Establishing the NGOsource Equivalency Determination Information Repository (EDIR) on Non-U.S. Based NGOs

Martin Schneiderman
Council on Foundations
NGOsource Repository
Manager

Sheila Warren
TechSoup Global
NGOsource Repository
Director

Updated October 2010

1

Equivalency Determination (ED) vs. Expenditure Responsibility (ER)

Two Regulatory Ways of Qualifying Non-U.S. based NGOs to Receive Grants

Benefits of Equivalency Determination (ED)

1. A <u>foreign NGO is treated like a U.S. public charity</u>:

   - General operating support is permitted.

   - In appropriate circumstances, grants to support projects that include some lobbying are permitted.

   - Re-granting is allowed in more circumstances.

2. <u>Imposes none of the ongoing additional multi-year costs of ER</u> *(including record-keeping and reporting costs).*

3. Can <u>update ED annually at low cost</u>.

Existing Disadvantages of Equivalency Determination (ED)

1. <u>High upfront cost</u> ($5-10k for legal opinion).

2. <u>More upfront work from NGO and the grantmaker</u>, often a difficult and frustrating process.

3. Time zone, language and regulatory differences <u>make support difficult</u>.

4. <u>Not all grantees will qualify for ED</u>, even after up front work is invested.

5. <u>EDs are not currently shareable among grantmakers</u>.

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Benefits of Expenditure Responsibility (ER)

○ Allows grantmakers to <u>make grants to foreign NGOs that are not recognized as U.S. public charities by the Internal Revenue Service</u>; without ER, these grants would be forbidden.

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Disadvantages of Expenditure Responsibility

Restrictions on use of grant funds;
CANNOT be used for:

○ General operating support

○ Projects that include any lobbying
(even if there are other funders)

○ Grants (including scholarships) to individuals

○ Grants to other organizations unless the NGO understands and imposes ER on all re-grantees

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More Disadvantages of Expenditure Responsibility

○ <u>Requires additional record-keeping from NGO.</u> NGO must maintain separate bookkeeping or accounting of grant funds and must track the use of any capital assets for the life of the item *(with an exception for items worth less than US$5,000).*

○ <u>Requires additional annual reporting based on the NGO's fiscal year</u>; grantmaker staff must solicit and review these additional reports.

○ <u>Timing and contents of reporting cannot be waived</u> and, if a NGO is out of compliance, no further payments or new grants can be made to that organization.

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The Need for a Centralized Shareable Repository of NGOsource Equivalency Determination Information
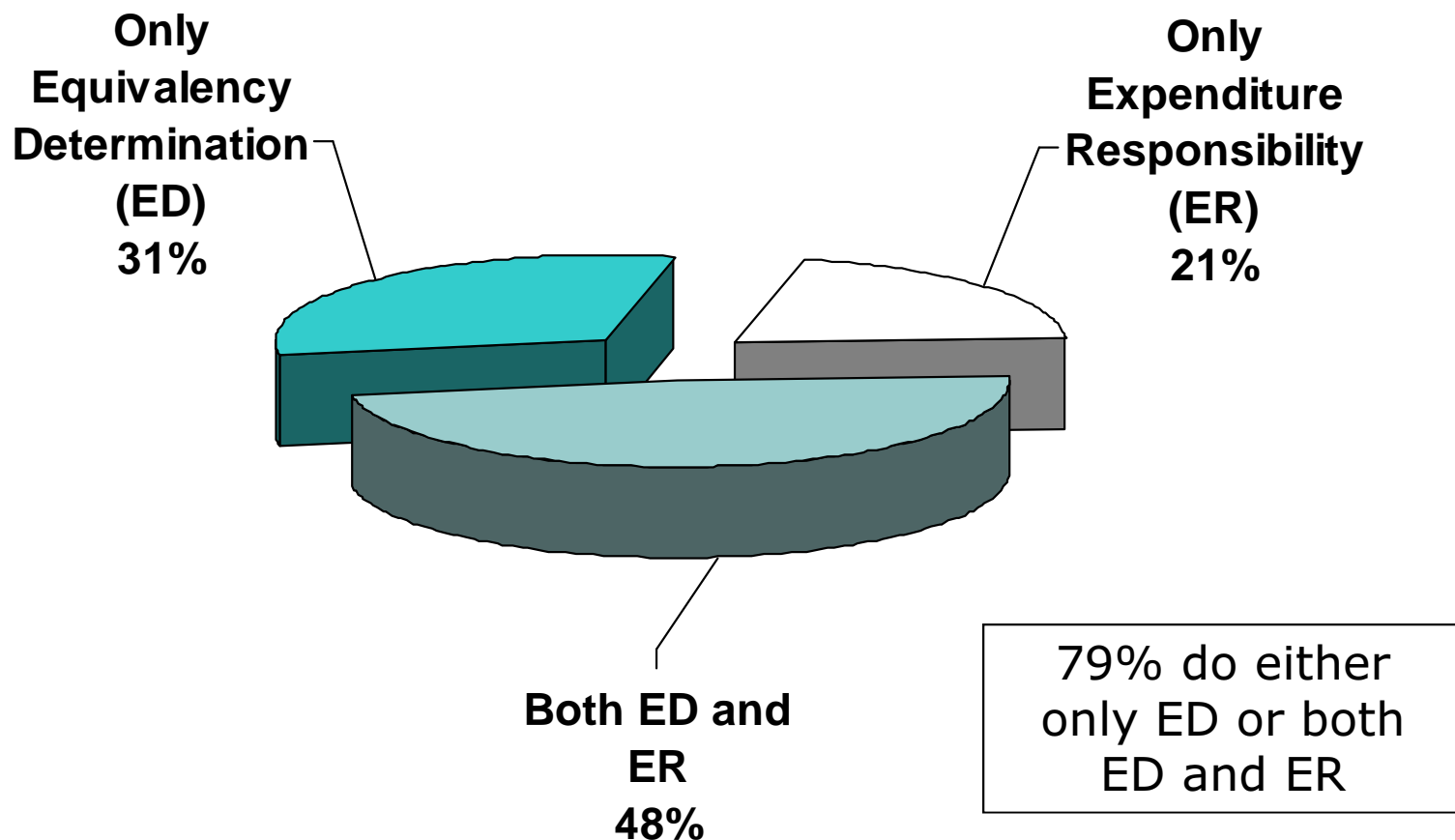
Our Challenges

- Current IRS regulations <u>prohibit grantmakers from using another organization's "good faith determination"</u>.

- High <u>duplication of effort and costs for both NGOs and grantmakers</u>.

- <u>No centralized database</u> to determine if an NGO has been previously reviewed and has met ED requirements.

- <u>No agreed upon standards</u> for ED data collection and processing procedures. Many grantmakers greatly exceed IRS ED requirements "*just in case*".

- <u>Difficulty communicating with and supporting NGOs</u> in different languages and time zones.

- <u>High cost</u> of $5000 - $10,000 for legal opinions

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Equivalency Determination is Broadly Used and Has the Potential for Sharing

Only Equivalency Determination (ED) 31%

Only Expenditure Responsibility (ER) 21%

Both ED and ER 48%

79% do either only ED or both ED and ER

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A Centralized Repository is Seen as a Significant Benefit

90% of NGO leaders
86% of grantmakers
75% of service providers agree that . . .

