

Side-by-Side Comparison

Treasury Department's *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S. Based-Charities* December 2005 and September 2006 Versions¹

Prepared by OMB Watch Oct. 6, 2006 For more information all 202/234-8494

See Appendix for text of footnotes.

For comments on 2005 text that has not changed see http://www.ombwatch.org/pdfs/Treas_Guidelines_Side-by-Side.pdf

| December 2005 Version <small>Strikeout lines = Text deleted in 2006 version</small> | September 2006 Version <small>New text underlined</small> | Change/Commentary |
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| Introductory Footnote | | |
| <p>[From footnote 1]</p> <p>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</p> | <p>[From footnote 1] <u>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.</u></p> <p>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. <u>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</u></p> | <p>These Guidelines add ambiguity where clarity is needed. Treasury creates troubling uncertainty by declaring that non-compliance does not constitute a violation of law, while simultaneously saying that charities that follow every step in these Guidelines have no safeguards or protection from having Treasury seize and freeze their assets.</p> <p>This illustrates the need for legal reforms that would provide nonprofits acting in good faith with effective recourse against Treasury's power to seize and freeze organizational assets if it believes anyone "associated with" the nonprofit has in turn been "associated with" a terrorist organization. Examples of reforms include appeal rights with real due process, opportunities to correct problems and safe harbor procedures that would guarantee against asset seizure due to isolated incidents.</p> |

¹ The Treasury Guidelines were made public on Sept. 29, 2006 and are available at http://www.ustreas.gov/offices/enforcement/key-issues/protecting/docs/guidelines_charities.pdf.

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| <p>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").</p> | <p>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").</p> | |
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I. Introduction

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| <p>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.</p> <p>In response to this threat, Treasury first released the <i>Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities</i> ("Guidelines") in November 2002. In December 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.</p> | <p>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, <u>to raise and move funds, provide logistical support, encourage terrorist recruitment or otherwise cultivate support for terrorist organizations and operations.</u> 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.</p> <p>In response to this threat, Treasury first released the <i>Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities</i> ("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. <u>Based on the comments received, Treasury has further amended the Guidelines to</u></p> | <p>Treasury has answered critics that cited lack of evidence for its claims that "investigations have revealed terrorist abuse" of charities by attaching an Annex that summarizes the "evidence." However, the Annex primarily cites cases of foreign front organizations, rather than U.S. charities that have been "abused" by terrorists. In addition, it exaggerates the extent of the terrorist financing problem presented by charities by failing to cite the dollars involved compared to the dollars terrorists raise from illegal activities such as drug trafficking and cigarette smuggling. (See the OMB Watch Annex commentary for details.)</p> <p>The fact that Treasury continues to label U.S. charities as significant conduits for terrorist support without adequate evidence is likely to impede ongoing dialogue between the charitable sector and Treasury.</p> <p>While the Dec. 2005 version of the Guidelines was a draft, Treasury fails to mention that charities were to implement it immediately.</p> |
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| <p>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.</p> <p>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.</p> | <p><u>improve their utility to the charitable sector in adopting practices that can better protect it from terrorists and their support networks.</u></p> <p>The Guidelines <u>are designed</u> 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 <u>or abuse</u>. 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. <u>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.</u> Rather, the Guidelines are intended to assist charities in developing, <u>re-evaluating, or strengthening</u> a risk-based approach to guard against the threat of diversion of charitable funds <u>or exploitation of charitable activity</u> by terrorist organizations and their support networks.</p> <p><u>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.</u></p> <p><u>The risk-based nature of these Guidelines reflects Treasury’s recognition that a “one-size-fits-all” approach is untenable and inappropriate</u></p> | <p>As Treasury notes in its "Response to Comments" (see http://www.ustreas.gov/offices/enforcement/key-issues/protecting/docs/response.pdf) many charities called for withdrawal of the Dec. 2005 draft guidelines.</p> <p>The new Introduction does a better job of recognizing the need for flexibility in application of these guidelines or other due diligence measures.</p> |
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| <p>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 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.</p> | <p><u>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.</u> 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 <u>all prudent and reasonable measures that are feasible under the circumstances.</u> Charities and donors are encouraged to consult these Guidelines when considering protective measures to prevent infiltration, <u>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.</u></p> <p>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 <u>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.</u></p> | <p>The Introduction significantly expands Treasury's goals beyond terrorist financing and compliance with existing sanctions programs to include vague and undefined goals of preventing "abuse" and "exploitation" or action that will "otherwise cultivate support" for terrorist operations. This appears to exceed Treasury's statutory authority, which is limited to preventing diversion of funds to designated entities and individuals.</p> |
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II. Fundamental Principles of Good Charitable Practice

