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August 14, 2018

Rep. Ron DeSantis, Chair  
Rep. Lynch, Ranking Member  
National Security Subcommittee, House Committee on Oversight and Government Reform  
2157 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman DeSantis and Ranking Member Lynch,

I am writing on behalf of the Charity & Security Network, which works to promote and protect the ability of nonprofit organizations (NPOs) to carry out programs that promote peace and human rights, aid civilians in areas of disaster and armed conflict and build democratic governance. We are concerned about several statements made in the July 11 hearing “The Muslim Brotherhood’s Global Threat” that inaccurately and unfairly portray the U.S. charitable sector as a source of terrorist financing. Such statements undermine the important work U.S. NPOs do around the world and fail to recognize the high levels of transparency, oversight and good governance they employ.

The thrust of the claims against NPOs in the hearing consisted primarily of innuendo based on loose chains of association and ideology or political opinion some witnesses disagreed with.<sup>1</sup> Overall, the hearing gave the impression that Muslim NPOs are to be targeted based on their ethnic and/or religious associations, rather than on conduct that threatens national security.

These comments address three main problematic themes from the hearing, explored in more detail below:

- Asserting that, because Treasury has not designated any U.S. NPOs as supporters of terrorism since January 2009, there is a problem of lax enforcement. This ignores the vigilance of law enforcement as well as the charitable sector’s due diligence and good governance practices.
- Citing the criminal prosecution of the Holy Land Foundation as a model for government action against NPOs, despite the numerous and serious legal issues that render that case an outlier.
- Uncritically citing conclusions in the Middle East Forum’s June 2018 report on Islamic Relief USA as fact, when assessment of key allegations demonstrate that the report is based on inadequate background research and uses faulty logic.

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<sup>1</sup> Many of the statements attributed to people witnesses claim are associated with the Muslim Brotherhood reflect ideology and political opinion. Whether one agrees or disagrees with such statements, the Supreme Court has deemed many of them protected speech. It is only conduct that gives rise to the issue of material support of terrorism. See *Holder v. Humanitarian Law Project* at 561 U.S. 1 (2010) 130 S. Ct. 2705

**Law enforcement and NPOs have been successful in protecting the charitable sector from terrorist financing abuse.**

During the hearing, there was debate between witnesses Jonathan Schanzer and Amb. Daniel Benjamin about what conclusions should be drawn from the fact that there have been no Treasury designations of U.S. charities as supporters of terrorism since January 2009. Schanzer called for a “reinvigoration” of the designation system, while Benjamin noted that DOJ “is watching” and would prosecute if violations were taking place.

Benjamin’s conclusion is correct. The high level of transparency, regulatory oversight and good governance of U.S. NPOs has made the sector an unattractive option for terrorist financiers. U.S. NPOs that work in global hot spots where aid is desperately needed take the threat of diversion of assets to terrorism very seriously. They know first-hand the dangers of working in proximity to terrorist-listed armed groups: attacks on NPO staff and facilities have steadily increased for many years.<sup>2</sup> In addition to protecting against these incidents, U.S. NPOs also take steps to ensure that their financial resources are used solely for charitable purposes.

U.S. NPOs operate with a high degree of transparency and oversight. Overall, NPOs are subject to extensive reporting and public disclosure requirements that provide the public and law enforcement with access to information on NPO leadership, governance, finances and activities. (See Annex I for a summary of regulation of U.S. nonprofit organizations.) Federal regulation, primarily administered by the Internal Revenue Service (IRS), requires compliance with extensive requirements designed to ensure activities and spending are exclusively for tax-exempt (charitable) purposes. State charity regulators oversee incorporation and governance of nonprofits, and, along with many municipalities, regulate fundraising to prevent fraud.

Since January 2009, law enforcement and regulators have continued their vigilance to protect the nonprofit sector from terrorist abuse. For example, Treasury’s Office of Terrorism and Financial Intelligence holds several meetings a year with NPOs to discuss trends and issues. In 2017 the IRS made charities that operate internationally a priority for random audits. DOJ has prosecuted cases where the defendants were charged with “fundraising under the auspices of charitable giving”<sup>3</sup> (aka sham charities) or cases involving non-terrorism charges such as tax fraud.<sup>4</sup>

Furthermore, NPOs undertake voluntary audits and participate in good governance programs. Specialized resources for international programming help NPOs maintain financial integrity and operate effective programs. (See Annex II for a detailed list of such programs.)

