, the MSB oversight and regulatory framework is seen as weaker than the federal banking examinations, and banks do not usually have access to the examination reports of MSBs.[103] According to some bank representatives, bank examiners appear to treat MSBs as being uniformly high-risk and often allocate more time and resources examining the MSB customer accounts. Bank regulators noted that this approach is consistent with the risk-focused approach to examinations, which indicates that bank examiners need to spend more time and resources on accounts that are identified by financial institutions as high-risk. A 2019 GAO report appears to support this finding, stating that banks perceive that money transmitter customers "drew heightened regulatory oversight."[104] The same report concluded that federal bank examiners identified challenges in assessing MSBs accounts and that it was "unclear how much due diligence is reasonable to expect banks to conduct for their money transmitter customers."[105]

NPOs have also expressed concerns about perceived examiner expectations related to NPO accounts and NPO account transactions, based on actions taken by their financial institutions related to their accounts as well as conversations with banks. A 2021 report by the Center for Strategic and International Studies (CSIS), indicated that "excessive examiner scrutiny of NPOs remains a serious factor for [financial institutions]."[106] According to the same report, "there is often a disconnect between regulatory policy and how examiners operate, which has the effect of discouraging [financial institutions] from banking NPOs."[107] A 2017 CSIS report also indicated that "bank examiners require [financial institutions] to undertake extensive and expensive steps to mitigate [ML/TF] risks[.]"[108]

d. Sanctions Compliance

According to the GAO Report, some financial institutions choose not to engage with customers that operate in jurisdictions that are the focus of U.S. sanctions. Similarly, some bank stakeholders that Treasury interviewed indicated that the U.S. sanctions regime is perceived as very unforgiving towards non-compliance and noted the perceived risks of significant fines as well as the reputational risks. Sanctions violations can occur on a strict liability basis; knowledge that a financial institution is dealing with a designated entity is not required for a civil violation. In other words, individuals or entities may face a civil monetary penalty even though they did not have affirmative knowledge that the transaction was subject to sanctions. In addition, incentives to operate in highly sanctioned jurisdictions are weak, since there are significant compliance costs, strict liability, and lack of profit potential. According to the GAO Report, "[s]anctions have become a larger driver of banking access challenges because of the increased use of primary, secondary, and sectoral sanctions as foreign

103 *See also* GAO Report, 16, 34 ("Several bank representatives also stated that while money transmitters may be subject to state and IRS oversight, the banks have little information about the quality of this oversight and, in particular, the consistency of oversight across states." They stated that as a result, regulatory oversight of money transmitters does not factor into or substitute for their own due diligence efforts.).

104 GAO Report, 1, 34.

105 *Id.* at 34.

106 Sue Eckert, Jacob Kurtzer & Sierra Ballard, *Mitigating Financial Access Challenges,* Center for Strategic & International Studies, 9 (Oct. 2022), https://www.csis.org/analysis/mitigating-financial-access-challenges, select the "Download the Report" option to access the report.

107 *Id.*

108 Sue Eckert, Kay Guinane & Andrea Hall, *Financial Access for U.S. Nonprofits,* Charity and Security Network, 64 (Feb. 2017), https://charityandsecurity.org/system/files/FinancialAccessFullReport_2.21%20(2).pdf.

policy tools in recent years." Furthermore, OFAC staff indicate the number of sanction programs has increased recently. Many financial institutions do not have the resources, capabilities, business interests, or willingness to establish and maintain a sophisticated sanctions compliance program. Thus, they often will not work with entities or individuals that operate in sanctioned jurisdictions.

e. Lack of Positive Incentives

Banks, according to financial institution representatives, must consider not only potential regulatory and AML/CFT risks but also the lack of positive incentives to support other U.S. policy goals, including preventing unwarranted de-risking domestically and internationally. According to an industry consultant and an MSB interviewed for this report, the only meaningful incentive for financial institutions, including MSBs and banks, is to avoid the risk of fines from regulators and reputational harm from a fine if they violate AML/CFT or sanctions regulations. However, industry participants stated that providing wider financial access abroad to combat de-risking and other U.S. policy goals beyond AML/CFT and sanctions compliance often does not lead to any direct and tangible benefit for banks, although there may be more intangible benefits like public goodwill. The lack of potential upside in this area, along with what are frequently very limited opportunities for financial benefit, may contribute to de-risking.

5. U.S. AND INTERNATIONAL EFFORTS TO ADDRESS DE-RISKING

a. U.S. Efforts to Address De-risking

According to the GAO Report,"[s]ome bank representatives said that some examiners may second-guess banks' risk assessments and due diligence efforts and that banks are unsure of what they need to do satisfy regulatory expectations."[109] These concerns, bank compliance offices suggested, exacerbate the potential for de-risking. Since at least 2002,[110] U.S. regulatory and supervisory authorities have routinely stated that they apply a risk-focused approach and not a zero-tolerance approach to the regulation and supervision of banks. On July 22, 2019, the FBAs in coordination with FinCEN, issued a joint statement supporting risk-focused BSA/AML supervision "as part of a broader effort to reinforce and enhance the effectiveness and efficiency of BSA/AML regime."[111] Further, since 2004, the FBAs and FinCEN have issued several guidance statements on assessing risks and the use of a risk-based approach by financial institutions when assessing customer accounts.[112] Nonetheless, surveyed bank compliance officials indicated they vary in their level of comfort with applying the risk-based approach, and some believe that they face a risk of large fines from regulators for any failure in banking controls. Federal regulators, however, note that such fines are rare and that

109 GAO Report, 18.

110 The FDIC, Federal Reserve System, and CSBS adopted risk-focused supervision in 1997. "Risk-Focused, Forward-Looking Safety and Soundness Supervision," Fed. Deposit Ins. Corp. (Aug. 27, 2019), https://www.fdic.gov/news/financial-institution-letters/2019/fil19047.html (*citing* "Uniform Financial Institution Rating System," FDIC (Jan. 1, 1997)). The OCC launched "supervision by risk program" in January 1996. "OCC Formally Launches Supervision by Risk Program with Distribution of Large Bank Supervision Handbook," Off. of the Comptroller of the Currency (Jan. 4, 1996), https://www.occ.gov/news-issuances/news-releases/1996/nr-occ-1996-2.html. And NCUA adopted a risk-focused supervision framework in May 2002. Risk-Focused Examination Program, NCUA (May 2002), https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/risk-focused-examination-program.

111 Board of Governors of the Fed. Reserve System, Fed. Deposit Ins. Corp., FinCEN, Nat'l Credit Union Admin., Off. of the Comptroller of the Currency, "Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision," (Jul. 22, 2019), https://www.occ.gov/news-issuances/news-releases/2019/nr-ia-2019-81a.pdf.

112 *See* Appendix I.

they are uniformly the result of total failure of AML/CFT compliance programs, not a result of more limited shortcomings that might result from a reasonable application of the risk-based approach.[113] Interviews for this review suggested a clear disconnect between the kinds of failures that have resulted in large fines in the past and the less severe kinds of failures that bank staff believe may result in large fines. There appears to be a significant misconception on the part of financial institutions on this point.

Since 2015, federal regulators have implemented regulations and provided guidance to financial institutions concerning the use of the risk-based approach when assessing customer relationships and accounts. In 2015, the FDIC issued a statement encouraging institutions to "take a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers without regard to the risks presented"[114] by that customer. FinCEN and the FBAs also issued several joint statements, related to financial institutions' responsibilities to take a risk-based approach when evaluating customer accounts.[115] On August 30, 2016, FinCEN and the FBAs issued a joint statement on the requirement for foreign correspondent banking to establish the appropriate, specific, and risk-based due diligence policies procedures and processes "reasonably designed to assess and manage risks inherent with these relationships."[116] FinCEN and the FBAs also issued a joint statement encouraging banks to consider implementation of innovative approaches to meet their BSA/AML compliance obligations.[117] Most recently, Treasury with the FBAs in July 2022 issued a joint statement that included updated guidance on the risk-based approach when conducting CDD and assessing customer relationships.[118]

In addition to providing guidance concerning the risk-based approach, Treasury and FBAs have issued joint statements covering specific customer types, including foreign correspondent, MSB, charity, and NPO accounts.[119] In 2014, the OCC issued a statement on risk management for accounts that emphasized banks "are expected to assess the risks posed by an individual MSB customer on a case-

113 There are few instances in which banks have received large fines from regulators concerning AML/CFT violations. *See* "Penalties," BankersOnline.com (Mar. 21, 2023), https://www.bankersonline.com/penalty/penalty-type/bsa-aml-civil-money-penalties or individual agencies.com.)

114 Fed. Deposit Ins. Corp., "Statement on Proving Banking Services," FIL-5-2015 (Jan. 28, 2015), https://www.fdic.gov/news/financial-institution-letters/2015/fil15005.pdf; 31 C.F.R §§ 1010, 1020, 1023, 1024, 1026; *see also* Fed. Deposit Ins. Corp., "Customer Due Diligence Requirements for Financial Institutions," (Oct. 5, 2016), https://www.govinfo.gov/content/pkg/FR-2016-05-11/pdf/2016-10567.pdf. In 2016, FinCEN implemented regulations under the BSA to further "clarify and strengthen" CDD requirements for certain financial institutions.

115 *See* Appendix I.

116 "U.S. Department of the Treasury and Federal Banking Agencies Joint Fact Sheet on Foreign Correspondent Banking: Approach to BSA/AML and OFAC Sanctions Supervision and Enforcement," Board of Governors of the Fed. Reserve System, Fed. Deposit Ins. Corp., Nat'l Credit Union Admin., Off. of the Comptroller of the Currency, Dep't of the Treasury (Aug. 30, 2016), https://www.occ.gov/publications-and-resources/publications/banker-education/files/pub-foreign-correspondent-banking-fact-sheet.pdf; *see also* "Risk Management Guidance on Foreign Correspondent Banking: Risk Management Guidance on Periodic Risk Reevaluation of Foreign Correspondent Banking," Off. of the Comptroller of the Currency, OCC Bulletin 2016-32, (Oct. 5, 2016), https://www.occ.gov/news-issuances/bulletins/2016/bulletin-2016-32.html.

117 "Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing," Board of Governors of the Fed. Reserve System, Fed. Deposit Ins. Corp., FinCEN, Nat'l Credit Union Admin., Off. of the Comptroller of the Currency (Dec. 3, 2018), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20181203a1.pdf.

118 "Joint Statement on the Risk-Based Approach to Assessing Customer Relationships and Conducting Customer Due Diligence," Board of Governors of the Fed. Reserve System, Fed. Deposit Ins. Corp., FinCEN, Nat'l Credit Union Admin., Off. of the Comptroller of the Currency (Jul. 6, 2022), https://www.fincen.gov/sites/default/files/2022-07/Joint%20Statement%20on%20the%20Risk%20Based%20Approach%20to%20Assessing%20Customer%20Relationships%20and%20Conducting%20CDD%20FINAL.pdf.

