Webinar | Direct Aid to Community: Best Practices

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*\*Transcript has been edited for clarity\**

Violeta (01:26):

I see people slowly joining us from the waiting room. Thank you so much for being here. What a lovely group of people. I'm going to have to take a photo of this. This is amazing. So thank you so much for being here. Sorry, we're a little bit late. We're here with David Atkin from the Center for Nonprofit Law in Eugene. Thank you so much for joining us. Folks are going to be sort of trickling in here from the waiting room. Everybody's muted right now. If you have any questions throughout the process, just go ahead and let us know in the chat room at the bottom of your screens through the chat button. And so David's going to speak for about an hour or a little bit less than an hour, and then we'll open it up for the questions. So as those questions pop up in your heads, just go ahead and type them in. We'll read them out loud or you can send them to me privately if you prefer. And then yeah, David, go ahead and take it!

David (02:29):

Okay. Hello, and good morning to you all. I've been doing a lot of Zoom meetings these days and sometimes the voices are a bit garbled. If it is difficult to hear me at all, would you please just wave and I'll know that we've got the, I'll slow down repeat things if I need to. Everything seems real stable this morning. I guess it's all a function of bandwidth and how many people are watching Netflix at home today. So with that in mind quick introduction for me. My name is David Atkin. I'm the senior attorney at the Center for Nonprofit Law. We're an unusual law office. We work only exclusively for nonprofit organizations. We're the only full law firm that does that in the state of Oregon. And we've been doing it for over 30 years. It's my mission in life and we are literally the go-to law office for over a thousand nonprofit groups located all over the country and working all over the world.

David (03:26):

So with that in mind, I'd like to jump right in now. I want to start by reading the five questions that MRG has posed for me to answer and advise you on in this session, so you know what's coming and also if you can see what's coming that may save you the trouble of writing down questions that are already on their list. Violeta, have you already sent those questions out to them in advance?

Violeta (03:51):

No. We... In the description of the webinar, we sorta kind of gave them a description of what the webinar was going to be about, which I think are the questions that you're going to be talking about.

David (03:59):

Perfect, okay. So I'm going to read the first five questions and then go through the answers on them. The first question is: Who can a nonprofit with 501(c)(3) status give direct financial charitable assistance to as an acceptable legal beneficiary of 501(c)(3)charitable assistance to low income people, especially during this coronavirus lockdown and shelter in place?

David (04:21):

And what about afterwards? So who can we give money to? The second is: What's the definition of low income for the purpose of giving direct financial charitable assistance? The third question is: What kind of documentation does a nonprofit organization need to have, to show that it is giving financial assistance only to people who qualify as low income and in need according to the IRS. Ah, four: Does the recipient of charitable financial assistance from a 501(c)(3) organization have to report that money as income and pay income taxes on it? And fifth and finally, Can an organization pay a stipend to people who are doing community organizing work for it during this coronavirus shutdown period? And what are the rules and requirements for paying such stipends? Okay. So the answer for the first question is generally that 501(c)(3) nonprofit profits are held to a high level... A high standard of operating.

David (05:22):

They must operate for charitable or educational, scientific, religious or scientific or literary purposes rather. So we're going to focus on charitable and how the IRS defines that. The first thing to know is that 501(c)(3) organizations must give money, uh direct financial assistance only to people who are poor and in need as the old, poor and distressed as the older regulations go from a long time back. And then we have years and years of elaborations about what does that mean or in distress. There is not a particular, uh bright-line test for it. There's a variety of, of definitions we can use that the IRS will accept and there's a couple of safe harbors that we can go to. One of the things I constantly come back to is there are many people in this, well in this society and in this world who would welcome our help as 501(c)(3) organizations, but who don't qualify as poor and distressed.

David (06:18):

And while it's nice to give them money and it's helpful (they're on stretched budgets too) they're not actually poor and distressed. And so the IRS says, while it's nice, nice is not the same thing as charitable to give money out. So we want to focus on not just people who, who would love the help and welcome it, but rather who actually is in need of it as a classic charitable beneficiary. So the safe harbors: The IRS says that if some government agency, local, state, or federal (and honestly especially federal), but some some federal agency, state or local agency is already giving them charitable assistance because it has determined that they are distressed and needy, then you can use that without any further analysis. Just verifying that they are in fact receiving, for instance, ah food stamps or ah Section 8 housing assistance — either of those would be examples of programs in which people are receiving a direct financial assistance.

David (07:18):

And the IRS says that's a safe Harbor, you're good there, but you don't need to go with that. You can give money to people who are not in either of those or other similar forms of federal or state or local agency assistance. So one of the things we have to look at is what are the facts and circumstances? Many organizations will set a lane at 200% of the poverty level, federal poverty level guidelines. And so you're look and see what's a family of two, a family of four. What is, what is the poverty level for that? What's 200% of it? But you can also go up from that if they have extraordinary expenses for medical, extraordinary expenses for care of some kind for their children, other things like that, and take that into account in determining, "Are they in fact poor, needy and distress?

