

A Beginner's Guide To International Grantmaking

Family foundations are increasingly interested in making grants overseas. Globalization continues to remove borders, and funders may seek to solve social issues regardless of country of origin. Happily, there are a host of opportunities for family foundations to be part of change on a global scale.

But with a world's worth of possibilities comes a greater responsibility for private foundations to consider the legal and practical implications of participating in international grantmaking. This guide is intended to be an introduction to a relatively complex subject. For those interested in pursuing any of these issues further, key resources are listed at the end. Additionally, please note that all grantmakers should consult with legal counsel before embarking on international grantmaking.

FIRST, WHY GLOBAL?

Passion	Your love of animals, the environment, or humanity may not be limited to your own backyard.
Respecting roots	Donors may wish to honor their heritage or country of origin.
Growing branches	Over generations, the family footprint may naturally increase as children move away from home, marriages bring cultures together, etc.
Scale	Your dollars may go further to fight issues like food scarcity, poverty, etc. overseas. Often, dollars can make a greater impact in countries that are still developing or have greater basic needs than here in the U.S.
Disaster relief	Sometimes donors wish to respond to the world's most pressing needs. When crises arise, foundations must know how to get their money moving quickly and into the right hands.

By
**Renee Sovis &
Mark Neithercut**

**Neithercut
Philanthropy
Advisors**

125 Park St.
Suite 375
Traverse City, MI
49684

313-568-9000

PRINCIPLES

For a grant to be a “qualifying distribution” — that is, to count toward a private foundation’s required payout — the IRS requires the grant to be used for charitable purposes. The easiest and most common way for this to occur is for the grant to be awarded to an organization that has received public charity status from the IRS, yet few foreign non-governmental organizations (NGOs) have achieved this status. So, what are your options?

Equivalency Determination. As the term suggests, equivalency determination is a process by which an expert determines that a foreign nonprofit is equivalent to the IRS requirements to be a public charity.

Expenditure Responsibility. In this case, the private foundation making the grant must monitor and document every expenditure of the grant, to ensure that it is charitable.

Intermediary. A third option is for the private foundation to partner with a U.S. public charity to support the project being conducted overseas. Although this option seems easier, it can be tricky due to the different ways an arrangement can be constructed.

SO, YOU WANT TO MAKE AN INTERNATIONAL GRANT?

To simplify this complicated mix of requirements, let’s review the options in order of what may be seen as the simplest option to the more onerous. Given your situation, you may find any one of these options a good fit. There are detailed rules and limitations for all of the options — so, again, the best advice is to consult counsel.

A. First, does the applicant have public charity status?

- Is the organization a U.S.-based public charity doing work overseas?
- Is the applicant an international organization with an office in the USA, and has that office received public charity status?
- Has the foreign organization (without a U.S. office) received public charity status?
- Is the applicant a foreign government?

If you answer yes to any of these questions, you can go ahead and make a grant without any of the additional activities discussed below. Note that foreign governments are deemed to be equivalent to public charities, but the supported project must be charitable.

B. If not, can you use an intermediary organization?

- Does the foreign organization have a “Friends of” partner in the U.S., and has that organization received public charity status?
- Is there an existing public charity in the USA that’s willing to sponsor the project?

As noted above, intermediaries can be tricky. The intermediary must serve as a sponsor of the project, not simply as an agent of the intended beneficiary. The intermediary must take responsibility for the project and agree to provide the appropriate final reports and accounting for the grant. This responsibility includes following the requirements of the various federal anti-terrorism guidelines.ⁱ

Importantly, the intermediary has authority to determine how the project is implemented — including what third-party organizations are engaged to implement the project. Thus, the grantmaking

foundation cannot simply earmark the grant for a third party.

U.S.-based “Friends of” organizations can be well-placed to serve as intermediaries, as they have public charity status and will typically meet the responsibility and reporting requirements.

Further, several U.S.-based public charities offer donor advised fund services for donors with international grantmaking interests. These agencies work primarily with donors, rather than private foundations, but may be willing to serve as an intermediary depending upon the circumstances of the grant. ⁱⁱ

A good intermediary knows the project or organization you wish to support, has worked with them in the past, and agrees to be a sponsor (that is, be a partner) in the project you wish to support. ⁱⁱⁱ

Between 2016 and 2019, 60.9 percent of the funds granted by U.S. private foundations for overseas projects utilized a U.S.-based intermediary, and only 12.6 percent were granted directly to a foreign entity. ^{iv}

C. Third, can you manage the grant yourself? (Expenditure Responsibility)

If the A and B options above aren't available or convenient, a private foundation may choose to exercise expenditure responsibility (ER). This process requires the foundation to monitor each expenditure to ensure that it is for charitable purposes, and to report these expenditures on its tax return. Expenditure responsibility allows a private foundation to make a grant to nearly any organization anywhere in the world.

Private foundations may find that expenditure responsibility is the easiest solution, especially since most private foundations already have detailed reporting requirements similar to those required by this process. ^v

D. Finally, is the applicant equivalent to a U.S. public charity? (Equivalency Determination)

Although equivalency determination (ED) may seem to be the least desirable option, it can be attractive to some grantmakers and it has significant benefits. First, there's considerable leeway in who or what may certify that a foreign NGO is equivalent to a U.S. public charity — you must make a “good faith effort.” Thus, a grantmaker may ask the potential applicant to contract for this task, and there are agencies that specialize in conducting ED investigations for a modest fee. ^{vi} Further, an NGO that receives an ED certificate can use it to apply to multiple U.S. private foundations, and the certificate is typically good for two years before it must be renewed.