The Financial Action Task Force (FATF) recognized that good governance and due diligence by NPOs lowers the risk of terrorist financing abuse when it revised its standard on NPOs (Recommendation 8) in June 2016, removing language that had characterized NPOs as “particularly vulnerable” to terrorist

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<sup>2</sup> USAID The Aid Worker Security Database <https://aidworkersecurity.org>

<sup>3</sup> Charity & Security Network “Lengthy Sentences Handed Out in Somali Aid Trial” Nov. 1, 2011, Online at [https://www.charityandsecurity.org/news/Lengthy\\_Sentences\\_Handed\\_Out\\_Somali\\_Aid\\_Trial](https://www.charityandsecurity.org/news/Lengthy_Sentences_Handed_Out_Somali_Aid_Trial), “Somali Sentenced to 8 Years on Prison” Jan. 9, 2013, Online at [https://www.charityandsecurity.org/news/Somali\\_Sentenced\\_8\\_Years\\_Prison](https://www.charityandsecurity.org/news/Somali_Sentenced_8_Years_Prison)

<sup>4</sup> Dan Eggen, “Ex-Leaders of Islamic Charity Are Convicted,” Washington Post, Jan. 12, 2008 Online at <http://www.washingtonpost.com/wp-dyn/content/article/2008/01/11/AR2008011103409.html>

abuse. Instead FATF urges governments to take a proportionate, risk-based approach that does not unduly disrupt the work of legitimate organizations.<sup>5</sup>

All this makes it extremely difficult for terrorist financiers to use legitimate NPOs as a source of funding. Data from the Department of Treasury's 2015 National Terrorist Financing Risk Assessment<sup>6</sup> supports this conclusion, finding that criminals and terrorists instead create sham charities. It states, "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..."<sup>7</sup> In fact, Treasury's risk assessment found that terrorist financing primarily comes from other sources altogether, such as kidnapping for ransom and smuggling.

FATF's December 2016 evaluation of the U.S. found U.S. oversight of the NPO sector to be sufficient. It noted that the "U.S. achieves high results ... for preventing abuse of the NPO sector."<sup>8</sup>

### **The Holy Land Foundation prosecution is an outlier, not a model for law enforcement.**

Several statements in the hearing cited the prosecution of the Holy Land Foundation as a model for future law enforcement action against NPOs and proof that there is a terrorist financing problem in the nonprofit sector. This analysis fails for several reasons:

- 1) Conviction of one charity is not evidence that the charitable sector overall has a problem. If this logic were applied to Congress, one could argue that conviction of one member on corruption charges is evidence that the entire Congress is corrupt. The flaws in that assumption are clear.
- 2) The Holy Land Foundation criminal trial, brought against both the charity and its leaders, was a legal anomaly in that the charity was not represented or present at the trial. On the eve of trial, attorneys for the defendants and the trial judge realized there was a major conflict of interest between the leaders and the charitable entity. The lawyer representing Holy Land withdrew from representation and the trial judge allowed the case to go forward without making any arrangement for the charity's legal representation. As a result, Holy Land was convicted *in absentia*.

Because the charity had been designated as a Special Designated Global Terrorist by the Treasury Department in 2001, it was illegal to conduct any transactions with it. When a Texas law professor attempted to appeal the charity's conviction, the Fifth Circuit Court of

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<sup>5</sup> Financial Action Task Force "International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation The FATF Recommendations" Recommendation 8 on Nonprofit Organizations, updated June 2016 Online at <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>

<sup>6</sup> U.S. Dept. of Treasury, National Terrorist Financing Risk Assessment 2015 Available Online at <https://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/National%20Terrorist%20Financing%20Risk%20Assessment%20%E2%80%932006-12-2015.pdf>

<sup>7</sup> Ibid p. 43

<sup>8</sup> Financial Action Task Force, Evaluation of the United States 2016, p. 6 paragraph 6 Online at <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-states-2016.html>

Appeals held that she could not do so because there was no one authorized to engage her services on behalf of the charity. Despite this legal Catch-22, the conviction was allowed to stand.<sup>9</sup>

The convoluted procedural problems in the Holy Land case make it an inappropriate model for future law enforcement.

