USA PATRIOT Act: Impact on Philanthropy and Nonprofits

Council of New Jersey Grantmakers

New York Regional Association of Grantmakers

February 24, 2006

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Overview of the USA Patriot Act

- Enacted October 24, 2001
  "To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes."

- Expanded the scope of criminal prosecution on providing support to terrorists organizations and increased penalties for noncompliance

- Some lawyers consider asset blocking to be more likely than criminal prosecution unless the defendant acted *willfully* or at least *knowingly* or *intending*
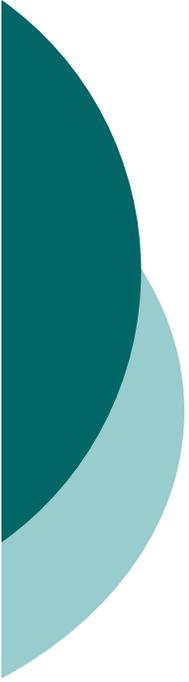
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Executive Order 13224

¡ **Issued just 45 days after September 11th**

¡ **Blocks assets of persons identified as foreign terrorists and explicitly bans charitable donations of funds, good and services**

¡ **Types of Lists**
  ⌐ Specially Designated Nationals (SDN) list
  ⌐ Specially Designated Terrorist (SDT) list
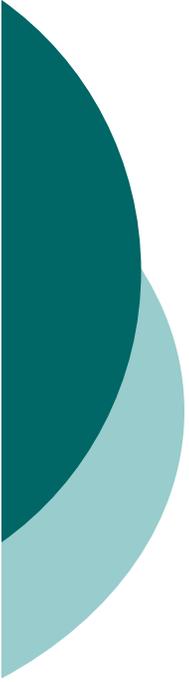 ⌐ Foreign Terrorist Organization (FTO) list

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Compliance Scope

The prohibition on funding terrorism _applies equally_ to grants made to _U.S. and foreign nonprofits_

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Anti-Terrorist Financing Guidelines: *Voluntary* Best Practices for U.S. – Based Charities

- Published November 7, 2002

- Maps out one route to compliance

- Criticized by grantmakers and charities as being ambiguous and unworkable

- Extensive comments filed by:
  - **COUNCIL ON FOUNDATIONS**
  - Independent Sector
  - Exempt Organizations committee of the American Bar Association Tax Section

- Amended November 2005
  http://www.treas.gov/offices/enforcement/key-issues/protecting/charities-intro.shtml

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Recent Developments

- April 2004 - Treasury Department meets with 20+ representatives of the philanthropic community

- May 2004 - philanthropic organizations decide to develop independent set of recommendations

- October 2004 - recommendations submitted to Treasury Department

- November 2005 - Treasury Department amends "_Voluntary_ Best Practices for U.S.-based Charities"

- February 2006 - COF Treasury Guidelines Working Group asks Treasury Department to withdraw the revised guidelines and instead endorse COF's Principles of International Charity

- March 10, 2006 – Congress to vote on making the USA PATRIOT Act permanent

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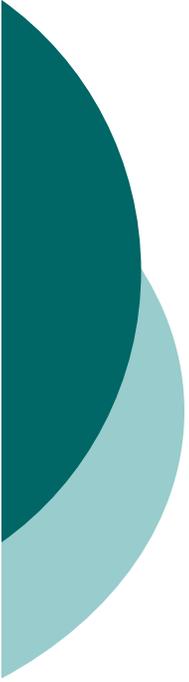
Seeking a
Safe

Harbor

Some Grantmakers' Response to the USA PATRIOT Act

Initial Reactions Expressed by Many Grantmakers

o *"This is a terrible waste of time and money that would be much better spent going directly to nonprofits."*

o *"What's the point? Everybody knows that terrorist organizations won't list officers who are posted on government watch lists."*

o *"This will alienate leaders of nonprofts that we're worked hard to support over the years. They'll think that we don't trust them."*

o *"This is a bad dream - when I wake up will it go away?"*

o *"Will a new President or Congress reverse this?"*

o *"Let's work together to explain the unintended impact on philanthropy to the U.S. Treasury Department – this could result in more reasonable revised guidelines."*[1]

Then Reality Sets in . . .
Grantmakers Ask Common Questions

1. What is everybody else doing?

2. Does this apply to us if we don't make international grants?

3. Which staff should be responsible for this? How much of their time will this take?

4. Our corporate compliance department isn't much help and our regular legal counsel doesn't really know much about this.