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| <p>A. Charitable organizations must comply with the laws of the United States.</p> | <p>A. <u>Charities are independent entities and are not part of the U.S. Government. Like all U.S. persons,</u> charitable organizations must comply with the laws of the United States, <u>which include,</u></p> | <p>Treasury has responded to public comments that said the integrity of charitable programs and the safety of workers in conflict areas require a clear statement that charities are independent entities</p> |
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| <p>B. Charitable organizations are encouraged to adopt practices in addition to those required by law that provide additional assurances that all assets are used exclusively for charitable or other legitimate purposes.</p> <p>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.</p> <p>D. Fiscal responsibility is an essential component of charitable work and must be reflected at every level of a charitable organization.</p> | <p><u>but are not limited to, all OFAC-administered sanctions programs.</u>²</p> <p>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</p> <p>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.</p> <p>D. <u>Governance, fiscal and programmatic responsibility and accountability</u> are essential components of charitable work and must be reflected at every level of a charitable organization <u>and its operations</u></p> | <p>and not arms of government.</p> <p>Treasury declined to include the following principle recommended by commentors: A charity "must safeguard its relationship with communities it serves in order to deliver effective programs. This relationship is founded on local understanding and acceptance of the independence of the charitable organizations."</p> |
| <p>III. Governance</p> | <p>III. Governance Accountability and Transparency</p> | <p>Expanded Title</p> |
| <p>A. Governing Instruments: Charitable organizations should operate in accordance with governing instruments, e.g., charter, articles of incorporation, bylaws, etc. The governing instruments should:</p> <ol style="list-style-type: none"> 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 | <p>A. Governing Instruments: Charitable organizations should operate in accordance with governing instruments, e.g., charter, articles of incorporation, bylaws, etc. The governing instruments should:</p> <ol style="list-style-type: none"> 1. delineate the charity's basic goal(s) and purpose(s); 2. define the structure of the charity, including the composition of its <u>governing body</u>, 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 | <p>Parts III-V, which address governance and transparency, are outside OFAC's area of expertise, and are not relevant to the goal of preventing diversion of funds to terrorists. These sections will only create confusion for nonprofits, who already must comply with IRS, state and local regulations.</p> |

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| <p>4. state that the charity shall comply with all applicable local, state, and federal laws and regulations.</p> | <p>4. state that the charity shall comply with all applicable local, state, and federal laws and regulations.</p> | |
| <p>B. Board of Directors: Charitable organizations should be governed by a board of directors (“board”) consisting of at least three (3) members.</p> <p>1. The board should be an active governing body</p> <p>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.</p> <p>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</p> | <p><u>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 basic principles for the creation of a transparent and accountable oversight body (the “governing board”).</u></p> <p><u>1. Members of the governing board ordinarily should not have an active role in the day-to-day management of the charitable organization.⁵ 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.</u></p> <p><u>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.</u></p> | <p>The introduction to section B is similar to Item III B 3 in the 2005 version.</p> <p>Deletion of the recommendation regarding the number of board members is a positive step toward limiting the Guidelines' substance to address their intended purpose, and not overlap federal and state charity regulation</p> <p>The first sentence is new. The remainder is similar to Section III B 3 in the 2005 version. The blanket statement about how active board members should be in day-to-day operations contradicts Treasury's statements that it means to avoid one-size-fits all approaches. It would negatively impact organizations that rely on volunteer work of board members or where the CEO serves as a board member.</p> |

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| <p>employee has a conflict of interest or a perceived conflict of interest.</p> <p>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.</p> | <p>3. The governing board should maintain records of its decisions.</p> <p>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.</p> <p>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.</p> <p>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 affiliates⁶ receiving funds from them.</p> <p>7. <u>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.</u></p> | <p>Treasury responded positively to comments objecting to a requirement to turn over records to government without a subpoena or other legal process. Section III B 7 includes the amended language.</p> <p>Items 4-6 have been moved from Section V A of the 2005 version. There is no change in the text, and the objections to inclusion of these provisions remain unchanged.</p> <p>Collecting social security numbers and home addresses of board members is unlikely to be relevant to the goal of preventing diversion of support to terrorists, and may raise privacy concerns that could make recruitment of board members difficult.</p> <p>Footnote 6 defines subsidiaries and affiliates as "organizations that are subject to the general supervision or control of a parent or central organization." This is similar to the definition in IRS Form 990, and responds to comments requesting a definition.</p> <p>Per the request of commentors, this amends the previous version by limiting it to situations where subpoenas or other legal process has been served.</p> |
| <p>V B. Key Employees</p> <p>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.</p> | <p>C. Key Employees⁷</p> <p>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.</p> | <p>Section C has been moved from Section V B in the 2005 version. In addition, footnote 7 changes the definition of key employees to be consistent with IRS definitions used for Form 990.</p> |

