Grants to Non-Charitable Entities

Introduction

International grantmaking can be a complex process for corporate funders, private and family foundations and donor advised funds, requiring funders to comply with US tax laws, IRS guidelines, and other regulations. Fortunately utilizing a philanthropic intermediary, like GlobalGiving, can help alleviate the risk and burden of performing due diligence on potential grantees, confirming charitable purpose of proposed projects, developing grant agreements, facilitating international grant payments, monitoring grant funds, and following up on required reporting.

An intermediary is an organization that provides specialized expertise to foundations and other donors, in particular through the regranting of charitable funds to organizations and projects outside the United States. An intermediary's expertise may include legal knowledge of US and other governments' guidelines, a deep understanding of a specific issue or region of the world, or capacity building and other support to grantee organizations.

Corporate funders, private and family foundations, and donor advised funds, partner with GlobalGiving, a 501(c)(3) public charity intermediary, to recommend grants to foreign organizations. Upon receiving a grant recommendation, GlobalGiving becomes the grantmaking entity that retains full control and discretion over the recommended grant to ensure compliance with IRS rules and regulations. GlobalGiving will manage the entirety of the grant process, including conducting due diligence on the recommended foreign organization, the execution of a grant agreement, the disbursement of funds, and review of grant reporting.

Expenditure Responsibility Requirements

GlobalGiving can make a grant to a non-charitable entity if it follows expenditure responsibility (ER) requirements. Grants to non-charitable entities must comply with these requirements to ensure that grant funds are used solely for charitable purposes. A failure to fulfill this obligation exposes GlobalGiving and its management to risk and potential tax-related penalties.

ER is comprised of the following steps:

- Completion of a pre-grant inquiry including an investigation of the recommended grantee to ensure that the proposed grant activities are charitable and the grantee is also able to perform the proposed activity.
- Execution of a written agreement with the grantee that specifies the charitable purposes of the grant and includes provisions that prohibit use of the funds for lobbying activities and require the grantees to return any funds not used for the designated charitable purpose.
- Requiring the grantee to maintain the grant funds in a separate fund so that charitable funds are kept isolated from non-charitable funds.
- Requiring the grantee to provide regular reports on the use of the funds and the charitable activities supported by the grant.

Charitable Purpose

In reviewing any grant proposal of a recommended grant for a non-charitable entity, GlobalGiving must assess whether the funds will be used **exclusively** for a charitable purpose as described in Internal Revenue Code (IRC) 170(c)(2)(B) -- which include religious, scientific, literary and educational activities as well as the promotion of amateur sports and the prevention of cruelty to children and animals.

GlobalGiving must also determine if the proposed activities to be funded by the grant will serve the public or provide benefits to private interests. Only a grant that serves the public can be deemed as a charitable expenditure. Grant funds used to support private interests are not considered to be charitable expenditures and will instead be considered taxable expenditures.

Tips for Non-Charitable Entities Seeking a Grant

For GlobalGiving, in partnership with a corporate funder, private and family foundation, or donor advised fund, to fully consider a recommended grant to a non-charitable entity, the entity should ensure that it has structured its grant proposal in such a way that the proposed activities are clearly furthering an **exclusively** charitable purpose as defined by IRC 170(c)(2)(B). While GlobalGiving is not able to provide proactive guidance to any recommended non-charitable entity, the entity should keep the following in mind when crafting its grant proposal.

The proposed activities should:

- Clearly further an exclusively charitable purpose.
- Directly serve the public interest.

The proposed activities should **not**:

- Further revenue generating activities or other non-charitable activities for the entity.
- Serve a private or business interest.
- Include the purchase of capital equipment, unless the entity is prepared to report on the useful life of the equipment and ensure it is used solely for the charitable purpose outlined in the grant proposal.
- Include regranting funds to secondary grantees, unless expenditure responsibility is also exercised by the initial grantee on the subsidiary grantees.

GlobalGiving is not a law firm, and the rules and regulations presented in this document are not exhaustive and are for informative purposes only. Any further questions related to international or tax law should be discussed with your legal representation.