

MEMBER ADVISORY

December 16, 2022

CRA's Draft Guidelines for Granting to Non-Qualified Donees – PFC's Preliminary Assessment

Background

The 2022 Federal Budget introduced a new framework for partnerships in the charitable sector called “qualifying disbursements.” It allows registered charities to make “qualifying disbursements” to both qualified donees and non-qualified donees (NQDs), provided certain requirements are met. Disbursements to non-qualified donees must be to further the charity’s charitable purposes and the charity must allocate funds for charitable activities carried out by the grantee, with reasonable records kept to demonstrate this.

The Canada Revenue Agency released their [draft guidelines](#) for grants to NQDs on November 30.

CRA is requesting feedback by January 31. PFC will submit recommendations to the CRA to improve the guidelines. PFC is encouraging its members to share their insights with PFC and to submit their own recommendations to the CRA.

PFC's Initial Assessment

We appreciate the intent of the CRA to create guidelines that support new partnerships for a wide range of users. And we are pleased to see that a key concern we have with the legislation has been referenced here. Language in the guidelines on pooled funding specifically (section 7.7 starting at point 83) clearly articulates that gifts can be accepted by charities for programs that support non-qualified donees, but that charities must qualify that ultimate authority on the use of resources rests with the charity (section 7.4).

However, we acknowledge that these guidelines are not law, and some of the wording of the legislation remains troubling. The directed giving stipulation

states that organizations jeopardize losing their charitable status for knowingly accepting gifts conditional on them going to NQDs. The issue with this provision is that it creates risk to the charitable status of charities engaging in partnerships with NQDs, and as a result may discourage pooled funding partnerships – an essential practice used frequently, especially during urgent and quickly evolving contexts, as has been seen during war, natural disasters and the COVID-19 pandemic in Canada and globally. Nonetheless, the draft guidelines create a framework for pooled funding to occur, which we are pleased about.

On the draft guidelines overall, we were expecting to find guidelines that were more concise, user-friendly, and technical. The guidelines are long, sometimes difficult to understand, and inaccessible. Significant editing is required. Some of the text could be turned into annexes for example.

Furthermore, there are numerous instances where language is misused, or terminology is inconsistent or vague. Many recommendations in the guidelines are arbitrary, and often not in line with best practices in grantmaking, or how the sector operates.

In particular, we are concerned with the way in which risk is presented. The term is mentioned 62 times throughout the document, including a detailed risk-assessment chart (section 5.1). But in many cases, the definition of a risk being suggested is absent, only inferred, or sometimes even characterized inaccurately.

For example, a long-term grant is defined as 1-2 years in duration, and it's seen as higher-risk ("medium-risk"). Experienced practitioners know that 1-2 year grants are in reality short time horizons and considered short-term investments. We also know that short-term funding is a critical issue facing the sector, as it is an inherently problematic mechanism for working to achieve social impact. Piecemeal project funding undermines quality programming, decent work, and organizational health, resilience and preparedness. This issue has been spoken about and written about extensively for years in our sector. In fact a key [Federal Budget 2023 ask of Imagine Canada](#) is to establish a core government funding threshold for these reasons. This is just one example of several problematic characterizations and insinuations throughout the document.

Moreover, the prevalence of the term 'risk' in the guidelines itself implies that there is something inherently wrong with risk, and with partnering with NQDs. Seasoned grantmakers know that there is always an element of risk in unintended or undesired outcomes - despite due diligence and risk mitigation measures. Risk is an inherent part of grantmaking, and sometimes grants made to support new ideas, unknown or emerging organizations, or different

approaches lead to the greatest outcomes. In fact, seasoned grantmakers have criticized foundations for not taking more risks in their programming.

The reality is that there can be great benefits from a reasonable embrace of risk within a responsible granting portfolio. And philanthropy and the non-profit and charitable sector as a whole are expected by government and the public to take risks in addressing all sorts of social challenges. But charities range in their own risk tolerance, and they should be encouraged to consider this in all of their activities, including granting to NQDs.

However, in our view, the guidelines should focus on the policy, and make clear that the key risk that charities are directly responsible to manage is that the proposed program by the nonqualified donees falls within its charitable purposes. Organizations like PFC, Imagine Canada, the Ontario Nonprofit Network, and other umbrella organizations and facets of civil society, will work with the laws at hand and the government's guidelines to support the sector with good practices and how to be best effective within those parameters.

In short, these guidelines are a start, but they need work. PFC will encourage editing and shortening as described above. Without revisions, we genuinely fear that the new regime for more equitable partnerships between charities and non-qualified donees may not be utilized, and those less experienced, less discerning charities that seek to use the guidelines, if they remain as is, may end up further behind than ahead because of the guidelines' shortcomings.

Next Steps

In partnership with [The Philanthropist Journal](#), PFC is hosting a webinar on January 10 to discuss the guidelines with the sector. Please [register here](#).

In the new year we will also be sharing a survey to solicit written feedback from our network to inform PFC's submission on the draft guidelines.