



International DATELINE

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It was with a combination of enthusiasm and humility that I chaired the Council's International Committee for the first time in September.

The committee's membership is intentionally diverse, encompassing family, corporate, and community grantmakers, as well as private independent foundations of various sizes and program interests. By design, the 26-member committee includes a high degree of participation by international grantmakers from around the world. Currently 11 committee members represent grantmaking organizations in countries as diverse as Mexico, the Philippines, Kenya, Canada, Germany, and Bulgaria, just to name a few. New members were added this September from Ecuador and Israel. Such a diversity of experience and perspectives ensures that the committee's discussions are always lively and reflect the realities of the broad international context.

Because of the growing global gap between rich and poor, and the unfortunate but not unexpected extremism and violence that this inequity can breed, international grantmaking is at a critical juncture.

The good news is that the role and importance of grantmaking around the world continues to grow, contributing to the building of civil society and democracy while alleviating conditions of poverty and suffering.

Although their counterparts in other countries are increasingly joining them, American foundations and corporate grantmakers in the United States continue to lead the way in international grantmaking. A new Council-funded report from the Foundation Center reveals that grantmaking for international purposes by U.S. foundations is growing faster than for domestic purposes, even during the difficult economic times of the past several years. Read more about the Foundation Center's report in this issue of International Dateline.

At the same time, the environment for international grantmaking is threatened by the long shadow of September 11, 2001. The U.S. Treasury Department's voluntary anti-terrorist financing guidelines for U.S. charities, issued last November, recommend an unrealistic and inappropriate set of additional responsibilities that could discourage U.S. grantmakers from funding abroad. (cont.)

Earlier this year the Council on Foundations reviewed the guidelines and urged that they be withdrawn. Attention has now shifted to the Internal Revenue Service, which has initiated a process to review its international grantmaking rules. See the [Legal Dimensions of International Grantmaking](#) article, which is part of this issue of *International Dateline*, for further discussion of this issue.

The Council has a crucial role to play as an advocate for effective and responsible international grantmaking. I look forward to working with the International Committee and the Council's staff to help it fulfill that role.

Feature

Growth of International Grantmaking Pauses in 2002

A new Foundation Center study funded by the Council on Foundations reveals that the rapid growth of international grantmaking by U.S. foundations and corporations in the 1990s continued through 2001 before falling off slightly in 2002. The study looks at changes in international grantmaking levels and patterns from 1998 through 2001 and estimates international grantmaking levels in 2002.

Total foundation giving for international purposes (including both domestic and direct overseas grants) more than doubled from \$1.6 billion in 1998 to \$3.3 billion in 2001. The dramatic increase is due in part to large international grants from the Bill & Melinda Gates Foundation and the Ford Foundation during this period. The Foundation Center estimates that total giving for international purposes declined in 2002 by an estimated 5 percent. The falloff is attributed to the impact of the economic downturn since 2000 on the assets of large private independent foundations.

Surprisingly, international grantmaking grew at a substantially faster rate than all foundation giving during the period 1998-2001. While total foundation giving rose during the four-year period by 57%, giving for international purposes increased by an impressive 131%. Moreover, the study reveals strong growth in international giving across the board among independent, corporate and especially community foundations. Reversing a trend from the early 1990s, more and more foundations and corporations are channeling their international grants through U.S.-based organizations rather than making direct grants to organizations outside the country.

Comparisons of the Foundation Center's sample of grants of \$10,000 or more from over 1,000 foundations in 1998 and 2001 indicate a shift in international program priorities. In 1998, international development received the most funding (17.5%), followed by health (14.8%). By 2001, health accounted for 29% of foundations' international funding followed by education (17.2%) and then international development (11.6%). Large international grants from the Gates Foundation for immunization and greater attention to the HIV/AIDS pandemic account for much of the increase in health funding.

