

Philanthropic Freedom Pilot Study: United States Country Report

Overall Philanthropic Freedom Score: 4.58

General Background Information on the United States

- GDP per capita: \$48,112¹
- Population: 314 million²
- Percent of population reporting “giving money”: 57%³
- Percent of population reporting “volunteering time”: 42%⁴
- Organizations in the U.S. are registered as nonprofit, most commonly with a 501 c3 or a 501 c4 status. 501c3 organizations are public charities and private foundations that are eligible for a tax exempt status, but are limited in their lobbying activities.
- There are approximately 1.5 million NGOs in the U.S.
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Philanthropic Freedom Score Overview

Category	Score	Key Points
Civil Society Regulation	5.00	<ul style="list-style-type: none"> • People wishing to act collectively do not need to obtain legal recognition in advance; estimates place the number of such “informal” groups in the hundreds of thousands. • Nonprofits have substantial autonomy over their structure, governance, membership rules, and activities, subject only to generally applicable laws, such as anti-discrimination ones. • Governing boards have the authority to dissolve nonprofit organizations, following procedures specified in their by-laws. State agencies usually have the power to dissolve nonprofit organizations for failing to comply with the requirements of incorporation laws. However, these actions generally require approval by a state court.
Domestic Tax Regulation	4.50	<ul style="list-style-type: none"> • Individuals and corporations are eligible to receive full deductions on their donations. The ceiling on individuals is 50% of taxable income. The ceiling for corporations is 10% of pre-tax net income. • All non-profit organizations can apply for exemption from Federal corporate income taxes and the Internal Revenue Service approves almost all applications, usually within a few months. The process generally requires minimal legal assistance. • In order to obtain tax-exemption, nonprofits have to abide by a variety of rules, ranging from annual reporting requirements to limits on executive compensation and commercial income, failure to comply with which could lead to imposition of financial penalties.
Cross-Border Flows Regulation	4.25	<ul style="list-style-type: none"> • While individual Americans can donate to charities operating in other countries, their cash or in-kind gifts are not eligible for tax-deductions. Gifts from foreign sources are not considered taxable income in the United States. However, gifts exceeding \$100,000 must be reported to the Internal Revenue Service.
Overall	4.58	<ul style="list-style-type: none"> • The policy environment in the United States is relatively conducive to philanthropic activity.

¹ World Bank. (2012). Data retrieved December 26, 2012, from World Bank Databank.

² Central Intelligence Agency. (2012). Data retrieved December 26, 2012, from The World Factbook 2012.

³ World Giving Index. (2012). Kent, UK: Charities Aid Foundation, 2012.

⁴ Ibid.

Socio-Cultural Background on U.S. Giving Environment
Provided by Dr. Leslie Lenkowsky
U.S. Country Expert
Indiana University Center on Philanthropy.

In the United States, philanthropic activity has been highly respected and widely practiced. Upwards of two-thirds of American households are thought to make donations annually. Contributions are estimated to amount to more than one in fifty dollars of national income, the highest share in the world. One-quarter of all Americans report volunteering their time to charitable groups, a figure that does not include informal types of volunteering, such as helping neighbors or friends.

The roots of philanthropic activity in the United States can be traced to the attitudes of its early settlers in the 17th century. Since then, many observers have noted the widespread expectation that Americans will be actively involved in charitable and other kinds of community-serving activities and seen it as an important factor in the maintenance of American democracy and more generally, “American exceptionalism,” or what makes the United States different from other countries.

Key factors impacting philanthropic activity in the United States have been: widespread religious affiliation; a public philosophy favoring a limited role for government; and family and community networks that engaged new generations (and immigrants) in civic organizations. Although it has played a supportive role, public policy, such as the deductibility of charitable contributions, has had a minor effect.

Although it continues to be held in higher esteem than other parts of society, such as government, the nonprofit sector is less well-regarded in the United States than it was one or two generations ago. Among the reasons for this are a number of well-publicized scandals involving charitable groups, such as the United Way and Red Cross, declining religious affiliation, increased government (and commercial) activity in areas once the preserve of nonprofits, and diminished rates of volunteering, especially among young people. However, civil society organizations in the United States continue to grow, both in number and size.