David (08:07):

So you can make up your own test in terms of demonstrating it, but you have to be able to do defend it to the IRS if you're not in one of their automatic safe harbors. How do you defend it? Well, you take the time to prepare proper documentation for it. So the IRS says, once you clear, clearly set "Here is our standard for who we're going to give money to, here's how we're going to set the level on it." And you know, the the, the, although we refer to people as low income individuals, we also in this situation, just have to look at assets. You're going to have someone who's low income because they're laid off, but they have a bank account with $200,000 in it and they're getting unemployment under the... under the state and federal legislation for the Corona virus shutdown.

David (08:57):

Are they, they're low income, they have little income but they're, but they're have, they have large assets and they're receiving assistance already. And so those would be an example of the kind of situation for the circums... facts and circumstances desk we want to look at. So make sure we're looking at assets as well as income, especially at a time like this. So the documentation, the IRS says, and I'm reading directly from an IRS Publication 3833 published in December of 2014:

David (09:27):

"An organization must maintain adequate records to show that the organization's payments further the organization's charitable purposes and that the [and pardon me, but the term they use] and that the victims they serve, are needy or distressed. Charities must also maintain appropriate records to show that they have made distributions to individuals after making appropriate needs assessments based on the recipient's financial resources and their physical, mental and emotional wellbeing. Generally documentation should include [and they give six things they want documentation on] a complete description of the assistance provided."

David (10:10):

Now obviously it's, you know, easy if it's money, it's an amount of money, but if it's other kinds of assistance payment of medical bills, different things like that, a complete description, description of the assistance provided.

David (10:21):

Now the IRS always likes it if an organization, a nonprofit 501(c)(3) organization can pay bills for people rather than giving them cash. Their concern obviously is such things as if you give them cash, will it really be spent on what you intended it for? Will it be borrowed by some relatives who puts the pressure on them? "I just need a loan and you've got the money." Will it be stolen from them? Will it be used for a gambling addiction, a drug addiction or something like substance addiction, alcoholism, whatever. So the IRS wants you to pay their bills for them, pay their rent, pay their doctor bills, pay for their childcare, whatever it is directly. But there's not a prohibition on giving direct cash. So you can do that. Look creatively for ways to ensure the money gets spent properly through follow up accounting, a receipt receiving receipts and things like that. So a complete description of the assistance provided.

David (11:17):

The second is the cost associated with providing assistance. That ties into, yeah, where did it go and how was it, you know, how did you make sure that you paid at the right cost and where the costs fully paid? The purpose for which the aid was given, the charities objective criteria for distributing assistance under each program. So what's your standard for who receives this? What are your objective criteria or who is eligible to receive the aid and, Violeta and others just to say that I can easily send this exact wording of the internal revenue code publications to you, Violeta to be distributed to everybody if that's helpful.

Violeta (11:59):

That would be awesome. And also just to remind folks, we are recording and so you can as soon as the webinar's over, if you register you will receive our recording and I can also send the transcript along with it so that you have basically word for word everything that David said if that would be helpful.

David (12:18):

I say that because I see some of you taking notes and it's a little hard to keep up with me. Okay. So the charities' objective criteria, who is eligible for disbursing assistance, unreached program and how the recipients were selected. And one of the things they're concerned with here is they're concerned with the possibility of some kinds of insults, insider, self dealing where it turns out the organization's giving money only to the families of its board members or its staff or things like that. So the name, address and amount distributed to each recipient. So keeping track who you gave it to, contact information for them, the amount given. And then the we get to any relationship between the recipient and the officers, directors or key employees of or substantial contributors to the charitable organization where they're looking specifically for that kind of inside or self-dealing, especially when you're giving out direct financial aid.

David (13:16):

And then the composition of the selection committee approving the assistance. So, and again, we'll send this to you, but those are what they want for documentation. Now under the composition of the selection committee approving the assistance, we always recommend that you make sure that your committee that's selecting the recipients of your aid does not include anybody who has applied for that aid. Just a matter of kind of avoiding conflicts of interest situations on that. Okay. the, again, the question of who's poor in distress, they want you to have a clear answer for it. There was a couple of safe harbors but they are quite flexible. I found in the many years of working with different organizations, providing different kinds of aid for who is actually needy and distressed. And it varies. And one of the main ways that varies is during crises. Oftentimes we think of crises as you know, natural disasters, earthquakes and typhoons and hurricanes and floods and them like, in which the rules are much more relaxed.