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| <p>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 about all U.S. employees, wherever employed, and foreign employees working in the United States.</p> <p>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.</p> | <p>2. While fully respecting individual privacy rights, charities should maintain records containing identifying information (<u>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.</u>) 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.</p> <p>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.</p> | <p>This section expands the list of examples of the kinds of information Treasury recommends charities collect.</p> |
| <p>IV. Financial Practice /Accountability</p> | <p>IV. Financial Accountability and Transparency</p> | <p>Expanded Title</p> |
| <p>A. The charity should have a budget, adopted in advance on an annual basis and approved and overseen by the board.</p> | <p>A. The charity should have a budget, adopted in advance on an annual basis and approved and overseen by the <u>governing</u> board.</p> | |
| <p>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.</p> | <p>B. The <u>governing</u> 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.</p> | |
| <p>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.</p> | <p>C. If the charity's total annual gross income exceeds \$250,000,⁸ the governing board should select an independent certified public accounting firm to audit the finances of the charity and to <u>issue a publicly available, audited financial statement on an annual basis.</u></p> | <p>In footnote 8 Treasury says it relied on Independent Sector's Panel on the Nonprofit Sector recommendations in setting \$250,000 as the threshold for an independent audit. However, Independent Sector has said Treasury's interpretation of the recommendation is incorrect. (BNA Oct. 4, 2006) The Independent Sector report proposed independent audits for organizations with annual revenue of \$1 million or more. This is another example of why OFAC, which has little expertise with charities, should not be suggesting best practices.</p> |

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| | | There is no legal requirement for charities to release audits to the public. The IRS Form 990 is the publicly available source of information on a charity's finances and activities. |
| <p>V F. Solicitations for Funds</p> <p>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.</p> <p>2. Solicitations for donations should accurately and transparently tell donors how and where their donations are going to be expended.</p> <p>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.</p> <p>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.</p> | <p>D. Solicitations for Funds</p> <p>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.</p> <p>2. Solicitations for donations should accurately and transparently tell donors how and where their donations are going to be expended.</p> <p>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.</p> <p>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.</p> | <p>The section on Solicitation of Funds has been moved from Section V F of the 2005 version, with no change. Problems with this section remain.</p> <p>This provision duplicates government regulation and is vague about the level of "substantiation" recommended.</p> <p>The recommendation that a charity should publicly disclose when funds are being used for a purpose other than for which they were solicited should be dropped. Solicitation of funds is already regulated by federal, state and local governments.</p> |
| <p>D. Receipt and Disbursement of Funds</p> <p>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).</p> <p>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.</p> | <p>E. Receipt and Disbursement of Funds</p> <p>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).</p> <p>2. The charity should include in its accounting of all charitable disbursements the name of each <u>grantee</u>,⁹ the amount disbursed, the date, and <u>form of payment</u> for each disbursement.</p> | <p>Treasury uses the term "grantee" in the 2006 version to answer criticism of the 2005 version's use of the word "recipient". However, the definition given for "grantee" in footnote 9 still fails to distinguish between an organization receiving a grant and an individual receiving a charitable service or benefit. The definition of</p> |

