

Congress of the United States

Washington, DC 20510

May 26, 2016

The Honorable Thomas J. Curry
Comptroller of the Currency
The Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Dear Comptroller Curry:

We write regarding bank “de-risking” and its negative consequences for businesses, financial institutions, and communities throughout the U.S., particularly those located along the southern border.

As you know, de-risking is the practice in which financial institutions consider closing or limiting entire lines of business and business relationships in order to avoid or limit risk. In particular, this includes performing a rational cost-benefit analysis related to compliance with Bank Secrecy Act anti-money laundering regulations (BSA/AML) and the costs and risks associated with compliance to determine whether the benefits to the institution justify the costs and additional regulatory burden.

Legitimate businesses in our states, including money service businesses (MSBs) and accounts related to law-abiding individuals and commercial enterprises, have been impacted by increases in the incidence of de-risking based on perceived risk over the past few years. In fact, many have lost critical access to the banking system. With an increasingly globalized economy, access to the financial infrastructure is crucial for customers and the economic survival of businesses. We are deeply concerned about the negative economic impacts associated with this trend.

We strongly support federal efforts to combat money laundering and terrorism. In addition, we recognize both the need for financial institutions to make sound decisions based on the regulatory regime they face, as well as the economic dangers faced by commercial enterprises when faced with limited access to banking services. The loss of financial access can actually subvert the anti-money laundering efforts by driving certain financial activities into unregulated and untraceable banking alternatives. We submit that it is in everyone’s best interest to improve the current regulatory environment to strike a balance between an effective enforcement of laws while maintaining and encouraging vibrant cross-border commerce.

Over the past two years, we have worked with financial institutions, community leaders, trade groups, and federal law enforcement and regulatory agencies, including members of your staff. We were pleased to hear your March 7, 2016 comments, in which you acknowledged the consequences that de-risking can have as well as your announcement that the OCC is carrying

out an internal evaluation to determine whether “possible gaps in existing policies” exist that might be contributing factors to the problem. In your speech, you also mentioned that new guidance – to replace the current guidance that was issued more than ten years ago – could be necessary.

We believe steps need to be taken to ensure that financial institutions have a clear understanding of the risks associated with servicing clients involved in transmitting money across borders as well as the expectations of those regulating them. This should lead to greater confidence in being involved in legitimate cross-border activity. In addition, we have learned that disparities may exist between OCC regulations and how OCC examiners are applying them. As such, we support the issuance of new and clear guidance and respectfully offer the following recommendations:

- *Undue Burden:* New guidance should affirmatively seek to minimize the burden on financial institutions of complying with BSA/AML while achieving the goals of identifying and preventing illicit activities. It should also clarify that banks are not law enforcement agents; rather, they are private entities that can use their unique relationships with customers to assist law enforcement in fighting criminal activities.
- *On-going Dialogue:* Since banks are most familiar with their customers, the OCC should maintain an ongoing, robust dialogue with financial institutions as well as with their customers that are experiencing trouble related to the application of BSA/AML regulations.
- *Internal Oversight to Address Discrepancies:* All OCC employees should be held accountable to ensure they appropriately follow directions and regulations emanating from your headquarters. In addition to new guidance, OCC should consider establishing an internal oversight committee with representatives involved with examination, rulemaking, and executive management to address discrepancies between stated policies and their application. Any new guidance should emphasize the importance of ensuring congruency between the two.
- *Coordinated Efforts:* The OCC should work with other regulators when issuing regulations to identical financial institutions. We also recommend that the OCC share best practices when coordinating among agencies.
- *Risk Assessment:* Financial institutions should perform due diligence in compliance with obligations set forth by the *Bank Secrecy Act*. The extent to which they should perform further due diligence should be dictated by the level of risk presented by the individual customer, and take into account factors such as product type offered, transaction level, purpose of the account and anticipated account activity.
- *Knowing the Customers:* New guidance should clarify that Customer Identification Programs (CIP) should require banks to know the identity and basic identifying data of

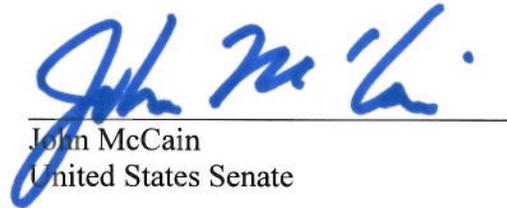
their customers, but not hold them accountable to unrealistic expectations of knowing similar information regarding their customer's customers.

We would appreciate the OCC treating this matter seriously and with due urgency. We respectfully request an in-office update on the internal review your agency is currently executing as well as a written response regarding the status of the drafting of new guidance, responses to these recommendations, and any other actions your agency is taking to remedy the problems associated with bank de-risking.

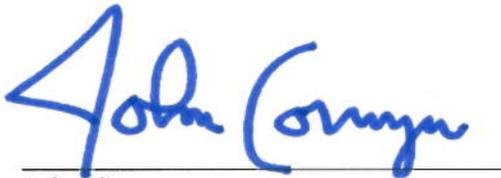
Thank you for your attention to this matter, in strict accordance with existing rules, regulations, and ethical guidelines. Should you have any questions, please contact our staff, Nick Morrison with Senator Flake via Nick_Morrison@flake.senate.gov or (202) 224-4521 and David Cole with Senator McCain via David_Cole@mccain.senate.gov or (202) 224-2235.



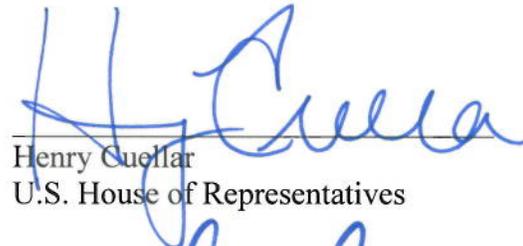
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United States Senate



John McCain
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