- 3) The list of 245 “unindicted co-conspirators” from the Holy Land case was discussed in the hearing as if it provides proof that the named organizations acted in concert with Holy Land to fund Hamas. This view has no foundation in fact or law. The prosecutors in the case admitted the list was filed only for the purpose of creating an exception to the hearsay rule, to potentially allow statements into evidence without first-hand witness testimony.<sup>10</sup>

Unfortunately, prosecutors filed the list without sealing it, contrary to Department of Justice policy, a political and highly unusual move that was criticized by both the trial court in Dallas and the Fifth Circuit Court of Appeals.<sup>11</sup> In a case brought by several of these named groups, the district court said release of the names violated due process rights under the Fifth Amendment, as it was “unaccompanied by any facts providing a context for evaluating the basis for the United States Attorney’s opinion.”

Therefore, it is not credible to label the groups on the “unindicted co-conspirator list” as presenting a “threat,” as suggested in the hearing, and the subcommittee should not treat them as such.

### **The Middle East Forum’s study on Islamic Relief USA is not a reliable source of information.**

Many statements in the hearing targeted Islamic Relief USA and the UK-based Islamic Relief Worldwide, citing the Middle East Forum’s (MEF) June study.<sup>12</sup> While Islamic Relief USA has published a rebuttal<sup>13</sup> rejecting MEF’s claims, we would like to highlight two points in MEF’s study that distort facts and manipulate context in a way that lead to false conclusions. If this is an example of MEF’s research and reasoning, its conclusions should be treated with a high degree of skepticism. MEF has a history of making sweeping generalizations and mischaracterizations about Muslim charities. The Bridge Initiative at Georgetown University referred to it as a “pseudo-scholarly organization.”<sup>14</sup>

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<sup>9</sup> United States v. El-Mezain, et al., No 09-10560 664 F.3d 467 (5<sup>th</sup> Cir. 2011) See p. 161-169.

<sup>10</sup> USA v. Holy Land Foundation et al Defendants, North American Islamic Trust Movant-Appellants United States Court of Appeals, Fifth Circuit No. 09-10875 Oct. 20, 2010 See p.3 <https://caselaw.findlaw.com/us-5th-circuit/1541982.html>

<sup>11</sup> Ibid

<sup>12</sup> Sam Westop, “Islamic Relief: Charity, Extremism & Terror,” Middle East Forum June 20, 2018 Online at <https://www.meforum.org/articles/2018/islamic-relief-charity-extremism-and-terror>  
<https://www.meforum.org/articles/2018/islamic-relief-charity-extremism-and-terror>

<sup>13</sup> See [www.irusa.org/answers](http://www.irusa.org/answers)

<sup>14</sup> “Maligning Muslims is a Multi-Million Dollar Industry,” The Bridge Initiative, Georgetown University April 23, 2015 Online at <http://bridge.georgetown.edu/maligning-muslims-is-a-multi-million-dollar-industry/>

First, MEF points out that two banks have closed Islamic Relief Worldwide accounts, “reportedly over terror financing fears.” Although no further information is provided, the banks’ action is presented as evidence against IRW. In fact, Islamic Relief Worldwide is only one of many organizations having problems with banking services for international programs as a result of the larger global trend of bank “derisking.” This affects all kind of groups, not just Muslim charities. Many banks have closed many accounts of charities working in global hot spots, citing fear of high fines and penalties under anti-money laundering/counter terrorist financing (AML/CFT) policies. MEF’s failure to take this wider context into account in its report indicates that, rather than basing conclusions on solid evidence, it is distorting facts to fit its agenda.

