DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2006–24037]

Clarification for Fiscal Year (FY) 2007 Implementation for the Elderly Individuals and Individuals With Disabilities, Job Access and Reverse Commute (JARC), and New Freedom Programs

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Interim guidance for FY 2007 implementation.

SUMMARY: The Federal Transit Administration (FTA) published a **Federal Register** notice on September 6, 2006 (71FR52610) announcing proposed guidance in the form of circulars to assist grantees in implementing the Elderly Individuals and Individuals with Disabilities (Section 5310), JARC, and New Freedom programs. By this notice, FTA clarifies interim guidance for FY 2007 included in the notice published on September 6, 2006, and provides additional interim guidance for FY 2007.

DATES: This clarification is effective on October 31, 2006.

ADDRESSES: FTA continues to invite public comment on the proposed circulars for these programs through November 6, 2006 via the Web site: *http://dms.dot.gov* (Docket Number FTA–2006–24037); fax at 202–493–2251; or mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL–401, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Henrika Buchanan-Smith, Office of Program Management, Federal Transit Administration, 400 Seventh Street, SW., Room 9114, Washington, DC 20590, phone: (202) 366–4020, fax: (202) 366–7951, or e-mail, *Henrika.Buchanan-Smith@dot.gov.*

SUPPLEMENTARY INFORMATION: FTA published a **Federal Register** notice and proposed program guidance circulars on September 6, 2006 for the Elderly Individuals and Individuals with Disabilities (Section 5310), JARC, and New Freedom programs. In the notice, FTA included ''Guidance for the Coordinated Planning Process for FY 2007,'' phasing in the requirements for the locally developed coordinated public transit–human service transportation plan.

This notice clarifies that applicants should follow this interim guidance regarding the planning process for all grants awarded under these three programs in FY 2007, including funds appropriated and apportioned in both FY 2006 and FY 2007.

An earlier **Federal Register** notice published March 15, 2006, included ''Interim Guidance for the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom Grants for FY 2006.'' At the time FTA published that Interim Guidance, we expected to issue final guidance before FY 2007, and the interim guidance was only made applicable to FY 2006 grants. The interim guidance for FY 2007 in the September 6, 2006 notice, however, applied only to the coordinated plan, not to other topics addressed in the FY 2006 interim guidance. The three proposed circulars include guidance for other areas such as designated recipient, competitive selection, project eligibility, and subrecipient eligibility. The proposed requirements in these circulars are based on provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) as well as issues raised and commented on during the public comment period. The proposed circulars reflect FTA's current interpretation of SAFETEA–LU.

The guidance contained in the proposed circulars should be used for applications submitted during FY 2007, to the extent possible. However, FTA recognizes that some designated recipients may have proceeded in good faith based on the interim guidance for FY 2006 in the March 15, 2006, notice, which stated that in the event FTA subsequently established more specific criteria for the coordinated planning or competitive selection process, or for project eligibility, the requirements would not be applied retroactively to grants awarded prior to the issuance of the guidance.

FTA will continue to apply this ''hold harmless'' principle to applications submitted in FY 2007 based on coordinated planning or competitive selection processes substantially complete before the issuance of final guidance. Designated recipients should be aware that projects awarded funding prior to the issuance of final guidance may not be eligible for continuation funding in future years if they do not meet the eligibility criteria in the final guidance. When FTA subsequently issues final guidance it will be effective in FY 2008.

Issued in Washington, DC, this 23rd day of October, 2006.

James S. Simpson,

Administrator.

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DEPARTMENT OF THE TREASURY

Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities

AGENCY: Office of Terrorism and Financial Crime, Treasury.

ACTION: Notice of updated guidelines.

SUMMARY: The U.S. Department of Treasury (''Treasury'') is publishing an updated version of its Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities (''Guidelines'') along with a new Annex. The Guidelines were originally released in November 2002. A revised version of the Guidelines was published for public comment on December 5, 2005. Treasury received nine (9) comments on the revised Guidelines and, as explained below, made a number of additional revisions in response to those comments.

DATES: *Effective Date:* The updated Guidelines were published on Treasury's Web site on September 29, 2006.

FOR FURTHER INFORMATION CONTACT: Office of Terrorist Financing and Financial Crime, Department of the Treasury, Washington, DC 20220: (202) 622–3786 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The Guidelines, the Response to Comments Submitted on the U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities (''Response''), and additional information concerning the protection of charities are available on the Treasury's Web site at *http://www.treas.gov/gov/offices/enforcement/key-issues/protecting/*.

The Response and Guidelines are reprinted below.

Dated: October 16, 2006.

Patrick M. O'Brien,

Assistant Secretary of the Treasury.

Response to Comments Submitted on the U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities

In response to the threat of terrorist financing in the charitable sector and to assist charities in protecting themselves from such abuse, Treasury initially

released its *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* (Guidelines) in November 2002. After receiving numerous comments from the sector regarding these Guidelines, Treasury hosted an Initial Outreach Event in April 2004, at which time Secretary Snow committed that Treasury would continue to work with the sector to amend and revise the Guidelines to improve their utility for the sector in protecting against terrorist abuse. On December 5, 2005, after extensive discussions with other government authorities and the charitable sector, Treasury released a draft revised version of the Guidelines and invited public comment on the revisions.