**Scoring of U.S. Civil Society Regulation
Provided by Dr. Leslie Lenkowsky**

<p>Indicator Question 1: To what extent can individuals form and incorporate the organizations defined?</p>	<p>Score: 5.0</p> <p>In the United States, people wishing to act collectively do not need to obtain legal recognition in advance; estimates place the number of such “informal” groups in the hundreds of thousands. If such groups wish to obtain legal recognition in order, e.g., to own property or limit individual liability, they can follow a well-established process of incorporation that entails meeting a minimal set of requirements, such as having by-laws, a set of directors, and a legal purpose; applying for Federal and state tax-exemption as a nonprofit corporation; and paying a small fee. Approval usually is pro forma and occurs with minimal delay. State governments administer this process; appeals can be made to state courts (and if Constitutional issues are involved, Federal ones). Although each state can establish its own requirements for incorporation, there has been growing uniformity in recent decades, though important differences remain. Once incorporated, an organization must meet certain legal requirements (e.g., its directors must act in accordance with fiduciary rules and it is not allowed to distribute profits to stock owners, if it has them) and file an annual report with state officials.</p> <p>A few nonprofit organizations, e.g., the Boy Scouts of America, are incorporated by the Federal government, usually for historical or political reasons. There is no standard form for such corporations; governance rules are established within a legislative process.</p> <p>Nonprofit organizations may also be established as charitable trusts, typically involving transfers of property, such as endowments, to be used for specified beneficiaries (e.g., children of veterans) or philanthropic purposes (e.g., private foundations). The process, requirements, and enforcement parallel those for nonprofit corporations.</p>
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<p>Indicator Question 2: To what extent are CSOs free to operate without excessive government interference?</p>	<p>American laws generally aim to create a separation between nonprofit and for-profit organizations. For example, state and Federal rules seek to restrict the amount of personal benefits that directors or key employees can receive from a nonprofit group. While nonprofit organizations can engage in commercial activities (and have for-profit affiliates), the revenue they make must be related to the organization’s purposes, or else could be subject to taxation or other penalties (including mandatory divestment). However, within these restrictions, nonprofits in the United States have substantial autonomy over their structure, governance, membership rules, and activities, subject only to generally applicable laws, such as anti-discrimination ones, which have been interpreted to prevent nonprofits from limiting eligibility for membership to certain demographic groups.</p> <p>The fundamental legal protection for nonprofit organizations in the United States is the First Amendment to the Constitution, which prohibits laws restricting the freedoms of speech, association and religion. As a result, most government constraints on not only the programs and operations of nonprofit groups (including fund-raising and other kinds of communications), but also how much they need to disclose about their activities to the public have been invalidated. However, restrictions have been allowed not only to prevent illegality, but also when other public interests are deemed at stake, the most notable being a variety of limitations imposed on nonprofit political activity. In addition, new requirements for board composition, public reporting, and other aspects of nonprofit governance and structure are regularly discussed. Tax laws may also limit nonprofit activities (see II, below).</p> <p>Score: 5.0</p> <p>Nonprofit organizations report regularly (usually, annually) to the state in which they are incorporated and the Federal Internal Revenue Service. The Federal report has grown increasingly detailed in recent years and all tax-exempt organizations are now required to file it (though those with less than \$50,000 in annual revenues can submit a simplified version).</p>
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<p>Indicator Question 3: To what extent is there government discretion in shutting down CSOs?</p>	<p>In the United States, governing boards have the authority to dissolve nonprofit organizations, following procedures specified in their by-laws (or where applicable, state incorporation laws). However, at dissolution, the net assets owned by a nonprofit (such as property or investments) must be made available for use by another nonprofit, rather than distributed to directors, stockholders, or members. State laws may set rules for doing so (including procedures for valuing assets). Since nonprofits are generally not required to report when they go out-of-business, accurate data on the extent of voluntary terminations is hard to come by.</p> <p>State agencies – typically, the Attorney General -- usually have the power to dissolve nonprofit organizations in their states for failing to comply with the requirements of incorporation laws. They can also take remedial steps, such as replacing an organization’s governing board. These actions generally require approval by a state court.</p> <p>At the Federal level, the Internal Revenue Service has the authority to revoke an organization’s tax-exemption, which could lead to its termination. It also can impose financial penalties, generally known as “intermediate sanctions.” Although the IRS can take these actions administratively, nonprofit organizations have the right to appeal them to Federal courts.</p> <p>In relation to the large number of nonprofit organizations existing in the United States, involuntary termination or other kinds of remedial actions by state or Federal authorities occur infrequently. Some have argued that this is because enforcement agencies have typically been under-staffed and under-funded. However, efforts to ascertain the extent of wrongdoing among nonprofit organizations (e.g., a recent IRS audit of salaries paid by large foundations) have usually found a low incidence of problems.</p> <p>Score: 5.0</p>
<p>Average Score on Civil Society Regulation: 5.0</p>	

