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DEVELOPING NEW MECHANISMS TO PROMOTE THE MUSLIM CHARITABLE SECTOR

WORKING GROUP DISCUSSION PAPER

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This draft is intended to serve as a discussion paper for the Muslim Charitable Sector working group at the 2012 U.S.-Islamic World Forum. The final paper will be completed after the Forum, and will include a summary of the working group's discussions and a set of policy recommendations. Please visit <http://www.brookings.edu/about/projects/islamic-world/us-islamic-world-forums> for draft and final versions of all four 2012 Forum papers.

¹ Patton Boggs LLP is an international law firm based in Washington, D.C. Neither Patton Boggs nor the conveners represent any client interests on this project.

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Developing New Mechanisms to Promote the Muslim Charitable Sector

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Zakat (charity) is one of the pillars of Islam and an important expression of religious faith for Muslims worldwide. In pursuing important anti-terrorism and anti-money laundering objectives, the United States and other governments have implemented aggressive law enforcement programs to investigate, sanction, and prosecute organizations suspected of disbursing funds for illegal purposes—including, in some cases, charitable organizations. During the past decade, several highly publicized government investigations and international counterterrorism efforts have resulted in a chilling effect on well-intentioned donor activity within the charitable sector and among Muslim-based charities in particular. President Barack Obama acknowledged this problem specifically in his 2009 speech in Cairo, Egypt. This working group will convene key stakeholders to consider these new challenges to philanthropic giving and to develop practical solutions. Among other possible solutions, the working group will examine the feasibility of a newly established, independent organization dedicated to evaluating Muslim charities and charities operating in Muslim-majority countries, with the objective of contributing to donor confidence and thereby promoting the success of this charitable sector.

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Developing New Mechanisms to Promote the Muslim Charitable Sector

Defining the Unique Challenges Facing Muslim Charities and Charities Operating in Muslim-Majority Countries

The first decade of the twenty-first century had a number of violent attacks on civilian populations by extremist groups asserting political or religious agendas. These attacks were catalysts for a new paradigm in international security. In pursuing important anti-terrorism and anti-money laundering objectives, governments around the world implemented aggressive law enforcement programs to monitor, investigate, sanction, and prosecute organizations suspected of disbursing funds for illegal purposes or terrorist financing. In rare, but highly publicized cases, charitable organizations were targeted in criminal investigations, prosecutions, and asset seizures.

Clearly, an important national security priority for every country is preventing the diversion of charitable funds for illegal purposes. Unfortunately, these highly publicized government investigations and prosecutions have cast suspicion on well-intentioned donor activity within the charitable sector and among Muslim-based charities in particular. For example, of the nine U.S.-based charities that have been designated as terrorist organizations or had assets blocked by the U.S. Department of Treasury, seven are Muslim charities.² Six other U.S.-based Muslim charities have been raided by federal law enforcement authorities or are known to be under criminal investigation.

Many Muslim charities and charities operating in Muslim-majority countries now confront significant handicaps in fundraising and in operating overseas. Donors who wish to support such charitable activities face a dilemma when assessing the qualifications of a particular charitable organization in what has been described as “a climate of fear.”³ Similarly, and in reaction to their own changing regulatory obligations, financial institutions are increasingly risk averse in dealing with Muslim charities.

In the United States, many Muslim Americans have been reluctant to make good faith contributions through charitable channels for fear that the charities to which they give

² The U.S. Department of the Treasury’s “Protecting Charitable Giving Frequently Asked Questions” (June 4, 2010) cites the following seven entities: (1) The Holy Land Foundation for Relief and Development; (2) Global Relief Foundation; (3) Benevolence International Foundation; (4) Al Haramain Foundation-USA; (5) Islamic African Relief Agency; (6) Goodwill Charitable Organization; and (7) KindHearts for Charitable Humanitarian Development, Inc.

