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Giving Globally: Best Practices in International and Other Non-Traditional Giving

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Private Foundations

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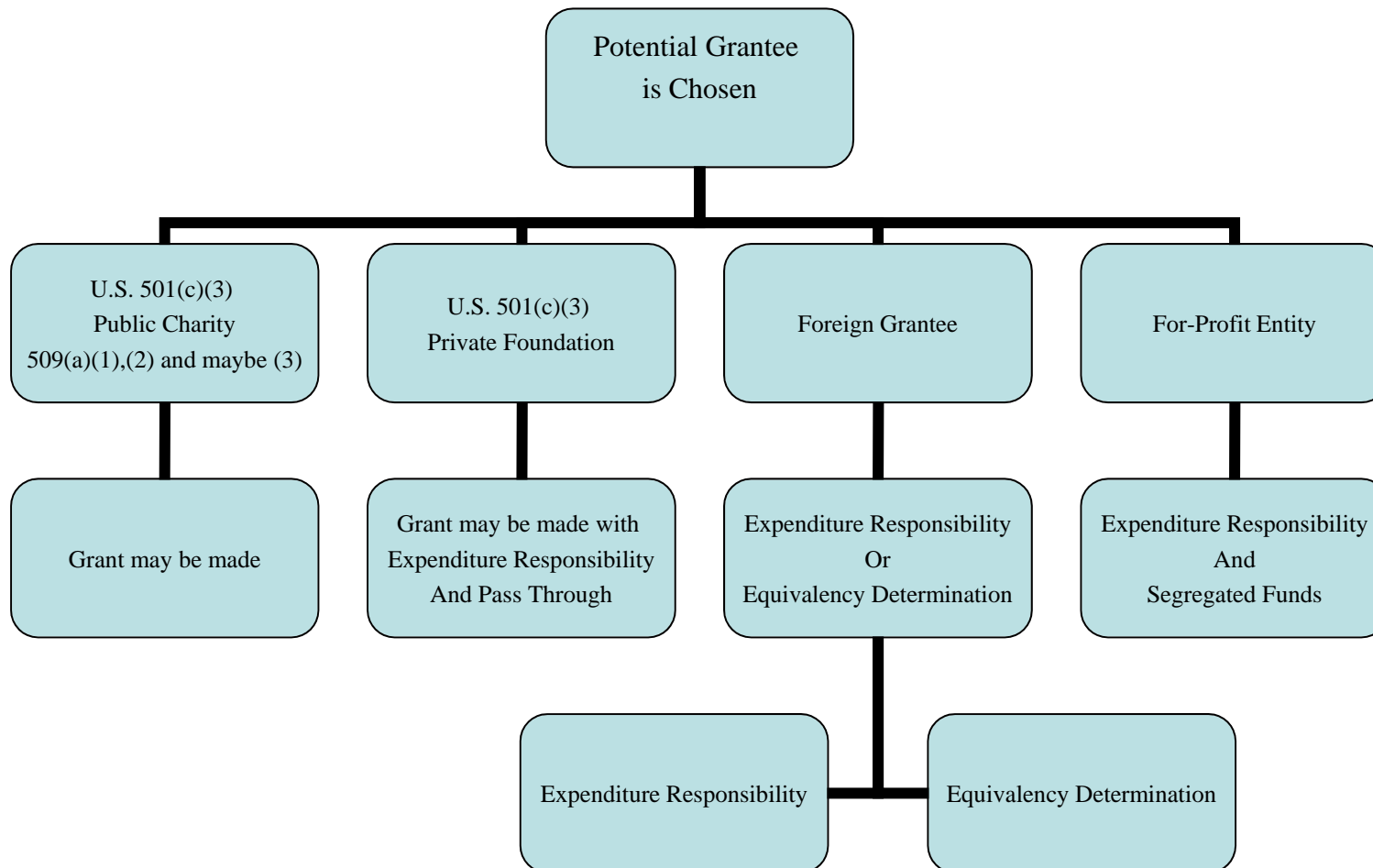
- All funds must be used for 501(c)(3) purposes:
 - Charitable
 - Educational
 - Literary
 - Scientific
 - Religious
 - Prevention of cruelty to children or animals
 - Amateur athletics

Taxable Expenditure

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- Penalties
 - Imposed on the foundation
 - Imposed on the foundation manager
 - Example: Mannheimer Charitable Trust

