

U.S. INTERNATIONAL GRANTMAKING

Country Information

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This section provides an introduction to international grantmaking and lays out a few basic options available to U.S. foundations and corporations: grants to U.S. 501c(3) organizations, grants to “Friends of” organizations, donor-advised funds and direct cross-border grants.

B. [Frequently Asked Questions on Cross-Border International Grantmaking](#)

This section takes a closer look at the legal requirements for private foundations and public charities wishing to make cross-border grants to international (non-U.S.) organizations. Also included are relevant anti-terrorism actions and policies of the U.S. Government.

A. Basic Options for International Grantmaking

The Council on Foundations defines “international grantmaking” to include grants made by U.S. foundations and corporations to overseas recipients as well as grants made to U.S.-based organizations operating international programs. This includes grants made toward activities wholly within the United States that have significant international purpose and impact.

International grantmaking by U.S. foundations and corporations is growing rapidly as U.S. grantmakers become more aware than ever of the rewards of supporting international activities and connecting with grantee partners around the world. According to *International Grantmaking III, An Update on U.S. Foundation Trends*, published by The Foundation Center in cooperation with the Council on Foundations, international giving doubled between 1998 and 2002, reaching \$3 billion in 2003.

There are several options available to U.S. foundations and corporations interested in international grantmaking. Here are the basic options:

1. [U.S. 501\(c\)\(3\) Organizations](#)
2. [“Friends of” Organizations](#)
3. [Donor-Advised Funds](#)
4. [Direct Cross-Border Grants](#)

- Visit USIG [Links](#) to connect with supporting organizations and access additional resources to supplement the legal and practical information you will find in this section.

1. U.S. 501(c)(3) Organizations

The simplest option is to make a grant directly to another U.S. 501(c)(3) charitable organization to support its international programs or activities.

- [What is a U.S. 501\(c\)\(3\) organization?](#)
- [Find U.S. 501\(c\)\(3\) organization's with an international grantmaking focus.](#)
- ["Simpler Approaches to Cross-Border Giving through Domestic Collaborations: A Post –September 11 Update,"](#) (in PDF) by Timothy R. Lyman and Edgardo Ramos, Day Berry & Howard Foundation. [Legal Dimensions of International Grantmaking](#), 2nd Quarter 2003.

2. “Friends of” Organizations

Another easy option is to make a grant to a U.S.-based 501(c)(3) “friends of” organization that has been set up to raise funds for a specific charitable program or activity outside the U.S., often a university, museum or hospital.

- ["How a Private Foundation Can Use "Friends Of" Organizations,"](#) by Victoria B. Bjorklund and Jennifer I. Goldberg, Simpson, Thatcher & Bartlett. [Legal Dimensions of International Grantmaking](#), Winter 1999.

3. Donor-Advised Funds

Still another relatively straightforward option is to establish a donor-advised fund with a U.S.-based 501(c)(3) public charity that can, for a fee, provide a range of legal and monitoring services to donors wishing to support organizations located outside the U.S. A relatively new but growing option for making international grants is to set up a donor-advised fund with a willing U.S. community foundation, some of which are linking local ethnic communities they serve with their countries of origin.

- [What is a donor-advised fund?](#)
- ["Donor-Advised Funds and International Grantmaking,"](#) (in PDF), Council on Foundations. [Legal Dimensions of International Grantmaking](#), 4th Quarter 2004.
- Locate your local community foundation on the Council on Foundations [Community Foundation Locator](#).

4. Direct Cross-Border Grants

Making cross-border grants directly to organizations located in other countries is an option that requires some additional steps due to special IRS rules for private foundations, but the process need not be difficult. Many private foundations choose this option because it enables them to have a one-to-one relationship with their overseas grantee partners.

The following section explains the two approaches embodied in the IRS rules — equivalency determination and expenditure responsibility—that private foundations may choose if they wish to make direct grants to non-U.S. grantees. Public charities often follow these rules as well, as a good practice, although they are not required to do so.

B. Frequently Asked Questions on Cross Border Grants

This section of the USIG website contains an overview of the U.S. tax laws and regulations affecting grants to non-U.S. organizations. Although direct cross-border grants require additional steps to ensure that grants serve a charitable purpose, the barriers are not insurmountable and the process is less complicated than many perceive.

The following information is a guide and does not constitute legal advice; for specific guidance, funders should obtain the assistance of expert legal counsel.

- I. [What are the legal requirements for private foundations wishing to make cross-border grants?](#)
 - a. [What is equivalency determination?](#)
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 - a. [What does Executive Order 13224 do?](#)
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 - c. [What are the Treasury Department's *Voluntary* Guidelines for Anti-Terrorist Financing?](#)
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I. What are the legal requirements for private foundations wishing to make cross-border grants?