David ([14:20](https://www.temi.com/editor/t/HAtdpg1_Tg5DxGAb0dPpeNyvj7aGDWBVnEkdOPeK-fjWp9Vc2D0q5XHrr1Hv18xbw8LNvTqZZ8I-ujBVKa-80R4csao?loadFrom=DocumentDeeplink&ts=860.11)):

Someone can have resources and still in a crisis, not be able to access those resources or have serious mental health needs or other issues and and unable to... To receive them without aid in the moment. So when you're giving aid, you take those kinds of things into account and our Corona virus shutdown certainly would qualify as not a natural disaster in the usual sense. Nonetheless, a natural, out-of-our-control set of circumstances that is in a national crisis. So we're more flexible. We still need to take documentation down when we're giving money away. But we have more flexibility in what is clearly a recognized national emergency like this. Now, one of the things that's good to know is you can give small amounts of money in a national crisis to almost anybody to help them pay a doctor, get food, make it, you know, travel to a place they need to get to for safety, anything like that.

David (15:15):

But the longer you give money, the more you have to do to show that their neediness continues. And so in the, in the moments of crisis giving money is not doesn't receive a lot of second guessing, but if a month later you're still sending large amounts to them, then the IRS is going to be looking at it with more and more scrutiny for whether the need continued after the, after the initial assistance you gave to them. And so continuing to update their information on why are they still poor and needy. Did they get a check from the government finally? Finally, one of the stimulus checks? Did that relieve their neediness for the moment? Did they get reemployed, did they start receiving unemployment? Did their employer receive a Small Business Administration loan under the, the payment... the, the payroll protection program under the PPP? And if so when that was around, when that arrived, when they started being re-employed did it help them? So things like this need to be taken into account in this particular crisis.

David (16:26):

Okay. Let's go back to the questions then. So who can we help? People who are needy and distressed. What's the definition of low income? We've looked at that. Any government program that provides them aid will automatically give you a safe harbor to do the same, otherwise you have to document with adequate record keeping. What is their income, what are their resources, their assets, what are their needs? How large is their family unit? All of those kinds of things.

David (16:57):

Does the recipient of charitable financial assistance have to report that money as income and pay income on it? Generally not. I've asked a CPA for under what circumstances the recipient might be required to receive aid and unfortunately they're in lockdown and pretty busy right now. I haven't gotten an answer back. So Violeta I will make some calls today and send that information out with you when I send this information to send out.

Violeta (17:22):

Wonderful. Thank you.

David (17:24):

Yes. The last question is very interesting. Can an organization pay a stipend to people who are doing community organizing work for it during this Coronavirus shutdown, and what are the rules and requirements for paying the stipends? Well, the first thing to say is that yes, you certainly can pay a stipend to someone for doing community organizing work, no question about it. The issue that arises is we hear the word stipend used in the nonprofit sector a lot.

David (17:52):

What it what it really means is that we're not paying them nearly minimum wage or what they're worth or what we'd like to be able to pay them, but we're giving them some help. And so we call it a stipend. But the word stipend doesn't have any specific legal definition that prevents it from being paid for services. So when someone works for you and you pay them a stipend, you have converted them from a volunteer into a paid worker. And there's only three categories of people who can work for you. Volunteers who work without pay, workers who are paid and are employees, workers who are paid and are independent contractors. So immediately when you've given them a stipend, you've turned them either into an employee or an independent contractor, unless the stipend is specifically reimbursement for expenses where they're traveling for you and you're paying within the federal guideline level of, of money for travel, food and lodging while they're on the road doing work for you.

David (18:48):

Other than that, then if it's not reimbursement for expenses, if it's a stipend, it's a payment for their services. So one of the first things to know is that in the for profit world, you simply cannot pay someone less than minimum wage. It's not allowed, even if the person volunteers to work for free or less because they want to learn the trade or work in your office, you have to say, I'm sorry. In the for profit world, we cannot allow, we cannot permit or allow or suffer someone, the law says to work without minimum wage. That's what the minimum wage laws are all about. In the nonprofit sector, however, that requirement is waived. People can volunteer and the statute specifically says they can, they can work without being paid minimum wage doing their regular job for you, so long as they did not expect or contemplate further payment for their services.

David (19:41):

One of the things I want to always point out when we're talking about volunteers who are working what looked like a regular job without minimum wages that the way the law is phrased, it puts the burden of proof on the organization to show they didn't contemplate being paid for it. And I've seen situations arise where you have volunteers working and everyone's clear they're a volunteer, there's no question about it. They work for six months and then the relationship goes bad and they go to the Bureau of Labor and Industry (BOLI) and say, "I knew I wasn't getting paid at the beginning. I was a volunteer but I expected once I was trained I would get paid. I didn't get paid." And the outcome can easily be, if you can't prove that they expected, didn't expect to get paid, and they say they did, you bear the burden of proof and you can end up paying them $10,000, $15,000, whatever it is, the value of their voluntary services at minimum wage for that period of time.