Although geographically the largest share (33%) of cross-border grants in 2001 went to organizations in Western Europe, according to the study, most of this funding supported either global programs or activities carried on in other parts of the world. Nearly 19% of all cross-border funding went directly to Sub-Saharan Africa, almost 16% to the Asia/Pacific region, and 15% to Latin America. Eastern Europe, Russia and the Independent States accounted for 6.4% of cross-border grants, North Africa and the Middle East 5.1%, Canada 4.0% and the Caribbean 1.7%.

For a copy of the full report, contact Stephen Dau at the Council on Foundations at daus@cof.org.

Kelly Uranker of the Pittsburgh Foundation

Community foundations are public charities that receive public funding through gifts, grants and contributions to support a local community or region. As the 12th largest community foundation in the country, the Pittsburgh Foundation has been addressing the needs of its community for over 50 years. Recently, the foundation began to administer a designated fund on behalf of the VIA Foundation in the Czech Republic. Council staff writer Isabelle Mack spoke with Kelly Uranker to learn how this relationship materialized.

How is the Pittsburgh Foundation different from a private foundation?

The Pittsburgh Foundation is a public charity. We have knowledge about Pittsburgh's social and economic needs. As a community foundation, we have over 900 funds that were set up by individuals for their specific interests and for the greater good of the Pittsburgh community.

How many living donors and nonprofits does the foundation serve?

We have close to 600 living donors, and we have about 325 donor-advised funds. Donors make suggestions on an annual basis regarding the nonprofits that will be supported by the funds. We serve close to 1,000 nonprofits.

What is the primary program focus of the foundation?

The foundation has five programmatic areas that are supported from our unrestricted funds. They are achieving educational excellence and equity; supporting families, children and youth; fostering economic development; reducing disparities in health outcomes; and advancing the arts. The foundation also has a responsiveness fund, which makes unrestricted grants to organizations that do not fall within the other five programmatic areas.

Dateline is always interested in what our members are doing regarding international grantmaking. We're especially interested in the relationship you have with the VIA Foundation in the Czech Republic. How did this relationship emerge?

Pittsburgh has a very strong ethnic population. In fact, the University of Pittsburgh has a large program focus on the different ethnicities of the Pittsburgh area. There are more than 2,000¹ Czech-Americans in Pittsburgh. Consequently, when the VIA Foundation in the Czech Republic came to the United States about five years ago trying to raise funds for causes in the Czech Republic, they approached major foundations in six or eight cities across the U.S, including Pittsburgh. They developed a very strong relationship with the Heinz Endowment in Pittsburgh because Heinz does a great deal of international grantmaking. Heinz introduced VIA to the Pittsburgh Foundation and talks were started to determine how VIA could establish a fund at our foundation that would benefit the Czech Republic. We partnered with the Heinz Endowment in the sense that Heinz made an initial grant to establish the "Friends of the Czech Republic Fund" at the Pittsburgh Foundation and we are administering it.

What kind of fund is it, what are the goals of the fund, and how long did it take before grants could be made after the fund was established?

The Czech Fund is a designated fund. The income raised on the principal goes to the VIA Foundation in Prague every year. VIA is primarily interested in educational and training projects in the Czech Republic. The fund was established in August 2002, and the first grant was made in August 2003.

How are the grants made and with what frequency?

It is an annual grant; and since it is a designated fund, the money will go to VIA every year in August. They then have up to a year to send us a follow-up report where they detail the grants their board has chosen to make.

As a public charity, you're accountable to the public; therefore, how is the fund structured and governed?

It is structured like any of our other designated funds. The VIA Foundation is the equivalent of a 501(c)(3) in the U.S., and as such, they provide us with the normal materials we ask of any nonprofit--their annual report, their financial records, their equivalency forms, etc.

What are the advantages of giving to the Czech Republic through the fund?

