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Comments and Suggestions for Update of the U.S. National Terrorist Financing Risk Assessment
June 11, 2108

Introduction

The Charity & Security Network (C&SN) appreciates the opportunity to provide input into the Department of Treasury's update of its 2015 National Terrorist Financing Risk Assessment (NTFRA). These comments are intended to assist in that process, following up on the discussion with nonprofit organizations (NPOs) Treasury hosted on April 12. They are informed by the experience and expertise of C&SN members, which include large and small NPOs, both service providers and expressive organizations. These comments suggest an approach to risk assessment of the nonprofit sector and identifies potential terrorist financing risks for NPOs, with mitigation measures that address them. It also notes specific portions of the 2015 NTFRA's analysis of NPOs that should be revised.

We request a follow-up meeting prior to publication of the updated risk assessment in order to discuss issues raised in these comments and Treasury's initial findings. As Treasury has stated that the scope of the NTFRA will not include a review of existing laws and measures in light of identified risks, these comments do not address those issues. In the event Treasury does undertake such a review, the NPO sector requests that there be engagement and outreach on it.

The nonprofit sector's strong interest in protecting its assets for the public good is aligned with government's interest in countering financing of terrorism. Programs operated by NPOs do more than help the individuals that receive assistance- they also contribute to human security generally. As such, an effective counterterrorism strategy protects, rather than disrupts, these programs. The NTFRA should acknowledge these societal benefits.

I. An approach to risk assessment of the NPO sector

The Financial Action Task Force's (FATF) Recommendation 8 on NPOs (R8) requires a risk-based approach to countering terrorist financing, not a zero-tolerance one. In conducting risk assessments of the nonprofit sector, FATF guidance states that governments should identify the *subset* of NPOs that face risk of terrorist financing abuse so that proportionate, targeted steps can be taken to address that risk.¹ These comments suggest a process for doing so in the U.S. context.

FATF's 2014 typology report suggests that risk assessments focus on proximity to terrorist organizations, primarily geographic location of operations, rather than on classes of NPOs. This approach is useful in identifying the *subset* of NPOs that face terrorist financing risk. **Except for fraudulent fundraising or**

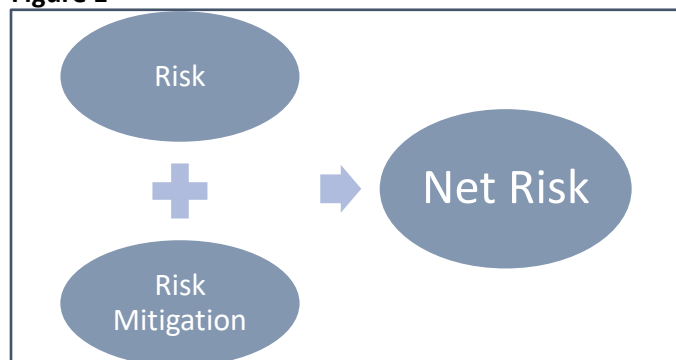
¹ Financial Action Task Force Recommendation 8 and Interpretive Note 2016 http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

sham NPOs, generally risks are not primarily with an NPO itself, but with the context in which it may operate.

It is also essential for the risk analysis to distinguish between:

- legitimate organizations (those registered and regulated by government) and sham charities or fraudulent fundraising operations that serve as fronts for terrorist financiers. The 2015 NTFRA does this effectively and the greater risk associated with the latter should not be used to assess risk against the former. The nature of the threat is different and requires different strategies and measures to address it.
- The actions of private donors and charities outside the U.S. should not be conflated with a risk analysis of U.S. NPOs. This is a national, not global, risk assessment.

Figure 1



We encourage Treasury to focus on the concept of “net risk”,² as illustrated in Figure 1. By taking into account both potential for abuse (risk) and ways risk can be reduced and managed (mitigation), the resulting net risk provides the most realistic and functional starting point for government to consider what additional measures may be needed (if any) and what existing measures may be unnecessary or disproportionate.

Once risks have been identified, they should be quantified to the extent possible, and ranked to reflect relative seriousness. This should be done not only for the nonprofit sector, but also in putting risks associated with NPOs in the larger context of the NTFRA.

II. Determining the Subset of NPOs with Terrorist Financing Risk

The Interpretive Note to FATF’s R8 provides clear terms for risk assessment of the NPO sector, acknowledging that “not all NPOs are inherently high risk (and some may represent little or no risk at all)...”³ Instead of a one-size-fits-all approach, FATF sets out steps for identifying the *subset* of NPOs that may be exposed to terrorist financing risk. These are:

- 1) Identifying U.S. NPOs that meet FATF’s functional definition of NPOs – a group that “primarily engages in raising and disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of ‘good works.’”⁴
- 2) Further narrowing the analysis to identify the *subset* of NPOs “which, by virtue of their activities or characteristics, are likely to be a risk of terrorist financing abuse...” and “identify the nature of threats posed by terrorist entities.”⁵

² FATF Private Consultative Forum 2018 Vienna, Compilation of Presentations Malaysia’s NRA Experience p. 1-4

³ R8 Interpretive Note Sec. C(5) p. 56

⁴ R8 Interpretive Note Sec. A(1) p. 54

⁵ R8 Interpretive Note Sec. C(5) p. 56

The analysis can be further refined using the FATF typologies report, which found that “The NPOs most at risk of terrorist financing abuse are engaged in ‘service activities’, meaning programmes focused on providing housing, social services, education, or health care. ...none of the NPOs in the case studies analysed were engaging in “expressive activities, meaning programmes focused on sports and recreation, arts and culture, interest representation or advocacy such as political parties, think tanks and advocacy groups.”⁶ This indicates that expressive organizations are unlikely to face terrorist financing risk.