David (20:35):

And so it's important when you have someone you're paying less than minimum wage, that you protect the organization by getting a simple statement in writing on paper, signed by them saying, simply, "I'm doing this work as a volunteer and I don't expect to get paid for it." And then you prevent that possible and occasionally very expensive outcome later. So if they're a volunteer and you're paying them a stipend, then we have to figure out, so they're, so they're, they're, they're, if they're not a volunteer because you've paid them a stipend, then we have to figure out how to classify them. And probably many of you are familiar with this already. The IRS says, and the the Department of Revenue in Oregon says, that the default is always that a person, is an employee. If you pay them, they're an employee, unless they qualify to be a classified as an independent contractor and to tell whether they qualify, you apply what the IRS calls the 20 factor test for worker classification.

David (21:36):

So many of you have probably seen this 20 factor test for worker classification. It goes through a set of questions like, "Does this person worked for multiple clients doing the same kind of work as an independent contractor for the others?" Or "Is this their only or only job they're doing this work for as an independent contractor? Do they hold themselves out and advertise themselves to the public that they're available to do this work for others? Do they have their own office, run their own business, have the right to hire staff to help them do the work for you?" Those are all things that are criteria earmarks for who is an independent contractor. They can hire their own staff to do the work for you. "Do they have the right, not just the actuality—lots of people work without direct supervision—but does the person you're paying have the right to work without being told how to do the work or close supervision?" An independent contractor, a plumber, an architect, whoever they know how to do the work and you tell them what you want and they do the work and employee, you have the right to tell them how to do the work. Other questions would include such things as, "Does the work that the person is doing directly accomplish your mission? Is it integral to your mission or does the work that person does, yeah, while critical and important, is it incidental to your mission?" So a good example would be the IT guy that keeps your computers running is critical, but the work they're doing is not directly integral to your mission. They're just keeping you running. Whereas a community organizer is someone who is doing something much more integral to your accomplishing your mission.

David (23:11):

And someone like a program director or an executive director is so integral to your mission, and so central, that is very difficult for someone in an executive director position for instance, to ever be an independent contractor running a business doing that for many organizations at once. So you, you look at these tests they also have a, an economic reality test outside the 20 factors that says, well, even if the person has four or five clients, but 95% of the work is all for one client and they've been working for that client for years and the, that client is, is consistently their main support for their, for them. The economic reality test says that, well even though they're working for three or four others in this situation, 95% of the money comes from just one. And if they've worked for years, probably they're still an employee.

David (23:59):

So you can see the real bias for making people fit into the classification as employees. Why is that? Well, you know somewhat perhaps cynically, but realistically it's because with employees they get more money out of your payroll deductions. They are your unemployment and your withholdings and your social security. And they get the money quicker more quickly. Whereas with an independent contractor reporting their own income, they take more deductions, they pay less taxes and they, and they pay later generally. So within that mind, with all of that in mind, they have an the state and federal government, I have a preference for employees because it helps them more. They get more money to run the government and fix the streets and hire the teachers, et cetera. And because of that, this is one of the few areas where there's really a lot of scrutiny for most nonprofits.

David (24:53):

Once you have your 501(c)(3) status, the IRS may never come back to you and, and, and do an audit or an investigation in, you know, 20 years, 30 years, the organization may not hear from them at all after you've got your 501(c)(3) status. And the reason is generally that the IRS is reactionary. For most purposes, they only investigate or audit if someone has given them a report and credible evidence that you've broken the rules, you've broken the regulations for 501(c)(3) organizations, or you've broken the law. They don't do much out of the blue. Other directed investigations. Why? Well, one of the reasons is there is no money in it for them. If you make a mistake on your 990 of $100,000, if they hire an IRS agent to come and investigate it and they spend a bunch of money on that agent's wages and they find out why you made mistake and what it was, guess what's in it for them?

David (25:45):

Zero, you aren't a taxpayer. They don't care about those kinds of mistakes. So you know, they're not really looking for those kinds of things. But here is the one and only area where there is actual real money on the table for the IRS and the Oregon Department of Revenue. It's in the classification, proper classification of your workers. And so they will do random audits. And out of the blue audits where they see your reporting, gee, you file a lot of 1099s and you've got a lot of independent contractors that goes on year after year. Some of them are the same people. They see it, they flag it and they'll investigate to see if you're properly classifying them and paying the right amount of taxes plus the employer's contribution, all of that. So just know that. You certainly can hire people who do community organizing and if they qualify, you can call them a independent contractor, likely you'll end up finding that they are best classified as an employee for your safety.

David (26:42):

And the reason I'm saying for your safety is if you misclassify someone as an independent contractor, don't pay your employer contributions, don't take their, the deductions out of their payroll for the Social security taxes and everything, the IRS and the Department of Revenue, if they second guess you and find you had no real legitimate legal basis for believing they were an independent contractor, meaning you didn't apply the 20 factors correctly. If they, if they look at that and find that they think you had no legal basis, the penalties can be very large proportionate to what you didn't pay. And as you know, that's really large. And so the longer you pay someone as an independent contractor and the more you pay them, the more, ah more liability you incur if you've misclassified them so to speak. And the longer you do it, the more likely you are to get caught.