119 *See* Appendix I.

by-case basis."[120] Also, NCUA provided guidance to credit unions and staff related to "Identifying and Mitigating Risks of Money Service Businesses."[121] The NCUA guidance provided that "[t]he level and types of risk posed by an MSB depend on the nature and scope of the MSB operation," and the guidance suggested that MSBs show "several indicators of high-risk as well as low-risk."[122] NCUA also provided that "credit unions are expected to assess the risks posed by each individual MSB account on a case-by-case basis."[123]

Over the years, Treasury has published a variety of guidance documents for NPOs, such as voluntary guidelines, charity FAQs, guidance on humanitarian assistance to high-risk or sanctioned jurisdictions, including Somalia, Syria, and Iran, and an OFAC risk matrix. In 2014, OFAC issued guidance "recogniz[ing] that some humanitarian assistance may unwittingly end up in the hand of members of a designated group" in highly unstable environments needing urgent humanitarian assistance, but such marginal incidents are "not a focus for OFAC sanctions enforcement."[124] In November 2020, FinCEN and the FBAs issued a joint fact sheet on BSA due diligence requirements for charities and NPOs indicating that the "U.S. government does not view the charitable sector as a whole as presenting a uniform or unacceptably high risk."[125] Further, the AMLA codified the risk-based approach into statute and reinforced "that the anti-money laundering and countering the financing of terrorism policies, procedures, and controls of financial institutions shall be risk-based."[126]

In addition to guidance related to MSBs and NPOs, the FBAs in close collaboration with Treasury have previously issued guidance concerning correspondent accounts, foreign governments, and foreign embassies. On October 5, 2016, the OCC published guidance concerning risk management on foreign correspondent banking accounts and periodic risk reevaluations.[127] The guidance provided best practices for conducting "periodic evaluations of risk and making account retention or termination decisions related to…foreign correspondent accounts" and reiterated that "banks should periodically evaluate and reassess [the risks]…as part of their ongoing risk management and due diligence practices."[128] In August 2016, Treasury and the FBAs issued a joint fact sheet on foreign correspondent banking and the BSA/AML as well as sanctions supervision and enforcement related to BSA and OFAC requirements. This statement noted that "[t]he vast majority (about 95%) of BSA/OFAC compliance

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120 Off. of the Comptroller of the Currency, "Banking Money Services Businesses: Statement on Risk Management," OCC Bulletin 2014-58 (Nov. 19, 2014), https://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-58.html.

121 Nat'l Credit Union Admin., "Identifying and Mitigating Risks of Money Services Businesses," 14-CU-10, (Dec. 2014), https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/identifying-and-mitigating-risks-money-services-businesses; *see also* "Money Services Businesses," Nat'l Credit Union Admin, SL No. 14-05 (Dec. 19, 2014), https://ncua.gov/files/letters-credit-unions/SupervisoryLetter_MoneyServices.pdf.

122 *Id.*

123 *Id.*

124 U.S. Dep't of the Treasury, Off. of Foreign Assets Control, "Guidance Related to the Provision of Humanitarian Assistance by Not-For-Profit Non-Governmental Organizations," (Oct. 17, 2014), https://home.treasury.gov/system/files/126/ngo_humanitarian.pdf.

125 Board of Governors of the Fed. Reserve System, Fed. Deposit Ins. Corp., FinCEN, Nat'l Credit Union Admin., Off. of the Comptroller of the Currency, "Joint Fact Sheet on Bank Secrecy Act Due Diligence Requirements for Charities and Non-Profit Organizations," (Nov. 19, 2020).

126 AMLA Sec. 6002(4).

127 Off. of the Comptroller of the Currency, "Risk Management Guidance on Foreign Correspondent Banking: Risk Management Guidance on Periodic Risk Reevaluation of Foreign Correspondent Banking," Bulletin 2016-32 (Oct. 5, 2016), https://www.occ.gov/news-issuances/bulletins/2016/bulletin-2016-32.html.

128 *Id.*

deficiencies identified by the FBAs, FinCEN, and OFAC are corrected by the institution's management without the need for any enforcement action or penalty."[129]

In October 2021, Treasury completed a comprehensive review of its sanctions programs to assess the impact of its economic and financial sanctions.[130] The review found that sanctions are an essential and effective policy tool that must be "carefully calibrated to help address their impact on the flow of legitimate humanitarian aid to those in need."[131] The sanctions review included a number of recommendations, including to "expand sanctions exceptions to support the flow of legitimate humanitarian goods and assistance and provide clear guidance at the outset when sanctions authorities are created and implemented."[132] Following the release of the report, the United States and Ireland co-led the development of United Nations Security Council Resolution (UNSCR) 2664, which establishes a humanitarian carveout under all asset freeze obligations under UN sanctions regimes. Following the adoption of UNSCR 2664 on December 9, 2022, Treasury issued a baseline set of general licenses for humanitarian-related activities across U.S. sanctions programs and became the first country in the world to implement UNSCR 2664. Specifically, OFAC issued or amended general licenses to authorize the activities of U.S. government implementing partners, certain international organizations, NPOs and charities, and exporters of food, medicine, and medical devices that are engaged in humanitarian-related activities.[133] Concurrently with the release of the general licenses, OFAC issued four FAQs that provided further guidance on the authorizations issued as well as guidance for financial institutions facilitating banking services for NPOs and due diligence expectations. The general license authorizations were implemented to support the flow of humanitarian aid to at-risk populations through international regulated financial systems. In light of the amendments to its regulations to add or revise general licenses to further ease the delivery of humanitarian aid, OFAC also issued *Supplemental Guidance for the Provision of Humanitarian Assistance*, which supplements OFAC's 2014 Guidance Related to the Provision of Humanitarian Assistance by Not-for-Profit Non-Governmental Organizations*.134 Just this year, after the devastating earthquakes impacting Türkiye and Syria, Treasury acted urgently to issue a General License for 180 days to facilitate earthquake relief efforts in Syria.135 Shortly thereafter, the Treasury issued an OFAC Compliance Communique, Guidance on Authorized Transactions Related to Earthquake Relief Efforts in Syria,* in response to questions from the private sector, the NGO community, and the general public on how to provide assistance related to

129 Board of Governors of the Fed. Reserve System, Fed. Deposit Ins. Corp., Nat'l Credit Union Admin., Off. of the Comptroller of the Currency, Dep't of the Treasury, "U.S. Department of the Treasury and Federal Banking Agencies Joint Fact Sheet on Foreign Correspondent Banking: Approach to BSA/AML and OFAC Sanctions Supervision and Enforcement" (Aug. 30, 2016), https://www.occ.gov/publications-and-resources/publications/banker-education/files/pub-foreign-correspondent-banking-fact-sheet.pdf.

130 *See generally Treasury 2021 Sanctions Review*.

131 U.S. Dep't of the Treasury, "Treasury Implements Historic Humanitarian Sanctions Exceptions," (Dec. 20, 2022), https://home.treasury.gov/news/press-releases/jy1175.

132 *Id.*

133 *See id.*; U.S. Dep't of the Treasury, "Publication of Humanitarian-related Regulatory Amendments and Associated Frequently Asked Questions," (Dec. 20, 2022), https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20221220.

134 U.S. Dep't of the Treasury, "Office of Foreign Assets Control Supplemental Guidance for the Provision of Humanitarian Assistance," (Feb. 27, 2023), https://home.treasury.gov/system/files/126/supplemental_ngo_humanitarian.pdf; *see also* U.S. Dep't of the Treasury, "Guidance Related to the Provision of Humanitarian Assistance by Not-for-Profit Non-Governmental Organizations," (Oct. 17, 2014), https://home.treasury.gov/system/files/126/ngo_humanitarian.pdf.

135 U.S. Dep't of the Treasury, "Treasury Issues Syria General License 23 To Aid In Earthquake Disaster Relief Efforts," (Feb. 9, 2023), https://home.treasury.gov/news/press-releases/jy1261.

earthquake relief to Syria while complying with OFAC sanctions.[136] Moreover, the U.S. government has emphasized that the implementation of reasonably designed and risk-based AML/CFT measures helps ensure humanitarian assistance flows to those most in need.[137]

Likewise, in 2020, the FFIEC Manual was updated to reflect prior joint statements on risk management such as the risk-focused approach to BSA/AML supervision. In 2021, the "Risks Associated with Money Laundering and Terrorist Financing, Charities and Nonprofit Organizations" section of the FFIEC Manual was updated to reflect the previously issued interagency statement regarding CDD for NPO customer accounts at financial institutions and stated that no specific customer type automatically presents a higher risk of money laundering, terrorist financing, or other illicit financial activity. Specific sections related to non-bank financial institutions and embassy customer accounts are already undergoing review to determine whether the manual needs updates to reflect current practices, regulations, and guidance and if so, what these changes should be. The sections were last updated in 2014. FinCEN, in coordination with the FBAs, intends to monitor the impact of these recent regulatory developments on examination practices, especially as they relate to the issue of de-risking.

FinCEN, in coordination with the FBAs, will also implement the new training requirements of the AMLA, Section 6307, and applicable updates to the FFIEC Manual to support continued standardization among the FBAs, IRS, and state agencies, to counter the effect of de-risking concerning correspondent banking accounts (foreign and domestic), MSBs, and NPO customer accounts.[138]

b. International Efforts to Address De-risking

A 2015 World Bank report found that the overall trend of correspondent banking loss was "not uniform for all jurisdictions or regions" at the time of the survey[139] and that approximately half of the banking authorities surveyed at that time indicated they were experiencing a decline in correspondent banking relationships.[140] As noted above, a 2016 BIS-CPMI report found that correspondent banking relationships were reduced particularly for respondent banks that do not generate sufficient volumes to cover compliance costs, are located in high-risk jurisdictions, or service customers that pose higher risks.[141] This same report indicated that smaller respondent banks in perceived high-risk jurisdictions were "especially affected by the reduction in the number of [correspondent banking] relationships."[142] A more recent report from CPMI indicated that the rate of decline of active correspondent banking relationships has varied across jurisdictions, and "country-level declines range from 23 [percent] in advance economies to 41 [percent] in small island developing states and dependent territories."[143] Also, a BIS Quarterly Review in 2020 provided that the number of active correspondent banking

136 U.S. Dep't of the Treasury, "Sanctions Compliance Guidance for Authorized Transactions Related to Earthquake Relief Efforts in Syria," U.S. Dep't of the Treasury (Feb. 21, 2023), https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20230221.

137 *NTFRA 2022* at 16.

138 *See* 31 U.S.C. § 5334 (requiring "[e]ach Federal examiner reviewing compliance with the Banks Secrecy Act" to attend appropriate annual training, as determined by the Secretary of the Treasury…with respect to" among other things, "de-risking and the effects of de-risking on the provision of financial services").

139 The World Bank, "Withdrawal from correspondent banking Where, Why, and What to do about it," (Nov. 2015), https://documents1.worldbank.org/curated/en/113021467990964789/pdf/101098-revised-PUBLIC-CBR-Report-November-2015.pdf.

140 *Id.*

141 Bank for Int'l Settlements, "Correspondent Banking," 13.

142 *Id.* at 12.

143 Bank for Int'l Settlements, Comm. on Payments and Market Infrastructure, "New correspondent banking data – the decline continues at a slower pace" (2020), https://www.bis.org/cpmi/paysysinfo/corr_bank_data/corr_bank_data_commentary_2008.htm.

relationships continues to decline, and "even as the number of…active correspondents declined, the global value and volume of payments continued to grow."[144] According to data from CPMI, active correspondent banking relationships continued to decline through 2020. Between 2011 and 2020, correspondent banking relationships declined by approximately 25%; from 2019 to 2020, correspondent banking relationships declined by four percent.[145] Despite the decline in active correspondent banking relationships, CPMI recorded an increase of two percent and seven percent in volume and value of transactions, respectively, over the course of 2020.[146]

For nearly a decade, international standard setting bodies and intergovernmental organizations have worked extensively to understand the decline in correspondent banking and are currently working on several projects to address de-risking.

