Grantmakers' Relief Funding of Individuals During a "Qualified Disaster"

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In response to the coronavirus pandemic (i.e., COVID-19), the President declared a national emergency on March 13, 2020 and invoked the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988. The COVID-19 pandemic is recognized as both a health and economic crises, and by invoking this Act, it is considered to be a federally recognized "qualified disaster." For private foundations and regranting nonprofit intermediaries, this declaration has implications for how to do relief funding for individuals.

Although Center for Cultural Innovation (CCI) is an experienced grantmaker, relief funding in response to a "qualified disaster" is new and different. We are sharing what we learned as a way to help grantmaking peers. This information is based on our own work of implementing the San Francisco Arts and Artists Relief Fund and is informed by numerous conversations with nonprofit colleagues and labor, tax, and charitable sector attorneys. Every situation, and every fund, is different, so nothing herein is meant to be definitive: Check with your local tax and legal counsels regarding your specific circumstances. This document is shared to inform your own set of questions and encourage support of individuals during this time.

What's the Big Deal about a "Qualified Disaster"?

By invoking the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the Presidential declaration qualifies the coronavirus pandemic as a "qualified disaster" under federal law, Title 26 Section 139 on "Disaster Relief Payments." A "qualified disaster" can be invoked not only by a Presidential declaration but also by terrorist or military actions, an accident involving a common carrier, and an event that the Secretary of the Treasury deems is catastrophic. A "qualified disaster," as is the circumstances of COVID-19, means that "qualified disaster relief payments" to individuals are not considered to be taxable income and also not subject to employment taxes or withholding. This is a big deal as every penny counts toward alleviating people's financial hardship during an economic disaster. (The focus herein is on giving to individuals as giving to nonprofit organizations is already tax exempt.)

Take Away: The economic recession caused by coronavirus is a federally recognized "qualified disaster," and related financial relief payments to individuals are exempt from taxation.

What Can Employers Do?

Nonprofit employers, including both grantseeking and grant-funding types, can provide tax-exempt financial assistance to their employees in a "qualified disaster." Decisions about who to support should be fair, is not in perception or actuality discriminatory, must avoid self-dealing, cannot benefit a specific person, and cannot go to groups of people who do not have charitable need. In other words, support must help a "charitable class" who are vulnerable to the impacts of COVID-19's circumstances. To that end, decisions should rest with a team, group, or committee to make objectively based decisions. So, for example, avoid providing financial assistance to only program officers while overlooking program assistants if all program staff are expected to endure the same challenges of suddenly needing to work from home. Examples of appropriate types of financial assistance directly associated with COVID-19 that would not be taxed as income include paying the costs of:

- Utility and internet cable bills and the wear and tear on employees' personal computer, printing, and cell phone devices (e.g., provide full-time employees $100/month and part-time employees $75/month to work at home).
- Unreimbursed medical expenses, especially for nonprofit sectors of journalism, homelessness, health care, and the like wherein employees are exposed to health risk due to COVID-19 (e.g., reimburse the deductibles and non-covered medical expenses of employees who have COVID-19).
- Child care, home school instruction, and tutoring expenses in light of school closures (e.g., provide employees with families a stipend to cover such costs).
- And, other types of payments and reimbursements directly in response to the circumstances of this disaster to cover personal, family, funeral, and medical expenses.

Take Away: Grantmakers can provide non-taxable payments and reimbursements to support employees' productivity, health, and families.

What Can Funders Do?

Grantmakers can fund, collaborate in pooled funds, and/or regrant to individuals. For foundations that either do not have permission to support individuals or lack the capacity, this is a good time to use a regranting 501c3 that already has relevant experience and capabilities—grantmaking expertise, grants management systems, and existing relationships with potential beneficiaries to help get the word out and offer field-relevant assistance.

