

Can a Private Foundation Make a Grant to a Non-Public Charity?

Private foundations may make grants to 501(c)(4) organizations (or other non-public charities) as long as the grant is for charitable purposes. Charitable purposes include any permissible 501(c)(3) public charity activity except lobbying and voter registration. Although a private foundation can fund a 501(c)(3) organization for lobbying and voter registration activity, it is prohibited from funding a nonpublic charity for these activities. The private foundation must exercise expenditure responsibility over a grant to a non-public charity; if it follows the expenditure responsibility requirements, it will avoid any tax liability regardless of how the grantee spends the grant money.

“Expenditure responsibility” means that a private foundation must satisfy three requirements to ensure that the money is spent properly.

THE PRE-GRANT INQUIRY

Before the grant is issued, the private foundation must develop a level of trust that the non-public charity will spend the grant funds solely for the purpose(s) for which the grant was made. A private foundation must inquire whether the non-public charity has ever improperly used a grant before. The private foundation needs to identify the non-public charity's other grants, review its prior grant history, and get to know the organization and its managers. For instance, a private foundation would want to know about the experience the managers of the nonpublic charity have, and whether the non-public charity has properly administered and adhered to the terms of other grants. If the private foundation has made previous grants to the non-public charity, knows it is still operating under the same management, and has adhered to all the terms of earlier grants, the foundation would not need to make any further inquiries.

GET IT IN WRITING

A written grant agreement, signed by both the private foundation and the non-public charity, must accompany the grant. The agreement should clearly detail the purposes of the grant, and must advise the charity that no grant funds can be spent on:

- Lobbying
- Conducting voter registration drives or influencing a public election
- Grants to individuals (with certain exceptions)
- Non-charitable purposes

The non-public charity must agree to repay any portion of the grant which is not used for the grant activity outlined in the agreement, submit full and complete annual reports on how the funds are spent and progress of the program, maintain records of

receipts and expenditures, and make its books and records available to the private foundation. Before issuing the grant, the private foundation should make sure that an officer, director, or trustee of the grantee has signed the grant agreement letter.

REPORTING REQUIREMENTS

The non-public charity must submit reports to the private foundation on how it used the grant funds, whether it complied with the grant requirements, and on its progress toward achieving the grant objectives. On its annual information returns to the IRS, the private foundation must provide information about the grant. It may rely on the information provided by the non-public charity in its reports.

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