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# Foreign Charitable Grantmaking Guidelines

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## FOREIGN CHARITABLE GRANTMAKING GUIDELINES

The following summarizes current key principles for international grantmaking by public charities, and is followed by recent guidelines issued by the US Department of Treasury and the Office of Foreign Assets Control.

### I. INTRODUCTION

- A. An IRC sec. 501(c)(3) organization may conduct all or part of its charitable activities in a foreign country. See Rev. Rul. 71-460.
- B. An IRC sec. 501(c)(3) organization may make grants to another 501(c)(3) organization. See Rev. Rul. 67-149. There are no geographic limitations.
- C. An IRC sec. 501(c)(3) organization will not jeopardize its exempt status even though it distributes funds to organizations that are not themselves IRC sec. 501(c)(3) organizations provided the following two conditions are met. See Rev. Rul. 68-489.
  - 1. The exempt organization must limit distributions to specific projects that further the organization's exempt purposes (non-diversion prohibition).
  - 2. The exempt organization must retain control and discretion as to the use of the funds and maintain records establishing that the funds were used for purposes in accordance with IRC sec. 501(c)(3).
- D. Distributions to Individuals- Need to maintain records and case histories showing the name and address of each recipient, the amount distributed to each, the purpose for which the aid was given, the manner in which the recipient was selected and relationship, if any, between the recipient and members, officers, or trustees of the organization. Rev. Rul. 56-304. The documentation needs to establish whether exempt purposes were in fact served by the distribution. *The Church in Boston v. Commissioner, 71 T.C. 101 (1978).*

**BOTTOM LINE:** Distributions must be for specific projects limited to exempt purposes, with continual control, discretion, and records.

### II. DEDUCTIBILITY OF DONATIONS-

- A. General Rule- While US charities can undertake operations and grantmaking activities abroad, donors may not obtain charitable deductions for contributions made directly to foreign organizations.
- B. Individuals and corporations can receive a charitable deduction for federal income tax

purposes for qualified charitable contributions. See IRC sec. 170(a). The contribution must be to an entity organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes and the organization must be “created or organized in the US or in any possession thereof, or under the law of the US”. See IRC sec. 170(c)(2)(A).

C. What about contributions to a US charity that are subsequently transmitted to a foreign charitable organization? That depends on whether:

1. the grant to the foreign organization was for purposes which the domestic organization has reviewed and approved as in furtherance of its tax-exempt purposes;
2. the contribution received by the domestic organization was earmarked for the foreign organization;
3. the contribution was subject to the control and discretion of the domestic organization?

D. The US charity can not merely serve as an agent for, or conduit of, a foreign charitable organization. However, the US charity can raise funds for specific projects to be carried out by the foreign organization, provided it maintains control and discretion over the use of the funds. See Rev. Rul.’s 63-252, 66-79, and 68-489.

### III. ADDITIONAL CONSIDERATIONS

A. Same issues that need to be addressed by a public charity in the US, don’t change by going abroad. Thus restrictions and prohibitions on lobbying, political activities, private benefit, private inurement, and unrelated business income activity remain imperative.

B. Antiterrorism Guidelines- The US Department of the Treasury issued voluntary guidelines for US charities engaging in exempt activities overseas. While not legally required, the guidelines provide practical and effective best practices for the US charity. *A copy of the guidelines is enclosed.*

C. Office of Foreign Assets Control (“OFAC”) Risk Matrix- OFAC administers and enforces US economic sanctions, and works with charitable organizations to assist them in understanding and complying with the legal obligations under US sanction and antiterrorism laws. OFAC developed a risk matrix to help US charities evaluate and better understand the potential legal risks associated with their overseas activities. The risk matrix should be carefully reviewed by the board as part of the due diligence process before issuing an overseas grant. *A copy of the matrix is enclosed.*

### IV. CHECKLIST FOR PUBLIC CHARITIES ENGAGING IN FOREIGN GRANTMAKING

A. US charity's bylaws provide procedures governing the issuance of foreign grants required by the Internal Revenue Service. See Rev. Rul. 66-79.

B. US charity requires submission of a pre-grant inquiry by the grantee as part of the due diligence process.

C. Officer of US charity conducts searches and determines that the foreign grantee is not suspected of any activities relating to terrorism, including terrorist financing or other support. Additional research is performed regarding the current political and social state of affairs as well as the legal structure in the jurisdictions which the grantee is operating to determine the risks associated with the project(s).

D. US charity executes agreement with foreign entity to (1) provide distributions for specific projects, (2) incorporate mechanisms for control and discretion over the use of the funds distributed; and (3) mandates reporting by grantee for the use of the funds.

For additional information and/or a review of an organization's overseas activities, please contact an attorney at Mosher & Wagenmaker, LLC.

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**U.S. DEPARTMENT OF THE TREASURY ANTI-TERRORIST FINANCING GUIDELINES:  
VOLUNTARY BEST PRACTICES FOR U.S.-BASED CHARITIES<sup>1</sup>**

**Table of Contents**

<b>I.</b>	<b>Introduction.....</b>	<b>2</b>
<b>II.</b>	<b>Fundamental Principles of Good Charitable Practice.....</b>	<b>3</b>
<b>III.</b>	<b>Governance Accountability and Transparency.....</b>	<b>4</b>
<b>IV.</b>	<b>Financial Accountability and Transparency.....</b>	<b>6</b>
<b>V.</b>	<b>Programmatic Verification.....</b>	<b>8</b>
<b>VI.</b>	<b>Anti-Terrorist Financing Best Practices.....</b>	<b>9</b>

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<sup>1</sup> This document is a revised version of the original *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* released by the U.S. Department of the Treasury in November 2002. This revised version incorporates comments received in response to the issuance of the draft revised Guidelines released for public comment in December 2005.

