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)

• State Law: Conflicts of Interest
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
Funding Lobbying

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

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

• Don’t 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
  • Grant to the chamber to coordinate contributions of food from its members
  • Grants directly to individuals to alleviate the affects of poverty

• More
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

• Lobbying and advocacy
• International grantmaking
• Impact investing
• Grants to individuals
• Using fiscal sponsors and intermediaries
• Self-dealing and Related Party Transactions