FOREIGN ORGANIZATION GRANTS

Hello Everyone, I was wondering, for those of you who make grants outside of the United States, have you encountered the new 1441 regulation that requires us to withhold income tax on any foundation money spent in the United States for travel to and from the states, lodging, food, research, etc? If so, how are you handling this? Best wishes!

Judith R. Rayter, Program Administrator Global Security and Sustainability Program John D. and Catherine T. MacArthur Foundation

Dear GMN Members, Thank you for responding to my inquiry. The Global Fund has contacted our lawyers and we are in the process of determining how to proceed. These are some of the things we are doing for now:

1) We have added a sentence to our contract letter stating the following: "These funds must be exclusively used to support activities conducted outside the United States and only in support of the objectives described in the materials submitted to the Global Fund for Women by [name of the organization] on [date submitted] and subsequent correspondence with the Global Fund for Women."

2) However, for grants that are going towards supporting U.S. activities (we have a few of them) we are excluding this sentence from the contract letter until we determine the appropriate "contract language."

3) For a grant that is going towards both general support and U.S. activities, we are specifying in the contract letter how much is going for general support and how much for U.S. activities. The grantee needs to provide a line item budget showing the portion that they will spend in the U.S.

4) I have drafted a letter (in English and in Spanish) to our grantees explaining them about the new regulation and explaining them about the forms SS-4 and W-8EXP that they are to complete. This letter, however, needs to be reviewed by our lawyers. I am attaching a sample o the English version. I will keep you all post it on how the Global Fund will handle this.

Hello Lourdes, Carnegie Corporation's policy and procedures regarding 1441 are below. I'd like to see how other foundations are handling the new reg. Please share your procedures with the list. I asked Jane Nober at the Council on Foundations if COF intended to protest the regulation. She said that depended on the response from COF membership. I would encourage COF members to write to Dot Ridings and encourage the Council to protest this inane regulation. \*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\* Carnegie Corporation Procedures

Our primary objective was to develop a policy that complied with the new regulation while minimizing the negative affect on our grantees.

1) If U.S. based activities are included in a proposal that will be recommended for funding, the program officer should inform the grantseeker of the IRS regulation and ask the following: Has the organization recently provided documentation to a U.S. funder in support of a tax treaty or tax exempt equivalency exemption, and if yes, what was the result?

2) If the answer is yes and the result was an exemption, then the program officer should send the required forms to the organization as quickly as possible. Because the preparation of exemption documentation is extensive and potentially costly to the grantseeker, we would not ask the grantseeker to begin the process from "scratch" for our purposes. Therefore, if the answer is no or the exemption was denied, then the program officer should ask the following: Are U.S. based activities essential to the success of the project? If yes, can another funding source support those activities?

3) If the activities are not essential and can be eliminated from the project plan, then the program officer should request a revised workplan and budget that omits the U.S.-based activities. If the activities are essential and no other funding sources are available, then the program officer should request a specific budget breakdown for U.S.-based activities (if such a breakdown is not already available in the proposal budget narrative).

4) Once the estimated amount of U.S. based activities is known, 30% withholding on that amount will be added to the amount of the grant and paid directly to the IRS. For example, if the original amount requested is $50,000, but U.S. based activities are budgeted at $3,000, then the amount of the grant will be increased to $50,900 and $900 will be paid directly to the IRS. \*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

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I have attached our revised Expenditure responsibility grant agreement containing highlighted text related to the 1441 ruling. If the grantee cannot sign this form stating that no funds will be spent inside the U.S., we split the grant into two grants, one for the non-U.S. portion and one for the U.S. portion (grossed up by the amount we would need to withhold). Mindy Roberts Grants Manager The David & Lucile Packard Foundation Phone: (650) 948-7658 Fax: (650) 947-8616 Email:[m.roberts@packfound.org](mailto:m.roberts%40packfound.org" \t "_blank) [http://www.packfound.org](http://www.packfound.org/)

AGREEMENT FOR EXPENDITURE RESPONSIBILITY GRANT This Agreement for Expenditure Responsibility Grant is an integral part of our grant award letter dated July 12, 2001. The undersigned Grantee agrees, as a condition to the receipt of this grant and in accordance with the rules for expenditure responsibility grants and payments made to non-U. S. organizations contained in the United States Internal Revenue Code (and related regulations), that all grant funds will be used exclusively to support activities conducted outside the United States and that the Grantee will:

1. Establish and maintain, as long as grant funds remain, the grant funds in a separate, segregated bank account dedicated to the charitable, scientific, or educational purposes for which the grant is made. Principal and income (if any) from the grant funds should be shown separately in the Grantee’s accounting records.
2. II. Repay to the Packard Foundation any portion of the grant not used for the purpose of the grant.
3. III. Submit to the Packard Foundation full and complete annual written reports on: (a) the use of the grant funds, (b) compliance with the terms of the grant, and (c) the progress made by the Grantee toward achieving the purposes for which the grant was made. Provide the annual reports for the year of receipt of the grant (or any portion), for all subsequent years until the grant funds are expended in full or the grant is otherwise terminated, and a final report on completion of the use of the grant. In the final report, provide details of all expenditures of principal and income (if any) made from the grant funds (including salaries, travel, and supplies) and the progress made toward the goals of the grant. Deliver all reports to the Packard Foundation within a reasonable period of time after the close of the Grantee’s annual accounting period.
4. IV. Maintain an accurate record of the grant received and expenses incurred under this grant, retain such books and records for at least four years after completion of the use of this grant; and permit reasonable access to its files, records and personnel by the Packard Foundation on request for the purpose of making financial audits, program evaluations or verifications concerning this grant as the Packard Foundation deems necessary.
5. V. Not to use any of these grant funds: A. To carry on propaganda or otherwise to attempt to influence legislation within the meaning of Internal Revenue Code Section 4945(d)(l); B. To influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive within the meaning of Internal Revenue Code Section 4945(d)(2); C. For any grant which does not comply with the requirements of Internal Revenue Code Section 4945(d)(3) (relating to grants to individuals) or Section 4945(d)(4) (relating to grants to organizations other than public charities); D. For any purpose other than charitable, scientific, or educational within the meaning of Internal Revenue Code Section 170(c)(2)(B); E. In the United States, including but not limited to payments for travel to or from the U.S., for activites in the U.S., or to or on behalf of any personnel (including Grantee’s personnel) while in the U.S.; and F. For purposes other than those stated in the attached grant award letter.
6. VI. Advise the Packard Foundation immediately if the Grantee obtains a determination letter of tax exempt status from the United States Internal Revenue Service; if the Grantee is unable to use the grant for the purposes stated above; or if any use or expenditure from this grant has been made for any other purposes. The Packard Foundation reserves the right to discontinue, modify, withhold U.S. tax from, or withhold any payments due under this grant, or to require repayment of any unexpended grant funds if necessary, in the Packard Foundation's judgment, to comply with the expenditure responsibility rules or requirements of any other law or regulation, or internal policy applicable to this grant. Read and agreed to by: /Grant # By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Signature) Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ AGREEMENT FOR EXPENDITURE RESPONSIBILITY GRANT This Agreement for Expenditure Responsibility Grant is an integral part of our grant award letter dated Date.

The undersigned agrees, as a condition to the receipt of this grant and in accordance with the United States Internal Revenue Code expenditure responsibility rules that it will:

1. Establish and maintain, as long as grant funds remain, the grant funds in a separate, segregated bank account dedicated to the charitable, scientific, or educational purposes for which the grant is made. Principal and income (if any) from the grant funds should be shown separately in the Grantee’s accounting records.
2. II. Repay to the Packard Foundation any portion of the grant not used for the purpose of the grant.
3. III. Submit to the Packard Foundation full and complete annual written reports on: (a) the use of the grant funds, (b) compliance with the terms of the grant, and (c) the progress made by the Grantee toward achieving the purposes for which the grant was made. Provide the annual reports for the year of receipt of the grant (or any portion), for all subsequent years until the grant funds are expended in full or the grant is otherwise terminated, and a final report on completion of the use of the grant. In the final report, provide details of all expenditures of principal and income (if any) made from the grant funds (including salaries, travel, and supplies) and the progress made toward the goals of the grant. Deliver all reports to the Packard Foundation within a reasonable period of time after the close of the Grantee’s annual accounting period.
4. IV. Maintain an accurate record of the grant received and expenses incurred under this grant, retain such books and records for at least four years after completion of the use of this grant; and permit reasonable access to its files, records and personnel by the Packard Foundation on request for the purpose of making financial audits, program evaluations or verifications concerning this grant as the Packard Foundation deems necessary.
5. V. Not to use any of these grant funds: A. To carry on propaganda or otherwise to attempt to influence legislation within the meaning of Internal Revenue Code Section 4945(d)(l); B. To influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive within the meaning of Internal Revenue Code Section 4945(d)(2); C. For any grant which does not comply with the requirements of Internal Revenue Code Section 4945(d)(3) (relating to grants to individuals) or Section 4945(d)(4) (relating to grants to organizations other than public charities); D. For any purpose other than charitable, scientific, or educational within the meaning of Internal Revenue Code Section 170(c)(2)(B). E. For purposes other than those stated in the attached grant award letter.
6. VI. Advise the Packard Foundation immediately if the Grantee obtains a determination letter of tax exempt status from the United States Internal Revenue Service; if the Grantee is unable to use the grant for the purposes stated above; or if any use or expenditure from this grant has been made for any other purposes. The Packard Foundation reserves the right to discontinue, modify or withhold any payments due under this grant, or to require repayment of any unexpended grant funds if necessary, in the Packard Foundation's judgment, to comply with the expenditure responsibility rules or requirements of any other law or regulation applicable to this grant. Read and agreed to by: / By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Signature) Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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