Financial Action Task Force (FATF)

In June 2014, the FATF provided a comprehensive assessment of the current nature of the terrorist financing threat and vulnerabilities facing the non-profit sector. It documented 102 case studies from public and government sources illustrating terrorist abuse of the non-profit sector. The report found that 13 years after the FATF formally recognized the NPO sector as vulnerable to terrorist financing abuse, the terrorist threat remained. The report also identified some new terrorist financing trends.[147] However, the report emphasized that "the abuse of the NPO sector by terrorist entities is, in the context of the global NPO sector, a low-probability risk."[148]

In October 2014, the FATF issued a statement concerning the FATF Plenary discussion of de-risking in support of a risk-based approach. The statement declared that, "it is central to [FATF's] mandate to ensure that the global AML/CFT standard is well understood and accurately implemented, and that countries and their financial institutions are provided with support in designing AML/CFT measures that meet the goal of financial inclusion."[149] The FATF used this assessment to update its Best Practices Paper for Supervision of NPOs the following year.[150]

In October 2015, the FATF issued a statement that described different projects to address de-risking, to include developing guidance to address properly identifying and managing risk in the context of correspondent banking, remittances, and money remitters. In a 2017 paper, the FATF also proposed developing "best practices on the appropriate CDD to facilitate financial inclusion" and revisions to the appropriate standard to help governments accurately identify NPOs that are "most vulnerable to terrorist financing abuse."[151] Based upon these reports and extensive consultation with the NPO sector, FATF updated its recommendation addressing supervision of NPOs to specifically note the

144 Tara Rice, Goetz von Peter, Codruta Boar, Bank for Int'l Settlements, *On the global retreat of correspondent banks*, Bank for Int'l Settlements Quarterly Review (Mar. 1, 2020), https://www.bis.org/publ/qtrpdf/r_qt2003g.htm.

145 Bank for Int'l Settlements, Comm. on Payments and Market Infrastructure "Correspondent banking trends persisted in 2020, even as payment landscape changed, new data show," (Dec. 13, 2021), https://www.bis.org/press/p211213.htm.

146 *Id.*

147 FATF, *Risk of Terrorist Abuse in the Non-Profit Sector* (Jun. 2014) , https://www.fatf-gafi.org/documents/documents/risk-terrorist-abuse-non-profits.html.

148 *Id.*

149 *Id.*

150 *Id.*

151 FATF, "FATF takes action to tackle de-risking," (Oct. 2015), https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-action-to-tackle-de-risking.html; FATF, "FATF Guidance on AML/CFT measures and financial inclusion, with a supplement on customer due diligence," (2013), https://www.fatf-gafi.org/en/publications/Fatfgeneral/Financial-inclusion-cdd-2017.html.

importance of a risk-based approach in June 2016.

More recently, in October 2021, FATF issued a report titled "High-level Synopsis of the Stock take of the Unintended Consequences of the FATF Standards," after a project team established in February 2021 analyzed the unintended consequences of de-risking, financial exclusion, undue targeting of NPOs, and curtailment of human rights. The FATF report found it difficult to identify a direct correlation between FATF standards and de-risking and stated that AML/CFT rules "are not the main cause of de-risking but can be a related factor."[152] The FATF, as of the date of this publication, is continuing work on NPOs as well as unintended consequences of de-risking.

Financial Stability Board (FSB)

The FSB is also addressing de-risking through its work to improve cross-border payments. In 2018, the FSB published a progress report on addressing the declines in correspondent banking and recommendations on remittances. The FSB's 2019 report on remittance service providers included monitoring recommendations for remittance service providers and concluded that more work needs to be done by "national authorities, international organizations, remittance service providers and banks" in order to improve remittance service provider supervisory frameworks.[153] In October 2020, the FSB published a cross-border payments roadmap, in coordination with the CPMI and other international organizations and standard-setting bodies. The cross-border payment roadmap is "a priority initiative of the G20"[154] that intends to address the challenges related to cross-border payments including costs, transparency, speed, and access.

The roadmap includes 19 "building blocks" that are sorted into five focus areas: "public and private sector commitment," "regulatory and supervisory and oversight frameworks," "existing payment infrastructures and arrangements," "data and market practices," and "new payment infrastructures and arrangements." The cross-border payment work encompasses innovative strategies to address cross-border payment challenges, as well as a review of the current payments infrastructures and payment systems, to include correspondent banking relationships. The roadmap work in 2021 and 2022 included a stock take of "international standards, principles and guidance that are relevant to cross-border payments" and analysis related to the structure of regulatory, supervisory, and guidance projects to determine the best way to address the challenges of costs, transparency, speed, and access of cross-border payments. Going forward, the roadmap will focus on three priority themes, based on both impact and feasibility of implementation by 2027. The themes are payment system interoperability and extension; legal, regulatory, and supervisory frameworks; and cross-border data exchange and message standards. This year, the FSB will also undertake work to review bank and non-bank supervision to develop recommendations for strengthening consistency of the application of regulation and supervision to banks and non-banks in a way that is proportional to their respective risks.

Moreover, the International Organization for Standardization (ISO), an independent non-governmental

152 FATF, "High-Level Synopsis of the Stock take of the Unintended Consequences of the FATF Standards," (Oct. 2021), https://www.fatf-gafi.org/media/fatf/documents/Unintended-Consequences.pdf.

153 FATF, "Remittance service providers' access to banking services: Monitoring of the FSB's recommendations," (May 2019), https://www.fsb.org/2019/05/remittance-service-providers-access-to-banking-services-monitoring-of-the-fsbs-recommendations/.

154 FSB, "G20 Roadmap for Enhancing Cross-border Payments: Consolidated progress report for 2022," (Oct. 2022), https://www.fsb.org/2022/10/g20-roadmap-for-enhancing-cross-border-payments-consolidated-progress-report-for-2022/.

organization currently comprising 167 national standards bodies, continues effort to implement new standards for payment messaging. The standards, known as ISO 20022, will increase payment transparency in which AML/CFT risk mitigation practices can be more consistently and effectively applied. Specifically, the ISO 20022 standard includes a suite of message format standards for the financial industry, including messages for payments, securities, trade services, debit and credit cards, and foreign exchange. ISO 20022 messages use extensible markup language (XML) syntax, have a common data dictionary that can support end-to-end payment message flow, and include structured data elements that provide for potentially richer payment message data than current payment message formats, such as SWIFT Message Types MT. The adoption of ISO 20022 is expected to increase confidence in payment transparency for improved detection, reporting and mitigation of AML/CFT and sanctions risks and enable financial institutions to improve access to financial markets and payment services.

International Financial Institutions (IFIs)

The multilateral development banks (MDBs) and the International Monetary Fund (IMF) are also supporting efforts to address de-risking.[155] The MDBs provide client countries with lending and technical assistance for increasing transparency and preventing and pursuing illicit financial flows, which helps to reinforce the integrity of the financial system. These activities improve both financial inclusion and AML/CFT compliance capacity.[156] The IMF has extended technical assistance, including through its Regional Capacity Development Centers (RCDCs), to strengthen capacity for financial authorities in emerging markets and developing economies.[157] The IFIs also support the efforts of standard setting bodies like CPMI and FATF while socializing international standards among their global membership. The IMF complements its financing with expert analysis and technical advice and helps governments build capacity to improve the efficiency and effectiveness of policies including domestic revenue mobilization, debt management, monetary policy operations, financial sector oversight, and the design and implementation of AML/CFT policies. These activities can reduce the AML/CFT risks of jurisdictions where respondent banks, MSBs, and NPOs operate.[158]

Following the IMF Executive Board's 2018 review of its AML/CFT strategy, the IMF has incorporated AML/CFT activities into program conditionality and its annual Article IV and regular financial sector surveillance when financial integrity issues are macro-critical. For example, in 2022, the Executive Board approved programs for Benin, Egypt, Mozambique, and Zambia that included conditionality aimed at strengthening governance, anti-corruption, and/or AML/CFT frameworks and supervision. The IMF has also provided capacity development in support of these objectives in multiple countries. The IMF has longstanding cooperation with the FATF and FATF-Style Regional Bodies, and also participates in AML/CFT assessments carried out by these and other entities. Since 2002, the IMF has provided targeted AML/CFT assistance through 175 projects in 92 countries. The United States, through its Executive Director, has consistently pressed for increased resources to support AML/

155 Alwazir, Jihad, *et al.*, International Monetary Fund, "Report on the Pacific Roundtables" (2019), https://www.imf.org/~/media/Files/Publications/DP/2019/English/RPRAACBRPEA.ashx.
156 U.S. Dep't of the Treasury, "Multilateral Development Banks," (Dec. 8, 2021), https://home.treasury.gov/policy-issues/international/multilateral-development-banks.
157 International Monetary Fund, "Regional Capacity Development Centers," (2019), https://www.imf.org/-/media/Files/capacity-developement/Brochures/regional-capacity-development-centers-brochure-september-2019.ashx.
158 International Monetary Fund, "Technical Assistance," https://www.imf.org/external/about/techasst.htm.

CFT work among IMF member countries, and going forward, the IMF expects to increase its AML/CFT assistance budget from $3.7 million in FY2022 to $7.7 million by FY2025. In addition, the AML/CFT Thematic Fund launched eight country projects, two regional projects, and two thematic projects since November 2020. These efforts focused on AML/CFT systems that have been affected by the pandemic as well as effective virtual delivery of capacity development.[159]

The World Bank and other MDBs support countries build capacity to prevent illicit financial flows and reinforce financial system integrity. The World Bank provides technical assistance through supporting risk assessments, implementing a risk-based approach to AML/CFT on the basis of the risk assessment, reviewing regulatory and institutional frameworks, and building capacity for systemic data collection. The MDBs work with country-specific AML/CFT relevant authorities as well as with multilateral fora such as the FATF, the G7, the G20, the United Nations, and the OECD. Since 2011, the World Bank has support more than 100 countries through their national risk assessments. The Bank has held regional cooperation workshops and led 65 countries to strengthen their AML/CFT regimes with over 50 countries establishing or revising their AML/CFT legal framework.[160]

6. KEY FINDINGS ON DE-RISKING

Based on Treasury's review for this report, the reasons for banks' decisions to not onboard or maintain banking relationships with certain categories of customers vary. In some cases, these decisions appear to be the result of a proper application of a risk-based approach and reflect a financial institution's capacity to manage risk as opposed to de-risking. In other cases, Treasury found that a bank's decision not to work with certain categories of customers in jurisdictions was primarily driven by profitability or cost considerations and not directly driven by ML/TF risk. However, there are many other cases which do appear to be indiscriminate or overly broad. As a result, Treasury cannot quantify the extent to which the reduction in access to financial services provided by banks to respondent banks, MSBs, and non-profits is due to appropriate risk management versus de-risking.

After its consultations and literature review, Treasury concluded that a wide range of customers either are unable to secure bank access or face unusual barriers in doing so as a result of de-risking. These negative impacts warrant corrective actions, as outlined in the recommendations below. The problem is particularly acute among small- and medium-sized MSBs that offer remittance transfer services, internationally focused NPOs operating in high-risk ML/TF jurisdictions, and small foreign banks with low correspondent banking transaction volumes.

a. Money Services Businesses

Remittances include small dollar person-to-person transfers sent by residents of a country to individuals abroad.[161] In the United States remittances are primarily sent through MSBs that are

159 U.S. Dep't of the Treasury, "Report to Congress From the Chairman of the National Advisory Council on International Monetary and Financial Policies (Sep. 2022), https://home.treasury.gov/system/files/206/2022_NAC_Report.pdf.

160 The World Bank, "Financial Market Integrity" (2020), https://www.worldbank.org/en/topic/financialmarketintegrity#:~:text=Since%20 2011%2C%20the%20Financial%20Integrity,strengthen%20their%20AML%2FCFT%20regimes.

161 Bank for International Settlements defines remittance transfers to include "cross-border person-to-person payments of relatively low value." Bank for Int'l Settlements, "General principles for international remittance services," 6 (Jan. 2007), https://www.bis.org/cpmi/publ/d76.pdf.

licensed as money transmitters.[162] MSBs often serve as the primary access point to the regulated financial system for underserved immigrant communities. In 2021 alone, U.S. residents sent a record high of approximately $73 billion in remittances[163] to their family and friends overseas.[164] Recipients frequently use these funds for critical needs such as food, education, and medical care. According to the World Bank's November 2022 Migration and Development Brief, remittances were the "premier source of external finance for [low-to-middle-income countries] since 2015," and "came to represent an even larger source of external finance for [low- to middle- income countries] during 2022, relative to foreign direct investment (FDI), official development assistance (ODA), and portfolio investment flows."[165]

The under- and unbanked in the United States often use money transmitters. According to the 2021 FDIC National Survey of Unbanked and Underbanked Households, approximately 4.5% of U.S. households do not have a bank account.[166] In addition, 7% of all households used money transfer services in 2021. The use of money transfer services was more common among unbanked households.[167] For the general population, the lack of customer identification documents is not a top reason for lack of a bank account. The issue is an important factor, however, for non-U.S. citizens without resident visas.