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| <p>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.</p> <p>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.</p> | <p>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.</p> <p>4. The charity should make disbursements by check or wire transfer rather than in currency whenever such financial arrangements are reasonably available. Where <u>these</u> 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, <u>or in remote areas afflicted by natural disasters</u>), the charity should disburse the currency in the smallest increments sufficient to meet immediate and short-term needs <u>or specific projects/initiatives</u> 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.</p> | <p>"grantee" is "an immediate grantee of charitable resources or services."</p> |
| <p>V C. Mechanisms for Public Disclosure of Distribution of Resources and Services</p> <p>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.</p> <p>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.</p> <p>3. The charity should make publicly available or provide to any member of the general public,</p> | <p>F. Mechanisms for Public Disclosure of Distribution of Resources and Services</p> <p>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.</p> <p>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.</p> <p>3. The charity should make publicly available or provide to any member of the general public,</p> | <p>This section has been moved from Section V C in the 2005 version, and remains unchanged. .</p> <p>This provision duplicates IRS Form 990.</p> <p>There is still an implicit assumption that the organization will prepare an annual report that goes beyond the scope of the IRS Form 990, as well as an audit.</p> <p>This suggests the audit applies to all charities, not just those with gross income exceeding</p> |

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| <p>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.</p> | <p>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.</p> | <p>\$250,000, as described above. This is unrelated to the purpose of preventing diversion of funding to terrorists, and should be dropped.</p> |
| <p>V. Disclosure/Transparency in Governance and Finance</p> | <p>V. Programmatic Verification</p> | <p>New Title</p> |
| <p>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. (This section has been modified and moved to Section III B in the 2006 version.)</p> | | |
| <p>B. Key Employees (Key employees include not only highly compensated employees but employees that exercise substantial influence over the day-to-day operations of the charity.) 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</p> | | |

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| <p>about all U.S. employees, wherever employed, and foreign employees working in the United States.</p> <p>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.</p> <p>(This section has modified and moved to Section III C in the 2006 version.)</p> | | |
| <p>C. Mechanisms for Public Disclosure of Distribution of Resources and Services</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>(This section has moved to Section IV F in the 2006 version.)</p> | | |
| <p>D. Supplying Resources</p> <p>When supplying charitable <i>resources</i> (monetary and in-kind contributions), fiscal responsibility on the part of a charity should include:</p> <p>1. the determination that the potential recipient of monetary or in-kind contributions has the ability to both accomplish the charitable purpose of the</p> | <p>A. Supplying Resources</p> <p>When supplying charitable resources (monetary and in-kind contributions), fiscal responsibility on the part of a charity should include:</p> <p>1. determining that the potential <u>grantee</u> of monetary or in-kind contributions has the ability to both accomplish the charitable purpose of the</p> | <p>The new Section V A was Section V D in the 2005 version.</p> |

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| <p>grant and protect the resources from diversion to non-charitable purposes, including any activity that supports terrorism;</p> <p>2. the reduction of the terms of the grant to a written agreement signed by both the charity and the recipient;</p> <p>3. ongoing monitoring of the recipient and the activities funded under the grant for the term of the grant; and</p> <p>4. the correction of any misuse of resources by the recipient and the termination of the relationship should misuse continue.</p> | <p>grant and protect the resources from diversion to non-charitable purposes <u>or exploitation by terrorist organizations and/or their support networks;</u></p> <p>2. reducing the terms of the grant to a written agreement signed by both the charity and the <u>grantee;</u></p> <p>3. ongoing monitoring of the grantee and the activities funded under the grant for the term of the grant; and</p> <p>4. correcting any misuse of resources by the <u>grantee</u> and terminating the relationship should misuse continue.</p> | <p>There is no definition of what constitutes "exploitation" by terrorist organizations or networks. This term is too vague.</p> |
| <p>E. Supplying Services</p> <p>When supplying charitable <i>services</i>, fiscal responsibility on the part of a charity should include:</p> <p>1. appropriate measures to reduce the risk that its assets would be used for non-charitable purposes, including any activity that supports terrorism; and</p> <p>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.</p> | <p>B. Supplying Services</p> <p>When supplying charitable services, fiscal responsibility on the part of a charity should include:</p> <p>1. appropriate measures to reduce the risk that its assets would be used for non-charitable purposes <u>or exploitation by terrorist organizations and/or their support networks;</u> and</p> <p>2. sufficient auditing or accounting controls to trace services or commodities between delivery by the charity and/or service provider and use by the <u>grantee.</u></p> | <p>The new Section V B was Section V E in the 2005 version.</p> <p>There is no definition of what constitutes "exploitation" by terrorist organizations or networks. This term is too vague.</p> |
| <p>VI E. The charity should review the financial and programmatic operations of each recipient as follows:</p> <p>1. The charity should require periodic reports from recipients on their operational activities and their use of the disbursed funds;</p> <p>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</p> | <p>C. Programmatic Review</p> <p>The charity should review the <u>programmatic</u> and financial operations of each grantee as follows:</p> <p>1. The charity should require periodic reports from grantees on their operational activities and their use of the disbursed funds;</p> <p>2. The charity should require <u>grantees</u> to take reasonable steps to ensure that funds provided by the charity are neither distributed to terrorists or their support networks <u>nor used for activities</u></p> | <p>The new Section V C has been moved from Section VI E in the 2005 version.</p> |