Treasury received a total of nine submissions during the comment period from a wide range of organizations. A number of organizations prefaced their comments with a general recommendation that Treasury withdraw the Guidelines based on their perception that the Guidelines are potentially harmful to the charitable sector given existing regulations governing the operations of charities. We do not believe that the voluntary adoption of the Guidelines—whereby charities with a higher risk of vulnerability to terrorist financing should consider adopting the best practices to better defend against that risk—would adversely affect the financial health, or obstruct the day-to-day operations, of the charitable sector.

Treasury is uniquely positioned to provide recommended measures to the charitable sector that are particularly relevant for combating the ongoing and pervasive terrorist abuse and exploitation of charities. Such voluntary measures are intended to assist charities build upon pre-existing controls and protective measures by adopting and applying appropriate counter-terrorist financing safeguards. Treasury also believes the sector is better served through ongoing dialogue regarding the evolving nature of the terrorist threat, particularly with respect to the charitable sector, and effective voluntary protective measures that the sector can adopt to combat this threat.

Treasury initially conceived the Guidelines as a direct response to requests from the sector for policies and practices to protect against potential terrorist abuse and assist in compliance with new terrorist financing authorities, including Executive Order 13224. The Guidelines not only provide such measures in the form of voluntary ''best practices,'' but their release initiated a strong and ongoing dialogue with the charitable sector. This dialogue has led to a greater awareness of the risks of terrorist abuse in the charitable sector, and as a result, charities have adopted more proactive approaches to protect their assets and the integrity of their operations. Treasury's engagement with the sector has also resulted in the evolution of the Guidelines into a more effective, relevant, and applicable resource for the sector. In addition, we encourage charities to consult other available publications or materials on good governance and sound charitable practices. We hope that the adoption of the policies and procedures contained in the Guidelines serve to strengthen donor confidence and contribute to the charitable sector's continued vitality.

For the above reasons, Treasury has not withdrawn the Guidelines. Instead, after careful consideration of all comments and recommendations, Treasury has further amended the Guidelines to enhance their usefulness for the charitable sector in adopting practices that better protect it from the risks of terrorist abuse. The purpose of this document is to summarize the content of the comments received and describe our response, including any changes to the Guidelines and the reasoning supporting those changes. The summary of the comment submissions has been organized according to the layout of the Guidelines.

1. Title

Comments: Many commenters indicated that part of the title of the Guidelines, *''Voluntary Best Practices,''* is a misrepresentation for two reasons. First, the commenters stressed that it is inaccurate to suggest that the Guidelines are a compilation of the charitable sector's best practices. Due to the diversity within the charitable sector, there is not a commonly agreed upon set of best practices that applies to all charities. Second, many commenters expressed the belief that the Guidelines are not voluntary. Their concern is based primarily upon the recent incorporation of the Guidelines into the memorandum accompanying the regulations for the 2006 Combined Federal Campaign (CFC), issued by the Office of Personnel Management (OPM). Moreover, concern exists that other federal agencies will adopt the recommendations included in the Guidelines as requirements, thus conferring upon the Guidelines de facto legal authority. A few commenters suggested that Treasury should change the title of the Guidelines to *''Suggestions for Complying with Anti-Terrorist Financing Laws.''*

Treasury Response: Although we acknowledge the concerns of the commenters, the title of the Guidelines remains unchanged, because it does not misrepresent the purpose and intent of the Guidelines. We believe the Guidelines represent sound best practices that help to prevent terrorist abuse of charitable organizations, and were, in fact, conceived after reviewing a wide spectrum of existing due diligence best practices employed by the sector. To address the concerns of the commenters, we have revised the Introduction to the Guidelines to state more clearly that these best practices are neither exhaustive nor comprehensive. Rather, the Guidelines represent one set of best practices specifically aimed at combating terrorist financing. Other best practices may exist that would be more suitable for combating other abuses that charities may face, but which may also be relevant or helpful in protecting charities from terrorist abuse. Nonetheless, the Guidelines contain many best practices that will help charities in adopting an appropriate risk-based approach to protect their assets and operations from terrorist financing abuse and facilitate their compliance with existing U.S. legal obligations, including the Office of Foreign Assets Control (OFAC) administered sanctions programs.

Similarly, we disagree that the Guidelines may become de facto legal requirements. We have been clear both in the Introduction to the Guidelines, as well in our public discourse regarding the Guidelines, that they are voluntary and do not create, modify, or supersede any existing U.S. legal requirements. In addition to the title, their voluntary nature is reiterated throughout the text of the Guidelines. We have also amended Footnote 1 (formerly Footnote 3) to make clear that non-adherence to the Guidelines does not, in and of itself, constitute a violation of existing U.S. law. Moreover, the incorporation of the Guidelines into the CFC commentary does not indicate the evolution of the Guidelines from a voluntary undertaking to a legal requirement, but, in fact, speaks to their usefulness as practical advice to protect charities from abuse. The incorporation of the Guidelines by other federal agencies encourages consistency across the U.S. Government and signals the acceptance of the central tenet of the Guidelines—charities should apply a risk-based approach in adopting appropriate measures to protect themselves against the threat of terrorist abuse. For these reasons, we have not changed the title to the Guidelines.