If you are an American donor or of Czech descent, and you want to help educational programs in the Czech Republic, this fund gives you a sense of security and a vehicle as there is already a foundation in the Czech Republic that knows its community and is going out and doing the necessary work. There is also the follow-up that we do so that after you have written your check to this fund, you receive a report on what programs your money is contributing to.

What are some of the challenges in managing this fund?

One challenge is keeping on top of the follow-up reports. The reports must be received in a timely manner and have to be detailed because of the IRS requirements as well as our own due diligence to our donors.

Are there any plans in the near future to venture into additional funds to support other international interests given the diverse ethnic population of Pittsburgh?

There are no plans; however, we welcome donors who want to give abroad. But it is definitely donor driven, as we are a community foundation focused on our community.

Any closing thoughts or advice to community foundation colleagues?

I think this is a wonderful opportunity to bring new donors into your community foundation. I have been with the foundation six years, and more and more I am finding that people are thinking globally and they want to give overseas. They want to think about their own backyards, but they also want to branch out, especially given the current political climate.

For more information, contact:

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¹ Source: U.S. Bureau of the Census, Census 2000

Expanding the Local: Community Foundations Look Outside the U.S.

At first it may seem counter-intuitive: public charities established for the benefit of a particular city, county or region providing funds not just outside that region, but outside the country. For a variety of reasons, however, increasing numbers of community foundations see their missions as extending beyond the city park or local college scholarship fund to include international exchange programs, relief and development efforts, and refugee assistance programs.

According to the report *International Grantmaking II: An Update on U.S. Foundation Trends* published by the Foundation Center in cooperation with the Council on Foundations in 2000, international funding by community foundations increased 160% between 1994 and 1998, the largest increase by any foundation type during that period. Moreover, the Foundation Center's most current research results, which cover 1998 to 2002 and which will be released this month, indicate that the growth in international giving by community foundations for that period is even more dramatic, estimated at a nearly 250% increase.

While there are a number of reasons for this increase, the most prominent is the rising number of donor-advised funds set up at community foundations by benefactors who have a substantial interest in international issues. For example, Neal Ball's decision to set up the Neal Ball Charitable Fund in 2000 with the Chicago Community Trust was the direct result of a trip he took to Thailand 23 years earlier to search for the missing relatives of a refugee he was sponsoring. The trip heightened his awareness of the needs of displaced people. Through the Chicago Community Trust, his fund supports the American Refugee Committee and the Chicago chapter of UNICEF.

This international focus goes even further at the Community Foundation Silicon Valley, where two support organizations are heavily involved in international issues.

The Skoll Foundation, which was set up as a support organization by eBay founder Jeff Skoll, sees its mission--investing in social entrepreneurs--as a global one. According to Skoll, the foundation supports "social entrepreneurs and innovative non-profit organizations working to make a difference in Silicon Valley as well as in other parts of the country and around the world.

That global theme is also seen throughout the mission of Silicon Valley's other support organization, the Kirsch Foundation. Established in the early 1990s by Infoseek founder Steve Kirsch and his wife Michele, the Kirsch Foundation's vision incorporates goals like "ensuring world safety" and "eliminating disease" which, in addition to being ambitious, are inherently global in scope. Between the two of them, the Kirsch and Skoll Foundations have supported a wide range of internationally focused charities: The Global Fund for Children, The Nepalese Youth Opportunity Foundation, Earthjustice Legal Defense Fund, The Global Peace Congress Fund, The Woodrow Wilson International Center for Scholars, and many others.

Some community foundations fund internationally not as the result of the interest of a single donor, but in response to the desires of a community group with strong ties to another country. The growth of immigrant communities all over the U.S. has spurred community foundations to explore funding international issues, either directly or through U.S.-based intermediary organizations. For example, the Asian Pacific Community Fund in Los Angeles makes grants in support of refugee resettlement, language training, development assistance and a host of other issues in Asia and California and receives grants from a variety of Asian-American interest groups through a fund set up at the California Community Foundation.

