

**Legal Background and Discussion of the
U.S. Treasury Department Anti-Terrorist
Financing Guidelines:
Voluntary Best Practices for U.S. Based Charities**

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I. Background

- A. On November 7, 2002, the Treasury Department released voluntary best practices for "U.S. based charities" making grants and conducting activities abroad (the "Guidelines"). The implication of these Guidelines is a high standard of due diligence with respect to foreign persons and organizations that will receive U.S. funding.
- B. The legal backdrop to the Guidelines is found in various Presidential Executive Orders, as well as legislation (both pre and post September 11, 2001). For example, certain statutes contain a number of legal prohibitions which impact on international charitable activities. A useful starting point is the Executive Order issued by President Bush in response to the terrorist attacks of September 11, 2001.

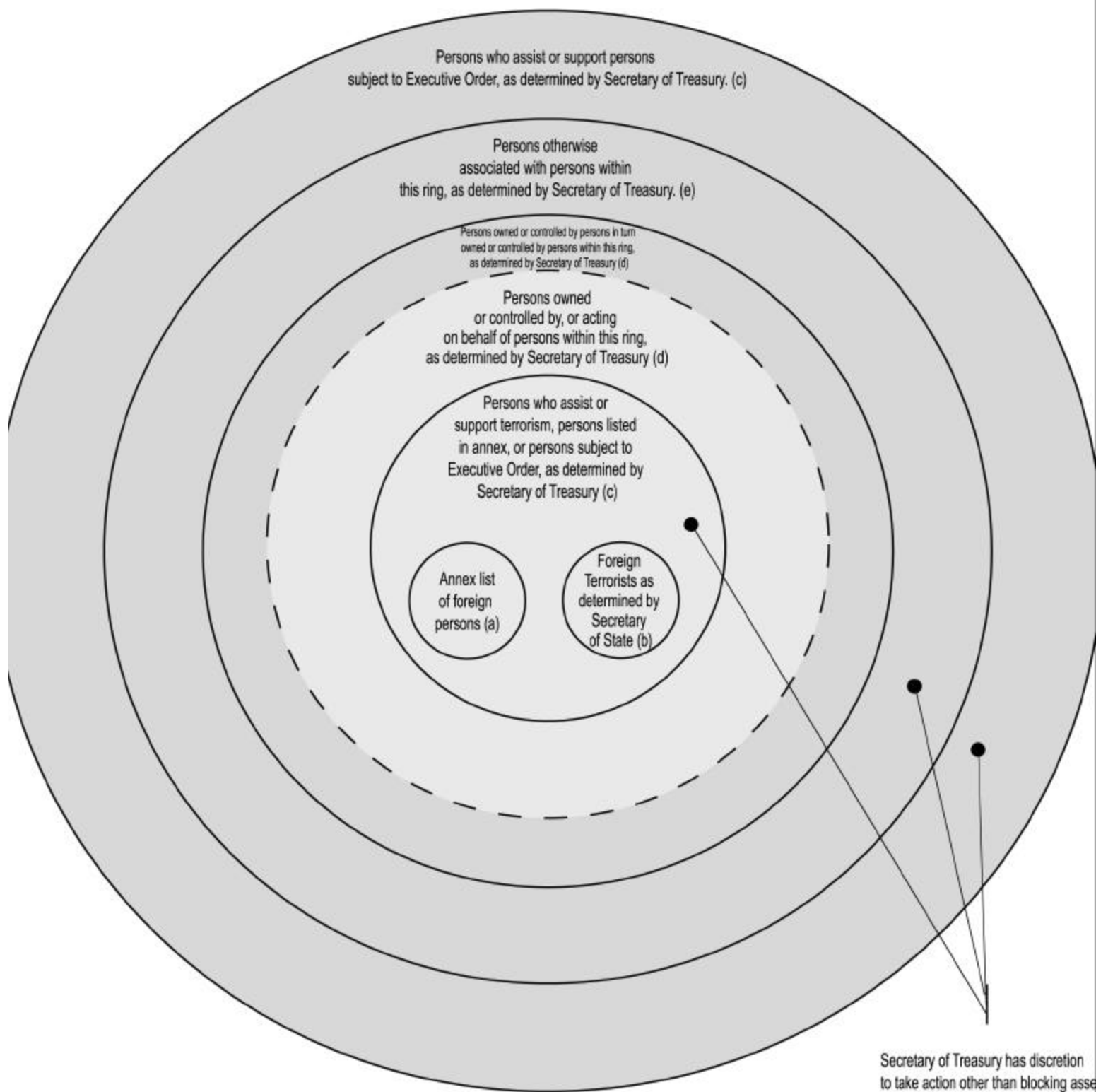
II. President Bush's Executive Order, Its Legal Precedent and OFAC Enforcement