David (27:30):

So, so to speak. The longer you do it, the, the thinner the ice is and the colder the water is underneath. So with that in mind, be careful how you classify and pay these independent pay, these community organizers. Other than that, you certainly can do it and you can even be creative in how you do it. If they're an employee and you're paying them less than minimum wage with this stipend, it drives Bureau of Labor & Industry (BOLI), it drives BOLI crazy on it because they really want people to either be not paid as a volunteer or paid full minimum wage. But at the end of the day, the statute actually allows you to pay them for less and less than minimum wage so long as they agreed to do so, and there's no undue pressure for an employee to work for less than minimum wage. And that's what they're worried about, that you're going to pressure an employee to work for less than minimum wage.

David (28:23):

And so the, the safe harbor I've found when I've gone through BOLI audits on this topic is that if you have the the person who's working and receiving a stipend being paid as an employee, if, if you have them sign a statement, they know that they're being paid less than minimum wage and they're doing it voluntarily and they're not being, there's no undue pressure to do so, then you have a policy in your personnel policy that says if we pay less than minimum wage, it will not be used as a criteria for future job decisions regarding pay, promotions, you know hiring them for longer periods, things like that. And then in actuality, the, the person if asked will say to say to BOLI, "No, I was working because it needed done. This was all the money they had and I'm showing my support by working less than minimum wage."

David (29:17):

So if the person will agree they weren't pressured to take less than minimum wage, they're doing it voluntarily and you have a policy saying you won't exert undue pressure then, and they signed something saying, so then I found that that gets you past that BOLI audit that could come on it. Okay. So you've hired the community organizer and a lot of times the work that the community organizer would be doing at this point is the direct assistance, and sometimes also you'll have that community organizer also raising money for their own position. Okay. Now, if they're out there soliciting money to your organization to fund their payroll, their, their, their, their pay, their stipend, that gets us into an interesting point and that is the IRS says donors can give what we would call unrestricted donations that the organization can use for anything.

David (30:15):

But donors can also give you money that is restricted donations. Meaning when the donor gives you money, they say this money is for a particular purpose. And the most common way that donor a donor, a restricted donations happen is when the donor says, "I love this project. I love what you're doing. I want you to use the money only for that." Perfectly legal. The the three restrictions donors will often impose would be one, a restriction on where the money's we used. "I want it to be used in my community, my town, you know, the city of Portland, the city of Tigard, this County, whatever it is, Marine County." So a geographic area where they restrict it that way. Another would be a restriction to what kind of people receive the aid, old people, young people, runaway teenagers, whatever it is, people on the streets.

David (30:59):

Or the third one is what kind of assistance is going to be delivered? Is it training, education? Is it food? Is a therapy? What is, what is it you're going to be helping them with? And you can combine all three of those. Someone can say "I want you to give money that's going to help kids on the streets during this crisis in, you know, in Marin County, and I want you to be specifically providing shelter and food for them." Okay? All three in a row, perfectly legal. You still as an organization get to decide how to deliver that aid and to whom you're still in control. You're still have the discretion, you're still managing your money. But the IRS says if you go one step further and restrict it too much, so the organization doesn't have control over the money, over your own 501(c)(3) money, then it's called an illegally earmark restriction.

David (31:47):

An illegally earmarked donation specifically are donations that are earmarked to go to or for the benefit of a particular person or family. So that's interesting. Say you are helping a particular family now. That means you can't say... You, the organization can create restricted funds by the way it asks for the money. "We want to give a help to sections, you know, Joe and Sally and their kids. And so we're raising money to provide food and shelter for them." And the IRS would say, "Oh, you can't say that." You can say "We're raising money to help Joe and Sally and other people like them. Please donate to our financial assistance fund." But you can't say we're raising money for Joe and Sally. The reason is if you say that you lose control over the money because the Joe and Sally, the recipients who are named are going to say, "You raised that money for us.

David (32:36):

You have to give that money to us." Even if it turns out they didn't need the money after all, or they could, they get a better income, but you still raise the money for them or they're using the money for, you know, gambling and, and vacations and and drugs, whatever it is. So you've lost control of the money. And not only will Joe and Sally say "It's our money, you raised it for us. Give it to us." The donors are going to say, "I gave the money for Joe and Sally, give it to them." And you're caught in a vice with that. And the IRS doesn't want you to be caught in that vice. They want you to be able to respond if circumstances warrant it. So they say you cannot say we're raising money for Joe and Sally. And if someone says I want to give money to help a particular family, Joe and Sally, again you have to say, "I'm sorry, we're not allowed to guarantee the money will go to them.

