NGOsource

Guide to Equivalency Determination
Contents

05 The purpose

06 What Is NGOsource?

08 What Is Equivalency Determination (ED));

10 A High Level Overview of ED Requirements

12 Public Support

16 Benefits of Equivalency Determination (ED) Compared to Expenditure Responsibility (ER)

18 Benefits of NGOsource

24 What to Expect When Working with NGOsource

34 Get Started
The purpose of this e-book is to provide grantmakers and NGOs with a guide to the equivalency determination (ED) process and to NGOsource’s unique approach. This guide will answer the following questions:

- What is NGOsource?
- What is equivalency determination (ED)?
- What are the requirements for a nongovernmental organization (an NGO) to be considered equivalent to a U.S. public charity?
- How much public support is required for an NGO to qualify as a publicly supported organization, and how do we calculate public support?
- What are the benefits of ED to grantmakers and NGOs as compared to expenditure responsibility (ER)?
- What are the benefits of working with NGOsource to support EDs relative to other approaches?
- What should grantmakers expect when they work with NGOsource?
- What should NGOs expect?

We hope that this e-book helps grantmakers and NGOs understand the role and process of equivalency determination with NGOsource.
What Is NGOsource?

NGOsource was launched in 2013, as a project of the Council on Foundations and TechSoup Global (Techsoup), to solve a problem shared by U.S. grantmaking foundations and other funders (grantmakers) making international grants. To comply with U.S. Internal Revenue Service (IRS) regulations, grantmakers traditionally worked with legal counsel to conduct "foreign public charity equivalency determinations" (EDs). Grantmakers needed to obtain EDs before making grants to certain types of foreign organizations.
The purpose of an ED is to determine whether a non-U.S. nongovernmental organization (NGO) is the equivalent of a U.S. public charity. Grantmakers historically found the ED process to be costly, inefficient, and duplicative.

In the past, an individual ED could cost a grantmaker up to $10,000 in legal fees. NGOs that were funded by more than one grantmaker also often lost time and money as they responded to redundant requests in varied formats. NGOsource’s efforts to streamline the ED process represented an opportunity to overcome a significant barrier to cross-border philanthropy.

A consortium of international foundations, who worked closely with the Council on Foundations, developed a solution: a sector-wide ED service and repository. TechSoup, a nonprofit social enterprise, was selected to build, launch, and run the new service, which was named NGOsource. The consortium provided seed funding to help TechSoup build the service, and guidance to ensure that it would meet the sector’s needs.

A key expectation was that the service would reduce ED costs as it became self-sustaining over time. NGOsource has achieved both objectives. Nearly four years into its operation, NGOsource has received more than 2,000 ED requests for NGOs, and operates in five languages in 114 countries. More than 150 grantmakers are NGOsource members; they include 15 of the 20 largest U.S.-based international grantmakers, as well as other leading donor advised funds and corporate, family, and community foundations.
What Is Equivalency Determination (ED)?

An equivalency determination (ED) is a good faith determination that an NGO is the equivalent of a U.S. public charity. It examines whether an NGO’s organizational documents, operations, and funding structure meet the same requirements of a U.S. public charity. If they do, then a grantmaker can make a grant to that NGO and be confident that the NGO is the legal equivalent of a U.S. public charity.
An ED is based on a set of detailed information about the NGO's operations and finances that is carefully reviewed by a "qualified tax practitioner." To be deemed equivalent to a U.S. public charity, an NGO must pass this three-pronged test:

- It is organized like a U.S. public charity.
- It is operated like a U.S. public charity.
- It meets certain minimum public support requirements (at least 33 1/3% of its funding comes from the public or from its charitable activities).

Certain religious organizations, hospitals, medical research organizations, and educational institutions (universities or schools) qualify as public charities by virtue of their unique status. Therefore, they don’t need to meet the third prong (minimum public support requirements).

ED requirements are based on U.S. tax laws and regulations, and a key aspect of the evaluation is a review of an organization's governing documents (which must be provided in English). Governing documents are the documents that are created in order to form an organization or to register it.

They usually contain the name and purposes of the organization. Examples include articles of incorporation, bylaws, constitution, charter, memorandum of association, and trust deed.