The benefit of supporting individuals is that people are the backbone of our efforts and sectors. They are the artists, arts workers, creative entrepreneurs, and cultural anchors who make artistic production possible and create meaningfulness in communities. From economic and labor perspectives, respectively, people's financial ability to afford time to participate in communal activities, make purchases, and retain services (i.e., consumption) is dependent on their ability to retain incomes (i.e., paychecks, 1099 income, or unemployment insurance). Consequently, supporting people directly helps keep them in our communities and helps for-profit and nonprofit enterprises bounce back more quickly from economic downturns. As New York Times writers Apuzzo and Pronczuk highlight in their March 23 article, "Covid-19's economic pain is universal. But Relief? Depends on where you live," Denmark is incentivizing businesses to retain workers so that people maintain income and access to protections and benefits, which creates resiliency: It is far less disruptive to support people now than the time and costs it would take to care for masses of unemployed people. Holding onto any gains during a disruption hinges on retaining people's talent, knowledge, and labor.The following are some considerations for designing and implementing a charitable relief fund to individuals that would not be considered taxable income (i.e., people keeping every penny of the grant):

- Focus singularly on providing support to alleviate hardships resulting from a "qualified disaster." This means that funds cannot be for both COVID-19 financial relief and also to finish an artistic project. Another example that disqualifies a grant (i.e., such support may be taxed) is offering funding that makes up for lost income (e.g., a cancelled fundraiser).

- Be explicit that the fund is in response to the qualified disaster. Names and objectives should be simple and clear. For example, call the fund “COVID-19 Relief Fund” or “Financial Support due to COVID-19” and go on to describe the purpose as being directly related to this “qualified disaster.”
- Ask questions in the application that ensure that applicants have financial need. This does not mean having a long or invasive set of proposal questions or requirements. For example, in our relief funding we only ask that applicants certify with their e-signature that they have financial need and to briefly describe the financial circumstances that led them to apply. It’s up to you, but we chose not to review household bank statements in order to maintain applicants’ dignity and privacy, and it’s unnecessary relative to Section 139.
- Use objectivity. Look for ways that decisions can be as automatic as possible. Automation in decision-making is a good indicator of not having to use personal judgement or subjectivity. This can be done in one or two ways, or a combination of both: use criteria that leads to objective decision-making and/or use a disinterested (i.e., they have nothing to gain) selection committee. For example, we stated that if applicants met the following criteria--residency, sector relevancy, and are of a historically vulnerable population that we named—those applicants automatically get support. As a regrantor, we also shared this list with the funders for their final review and approval. So, we did both for relevancy and objectivity. To be clear, relief funding calls for a significantly different approach than project funding: The former calls for speed and objective decision-making processes, whereas the latter calls for lengthier juried deliberations and subjective interpretations of quality and relevancy. Conventional panel-review grantmaking approaches are poorly suited to relief funding.
- Avoid, as always, self dealing. Be explicit that friends, family, and anyone with real or perceived financial connections to employees, staff, board members, and directors of the fund cannot apply or receive support.
- Consider equity criteria in times of economic disasters. Diversity and equality are important considerations, but economic crises pose a greater threat to those who have been historically underserved and discriminated against financially. Those who are black, indigenous, immigrants, trans, and with disabilities have had less access to connections, safety nets, and both non-profit and financial-industry resources. Targeting historically vulnerable populations is a clear demonstration of a “charitable class” for relief funding. If possible, take the time to create and accept translated versions of the fund.
- Use “weights” if relying on any kind of lottery system. For example, prioritizing certain at-need populations can be done by assigning them extra “points.” Regarding how to implement a lottery-style approach, there are many social science industry websites that are reliable and valid in generating randomization.
- Find out if relief grants would be considered taxable income by individual recipients in the state they are in. Most states, like the state of California, officially recognize a federally recognized “qualified disaster,” meaning that Californians’ relief payments are not considered taxable income at both federal and state levels. This also means that a W-9 and 1099 are not necessary. For funders covering only one or a few states, it is easy to call a tax attorney and find this information out. For national funders, it may be easier to require a W-9 and issue a 1099 as it may be challenging to research the laws for every state; but it would be helpful to inform recipients that the grant is not subject to federal income tax and they should check with a tax expert about their state and local tax liability.
- Look for ways to ease applicants and grantees’ efforts. Disasters are disruptive, and financial downturns cause stress and depression. Assume that individuals may have difficulty filling out an application (slow internet connection, denial about dire financial circumstances, no household computer or printer [and Kinko’s is closed], and they may be sheltering in a place where they cannot access records). In our case, we learned about “qualified disasters” because we were