³ The American Civil Liberties Union’s “Blocking Faith, Freezing Charity” (2009) concludes that there is “a climate of fear that chills American Muslims’ free and full exercise of their religion through charitable giving.”

might be designated by the U.S. government as illegal providers of “material support” to terrorists and terrorist organizations.⁴

A June 2009 report from the American Civil Liberties Union described a “pervasive fear among Muslim charitable donors that they may be arrested, retroactively prosecuted for donations made in good faith to legal Muslim charities, targeted for law enforcement interviews for exercising their religious obligation to pay Zakat, subpoenaed to testify in a criminal case, subjected to surveillance, deported or denied citizenship or a green card, or otherwise implicated because of charitable donations made in fulfillment of their religious obligation to give Zakat.”⁵ In addition, some reports suggest that counterterrorism laws and policies have caused a shift in donor giving from overseas humanitarian relief efforts to local charities, and from small- and mid-sized Muslim charities to larger and more prominent groups.

These challenges were succinctly acknowledged by President Obama in his June 2009 speech in Cairo when he stated:

[I]n the United States, rules on charitable giving have made it harder for Muslims to fulfill their religious obligation. That’s why I’m committed to working with American Muslims to ensure that they can fulfill zakat.⁶

Indeed, as discussed below, the U.S. Department of Treasury and other international agencies have attempted to reach common ground with the charitable community to reconcile these issues, but thus far, the burden of suspicion that falls disproportionately on Muslim charities has not been substantially relieved.

Without commenting on the existing laws and regulations by which governments pursue their law enforcement and counterterrorist objectives, it is evident that none of the responsible stakeholders—governments, charitable organizations, financial institutions, and donors—accepts the status quo to the extent that it reflects invidious discrimination. Donor choices, and more broadly, the standards against which Muslim charities are measured, should be the same as those applied to all charitable organizations.

The statement of this principle is easier than its implementation. Given the size, scope, and diversity of the worldwide charitable sector, a single solution is unlikely to address the legitimate objectives of all concerned. The goals of this paper are to (1)

⁴ Ibid.

⁵ Ibid., 13.

⁶ Press Release, *The Remarks of the President on a New Beginning*, June 4, 2009.

consider the legal environment within which the stakeholders operate, (2) examine some of the previous or existing models in which a reconciliation of those interests has been attempted, (3) suggest a set of working principles designed to produce both the appearance and reality of a nondiscriminatory environment for Muslim charities, and (4) consider concrete solutions that are realistic and achievable.

Questions for Consideration by the Working Group

1. Is the problem well defined? Will the stakeholders agree that there is a “burden of suspicion that falls disproportionately on Muslim charities”?
2. Does the working group accept the stated principle that, “Donor choices, and more broadly, the standards against which Muslim charities are measured, should be the same as those applied to all charitable organizations”?
3. What should be the boundaries of the charitable community that we can, and should, reasonably address? Should we include some or all of the following: Muslim-based charities, charities that operate in Muslim-majority countries, and charities that operate in conflict zones that governments consider high-risk for terrorist operations? Is it practical to devise solutions that potentially encompass thousands of organizations in multiple countries?
4. Is it appropriate, or is it stigmatizing, to focus on solutions that are addressed solely or primarily to benefit Muslim-based charities?

The Legal and Regulatory Environment

While concerns about terrorist exploitation of the charitable sector are global, specific counterterrorism efforts and law enforcement regimes vary widely by jurisdiction. International cooperation among regulators, and cross-border information-sharing between governments, also varies.

For example, the United States employs very broad legal weapons. Among these is the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (“Patriot Act”) of 2001, which amended the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996 and the International Emergency Economic Powers Act (IEEPA).⁷ Together, these laws prohibit transactions with groups that the U.S. government designates as terrorist organizations and enforce criminal penalties for those who provide “material support” or resources to any terrorist activity. Under the AEDPA, the Secretary of State, in consultation with the Attorney General and the

⁷ *United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism of 2001*, Pub. L. No. 107-56, Title I, § 106, 115 Stat. 272 (Oct. 26, 2011).