- A. Executive Order 13224 was issued by President Bush on September 24, 2001. The President declared a national emergency, thereby permitting the exercise of presidential authority to impose economic sanctions pursuant to the International Emergency Economic Powers Act of 1977 (the "IEEPA"). Executive Order 13224:
 - 1. Blocks the property and property interests in the U.S. of the following individuals and entities ("persons"):
 - a. foreign persons listed in the Annex to the Executive Order;
 - b. foreign persons the Secretary of State determines to have committed acts of terrorism, or to pose a significant risk of committing acts of terrorism;

* With thanks for the invaluable assistance of Alison Lonshein, Esq. and Emily Spitzer, Esq.

- c. persons the Secretary of Treasury determines to assist in, sponsor, or provide support for acts of terrorism or support for persons listed in the Annex, or determined to be subject to the Executive Order. Support includes the provision of financial, material, or technological support and financial or other services;
 - d. persons the Secretary of the Treasury determines to be owned or controlled by, or who act for or on behalf of any of the above-listed persons or persons the Secretary determines to be owned or controlled by persons who are in turn owned or controlled by such persons; and
 - e. persons the Secretary of Treasury determines to be otherwise associated with any person listed above.
2. Prohibits U.S. persons and persons within the U.S. from dealing in blocked property or *making or receiving contributions of funds, goods and services* to or for the benefit of persons subject to the Executive Order. Exceptions are generally available for personal communications that do not transfer anything of value (*e.g.*, postal, telegraphic and telephonic communications), informational materials (*e.g.*, publications, artwork, posters, photographs) and transactions incident to travel.
3. Prohibits donations of food, clothing, medicine and other such items to persons whose property is blocked under the Executive Order, even if the donations are intended to relieve human suffering.

4. Persons Covered by Executive Order:



Note: Parenthetical letters relate to subparagraphs in Part II.A.1 of this outline.

B. Legal Precedents

1. The International Emergency Economic Powers Act of 1977 (the "IEEPA") authorizes the President to declare a national emergency and to deal with any unusual and extraordinary threat to national security, foreign policy or the economy of the U.S., the source of which is primarily outside the US. The IEEPA is essentially the peace time equivalent of the Trading with the Enemy Act (50 U.S.C. App. § 5(b)), enacted in 1917. Under the IEEPA, the President is empowered to investigate, regulate and prohibit transactions involving property subject to the jurisdiction of the United States in which a foreign country or national has an interest. The President is not authorized to regulate or prohibit personal communications, import and export of information and informational materials (unless otherwise subject to export controls under the Export Administration Act), and transactions incident to travel. Humanitarian relief also may not be restricted, unless such donations would impair the President's ability to deal with a national emergency, are in response to coercion, or would endanger US armed forces engaged in hostilities. 50 U.S.C. §§ 1701, 1702.
 - a. The Patriot Act (described below) amended the IEEPA to allow:
 - i. the President to block property under the IEEPA during the pendency of an investigation and to confiscate the property of foreign persons/organizations/countries that the President determines to have assisted in hostilities or attacks against the U.S.; and
 - ii. *ex parte* and *in camera* review of classified information in the course of judicial review of a determination made under the IEEPA. See Patriot Act § 106.
 - b. Legal issues relating to the powers exercised both under the IEEPA and the Executive Order have been raised in *Global Relief Foundation, Inc. v. O'Neill*, 207 F. Supp. 2d 779 (N.D.Ill. 2002), *aff'd in part* 7th Cir. (Dec. 31, 2002) and in *Holy Land Foundation for Relief and Development v. Ashcroft*, 219 F. Supp. 2d 57 (D.C. Aug. 8, 2002). The courts in both cases held that application of the IEEPA extended to the assets of U.S. persons and entities in which foreign persons had "any" interest in the property, such as property used for the benefit of foreign persons.
2. In 1995, President Clinton issued Executive Order 12947 (50 § U.S.C. 1701 note) specifically relating to the Middle East peace process. It was more limited in scope than President Bush's Order but represents a similar exercise of executive power. Executive Order 12947 ordered the blocking of assets of:

- a. terrorists who threaten to disrupt the Middle East peace process, as listed in the Annex to the order;
- b. foreign persons designated by the Secretary of State to have committed or to pose a significant risk of committing violent acts with the purpose or effect of disrupting the Middle East peace process;
- c. foreign persons designated by the Secretary of State "to assist in, sponsor, or provide financial, material, or technological support for, or services in support of, such acts of violence;" and
- d. persons determined by the Secretary of the Treasury "to be owned or controlled by, or to act for or on behalf of," any of the above persons.

