

U.S. Department of the Treasury: Protecting Charitable Giving

Frequently Asked Questions

June 4, 2010

Introduction

"Designating and freezing the assets of an organization engaged in charitable work is a decision not taken lightly because the last thing we want to do is cut off needed humanitarian assistance. However, when charitable organizations use charity and humanitarian assistance to provide support for a terrorist organization or as cover to fund terrorist activity and harm innocent civilians, often in poor and impoverished regions, we have a responsibility to do all we can to shut down the funding channels of terrorism."

— Stuart Levey, Treasury Under Secretary for Terrorism and Financial Intelligence (TFI)

The U.S. Department of the Treasury recognizes and strongly supports the essential role of charity in religious and secular communities across the United States and around the world. Charities play a critical role in our society and the United States Government promotes charitable giving in many ways, including through the provision of tax-exempt status for charitable organizations in the United States and tax deductions under the Internal Revenue Code.

Charitable organizations help meet the needs of communities in conflict zones around the world, including where terrorist groups operate. Charities operating or funding services in such areas are particularly vulnerable to exploitation by terrorist groups and their support networks that may establish or abuse charities to raise and move funds, or provide other forms of support, that benefit such terrorist groups.

Assisting the U.S. charitable sector to minimize its exposure to these various forms of terrorist abuse is a key objective of the U.S. Department of Treasury in combating terrorist financing. As described in greater detail below, the Treasury Department has developed a comprehensive approach to combating terrorist exploitation of the charitable sector. An essential element of Treasury's approach is raising awareness across the charitable sector and the general public of: (i) the ongoing exploitation of charitable assistance by terrorist groups and their support networks; (ii) actions that the Treasury Department is taking to address this threat; and (iii) steps that the charitable sector and donor community can take to protect themselves against such abuse.

The following list of frequently asked questions and responses provides general information about the Treasury Department's approach to combating terrorist abuse of charities and references additional guidance to the charitable sector on ways to mitigate the threat posed by terrorist groups and their support networks.

Questions

1. What is the purpose of a terrorist designation?

The purpose of a terrorist designation is to deprive the subject of access to the funds required to pay for infrastructure, travel and other logistics, supplies and weaponry, and day-to-day sustenance to terrorist groups and their operatives. Designations are designed to be preventive -- to freeze assets when there is a reasonable basis to believe that the entity or individual is itself engaged in terrorist activity or supporting a designated terrorist or terrorist group. A primary objective and significant benefit of publicly designating individuals or entities that support terrorist groups or terrorist activities is the notice that such a designation provides to the charitable sector, the donor community and the public at large.

Designations also help counter terrorism by:

- *Deterring* non-designated parties who might otherwise be willing to finance terrorist activity;
- *Exposing* terrorist financing “money trails” that may generate leads to previously unknown terrorist cells and financiers;
- *Dismantling* terrorist financing networks by encouraging designated persons to disassociate themselves from terrorist activity and renounce their affiliation with terrorist groups and their support networks;
- *Terminating* terrorist cash flows by shutting down the pipelines used to move terrorist-related funds or other assets;
- *Forcing* terrorists to use more costly and higher risk means of financing their activities, which makes them more susceptible to detection and disruption; and
- *Fostering* international cooperation and compliance with obligations under United Nations Security Council Resolutions 1267 (1999) and 1373 (2001).

2. Who in the U.S. Government is responsible for designating individuals and entities, including charities?

A key component of U.S. efforts to combat terrorism financing is Executive Order 13224 (E.O. 13224), which was issued by the President after the September 11, 2001 attacks at the World Trade Center, in Pennsylvania, and against the Pentagon.¹ E.O. 13224, as amended, blocks all property and interests in property within the United States or in the possession or control of U.S. persons, including foreign branches, in which there is an interest of any person listed in the order or subsequently designated under the order.

¹E.O. 13224, “Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism,” 66 Fed. Reg. 49,079 (Sept. 25, 2001) was issued under the authorities vested in the President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)(IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code.

E.O. 13224 delegates to the Secretary of State the power to designate foreign persons who are found to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States. The State Department is also responsible for classifying a group that engages in terrorism as a Foreign Terrorist Organization (FTO) under additional authorities. For further information on how an FTO is identified, the legal criteria for designating an FTO, the consequences of being designated an FTO, and the current FTO list, please see the State Department's website.²

E.O. 13224 authorizes the Secretary of the Treasury to designate those persons, whether foreign persons or U.S. persons, who are owned or controlled by, or that act for or on behalf of, designated persons; those who assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of acts of terrorism or designated persons; and those who are "otherwise associated with" designated persons.³

The U.S. Department of the Treasury uses the administrative term "specially designated global terrorist" or "SDGT" to identify persons who are listed in E.O. 13224 or who have been designated pursuant to the E.O.⁴ Within the Department of the Treasury, the Office of Foreign Assets Control (OFAC) administers and implements E.O. 13224 pursuant to a delegation of authority from the Secretary of the Treasury.⁵

The charities that have been designated pursuant to E.O. 13224 have typically been designated for being owned or controlled by, acting for or on behalf of, or providing support or services to a specially designated global terrorist (usually also a designated foreign terrorist organization).

