

WEBINAR

Exploring Grants to Individuals:

Clearing Up Misconceptions and Compliance Considerations for Foundations



In addition to their more common practice of granting to charities, private foundations have the unique capability of making direct grants to individuals (GTIs), which they can employ to expedite their assistance and cast a wider net of charitable support. While granting to individuals can be especially effective in times of crisis and emergency, foundations can also provide hardship assistance grants, scholarship grants, awards, and even prizes.

Foundation Source's Chief Legal Officer, Jeffrey D. Haskell, and Deputy Legal Officer, Jennifer Bruckman-Gorak, recently presented a webinar hosted by *Trusts & Estates* magazine to clear up common misconceptions about granting to individuals and to explore special considerations when doing so. Susan Lipp, editor-in-chief of *Trusts & Estates* magazine, moderated the discussion. Highlights of their presentation follow below.



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Why would a private foundation want to make grants to individuals (GTIs)?

For starters, making GTIs lets a foundation control exactly who will receive support. (By contrast, when a foundation grants through a public charity, the charity selects the grantees.) Also, granting to individuals enables a foundation to have an immediate and direct charitable impact because there's no middleman (a public charity) involved. For disaster relief grants in particular, there may not even be a public charity serving the impacted region, or if there is one, it might have high administrative costs, which a foundation can circumvent by making GTIs. Further, such a charity might be stretched too thin, and a foundation can help to fill in the gaps with GTIs.

Additionally, if a foundation wants to support a specific individual, to perhaps enhance the person's special skill or talent such as writing a textbook, composing a musical score or choreographing a dance recital, GTIs are the ideal tool for doing so. This capability underscores the tremendous flexibility that private foundations offer for giving.

Can all private foundations make GTIs?

Yes, as long as a foundation's charter documents don't prohibit GTIs and its grant agreements don't include funding restrictions against GTIs. For example, a foundation's bylaws may require that the foundation make grants only to public charities or only for a specified purpose, such as cancer research, which would be inconsistent with providing disaster relief or scholarships directly to individuals.

Are there rules or requirements for making GTIs?

Yes. All GTIs must be in support of a charitable purpose and comply with foundation tax law, specifically with the IRS's taxable expenditure rules, which impose a 20% penalty for noncompliance. These expenditure rules also require that a foundation obtain advance IRS approval if its GTIs are for travel, study or similar purposes (e.g., a scholarship, fellowship or study abroad experience). Fortunately, for foundations with GTI programs that support these purposes, advance approval is needed only for the grant program as a whole and not on a grant-by-grant basis. If any material changes are made to the program, though, the foundation would then need to obtain IRS approval of the revised program.

It's also fortunate that the IRS does not require advance approval if foundations make GTIs to provide hardship and emergency assistance. This enables foundations to help people in need immediately and make greater charitable impact. The IRS also does not require advance approval for awards programs—as long as the awards are given in recognition of past accomplishments and do not impose conditions on how the funds must be spent by the recipient.

For GTIs that require advance approval from the IRS, when and how should a foundation pursue the approval?

A foundation may apply for advance IRS approval at any point in its life cycle. If a foundation knows from the start that it wants to make grants that will require approval, it may submit a request with Form 1023 which is the IRS's application for recognition of exemption. Form 1023 needs to be filed within 27 months of the foundation's formation. In our experience though, it's not typical that a foundation knows at the very

beginning of its existence that it will want to make GTIs that will require IRS approval. In this case, if a foundation wants to request approval after receiving its favorable determination letter, it would submit its request using IRS Form 8940 and would need to pay an IRS user fee that's currently \$3,500. It's important to keep in mind that no matter when a foundation decides to apply for advance approval, it must always do so prior to making any grants that require it.

Can GTIs be given to anyone?

No. GTIs may not be given to the foundation's "disqualified persons," also known as insiders, which include those who run the foundation such as the directors, officers, trustees, as well as substantial contributors, and certain family members of those persons. These individuals are not allowed to reap a financial benefit from their foundations because, if they do, they're personally subject to tax penalties.

Additionally, GTIs of all types must be chosen from a "broad charitable class," meaning a group of people that's large enough or sufficiently open-ended to ensure that the number of people in the class cannot be reduced to a fixed list. For example, if a foundation program offers relief only to cancer patients presently in a specific hospital, that would not be open-ended enough because all of the members of the class could in fact be listed. However, the present and future cancer patients located in a defined geographical area like Washington, D.C., for example, would be an open-ended class because it's impossible to predict who in that area will be diagnosed with cancer and eventually be added to that class. And for this reason, disaster relief GTI programs are often designed to afford relief not only to the victims of a specified disaster, but also to victims of future disasters.

How do foundations establish eligibility criteria for their GTIs?

First and foremost, the criteria must be related to the grant's purpose. It's also important to ensure that grant recipients are selected in a fair and even-handed way to preclude discrimination.

Does the IRS require documentation of how GTIs are given and used?

Yes. Foundations are expected to document their eligibility criteria, selection process, OFAC screening, the fact that the recipients were not foundation insiders, and any additional due diligence the foundation may have conducted. In the context of a scholarship, selection information might include a record of the grant recipient's grades. For hardship assistance, it would include recording the grant recipient's severity of financial need. For emergency assistance, it should include a description of the emergency experienced by the applicant. Overall, bear in mind that documentation is key.

This is a condensed, edited version of the conversation. Get full insights by watching the entire video of the presentation [here](#). Check out our [blog](#) and [white paper](#) about GTIs as well.

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At the forefront of PhilTech, Foundation Source is the partner of choice for flexible software and services that offer end-to-end support for private foundations, donor-advised funds and planned giving. We offer a range of purpose-built, cloud-based platforms that facilitate all stages of giving and a configurable suite of administrative, compliance, tax, and philanthropic advisory services for donors, nonprofits and charities, and professional advisors, including RIAs and financial institutions serving wealth management and private banking clients.

With 70 years of combined experience, Foundation Source empowers people and companies to create a better world through philanthropy. We support more than 4,000 charitable organizations, administer more than \$26 billion in foundation assets, and facilitate more than 120,000 grants and planned gifts annually.

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