Terrorists designated under this Executive Order are referred to as Specially Designated Terrorists (SDT) and are included in OFAC's list of Specially Designated Nationals (described below).

C. Enforcement of all of the blocking actions described above is administered by the Treasury Department's Office of Foreign Assets Control ("OFAC"). OFAC also administers other economic sanctions programs imposed by various legislation.

1. OFAC publishes the **Specially Designated Nationals List (the "SDN List")**. This is a critical list which includes individuals and entities owned or controlled by, or acting for or on behalf of, targeted OFAC countries such as Libya and Cuba. It also includes individuals, groups and entities such as terrorists and narcotics traffickers designated under programs which are not country specific. For example, the persons designated as terrorists in Bush's Executive Order, known as specially designated global terrorists (SDGTs), appear on the SDN list. The list can be found at **www.ustreas.gov/offices/enforcement/ofacs/sdn**.
2. Administrative remedies are available for appealing blocking actions and for removal from the SDN List. See OFAC regulations at 31 C.F.R. § 501.801 *et seq.*

D. U.S. Charities Blocked Under the Executive Order

1. The Holy Land Foundation was established for the purpose of providing human aid worldwide, although its work focused primarily in the West Bank and Gaza. In 1995 it was designated an SDT pursuant to Executive Order 12947, which blocked the assets of persons who were threats to the Middle East peace process. Although the Holy Land Foundation had resuscitated its image, OFAC designated it an SDGT on the basis of its connections with Hamas. In particular, Holy Land's founder and CEO has

been identified as a fundraiser for Hamas. OFAC issued a blocking notice freezing Holy Land's assets and removed all documents, computers and furniture from its headquarters. Holy Land's petition for a preliminary injunction challenging its designation as a terrorist organization and the blocking actions was denied. See 219 F. Supp. 2d 57 (D.D.C. 2002).

2. Global Relief Fund sent over 90 percent of its funds to approximately 25 countries. In December 2001 OFAC issued a blocking notice pursuant to the Bush Executive Order, thereby freezing Global Relief's assets pending an investigation to determine whether it is an SDGT. The organization's office and the home of its Executive Director was searched, and computers and financials records were seized. While Global Relief Fund's petition for a preliminary injunction challenging the blocking was pending, OFAC designated Global Relief an SDGT. Consequently, the issue now is whether the SDGT designation is supported by the administrative record. See, e.g., 207 F. Supp. 2d 779 (N.D. Ill. 2002), aff'd in part 7th Cir. (Dec. 31, 2002). Apart from the civil proceedings involving the organization itself, Global Relief's co-founder and board member, Rabih Haddad, was arrested in December 2001 (the same day the office was searched) because his tourist visa had expired. Haddad was the subject of the 2002 court rulings that immigration hearings must be conducted openly. Haddad and his family have since been ordered to leave the country.
3. Benevolence International Foundation ("BIF") is also a multinational charity established to aid the needy through distributions of food, clothing and medical services and by operating orphanages, hospitals and clinics in Afghanistan, Bosnia, China, Pakistan, and other countries. In December 2001, OFAC issued a blocking order and the FBI searched BIF's offices and the home of its Executive Director, seizing financial and business records and personal effects. BIF filed a suit against the federal government alleging various constitutional violations and sought a preliminary injunction challenging the blocking and seizures. The District Court stayed these proceedings in May 2002, pending a related criminal case for perjury against the Executive Director. Under a recent plea agreement, the Executive Director admitted that he illegally channeled BIF funds to rebel fighters in Bosnia and Chechnya but did not admit to ties to Al Qaeda or other terrorists. See Benevolence International Foundation, Inc. v. Ashcroft, No. 02 C 763 (N.D. Ill., filed Jan. 30, 2002); 200 F. Supp. 2d 935 (N.D. Ill. 2002).