Private foundations wishing to make a cross-border grant must ensure that:

1. The grant is clearly for a charitable purpose, and
2. The grant counts as a qualifying distribution for the purpose of meeting the foundation's annual distribution requirement.

The easiest way for a private foundation to satisfy both of these requirements is to choose a grantee that is recognized by the IRS as a public charity.

- Refer to *Beyond Our Borders*, page 23 for more information on how this may be done.

If a private foundation chooses to make a grant to a non-U.S. organization that is not recognized by the IRS as a public charity the foundation must follow one of the two options provided in the tax code:

1. Determine that the non-U.S. grantee is the “equivalent” of a U.S. public charity (“equivalency determination”), or;
2. Exercise “expenditure responsibility.”[\[1\]](#)

a. What is Equivalency Determination?

Equivalency determination is a process designed to assess whether a potential non-U.S. grantee organization is the equivalent of a U.S. public charity. It involves collecting certain information from the grantee about its origins, activities and finances through an affidavit (see link below for sample affidavit). On the basis of the information provided in the affidavit, the private foundation then makes a good faith determination concerning U.S. public charity equivalency and documents that decision. The determination may be made by the private foundation on its own or relying on the written opinion of counsel or the potential grantee's counsel. The process need not be complicated; many private foundations routinely conduct equivalency reviews of prospective grantees.

The following documents, translated into English, are necessary to make an equivalency determination:

1. Founding documents of the organization.
2. A description of the purposes of the organization as well as its past and present activities.
3. Dissolution provisions, either contained in the founding documents or applicable law (see link below to country notes).

4. Restrictions on private benefit, non-charitable activities, lobbying, and participation in political campaigns, either contained in the founding documents or applicable law (see link below to country notes)
5. Detailed financial records (excluding religious institutions or medical or educational organizations).

- Download USIG's [sample forms and affidavits](#) for equivalency determination.
- [IRS Revenue Procedure 92-94](#) (in PDF) describes the affidavit requirements.

Advantages of Equivalency Determination: This method does not require grantee reports at the end of each accounting period, a separate account dedicated to charitable purposes, or detailed reporting on Form 990-PF.

Disadvantages Equivalency Determination: This method requires substantial documentation in English plus financial reporting from previous years.

b. What is Expenditure Responsibility?

Expenditure responsibility is a method of making direct cross-border grants to a non-U.S. organization whereby the private foundation assumes full responsibility for ensuring that its grant is used for a charitable purpose. The process need not be unduly burdensome for either the grantmaker or grantee. Private foundations may apply expenditure responsibility grants to their payout requirement if they take the following steps:

1. Undertake a pre-grant inquiry with reasonable determination that the intended grantee is capable of fulfilling the charitable purposes of the grant.
2. Conclude a grant agreement that includes spending and reporting responsibilities and commits the grantee to spend the money only for the specified charitable purposes.
3. Require grantee to maintain grant funds in a separate account for charitable purposes.
4. Require one or more reports from the grantee detailing how the funds have been spent.
5. Report the grant on the foundation's form 990-PF.

Reporting for expenditure responsibility grants:

The U.S. Department of the Treasury requires that recipients of expenditure responsibility grants provide reports on how the funds were used. Existing IRS guidance does not provide clear answers on the following aspects of the reporting requirement: grants for capital equipment, grants for endowment, and reasonable efforts to secure reports from grantees. In the absence of guidance from the IRS, the Council on Foundations has made available its recommendations to international grantmakers in a

letter to the U.S. Department of the Treasury: Guidance on Expenditure Responsibility: [Council on Foundations Letter to Treasury](#) (in PDF).

- Refer to [Expenditure Responsibility Step by Step](#), Third Edition, by John A. Edie.
- Download USIG's [sample forms and affidavits](#) for expenditure responsibility.

Advantages of Expenditure Responsibility

Because equivalency determination can occasionally be a lengthy and ultimately unsuccessful process (i.e., the prospective grantee turns out *not* to be the equivalent of a U.S. public charity), grantmakers often choose to exercise expenditure responsibility instead.

Disadvantages of Expenditure Responsibility

Grant reports are required from the grantee until all funds have been expended which may require monitoring the grant over a period of several years.

- Refer to [Expenditure Responsibility Step by Step](#), Third Edition, by John A. Edie.
- Download USIG's [sample forms and affidavits](#) for expenditure responsibility.

c. How do I decide whether to use Equivalency Determination or Expenditure Responsibility?