researching how to avoid making recipients fill-out a W-9, which is challenging if they only have their phones. The lesson? Using creative problem-solving to benefit populations with needs can yield unexpected and positive outcomes, in this case, giving grantees the full value of their check.

- Be prepared to document relief spending. Generally, records need to include the type of support (e.g., a grant), time period, location, charitable purpose, and criteria and decision-making processes used. Charitable grantmakers will need to complete Schedule I of tax form 990 or 990-PF. In our case, we provided short-term emergency relief support (in San Francisco, the $1.5million fund lasted roughly 1 month with two rounds), which does not require listing individual names. Of course, we collected all grantees' names, but this federal guidance of only needing "estimated number of victims assisted" in short-term emergency support frees us from requiring their social security or tax-ID numbers. For funders wanting to help individuals no matter their citizenship status, this is a good reason to consider providing relief funding during a "qualified disaster."
- Factor in the cost of regranting, if that is the method used. Relief work is volume work that requires skill and speed and is labor intensive. I have heard from regranting intermediaries and service organizations who have been asked to do this work for free at a time when they are also anxious about cancelled fundraisers and being cut from funding. If it was not clear before, it should be clearer now: Avoiding paying true costs has created financial precarity among Americans and hollowed out the capacity of the nonprofit sector thereby turning economic downturns into economic disasters. Before COVID-19, four out of 10 Americans couldn't cover a $400 expense and the majority of nonprofits have less than two months of financial reserves, all of which have certainly worsened. If there is a lesson to be learned from COVID-19, it's that we need stronger and more distributed social safety nets and participate in helping needed organizations be more financially resilient.
- Understand that there are always "gray areas" of the law. Precedent is useful; but, when it comes to disasters, every situation will be unique. In the past, Section 139 has applied to disasters, like Hurricane Katrina, where relief funding was applied to tangible costs, such as repairing a roof or re-building a house. With COVID-19, there is no precedent for providing unrestricted financial support. This means that there may be a chance that relief funding during this "qualified disaster" may not fall under Section 139. If grants are found not to qualify under Section 139, they may still be tax-free to the recipients as charitable gifts if made to alleviate genuine financial need. This "gray-ness" is another good reason to review relief fund plans with experts.
- Consider the payment process and how money will be received. The payment process was the most time-consuming part of our process. But it need not be so with you! Using a grants management system that automates electronic payments to grantees' bank accounts would have made quick work of this process. Also, consider how grantees might be paid. Issuing a debit or credit card helps grantees pay for groceries but may not be an acceptable form of payment by their landlords.

Take Away: "Qualified disaster"-related funding is its own thing. It is an opportunity to give people non-taxable support, yet there are specific conditions and criteria that need to be met.

Overall, in our experience, relief funding to nonprofits and individuals is fairly simple. The guidelines are short and to the point, the proposal process is deliberately easy to fill out and to review, and the lack of a lengthy adjudication process makes things go quickly. Government encourages charitable relief spending, and grantmakers can stretch the value of the dollar with grants to individuals that are not taxable (but check your state).

Resources

- Center for Cultural Innovation. (2020) San Francisco Arts and Artists Relief Fund. https://www.cciarts.org/EmergencyRelief.htm (This is the example used to generate this information.)

- Cornell Law School. Legal Information Institute (LII). 26 U.S. Code § 139, Disaster relief payments. https://www.law.cornell.edu/uscode/text/26/139

- Internal Revenue Service. (Revised version December 2014). Disaster relief: Providing assistance through charitable organizations. https://www.irs.gov/pub/irs-pdf/p3833.pdf

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