Even within the category of service organizations, FATF found that the risks are not equal. Instead, it found there is greater risk for NPOs “in close proximity to an active terrorist threat.” This proximity can be either to a conflict zone or within a population targeted by a terrorist movement.

Next, the NTFRA can narrow its analysis to the subset of NPOs facing identified risks. It should identify risk mitigation and management measures already in place for NPOs at risk in order to determine overall net risk faced.

Specifically, the NTFRA should ask:

- of the more than one million charities recognized by the IRS and additional 300,000 small charities or houses of worship that are not required to file for recognition of their tax- exempt status, how many are service organizations operating in proximity to a terrorist threat?
- What threats do they face?
- What mitigation measures are in place that reduce the risk?

To help answer these questions we recommend using IRS data on charities that file international activities information (Schedule F) in their annual Form 990 report. This information is available from Guidestar, which collects and analyzes Form 990 information. C&SN’s 2017 research on financial access found that there were 8,665 Schedule F filers in 2014. Many of these are expressive organizations or do not operate in proximity to a terrorist threat.

Treasury can reasonably conclude that only a small fraction of the U.S. NPO sector is exposed to risk of terrorist financing abuse. Given the risk mitigation provided by the combined effect of government regulation and nonprofit sector good governance practices described below, the net risk is very low.

III. Terrorist financing risk and risk mitigation for U.S. NPOs

Below we suggest two major categories of terrorist financing risks and the risk mitigation measures that reduce the risk level. Overall, the U.S. NPO sector is not at high risk for terrorist financing abuse, despite the large number of organizations operating internationally, including those in high-risk geographic areas. The comprehensive regulation of NPOs at the federal, state and local level and the robust good governance and due diligence programs used by NPOs have led to low net risk. As a result, the number of enforcement cases against U.S. NPOs has dwindled in recent years. This demonstrates the effectiveness of risk mitigation and management practices currently used by U.S. NPOs.

⁶ Risk of Terrorist Abuse in Non-Profit Organisations, June 2014 <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/bpp-combating-abuse-npo.html>

A) The Primary Risk: Fraud and Sham NPOs

The Risk:

The 2015 NTFRA established that the primary risk to the charitable sector is fraud, either through sham organizations, social wings of terrorist groups that abuse their programs for recruitment and propaganda purposes, and fundraising by individuals under false pretense of charitable giving. It noted two important points in this regard:

- “While some terrorist supporters create sham charities as a cover to raise and move funds, other terrorist groups and their supporters use charities to provide funds or otherwise dispense critical social or humanitarian services to vulnerable populations in an effort to radicalize communities and build local support. Charities established and 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 groups or generate dependency among vulnerable populations for these essential services.” [p. 38]
- The section on *Individuals Fundraising Under the Auspices of Charitable Giving – Without Charity Involvement* makes it clear that this form of abuse is often carried out by individuals “without the use of specific charitable organizations.” Treasury’s analysis found that 24 percent of law enforcement cases “involved individuals raising proceeds on behalf of humanitarian causes without a link to an established charitable organization.” It notes that this fraudulent form of abuse is increasing. [p.41] The conclusion is that “there has been a shift in recent years towards individuals with no connections to a charitable organization recognized by the U.S. government soliciting funds under the auspices of charity for a variety of terrorist groups...” [p.43]

Risk mitigation:

The first line of defense against sham NPOs and fraudulent fundraising is effective government implementation and enforcement of rules and regulations governing NPOs. Compliance with laws in place at the federal, state and local levels is not possible if resources are not being used for legitimate public-good purposes. Analysis of reporting and oversight information can alert government to cases where organizations are fronts for non-charitable purposes, including terrorist financing. In addition, information from organizations that fill a “watchdog” function, including programs that certify or rate NPOs on whether they meet specific standards, can help distinguish between legitimate and sham NPOs.

a) Regulation of the NPO sector

In the United States, NPOs are subject to a complex system of regulation and oversight that combines registration, reporting and monitoring at the federal, state and local levels. These regulatory regimes mostly revolve around raising, spending and accounting for funds, protecting the public from fraud, and encouraging charitable contributions. At the federal level the primary focus is on tax-exempt status, while registration and rules to prevent fraudulent fundraising are matters at the state or local level. The First Amendment protections for freedom of association, assembly and expression guard against undue regulation of NPOs. Further information and resources on regulation of U.S. NPOs is in Annex I.

b) NPO sector-based certification programs and watchdogs

A number of NPO-sector based certification and “watchdog” programs help prevent fraudulent fundraising and provide transparency, reducing the ability of sham NPOs to function. For example, Charity Navigator and the Better Business Bureau’s (BBB) Wise Giving Alliance conduct independent reviews and provide ratings. The Wise Giving Alliance tests 20 charity standards; those that meet all 20 are deemed “standards met.” Charity Navigator reviews 24 Financial and Accountability & Transparency metrics to calculate a score and award 0 to 4 stars. GuideStar provides a public database of charity annual reports to the IRS and extensive tools for searching and analyzing these organizations. It rewards NPOs that provide information about their outputs and results with its highest (platinum) seal. Great Nonprofits provides information on over 1.8 million NPOs with “Yelp-like” ratings. It should be noted that in some cases, such as with Wise Giving Alliance and Charity Navigator, the criteria used in these programs tend to exclude smaller or new NPOs.⁷ Therefore, the fact that an NPO is not rated by these programs should not automatically lead to negative assumptions. Instead, it means that other sources of researching the group are necessary.