There is a growing body of research documenting the trend of “derisking” by banks, where they limit or cancel services to customers perceived to be high-risk rather than managing risk through due diligence.<sup>15</sup> Charities, money service businesses and others have been severely impacted by the derisking problem.

A recent hearing conducted by the House Financial Services Committee provided expert testimony on the drivers and impacts of this problem. The testimony made it clear that derisking is systemic and that many customers are feeling the effects. The testimony included data from research the Charity & Security Network commissioned to measure the impact on U.S. charities that work internationally. The data, empirically valid within a 5.4% margin of error, found that:

- 2/3 of U.S. charities working internationally have experienced problems with access to banking services,
- 16% have had accounts closed or been refused when trying to open accounts,
- These problems impact all types of charitable programs in programs serving all parts of the globe, and
- 42% have been forced to carry cash across borders to fund programs when the banking system fails to serve them.<sup>16</sup>

A recent study in the United Kingdom produced similar results. The Charity Finance Group’s study found that 79% had difficulty with banking services and 15% had accounts closed.<sup>17</sup>

Second, MEF cites the fact that the United Arab Emirates designated Islamic Relief Worldwide as a terrorist organization in 2014 as further evidence of terrorist ties. However, an analysis of the UAE list shows that it is highly politicized, targeting entities the UAE government perceives as a threat to its grip on power,<sup>18</sup> rather than an objective list of entities based on their conduct in carrying out or supporting terrorist attacks. The UAE’s poor human rights record reduces the credibility of its terrorist list.<sup>19</sup> One

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<sup>15</sup> General Accountability Office, Bank Secrecy Act: Further Actions Needed to Address Domestic and International Derisking Concerns,” June 26, 2018 Online at <https://www.gao.gov/assets/700/692811.pdf>

<sup>16</sup> Sue Eckert, Kay Guinane and Andrea Hall, “Financial Access for U.S. Nonprofits,” Charity & Security Network Feb. 2017 Online at <https://www.charityandsecurity.org/FinAccessReport>

<sup>17</sup> <https://www.thirdsector.co.uk/charities-de-risked-mainstream-banks-says-cfg-report/finance/article/1460805>

<sup>18</sup> Adam Taylor, “Why the UAE is calling 2 American groups terrorists” Washington Post, Nov. 17, 2014 Available online at [https://www.washingtonpost.com/news/worldviews/wp/2014/11/17/why-the-u-a-e-is-calling-2-american-groups-terrorists/?utm\\_term=.8a40b965531b](https://www.washingtonpost.com/news/worldviews/wp/2014/11/17/why-the-u-a-e-is-calling-2-american-groups-terrorists/?utm_term=.8a40b965531b)

<sup>19</sup> U.S. Department of State, “United Arab Emirates 2017 Human Rights Report” <https://www.state.gov/documents/organization/277513.pdf>

indicator of the political focus of the list is that Hamas is not included. Given MEF's focus on Hamas as a terrorist group, it is surprising that it would treat a list that excludes Hamas as credible.<sup>20</sup> That it does so is further indication of the unsoundness of MEF's analysis.

### **Conclusion**

Nonprofit organizations support Congressional efforts to protect national security and urge the subcommittee to focus on real threats. U.S. NPOs are not among them.

We urge you to meet with our members and hear more about their due diligence and governance and the important work they do around the world. Please let us know if you need more information.

Yours truly,

A handwritten signature in black ink that reads "Kay Guinane". The signature is written in a cursive, flowing style.

Kay Guinane, Director

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<sup>20</sup> [https://en.m.wikipedia.org/wiki/List\\_of\\_designated\\_terrorist\\_groups](https://en.m.wikipedia.org/wiki/List_of_designated_terrorist_groups)