While most community foundations involved in international issues are doing so because of the interest of specific donors, some are working internationally as a result of their location. For example, as a result of its proximity along the U.S.-Mexico Border, the Arizona Community Foundation has funded the work of several organizations working in both the U.S. and Mexico.

The Border Ecology Project, a small research and advocacy organization based along the border, is an Arizona Community Foundation grantee that works to prevent, reduce or remediate pollution hazards created in the region. Another grantee, the International Sonoran Desert Alliance, works to protect the biological and cultural diversity of the entire Sonoran desert area, which stretches from Arizona to California and deep into Mexico.

The Arizona Community Foundation has also joined with the Cochise Community Foundation, the El Paso Community Foundation, the New Mexico Community Foundation, and seven other U.S.-based community foundations in the border region to contribute to the U.S.-Mexico Border Philanthropy Project. This effort to improve the quality of life in low-income areas along the border is facilitated by the Synergos Institute and, in addition to the U.S. community foundations, is supported by nine other U.S.-based funders and seven Mexico-based community foundations.

Estellean Wick, Advisory Board representative for the Cochise Community Foundation, feels that groups of such diverse actors holds promise for the future. "The collaboration of international, national and regional funders with local community foundations holds great hope for developing systemic change in the border region," she said.

Other community foundations are taking on international issues in response to the needs of immigrants living within their communities. In 2001, the Community Foundation of Middle Tennessee provided general support funding to a Nashville-based Iraqi refugee organization that seeks to assist the estimated 30,000 Iraqi immigrants in the U.S. and to educate Americans generally about Iraq. Similarly, community foundations in Lowell (Massachusetts), Sioux Falls (South Dakota), Bellingham (Washington) and other communities are making grants in response to diverse refugee needs for support and community education efforts in those areas.

Whether driven by the interests of individual donors, by location along an international border, or by the demands of immigrants living within their community, community foundations constitute a rapidly growing source of international grantmaking.

Spotlight on the Council's International Members

The Anguilla Community Foundation

The Anguilla Community Foundation was established in May 1999 as the first foundation in any English-speaking nation of the Caribbean. Launched after a yearlong feasibility study and needs assessment conducted under the guidance of former Philadelphia Foundation president and current Anguilla director Carolle Perry Devonish, the foundation's establishment is part of a growing worldwide movement toward using the community foundation concept to address the social and economic needs of particular geographic regions.

Initially, the foundation was supported and housed by the Social Security Fund of Anguilla, which also gave it an initial endowment of 200,000 East Caribbean Dollars (about \$75,000 U.S.). The Anguilla Progressive Association of New York, which has 501(c)(3) status and allows U.S.-based donors to take a charitable deduction, also supports the foundation by acting as its fiscal agent.

In addition to assistance from the Social Security Fund, Anguilla has found mentors in Minneapolis Foundation President and CEO Emmett Carson, Philadelphia Foundation Vice President of Programs Lynette Campbell, Southeastern Council of Foundations President Martin Lehfeltd and the Council on Foundations Inclusiveness Committee.

Since its inception, the Anguilla Community Foundation has grown to become a leader in the community foundation movement in the Caribbean region--helping, along with the National Community Foundation (St. Lucia), the Community Foundation of the Virgin Islands, the St. Croix Foundation, and the BVI Investment Club Foundation (British Virgin Islands), to found the Association of Caribbean Community Foundations (ACCF) this past June. "We are especially pleased for community foundations to be working together in a region where there are limited

resources and opportunities for funding," says Devonish. "Our next meeting will be held in October in Baltimore in conjunction with the Council's Fall Conference for Community Foundations. We look forward to the opportunities for networking with other community foundations and funders that meeting will provide us."

For additional information, contact Carolle Perry Devonish by e-mail at cperry@anguillanet.com or by phone (after October 1) at 264/497-7209.