In 2001, the IRS made clear in a letter to the Council on Foundations that a private foundation wishing to make a grant to a foreign organization could choose between expenditure responsibility and equivalency determination, and that there was no obligation to rule out equivalency before turning to expenditure responsibility.

- To read the IRS letter, visit:
<http://www.cof.org/Content/General/Display.cfm?contentID=139>.

The *Legal Dimensions of International Grantmaking* article, “Equivalency or Expenditure Responsibility? A Guide in Plain English,” Betsy Buchalter Adler and Stephanie L. Petit of Silk, Adler & Colvin, provides a useful matrix to help determine which technique to use:[\[3\]](#)

Table 1: When There Is No Choice

Situation	Required Action
Grantee is a non-charitable enterprise that will use the grant for charitable purposes	Expenditure responsibility is the only way to make this grant
Grantee cannot supply the information required for an equivalency affidavit	Grantor must use expenditure responsibility because it does not have enough information for an equivalency determination
Grantor evaluates the affidavit and concludes that despite everyone’s best efforts, the grantee is not the equivalent of a public charity	Expenditure responsibility is the only way to make the grant

Table 2: When the Grantor Can Choose

Circumstances that favor Equivalency	Circumstances that favor Expenditure Responsibility
Grantor expects long-term relationship	Grantor plans a one-time grant
Grantee can supply governing documents and no financial data is needed (i.e., grantee is a school, hospital or church)	Grantee may have considerable difficulty in supplying historical financial data or obtaining a certified copy of its governing documents
Grantor wants flexible reporting procedures	Grantor wants strict reporting provisions
Grantor wants to make a general support grant	
Grantee plans to re-grant funds received to accomplish its exempt purposes	

Footnotes

[1] Rules for the Road p. 24.

[2] Beyond our Borders, p. 25.

[3] Betsy Buchalter Adler and Stephanie L. Petit of Silk, Adler & Colvin. Legal Dimensions of International Grantmaking “Equivalency or Expenditure Responsibility? A Guide in Plain English”, 2nd Quarter 2005.

II. What are the legal requirements for public charities wishing to make cross-border grants?

International grantmaking requirements for public charities are significantly less onerous than those for private foundations, yet public charities still have a fiduciary duty to ensure that grant funds are used exclusively for charitable purposes. Although they are not required to do so, most public charities follow the grantmaking rules for private foundations.

The suggested approach for public charities by the Council on Foundations is as follows:

- Obtain English copies of organizational documents and a description of the activities and programs of the grantee.
- Enter into a specific written agreement, documenting the grantee's commitments and the use of funds to charitable purposes.
- Obtain a yearly accounting of the funds for each year until the funds are expended.[\[1\]](#)

Footnotes

[1] Beyond our Borders. p. 20.

III. What anti-terrorism actions and policies of the U.S. Government relate to international grantmaking?

The U.S. government took a number of steps to ensure that charitable funds were not diverted to terrorists and their organizations in the United States and around the world following the terrorist attacks of September 11, 2001. These included Executive Order 13224 and the USA Patriot Act, both issued shortly after 9/11, as well as the Treasury Department's "Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities," issued in November 2002. This section provides a brief description of U.S. government anti-terrorism initiatives:

- Executive Order 13224
 - U.S.A. Patriot Act
 - U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities
- For a comprehensive summary of anti-terrorism measures and how they affect international grantmakers, consult the [Handbook on Counter-Terrorism Measures](#) published by Independent Sector, InterAction, the Council on Foundations and the Day, Berry & Howard Foundation.

a. What does Executive Order 13224 do?

Executive Order 13224 was signed by President George W. Bush on September 24, 2001, to cut off resources to terrorists and terrorist organizations through asset blocking. The Executive Order prohibits transactions with those entities deemed by the Executive Branch to be associated with terrorism and freezes all assets controlled by or in the possession of these entities and those who support them. The EO prohibits the provision of any financial or material support to any entity specifically listed in an Annex or determined by the Secretaries of State or Treasury as well as any *associated entities*. Several U.S. government agencies have created lists of known or suspected terrorists, as has the [United Nations](#) and the [European Union](#). The most comprehensive of the U.S. lists is the Treasury Department's [Specially Designated Nationals](#) (SDN) list. Both the Treasury Department and Executive Order lists are physically included in the [Executive Order](#) (in PDF- 94 pages). The open-endedness of the prohibitions contained in the EO is worrisome for grantmakers. No distinction is made in the EO between domestic and international terrorism.

b . How does the U.S.A. Patriot Act relate to grantmaking?

