

Legal 101:

Grantmaking Compliance and Best Practices

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Agenda

- Key questions
- Grants to charities
- Grants to government
- Grants to non-charities
- Grants to international organizations
- Grants to individuals
 - Scholarships
 - Awards
 - Disaster relief/hardship assistance



Key Questions

- What is the tax status of your organization?
 - Private foundation
 - Public charity (w/ donor-advised funds?)
 - For-profit (i.e., corporate giving program)
- Is the grant to an individual or an organization?
- If the grant is to an organization, what is the tax status of the potential grantee?
- Why do these questions matter?

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Grants to Organizations: Determining Tax Status

Is the grantee a charitable organization (public charity or private foundation)?

Sources:

- IRS Select Check (www.irs.gov)
- IRS Business Master File (www.irs.gov)
- Third-party provider (e.g., GuideStar)

Which charitable organizations may not be included in those sources?

- Religious institutions
- Organizations under group exemptions



Grants to Charities: Is it a public charity?

Determine public charity v. private foundation

13-0068209	Council on Foundations Inc	Alvirton	VA	United States	PC
13-2780784	American Council on the Teaching of Foreign Languages Inc	Alexandria	VA	United States	PC
87-0288699	Utah County Council on Drug Abuse Rehabilitation & Education	Orem	UT	United States	PC
88-0759128	Utah-Idaho Council on Problem Gambling Lic	Salt Lake City	UT	United States	PC
78-0436116	Council on Holistic Healing and Recovery From Addiction Abuse	Houston	TX	United States	PF
78-0392755	Washington County Advisory Council on Recycling	Brenham	TX	United States	PC
78-0252103	Foundation for the Council on Alcohol and Drug Abuse	Houston	TX	United States	PC

Documentation of due diligence

- Source
- Date information checked
- Copy of reviewed information
- Specific requirements if relying on third-party provider



Grants to Charities: Supporting Organizations

Extra steps required for grants to public charities from private foundations or donor-advised funds:

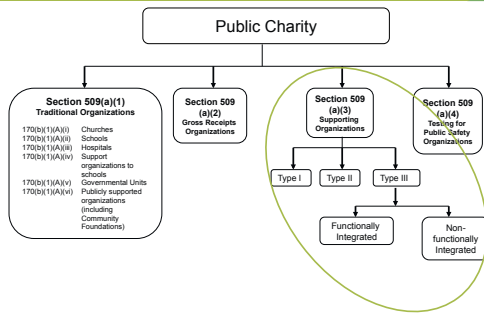
- Determine if the grantee is a supporting organization (Section 509 (a)(3) organization)
- If grantee is a supporting organization (SO), determine SO type

Why are the extra steps required?

- Grants to some supporting organizations require "expenditure responsibility"
- Grants to some supporting organizations do not count towards payout for private foundations
- 990-PF now requires private foundations to identify supporting organization grantees on its grants listing



Grants to Charities: Supporting Organizations



Grants to Charities: Religious Institutions

Some not required to have an IRS determination

- Houses of worship
- Integrated auxiliaries (brotherhoods, youth groups)

More loosely affiliated groups – hospitals, nursing homes – should have an IRS determination of public charity status

Options for those not required to have a determination:

- May have an IRS determination
- May be part of group exemption
- Use multi-part IRS test for determining whether an organization is a "church"

Grants to Charities: Group Exemptions

Examples:

- Parent teacher organizations, religious organizations

Documentation:

- Group ruling
- Evidence that subordinate is included under group ruling

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Grants to Charities: Private Foundations

From private foundations to private foundations:

- Require "expenditure responsibility"
- To private non-operating foundation: out-of-corpus rules must be followed to count grant towards payout requirement

From public charities to private foundations:

- Grants to private operating foundations generally ok
- Grants to private non-operating foundations can raise concerns, particularly from donor-advised funds