5. Where do we start? Should we conduct a risk analysis?

Then Reality Sets in . . .
Grantmakers Ask Common Questions

6. What is reasonable, practical and fair? Profiling is cost effective, but discriminatory and we may be subject to criticism.

7. How can we automate and streamline the compliance verification process to reduce costs?

8. Exactly what do we have to check, how often and when?

9. How do we research and identify "false positives" and how many are there likely to be?

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Our Organization's Reputation at Risk

"Even if we invest heavily in verification checking and do the best job that we can of vetting nonprofits, we could still inadvertently make a gift to an organization that is somehow affiliated to a terrorist.

We'll then find our company's name in newspaper headlines, and the damage to our company's reputation would be terrible."

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Should we stop making grants abroad?

<u>This is the last thing that you should do.</u>

Peace, freedom democracy, poverty alleviation, economic opportunity and human rights are the best antidotes to terrorism.

Grants that support the achievement of such goals are a country's best protection from future attacks by terrorists.

What Nonprofits are Experiencing and How They're Responding

- ¡ Initially frustrated and didn't understand what the "war on terrorism" had to do with their nonprofit.

- ¡ Burdened by additional paperwork and a need to allocate more staff resources.

- ¡ Required to use different funder compliance forms - each asks for some different information . . .
  "It's impossible to keep track of it all."

- ¡ Delays in receipt of funds

- ¡ Reduction in grants to selected nonprofits

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What Nonprofits are Experiencing and How They're Responding

¡ *"It's difficult or impossible for us to honestly vouch for compliance of every one of our sub-grantees."*

¡ Some reluctance or unwillingness to sign compliance forms or grant agreements

  l Primarily institutions of higher education and civil liberty organizations (e.g. ACLU)

  l Ask grantmakers to add qualifying language such as *"to the best of my knowledge . . . "*

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Academics Protest Grant Terms

"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 subgrants to any entity that engages in these activities."

FORD FOUNDATION
Strengthen democratic values, reduce poverty and injustice, promote international cooperation and advance human achievement

"It is flatly inconsistent with academic freedom to hold universities and colleges responsible for the beliefs and publications of their faculty."

– Roger Bowen AAUP President
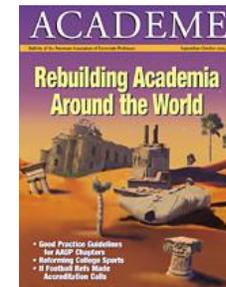
The foundation does "not intend to interfere with the speech of faculty . . . Our grant letter relates to the official speech of the university and to speech that the university explicitly endorses."

- Susan Berresford, Ford Foundation President

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What Some Grantmakers are Doing

1. Publish the foundation's USA Patriot Act <u>compliance policy on their public Web site</u> and on all applications.

2. Require <u>copies of budgets and annual reports.</u>

3. Fund only carefully <u>vetted and pre-approved nonprofits</u> that work outside the USA.

4. Use integrated <u>list checking software & services</u> to check organization and staff names before all payments.

5. Rely on <u>workplace giving service providers to vet all organizations</u> prior to each disbursement.

What Some Grantmakers are Doing

7. Require authorized <u>nonprofit officials to sign a compliance form</u> (sometimes for only selected grants):
   - Names and titles of key officers
   - Agree that all foundation guidelines are being met
   - Funds have not and will not support terrorists
   - Provide a list of affiliates and subcontractors
   - Sub-grantees must also meet all requirements
   - Signed grant agreement

8. <u>Ask employees to sign a statement</u> that *"to the best of their knowledge"* nonprofits that they request for gift matching and grants are not supporting terrorists.

9. Implement <u>grantee portals</u> to streamline operations and reduce cost.

GuideStar.org.

THE JK GROUP, INC.
Integrated Solutions for Global Philanthropy

createhope

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GE Foundation Funded Feasibility Study

- Collaboration between COF, Foundation Center, GuideStar, and Independent Sector.

- Assess the need and determine the feasibility of developing and maintaining a central database of pre-vetted international organizations.

