USA PATRIOT Act and Implications for Grantmakers

Council on Foundations
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USA PATRIOT Act

- Enacted October 24, 2001
  "To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes."

- Expanded the scope of criminal prosecution on providing support to terrorists organizations and increased penalties for noncompliance

- Some lawyers consider asset blocking to be more likely than criminal prosecution unless the defendant acted *willfully* or at least *knowingly* or *intending*

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Executive Order 13224

- Issued 45 days after September 11th

- Blocks assets of persons identified as foreign terrorists and explicitly bans charitable donations of funds, good and services

- Types of Lists
  - Specially Designated Nationals (SDN) list
  - Specially Designated Terrorist (SDT) list
  - Foreign Terrorist Organization (FTO) list

Compliance Scope

The prohibition on funding terrorism <u>applies equally</u> to grants made to <u>U.S. and foreign nonprofits</u>

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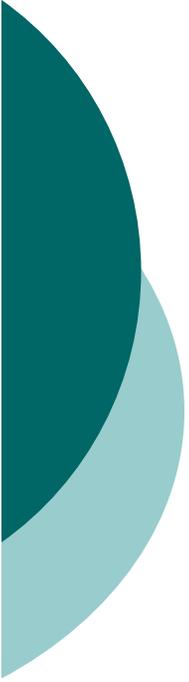
Anti-Terrorist Financing Guidelines: *Voluntary* Best Practices for U.S. – Based Charities

- Published November 7, 2002

- Maps out one route to compliance

- Criticized by grantmakers and charities as being ambiguous and unworkable

- Extensive comments filed by:
  - **COUNCIL ON FOUNDATIONS**
  - Independent Sector
  - Exempt Organizations committee of the American Bar Association Tax Section

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Seeking a
Safe

Harbor
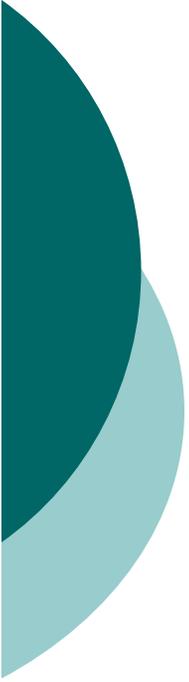
Key Differences Between Tax and Anti-Terrorist Laws

- PROCESS BASED - Compliance with tax laws requires adherence to a prescribed process such as nonprofit verification using the IRS Master file or reporting incorrect information on a tax form

- RESULTS BASED – Penalties imposed only if funds are found to be directed to terrorists

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Some Grantmakers' Response to the USA PATRIOT Act

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Our Organization's Reputation at Risk

"Even if we invest heavily in verification checking and do the best job that we can of vetting nonprofits, we could still inadvertently make a gift to an organization that is somehow affiliated to a terrorist.

We'll then find our company's name in newspaper headlines, and the damage to our company's reputation would be terrible."

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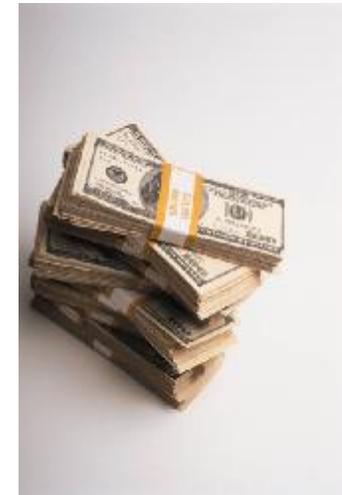
U.S. Public Charities on SDN List

1. The Holy Land Foundation for Relief and Development, Richardson, TX

2. Benevolence International Foundation, Oak Lawn, IL

3. Global Relief Foundation, Bridgeview, IL

4. Al Haramain Islamic Foundation, Ashland, OR

.0004% of all U.S. 501(c)(3) organizations to date

As of: April 15, 2004

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Terrorism Watch Lists

¡ OFAC SDN list
¡ OFAC Blocked Countries

| OFAC Sources |

¡ Bureau of Industry and Security (Export/Import sanctioned entities)
¡ Canadian Consolidated List (OSFI)
¡ FBI Hijack Suspects
¡ FBI Most Wanted
¡ FBI Most Wanted Terrorists
¡ FBI Seeking Information
¡ FBI Top Ten Most Wanted
¡ Non-Cooperative Countries and Territories
¡ Politically Exposed Persons
¡ Unauthorized Banks

| U.S. Homeland Sources |

¡ Bank of England
¡ DTC Debarred Parties
¡ European Union Terrorism List
¡ Interpol Most Wanted
¡ United Nations Consolidated List
¡ World Bank Debarred Parties

| World Sources |

Balinese Men's First Names (birth order)

1. Wayan
2. Made
3. Nyoman
4. Ketut

5. Wayan
6. Made
7. Nyoman
8. Ketut

U.S. Library of Congress Spellings of the Libyan Leader's Name قذافي

(1) Muammar Qaddafi

(2) Mo'ammar Gadhafi

(3) Muammar Kaddafi

(4) Muammar Qadhafi

(5) Moammar El Kadhafi

(6) Muammar Gadafi

(7) Mu'ammar al-Qadafi

(8) Moamer El Kazzafi

(9) Moamar al-Gaddafi

(10) Mu'ammar Al Qathafi

(11) Muammar Al Qathafi

(12) Mo'ammar el-Gadhafi

(13) Moamar El Kadhafi

(14) Muammar al-Qadhafi

(15) Mu'ammar al-Qadhdhafi

(16) Mu'ammar Qadafi

(17) Moamar Gaddafi

(18) Mu'ammar Qadhdhafi

(19) Muammar Khaddafi

(20) Muammar al-Khaddafi

(21) Mu'amar al-Kadafi

(22) Muammar Ghaddafy

(23) Muammar Ghadafi

(24) Muammar Ghaddafi

(25) Muamar Kaddafi

(26) Muammar Quathafi

(27) Muammar Gheddafi

(28) Muamar Al-Kaddafi

(29) Moammar Khadafy

(30) Moammar Qudhafi

(31) Mu'ammar al-Qaddafi

(32) Mulazim Awwal Mu'ammar

(33) Muhammad Abu Minyar al-Qadhafi

Excerpt of the OFAC List

MALARBE, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a.
MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a.
MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a.
MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual)
[SDNTK]

MALERBE, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a.
MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a.
MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a.
MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual)
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MALARBE, Oscar; a.k.a. MALERBE, Oscar; a.k.a. MALERVA, Oscar; a.k.a.
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[SDNTK]

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Why Use Computers for Compliance Checking?