Grantmaking Work Chart



U.S. Grantmaking

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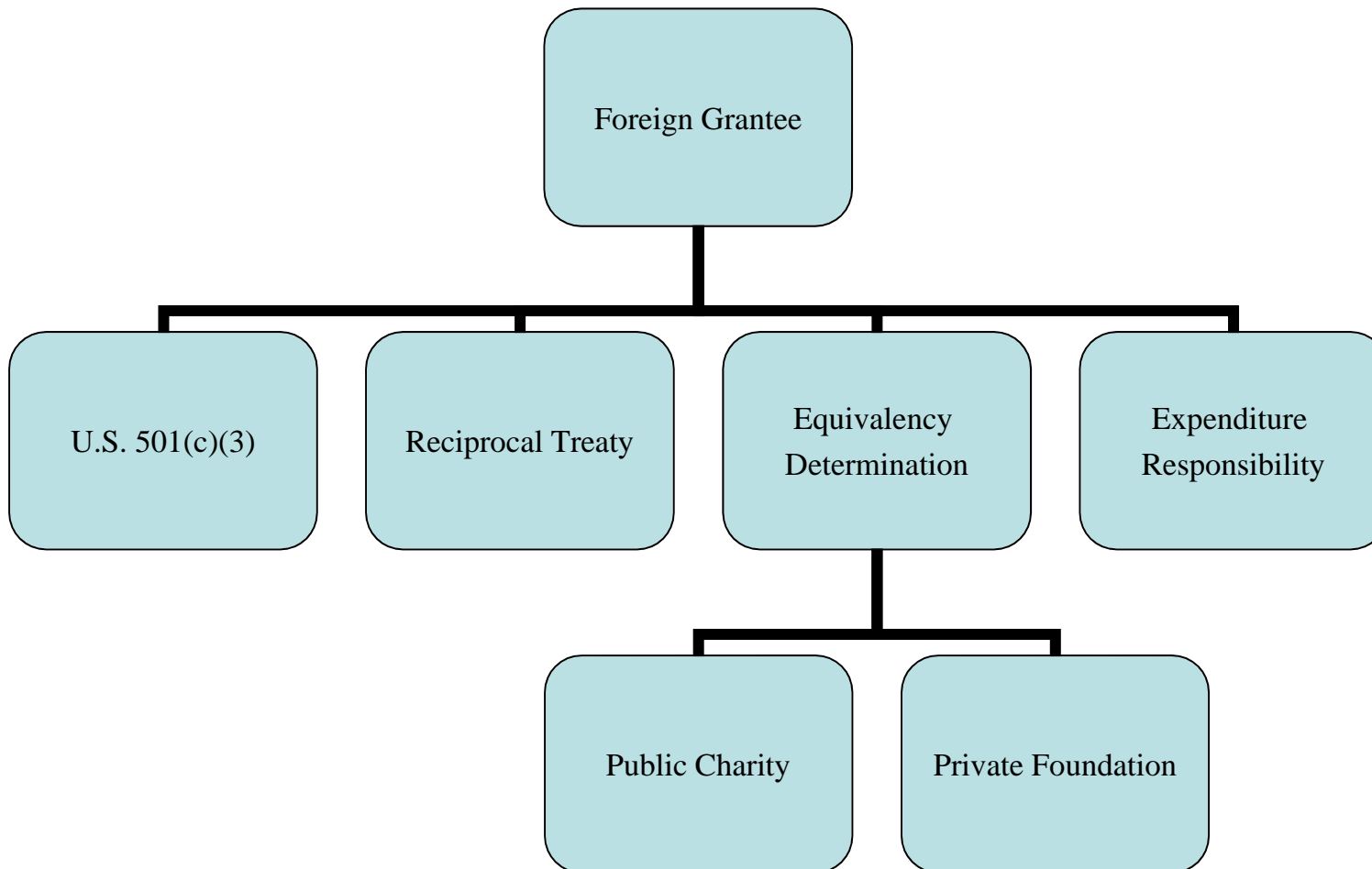
- Check status of grantee on www.irs.gov
- 509(a)(1) public charities -- derive publicly supported status either from:
 - Receipt of contributions from a large number of public sources (33 and 1/3 percent test); or
 - Nature of organization – schools, churches, hospitals, governmental units, etc.

U.S. Grantmaking

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- 509(a)(2) public charities – derive publicly supported status from revenue earned through service provided to the public
- 509(a)(3) supporting organizations – derive publicly supported status from the organization(s) that they support
- Restrictions on lobbying and/or political activities

Grantmaking Work Chart



Foreign Grantmaking

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If the foreign organization has:

- obtained a U.S. 501(c)(3) tax-exemption and is classified as a public charity; or
- can be determined to be the equivalent of a U.S. public charity,

then the grant can be made as if it were made to a U.S. public charity.