- Project kickoff planned for Spring 2006
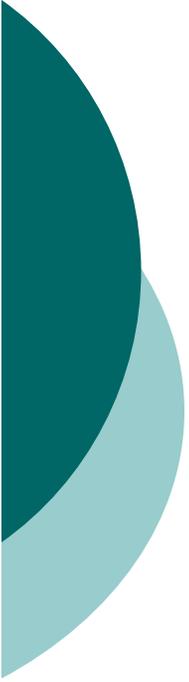
U.S. Public Charities on SDN List

1. The Holy Land Foundation for Relief and Development, Richardson, TX

2. Benevolence International Foundation, Palos Hills, IL

3. Global Relief Foundation, Bridgeview, IL

4. Al Haramain Islamic Foundation, Ashland, OR

5. Central Africa Development Fund, Richardson, TX

6. Islamic African Relief Agency – USA a.k.a. Islamic American Relief Agency – USA Columbia, MO

7. Rabbi Meir Kahana Memorial Fund, Cedarhurst, New York

.0008% (<u>eight ten thousandths</u>)
of all U.S. 501(c)(3)
organizations to date

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As of: February 2006

How to Reduce Your Risk

Terrorism Watch Lists

- OFAC SDN list
- OFAC Blocked Countries

OFAC Sources

- Bureau of Industry and Security (Export/Import sanctioned entities)
- Canadian Consolidated List (OSFI)
- FBI Hijack Suspects
- FBI Most Wanted
- FBI Most Wanted Terrorists
- FBI Seeking Information
- FBI Top Ten Most Wanted
- Non-Cooperative Countries and Territories
- Politically Exposed Persons
- Unauthorized Banks

U.S. Homeland Sources

- Bank of England
- DTC Debarred Parties
- European Union Terrorism List
- Interpol Most Wanted
- United Nations Consolidated List
- World Bank Debarred Parties

World Sources

The Limitations of Using Watch Lists to Identify Terrorists
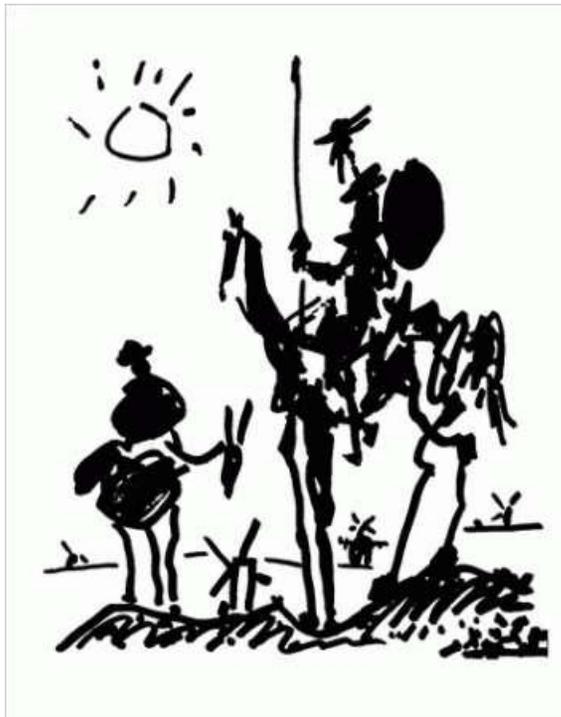
The Challenge of Checking Balinese Men's First Names After the 2002 Bombing . . . .

Birth Order

1. Wayan
2. Made
3. Nyoman
4. Ketut

5. Wayan
6. Made
7. Nyoman
8. Ketut

U.S. Library of Congress Spellings of the Libyan Leader's Name قذافي

(1) Muammar Qaddafi

(2) Mo'ammar Gadhafi

(3) Muammar Kaddafi

(4) Muammar Qadhafi

(5) Moammar El Kadhafi

(6) Muammar Gadafi

(7) Mu'ammar al-Qadafi

(8) Moamer El Kazzafi

(9) Moamar al-Gaddafi

(10) Mu'ammar Al Qathafi

(11) Muammar Al Qathafi

(12) Mo'ammar el-Gadhafi

(13) Moamar El Kadhafi

(14) Muammar al-Qadhafi

(15) Mu'ammar al-Qadhdhafi

(16) Mu'ammar Qadafi

(17) Moamar Gaddafi

(18) Mu'ammar Qadhdhafi

(19) Muammar Khaddafi

(20) Muammar al-Khaddafi

(21) Mu'amar al-Kadafi

(22) Muammar Ghaddafy

(23) Muammar Ghadafi

(24) Muammar Ghaddafi

(25) Muamar Kaddafi

(26) Muammar Quathafi

(27) Muammar Gheddafi

(28) Muamar Al-Kaddafi

(29) Moammar Khadafy

(30) Moammar Qudhafi

(31) Mu'ammar al-Qaddafi

(32) Mulazim Awwal Mu'ammar

(33) Muhammad Abu Minyar al-Qadhafi

Excerpt of the OFAC List

MALARBE, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a.
MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a.
MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a.
MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico
(individual)
[SDNTK]

MALERBE, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a.
MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a.
MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a.
MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico
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MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a.
MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico

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Why Use Computers for Compliance Checking?