Compliance checking requires perfect execution of a boring and repetitive task – one that a computer does well and people do poorly.

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Some U.S. PATRIOT Act and OFAC Compliance Verification Tools

- **Bridger Insight**
- **ChoicePoint** (acquired Bridger)
- **Equifax**
- **GuideStar**
    - EZ Basic Information
- **OFACSearch**
- **RDC (Regulatory Data Corporation)**
    - GRID (Global Regulatory Information Database)

Source	Product / Service	Verification Lists	Features	Cost
U.S. Treasury Department www.treas.gov/offices/eot ffc/ofac/	OFAC lists (only manually downloadable lists)	OFAC (organizations, individuals, vessels)	None	Free
Attus www.attustech.com	OFACWatchDog™ (Windows or Web)	OFAC (organizations, individuals, vessels and domain names) plus option of multiple other lists	Language sensitive searches, automated list updating, list checking, accept list, audit trail, Web service integration	$499/year (single user) $699/year (network user) These are reduced prices for grantmaking organizations
Bridger Systems www.ofaccompliance.com	Bridger Insight (Windows or Web)	OFAC (organizations, individuals, vessels) and multiple other lists	Automated list updating, list checking and accept list, audit trail	Starts at $735 (Windows) and $895 (Web) – also varies depending on number of supported nonprofits. 15% discount available to MicroEdge clients.
GuideStar www.guidestar.org	GuideStar EZ GuideStar Charity Check (both Web)	OFAC (organizations only)	Checking one organization at a time	GuideStar EZ and GuideStar Plus both free Service to do checking of organization names against the OFAC list plus 501(c)(3) verification - $580 per 1000 records if EIN is provided
The Oasis Group www.ofacsearch.com	OFACSearch (Web and Service)	OFAC (organizations, individuals, vessels, domain names)	Automatic list updating, list checking, accept list, audit trail, language sensitive searches, Web service integration	$400/year This is a reduced price for grantmaking organizations
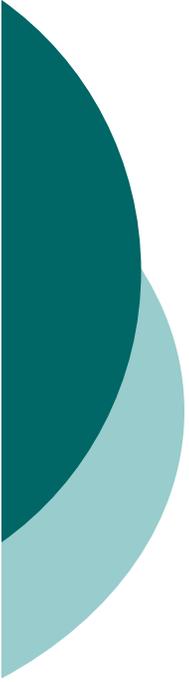
Types of Grants that Warrant Special Attention

- **Donor Advised Funds and Matching Gifts**
  - Rely on donor or employee to know the charity
  - Donations to organizations that you don't know well and normally verify only nonprofit status
  - Grant process is automated

- **Regranting Organizations**
  - Treasury Guidelines suggest that a grantmaker is responsible for grants monies until it is expended by the ultimate grantee

- **Grants to U.S. Public Charities**

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Should we stop making grants abroad?

This is the last thing that you should do.

Peace, freedom democracy, poverty alleviation, economic opportunity and human rights are the best antidotes to terrorism.

Grants that support the achievement of such goals are a country's best protection from future attacks by terrorists.
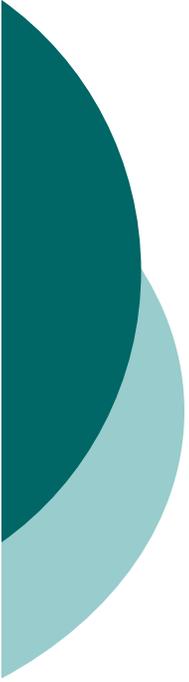
Particular Concerns Expressed by Grantmakers

¡ What is everybody else doing?

¡ Our compliance department isn't much of a help

¡ What is reasonable and practical?

¡ Risk analysis vs. profiling

¡ How can we automate and streamline the verification process to reduce costs?

¡ How to we research and identify "false positives"

¡ Staffing and responsibility

¡ This is a terrible waste of time and money that should be going to nonprofits – no terrorist organization will list officers or board members who are known terrorists

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A Suggested Approach for Due Diligence

1. Consult with competent legal counsel

2. Conduct a risk assessment, document the process, determine your tolerance for risk, and take appropriate actions

3. Determine what level of compliance checking you will require for U.S. and non-U.S grants, and for grants of different sizes

4. Decide which lists will need to be used, what you'll need to check, when, and how often

5. Document your decisions and actions and revisit them whenever there are significant changes in your grantmaking program

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A Suggested Approach for Due Diligence

6. Use **USA PATRIOT** Act compliance software that is integrated with your grants management and employee giving systems software and process

7. Ensure that all interdiction lists are always maintained up-to-date

8. Train primary and backup staff to use the system

9. Revise your workflow, operational procedures and system documentation as required

10. Stay abreast of new regulations, interpretations and case law

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A Suggested Approach for Due Diligence

11. Work together with your colleagues in the philanthropic community to establish standards

12. Work closely with the providers of your grants management, employee giving, and compliance verification products and services to streamline your operations and reduce costs

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Grants Management Vendor
USA PATRIOT Act Compliance Verification

Vendor	Org	Contact	Integrated Compliance Verification *
Arlington Group	Y	N	Easygrants has built-in OFAC organization checking, auto seek and detection of updates to the OFAC organizations list, e-mail notification to foundation staff of OFAC updates, and optional auto or manual refresh of the OFAC organizations table as updates are made available. link to external databases
Bromelkamp	Y	N	Built-in seamless hot link to GuideStar EZ Basic and optional Charity Check information services for OFAC organization checking. GuideStar provides clients a 90-day free trial and discount ($450 vs. $750) for CharityCheck.
Foundation Source	Y	N	Currently doing organization checking using Bridger Insight. Contact checking planned for 2Q 2004.