3. How does a Treasury designation work?

The process followed for Treasury designations pursuant to E.O. 13224, as amended, is as follows:

- (1) Treasury conducts an extensive investigation to determine whether there is a reasonable basis to believe that the subject of the investigation meets the criteria for designation pursuant to E.O. 13224. To accurately identify specific terrorist threats, such investigations draw on a broad range of information, including both publicly available and non-publicly available information (such as law enforcement or classified information), and involve consideration of both inculpatory and exculpatory information.
- (2) Once the evidence is collected, Treasury drafts an evidentiary memorandum summarizing the information acquired through its investigation. To ensure compliance with the law, designation packages are subject to rigorous internal review for legal sufficiency prior to designation. After an evidentiary package has been reviewed within OFAC, it is then reviewed for legal sufficiency by Treasury's attorneys. The Department of Justice also reviews the evidentiary memoranda.
- (3) E.O. 13224 directs that designations by the Departments of the Treasury and State be undertaken in consultation with one another, as well as in consultation with the Departments of Justice and Homeland Security. Once this interagency process has been completed, the final evidentiary

² <http://www.state.gov/s/ct/rls/other/des/123085.htm>

³ To be "otherwise associated with" means "to own or control or to attempt, or to conspire with one or more persons, to act for or on behalf of or to provide financial, material, or technological support, or financial or other services, to." 31 C.F.R. § 594.316.

⁴ See 31 C.F.R. § 594.310.

⁵ See 31 C.F.R. § 594.802.

package is presented for signature by the Director of OFAC pursuant to authority delegated from the Secretary of the Treasury.

- (4) At the time of designation, OFAC makes a reasonable effort to provide a designated party in the United States with notice of its designation, an explanation of the effect of the designation, as well as information on procedures to seek a license or challenge the designation.
- (5) A designated party may administratively challenge its designation or seek rescission of a blocking order by filing a petition with OFAC.⁶ A party seeking to challenge a designation or blocking may submit to OFAC written arguments and evidence showing why an insufficient basis exists for the designation or why the circumstances resulting in the designation no longer apply. After OFAC has conducted a review of the request for reconsideration, it will provide a written decision to the designated person. Alternatively, a designated person, whether based in the United States or elsewhere, may immediately challenge its designation in U.S. federal district court.

A Treasury designation immediately triggers an asset freeze and prohibits any U.S. person from doing business with the specific individuals and entities named in the designation. The effectiveness of designations relies upon a number of conditions, including that designations be implemented without prior notice to the designated person(s) to prevent asset flight.

In certain instances, OFAC may use its authority to license certain transactions that otherwise would be prohibited, when doing so would further U.S. foreign policy. OFAC regularly promulgates in its regulations what are known as “general licenses” authorizing certain categories of otherwise prohibited activity for all those who meet its terms, and it also grants specific licenses on a case-by-case basis.⁷

The United States also works with the rest of the world both bilaterally and multilaterally through the United Nations (UN) and the Financial Action Task Force (FATF) to facilitate the implementation of similar measures and to promote greater fairness, transparency, credibility and effectiveness of sanctions regimes around the world.

4. Does the Treasury designation process include safeguards to ensure adequate due process and fairness for those designated pursuant to E.O. 13224?

The U.S. Government operates a fair and transparent designation process. It has implemented robust procedures grounded in law and regulations pursuant to the International Emergency Economic Powers Act (IEEPA) and E.O. 13224, including:

- Clear criteria, standards, and procedures for designations:
 - E.O. 13224 authorizes the Secretary of the Treasury to designate those persons, whether foreign persons or U.S. persons, who are owned or controlled by, or that act for or on behalf of, designated persons; those who assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of acts of terrorism or designated persons; and those who are “otherwise associated with” designated persons.

⁶ See 31 C.F.R. § 501.807.

⁷ See 31 C.F.R. § 501.801.

