

Disaster Relief: Providing Charitable Assistance When Disaster Strikes

By Jeanette Lodwig and LaVerne Woods

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In the wake of a major disaster there is often an outpouring of generosity to help alleviate human suffering. Charitable organizations play an important role in providing crucial assistance to victims of disasters, whether in New York, Louisiana, Haiti, Chile, Japan or elsewhere around the globe. The legal rules regarding disaster relief present traps for the unwary charity, however, and U.S. charities should ensure that their relief efforts comply with those requirements.

Preserving flexibility in how donations may be used

If a charity tells donors that it will use their contributions to provide relief for victims of a specific disaster, it must use the contributions for that purpose. It may not later determine that the needs of those affected have been met, and apply any unused funds to some other purpose.

To preserve flexibility, a charity must, at the time it asks for or accepts contributions, state clearly that it retains the right to redirect the funds to a different charitable purpose. For example: "On those occasions when donations exceed our expenses of providing relief for a particular disaster, we may use donations to prepare for and provide assistance to victims of other disasters."

Grantmaking to U.S. and foreign organizations

U.S. charities that make grants may fund either U.S. charities or foreign organizations that provide on-the-ground disaster relief. The simplest approach from a legal standpoint is to provide funds to a U.S. public charity that can respond quickly and efficiently through direct programs. Funders may provide grants to U.S. charities to relieve victims of either domestic or foreign disasters.

Charitable funders may also make grants directly to a foreign organization, such as a foreign nongovernmental organization (NGO) operating in the country where the disaster occurred. All U.S. grantmakers must take appropriate measures to ensure that their grants to foreign organizations are used exclusively for the intended charitable purposes, and not to fund terrorist activities.

U.S. funders should perform due diligence regarding a potential foreign grantee, including checking lists of suspected terrorist organizations. They should disburse funds only under a written grant agreement that requires the grantee to use the funds exclusively for charitable purposes and to provide disaster relief based on an objective determination of need. The agreement should also prohibit use of grant funds to support terrorist activities and require reports on the use of the funds. *All charitable funders should consult with legal counsel before implementing a foreign grantmaking program.*

Special procedural rules may also apply to grants to foreign organizations, depending on the U.S. funder's tax classification. If the funder is a private foundation or a donor-advised fund, then it must generally follow either the "equivalency determination" or "expenditure responsibility" rules under federal tax law. Charitable funders that are classified as public charities under U.S. tax law have greater flexibility in making grants to foreign organizations.

Employer-related disaster relief programs

Employers often wish to assist employees and their families who have been severely affected by a disaster. An employer may seek to provide assistance through a company-controlled private foundation or an assistance fund created at a public charity. The Internal Revenue Service (IRS) requires that all charitable employee-assistance programs meet the following three requirements:

1. The class of beneficiaries eligible for disaster relief must be sufficiently large or indefinite to constitute a charitable class;
2. The recipients must be selected based on an objective determination of need or distress; and
3. The selection must be made using either an independent selection committee or adequate substitute procedures to ensure that any benefit to the employer is incidental and tenuous. A selection committee is considered independent if a majority of its members are individuals who are not in a position to exercise substantial influence over the employer.

Charitable organizations must keep adequate documentation to show that payments were made for charitable purposes and that the victims served were needy or distressed. The IRS does not expect organizations that distribute short-term emergency assistance in the immediate aftermath of a disaster to maintain records as detailed as those required for organizations providing longer-term assistance.

Additional requirements may apply depending on the tax status of the charity providing the relief. An employer-sponsored private foundation may provide disaster relief payments to employees and family members only in the event of a “qualified disaster.”

A “qualified disaster” is:

1. A disaster that results from terrorist or military action;
2. A presidentially declared disaster;
3. A disaster related to transportation accidents, such as airplane crashes; or
4. Other disasters as determined by the secretary of the treasury.

In addition, a private foundation may not make relief payments to its officers and directors or members of the selection committee.

Taxation of disaster-relief payments to recipients

Under a special rule enacted following the events of Sept. 11, 2001, “qualified disaster relief payments” are not taxable as income to the recipient. A “qualified disaster-relief payment” includes amounts that an individual receives to pay or reimburse expenses for housing, transportation or medical care arising from a “qualified disaster.”

Additional resources

- IRS Publication 3833, [Disaster Relief: Providing Assistance Through Charitable Organizations](#)
- IRS.gov, [Disaster Relief - Resources for Charities and Contributors](#)
- Treasury Department, [U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities](#)

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