III. Patriot Act of 2001: Provisions of General Relevance to Charitable Organizations¹

- A. "The Uniting and Strengthening of America by Providing Appropriate Tools to Intercept and Obstruct Terrorism Act of 2001," known as the Patriot Act, is intended to strengthen the government's ability to combat terrorism. It is immensely broad in scope in that it amends many existing statutes. Many sections are not directly relevant to the charitable sector, but there are certain key provisions that should be of interest to charitable organizations conducting international activities.
- B. Relevant Patriot Act Amendments
1. Patriot Act §§ 805 and 811(f) amend 18 U.S.C. § 2339A, which prohibits the provision and/or concealment of material support or resources with the intent or knowledge that such support will be used to commit specific terrorist acts. The definition of material support or resources included monetary support and the provision of various services but excluded the provision of medicine and religious materials. As amended by the Patriot Act, the definition of material support or resources has been expanded to include the provision of expert advice or assistance. The Patriot Act also broadened liability to include attempt and conspiracy, and the provision of material support outside the U.S. Finally, the Patriot Act amendments enhanced criminal penalties for those found liable under these provisions.
 2. Patriot Act § 810(c) amends 18 U.S.C. 2339B, which prohibits persons within the US from knowingly providing material support or resources to "foreign terrorist organizations" as designated under § 219 of the Immigration and Nationality Act (8 U.S.C. § 1189)). Material support or resources has the same meaning as described above under § 2339A, as amended. The amendments under the Patriot Act enhanced the applicable criminal penalties.
 - a. Note that in addition to the criminal liability described above, civil liability can arise under 18 U.S.C. § 2333, which authorizes any US national (or survivor) who is injured in person, property or business "by reason of an act of international terrorism" to sue and recover threefold the damages sustained and cost of suit, including attorney's fees. "International terrorism" is defined in § 2333 to include activities that "involve violent acts or acts dangerous to human life." *See Boim v. Quranic Literary Institute*, 127 F. Supp. 2d 1002 (N.D. Ill. 2001), *aff'd* 291 F.3d 1000 (7th Cir. 2002). (holding that decedent's parents could bring an action under 18 U.S.C. § 2333 for damages against U.S. charities that allegedly

¹ This section includes only those provisions that are relevant to making grants and conducting programs abroad. Depending upon the nature of an organization's activities, other sections of the Patriot Act may apply.

aided and abetted terrorist activities of Hamas by providing financial support).

IV. Suppression of the Financing of Terrorism Convention Implementation Act of 2002 (18 U.S.C. § 2339C)

This Act implements the United Nations International Convention for the Suppression of the Financing of Terrorism, December 9, 1999. (Signed by US on January 10, 2000 and ratified June 26, 2002.) Section 202 of this Act (creating 18 U.S.C. § 2339C) prohibits raising or contributing funds and/or concealing such support with the intent or knowledge that the contributions will be used to violate one of the treaties enumerated in the Act or to commit a terrorist act. In addition to the criminal and civil penalties generally imposed by 18 U.S.C. § 2339C, civil penalties of at least \$10,000 will be imposed on any legal entity located within the U.S. if a person responsible for the management or control of the legal entity violates this section while acting in such capacity. It also prohibits concealment of material support or resources, knowing or intending that such support was provided in violation of 18 U.S.C. § 2339B (See Section III.B.2 above).

V. Current Legislative Proposals for Suspension of Exempt Status

- A. At least two bills have been introduced in the Senate which, if passed, would amend Internal Revenue Code § 501 to provide for the suspension of an organization's exempt status under IRC § 501(a) for any period in which it is designated a terrorist organization or a supporter of terrorism. See Care Act of 2003, § 208 (S. 256) introduced Jan. 30, 2003 and approved by the Senate Finance Committee on February 5, 2003 and S. 3081 introduced by Senator Tim Johnson on Oct. 8, 2002.
1. Under the Care Act a terrorist organization is an organization designated or defined as:
 - a. a terrorist organization or a foreign terrorist organization under certain sections of the Immigration and Nationality Act,
 - b. subject to economic sanctions under an Executive Order related to terrorism and issued under the authority of the IEEPA (such as the Bush Executive Order) or section 5 of the United Nations Participation Act, or
 - c. an organization supporting or engaging in terrorist activity designated in any other Executive Order issued in the future or under any federal law that refers back to the Care Act.
 2. No deduction for contributions to such terrorist organizations will be allowed during the period of suspension. An organization erroneously designated as a terrorist organization may challenge the designation, but not the suspension itself, and may apply for a refund or credit for any

overpayment of taxes resulting from the period of suspension. Notice of any suspensions would be published by the IRS.