- Standard for designation is that there is a “reasonable basis” to believe that the individual or entity meets the criteria above for designation.
- The process followed for Treasury designations pursuant to E.O. 13224, as amended, is as follows:
 - Treasury conducts an extensive investigation to determine whether there is a reasonable basis to believe that the subject of the investigation meets criteria for designation pursuant to E.O. 13224. To accurately identify specific terrorist threats, such investigations draw on a broad range of information, including both publicly available and non-publicly available information (such as law enforcement or classified information), and involve consideration of both inculpatory and exculpatory information.
 - Once the evidence is collected, Treasury drafts an evidentiary memorandum summarizing the information acquired through its investigation. To ensure compliance with the law, designation packages are subject to rigorous internal review for legal sufficiency prior to designation. After an evidentiary package has been reviewed within OFAC, it is then reviewed for legal sufficiency by Treasury’s attorneys. The Department of Justice also reviews the evidentiary memoranda.
 - E.O. 13224 directs that designations by the Departments of the Treasury and State be undertaken in consultation with one another, as well as in consultation with the Departments of Justice and Homeland Security. Once this interagency process has been completed, the final evidentiary package is presented for signature by the Director of OFAC pursuant to authority delegated from the Secretary of the Treasury.
 - At the time of designation, OFAC makes a reasonable effort to provide a designated party in the United States with notice of its designation, an explanation of the effect of the designation, as well as information on procedures to seek a license or challenge the designation.
- Publicly known procedures for considering delisting requests:
 - Delisting is a procedure by which targeted sanctions with respect to a designated person, including a charitable organization, are lifted. As with the initial designation process, any delisting involves the preparation of an administrative record and interagency consultation. To be delisted, designated persons generally must petition the designating agency for delisting and credibly demonstrate that they no longer engage in or plan to engage in the activity for which they were designated and/or that the circumstances resulting in the designation otherwise no longer apply. In addition, under certain circumstances, OFAC may of its own accord decide to delist a designated person.
 - Alternatively, a designated person, whether based in the United States or elsewhere, may immediately challenge its designation in U.S. federal district court.
- Publicly known procedures for requests for licenses or exemptions;⁸

⁸ ⁸See 31 C.F.R. §501.801. Additional information regarding licensing is available at <http://www.treas.gov/offices/enforcement/ofac/faq/index.shtml#license>

- Making reasonable efforts to provide notice to listed U.S. persons upon designation; and
- Issuing public statements regarding the reasons for listing, where possible.

There is a well-established interagency process for the development and implementation of designations. As mentioned above, all evidentiary memoranda supporting designation are reviewed by the Departments of Treasury, Justice and State prior to action being taken.

In addition, all final agency actions taken by OFAC are subject to judicial review in U.S. courts pursuant to the Administrative Procedure Act. Persons designated pursuant to E.O. 13224 can and do avail themselves of the U.S. judicial system to challenge their designations. OFAC actions under E.O. 13224 have been challenged repeatedly, and courts generally have upheld both the underpinnings of legal authorities and Treasury's application of them.

5. How can a person designated pursuant to E.O. 13224 be removed from the OFAC list of sanctioned persons?

Delisting is a procedure by which targeted sanctions with respect to a designated person, including a charitable organization, are lifted. As with the initial designation process, any delisting involves the preparation of an administrative record and interagency consultation. To be delisted, designated persons generally must petition the designating agency for delisting and credibly demonstrate that they no longer engage in or plan to engage in the activity for which they were designated and/or that the circumstances resulting in the designation otherwise no longer apply. In addition, under certain circumstances, OFAC may of its own accord decide to delist a designated person.

6. Has OFAC ever delisted a person designated pursuant to E.O. 13224?

OFAC has delisted several persons designated pursuant to E.O. 13224 where such persons have petitioned OFAC and credibly demonstrated that they no longer engaged in or planned to engage in the activity for which they were designated, and/or that the circumstances resulting in the designation otherwise no longer applied.

For example, in November 2009, OFAC delisted Patricia Rosa Vinck, Barakaat International, and Barakaat International Foundation, having determined that Vinck and the two entities no longer presented a significant threat of supporting terrorism. The Barakaat organizations were part of a financial conglomerate operating in 40 countries around the world that facilitated the financing and operations of al-Qaeda and other terrorist groups. Vinck served as secretary of the Belgium office of Global Relief Foundation (GRF) and facilitated its activities in support of terrorism. Following his designation, Vinck ceased her activities on behalf of GRF, and the two Barakaat entities are no longer operating.

7. Why and how are charities exploited by terrorist groups or otherwise used to support terrorism?

Terrorist groups and their associates may exploit charities for a number of reasons, including:

- Many terrorist groups have significant funding needs. Although the support necessary for any given terrorist attack may be relatively small, the amount needed to support the ongoing efforts of a transnational terrorist organization, such as al-Qaeda, Hamas or Hezbollah, is significant. Charities

can be established or otherwise used to provide a veil of legitimacy needed to cover the movement of funds, personnel, military supplies, and other resources by terrorist groups and their associates, including to high-risk areas where they operate.