B) Risks for Legitimate Organizations Regulated by U.S. Governmental Entities

1) Financial exclusion – lack of adequate access to financial services for international transfers

The Risk:

U.S. NPOs cite lack of adequate access to financial services for international transfers as the top threat for terrorist financing abuse. Numerous studies have documented the seriousness of this problem, which impacts thousands of charities operating all types of international programs in all parts of the world.⁸ When NPOs cannot use traditional, regulated banking services for transfers or their accounts are closed, new security risks are created. This is because NPOs are forced to use less formal, regulated and transparent channels for transfers, thus increasing the chance that funds may be diverted. For example, C&SN’s 2017 study⁹ found that 42% of U.S. NPOs operating internationally have been forced to carry cash across borders because they are unable to access the traditional banking system in order to fund their programs. Often the alternative is to let people go without life-saving aid, which is an unacceptable option. To do so would cause unnecessary suffering and increase opportunities for terrorist exploitation and recruitment of vulnerable populations.

Risk Mitigation:

The financial access problem is being addressed in a multi-stakeholder dialogue sponsored by the World Bank and ACAMS (Association of Certified Anti-Money Laundering Specialists) that is working on concrete solutions (see Annex III for a description of these projects). Progress has been slow, in part due to lack of robust participation by key government stakeholders. In addition, NPOs cooperate with bank information requests as fully as they can.

However, the drivers of this financial access problem can only be fully addressed by government action, since banks are responding to regulatory pressures that discourage serving NPO customers.¹⁰

⁷ Charity & Security Network, “Financial Access for U.S. NPOs” February 2017 p. 98

⁸ Ibid Chapter 4

⁹ Ibid p. 47

¹⁰ Global Center on Cooperative Security and Oxfam America, “Understanding Bank Derisking and its Effects on Financial Inclusion: An Exploratory Study” November 2015 <https://policy-practice.oxfam.org.uk/publications/understanding-bank-de-risking-and-its-effects-on-financial-inclusion-an-explora-582310>

In addition, full government participation in the multi-stakeholder dialogue could help produce more useful guidance for both banks and NPOs, facilitate development of standardized information collection by banks, establish a know-your-nonprofit-customer repository and address barriers that occur at the correspondent banking level.

One important step government can take is to update the Bank Examination Manual so that it reflects the risk-based, proportionate approach called for in FATF's R8 and retrain bank examiners on the new changes. The current NPO-related sections of the manual reflect the outdated FATF R8 view that NPOs are inherently high-risk customers. In October 2017 U.S. banks and NPOs working together in the World Bank/ACAMS multi-stakeholder dialogue submitted a joint proposed revision to this language to federal banking regulators.

2) Humanitarian Vacuum” created by restrictions on NPO access to civilians in need

The Risk:

U.S. counterterrorist financing rules, including sanctions programs and the prohibition on providing material support, have been drafted and interpreted in a manner that restricts principled humanitarian assistance or fosters risk-averse behavior with respect to humanitarian operations.¹¹ When the effect of these restrictions is to block access to civilians in need, there is a risk that terrorist groups will step in to fill the resulting vacuum.¹² These groups likely do not consider themselves bound by humanitarian principles that forbid humanitarian assistance providers from taking sides in conflicts. When armed groups fill a “humanitarian vacuum” aid may be used for propaganda purposes or to force local populations to cooperate with or even join terrorist groups.

Risk Mitigation:

Principled humanitarian action, based on internationally recognized standards, requires humanitarian assistance providers to be neutral in conflicts, to operate independently (not under the direction or control of a party to the conflict) and provide aid on the basis of need alone. There is an extensive body of international law (Geneva Conventions and Protocols) and guidance from the International Committee of the Red Cross and Red Crescent to guide operational organizations.¹³ In addition, the NPO sector has developed numerous training programs and written resources that provide guidance for implementing these principles in a variety of program types, from digging wells to providing food.¹⁴ (See examples in Annex II)

Adherence to humanitarian principles prevents the risk of a “humanitarian vacuum” that can be exploited by terrorists for propaganda and recruitment. To prevent this scenario, the U.S. should

¹¹ FAO/FSNAU and FEWSNET “Mortality among populations of southern and central Somalia affected by severe food insecurity and famine during 2010-2012” May 2013
https://reliefweb.int/sites/reliefweb.int/files/resources/Somalia_Mortality_Estimates_Final_Report_1May2013.pdf

¹² Charity & Security Network, “Safeguarding Humanitarianism in Armed Conflict,” June 2012,
<http://www.charityandsecurity.org/sites/default/files/Safeguarding%20Humanitarianism%20Final.pdf>.

¹³ ICRC Databases on International Humanitarian Law <https://www.icrc.org/en/icrc-databases-international-humanitarian-law>

For example, the [Sphere Project](http://www.spherehandbook.org/en/about-us/) is a “voluntary initiative that brings a wide range of humanitarian agencies together around a common aim - to improve the quality of humanitarian assistance and the accountability of humanitarian actors to their constituents, donors and affected populations.”¹⁴
<http://www.spherehandbook.org/en/about-us/>

interpret and apply counterterrorist financing rules and restrictions in a manner consistent with principled humanitarian action. By creating an enabling environment for legitimate NPOs, the “humanitarian vacuum” problem is prevented.