* As of March 1, 2004, CyberGrants invited but chose not to report

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Grants Management Vendor
USA PATRIOT Act Compliance Verification

Vendor	Org	Contact	Integrated Compliance Verification *
MicroEdge	Y	Y	Built-in seamless hot link to GuideStar EZ Basic and Charity Check for OFAC organization checking. Provides a set of custom reports specifically designed to export data in formats compatible with third-party compliance vendor solutions. Established strategic partnerships with multiple compliance solution vendors to offer discounts to MicroEdge clients.
NPO Solutions	Y	Y	Provides a set of custom data report exports specifically designed for use with third-party compliance vendor solutions Established strategic partnerships with multiple compliance solution vendors to offer discounts to NPO clients.

* As of March 1, 2004

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Employee Giving Service Provider
USA PATRIOT Act Compliance Verification

Vendor	Org	Contact	Compliance Verification *
4Charity	Y	N	Checking of organization and primary contact (one individual) information at no additional charge for clients using Bridger. Additional services available on request.
AmeriGives	Y	Y	Organization checking using the OFAC list downloaded monthly. Contact checking is an optional fee-based service.
CreateHope	Y	Y	Risk Management Solution (RMS), a multi-stage system and process that gathers data and certifications directly from nonprofits to assist in the identification of potential risks. This information is imported into a proprietary web-based system and processed through varying levels of risk review. 250 watch lists are used plus extensive media sources. Basic and optional fee-based services are available.

* As of March 1, 2004

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Employee Giving Service Provider
USA PATRIOT Act Compliance Verification

Vendor	Org	Contact	Compliance Verification *
JK Group	Y	Y	Checking of organization and primary contact (one individual) information at no additional charge for clients using an integrated version of Bridger. Optional enhanced fee-based services: ¡ To solicit and check up-to-date contact information about officers and board members. ¡ Certify & monitor to assure that recipient organizations' records adhere to accepted financial and record-keeping practices and records will be made available on demand. ¡ Services to assure that grant funds were utilized as expected - expenditure responsibility - for both U.S. and international grants.

* As of March 1, 2004, KindMark invited but chose not to report

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Googling Your Grantee:
Due Diligence Survey

¡ Survey conducted online by the Grants Managers Network (GMN) in February and March 2004

¡ 157 total respondents

¡ Cross section of philanthropic institutions by type, size, and number of grants

¡ Complete survey results are available at www.gmnetwork.org

Do you make grants to nonprofits that support work outside the USA?

Number of Repondents

No all of our grantees are US-based and their programs are focused only in the US.

Yes some of our grantees are based outside of the US and their programs are also focused outside of the US.

Yes some of our US-based grantees have some programs that are focused outside the US.

Source: GMN Online Survey March 2004

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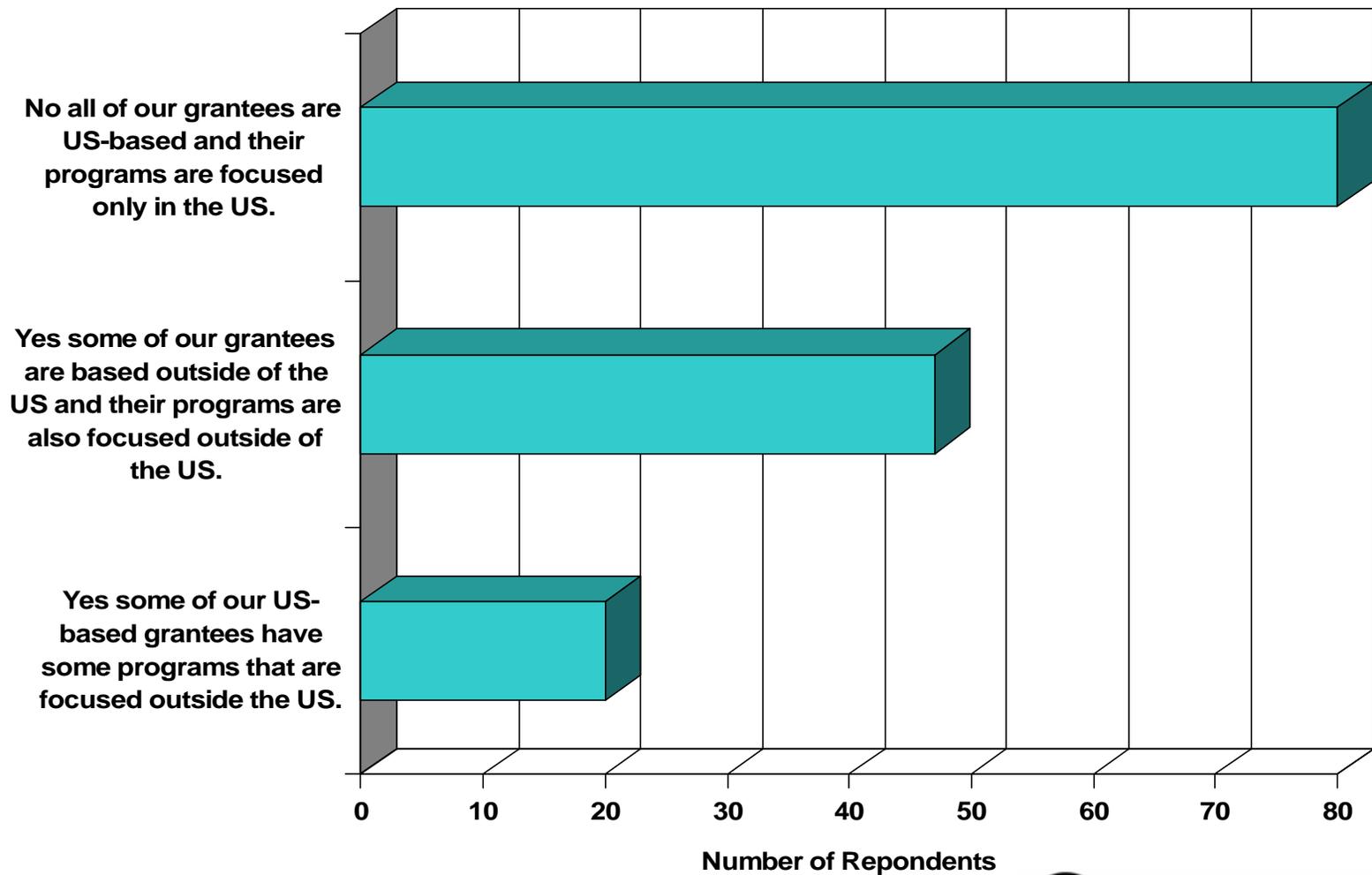
USA PATRIOT Act Compliance Verification Practices