- Terrorist groups and their supporters often provide funds or otherwise dispense critical social services to vulnerable populations in an effort to radicalize communities and build local support. Charities established or controlled by terrorist groups and persons assisting their causes can help fund the operation of schools, religious institutions and hospitals that may create fertile recruitment grounds or generate dependency among vulnerable populations for essential services. Local support for these essential services, often provided in places where governments have difficulty providing competitive alternatives, also might create political backlash for governments considering enforcement actions against the terrorist group that delivers these services.

In addition, charities:

- Often focus their relief efforts on areas of conflict where humanitarian need is urgently needed, but where terrorist groups may control territory or be particularly active;
- May have access to considerable sources of funds, including from donors who wish to support a charitable cause but are often unaware of or unlikely to question potential links to terrorism;
- Often deal in cash;
- May have a global presence that can facilitate the movement of funds across borders via international branches; and
- Enjoy the public trust and are often subject to minimal or modest government supervision, resulting in less oversight and transparency than in more-regulated sectors.

These characteristics may expose well-intentioned charities to abuse through exploitation by terrorist groups and their associates and may provide cover for purported charities that are not well-intentioned.

8. What is the extent of the terrorist financing risk for U.S.-based charities?

The extent of the terrorist financing risk for U.S.-based charities varies dramatically depending on the operations and activities of the charity. There are approximately 1.8 million charities in the United States, the vast majority of which face little or no terrorist financing risk. However, for those U.S.-based charities operating abroad, particularly in high-risk areas where terrorist groups are most active, the risks can be significant. Terrorist groups and their supporters continue to take advantage of charities to infiltrate the charitable sector and exploit charitable funds and operations to support their activities.

There have been many examples around the world of charities that have been integral components of terrorist networks. Examples include: the Revival of the Islamic Heritage Society (RIHS), which was designated for providing financial and material support to the al-Qaeda network; the Union of Good, which was designated for providing support to Hamas; the Martyrs Foundation, which was designated for providing support to Hezbollah; Pakistan-based Jammāt ud Dawa (JUD), which was designated for providing support to Lashkar E Tayyiba (LT), which itself was designated by the Department of State; and Tamils Rehabilitation Organization (TRO), which was designated for providing support to the Liberation Tigers of Tamil Eelam (LTTE). JUD and the Union of Good are especially good examples of

charities that provide social services to communities, but at the same time are important components of the overall terrorist mission of the organizations they support.

Terrorist exploitation of charities has not been limited to organizations located overseas. There have been numerous examples of terrorist groups and their support networks raising funds through charities in the United States as well. Through the collective efforts of the U.S. law enforcement community, this type of conduct has become far more difficult. Treasury's primary contribution to these domestic law enforcement efforts has been through the application of Treasury's designation authorities pursuant to E.O. 13224, which it has applied against the following eight U.S.-based charities:

- **Holy Land Foundation:** The Holy Land Foundation for Relief and Development (HLF) was designated on December 2, 2001 and May 21, 2002 for providing millions of dollars of material and logistical support to Hamas. HLF, originally known as the Occupied Land Fund, was established in California in 1989 as a tax-exempt charity. HLF supported Hamas activities through direct fund transfers to its offices in the West Bank and Gaza that are affiliated with Hamas and transfers of funds to Islamic charity committees ("zakat committees") and other charitable organizations that are part of Hamas or controlled by Hamas members.
- **Global Relief Foundation:** The Global Relief Foundation (GRF) was designated on October 18, 2002 for providing support for and assistance to Usama bin Laden (UBL), al-Qaeda, and other known terrorist groups.
- **Benevolence International Foundation:** Benevolence International Foundation (BIF-USA) was designated on November 19, 2002 after its CEO was indicted by the Justice Department for operating BIF-USA as a racketeering enterprise and providing material support to terrorist groups, including al-Qaeda. BIF-USA was incorporated in Illinois in 1992 as a tax-exempt, not-for-profit organization whose stated purpose was to conduct humanitarian relief projects throughout the world.
- **Al Haramain Foundation—U.S. Branch:** Al Haramain Foundation—U.S. Branch (AHF) was designated on September 9, 2004 because of AHF's support for al-Qaeda. Individuals associated with the branch tried to conceal the movement of funds intended for Chechnya by omitting them from tax returns and mischaracterizing their use, which they claimed was for the purchase of a prayer house in Springfield, Missouri.
- **Islamic African Relief Agency:** Islamic African Relief Agency (IARA) was designated on October 13, 2004 for providing direct financial support for Usama Bin Ladin (UBL) and al-Qaeda's precursor, Maktab Al-Khidamat (MK). IARA, MK and UBL commingled funds and cooperated closely in raising and spending funds. IARA engaged in a joint program with an institute controlled by UBL that was involved in providing assistance to Taliban fighters. IARA was also responsible for moving funds to the Palestinian territories for use in terrorist activities, notably serving as a conduit to Hamas in one Western European country. IARA was headquartered in Khartoum, Sudan and had maintained over 40 offices throughout the world, including one in Columbia, Missouri.
- **Goodwill Charitable Organization:** The Goodwill Charitable Organization (GCO) was designated on July 24, 2007 for providing financial support to Hizbollah directly and through the Martyrs Foundation in Lebanon. GCO was established as a fundraising office in Dearborn, Michigan by the Martyrs Foundation, which is a Hizbollah front organization that reports directly to the leadership of the Martyrs Foundation in Lebanon. Hizbollah recruited GCO leaders and maintained close contact with GCO representatives in the United States.