2. Introduction

Comments: Many commenters expressed concern that the introductory paragraphs broadly overstate the extent of diversion of charitable assets to terrorist organizations and their support networks. In particular, several comments singled out the following sentence: ''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.'' The commenters recommended that Treasury include data and other information to support these statements.

Treasury Response: We have taken this comment under advisement and have revised the sentence quoted above by including an Annex that describes and references the various indicators of terrorist financing in the charitable sector. There exists a large library of open source information describing the use of charities by terrorists and their supporters that is available to the public. Terrorist financing risk in the sector is evidenced by: (i) open source media reports; (ii) designations of charities; (iii) results of investigations and prosecutions of charities and individuals associated with charities; and (iv) international actions. The Annex also notes that much of the information evidencing the terrorist financing risk in the charitable sector is available on Treasury's Web site at *http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml.*

3. Fundamental Principles

Comments: Several commenters noted that the Guidelines do not include two principles from *Principles of International Charity*, which was developed by the Treasury Guidelines Working Group of Charitable Sector Organizations and Advisors and released in March 2005. The first principle asserts that charitable organizations are non-governmental entities and are not agents for enforcement of U.S. or foreign laws or their policies. The second principle states that each charity ''must safeguard its relationship with the communities it serves in order to deliver effective programs. This relationship is founded on local understanding and acceptance of the independence of the charitable organization.''

Treasury Response: We agree with both of these principles. Therefore, we have revised the first principle in Fundamental Principles to state: ''Charities are independent entities and are not part of the U.S. Government. Like all U.S. persons, charitable organizations must comply with the laws of the United States, which include, but are not limited to, all OFAC administered sanctions programs.'' With this revision, we recognize the necessity of independence for charities to perform their work effectively. We also acknowledge that charities, by virtue of their separation from the government, are not agents for the enforcement of U.S. or foreign laws or their respective policies. Moreover, we do not believe that charities become agents of the government by virtue of their obligation to abide by U.S. law, or by applying any of the best practices within the Guidelines. Based on this revision, we do not think it is necessary to revise the Fundamental Principles further to include the second principle, because our revision captures the meaning, and is consistent with, the second principle. The recognition of the independence of charities ensures that the foundation forming a charity's relationship with the community it serves will not be shaken.

4. Governance, Financial Practice, and Disclosure/Transparency

Comments: This section will group together comments falling under the sections for Governance, Financial Practice, and Disclosure/Transparency in Governance and Finances, due to the interrelated nature of those comments. Several commenters suggested combining the Financial Practice section with the Disclosure/Transparency section into one section, entitled ''Accountability.'' The commenters felt that such a section, dealing only with financial practices, would be more applicable to Treasury's expertise.

In the event that Treasury should choose to keep the practices pertaining to governance in the Guidelines, the commenters recommended the following specific changes:

- *Section III.B:* A few commenters noted the need for an appropriate exception to the suggestion that the governing board of a charity consist of at least three members. They explained that this provision does not take into account certain trusts, religious organizations, and corporation soles, which may not be able to have more than one member on the board.
- *Section III.B.4:* Many commenters expressed concern with the provision recommending that governing board records be immediately turned over to appropriate law enforcement authorities, stating that such a provision goes beyond federal and state disclosure laws and constitutional protections.
- *Section V.B:* Two commenters noted that the definition of ''key employees'' expands on the definition contained in Form 990 from the Internal Revenue Service (IRS), and it could be interpreted to include people who exert influence over charitable activities, but who are not directly related to the charitable projects.
- *Section V.A.3:* One commenter remarked on the lack of a definition for subsidiaries or affiliates and cited the need for clarification.
- *Section IV.C:* One commenter stated that the provision in the Guidelines recommending independent audits for charitable organizations if the charity's annual gross income exceeds $250,000 is inconsistent with the auditing standards issued by OMB Circular A–133.

Treasury Response: Based on the comments received, we extensively reorganized these three sections to clarify the objectives of each section:

- We changed the original section, ''Governance,'' to ''Governance Accountability and Transparency.'' Within this section, we incorporated all provisions relating to governance from the original ''Disclosure/Transparency'' section.
- We renamed the original ''Financial Practice/Accountability'' section to ''Financial Accountability and Transparency'' and incorporated all provisions relating to financial practice from the original ''Disclosure/Transparency'' section.
- We revised the original ''Disclosure/Transparency'' section and renamed it ''Programmatic Verification,'' which conveys the purpose of its remaining provisions more clearly, and aligns more closely with existing international best practices for non-profit organizations. It also incorporates the provisions on how charities should best review the programmatic operations of their grantees, which were originally located in the final section on anti-terrorist financing best practices.