Yes for grantees that support programs that are focused outside of the US
1%

Yes for non-US based grantees
4%

Yes selected grantees based on our personal knowledge of the individuals and organization
1%

Yes all grantees
8%

Yes, other approach
14%

No
72%
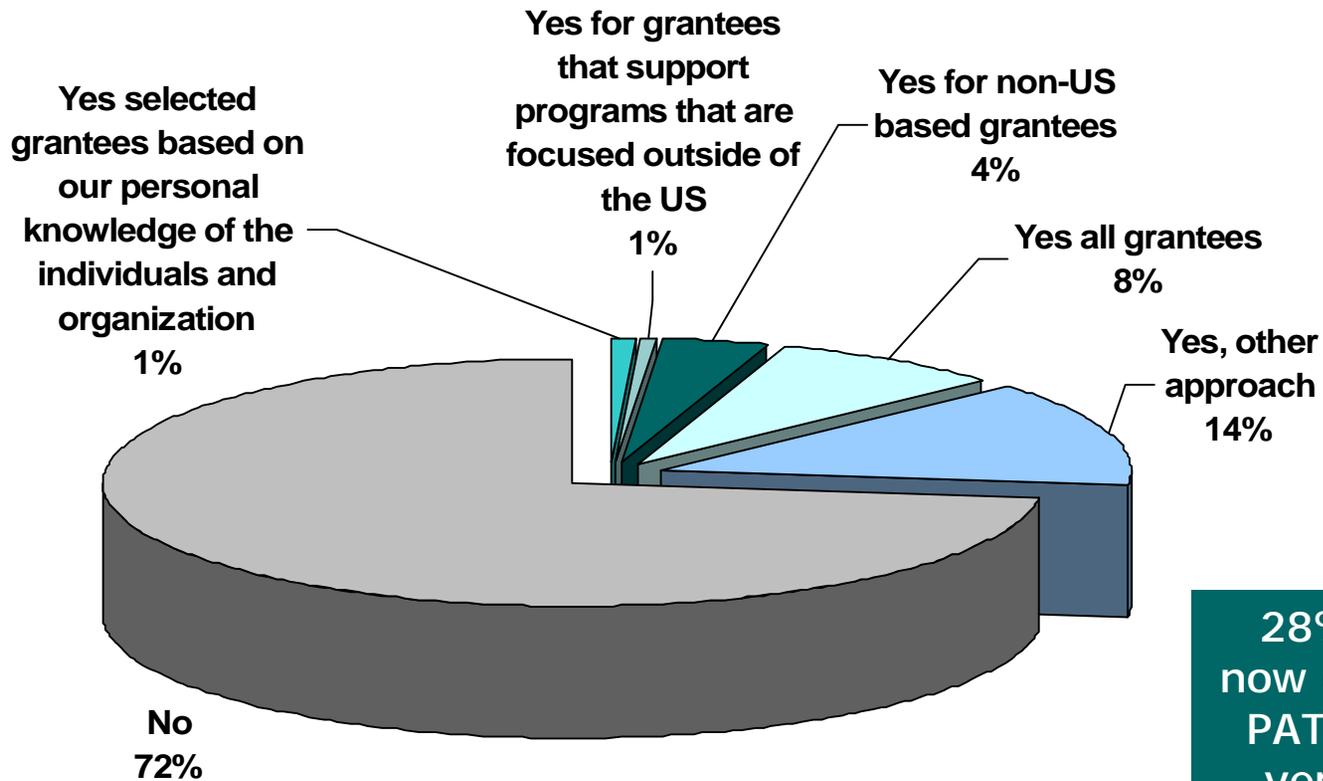
28% report now doing USA PATRIOT Act verification checks

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Regranting Organizations
and their Level of Due Diligence

No we don't make grants to regranting organizations 47%

Yes we make grants to regranting organizations and we know that they conduct at least the same level of due diligence as we do 33%