Expenditure Responsibility

- Pre-grant inquiry
- Written grant agreement with special provisions
- Segregation of funds if non-charity
- Follow-up reporting from grantee
- Disclosure on Form 990-PF

Grants to Government

Examples:

- police departments, public schools, libraries

General Rules:

- Must be for an exclusively public purpose
- Prudent to document status as a government unit (e.g., authorizing statute)
- No expenditure responsibility required

Grants to Non-charities

Examples:

- Tax-exempt organizations that are not charities (e.g., garden clubs; chambers of commerce)
- For-profit entities (e.g., technical college)

General Rules:

- Must be exclusively for charitable purpose
- Documentation critical – grant agreements and follow-up reporting
- Grants from private foundations and donor-advised funds require expenditure responsibility



Expenditure Responsibility

- Pre-grant inquiry
- Written grant agreement with special provisions
- Segregation of funds if non-charity
- Follow-up reporting from grantee
- Disclosure on Form 990-PF



International Grants

Determine whether organizing documents permit international grantmaking and consider policy issues

All grantmakers:

- Obtain documentation
- Comply with counter-terrorism guidelines
- Execute written grant agreement
- Obtain follow-up reporting

Private foundations and donor-advised funds:

- Expenditure responsibility or
- Equivalency determination



Equivalency Determination

Process to document that grantee is equivalent to U.S. public charity

- Grantee affidavit
- Written opinion of counsel
- Written advice from a qualified tax practitioner
 - New development: Equivalency determination repositories



Grants to Individuals: Scholarships

Purpose: Assist individual pursue education, achieve an objective, or develop a skill

General Rules:

- Must be open to a charitable class
- Awarded on objective and non-discriminatory basis
- No benefit to persons making selection
- Special rules for assistance to corporate employees or their dependents

IRS pre-approval required for private foundation grants to individuals for study and/or travel



Grants to Individuals: Awards

Purpose:

- Recognize past achievement, not intended to finance future activity

General Rules:

- Award must serve a charitable purpose
- Recipients selected in objective and nondiscriminatory manner

No IRS pre-approval required unless awarded by a private foundation for the purpose of study and/or travel



Grants to Individuals: Scholarships and Awards

Donor-advised fund rules

No grants to individuals

Scholarship fund will not be considered donor-advised if:

- Donor, persons appointed or designated by the donor, and related parties do not control selection committee
- Advice is provided only as member of committee
- Sponsoring organization appoints selection committee
- Procedures are approved in advance by board
- Procedures are objective and non-discriminatory



Grants to Individuals: Disaster Relief and Hardship Assistance

Purpose:

- Assisting individuals with basic necessities

General Rules:

- Must benefit a charitable class
- Establish a process for determining who will receive assistance and permissible types of assistance
- Documentation of need important but extent of documentation will vary based on the timing and nature of assistance
- Resource: IRS Publication 3833



Grants to Individuals: Disaster Relief and Hardship Assistance

Corporate private foundations

- Carefully follow rules for disaster relief established post-9/11 to provide relief to employees in "qualified disasters"
- Other hardship assistance to employees generally not permissible



QUESTIONS

Additional Resources

Articles on grantmaking issues: www.cof.org

International grantmaking resources:
www.usiq.org

Learn Foundation Law: learnfoundationlaw.org



Introducing Learn Foundation Law (and Maya)



Brief History

- In 2010, the Gates, Hewlett, Packard and Moore Foundations joined together to develop a comprehensive training program on legal issues in grantmaking.
- The goal of our collaboration was to create a suite of high-quality, online legal trainings to use with our staff and to share broadly with the field.

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Courses

- **Current courses:**
 - Advocacy and Lobbying
 - Expenditure Responsibility
 - Anti-bribery/Anti-corruption
- **Courses to come in 2014:**
 - Electioneering Prohibition
 - Program Related Investments
- **Future courses :**
 - To be determined



www.learnfoundationlaw.com