Compliance checking requires perfect execution of a boring and repetitive task – one that a computer does well and people do poorly.

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Some U.S. PATRIOT Act and OFAC Compliance Verification Tools

¡ **Attus**

¡ **ChoicePoint** (acquired Bridger)

¡ **Equifax**

¡ **GuideStar**

　l EZ Basic Information

¡ **OFACSearch**

¡ **RDC (Regulatory Data Corporation)**

　l GRID (Global Regulatory Information Database)

Source	Product / Service	Verification Lists	Features	Cost
U.S. Treasury Department www.treas.gov/offices/eotffc/ofac/	OFAC lists (only manually downloadable lists)	OFAC (organizations, individuals, vessels)	None	Free
Attus www.attustech.com	OFACWatchDog™ (Windows or Web)	OFAC (organizations, individuals, vessels and domain names) plus option of multiple other lists	Language sensitive searches, automated list updating, list checking, accept list, audit trail, Web service integration	$499/year (single user) $699/year (network user) These are reduced prices for grantmaking organizations
ChoicePoint www.choicepoint.com	Bridger Insight (Windows or Web)	OFAC (organizations, individuals, vessels) and multiple other lists	Automated list updating, list checking and accept list, audit trail	Starts at $735 (Windows) and $895 (Web) – also varies depending on number of supported nonprofits. 15% discount available to MicroEdge clients.
GuideStar www.guidestar.org	GuideStar EZ GuideStar Charity Check (both Web)	OFAC (organizations only)	Checking one organization at a time	GuideStar EZ and GuideStar Plus both free Service to do checking of organization names against the OFAC list plus 501(c)(3) verification - $580 per 1000 records if EIN is provided
The Oasis Group www.ofacsearch.com	OFACSearch (Web and Service)	OFAC (organizations, individuals, vessels, domain names)	Automatic list updating, list checking, accept list, audit trail, language sensitive searches, Web service integration	$400/year This is a reduced price for grantmaking organizations

Grants Management Vendor
USA PATRIOT Act Compliance Verification

Vendor	Org	Contact	Integrated Compliance Verification *
Arlington Group	Y	N	Easygrants has built-in OFAC organization checking, auto seek and detection of updates to the OFAC organizations list, e-mail notification to foundation staff of OFAC updates, and optional auto or manual refresh of the OFAC organizations table as updates are made available. link to external databases
Bromelkamp	Y	Y	Built-in seamless hot link to GuideStar EZ Basic and optional Charity Check for organization checking. GuideStar provides Bromelkamp clients a 90-day free trial and discount ($450 vs. $750) for Charity Check. Pearl software includes a utility that integrates with ChoicePoint Bridger Insight to check organizations and contacts. Bromelkamp clients get a 10% discount from ChoicePoint retail prices.

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* As of February 2006, CyberGrants invited but chose not to report

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Grants Management Vendor
USA PATRIOT Act Compliance Verification

Vendor	Org	Contact	Integrated Compliance Verification *
Foundation Source	Y	Y	Clients get free access to GuideStar premium content and Charity Check to conduct their own research prior to making grants. ChoicePoint then used to check all organizations and contacts prior to all disbursements made by Foundation Source.
MicroEdge	Y	Y	Built-in seamless hot link to GuideStar EZ Basic and optional Charity Check for OFAC organization checking. Provides a set of custom reports specifically designed to export data in formats compatible with third-party compliance vendor solutions. Established strategic partnerships with multiple compliance solution vendors to offer discounts to MicroEdge clients.
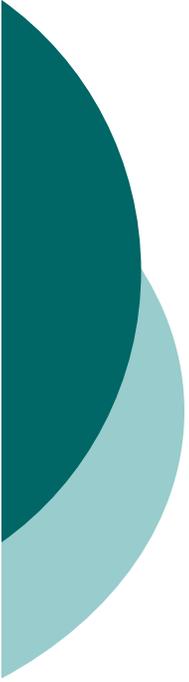
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* As of February 2006, CyberGrants invited but chose not to report

Grants Management Vendor
USA PATRIOT Act Compliance Verification

Vendor	Org	Contact	Integrated Compliance Verification *
NPO Solutions	Y	Y	Provides a set of custom data report exports specifically designed for use with third-party compliance vendor solutions Established strategic partnerships with multiple compliance solution vendors to offer discounts to NPO clients.