Yes we make grants to regranting organizations but are not sure about their level of due diligence 20%
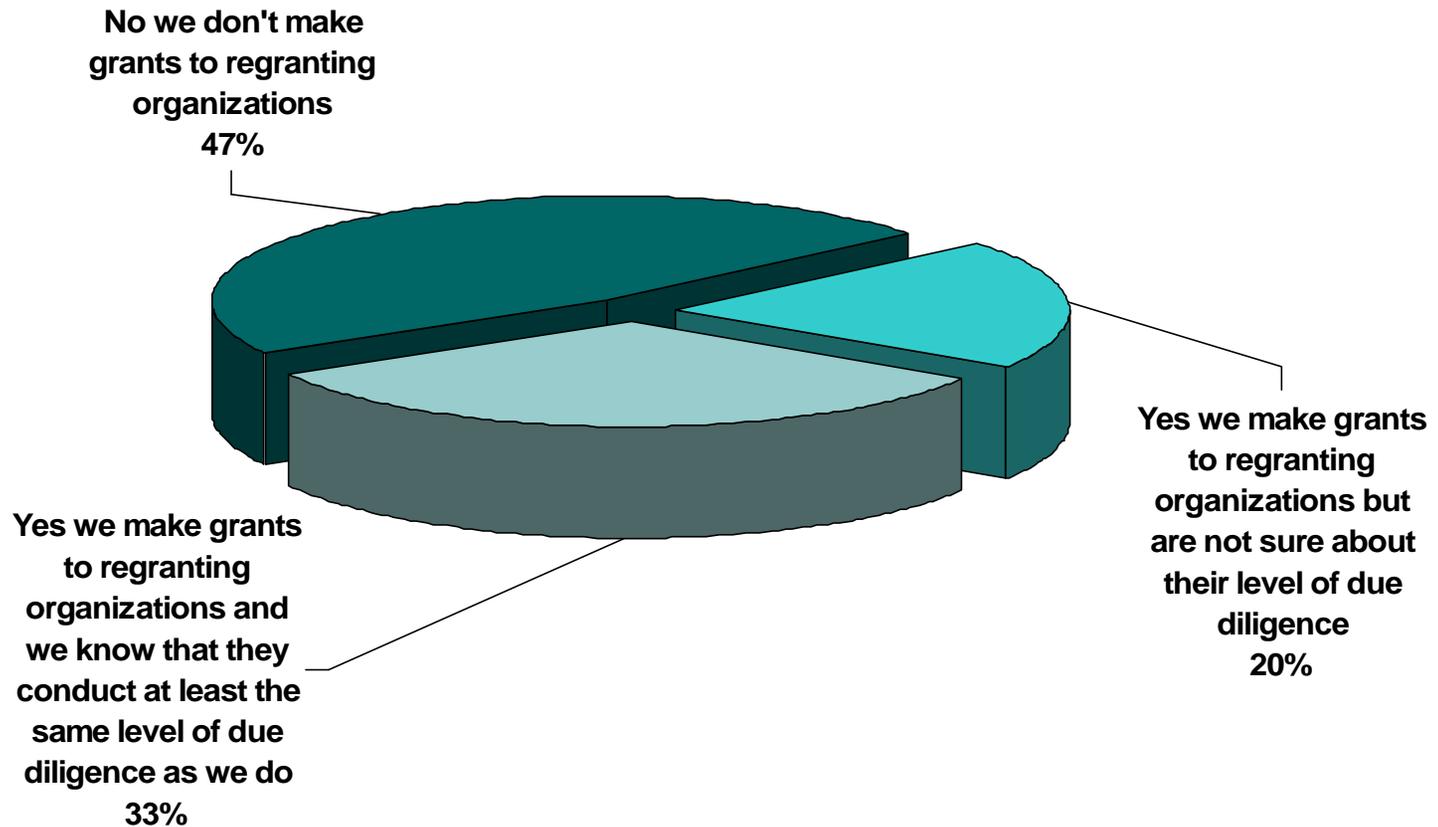
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Which documents are required as part of your pre-award due diligence?

Number of Repondents

Legend:
- Required of some applicants
- Required of all applicants

Categories (top to bottom):
- IRS tax determination letter
- Grant proposal
- Grant budget
- List of board members
- Current operating budget
- List of all sources of income
- Workplan
- Audited financials
- List of officers
- Annual report
- Resumes of key staff
- Organization chart
- USA Patriot Act compliance statement

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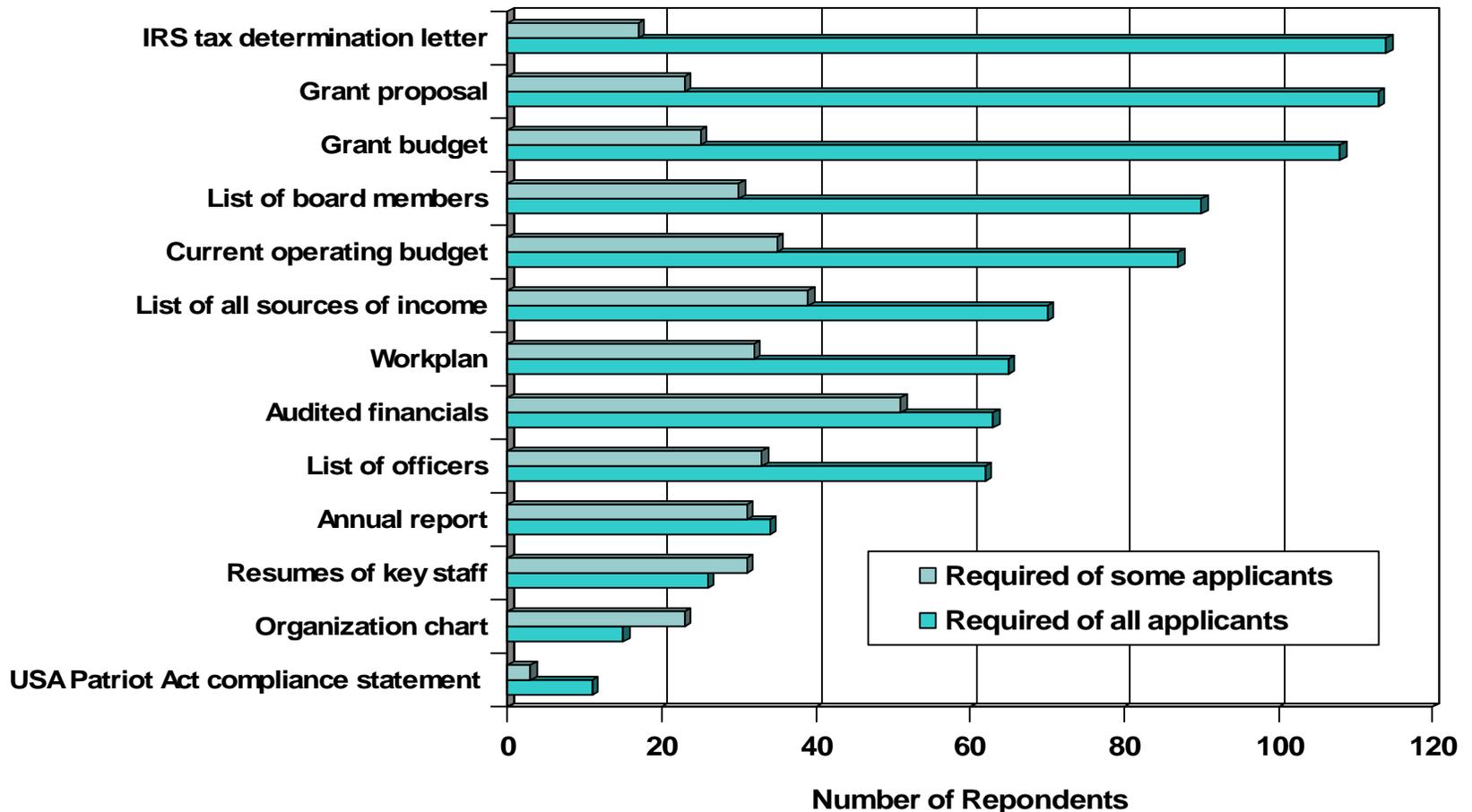
Which software do you use to automate verification checking?