These Guidelines are designed to assist charities that attempt in good faith to protect themselves from terrorist abuse and are not intended to address the problem of organizations that use the cover of charitable work, whether real or perceived, to provide support to terrorist groups or fronts operating on behalf of terrorist groups. Non-adherence to these Guidelines, in and of itself, does not constitute a violation of existing U.S. law. Conversely, adherence to these Guidelines does not excuse any person (individual or entity) from compliance with any local, state, or federal law or regulation, nor does it release any person from or constitute a legal defense against any civil or criminal liability for violating any such law or regulation. In particular, adherence to these Guidelines shall not be construed to preclude any criminal charge, civil fine, or other action by Treasury or the Department of Justice against persons who engage in prohibited transactions with persons designated pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, as amended, or with those that are designated under the criteria defining prohibited persons in the relevant Executive orders issued pursuant to statute, such as the International Emergency Economic Powers Act, as amended. Please see Footnote 12 for an explanation of the master list of Specially Designated Nationals (the “SDN List”), which includes all such designated persons. These Guidelines are also separate and apart from requirements that apply to charitable organizations under the Internal Revenue Code (“IRC”).

## I. Introduction

Upon issuance of Executive Order 13224, President George W. Bush directed the U.S. Department of the Treasury (“Treasury”) to work with other elements of the federal government and the international community to develop a comprehensive and sustained campaign against the sources and conduits of terrorist financing. Investigations have revealed terrorist abuse of charitable organizations, both in the United States and worldwide, to raise and move funds, provide logistical support, encourage terrorist recruitment or otherwise cultivate support for terrorist organizations and operations. This abuse threatens to undermine donor confidence and jeopardizes the integrity of the charitable sector, whose services are indispensable to both national and world communities.

In response to this threat, Treasury first released the *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* (“Guidelines”) in November 2002. In December 2005, based on extensive review and comment by public and private sector interested parties, Treasury revised and released the Guidelines in draft form for further public comment. Based on the comments received, Treasury has further amended the Guidelines to improve their utility to the charitable sector in adopting practices that can better protect it from terrorists and their support networks.

The Guidelines are designed to enhance awareness in the donor and charitable communities of the kinds of practices that charities may adopt to reduce the risk of terrorist financing or abuse. These Guidelines are voluntary and do not create, supersede, or modify current or future legal requirements applicable to U.S. persons, including U.S. non-profit institutions. Adherence to these guidelines does not constitute a legal defense against any civil or criminal liability for violating any local, state, or federal law or regulations. In addition, these Guidelines do not represent an exhaustive or comprehensive compilation of best practices. Many charities, through their extensive experience and expertise in delivering international aid, have already developed effective internal controls and practices that lessen the risk of terrorist financing or abuse. In view of this fact, Treasury does not want charities to abandon proven internal controls and practices. Rather, the Guidelines are intended to assist charities in developing, re-evaluating, or strengthening a risk-based approach to guard against the threat of diversion of charitable funds or exploitation of charitable activity by terrorist organizations and their support networks.

In addition, these Guidelines are intended to assist charities in understanding and facilitating compliance with preexisting U.S. legal requirements related to combating terrorist financing, which include, but are not limited to, various sanctions programs administered by the Office of Foreign Assets Control (“OFAC”). These preexisting legal requirements are clearly marked in the text of the Guidelines.

The risk-based nature of these Guidelines reflects Treasury’s recognition that a “one-size-fits-all” approach is untenable and inappropriate due to the diversity of the charitable sector and its operations. Accordingly, certain aspects of the Guidelines will not be applicable to every charity, charitable activity, or circumstance. Moreover, Treasury acknowledges that certain exigent circumstances (such as catastrophic disasters) may make application of the Guidelines difficult. In such cases, charities should maintain a risk-based approach that includes all prudent and reasonable measures that are feasible under the circumstances. Charities and

donors are encouraged to consult these Guidelines when considering protective measures to prevent infiltration, exploitation, or abuse by terrorists. Although adherence to these Guidelines does not guarantee protection from terrorist abuse, effective internal controls which incorporate the principles and practices set forth in these Guidelines can prevent the diversion of charitable resources from their proper uses, as well as identify situations involving terrorist financing or abuse.

Treasury recognizes the vital importance of the charitable community in providing essential services around the world. Treasury also understands the difficulty of providing assistance to those in need, often in remote and inaccessible regions, and applauds the efforts of the charitable community to meet such needs. The goal of these Guidelines is to facilitate legitimate charitable efforts and protect the integrity of the charitable sector and good faith donors by offering the sector ways to prevent terrorist organizations from exploiting charitable activities for their own benefit.

## **II. Fundamental Principles of Good Charitable Practice**

- A. Charities are independent entities and are not part of the U.S. Government. Like all U.S. persons, charitable organizations must comply with the laws of the United States, which include, but are not limited to, all OFAC-administered sanctions programs.<sup>2</sup>

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<sup>2</sup> OFAC sanctions programs include those relating to particular countries or regimes (country-based programs), as well as those relating to groups, individuals, or entities engaged in specific activities (list-based programs). Sanctions programs normally: (i) prohibit U.S. persons from engaging in certain transactions, such as trade in goods and services and financial transactions, and/or (ii) require U.S. persons to block the assets and property of persons designated under the relevant Executive order or law. The particular prohibitions and/or obligations of U.S. persons vary by program. OFAC can issue licenses to U.S. persons to engage in transactions that would otherwise be prohibited, if there is a policy-permissible reason to do so, and if permitted by statute. Further information on how to apply for specific licenses is available at <http://www.treas.gov/offices/enforcement/ofac/faq/index.shtml#license>.

For further information on OFAC-administered sanctions programs and general licensing under these programs, please see <http://www.treas.gov/offices/enforcement/ofac>.

OFAC guidelines for non-governmental organizations wishing to undertake humanitarian activities in sanctioned countries are available at [http://www.treas.gov/offices/enforcement/ofac/regulations/ngo\\_reg.pdf](http://www.treas.gov/offices/enforcement/ofac/regulations/ngo_reg.pdf).

Other helpful guidance materials for charities relating to protection from terrorist abuse may be found at <http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml>.