**Scoring of U.S. Domestic Tax Regulation
Provided by Dr. Leslie Lenkowsky**

<p>Indicator Question 4: Are there income tax incentives (at national, state, or provincial levels) in the form of credits or deductions for individuals and/or corporations to donate money or charitable gifts?</p>	<p>In the United States, tax incentives are available to donors, but considerable variation exists among states and localities in the type and value of these incentives.</p> <p>Donors – individual as well as businesses -- to nonprofits whose purposes are considered charitable and have broad public support -- i.e., those exempt under section 501c(3), or “public charities,” which constitute over a majority of tax-exempt groups -- can deduct the amount of their cash or in-kind gifts from their income tax liability. However, donors to other types of nonprofits exempt from Federal taxes (e.g., labor unions or political action committees) cannot do so. Moreover, only taxpayers who itemize their deductions – about one-third of all households -- are eligible to claim this deduction, the value of which is reduced for taxpayers with large amounts of itemized deductions. Gifts to “public charities” provided for in wills – known as “bequests” – are deductible in full from estate taxes.</p> <p>States and localities differ in how they treat charitable gifts. Some follow Federal rules; others do not. In some states, donations for particular kinds of nonprofits (e.g., colleges or universities in the state, or organizations helping the needy) are deductible, or may be eligible for a credit against income tax liability, up to an amount specified in state law. Likewise, some states allow nonprofits to sell goods or services without collecting sales taxes from purchasers; others do not. Some waive sales tax collections only for certain types of transactions.</p> <p>The maximum value of Federal tax deductions is set in relation to the donor’s taxable income. Individuals can reduce their taxable incomes by up to 50% annually for gifts to “public charities,” while businesses can deduct up to 10% of their pre-tax net income. (Other limits apply to gifts of capital or to private foundations.) Both can carry-over “excess”.</p> <p><i>(The country expert was not required to score this question; CGP applied a score of 5.0 due to the available tax deductions, the high ceiling, and the wide pool of civil society organizations approved to receive donations.)</i></p>
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Score: 5.0

<p>Indicator Question 5: To what extent is the tax system favorable to making charitable donations?</p>	<p>Although the process of obtaining tax deductions is generally clear and predictable, except for special tax situations or special kinds of gifts (such as donations of capital or valuable in-kind goods, like artwork), deductibility is limited only to taxpayers who itemize their deductions, about one-third of all households. Moreover, since the value of the deduction to the donor depends on his or her tax-bracket (currently, at most, 35%), it is worth less than the amount of the donation. (By contrast, the value of a tax-credit equals the amount of the donation.) The reduction in the value of itemized deductions for taxpayers with large amounts of them also has the effect of lowering the value of the deduction for contributions, especially for upper-income taxpayers.</p> <p>Deductibility is also limited to gifts to “public charities.” Although these comprise the bulk of nonprofits in the United States, less incentive to give exists for other kinds of organizations, all of which, to one degree or another, serve public purposes</p> <p>Taxpayers must keep records of gifts for which they claim deductions and receive a written acknowledgement from the recipient for gifts of more than \$250. This adds a small, but potentially significant paperwork burden to donors, as well as nonprofit groups. (Valuation of in-kind donations can also be a challenge.) Contributors to private foundations (a “public charity” usually controlled by an individual or family) face additional requirements, including restrictions on the kinds of assets the organization is allowed to own.</p> <p>Variations among state and local tax-deduction policies also create limits and uncertainties for donors, who may have tax incentives to give in some jurisdictions that are unavailable in others. State-level tax credits, targeting certain kinds of charities but not others, potentially displace donations toward politically favored organizations (though no empirical evidence exists that they do).</p>
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Score: 4.0