- **Tamils Rehabilitation Organization:** Tamils Rehabilitation Organization (TRO) was designated on November 15, 2007 for serving as a front to facilitate fundraising and procurement for the designated terrorist group Liberation Tigers of Tamil Eelam (LTTE). In the United States, TRO had raised funds on behalf of the LTTE through a network of individual representatives. TRO had also facilitated LTTE procurement operations in the United States, including the purchase of munitions, equipment, communication devices, and other technology for the LTTE. TRO's efforts worldwide reportedly had allowed the LTTE to use humanitarian aid, which TRO collected from the international community after the December 2004 tsunami, to launch new campaigns to strengthen LTTE's military capacity.
- **Tamil Foundation:** U.S.-based Tamil Foundation was designated on February 11, 2009 for serving as a front to facilitate fundraising for LTTE. Over the course of many years, the Tamil Foundation, based in Cumberland, Maryland, and the TRO had comingled funds and carried out coordinated financial actions.

In addition to these designations of U.S.-based charities, OFAC in 2006 exercised its statutory authority to block pending investigation the assets of KindHearts for Charitable Humanitarian Development, Inc. (KindHearts), an NGO operating out of Toledo, Ohio, based on evidence that the charity was providing financial support to Hamas.

9. What are the U.S. and the international community doing about this global threat?

The international community has developed a comprehensive approach to combating terrorist financing in the charitable sector. This approach is best outlined in the Financial Action Task Force (FATF) Special Recommendation VIII (SRVIII) on countering terrorist abuse of non-profit organizations.⁹ The FATF is the premier international standard-setting body for anti-money laundering (AML) and countering the financing of terrorism (CFT).¹⁰ In working to fulfill its international obligations, the U.S. strategy to counter this threat consists of the following objectives:

- Raising awareness of the risk of terrorist abuse of the charitable sector (*e.g.*, U.S. Department of the Treasury Anti-Terrorist Financing Guidelines,¹¹ OFAC Risk Matrix for the Charitable Sector,¹² and Typologies and Open Source Reporting on Terrorist Abuse of Charitable Operations in Post-Earthquake Pakistan and India¹³);
- Engaging in direct and sustained outreach to the charitable sector;¹⁴
- Investigating and taking targeted action against specific terrorist financing threats within the charitable sector (*e.g.*, U.S. designations of charities under presidentially issued executive orders¹⁵); and
- Pursuing multilateral efforts by engaging our foreign partners to assist charities around the world to minimize their exposure to terrorist abuse (*e.g.*, seeking wider and more effective implementation of UN resolutions and FATF international standards).

⁹ http://www.fatf-gafi.org/document/9/0,3343,en_32250379_32236920_34032073_1_1_1_1,00.html#VIIINonprofit

¹⁰ <http://www.fatf-gafi.org>

¹¹ <http://www.treasury.gov/offices/enforcement/key-issues/protecting/charities-intro.shtml>

¹² http://treas.gov/offices/enforcement/ofac/policy/charity_risk_matrix.pdf

¹³ http://treas.gov/offices/enforcement/key-issues/protecting/docs/charities_post-earthquake.pdf

¹⁴ For example: <http://www.treasury.gov/press/releases/20088151117341160.htm>

¹⁵ <http://treas.gov/offices/enforcement/key-issues/protecting/fto.shtml>

There is increasing global awareness of terrorist exploitation of the charitable sector and therefore greater efforts have been made to prevent such abuse. For example, many countries are increasingly using financial, economic, and law enforcement powers to identify, investigate, designate, and prosecute charities and charity officials engaged in terrorist financing or supporting terrorist groups. Countries are also working with their development agencies and the development community to better protect social and charitable services, especially in regions at high-risk of terrorist abuse or exploitation.

