

Expenditure Responsibility Grants: Quick Reference Guide

What is Expenditure Responsibility?

Expenditure responsibility (ER) refers to the required oversight and monitoring procedures that permit a private foundation to make grants to certain types of organizations (typically organizations that are not 501(c)(3) public charities). The goal of ER is to help ensure that foundation grant funds are spent solely for the charitable purposes for which they are awarded.



When is ER Required?

ER is not required for grants or program-related investments (PRIs) to the following types of organizations:

1. 501(c)(3) public charities
2. Units of government (domestic and foreign)
3. International organizations designated by executive order
4. Exempt operating foundations
5. Foreign organizations with an “equivalency determination”

ER is required for grants and PRIs to any entity that is not listed above, including:

1. For-profit companies
2. Private foundations
3. Foreign organizations without an “equivalency determination”
4. New organizations waiting for their IRS "determination letters," recognizing their Section 501(c)(3) public charity status
5. Section 501(c)(4), section 501(c)(6), and all other section 501(c) tax-exempt organizations that are not section 501(c)(3) public charities

How is ER Exercised?

Step 1: Pre-Grant Inquiry

The pre-grant inquiry must give a reasonable person assurance that the potential grantee will use the grant for proper purposes.

In order to conduct the pre-grant inquiry, a private foundation will typically request and review (if they are available) the following types of documents:

- Legal status;
- A list of board members, officers and key project participants;
- An organization chart;
- An annual report for the prior year or a brief description of the organization's history, goals, mission, recent activities and future plans;
- A budget for the current year;
- Financial statements; and
- Grants made to the organization by other foundations or the government.

Step 2: Grant Agreement

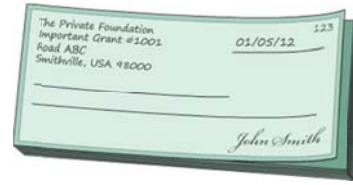
All ER grants must be made pursuant to a written grant agreement that contains the specific provisions described in Treasury Regulation 53.4945-5(b)(3).



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Step 3: Separate Account

The grant agreement must require the grantee to maintain grant funds in a separate account. The grantee can satisfy the separate account requirement by opening a separate bank account or a separate bookkeeping account.



Step 4: Reports from the Grantee

ER grantees must report on:

- a. the use of the grant funds;
- b. progress made by the grantee toward achieving the purposes for which the grant was made; and
- c. compliance with the terms of the grant agreement.

ER grantees must provide:

- an Annual Report for the year in which the first payment is made, and for all subsequent years until the grant funds are fully spent; and
- a Final Report after all grant funds have been spent, and cover the entire grant period.

Annual and Final Reports must be received “within a reasonable” period of time” after the end of the grantee’s fiscal year.

If a grantee fails to submit a required report, the foundation must:

- make a “reasonable effort” to obtain the required report; and
- withhold any future payments on the grant or any other grant to the same grantee until the report is furnished.

Step 5: Reports to the IRS on the Foundation’s Tax Return

The foundation must report all ER grants to the IRS on the foundation’s tax returns. The foundation’s report to the IRS must include those items set out in Treasury Regulation 53.4945-5(d)(2).

Step 6: Investigation of Diversion

The foundation must promptly review each ER grant report after it has been received.

If the foundation believes that there may have been a diversion of funds, the foundation must:

- take “all reasonable and appropriate steps” to ensure the grantee either returns the diverted funds to the foundation, or restores the amount to the grant account; and
- withhold all further payments to the grantee on all grants until the diverted funds are restored and the foundation has received appropriate assurances that further diversions will not occur

If you suspect a diversion of ER grant funds, you should seek assistance immediately from your Legal Department, Grants Management or other department responsible for compliance.

Complicating Issues in ER Grants

There are several complicating issues in ER grants. You should seek further assistance from your Legal Department, Grants Management or other department responsible for compliance at your foundation before making an ER grant that involves any of the issues listed below, or if you have any questions about ER grants.

- ER Grants with Subgrants
- ER Grants to Private Foundations
- ER Grants for Capital Equipment
- ER Grants to Support Advocacy