Within the Law and Outside the Box

November 6, 2019
Overview

• Defining the Framework
• Getting creative within “simple”
• Increased complexity
• Advanced grantmaking
• Beyond grantmaking
• Applying the Framework
• Topics for Additional Review
The Grants Only Myth

• Many foundations mistakenly believe that grants to other charities are the only effective and legal way to accomplish their mission

• Why?
  – Misreading the 5% payout rule (4942)
  – Misreading taxable expenditures (4945)
  – Overly restrictive governing documents
Reality – A Much Bigger Tool Box

• Grants to non-charities
  – Other non-profits – (c)(4), (c)(6), etc.
  – Non-US entities
  – Individuals
  – Governments (domestic and foreign)
  – For-profit entities

• Direct Charitable Programs

• Advocacy

• PRI’s and Impact Investing
Legal Framework

- Excise Tax (§4940)
- Self-dealing (§4941)
- 5% Payout (§4942)
- Excess Business Holdings (§4943)
- Jeopardy Investments (§4944)
- Taxable Expenditures (§4945)
Creativity Within Simple Grants

– General operating or project support
– Matching/Challenge
– Endowment funds
– Capacity building
– Recoverable grants
– In-kind contributions
Slightly Complex Grants

- Religious organizations
- Group rulings
- Executive order (e.g., World Bank)
- Grants to government
- Tax treaty reciprocity
More Complicated Grants

• Types of organizations
  – Private Foundations
  – New Charities – application still pending
  – Non-charities

• Process: expenditure responsibility
  – Pre-grant inquiry
  – Written grant agreement
  – Segregation of funds if non-charity
  – Follow-up reporting from grantee
  – 990-PF reporting
Advanced Grantmaking

• Grants to individuals
  – Scholarships
  – Disaster relief and emergency hardship
• Program related investments (“PRI’s”)
• Direct international grantmaking
• Funding advocacy
Grants to Individuals

• Required for all grants to individuals
  – Charitable purpose
  – Objective and non-discriminatory basis
  – Broad charitable class (open or indefinite)
  – Criteria must be related to purpose

• IRS pre-approval
  – Must apply for approval before making grants
  – 45 day rule
  – Not necessary for:
    • Prizes/Awards past accomplishments / “no strings”
    • Financial hardship
    • Emergency/disaster relief
International Grants

• Options
  – Recognized by IRS
  – Foreign government
  – International organization
    • Expenditure responsibility
    • Equivalency determination
  – Direct activities
Impact Investing

• PRI
  – Primary purpose must be charitable
  – Income/asset appreciation not a significant purpose
  – Advantages
    • Counts as qualifying distribution
    • Exempt from jeopardy investment rules
    • Exempt from excess business holding rules
    • Assets held are “charitable use” and not part of 5% denominator

• MRI’s
  – Mission aligned investments
  – Part of the investment portfolio, not grant funds
  – Subject to investment policy, fiduciary standards, excess business holdings and jeopardy investment rules
  – Includes a wide range of activities
Advocacy and Lobbying

• Not synonyms. Advocacy is permissible
• Direct engagement in lobbying is prohibited
• Definition of lobbying
  – Direct (contact, legislator, expressing a view)
    • Includes ballot work
  – Grassroots (telling public to lobby, call to action)
  – Exceptions (self-defense, research, tech assist)
• Funding organizations that lobby is ok
• Limits on Voter Registration and GOTV
Funding Lobbying

• General support grants:
  – No wink, wink, nudge, nudge

• Specific project grants:
  – Non-lobbying amount
  – No earmarking
  – May rely on budget

• Don’t need to prohibit lobbying
  – Exception: ER grants
Direct Charitable Programs

- Foundations are not limited to grants only
- Paying for programs directly is both legal and counts towards the 5% payout requirement
- Operating foundations primarily run programs, but mix of grants/programs is ok
- Make sure governing documents, mission, and other policies are aligned with the work
Applying the Framework
Less to More...Poverty

- **Less**
  - General support for local food bank
  - 2:1 challenge grant to encourage others to support the food bank
  - Hire a staff person to coordinate contributions of food from business to shelters and the homeless

- **More**
  - Grant to the chamber to coordinate contributions of food from its members
  - Grants directly to individuals to alleviate the affects of poverty
Less to More...Scholarships

• Less
  • Endow a science scholarship at the local University
  • Fund and serve on the selection committee for a scholarship fund at the local community foundation
  • Award scholarship grants directly to individuals
  • Support efforts to increase state and federal funding for student loans and scholarships

• More
Less to More...International

• Less
  • Unrestricted grant to Give2Asia
  • Grant to Oxfam America supporting clean water project in Peru
  • Grant directly to the government of Ghana to purchase school computers
  • ER grant to NGO fighting AIDS in Africa
  • ED grant to NGO in China to build a school after an earthquake
  • PRI to bank for micro-loans in India

• More
Less to More... Disaster Relief

- Less
  - Operating grant to the Red Cross
  - Create hurricane relief fund at local CF
  - Purchase state-of-the-art communications equipment for local first-responders
  - 0% interest loans to local relief organizations so they can focus on responding first and fundraising later
  - Establish a disaster relief fund within the foundation

- More
Topics For Further Exploration
Deeper Dive Topics

• Self-dealing and Related Party Transactions (January 30, 2020)
• International grantmaking
• Grants to individuals
• Lobbying and advocacy
• Impact investing