We also considered the specific comments received on these three sections and made the following revisions (the section numbers correspond with the current sections in the Guidelines).

- *Section III.B:* We deleted the provision calling for a minimum of three members on the governing board of a charity. We agreed with the commenters that this provision did not adequately take into account the existence of certain types of organizations that would not be able to

meet this recommendation. Thus, we revised the section that originally discussed best practices for a charity's board of directors, renaming it, ''Independent Oversight.'' Within this section, we added a preamble conveying the importance of both independent oversight of charitable organizations and flexibility for an organization to choose the oversight structure that best fits its needs. We have also included the acknowledgement that independent oversight may be unfeasible for certain charitable organizations, such as houses of worship and corporation soles. The remaining provisions within this oversight section merely highlight certain basic principles that are hallmarks of good governance: (i) Independence of the governing board; (ii) development of conflict of interest policies and procedures; (iii) accountability of the governing board; and (iv) recordkeeping.

• *Section III.B.2:* We agreed with one commenter's concern about the confusion caused by a governance provision calling for the board to adopt, implement, and oversee practices consistent with the principles contained in the Guidelines. We understand that some may interpret the provision to mean that the best practices provided in the Guidelines are either mandatory or represent a comprehensive list of best practices to protect against terrorist financing in the charitable sector. As stated earlier, the Guidelines do not purport to be an exhaustive compilation of best practices, and are voluntary. Therefore, we have changed this provision to clarify that members of a charity's governing board are responsible for the oversight of practices that will effectively safeguard charitable assets.

• *Section III.B.6:* We have added a footnote (Footnote 6) defining subsidiaries and affiliates, as the terms are used in the Guidelines. The definition is similar to the one used by Form 990: ''Subsidiaries or affiliates are organizations that are subject to the general supervision or control of a parent or central organization.''

• *Section III.B.7:* In response to some commenters' concern with the provision governing the disclosure of records, we revised the provision to state the following: ''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.''

• *Section III.C:* We agreed with the commenters who noted the difference between the definition of key employees in the Guidelines and the definition used by the IRS. We amended the definition of key employees to mirror the definition used by the IRS in Form 990.

• *Section IV.C:* We disagree that the Guidelines are inconsistent with the audit standards set forth by OMB Circular A–133. First, OMB Circular A–133 only applies to audits performed on expenditures of federal grants or awards. While many charities may receive federal grants, the Guidelines are intended to provide best practices that charities may apply regardless of whether they receive federal funds or private donations. Second, while Circular A–133 sets standards among Federal and State governments regarding the audits of non-profit organizations expending federal awards, it does not preclude charities from having additional independent audits performed if they wish. Third, as stated in the eighth footnote of the Guidelines, the $250,000 threshold figure is drawn from the June 2005 final report to Congress of the Panel on the Nonprofit Sector, convened by Independent Sector, and is thereby consistent with industry's suggested threshold. Finally, the Guidelines are not obligatory, but voluntary steps that charities may choose to take as additional protective measures. Thus, the provision on financial audits remains unchanged in the Guidelines.

5. Anti-Terrorist Financing Best Practices

Comments: The majority of the comment submissions expressed concerns with various provisions in this section. The following summarizes the specific comments:

• *Section VI:* One commenter noted the difficulty of assessing risk pursuant to the Guidelines' risk-based approach without any corresponding advice.

• *Sections VI.A and B:* Several comments focused on the amount of information-collection provisions, regarding them as onerous, unrealistic, and having limited value in protecting against terrorist financing.

• *Sections VI.B.1 and 4:* Many commenters objected to the inclusion of the publicly available information, including the Internet, as a means to vet grantees or employees. They argued that Internet searches would yield widely varying and unverified information about certain organizations or individuals.

• *Section VI.B.3:* A few commenters objected to the incorporation of other government lists of designated parties created pursuant to UNSCR 1373. They claimed that Treasury is inadvertently legitimizing these other lists by citing to them.

• *Section VI.B.5:* A few comments focused on the provision suggesting that charities request certifications from grantees with whom they contract or work. They suggested deleting the provision or at least revising the certification to adopt the approach of the 2006 CFC. This approach would involve a grantee certifying its compliance with U.S. law, as opposed to certifying that it has checked certain lists.

• *Section VI.D:* Some commenters recommended deleting the voluntary reporting provision in its entirety, arguing that it creates the impression that charitable organizations are agents of the U.S. Government.

• One commenter suggested the Guidelines should explicitly state that it is permissible for a charity to engage in normally prohibited transactions with a group, entity, or individual on the Specially Designated Nationals and Blocked Persons List (SDN List) if OFAC issues a license to charities for such transactions.

Treasury Response: We have made the following revisions to the anti-terrorist financing best practices section based on the comments (the section numbers correspond with the current sections in the Guidelines):

• *Section VI:* In response to the comment requesting further assistance in assessing the risk of terrorist abuse or exploitation, Treasury continues to produce information and engage in outreach to assist charities in understanding the nature of ongoing terrorist abuse. Such materials and outreach are available on or through the Treasury Web site and are further described or referenced in the Annex to the Guidelines.