10. Can Treasury designate a charity for supporting terrorism even if it also engages in charitable activity?

Yes. It is well-documented that terrorist groups and their associates have established and used charities to raise, move and use funds or engage in charitable activity that supports the relevant terrorist group, including by dispensing charitable or social welfare services on behalf of the terrorist group. In such instances, the provision of charitable services does not excuse the charity's support for the terrorist group.

11. How many charities have been designated by the Treasury Department?

As of May 2010, 547 individuals and entities have been designated under E.O. 13224. Of these, there are approximately 60 designated charities, branches and associated individuals. Eight of these designations were of charities located in the United States. The property of one additional U.S. charity, KindHearts, has been blocked pending investigation to determine whether it should be designated pursuant to E.O. 13224.¹⁶ By comparison, there are approximately 1.8 million charities in the United States.

12. What is the amount of assets blocked due to an interest of U.S.-based charities designated by Treasury?

As of December 31, 2009, the total amount of assets blocked pursuant to counter-terrorism sanctions administered by the Treasury Department's Office of Foreign Assets Control (OFAC) is approximately \$19.8 million, and the amount of assets blocked due to an interest of the nine U.S. charities that have been designated or whose property has been blocked pending investigation is approximately \$3 million.

In looking at these numbers, it is very important to note that blocked assets include not only assets owned by designated individuals and entities, but also assets in which the designated individuals or entities have an interest. For example, a wire transfer destined for a designated terrorist group will be blocked prior to reaching the intended beneficiary because the designated terrorist group is deemed to have an interest in the wire transfer. The amounts listed above represent a mixture of assets owned by the designated U.S. charities, as well as assets that may be owned by third parties but that have been blocked due to an interest in the property of a designated U.S. charity.

13. Why are the assets of designated charities frozen and not provided to another charitable organization or returned to the donor community?

The transfer of blocked assets of designated charitable organizations for other charitable purposes or the return of such funds to donors raises several complex legal and policy issues. In particular, because

¹⁶ <http://www.treas.gov/press/releases/js4058.htm>

Treasury does not take legal title to blocked property, it is unable to simply redirect or transfer blocked property of designated charities to third parties. While Treasury can license a particular transaction involving blocked funds in response to a written license application, its exercise of such authorities is constrained by legal limitations and policy considerations, including the existence of other claims to the blocked property and absence of complete information regarding the property.

14. What is Treasury doing to mitigate the collateral consequences of terrorist exploitation of Muslim charities and the Muslim donor community, as well as the designations of several Muslim charities located in the United States?

Treasury designations of Muslim charities have been infrequent, with only six U.S. Muslim charities designated since December 2001. Nonetheless, the Treasury Department understands that the steps that it has taken to shut down charities that support terrorist groups (combined with other successful counter-terrorism efforts across the U.S. Government), have had the unfortunate and unintended consequence of causing a chilling effect on well-intentioned donor activity within Muslim-American communities. Treasury has been working with members of the American-Muslim charitable community to protect its ability to fulfill its religious obligations. This has informed Treasury's outreach efforts with the charitable and American-Muslim communities, which includes conducting outreach events, issuing guidance and developing partnerships with the sector.

A significant portion of Treasury's outreach is devoted to the development of guidance to assist the charitable sector in adopting protective measures against terrorist abuse of charities. Over the past several years, Treasury has developed, promoted and updated various documents published on its website to assist the charitable sector in this effort. Such documents include:¹⁷

- A summary of charitable organizations designated by Treasury;
- An OFAC Risk Matrix for the charitable sector;
- The U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices For U.S.-Based Charities;
- A Response to Comments Submitted on the U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities;
- A Counter-Terrorist Referral Form for Charities;
- Typologies and Open Source Reporting On Terrorist Abuse of Charitable Operations in Post-Earthquake Pakistan and India; and
- A Response to Inquiries from Arab American and Muslim American Communities for Guidance on Charitable Best Practices.

The importance of Treasury's efforts to develop guidance for the charitable sector in combating terrorist exploitation is heightened by the fact that, unlike financial institutions, there is no regulatory regime or supervisory mechanism to specifically address terrorist abuse of charities. The obligation on charities, as

¹⁷ These documents and additional information to assist charities in protecting against terrorist exploitation are available on the Treasury website at: <http://www.treasury.gov/offices/enforcement/key-issues/protecting/>

with all U.S. persons, is to comply with the law. This means that Treasury efforts to conduct outreach and issue guidance materials represent a primary means of assisting the charitable sector in developing and implementing effective safeguards against terrorist abuse. The Treasury Department will continue to provide additional products and information that can help charities address the threat of terrorist exploitation while promoting their charitable mission.