Most NGOsource EDs are valid for up to two years.

In September 2015, the U.S. Department of the Treasury and the IRS issued final regulations on EDs. These regulations finalize the proposed regulations that were first issued in September 2012 (which experts have relied upon in the interim), and affirm NGOsource’s approach.

The final regulations more definitively allow grantmakers to confidently rely on the EDs in NGOsource's repository because they affirm the unique approach that NGOsource has taken to provide ED repository services since its inception. This includes NGOsource's decision to staff the program with qualified tax practitioners. In addition, the new regulations no longer expressly permit grantmakers in most situations to rely on a foreign affidavit alone, absent an ED written by a qualified tax practitioner. This makes the availability of an ED even more crucial for grantmakers.
A High Level Overview of ED Requirements

This table provides a summary of the requirements for an organization to be equivalent to a U.S. public charity.
### To Be Equivalent to a U.S. Public Charity

The organization must be organized exclusively for charitable purposes. It must:

- Be charitable
- Be religious
- Be scientific
- Be literary
- Be educational
- Prevent cruelty to animals or children
- Foster national or international relationships
- Test for public safety
- Protect the underprivileged
- Advance education
- Promote health or medical research organizations
- Foster national or international understanding
- Promote amateur sports competition, and/or
- Prevent cruelty to animals or children
- Promote peace or international cooperation

The organization must operate exclusively for charitable purposes.

**In addition to the above,** "charitable" operations broadly include operations that provide relief to the poor, the distressed, or the underprivileged; advance religion; advance education or science; erect or maintain public buildings, monuments, or works; lessen the burdens of government; lessen neighborhood tensions; eliminate prejudice and discrimination; defend human and civil rights that are secured by law; and combat community deterioration and juvenile delinquency.

The organization must show evidence that its assets will be used for charitable purposes in perpetuity.

Lobbying and politics
- The organization's activities cannot influence legislation ("lobby") more than an insubstantial amount.
- The organization cannot intervene in political campaigns for public office.

Private benefit
- The organization's activities cannot benefit private persons or noncharitable organizations.

Public support (if applicable)
- The organization should have at least 33% percent public support (at least one-third of its support must be from "public" sources).
- Public support is calculated over a five-year period.
- In some instances if an organization has less than 33% percent public support but more than 10 percent, relevant facts and circumstances must establish that the organization operates similarly to a publicly supported charity.
- If the organization is less than five years old, it must submit financial information from its date of formation (including a shorter year). It must also project financial information for the remaining years in order to provide a total of five years for the analysis.

Governing documents and self-declared information provided by the organization
- The organization must certify that it is organized for charitable purposes, and/or that local law requires it to operate exclusively for charitable purposes.
- Governing documents must describe purposes and powers.
- Governing documents must prohibit the organization from engaging in noncharitable activities, except as an insubstantial part of its activities.

Governing documents and self-declared information that are provided by the organization
- The organization must certify that it primarily engaged in activities that are charitable — the NGOsource questionnaire asks for a description of the organization's activities.
- The organization's governing documents (and actual activities) must support the same.
- Ancillary documents such as annual reports, program brochures, or websites may also be reviewed.

The organization must show evidence that on dissolution, its assets will be transferred for charitable purposes, AND the organization’s governing documents or local law must support this.

- The organization must certify that on dissolution, its assets will be transferred for charitable purposes, AND
- The organization’s governing documents or local law must support this.

Lobbying and politics
- The organization must certify that it does not engage in substantial lobbying or intervene in elections, AND
- The organization’s governing documents (and actual activities) must support the same.
- Ancillary documents such as annual reports, program brochures, or websites may also be reviewed.

Private benefit
- The organization must certify that its net assets do not benefit any private individuals or insiders, AND
- The organization’s governing documents (and actual activities) or local law must support the same.

Public support (if applicable)
- Five fiscal years of financial information (does not need to be audited)
- Certain religious organizations, hospitals, medical research organizations, and educational institutions (universities or schools) qualify as public charities; they do not need to meet minimum public support requirements.

- The organization must certify that its net assets do not benefit any private individuals or insiders, AND
- The organization’s governing documents (and actual activities) or local law must support the same.

