

**U.S. DEPARTMENT OF THE TREASURY ANTI-TERRORIST FINANCING GUIDELINES:
VOLUNTARY BEST PRACTICES FOR U.S.-BASED CHARITIES¹**

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¹ This document is an amended version of the *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* released by the U.S. Department of the Treasury in November 2002.

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, often through the diversion of donations intended for humanitarian purposes but funneled instead to terrorists, their support networks, and their 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 November 2005, Treasury revised these Guidelines, based on extensive review and comment by public and private sector interested parties, to improve the utility of the Guidelines in protecting the sector from abuse by terrorists and their support networks. The Guidelines further enhance awareness in the donor and charitable communities of the kinds of practices that charities may adopt to reduce the risk of terrorist financing. These Guidelines, as presented by Treasury, are voluntary and do not supersede or modify current or future legal requirements applicable to all U.S. persons, including non-profit institutions. Rather, the Guidelines are intended to assist charities in developing a risk-based approach to guard against the threat of diversion of charitable funds for use by terrorists and their support networks. Given the risk-based nature of these Guidelines, we recognize that certain aspects will not be applicable to every charity, charitable activity, or circumstance. Moreover, we acknowledge 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 or abuse by terrorists.²

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 protect the integrity of the

² 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. 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 9 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”).

charitable sector by offering the sector ways to minimize the threat of well-intentioned donations not reaching their intended beneficiaries and to combat the abuse of charities by terrorists and their support networks.

II. Fundamental Principles of Good Charitable Practice

- A. Charitable organizations must comply with the laws of the United States.
- B. Charitable organizations are encouraged to adopt practices in addition to those required by law that provide additional assurances that all assets³ are used exclusively for charitable or other legitimate purposes.⁴
- 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. Fiscal responsibility is an essential component of charitable work and must be reflected at every level of a charitable organization.

III. Governance

- 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 the board, how the board is selected and replaced, and the authority and responsibilities of the board;
 - 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.

³ 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.

⁴ 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.

- B. Board of Directors: Charitable organizations should be governed by a board of directors (“board”) consisting of at least three (3) members.
1. The board should be an active governing body.
 2. The board of each individual charitable organization is responsible for that organization’s compliance with relevant laws, and it should adopt and implement practices consistent with the principles contained herein. The board of each charitable organization should oversee implementation of the governance practices to be followed by that organization in a manner consistent with this Section III.
 3. The board should be an independent governing body, exercising effective and independent oversight of the charity’s operations. The charity should establish a conflict of interest policy for board members and employees. That policy should establish procedures to be followed if a board member or employee has a conflict of interest or a perceived conflict of interest.
 4. The board should maintain records of all decisions made. When appropriate, these records should immediately be made available for inspection by the appropriate regulatory/supervisory and law enforcement authorities.

IV. Financial Practice/Accountability

- A. The charity should have a budget, adopted in advance on an annual basis and approved and overseen by the board.
- B. The 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, the board should select an independent certified public accounting firm to audit the finances of the charity and to issue a yearly audited financial statement. The yearly audited financial statement should be available for public inspection.
- D. 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 recipient, the amount disbursed, and the date of the 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 normal 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), the charity should disburse the currency in smaller increments sufficient to meet immediate and short-term needs 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.

V. Disclosure/Transparency in Governance and Finances

A. Board of Directors/Trustees

1. Charities should maintain and make publicly available a current list of their board members or trustees and the salaries they are paid.
2. While fully respecting individual privacy rights, charities should maintain records containing additional identifying information about their board members, such as home address, social security number, citizenship, *etc.*
3. While fully respecting individual privacy rights, charities should maintain records containing identifying information for the board members of any subsidiaries or affiliates receiving funds from them.

B. Key Employees⁵

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/or direct or indirect benefits they receive.
2. While fully respecting individual privacy rights, charities should maintain records containing identifying information (such as home address, social security or other taxpayer identification 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

⁵ Key employees include not only highly compensated employees but employees that exercise substantial influence over the day-to-day operations of the charity.

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.

C. Mechanisms for Public Disclosure of Distribution of Resources and Services

1. The charity should maintain and make publicly available a current list of any branches, subsidiaries, and/or affiliates that receive resources and 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 body 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.