• *Sections VI.A and B:* We disagree with the comment that the information-collection procedures are burdensome and of little utility. We recognize that the information-collection practices are expansive and are purposefully designed so that a charity can gather as much information as possible to ensure the greatest transparency and accountability over charitable operations. This type of information-gathering is essential for the charity to know its grantees and to be assured that its assets will not be diverted to terrorist organizations or their support networks. Moreover, the general risk-based approach governing the Guidelines affords charities the opportunity to tailor the scope of these information-collection procedures to the terrorist financing risk they face. A charity

should perform its own terrorist financing risk assessment based on its particular operations and projects. Depending on its particular risk profile, a charity should then choose appropriate protective measures that will adequately safeguard its assets from terrorist financing abuse and ensure their delivery to legitimate beneficiaries. As stated above, the best practices of the Guidelines are not a comprehensive or exhaustive listing of all best practices. Charities are free to apply other measures that they believe will protect their assets from diversion.

In order to lessen any perceived administrative burden on charities, we have amended the Guidelines by replacing the word ''recipient'' with ''grantee'' throughout the document and defining ''grantee''. This revision is intended to clarify the information-collection recommendations by explaining what charities should do for immediate grantees versus downstream grantees. ''Grantee'' is defined as an immediate grantee of charitable resources or services. To the extent reasonably practicable, charitable organizations should also apply or ensure the existence of applicable safeguards in any downstream sub-grantees or recipients to protect charitable resources from diversion. Finally, we caution charities against entering into a relationship with a grantee where any doubts exist about the grantee's ability to ensure safe delivery of charitable resources.

• *Sections VI.B.1 and 5:* We agree with commenters that the Internet often provides information that may be false or unverified. For this reason, we have removed the clause suggesting that charities look to the Internet for further information about potential grantees or employees. However, the Guidelines still encourage charities to employ all reasonably available means, including publicly available information, to determine the level of risk accompanying a particular charitable operation or when engaging in appropriate vetting procedures. List-checking alone does not guarantee the safe delivery of charitable assets to intended beneficiaries. Properly using publicly available resources, such as open source media reports or other federal agency lists and information, can provide a charity with adequate and comprehensive information from which to make informed decisions about the kinds of protective measures it should take.

• *Section VI.B.4:* We do not agree with commenters that Treasury is legitimizing the UNSCR 1373 lists adopted by other governments by merely providing information that such lists exist. The purpose of including information on UNSCR 1373 lists in the Guidelines is not to endorse such lists, but to provide charities with an understanding of the varying laws under which they may operate in other jurisdictions. However, in response to the objections raised in some comments and to clarify the purpose of the information, we have added the following sentence to Footnote 14: ''The Guidelines do not legitimize or endorse the UNSCR 1373 lists adopted by foreign jurisdictions.''

• *Section VI.B.6:* We agree with the importance of carrying a consistent message throughout the U.S. Government. For that reason, we have accepted the suggestion of one commenter to align the certification more closely with the one adopted in the 2006 CFC. The new provision also delineates different certifications for U.S. and foreign grantees. Instead of having grantees certify that they checked the SDN List, the new certification suggests that U.S. grantees certify that they are in compliance with all laws restricting U.S. persons from dealing with parties subject to OFAC sanctions. With regard to foreign grantees, they should certify that they do not deal with parties subject to OFAC sanctions or anyone else known to support terrorism.

• *Section VI.D:* We disagree with the notion that the voluntary reporting provision creates the impression that charities are agents of the U.S. Government. As with all parts of the Guidelines, this provision is voluntary and charities are not under any obligation to report any information. This provision is also consistent with U.S. guidance to other sectors regarding terrorist financing or other illicit finance risks. In addition, we have clearly acknowledged in the Fundamental Principles of the Guidelines that charitable organizations are independent entities and are not a part of the U.S. Government. The voluntary reporting measure explains what steps a charity may proactively take to assist in protecting itself from abuse by terrorists and their support networks. Since charities occasionally have direct access to evidence of terrorist activities in the course of their operations, voluntarily reporting such evidence provides the appropriate authorities with the opportunity to conduct further investigations, and helps reduce the threat that terrorist financing poses to the charitable sector. Thus, the provision is an important component of anti-terrorist financing best practices, and it remains in the Guidelines with only minor changes.

• While the comment regarding OFAC's licensing authority is accurate, we believe that the Guidelines make sufficient reference to this authority in Footnote 2 (formerly Footnote 8), which states: ''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.'' In addition, the footnote refers to further information, available on OFAC's Web site, regarding licensing procedures for non-profit organizations wishing to undertake humanitarian activities in sanctioned countries. To provide more information on licensing, we have added the link to OFAC's Web site, which has information about the types of available licenses and the process for requesting a license.