Small and medium MSBs that provide money transmission services in the form of remittances for certain immigrant communities support the economic needs of these communities and their families abroad. A significant percentage of certain countries' GDPs come from personal remittances received from abroad. In the World Bank's Migration and Development Brief, published in November 2022, remittances constituted between 22% and 50% of ten lower-to-middle income country GDPs.[168] Immigrant communities send remittances through small MSBs that are often operated by individuals from their communities who understand their customs and speak their language. These small MSBs thus fulfill a significant need expressed by these communities. For example, the large Somali immigrant communities in Minnesota and Washington state send remittances to their family and friends in Somalia, often using MSBs that are forced to carry the funds in cash outside of the United States due to a lack of banking relationships.[169] In 2020, personal remittances received in Somalia constituted approximately 25.2% of GDP.[170]

162 Remittances are sent through banks as well.
163 The World Bank, "Remittances" (2022), https://www.knomad.org/data/remittances.
164 The United States has approximately 44 million foreign-born residents. *See* U.S. Census Bureau, "Foreign Born Resident," (2020), https://data.census.gov/cedsci/table?q=foreign-born&tid=ACSST5Y2020.S0502.
165 This statement excludes China, which is the largest recipient of foreign domestic investment (FDI). Dilip Ratha *et. al.*, The World Bank, *Migration and Development Brief 37: Remittances Brave Global Headwinds. Special Focus: Climate Migration* (Nov. 2022), https://www.knomad.org/sites/default/files/publication-doc/migration_and_development_brief_37_nov_2022.pdf.
166 Fed. Deposit Ins. Corp., "2021 FDIC National Survey of Unbanked and Underbanked Households," 2 (Oct. 2022), https://www.fdic.gov/analysis/household-survey/2021report.pdf.
167 *Id.*
168 Ratha, *Migration and Development Brief* at 37.
169 U.S. Census Bureau, "The Foreign-Born Population From Africa: 2008-2012 (Supp. Table 2)" (Oct. 1, 2014), https://www2.census.gov/library/publications/2014/acs/acsbr12-16_supptab2.pdf.
170 The World Bank, "Personal remittances, received (% of GDP) – Somalia" (2020) https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=SO&most_recent_value_desc=true.++In.

There have been limited studies concerning the prevalence of de-risking among money transmitters.[171] In 2015, the World Bank Group conducted a survey of governments, banks, and money transmitter organizations (MTOs), including MTOs in the United States, to determine the prevalence of de-risking in the remittance market.[172] The survey found that MTOs were negatively impacted by the decline in foreign correspondent banking relationships and that there was a significant increase in banks closing MTO accounts between 2010 and 2014.[173] The same survey showed that approximately 28% of the MTO principals, and 45% of MTO agents surveyed at that time no longer had access to banking services at the time of the survey.[174] In 2017, a survey conducted by the FSB's Correspondent Banking Coordination Group found that "respondent banks reported terminating services to 'most' [MTOs] at least 70% more often than other types of higher risk client."[175] There is no current data to determine whether the MTO sector continues to experience a significant loss of access to banking services, but anecdotal evidence suggests that while de-risking has appeared to plateau, many providers face high costs and limited banking options.

Treasury also conducted several consultations with MSBs of varying sizes in the United States that provide money transmitter services. The consultations with MSBs revealed that as of 2022, large MSBs do not experience widespread denial of access to banking services.[176] Treasury's survey found that medium-size MSBs have not experienced de-risking to the same degree as they did in 2015; however, the participants indicated that there are a limited number of financial institutions that will provide financial services for medium-size MSBs. Further, these medium-size MSBs stated that they pay high fees and often go through a rigorous onboarding process that takes several months to complete before the banks onboard them. The MSBs questioned whether the fees and the thoroughness of the due diligence process accurately reflect the reality of the risks involved.

Small MSBs continue to have significant issues accessing banking services, especially small MSBs that service certain immigrant communities. According to the consultations and GAO reports,[177] small MSBs that service immigrant communities from high-risk jurisdictions are often not able to maintain bank accounts. This can prove costly and present a significant security risk to the MSB and may require the MSB to use mechanisms outside of the regulated financial system to transfer funds to the intended recipients.[178] Some of the large MSB stakeholders indicated that their agents[179] sometimes experience

171 GAO reports to include: GAO, "Bank Secrecy Act, Views on Proposals to Improve Banking Access for Entities Transferring Funds to High-Risk Countries," GAO-22-104792 (Dec. 16, 2021), https://www.gao.gov/assets/gao-22-104792.pdf; GAO, "Remittances to Fragile Countries Treasury Should Assess Risks from Shifts to Non-Banking Channels," GAO-18-313 (Mar. 2018); https://www.gao.gov/assets/gao-18-313.pdf; GAO, "Bank Secrecy Act, Further Actions Needed to Address Domestic and International De-risking Concerns," GAO-18-642T (Jun. 26, 2018), https://www.gao.gov/assets/gao-18-642t.pdf.

172 Money transmitter organizations (MTOs), referenced herein also include and relate to MSBs that provide money transmitting services in the United States. Throughout this report we will be referencing MSBs that are registered as money transmitters with FinCEN.

173 The World Bank, "Fact finding summary from de-risking surveys (English)" (Nov. 1, 2015), http://documents.worldbank.org/curated/en/534371468197058296/Fact-finding-summary-from-de-risking-surveys, and https://documents1.worldbank.org/curated/en/534371468197058296/pdf/101097-WP-Box393255B-PUBLIC-Fact-Finding-Summary-from-De-Risking-Surveys-November-2015.pdf.

174 *Id.*

175 FSB, "FSB Correspondent Banking Data Report," (Jul. 2017), https://www.fsb.org/wp-content/uploads/P040717-4.pdf.

176 Treasury's consultations with large MSB suggested that sometimes the large MSBs must advocate on behalf of their agents. Thus, the agents of the large MSBs sometimes experience difficulty accessing banking services as well.

177 GAO, "Bank Secrecy Act, Views on Proposals to Improve Banking Access for Entities Transferring Funds to High-Risk Countries," GAO-22-104792 (Dec. 16, 2021), https://www.gao.gov/products/gao-22-104792; *see also* GAO, "Remittances to Fragile Countries Treasury Should Assess Risks from Shifts to Non-Banking Channels," GAO-18-313 (Mar. 2018), https://www.gao.gov/productsassets/gao-18-313.pdf.

178 *Id.* 18, Fig. 5.

179 "Money transmitters typically work through agents—separate business entities generally authorized to send and receive money transfers." "Bank Secrecy Act, Views on Proposals to Improve Banking Access for Entities Transferring Funds to High-Risk Countries," 9.

issues accessing banking services as well, and the larger MSBs must then step in to facilitate assisting the agents in attaining a bank account. Further, small and medium MSBs stated that they often receive little notice from their banks concerning closing of their bank accounts.

Treasury also conducted consultations with medium and large banks. According to these participants, servicing MSBs is expensive, as the banks consider MSBs to be high-risk and thus require frequent due diligence reviews and continuous transaction monitoring. Further, the bank representatives stated that lack of visibility into individual MSB customer transactions heightens banks' perception of risk and aversion to dealing with MSBs. Some of the participants stated that MSBs are not held to the same AML/CFT regulatory standards as other financial institutions, thus posing a greater risk.

b. International Non-Profit Organizations

Financial institutions provide services to NPOs through the facilitation of funds transfers that support the general business operations of the NPOs, the processing of donations, and the delivery of funds in jurisdictions where aid work is being carried out, among other vital services.

Loss of financial services access, including through de-risking, impacts the NPO sector. At least since 2017, U.S.-based NPOs with international operations reported facing barriers to accessing services at financial institutions. Barriers to services mainly included delayed funds transfers, bank account closures, or rejection of new bank account applications.[180] Starting in 2017, several surveys and reports attempted to quantify the scale and effects of de-risking and curtailment of financial access for NPOs with international operations. The studies found that NPOs with international operations have, and continue to experience, financial access shortfalls that result in the inability to deliver humanitarian assistance in a timely manner.[181] A 2017 survey of NPOs with international operations indicated that two thirds of these NPOs experienced difficulties accessing financial services that included delays of wire transfers, what they deemed to be unusual documentation requests, increased fees, account closures, and refusal to open accounts.[182] Fifteen percent of the survey respondents reported regularly experiencing the listed financial access issues.[183] A more recent 2020 survey of NPOs that operate internationally, to include U.S. NPOs, found that approximately 62.5% of the survey respondents reported having difficulties accessing financial services to include account closures, delays in transfer of funds, funds transfers denied, inability to open an account, increased documentation request, and increased fees internationally.[184] The 2020 survey also found that the survey respondents reported "frequently or constantly" experiencing financial access problems.[185]

In addition to studies related to NPO access to financial services, the GAO published a report in September 2018 concerning banking access challenges related to the implementation partners of Department of State (State) and USAID humanitarian assistance projects.[186] The United States in 2021

180 Sue Eckert, *Financial Access for U.S. Nonprofits.*
181 *Id.*
182 *Id.*
183 *Id.*
184 Jonathan Altman *et. al.*, *Using Data to Understand the Impact of AML/CFT/Sanctions on the Delivery of Aid: The Perspective of Nonprofit Organizations*, Yale University Capstone Study (Jan. 2021), https://docs.google.com/document/d/18ey_HQE3tPEVIXYXotrhi2T2-t0OZ42xJEIjvu5Wdc8/edit.
185 *Id.*
186 GAO, "Humanitarian Assistance USAID Should Improve Information Collection and Communication to Help Mitigate Implementers' Banking Challenges," GAO-18-669 (Sep. 2018), https://www.gao.gov/productsassets/gao-18-669.pdf.

funded $13 billion in humanitarian assistance projects.[187] Implementing partners involved in these humanitarian assistance projects include internationally focused NPOs. The report found that the implementing partners, despite having the support of the U.S. government to facilitate humanitarian assistance projects, faced financial access issues that included long delays and the need to move funds through less transparent non-bank channels. This runs contrary to the U.S. policy interests of getting humanitarian assistance to those in need as quickly as possible.

Treasury conducted consultations for this report with State, USAID and with a variety of NPO organizations that vary in size and purpose. These consultations addressed the banking services available to State and USAID implementing partners, as well as NPOs, and found that significant financial access barriers persist for these organizations. The financial access challenges cited by the NPOs, State, and USAID included what they considered unnecessary cancellations and suspensions of financial transactions, transfer delays, burdensome due diligence requests, and closure of bank accounts with little notice. Further, the NPOs indicated that transaction delays and denials were often due to decisions by respondent banks and intermediate banking relationships along the payment chains they use and therefore outside of the control of their primary financial institution. The NPOs also stated that their financial access issues do not solely relate to correspondent banks and banking intermediaries, but also include financial institutions where the NPOs hold their primary bank account.

Additionally, the NPOs stated that financial access challenges have worsened over the past year given the increased application of U.S. sanctions, as well as sanctions applied by many other countries, combined with growing humanitarian crises. This has occurred, in their view, despite unprecedented humanitarian authorizations issued by OFAC. At the same time, NPOs acknowledged that financial sanctions remain an essential foreign policy tool to combat global threats, and they play an important role in tackling complex international challenges. These include combatting human rights abuses, curtailing Russia's financial architecture complicit in Russia's unjustified invasion of Ukraine, and stifling the international proliferation of illicit drugs, among others. Understanding that the U.S. government and international community will continue to apply financial sanctions moving forward, NPOs have not advocated for fewer uses of sanctions. Rather, NPOs have requested proactive efforts be taken to address the unintended consequences of U.S. and international sanctions policies, such as loss of banking access for the humanitarian sector.