David (33:23):

We will put it in our financial assistance fund and ask them to apply. And if they qualify we can help them. But we can't, we're not allowed to promise you the money will only go to them." So it sounds like semantics perhaps, but words count where it's conveyed meaning and meaning is a, is important here. And so when you're doing this kind of community organizing, raising money for particular people, you can't say we're raising it for a particular person or family. We're raising it, you have to say, for our charitable assistance fund. And if it helps, you can say "We're helping people like Joe and Sally and others" so that it's clear you're not dedicating the money to them. Okay. There's another interesting spin to this. If you've got people out doing community organizing and raising money for their own program and that is, the same rule that saves you can't earmark donations for a particular person or family means that they cannot raise money, you know for them their, their particular salary or payroll.

David (34:21):

So for instance, if you have you know Joan out there raising money in the community she can't, she cannot tell people, "Please donate to MRG for my, so they can pay my salary, please donate. So I received the money and can keep doing this work." It sounds reasonable. Donate money to help me keep working. But the IRS says if you do that, you're caught in that same vice where she's going to say, "I raised the money for me and if you don't like my work, you, you have to give me the money anyway." And where the donor, say "I gave money for Joan, I want her paid" and you'll lose control over the whether or not that employee is the right employee doing the right work and performing and accomplishing your mission. So you have to make sure that if they're raising money for their own work in position, that you say, and that Joan says, "If you want to support this work, please donate to MRG" or to your own organization, whatever it is.

David (35:13):

And you can restrict the money for community organizing of this type or in this neighborhood or whatever it is. But you can't earmark it for me particularly, it has to be restricted for this work and maybe in this neighborhood. That's a valid restriction and we'll honor it. But you can't say this money is for Joan's pay. Okay. With that in mind, then you can have an agreement with them. If we, if you choose that says "You raise the money as a community organizer for us to help pay you and you agree and we agree that we'll support you as much as we can. But the amount of money we pay you is, is limited by the amount of money that we're able to pay it, which is based part in part on how much you raise." Meaning there's some contingencies here.

David (36:01):

"We'll pay you a lot if you raise a lot, but if we don't have the money, unless you raise it we're not agreeing to pay you full minimum wage and you agree to that." So those are some of the interesting issues and complications that come up when you're hiring a community organizer out in the community doing your good work for you and some of the issues that could arise. Okay. that's the end of the first five questions. I've raced through that kind of fast to leave time in case you have other questions and it's so I'd love to help answer them. Violeta, where are we or are we on any other questions?

Violeta (36:38):

So we have a couple of that have to do with you know, a lot of the folks in our communities are undocumented. And so a couple of the questions have to do with, for example you know, if a person doesn't have a social security number and then, so, you know, we wouldn't want to put them in the position where they're an independent contractor and have to submit a W9 or you know, whatever. So any recommendations there, is there a way of still giving money to that community without putting them at risk?

David (37:13):

Yes. Yeah. And, and really the recommendation boils down to another phrase we heard long ago that was an incremental step towards full acknowledgement of a lot of LGTBQ plus people. And that was "Don't ask, don't tell." Don't keep the records, don't ask the question, don't have it down anywhere. Because if you have it, you could be required to disclose it under some circumstances. So don't ask them about it. Don't record it if they don't have a social security number. Or if some of them don't have social security numbers, don't ask for that. So, you know, it's easier with the people that you're giving the money to, to, to avoid the question of, of are you are you documented? You don't really have to, to track that you're tracking who they are, what's their address, what are their financial resources. When they're working for you,

David (38:01):

and they receive under $600 per year, you don't have to give a 1099. And they can be completely off the radar in that way. If you misclassified them with $600 or less, frankly, it's not worth anybody's efforts at the IRS or the Department of Revenue to track it down and try and find out did you classify them correctly? But once you're paying them more than $600 a year, then you have a duty as an organization to to track down that and the duty to start a, if they're an employee to find out, are they are they documented in here legally or not? But to the, you can pay them less than $600, don't ask. And if they're recipients not doing the work for pay but recipients of, of charitable assistance then again don't keep records on it.

Violeta (38:47):

And then, so another question that might be sort of related, it has to do with so there are sort of direct financial assistance there is, you know, things like you pay the rent or you pay their medical bills. What about like grocery store cards or paying stipends with a gift card or a visa check debit card or it's not necessarily cash, and it's sort of limiting but not...

David (39:15):

Yeah. Yeah, I get it. And the answer is that when you're giving people gift cards, grocery cards, things like that where it's not cash as, and they qualify as a recipient of your charitable assistance, the IRS loves it because that money can only be spent at a grocery store. So it can't be misused, borrowed loaned, stolen or anything. So they love that. That's a great way to not have to do their grocery shopping or be there to pay the bill. But surely to go through food. So perfect. When you're using gift cards to pay someone for their for their work and services for you, then the IRS says that pay includes items of barter of all kinds. And so you still have turned them into an employee probably. And and giving them gift cards will assure that you are not giving them cash, that could be again, misused, but if they're earning it, it doesn't matter to the IRS whether it's a gift card or cash or check.