Notes and News

WINGS Meetings Planned for Latin America/Caribbean Region and for Emerging Associations of Grantmakers

Worldwide Initiatives for Grantmaker Support (WINGS) will convene the second regional meeting of associations of grantmakers and grantmaker support organizations in Latin America and the Caribbean November 20-22, 2003 in Santiago, Chile. The local host will be the ProHumana Foundation. The purpose of the meeting is to strengthen associations in those countries where they already exist, to support and encourage emerging associations of grantmakers in those countries where they are not yet formally established, and to build a spirit of regional cooperation and collaboration. The 2003 meeting builds on the first Latin America and Caribbean gathering of grantmaker associations that took place last November in Sao Paulo, Brazil.

In addition, WINGS will hold a peer learning meeting for emerging grantmaker associations January 22-24, 2004 in Moscow. The meeting, to be hosted by the Russian Donors Forum, will focus on helping associations of grantmakers that are newly forming to learn from each other and more experienced organizations.

WINGS has also published two volumes of case studies examining seven grantmaker associations (vol. 1) and eight community foundation support organizations (vol. 2) drawn from Asia, Africa, Europe and the Americas. Both volumes highlight organizations at different stages of development, with different organizational forms, and in widely varying contexts. Each volume includes an overview that draws lessons learned from the case studies. Both volumes can be downloaded from the WINGS Web site (www.wingsweb.org). A limited number of printed copies are available from the Council on Foundations. Contact Rob Buchanan by e-mail at buchr@cof.org or by phone at +1 202 467-0391 to request copies.

Notes and News

International Highlights at the Fall Conference for Community Foundations

Following are Council-sponsored events, speakers and sessions of interest to international grantmakers:

Tuesday, October 28

Crossing Borders: How International Experience Helps to Tackle Local Problems

9:00- 10:30 a.m., Room: Ballroom I

Experience community philanthropy's different faces, shaped by cultural values and economic realities. Learn how community foundations in other countries meet local needs. International exchange enables community professionals to gain a fresh perspective on their own foundations as well as to bring home creative ideas and practical solutions to local challenges. Speakers include:

Joseph Lumarda, Executive Vice President of the California Community Foundation

Juraj Mesik, Senior Community Foundation Specialist with The World Bank
Monica Patten, President and CEO, Community Foundations of Canada (moderator)

Youth Around the World: Community Foundations and Conflict Mediation

10:45 a.m.-12:15 p.m., Room: Essex A-C

The energy and idealism of young people are contributing to the work of community foundations around the world, particularly in the area of conflict mediation. Come hear young community leaders from around the world tell their stories. Learn about their experiences working with community foundations active in community-based mediation and the imaginative ways youth in diverse cultures are becoming engaged. Speakers include:

Sarah Clarke, Public Achievement in Belfast, Northern Ireland
Norman Wray, Esquel Foundation in Quito, Ecuador
Rob Collier, President and CEO, The Council of Michigan Foundations (moderator)

The Movie "Promises," a series of interviews with Palestinian and Israeli youth, will be shown in Resource Central in conjunction with this session.

International Programs Reception

6:00-8:00 p.m., Room: Dover A-C

Come meet and talk with representatives of other foundations engaged or interested in international grantmaking, as well as representatives of community foundations and support organizations from around the world.

Member Benefits

Special GuideStar Discount for Council Members

Through a unique partnership with GuideStar, Council on Foundations members may take advantage of special discounts on GuideStar products designed just for grantmakers, including GuideStar for Grantmakers, Charity Check, Analyst Reports, Compensation Studies, and Data Services. For more information go to the Membership section of the Council's website, www.cof.org, and click Member Benefits.

Announcements

Hilton Humanitarian Prize
The Conrad N. Hilton Humanitarian Prize of \$1 million (U.S.) is awarded annually to an organization making extraordinary contributions toward alleviating human suffering anywhere in the world. The deadline for nominations is November 1, 2003. For more information visit the Conrad N. Hilton Foundation website at www.hiltonfoundation.org.