"The availability of a centralized repository containing up-to-date vetted nonprofit information <u>would be a significant benefit</u>."

# Assemble a Strong Team

Four Partner Leadership Organizations

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FOUNDATION CENTER

INDEPENDENT SECTOR

A vital voice for us all

InterAction.
American Council for Voluntary International Action

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Funding Consortium Members

Repository funders since project inception and grants currently being considered and processed

Off and Running
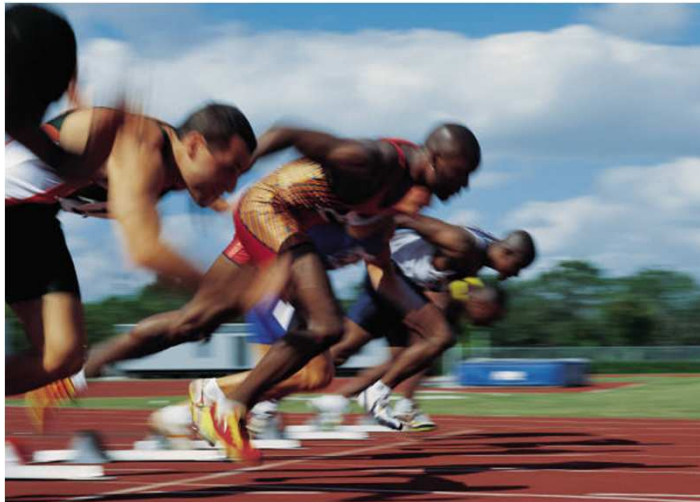
Streamline the ED Process

○ Establish a centralized Repository of NGO information that would enable international grantmakers to <u>share and rely</u> on EDs that are conducted by the Repository.

○ <u>Select and support a well qualified organization to establish and manage the Repository</u> on a long term basis.
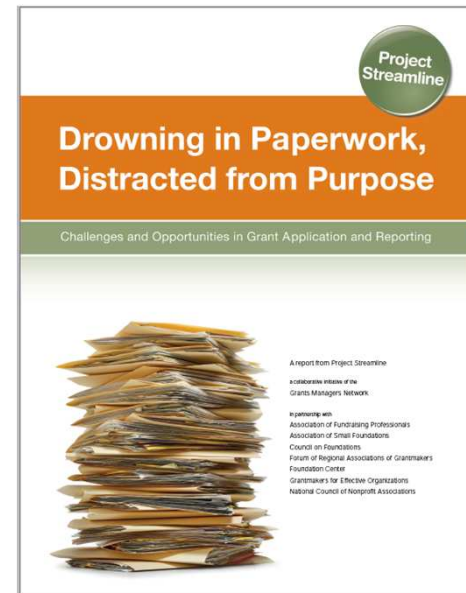
NGO Repository Project cited as a "Creative Approach" to streamlining international grantmaking

Proposed Equivalency Determination Information Repository (EDIR) Operation

NGOsource Proposed Repository Services for NGOs and Grantmakers

1. Provide step-by-step instructions, references and online tools in multiple languages to assist NGOs to successfully collect, prepare and submit all of the information required to be considered for ED status

2. Comprehensive list of FAQs plus examples to assist NGOs in collecting their required documents

3. Online branching ED questions to streamline the process by filtering questions by type of public charity/private foundation

4. Provide NGOs with a high level of global support in nearby time zones via e-mail, phone, computer, fax and other means

NGOsource Proposed Repository Services for NGOs and Grantmakers

5. Online tools to help NGOs <u>convert budgets from local currencies into $USD</u>

6. Optional fee-based <u>document translation referral services</u>

7. <u>Review of all submitted information and documents</u> as being complete and up-to-date

8. <u>Escalation to external legal counsel</u> with expertise in international nonprofit law on an <u>as-needed basis</u>*

9. <u>Grantmaker web-based portal</u> and e-mail updates showing the current status of ED processing

Selected special case ED escalations may require an additional surcharge

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NGOsource Proposed Repository Services for NGOs and Grantmakers

10. The EDIR will make a "<u>good faith determination</u>" that can <u>be shared and relied on</u> that an NGO is the equivalent of a U.S. public charity as specified in Rev. Proc. 92-94.

11. Issuance of an <u>approved time-limited Repository certificate</u> for a successful ED

12. Reminder services to help NGOs to <u>maintain up-to-date information</u>

13. <u>Integration with the major commercial grants management software and services</u>

14. <u>Annual independent audit</u> of the EDIR operation

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Getting an Initial "Green Light" from the IRS

- The IRS representatives <u>raised no objections and indicated a willingness to review a more detailed plan</u> for the Repository at the appropriate time.

- <u>The IRS envisioned creating just such a Repository</u> when Revenue Procedure 92-94 was issued 15 years ago.

- IRS officials indicated that, <u>should the agency approve the Repository, grantmakers could rely on the equivalency determination information stored there.</u>

Source: This feedback was the result of an important "go/no go" meeting with IRS officials of the Exempt Organization Division in September 2007

TechSoup Global + Partners Selected to Host and Manage the Repository

For more info see: http://techsoupglobal.org/ngorepository/faqs

techsoup GLOBAL Strengths

- Guided NGOs through <u>eligibility and verified the legal charitable status</u> of 107,000+ organizations of which 30,000 are non-U.S. NGOs.

- <u>Network of 25 global partners serving 31 countries</u>

- <u>Demonstrated expertise processing US$1 billion of in-kind donations</u> by 40 major U.S. corporate grantmakers.

- <u>Existing workflow, processes, and integrated multi-lingual systems</u> that are similar to the Repository's key requirements.

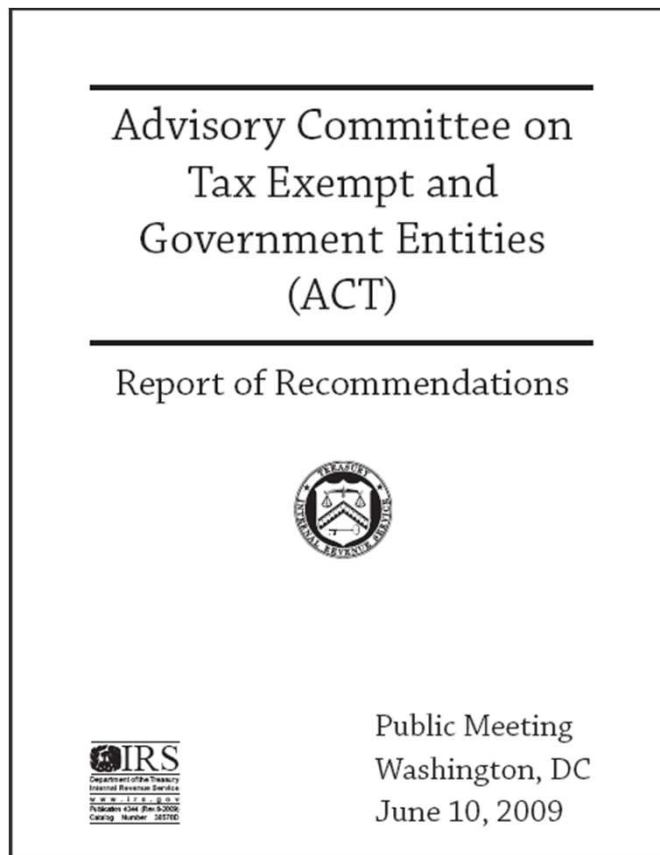- Developed and implemented a <u>proven financially sustainable revenue generating business model</u>