Violeta (40:15):

Right. And then, so there's another question really interesting one about, "Is there a dollar amount distinction between what is considered a grant versus a sponsorship? so of a particular event or an effort at the nonprofit level, are there any different reporting requirements? Like for example, the $600 situation. I'm not sure that you would give a sponsorship to someone versus,

David (40:41):

Yeah, usually when I think of the word sponsors, it's donors who are giving money on their businesses and we call them business sponsors, underwriters, etcetera. And they're even though, you know, businesses give you money because they like what you do, but also because they want some acknowledgement in the community and they may put it into their advertising budget, you know, they're going to give you X amount of money. And in return, you have a very specific contract that says, anybody that gives us, you know, $1,000, will get this amount of space on our website, this amount of space on our program at the next event, a thank you from the stage. If you'd give us, you know, $5,000, we'll put you on a big plaque at the entrance where everybody walks in and and you know donate a, get a dedicated page on the, on the program to your, our website.

David (41:25):

So you can have very specific agreements for how you're going to very publicly a sponsor who's giving you money. And even though they will call it advertising, for your purposes, it's not advertising, which would be an unrelated business income you have to report special and be taxed on; if you have unrelated business income like advertising for a business. So as long as you have with, with, with donors, sponsors are not advertising them and the IRS says advertising happens if you say they make the best or their prices are the lowest or you give sale dates or inventory or prices of their products you've advertised. But if you just simply say thank our wonderful donors, they make such and such, they can be reached at such and such kind of what you hear every day on OPB and NPR. So usually when I think sponsors it's that and they can be giving money that's earmarked as well for a particular health, for a particular program in their neighborhood or whatever. When we use the word sponsor for a recipient of charitable assistance usually you know there's no difference at all between a grant to them, a payment to them or a sponsorship of them. The rules are going to be the same. Did you give them money and did they qualify as being medium distressed?

David (42:40):

Was that helpful to the person that asked the question about sponsorships and grants?

Violeta (42:46):

So I think they were thinking more along the lines of like non profit to non profit. So for example you know, like MRG makes grants to organizations and then we also do sponsorships And so, yeah.

David (43:01):

Yeah. The most common word in the nonprofit world, when one organization gives money to a nonprofit, gives money to another is calling it a grant, but there's no difference in the rules for giving grants. A 501(c)(3) can give money to any other 501(c)(3) that's unrestricted or or restricted for a particular program or purpose or even a grant to them that is for a permanent what we call permanently restricted funds that are for their own endowment or things like that where it can never be spent. They can, they can subsidize each other. One can rent to you at a lower or higher rate than it's worth and you can, they can give you loans or grants. So when it's between two 501(c)(3)s because they're the same, it's, it's almost seamless. You can do anything with them that you could have done to your own program.

David (43:45):

The place where we get in trouble is if, if a 501(c)(3) wants to give money or grant to a non-501(c)(3) organization, either one with a different category of tax exemption, for instance, you want to give a grant to the Oregon Association of Nature Paths so they can provide medical assistance in this crisis. You have to be really careful that you have a really clearly written restricted grant contract with them because they can do things with your money, you couldn't legally do with it—they're a 501(c)(6). So you have to be very careful to have a written agreement signed by the grantee if they're not a 501(c)(3) and if it's an organization that's simply not received their own 501(c)(3) status yet, so you want to give money to, but they're a charitable and educational organization, but they don't have their own status.

David (44:34):

Again, your rules are you have to control your money to them to make sure they don't misuse it. So when it is a group with 501(c)(3) status, you can give unrestricted grants. If they there's a group that doesn't have 501(c)(3) status, again, it has to be restricted even if it's not because they're a 501(c)(6) or (c)(7) or anything else, still if they're just not tax exempt, they can do things with your money you couldn't have done with it. So you have to make sure to have a well written restricted grant agreement that they've signed before you hand them the money on that. Whether you call it a sponsorship or not, probably shouldn't matter.

Violeta (45:11):

One more question. If you are hiring people as staff but trying to give them a stipend, can you pay them a set amount and not like pay them on an hourly basis?

David (45:24):

Yeah. Again, it drives BOLI crazy because they're worried about undue influence and taking advantage of, of people and all of that. And yet the law seems to allow it and I've gone through audits with BOLI where people voluntarily, all, everyone in the office took less than minimum wage when that was less money. And some of them only, they took full wages when there was enough money and they all cut back in equal amount when there wasn't money. I mean all kinds of different arrangements and at the end of the day if there's not undue pressure and influence to where you're taking advantage of them and they all agree to it, BOLI at the at the end of the audit has to say, okay.

David (46:03):

And so yes, you can pay them hourly, you can pay them salary and it can be a different amount each month. Even in my experience if... If you're paying them as the money comes in, what you have to pay. Okay.

Violeta (46:14):

What about... Can we make mortgage payments for people?