VI. Anti-Terrorist Financing Guidelines – Voluntary Best Practices

- A. The Guidelines establish specific due diligence procedures for "U.S.-based charities" making grants and conducting activities abroad. The Guidelines are voluntary and, therefore, do not constitute actual prohibitions on activities such as those contained in the Bush Executive Order. Also, the Guidelines' procedures for distribution of funds only apply to those distributions made to foreign organizations. In contrast, the Bush Executive Order prohibits transactions with designated terrorists and others, whether located in the U.S. or abroad.
- B. Compliance with the Guidelines is meant to reduce the likelihood that charitable funds will be diverted for terrorist purposes and thus reduce the risk of blocking of a charity's assets. Compliance does not offer a safe harbor for a U.S. charity from blocking action under any executive order or regulation.
- C. Although comparisons have been made with the expenditure responsibility requirements of IRC § 4945, the Guidelines differ substantially from those. They require a higher level of due diligence and accountability. Also, they apply to all foreign grants and other expenditures regardless of type of organization receiving funds, including public charities.
- D. The Guidelines are organized into four categories: Governance, Disclosure and Transparency, Financial Practice and Accountability, and Anti-terrorist Financing Procedures. With the exception of the anti-terrorist financing procedures, the Guidelines do not seem to necessitate substantive procedural changes for charities that are already complying with state and federal laws. The antiterrorist financing guidelines may differ substantially from current common practice in international grantmaking and presents the most serious challenges. Each section of the Guidelines is summarized below with the most attention given to the anti-terrorist financing procedures.
 - 1. Governance: the Charity should have an adequate governing structure.
 - a. Sets out basic requirements for governing instruments and suggests an active and independent board of at least 3 directors. No more than 20% of the directors should receive direct or indirect "compensation".
 - b. Suggests that all charities have a conflict of interest policy and that any transactions in which a board member has an interest be prohibited. Goes beyond what most state statutes and federal law require.
 - 2. Disclosure/transparency in Governance and Finances.

- a. Suggested disclosure includes the type of compensation information that is already provided by charities filing federal information returns as well as information retention that is likely already done by any organization performing payroll or human resources functions.
 - b. Also suggests that financial statements be done in conformity with GAAP, which may not be feasible or common for some smaller organizations.
3. Financial Practice/Accountability.
- a. Offers primarily operational suggestions, many of which most organizations already have in place: an annual budget, a designated financial officer, independent auditors if gross income exceeds \$250,000 and standard banking practices.
 - b. Suggests that disbursements be made only by check or wire transfer and not in cash. This has generated some comment, particularly with respect to organizations operating in remote or strife-affected parts of the world where access to a traditional banking system is not always an option.
4. Anti-terrorist financing procedures.
- a. Sets out the steps to be taken before expending charitable funds to or for foreign recipient organizations. The purpose of these steps is to ensure that funds do not get diverted by having funders adopt a “know your grantee” system similar to the “know your customer” rules of banking systems.
 - b. The basic information that should be obtained about foreign grantees according to the Guidelines includes:
 - i. grantee's name in English, in language of origin, and any acronyms or other names used;
 - ii. jurisdictions in which foreign grantee maintains a physical presence;
 - iii. jurisdiction in which the foreign grantee was incorporated or formed;
 - iv. address and phone number of any place of business of foreign grantee;

- v. principal purpose of foreign grantee, including detailed report of its projects and goals;
 - vi. names and addresses of organizations to which foreign grantee currently provides or proposes to provide funding services, or material support, to the extent known, as applicable;
 - vii. names and addresses of any subcontracting organizations utilized by the foreign grantee;
 - viii. copies of any public filings or releases made by the foreign grantee, including most recent official registry documents, annual reports, and annual filing with pertinent government, as applicable; and
 - ix. foreign grantee's existing sources of income, such as official grants, private endowments, and commercial activities.
- c. The vetting procedures with respect to each potential foreign grantee include the following:
- i. conducting a reasonable search of public information, including information via the internet, to determine whether the foreign grantee is or has been implicated in questionable activity;
 - ii. verifying that the foreign grantee does not appear on any list of the US government, UN or EU identifying it as having links to terrorism or money laundering (lists specifically cited in the Guidelines are OFAC's SDN List, Justice Department Terrorist Exclusion List, list pursuant to UN Security Council Resolution 1267, and list pursuant to EU Regulation 2580, and any other official list available);
 - iii. obtaining 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 of foreign grantee's principal place of business, such as board members, etc., and for senior employees at the recipient's other locations (these names should also be checked against the lists cited in above);
 - iv. requiring the foreign grantee to certify that it does not employ or deal with any entities or individuals on the lists,

or with any entities or individuals known to support terrorism; and

- v. determining the identity of foreign grantee's financial institutions with which it maintains accounts and seeking bank references for purposes of determining whether the financial institution is a shell bank, operating under an offshore license, licensed in a jurisdiction considered uncooperative in international fight against money laundering, licensed in a jurisdiction that the Treasury has determined to be a primary money laundering concern, or licensed in a jurisdiction lacking in adequate anti-money laundering controls and regulatory oversight.