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Seeking Regulatory Approval

○ <u>Initial PLR filing with IRS</u> in March 2009

○ <u>Met with IRS Exempt Organization</u> officials in April and November 2009

○ <u>Revised PLR request submitted</u> in June 2009

○ <u>Submitted Revenue Procedure</u> to Treasury Department December 2009

○ <u>Met with Treasury</u> in February 2010

○ Regulatory review <u>now in process</u>

Caplin & Drysdale, Chartered
One Thomas Circle, NW, Suite 1100
Washington, DC 20005
202-862-5000 202-429-3301 Fax
www.capdale.com

202-862-5020 Direct
mss@capdale.com

March 5, 2009

Via Federal Express

Ms. Lois Lerner
Exempt Organizations Division, T:EO:RA
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Centralized Repository Ruling Request

Dear Ms. Lerner:

As you know, over the past year or so a consortium of U.S. grantmakers and related groups have been exploring the possibility of developing a centralized electronic repository of information on non-U.S. nonprofit organizations that are the equivalent of U.S. public charities or other U.S. charities (the "Repository"). Since the time we first discussed the possibility of such a repository with the Exempt Organizations Division in 2007, the consortium has carried out an extensive planning effort, and it has selected TechSoup Global, Inc., as the organization to host the repository. At this point we are ready to share very concrete plans for the operation of the proposed repository with the Service. Accordingly, I enclose a detailed pre-ruling submission describing those plans for your office's consideration. I am also submitting a copy to Mary Jo Salins, who was designated as the primary contact regarding this matter when we spoke to the Service in 2007.

Given the comprehensive scope of the proposed repository, we believe it would be most efficient to have a pre-submission conference in which to discuss the current proposal so that we can make sure that the final ruling request adequately addresses all questions the Service may have about the operation of the proposed repository and the rulings we are seeking. If that is not possible, please call me at 202-862-5020 so that we can plan our next steps.

From the beginning, we have appreciated the Service's encouragement and interest in the proposed repository, and we are enthusiastic about the potential it holds to streamline the

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ACT Recommends Facilitating Equivalency Determination Information Repositories

Advisory Committee on
Tax Exempt and
Government Entities
(ACT)

Report of Recommendations

Public Meeting
Washington, DC
June 10, 2009

ADVISORY COMMITTEE ON

TAX EXEMPT AND GOVERNMENT ENTITIES

(ACT)

EXEMPT ORGANIZATIONS: RECOMMENDATIONS

TO IMPROVE THE TAX RULES GOVERNING

INTERNATIONAL GRANTMAKING

Mary Rauschenberg, Project Leader

Fred Goldberg, Project Leader

Bonnie Brier

Karin Goldman

Jack Siegel

Ana Thompson

June 10, 2009

Source: http://www.irs.gov/pub/irstege/tege_act_rpt8.pdf

ACT Encourages IRS to Give High Priority to COF and TechSoup Global Proposal

"*We encourage the IRS to facilitate formation of Equivalency Determination Information Repositories EDIRs which would make equivalency determinations in accordance with the requirements of Rev. Proc. 92-94 (as updated from time to time) and procedures approved by the IRS that could be relied on by other charities.*

In furtherance of this recommendation, we encourage the IRS to give high priority attention to the proposal of the Council on Foundations and TechSoup Global and any other organization seeking to establish an EDIR. We have not reviewed this proposal and express no views regarding its merits. However, we believe that it presents an opportunity for the IRS to develop standards for EDIRs. Ultimately the IRS should publish guidance regarding standards and procedures for EDIRs to obtain IRS approval."

Source: http://www.irs.gov/pub/irstege/tege_act_rpt8.pdf

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Repository Membership
and ED Processing Fees
Currently Under Consideration

As of November 2009
and Subject to Change

Comparing the Approaches

	ED Cost	Time *	Cross Border NGO Support	Liability Risk
NGOsource Repository	**Annual membership plus ED processing fee**	**Immediate ED to 4 weeks or longer**	**Repository staff in multiple time zones & languages**	**Full anticipated risk transfer**
In–house ED	Varies widely	3-6 weeks average	Foundation staff if available & skilled	Risk on grantmaker
Outsource ED to law firm	$5,000 to $10,000	4-8 weeks average	Law firm	Risk on law firm / GM
Expenditure Resp. (ER)	Varies widely	Longer life cycle	Foundation staff if available & skilled	Risk on grantmaker

* Assumes NGO compliance and provision of information

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ANNUAL SUBSCRIPTION FEE
*Under Consideration**

Tier	Fee	Number of ED Requests Submitted
1	$1,000	Up to 9 ED requests annually
2	$1,900	10-29 ED requests annually
3	$4,600	30-59 ED requests annually
4	$10,000	60-99 ED requests annually
5	$14,500	100+ ED requests annually

PLUS the following ED Processing Fees →

* As of November 30, 2009 and subject to change

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ED PROCESSING FEES FOR GRANTMAKERS
*Under Consideration**

For each request:

New NGO - $1,445 to $1,760 fee (varies by volume)
The NGO is new-to-the-Repository. This requires a significant level of NGO support, data collection, complete review of all submitted information, and possible escalation to external legal counsel.

ED Update Needed - $800 fee
Some out-of-date NGO data is in the Repository. The NGO is contacted and provided the necessary support, they update their data, and the Repository team conducts the review.

Current Existing ED - $250 fee
The NGO's certified status is up-to-date and still valid. The Repository can proceed to issue a new ED certificate to any member grantmaker.

* As of November 30, 2009 and subject to change

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STARTER PACKAGE
*Under Consideration**

- ○ New Repository members (one time only)

- ○ 1-4 ED requests in the year

- ○ 50% discount
  - Tier 1 Annual Subscription Fee = $500
  - New ED Processing Fee = $880

* As of November 30, 2009 and subject to change

Intended Benefits Over In-house ED

1. **Risk elimination**. With the anticipated regulatory approval, the <u>grantmaker will no longer be making a risk-laden determination on its own</u>.

2. **Higher quality process.** The repository provides a dedicated full-time staff and a <u>consistent, reliable resource for ED processing</u>.

3. **Elimination of a requirement for a highly specialized in-house skill**. <u>ED is an extremely specialized skill</u> often concentrated in one or a few staff that at any given time may be unavailable due to vacation, illness, or other turnover.

4. **Allowing internal grants management staff to focus on core tasks**. <u>Elimination of a frustrating and difficult to scale process</u>.

