

What to know about U.S. grantmaking to Mexico



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Why this guide

There are many individuals in our local communities with family ties, professional connections, or simply those who want to make an impact in an area of personal interest in Mexico. This reference sheet is designed to highlight issues you may want to address or questions you wish to have answered to assist you in your grantmaking to Mexico. There are many issues to consider including identifying whom to help, and what is the best way to go about it. There are legal and fiscal obligations that also need to be considered. The most important thing to understand is that grantmaking to Mexico is indeed possible, and with the right tools and resources, your efforts can be seamless. This reference sheet was designed to complement the panel discussion on “Everything you want to know about grantmaking to Mexico” as part of the 2018 Philanthropy Southwest Annual Conference, and is based upon the expertise of leaders and organizations that engage in Mexico on a regular basis.

Key considerations

- Work in collaboration with local partners.
- Understand cultural and linguistic differences.
- Conduct due diligence in both countries.
- Understand what information you need to collect from donors and grantees to be in compliance.
- Know regulations about maintaining data records.
- Be aware of currency exchange (possible losses / gains) and information needed for the international transfer of funds.
- Familiarize yourself with legal, fiscal and tax regulations/benefits in Mexico.
- Whether the donation is a cash or in-kind contribution. For in-kind gifts, the grantee organization must complete an importation process before the Mexican federal authorities¹.
- Join funder networks and affinity groups, use donor funds, and seek advice from in-country consultants, U.S.-based philanthropic advisers and organizations experienced in international giving.
- Be mindful of translation and language issues regarding financial and narrative reports.
- Contemplate a tour or a site visit.

U.S. government regulations surrounding international giving².

The Internal Revenue Code (IRC)

The IRC allows the giving of international grants under the condition that the foundation either certify foreign charities as 501(c)(3) equivalent organization or the foundation employs a process called “expenditure responsibility,” which requires a pre-grant inquiry, grant agreement, separate accounting for charitable funds, and financial tracking and reporting.

Pension Protection Act of 2006

Classifies permissible international giving through donor advised funds under certain conditions.

¹ In-Kind Donations Guide to Mexico, International Community Foundation.

https://icfdn.org/wp-content/uploads/2015/11/InKind_Guide_English.pdf

² Guide to International Charitable Giving, International Community Foundation. <https://icfdn.org/wp-content/uploads/2015/11/A-Guide-to-International-Giving.pdf>

USA Patriot Act of 2001 (reauthorized in 2005)

This law increases, among other things, existing criminal penalties for knowingly or intentionally providing material support or resources for terrorism through international grantmaking.

Executive Order 13224

This order prohibits transactions with any charitable organization deemed by the Executive Branch and other U.S. agencies to be associated with terrorism. This executive order freezes all assets controlled by or in the possession of any charity or other entity that supports terrorists.

To ensure full compliance with the law, the foundation must check the names of nonprofit staff and directors against lists of prohibited persons.

U.S. Department of the Treasury: Anti-Terrorist Financing Guidelines

These "Voluntary Best Practices for U.S.-Based Charities" provide guidance regarding compliance with the USA Patriot Act and Executive Order 13224. The guidelines describe how international funders should make grants and transfer funds to non-U.S. organizations.

Mexico government regulations surrounding receiving donations from U.S. – based grantmaking foundations³

Mexican law does not require that nonprofit organizations obtain any specific permit or registration with any government agencies before receiving international funding. However, it is important for grantmakers to make sure that the organization is legally incorporated in Mexico as any one of these types of nonprofit organizations:

- Civil association (AC), established pursuant to state civil codes;
- Private assistance institution (institución de asistencia privada) (IAP), established pursuant to state laws governing the subject;
- Civil society (SC), established pursuant to state civil codes; and
- The trust (fideicomiso).

Any of these organizational forms is entitled to seek certain benefits by registering under the Income Tax Law and/or the Law for Promotion of Civil Society Organizations. Registration under these laws is voluntary. An organization must meet specified criteria in order to register and to be eligible for attendant benefits⁴.

Mexico's Anti-Money Laundering Law

Receiving donations is defined as a vulnerable activity under the law, and reporting donated income is mandatory. Organizations receiving donations above a certain amount must obtain information and back-up documentation from the donor to prove the legality of the source of funding. Although not all donations need to be reported, the lowest reporting threshold is quite low US\$ 7,550 and is cumulative for periods of six months.