E. IRC § 4945 Expenditure Responsibility

- 1. Under the Internal Revenue Code, a private foundation is not an insurer of the activity of the organization to which it makes a grant. The aims of the IRC § 4945 expenditure responsibility procedures are to:
 - a. see that grants are spent solely for the purpose for which made,
 - b. obtain full and complete reports from grantees on how funds are spent, and
 - c. make full and detailed reports with respect to such expenditures to the IRS.

See Treas. Reg. § 53.4945 – 5(b)(1).

- 2. Pre-grant inquiry under IRC § 4945
 - a. Treas. Reg. 53.4945-5(b)(2) requires that prior to making an expenditure responsibility grant, a limited inquiry be made with respect to the potential grantee that is "complete enough to give a reasonable man assurance that the grantee will use the grant for proper purposes." The inquiry should include:
 - i. the identity, prior history and experience of the grantee and its managers, as well as
 - ii. any knowledge that the private foundation has (based on prior experience or otherwise), or other information that is readily available, concerning the management, activities, and practices of the grantee.

- b. The Regulations contain a detailed example of an inquiry revealing the police record of an official of a grantee. See Treas. Reg. § 53.4945-5(b)(2)(ii)(Ex. 1).
 - c. The scope of the inquiry may vary depending upon the size and purpose of the grant, the period over which it is to be paid, and the prior experience which the grantor has had with respect to the grantee and its capacity to use the grant for proper purposes.
3. Written Grant Agreements Required by IRC § 4945
- a. Expenditure responsibility grants must be subject to a written agreement signed by an appropriate officer, director or trustee of the grantee. The agreement must include the purposes of the grant and an affirmation that the grantee will not use any of the funds for any other purpose, or to carry on propaganda, attempt to influence legislation, influence a public election, or make any grant to an individual or other non-public charity that does not comply with IRC § 4945(d)(3) or (4). The grantee must maintain and make available records of its receipts and expenditures.
4. Reporting Requirements of IRC § 4945
- a. Reporting for expenditure responsibility grants includes annual and final narrative and financial reports on the use of grant funds, compliance with terms of the grant, and progress made by the grantee toward achieving purposes for which the grant was made.
 - b. The foundation need not conduct any independent verification of such reports unless it has reason to doubt their accuracy or reliability. If the grantee fails to make a report, the foundation must make reasonable efforts to obtain them and withhold future payments on the grant and any other grant to the grantee until the report is furnished.
5. Diversion of Funds under IRC § 4945
- If the foundation determines that part of the grant was diverted for improper purposes, it must take all reasonable and appropriate steps, including legal action where appropriate, either to recover grant funds or ensure restoration of diverted funds and dedication of other grant funds to purposes for which the grant was made. If such steps are taken, there is no taxable expenditure. If any further payments are to be made to the grantee, the private foundation must withhold such payments until it has received assurances that future diversions will not occur and that the grantee has taken extraordinary precautions to prevent future diversions.

6. IRC § 501(c)(3) Equivalency – Though independent of expenditure responsibility, the equivalency process contains substantial due diligence elements, which again differ from those proposed in the Guidelines. Equivalency is based upon reasonable judgment and a good faith determination using the foreign grantee's sworn statement or opinion of counsel.
 - a. Copies of the foreign grantee's charter, bylaws and other governing documents translated into English must be reviewed for an equivalency determination.
 - b. The statement of facts required to support an equivalency determination include, but are not limited to, the following:
 - i. date and law under which organization was created;
 - ii. statement of exempt purposes and description of past, present and future activities;
 - iii. statement that assets are not used for private benefit or for noncharitable purposes;
 - iv. disclosure of other organizations, if any, that control or operate in connection with the foreign grantee;
 - v. for a public charity equivalency, a support schedule showing sources of income during the four most recent tax years including: (i) gifts, grants, and contributions received, and (ii) a schedule of contributions for each donor whose support for the 4-year period was greater than 2%.

F. IRC § 4945 vs. the Guidelines -- Comparisons and Distinctions. Although there is superficial similarity between the best practices of the Guidelines and the requirements and concepts of expenditure responsibility, IRC § 4945 leaves far more flexibility to the funder and allows for reasonable best efforts. Furthermore, compliance with expenditure responsibility may not entirely meet the due diligence standards suggested by the Guidelines, particularly as the scope of pre-grant inquiry can vary. The following paragraphs set out specific comparisons.