Source: GMN Online Survey March 2004

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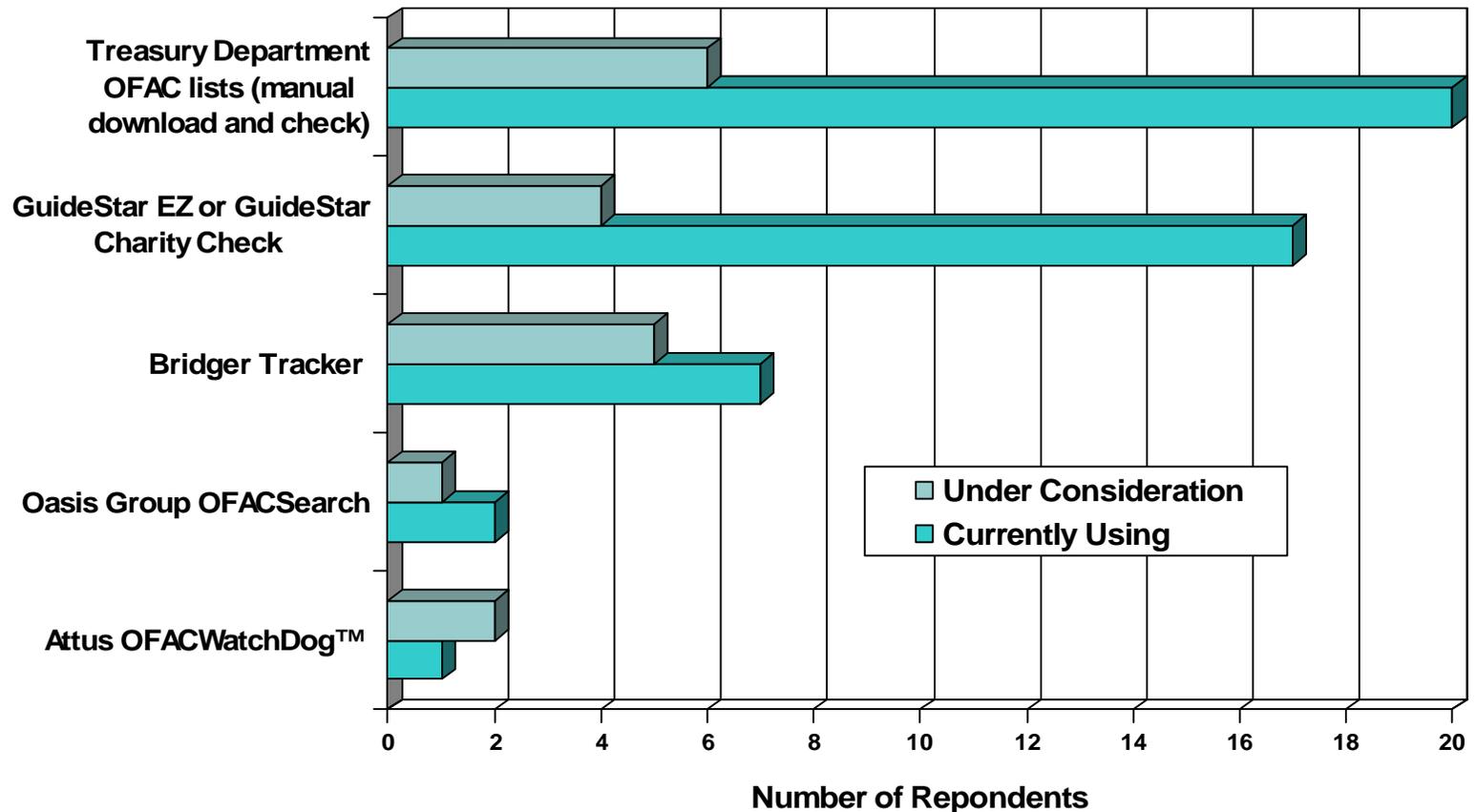
Commercial Products with Integrated Links to Due Diligence Services

