

# Within the Law and Outside the Box

November 17, 2016



### 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



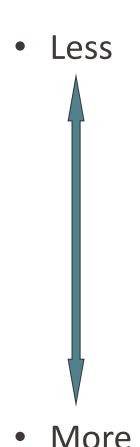


# **Applying the Framework**





### Less to More...Poverty

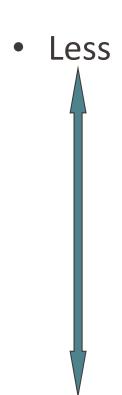


- General support for local food bank
- 2:1 challenge grant to encourage others to support the food bank
- Hire a staff person to coordinate contributions of food from business to shelters and the homeless
- Grant to the chamber to coordinate contributions of food from its members
- Grants directly to individuals to alleviate the affects of poverty





### Less to More...Scholarships



More

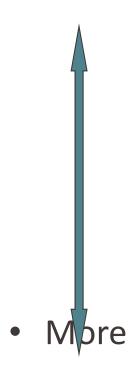
- Endow a science scholarship at the local University
- Fund and serve on the selection committee for a scholarship fund at the local community foundation
- Award scholarship grants directly to individuals
- Support efforts to increase state and federal funding for student loans and scholarships





### Less to More...International

Less



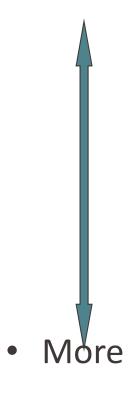
- Unrestricted grant to Give2Asia
- Grant to Oxfam America supporting clean water project in Peru
- Grant directly to the government of Ghana to purchase school computers
- ER grant to NGO fighting AIDS in Africa
- ED grant to NGO in China to build a school after an earthquake
- PRI to bank for micro-loans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





### 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





# 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