<p>Indicator Question 6: Do CSOs receive tax exemptions in the form of property tax exemptions, income tax exemptions, or others? If so, what are these exemptions?</p>	<p>Tax-exemptions are widely available to non-profit organizations, but they often come with strings attached and are becoming increasingly controversial, especially with local governments.</p> <p>All non-profit organizations can apply for exemption from Federal corporate income taxes and the Internal Revenue Service approves almost all applications, usually within a few months. The process generally requires minimal legal assistance. However, in order to obtain tax-exemption, nonprofits have to abide by a variety of rules, ranging from annual reporting requirements to limits on executive compensation and commercial income, failure to comply with which could lead to imposition of financial penalties. Like other corporations, nonprofits have to collect Federal payroll taxes from their employees. Private foundations (see above) are also required to spend a certain amount of their assets each year (an implicit tax) and pay a tax on their investment income.</p> <p>Organizations exempt at the Federal level can apply for and will generally receive exemption from state and local corporate income taxes as well. In addition, non profit organizations can be exempted from paying state or local taxes on property they own and sales taxes on purchases they make. However, the coverage and requirements for these exemptions, such as their applicability to types of property or purchases, vary across jurisdictions. Moreover, in many places, nonprofits are expected (and sometimes required) to provide certain kinds of services, e.g., charity care in the case of hospitals, in exchange for these exemptions.</p> <p>At the insistence of some state or local governments, nonprofits – typically, hospitals and universities -- “voluntarily” make “payments in lieu of taxes” (PILOT’s), the amount of which is usually related to the amount of tax the organization would pay if it were not exempt. Others may be required to pay “user fees” for government services, such as police and fire protection.</p> <p><i>(The country expert was not required to score this question; CGP applied a score of 5.0 due to the wide range of tax deductions available to nonprofits and the availability for all nonprofits to apply for tax exemption.)</i></p>
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Score: 5.0

<p>Indicator Question 7: To what extent is the tax system favorable to CSOs in receiving charitable donations?</p>	<p>Although exemption from Federal, state and local taxes has long been considered a defining feature of the nonprofit sector in the United States, the conditions attached to it, the requirements to collect payroll taxes (which are paid by both the employer and the employee) or make “payments in lieu of taxes,” and the variation in the treatment of sales taxes among states and localities diminish its favorable impact.</p> <p>Organizations representing the nonprofit sector (such as the National Council of Nonprofits) have been particularly concerned by what they perceive as increased challenges to tax-exemptions in major cities as a result of efforts to deal with fiscal shortfalls. At the Federal level, proposals to require private foundations to increase their rates of spending have arisen from the view that they are not doing enough to justify their tax-exemptions. Both nationally and in states such as Illinois and Pennsylvania, hospitals (and to a lesser degree, universities) are being called on to provide more services to the needy as a condition of maintaining their tax-exempt status.</p> <p>Moreover, the benefits of tax-exemptions accrue mostly to large and well-financed nonprofits, which own significant amounts of taxable property or whose income exceeds their expenses (and thus, they are liable for corporate income taxes). While these organizations provide substantial amounts of public services as well, they represent a relatively a small proportion on nonprofits in the United States, most of whom own minimal property or operate on a breakeven basis (or worse). For this group, tax-exemption is of little or no consequence.</p> <p>Businesses have also challenged tax-exemption for activities, conducted by non-profits, which they regard as competing with goods or services they are providing. Fitness companies, for example, have questioned whether or not the YMCA continues to deserve its property tax-exemption, though largely without success to date.</p>
<p align="center">Average Score on Domestic Tax Regulation: 4.5</p>	