Source: GMN Online Survey March 2004

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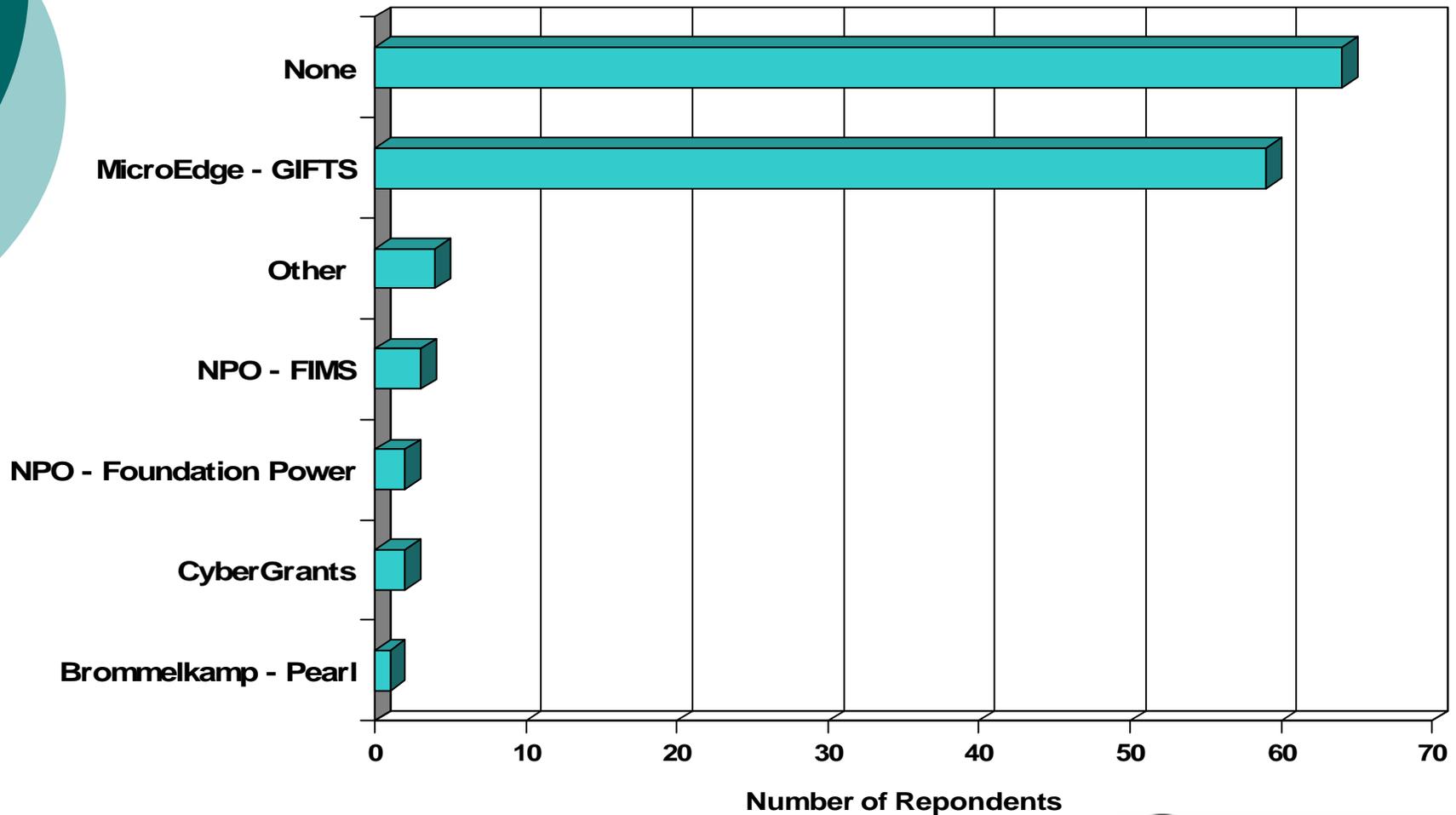
Which staff are responsible for conducting due diligence reviews?

Bar chart showing Number of Respondents by staff role:
- Program Officer: ~87
- Grants Director or Manager: ~80
- Grants Associate or Assistant: ~34
- Program Associate or Assistant: ~32
- President or Executive Director: ~21
- Grants Officer: ~19
- Other: ~16
- Financial Officer: ~13
- Grant Administrator: ~7
- Board Member: ~7
- General Counsel or Legal Staff: ~4
- External Evaluator: ~3
- Grant Coordinator: ~2
- Internal Evaluator: ~2
- Treasurer: ~1

Number of Repondents

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Online Tools Used to Conduct Due Diligence Research