If the foreign organization:

- can be determined to be the equivalent of a U.S. private foundation,

then the rules governing grants from one private foundation to another apply.

Foreign Grantmaking

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If no equivalency, then the grant must be made as if it were being made to a non-charitable organization in the U.S.:

- restricted to a specific charitable purpose; and
- grant funds maintained in separate segregated account

Foreign Grantees: Steps in the Process

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- Step One: Has the foreign organization obtained a U.S. 501(c)(3) tax-exemption? If yes, then grant can be made accordingly.
- Step Two: Is there an applicable tax treaty in place providing for reciprocity? If yes, then grant can be made accordingly.
 - Canada
 - Mexico

Foreign Grantees

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- Step Three: Expenditure Responsibility or Equivalency Determination?
- Considerations:
 - Timing of grant:
 - Ease of obtaining information
 - Likelihood of equivalency
 - Purposes of grant
- Often there will be no choice other than ER

EXPENDITURE RESPONSIBILITY

Expenditure Responsibility

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Private Foundations must exercise Expenditure Responsibility (ER) for:

Grants to a foreign grantee:

- (i) with no Equivalency Determination; or
- (ii) that is equivalent to a U.S. private foundation.

Expenditure Responsibility (ER) Steps

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- Step One: Pre-Grant Inquiry
- Step Two: Written Agreement
- Step Three: Separate Segregated Fund (unless grantee has been determined to be the equivalent of a U.S. private foundation)
- Step Four: Reports to the Private Foundation
- Step Five: IRS Reporting

Step One: Pre-Grant Inquiry

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This step usually is undertaken by the Grants Manager directly.

- History with prior grants and reputation with other funders may be considered
- OFAC Sanctions/Anti-Terrorism Voluntary Guidelines: Use of Applicable List-checking Software
 - False or Questionable Positives

Step Two: Written Agreement

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Agreement must set out:

- Charitable activity to be funded
- Grantee's obligations
- Restrictions on use of funds

Step Three: Segregated Funds

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- Unless the grantee has been determined to be the equivalent of a U.S. private foundation, grantee must agree to maintain grant funds in a separate, segregated account dedicated to the charitable project or activity supported by the grant.

Step Four: Reports to Foundation

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Grantee must provide the grantor with reports at the end of grantee's fiscal year in which grant was made and at the end of each fiscal year until grant funds are fully spent. The final report must relate to all expenditures made from grant funds.

Step Five: Reporting to IRS

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- Expenditure responsibility grants must be disclosed on the IRS Form 990-PF for as long as grantee reports are required. IRS requires:
 - Name and address of grantee
 - Date and amount of grant
 - Purpose of grant
 - Amounts expended by grantee
 - Whether any funds have been diverted
 - Dates of reports received
 - Date and results of any verification of reports if required

Pros and Cons of ER

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PROS	CONS
Quicker than Equivalency Determination (ED)	Ongoing reporting obligations
Only option when ED impossible or impractical	Project must be identified (Possible use of commitment letter for future project to be determined)
ED finding of private foundation means ER must be exercised anyway (plus “pass-through”)	No endowment grants