The risk of creating a humanitarian vacuum outweighs any risks of inadvertent or incidental diversion of resources to terrorist groups. Humanitarian organizations have a strong track record in protecting their assets, which is bolstered by their adherence to humanitarian principles. Risk analysis is inherent in their approach, based on a principle to “Do No Harm.” The SPHERE Handbook states that “Those involved in humanitarian response take steps to avoid or minimise any adverse effects of their intervention, in particular the risk of exposing people to increased danger or abuse of their rights.”¹⁵ This is a risk-based approach that has been in operation for over half a century.

3) Crimes against NPOs by external Actors

The Risk:

NPOs operating programs in areas of armed conflict have at times been victims of crimes committed by armed groups, including those on the terrorist list. These include murder and assault, kidnapping for ransom, theft of cash and theft of materials in convoys or stored in warehouses. These risks are not unique to NPOs, but apply to all entities operating in conflict zones.

Risk Mitigation:

NPOs take extraordinary steps to protect their staff, volunteers and assets. While the risks described above cannot be entirely avoided due to the nature of conflict zones, they can be mitigated and managed. For example, InterAction, the largest association of U.S. nongovernmental organizations, operates a program that provides written resources, training and collaboration among NPOs working to ensure the security of their operations.¹⁶ There are numerous similar programs, such as the “Saving Lives Together” Framework sponsored by the UN as well as the joint InterAction and European Interagency Security Forum Safety and Security Training Project. Additional information on these programs is provided in Annex II.

In addition, the growing trend toward cash assistance, as seen in USAID’s February 2018 call for proposals, where specific criteria for cash assistance are set out¹⁷ reduces the need to transport or store goods and materials, thus reducing the risk of theft. NPOs have developed good practices and methodologies for when and how to use cash programming.¹⁸

The most effective measure against theft and attacks by external actors is the strong relationships NPOs have with the communities that facilitate trust and cooperation.

¹⁵ SPHERE Handbook, Protection Principle 1 <http://www.spherehandbook.org/en/protection-principle-1-avoid-exposing-people-to-further-harm-as-a-result-of-your-actions/>

¹⁶ InterAction, NGO Security Overview, <https://www.interaction.org/project/ngo-security/overview>

¹⁷ USAID Office of Foreign Disaster Assistance Proposal Guidelines February 2018 v.1 https://www.usaid.gov/sites/default/files/documents/1866/USAID-OFDA_Proposal_Guidelines_February_2018_0.pdf

¹⁸ Mercy Corps , Cash Transfer Programming Toolkit https://reliefweb.int/sites/reliefweb.int/files/resources/mercy_corps_cash_transfer_programming_toolkit_part_1.pdf

4) Crimes against NPOs by internal (Bad Apple) actors

The Risk:

Staff, directors or volunteers of an NPO may violate their duty of care and abuse their position to divert resources to terrorist organizations. This is a crime against both the NPO (theft) and the U.S. (terrorist financing). The incidence of this type of abuse in the U.S. is low.

Risk Mitigation:

Two major factors combine to limit the incidence of “bad apple” abuse: regulation of U.S. NPOs and sector-based good governance practices:

a) Regulation of Nonprofit organizations

The U.S. regulatory regime for NPOs is described above and in Annex I.

b) Good governance programs and practices in the NPO sector

U.S. NPOs do not rely solely on compliance with government regulation and oversight to ensure good governance and program effectiveness. NPOs adopt programs that implement effective oversight and financial control, often drawing on resources provided by organizations dedicated to making the sector accountable and transparent. These programs provide a wide array of resources, including publications, tool kits and guides, individual technical assistance, peer-to-peer exchanges, training and certification programs. Further information on NPO-based good governance programs can be found in Annex II.

IV. Revisions to 2015 NTFRA

The 2015 NTFRA included some statements that tended to exaggerate the risk for U.S. NPOs. We suggest the following portions be updated and/or revised:

- The first part of the risk assessment identifies the major sources of funding for terrorist groups globally as criminal activity (including kidnapping for ransom and extortion), state sponsorship of terrorism and “private donations and misuse of charitable organizations.” [p. 16-17] By conflating individual donations to terrorist groups with misuse of charitable organizations, and non-U.S. groups with U.S. NPOs, the assessment implies a greater threat from charities than the evidence supports. Nearly all the cases cited involve cash donations to foreign terrorist organizations by foreign individuals or members of diaspora communities. [p. 16]
- The 2015 NTFRA makes broad-brush and unsubstantiated claims about terrorist abuse of the NPO sector, stating, “Terrorist groups and their supporters continue to take advantage of charitable organizations to infiltrate the charitable sector and exploit donations and operations to support terrorist activities.” [p. 37] No evidence is cited for this sweeping claim. Statements like this cause serious problems for U.S. NPOs when banks interpret it as a warning not to serve NPO customers.
- The assessment does not distinguish between complicit and non-complicit charities, making it difficult for stakeholders to identify appropriate risk-mitigation measures.
- While noting a rise in banks’ Suspicious Activity Reports (SARS) that include charitable organizations, there is no information on what, if any, actual abuse may have been revealed. It

is not possible to draw any conclusions from this information, since there is no data on the trend in total SARS filed during the same period. It may be that SARS filing has increased substantially and the increase in reports on charities is proportionate to an overall rise. More data is needed for this information to be useful in assessing risk.

V. Conclusion

Since the 2015 NTFRA was published there have been two new developments that the 2018 update should take into consideration: changes to FATF Recommendation 8 that provide a framework for assessing terrorist financing risks for NPOs and significant growth in the scale of problems NPOs face accessing financial services needed for international transfers.