D. Supplying Resources

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

1. the determination that the potential recipient 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, including any activity that supports terrorism;
2. the reduction of the terms of the grant to a written agreement signed by both the charity and the recipient;
3. ongoing monitoring of the recipient and the activities funded under the grant for the term of the grant; and
4. the correction of any misuse of resources by the recipient and the termination of the relationship should misuse continue.

E. 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, including any activity that supports terrorism; 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 recipient.

F. Solicitations for Funds

1. The charity should clearly state its goals for and purposes of soliciting funds so that anyone examining its 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 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 whenever it makes a determination that circumstances justify applying funds for a charitable purpose different from the purpose for which they were contributed.

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, when taking these steps, charities should apply a risk-based approach, particularly with respect to foreign recipients due to the increased risks associated with overseas charitable activity.

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

1. The recipient's name in English, in the language of origin, and any acronym or other names used to identify the recipient;⁶
2. The jurisdictions in which a recipient maintains a physical presence;

⁶ Charities should also be mindful of the possibility that a recipient 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 recipient 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.

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

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

1. The charity should conduct a reasonable search of public information, including information available via the Internet, to determine whether the recipient is suspected of activity relating to terrorism, including terrorist financing or other support (*see* Part D of this Section VI for guidance on communicating suspicious information to the appropriate authorities);⁷

⁷ 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.

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>.

2. As U.S. persons, U.S.-based charities must comply with all Office of Foreign Assets Control (“OFAC”) administered sanctions programs.⁸ Among other precautions, the charity should assure itself that recipients 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/.⁹
3. With respect to key employees, board members, or other senior management at a recipient's principal place of business, and for key employees at the recipient's other business locations, the charity should obtain the full name in English, in the language of origin, and any acronym or other names used; nationality; citizenship; current country of residence; and place and date of birth. The charity should assure itself that none of these individuals is sanctioned by OFAC. Moreover, charities should be aware that other nations may have their own lists of designated terrorist-

⁸ 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.

For further information on OFAC-administered sanctions programs and 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.

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>.

⁹ 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 recipients 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.

related individuals, entities, or organizations pursuant to national obligations arising from United Nations Security Council Resolution 1373 (2001).¹⁰

4. With respect to the key employees, board members, or other senior management described in the preceding paragraph, the charity should also consider, on the basis of risk, consulting publicly available information (e.g., through public database or Internet searches) to ensure that such parties are not suspected of activity relating to terrorism, including terrorist financing or other support (*see* Part D of this Section VI for guidance on communicating suspicious information to the appropriate authorities); and
 5. The charity should require recipients to certify that they do not employ, transact with, provide services to, or otherwise deal with any individuals, entities, or groups that are sanctioned by OFAC, or with any persons known to the recipient to support terrorism.
- C. The charity should conduct basic vetting of its own key employees as follows:
1. The charity should consult publicly available information, including information available via the Internet, to determine whether any of its key employees is suspected of activity relating to terrorism, including terrorist financing or other support; and
 2. The charity should assure itself that none of its key employees is sanctioned by OFAC.
- D. Should a charity's vetting practices lead to a finding that any of its own key employees, any of its recipients, or any of the key employees, board members, or other senior management of its recipients is suspected of activity relating to terrorism, including terrorist financing or other support, the charity should act as follows:

¹⁰ 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. For example, the SDN List incorporates those parties designated by the United States pursuant to national obligations under UNSCR 1373.

This information regarding UNSCR 1373 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 recipient organizations (including principal individuals and senior 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.

1. If there is a valid or potentially valid match between the name of one of the individuals or organizations listed above and a name on the SDN List, the charity should immediately report this match to OFAC and seek further guidance. Charities should report the match through OFAC's hotline at 1-800-540-6322; and
 2. The charity can provide information on any suspicious activity that does not directly involve an OFAC match through a referral form available on Treasury's website at <http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml>. In addition, a charity should simultaneously report suspicious activity to the Federal Bureau of Investigation through its local field offices. 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>.
- E. The charity should review the financial and programmatic operations of each recipient as follows:
1. The charity should require periodic reports from recipients on their operational activities and their use of the disbursed funds;
 2. The charity should require recipients to take reasonable steps to ensure that funds provided by the charity are not distributed to terrorists or their support networks. Periodically, a recipient 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 recipients to the extent possible – 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 recipient has taken adequate measures to protect its charitable resources from diversion to, or abuse by, terrorists or their support networks.