Calendar

2003

- October 26-29: [19th Fall Conference for Community Foundations and Pre-conference Events](#), Baltimore, MD
Contact: Heather Scott, 202/467-0406
- November 2-4: [Independent Sector Annual Conference](#) San Francisco, CA
Contact: Patricia Workman, 202/467-6100
- November 11-12: [Mexican Center for Philanthropy Annual Meeting](#) Mexico City,

International Committee Nominations
The Council on Foundations is seeking nominations to fill vacancies in 2004 for its International Committee. The committee seeks members who are committed to its goals of assisting the Council in building and extending the field of international philanthropy and increasing its effectiveness. The deadline for nominations is December 31, 2003. For more information visit the International Programs section of the Council's website at www.cof.org, or contact Isabelle Mack at macki@cof.org or by phone at 202/467-0435.

Council on Foundations International Fellows Program 2004-2005
The International Fellows program consists of a 12-month position designed for a professional working in philanthropy outside the United States who is interested in learning about the Council and the work of its members. The deadline for applications is March 15, 2004. For more information contact Isabelle Mack at macki@cof.org or by phone at 202/467-0435.

2004 Robert W. Scrivner Award Call For Nominations
Nominations are now being sought for the 2004 Robert W. Scrivner Award for Creative Grantmaking. The Scrivner award honors grantmakers who, with a combination of vision, principle and personal commitment, are making a critical difference in a creative way. The deadline for nominations is December 15, 2003. For more information visit the Council's website (www.cof.org) and click on the "Awards Program" link, or contact Katie Lamb at 202/467-0429.

Mexico
Contact: cemefi@cemefi.org

- November 20-22: [WINGS](#) Latin America and Caribbean Regional Meeting Santiago, Chile
Contact: Gaynor Humphreys, gaynor@efc.be
- December 9: [Institute for New Board Members](#), Washington DC
Contact: Ellen Bryson, 202/467-0438
- December 10: [Special Seminar: Establishing a New Foundation](#)
Washington DC
Contact: Jennifer Hollahan, 202/467-0282
- December 10-12: [Institute for New Grantmakers](#), Washington DC
Contact: Jennifer Hollahan, 202/467-0282

2004

- January 22-24: [WINGS](#) Peer Learning Meeting for Emerging Associations of Grantmakers Moscow, Russia
Contact: Michael Strübin, michael@efc.be
- February 8-10: [18th COF Family Foundation Conference](#), New York, NY
Contact: Susan Price, 202/467-0436
- March 21-25 [The CIVICUS World Assembly](#) Gaborone, Botswana
Contact: David Kalete, 27-11-833-5959, kalete@CIVICUS.org
- April 26-28: 2004 [COF](#) Annual Conference Ontario, Canada
Contact: Angelique Wilkins, 202/467-0295

IRS Announcement 2003-29: What Does It Mean?

By Marc S. Owens and Sharon P. Light, Caplin & Drysdale

Over the last two years, the U.S. government has taken many actions to stop the flow of funds to terrorist organizations, putting U.S. foundations and charities on notice that new rules apply to grants made to organizations that are not located in the U.S. It is not clear what those new rules are, however. While the President, Congress and the U.S. Department of the Treasury all have acted with respect to foreign grantmaking, the IRS has been notably silent.

Recently, though, the IRS issued Announcement 2003-29, 2003-20 I.R.B. 928, signaling that the agency--the traditional regulator of U.S. charitable activity under the tax laws--is considering guidance that will give U.S. charities and foundations greater clarity in complying with the tax rules as they relate to diversion of assets to terrorist organizations.

This article discusses the context for and the substance of the IRS Announcement. It also discusses how charities and foundations might choose to respond to the Announcement and what the IRS might do once all the comments are in.