1. The IRC § 4945 pre-grant inquiry is somewhat narrower in scope than the Guidelines even though it includes the concepts of evaluating the individuals involved with a grantee, as well as reviewing "readily available" material on the grantee and its management. IRC § 4945 is concerned primarily with how the potential grantee will spend the grant funds and whether the persons responsible for their use can be expected to use the funds in a manner consistent with the terms of the grant. In contrast, the

Guidelines are more broadly concerned with how a grantee uses its assets generally, as well as with its overall sources of support and management.

2. The IRC § 4945 pre-grant inquiry allows for flexibility in the amount of due diligence required. For example, if a potential grantee has an excellent reputation within the philanthropic community, a private foundation need not necessarily conduct an intensive review. The Guidelines imply that an organization should adopt the above procedures for all foreign grants it considers, regardless of the grantee's reputation.
3. An inquiry into the identity and standing of foundation managers is not always required under IRC § 4945. Rather it depends upon the circumstances of the grant and the history and experience with the grantee organization. The Guidelines, in contrast, recommend this practice with respect to all foreign grants.
4. Expenditure responsibility requires a grant agreement specifying the terms and conditions of the grant. No such agreement is required under the Guidelines. The Guidelines, however, do suggest obtaining a certification concerning anti-terrorism from foreign grantees. While not currently required under § 4945, this could be worked into the agreement or affidavit.
5. Expenditure responsibility grants are subject to detailed reporting requirements. The Guidelines also recommend periodic reports on operational activities and the use of grant funds from all foreign grantees. The Guidelines furthermore require foreign grantees to report on the reasonable steps they have taken to ensure that the grant funds are not ultimately distributed to terrorist organizations.
6. The Guidelines suggest on-site audits whenever possible, consistent with the amount of the grant and the cost. There is no analogous IRC § 4945 requirement for routine, on-site audits of the foreign grantee.
7. Except in the context of an equivalency determination there is no specific obligation to review the corporate documents of foreign grantees under IRC § 4945. The Guidelines suggest obtaining copies of all public filings. Effectively, the Guidelines include the requirements of both equivalency determinations and expenditure responsibility.

VII. International Efforts

A. The United Nations

1. The UN passed the International Convention for the Suppression of the Financing of Terrorism on December 9, 1999. The U.S. signed it in January 2000 and passed implementing legislation in June 2002. (See Section IV above.)

2. Pre-September 11, 2001, a number of relevant U.N. Security Council Resolutions were passed calling upon member states to take action to prohibit support for the Taliban and Al-Qaeda, to maintain a list of persons associated with Osama Bin Laden and members of Al-Qaeda, and to enact legislation or administrative measures to prevent and punish violators. Security Council Resolution 1269 (October 19, 1999) addressed terrorism more generally, calling on member states to prevent and suppress terrorist acts by implementing international anti-terrorist conventions, preventing and suppressing terrorist financing and cooperating with one another through treaties and the exchange of information. Also see UN Security Council Resolutions 1214 (Dec. 8, 1998), 1267 (Oct. 15, 1999), 1333 (Dec. 19, 2000), 1363 (Jul. 30, 2001).

3. Post September 11, 2001, the UN Security Council adopted a series of resolutions condemning the attacks, reaffirming its commitment to thwarting terrorism and calling upon member states to adopt additional anti-terrorism measures. See UN Security Council Resolutions 1368 (Sept. 12, 2001), 1373 (Sept. 28, 2001), 1377 (Nov. 12, 2001), 1438 (Oct. 14, 2002), 1440 (Oct. 24, 2002), 1450 (Dec. 13, 2002), 1452 (Dec. 20, 2002). The most significant are Resolution 1390, which establishes a list of UN designated terrorists whose assets should be blocked and Resolution 1373, which:
 - a. calls for members to block the assets of terrorists, entities owned or controlled by terrorists and persons and entities acting on behalf of terrorists, “including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;”
 - b. calls upon states to prohibit their nationals to fund or provide services to terrorists;
 - c. directs states to criminalize indirect and direct financing of terrorist activities or participation or facilitation of the commission of terrorist acts; and
 - d. authorizes the creation of the *Security Council Counter Terrorism Committee* to monitor the implementation of Resolution 1373. On February 20, 2003, the Counter Terrorism Committee announced its three-point plan of action consisting of (i) working with member states to raise their capacity to defeat terrorism within their borders, (ii) providing assistance programs, and (iii) creating a global network of international and regional organization to serve the committee’s aims. A special meeting will be held on March 7, 2003 to develop these plans. Resolution 1377 furthermore invited the committee to explore ways to promote best practices in the

areas covered by Resolution 1373, including the preparation of model laws.