One think tank report by the Center for Strategic and International Studies (CSIS) argued that the number of humanitarian crises in various jurisdictions, including Afghanistan, Syria, Somalia, and Yemen, has increased "the frequency and magnitude"[188] of financial access issues for NPOs with international operations. These same jurisdictions have experienced increased economic and trade sanctions. The CSIS report argued that the "lack of payment channels" to facilitate financial transactions in the regulated financial system in humanitarian crisis areas, including Afghanistan and

187 U.S. State Dep't, "U.S. Dep't of State Refugee and Humanitarian Assistances" (2021), https://www.state.gov/policy-issues/refugee-and-humanitarian-assistance/.

188 Sue Eckert, Jacob Kurtzer, Sierra Ballard, Center for Strategic & International Studies, *Mitigating Financial Access Challenges*, 7 (Oct. 2022), https://www.csis.org/analysis/mitigating-financial-access-challenges; *see also*, Sue Eckert, *Counterterrorism, sanctions and financial access challenges: Course corrections to safeguard humanitarian action*, Int'l Review of the Red Cross, IRRC No. 916-917 (Cambridge Univ. Press 2022), https://international-review.icrc.org/sites/default/files/reviews-pdf/2022-02/counterterrorism-sanctions-and-financial-access-challenges-916.pdf.

Syria, pose a unique challenge to NPOs providing humanitarian aid in those jurisdictions.[189]

BIS data[190] suggests that active correspondent relationships also declined significantly in jurisdictions experiencing substantial economic and trade sanctions, including in Afghanistan, Syria, and Yemen. However, in some instances the decline of active correspondent banking relationships relates to economic and structural factors, specifically related to regulatory and financial systems in the jurisdictions, instead of efforts to manage money laundering and/or terrorist financing risk.

c. Small Foreign Banks with Low Correspondent Banking Transaction Volumes

Loss of correspondent banking relationships is a serious concern and poses particular dangers for small countries with small foreign banks. Small jurisdictions,[191] such as those in the Pacific and Caribbean, often have limited access to financial markets and continue to have difficulty maintaining their correspondent banking relationships. Complete loss of access to international financial markets is rare.[192] However, impacts of the loss of correspondent banking relationships in regions dependent on remittance revenues often lead to loss of customer base and a drop in remittance volumes, as well as substantial delays, since transfers are extended through a long chain of intermediaries.[193] The financial institutions in regions with the largest decline of correspondent banking relationships often rely on extended intermediary banking relationships for cross-border transfers, which increases reliance on a smaller number of correspondent banks and may increase costs and cause delays.[194]

There have been a number of studies that explore the prevalence of financial access loss in certain small countries, many of which over the years have had significant AML/CFT deficiencies. The studies' results vary significantly, since each country and region has different trade policies, political and regulatory systems, sources of revenue, and economic dependencies. The populations of these countries often rely on remittances to support economic growth and activity, as well as foreign direct investments.[195] The studies found that although ML/TF concerns play a role in a correspondent banks' decision to not take on a customer, profitability and business decisions are often the primary underlying factors that are cited for not banking certain respondent banks. Ultimately, according to surveys and academic studies, the volume of transactions is too low to justify maintaining a relationship with the foreign bank.

As part of this survey, Treasury conducted consultations with large U.S. correspondent banks. During the consultations, correspondent banks indicated that before they enter a correspondent banking relationship with a respondent bank, they conduct due diligence and, for some of the participants,

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189 Sue Eckert, *Mitigating Financial Access Challenges*, 10.

190 Tara Rice, Goetz von Peter, Codruta Boar, Bank for Int'l Settlements, *On the global retreat of correspondent banks*, BIS Quarterly Review (Mar. 1, 2020), https://www.bis.org/publ/qtrpdf/rqt2003g.htm ("Countries subject to US sanctions, designated as high-risk for illicit financing or perceived to be corrupt may lose a greater share of ACs").

191 The World Bank, "The World Bank Small States Overview," https://www.worldbank.org/en/country/smallstates/overview.

192 Tara Rice, *On the global retreat of correspondent banks*, 16.

193 The World Bank, *The Decline in Access to Correspondent Banking Services in Emerging Markets: Trends, Impacts, and Solutions, Lessons Learned from Eight Country Case Studies* WBG (2018). https://documents1.worldbank.org/curated/en/552411525105603327/pdf/The-decline-in-access-to-correspondent-banking-services-in-emerging-markets-trends-impacts-and-solutions-lessons-learned-from-eight-country-case-studies.pdf.

194 FSB, "Financial Stability Board Correspondent Banking Data Report" (Jul. 2017), https://www.fsb.org/wp-content/uploads/P040717-4.pdf.

195 As an example, in 2020, small Pacific Island states received approximately 10 percent of their collective GDP in the form of personal remittances, and personal remittances received accounts for approximately 39 percent of Tonga's total GDP.

request respondent banks to complete the Wolfsberg Correspondent Banking Due Diligence Questionnaire.[196] According to some of the participants, the questionnaire provides consistency in the bank's approach to assessing risks during the onboarding process for new respondent customer accounts. In addition to the initial due diligence of the respondent bank, the correspondent banks complete onsite reviews of the compliance programs of the respondent bank and continuous reviews of the respondent bank's transaction activity. The correspondent banks indicated that high-risk[197] customers require frequent reviews of the customer account transaction activity and a review and update of the CDD for those accounts and therefore require more personnel and financial resources. When considering opening a respondent bank account, the correspondent banks indicated that they first look at the potential profit opportunities of the respondent relationship and then determine whether the costs associated with maintaining the account justify initiating and continuing with the relationship. Also, correspondent banks need to have a certain volume of transactions from the respondent bank to justify the costs of maintaining the relationship. If transaction volumes are not high enough, correspondent banks have to either charge higher fees to respondent banks or reconsider the customer relationship.

7. ADVERSE CONSEQUENCES OF DE-RISKING

De-risking undermines several key U.S. government policy objectives by driving financial activity out of the regulated financial system, hampering remittances, preventing low- and middle-income segments of the population from efficiently accessing the financial system, delaying the unencumbered transfer of international development funds and humanitarian and disaster relief, and undermining the centrality of the U.S. financial system.

a. Increased Use of Unregulated Financial Channels

As previously noted, Treasury is charged with protecting the U.S. financial system pursuant to its statutory authority under the BSA, but de-risking can harm Treasury's ability to protect the U.S. financial system. The more expensive or burdensome it is for customers to use the regulated financial system, the more people unable to obtain access may turn towards unregulated financial channels to move money. Absent alternatives, MSBs and NPOs may resort to using alternative mechanisms outside of the regulated financial system, sending remittances in cash, or carrying funds on their person, in order to carry out their mission or ensure that their customers' or donors' funds arrive on time to the designated beneficiary. For example, during the consultative process, more than one MSB stakeholder shared examples of how MSB operators physically carried large amounts of cash through U.S. customs and international airports because they could no longer rely on consistent access to the U.S. financial system. The loss of transparency into these international funding flows affects governments' ability to monitor and investigate transactions and undermines the integrity of the international financial system.

The marginalization of certain categories of customers through de-risking also raises the specter of sanctions evasion, and increased reliance on unregistered financial mechanisms can create a

196 The Wolsfberg Group, "The Wolfsberg Group Correspondent Banking Due Diligence Questionnaire" https://www.wolfsberg-principles.com/wolfsbergcb.

197 "High-risk" is defined by the correspondent bank's own internal risk assessment policies and differs for every institution.

potential profit center for criminals. Finally, increased de-risking may cause financial activity to move towards non-U.S. financial institutions, eroding the centrality of the U.S. financial system. Accordingly, addressing de-risking can improve the integrity as well as the stability of the U.S. financial system.

b. Curtailment of Financial Access

De-risking of entire categories of customers or jurisdictions can result in a disproportionate curtailment of services for economically vulnerable populations. It also has the potential to result in disparate impacts and adversely affect financial inclusion. Some MSBs told Treasury that they were turned away by all banks. GAO reports[198] and Treasury's consultations demonstrate that small MSBs that service high risk countries have a difficult time maintaining a bank account, which limits their access to banking services. As stated in a CSIS Report, there is a "chilling effect" on donors to NPOs as well, which discourages people from providing funds to support humanitarian needs. Many donors now include contractual clauses that assign the risk to NPOs.[199]

For this report, Treasury consulted with several NPOs that indicated financial access matters to NPOs for more than cross-border payments. Access to banking services including bank accounts can increase legitimacy and make it easier to solicit online donations and pay employees, in addition to earning interest income. Furthermore, most businesses, including NPOs, require access to credit and insurance mechanisms to operate.[200]

For small jurisdictions, de-risking policies can have severe implications for tourism, trade, remittances, and foreign direct investment. De-risking puts additional pressure on many small jurisdictions with significant and ongoing trade deficits. To finance this trade imbalance, small countries are often net importers of credit, investment, or remittances from abroad. Correspondent bank withdrawal could undermine these countries' access to foreign financing to support public investment and valued economic sectors, like tourism. The tourism sector is critical to economic development and is a key source of foreign exchange for many small countries. The inability to process credit or debit card transactions due to lost correspondent banking relationships or high access costs to the U.S. dollar can deter tourists from purchasing goods from local hotels and shops. More fundamentally, small countries require safe, affordable, and reliable access to the global financial system to achieve sustainable economic growth.[201]

c. Correspondent Consolidation

As fewer U.S. banks offer correspondent banking services, the market consolidates, and competition decreases overall, leading to higher costs. This market consolidation is particularly relevant for overseas jurisdictions that are served by only one large U.S. bank. If that bank pulls out of the market, foreign banks turn instead to intermediary banks that extend "[p]ayment chains [that] can be quite long, involving banks in more than two jurisdictions."[202] Every additional intermediary bank could

198 *See, e.g.*, GAO, "Bank Secrecy Act, Views on Proposals to Improve Banking Access for Entities Transferring Funds to High-Risk Countries," GAO-22-104792 (Dec. 16, 2021), https://www.gao.gov/products/gao-22-104792.

199 Sue Eckert, *Mitigating Financial Access Challenges,* 7–8.

200 The World Bank, "Financial Inclusion," https://www.worldbank.org/en/topic/financialinclusion/overview.

201 Adrienne Arsht, Atlantic Council, *Financial De-Risking in the Caribbean: The US Implications and What Needs to be Done, A Report by the Caribbean Initiative's Financial Inclusion Task Force* (Mar. 2022), https://www.atlanticcouncil.org/wp-content/uploads/2022/02/Financial-De-Risking-in-the-Caribbean_US-Implications.pdf.

202 Bank for Int'l Settlements, *Correspondent Banking*, 33.

increase the cost of each transaction.[203] Increased fees are especially burdensome on remittance payments, which tend to be sent by U.S.-based customers back to their families in their home countries.

In addition to increasing costs, the use of nested correspondent accounts leads to delays in payments, as each intermediary needs to satisfy its own process requirements. Timely payments are helpful for business in general and can be especially important for NPOs and customers sending remittances to countries in crisis, whether due to conflict or natural disasters. In a humanitarian crisis, delays of even a few days can significantly hamper NPOs' ability to deliver life-saving food and services. At the same time, nested correspondent accounts make direct transaction monitoring and customer due diligence much more difficult, and thus pose increased risk.[204]

d. Geopolitical Concerns

Loss of bank access, where it is widespread and indiscriminate enough to be considered de-risking, has the potential to push countries to seek closer relationships with geopolitical competitors and cause significant macroeconomic damage to regions of U.S. foreign policy interest. By pushing countries and financial institutions to seek foreign alternatives to the U.S. financial system, de-risking may strengthen the influence of our competitors. To the extent it holds back prosperity, economic growth, and stability, de-risking could also pose a challenge to our larger foreign policy goals, not to mention creating resentment against American leadership and exacerbating human suffering, which is antithetical to American values.