The United States relies on a wide array of federal criminal statutes in fighting the threat of terrorist financing. Charities should be particularly aware that in its efforts against the financing of terrorism, the U.S. relies on, among others, the federal statutes that prohibit:

- the financing of terrorism (18 U.S.C. § 2339C),
- providing material support or resources to terrorists (18 U.S.C. § 2339A), and
- providing material support or resources to designated terrorist organizations (18 U.S.C. § 2339B).

In that effort, the U.S. also particularly relies upon the federal statutes which criminalize:

- B. Charitable organizations are encouraged to adopt practices in addition to those required by law that provide additional assurances that all assets<sup>3</sup> are used exclusively for charitable or other legitimate purposes.<sup>4</sup>
- C. Individuals acting in a fiduciary capacity for any charitable organization should exercise due care in the performance of their responsibilities, consistent with applicable common law as well as local, state, and federal statutes and regulations.
- D. Governance, fiscal and programmatic responsibility and accountability are essential components of charitable work and must be reflected at every level of a charitable organization and its operations.

### III. Governance Accountability and Transparency

- A. Governing Instruments: Charitable organizations should operate in accordance with governing instruments, *e.g.*, charter, articles of incorporation, bylaws, *etc.* The governing instruments should:
  - 1. delineate the charity's basic goal(s) and purpose(s);
  - 2. define the structure of the charity, including the composition of its governing body, how such body is selected and replaced, and the authority and responsibilities of the body;
  - 3. set forth requirements concerning financial reporting, accountability, and practices for solicitation and distribution of funds; and
  - 4. state that the charity shall comply with all applicable local, state, and federal laws and regulations.
- B. Independent Oversight: It is important for charitable organizations to have independent oversight of charitable operations, and each charitable organization should determine what oversight structure best suits that organization and will provide for unbiased scrutiny of its operations. The following provisions set forth

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- the laundering of monetary instruments (18 U.S.C. § 1956), and
  - engaging in monetary transactions in property derived from specified unlawful activity (18 U.S.C. § 1957).

<sup>3</sup> An asset is any item of value, including, but not limited to, services, resources, business, equitable holdings, real estate, stocks, bonds, mutual funds, currency, certificates of deposit, bank accounts, trust funds, and the property and investments placed therein.

<sup>4</sup> A charitable organization may never use charitable assets for illegal purposes; however, a charitable organization may accrue unrelated business taxable income in the course of legitimately doing business as a charitable organization. Even though an organization is recognized as tax exempt, it still may be liable for tax on its unrelated business taxable income.

basic principles for the creation of a transparent and accountable oversight body (the “governing board”).

1. Members of the governing board ordinarily should not have an active role in the day-to-day management of the charitable organization.<sup>5</sup> The charity should establish a conflict of interest policy for both members of the governing board and employees. That policy should establish procedures to be followed if a member of the governing board or employee has a conflict of interest or a perceived conflict of interest relating to the management or operations of the charity.
2. The governing board should be responsible for the charitable organization’s compliance with relevant laws, its finances and accounting practices and for the adoption, implementation, and oversight of practices, including financial recordkeeping that will safeguard charitable assets effectively.
3. The governing board should maintain records of its decisions.
4. Charities should maintain and make publicly available a current list of members of the governing board, their salaries and their affiliation with any subsidiary or affiliate of the charitable organization.
5. While fully respecting individual privacy rights, charities should maintain records of additional identifying information about the members of the governing board, such as available home, email and URL addresses, social security number, citizenship, *etc.*
6. While fully respecting individual privacy rights, charities should maintain records of identifying information for the members of the governing boards of any subsidiaries or affiliates<sup>6</sup> receiving funds from them.
7. When served with process or when other appropriate authorization exists, charities should produce requested records maintained in accordance with these Guidelines to the appropriate regulatory/supervisory and law enforcement authorities in a timely fashion.

### C. Key Employees<sup>7</sup>

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<sup>5</sup> Certain charitable organizations, such as houses of worship, certain trusts, and corporations sole, may not be able to apply this practice due to their varying organizational and operational structures.

<sup>6</sup> Subsidiaries or affiliates are organizations that are subject to the general supervision or control of a parent or central organization.

<sup>7</sup> Key employees include not only highly compensated employees but employees who have responsibilities, powers, or influence similar to those of officials, directors, or trustees. Key employees also include chief management and administrative officials of a charitable organization, including those involved in the disbursement of funds.

1. Charities should maintain and make publicly available a current list of their five highest paid or most influential employees (the key employees) and the salaries and direct or indirect benefits they receive.
2. While fully respecting individual privacy rights, charities should maintain records containing identifying information (such as available home, email and URL addresses, social security or other identification number – *e.g.*, taxpayer identification number, national identity, or passport number – citizenship, *etc.*) about their key, non-U.S. employees working abroad. Such information should be similar to that maintained by charities in the normal course of operations about all U.S. employees, wherever employed, and foreign employees working in the United States.
3. While fully respecting individual privacy rights, charities should maintain records containing identifying information for the key employees of any subsidiaries or affiliates receiving funds from them.

#### **IV. Financial Accountability and Transparency**

- A. The charity should have a budget, adopted in advance on an annual basis and approved and overseen by the governing board.
- B. The governing board should appoint one individual to serve as the financial/accounting officer who should be responsible for day-to-day control over the charity's assets.
- C. If the charity's total annual gross income exceeds \$250,000,<sup>8</sup> the governing board should select an independent certified public accounting firm to audit the finances of the charity and to issue a publicly available, audited financial statement on an annual basis.
- D. Solicitations for Funds
  1. The charity should clearly state its goals for and purposes of soliciting funds so that anyone examining the charity's disbursement of funds can determine whether the charity is adhering to those goals.
  2. Solicitations for donations should accurately and transparently tell donors how and where their donations are going to be expended.
  3. The charity should substantiate on request that solicitations and

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<sup>8</sup> The \$250,000 figure is drawn from the June 2005 final report to Congress of the Panel on the Nonprofit Sector, convened by Independent Sector. This report, which offers a comprehensive approach to improving oversight and governance of charitable organizations, recommends independent financial audits for charities that have more than \$250,000 in total annual revenue. This report is available at <http://www.nonprofitpanel.org/final/>.

informational materials, distributed by any means, are accurate, truthful, and not misleading, in whole or in part.