The framework for assessing risk of the nonprofit sector set out by FATF can lead to more effective, targeted and proportionate terrorist financing policy by avoiding one-size-fits-all counterterrorist financing measures. The analysis of NPOs in the 2018 update should reflect this approach, taking particular care to clearly identify the *subset* of NPOs facing risks, specifying what those risks are and taking existing risk mitigation and management measures into account before determining the net risk. The updated NTFRA should clearly put identified risks in context by ranking them – not all risks are equal. It should avoid broad brush statements about risk to the nonprofit sector as a whole, as the vast majority of U.S. NPOs face little to no risk of terrorist financing abuse.

Instead, the NTFRA should clearly note the positive impact of the work NPOs that operate programs in high-risk locations, such as conflict zones, has on human security overall and encourage financial institutions to provide services to these customers. It should emphasize that risks should be managed and mitigated, not avoided. Financial exclusion of NPOs can create serious risks when it results in the humanitarian vacuum described in these comments.

Although Treasury has indicated that the NTFRA will not include a review of existing laws and measures intended to address terrorist financing risk, the document should caution all parties, including government and financial institutions, that any steps taken to address identified risks should be consistent with FATF criteria. These are described in the Interpretive Note for R8 as follows:

“Measures to protect NPOs from potential terrorist financing abuse should be targeted and in line with the risk-based approach. It is also important for such measure to be implemented in a manner which respects countries’ obligations under the Charter of the United Nations and international human rights law.”



Regulation of Nonprofit Organizations in the U.S. – An Overview

Nonprofit organizations (NPOs) in the United States are subject to a complex system of regulation and oversight that combines registration, reporting and monitoring at the federal, state and local levels. These regulatory regimes mostly revolve around raising, spending and accounting for funds, protecting the public from fraud, and encouraging charitable contributions. The First Amendment protections for freedom of association, assembly and expression guard against undue regulation of NPOs. In some cases, religious organizations are exempt from regulatory requirements to avoid entanglement of church and state.

Federal Regulation

Federal regulation of NPOs primarily focuses on exemption from taxation and is administered by the Internal Revenue Service (IRS). The tax code recognizes more than two dozen types of NPOs, ranging from charities to credit unions. Charities make up the largest category of exempt organizations, as it is the only category that allows a tax deduction for donations. All nonprofits must operate for the benefit of the public and dedicate their resources solely to their exempt purpose.

To become tax-exempt, an organization must file an application with the IRS, providing extensive details on governance, finances and how its activities will meet an exempt purpose. Once approved, charitable organizations and private foundations must file annual information returns with the IRS (Forms 990 and 990PF). This includes information on donors and the IRS applies a complex “public support test” to determine whether any donor has disproportionate influence in the organization. Charities with international activities must include Schedule F describing their activities and expenses. NPOs must make their tax-exempt status application and Form 990 available to the public. [Guidestar](#) provides an online database of annual Form 990 submissions.

Nonprofits that receive federal grants must undergo additional detailed reviews by the grantmaking agency and submit audits that meet the standards set by OMB Circular A-133.

State and Local Regulation

U.S. nonprofits incorporate at the state level by filing articles of incorporation and by-laws that set out their governance structure and procedures. Most NPOs must file reports to state regulatory authorities on an annual basis. Additional state and local rules apply to fundraising from the general public. For additional detail, see the resources listed below:

RESOURCES

Overview: www.hg.org/nonprofit-organizations.html This brief overview includes links to useful resources.

Federal Regulation

1. Internal Revenue Service (IRS)

- Webpage on Charities & Nonprofits - www.irs.gov/charities-non-profits
- Applying for federal tax-exempt status - www.irs.gov/charities-non-profits/applying-for-tax-exempt-status
- IRS page to search whether an organization is recognized as tax-exempt - <https://apps.irs.gov/app/eos/>
- IRS Form 990 – Federal Return of Organization Exempt From Income Tax
 - Public charities www.irs.gov/pub/irs-pdf/f990.pdf
 - Schedule F for activities outside the U.S. - www.irs.gov/pub/irs-pdf/f990sf.pdf
 - Private foundations www.irs.gov/pub/irs-pdf/f990pf.pdf
 - Thresholds for filing Form 990 - www.irs.gov/charities-non-profits/form-990-series-which-forms-do-exempt-organizations-file-filing-phase-in, See IRS chart below.

<i>Status</i>	<i>Form to File</i>
Gross receipts normally \leq \$50,000 Note: Organizations <u>eligible</u> to file the <i>e-Postcard</i> <u>may choose to file a full return</u>	990-N
Gross receipts $<$ \$200,000, and Total assets $<$ \$500,000	990-EZ or 990
Gross receipts \geq \$200,000, or Total assets \geq \$500,000	990
Private foundation - regardless of financial status	990-PF

2. Federal Trade Commission - on avoiding scam fundraisers

- www.consumer.ftc.gov/articles/0074-giving-charity

3. Federal grantees

- Eligibility requirements - USAID compliance for grantees - www.usaid.gov/compliance
- “The Compliance Division in the Office of Management Policy, Budget and Performance serves to:
 - Track compliance with U.S. federal regulations by partner organizations or individuals working directly with USAID
 - Take suspension and/or debarment actions against firms, organizations, and/or individuals that are not presently responsible
 - Evaluate contractor or grantee disclosures of organizational or compliance issues
 - Manage corrective actions with partner entities
 - Track trends in partner performance issues
 - Conduct outreach at the missions with both staff and USAID partners

- Adjudicate disputes and appeals to the Assistance Executive under grants and cooperative agreements

The Compliance Division works closely with the USAID Office of Inspector General (OIG) and other USG oversight bodies on waste, fraud, and abuse matters. The division proactively manages alleged reports of non-compliance or ethical concerns associated with USAID development partners.”

