

**Side-by-Side Comparison of Treasury Department's  
Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities  
From November 2002 and December 2005<sup>1</sup>**

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| <b>I. Introduction</b>   |   |  |
| <p>[Did not have a formal Introduction section, but had a preamble.]</p> <p>Compliance with these guidelines shall not be construed to preclude any criminal or civil sanctions by the Department of the Treasury or the Department of Justice against persons who provide material, financial, or technological support or resources to, or engage in prohibited transactions with, persons designated pursuant to the Antiterrorism and Effective Death Penalty Act of 1986, as amended, or the International Emergency Economic Powers Act, as amended.</p> | <p>[From footnote 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").</p> | <p>Very similar, except the new version is more detailed in its explanation. The new version indicates that the Guidelines are "to assist charities that attempt in good faith to protect themselves..." But compliance with the Guidelines does not provide any legal protection to any individual or charity, according to the Guidelines.</p> <p>The new version also notes that the standards established in the Guidelines are not a replacement for requirements under the tax code.</p> |
|  | <p>Upon issuance of Executive Order 13224, President George W. Bush directed the U.S. Department of</p>   | <p>There is no footnote or justification for the italicized sentence. Public evidence runs</p>   |

<sup>1</sup> Prepared by OMB Watch, December 12, 2005. For more information, (202) 234-8494. A summary of the Guidelines is available at <http://www.ombwatch.org/article/articleview/3206/1/407?TopicID=1>.

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|                       | <p>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. <i>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.</i> 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. (emphasis added)</p>  | <p>contrary to this statement. Charities have not been conduits for terrorist activities.</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 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,</p> | <p>Treasury emphasizes that compliance with these Guidelines is voluntary. The Guidelines are “intended to assist charities” and “charities and donors are encouraged to consult these Guidelines when considering protective measures...”</p> <p>Treasury also emphasizes flexibility in applying these Guidelines utilizing a risk-based approach that is appropriate for the situation and group.</p> <p>Yet the body of the Guidelines provides very limited flexibility or alternatives. They do not provide any assistance on how to assess risk. The Guidelines read like a regulation or compliance guide in that it states actions charities “should” take, leaving open the possibility that noncompliance could trigger investigation.</p> |

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|   | 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.  |   |
|   | 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.   | "The goal of these Guidelines is to protect" charities. Yet the Guidelines provide no legal protection, but do add onerous obligations.   |
| <b>II. Fundamental Principles of Good Charitable Practice</b> |  |   |
|   | <p>A. Charitable organizations must comply with the laws of the United States.</p> <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. (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.) (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.)</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,</p> | <p>New section.</p> <p><i>The Principles of International Charity</i>, written by a working group of charities and foundations, included additional principles stating that:</p> <ul style="list-style-type: none"> <li>• Charities should operate exclusively for charitable purposes</li> <li>• Charities are not government entities or agents of law enforcement</li> <li>• Specific steps defining fiscal responsibility (generally referred to later in these Guidelines)</li> <li>• Specific measure of financial accountability will "vary depending on the type of services and the exigencies of the surrounding circumstances"</li> <li>• Charities must safeguard their relationships with the communities they serve in order to be effective, and this includes being seen as independent.</li> </ul> |