4. The charity should fully, immediately, and publicly disclose if it makes a determination that circumstances justify applying funds for a charitable purpose different from the purpose for which such funds were contributed or solicited.

#### E. Receipt and Disbursement of Funds

1. The charity should account for all funds received and disbursed in accordance with generally accepted accounting principles and the requirements of the Internal Revenue Code. The charity should maintain records of the salaries it pays and the expenses it incurs (domestically and internationally).
2. The charity should include in its accounting of all charitable disbursements the name of each grantee,<sup>9</sup> the amount disbursed, the date, and form of payment for each disbursement.
3. The charity, after recording, should promptly deposit all received funds into an account maintained by the charity at a financial institution. In particular, all currency donated should be promptly deposited into the charity's financial institution account.
4. The charity should make disbursements by check or wire transfer rather than in currency whenever such financial arrangements are reasonably available. Where these financial services do not exist or other exigencies require making disbursements in currency (as in the case of humanitarian assistance provided in rural areas of many developing countries, or in remote areas afflicted by natural disasters), the charity should disburse the currency in the smallest increments sufficient to meet immediate and short-term needs or specific projects/initiatives rather than in large sums intended to cover needs over an extended time frame, and it should exercise oversight regarding the use of the currency for the intended charitable purposes, including keeping detailed internal records of such currency disbursements.

#### F. Mechanisms for Public Disclosure of Distribution of Resources and Services

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<sup>9</sup> The term "grantee," as it is used throughout these Guidelines, means an immediate grantee of charitable resources or services. To the extent reasonably practicable, charitable organizations should also apply or ensure the existence of applicable safeguards (as described in Sections III, IV, V, and VI) in any downstream sub-grantees or recipients to protect charitable resources from exploitation by terrorists, terrorist organizations, or terrorist supporters. Charities should not enter into a relationship with a grantee where any doubts exist about the grantee's ability to ensure safe delivery of charitable resources independent of influence by or association with any terrorist organization.

1. The charity should maintain and make publicly available a current list of any branches, subsidiaries, and/or affiliates that receive resources and/or services from the charity.
2. The charity should make publicly available or provide to any member of the general public, upon request, an annual report. The annual report should describe the charity's purpose(s), programs, activities, tax exempt status, the structure and responsibility of the governing board of the charity, and financial information.
3. The charity should make publicly available or provide to any member of the general public, upon request, complete annual financial statements, including a summary of the results of the charity's most recent audit. The financial statements should present the overall financial condition of the charity and its financial activities in accordance with generally accepted accounting principles and reporting practices.

## **V. Programmatic Verification**

### **A. Supplying Resources**

When supplying charitable *resources* (monetary and in-kind contributions), fiscal responsibility on the part of a charity should include:

1. determining that the potential grantee of monetary or in-kind contributions has the ability to both accomplish the charitable purpose of the grant and protect the resources from diversion to non-charitable purposes or exploitation by terrorist organizations and/or their support networks;
2. reducing the terms of the grant to a written agreement signed by both the charity and the grantee;
3. ongoing monitoring of the grantee and the activities funded under the grant for the term of the grant; and
4. correcting any misuse of resources by the grantee and terminating the relationship should misuse continue.

### **B. Supplying Services**

When supplying charitable *services*, fiscal responsibility on the part of a charity should include:

1. appropriate measures to reduce the risk that its assets would be used for non-charitable purposes or exploitation by terrorist organizations and/or their support networks; and

2. sufficient auditing or accounting controls to trace services or commodities between delivery by the charity and/or service provider and use by the grantee.

C. Programmatic Review

The charity should review the programmatic and financial operations of each grantee as follows:

1. The charity should require periodic reports from grantees on their operational activities and their use of the disbursed funds;
2. The charity should require grantees to take reasonable steps to ensure that funds provided by the charity are neither distributed to terrorists or their support networks nor used for activities that support terrorism or terrorist organizations. Periodically, a grantee should apprise the charity of the steps it has taken to meet this goal; and
3. The charity should perform routine, on-site audits of grantees to the extent reasonable – consistent with the size of the disbursement, the cost of the audit, and the risks of diversion or abuse of charitable resources – to ensure that the grantee has taken adequate measures to protect its charitable resources from diversion to, or abuse or influence by, terrorists or their support networks.

## VI. Anti-Terrorist Financing Best Practices

Charities should consider taking the following steps before distributing any charitable funds (and in-kind contributions). As explained in Section I, these suggested steps are voluntary. The purpose of these steps is to enable charities to better protect themselves from the risk of terrorist abuse and to facilitate compliance with U.S. laws, statutes, and regulations, with which all U.S. persons, including U.S. charities, must comply. Depending upon the risk profile of an individual charitable organization, adopting all of these steps may not be applicable or appropriate. When taking these steps, charities should apply a risk-based approach, particularly with respect to engagement with foreign grantees due to the increased risks associated with overseas charitable activity.

A. The charity should collect the following basic information about grantees:

1. The grantee's name in English, in the language of origin, and any acronym or other names used to identify the grantee;<sup>10</sup>

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<sup>10</sup> Charities should also be mindful of the possibility that a grantee may have changed its name or transformed its organizational structure to avoid being associated with prior questionable activity. If a charity has any reason to believe that the grantee is operating under a different identity or has used a different name in the past, the charity should undertake reasonable efforts to uncover any such prior identity or name.

2. The jurisdictions in which a grantee maintains a physical presence;
3. Any reasonably available historical information about the grantee that assures the charity of the grantee's identity and integrity, including: (i) the jurisdiction in which a grantee organization is incorporated or formed; (ii) copies of incorporating or other governing instruments; (iii) information on the individuals who formed and operate the organization; and (iv) information relating to the grantee's operating history;
4. The available postal, email and URL addresses and phone number of each place of business of a grantee;
5. A statement of the principal purpose of the grantee, including a detailed report of the grantee's projects and goals;
6. The names and available postal, email and URL addresses of individuals, entities, or organizations to which the grantee currently provides or proposes to provide funding, services, or material support, to the extent reasonably discoverable;
7. The names and available postal, email and URL addresses of any subcontracting organizations utilized by the grantee;
8. Copies of any public filings or releases made by the grantee, including the most recent official registry documents, annual reports, and annual filings with the pertinent government, as applicable; and
9. The grantee's sources of income, such as official grants, private endowments, and commercial activities.

