



Analysis - U.S. National Terrorist Financing Risk Assessment 2015 Sets Stage for Review of Rules Impacting Nonprofit Organizations
October 2015

In anticipation of the Financial Action Task Force’s (FATF) evaluation of U.S. implementation of its anti-money laundering and terrorist financing (AML/TF) standards, the U.S. Department of Treasury published the first [National Terrorist Financing Risk Assessment](#) on June 12, 2015. While the section on nonprofit organizations (NPOs) offers little new information on current risks of terrorist abuse, it does find that abuse of the charitable sector tends to involve individual fundraisers claiming a charitable purpose but “*outside of any charitable organization recognized by the U.S. government.*” [p. 3] (emphasis added)

[According to FATF](#) the national risk assessment is the first step in analyzing the need for measures to protect the charitable sector from terrorist abuse. It adds that any restrictions should be targeted to actual risk so that the activities of legitimate NPOs are not disrupted. The findings in this assessment raise questions about the necessity of many restrictions that currently apply to U.S. NPOs, especially those recognized as tax-exempt by the federal government.

Treasury did not conduct public outreach to solicit input or comments despite [guidance from FATF](#) encouraging it to engage all relevant stakeholders, including the nonprofit sector. The 61-page document is based solely on government sources.

According to Treasury, the assessment is intended to “help the public and private sectors understand the money laundering and terrorist financing methods used in the United States... and more effectively target and prevent these activities.” It states that the U.S.’s efforts to stop terrorist financing are largely successful but residual risk remains. Law enforcement agencies, regulators and policy makers must adapt as the terrorist threat evolves.

Key Points:

- Most terrorist financing comes from crime and state sponsors of terrorism
- Charities that are recognized by the U.S. government are not a significant source of terrorist financing
- Fraudulent fundraisers and sham charities that support terrorism are a growing problem
- Treasury continues to rely on outdated guidance that charities and grantmakers have asked be replaced.

Part I: The Global Terrorist Financing Threat

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, 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.

However, the assessment goes on to state that only “Some of this fundraising activity has occurred under the auspices of charitable giving...” [p. 16]

Part II: Countering Terrorist Financing

The U.S. uses law enforcement, financial regulations and international engagement to prevent and disrupt terrorist financing. This part of the assessment describes the roles and activities of the various agencies and activities involved, including criminal prosecutions and oversight of financial institutions.

Part III: Terrorist Financing Vulnerabilities and Risks in the United States

This is the heart of the national risk assessment. Section 1 provides detail about terrorist financing through criminal activities, including kidnapping for ransom, drug trafficking, extortion, fraud and smuggling. [p. 26-35] Section 2, titled “Misuse of Charitable Organizations and Individuals Raising Funds Under the Auspices of Charitable Giving” [p. 35-44], is a mix of global and U.S. examples. It does little to inform stakeholders about the U.S. government’s view of the current risk for legitimate NPOs, other than to note that charities operating overseas, “particularly in high-risk areas where terrorist groups are most active,” can face significant risk. [p. 37]

Instead, **it continues Treasury’s unfortunate tendency to make 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 footnote or other references are provided for this sweeping claim.

Charities in General

In describing the nature of terrorist financing vulnerability of charities, the assessment notes that “some” charities “continue to be vulnerable to abuse,” without any specificity. It also says that its analysis of criminal cases found that “fundraising through charitable organizations accounted for about 20 percent of the overall observed methods of fundraising for terrorist organizations.” **The assessment does not distinguish between complicit and non-complicit charities, making it difficult for stakeholders to identify appropriate risk-mitigation measures.** The footnotes and references for this conclusion refer to 96 of 229 criminal cases surveyed that had a financial component. Of these, 24 percent involved criminal activity. However, the data does not include information on the amounts of money involved, making it difficult to determine the extent of the risk.

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.

Sham Organizations and Fraud, Not Legitimate NPOs

One of the most important and useful points regarding NPOs states that:

“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]

This, taken together with the examples and other statements in the assessment, establish that the primary risk to the charitable sector is fraud, either through sham organizations or social wings of terrorist groups that abuse their programs for recruitment and propaganda purposes.