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|  | and federal statutes and regulations.<br>D. Fiscal responsibility is an essential component of charitable work and must be reflected at every level of a charitable organization.   |   |
| <b>III. Governance</b>   |   |   |
| <p><b>A. Governing Instruments:</b></p> <p>The charity 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"> <li>1. delineate the charity's basic goal(s) and purpose(s);</li> <li>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;</li> <li>3. set forth requirements concerning financial reporting, accountability, and practices for solicitation and distribution of funds; and</li> <li>4. state that the charity shall comply with all applicable federal and state laws.</li> </ol> | <p><b>A. Governing Instruments:</b></p> <p>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"> <li>1. delineate the charity's basic goal(s) and purpose(s);</li> <li>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;</li> <li>3. set forth requirements concerning financial reporting, accountability, and practices for solicitation and distribution of funds; and</li> <li>4. state that the charity shall comply with all applicable local, state, and federal laws and regulations.</li> </ol> | <p>Same, except #4 includes <i>local</i>, state, and federal laws and <i>regulations</i>. Neither "local" nor "regulations" were in the 2002 version.</p>   |
| <p><b>B. Board of Directors:</b></p> <p>The charity should be governed by a board of directors consisting of at least three members.</p> <ol style="list-style-type: none"> <li>1. The board should be an active governing body, meeting at least three times annually with the majority of members attending in person.</li> <li>2. The board should be an independent governing body, exercising effective and independent oversight of the charity's operations. <ol style="list-style-type: none"> <li>a. The charity should establish a conflict of interest policy for board members and employees. The policy should establish procedures that must be followed if a board member or employee has a</li> </ol> </li> </ol>                          | <p><b>B. Board of Directors:</b></p> <p>Charitable organizations should be governed by a board of directors ("board") consisting of at least three (3) members.</p> <ol style="list-style-type: none"> <li>1. The board should be an active governing body.</li> <li>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.</li> </ol>  | <p>Same, except:</p> <ol style="list-style-type: none"> <li>1. No longer indicates the board should meet at least three times annually with the majority of members attending in person.</li> <li>2. Drops the statement that a charity should not engage in transactions with entities in which a board member has a conflict of interest. The earlier version was inconsistent with IRS standards.</li> <li>3. Drops the statement that an independent governing body cannot have more than 20% of board members or executive committee members receive direct or indirect compensation from the organization. The earlier version was</li> </ol> |

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| <p>conflict of interest or a perceived conflict of interest.</p> <p>b. The charity should not engage in transactions with entities in which a board member has a conflict of interest.</p> <p>c. The charity whose directly and/or indirectly compensated board members constitute more than one-fifth (20%) of the total voting membership of the board or of the executive committee will not be considered to have an independent governing body.</p> <p>3. The board should maintain records of all decisions made. These records should be available for public inspection.</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 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>inconsistent with IRS standards.</p> <p>4. Adds a new provision that indicates the board is responsible for the organization's compliance with laws and these "principles." Even though the Introduction encourages flexibility in implementing risk-based approaches, this provision says the principles of the Guidelines should be implemented.</p> <p>5. Records of organizational decisions no longer are available for public inspection, but are to be made available <i>immediately</i> to regulatory/supervisory and law enforcement authorities. The definition of these "authorities" is not provided. It is not clear the breadth of reach this automatic investigative authority would have. This is very troubling.</p> |
| <p><b>IV. Financial Practice/Accountability</b><br/> <b>[In the 2002 Guidance, this section came after the Disclosure/Transparency in Governance and Finances section.]</b></p>  |   |  |
| <p>A. The charity should have a budget, adopted in advance on an annual basis that is 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 board.</p>   | <p>Adds that the budget should be approved by the board.</p>   |
| <p>B. The board of the charity should appoint one individual to serve as the financial/accounting officer who is ultimately responsible for the day to day control over the money of the charity.</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>Same, except the financial/accounting officer should be responsible for all the charity's assets, not just its money.</p>   |
| <p>C. If the charity's total annual gross income exceeds \$250,000, the board of the charity should select an independent certified public accounting firm, which serves as an auditor and reviews the finances of the charity and issues 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, 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>Same. It is very strange to have OFAC settings new standards for the charitable sector. This standard is different than the audit requirements under OMB Circular A-133, applying to federal grantees.</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</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</p>  | <p>Nearly the same, but provides additional detail. The new Guidelines make clear: (1) the accounting of funds applies to all expenses domestically and internationally; (2)</p>   |