More Intended Benefits Over In-house ED

5. **More consistent ED turnaround time**. NGOs are sometimes unresponsive to the data and time requirements of the ED process. The Repository will provide <u>better NGO support (in time zone, in language, in culture)</u> in order to obtain more complete and timelier ED submissions.

6. **Significant benefit to the NGO**. Provides a <u>less expensive process</u>, for which they potentially will have further time and cost savings when they have multiple funders and only need to complete a single ED. Also, an NGO with a certified ED will <u>potentially gain access to the TechSoup in-kind donation program</u>, which provides access to software, hardware, and other technology resources that increase its capacity, without having to register or qualify separately.

Spring 2009 Survey of International Grantmakers Highlights of Preliminary Results
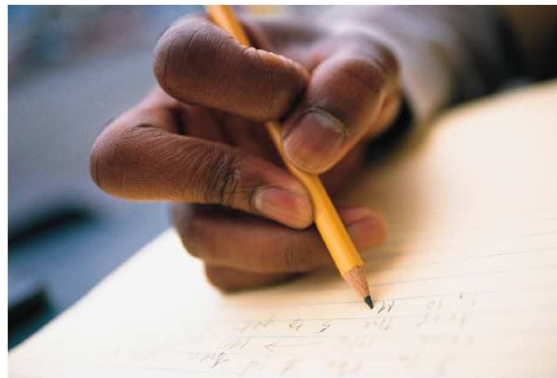
Role in the NGO Repository Outsourcing Decision-Making Process - Q6

80% of the survey respondents are directly involved in the decision-making process

Percent of Respondents

	I'm the primary decision-maker	I'll participate in the decision-making process	I'll make a recommendation	I won't be involved in making the decision
■ Orgs	24%	56%	29%	1%

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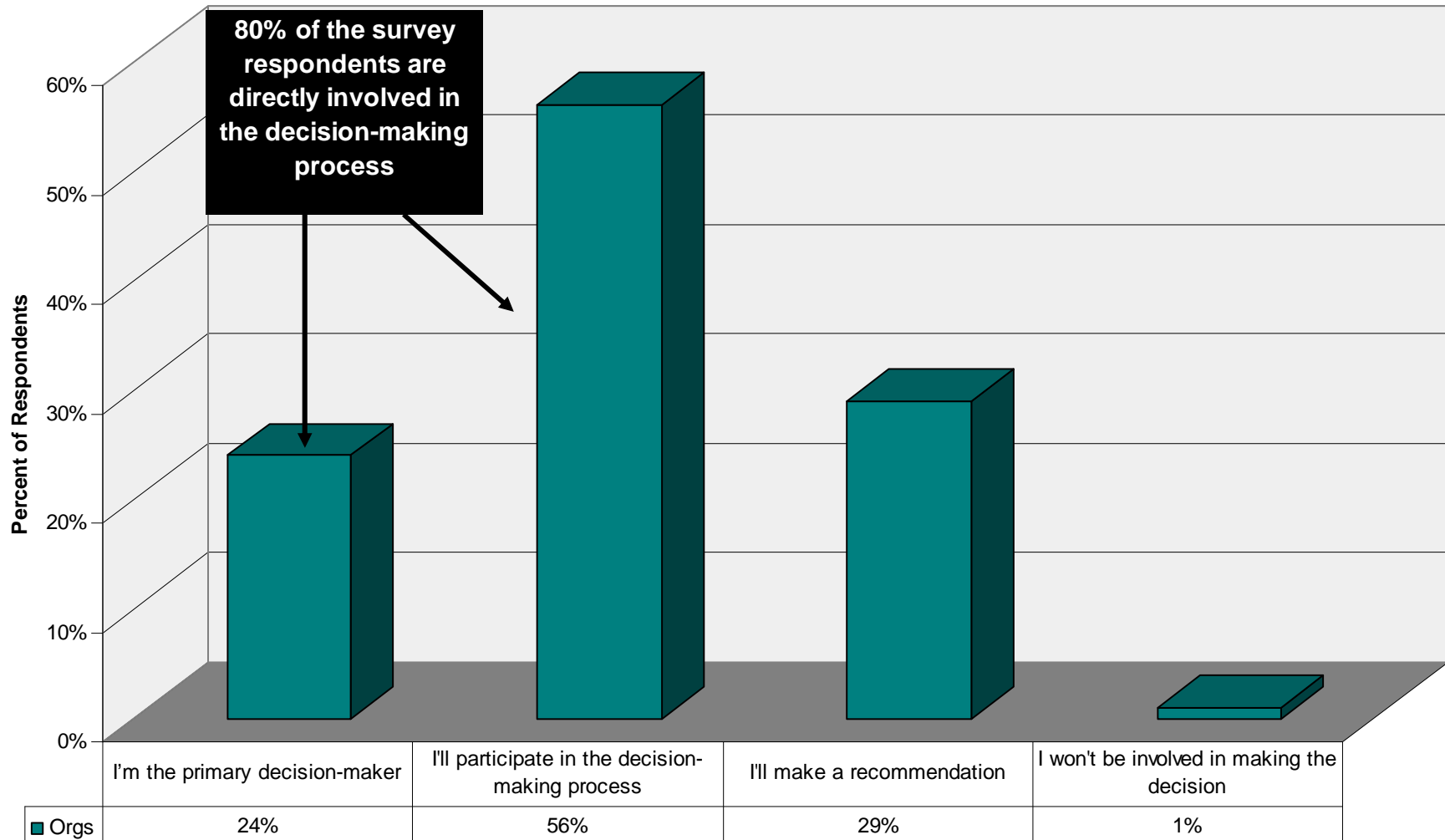
Direct Grants to Non-U.S. Based NGOs that are
Continuing Support from Prior Years - Q10
(e.g. renewals or multi-year payments)

