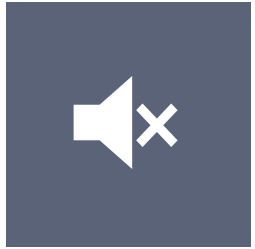


Equivalency Determination – The Basics



Mute your lines



Use the chat box for
questions and responses



Video off during
presentation



Rename yourself:
Name, Pronouns

Ground Rules

Today's Speaker



Michael Demian
Legal Counsel
NGOsource | TechSoup

NGO*source*

A PROJECT OF THE COUNCIL ON FOUNDATIONS AND TECHSOUP

EQUIVALENCY DETERMINATION SERVICE
THAT HELPS U.S. GRANTMAKERS STREAMLINE
THEIR INTERNATIONAL GRANTMAKING
PROCESS

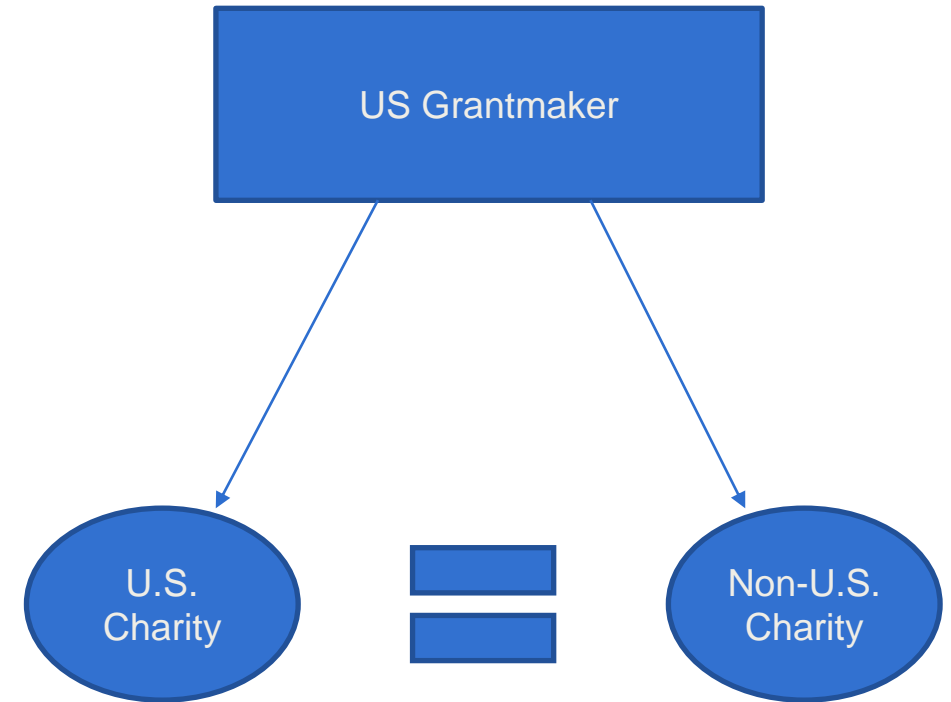


Agenda

- 1) Equivalency Determination - What it is, and Why it is used, etc.
- 2) ED Requirements – The 3-Prong Test
- 3) ED Repository Model
- 4) Challenges & How to Address Them
- 5) Example
- 6) Questions

What is equivalency determination (ED)?

- Evaluation under US tax law of whether a non-U.S. organization is equivalent to a U.S. public charity in compliance with IRS/Treasury regulations.
- A foundation can treat a foreign organization just as it would a public charity in the U.S.
- Who? Why? How?



Grantmaking in the U.S.