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| <p>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.</p> <p>2. The charity should include in its accounting of all charitable disbursements the name of each recipient and the amount disbursed.</p> <p>3. The charity, after recording, should promptly deposit all received money into the bank account maintained by the charity. In particular, all cash donations should be promptly deposited into the charity's bank account.</p> <p>4. The charity should make disbursements by check or wire transfer, but not in cash.</p> | <p>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>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>the accounting should also include the date of disbursement; and (3) broadens from putting the received money into a bank to putting it in a financial institution.</p> <p>Additionally, the 2002 version said the charity should not make cash disbursements. But the new version recognizes that cash assistance is necessary in some circumstances. The new Guidelines recommend providing cash disbursements in small amounts to be used over a short period of time.</p> <p>The call for charities to exercise oversight over "the use" of cash disbursements could be extremely difficult to implement if the objective is to track how the money is used once it has left the charity.</p> <p>Other parts of the Guidance cover both resources and services distributed by the charity as part of the definition of funds. This provision does not define "disbursement of funds," leaving it vague whether these steps distinguish between grants to organizations and services provided to individuals.</p> |
| <p><b>V. Disclosure/Transparency in Governance and Finances</b><br/> <b>[In the 2002 Guidance, this section came before the Financial Practice/Accountability section.]</b></p>  |  |   |
| <p><b>A. Board of Directors</b></p> <p>1. The charity should make publicly available a list of its board members and the salaries they are paid.</p>   | <p><b>A. Board of Directors/Trustees</b></p> <p>1. Charities should maintain and make publicly available a current list of their board members or trustees and the salaries they are paid.</p>   | <p>Same, but adds a gratuitous and undefined comment about "fully respecting individual privacy rights." Also it does not define "subsidiaries or affiliates."</p> <p>Collecting social security numbers and home</p>   |

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| <p>2. The charity should maintain records containing additional identifying information about its board members, such as home address, social security number, citizenship, etc.</p> <p>3. The charity should maintain records containing identifying information for the board members of any subsidiary or affiliate receiving funds from the charity.</p>  | <p>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.</p> <p>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.</p>   | <p>addresses of board members, as suggested by the Guidelines, may be a violation of an individual's privacy. This is particularly true since the records are to be "immediately" available to a range of "authorities" (as described above).</p> <p>These new standards exceed IRS or other government requirements.</p>  |
| <p><b>B. Key Employees</b></p> <p>1. The charity should make publicly available a list of its five highest paid employees (the key employees) and the salaries and/or direct or indirect benefits they receive.</p> <p>2. The charity should maintain records containing additional identifying information about its key employees, such as home address, social security number, etc.</p> <p>3. The charity should maintain records containing identifying information for the key employees of any subsidiary or affiliate receiving funds from the charity.</p> | <p><b>B. Key Employees</b> (Key employees include not only highly compensated employees but employees that exercise substantial influence over the day-to-day operations of the charity.)</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>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>The definition of key employees is expanded beyond the five highest paid employees to include "employees that exercise substantial influence" over the operations of the organization and "highly compensated" employees.</p> <p>The disclosure of key employee salaries and benefits is broader than requirements on the IRS Form 990. The Form 990 requires disclosure of the five highest paid employees earning above \$50,000, as well as compensation for any board member or "key employee" which is "any person having the authorities or powers similar to those of officers, directors, or trustees."</p> <p>Moreover, it would be difficult to figure out what to make public. The revised Guidelines call for the five highest paid employees <b>OR</b> most influential employees, not for both. What happens if the five highest paid employees are not the most influential employees? Which names and compensation should be disclosed?</p> |
| <p><b>C. Distribution of Funds</b></p> <p>1. The charity should publicly identify any subsidiaries and/or affiliates that receive funds from the charity.</p>   | <p><b>C. Mechanisms for Public Disclosure of Distribution of Resources and Services</b></p> <p>1. The charity should maintain and make publicly available a current list of any branches,</p>  | <p>The same, except for 3 changes that broaden it:</p> <p>1. The public list of recipients should include those receiving <i>services</i>, not just <i>resources</i>. This raises concerns about</p>   |