Employee Giving Service Provider
USA PATRIOT Act Compliance Verification

Vendor	Org	Contact	Compliance Verification *
4Charity	Y	N	Checking of organization and primary contact (one individual) information at no additional charge for clients using Bridger. Additional services available on request.
AmeriGives	Y	Y	Organization checking using the OFAC list downloaded monthly. Contact checking is an optional fee-based service.
CreateHope	Y	Y	Risk Management Solution (RMS), a multi-stage system and process that gathers data and certifications directly from nonprofits to assist in the identification of potential risks. This information is imported into a proprietary web-based system and processed through varying levels of risk review. 250 watch lists are used plus extensive media sources. Basic and optional fee-based services are available.

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* As of March 1, 2004

Employee Giving Service Provider
USA PATRIOT Act Compliance Verification

Vendor	Org	Contact	Compliance Verification *
JK Group	Y	Y	Checking of organization and primary contact (one individual) information at no additional charge for clients using an integrated version of Bridger insight. Optional enhanced fee-based services: ¡ To solicit and check up-to-date contact information about officers and board members. ¡ Certify & monitor to assure that recipient organizations' records adhere to accepted financial and record-keeping practices and records will be made available on demand. ¡ Services to assure that grant funds were utilized as expected - expenditure responsibility - for both U.S. and international grants.

* As of March 1, 2004, KindMark invited but chose not to report
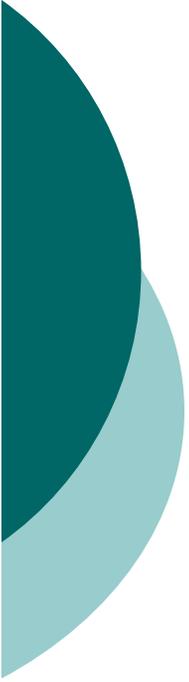
Types of Grants that Warrant Special Attention

- **Donor Advised Funds and Matching Gifts**
  - Rely on donor or employee to know the charity
  - Donations to organizations that you don't know well and normally verify only nonprofit status
  - Grant process is automated

- **Regranting Organizations**
  - Treasury Guidelines suggest that a grantmaker is responsible for grants monies until it is expended by the ultimate grantee

- **Grants to U.S. Public Charities**

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How to Get Started

A Suggested Approach for Due Diligence

1. Consult with competent legal counsel

2. Conduct a risk assessment, document the process, determine your tolerance for risk, and take appropriate actions.

3. Determine what level of compliance checking you will require for U.S. and non-U.S grants, and for grants of different sizes.

4. Decide which lists will need to be used, what you'll need to check, when, and how often.

5. Document your decisions and actions and revisit them whenever there are significant changes in your grantmaking program.

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A Suggested Approach for Due Diligence

6. Use USA PATRIOT Act compliance software that is integrated with your grants management and employee giving systems software and process.

7. Ensure that all interdiction lists are always maintained up-to-date.

8. Train primary and backup staff to use the system.

9. Revise your workflow, operational procedures and system documentation as required.

10. Stay abreast of new regulations, interpretations and case law.

A Suggested Approach for Due Diligence

11. Work together with your colleagues in the philanthropic community to establish standards.

12. Work closely with the providers of your grants management, employee giving, and compliance verification products and services to streamline your operations and reduce costs.

13. Provide nonprofits with Web-based systems to meet your compliance requirements.
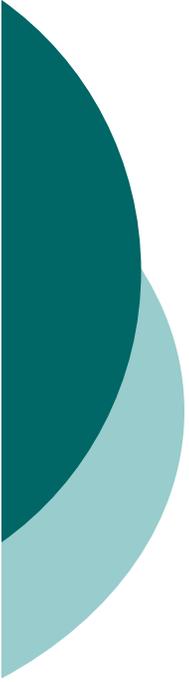
Technology Resources

Articles about technology, industry trends, surveys, and links to references of special interest to foundations and nonprofits.

The site is updated regularly.

www.iaa.com/resources.html

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