Options for international grantmaking⁵

³ Briefing for Donors on the Anti-money Laundering Law in Mexico, May 5, 2015. Prepared by Guadalupe Mendoza-Trejo, independent philanthropy consultant. www.procapacidad.org

⁴ Mexico Country Note. Council on Foundations. <https://www.cof.org/content/mexico>

⁵ Global Grantmaking: Using a Private Foundation to Give Beyond Borders. Foundation Source.

Grants to organizations recognized by the IRS

- **Foreign charities recognized as 501(c)3 public charities**
Any foreign charitable organization may apply to the IRS for recognition as a United States-based public charity by filing Form 1023. In addition, a foreign government or governmental subdivision automatically is treated as though it were a U.S.-based public charity.
- **U.S.-based nonprofit organizations with established international programs**
One of the most straightforward ways to give internationally is to grant to a U.S.-based charity that operates its own programs in other countries.
- **“Friends of” organizations**
These organizations are domestic public charities formed for the express purpose of benefiting a specifically named foreign charity. As “Friends of” organizations work continuously with their foreign partner, they may be better able to conduct due diligence on the foreign charity, oversee the grant, and obtain evaluation reports than an individual donor.
- **International intermediaries**
International intermediaries are U.S.-based public charities that specialize in re-granting to charitable organizations abroad. Their chief advantages are convenience and expertise. They offer simplified legal and administrative processes for donors and make it their business to meet federal regulations.
- **Diaspora funds⁶**
Diaspora funds promote and facilitate giving by members of a particular emigrant community for causes and projects in their home country.

Grants to foreign organizations not recognized by the IRS⁷

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 partners⁸.

- **Expenditure responsibility**
ER is a set of grantmaking and monitoring procedures and requirements, designed to ensure that grant funds are used for charitable purposes. These procedures and requirements enable U.S. grantmakers to make grants to foreign organizations that are neither recognized as 501(c)3 public charities by the IRS nor as the equivalents of U.S. public charities.

⁶ International Grantmaking with a Global View, Rebecca

Nichols and Anne Mackinnon, GrantCraf. <http://www.grantcraft.org/assets/content/resources/global.pdf>

⁷ <http://www.ngosource.org/how-it-works/what-is-equivalency-determination>

⁸ <https://www.cof.org/content/basic-options-global-grantmaking-us-foundations>

- **Equivalency determination**
Equivalency determination is a process by which a U.S. grantmaker evaluates whether an intended foreign grantee is the equivalent of a U.S. public charity. The grantmaker must collect a set of detailed information about the grantee's operations and finances and make a reasonable determination of its equivalency. One potentially useful resource for making an equivalency determination is [NGOSource](#), a membership-based service that offers a streamlined process.

Additional resources:

- **"Equivalency or Expenditure Responsibility: A Guide in Plain English"**, by Betsy Buchalter Adler and Stephanie L. Petit
<https://www.adlercolvin.com/wp-content/uploads/2017/12/Legal-Dimension-Equivalency-or-Expenditure-Responsibility-00069171xA3536.pdf>
- **Resources for U.S. foundations and grantmakers wishing to make grants abroad.**
<https://www.cof.org/topic/global-grantmaking>
- **"Global Grantmaking: Overview and Guidelines"**, Foundation Source.
<https://www.foundationsource.com/resources/library/international-grantmaking/>
- **"Legal Framework for Global Philanthropy: Barriers and Opportunities"**, International Center for Not-for-Profit Law.
https://c.ymcdn.com/sites/www.wingsweb.org/resource/collection/3FoEC9A8-2934-454A-A4AA-63DA30CA30A5/ICNL_Legal_Framework_for_Global_Philanthropy.pdf
- **"Aportes filantrópicos de fundaciones destinados a hispanos/latinos en los Estados Unidos y a América Latina"**. Foundation Center in collaboration with Hispanics In Philanthropy.
http://foundationcenter.org/gainknowledge/research/pdf/fc_hip2011_espanol.pdf
- **"Beyond our borders: A guide to making grants outside the U.S."**. John A Edie. Council on Foundations; 3rd edition (2002).
- **"Grantmakers Without Borders"**
www.internationaldonors.org
- **"Recursos para el desarrollo: Guía práctica para la obtención de donativos de Estados Unidos a México"**. Jacqueline Butcher García-Colín. Centro de Investigación y Estudios sobre la Sociedad Civil, A. C. <http://www.ciesc.org.mx/documentos/rpd/rpdES.pdf>

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