

April 26, 2010

Ms. Kay Guinane
Charity & Security Network
1400 16th Street NW Suite 210
Washington, DC 20036

Re: Frozen funds of designated U.S.-based charities

Dear Ms. Guinane,

I am responding to your letter of February 19, 2010 to David Cohen, Treasury Assistant Secretary for Terrorist Financing, regarding the status of frozen assets of several U.S.-based charities.

We understand the importance of this issue. However, as we have discussed, transfer of blocked assets of designated U.S.-based charitable organizations for charitable purposes, or the return of such funds to donors, raises several complex legal and policy issues. In reviewing these matters further, we believe we have little flexibility to redirect blocked assets and would like to provide you with our rationale:

1. **Treasury does not have ownership of these assets.** Blocking assets does not constitute the taking of property, as it does not include vesting of title to the property in the U.S. government. Therefore, Treasury lacks the authority to redirect or transfer blocked property of designated charities.
2. **Treasury licensing authorities for a specific disposition of blocked assets are also constrained by legal limitations and policy considerations.** Treasury can license a particular transaction involving blocked funds in response to a written license application, but existing laws and regulations require the consent of the underlying property holder. All persons who hold an interest in funds blocked pursuant to any particular designation, including designations of U.S.-based charities, may not be definitively known. This complicates resolution of the legal issue of whether the charity can give proper consent and/or whether consent from additional parties in interest may need to be obtained. Moreover, even if a designated charity were established as the sole property holder and requested a license for the blocked property, it is still not clear that such interests should be afforded preference or priority over those of competing parties' claims.
3. **There are often several competing/countervailing claims to the blocked assets.** Separate and apart from the interests of designated parties, there are usually several other parties with competing and often compelling interests in the frozen funds. These can be broadly grouped in the following three categories:
 - a. Forfeiture: To the extent a designated organization was engaged in criminal activities or that the blocked funds were involved in or traceable to certain criminal activities, the

blocked funds may be subject to forfeiture. For example, we understand that the Department of Justice has obtained a preliminary order of forfeiture for the assets of the Holy Land Foundation ("HLF") for the purpose of distributing such assets to victims of terrorism.

- b. Congressional Intent to Allow Terrorism Victims to Recover Damages Against Blocked Assets: In specific circumstances, blocked assets may be made available for attachment and execution by certain judgment creditors of terrorist parties pursuant to the Terrorism Risk Insurance Act of 2002, Public Law 107-297 ("TRIA"), codified at 28 U.S.C. § 1610. TRIA provides that the "blocked assets of [a terrorist party]...shall be subject to execution or attachment in aid of execution in order to satisfy" a judgment for compensatory damages obtained against that terrorist party "based upon an act of terrorism." For example, terrorist victims who have obtained judgments against Hamas have sought to satisfy those judgments against the blocked assets of HLF. In the absence of clear congressional direction to redirect block assets to charitable purposes or return them to donors, we are guided by the general intent underlying TRIA.
- c. Creditors: Creditors of designated charities, such as landlords, vendors, employees, and others, may have claims against the designated person. Typically, OFAC does not license the use of blocked property to pay such claims, or for any other purpose, subject to a handful of narrow exceptions. If OFAC were to consider licensing blocked funds for charitable purposes, it might have to address these other claims as part of the disposition of the blocked funds, which could raise difficult questions of proof and priority among competing claims. Adjudicating such matters is neither within Treasury's blocking mandate nor core mission, and it is ill-equipped to handle such matters.

In addition to these specific challenges associated with the disposition of assets frozen pursuant to the designation of U.S.-based charities, any consideration of returning such assets to the designated charities' donors would raise a host of additional practical and legal challenges. For example, efforts to return funds to donors would require a detailed accounting of who were the donors, how much money they donated, and when such donations were made. These records may not fully exist or be readily available.

We understand and appreciate your interest in this difficult matter and will consider any proposals you may have. We also want to thank you for raising this challenging and important topic.

Sincerely,


Chip Poncy

*Thanks. Lay - looking forward
to continuing to work with you.*