- Audit requirements in OMB Circular A-133

[Wikipedia –](#)

“The **OMB A-133 Compliance Supplement** is a large and extensive [United States federal government](#) guide created by the [Office of Management and Budget](#) (OMB) and used in [auditing federal assistance](#) and [federal grant](#) programs, as well as their respective [recipients](#). It is considered to be the most important tool of an [auditor](#) for a [Single Audit](#).”

[Greater Washington Society of CPAs, Introduction to OMB Circular A-133](#)

“The A-133 compliance supplement describes 14 types of compliance requirements and related audit objectives and procedures to be considered in performing audits subject to Circular A-133.” These range from cash management to subrecipient monitoring.

State and Local Regulation

1. [IRS Page on state regulation](#)

“Charitable Solicitation - State Requirements

Many states have laws regulating the solicitation of funds for charitable purposes. These statutes generally require organizations to register with a state agency before soliciting the state's residents for contributions, providing exemptions from registration for certain categories of organizations. In addition, organizations may be required to file periodic financial reports. State laws may impose additional requirements on fundraising activity involving paid solicitors and fundraising counsel.”

2. **National Association of State Charity Officials (NASCO)**

“The National Association of State Charity Officials (NASCO) is an association of state offices charged with oversight of charitable organizations and charitable solicitation in the United States...The requirements and procedures for forming charitable organizations differ from state to state, as do the registration and filing requirements for organizations that conduct charitable activities or solicit charitable contributions. Please consult the resources listed on this website for links to both national and state-specific information.”

NASCO’s Resources page: www.nasconet.org/resources/ links to:

- Federal government (IRS, FTC)
- National resources (a comprehensive list of nonprofit compliance programs, umbrella groups, research institutes and resource providers)
- Guidebooks and publications by state regulatory authorities
- Contact information for state regulatory authorities

3. Example of a state charitable solicitation rule

Adler & Colvin, CHARITABLE SOLICITATION REGULATION: Frequently Asked Questions by David A. Levitt April 2016

[www.adlercolvin.com/pdf/public_charities/FAQ%20on%20charitable%20solicitation%20regulation%20\(00782811xA3536\).pdf](http://www.adlercolvin.com/pdf/public_charities/FAQ%20on%20charitable%20solicitation%20regulation%20(00782811xA3536).pdf)

4. State regulation of solicitation by charities

NACUANotes, [REGISTRATION ROUNDUP: A SUMMARY OF STATE REQUIREMENTS FOR CHARITABLE ORGANIZATIONS](#) by Jessie Brown, Associate General Counsel, American Council on Education

“This NACUANOTE provides a brief, high level overview of state charitable registration requirements and their applicability to colleges and universities. Readers are encouraged to consult the list of resources provided at the end of this NACUANOTE for charts and additional information on state-specific requirements, which can vary widely.”

5. Some local governments have solicitation regulations

Example: [Jefferson County, Kentucky Charitable Street Solicitation Rules](#)

For more information about nonprofit regulation or about the work of the Charity & Security Network, contact us at:

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700 12th Street NW 7th Floor
Washington, D.C. 20005

Phone: (202) 481-6927
Email: info@charityandsecurity.org
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Annex II: U.S. Nonprofit Sector Good Governance Programs

Governing Bodies/Boards of Directors

The board of directors of an NPO has the ultimate responsibility for ensuring that it is accountable and uses its resources exclusively for its charitable or other public purpose. There are many resources that board members can tap to help carry out these responsibilities. For example, *BoardSource*¹⁹ “supports, trains, and educates nonprofit leaders from across the country and throughout the world.” Its Board Support Program provides year-round technical assistance. It has online resources, which includes a Board Self-Assessment, downloadable tools, webinars and peer-to-peer exchange.

Nonprofit Associations/Umbrella Groups

Associations of NPOs provide a plethora of resources on good governance for their members. These include *Independent Sector*, a national network of diverse NPOs that provides training as well as a voice for the sector in Washington. Its *Principles of Good Governance and Ethical Practice*²⁰ sets out “33 principles of sound practice for charitable organizations and foundations related to legal compliance and public disclosure, effective governance, financial oversight, and responsible fundraising.”

The largest network of NPOs is the *National Council of Nonprofits*, which has over 25,000 organizational members, including 42 state associations of NPOs. In addition to providing background information on the sector to the public and a policy voice for its members, the council “produces and curates tools, resources, and samples for nonprofits.” These include extensive information for board members on their roles and responsibilities²¹ and sample policies and procedures on financial management.²²

The *Council on Foundations*, the largest association of U.S. grantmakers, also provides extensive resources,²³ including many online tools and publications, for its members. These cover governance, management, expenditure responsibility and compliance with legal requirements. For example, the detailed overview on *Governance and Compliance Issues for Foundation Financial Management*²⁴ summarizes critical governance issues for foundations at the federal and state levels, explains the role and responsibilities of the investment committees that oversee foundation assets and provides guidelines for board governance and leadership.

