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### Doing good while being good: Ensuring your relief fund is compliant

By Douglas Stockham

Without question, providing relief funds to your own in times of unforeseen hardship or natural disaster is valued as an employer. It is a unique component that builds goodwill and—for many companies—helps to enhance investor-specific environmental, social, and governance (ESG) efforts. But whether your organization provides direct corporate assistance or has a private foundation, financial assistance given to a team member must comply with tax-exempt regulations, regardless of the good you intend to do.

Surprising to some, but all relief efforts are not created equal. Public charities with Field of Interest Funds are permitted to provide tax-advantaged relief for qualified disasters, nonqualified disasters, and hardships; while community foundations, direct corporate assistance, and private foundations are not. Figure 1 outlines the various charitable structures and their abilities to provide relief based on regulations.

Figure 1: Relief options from charitable structures

	PUBLIC CHARITY (EAF)  Field-of-Interest Restricted Fund	PUBLIC CHARITY  (Community Foundations)  Donor Advised Fund	DIRECT CORPORATE ASSISTANCE	PRIVATE FOUNDATION
Qualified Disaster Relief (e.g., Presidentially Declared Disaster)	Permitted charitable activity	Permitted charitable activity	Permitted but not charitable and generally taxable to the employee (exception is a qualified 139 plan)	Permitted charitable activity
Non-Qualified Disaster Relief	Permitted charitable activity	Not permitted	Permitted but not charitable and generally taxable to the employee	Not permitted

	PUBLIC CHARITY (EAF)  Field-of-Interest Restricted Fund	PUBLIC CHARITY  (Community Foundations)  Donor Advised Fund	DIRECT CORPORATE ASSISTANCE	PRIVATE FOUNDATION
Hardship Assistance	Permitted charitable activity (if IRS criteria are met)	Not permitted	Permitted but not charitable and generally taxable to the employee	Not permitted

Here are five common things to look for to determine compliance and ensure your organization is on the right track with the United States Internal Revenue Service (IRS).

### **Are the fund’s grant guidelines specific and objective?**

Issues occur when grant guidelines are very general and/or when grant decisions are made subjectively. According to IRS regulations, “[t]he organization establishes specific written criteria for the application, selection and disbursement of funds.”<sup>[1]</sup> For example, including “other” as an option in any of the grant criteria is not specific. A straightforward way to determine if the grant guidelines are specific and objective is to ask yourself, “If the application was reviewed by five different people, would they all come to the same conclusion?”

### **Is an advisory/oversight committee being used appropriately?**

Organizations often use a committee of team members and/or retired team members to administer a fund, often resulting in an inconsistent, nonobjective process. IRS regulations state that “[t]he organization establishes a committee to administer the program consisting of persons who aside from serving on the committee have no financial interest in the employer; or the committee consists of persons representing a broad spectrum of employees who understand that they are acting in a personal capacity as agents of the organization rather than as representatives of the employer.”

For example, if grant recipients are selected by management or human resources, the IRS would not view this as an independent, objective process. One way to guarantee maximum independence is to partner with a third-party public charity that has disaster and hardship relief expertise.

### **Is employment used only as an initial qualifier for eligibility?**

While employment can be used as an initial qualifier for eligibility to apply for and receive a grant, additional measures like requiring a supervisor’s signature on the application, considering disciplinary issues, or considering a team member’s length of service, etc., should not be included.

IRS guidelines state that “[t]he conditions are designed to ensure that employment is merely an initial qualifier for eligibility, that the ultimate recipients are not chosen based upon employment related factors, and that those

responsible for selecting recipients are independent from the employer.”

Beyond initial eligibility, the nexus between employer and employee must be deemed broken. This can be accomplished by using a third-party public charity because the applicant is seen as an individual rather than an employee or contractor, and the charity—rather than the fund’s sponsoring organization—is responsible for objectively reviewing the grant application and determining whether or not a grant can be awarded based on the fund’s criteria and IRS regulations.

## **Is the fund structured and administered in a way to ensure full regulatory compliance?**

Most funds attempt to comply with federal and state regulations but do not fully understand the depths of compliance. The most common way funds do not comply fully with regulations is by providing a private benefit to parties administering the program; however, the IRS may view the program as a team member benefit advantageous to the organization. The IRS’s main concern is that relief funds do not “impermissibly serv[e] the related employer,” meaning that the fund is not a disguised benefit or compensation.

Per regulations, the only permitted charitable activity for private foundations and donor-advised funds is to provide relief grants to individuals who are affected by qualified disasters, while field-of-interest restricted funds are permitted to provide financial assistance for qualified disasters, non-qualified disasters, and personal hardships.

## **Is the fund structured and communicated to ensure full regulatory compliance?**

IRS publications require that “[t]he organization informs all charitable class members that disaster relief and emergency hardship funds are available, including the criteria for application and selection.”

Many organizations try to ensure a program is communicated to all team members, but this is often not done well. For example, if new team members are made aware that a relief fund program is available to them, but grant criteria are not shared, this is less compliant. Ongoing, effective communication to keep team members updated on the state of the fund on a regular basis and celebrating the fund’s success are two great ways to keep team members involved.

Remember, establishing a relief fund is always a step in the right direction and the right thing to do to support your extended network, but keep in mind that to avoid taking the proverbial two steps back, compliance throughout the entire do-good process is key.

## **Takeaways**

- For United States Internal Revenue Service (IRS) compliance, grant criteria and guidelines should be specific, straightforward, and objective.
- IRS-compliant grants can only be administered by independent and objective individuals. If a fund’s sponsoring organization chooses to establish a committee of its employees to participate with its private charity that administers the program, those individuals must understand they are acting as independent reviewers, rather than as employees who hold a financial interest in the organization.
- Per the IRS, a grant applicant’s employment is merely an initial qualifier for eligibility; a person cannot be selected based upon employment-related factors nor directly selected by the employer.
- Disaster relief grants should not provide a private benefit to those parties administering said grants.

- Fund specifics—including grant criteria and successes—should be actively and regularly communicated to all team members.

<sup>1</sup> Ruth Rivera Huetter and Marvin Friedlander, “Disaster Relief And Emergency Hardship Programs,” IRS EO CPE Text, 1999: 223–226, <https://www.irs.gov/pub/irs-tege/eotopick99.pdf>.

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