Charity-related prosecutions and examples of U.S. charities that have been listed as terrorist supporters support this conclusion. These cases demonstrate that there have been few instances of terrorist financing abuse of legitimate American charities. Where abuse has occurred, most of Treasury’s information points to social wings of terrorist groups as the problem rather than legitimate charities recognized by the U.S. government. This has implications for the review of U.S. terrorist financing restrictions on NPOs, which are one-size-fits-all rather than risk-based.

Risk-Based Approach or One-Size-Fits-All Restrictions?

Treasury says it takes a risk-based approach to protect the U.S. charitable sector from terrorist abuse. [p. 35] However, **the broad restrictions placed on U.S. NPOs are not based on risk. Instead, they impose blanket prohibitions on all NPOs, with inadequate exemptions and licensing procedures.** The Charity & Security Network and Council on Foundations detailed these problems in a July 2015 [memorandum to FATF](#).

Outreach, Not Engagement

In describing its approach to risk mitigation, Treasury says its efforts include enforcement action, increased IRS reporting on international activities, and “sustained outreach to the charitable sector and donor communities to raise awareness of the vulnerability and provide guidance on risk mitigation best practices.” [p.38]

While Treasury makes presentations at events with NPOs present and conducts quarterly informational meetings with NPOs that focus on international work, it has not engaged in the two-way dialog between governments and NPOs that is recommended in FATF’s [Best Practices Paper on Combatting the Abuse of Nonprofit Organizations](#).

The section on outreach [p. 40-41] indicates that Treasury perceives that its guidance and other documents, which have been criticized by the NPO sector as inadequate or misguided, meet this requirement. The NPO sector has made Treasury aware of its concerns with these documents, but the agency continues to ignore that input. These documents include the:

- [Risk Matrix](#): Released in 2007 without input or opportunity to comment, the Risk Matrix is directed toward grantmakers, particularly foundations with international programs. It is a formulaic chart of ambiguous factors, eventually branding each grantee or grantmaking practice as "high," "medium," or "low" risk. Treasury recommends that the higher the risk, the more voluntary practices a grantmaker should adopt from its “Guidelines.” (see below) The risk factors shed little light on what circumstances constitute a "high"-risk situation.

- [Voluntary Anti-Terrorist Financing Best Practices Guidelines](#): The most recent version of Treasury’s ATF Guidelines was released in September 2006. A diverse working group of NPOs, including grantmaking foundations and international charities, called on Treasury to withdraw them, noting that “they significantly exaggerate the extent to which U.S. charities have served as a source of terrorist funding,” have limited relevance to the goal of preventing diversion of assets to terrorists, and suggest detailed information collection practices that are not always useful or appropriate. In addition, adherence to the Guidelines provides no legal protection against designation or asset freezes should a charity unwittingly be abused by a terrorist group.
 - [Guidance Related to the Provision of Humanitarian Assistance by Not-for-Profit Non-Governmental Organizations](#): This document was released in October 2014 by the Office of Foreign Assets Control (OFAC) to provide guidance for charities and donors working in high-risk environments. The guidance, which “does not have the force of law,” does not include key proposals made by NPOs, such as clear standards for nonprofit licenses and timelines for decisions on license applications. It does not address the needs of development, peacebuilding, human rights or other types of nonprofit programs abroad. OFAC’s licensing process has been criticized by NPOs for being slow and non-transparent. While the Guidance is a step in the right direction, [NPOs criticized it](#) for being “mostly clarification of current policy, rather than an effort to address systemic problems.”

Taking Credit for NPO Efforts to Protect Themselves

Treasury correctly states that the NPO sector shares its goal of “protecting and promoting safe charitable giving.” [p. 41] However, **Treasury incorrectly credits its guidelines for strengthened internal controls and risk mitigation measures taken by NPOs over the years. The NPO sector’s efforts are based on its own expertise and guidance documents**, such as the [Principles of International Charity](#), the SPHERE project and other self-regulatory programs. The risk of legal sanction by Treasury, without an opportunity for adequate redress, is another kind of risk NPOs must consider.

Individuals Fundraising Under the Auspices of Charitable Giving – Without Charity Involvement

This section makes it clear that this form of abuse is 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]

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This publication is produced under the project: “Standing up Against Counter-Terrorism Measures that Constrain Civic Space”. The project is supported in part by the grant from the Open Society Human Rights Initiative. The views in the paper do not necessarily represent the views of the Open Society Foundations. For more information visit: www.fatfplatform.org