B. Financial Task Force on Money Laundering (the "FATF")

1. The FATF was created by the G-7 Summit held in Paris in 1989 to develop and promote national and international policies to combat money laundering and to monitor anti-money laundering measures. Following September 11, the FATF expanded its purposes to include combating terrorist financing. To that end, the FATF issued international standards to combat terrorist financing, and called upon all countries to adopt them. Twenty-nine countries, including the U.S., are members of the FATF.
2. The "FATF Special Recommendations on Terrorist Financing" of October 31, 2001 call upon countries to:
 - a. Ratify and implement the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism and implement UN resolutions relating to the prevention and suppression of terrorist financing, and in particular UNSCR 1373;
 - b. Criminalize the financing of terrorism, terrorist acts and terrorist organizations;
 - c. Implement measures to "freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations" in accordance with UN resolutions;
 - d. Require financial institutions to report funds they suspect or have reasonable grounds to suspect are linked to terrorism, terrorist acts or terrorist organizations;
 - e. Cooperate and exchange information with other countries;
 - f. Require institutions that transmit money or value to register and impose civil or criminal sanctions on those that provide such financial services illegally;
 - g. Require institutions that perform wire transfers to maintain records on the transferor and messages sent; and
 - h. Review the adequacy of laws and regulations governing non-profit organizations which are subject to abuse by terrorists.
3. The FATF published "Guidelines, Combating the Abuse of Non-Profit Organisations: International Best Practices" in October 2002. These are intended to aid governments, non-profits and donors with the prevention

and identification of terrorist financing. The Best Practices overlap to some extent with the Guidelines in that both call for financial transparency and board oversight. However, FATF's Best Practices recognize that each charity must assess its own risk of inadvertently supporting terrorists and its need for additional safeguards and suggests that governments should not unduly burden small organizations whose activities do not pose such risks. FATF's Best Practices recommend:

- a. Financial transparency of charitable organizations: maintain full program budgets that account for all program expenditures and that identify recipients and uses of funds; conduct independent audits; maintain bank accounts within formal banking system.
- b. Programmatic verification by charitable organizations: accurately disclose purposes for solicitations; ensure that funds are used for stated purposes and intended beneficiaries; conduct field examinations for programs if there is a risk of potential misuse; require progress reports of programs and verify if necessary; oversee foreign operations from both home and abroad.
- c. Internal administration and board oversight of charitable activities: document administrative, managerial and policy control over organization; board has a key role and should act with due diligence with respect to finances, management, staff and operations; adopt procedures to prevent use of the organization's funds or assets to support terrorist activities.
- d. Government oversight: government law enforcement should play key role in combating the abuse of non-profit organizations; bank regulators should report suspicious activities; governmental authorities should share information.
- e. Private sector watchdog organizations: should be a focal point of international activities to combat abuse where it exists.
- f. Sanctions: countries should establish effective and proportionate administrative, civil or criminal penalties for those who misuse charities for terrorist financing.

VIII. Lists of Terrorists and Terrorist Organizations

1. Treasury OFAC Specially Designated Nationals List
(www.ustreas.gov/offices/enforcement/ofac/sdn) – this list includes:
 - a. Executive Order Annex (64 FR 49079)

- b. Department of State Comprehensive List of Terrorists and Groups Identified Under Executive Order 13224
(www.state.gov/s/ct/rls/fs/2002/12327.htm)
- c. Department of State List of Foreign Terrorist Organizations
(www.state.gov/s/ct/rls/fs/2002/12389.htm)
- d. Executive Orders 12947 and 13099 Lists of Terrorists Who Threaten to Disrupt the Middle East Peace Process (50 U.S.C. § 1701 note; 63 FR 45167).

2. Department of State Terrorist Exclusion List (for immigration purposes)
(www.state.gov/s/ct/rls/fs/2002/15222.htm)
3. FBI List of Most Wanted Terrorists
(www.fbi.gov/mostwant/terrorists/fugitives.htm)
4. FBI List of September 11 Hijackers
(www.fbi.gov/pressrel/pressrel01/091401hj.htm)
5. Bureau of Industry and Security Entity List, Denied Persons Lists and Unverified List (www.bxa.doc.gov)
6. United Nations List Pursuant to Security Council Resolution 1390 (2002) and Paragraphs 4(B) of Resolution 1267 (1999) and 8(C) of Resolution 1333 (2000) (www.un.org/Docs/sc/committees/1267/1267ListEng.htm)
7. European Union List Implementing Article 2(3) of Regulation (EC) No. 2580/2001 on Specific Restrictive Measures Directed Against Certain Persons and Entities with a View to Combating Terrorism (published in *Official Journal of the European Communities*, available at http://europa.eu-int/eu-lex/en/search/search_oj.html)