B. The charity should conduct basic vetting of grantees as follows:

1. The charity should conduct a reasonable search of publicly available information to determine whether the grantee is suspected of activity relating to terrorism, including terrorist financing or other support. Charities should not enter into a relationship with a grantee where any terrorist-related suspicions exist;<sup>11</sup>

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<sup>11</sup> List-checking alone (as described throughout this section) does not guarantee the safe and secure delivery of charitable funds and services in high-risk areas. For this reason, the Guidelines encourage charities to employ all reasonably available resources both when determining the level of risk in a particular charitable operation and when engaging in appropriate vetting procedures. One example of publicly available information of which charities should be aware is the Terrorist Exclusion List (the "TEL"). The TEL was created pursuant to the USA PATRIOT Act, which authorizes the Secretary of State to designate organizations or groups for inclusion on the TEL in consultation with or upon the request of the Attorney General. Inclusion on the TEL allows the U.S. Government to exclude or deport aliens who provide material assistance to, or solicit assistance for, designated TEL organizations. Although many of the organizations included on the TEL are also included on the Office of Foreign Assets Control ("OFAC") SDN List, several TEL organizations are not listed on the SDN List because of the different purposes and legal criteria associated with these lists.

2. The charity should assure itself that grantees do not appear on OFAC's master list of Specially Designated Nationals (the "SDN List"), maintained on OFAC's website at [www.treas.gov/offices/enforcement/ofac/sdn/](http://www.treas.gov/offices/enforcement/ofac/sdn/),<sup>12</sup> and are not otherwise subject to OFAC sanctions.<sup>13</sup>
3. With respect to key employees, members of the governing board, or other senior management at a grantee's principal place of business, and for key employees at the grantee's other business locations, the charity should, to the extent reasonable, obtain the full name in English, in the language of origin, and any acronym or other names used; nationality; citizenship;

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TEL designations do not trigger any legal obligations for U.S. persons; however, the TEL does provide charities with additional terrorist-related information that may assist charities in making well-informed decisions on how best to protect themselves from terrorist abuse or association. For further information regarding the TEL, including access to the list containing all TEL designees, please refer to the U.S. Department of State's website at <http://www.state.gov/s/ct/rls/fs/2004/32678.htm>.

<sup>12</sup> The master SDN List is an integrated listing of designated parties with whom U.S. persons are prohibited from providing services or conducting transactions and whose assets are blocked. OFAC's designations are available in a variety of formats and can easily be broken down into subsets of the master list by program, by country of residency, individuals vs. entities, and other variations for appropriate use in a charity's risk-based approach. Each charity should determine which OFAC listings align with the specific risks the charity faces in its operations and should check grantees accordingly.

OFAC routinely updates information on its targets, including persons designated under country-based and list-based economic sanctions programs, such as individuals and entities designated under the various Executive orders and statutes aimed at terrorism. OFAC offers a free email subscription service that enables subscribers to keep current with these updates. With respect to terrorism-related OFAC sanctions programs, SDN listings include persons designated under Executive Order 13224, Executive Order 12947, or the Antiterrorism and Effective Death Penalty Act of 1996, as amended; such persons are called "Specially Designated Global Terrorists" or "SDGTs", "Specially Designated Terrorists" or "SDTs", or "Foreign Terrorist Organizations" or "FTOs", respectively. SDN listings also include parties subject to OFAC sanctions pursuant to other list-based programs (such as counter-WMD proliferation and counter-narcotics) and country-based programs.

In addition to checking appropriate SDN listings, charities should consult OFAC's website for other information relating to sanctioned activities or countries that may implicate their operations.

<sup>13</sup> As discussed in Footnote 12, the SDN List is an integrated list of individuals, organizations, and entities that the U.S. Government has designated pursuant to both country-based and list-based OFAC administered sanctions programs. U.S. persons, including U.S.-based charities, are prohibited from dealing with any of the parties included on the SDN List. A charity wishing to engage in activity in a country subject to economic sanctions should contact OFAC directly about any authorizations necessary to engage in such activity. Although the SDN List includes persons meeting the criteria established in the authorities or Executive orders that define certain OFAC sanctions programs, transactions with actors not named on the SDN List may nevertheless violate U.S. sanctions due to interests of designated parties in such transactions or prohibitions owing to country-based OFAC administered sanctions programs. For example, if a charity engages in a particular transaction with a party not on the SDN List that involves the property or interests in property of a designated actor, the transaction may be subject to OFAC sanctions. This underscores the importance of charities knowing their grantees and monitoring their programs and transactions through the use of appropriate due diligence measures. Therefore, while the SDN List is a critically important compliance tool that can assist charities in meeting their legal obligations under the variety of sanctions programs that OFAC administers, it should only form one part of a charitable organization's broader risk-based approach to protect against the risks of terrorist abuse.

current country of residence; and place and date of birth. The charity should assure itself that none of these individuals is subject to OFAC sanctions.

4. Charities should be aware that other nations may have their own lists of designated terrorist-related individuals, entities, or organizations pursuant to national obligations arising from United Nations Security Council Resolution 1373 (2001).<sup>14</sup>
5. With respect to the key employees, members of the governing board, or other senior management described in the preceding paragraph, the charity should also consider consulting publicly available information to ensure that such parties are not reasonably suspected of activity relating to terrorism, including terrorist financing or other support; and
6. As a pre-condition to the issuance of a charitable grant, the charity should require grantees to certify that they are in compliance with all laws, statutes, and regulations restricting U.S. persons from dealing with any individuals, entities, or groups subject to OFAC sanctions, or, in the case of foreign grantees, that they do not deal with any individuals, entities, or groups subject to OFAC sanctions or any other persons known to the foreign grantee to support terrorism or to have violated OFAC sanctions.