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| <p>should apprise the charity of the steps it has taken to meet this goal; and</p> <p>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.</p> | <p><u>that support terrorism or terrorist organizations.</u> Periodically, a <u>grantee</u> should apprise the charity of the steps it has taken to meet this goal; and</p> <p>3. The charity should perform routine, on-site audits of <u>grantees</u> to the extent <u>reasonable</u> – 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 <u>grantee</u> has taken adequate measures to protect its charitable resources from diversion to, or abuse <u>or influence by</u>, terrorists or their support networks.</p> | |
| <p>F. Solicitations for Funds</p> <p>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.</p> <p>2. Solicitations for donations should accurately and transparently tell donors how and where their donations are going to be expended.</p> <p>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.</p> <p>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.</p> <p>(This section has been modified and moved to Section IV D in the 2006 version.)</p> | | |
| VI. Anti-Terrorist Financing Best Practices | | |
| <p>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</p> | <p>Charities should consider taking the following steps before distributing any charitable funds (and in-kind contributions). As explained in Section I, <u>these suggested steps are voluntary.</u> The purpose of these steps is to enable charities</p> | <p>Treasury encourages charities to take a "risk-based approach" to assessing their vulnerability to diversion of funds to terrorism. However, Treasury has not provided the nonprofit sector with its assessment of what these risk factors</p> |

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| <p>with respect to foreign recipients due to the increased risks associated with overseas charitable activity.</p> | <p><u>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.</u></p> | <p>are. Treasury has publicly referred to a "risk-matrix" that it has developed for nonprofits, but this has never been made publicly available. A similar risk-matrix for banks is published in the Code of Federal Regulations at Annex A to 31 CFR 501.</p> |
| <p>A. The charity should collect the following basic information about recipients:</p> <ol style="list-style-type: none"> 1. The recipient's name in English, in the language of origin, and any acronym or other names used to identify the recipient; 2. The jurisdictions in which a recipient maintains a physical presence; 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 | <p>A. The charity should collect the following basic information about grantees:</p> <ol style="list-style-type: none"> 1. The <u>grantee's</u> name in English, in the language of origin, and any acronym or other names used to identify the grantee;¹⁰ 2. The jurisdictions in which a <u>grantee</u> maintains a physical presence; 3. Any reasonably available historical information about the grantee that assures the charity of the <u>grantee's</u> 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 <u>and operate</u> the organization; and (iv) information relating to the <u>grantee's</u> operating history; 4. The <u>available postal, email and URL</u> addresses and phone number of each place of business of a <u>grantee</u>; 5. A statement of the principal purpose of the <u>grantee</u>, including a detailed report of the grantee's projects and goals; 6. The names and <u>available postal, email and URL</u> addresses of individuals, entities, or organizations to which the <u>grantee</u> currently | <p>This section makes frequent use of the word "should" when the Guidelines are supposed to be flexible and voluntary. The phrase "best practices" implies that other measures a charity might take to protect its assets from abuse would somehow fall short. This makes the Guidelines internally inconsistent.</p> <p>These information collection recommendations are burdensome and unrealistic.</p> |