Secretary of the Treasury, is authorized to designate organizations as “Foreign Terrorist Organizations” (FTOs).

Another central component of U.S. efforts to prevent terrorist financing is Executive Order 13224 (E.O. 13224), which was issued by President George W. Bush in 2001.⁸ It designated twenty-seven organizations and individuals as “Specially Designated Global Terrorists” and authorized the Secretary of the Treasury and the Secretary of State to name additional organizations and individuals to this list, which is maintained by the Treasury Department’s Office of Foreign Asset Controls (OFAC).⁹

Under this U.S. counterterrorism legal framework, when a charity is designated for providing “material support” to a terrorist organization, all of its U.S. property and financial assets are blocked and its financial and donor records seized. In addition, even short of an official designation, the Patriot Act amended IEEPA to allow the government to freeze an organization’s assets when an investigation into whether it should be designated is opened.¹⁰

Since 2001, the United States has designated approximately sixty charities worldwide as terrorist organizations. Of these, eight U.S.-based charities have been designated formally, and the assets of one additional U.S. charity were blocked pending investigation.¹¹

As of 2009, the total amount of assets blocked pursuant to counterterrorism sanctions administered by the U.S. government was approximately \$19.8 million.¹² Similarly, approximately \$3 million in assets of U.S.-based charities have been blocked pursuant to either a formal designation or a pending investigation.¹³ These amounts are relatively small in comparison to the total value of asset seizures in other U.S. law enforcement proceedings, but the targeting of charities—including Muslim-based charities—contributes to the chilled philanthropic climate that President Obama described in Cairo.

⁸ E.O. 13224, *Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism*, 66 Fed. Reg. 49,079 (Sept. 2001).

⁹ *Ibid.*

¹⁰ PATRIOT Act, Pub. L. No. 107-56, 115 Stat. 272.

¹¹ U.S. Department of the Treasury, “Protecting Charitable Giving Frequently Asked Questions” (June 4, 2010), 8.

¹² *Ibid.* at 10.

¹³ U.S. Department of the Treasury: *Protecting Charitable Giving Frequently Asked Questions* (June 4, 2010).

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In addition to the law enforcement tools employed by individual countries, multilateral organizations also have developed specific counterterrorism policies that apply to charities, which may inform potential solutions for the working group.

For example, the Financial Action Task Force (FATF) is the primary standard-setting body in the international effort against terrorist financing and money laundering. Established in 1989 by the G-7 Economic Summit, FATF is an intergovernmental body comprising thirty-six member states. It sets global standards, assesses compliance with those standards, and promotes compliance through diplomatic coordination of economic measures through its member governments.¹⁴ In particular, FATF's Special Recommendation VIII establishes a framework for governments and financial institutions to ensure that nonprofit organizations cannot be misused for financing terrorism.¹⁵ It states that countries should "review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism" and ensure that nonprofit organizations cannot be misused (a) by terrorist organizations disguised as legitimate entities, (b) as conduits for terrorist financing, or (c) to obscure the clandestine diversion of funds intended for legitimate purposes to terrorist activity.¹⁶

The United Nations also has played a central role in the global counterterrorist financing effort. UN Security Council Resolution (UNSCR) 1267 and its successor resolutions establishes a binding legal obligation on member states to freeze funds and other financial resources of, and prohibit dealings with, designated individuals and entities affiliated with the Taliban and al-Qaeda.¹⁷ In addition, UNSCR 1373 obligates UN member states to establish sanctions programs and procedures like the United States in order to impose economic sanctions against all entities that engage in or support terrorist activities.¹⁸ Specifically, under UNSCR 1373, member states are asked to implement sanctions against any person or entity involved in terrorist activity, regardless of whether that person or entity was specifically designated by the United Nations. Nonetheless, many countries have not yet implemented these sanctions programs.