- Five fiscal years of financial information (does not need to be audited)
- Certain religious organizations, hospitals, medical research organizations, and educational institutions (universities or schools) qualify as public charities; they do not need to meet minimum public support requirements.
Public Support

In general, to be considered equivalent to a U.S. public charity, an NGO (that does not otherwise qualify as a religious organization, hospital, medical research organization or educational institution (universities or schools)) must show that at least one-third of its funding comes from "public" sources or from its charitable activities.
Public support is calculated over a five-year period (including the most recently completed tax year, and the four prior tax years, including any short years). The public support calculation can be done on the basis of an organization’s regular accounting method and in the currency that is used by the organization for its financial reporting. The rules around the public support test are complex. The summary below is intended to provide a high-level overview only.

**What is "Public Support"?**

Public support can come from one of the following four categories:

1. **Gifts, grants, contributions, or membership fees**

   This category includes all funds or other items of value that are received as gifts, grants, contributions, or membership fees (when they are provided as support). Support could be from an individual, an institution, or a government. It could also be from a business, a nonprofit, or any other entity.

   Depending on the source of the contribution, not all sources of support are fully counted in the public support calculation, meaning that some sources are ultimately more favorable to an organization’s overall public support percentage. Contributions from so-called public sources (governments and public charities) are counted in full when calculating public support, and therefore help an organization maintain a high percentage.

   Contributions from so-called private sources (individuals, companies, and private foundations) are only counted up to a limited percentage of the organization’s overall support. For this reason, if the NGO’s primary support comes from a limited number of private sources, its public support might be negatively affected.

2. **Value of services or facilities that are furnished to the organization by a governmental unit**

3. **Tax revenues**
Revenue that is received for mission-related activities

In this category, an organization should include income from activities that it conducts to further its exempt purposes. Examples of income from these activities include charging admission for events, selling merchandise, performing services, or providing facilities in connection with its charitable purpose. Organizations like museums, zoos, or other institutions with significant admission fees or service-related income often qualify as publicly supported by virtue of income from mission-related activities. For other organizations, however, this type of income is less relevant.

Even if an organization's public support is less than one-third, in some circumstances, it can still meet the public support test if it passes a "Facts and Circumstances Test." In this case, the organization would need to show that it normally receives a substantial part of its support (at least 10 percent) from "public" sources. The organization would also need to show that it meets certain facts and circumstances that tend to show that it operates like a publicly supported charity (the "Facts and Circumstances Test"). Therefore, if an organization receives at least 10 percent public support, and it meets the Facts and Circumstances Test, it will be deemed to be publicly supported. To meet this test, a number of facts are considered, including:

- the organization's actual percentage of financial support
- the sources and types of support
- whether its governing body is representative of the community it serves
- the availability of public facilities or services that it provides
- the diversity of its membership

If an organization is not yet five years old, NGOsource requests actual financial information from the date of its formation (including any short year). In addition, NGOsource asks that the organization project financial information for the remaining years so that it can review a total of five years.
Benefits of Equivalency Determination (ED) Compared to Expenditure Responsibility (ER)
In certain instances, a grantmaker may choose to exercise expenditure responsibility (ER) when funding an NGO. This may include instances in which an NGO is unable to provide the information that is required to complete an ED analysis or the ED analysis concludes that the NGO is not equivalent.

The ER rules require specific forms of oversight and monitoring before, during, and after the grant period. These requirements ensure that the funds are used exclusively for the intended charitable purposes of the grant.

Many grantmakers prefer ED over ER. Here are some of the reasons why:

- Grantmakers may expect to establish long-term relationships with their grantees, and an ED permits them to more easily make subsequent grants to an NGO that has already been certified.

- Grantmakers may want to help build a grantee’s organizational capacity beyond specific project goals, and an ED can help both grantmaker and grantee better understand the grantee’s organizational structure.

- Grantmakers may want more flexibility in the disbursement of grant funds (for example, for capital equipment or general operating support), over which ER is significantly more restrictive.