Conclusion

As the Annex to the Guidelines illustrates, the risk of terrorist abuse of the charitable sector is both ongoing and significant. Recognition of this reality is the first step in finding ways to protect both donors and charities.

Treasury is sensitive to the concerns raised by the charitable sector and appreciates the insightful comments submitted. The release of these revised Guidelines reflects a further positive development in the ongoing dialogue between the charitable sector and Treasury. Treasury believes that the Guidelines offer a framework of voluntary best practices that is attuned to the unique challenges and risks facing charities. These best practices provide the necessary framework to safeguard against terrorist abuse of the charitable sector by offering protective measures to help ensure that the vital services provided by charities are not exploited by terrorists or their organizations.

Treasury remains deeply committed to working with the charitable community on future initiatives to combat terrorist abuses. While Treasury believes that the Guidelines represent a positive step in combating terrorist abuse of the charitable sector, the Guidelines also underscore the need for continued public outreach as a critical element of our comprehensive approach to combating terrorist abuse of the charitable sector.

U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities [1]

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I. Introduction

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

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

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

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

The risk-based nature of these Guidelines reflects Treasury's recognition that a ''one-size-fits-all'' approach is untenable and inappropriate due to the diversity of the charitable sector and its operations. Accordingly, certain aspects of the Guidelines will not be applicable to every charity, charitable activity, or circumstance. Moreover, Treasury acknowledges that certain exigent circumstances (such as catastrophic disasters) may make application of the Guidelines difficult. In such cases, charities should maintain a risk-based approach that includes all prudent and reasonable measures that are feasible under the circumstances. Charities and donors are encouraged to consult these Guidelines when considering protective measures to prevent infiltration, exploitation, or abuse by terrorists. Although adherence to these Guidelines does not guarantee protection from terrorist abuse, effective internal controls which incorporate the principles and practices set forth in these Guidelines can prevent the diversion of charitable resources from their proper uses, as well as identify situations involving terrorist financing or abuse.

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

II. Fundamental Principles of Good Charitable Practice

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

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

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

[2] 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

Continued

B. Charitable organizations are encouraged to adopt practices in addition to those required by law that provide additional assurances that all assets [3] are used exclusively for charitable or other legitimate purposes.[4]

C. Individuals acting in a fiduciary capacity for any charitable organization should exercise due care in the performance of their responsibilities, consistent with applicable common law as well as local, state, and federal statutes and regulations.

D. Governance, fiscal and programmatic responsibility and accountability are essential components of charitable work and must be reflected at every level of a charitable organization and its operations.

III. Governance Accountability and Transparency

A. Governing Instruments: Charitable organizations should operate in accordance with governing instruments, e.g., charter, articles of incorporation, bylaws, etc. The governing instruments should:

1. Delineate the charity's basic goal(s) and purpose(s);

2. Define the structure of the charity, including the composition of its governing body, how such body is selected and replaced, and the authority and responsibilities of the body;

3. Set forth requirements concerning financial reporting, accountability, and practices for solicitation and distribution of funds; and

4. State that the charity shall comply with all applicable local, state, and federal laws and regulations.

B. Independent Oversight: It is important for charitable organizations to have independent oversight of charitable operations, and each charitable organization should determine what oversight structure best suits that organization and will provide for unbiased scrutiny of its operations. The following provisions set forth basic principles for the creation of a transparent and accountable oversight body (the ''governing board'').

1. Members of the governing board ordinarily should not have an active role in the day-to-day management of the charitable organization.[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.

2. The governing board should be responsible for the charitable organization's compliance with relevant laws, its finances and accounting practices and for the adoption, implementation, and oversight of practices, including financial recordkeeping that will safeguard charitable assets effectively.

3. The governing board should maintain records of its decisions.

4. Charities should maintain and make publicly available a current list of members of the governing board, their salaries and their affiliation with any subsidiary or affiliate of the charitable organization.

5. While fully respecting individual privacy rights, charities should maintain records of additional identifying information about the members of the governing board, such as available home, email and URL addresses, social security number, citizenship, etc.

6. While fully respecting individual privacy rights, charities should maintain records of identifying information for the members of the governing boards of any subsidiaries or affiliates [6] receiving funds from them.

7. When served with process or when other appropriate authorization exists, charities should produce requested records maintained in accordance with these Guidelines to the appropriate regulatory/supervisory and law enforcement authorities in a timely fashion.

C. Key Employees [7]

1. Charities should maintain and make publicly available a current list of their five highest paid or most influential employees (the key employees) and the salaries and direct or indirect benefits they receive.

2. While fully respecting individual privacy rights, charities should maintain records containing identifying information (such as available home, email and URL addresses, social security or other identification number—*e.g.*, taxpayer identification number, national identity, or passport number—citizenship, etc.) about their key, non-U.S. employees working abroad. Such information should be similar to that maintained by charities in the normal course of operations about all U.S. employees, wherever employed, and foreign employees working in the United States.

3. While fully respecting individual privacy rights, charities should maintain records containing identifying information for the key employees of any subsidiaries or affiliates receiving funds from them.