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| <p>2. The charity should provide 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 provide upon request complete annual financial statements. 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>subsidaries, 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>disclosure of who groups associate with;</p> <p>2. The public list tracks not just those receiving funds, but also those receiving resources such as in-kind contributions (see next section); and</p> <p>3. The public list includes branches, not just subsidiaries and affiliates. There are no definitions of "branches, subsidiaries, and/or affiliates." Depending on the definition, this might become onerous.</p> <p>There is still an implicit requirement that the organization will prepare an annual report that goes beyond the scope of the IRS Form 990, as well as an audit. The audit applies to all charities, not just those with gross income exceeding \$250,000, as described above.</p> <p>This provision could be costly to implement. It may also open the door to harassment with vague disclosure requirements to "any member of the general public." Charities now are required to make copies of the IRS Form 990 available on a cost-reimbursable basis. If the annual financial statement is broader than the Form 990 and there is no right for cost reimbursement, this raises concerns.</p> |
|   | <p><b>D. Supplying Resources</b></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 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</p>  | <p>This is a new provision.</p> <p>This seems to imply that any level of money transferred or in-kind contributions provided is now considered a grant, whether the recipient is an organization or an individual. And that triggers a host of requirements, including a "written agreement," "ongoing monitoring," and a determination that the recipient has the ability to "protect the resources from diversion to non-charitable purposes."</p> <p>This set of standards may discourage collaboration among charities, particularly in sharing in-kind contributions. This is because</p>  |

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|  | recipient;<br>3. ongoing monitoring of the recipient and the activities funded under the grant for the term of the grant; and<br><br>4. the correction of any misuse of resources by the recipient and the termination of the relationship should misuse continue.  | any transfer of resources, including in-kind contributions, will trigger grant-like responsibilities.   |
|  | <b>E. Supplying Services</b><br><br>When supplying charitable <i>services</i> , fiscal responsibility on the part of a charity should include:<br><br>1. appropriate measures to reduce the risk that its assets would be used for non-charitable purposes, including any activity that supports terrorism; and<br><br>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.   | This is a new provision.<br><br>This set of standards is quite broad and invasive, especially since a recipient can be an individual as well as an organization. Presumably, this means any charity providing a service, such as drug counseling or crime prevention, would need to establish “appropriate measures” to make sure the recipient does not take drugs, commit a crime, or undertake other non-charitable purposes. It not only must have “controls” to trace the delivery of service, but also the “use by the recipient.”  |
| <b>D. Solicitations for Funds</b><br><br>1. The charity should clearly state its goals and purposes so that anyone examining its disbursement of funds can determine whether the charity is adhering to those goals.<br><br>2. Solicitations for donations should accurately and transparently tell donors how and where their donations are going to be expended.<br><br>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. | <b>F. Solicitations for Funds</b><br><br>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.<br><br>2. Solicitations for donations should accurately and transparently tell donors how and where their donations are going to be expended.<br><br>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.<br><br>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 | Same, except adds a new provision that the charity should immediately and publicly disclose when funds are being used for a purpose other than for which they were solicited. While this may be an important principle, the way this is written is outside the scope of OFAC (and an issue which Congress may wish to address).<br><br>It is not clear whether this section may duplicate or contradict state and local laws regulating charitable solicitations. OFAC is silent on this point.<br><br>It is not clear what level of detail is assumed. Many solicitations are in general support of an organization, making it hard, except in the broadest sense, to tell donors “how and where” their donations will be spent. |

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|  | which they were contributed.  |   |
| <b>VI. Anti-Terrorist Financing Best Practices</b>   |   |   |
| <p>The charity should take the following steps before any charitable funds are distributed to foreign recipient organizations.</p>   | <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 with respect to foreign recipients due to the increased risks associated with overseas charitable activity.</p>  | <p>The scope has broadened. This provision applies to all recipients, not just foreign recipients. Thus, it now applies to all U.S. charities, regardless of whether work is being done overseas.</p> <p>It also does not distinguish foundations from charities. For example, it covers in-kind contributions also, which makes it clear that its reach is far beyond grantmaking foundations. All charities are covered by these Guidelines.</p> <p>A risk-based approach should be employed particularly with respect to foreign recipients. There is no explanation of how to assess risk or what a “risk-based approach” involves.</p> |
| <p><b>A. The charity should collect the following basic information about a foreign recipient organization:</b></p> <p>1. The foreign recipient organization's name in English, in the language of origin, and any acronym or other names used to identify the foreign recipient organization.</p> | <p><b>A. The charity should collect the following basic information about recipients:</b></p> <p>1. The recipient's name in English, in the language of origin, and any acronym or other names used to identify the recipient; (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.)</p> | <p>In a footnote, the Guidelines instruct charities to “undertake reasonable efforts to uncover” individuals and organizations that may have changed names or organizational structure to avoid being associated with questionable activity. The charity is asked to undertake this task if it “has any reason to believe” that a recipient is using a different identity or name that in the past.</p>   |
| <p>2. The jurisdictions in which the foreign recipient organization maintains a physical presence.</p>   | <p>2. The jurisdictions in which a recipient maintains a physical presence;</p>   | <p>Same</p>   |
| <p>3. The jurisdiction in which the foreign recipient organization is incorporated or formed.</p>  | <p>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</p>  | <p>Broader. The new Guidance calls for collecting historical information about recipients including where incorporated, but also information about the people who started the organization and copies of incorporating or governing instruments.</p>  |