There are other programmatic and legal reasons why a grantmaker might prefer ED. The NGOsource Resources page offers links to additional information on this and related topics.
Benefits of NGOsource

“*The Rockefeller Foundation has been a proud supporter of NGOsource since its inception. Both practical and transformative, NGOsource addresses an acute need in philanthropy.*”

— Pamela Foster, The Rockefeller Foundation

“*The equivalency determination which War Child was awarded … is a crucial mechanism for ensuring we are able to continue our programmes around the world. It reassures grantmakers that War Child UK is a legitimate and well-governed organisation that meets the same criteria that US-registered charities are expected to adhere to.*”

— Martin Holliday, Programme Funding Coordinator, War Child UK
Benefits for Grantmakers

NGOs source does the work, so grantmakers can focus on grantmaking.

The traditional equivalency determination (ED) process is often costly and inconsistent. Differences from grantmaker to grantmaker can result in incompatible or subjective results; costs can range from $5,000 to $10,000 per ED if the grantmaker uses outside counsel.

NGOs source reduces duplication of efforts across the philanthropic sector. NGOs source's centralized repository and in-house counsel increase affordability by centralizing the collection of ED information and by providing grantmakers with a reliable, standardized, and easy-to-use service. NGOs source offers the following benefits:

- **Reduced risk**
  Grantmakers no longer bear the burden of lengthy, risk-laden determinations

- **Streamlined process**
  NGOs source's centralized information collection minimizes redundancy, increases efficiency, and standardizes the ED process.

- **No need for specialized staff**
  NGOs source's highly qualified team eliminates the need for internal ED expertise or external legal counsel.

- **Reduced NGO burden**
  With NGOs source's standardized questionnaire, NGOs are no longer tasked with providing duplicative or incongruent data from one grantmaker to the next.

- **Lowered costs**
  Grantmakers experience long-term cost and time savings.

- **Full service determinations**
  NGOs source pursues the information that's needed, stays abreast of complex IRS and country-specific laws, communicates with the NGO, and makes the determination of equivalency.

- **Improved grantee experience**
  The NGO can interact with NGOs source's and its partners in its local language and during its business hours whenever possible.
• **Convenient availability**
With NGOsource's bench of experts, its ED services are available year-round, without interruption.

• **Anytime access**
Grantmakers can request new EDs and track the status of their ED requests at any time and at their convenience using an online Grantmaker Portal.

• **Consistent turnaround time**
NGOsource's dedicated team and partners provide superior NGO support, which leads to more complete and timelier ED submissions.

• **Increased cross-border philanthropy**
Because NGOsource provides an efficient ED process, grantmakers' management and staff are able to devote more time and energy to programs and to deepening grantee relationships.

Ready to join?

[Apply now](#)

Photo courtesy of Connecting Up, Partner NGO in Australia
Benefits for NGOs

NGOsource provides many benefits to certified organizations, including:

- **Access to more flexible funding**
  Certain grantmakers, including private foundations, generally cannot make a grant to an organization that is not a U.S. public charity unless they use ED or ER. ER generally puts greater restrictions on how grant funds are spent and imposes additional reporting requirements. Therefore, ED facilitates greater flexibility in the use and reporting of funds during a grant cycle, which benefits grantmakers and NGOs alike.

- **Reduced burden for NGOs**
  With NGOsource's standardized questionnaire, organizations are no longer tasked with providing duplicative or incongruent data from one grantmaker to the next. NGOsource's streamlined ED process and centralized repository makes information accessible for any grantmaker that is an NGOsource member.
• **Improved experience**

It can be difficult to communicate with various grantmakers across different time zones. With NGOsource's global network of partners, organizations can interact with NGOsource support in their local language and during business hours whenever possible.

• **Increased cross-border philanthropy**

NGOsource's efficient ED process allows grantmaker management and staff to devote more time and energy to programs and to deepening grantee relationships, which benefits the NGO sector around the world.

• **Certification as equivalent to a 501(c)(3) public charity**

Many organizations that have received ED certification from NGOsource feel that it has increased their credibility and visibility with grantmakers. Although future grantmakers must still pay a fee to access an ED specific to that grantmaker, the ED process is more streamlined and reliable after the initial ED certification. NGOsource's ED questionnaire also serves as a useful tool to audit an organization's financial and legal information and make internal improvements.