Widespread de-risking could also reduce the centrality of the U.S. financial system and further accelerate efforts by some jurisdictions to reduce their dependency on the U.S. dollar and the U.S. financial system. While the U.S. dollar is the leading currency in the international monetary system, some individuals whom Treasury interviewed expressed concern that the increased use of U.S. sanctions in the last decades has made the U.S. dollar less attractive and created demand for payment channels that do not depend on it. Although the U.S. dollar's position remains strong,[205] unchecked de-risking could compound moves towards de-dollarization.

e. Development Funding and Humanitarian and Disaster Relief

De-risking also undermines the key U.S. policy objectives of maintaining the flow of essential and legitimate remittance and humanitarian flows. De-risking can make it harder for NPOs, including international development and humanitarian organizations, to carry out activities critical to the provision of legitimate humanitarian assistance or other activities that support basic human needs in affected communities. De-risking by U.S. financial institutions can also cause economic damage in strategically important regions if such measures prevent individual remittances from flowing efficiently. As expressed by Congress, providing vital humanitarian and development assistance and protecting the integrity of the international financial system are complementary goals.[206]

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203 "[F]or MT 103 messages a fee is typically deducted from the payment amount by each intermediary bank so that…the beneficiary does not receive the full amount of the original payment order." However, for MT 202 COV method, intermediaries do not deduct additional fees. And "most of the costs involved in correspondent banking arise not from the actual payments processing but from compliance and IT work on system modifications." *Id.* at 37.

204 FinCEN, "Updated Advisory on Widespread Public Corruption in Venezuela," FinCEN Advisory, 8 (May. 3, 2019).

205 Board of Governors of the Fed. Reserve System, *The International Role of the U.S. Dollar*, (Oct. 6, 2021), https://www.federalreserve.gov/econres/notes/feds-notes/the-international-role-of-the-u-s-dollar-20211006.html.

206 AMLA, Sec. 6215(a)(1).

8. REGULATORY REVIEW

As a result of the review required by Section 6215(c)(2), Treasury has identified several proposals that would help "reduce any unnecessarily burdensome regulatory requirements and ensure that the information [collected] fulfills the purpose [of the BSA]."[207] These proposals include (1) considering revisions to AML/CFT programs as required under Section 6101 of the AMLA, which directs Treasury to publish National AML/CFT Priorities and promulgate regulations to carry out those priorities; (2) considering the support of financial inclusion through the application of a risk-based approach to AML/CFT compliance; (3) continuing public-private sector engagement; (4) clarifying and considering revising certain BSA regulations; and (5) promoting consistent implementation in examination of regulatory requirements and supervisory expectations that take into account the effect of de-risking through training provided by the Treasury to Federal examiners.

These efforts are ongoing, and as the delegated administrator of the BSA, FinCEN is working to implement the various requirements of AMLA, including those related to de-risking. In some cases, the review required under Section 6215(c) overlaps with other sections of the AMLA, such as Sections 6101, 6204, 6205, 6216, and 6307.[208] The potential implementation of these provisions will be complementary in working toward achieving a major policy goal of the AMLA: promoting financial inclusion and mitigating the adverse effects of de-risking through the application of effective, reasonably designed, and risk-based AML/CFT compliance programs. In addition, there are certain reforms to BSA regulations and regulatory processes outside of the AMLA that may be effective in addressing de-risking.

9. STRATEGY

This report proposes a strategy designed to reduce de-risking and the adverse consequences of de-risking, while (1) effectively mitigating money laundering, terrorist financing, proliferation financing, and sanctions evasion risks; and (2) maximizing the ability of sanctions to change behavior. In addition to supporting the centrality and competitiveness of the U.S. financial system, the strategy seeks to foster an environment where humanitarian-related activities can occur, including in conflict zones or high-risk jurisdictions, through humanitarian-related authorizations and streamlined public guidance for NPOs and relevant private-sector actors. Finally, the strategy aims to promote financial inclusion by reducing barriers to the legitimate use of financial services as much as possible, while supporting efficient, safe, and affordable domestic and cross-border transactions, especially those that facilitate remittances.

As indicated above, the causes of de-risking are found in large-scale trends and profitability is the primary driver for de-risking. Accordingly, the recommendations in the strategy are necessarily high level, and will require additional resources and follow-up if pursued. The U.S. government has a limited ability to influence financial institutions' revenues and expenses in this area without significantly weakening the ability to mitigate money laundering, terrorist financing, proliferation

207 AMLA Sec. 621(c)(2).

208 Section 6101, Establishment of national exam and supervision priorities; Section 6204, Interagency anti-money laundering and countering the financing of terrorism personnel rotation program, Section 6216, Review of regulations and guidance, Section 6307, Training for examiners on anti-money laundering and countering the financing of terrorism.

financing, and sanctions risks. As such, Treasury's recommended solutions lead with an interest in understanding de-risking through more public-private sector engagement, tracking and measuring data to better understand the nature and magnitude of de-risking in the United States, and assessing the notice period and termination practices that banks engage in when closing customer accounts. Treasury also proposes solutions related to clarifying and updating certain regulations and updating examination practices, since the U.S. government has a greater ability to effect change through those mechanisms. Finally, Treasury recommends continued engagement with international counterparts to improve global AML/CFT controls. The recommendations aim for areas in which Treasury sees an opportunity to make some improvement within the limits of its tools and authorities while recognizing the limits of Treasury's influence on the key drivers of de-risking. Accordingly, Treasury recommends the following actions.

During the consultation process, several stakeholders raised the idea of using the Community Reinvestment Act (CRA) to help give banks more incentive to support cross-border remittances. This echoes years of engagement with the financial sector and diaspora communities in the U.S. that have made similar suggestions. Treasury looks forward to the promulgation of a final CRA rule by the Federal Reserve, OCC, and FDIC in due course.

a. Examination Practices Review

As indicated above, during the consultations that Treasury engaged in, participants stated that a potential driver of de-risking is a perceived lack of regulatory clarity as well as a lack of consistency in how examiners are evaluating banks' AML/CFT programs. Regulatory clarity issues are addressed in the next section. While the FFIEC BSA/AML Examination Manual establishes standard AML/CFT examination procedures, there are variations in how those procedures are interpreted and applied in practice. Such variations may be due in part to differences in business models, asset size, market/customer focus, and other related factors, and understanding these variations and their underlying causes is key to addressing them. FinCEN should therefore consider conducting a review of examination findings and practices in collaboration with the FBAs, and as part of the development and implementation of annual examiner training required by Section 6307 of the AMLA, to better understand how examination procedures are applied and to identify examination and supervisory practices that may be sources of this perceived inconsistency. Based on the results of this review, FinCEN in consultation with the FBAs should consider potential options for addressing identified inconsistencies. To address potential concerns regarding supervisory consistency, FinCEN along with the FBAs has recently completed a variety of educational and guidance efforts on supervisory consistency. These efforts, as well as additional potential ideas that FinCEN is exploring, include:

1. Treasury's relevant components should consider requesting enhanced formal membership and participation on supervisory task forces and programs administered by the FFIEC. Treasury components, including FinCEN, currently participate in various FFIEC task forces and programs, but the lack of full voting membership in the FFIEC limits FinCEN's role in assessing and changing federal and state examination practices and programs to improve the consistency of risk-focused supervision and examination. Examples of current participation by relevant Treasury components on task forces and programs administered by the FFIEC include but are not limited to: the AML/CFT sub-committee of the FFIEC Task Force on Supervision (TFOS); the FFIEC working group drafting the

revisions to the FFIEC BSA/AML Examination Manual; and the development group on the annual FFIEC Advanced BSA/AML Specialists Conference. Despite FinCEN's role as the administrator of the BSA, FinCEN lacks voting authority in the FFIEC on BSA matters. FinCEN's voting membership in the FFIEC would establish a regular schedule for FinCEN to directly update and brief the TFOS and provide FinCEN with a voting role in AML/CFT subcommittee meetings, programs, and projects.[209] This would require a statutory change, necessitating congressional action. Given FinCEN's understanding of ML, TF, and PF risks, these changes could enhance the work of FFIEC and make it more focused on risk and de-risking.

2. FinCEN and the FBAs should work together to consider how FinCEN might be able to more directly support the overall examination process and how the process could be improved. As the administrator of the BSA, FinCEN can examine different financial institution types, such as banks and MSBs, to develop an overall understanding of financial institutions' compliance practices and processes that may inadvertently exacerbate de-risking. Additionally, FinCEN can work with federal and state examiners to review and modify examination practices in order to promote consistency in the application of a risk-focused approach to examinations and minimize the impact, if any, on de-risking. To operationalize, this will require additional funding from Congress to support enhanced staffing in FinCEN's Enforcement and Compliance Division.
3. FinCEN should update the 2009 MSB examination manual.[210]
4. FinCEN, in coordination with the FBAs, should implement the enhanced training requirements of the AMLA, Section 6307, for examiners reviewing the AML/CFT compliance programs of financial institutions.[211] This annual examiner training requirement focuses on potential risk profiles and warning signs that an examiner may encounter during examinations, financial crime patterns and trends, understanding by an examiner on the high-level context for why AML/CFT programs are needed by law enforcement and national security authorities and what risks those programs are seeking to mitigate, and de-risking and its effects on access to financial services.
5. FinCEN should consult with the FBAs to consider whether there are any additional mechanisms that could help to achieve greater standardization and effectiveness and provide additional gateways for feedback from financial institutions when they have concerns or questions about the consistency, clarity or risk-focus of examinations, including consideration of the possibility of ombudsman/ liaison positions or duties, in addition to those already provided for by the AMLA.

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209 *See also Bank Secrecy Act, Views on Proposals to Improve Banking Access for Entities Transferring Funds to High-Risk Countries*, 6. The FFIEC BSA/AML Examination Manual provides guidance for examiners who carry out BSA/AML/BSA examinations, and OFAC examinations. The manual includes an overview of the BSA/AML compliance program requirements, risks and risk management and examination procedures for BSA/AML examinations. The manual is continuously updated based on technical, regulatory, and issued guidance concerning BSA/AML and it is updated by the FBAs, state banking agencies, FinCEN, and the U.S. Department of the Treasury. OFAC provides information concerning the sections related to sanctions and OFAC reviews.

210 FinCEN, *Bank Secrecy Act/Anti-Money Laundering Examination Manual for Money Services Businesses* (2008), https://www.fincen.gov/sites/default/files/shared/MSB_Exam_Manual.pdf.

211 Section 6307, titled "Training for examiners on anti-money laundering and countering the financing of terrorism," contemplates coordination of examiner training materials. Section 6307 also requires examination staff to attend the appropriate annual training, as determined by the Treasury Secretary, relating to AML/CFT, to include "[de-risking] and effects of [de-risking] on the provision of financial services," among other areas of focus. Section 6307 also requires that Treasury, "in consultation with the [FFIEC], FinCEN, and Federal, State, Tribal and local law enforcement agencies to establish the appropriate training materials and standards for use in the training required."