A very high percent of EDs will be renewed annually

	None	1 - 24%	25 - 49%	50 - 74%	75 - 100%
Orgs	18%	25%	23%	21%	13%

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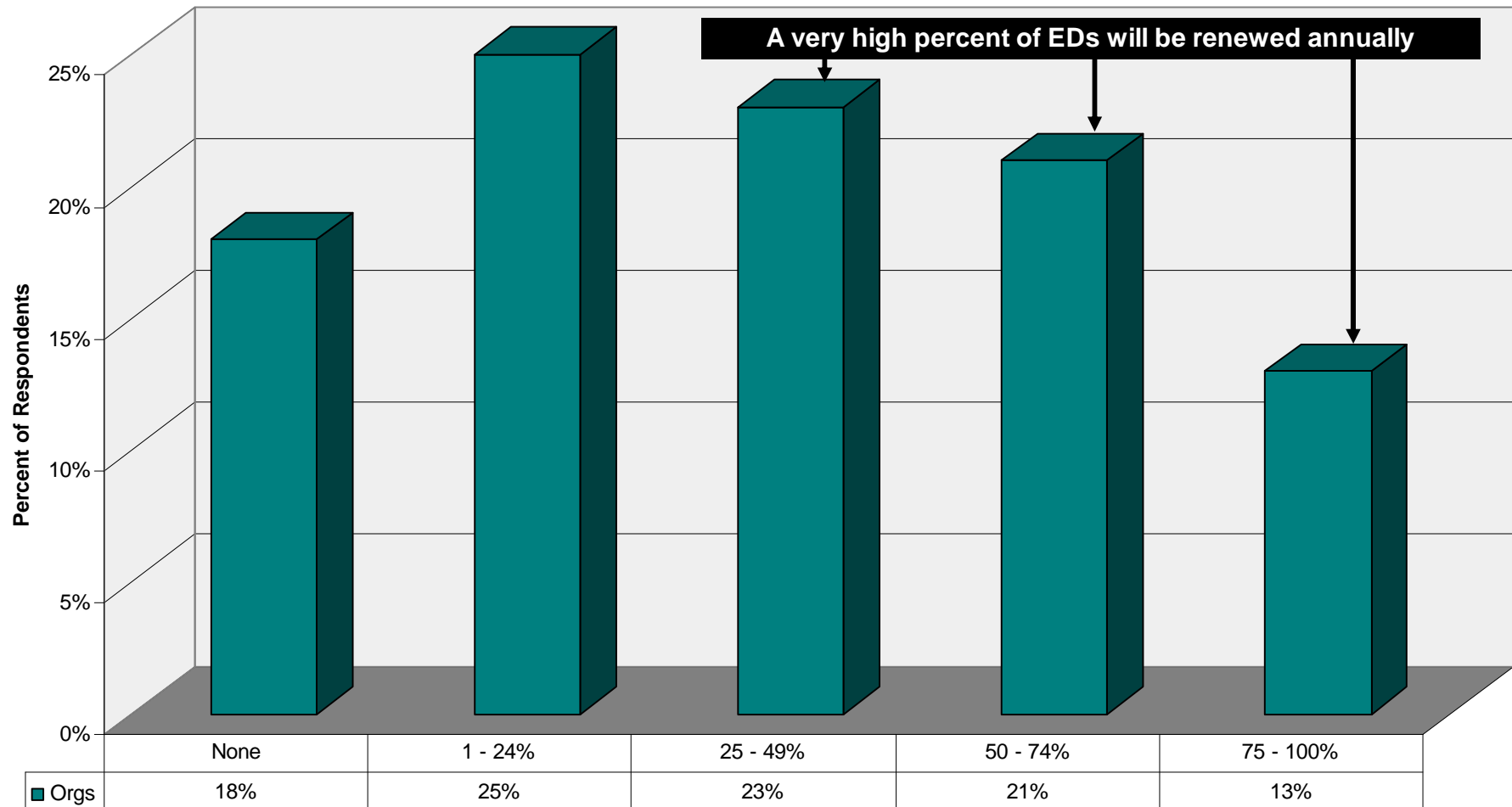
Changes in International Grantmaking - Q17

16% project more international grantmaking

	More international grants	About same number of international grants	Fewer international grants	Don't know
■ Orgs	16%	67%	1%	15%

Percent of Respondents

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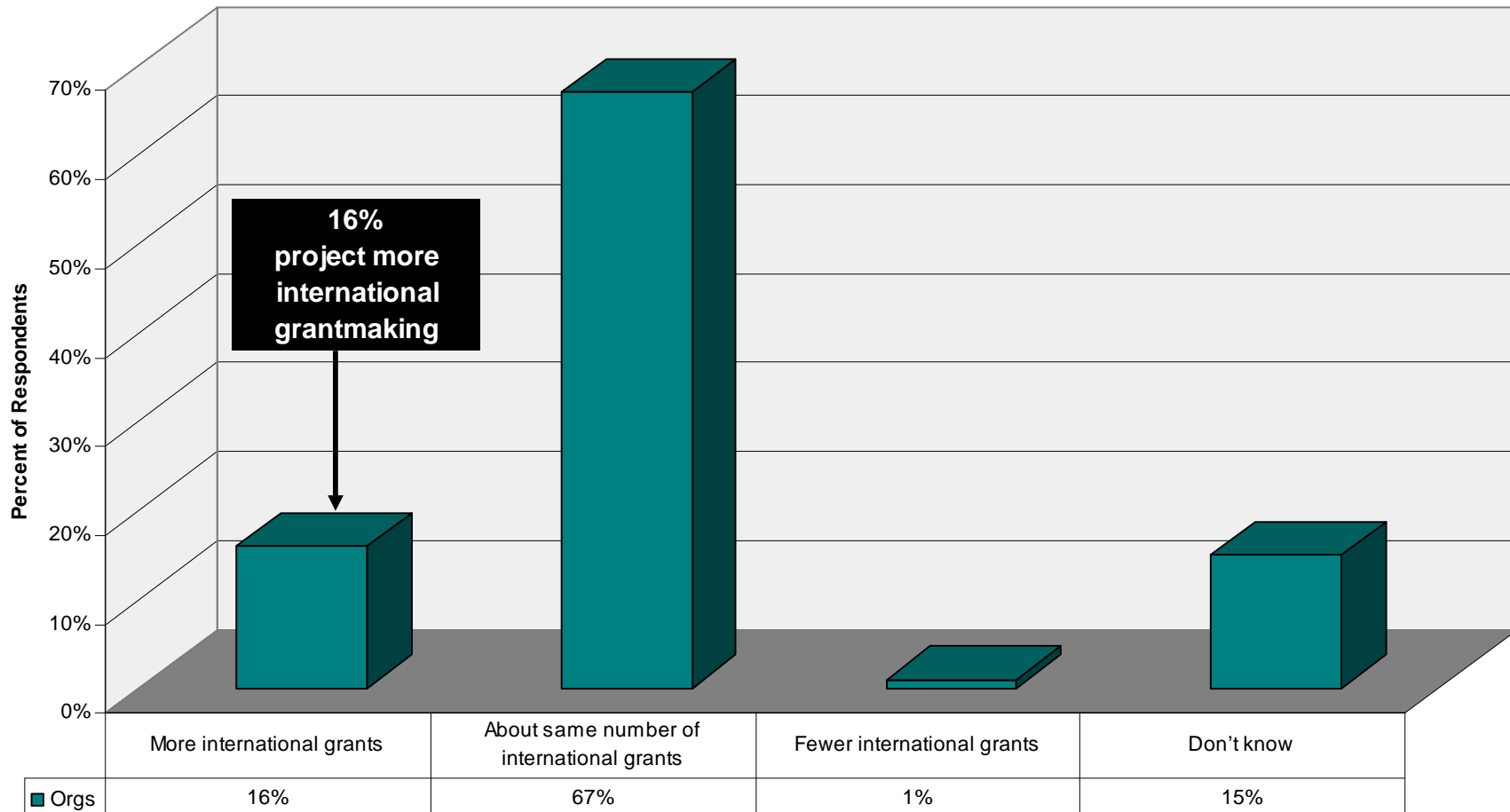
Impact on the Ratio of Equivalency Determination (ED) vs. Expenditure Responsibility (ER) Grants - Q18