C. The charity should conduct basic vetting of its own key employees as follows:

1. The charity should conduct a reasonable search of publicly available information to determine whether any of its key employees is suspected of activity relating to terrorism, including terrorist financing or other support. Charities should not employ a person where any terrorist-related suspicions exist; and

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<sup>14</sup> Under United Nations Security Council Resolution 1373 (2001) (UNSCR 1373), UN Member States must generally freeze without delay the funds and other financial assets or economic resources of persons financing or otherwise supporting terrorist activity or terrorist-related individuals, entities, or organizations. In addition, UN Member States must generally prohibit their nationals from engaging in transactions with such parties. In order to implement these obligations under UNSCR 1373, each UN member state should, as a practical matter, develop its own list of parties sanctioned under the criteria of UNSCR 1373. For example, the SDN List incorporates those parties designated by the United States pursuant to its national obligations under UNSCR 1373.

The Guidelines do not legitimize or endorse the UNSCR 1373 lists adopted by foreign jurisdictions. Rather, this information is intended to assist charities in developing their own risk-based programs based upon a full understanding of the law in those jurisdictions in which they may operate. Charities operating in a foreign jurisdiction may choose to take the additional precautionary measures of determining whether that jurisdiction maintains a national list under UNSCR 1373 and screening the identities of grantee organizations (including their directors and key employees) against any such list. Such precautionary measures may protect charities from potential sanctions or other consequences to which they might be subject from foreign jurisdictions as a result of engaging in transactions with individuals, entities, or organizations deemed to be financing or otherwise supportive of terrorist activity under the laws of those jurisdictions.

2. The charity should assure itself that none of its key employees is subject to OFAC sanctions or have violated OFAC sanctions.
- D. Should a charity's vetting practices lead to a finding that any of its own key employees, any of its grantees, or any of the key employees, members of the governing board, or other senior management of its grantees is suspected of activity relating to terrorism, including terrorist financing or other support, there are a number of available mechanisms and resources that a charity may utilize:
1. If the charity believes there is a match between the name of one of the individuals or organizations listed above and a name on the SDN List, the charity should take appropriate due diligence steps to ascertain whether the match is valid. These steps and further guidance are available on OFAC's Web site at <http://www.treas.gov/offices/enforcement/ofac/faq/answer.shtml#hotline>; and
  2. The charity should provide information on any suspicious activity relating to terrorism, including terrorist financing or other support, which does not directly involve an OFAC match, through a referral form available on Treasury's Web site at <http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml>. In addition, the Federal Bureau of Investigation maintains local field offices to which charities should provide such suspicious information. A list of the locations and phone numbers of the FBI's field offices is available at <http://www.fbi.gov/contact/fo/fo.htm>.

## ANNEX TO GUIDELINES

The risk of terrorist abuse facing charitable organizations is ongoing and significant and cannot be measured from the important but relatively narrow perspective of terrorist diversion of charitable funds to support terrorist acts. Rather, terrorist abuse also includes the exploitation of charitable services and activities to radicalize vulnerable populations and cultivate support for terrorist organizations and activities. As reported through a wide range of media sources, terrorist organizations deliberately establish, infiltrate, or otherwise exploit charitable organizations to build terrorist support networks.<sup>15</sup> Recent developments – such as the exploitation by Lashkar e Tayyiba (a.k.a. Jamaat-ud-Dawa) and other terrorist entities/charitable fronts of relief efforts following the October 2005 earthquake in South Asia, the critical role of Hamas-associated charities in building popular support in the Palestinian territories for the terrorist organization, and Hezbollah’s substantial control of charitable distribution networks in southern Lebanon – demonstrate the ongoing intent and effectiveness of terrorist organizations in exploiting charitable organizations and relief efforts.

Treasury, together with other Departments across the U.S. Government, is continuing to combat such terrorist abuse of the charitable sector by: (i) administratively sanctioning terrorist-related charities and charitable officials through terrorist financing designations; (ii) contributing financial information and investigative resources and expertise to advance criminal investigations and prosecutions of charities and charitable officials providing material support for designated terrorist organizations or activities; (iii) facilitating international action to address these abuses; and (iv) conducting comprehensive outreach to the charitable sector to raise awareness of terrorist exploitation and the steps charities can take protect themselves from such abuse.

U.S. designations of charities and charitable officials demonstrate the breadth of the problem of terrorist infiltration and exploitation of the charitable sector. To date, the United States has designated forty-three charities worldwide and twenty-nine associated individuals for their support of terrorist organizations and operations. These seventy-two charities and individuals

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<sup>15</sup> See, e.g., Matthew Levitt, *HAMAS: Politics, Charity and Terrorism in the Service of Jihad*; New Haven, CT: Yale Univ. Press, 2006 (documenting the logistical and financial support Hamas charities provide for the group’s political and terrorist activities); Heather Timmons, *British Study Charitable Organizations for Links to Plot*, N.Y. TIMES, Aug. 25, 2006 (describing the risks inherent in delivering charitable aid and resources to high-risk areas where terrorist organizations are known to operate); Robert F. Worth & Hassan M. Fattah, *Relief Agencies Find Hezbollah Hard to Avoid*, N.Y. TIMES, Aug. 23, 2006 (describing Hezbollah’s efforts to cultivate support by controlling the provision of charitable resources and services across southern Lebanon); Laila Bokhair, *Political Struggle Over Earthquake Victims*, Norwegian Defense Research Establishment, Nov. 23, 2005 (documenting terrorist organizations such as Lashkar-e-Taiba and Jaish-e-Mohammed efforts to provide humanitarian aid to affected areas in the months following the earthquake in South Asia); Christopher Kremmer, *Charities Linked to Extremists Lead Quake Relief*, AGE, Nov. 21, 2005 (reporting that in addition to providing relief in South Asia, terrorist organizations are recruiting and indoctrinating orphan children in their extensive network of orphanages); Evan Kohlmann, *The Role of Islamic Charities in International Terrorist Recruitment and Financing* (2006), Danish Institute for International Studies: available at <http://www.diiis.dk/graphics/Publications/WP2006/DIIS%20WP%202006-7.web.pdf> (tracing the historical link between charitable organizations and terrorist activities from the Soviet-Afghan war through to the present); BBC News, *Faith, hate and charity: Transcript*, BBC One, Recorded from Transmission, July 30, 2006 (reporting on one of Britain’s leading Islamic charities, Interpal, and illustrating Interpal’s use of a network of charities in Gaza and the West Bank to support and fund Hamas, a terrorist organization designated by the U.S. Government and the European Union).

