



March 20, 2020

Direct Impact - Establishing an Emergency COVID-19 Relief Fund

The impact of COVID-19 on our communities is only just starting to come into focus. It's not just the health risks - millions are likely to find themselves unemployed, without health insurance or a means to make money. Those who must continue their work as this crisis balloons, in particular health care workers, have no safe place to leave their children. Nearly everyone is facing increased financial pressures. Families will lose their homes, businesses will shutter, and nonprofits will be forced to cease operation. The damage will already be dramatic, no matter what happens from here - without massive governmental and NGO intervention, it may be catastrophic.

Can My Nonprofit Make Direct Grants to Individuals Impacted by COVID-19?

Many nonprofits that have not traditionally made grants to individuals are asking if they can do so, and how. They want to help specific people in their communities who are in danger of losing their homes or are already homeless, who do not have enough food for their children, or who have special health care expenses. What are the rules for nonprofits giving to individuals in a time of crisis?

Many nonprofits without experience making grants to individuals are nervous about doing so, concerned that such grants may not be "charitable" enough to pass muster. Many are comfortable with scholarship grants, or grants to support the poor with means-testing and other screens to ensure that only the truly needy receive benefits. But what about support for those who might not satisfy those means-testing screens, but are now in urgent need?

The U.S. government and many states, including Massachusetts, have declared a state of emergency with respect to COVID-19. Accordingly, and given the urgency of these needs, it is appropriate to consider support for those impacted by COVID-19 as disaster relief, akin to help for victims of wildfires or hurricanes. In disaster relief scenarios, nonprofits are not required to ensure that only the "poor" receive benefits. "Relief of the distressed" is a recognized charitable purpose, and it is perfectly appropriate for a nonprofit to establish COVID-19 emergency funds to help anyone in immediate distress as a result of the current emergency, and to make grants to relieve that distress as the nonprofit feels is appropriate and consistent with its mission.

Of course, any relief provided for this purpose should be calibrated to relieving that immediate distress. Disaster relief support generally cannot wait for robust grant



Hemenway
& Barnes LLP



March 20, 2020

applications with detailed supporting material - people need help now. At the same time, nonprofits have some duty to set up reasonable parameters, criteria, and procedures for deciding who will receive help and how much. For example, a nonprofit may place a cap on support for any one individual or family, and may require a brief narrative description of the applicant's immediate distress and how the grant will help alleviate that distress in the short term. Where appropriate, a nonprofit may request some other evidence of need, such as communications with creditors, proof of lost income, or a testimonial from a third party, although the nonprofit may exercise its judgment as to what it needs under the particular circumstances to be comfortable that the distress is real. The nonprofit should also consider establishing a committee (which reports periodically to the Board) to vet these applications and make determinations. There are no bright lines here - the key is that the nonprofit has taken reasonable steps to ensure that its funds are used for charitable purposes, including relief of the distressed. A nonprofit that does that in good faith will fulfill its obligations under federal tax law, and its obligations to donors and to the public as stewards of charitable funds.

Who Can Contribute to My COVID-19 Relief Fund, and on What Conditions?

Individuals and companies can of course make contributions to the fund. Congress frequently lifts the adjusted gross income limitations for gifts in support of disaster relief, allowing individuals who itemize their deductions and companies to deduct all of these contributions regardless of their adjusted gross income. This is particularly powerful for companies that are otherwise very limited in their ability to take charitable deductions (10 percent of their adjusted gross income per year).

It is important to ensure that individual or corporate donors are not participating in decisions regarding individual recipients of funds. Allowing donors to " earmark " funds for specific recipients, or even to participate in advising regarding specific grantees, could jeopardize the donor's income tax deduction, and in certain cases might accidentally convert the disaster relief fund into a donor-advised fund (DAF). This would be a problem, as DAFs (other than certain employer-sponsored disaster relief funds and certain scholarship funds that are exempted from DAF restrictions) are not allowed to make grants to individuals. DAFs can, however, make grants to emergency COVID-19 relief funds at charities (including funds set up by DAF sponsors), so long as the donors and designated advisors do not participate in the selection of individual recipients.

Contrary to popular belief, private foundations are allowed to make direct grants for relief of the poor or distressed. Many people believe that private foundations cannot make direct grants to individuals without IRS pre-approval of grant procedures, but this restriction



**Hemenway
& Barnes** LLP



March 20, 2020

applies only to travel or study grants. Direct disaster relief grants are permissible for private foundations, if done correctly.

Does My Nonprofit Need to Issue a 1099 to Recipients?

Disaster relief grants generally are not taxable income to the recipient, and therefore a Form 1099 is generally not required. Grants in the nature of scholarships, or grants to employees, may follow different rules - confirm with your tax advisors.

So, Should We Do This?

Many nonprofits may prefer to make grants to other nonprofits for this purpose, and this can make good sense where the other nonprofits are closer to the target community, or already have procedures in place to handle these sorts of grants. However, a nonprofit for whom direct COVID-19 support is within its mission should not let fear of the tax rules get in the way of helping its constituents directly. With a little bit of planning and advice up front, disaster relief grants to individuals can allow nonprofits to have a direct and immediate impact on those in urgent need, and help those it serves stay afloat until this crisis has passed.

Contact Us

If you have any questions about how to establish or operate a tax-compliant emergency COVID-19 relief fund, please contact a member of our [Nonprofit Practice Group](#), or the authors of this advisory:

Brad Bedingfield
617.557.9704

bbedingfield@hembar.com

Eleanor Evans
617.557.9711

eevans@hembar.com

www.hembar.com Copyright © 2020 Hemenway & Barnes LLP

This advisory is provided solely for information purposes and should not be construed as legal advice with respect to any particular situation. This advisory is not intended to create a lawyer client relationship. You should consult your legal counsel regarding your situation and any specific legal questions you may have.



Hemenway
& Barnes LLP