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Secretary Clinton Says Proposed Regulations “Clear the Way” for Equivalency Repositories

Private foundations making grants directly to foreign organizations generally must use one of two grantmaking procedures: [expenditure responsibility](#) or [foreign public charity equivalency](#) (“FPCE” for short). In FPCE, a grantor makes a good faith determination, based on an affidavit of the grantee or on an opinion of counsel, that the foreign charity meets the basic 501(c)(3) public charity requirements. The FPCE process can sometimes be difficult: language, time zones, and legalese, among others, can all present obstacles. For several years now, the Council on Foundations and many international grantmakers have been [working on a project](#) that would greatly streamline the FPCE process. At the core of this project was the idea of a “repository”—a third party that could work with potential foreign grantees to help them fill out the FPCE affidavit. The repository staff would review the affidavit information, and if the information met FPCE criteria, the repository could certify this to U.S. grantmakers. In that way, each individual grantmaker wouldn’t have to go through the evaluation process itself; a repository could take care of it, once, for multiple grantmakers. This approach struck many in the philanthropy sector, including this law firm, as an efficient solution, but the IRS has not yet formally approved it.

As I [wrote earlier this week](#), the IRS released proposed regulations specifying that a grantmaker could rely, not just on an opinion of counsel to make its FPCE determination, but also on the opinion of a CPA or other “enrolled agent.” These regulations do not explicitly mention the repository idea. However, in a [speech](#) later the same day in which she encouraged the growth of global philanthropy, Secretary of State Clinton not only endorsed the proposed regulations but seemed to endorse the idea of a repository as well. She said:

So thanks to the Treasury Department—and Ruth Madrigal is here representing the Treasury Department—those regulations are being changed to reduce this burden dramatically. Now, in making equivalency determinations, foundations can rely on advice from a broader range of tax professionals, not just attorneys, which will make the process easier and far less expensive. *And although it’s not specifically addressed in the new rules, this change will clear the way for foundations to set up organizations that can serve as repositories of this determination, meaning this would only need to be done one time.* And Treasury and State will work together with you to try to create such a clearinghouse of information that would then be accepted as reliable.

(emphasis added)

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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This is exciting news for the sector. While the proposed regulations will likely make international grantmaking somewhat more accessible, a repository would go much, much further. And now it looks like we're one giant step closer to having one.