- Private foundations must make grant payments for charitable purposes
- Private foundation payments made for non-charitable purposes are "taxable expenditures" that are subject to an excise tax (penalty tax)
- Assurances that funds will be spent charitably when grant awarded to a 501(c)(3) public charity
- A foundation can rely on an ED for up to 2 years

ED Requirements: 3-Prong Test

The non-U.S. organization is **ORGANIZED** like a U.S. public charity

- Exempt purposes (“charitable”)
- Dissolution
- No private benefit

The non-U.S. organization is **OPERATED** like a U.S. public charity

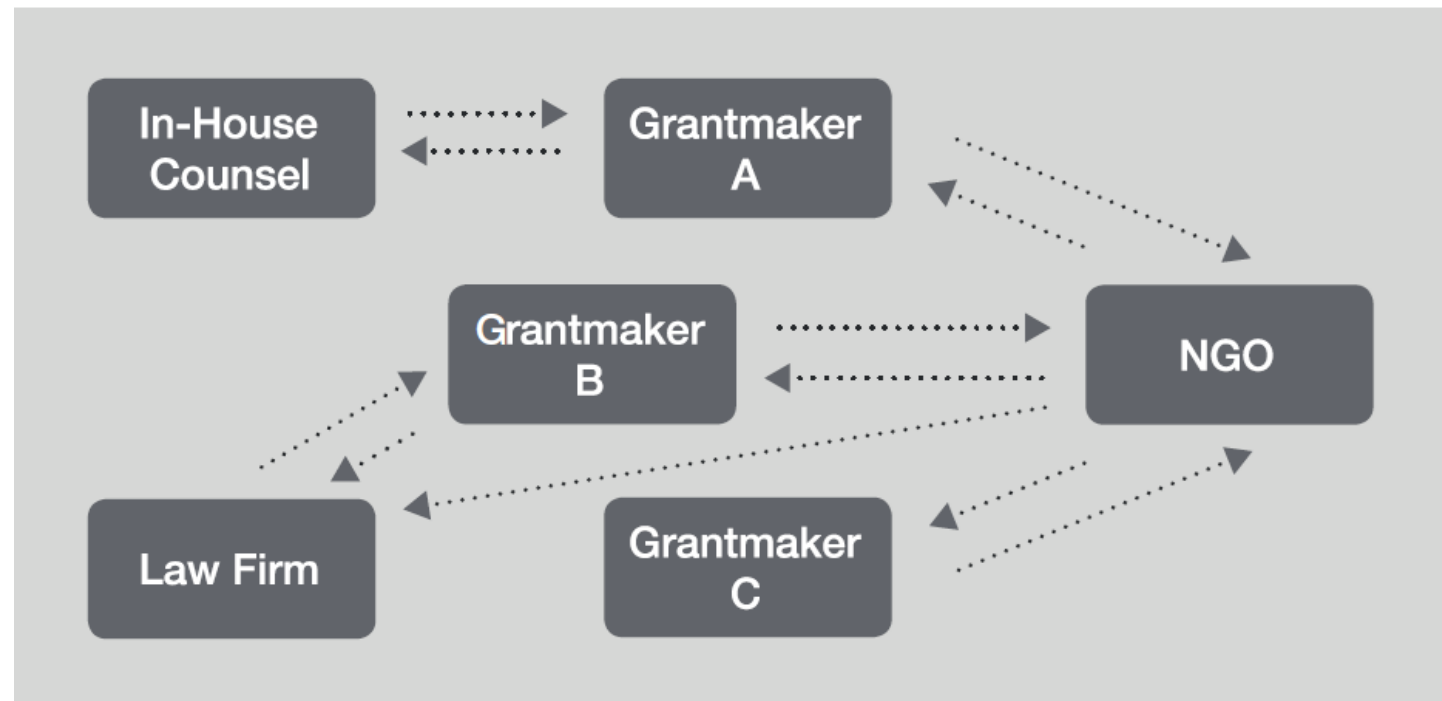
- Activities
- No political campaigning
- No substantial lobbying