comprise over fifteen percent of all U.S.-designated terrorist supporters or financiers, indicating the primary importance of charities as a critical means of support for terrorist organizations and activities. Treasury maintains a summary of all designated charities, including unclassified background information summarizing the basis of each designation, to assist the donor and charitable communities in identifying those charities associated with terrorist financing and support. Further information and press releases relating to these designations are available on the Treasury Web site at [http://www.treas.gov/offices/enforcement/key-issues/protecting/charities\\_exec-orders.shtml](http://www.treas.gov/offices/enforcement/key-issues/protecting/charities_exec-orders.shtml).

In addition to these ongoing efforts by Treasury and the U.S. Government, other countries and organizations from around the world have recognized and helped curb abuse of the charitable sector by terrorist organizations. The Financial Action Task Force (FATF) – the premier inter-governmental organization responsible for developing and promoting global policies to combat money laundering and terrorist financing – has studied the problem of terrorist financing and abuse across the charitable sector globally and has published typologies of such abuse. The FATF has also published Best Practices for Non-Profit Organizations and more recently issued interpretive guidance strengthening the international standard for combating terrorist abuse of non-profit organizations. Additionally, FATF style regional bodies (FSRBs) such as the Asia Pacific Group (APG), Eurasian Group (EAG) and the Middle East and North Africa Financial Action Task Force (MENA FATF) are developing typologies and studies on the active threat of terrorist financing and support through charities that operate within their regions.<sup>16</sup> These organizations and their member countries are implementing measures to actively combat this threat through the development and application of supervisory, investigative, and financial authorities to identify and dismantle charities engaged in terrorist financing or support. Many of these documents, which underscore the threat that terrorist organizations and operations pose to the charitable sector, are available on the Treasury Web site at <http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml>.

Treasury continually engages in outreach and updates its Web site to communicate useful information regarding: (i) the ongoing risks of terrorist abuse in the charitable sector; (ii) ongoing U.S. and other governmental efforts to mitigate these risks and combat terrorist abuse, and (iii) steps the sector can take to protect against such abuse. Treasury's Guidelines represent one essential component and product of the ongoing outreach that Treasury is conducting with the charitable sector to empower and protect the sector from terrorist abuse. Another example of available resources is Treasury's December 2005 advisory paper, which provides information to charities delivering relief in areas affected by the 2005 South Asia earthquake by detailing typologies of terrorist abuse of charities and reports on activity by militant and terrorist groups in those areas. This paper also shows, through media reports, the extent to which terrorist organizations pose a risk to charities trying to deliver aid in unstable areas, where terrorist

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<sup>16</sup> The efforts of the MENA FATF are particularly exemplary of international efforts to combat terrorist abuse of charities. MENA FATF Member States have issued a best practices paper, based on the FATF's international standard for combating terrorist abuse of the non-profit sector, tailored to the specific religious, social, and economic values of the region. The comprehensive framework, crafted by the MENA FATF, outlines legislative, regulatory, and procedural measures to ensure that the charitable sector is not misused or abused by terrorist financiers. The MENA FATF charities best practices paper is an indispensable tool for the Middle East and North Africa region in helping to protect against terrorist abuse of charities by offering guidance to promote transparency and accountability in the charitable sector.

organizations themselves and/or their charitable fronts are often engaged in delivering relief as an effective recruitment mechanism in building broader support for their organizations.

Treasury will continue its outreach and informational efforts as part of its larger mission to combat terrorist financing and safeguard the charitable sector from terrorist abuse.

## **Risk Matrix for the Charitable Sector**

### **Introduction**

The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") is charged with administering and enforcing U.S. economic sanctions programs, which include a range of sanctions against foreign states, terrorists, international narcotics traffickers, and other specially designated targets. Since September 11, 2001, a number of investigations in the United States and abroad, as well as reports by international organizations and in the media, have revealed the vulnerability of the charitable sector to abuse by terrorists, rogue actors, and other sanctions targets. In particular, terrorist organizations have exploited charitable organizations, both in the United States and worldwide, to raise and move funds, provide logistical support, or otherwise cultivate support for their organizations and operations.

This type of abuse can result in violations of OFAC-administered economic sanctions programs. For this reason, OFAC has actively engaged with charitable organizations to assist them in understanding and complying with their legal obligations under U.S. sanctions programs while delivering aid in high-risk areas.<sup>1</sup> OFAC has encouraged charities to develop proactive, risk-based compliance programs, informed by best practices, to protect their assets and resources from diversion or exploitation by rogue actors, terrorists, or other sanctions targets.<sup>2</sup>

To assist the charitable sector in adopting an effective, risk-based approach, OFAC is providing this matrix of common risk factors associated with disbursing funds and resources to grantees.<sup>3</sup> This matrix will be particularly useful to charities that conduct overseas charitable activity due to the increased risks associated with international activities.<sup>4</sup> The matrix is designed to provide charities with an understanding of the risks that they should consider in the course of conducting their due diligence. However, the matrix is not a comprehensive list of risk factors indicating abuse or exploitation of a particular charity or its operations, nor is it meant to establish whether or not a charity or grantee is engaged in illicit activities. Any of the risks highlighted in this matrix could constitute normal business operations for certain charities, given the resources they possess, the environments in which they work, and the constraints under which they operate. We hope that charities find this matrix to be a helpful tool in developing an appropriate compliance program.