The Council of Foundations has a helpful review of ED vs. ER and situations where one is more attractive than the other. ^{vii}

FURTHER CONSIDERATIONS

Charitable purpose. Every grant made internationally, whether through expenditure responsibility, equivalency determination, or an intermediary, must be made for charitable purposes. The same considerations used in all your foundation's grantmaking should apply, such as proper due diligence.

Site visits. The world is smaller than ever, but that may not mean that international travel is always possible. However, when it is, site visits are immensely valuable for international grantmaking. Meeting the leaders of the organizations you wish to support and witnessing their work can spur better relationships, more productive grants, and greater fulfillment from your grantmaking.

Be nimble. Grantmaking always involves risk, and when you're granting in areas that have less privilege than the United States, be willing to work with your grantee where they're at. And if a global pandemic taught us anything, it's that we can't predict the future and we can all loosen up a bit. From strict deadlines to exhaustive reporting requirements and a host of administrative hurdles, don't let managing your grant take time away from your partner organization doing its good work.

Be humble. One of the worst mistakes grantmakers can make is assuming they know what the grantee needs better than they do. Listen first, ask questions to clarify, and encourage open and honest dialogue.

Don't fund terrorism. After 9-11, the federal government instituted a series of restrictions on the flow of funds overseas to

ensure that no one or no entity was funding terrorism. The penalties can be severe, and there is no simple set of guidelines to create a "safe haven."^{viii}

Don't forget to check foreign laws.

Several countries now require NGOs in the host country to comply with regulations or reporting requirements when receiving foreign grants. These typically include steps to ensure that the funder (you) is not involved in terrorism or other illegal activities. Failure to follow these requirements may subject you or the grantee to penalties and fines.

Consult your attorney. This guide is intended to be a quick overview of a complicated subject. Be sure to consult with legal counsel or other professionals to ensure compliance. There are detailed rules, requirements, and limitations to all the issues discussed. If one of the options discussed above seems like a good fit, be sure to dig deeper to learn more about the details.

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Note: *We are thankful to Robin Ferriby, Esq., of Clark Hill (clarkhill.com) for his helpful comments on an early draft.*

Recommended Resources

Mark B. Weinberg, "Treasury and Charities on International Grantmaking: Can't We All Just Get Along?" *Family Foundation Advisor*, July/August 2005, Vol. 4/No. 5.

Grants by Private Foundations: Expenditure Responsibility, irs.gov/charities-non-profits/private-foundations/grants-by-private-foundations-expenditure-responsibility

Frequently Asked Legal Questions about Global Grantmaking, Council on Foundations, cof.org/content/frequently-asked-legal-questions-about-global-grantmaking

Equivalency Determination or Expenditure Responsibility, Council on Foundations, cof.org/content/equivalency-determination-or-expenditure-responsibility

International Intermediaries, Exponent Philanthropy, exponentphilanthropy.org/resource/international-intermediaries

Suzanne Hammer, "8 Tips for International Giving," *Family Foundation Advisor*, November/December 2021.

Yumi Sera, "Working with Intermediaries Global Grant Making through Partner Organizations," *GrantCraft*, 2007.

Rebecca Nichols and Anne Mackinnon, "International Grant Making: Funding with a Global View," *GrantCraft*, 2004.

Lara Kalwinski and Suzanne S. Friday, "International Grantmaking: A Guide for Funders Making Grants Outside the United States," Council on Foundations, 2019.

Steven Lawrence, "The State of Global Giving by U.S. Foundations," Council on Foundations, 2022.

Elizabeth L. Mathieu, "The IRS and Treasury Acknowledge That the World Is Flat ... Almost: Issues in Private Foundation Governance and Cross-Border Grant-Making," *Family Foundation Advisor*, January/February 2013, Vol. 12/No. 2.

Jerry J. McCoy and Kathryn W. Miree, "Family Foundation Handbook," CCH Inc., 2015.

Suzanne S. Friday and Lara Kalwinski, *Mastering Foundation Law: The Council on Foundations Compendium of Legal Resources, Chapter 27, Expenditure Responsibility: Step by Step*.

NOTES

- i A useful review of the differences between sponsor and agent is in *Fiscal Sponsorship: 6 Ways to Do it Right*, 2nd Edition, Study Center Press, 2005.
- ii For example, Charities Aid Foundation America
- iii A good discussion about intermediaries can be found in Yumi Sera, "Working with Intermediaries Global Grant Making through Partner Organizations," *GrantCraft*, 2007.
- iv The State of Global Giving by U.S. Foundations 2022, Council on Foundations, p. 55.
- v Expenditure Responsibility requirements are determined by Treasury regulations. Generally, the regulations require 1) a pre-grant inquiry, 2) the use of a grant agreement with required elements, 3) at least annual reports from the grantee until all provided funds are expended, and 4) the return of funds not used for the intended charitable purposes of the grant.
- vi NGOSource is a program of TechSoup Global. ngosource.org/
- vii Equivalency Determination or Expenditure Responsibility, Council on Foundations. cof.org/content/equivalency-determination-or-expenditure-responsibility
- viii A good review of these issues can be found in Jane Peebles, "Cross-Border Grant Making by Private Foundations," CAF America Insider Blog, cafamerica.org/cross-boarder-grant-making-by-private-foundations. Also see: Elizabeth L. Mathieu, "The IRS and Treasury Acknowledge That the World Is Flat ... Almost: Issues in Private Foundation Governance and Cross-Border Grant-Making," *Family Foundation Advisor*, January/February 2013, Vol. 12/No. 2.



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