The non-U.S. organization meets certain minimum **PUBLIC SUPPORT** requirements

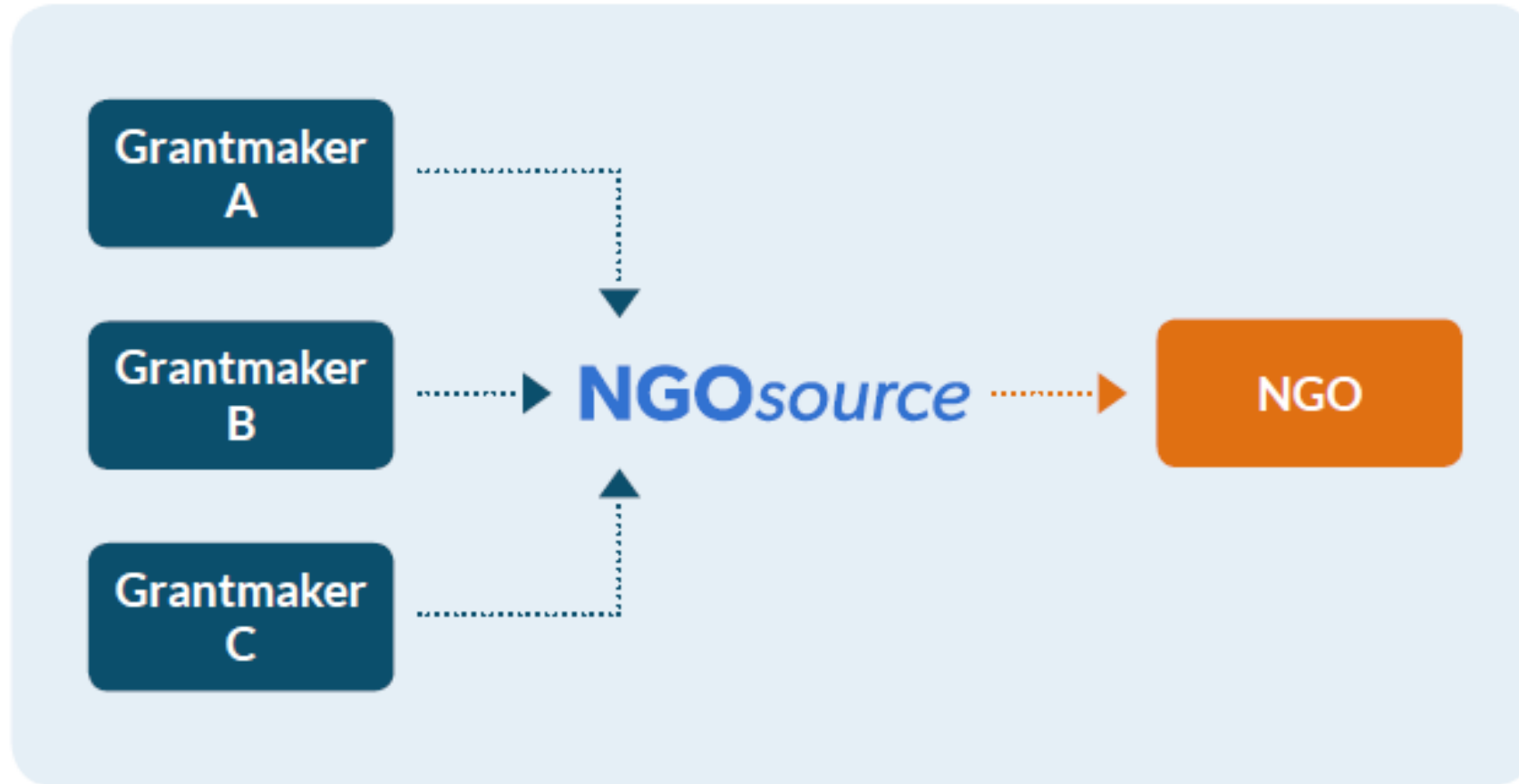
- At least 33 ⅓ % of its total support comes from the public; or (10% + cont. program) + other facts and circumstances.
- Or otherwise qualifies as equivalent to a school, church, or hospital. *Different rules apply to government entities*

EDs without Repository

- Inefficient
- Duplicative
- Inconsistent
- Complex
- Expensive



EDs with Repository



The Alternative...