## **Risk Factors for Charities Disbursing Funds or Resources to Grantees<sup>5</sup>**

<b>Low Risk</b>	<b>Medium Risk</b>	<b>High Risk</b>
The grantee has explicit charitable purposes and discloses how funds are used with specificity.	The grantee has general charitable purposes and discloses how funds are used with specificity.	The grantee has general charitable purposes and does not disclose how funds are used.
The charity and the grantee have a written grant agreement that contains effective safeguards. For example, provisions addressing proper use of funds by the grantee, delineation of appropriate oversight, and programmatic verification.	The charity and the grantee have a written grant agreement with limited safeguards.	The charity and the grantee do not have a written grant agreement.
The grantee has an existing relationship with the charity.	The grantee has existing relationships with other known charities but not with this charity.	The grantee has no prior history with any charities.
The grantee can provide references from trusted sources.	The grantee's references are from sources with which the charity is unfamiliar.	The grantee can provide no references or sources to corroborate references provided.
The grantee has a history of legitimate charitable activities.	The grantee is newly or recently formed, but its leadership has a history of legitimate charitable activities.	The grantee has little or no history of legitimate charitable activities.
Charity performs on-site grantee due diligence through regular audits and reporting.	Charity performs remote grantee due diligence through regular audits and reporting.	Charity performs no grantee due diligence, or due diligence is random and inconsistent.
Grantee provides documentation of the use of funds in the form of video, receipts, photographs,	Grantee provides documentation of the use of funds. Documentation may only include receipts and	Grantee provides no documentation of use of funds.

testimonies, and written records.	written records.	
The charity disburses funds in small increments as needed for specific projects or expenditures.	The charity authorizes grantee discretion within specified limits.	The charity disburses funds in one large payment to be invested and spent over time or for unspecified projects selected by the grantee.
Reliable banking systems or other regulated financial channels for transferring funds are available and used by the grantee, subjecting such transfers to the safeguards of regulated financial systems consistent with international standards.	Reliable banking systems or other regulated financial channels for transferring funds are not reasonably available for the grantee’s relevant activity, but the charity and the grantee agree on alternative methods that they reasonably believe to be reliable, trustworthy, and protected against diversion.	The grantee does not use regulated financial channels or take steps to develop alternative methods that the charity and grantee reasonably believe to be reliable, trustworthy, and protected against diversion.
Detailed procedures and processes for the suspension of grantee funds are included within the written agreement and enforceable both in the United States and at the grantee’s locale.	Detailed procedures and processes for the suspension of grantee funds are included within the written agreement but may not be enforceable at the grantee’s locale due to instability or other issues.	There exist no procedures or processes for suspension of grantee funds in the event there is a breach of the written agreement.
The charity engages exclusively in charitable work in the U.S. or in foreign countries/regions where terrorist organizations are not known to be active.	The charity engages in some work in foreign countries/regions where terrorist organizations may be active.	The charity primarily engages in work in conflict zones or in countries/regions known to have a concentration of terrorist activity.

<sup>1</sup> Engaging in a prohibited sanctions transaction, including one with a person on the Specially Designated Nationals and Blocked Persons List, administered by the Office of Foreign Assets Control (“OFAC”), is a violation of U.S. law. Nevertheless, in implementing and enforcing sanctions programs, OFAC recognizes that charities and their grantees differ from one another in size, products, and services, sources of funding, the geographic locations that

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they serve, and numerous other variables. OFAC will take these variables into account in evaluating the compliance measures of charities. OFAC addresses every violation in context, taking into account the nature of a charity's business, the history of the group's enforcement record with OFAC, the sanctions harm that may have resulted from the transaction, and the charity's compliance procedures.

<sup>2</sup> To assist charities in protecting their funds against terrorist diversion, Treasury developed the Anti-Terrorist Financing Guidelines: Voluntary Practices for U.S.-Based Charities ("Guidelines") and released them in November 2002. In December 2005, after extensive public comment and numerous outreach engagements with the sector, Treasury revised the Guidelines and released them in draft form for public comment. Based on the comments received, in September 2006, Treasury released an updated version of the Guidelines. These updated Guidelines encourage charities to adopt a risk-based approach in developing protective measures to guard against the risk of terrorist abuse. They acknowledge that charities are in the best position to understand and address the specific risks they face in their operations. The Guidelines also reference various materials that demonstrate and describe the ongoing risks of terrorist abuse of the charitable sector. Many of these materials are available on the Treasury Web site at <http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml>.

<sup>3</sup> This risk matrix is designed to assist charities that attempt in good faith to protect themselves from abuse by sanctioned parties or other bad actors and are not intended to address the problem of organizations that use the cover of charitable work, whether real or perceived, to provide support for illicit causes. The matrix is not mandatory; non-adherence to this guidance, in and of itself, does not constitute a violation of existing U.S. law. Conversely, adherence to the risk matrix does not excuse any person (individual or entity) from compliance with any local, state, or federal law or regulation, nor does it release any person from or constitute a legal defense against any civil or criminal liability for violating any such law or regulation. In particular, adherence to the risk matrix shall not be construed to preclude any criminal charge, civil fine, or other action by Treasury or the Department of Justice against persons who engage in prohibited transactions with persons designated pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, as amended, or with persons designated under the criteria defining prohibited persons in the relevant Executive orders issued pursuant to statute, such as the International Emergency Economic Powers Act, as amended.

<sup>4</sup> The term "grantee," as it is used throughout the matrix, means an immediate grantee of charitable resources or services. To the extent reasonably practicable, charitable organizations should also use the matrix and the Guidelines to ensure the safe delivery of charitable resources by any downstream sub-grantees.

<sup>5</sup> OFAC appreciates The American Bar Association's instructive comments on risk factors listed in Table 1 of Comments in Response to Internal Revenue Service Announcement 1003-29, 2003-20 I.R.B. 928 Regarding International Grant-Making and International Activities by Domestic 501(c)(3) Organizations, July 18, 2003 (Comment). The Comment represented the views of individual members of the Committee on Exempt Organizations of the Section of Taxation and contained recommendations on how the IRS might clarify existing requirements of section 501(c)(3) organizations with respect to international grant-making and other international activities. .