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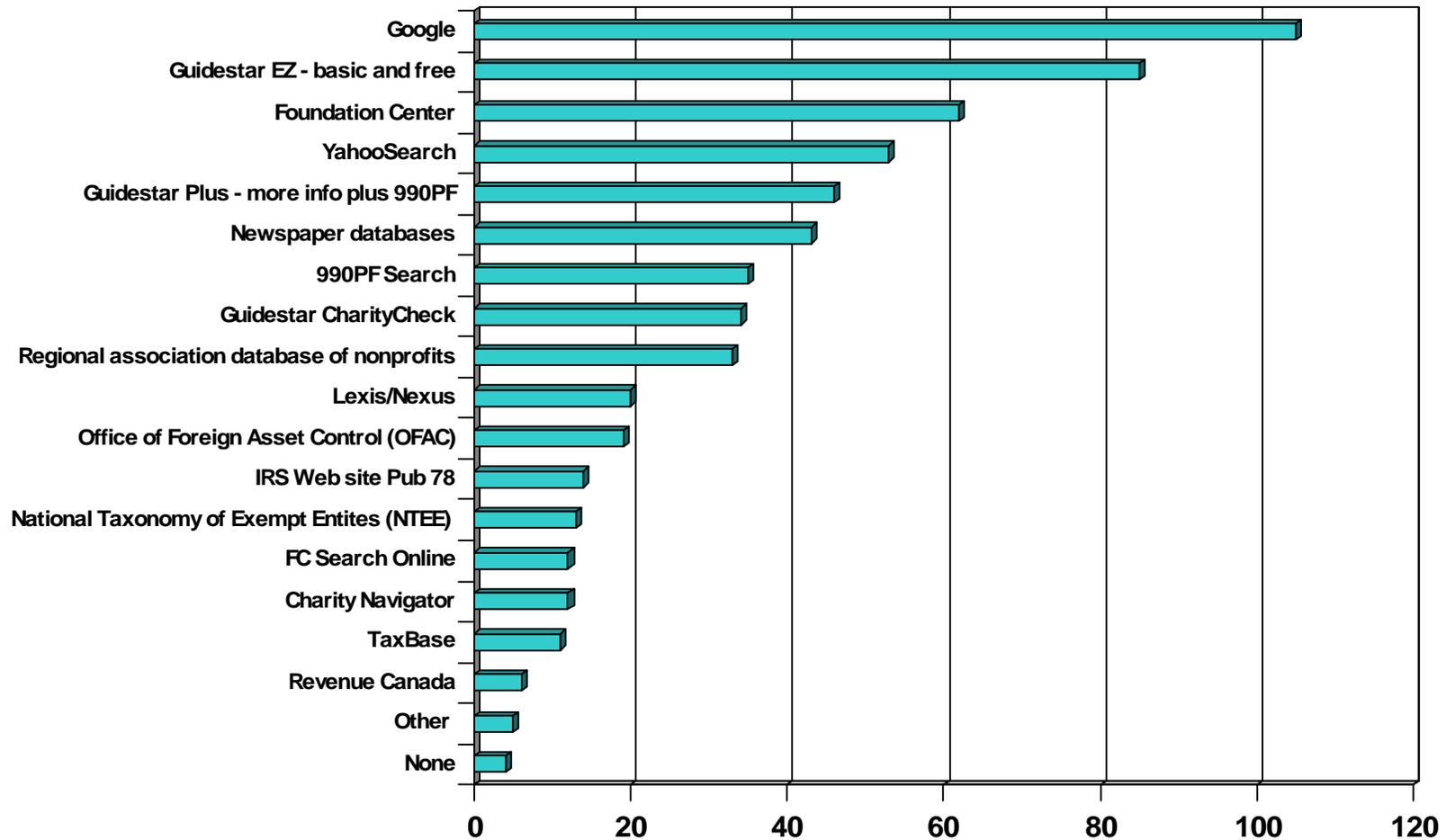
Do you conduct site visits?
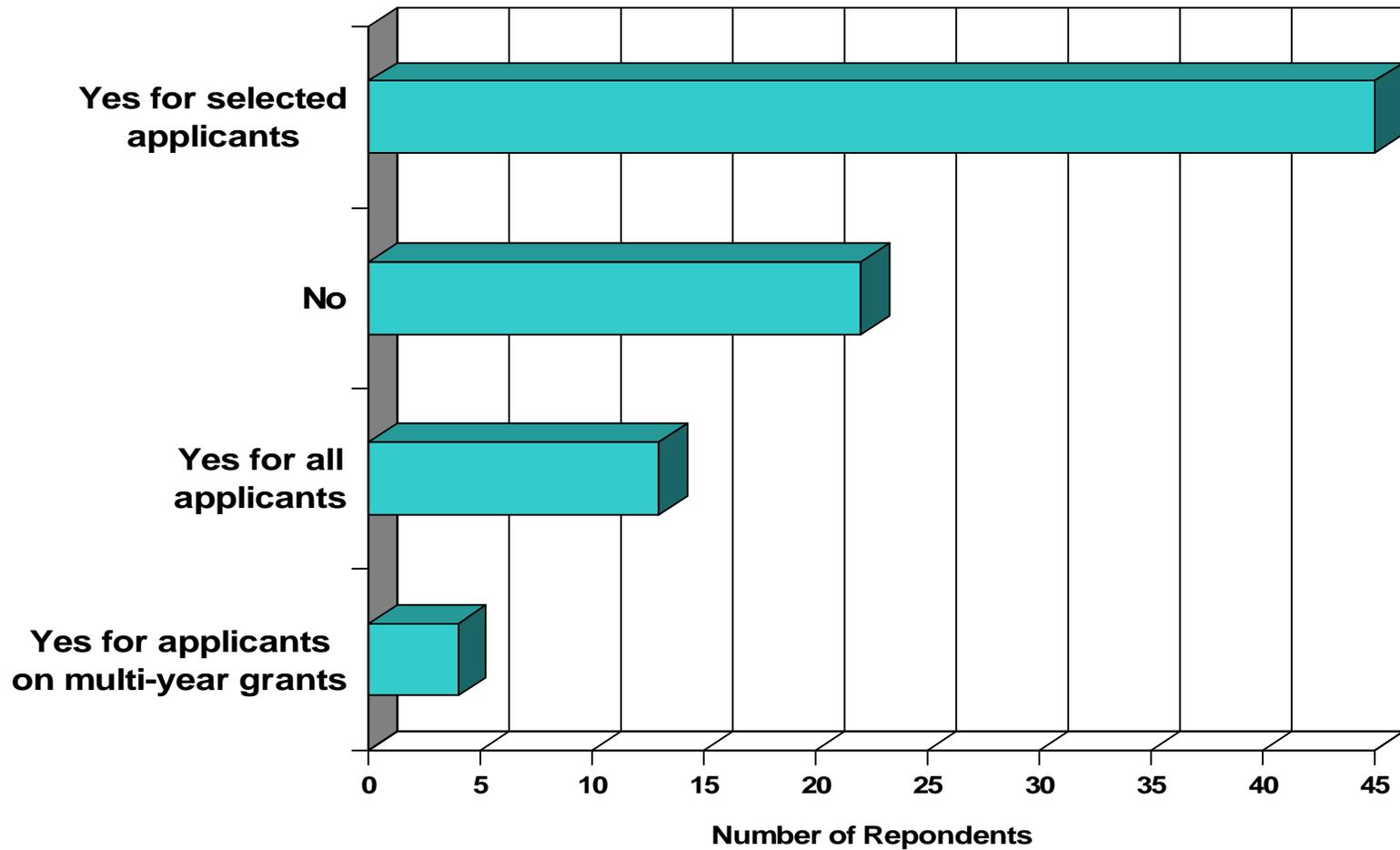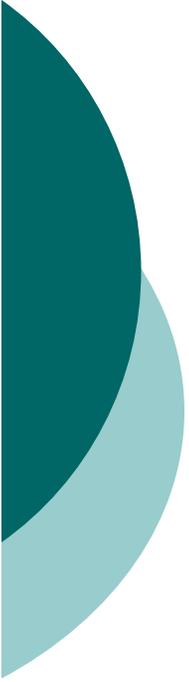
Technology Resources

Articles about technology, industry trends, surveys, and links to references of special interest to foundations and nonprofits.

The site is updated regularly.

www.iaa.com/resources.html

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