36% expect to shift from ER to ED grants

	More ED and less ER	About same number of ED and ER	We'll continue to make only ER grants	Don't know
■ Orgs	36%	19%	10%	35%
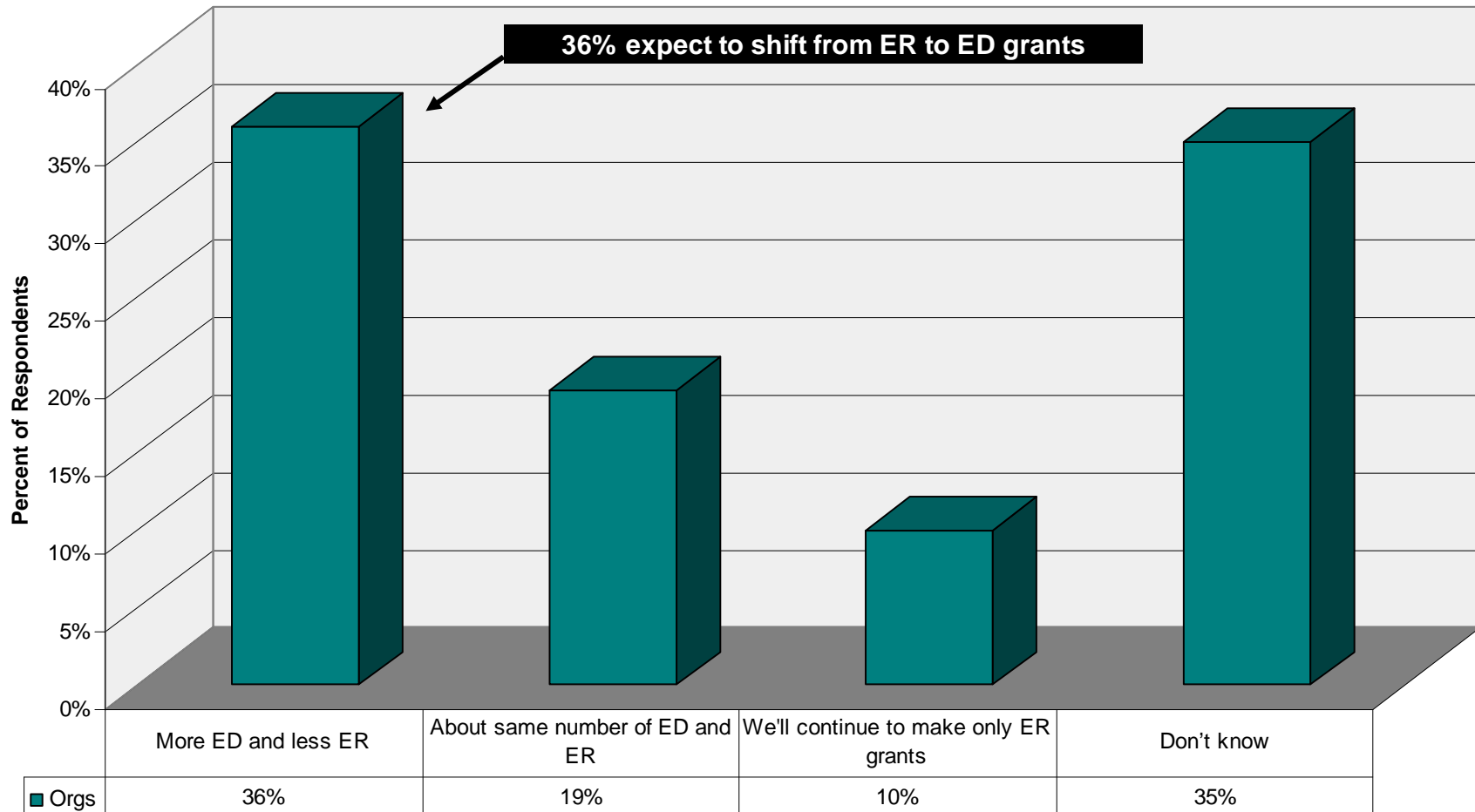
Impact of the Number of International Grants via Regranting Through U.S. Intermediary Organizations - Q19

28% report a shift to direct grants from regranting by intermediaries

Orgs	More direct grants and less by regranting through U.S. intermediary organizations	About same number of direct grants vs. regranting through U.S. intermediary organizations	Don't know
	28%	38%	34%

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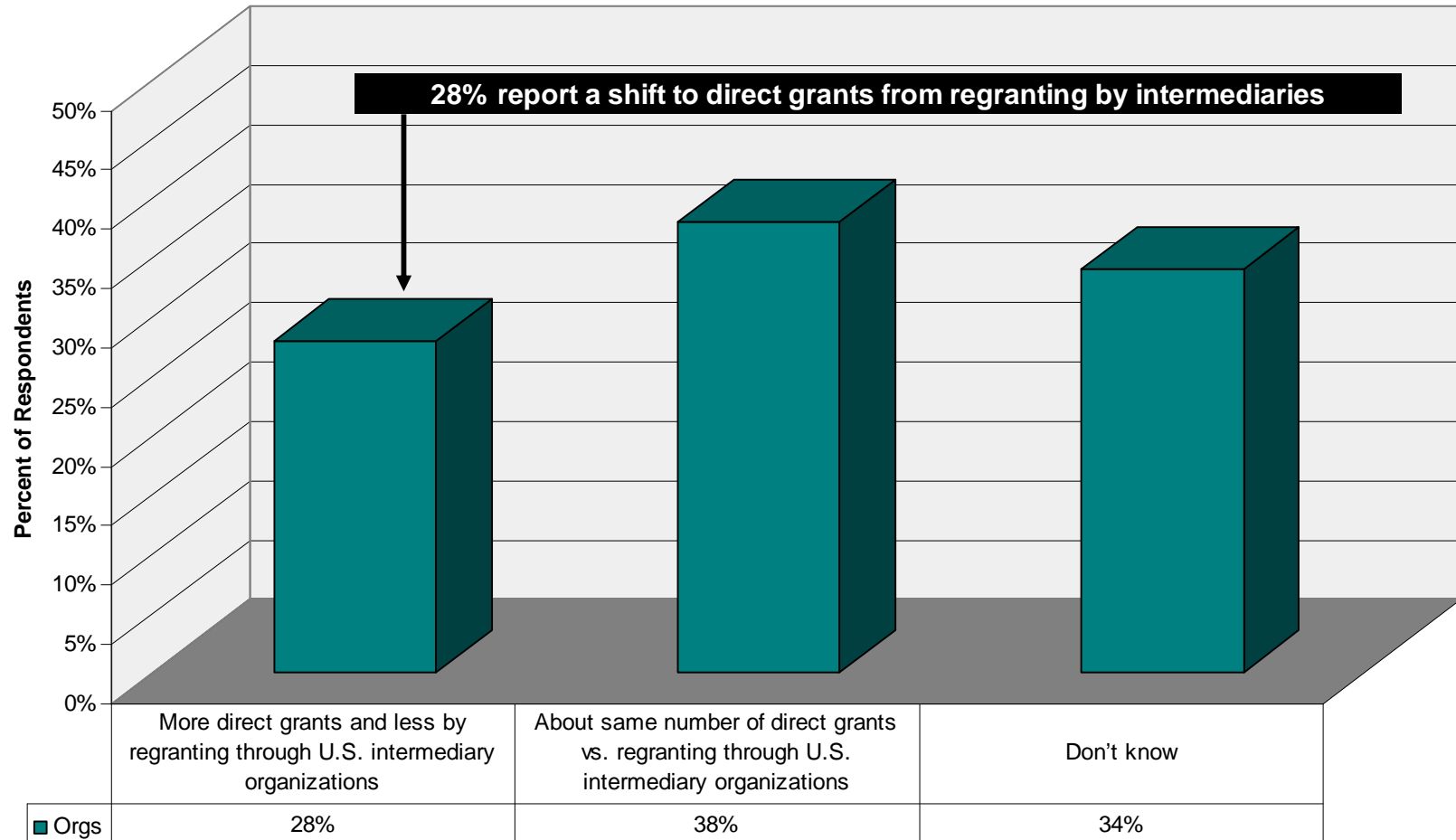
Would Become a Member of the Repository and Use the Service to Process our Equivalency Determinations - Q24a