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| <p>funding, services, or material support, to the extent reasonably discoverable;</p> <p>7. The names and addresses of any subcontracting organizations utilized by the <u>recipient</u>;</p> <p>8. Copies of any public filings or releases made by the <u>recipient</u>, including the most recent official registry documents, annual reports, and annual filings with the pertinent government, as applicable; and</p> <p>9. The <u>recipient's</u> sources of income, such as official grants, private endowments, and commercial activities.</p> | <p>provides or proposes to provide funding, services, or material support, to the extent reasonably discoverable;</p> <p>7. The names and <u>available postal, email and URL</u> addresses of any subcontracting organizations utilized by the <u>grantee</u>;</p> <p>8. Copies of any public filings or releases made by the <u>grantee</u>, including the most recent official registry documents, annual reports, and annual filings with the pertinent government, as applicable; and</p> <p>9. The <u>grantee's</u> sources of income, such as official grants, private endowments, and commercial activities.</p> | <p>Even the federal government does not have this information about subrecipients of its financial assistance.</p> |
| <p>B. The charity should conduct basic vetting of recipients as follows:</p> <p>1. The charity should conduct a reasonable search of public information, including information available via the Internet, to determine whether the <u>recipient</u> 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);</p> <p>2. As U.S. persons, U.S.-based charities must comply with all Office of Foreign Assets Control ("OFAC") administered sanctions programs.* 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/.**</p> <p>3. With respect to key employees, <u>board</u></p> | <p>B. The charity should conduct basic vetting of <u>grantees</u> as follows:</p> <p>1. The charity should conduct a reasonable search of publicly <u>available</u> information to determine whether the <u>grantee</u> is suspected of activity relating to terrorism, including terrorist financing or other support. <u>Charities should not enter into a relationship with a grantee where any terrorist-related suspicions exist;</u>¹¹</p> <p>2. The charity should assure itself that <u>grantees</u> 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/,¹² and are not otherwise subject to OFAC <u>sanctions</u>.¹³</p> <p>3. With respect to key employees, <u>members of</u></p> | <p>This section expands information collection in a manner that puts charities in the position of doing the investigative work of government. This should be dropped.</p> |

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| <p>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-related individuals, entities, or organizations pursuant to national obligations arising from United Nations Security Council Resolution 1373 (2001).*</p> <p>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</p> <p>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</p> | <p><u>the governing board</u>, or other senior management at a <u>grantee's</u> principal place of business, and for key employees at the <u>grantee's</u> other business locations, the charity should, <u>to the extent reasonable</u>, 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 <u>subject to OFAC sanctions</u>.</p> <p>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).¹⁴</p> <p>5. With respect to the key employees, <u>members of the governing board</u>, 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</p> <p>6. <u>As a pre-condition to the issuance of a charitable grant</u>, the charity should require <u>grantees to certify that they are in compliance with all laws, statutes, and regulations restricting</u></p> | <p>The last sentence of VI B 3 has become section VI B 4 in the 2006 version. This section implies that charities should check foreign lists, which are sometimes used for political purposes, to suppress dissent and are therefore not reliable sources of information.</p> |
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| <p>by OFAC, or with any persons known to the recipient to support terrorism.</p> | <p><u>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.</u></p> | <p>This expands the certification requirement for foreign grantees beyond the OFAC sanctions programs in a manner that is vague and impossible to implement.</p> |
| <p>C. The charity should conduct basic vetting of its own key employees as follows:</p> <p>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</p> <p>2. The charity should assure itself that none of its key employees is sanctioned by OFAC.</p> | <p>C. The charity should conduct basic vetting of its own key employees as follows:</p> <p>1. The charity should <u>conduct a reasonable search of publicly available information</u> to determine whether any of its key employees is suspected of activity relating to terrorism, including terrorist financing or other support. <u>Charities should not employ a person where any terrorist-related suspicions exist;</u> and</p> <p>2. The charity should assure itself that none of its key employees is subject to OFAC sanctions <u>or have violated OFAC sanctions.</u></p> | <p>This section expands information collection in a manner that puts charities in the position of doing the investigative work of government. This should be dropped.</p> |
| <p>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:</p> <p>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</p> <p>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</p> | <p>D. Should a charity's vetting practices lead to a finding that any of its own key employees, any of its <u>grantees</u>, or any of the key employees, members of the governing board, or other senior management of its <u>grantees</u> is suspected of activity relating to terrorism, including terrorist financing or other support, <u>there are a number of available mechanisms and resources that a charity may utilize:</u></p> <p>1. <u>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;</u> and</p> <p>2. The charity should provide information on any suspicious activity <u>relating to terrorism, including terrorist financing or other support, which does not directly involve an OFAC match,</u> through a</p> | <p>This section expands information collection in a manner that puts charities in the position of doing the investigative work of government. This should be dropped.</p> |

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| <p>http://www.treas.gov/offices/enforcement/key issues/protecting/index.html. 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.</p> | <p>referral form available on Treasury's Web site at http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml. In addition, <u>the Federal Bureau of Investigation maintains local field offices to which charities should provide such suspicious information.</u> 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.</p> | |
| <p>E. The charity should review the financial and programmatic operations of each recipient as follows:</p> <ol style="list-style-type: none"> 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. <p>(This section has been modified and moved to Section V C in the 2006 versions.)</p> | | |