¹⁴ FATF member governments include: Argentina; Australia; Austria; Belgium; Brazil; Canada; Denmark; European Commission; Finland; France; Germany; Greece; Gulf Cooperation Council; Hong Kong, China; Iceland; India; Ireland; Italy; Japan; Luxembourg; Mexico; Kingdom of the Netherlands; New Zealand; Norway; People's Republic of China; Portugal; Russian Federation; Singapore; South Africa; South Korea; Spain; Sweden; Switzerland; Turkey; United Kingdom; and the United States.

¹⁵ FATF, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation & Proliferation.

¹⁶ FATF, Special Recommendation VIII.

¹⁷ United Nations Security Council Resolution S/RES/1267 (1999)

¹⁸ United Nations Security Council Resolution S/RES/1373 (2001),

Finally, while banks and other financial institutions are not directly responsible for oversight of charitable organizations, they play an important role in effectively channeling charitable fundraising and disbursements of funds through traditional banking systems, which are heavily regulated and monitored. Pursuant to the Patriot Act, all U.S. financial institutions are required to implement “Know Your Customer” (KYC) standards to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering and terrorist financing activities. Other major banking jurisdictions employ similar requirements, which enlist financial institutions in policing and reporting suspected criminal activity that relies upon the banking system, and subjecting these institutions to liability for failing to do so.

In this complex legal environment, several principles will be important in devising fair and neutral solutions that reconcile and balance the law enforcement and counterterrorism objectives of governments with the interests of philanthropic donors and Muslim-based charitable organizations. These principles include the following:

- **By law and by custom, law enforcement and counterterrorism investigations are not public.** In the United States and most countries, the unauthorized release of classified intelligence information is a serious crime, and in most jurisdictions, pre-indictment criminal investigations also may not be disclosed.¹⁹ As a result, in the context of rating or evaluating charitable organizations for the purposes of providing relevant information to prospective donors, financial institutions, or project partners, it is fair to assume that there will be no public access to either adverse or favorable information about charities from government law enforcement agencies or intelligence sources.
- **It is not customary for governments to publish an “approved” list, or to state that a particular organization is not under investigation.** While governments occasionally publicly identify individuals or organizations that are subject to regulatory or criminal sanctions—for example, the U.S. OFAC Specially Designated Nationals and Blocked Persons List mentioned above, or administratively “debarred” persons/organizations prohibited from doing business with the U.S. government—it is not customary for governments to publish an “approved” list, or to state that a particular organization is not under investigation.
- **As a matter of public policy, governments may be expected to endorse nondiscriminatory application of investigative resources (e.g., to reject “profiling” or other negative presumptions in regard to a particular segment**

¹⁹ In the United States, for example, Grand Jury Secrecy rules rigidly restrict disclosure of information regarding the deliberations of a grand jury in criminal proceedings. See Rule 6, *Federal Rules of Criminal Procedure*.

of the charitable sector). As a practical matter, law enforcement and counterterrorism investigations will direct their priorities to perceived risks in the present environment, which may continue to disproportionately burden Muslim-based charities or charities operating in Muslim-majority countries and communities.

- **Governments have some relevant information that is presumptively public and could be shared with donors and others.** For example, government aid organizations, such as the U.S. Agency for International Development (USAID) and the UK Department for International Development (DFID), routinely enter into grants and contracts with charitable organizations around the world and approve specific subcontracts or subgrants to such organizations, as part of the implementation of international development and assistance programs. This information is presumably relevant to donors and reflective of some measure of vetting or due diligence by the government itself. One goal that should be considered is to enlist governments to collect and publish this information.

Questions for Consideration by the Working Group

1. What can we realistically expect governments to contribute to a new organization? For example, if it is clear that any solution includes relying, in part, on evidence that a particular government does business with a particular charity, will governments be discouraged from sharing that information—either to protect the charity from some perceived risks, or to protect the government from appearing to endorse a particular organization?
2. Would it be practical to have governments provide a designated liaison to a new organization for coordination or information-sharing? What level of coordination between government and a new organization would be appropriate to assure the organization's independence?
3. Assuming that no solution will be endorsed by all governments, what kinds of solutions are likely to arouse hostility from governments?