To read more about how NGOsource benefits the organizations it certifies around the world, read the latest impact stories on the NGOsource blog.
What to Expect When Working with NGOsource

Grantmakers

After signing up as NGOsource members, grantmakers gain access to the NGOsource Grantmaker Portal, the online database where they can request and manage their EDs. NGOsource guides grantmakers throughout the entire ED process, which takes approximately four to six weeks to facilitate.
How It Works

1. The grantmaker registers to become an NGOsource member.

The grantmaker completes membership registration. After it is approved, the grantmaker pays its annual membership fee and subsequently receives a username and password. This allows the grantmaker to log on to the Grantmaker Portal, the entry point for members into NGOsource.

2. The grantmaker makes an ED request using NGOsource's Grantmaker Portal.

Every request starts with a search in the NGOsource repository to see if NGOsource has already processed an ED for that NGO. New EDs typically take four to six weeks, and turnaround is largely determined by the responsiveness of the grantee. ED requests for NGOs that are already in the NGOsource repository can be much faster.

3. NGOsource initiates the ED process.

NGOsource's Grantmaker Portal prompts the grantmaker to email its intended grantee to introduce NGOsource and explain that ED is an important step in the grantmaking process. NGOsource will also reach out to the intended grantee to explain the ED process and provide an overview of the resources available to the NGO during this process.

4. The grantmaker receives notification of NGOsource's final determination.

This notification occurs after the intended grantee has completed the questionnaire and NGOsource has completed the ED review process.

If the intended grantee is certified as equivalent to a U.S. public charity, NGOsource will notify the grantmaker by email. The email will provide instructions on how to download and print the ED certificate and the documentation that accompanies it. An electronic or hard copy of the ED certificate and the paperwork that goes with it is the only record that a grantmaker
needs for legal purposes and regulatory compliance.

The certificate is issued in the name of the NGOsource grantmaker member and cannot be shared outside the member organization. The validity period is dictated by law and will be clearly shown on the ED certificate. Typically, the certificate is valid for one year after the end of the NGO's current fiscal year (that is, two years after the fiscal year that was most recently completed).

If the intended grantee is found "not certified," NGOsource will notify the grantmaker and explain the reasons the organization was unable to be certified. Other NGOsource members only see that the NGO does not have a current NGOsource certification. The requesting grantmaker's identity will remain confidential.

5 The NGO's information is held by NGOsource for other ED requests.

NGOsource retains a file on the NGO with the information that's needed to process ED requests from other grantmakers. This information is kept secure and confidential. Grantmakers now have access to a large repository of these NGOs. By using NGOsource, grantmakers have access to the names of NGOs who are listed in the NGOsource repository. Grantmakers also help minimize the burden on grantees that's caused by future ED requests.

6 The original grantmaker may renew the ED certificate.

The ED is typically valid for one year after the end of the NGO's current fiscal year (two years after the fiscal year that was most recently completed). The validity period will be clearly shown on the ED certificate. Grantmakers can request a renewal at any time after the initial ED has been processed and completed, regardless of expiration date. NGOsource recommends that a grantmaker request an ED at least two months in advance of the next grant payment if the ED certificate expires before that payment.
NGOs

Grantmakers initiate the ED process through NGOsource when they want to use an ED for a grant to an NGO. Afterwards, a representative from the NGO should expect to receive ongoing support throughout the ED process from NGOsource. NGOsource or one of its global partners will help the NGO to complete a questionnaire that collects information that’s required by U.S. law for the ED analysis. The NGO must also provide certain documents that are legally required; these include governing documents that have been translated into English and detailed financial information.

Although future grantmakers must still pay a (reduced) fee to access the NGO's ED, the ED process is more streamlined and reliable after the initial ED certification. Upon completion of the ED process, many NGOs mention that they find increased opportunities to receive U.S.-based funding.
How It Works

1. The intended grantee is invited to participate in the ED process.

Typically, grantmakers email the intended grantee to introduce them to NGOsource and explain why ED is an important step in the grantmaking process. NGOsource or one of its global partners also email the intended grantee to explain the ED process. The email also explains the role of the global partner to provide support throughout the process, and describes the questionnaire the intended grantee will complete.
2 The NGO completes the questionnaire.