15. Can I donate to a charity that has been designated as a Specially Designated Global Terrorist?

No. All U.S. persons (individuals and entities) are prohibited from engaging in any transaction or dealing in property or interests in property of persons designated as Specially Designated Global Terrorists (SDGTs). Please see OFAC's website for more information on SDGTs.¹⁸

16. Could I be designated by Treasury or prosecuted by the Department of Justice if I made a good-faith donation to a charity that was later designated by the U.S.?

It is the policy of the Treasury Department not to designate or take civil enforcement action against donors where the donor has no knowledge or reason to know that the charity that is subsequently designated was engaged in supporting terrorist activity or a terrorist group.¹⁹ There have not been any designations to date based solely on such good-faith donations. In assessing whether a donor contribution to a designated charity constitutes conduct warranting either a civil enforcement action or designation, the Treasury Department considers the totality of the facts and circumstances surrounding a case.

Criminal prosecution requires willful violation of OFAC's sanctions. Decisions on criminal prosecutions are made by the U.S. Department of Justice, which considers any prosecution or civil penalty action on a case-by-case basis, considering all the relevant facts.

17. What is the difference between a designation and a criminal prosecution?

Designations under IEEPA by the Treasury Department and criminal prosecutions by the Justice Department for terrorist financing are distinct actions that are based on different legal authorities, serve different purposes, and have different consequences. Each of these actions must satisfy distinct legal criteria, evidentiary rules, and burdens of proof.

There are clear distinctions between designations and prosecutions. For example:

- **Purpose:** Designations are preventive measures that further the national security and foreign policy interests of the United States by denying designated persons access to funds, goods or services, and to the U.S. financial system. Criminal prosecutions are intended to deter and punish crimes.
- **Process:** Designations are a civil administrative action requiring a determination that there is a reasonable basis to believe that the subject meets criteria specified in the relevant Executive Order. Designations are subject to challenge both administratively and by judicial review under the Administrative Procedure Act. Criminal prosecutions generally involve a jury trial and guilt must be

¹⁸ <http://treas.gov/offices/enforcement/ofac/faq/#sdn>

¹⁹ This statement of policy is not, nor is it intended to be, a waiver of civil or criminal liability or grant of immunity and does not create any rights or obligations whatsoever.

proved beyond a reasonable doubt. Designations make use of “all source” information, including intelligence, which can be reviewed by a court “ex parte/in camera” (the evidence is reviewed by a judge, but is not shared with the designated person or his attorney). Such intelligence may be used in a criminal prosecution and statutory procedures exist to govern issues surrounding classified information that may arise in a criminal prosecution.

- **Consequences:** Designations involve the blocking of property in the United States or in the possession or control of U.S. persons and prohibit transactions with the designated person. Criminal prosecution can involve imprisonment and/or fines of the person(s) found guilty of violating applicable laws.

Some charities designated by Treasury have also been subject to criminal investigations and there have been prosecutions by the Department of Justice of charities and charity officials. For example, the Treasury Department designated the Holy Land Foundation for Relief and Development (HLF) in December 2001 for its support to Hamas and the Justice Department pursued a criminal prosecution against the HLF and several of its key officials, which culminated in the conviction of HLF and five of its officials in November 2008 on all charges, including the IEEPA-based prohibition against the provision of material support to Hamas.

18. Why do most designations of charities appear to be directed at Muslim charities?

Designation is based on a determination that an individual or entity meets criteria for designation under E.O. 13224. It does not reflect consideration of the designated person’s religious affiliation. Treasury has designated both Muslim and non-Muslim individuals and entities, including charities, as SDGTs. There have been six U.S. designations of Muslim charities and two designations of non-Muslim charities.

However, the current top terrorist threats to U.S. and global security are from self-acclaimed Muslim organizations (*e.g.*, al-Qaeda, Taliban, Hamas, and Hezbollah). These global terrorist groups and their supporters continue to exploit Muslim-affiliated charities providing or financing charitable and social services to vulnerable populations in high-risk regions of the world as a key element of their terrorist agenda and operations. Therefore, as Treasury has pursued its mission of designating key elements of those financial networks that support terrorist groups – and particularly al-Qaeda and its affiliates, Taliban, Hamas and Hezbollah – Treasury’s designations include a number of Muslim charities that support these terrorist groups.

19. Why has Treasury not issued a “white list” of approved charities?

Publishing a so-called “white list” of U.S.-approved charities would be an ideal tool if it were possible to build a reliable and comprehensive one that could be kept up to date. Unfortunately, it is not a feasible, practical, or appropriate means to address the terrorist financing concerns of the donor and charitable communities.