Share examination findings

As indicated above, during Treasury's consultations, MSB and bank participants stated that banks and bank examiners do not understand MSBs sufficiently to adequately assess the money laundering risks. If banks are unable to gather sufficient information to conduct appropriate CDD, develop a customer risk profile, and monitor for suspicious activity, they are less likely to provide MSBs with accounts. The bank participants stated that bank examiners conduct additional examination steps based on the 2005 interagency guidance on providing banking services to MSB customer accounts, and thus spend extra time reviewing and assessing MSB accounts. Some of the MSB participants and a state bank regulator indicated that allowing MSBs to share their examination results with their banks might provide more information, clarity, and security in understanding business operations and AML/CFT compliance controls. One state has initiated a program with a confidentiality agreement to allow banks and bank examiners to view MSB exam reports.[212]

Treasury recommends that banking regulators explore allowing MSBs to share federal and/or state examination results with their banking partners. This could provide banks with greater visibility into the MSB's operations and assist them in demonstrating their BSA compliance to bank examiners when reviewing MSB customer accounts.

b. Notice Period Analysis

As indicated above, during Treasury's consultations with MSBs and NPOs, as well as international counterparts, many interlocutors claimed that banks give insufficient notice to MSBs, NPOs, and small foreign banks about bank account closures. Due to the limited nature of this study, Treasury cannot offer broad conclusions about the extent of banks' termination notices or the specific ramifications outside of anecdotal evidence. In its 2016 bulletin concerning risk management guidance on foreign correspondent banks, the OCC stated that "when the bank has decided to terminate the foreign correspondent account, [the bank should] provide sufficient time for the foreign financial institution to establish an alternative banking relationship with other U.S. banks."[213] Treasury proposes additional inquiry by a combined group from Treasury, including FinCEN, and bank supervisors, into current bank practices and processes related to account termination and whether and how such processes might be improved for bank customers. Based on responses, Treasury components in coordination with the FBAs and state regulators should then decide whether further action is needed, except for in exceptional circumstances, financial institutions provide sufficient notice to MSBs, NPOs, respondent banks, and relevant authorities, along with business account relationships, before exiting relationships. Any statement, guidance, or rulemaking should not prescribe a specific time rule but could address ancillary issues like the advisability of giving customers as much notice as possible and the potential to agree on potential termination procedures at the inception of customer relationships.

212 Wash. Dep't of Fin. Inst., "Impact Money Services Business Program," (Oct. 7, 2022), https://dfi.wa.gov/sites/default/files/dfi-guidance-for-depository-institutions-on-msbs.pdf; *see also* Wash. Dep't of Fin. Inst., "Agreement to Maintain Confidentiality," https://dfi.wa.gov/sites/default/files/depository-institutions-msbs-confidentiality-agreement.pdf.

213 Off. of the Comptroller of the Currency, "Risk Management Guidance on Foreign Correspondent Banking: Risk Management Guidance on Periodic Risk Reevaluation of Foreign Correspondent Banking," Bulletin 2016-32 (Oct. 5, 2016), https://www.occ.gov/news-issuances/bulletins/2016/bulletin-2016-32.html.

c. Improve AML/CFT Programs

As noted above, FinCEN and the FBAs have issued statements emphasizing the need for financial institutions to take a risk-based approach in their AML/CFT compliance programs.[214] In accordance with this prior guidance, many banks have adopted risk assessments as a standard feature of their compliance programs. While the FBAs have traditionally expected banks to conduct risk assessments as part of their AML/CFT compliance program implementation and have applied a risk-focused approach to supervising for compliance with the provisions of the BSA,[215] banks are not currently subject to a regulatory requirement that their AML/CFT programs be risk-based, or that they conduct risk assessments. However, the traditional approach is subject to change pursuant to AMLA's requirements.

To address this issue, Treasury is preparing a rulemaking that would implement relevant parts of Section 6101(b) of the AMLA, which provide an opportunity to revise AML/CFT programs so that they are "effective," "reasonably designed," and "risk-based," as described in the statute.[216] This provision of the AMLA requires the Treasury Secretary and the appropriate Federal functional regulators to consider these factors in prescribing minimum standards for AML/CFT programs. Among these, there must be consideration for how AML/CFT programs should be "risk-based, including ensuring that more attention and resources of financial institutions should be directed toward higher-risk customers and activities, consistent with the risk profile of a financial institution, rather than toward lower risk customers and activities."[217] Implementing this specific provision will provide financial institutions with greater clarity in how to prioritize the allocation of their compliance resources, which could allow them to maintain broader access to banking services while at the same time effectively meeting their AML/CFT compliance obligations. As noted in the AMLA, these are complementary goals.

Certain Section 6101(b) amendments to the BSA also require the Treasury Secretary to consider that the extension of financial services to the underbanked and the facilitation of certain financial transactions, including remittances, while protecting the financial system from abuse are key policy goals of the United States.[218] Furthermore, as part of a planned rulemaking, FinCEN is considering how the AML/CFT national priorities required under certain Section 6101(b) amendments may be incorporated into financial institutions' AML/CFT programs and whether this should include consideration of financial inclusion and mitigates the harmful effects of de-risking.[219]

Policy guidance plays an important role in communicating the expectations and risk perspectives of U.S. government agencies to the public. Therefore, Treasury staff will coordinate with the FBAs to review related guidance and evaluate its continued effectiveness in the de-risking context. At a minimum, the review would include the following four guidance documents which cover the customer

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214 *See id.* Appendix I.

215 FFIEC BSA/AML Manual, Fed. Fin. Inst. Examination Council, https://bsaaml.ffiec.gov/manual/BSAAMLRiskAssessment/01. According to the FFIEC Manual, banks should "structure their compliance programs to be risk-based."

216 *See* 31 U.S.C. § 5318(h)(2)(B)(iv)(II) & (h)(4)(D).

217 *Id.* § 5318(h)(2)(B)(iv)(II).

218 *Id.* § 5318(h)(2)(B)(ii).

219 FinCEN, *Anti-Money Laundering and Countering the Financing of Terrorism National Priorities*, (Jun. 30, 2021), https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20(June%2030%2C%202021).pdf.

types specified in Section 6215. All predate the CDD, have been the subject of industry requests for withdrawal, and are incorporated into the FFIEC Manual:

- Joint Statement, Guidance on Accepting Accounts from Foreign Embassies, Consulates and Missions (March 24, 2011).
- U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S. Based Charities (September 29, 2006).
- Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States (April 26, 2005).
- Guidance On Accepting Accounts from Foreign Governments, Foreign Embassies and Foreign Political Figures (June 15, 2004).

Following any review of the guidance documents, Treasury will coordinate with the FBAs to consider whether these and other issuances should be updated or replaced to improve the clarity of communications with industry participants to further enhance their compliance with AML/CFT requirements and effectiveness of AML/CFT programs.

d. Clarify and Consider Revising MSB BSA Regulations

FinCEN will incorporate the findings from the consultations performed for this study and from the regulatory review as required by Section 6216 of the AMLA to consider clarifications or regulatory changes to promote financial inclusion and reduce de-risking. Options for implementing this proposal include reviewing MSB regulations and guidance. FinCEN will conduct a review of BSA regulatory requirements and definitions for MSBs in the context of technological advances, innovation, and changing business models in the traditional finance ecosystem and assess whether some MSBs may be providing services that should be subjected to BSA regulatory requirements more in line with bank requirements.

e. Improve International Cooperation to Raise AML/CFT Compliance

Financial institutions and governments become more attractive customers to correspondent banks the more they effectively mitigate ML and TF risks and consistently adhere to international standards. The FATF report on the State of Effectiveness and Compliance with the FATF Standards, indicates that "just 10% of countries have effectively implemented [AML/CFT] supervisory measures."[220] Additionally, only 19% of the FATF-style regional body members received a substantial or higher rating concerning implementation of the risk-based approach.[221] In practice, therefore, most countries are not effectively supervising financial institutions to mitigate risk, and few apply a risk-based approach, which is the cornerstone of the international standards in combatting illicit finance.

Treasury will use its influence and participation in bilateral and multilateral fora abroad to push for strengthening the effective implementation of the FATF standards through the FATF peer review process and FATF-style regional body mechanisms. This would include working at the FATF to improve global implementation of Recommendation 8 on NPOs. FATF Recommendation 8 advises jurisdictions to apply the risk-based approach in supervising NGOs for terrorist financing. Unfortunately, some

220 FATF, *Report on the State of Effectiveness Compliance with FATF Standards* 44, (2022), www.fatf-gafi.org/publications/documents/effectiveness-compliance-standards.html.

221 *Id.*

authoritarian regimes have inappropriately applied this FATF standard to close down organizations for political gain. More appropriate application of Recommendation 8 would help in ensuring that the risk-based approach to supervision of NPOs is actually applied. Treasury will also use its influence and participation at the FATF to improve global implementation of Recommendation 14 on money and value transfer systems so that the recommendation is better understood worldwide. Most remittance services providers would fall under Recommendation 14. Efforts should include working with foreign governments to help them improve their MSB and correspondent banking regulation and supervision.

f. Support Regional Consolidation Projects

As noted above, Treasury's consultations and literature review found that profitability is the primary factor that correspondent banks consider when deciding to initiate, maintain, or exit a business customer relationship. Correspondent bank consultation participants and Treasury's literature review found that one reason small foreign banks have difficulty maintaining correspondent accounts is that the low volume of transactions does not provide enough profit to justify the costs, some of which are fixed.

Treasury will research and consider regional "consolidation" respondent banking approaches, which may include mechanisms such as the establishment of a publicly chartered corporation to consolidate regional financial flows into one respondent banking customer at sufficient volume to improve profitability for potential correspondent banks.[222] If structured appropriately to address supervision, compliance, and oversight considerations, such an approach could encourage banks to take on correspondent relationships, provided sufficient AML/CFT supervision from a credible regulator.

Treasury notes that there are many challenges related to this option, including regulations, capitalization, and ownership structure of the respondent banking customer. At a fundamental level, such an arrangement would have to facilitate transparency and avoid "nesting" arrangements. Otherwise, the correspondent bank would lose crucial visibility needed to effectively mitigate ML/TF risk. This recommendation would require extensive research and analysis as well as public- and private- sector stakeholder outreach to understand whether such a thing is possible and if so, how to structure it.

g. Support International Financial Institution Efforts on De-risking

Treasury leads engagement in the MDBs and the IMF, both of which conduct a variety of projects and technical assistance aimed at addressing de-risking. Treasury can use its influence and participation in IFIs to support efforts to conduct national risk assessments, risk management strategies, and diagnostics of legal frameworks across regions. Technical assistance through IFIs such as the IMF Regional Capacity Development Centers can improve AML/CFT regimes in small countries disproportionately affected by de-risking and can enhance domestic regulatory regimes, thus lowering compliance risks for global correspondents.

Beyond technical assistance, Treasury supports MDB and other IFI efforts to minimize de-risking. The MDBs have a variety of projects that can mitigate de-risking trends. This includes development projects to improve national identity systems and support targeted financial sector reforms. Access to the global payment system is essential for financial inclusion and cross-border trade, so providing

222 The Caribbean Finance Committee proposed to explore a similar mechanism with central banks and the Caribbean governments.

support to make correspondents more sustainable could be viewed as a public good if it alleviates correspondent bank withdrawal. Treasury will encourage the IFIs to provide support to vulnerable regions such as the Caribbean and the Pacific to mitigate de-risking trends and identify policy responses to retain access to correspondent banking relationships.

h. Explore the Potential for Emerging Technological Solutions, Including Digital Identity

During the consultations and literature review, Treasury explored the potential for innovative technology to help address challenges around de-risking, including digital identity solutions, financial technology (FinTech), regulatory technology (RegTech), and other emerging technological solutions. Treasury will continue studying the potential of innovative technologies, including digital identity solutions, privacy enhancing technologies (PETs) for robust, privacy-preserving information sharing, and emerging AI-driven AML transaction monitoring solutions to address de-risking.

