

## 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?

3



## Grants to Organizations: Determining Tax Status

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

### Sources:

- IRS Select Check ([www.irs.gov](http://www.irs.gov))
- IRS Business Master File ([www.irs.gov](http://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:

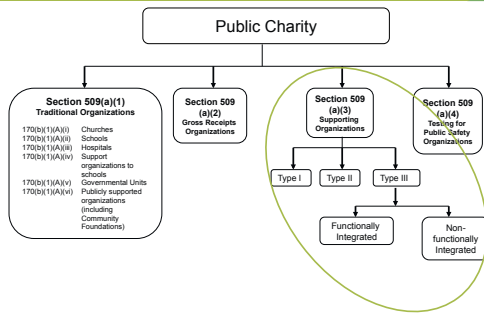
- Determine if the grantee is a supporting organization (Section 509 (a)(3) organization)
- If grantee is a supporting organization (SO), determine SO type

### 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

9

## 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](http://www.cof.org)

**International grantmaking resources:**  
[www.usiq.org](http://www.usiq.org)

**Learn Foundation Law:** [learnfoundationlaw.org](http://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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HEWLETT  
FOUNDATION

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Lucile Packard  
FOUNDATION

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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

**LEARN FOUNDATION LAW**

HOME COURSES ABOUT THE COURSES

**Welcome to Learn Foundation Law**

In 2010, legal staff at the David and Lucile Packard Foundation, Bill & Melinda Gates Foundation, The William and Flora Hewlett Foundation and Gordon and Betty Moore Foundation collectively the "Foundations" joined together to develop a comprehensive training program on legal issues in grantmaking. The goal of this collaboration is to create online, web-based trainings to supplement existing in-person training programs. The Foundations identified a shared need for this type of instructional resource, and a common desire to collaboratively develop a training system that speaks to a variety of learning styles and organizational training needs.

As a result, the Foundations developed Learn Foundation Law, a free first-of-its-kind resource for private foundations (and others who are interested) to host a trainings and look related to the basic legal rules for private foundations. Learn a training developed by the Foundations like this one how to complete and feature a program offer named laws who hosts participants through each course. Participants can return to any training at any time for a refresher and click on individual modules to offer back to specific topics. In addition, other a trainings developed by any one of the Foundations may also be hosted on this site.

The Foundations hope you find value in this site, as it is intended to be an ongoing project to benefit the field and support the outcomes we seek in the charitable communities served.

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