A Survey of Previous and Existing Approaches for Encouraging Donor Confidence and Promoting Charitable Giving

During the last decade, several initiatives have emerged from governmental, charitable, and financial stakeholders to improve transparency and accountability in the charitable sector and to reduce the risk of fraud and to counter the financing of terrorism.

Government Guidelines and Recommended Best Practices

In the United States, the Treasury Department has played a leading role in coordinating intergovernmental activities with respect to counterterrorist financing and its implications for charitable organizations. In fact, one of the most controversial actions taken by the U.S. government with regard to the charitable sector was the issuance of the Treasury Department’s voluntary guidelines.

In 2002, and again in 2006, the Department released the “Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities.”²⁰ These guidelines offer recommendations for charitable organizations to apply in determining their philanthropic giving strategy to help prevent the diversion of funding to terrorist organizations. Among other items, the guidelines recommend vetting and certifying grantees, reviewing financial records, and strengthening due diligence requirements. In general, the charitable sector expressed concerns about the guideline’s (1) due diligence recommendations and extensive data collection requirements, arguing that they imposed a high burden on charitable organizations with limited resources, (2) provisions that suggest the charitable organizations are agents for governments, and (3) that, although the guidelines are labeled voluntary, in practice, they may be treated as de facto legal mandates by banks and other government agencies.

To address some of these concerns, a Treasury Guidelines Working Group was established in 2003 by the Council on Foundations with representation from over seventy nonprofit organizations. The working group’s mission was to replace the guidelines with the “Principles of International Charity,” which were adopted by the participating nonprofit organizations in 2005. According to press reports, the group disbanded in 2010 over a perceived lack of progress or adoption of the principles by the Treasury Department. The working group issued a formal press release criticizing the Treasury Department for a lack of “any substantive changes to its approach—or to recognize the important role of global philanthropy in increasing national security through funding to address poverty, inequality, disease, and other pressing needs.”²¹ At present, the situation appears to have reached a stalemate, with many U.S. charities continuing to object to the guidelines and government continuing to reject the proposed new principles.

²⁰ U.S. Department of the Treasury, “Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities”.

²¹ The Charity and Security Network, “Nonprofit Groups End Talks with Treasury about Ineffectual Guidelines”

http://www.charityandsecurity.org/news/Nonprofit_Groups_End_Talks_With_Treasury_about_Ineffectual_Guidelines (December 1, 2010).

In 2007, USAID announced plans to launch a “Partner Vetting System” (PVS) that would require nongovernmental organizations seeking USAID grants to submit detailed information about key grantee personnel for checking against government security and designation lists, such as the OFAC Specially Designated Nationals and Blocked Persons List. According to USAID, PVS would “screen key contract and grant personnel and organizations against national security databases.”²² Although implementation of the PVS stalled for several years, the State Department issued a notice in the Federal Register last year announcing a plan for a pilot PVS program in five countries.²³

More recently, there also has been an effort by USAID and the Departments of State and Treasury to engage with the Muslim charitable sector overseas. For example, this summer, there is an effort underway to convene key stakeholders in London to discuss ways to protect charities from abuse. In addition to representatives from the charitable sector, the government also has involved the financial sector in this initiative and the results of a government-conducted survey of nonprofit organizations may help to inform new practices and approaches.

Charitable Rating Agencies and Monitoring Organizations

Some nonprofit organizations and private sector accreditation organizations have moved forward to develop “best practices” within the charitable sector, including at least one organization dedicated to Muslim nonprofit organizations in particular. With approximately 1.8 million charities in the United States alone, there is no shortage of benchmarks and standards that have been applied to the charitable sector.

In fact, a 2010 World Bank study on nonprofit organizations argued that oversight of the charitable sector should take place through self-regulatory organizations, which “may not have the force of law, [but] they can have the force of contract and the power to sanction their members where there is violation of an agreed code of conduct.”²⁴ In considering the appropriate role for governments, the study encouraged government regulators to “recognize the need felt in the [charitable] sector to demonstrate its good governance and care and its standing as a responsible actor and use that aspiration to also address terrorism financing concerns, allowing it to take ownership of its own problems.”²⁵

²² Department of State, Status Report, “Partner Vetting System (PVS) Pilot Program”.