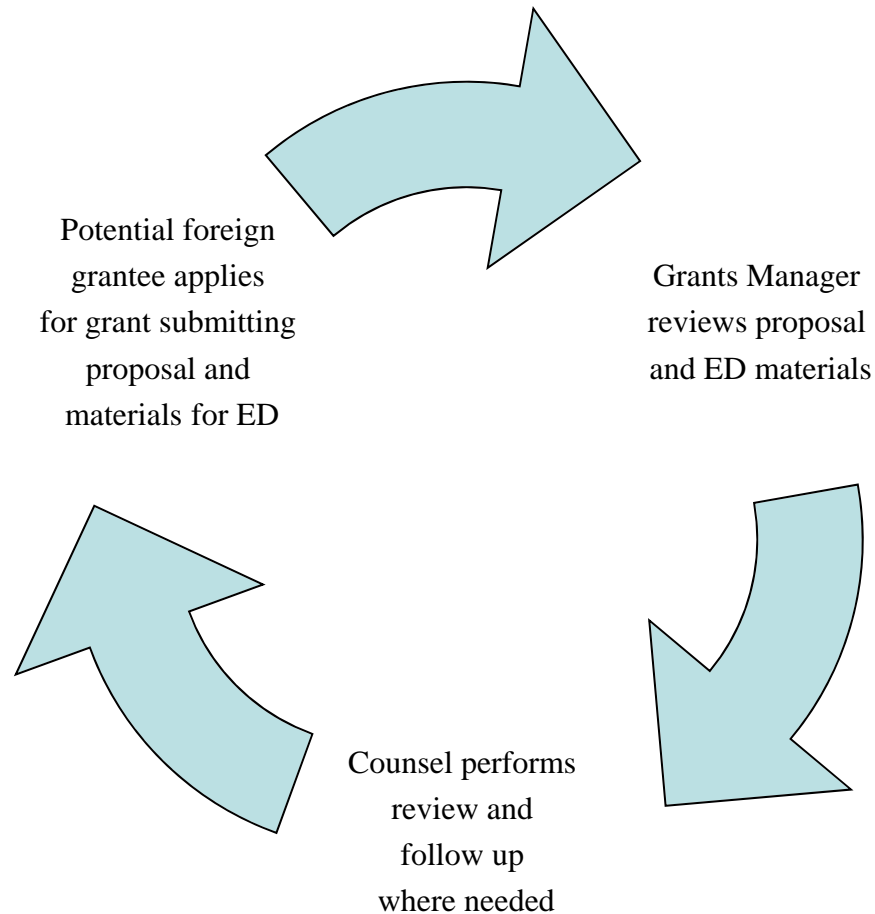
Questions About ER

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- How long must reporting last for capital grants?
- What constitutes “reasonable efforts” to obtain reports from grantees?
- What happens when a grantor learns of a diversion of funds by a grantee?

EQUIVALENCY DETERMINATION

Equivalency Determination (ED)



Equivalency Determination (ED)

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The only way to avoid ER is through ED:

Private Foundation makes a “reasonable judgment” that the grantee is an organization described in Section 501(c)(3). To treat grantee as a public charity, foundation must make a “good faith determination” that the grantee is the equivalent of a U.S. public charity.

Equivalency Determination (ED)

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- Option 1: foundation relies on a written opinion of counsel that the grantee is the equivalent of a public charity;

OR

- Option 2: foundation makes a determination of equivalency based on a currently qualified affidavit of grantee.

Equivalency Determination (ED)

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- Where foundation will make its own ED, it should request from potential grantee:
 - Organizational documents in English
 - Completed Affidavit
 - Information on sources of support where applicable

Revenue Procedure 92-94 Affidavit

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- Affidavit must contain:
 - Description of grantee’s purposes and past and present activities;
 - Statement regarding restrictions on private benefit;
 - Statement that funds will not be used for lobbying and political activity;
 - Dissolution procedure;
 - Explanation of any formal relationship with any other organization; and
 - Evidence of public charity status where applicable
- Copies of governing documents must be attached

Common Issues with ED

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- Dissolution provision in governing documents
- Legal restrictions on lobbying or political activity
- Racial non-discrimination policies of schools
- Standards applicable to hospitals

Equivalent to a Private Foundation

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- Grant will require:
 - expenditure responsibility
 - “pass through” (unless organization is equivalent of a private operating foundation)
- Grant will not require:
 - segregated funds
 - restriction as to specific purpose (can be general purpose)

Pass-Through Requirements

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The Grantee must spend, prior to the close of the fiscal year following the fiscal year in which the grant is made, an amount not less than the sum of:

- (a) the total amount of the grant and any other amounts received from all other U.S. private foundations during the fiscal year in which the grant was made; plus

- (b) five percent of the fair market value of the Grantee's assets during the fiscal year in which the grant was made that are not used or held for use directly in carrying out the Grantee's charitable purposes.

Equivalent to a Public Charity

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- Avoids ER, pass-through, segregated funds, specific purpose grant
- Must be the equivalent of a 509(a)(1), (2) or (3) public charity
- Public Support Test

ED for Multi-Year Grants

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- Status not Dependent on Financial Support
 - Ask grantee to amend all facts that have changed or attest that no facts have changed
- Status Dependent on Financial Support
 - Ask grantee for updated financial information
- Tech Soup Global

Friends of Organizations

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- Organizations established in the U.S. to enable individuals to make tax deductible contributions
- Beware common problems and misunderstandings
- Tipping: a private foundation could “tip” a Friends of grantee out of public support status

Grants to Supporting Organizations

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- Type I or Type II
- Type III functionally integrated
- Type III non-functionally integrated
 - Grantor must exercise ER and grants are not qualifying distributions
- Disqualified persons
 - If there is control, grantor must exercise ER and grants are not qualifying distributions

Other Types of Grantees

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- Private Operating Foundations: foundations that make direct exempt function expenditures, conduct charitable activities
- Organizations that lobby: foundations may make grants to public charities that lobby as long as such grants are not earmarked for lobbying

Closing Thoughts

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Almost any grant is possible with proper structuring!

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