



## EARTHRIGHTS INTERNATIONAL POLICY

### FORWARDING OF FUNDS, FISCAL SPONSORSHIP, RE-GRANTING, AND PASS-THROUGH POLICIES

June 2020

#### PURPOSE

In order to comply with U.S. tax law, EarthRights must follow certain rules regarding our financial arrangements with other organizations and individuals. In general, whenever considering any arrangement to accept money intended for a specific individual or organization – except another U.S.-designated 501(c)(3) charity – global Development, Finance, and Legal leads should be consulted and advise on arrangements before any proposal or grant agreement is finalized, and before any money is accepted. In some cases, approval by the Executive Director may be necessary.

Often, our grant proposals and budgets may explain that we intend to hire a particular consultant or grant money to a partner organization. As long as this is our choice, and we retain the freedom to choose a different way of accomplishing the grant, this is not a problem.

This is different from a situation in which a funder *requires* us to transfer money to a particular other organization or particular individual, or in which another organization or individual approaches us with the intent of using our tax-exempt status to receive money intended to be transferred to them.

#### I. Fiscal sponsorship

Fiscal sponsorship is an arrangement in which we adopt a “project” under our own nonprofit umbrella. For example, EarthRights was the fiscal sponsor for the International Corporate Accountability Roundtable (ICAR) when it was first formed. Such an arrangement is usually much more extensive than a single grant, however, and requires high-level discussions, including approval by the Executive Director. Any proposal for a fiscal sponsorship arrangement should be raised far in advance of the need.

A valid fiscal sponsorship arrangement requires several important features:

- A. **Charitable purpose.** The project must fit within EarthRights’ charitable purpose under Section 501(c)(3), which is generally to protect human rights and the environment.



- B. **Financial control and decision-making.** EarthRights must have ultimate control over any funds donated with the intent of furthering the purpose of the project. We must make the decisions about whether funds will be transferred to the project. We cannot be a “mere conduit” for transmitting money to the project; while the funds may be accepted with a purpose restriction, that restriction must be broad enough to allow us to give the money to a different entity that also fulfills the stated purpose.
- C. **Administrative oversight.** Because EarthRights is ultimately responsible for ensuring that the funds are spent to promote the charitable purpose, we must have oversight over the project and make sure that it is properly managed.
- D. **Administration Fees.** The cost of administering, on the rare instance that a fiscal sponsorship is approved, EarthRights will charge a percent-based fee on the number of transactions and administrative burden. This fee will range between 5-10%.

Because this is a complicated arrangement that takes time to develop, it should be started well before the funds are needed, and no one should assume that this sort of arrangement will be approved. Instead, **the general rule is that EarthRights does not act as a fiscal sponsor.**

## II. Re-grants to other charities or non-government organizations

Under U.S. law, EarthRights is a charity designed under Section 501(c)(3) of the Internal Revenue Code, which means that our own activities are exempt from taxes, and donations to us are generally tax-deductible. Sometimes, we accept grants which we may re-grant to other 501(c)(3) charities. This does not pose a problem and does not require special approval.

EarthRights may make sub-grants to individuals or non-government organizations (NGOs) in countries other than the United States for partnerships that are deemed to further our mission or achieve goals in the strategic plan. A re-granting obligation will first be considered only if it aligns with the strategic priorities of EarthRights. The Program lead and Executive Director (or delegate) will determine this alignment. All partnership agreements must have prior approval from Development and Finance.

EarthRights is responsible for compliance and may require additional monitoring and reporting. Before an agreement is approved, program and monitoring and evaluation teams will provide documented assessments of:

- A. Organizational capacity and suitability
- B. Risk Assessment and Amelioration
- C. Financial assessment for forwarding funds over \$10,000
- D. Proposal, budget, and reporting requirements to EarthRights.
- E. ToR (terms of reference) of the agreement using EarthRights templates.



Regional or Program Directors must sign all partner agreements. A digital or paper copy of the fully executed agreement must be sent to Development and Finance.

Partnerships with organizations that are engaged in long-term programs, have established financial systems, and shared donors are considered lower risk and may qualify for cost reimbursement or Terms of Reference (ToR).

Refer to the forwarding of funds re-granting procedures in the staff manual (Version 1.2, May 2021) for implementation guidelines and standard tools.

### III. “Pass-through” or earmarked funds for specific individuals or organizations

Generally, **EarthRights cannot accept money which is intended to be transferred (or “passed-through”) to another individual or organization** that is not also a 501(c)(3) charity, including the organizations of partners, alumni, current students, and other similarly affiliated entities. Although we work hard to support our partners and students in many ways, we risk scrutiny from the U.S. tax authorities and put our tax-exempt status in jeopardy by transferring money to them at the request of a donor. For example, a U.S. foundation may not give us a grant under the condition that we implement the grant by giving money to specified local partner organizations or individuals, regardless of whether they are characterized as partners, grantees, or consultants.

The question is best examined from the donor’s perspective - *are they using our nonprofit status to channel money that is designated for a specific individual or organization that does not have the same nonprofit status?* If so, then the money generally cannot be considered a charitable contribution. Under some circumstances we may still be able to accept the money, but it will not be considered a tax-deductible donation.

There are limited circumstances under which exceptions to this policy may be appropriate. Any exceptions, however, or any grant agreements or other contracts that might implicate this policy, must be formally approved in writing by global Development, Finance, and Legal leads to ensure compatibility with the law and donor requirements.

For further guidance, please refer to these resources:

<https://www.irs.gov/pub/irs-tege/eotopick92.pdf>  
<https://www.irs.gov/pub/irs-tege/eotopice96.pdf>