Expenditure Responsibility (ER)

- The process where a foundation monitors funds to ensure that they are used for charitable purposes
- Requires pre-grant inquiry, separate accounting of funds, and regular reports
- Grantee must provide regular reports to the foundation on its activities and finances until the grant funds have been spent in full

Common ED Challenges

- Dissolution
- Lobbying
- Non-Discrimination Provisions

Dissolution

What happens to an organization's assets when it dissolves?

- 1) Another CHARITABLE organization; OR
- 2) Another organization for CHARITABLE PURPOSES; OR
- 3) Government for public purposes

Common Issues: “non-profit”; “similar” purposes

Lobbying

What is allowed and not allowed?

NOT Allowed:

- Communicate with a legislator by referring to and reflecting a view on specific legislation;
- Communicate with the public by referring to and reflecting a view on specific legislation and urging them to contact their legislators.

Allowed:

Various forms of Advocacy, such as:

- Research
- Examinations and discussions
- Lobbying “administrative bodies”
- Engaging in litigation
- Providing technical advice or assistance to a legislative body

Non-Discrimination

What is required?

The goal is to ensure no discrimination on basis of race, color, national or ethnic origin

- 1) An organization must adopt a non-discrimination policy
- 2) An organization must also operate in a racially non-discriminatory manner as to students
- 3) Based on facts and circumstances in each case: considerations = history, culture, etc.

Example

Thurston and Lovey Howell Foundation



The Save Gilligan Fund (Fiji)



The Save Gilligan Fund - ED Profile

- Objective is to provide free vaccinations and housing to shipwreck survivors;
- Operates in various communities in the South Pacific;
- Upon dissolution, assets must go to another org with similar purposes;
- No assets, income, profits, or dividends to members;
- 20% publicly supported.

The Save Gilligan Fund - Non-Compliant

- Objective is to provide free vaccinations and housing to shipwreck survivors;
- Operates in various communities in the South Pacific;
- Upon dissolution, assets must go to another org with similar purposes;
- No assets, income, profits, or dividends to members ;
- 20% publicly supported.

Save Gilligan Fund - Dissolution

- Objective is to provide free vaccinations and housing to shipwreck survivors;
- Operates in various vulnerable communities in the South Pacific;
- Assets and income can only be used to fulfill its objectives;
- Upon dissolution, assets must go to another org with similar purposes;
- No assets, income, profits, or dividends to members;
- 20% publicly supported.

Save Gilligan Fund - Dissolution

- Objective is to provide free vaccinations and housing to shipwreck survivors;
- Operates in various communities in the South Pacific;
- Upon dissolution, assets must go to another org for the same purposes, or for charitable purposes;
- No assets, income, profits, or dividends to members;
- 20% publicly supported.

Save Gilligan Fund - Public Support

- 20% publicly supported.
- *Does SGF maintain a continuous program of raising funds from the public?*
 - If **NO** >>> Non-Compliant.
 - If **YES** >>> Facts and Circumstances Test ...Passed?

Save Gilligan Fund - ED Analysis

- Objective is to provide free vaccinations and housing to shipwreck survivors;
- Operates in various communities in the South Pacific;
- Upon dissolution, assets must go to another org for same or charitable purposes;
- No assets, income, profits, or dividends to members;
- 20% publicly supported +
 - *Maintains continuous programs to raise funds from public +*
 - *Passes Facts and Circumstances Test*

ED Success!!



Questions?

Contact Info: Michael Demian, Legal Counsel

Email: mdemian@techsoup.org

Thank you!

An illustration of two children, a boy and a girl, standing on a dark, rolling hill under a deep blue night sky filled with white stars. The boy is on the right, reaching up towards a bright comet streaking across the sky. The girl is on the left, holding his hand. A large, bright orange comet streaks across the upper right portion of the sky. The foreground features a large, smooth, orange-colored hill or mound.

NGOsource FAQs: <https://www.ngosource.org/faq>

NGOsource's LegalEASE blog: <https://www.ngosource.org/legalease>