International Program Support

- InterAction

Based in Washington, DC, InterAction is the largest association of U.S. based non-governmental organizations that operate programs in foreign countries. It convenes its 180+ members in functional

¹⁹ Board Source, Board Support Program designed for Non-Profit Organizations, <https://boardsource.org/>

²⁰ Independent Sector, Principles for Good Governance and Ethical Practice, <https://independentsector.org/programs/principles-for-good-governance-and-ethical-practice/>

²¹ Council of Nonprofits, Board Roles and Responsibilities, <https://www.councilofnonprofits.org/tools-resources/board-roles-and-responsibilities>

²² Council of Nonprofits, Financial Management, <https://www.councilofnonprofits.org/tools-resources/financial-management>

²³ Council on Foundations, Resources, <https://www.cof.org/page/resources>

²⁴ John S. Griswold and William F. Jarvis, “Governance and Compliance Issues for Foundation Financial Management,” https://www.cof.org/sites/default/files/documents/files/COF_WP_GOV.pdf

working groups to enhance coordination and effectiveness of their work and provides policymakers and the public with information and expertise on development and humanitarian issues.

InterAction provides training²⁵ and resources²⁶ that cover a range of topics, from accountability to program evaluation and effectiveness. For nearly 30 years its Private Voluntary Organization (PVO) Standards program,²⁷ a “set of ethical guidelines covering private voluntary organization (PVO) governance, financial reporting, fundraising, public relations, management practice, human resources and program services.” The standards are regularly updated to reflect sector best practices. Organizations must show that they meet these standards before being accepted as InterAction members. Each member is required to conduct a biannual “Self-Certification Plus” review of its governance and operations to ensure it continues to meet PVO standards. This provides an opportunity for organizations to review, update and revise existing policies and adopt new ones where needed.

- Humentum (formerly Inside NGO)

Humentum is a capacity building organization serving over 300 members in the international relief and development community. In addition to an extensive training program (over 300 events a year), Humentum sponsors more than 50 events annually for senior NPO leaders, and conducts topical roundtables, “where functional experts discuss problems, solutions, and best practices.” Humentum’s programs cover topics such as USAID compliance, financial controls, grants management, human resources and operational effectiveness.

- Council on Foundations Global Philanthropy Program

The focus of COF’s global program is to support U.S. philanthropy’s international engagement, facilitating responsible and effective cross-border grantmaking. In addition to advocating to reduce barriers to cross-border philanthropy, it provides extensive online resources²⁸ covering legal issues such as anti-terrorism compliance and expenditure responsibility, both at introductory and advanced levels. Its *Principles of International Charity*,²⁹ developed in cooperation with a working group of diverse groups from the NPO sector, sets out eight basic principles for responsible operation of international programs, with commentary on practical application.

- CAF America (Charity Aid Foundation)

CAF America is the U.S. branch of the Charity Aid Foundation, a global network that “offers global grant-making & philanthropic advisory services to corporations, foundations, and individuals.”³⁰ Its many offerings include the newly published handbook *Cross Border Giving: A Legal and Practical Guide*.³¹

- NGO Source

The process for U.S. grantmakers conducting due diligence on non-U.S. charities is governed by IRS rules that require a determination that the grantee is the equivalent of a U.S. charity, as defined by Section

²⁵ InterAction, Training, <https://www.interaction.org/resources/training>

²⁶ InterAction, Resources, <https://www.interaction.org/resources>

²⁷ InterAction, Standards for Membership, <https://www.interaction.org/membership/standards>

²⁸ Council on Foundations, Resources, <https://www.cof.org/page/resources>

²⁹ Treasury Guidelines Working Group of Charitable Sector Organizations and Advisors “Principles of International Charity,” Council on Foundations, March 2005, http://www.usig.org/PDFs/Principles_Final.pdf

³⁰ <https://www.cafamerica.org/>

³¹ CAF America, June 2018 “Cross Border Giving: A Legal and Practical Guide” <https://www.cafamerica.org/publications/cross-border-giving/>

501(c)(3) of the tax code.³² This requires collection of detailed information on a group’s governance, finances and activities. IRS regulations require that this information be evaluated by a qualified tax practitioner.³³ NGO Source, described below, is an effective and efficient way for grantmakers to screen potential foreign grantees.

To streamline the “equivalency determination” process TechSoup Global built a repository – NGO Source - of information on foreign NPOs that U.S. donors can use for international grantmaking.³⁴ Launched in 2013, it is the first custom-built repository of non-U.S NPOs that meet the IRS requirements for public charities.

NGO Source uses a standardized process developed by legal experts that is designed to comply with IRS regulations. In 2015, the IRS finalized a rule³⁵ giving grantmakers confidence that they can rely on equivalency determinations from a program such as NGO Source. This was further clarified in a 2017 Revenue Ruling.³⁶ If, after review by legal experts, the proposed grantee meets NGO Source criteria, it is added to the repository and the information is available to other grantmakers. There are now over 4,000 NPOs in NGO Source’s database.

- Guidelines For The Implementation Of The “Saving Lives Together” Framework (SLT)

The Saving Lives Together (SLT)³⁷ is an initiative by the UN Security Management System (UNSMS), International NonGovernmental Organisations (INGOs) and International Organisations (IOs) to address common security challenges when operating in volatile environments. SLT provides a framework to improve collaboration on common security concerns and enhance the safe delivery of humanitarian and development assistance. SLT’s guidelines support implementation of the Framework, “to achieve a clear, more focused and systematic approach to security collaboration between the UN, INGOs and IOs” and “set out practical steps and options for the effective implementation of the SLT Framework.”