One approach that FinCEN is actively exploring is the use of digital identity solutions to assist customers in asserting their identity and financial institutions in their CIP and AML program compliance efforts. Potential solutions include authoritative identity attribute validation services modeled on the Social Security Administration's electronic Consent Based Social Security Number Verification (eCBSV) Service, state mobile driver's licenses (mDLs), and the Department of Homeland Security's digital resident cards in the Worldwide Web Verifiable Credential format. FinCEN is particularly interested in examining how these new, updatable digital identities can help build trust in financial services, mitigate customer identification process breakdowns, and improve financial institutions' abilities to combat illicit finance. Digital identity solutions could also potentially address de-risking by increasing the efficiency and safety of customer identification data storage and processes that banks and MSBs currently use. At the same time, digital identities raise corresponding issues related to financial inclusion, which require further examination.

i. Modernization of U.S. Sanctions

As indicated above, Treasury continues to take steps to modernize U.S. sanctions programs, including the incorporation of baseline humanitarian-related authorizations across U.S. sanctions regimes to implement UNSCR 2664. OFAC issued a baseline set of general licenses in December 2022 to facilitate humanitarian assistance by authorizing certain activities by the U.S. government and implementing partners, certain international organizations and entities, NGOs, and exporters of food, medicine, and medical devices, across a number of U.S. sanctions regimes. OFAC also recently issued the February 2023 general license to allow humanitarian assistance in the wake of the earthquake in Türkiye and Syria. Along with the authorizations, OFAC provided FAQs and guidance related to the U.S. government's authorizations for humanitarian-related activities. To facilitate further support for this program, Treasury will continue to review regulations and FAQs to assess the need for revised or updated guidance concerning appropriate risk-based diligence measures involving humanitarian-related actors and transactions.

j. Reduce Burdensome Requirements for the Processing of Humanitarian Assistance

It is in the U.S. government's foreign policy interests for U.S. government-funded or U.S. government implementing partner NPOs to have sufficient access to financial services. Treasury strongly encourages financial institutions to ensure that transactions complying with U.S. laws and regulations are approved without delay. Treasury will continue working with financial institutions to encourage them to adopt a risk-based approach to access by NPOs to the essential financial services they need to engage in life-saving assistance abroad. Treasury will continue to engage with the humanitarian assistance community to explore ways to reduce burdensome regulatory or other requirements to better facilitate financial access services for this class of NPOs.

k. Track and Measure De-risking

As indicated above, the consultations revealed that data on de-risking and loss of account access more broadly is often incomplete and requires a laborious process of interview and consultation to see even somewhat holistic. As a result, there is a need for greater alignment among both U.S. financial institutions and regulators about the trend and magnitude of the problem. Part of the challenge is that to date, the U.S. government has not undertaken a formal survey or mandated that U.S. financial institutions report the closures of accounts or identify to the U.S. government classes of customers for which they do not provide financial services (e.g., whether or not they serve MSBs).

Both Treasury and the FBAs lack sufficient reliable data on the extent to which financial institutions have historically engaged in de-risking or are continuing to do so. Much of what is understood is based on concerns or complaints raised by certain classes of customers, to include certain countries, to Treasury officials. This can introduce subjectivity into Treasury's analysis and creates a time lag in understanding changes in the environment.

To address this, Treasury recommends a joint study mechanism with the FBAs for improving transparency around de-risking to better understand when and why it occurs. Treasury recommends that FinCEN and the FBAs take stock of existing data to better understand the current information gaps in order to scope out further data collection efforts concerning de-risking. This would not change banks' ability to make risk-based business decisions, but rather would help Treasury and regulators understand the underlying problem, if any, on a quantitative basis. Data on international correspondent banking relationships is particularly important to better inform bilateral and multilateral efforts to mitigate de-risking. Such a study should also consider whether further data collection requirements might put unintended pressure on banks to accept all customers regardless of risks and consider as well the limits of data collection authority and practical capacity.

l. Public-Private Sector Engagement

Treasury recommends continued public-private sector engagement to include key topics such as risk-based approach, support for innovation, education on AML/CFT obligations, and compliance practices for impacted parties, and data sharing. During Treasury's consultations with NPOs, MSBs, and international counterparts, participants indicated that continued public and private sector engagement with policymakers, regulators, and financial institutions will help create a deeper and more widespread understanding of the potential causal factors of de-risking. Treasury recommends the establishment and support of formal multi-stakeholder, public-private, domestic, and international fora on de-risking causal factors, consequences on categories of customers, and collaborative solutions. Similar past engagements include the World Bank Stakeholder Dialogue on De-risking, U.S.-Latin America Private Sector Dialogue (US-LA PSD), and CSIS Multi-stakeholder Working Group on Financial Access.

10. CONCLUSION

Treasury's findings generally support the view that de-risking poses a challenge to both public and private sector participants in providing responsible access to financial services, advancing U.S. foreign policy and the centrality of the U.S. financial system, and combatting illicit finance. Reducing these frictions and removing unwarranted barriers to access is both a U.S. and international priority, particularly for cross-border payments used by MSBs, international NPOs and certain foreign banks. Treasury's industry and academic research, interagency collaboration, and extensive public-private interviews pointed to profitability as the most important factor in de-risking; however, Treasury also identified other factors that contribute to and/or exacerbated the effects of de-risking, including AML/CFT risks.

No single action by the federal government will be a panacea to the issue of de-risking. That said, coordinated actions by the federal government could make significant progress and help reduce the consequences of de-risking. A collaborative effort will be far more effective than anything the federal government might do on its own. Public and private stakeholders should find ways to support the effort to address the adverse consequences of de-risking. Foreign partners could provide important support as well. Matching actions by other governments, many of which have expressed a desire to help in bilateral discussions, would greatly increase the impact this strategy could have. Support from multilateral institutions could also magnify the potential of this strategy to combat de-risking, especially by providing technical assistance abroad and helping to ensure strong and consistent application of international standards to AML/CFT regulation and supervision. Continued open engagement and dialogue, as well as commitment to help improve financial inclusion are essential to mitigate the causes of de-risking and to strengthen the AML/CFT regimes of the United States and the rest of the world.

APPENDIX

PUBLICATIONS OR PUBLIC STATEMENTS BY THE U.S. DEPARTMENT OF THE TREASURY ON DE-RISKING

a. *Treasury and FBA joint statements*

- Joint Statement on the Risk-Based Approach to Assessing Customer Relationships and Conducting Customer Due Diligence (July 6, 2022)
- Statement on Bank Secrecy Act Due Diligence for Independent ATM Owners or Operators (June 22, 2022)
- Joint Fact Sheet on Bank Secrecy Act Due Diligence for Charities and Non-Profit Organizations (November 19, 2020)
- Joint Statement on Bank Secrecy Act Due Diligence Requirement for Customers Who May Be Considered Politically Exposed Persons (August 21, 2020)
- Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision (July 22, 2019)
- Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing (December 3, 2018)
- OCC Bulletin 2016-32 Risk Management Guidance on Foreign Correspondent Banking: Risk Management Guidance on Periodic Risk Reevaluation of Foreign Correspondent Banking (October 5, 2016)
- Joint Fact Sheet on Foreign Correspondent Banking: Approach to BSA/AML and Office of Foreign Assets Control (OFAC) Sanctions Supervision and Enforcement (August 30, 2016)
- Guidance on Existing AML Program Rule Compliance Obligations for MSB Principals with Respect to Agent Monitoring (March 11, 2016)
- Statement on Providing Banking Services (FDIC statement, encouraging depository institutions to take a risk-based approach) (January 28, 2015)
- Banking Money Services Businesses: Statement on Risk Management (OCC Bulletin 2014-58) (November 19, 2014)
- Joint Statement, Guidance on Accepting Accounts from Foreign Embassies, Consulates and Missions (March 24, 2011)
- U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities (September 29, 2006)
- Registration and De-Registration of Money Services Businesses (February 3, 2006)
- Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States (April 26, 2005)
- Guidance on Accepting Accounts from Foreign Governments, Foreign Embassies and Foreign Political Figures (June 15, 2004)

b. *FinCEN manual and publications*

- Bank Secrecy Act/Anti-Money Laundering Examination Manual for Money Services Businesses (2008)
- Money Laundering Prevention, A Money Services Business Guide (September 2007)
- Bank Secrecy Act Requirements, A Quick Reference Guide for Money Services Businesses (September 2007)
- Reporting Suspicious Activity, A Quick Reference Guide for Money Services Businesses (September 2007)

c. *Expansion of humanitarian authorizations and guidance in U.S. and international sanctions regimes*

- COVID-19-related general licenses in the Iran, Syria, and Venezuela programs, expanding on longstanding humanitarian exemptions, exceptions, and authorizations to cover additional COVID-19-related activities in those jurisdictions, including the delivery of face masks, ventilators and oxygen tanks, vaccines and the production of vaccines, COVID-19 tests, air filtration systems, and COVID-19-related field hospitals, among other items.
- Expanded humanitarian-related authorizations across a number of sanctions programs. For example, in the Syria sanctions program, Treasury expanded the authorization for NGOs to engage in certain additional humanitarian-related activities. These expanded activities include humanitarian projects that meet basic human needs, democracy-building, projects supporting education, non-commercial development projects directly benefiting the Syrian people, and activities to support the preservation and protection of cultural heritage sites. This action helps ensure the continued provision of humanitarian assistance that benefits the Syrian people. Similarly, even while imposing an unprecedented range of sanctions in response to Russia's unjustified invasion of Ukraine, Treasury issued broad authorizations for certain transactions that would otherwise be prohibited by our Russia sanctions, including transactions related to the production, manufacturing, sale, or transport of agricultural commodities (including fertilizer), agricultural equipment, medicine, medical devices, replacement parts and components for medical devices, or software updates for medical devices; the prevention, diagnosis, or treatment of COVID-19 (including research or clinical studies relating to COVID-19); or ongoing clinical trials and other medical research activities. These authorizations have been crucial to mitigating the impact of Russia's unjustified invasion on food security around the world.
- Broad humanitarian Afghanistan-related authorizations and guidance, including seven general licenses and 25 frequently asked questions focused to implement UNSCR 2615 and ensure that our sanctions do not prevent the flow of humanitarian aid to the people of Afghanistan.
- U.S. co-led negotiations with Ireland that resulted in the addition of humanitarian carveouts across UN sanctions programs through the adoption of UNSCR 2664. Previously, the U.S.-led negotiations at the UN that resulted in the issuance of UNSCR 2615 which was critical to allowing humanitarian assistance to continue to flow to Afghanistan.

- Additional targeted humanitarian-related guidance to explain these expanded humanitarian-related authorizations to humanitarian stakeholders and financial institutions. Notably, Treasury has issued several Frequently Asked Questions and factsheets on the following topics: (1) Provision of Humanitarian Assistance and Trade to Combat COVID-19, (2) Provision of Humanitarian Assistance to Afghanistan and Support for the Afghan People, (3) Preserving Agricultural Trade, Access to Communication, and Other Support to Those Impacted by Russia's War Against Ukraine, [and] (4) Food Security Fact Sheet: Russia Sanctions and Agricultural Trade, [; and (5) Guidance Related to The Provision of Humanitarian Assistance by Not-for-Profit Non-Governmental Organizations.]

Specific roundtable engagements, participation in multi-stakeholder dialogues on de-risking and public engagements, statements and speeches include:

d. *Public roundtables and engagements:*

- Treasury Roundtable on Financial Access for Money Services Businesses (January 13, 2015)
- Financial Sector Innovation Policy Roundtable (February 10, 2021)
- FinCEN Bank Secrecy Act Advisory Group (BSAAG)
- FinCEN Innovation Hour program
- FinCEN Exchange program
- Treasury ongoing meetings with NPO partners

e. *Treasury participation in multi-stakeholder dialogues on de-risking:*

- Center for Strategic and International Studies (CSIS)
- Norwegian Refugee Council
- Global Counterterrorism Forum Countering America's Adversaries Through Sanctions Act (CAATSA) Feasibility Study
- World Bank Stakeholder Dialogue on De-risking
- U.S.-Latin America Private Sector Dialogue (US-LA PSD)

f. *Public engagements, statements, and speeches:*

- Remarks by Acting Under Secretary Adam Szubin at the ABA/ABA Money Laundering Enforcement Conference (November 16, 2015)
- Remarks of Under Secretary Cohen, American Bankers Association (ABA)/ABA Money Laundering Enforcement Conference (November 10, 2014)

g. *Research reports and other publications*

- Treasury study on Somalia remittances and de-risking (2018)

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