Scoring of U.S. Cross-Border Flows Regulation

<p>Indicator Question 8: Are there costs/taxes on cross-border philanthropic cash and/or in-kind donations (e.g. customs, duties, VAT, etc)? If so, what are these costs?</p>	<p>The main costs for charitable contributions from Americans to foreign charities, or from foreign donors to American charities, stem from tax policies. Post-9/11 efforts to control the financing of terrorist activity have added another set of restrictions.</p> <p>While individual Americans can donate to charities operating in other countries, their cash or in-kind gifts are not eligible for tax-deductions. However, private foundations may count such donations toward the amounts they are required to give annually if they follow a complicated set of procedures aimed at ensuring their gifts are being used for activities that would be considered charitable in the United States. Americans can claim tax-deductions for gifts to U.S.-based organizations, such as churches or humanitarian groups, which operate in foreign countries, but these groups must comply with Internal Revenue Service rules regarding how charitable gifts must be used, although payments can be made directly to needy individuals as part of a “qualified” disaster relief effort.</p> <p>Gifts from foreign sources (e.g., bequests or donations from trusts) are not considered taxable income in the United States. However, gifts exceeding \$100,000 (or a lesser amount if from a foreign corporation) must be reported to the Internal Revenue Service.</p> <p>Since 2001, Federal policies have tried to prevent charitable contributions from being used to finance terrorist activities. In general, these rules have required donors to exercise greater diligence in making international gifts, or face penalties. In addition, gifts to organizations on a list of suspected terrorist groups, maintained by the U. S. Department of State, are prohibited, even if the funds were directed toward the charitable work such groups sometimes undertake.</p> <p>Tax-treaties (especially with Mexico, Canada and Israel) and other international agreements (such as those dealing with donations of “cultural property”) can also affect cross-border philanthropy by Americans.</p> <p><i>(The country expert was not required to score this question; CGP applied a score of 4.5. On the positive side, apart from terrorist related laws, Americans are free to donate to foreign organizations without extra costs and nonprofits can receive funds from abroad without extra fees. On the negative side, there are limited tax benefits in donating to foreign organizations.)</i></p>
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Score: 4.5

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Indicator Question 9: To what extent is the legal regulatory environment favorable to cross-border flows impeded?</p>	<p>The legal environment for cross-border philanthropy is less encouraging than for domestic giving in the United States. Perhaps as a result, international giving is a relatively small portion -- 8 percent according to the 2012 Giving USA survey – of American donations.</p> <p>As noted above, although almost no programmatic restrictions exist, gifts to foreign charities are not eligible for tax-deductions. To offset that restriction, many foreign organizations have established “public charities” in the United States to which American donors can contribute. Some have also registered with the Internal Revenue Service. As a result, much of American giving abroad occurs through US-based organizations, especially religious, health, and humanitarian groups.</p> <p>Private foundations have to incur sizable administrative burdens in order to make foreign gifts. Consequently, American foundations with very large resources, who can afford the costs of conducting due-diligence checks and monitoring expenditures, do most grant-making for international programs. As with similar programs for U.S. residents, foundations that sponsor fellowships for foreign citizens need prior approval from the Internal Revenue Service (which is usually pro forma).</p> <p>Restrictions aimed at preventing funding of terrorist activities have been accused of reducing giving, especially to Middle Eastern countries and Muslim groups. Highly publicized trials involving the acquisition of cultural artifacts by American museums and universities have also led to concerns about the possibility of a decline in such donations (or purchases) in the future. However, no empirical evidence exists for either claim.</p> <p>Records of donations from foreign sources to American charities are not available. However, the Internal Revenue Service reports an increase in foreign trusts established by Americans, some of which may make payments to United States charities, as do American foundations domiciled offshore (e.g., Atlantic Philanthropies).</p> <p>Private transaction costs (such as bank transfer fees) can also be a disincentive for cross-border philanthropy, but are largely unregulated.</p> <p>Score: 4.0</p>
<p>Average Score on Cross-Border Flows Regulation: 4.25</p>	

Overall Philanthropic Freedom*: 4.58

*This score reflects equal weighting of the three categories described above.