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| 4. The address and phone number of any place of business of the foreign recipient organization.   | 4. The address and phone number of each place of business of a recipient;  | Clarified. Collect address and phone number of all places of doing business. This might be difficult with a national nonprofit with chapters throughout the country   |
| 5. The principal purpose of the foreign recipient organization, including a detailed report of the recipient's projects and goals.  | 5. A statement of the principal purpose of the recipient, including a detailed report of the recipient's projects and goals;   | Same  |
| 6. The names and addresses of organizations to which the foreign recipient organization currently provides or proposes to provide funding, services, or material support, to the extent known, as applicable.   | 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;  | Broader. In addition to collecting names and addresses of <i>organizations</i> that receive funding, services or material support from the recipient, the new Guidelines call for collecting names and addresses of <i>individuals</i> and <i>entities</i> "to the extent reasonably discoverable." "Entities" is not defined.  |
| 7. The names and addresses of any subcontracting organizations utilized by the foreign recipient organization.  | 7. The names and addresses of any subcontracting organizations utilized by the recipient;  | Same.   |
| 8. Copies of any public filings or releases made by the foreign recipient organization, including most recent official registry documents, annual reports, and annual filing with the pertinent government, as applicable.  | 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   | Same.   |
| 9. The foreign recipient organization's existing sources of income, such as official grants, private endowments, and commercial activities.   | 9. The recipient's sources of income, such as official grants, private endowments, and commercial activities.  | Same, except the word "existing" was dropped.   |
| <p><b>B. The charity should conduct basic vetting of potential foreign recipient organizations as follows:</b></p> <p>1. The charity should be able to demonstrate that it conducted a reasonable search of public information, including information available via the internet, to determine whether the foreign recipient organization is or has been implicated in any questionable activity.</p> | <p><b>B. The charity should conduct basic vetting of recipients as follows:</b></p> <p>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);</p> <p>(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</p> | <p>Clarified and expanded. The new Guidelines provide a footnote describing the State Department's Terrorist Exclusion List as an example of the type of information that a "reasonable search" would include.</p> <p>The new Guidelines are expanded by referencing Part D of Section VI on communicating suspicious information to authorities. More on this below.</p> |

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|   | <p>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.</p> <p>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 <a href="http://www.state.gov/s/ct/rls/fs/2004/32678.htm">http://www.state.gov/s/ct/rls/fs/2004/32678.htm</a>.)</p>  |   |
| <p>2. The charity should be able to demonstrate that it verified that the foreign recipient organization does not appear on any list of the U.S. Government, the United Nations, or the European Union identifying it as having links to terrorism or money laundering. The charity should consult the Department of the Treasury’s Office of Foreign Assets Control Specially Designated Nationals List, which will identify entities designated by the U.S. Government as Foreign Terrorist Organizations or as supporters of terrorism. The charity also should consult the U.S. Government’s Terrorist Exclusion List maintained by the Department of Justice, the list promulgated by the United Nations pursuant to U.N. Security Council Resolutions 1267 and 1390, the list promulgated by the European Union pursuant to EU Regulation 2580, and any other official list available to the charity.</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 <a href="http://www.treas.gov/offices/enforcement/ofac/sdn/">www.treas.gov/offices/enforcement/ofac/sdn/</a>.**</p> <p>(* 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.</p> | <ol style="list-style-type: none"> <li>1. The Guidelines no longer call for checking multiple lists. Instead, the charity should check OFAC’s Specially Designated Nationals list. The new Guidelines provide a footnote describing the SDN and notes that the list is continually updated, implying that charities need to check the list regularly.</li> <li>2. Presumably OFAC expects charities to still check other lists when searching public information on the Internet. For example, the new Guidelines include a footnote providing information on the State Department’s list. Additionally, the new Guidelines preface the comment about checking the SDN by saying “among other precautions” which presumes more than checking the SDN is needed.</li> <li>3. The new Guidelines note that charities</li> </ol> |

