



The Debate Over Anti-Terrorism Certification

by Andrew C. Schulz*

In an effort to ensure that charitable resources are used exclusively for charitable purposes and not used to support terrorist activity, organizations may choose to adopt practices in addition to those explicitly required by law. Among the practices that some charities choose to adopt is including language in their grant agreements requiring grantees to certify that they do not and will not knowingly provide material support to any individual or entity furthering terrorist activities. Opinions differ on whether requiring grantees to sign certifications about supporting terrorists is beneficial or harmful.

Some believe certification is valuable because it fosters greater awareness of the problem and forces grantees to consider with whom they might be doing business. Grantee certification is also popular among some funders because it provides clear evidence that the funder and grantee are both aware of the problem and that they are taking steps to minimize the risks. Others believe that following the same procedures that the government and other financial institutions use provides protection from liability in the event that money is actually diverted. In effect, by following a certain standard of care, some organizations believe that a prosecutor would exercise discretion and not seek harsh penalties if funds were in fact diverted.

Critics argue that certification is worthless and some assert that it can even be dangerous. The certification itself may have little merit because anyone who knowingly supports terrorists will have no concerns about lying on the certification. Further, even if such language may help reduce the risk that funds are diverted to terrorism, under current U.S. law there is no "safe harbor" available, so certification provides no legal protection in the event that funds are actually diverted. Some critics also argue that certification is harmful. They argue that the background checks that an organization would have to conduct to truthfully complete some of the certifications would violate the privacy and

employment rights of the organization's employees and other individuals. Even worse, for some grantees operating in volatile areas of the world, the certification and resulting due diligence can create an appearance that they are agents of the U.S. government. This can literally be a matter of life and death. Forcing such grantees to sign certification language—and the attendant work associated with ensuring its accuracy—increases their already considerable operational risks.

As with any procedure, the decision whether to implement a certification requirement for grantees must be based on each organization's experience, culture, risk tolerance and circumstances. While some organizations do require grantees to make such certifications, others do not, relying instead on other procedures to ensure compliance with current law. In most cases, a range of procedures may provide the greatest confidence that assets will be used exclusively for charitable purposes. No single approach will be appropriate in every case.

The next section provides examples of certification language. As you will notice, the certification language currently being used by funders varies considerably in scope. When developing certification language, funders should be especially careful that the language is tailored to address the concerns of minimizing the risk

that funds will be used to support terrorism while, at the same time, not limiting a grantee's ability to fulfill the purposes of the grant. For this reason, it is important to consult with knowledgeable counsel to ensure that the choice to require certification and the specific language to use meets the needs of your particular organization.

For additional information, the [United States International Grantmaking](#) (USIG) project lists [resources on anti-terrorism legislation and compliance](#).

Examples of Certification

Example A

I certify that _____ does not knowingly employ or do business with groups or individuals whose names appear on any list of the U.S. government, the United Nations, or the European Union of known or suspected terrorists. I also certify that _____ will comply with all current U.S. laws and regulations governing the disbursement of charitable contributions for overseas activities.

Example B

Grantee warrants that it does not support or conduct, directly or indirectly, violence or terrorist activities of any kind.

Example C

Grantee Organization operates in compliance with the laws of its home country and confirms it does not support, directly or indirectly, any terrorist activities or violence of any kind.

Example D

Our organization or any organization to which we may re-grant these funds operates in compliance with the laws of its home country, and that it takes reasonable steps to ensure that

grant funds are not ultimately distributed to terrorist organizations and does not support, directly or indirectly, any terrorist activities or violence of any kind, and that it takes reasonable steps to ensure that staff, board, and other volunteers have no dealings whatsoever with terrorists or terrorist organizations and do not support, directly or indirectly, any terrorist activities or violence of any kind.

We further certify that none of our officers, directors, or other authorized persons who may have contact with us, and none of the officers or directors of any organization to which we may re-grant these funds or any other authorized persons who may have contact with it, is designated as a prohibited person under any U.S. government-issued list or is a national of a U.S. sanctioned country.

Example E

By countersigning this grant letter, you agree that your organization will not promote or engage in violence, terrorism, bigotry or the destruction of any state, nor will it make sub-grants to any entity that engages in these activities.

[U.S. Agency for International Development \(USAID\) Certification Regarding Terrorist Financing: Implementing E.O. 13224 \(Revision 2\)](#)

1. The Recipient, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts, as that term is defined in paragraph 3.

2. The following steps may enable the Recipient to comply with its obligations under paragraph 1:
 - a. Before providing any material support or resources to an individual or entity, the Recipient will verify that the individual or entity does not (i) appear on the [master list of Specially Designated Nationals and Blocked Persons](#), which list is maintained by the U.S. Treasury's Office of Foreign Assets Control (OFAC) and is available online at OFAC's website, or (ii) is not included in any supplementary information concerning prohibited individuals or entities that may be provided by USAID to the Recipient.
 - b. Before providing any material support or resources to an individual or entity, the Recipient also will verify that the individual or entity has not been designated by the United Nations Security

- (UNSC) sanctions committee established under UNSC Resolution 1267 (1999) (the "1267 Committee") [individuals and entities linked to the Taliban, Usama bin Laden, or the Al Qaida Organization]. To determine whether there has been a published designation of an individual or entity by the 1267 Committee, the Recipient should refer to the [consolidated list](#) available online at the [Committee's website](#).
- c. Before providing any material support or resources to an individual or entity, the Recipient will consider all information about that individual or entity of which it is aware and all public information that is reasonably available to it or of which it should be aware.
- d. The Recipient also will implement reasonable monitoring and oversight procedures to safeguard against assistance being diverted to support terrorist activity.

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