²³ Ibid.

²⁴ Emile van der Does de Willebois, *Nonprofit Organizations and the Combating of Terrorism Financing A Proportionate Response*, The World Bank (2010).

²⁵ Ibid.

The following are some examples of the many charitable and philanthropic organizations that have established benchmarks and best practices to protect charitable assets from abuse:

- Muslim Advocates: In 2008, Muslim Advocates, a national legal advocacy and educational organization, and the Better Business Bureau’s Wise Giving Alliance (BBB-WGA) partnered to create the Muslim Charities Accreditation Program. For a charity to become accredited, groups must meet “20 Standards for Charity Accountability” established by the BBB-WGA.²⁶ In 2009, three Muslim American charitable organizations became the first groups to gain the accreditation.²⁷
- InterAction: With over 190 members, InterAction is the largest group of U.S.-based international nongovernmental organizations. Interaction’s “Private Voluntary Organization (PVO) Standards”, updated in January 2011, set criteria for the “financial, operational, and ethical code of conduct for InterAction and its member agencies” to ensure the public’s “confidence in the integrity, quality, and effectiveness of member organizations and their programs.”²⁸
- Humanitarian Accountability Partnership (HAP) International: HAP is a multiagency member initiative designed to provide best practices to humanitarian aid agencies. HAP has developed a specific set of benchmarks for accountability and quality management in humanitarian work. In 2010, it published the “HAP Standard in Accountability and Quality Management.”²⁹
- Transparency International: Transparency International developed and published (in both Arabic and English) a “Preventing Corruption in Humanitarian Operations Handbook” for its partners that evaluates corruption risks and develops standards to reduce such risks.
- The Joint Standards Initiative (JSI): In 2011, three nonprofit organizations—Sphere Project, HAP, and People in Aid—collaborated to form the Joint Standards Initiative. The purpose of the initiative is to bring together the multiple standards and best practices employed for humanitarian aid into a common “single coherent framework” for the charitable sector. It is specifically geared toward small and large nonprofit organizations engaged in international aid and development work.³⁰

²⁶ Ibid.

²⁷ The first three charities included: (1) Islamic Networks Group, (2) UMMA Community Clinic, and (3) Inner-City Muslim Action Network.

²⁸ See <http://www.interaction.org/document/interactions-pvo-standards>.

²⁹ See “Preventing Corruption in Humanitarian Operations Handbook,” http://www.transparency.org/whatwedo/pub/handbook_of_good_practices_preventing_corruption_in_humanitarian_operations.

³⁰ See <http://www.jointstandardsinitiative.org>

Public-Private Partnerships

Another model that has achieved success in its limited circumstances has been the formation of public-private partnerships used by the U.S. government and a handful of NGOs working in international conflict zones such as Palestine or Afghanistan.

As part of a pilot project in 2008, USAID signed a Memorandum of Understanding (MOU) with the American Charities for Palestine (ACP), initiating a partnership and establishing an alternative relief mechanism for the Palestinian Territories.³¹ Under the MOU, ACP raises private donations from donors and collaborates with USAID to jointly provide the funds in direct support of mutually agreed-upon projects and activities in the West Bank and Gaza, particularly in the areas of health and education.³²

One important benefit to this public-private model is that all partners are held accountable by the agreed terms of the MOU, and contract performance assessments may be conducted to assure compliance. Of course, an obvious limitation of this approach and a concern for many nonprofit organizations is that it effectively restricts charitable activities to those that are aligned with the policy objectives of a particular government and its inherent political or foreign policy objectives.