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|                       | <p>For further information on OFAC-administered sanctions programs and licensing under these programs, please see <a href="http://www.treas.gov/offices/enforcement/ofac">http://www.treas.gov/offices/enforcement/ofac</a>.</p> <p>OFAC guidelines for non-governmental organizations wishing to undertake humanitarian activities in sanctioned countries are available at <a href="http://www.treas.gov/offices/enforcement/ofac/regulations/ngo_reg.pdf">http://www.treas.gov/offices/enforcement/ofac/regulations/ngo_reg.pdf</a>.</p> <p>Other helpful guidance materials for charities relating to protection from terrorist abuse may be found at <a href="http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml">http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml</a>.)</p> <p>(** 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.</p> <p>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.</p> | <p>must comply with OFAC sanctions programs and provides a footnote describing information about them.</p> <p>4. The new Guidelines call on charities to "consult OFAC's website for other information relating to sanctioned activities or countries that may implicate their operations."</p> |

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|  | <p>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.)</p>   |  |
| <p>3. The charity should obtain the full name in English, in the language of origin, and any acronym or other names used, as well as nationality, citizenship, current country of residence, place and date of birth for key staff at the foreign recipient organization's principal place of business, such as board members, etc., and for senior employees at the recipient's other locations. The charity should run the names through public databases and compare them to the lists noted above.</p> | <p>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-related individuals, entities, or organizations pursuant to national obligations arising from United Nations Security Council Resolution 1373 (2001).*</p> <p>(* 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.</p> <p>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</p> | <p>Clarified and broadened.</p> <ol style="list-style-type: none"> <li>1. The charity should check OFAC's sanctioned list to see if: <ul style="list-style-type: none"> <li>• "Key employees, board members, or other senior management" at the principle place of business of the recipient are on the list. "Key employees" includes highly paid employees and those with substantial influence over day-to-day operations. In the 2002 version it was only "key staff."</li> <li>• "Key employees" at other business locations of the recipient are on the list. In the 2002 version is was "senior employees" at other locations.</li> </ul> </li> <li>2. The new Guidelines implicitly encourage checking other lists maintained by other nations. OFAC indicates that it provides this information "to assist charities in developing their own risk-based programs..." At the same time, OFAC says, "Such precautionary measures may protect charities from potential sanctions or other consequences to which they might be subject from foreign jurisdictions..." Moreover, the next section suggests checking publicly available information.</li> </ol> <p>Some countries use their terrorist lists to suppress dissent, reducing the credibility of foreign lists.</p> |

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|   | <p>transactions with individuals, entities, or organizations deemed to be financing or otherwise supportive of terrorist activity under the laws of those jurisdictions.)</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>New provision. In addition to seeing whether these individuals appear on the OFAC sanctions list, charities “should also consider” (which appears less directive than other statements in the Guidance) consulting other publicly available information to see if the individuals are suspected of terrorism. The new Guidelines are expanded by referencing Part D of Section VI on communicating suspicious information to authorities. More on this below.</p>  |
| <p>4. The charity should require foreign recipient organizations to certify that they do not employ or deal with any entities or individuals on the lists referenced above, or with any entities or individuals known to the foreign recipient organization to support terrorism.</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 by OFAC, or with any persons known to the recipient to support terrorism.</p>  | <p>Clarified and broadened. The new Guidance calls for certification that recipients “do not employ, transact with, provide services to, or otherwise deal with” individuals, entities, or groups on the OFAC list or are known to support terrorism.</p> <p>This is broader than the 2002 version in three ways:</p> <ol style="list-style-type: none"> <li>1. It applies to all domestic and foreign recipients, not just foreign recipients;</li> <li>2. It covers providing services to people; and</li> <li>3. It appears to be an endless loop, covering recipients and sub-recipients, assuming the recipient is a charity.</li> </ol> <p>Recipients include any individual or group that receives money or in-kind contributions at any amount. This certification would require recipients to check multiple lists in order to certify they do not deal with anyone known to support terrorism. It would likely require the recipient to have all individuals and groups they deal with, including vendors, sign certifications themselves, in order to accurately certify themselves.</p> |

