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Within the Law and Outside the Box

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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



- More

- 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
- 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