42% would use the Repository service

45% are either neutral or don't know yet

Only 13% won't use the service

	Strongly Agree	Agree	Neutral	Don't Agree	Strongly Disagree	Don't Know
■ Orgs	18%	24%	27%	7%	6%	18%

Percent of Respondents

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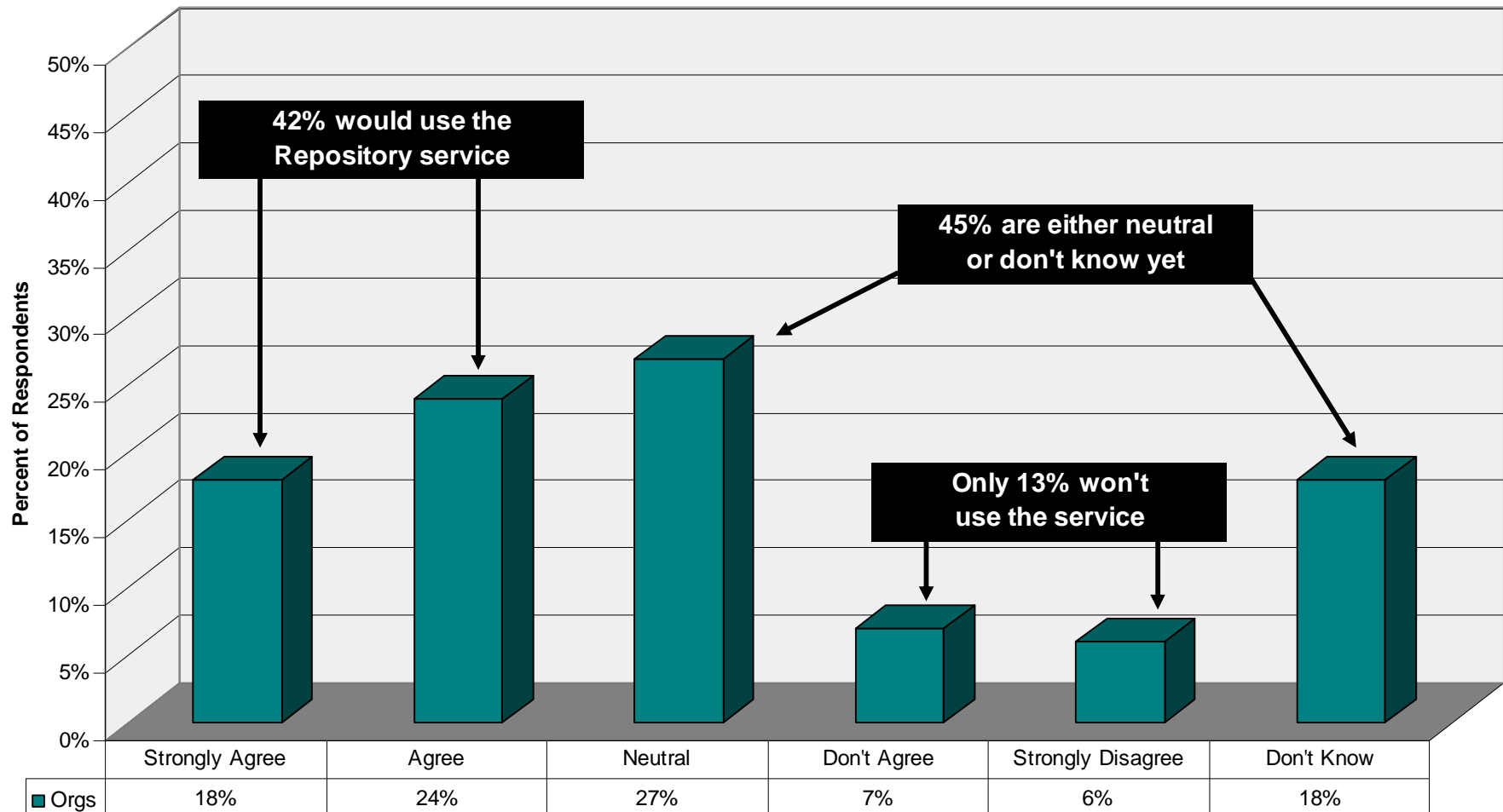
NGO Repository: 2009 Timeline and Targets

							2009					
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec

Detailed Planning → **Development Phase 1**

Submit initial IRS private letter ruling request

Met with key IRS officials in DC

Submit final IRS private letter ruling request

Complete detailed business and project plan

Focus on beta learning period with grantmakers and NGOs

Submitted Revenue Procedure Request to U.S. Treasury Department

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NGO Repository: 2010 – 2012 Timeline and Targets

2010

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec

Meet with Treasury Dept

Repository Development and Testing

2011

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec

Dev. Phase 2

Repository Operations

2012

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec

Repository Operations

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Fully Working Prototypes of the NGO Repository's Grantmaker Portal

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SAMPLE: Grantmaker Dashboard

SAMPLE: Grantmaker Notification Options

Welcome, useranderson   **My account   Log out**   Powered by TechSoup Global

NGOsource
amplify your social impact   Dashboard   My NGOs   Request an ED

My NGOs

Filter by [–ED Progress – ▾] [–Country– ▾] [Update]

Country	Name	ED Progress	Due	Request	Status
Australia	Youth Affairs Council of South Australia		12/12/2003	7/13/2009	NGO Invited
Spain	Social Science Institute		3/2/2009	5/11/2009	More Info Requested
Chile	Foundation for the Arts		4/20/2009	5/11/2009	Authorized
Canada	Centre for Policy Research		5/2/2009	5/11/2009	Requested
South Africa	Diabetes South Africa		6/1/2009	6/25/2009	Requested
South Africa	Heifer Project South Africa		6/2/2009	6/25/2009	Started
South Africa	Aletha Test Org		6/9/2009	6/26/2009	Started
South Africa	Retina South Africa		6/10/2009	6/26/2009	NGO Invited
South Africa	Business & Arts South Africa (BASA)		6/11/2009	6/26/2009	Started
South Africa	South South North		6/16/2009	6/25/2009	**Certified**

[<< First] [< Previous] [1] [2] [3] [...] [Next >] [Last >>]