IV. Financial Accountability and Transparency

A. The charity should have a budget, adopted in advance on an annual basis and approved and overseen by the governing board.

B. The governing board should appoint one individual to serve as the financial/accounting officer who should be responsible for day-to-day control over the charity's assets.

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that would otherwise be prohibited, if there is a policy-permissible reason to do so, and if permitted by statute. Further information on how to apply for specific licenses is available at *http://www.treas.gov/offices/enforcement/ofac/faq/index.shtml#license*.

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

OFAC guidelines for non-governmental organizations wishing to undertake humanitarian activities in sanctioned countries are available at *http://www.treas.gov/offices/enforcement/ofac/regulations/ngo_reg.pdf*.

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

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

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

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

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

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

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

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

[6] Subsidiaries or affiliates are organizations that are subject to the general supervision or control of a parent or central organization.

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

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 issue a publicly available, audited financial statement on an annual basis.

D. Solicitations for Funds

1. The charity should clearly state its goals for and purposes of soliciting funds so that anyone examining the charity's disbursement of funds can determine whether the charity is adhering to those goals.

2. Solicitations for donations should accurately and transparently tell donors how and where their donations are going to be expended.

3. The charity should substantiate on request that solicitations and informational materials, distributed by any means, are accurate, truthful, and not misleading, in whole or in part.

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

E. Receipt and Disbursement of Funds

1. The charity should account for all funds received and disbursed in accordance with generally accepted accounting principles and the requirements of the Internal Revenue Code. The charity should maintain records of the salaries it pays and the expenses it incurs (domestically and internationally).

2. The charity should include in its accounting of all charitable disbursements the name of each grantee,[9] the amount disbursed, the date, and form of payment for each disbursement.

3. The charity, after recording, should promptly deposit all received funds into an account maintained by the charity at a financial institution. In particular, all currency donated should be promptly deposited into the charity's financial institution account.

4. The charity should make disbursements by check or wire transfer rather than in currency whenever such financial arrangements are reasonably available. Where these financial services do not exist or other exigencies require making disbursements in currency (as in the case of humanitarian assistance provided in rural areas of many developing countries, or in remote areas afflicted by natural disasters), the charity should disburse the currency in the smallest increments sufficient to meet immediate and short-term needs or specific projects/initiatives rather than in large sums intended to cover needs over an extended time frame, and it should exercise oversight regarding the use of the currency for the intended charitable purposes, including keeping detailed internal records of such currency disbursements.

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

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

2. The charity should make publicly available or provide to any member of the general public, upon request, an annual report. The annual report should describe the charity's purpose(s), programs, activities, tax exempt status, the structure and responsibility of the governing board of the charity, and financial information.

3. The charity should make publicly available or provide to any member of the general public, upon request, complete annual financial statements, including a summary of the results of the charity's most recent audit. The financial statements should present the overall financial condition of the charity and its financial activities in accordance with generally accepted accounting principles and reporting practices.

V. Programmatic Verification

A. Supplying Resources

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

1. Determining that the potential grantee of monetary or in-kind contributions has the ability to both accomplish the charitable purpose of the grant and protect the resources from diversion to non-charitable purposes or exploitation by terrorist organizations and/or their support networks;

2. Reducing the terms of the grant to a written agreement signed by both the charity and the grantee;

3. Ongoing monitoring of the grantee and the activities funded under the grant for the term of the grant; and

4. Correcting any misuse of resources by the grantee and terminating the relationship should misuse continue.

B. Supplying Services

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

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

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

C. Programmatic Review

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

1. The charity should require periodic reports from grantees on their operational activities and their use of the disbursed funds;

2. The charity should require grantees to take reasonable steps to ensure that funds provided by the charity are neither distributed to terrorists or their support networks nor used for activities that support terrorism or terrorist organizations. Periodically, a grantee should apprise the charity of the steps it has taken to meet this goal; and

3. The charity should perform routine, on-site audits of grantees to the extent reasonable—consistent with the size of the disbursement, the cost of the audit, and the risks of diversion or abuse of charitable resources—to ensure that the grantee has taken adequate measures to protect its charitable resources from diversion to, or abuse or influence by, terrorists or their support networks.

VI. Anti-Terrorist Financing Best Practices

Charities should consider taking the following steps before distributing any charitable funds (and in-kind contributions). As explained in Section I, these suggested steps are voluntary. The purpose of these steps is to enable charities to better protect themselves from the risk of terrorist abuse and to

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

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

facilitate compliance with U.S. laws, statutes, and regulations, with which all U.S. persons, including U.S. charities, must comply. Depending upon the risk profile of an individual charitable organization, adopting all of these steps may not be applicable or appropriate. When taking these steps, charities should apply a risk-based approach, particularly with respect to engagement with foreign grantees due to the increased risks associated with overseas charitable activity.

