

More

Equivalency – what it is,
why you need it, and
how to arrange it:

everything you need to
know about this key way
to receive grants directly
from **US Foundations.**

Context

Over \$75 billion (€69 billion; £61 billion) is given away each year in grants by US private and corporate foundations. While many countries restrict the recipients of grant money to their own citizens and charities, the US takes a different view. Almost any charity in the world can receive grants from US foundations – if the recipient can establish that it is *equivalent* to a US charity. This article explains in brief what is required to establish equivalency¹.

An ‘equivalency determination’ has benefits for the recipient and the donor. For recipients, there is no need to incorporate a new 501(c)(3), which is expensive, time-consuming, and a permanent administrative burden. There are no administrative fees assessed against the grant, so 100% of the face value is available for the project. And grants through equivalency are written directly to your charity, not to a third-party ‘intermediary’, reinforcing your brand with the donor.

For foundations, equivalency grants are not taxed to the foundation and the grants count toward the foundation’s annual minimum disbursement of 5% of its total assets. Practically speaking, without those two benefits, almost no foundation will make a grant to a non-US charity. In addition, it is easy for foundations to make highly-restricted grants when the recipient is deemed equivalent.

¹ Other methods of receiving US grants are through (1) a non-US charity’s ‘American Friends’ group, (2) an ‘intermediary’ 501(c)(3) like CAF America, King Baudouin Foundation US, or National Philanthropic Trust, (3) an ‘expenditure responsibility grant’, or (4) a cooperating American charity that sponsors a joint project with a non-US charity.

Determining Equivalency

The Rules

Equivalency determinations are set out in the prosaically named ‘Revenue Procedure 2017-53’. It came into effect in September 2017. The rules require a US-licensed advisor – usually an US attorney or accountant – to deliver a formal opinion, called ‘preferred written advice’. It must address specified aspects of the recipient’s structure, operations, finance, and personnel. **The advice must conclude that the recipient would be classified as a ‘publicly-supported charity’, had it been established in the US.** There is one critical limitation in the rules: equivalency only applies to grants from private and corporate foundations. It does not work for gifts made by individuals out of their own, personal funds.

Formation and Operation

The equivalency document is in three parts: a professional opinion, an affidavit from the recipient, and two financial disclosure forms.

1. Opinion

The major points in the opinion are:

- Activities – description of past, current, and anticipated activities.
- Governing instruments – the ‘organic document’ that establishes the charity cannot allow non-charitable purposes, private shareholders, or political intervention.
- Charitable purposes – the organisation’s purposes (objects) must be considered ‘charitable’ under US law.
- Distribution of assets – if the charity is dissolved (wound up), there must be explicit or customary provisions for the transfer of remaining assets into a similar charitable purpose.
- Description of affiliated organisations, which can include commercial/‘trading’ activity.
- No sanctions – the charity itself, its board of directors/trustees, nor its senior staff can appear on any US sanctions list.

2. Affidavit

The recipient’s affidavit is a sworn statement about structures and activities. The format is well-established.

3. Financial Forms

The two financial forms demonstrate how the recipient has passed the arcane ‘public support test’. This is a regulatory measurement that defies clear explanation! The test assigns all income during the previous five financial years to categories in the ‘Public Support Schedule’ and lists every major donor on the ‘Major Donor Support Form’.

The Public Support Test

From the two financial forms, a calculation produces a ‘public support percentage’ which measures the breadth of support among donors. A percentage of 33.3% or more is ideal. But the percentage can sink as low as 10%, if the charity can present a convincing argument – described as a ‘facts and circumstances test’ – drawn from US Treasury regulations. If public support is in the 10-33% tier, you will want good professional guidance on how to make a compelling argument for public support. Because of the public support calculation, charities supported principally by government/state funds usually find it easy to reach the 33.3% threshold.

There are also specialised rules for schools, in regard to potentially discriminatory admission policies, and for hospitals.

Duration

An equivalency opinion is valid during the two years following the date of the most recent financial statement used in the financial forms. If, for example, an opinion was issued in September 2020 based on five financial years concluding on 31 March 2020, then the opinion would be valid until 31 March 2022, as long as there was no material change in purposes, programs, or finance.

Renewal

The first opinions under the 2017 law are coming up for renewal, having been effective for two years. There is no specified renewal procedure. But at a minimum, for a new opinion – assuming no change in structure or operations – the recipient will need to recalculate the public support test, using the most recent five years of income.

Acceptance of the Opinion

The practitioner who prepares the advice is responsible for rendering a competent opinion. But final acceptance of that opinion is the prerogative of the grantmaking foundation. As a practical matter, the grantmaker would not ask for the determination unless there was genuine interest in making a grant.

When to obtain an Opinion

In most cases, an equivalency determination can be produced in two to four weeks. As a result, it is usually best to wait to commission the opinion until there is certainty that a grant proposal will be submitted. In a best case, a grantmaker will indicate that it is willing to make the grant on the basis of receiving an acceptable opinion.

Costs

As with any legal or accountancy service, the cost of preparing an equivalency opinion varies widely. It is offered both by private practitioners and non-profit organisations. Prices are typically in the range of \$2,500 to \$3,750 where there are no unusual or complex circumstances.

We can help

[Ken Hoffman](#), a US lawyer and fundraising consultant, is a Partner in More Partnership. His specialism is advising non-US charitable organisations and their American Friends groups, on governance, compliance, and fundraising strategies. Ken can be contacted at khoffman@morepartnership.com.

Disclaimer

This paper provides legal information for public educational purposes. It is not legal advice, for which you must seek qualified advisors with experience not only with US non-profit organisations, but also with the more specialised world of ‘Friends Groups’ and international philanthropy. A legal advisor will consider all of your particular circumstances and help fashion an appropriate structure to meet your organisation’s needs.

Further Reading

You may wish to take a look at four related blogs by the same author:

- ‘*American Friends Group: do you need one?*’, available at <https://www.morepartnership.com/latest-op-AmerFriends190206.html>
- ‘*It’s that time of year again: your calendar guide to US fundraising*’, available at <https://www.morepartnership.com/latest-op-USFRCalendar180117.html>
- ‘*Raising funds in America without your own 501(c)(3): alternatives to ‘American Friends’ groups*’, available at <https://www.morepartnership.com/latest-op-raising-US-funds-without-501c3-161219.html>
- ‘*More Mythbusting: US Fundraising and “American Friends” Groups, the top ten myths*’, available at <https://www.morepartnership.com/latest-op-USfriendsgroups150427.html>

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