The U.S.A. Patriot Act was enacted in October 2001. Among its many provisions, the Act increased existing criminal penalties for knowingly or intentionally providing material support or resources for terrorism. For grantmakers, these criminal statutes open the possibility that they could be found -- despite their best intentions -- to have knowingly or intentionally provided material support or resources for terrorism. Another concern for grantmakers is potential civil liability should their grants end up in the wrong hands. Nonprofit grantmaking organizations are not immune to potential legal liability because of the inherent charitable or humanitarian nature of their missions.[\[1\]](#)

c. What are the Treasury Department's *Voluntary Anti-Terrorist Financing Guidelines*?

The U.S. Treasury Department issued the "[Anti-terrorist Financing Guidelines: Voluntary Best-Practices for U.S.-based Charities](#)" in November 2002 to assist nonprofits and grantmakers in complying with the Executive Order and the Patriot Act. The Guidelines describe so-called "best practices" for the manner in which internationally active foundations and nonprofits are organized and run, and provide an outline of a proposed anti-terrorist financing compliance program for such organizations. It is important to note that the Guidelines were developed solely by the Treasury Department and do not represent a universal view.

Analyses of the *Voluntary Guidelines*:

- [COF Comments on U.S. Department of Treasury Anti-Terrorist Financing Guidelines](#) (in PDF): The Council on Foundations responded to the Treasury Department's *Voluntary Anti-Terrorist Financing Guidelines* in June 2003, expressing Council members' concerns about the Treasury guidelines and outlining an alternative approach to ensure that funds do not reach terrorists.
 - Two memos, one prepared by the law firm of [Patterson, Belknap, Webb & Tyler LLP](#) (in PDF), and the other prepared by [Silk, Adler & Colvin](#) (in MS Word), also analyze the *Voluntary Best Practices*.
- A Council on Foundations-led working group, of more than 40 U.S. charitable sector organizations including Independent Sector, InterAction and Grantmakers Without Borders, developed the [Principles of International Charity](#), as an alternative to the U.S. Treasury Department's *Voluntary Guidelines*, after the group met with Treasury officials in 2004. This document was presented to the Treasury Department in March 2005.

d. How should grantmakers respond to these various anti-terrorism measures?

Despite the attention paid in the media to a handful of charities alleged to have helped finance and aid terrorist activities, the Executive Order and the U.S.A. Patriot Act are not targeted directly at grantmaking organizations. As a result, they do not spell out specific procedures that grantmakers should undertake in order to comply with the law.

In the absence of such guidance, grantmakers will have to rely a good deal on common sense. Some useful ideas to consider include:

- Know as much as you can about your grantees and their associates.
- Know what you can about donors who play a role in identifying grantees.
- Involve your donors and grantees in the compliance process.
- Educate board and staff about internal anti-terrorism measures.
- Consider developing an anti-terrorism policy statement.
- Discuss concerns with legal counsel.
- Document steps taken to comply with the Executive Order and the Patriot Act.
- Keep informed about anti-terrorism developments.^[2]
- Consult the [*Principles of International Charity*](#) .

International grantmakers are responding to the federal anti-terrorism policies in many ways. The Council's [International Programs](#) staff conducted an informal survey of a representative sample of approximately thirty-five of the Council's international grantmaking members to determine what, if any, changes they had made or were planning to make in their procedures because of the government's anti-terrorism actions. Read the results of this survey in: "[Federal Anti-Terrorism Measures: How Foundations and Corporate Grantmakers are Responding.](#)"

Visit "[Legal Publications](#)" for a list of resources made available by the Council on Foundations to provide general guidance to grantmakers responding to federal anti-terrorism initiatives.

Footnotes

[1] Independent Sector, InterAction, the Council on Foundations and the Day, Berry & Howard Foundation. [Handbook on Counter-Terrorism Measures: What U.S. Nonprofits Need to Know](#). (2003).

[2] Timothy R. Lyman, Michael G. Considine and Jennifer L. Sachs, Day Berry & Howard Foundation. *Legal Dimensions of International Grantmaking* "[International Grantmaking after September 11: Dealing with Executive Order 13224 and the USA Patriot Act.](#)" (Council on Foundations: Fall 2002)

IV. Where can I find additional information about international grantmaking?

- Visit the [Publications](#) section of the USIG website to browse titles from the Council on Foundations and other organizations. Council publications that are for sale may be purchased from the Council's website. All other's marked "FREE" are available as downloads.
- Visit the section on [Links](#), containing links to affinity groups, intermediary/partner organizations, education and support organizations, papers, reports, news articles, networking groups and more.

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