## **Annex I**

### **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](http://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](http://www.irs.gov/charities-non-profits)
- Applying for federal tax-exempt status - [www.irs.gov/charities-non-profits/applying-for-tax-exempt-status](http://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](http://www.irs.gov/pub/irs-pdf/f990.pdf)
  - Schedule F for activities outside the U.S. - [www.irs.gov/pub/irs-pdf/f990sf.pdf](http://www.irs.gov/pub/irs-pdf/f990sf.pdf)
  - Private foundations [www.irs.gov/pub/irs-pdf/f990pf.pdf](http://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](http://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 <b>Note:</b> Organizations <a href="#">eligible</a> to file the <i>e-Postcard</i> <a href="#">may choose to file a full return</a>	<a href="#">990-N</a>
Gross receipts $<$ \$200,000, and Total assets $<$ \$500,000	<a href="#">990-EZ</a> or <a href="#">990</a>
Gross receipts $\geq$ \$200,000, or Total assets $\geq$ \$500,000	<a href="#">990</a>
Private foundation - regardless of financial status	<a href="#">990-PF</a>

### 2. Federal Trade Commission - on avoiding scam fundraisers

- [www.consumer.ftc.gov/articles/0074-giving-charity](http://www.consumer.ftc.gov/articles/0074-giving-charity)

### 3. Federal grantees

- Eligibility requirements - USAID compliance for grantees - [www.usaid.gov/compliance](http://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/](http://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](#)

## 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*<sup>21</sup> “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*<sup>22</sup> 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 responsibilities<sup>23</sup> and sample policies and procedures on financial management.<sup>24</sup>

The *Council on Foundations*, the largest association of U.S. grantmakers, also provides extensive resources,<sup>25</sup> 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*<sup>26</sup> 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

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<sup>21</sup> Board Source, Board Support Program designed for Non-Profit Organizations, <https://boardsource.org/>

<sup>22</sup> Independent Sector, Principles for Good Governance and Ethical Practice, <https://independentsector.org/programs/principles-for-good-governance-and-ethical-practice/>

<sup>23</sup> Council of Nonprofits, Board Roles and Responsibilities, <https://www.councilofnonprofits.org/tools-resources/board-roles-and-responsibilities>

<sup>24</sup> Council of Nonprofits, Financial Management, <https://www.councilofnonprofits.org/tools-resources/financial-management>

<sup>25</sup> Council on Foundations, Resources, <https://www.cof.org/page/resources>

<sup>26</sup> 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](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 training<sup>27</sup> and resources<sup>28</sup> that cover a range of topics, from accountability to program evaluation and effectiveness. For nearly 30 years its Private Voluntary Organization (PVO) Standards program,<sup>29</sup> 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 resources<sup>30</sup> covering legal issues such as anti-terrorism compliance and expenditure responsibility, both at introductory and advanced levels. Its *Principles of International Charity*,<sup>31</sup> 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.”<sup>32</sup> Its many offerings include the newly published handbook *Cross Border Giving: A Legal and Practical Guide*.<sup>33</sup>

- 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

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<sup>27</sup> InterAction, Training, <https://www.interaction.org/resources/training>

<sup>28</sup> InterAction, Resources, <https://www.interaction.org/resources>

<sup>29</sup> InterAction, Standards for Membership, <https://www.interaction.org/membership/standards>

<sup>30</sup> Council on Foundations, Resources, <https://www.cof.org/page/resources>

<sup>31</sup> 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](http://www.usig.org/PDFs/Principles_Final.pdf)

<sup>32</sup> <https://www.cafamerica.org/>

<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup> 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 rule<sup>37</sup> 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.<sup>38</sup> 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)<sup>39</sup> 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.<sup>40</sup> Online resources include OpenBriefing<sup>41</sup> and Aidworkersafety.org, a project of Humanitarian Outcomes that provides online tools, guidelines, training and shared info via country/field level consortia.<sup>42</sup>

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<sup>34</sup> 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."

<sup>35</sup> 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>

<sup>36</sup> NGO Source <http://www.ngosource.org/>

<sup>37</sup> 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>

<sup>38</sup> Rev. Proc 2017-53 <https://www.irs.gov/pub/irs-drop/rp-17-53.pdf>

<sup>39</sup> <https://www.un.org/undss/content/Leadership>

<sup>40</sup> <https://www.centreforsafety.org/training/ngo-security-conference-2017/>

<sup>41</sup> <https://www.openbriefing.org/>

<sup>42</sup> <https://aidworkersecurity.org/resources>