Several Lessons Learned From These Approaches

Among these cross-sector initiatives, there are some lessons to consider:

- **There is no shortage of generally accepted “best practices” that might be adopted by a standards-setting organization, but all impose resource obligations on the participating charities.** Before accepting these additional burdens, the participants naturally hope for some reasonable assurance that compliance with these standards will be rewarded with a reliable “seal of approval” or designation on an approved “white list.” Insofar as governments are concerned, this has not been forthcoming, and for the reasons mentioned above, is not considered a realistic goal. With millions of registered charities around the world, governments argue that an approved “white list” could never be comprehensive or current. In addition, since terrorist activity is constantly adaptive, charities listed on any approved list at any particular time could be manipulated, or even targeted, for

³¹ Press Release, *American Charities for Palestine signs “Historic” Partnership Agreement with USAID* (July 31, 2008).

³² *Ibid.*

terrorist financing purposes in the future.

- **The public-private partnership model is credible and unique, but it may be best suited for limited settings**, such as active combat zones or occupied or disputed territories, where it is more difficult to channel charitable donations and direct humanitarian aid without violating U.S. counterterrorism laws.
- **The well-intentioned Treasury Guidelines Working Group may reflect unrealistic expectations on all sides.** The U.S. government, and any government, is burdened by multiple policy objectives: an interest in supporting the charitable sector, a public policy that forbids discrimination on the basis of religious affiliation, a classified law enforcement environment, a broad intelligence gathering and counterterrorism apparatus, and aggressive prosecutorial machinery designed to cripple criminals and those that support them. These are legitimate objectives and roles, but they may preclude governments from acting as a broker or mediator in resolving these difficult and complex issues, and from credibly balancing its own interests with those of charities seeking to dispel unreasonable suspicions. Similarly, charitable organizations may have unrealistic expectations of securing a “safe harbor” designation from government in return for adhering to its recommended due diligence and vetting requirements. In addition, charities may be unlikely to agree among themselves on the wisdom of a government approved “white list” of charities, which by default, implies that an unapproved “black list” also exists.

Questions for Consideration by the Working Group

1. Previous efforts to address this problem, and analogous problems faced by the financial services industry in vetting customers, have focused on establishing voluntary standards, guidelines, or “best practices.” Keeping in mind that all standards inevitably burden charities, especially small ones, what principles should define those standards? For example, should the standards follow accepted models used in the financial services industry?
2. The selection of any standards will be potentially divisive among the stakeholders in the charitable sector. Some standards may be regarded as excessively burdensome, some as surrogates for law enforcement monitoring purposes, and some as discriminatory among charities of different sizes and purposes. How should standards be selected to achieve maximum support and consensus among the charitable sector’s stakeholders?
3. What are the benefits of a self-regulatory umbrella organization that does not have “the force of law” but does have the power to promote best practices and to sanction members for violations of agreed standards?

Proposing a Framework: The Essential Elements for a New Organization

Given the size, scope, and diversity of the worldwide charitable sector, it is clear that no single solution will provide a panacea for the challenges facing charities in the post-9/11 security environment. Overcoming these challenges will require a strong partnership between government, nonprofit organizations, financial institutions, and other stakeholders. Insofar as all concerned parties have a shared interest in advancing good governance and best practices within the charitable sector, the working group's mission is to help reach consensus on shared principles.

Although we are not advocating for any particular solution or set of governance standards without prior consultation with the working group, we have developed a list of essential elements by drawing from the standards of policy and conduct generally accepted by governments and nonprofit organizations around the world, and from some of the previous or existing models in which a reconciliation of government and charitable interests has been attempted. In doing so, it is possible to lay the framework for assessing potential remedies that may help support the charitable sector and to develop a set of key benchmarks and indicators that produce both the appearance and reality of a nondiscriminatory environment for Muslim charities.

Independence and Governance

As a basic premise, it is important that any organization achieve both the perception and the reality of independence. As such, the organization should not be affiliated with any one government, charity, or donor. In fact, in particularly sensitive international hot zones, it is possible that association with any government could pose operational risks and hazards to charities on the ground. For example, it is possible that prominent intergovernmental agencies could oversee this initiative, such as the regional FATF for the Middle East and North Africa region. Alternatively, an umbrella organization established by an amalgam of financial institutions such as the American Bankers Association might be charged with managing the new organization.