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

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

2. The jurisdictions in which a grantee maintains a physical presence;

3. Any reasonably available historical information about the grantee that assures the charity of the grantee's identity and integrity, including: (i) the jurisdiction in which a grantee organization is incorporated or formed; (ii) copies of incorporating or other governing instruments; (iii) information on the individuals who formed and operate the organization; and (iv) information relating to the grantee's operating history;

4. The available postal, e-mail and URL addresses and phone number of each place of business of a grantee;

5. A statement of the principal purpose of the grantee, including a detailed report of the grantee's projects and goals;

6. The names and available postal, e-mail and URL addresses of individuals, entities, or organizations to which the grantee currently provides or proposes to provide funding, services, or material support, to the extent reasonably discoverable;

7. The names and available postal, e-mail and URL addresses of any subcontracting organizations utilized by the grantee;

8. Copies of any public filings or releases made by the grantee, including the most recent official registry documents, annual reports, and annual filings with the pertinent government, as applicable; and

9. The grantee's sources of income, such as official grants, private endowments, and commercial activities.

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

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

2. The charity should assure itself that grantees do not appear on OFAC's master list of Specially Designated Nationals (the ''SDN List''), maintained on OFAC's Web site at *http://www.treas.gov/offices/enforcement/ofac/sdn/,* [12] and are not otherwise subject to OFAC sanctions. [13]

3. With respect to key employees, members of the governing board, or other senior management at a grantee's principal place of business, and for key employees at the grantee's other business locations, the charity should, to the extent reasonable, obtain the full name in English, in the language of

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

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

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 Web site at *http://www.state.gov/s/ct/rls/fs/2004/32678.htm.*

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

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

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

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

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 subject to OFAC sanctions.

4. Charities should be aware that other nations may have their own lists of designated terrorist-related individuals, entities, or organizations pursuant to national obligations arising from United Nations Security Council Resolution 1373 (2001).[14]

5. With respect to the key employees, members of the governing board, or other senior management described in the preceding paragraph, the charity should also consider consulting publicly available information to ensure that such parties are not reasonably suspected of activity relating to terrorism, including terrorist financing or other support; and

6. As a pre-condition to the issuance of a charitable grant, the charity should require grantees to certify that they are in compliance with all laws, statutes, and regulations restricting U.S. persons from dealing with any individuals, entities, or groups subject to OFAC sanctions, or, in the case of foreign grantees, that they do not deal with any individuals, entities, or groups subject to OFAC sanctions or any other persons known to the foreign grantee to support terrorism or to have violated OFAC sanctions.

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

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

2. The charity should assure itself that none of its key employees is subject to OFAC sanctions or have violated OFAC sanctions.

D. Should a charity's vetting practices lead to a finding that any of its own key employees, any of its grantees, or any of the key employees, members of the governing board, or other senior management of its grantees is suspected of activity relating to terrorism, including terrorist financing or other support, there are a number of available mechanisms and resources that a charity may utilize:

1. If the charity believes there is a match between the name of one of the individuals or organizations listed above and a name on the SDN List, the charity should take appropriate due diligence steps to ascertain whether the match is valid. These steps and further guidance are available on OFAC's Web site at *http://www.treas.gov/offices/enforcement/ofac/faq/answer.shtml#hotline;* and

2. The charity should provide information on any suspicious activity relating to terrorism, including terrorist financing or other support, which does not directly involve an OFAC match, through a referral form available on Treasury's Web site at *http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml.* In addition, the Federal Bureau of Investigation maintains local field offices to which charities should provide such suspicious information. A list of the locations and phone numbers of the FBI's field offices is available at *http://www.fbi.gov/contact/fo/fo.htm.*

Annex to Guidelines

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

Treasury, together with other Departments across the U.S. Government, is continuing to combat such terrorist abuse of the charitable sector by: (i) Administratively sanctioning terrorist-related charities and charitable officials through terrorist financing designations; (ii) contributing financial information and investigative resources and expertise to advance criminal investigations and prosecutions of charities and charitable officials providing material support for designated terrorist organizations or

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

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

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

activities; (iii) facilitating international action to address these abuses; and (iv) conducting comprehensive outreach to the charitable sector to raise awareness of terrorist exploitation and the steps charities can take to protect themselves from such abuse.

U.S. designations of charities and charitable officials demonstrate the breadth of the problem of terrorist infiltration and exploitation of the charitable sector. To date, the United States has designated forty-three charities worldwide and twenty-nine associated individuals for their support of terrorist organizations and operations. These seventy-two charities and individuals comprise over fifteen percent of all U.S.-designated terrorist supporters or financiers, indicating the primary importance of charities as a critical means of support for terrorist organizations and activities. Treasury maintains a summary of all designated charities, including unclassified background information summarizing the basis of each designation, to assist the donor and charitable communities in identifying those charities associated with terrorist financing and support. Further information and press releases relating to these designations are available on the Treasury Web site at *http://www.treas.gov/offices/enforcement/key-issues/protecting/charities_exec-orders.shtml.*

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

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

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

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment a proposal to extend, with revision, the Consolidated Reports of Condition and Income (Call Report) for banks and the Thrift Financial Report (TFR) for savings associations, which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the proposed revisions prior to giving final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before January 2, 2007.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room,