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|                       |   | Presumably, if a recipient is a charity and provides money or in-kind contributions to a group or an individual, then the recipient becomes the charity and the sub-recipients become the recipients and would need to provide the certification.   |
|                       | <p><b>C. The charity should conduct basic vetting of its own key employees as follows:</b></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>New Provision.</p> <p>The charity should apply the list checking to its own “key employees” – meaning “highly compensated” or “exercise substantial influence over the day-to-day operations” – the same list checking requirements of recipients and many of its employees.</p>   |
|                       | <p><b>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:</b></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 <a href="http://www.treas.gov/offices/enforcement/keyissues/protecting/index.shtml">http://www.treas.gov/offices/enforcement/keyissues/protecting/index.shtml</a>. 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</p> | <p>New Provision.</p> <p>This calls on charities to report any individuals or recipients to OFAC if the name is on the SDN list.</p> <p>Additionally, the new Guidelines indicate charities “can provide” information on “any suspicious activity” through a referral on the Treasury Department’s website. Charities should also report the activity to the FBI.</p> <p>This applies to any of the key employees within the charity, any recipients, or any key employees, board members, or other senior management of recipients. Key employees refers to “highly compensated” people or those who “exercise substantial influence over the day-to-day operations” of the organization. Recipient refers to any entity – domestic or foreign – that receives funding or in-kind contributions of any amount.</p> |

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|   | <p>numbers of the FBI's field offices is available at <a href="http://www.fbi.gov/contact/fo/fo.htm">http://www.fbi.gov/contact/fo/fo.htm</a>.</p>  |   |
| <p><b>C. The charity should review the financial operations of the foreign recipient organization as follows:</b></p> <p>1. The charity should determine the identity of the financial institutions with which the foreign recipient organization maintains accounts. The charity should seek bank references and determine whether the financial institution is: (i) a shell bank; (ii) operating under an offshore license; (iii) licensed in a jurisdiction that has been determined to be non-cooperative in the international fight against money laundering; (iv) licensed in a jurisdiction that has been designated by the Secretary of the Treasury to be a primary money laundering concern; and (v) licensed in a jurisdiction that lacks adequate anti-money laundering controls and regulatory oversight.</p> <p>2. The charity should require periodic reports from the foreign recipient organization on its operational activities and use of the disbursed funds.</p> <p>3. The charity should require the foreign recipient organization to undertake reasonable steps to ensure that funds provided by the charity are not ultimately distributed to terrorist organizations. Periodically, the foreign recipient organization should apprise the charity of the steps it has taken to meet this goal.</p> <p>4. The charity should perform routine, on-sight audits of foreign recipient organizations whenever possible, consistent with the size of the disbursement and the cost of the audit.</p> | <p><b>E. The charity should review the financial and programmatic operations of each recipient as follows:</b></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 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>Scope of the review of each recipient is now of financial and programmatic operations, not just financial.</p> <p>1. Dropped from new Guidance.</p> <p>2. Same.</p> <p>3. In ensuring funds are not distributed to terrorists, the new Guidelines: (a) dropped “ultimately”; and (b) added “or their support networks.”</p> <p>4. Clarified. An additional item to consider in doing the on-site audits is the risk of diversion or abuse of charitable resources. The purpose of the on-site audits is to ensure there are adequate measures to protect the charitable resources.</p> |