



COUNCIL *on* FOUNDATIONS

December 18, 2006

The Honorable Henry M. Paulson, Jr.
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Mr. Secretary:

On behalf of the Treasury Guidelines Working Group of Charitable Sector Organizations and Advisors (“Working Group”), I am submitting the following comments in response to the document published in the October 31, 2006 Federal Register, entitled “U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities” (“Guidelines”), and the accompanying Treasury response to public comments submitted with respect to the December 2005 version of that document.

The Working Group, a group broadly representative of U.S. charitable organizations, emerged from an ad hoc group of legal advisors and practitioners concerned about the original draft of the Guidelines, issued in November 2002. The Council on Foundations formally convened the Working Group in 2004. After very careful consideration, the Working Group concluded that the original Guidelines were unworkable and set out to draft an effective alternative. The product of our deliberations, the “Principles of International Charity,” was released in March 2005 and describes the fundamental principles and relevant U.S. laws and regulations that have effectively guided the international charitable work of experienced U.S. organizations to ensure that charitable assets will be used for their intended purposes and not diverted to terrorist or other non-charitable uses. After consideration of the revised Guidelines issued in December 2005, we again requested that the Guidelines be withdrawn and the Principles of International Charity endorsed in their place. Because we recognized that Treasury might well decline to withdraw the revised Guidelines, we also offered recommendations for resolving some of the most serious problems with the document.

On September 29, 2006, Treasury released an updated version of the Guidelines and a response to the public comments submitted on the December 2005 version. We have carefully considered this newest version of the Guidelines and continue to have serious concerns with the document.

The Working Group appreciates that Treasury has made significant improvements to the Guidelines in response to its comments on the December 2005 version. Specifically, the Guidelines now state clearly that charities are independent entities and not agents of the U.S. Government. They acknowledge that a “one-size-fits-all” approach is not appropriate, and recognize the need for flexibility in application. The Guidelines state more clearly that they are not comprehensive, should be applied in a graduated way based on each charity’s risk assessment and that failure to comply with the Guidelines is not a violation of U.S. law. In addition, Treasury has removed certain governance provisions that the Working Group identified as problematic in the December 2005 and earlier versions of the Guidelines. These improvements notwithstanding, there continue to be areas in

which the Guidelines raise legitimate concerns without furthering their stated purpose “to assist charities that attempt in good faith to protect themselves from terrorist abuse”.

First, the Guidelines significantly exaggerate the extent to which U.S. charities have served as a source of terrorist funding. The Working Group comments asked that Treasury provide data on the prevalence of terrorist abuse of U.S. charities. In response, Treasury attached an Annex, which regrettably does not address Working Group concerns. The Annex does not adequately distinguish between domestic and foreign charities. Further, failure to provide an accurate picture of the dollar amounts involved in terrorist abuse of charities results in overstatement of the risk that donations to legitimate charities may be diverted into the hands of terrorists.

Second, despite Working Group comments, the Guidelines continue to impose onerous information collection and reporting requirements that do little to protect charities from terrorist abuse. In addition, the latest version of the Guidelines includes troubling new provisions. Among these, the Guidelines advise that charities should not enter into relationships with grantees or employees “where any terrorist-related suspicions exist”, and that charities report board members or key employees to OFAC if they find “any suspicious activity relating to terrorism, including terrorist financing or other support, which does not directly involve an OFAC [list] match.” The Working Group believes that the quoted terms are vague and undefined and that reporting is inappropriate in the absence of solid evidence of terrorist-related activity.

Third, the Working Group remains concerned that Treasury has not gone far enough to ensure that the Guidelines remain *voluntary*. The Guidelines have already been incorporated into the 2006 Combined Federal Campaign. In commentary accompanying the CFC regulations, the Office of Personnel Management stated that participants in the CFC “as a minimum, should follow the ‘Anti-Terrorist Financing Guidelines.’” Members of the Working Group are also aware that IRS agents – both in the context of audits and exemption applications – have questioned organizations about their compliance with the Guidelines. If the Guidelines are voluntary, they should not become a criterion for evaluating tax-exempt status.

Much of the work performed by U.S. charities around the world is designed to address the conditions that breed terrorism, such as starvation, malnutrition, and poor access to water, schools and health care services. The Working Group is concerned that many charities may not have the resources to fund the cost of complying with the Guidelines and will be forced to abandon work that is critical to the global fight against terrorism. We are also concerned that donors will be deterred from funding such charitable work because Treasury has overstated the risk of diversion of assets from legitimate charities that act in good faith to protect themselves from terrorist abuse.

The stated purpose of the Guidelines is to assist charities that operate in good faith to safeguard their assets from diversion to terrorism. The Working Group agrees wholeheartedly with this goal, as evidenced by its work in developing the Principles of International Charity. We believe the practices suggested in the Guidelines do not offer protection of charitable assets beyond what is already required by existing law, and in some respects may actually impede charities’ efforts to combat international terrorism.

In conclusion, Mr. Secretary, while we appreciate Treasury's efforts to revise the Guidelines to respond to our concerns, we continue to feel that the Guidelines and the accompanying Annex should be withdrawn and the Principles of International Charity endorsed in their stead.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Gunderson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Steve Gunderson
President and CEO