- Additional resources

The UK-based Center for Safety and Development hosts regular security conferences. It is endorsed by InterAction.³⁸ Online resources include OpenBriefing³⁹ and Aidworkersafety.org, a project of Humanitarian Outcomes that provides online tools, guidelines, training and shared info via country/field level consortia.⁴⁰

³² In the alternative, a grantmaker may conduct “expenditure responsibility” as defined by the IRS as “1) To see that the grant is spent only for the purpose for which it is made, 2) To obtain full and complete reports from the grantee organization on how the funds are spent, and 3) To make full and detailed reports on the expenditures to the IRS.”

³³ Internal Revenue Service, “Reliance Standards for Making Good Faith Determinations”, Federal Register, Sept. 2012, <https://www.federalregister.gov/documents/2012/09/24/2012-23553/reliance-standards-for-making-good-faith-determinations>

³⁴ NGO Source <http://www.ngosource.org/>

³⁵ Internal Revenue Service, “Reliance Standards for Making Good Faith Determinations”, Federal Register, Sept. 2015, <https://www.federalregister.gov/documents/2015/09/25/2015-24346/reliance-standards-for-making-good-faith-determinations>

³⁶ Rev. Proc 2017-53 <https://www.irs.gov/pub/irs-drop/rp-17-53.pdf>

³⁷ <https://www.un.org/undss/content/Leadership>

³⁸ <https://www.centreforsafety.org/training/ngo-security-conference-2017/>

³⁹ <https://www.openbriefing.org/>

⁴⁰ <https://aidworkersecurity.org/resources>

Annex III



Workplan to Improve NPO Access to Financial Services

The January 2017 World Bank/ACAMS *Stakeholder Dialogue on De-risking*⁴¹ reflected broad agreement among participants on the importance of supporting critical humanitarian and development work abroad, and advanced concrete ideas to help improve financial access for nonprofit organizations (NPOs). The following four workstreams have been created to explore practical solutions; the remit, proposed outcomes, timeframes, and co-chairs for each workstream are described below.

1) Facilitate Information and Understanding of NPOs

Rick Small (BB&T) and Doug Rutzen (International Center for Not-for-Profit Law)

Objective: Garner better information to assist financial institutions (FIs) in on-boarding and managing NPO accounts, help NPOs understand due diligence requirements and expectations of FIs, and develop training initiatives for all stakeholders

To that End: Provide guidance as to the type of information banks require in establishing business relationships with NPOs; develop overview and resources on the NPO sector; and explore NPO risk management practices and ways to differentiate among NPOs

Expected Deliverables and Timeframes:

- Compile information banks routinely require in servicing NPOs to develop standardized list and develop guidance to assist NPOs (2018)
- Develop training programs/resources regarding NPOs for regulators and banks, and for NPOs on risk management and due diligence (2018-19)
- Elaborate risk management/mitigation practices related to NPOs, develop models for due diligence programs, and explore differentiated risk among types of NPOs (2018-19)

2) Explore Technological Solutions to Facilitate NPO Transfers

Kay Guinane (Charity & Security Network), Mike Pisa (Center for Global Development), & Sheila Warren (World Economic Forum/Tech Soup)

Objective: Explore technological options to facilitate NPOs' access to financial services, particularly transfers to areas of higher risk, and help lower the cost of compliance with CDD requirements in banking NPOs

⁴¹ See *Stakeholder Dialogue on De-risking: Supporting Financial Access for Humanitarian Organizations and Charities*, February 2017.

To that End: Investigate methods NPOs might utilize to move funds to regions financial institutions consider outside their risk tolerance (e.g. blockchain, e-credits, identifier & biometrics etc.); and explore the parameters for a repository/utility containing comprehensive information on NPOs

Expected Deliverables and Timeframe:

- Explore how technology can help provide payment channels for NPOs when the traditional system is unable to provide services Develop parameters of an NPO repository/utility (similar to other KYC utilities and modeled on NGO Source, a custom-built database which provides fee-based access to comprehensive information on registered NPOs for use by banks). Assess feasibility and develop specifications that would inform implementation, including drafting an RFP and exploring external funds to build and launch the utility (2018)

3) Clarify Regulatory Requirements and Risk Guidance

Megan Hodge (Ally Bank) and Scott Paul (Oxfam)

Objective: Promote a more risk sensitive approach to regulation and on-site supervision, educate/raise awareness of the way NPOs operate, transfer, and use funds among regulatory/supervisory authorities, and facilitate payment channels to facilitate humanitarian responses in crises

To that End: Amend the regulatory framework to realistically reflect and clarify NPO-related risk; develop approved alternative channels to move funds into areas affected by humanitarian crises which are beyond banks' risk tolerance

Expected Deliverables and Timeframes:

- Develop proposed revision of NPO section of US BSA/AML Manual reflecting revised FATF Rec 8 (submitted October 2017)
- Consider options for specialized channels to move funds into high-need crisis areas (2018-19)
- Explore ways to improve humanitarian licensing and exemptions (2018-19)

4) Enhance Communications and Outreach

John Byrne (ACAMS) and Lia van Broekhoven (Human Security Collective)

Objective: Develop online resources and other outreach tools to promote greater understanding of NPOs and broader financial access challenges.

Expected Deliverables and Timeframes:

- Expand Financial Access/Banking NPOs website (summer 2018)
- Develop webinars, FAQs, and information resources concerning obstacles to financial inclusion, how NPOs are regulated, and other general information to better understand NPOs active in higher-risk regions, and the regulatory and legal systems to which banks are subject (2018)

June 2018