Context for IRS Announcement 2003-29

The first official governmental action to stem terrorist financing came soon after September 11, 2001, as President George W. Bush released Executive Order 13224, authorizing the Office of Foreign Assets Control ("OFAC") to block transactions and seize assets of individuals and organizations deemed to be associated with terrorism. The Executive Order included a list of such persons. Over time, similar lists maintained by the U.S. Department of State and U.S. Department of the Treasury were linked to the Executive Order's list on OFAC's website, and all are regularly updated. By the end of October, 2001, Congress had adopted the USA Patriot Act, which imposed or enhanced civil and criminal penalties for knowingly or intentionally aiding terrorists.

Charities were anxious to ensure that charitable dollars were not diverted to terrorist purposes, but the government--aside from providing lists of persons associated with terrorism--had not provided any indication about what it expected charities to do. Then, in November, 2002, the Treasury Department issued "Anti-Terrorist Financing Guidelines: Voluntary Best Practices For U.S.-Based Charities," to suggest procedures that charities could follow to reduce the risk that their funds would be seized by OFAC.

According to the Guidelines, if charities followed the myriad voluntary procedures contained therein--which ranged from checking any government list and "any other official list available to the charity" to undertaking money-laundering investigations to identifying subcontractors of a grantee--they could reduce the risk that their funds would be seized. Those in the charitable community were quick to point out that many of the procedures contained in the Guidelines were unworkable and ill-suited to prevent diversion of assets to terrorist uses. The Council on Foundations submitted comments to the Treasury Department requesting that the Guidelines be withdrawn and replaced with a risk-based approach to due diligence for foreign grants. [The document is available on the Council's Web site www.cof.org under international programs, "legally speaking."] Treasury officials, in response, have emphasized that the Guidelines are not legal requirements, but that, at the very least, funders should be checking terrorist lists for names of potential grantees.

In the absence of clear guidance from the government, individual foundations and charities have adopted what they believe to be reasonable precautionary measures to ensure that grants are not diverted to terrorist purposes--without knowing whether these actions might be deemed sufficient by whichever agency might review their actions.

Explanation of the IRS Announcement

The IRS request for comments is straightforward. The IRS would like to know what charities and foundations are doing to make sure that funds given to non-U.S. organizations are used for charitable purposes and what they have done to ensure that funds are not diverted to the specific non-charitable purpose of supporting terrorism. [1] The IRS asks what sorts of difficulties U.S. funders have monitoring use of funds by foreign grantees. Acknowledging that some of the procedures outlined in the Guidelines may be burdensome and unrelated to tax compliance, the IRS still asks which of the practices suggested in the Guidelines are currently used by charities and how associated burdens might be mitigated. Finally, the IRS asks for suggested changes in the current procedural and reporting requirements that would help reduce the risk of diversion of charitable funds to terrorist uses.

In short, the Announcement does not impose any new requirements on charities or private foundations. It does not even implicitly endorse any of the procedures in the Treasury Guidelines. The Announcement seems to be the IRS's attempt to get a practical, hands-on perspective on the most effective way of addressing the risk that charitable funds intended for use by non-U.S. organizations will be diverted to terrorist uses.

Responding to the IRS Announcement

Some charities and foundations may be wary of responding to Announcement 2003-29 for fear that a response might have the unwelcome effect of attracting IRS attention. Those organizations might alleviate that concern by collaborating with others that share common characteristics to prepare a joint response. For example, eight large private foundations have submitted a response that does not describe the practices of any one institution but presents a picture of how some larger private foundations engage in international grantmaking. Their response was attached to the Council's submission to the IRS on Announcement 2003-29 [available on the Council's Web site www.cof.org under international programs, "legally speaking"] along with the submissions of several larger corporate foundations. [2]

Finally, even though the Announcement asks that comments be submitted by July 18, 2003, the IRS is still encouraging public charities and private foundations to submit comments.