Because there are approximately 1.8 million charities in the U.S., a “white list” could never be comprehensive of all the legitimate and uncompromised charities. Further, since terrorist activity is dynamic and adaptive, charities determined to be “safe” at a particular point in time could nevertheless be manipulated for terrorist financing purposes in the future. It is quite possible that some charities on a “white list” could be targeted for exploitation or infiltration by terrorists or their supporters.

20. What can charities and donors do to help protect themselves and the charitable sector as a whole?

All U.S. persons are responsible for complying with U.S law and regulations, including OFAC sanctions programs. The following principles are important to keep in mind when making donations to charities or when operating a charitable organization.

For Donors:

- Know your charity: Donors should undertake reasonable steps to research publicly available materials in order to ascertain how a charity operates, how it is managed, the nature of its programs and where they operate. This is especially the case for charities that operate in areas where there is known risk of terrorist activity such as Afghanistan, Lebanon, Pakistan, and West Bank/Gaza. Self-regulatory organizations, such as the Better Business Bureau²⁰ and Guidestar,²¹ provide donors with information about specific U.S. charities that may also be useful.
- Check the OFAC SDN List²² to make sure that the charity and its key officials are not designated.

For Charities:

- Charities should conduct a risk-assessment of their operations to determine if they are vulnerable to terrorist exploitation, such as what type of activities they are engaged and in what regions they are operating. OFAC's Risk Matrix²³ can be a useful tool.
- Charities should consider adopting measures to mitigate these risks, such as those found in the Treasury Department's Voluntary Guidelines.²⁴

For those charities operating in high-risk regions, Treasury provides guidance on how to mitigate the risks of terrorist exploitation. These anti-terrorist financing procedures include, but are not limited to, the following steps that a charity should take before any charitable funds are distributed to foreign recipient organizations:

- Collect basic information about recipients of funding;
- Conduct basic vetting of recipient organizations, including checking their names against OFAC's List of Specially Designated Nationals and Blocked Persons (the "SDN List"),²⁵
- Conduct basic vetting of key employees, including checking their names against the SDN List;
- Review the financial and programmatic operations of the foreign recipient organization (*e.g.*, periodic reports, on-site visits, etc).

²⁰ <http://www.bbb.org/us/Find-Business-Reviews/>

²¹ <http://www2.guidestar.org/>

²² <http://www.treas.gov/offices/enforcement/ofac/sdn/>

²³ http://treas.gov/offices/enforcement/ofac/policy/charity_risk_matrix.pdf

²⁴ <http://treas.gov/offices/enforcement/key-issues/protecting/charities-intro.shtml>

²⁵ The SDN List is frequently updated. There is no predetermined timetable, but rather names are added or removed as necessary and appropriate. An up-to-date version of the List may be found at: <http://treas.gov/offices/enforcement/ofac/sdn/>.

The following Treasury Department and other website links provide additional information and resources:

Protecting Charitable Organizations: <http://www.ustreas.gov/offices/enforcement/key-issues/protecting/index.shtml>

Summary of Charity Designations (combines background information and press statements relating to charities and FTOs potentially operating as charitable fronts that have been designated by the U.S. Government): <http://www.treas.gov/offices/enforcement/key-issues/protecting/fto.shtml>

The Treasury Department's Charitable Guidelines: http://www.treas.gov/offices/enforcement/key-issues/protecting/docs/guidelines_charities.pdf

OFAC: <http://www.ustreas.gov/offices/enforcement/ofac/>

OFAC Frequently Asked Questions: <http://www.ustreas.gov/offices/enforcement/ofac/faq/index.shtml>

OFAC Risk Matrix for the Charitable Sector:
http://www.ustreas.gov/offices/enforcement/ofac/policy/charity_risk_matrix.pdf

Typologies and Open Source Reporting of Terrorist Abuse of Charitable Operations in Post-Earthquake Pakistan and India: http://www.ustreas.gov/offices/enforcement/key-issues/protecting/docs/charities_post-earthquake.pdf

List of Designated Charities and Associated Individuals:
<http://www.ustreas.gov/offices/enforcement/key-issues/protecting/fto.shtml>

OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) (comprised of all designated individuals, entities, and organizations pursuant to OFAC's various sanctions programs):
<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>.

Further information on terrorist financing laws and regulations:
http://www.treas.gov/offices/enforcement/key-issues/protecting/charities_exec-orders.shtml.

Financial Action Task Force (FATF) Special Recommendation VIII on Countering Terrorist Abuse of NPOs (SRVIII): http://www.fatf-gafi.org/document/22/0,3343,en_32250379_32236920_43757718_1_1_1_1,00.html