To achieve credibility among donors, the organization will want to assemble a blue chip board of directors that represents key stakeholders from various disciplines.

Benchmarks and Reliance on Fact-Based Information

One of the first mandates of the organization should be to convene experts from prominent charities, governments, and financial institutions with the goal of defining the

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criteria that would be most relevant to the donor community and/or the financial sector. These criteria are not intended to impose new legal requirements, but rather to provide guidance on fundamental principles of good charitable practice; governance, accountability, and transparency; financial accountability and transparency; and programmatic verification.

This draft paper does not attempt to define the entire universe of potential benchmarks that would be established by the organization. The working group will dedicate time to considering the proposed architecture of any newly established organization and relevant benchmarks, but we offer some suggested indicators and essential elements for purposes of debate and discussion, including:

- Partnerships with Government: Relevant information on any grant agreements or subcontracts between charities and government agencies, such as USAID, UK-DFID, or the Middle East Partnership Initiative, may be an important factor for donors to consider in their philanthropic giving choices since it has some measure of vetting or due diligence by the government itself.
- Partnerships with Prominent Donors: Information on any grant agreements or partnerships with major charitable donors, such as the MacArthur Foundation, or intergovernmental entities, such as the World Bank would be relevant for donors since these organizations have established vetting criteria and procedures.
- Financial Audits: Annual independent auditing is a widely recognized practice of ensuring that an organization's accounts accurately reflect the reality of its finances and should be considered a good practice.
- Bank Accounts: Charities should avoid disbursing funds in cash, maintain registered bank accounts for their operations and activities, and utilize formal and registered financial channels for making international funds transfers.
- Funding and Programmatic Reports: Charities should publish annual reports that describe their project partners and the amounts of funding provided to each with key deliverables.
- Real-Time Monitoring for Criminal Issues: Charitable organizations should be vetted by reviewing public government watch lists and criminal designations such as OFAC's List of Specially Designated Nationals and Blocked Persons, the UN's 1267 Designations, and criminal designations by the Department of Justice.
- Vetting Potential Recipient Organizations: In making grant distributions, charitable organizations should conduct basic vetting of potential foreign recipient organizations.

Deliverables and Work Product

As a basic premise, the newly established organization would not demand certain standards from charities or publish a seal of approval upon meeting any of the established benchmarks. Rather, it would publish a fact-based survey at designated intervals (annually or biannually) to provide information to donors and financial institutions with useful information. For example, a report on a particular charity might inform donors that the charity met twenty-nine of thirty-two established benchmarks, for example.

Scale and Start-Up Activities

Because the size and scope of the charitable sector is so large, there have been some suggestions that the organization should begin with a small pilot program. Recognizing the value of this approach, it may also be important that the organization proactively review a certain number of prominent charities from the start to establish credibility. For example, this initial review might include the top fifty Muslim charities operating in the United States and overseas.

Government Involvement

While it is important that this organization is independent and not affiliated with any particular government, it is also essential that government officials are not hostile to the organization. It is possible that key government agencies might consider providing publicly available information useful to the organization or assigning a key liaison to interface with the organization.

Questions for Consideration by the Working Group

1. What should be the succinct mission statement of a new independent organization, and what type of work product should it produce?
2. How will the organization identify and evaluate charities? To be credible, must it at least evaluate a certain number of prominent Muslim charities and charities operating in Muslim-majority countries?
3. What principles should define the rating standards and benchmarks? Is it appropriate to borrow from existing and generally accepted standards, such as the financial sector's "Know-Your-Customer" standards or international anti-money laundering standards?
4. What will it take to create a rating organization that is perceived as genuinely independent? Who will run it, and can it be affiliated with any existing organizations? Where will it be based, and how will it be funded so that its independence is not undermined?