How the IRS might make new rules on foreign grantmaking

Once all the comments are in, the IRS certainly has the discretion not to issue any further guidance with respect to international grantmaking. However, given the gravity of the terrorist threat, the IRS is likely to act in any of a number of ways.

First, the IRS could issue a new regulation, which explains and interprets a provision of the Internal Revenue Code. For example, the IRS might issue a new regulation explaining what it means to be "charitable" under section 501(c)(3) to specifically exclude terrorist activities.

However, issuing a regulation is a slow process-- it can take years--as the IRS is required to issue temporary regulations for public comment before it can issue final regulations.

The IRS also could issue a Revenue Ruling, but such rulings usually address a specific factual situation that has arisen, so they are of limited utility. Only a handful of U.S. charities have been implicated in terrorist funding schemes, and it seems that their involvement in terrorism might have been known or intentional; thus, a clarification of the IRS position on terrorist support in that context will be of no value to the overwhelming majority of charities and foundations that are conscientiously trying to avoid support of terrorism.

The IRS might decide that a Revenue Procedure would be an effective way to change the way U.S. charities make grants to non-U.S. organizations. A Revenue Procedure tells taxpayers that if they follow certain procedures, the IRS will treat the taxpayers' actions favorably. For example, as the IRS has asked how to mitigate the burdens imposed by new procedures, a Revenue Procedure could address that concern by providing a safe harbor from liability^[3] for diversion to terrorist uses for (1) U.S. charities that make grants to non-U.S. organizations after undertaking prescribed due diligence procedures, and (2) U.S. donors that make a grant to a U.S. organization that represents that it engages in such due diligence procedures before making a grant to a non-U.S. organization with those funds. Revenue Procedures do not require public comment, so this would be a relatively efficient way of getting guidance out to taxpayers who are uncertain about the current rules.

The Service could also release an IRS Publication discussing its views on how existing tax law applies to terrorist support by charitable organizations. The IRS has issued these most recently in the exempt organizations area regarding how tax laws apply to churches and to disaster relief efforts. While IRS Publications are not a source of new law or procedure, they can clear up muddy issues for taxpayers absent other more authoritative guidance. They do not require public comment before issuance.

Conclusion

The IRS Announcement does not require charities or foundations to take any additional actions with respect to foreign grantmaking. It does offer an opportunity for grantmakers to make sure the IRS has a realistic view of the challenges inherent in foreign grantmaking before the agency drafts new rules, which could clarify an area of the law that has been in flux since September 11, 2001.

About the Authors and Editor

Marcus S. Owens is a member and Sharon P. Light is an associate in the Washington, DC, law firm of Caplin & Drysdale, Chartered. Mr. Owens previously served as the Director of the Exempt Organizations Division of the Internal Revenue Service.

Timothy R. Lyman, a partner in the Hartford, Connecticut office of Day, Berry & Howard LLP, and a member of the firm's Tax Exempt Organizations Practice Group, edited this article.

^[1] The IRS Announcement goes beyond inquiring about funding of foreign organizations by addressing also foreign "activities" of U.S. charities and private foundations. This article generally limits its scope to grantmaking to organizations located outside the U.S., and does not address programmatic activities carried out abroad by U.S. organizations.

^[2] In addition to the Council's response to Announcement 2003-29, which focuses on the concerns of grantmakers, a response was also prepared on behalf of INDEPENDENT SECTOR and InterAction. The Independent Sector/InterAction response also addresses the concerns of U.S. charities and foundations engaged in programmatic activities abroad, and can be found at <http://www.independentsector.org/programs/gr/intlactivities.html>.

^[3] It is important to understand the limited scope of the IRS's jurisdiction. The IRS can provide guidance concerning avoidance of tax-exempt status or excise tax problems that might result from diversion of a charity's or a foundation's assets to terrorist organizations. However, the IRS has no power to influence the treatment of grantmakers under Executive Order 13224 or the USA Patriot Act, discussed above.

About **International Dateline**

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