■ Requested(**44**)   ■ Waiting NGO(**64**)   ■ In Review(**4**)   ■ Completed(**6**)

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SAMPLE: Search Results

SAMPLE: Questionnaire Basic Information

Home

Equivalency Determination Wizard

Welcome	
Charity Type	
Organization	
➡ Basic Information	
Basic Information 2	
Contact	
Tax-Exempt Status	

✔ section is completed
🛈 section has errors

Organization

➕ Help

Basic Information

Name of organization in English *:

Name of organization in local language (no special characters) * 🛈:

Please enter any other names under which your organization conducts business or has conducted business in the past. 🛈:

What is your nonprofit registration number? 🛈:

Address of primary office - Line 1 *:

Address of primary office - Line 2:

Address of primary office - Line 3:

City of primary office *:

Country of primary office *:
— Select country — ⯆

State or Region of primary office *:
— Select one — ⯆

Postal code of primary office 🛈:

Phone number of primary office *:

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SAMPLE: Questionnaire Organization Test

Home

Equivalency Determination Wizard

Welcome	**Tax-Exempt Status** ✚ Help
Charity Type	Organizational Test
Organization	
Contact	Is your organization registered solely for charitable purposes? * 🔵:

Tax-Exempt Status

Document Upload

Operational Test

Activities

➡ Organizational Test

Political Activity

Influencing Legislation

Dissolution

Personal Benefit

✔ section is completed

⚠ section has errors

Is your organization registered solely for charitable purposes? * 🔘:

◉ Yes

◯ No

Do the governing documents of your organization allow it to conduct activities that are not charitable? * 🔘:

◉ Yes

◯ No

Do the laws in your country allow the organization to conduct non-charitable activities as a substantial part of its total activitites? *:

◉ Yes

◯ No

[Back] [**Continue**] [Save & Quit]

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SAMPLE: Spanish Welcome Screen

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Staging SMOKE
Spanish

Welcome, Espanol.Test.
my account   my orders   log out

Inicio » Cuenta de usuario » Determinación de equivalencia

Cuestionario de determinación de equivalencia

Bienvenido

Tipo de organización benéfica

Organización

Contacto

Estado de exención impositiva

🔵 Click to see help text.
✅ Section is complete.
🔴 Section has errors.

Bienvenido

➕ Ayuda

Descripción general. ¡Bienvenido al cuestionario de determinación de equivalencia de NGOsource! Como debe saber, un donador con sede en los EE. UU. se encuentra en proceso de evaluar una solicitud de donación para su organización. Como parte de su solicitud de donación, se le ha solicitado a NGOsource (una compañía independiente sin fines de lucro de los EE. UU.) que complete una determinación de equivalencia.

Conforme a las leyes impositivas de los EE. UU., los donadores deben cumplir requisitos legales específicos antes de otorgar una donación a una entidad como la suya, que se encuentra organizada según las leyes de otros países que no son los EE. UU. Estos requisitos legales pueden cumplirse realizando una determinación de equivalencia (ED). El fin de la ED es demostrar que su organización es el equivalente de una organización benéfica de los EE. UU. Si usted reúne los requisitos como equivalente de una organización benéfica de los EE. UU., los donadores podrán reducir las restricciones en el uso de fondos de donación.

Comprendemos que puede parecer que este complejo proceso demanda mucho tiempo o es confuso, y nos hemos esforzado por hacerlo lo más simple posible. Tenga en cuenta que completar este proceso una vez permitirá que otros donadores con sede en los EE. UU. encuentren su organización más fácilmente.

Documentos requeridos que debe recopilar. Antes de comenzar el cuestionario de determinación de equivalencia en línea, puede resultarle útil recopilar lo siguiente:

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SAMPLE: Contact Info with Online Help

SAMPLE: Spanish Attach Documents

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Staging SMOKE
Spanish

Welcome, Espanol.Test.

my account   my orders   log out

Inicio » Cuenta de usuario » Determinación de equivalencia

Cuestionario de determinación de equivalencia

Bienvenido

Tipo de organización benéfica

Organización

Contacto

Estado de exención impositiva

➡ Subir documentos

Prueba operativa

Actividades

Prueba organizativa

Actividad política

Influencia en la legislación

Disolución

Estado de exención impositiva

Subir documentos

Suba las copias de sus documentos de constitución en inglés. Los docum
los documentos que usó para registrar o crear su organización. Los docu
suelen contener el nombre y los fines de la organización. No es necesario
inglés estén certificadas.

Si debe enviar por fax o correo sus documentos de constitución, comunío
de atención al cliente para obtener ayuda. Puede encontrar la dirección de
representante de atención al cliente si hace clic en la casilla gris "+ Ayuda
de la pantalla.

Algunos ejemplos de documentos de constitución incluyen:
* Actas constitutivas
* Documentos para la creación de la empresa
* Estatutos de la fundación
* Leyes de fundación
* Estatutos
* Documento de registro sin fines de lucro
* Otros documentos

1. *
   [_____] Browse...

2. [_____] Browse...

— Ayuda

Contáctenos

Email: test@info.org
Skype: johnslifeonline
Teléfono: 5554443333
Fax: 5554442222

¿Preguntas?

Visualizar las PF

Buscar en el glosario

[_____] **Ir**

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Link to the Foundation Center's Foundation Directory Online (FDO) and Interactive Map of Cross-border Giving

FOUNDATION CENTER
Knowledge to build on.

Map of Cross-border Giving
Grants by U.S. Grantmakers to Non-U.S. Recipients

Return to grantmaker list

The William and Flora Hewlett Foundation

Grant List

Grant Count: 47
Parameters: Recipient Type: All, **Years:** 2003-2008, **Country:** Brazil

Click on any column header to re-sort the list.

Indicates that the NGO has a current Repository ED

Recipient Name, Location	Year Authorized	Grant Amount ▼
Instituto de Energia e Meio Ambiente, Brazil	2008	$1,500,000
Logit Engenharia Consultiva, Brazil ED✓	2004	$1,010,000
Associacao Nacional de Transportes Publicos, Brazil	2003	$976,000
Fundacao de Apoio a Universidade de Sao Paulo, Brazil	2006	$600,000
Eletra Industrial, Brazil	2003	$600,000
Instituto de Energia e Meio Ambiente, Brazil	2007	$450,000
Instituto de Energia e Meio Ambiente, Brazil ED✓	2007	$400,000
Amazon Institute of People and the Environment, Brazil	2003	$400,000
ICONE - Instituto de Estudos do Comercio e das Negociacoes Internacionais, ED✓ Brazil	2006	$356,000
Federal University of Minas Gerais, Brazil	2006	$250,000
Federal University of Minas Gerais, Brazil	2003	$250,000
Companhia de Tecnologia de Saneamento Ambiental, Brazil	2003	$250,000
Associacao O Eco, Brazil	2007	$225,000

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Time for spirited questions!

Contact Us

Martin Schneiderman
Information Age Associates
COF NGOsource Repository Manager
mbs@iaa.com
(609) 924-6936

Sheila Warren
TechSoup Global
NGOsource Repository Director
swarren@techsoupglobal.org
(415) 829-8061

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