The online NGO questionnaire contains legally and technically complex questions that the IRS requires. In addition, NGOsource asks the NGO to submit its founding and financial documents. If an NGO is less than five years old, NGOsource requests financial information from the organization's date of formation (including a short year). Plus, NGOsource asks that the organization project financial information for the remaining years so that NGOsource can review a total of five years of financial data.

NGOsource and its partners do everything possible to help the intended grantee complete the questionnaire during the allotted completion time. One of NGOsource's global partners provides ongoing support in the NGO staff's preferred language of English, Spanish, French, Portuguese, or Mandarin Chinese, and during business hours whenever possible. The grantee will have up to two weeks after it receives NGOsource's introductory email to complete the questionnaire and submit its documents; it may contact its NGOsource partner for support at any time. This time frame takes into consideration the technological limitations that many NGOs face.
3 NGOsource begins the ED review process.

The NGOsource partner checks the questionnaire for completeness and will ask the intended grantee for more information if it's needed. The NGOsource team then evaluates the information that has been provided by the grantee. Typically, the NGOsource team completes an ED review within four U.S. business days. It may take longer if NGOsource needs more information from the grantee, or, rarely, if the review is especially complex.

5 The grantmaker is notified.

NGOsource will email the grantmaker to let it know whether or not the intended grantee has been assessed as equivalent to a U.S. public charity. If the intended grantee is found "not certified," NGOsource will email the grantmaker and explain why. The grantmaker will typically then notify the intended grantee, and only other NGOsource members will see that the NGO did not receive an ED from NGOsource.

4 The intended grantee is notified of submission.

NGOsource sends the intended grantee a confirmation email that the ED questionnaire was submitted. NGOsource in-house counsel may contact the intended grantee to clarify or ask for additional information.

6 The NGO’s information is held by NGOsource for other ED requests.

NGOsource retains a file on the NGO with the information that is needed to process ED requests from other grantmakers. This information is kept secure and confidential. The original grantmaker may additionally request an ED renewal at any time before the ED certificate expires. As part of the NGOsource repository of NGOs that have received EDs, NGOs now have access to greater opportunities of funding from U.S. grantmakers. Plus, the burden to the grantee is minimized.
If an intended grantee does not qualify for equivalency, it does not mean that the NGO is not charitable.

Also, it does not affect the NGO's status within its own country. It may simply be because of the inherent differences in organizational structures and legal requirements between the U.S. and other countries. It is also possible that an NGO that does not qualify — for example, because of insufficient public support — may qualify in a later year.

Some of the more common reasons that an NGO cannot be certified as a public charity equivalent under U.S. law are

- political activity
- excessive lobbying
- improper dissolution clauses
- failure to meet public charity financial support requirements
If an organization is not certified as equivalent to a public charity in the U.S., the grantmaker will not be able to rely on ED certification to fund that organization.

If so, a grantmaker can decide to work with NGOsource to identify the reasons the organization is unable to be certified. And if applicable, the grantmaker can work with the intended grantee to meet the requirements for ED.

The grantmaker might also choose to use ER. Although NGOsource does not currently provide direct support for the ER process, we can refer interested grantmakers to organizations that support this process.
Get Started

We hope that this e-book has provided a useful overview of equivalency determination.

Whether you are a U.S. grantmaker or an NGO, NGOsource is here as a resource for you to support your equivalency determination needs.

Photo courtesy of Blue Ventures Conservation, NGO working in the UK
If you are a grantmaker
and might like to work with us to support
your international grantmaking needs,
register to become a member.
on our website, and feel free to
contact us at any time.

If you are an NGO,
we hope this e-book helped you to learn more
about equivalency determination.
Please contact us with any questions and
sign up for our newsletter to receive ongoing
updates aboutngoSource.

Please note that the material that’s presented in this e-book
is for general informational purposes only and does not represent legal advice.
Consult your professional advisors as you deem appropriate and necessary.
TechSoup Global shall not be held responsible for any claims or losses
that may arise from any errors or omissions in this document.