



Determination of Supporting Organization Status

Why must private foundations and sponsoring organizations of donor-advised funds determine whether a grantee is a supporting organization?

As a result of new requirements imposed by the Pension Protection Act of 2006 on grants to certain supporting organizations from private foundations and donor-advised funds, both private foundations and sponsoring organizations of donor-advised funds must be able to determine whether a charity to which they are considering making a grant is a supporting organization (i.e., a public charity under Section 509(a)(3) of the Internal Revenue Code) and, if it is, whether it is a Type I, Type II, or Type III, and, if it is a Type III, whether it is functionally integrated.

What are the new requirements? Private foundations must exercise expenditure responsibility for grants to a Type III supporting organization that is not functionally integrated and for grants to any type of supporting organization for which a disqualified person with respect to the private foundation controls the supporting organization or an organization that the supporting organization supports. Further, private nonoperating foundations may not count such grants toward their minimum distribution (payout) requirement.

Sponsoring organizations of donor-advised funds must exercise expenditure responsibility for grants to a Type III supporting organization that is not functionally integrated and for grants to any type of supporting organization for which a donor advisor (including related parties) of a donor-advised fund controls an organization that the supporting organization supports.

For more information on the new requirements, see the Council's webpage on the [Pension Protection Act of 2006](#).

Step 1: Determining Whether an Organization Is a Supporting Organization. In Notice 2006-109 (December 4, 2006), the Internal Revenue Service issued guidance to private foundations and to sponsoring organizations of donor-advised funds concerning how they may identify public charities that are supporting organizations. See the [IRS's notice](#) and the [Council's summary](#) of the notice

Section 3.01 of the notice states that grantmakers may rely on information from either of the following sources to determine whether a public charity is or is not a supporting organization:

- the [IRS Business Master File](#) (BMF) (this is not the same as IRS Publication 78)
- the grantee's IRS determination letter.

Relying on a Third Party: In a notice issued on March 27, 2007, the IRS has clarified that a grantmaker may use a third party to obtain information from the IRS BMF to determine whether or not a charity is a supporting organization, provided that the grantmaker obtains a report from the third party that includes all of the following:

- the grantee's name, Employer Identification Number, and public charity classification under Section 509(a)(1), (2), or (3)
- a statement that the information is from the most currently available IRS monthly update to the BMF, along with the IRS BMF revision date
- the date and time of the grantmaker's search

The grantmaker must retain the report in electronic or hard-copy form.

An example of a third party that provides information from the IRS BMF in full compliance with the IRS guidance is GuideStar's [Charity Check Service](#).

Step 2: Determining the Type of Supporting Organization. If an organization is a supporting organization, grantmakers must next determine its type. The notice prescribes one process for organizations with Type I or Type II status and a more complex one for those that are Type III. In all cases, the grantmaker must first verify that the organization is a public charity by checking either the organization's determination letter or its status in [IRS publication 78](#).

Basis for Determining that an Organization Is a Type I or II Supporting Organization: Grantmakers may rely on a written representation signed by an officer, director, or trustee of the grantee, if both of the following are true:

- The representation describes the process used for selecting the grantee's officers, directors, or trustees and references the pertinent provisions of the grantee's organizing documents that establish the grantee's relationship to its supported organizations.
- The grantmaker collects and reviews copies of the grantee's governing documents. If the grantee's organizing documents are not sufficient to establish the relationship, the grantmaker must also collect organizing documents from the supported organization.

Basis for Determining that an Organization is a Functionally Integrated Type III Supporting Organization:

- The grantee's written representation identifies the organizations it supports.

- The grantmaker collects and reviews the grantee’s organizing documents (and those of the supported organizations if necessary).
- The grantmaker collects a written representation signed by an officer, director, or trustee of each supported organization stating that the supporting organization is functionally integrated and that but for the involvement of the supporting organization, the supported organization normally would engage in those activities itself.

Notice 2006-109 affirms that the IRS will apply the “but for” test from Treas. Reg. 1.509(a)-4(i)(3)(ii) in deciding whether a Type III supporting organization is functionally integrated. The IRS did not clarify the status of supporting organizations whose sole purpose is fundraising for the supported organization, a point on which several persons have requested guidance.

Alternative: Grantmakers may also rely on a reasoned written opinion of counsel of either the grantee or the grantmaker in making the determination that a supporting organization is a Type I, Type II, or functionally integrated Type III supporting organization.

Control Test: The IRS will use the definition of control found in the regulations under Section 4942 in deciding whether a private foundation disqualified person or a donor advisor (and related parties) controls a supporting organization or an organization that a supporting organization supports. The notice suggests that grantmakers may need to obtain lists of the supported organizations from potential supporting organization grantees. The Section 4942 regulations provide that an organization is controlled if disqualified persons can, by aggregating their votes or positions of authority, require the supported organization to make, or refrain from making, an expenditure.

The information provided here is based on our continuing analysis of the bill. Every effort has been made to ensure accuracy of these documents. Please understand, however, that this information is subject to change, due to the complexity of the bill and the fact that many of these provisions introduce issues that are new to the Internal Revenue Code. This information is not a substitute for professional legal, tax, or other advice, and we strongly encourage grantmakers and donors to work with their counsel to determine the impact of this legislation on their particular situations. This information may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code.