David (46:19):

That's an interesting question. In that situation you're helping them buy their house and which is different than paying rent and yet if they're going to be kicked out of their house and foreclosed and on the street, if you don't, the outcome is much the same as an eviction. It's a foreclosure. I have not seen any particular case law on that and haven't been asked that before to do any legal research on it. My hunch would be that if they qualify for charitable assistance looking at their income and assets, yes. But if they have enough equity in their house that they could take out a home equity loan on it to pay for other things, possibly even a home equity loan to pay the mortgage payments while they're waiting to get their income back, then that home equity line of credit, a HELOC could pull them through and that's considered an asset.

David (47:16):

So you'd want to make sure that you really work with them to analyze what are their options in this situation to avoid getting foreclosed on and kicked out on the streets, including do they have enough assets to rent even if they can't make a really high mortgage payment. But but after your analysis, if their, if their situation is dire and they're going to be out on the streets, I think the IRS would allow you to keep them sheltered, to keep them housed by giving them money to pay their mortgage payments until they are back up on their feet.

Violeta (47:49):

Excellent.

David (47:50):

Yeah. A disclaimer that, I haven't actually looked at any case law on this, so this is what the analysis suggests.

Violeta (47:57):

Right. Mmm. What...? One more question here. It says, "What responsibility does or do organizations have on allowing clients to choose how they would like assistance to look like, for example, cash versus gift cards versus bill pay." Does that, does that make sense?

David (48:19):

Yeah, it does. It certainly does. And here we get into a bit of an almost a some tension between the wishes of the recipient and the wishes and needs of the organization. Where the organization has an incentive to make sure the money's used for the purpose of that it wants to help, whether it be at rent, food or whatever. And so if a, a recipient of your charitable assistance says, "I really want cash, I don't want a gift card." It's a, it's a red flag. What's the money really going to be used for if, if we think we're giving you money for groceries, but you won't accept a gift card, why is that? But you think, well, if we think we're helping you pay the rent, but you don't want us to give the check to the landlord, again, it's a red flag.

David (49:04):

And I would say in those situations, there's a good reason that the IRS prefers you to pay their expenses for them. It's remarkable to me how many times if a person has some money and they have a relative and in bad shape and needs to take a loan, that will pressure them or the money gets taken. There's so many ways the money can be disappeared or misused that you know, you and, and your recipients are better off if you can not give them cash. But at the end of your analysis of why do they need cash and why is it a valid request? If you ask for receipts afterwards, say, "Yes, we'll give you cash and we want you to present us with a receipt from that third party you paid to show us it really went there," then you're still doing your duty to do what you can to control the money.

Violeta (49:50):

That's a great idea. Quick question. Well, none of these questions are quick. Let's agree on that. So if someone is doing community organizing to benefit a nonprofit they have already received, received their stipend of $600 and they continue organizing without being compensated, can the nonprofit pay their rent or other bills or might that be an illegal exchange of goods and services?

David (50:16):

That actually is a quick answer. A quick question. The answer is that yes, if you pay their rent or pay their food instead of paying them money, that's the same thing as paying the money in the eyes of the Oregon Department of Revenue and the IRS and you really are employing them and that really is taxable income. And they really have to have a 1099 or a W2 at the end of the year on all of it, not just the cash.

Violeta (50:39):

And would it be, okay... So in the case of giving cash assistance to someone, would it be okay do you think to, to have people self-certify for example, like "You, by receiving this money, you certify that you are going to, you know, this is your income status, this is your unemployment status." You know, is that enough of a, of a due diligence if you will?

David (51:06):

No.

Violeta (51:07):

Okay.

David (51:07):

Unfortunately and you know, the reason is that the world is full of people who are stretched on a budget that is still large enough, they should be able to make it, but they don't want to give up some of their amenities. I mean, it's just in the human nature. The IRS specifically in their, in their, again, population publication 3833 says "An organization must maintain adequate records to show that your payments further the charitable purposes and that the victim served or needy or distressed. You must also maintain appropriate records to show that you have made distributions to individuals after making appropriate needs assessments based on the recipient's financial resources as well as their physical, mental, and emotional being." So they're really pretty clear. You can't just let people self-certify because if you do, people who really didn't need the help will be taking money away that people who desperately needed it should have gotten. And so in a sense, to best serve the public good and the public's interest, you really can't just take their word for it.

David (52:06):

On the other hand, how much record keeping and analysis you do is, is really based on how much money you're giving them and are you giving it to them repeatedly? In the short run, if they can simply show you know, what their income and assets are on a sheet of paper, and they, and you, you know, ask for their last paycheck stub or anything like that, you're still keeping records instead of just saying, are you poor and needy? You're actually drilling down a little bit. What was your income? When was your last paycheck? What are your assets? Do you have money in a savings account? If you ask the questions, you can take their answers for it without having to require you know, bank statements and things like that if you're not giving them large amounts of money repeatedly. So you want to drill down a little bit, but you can accept their honest answers to those questions. And then you make the analysis about whether they're needy instead of asking them, just you consider yourself, Maybe that is kind of, kind of, you can't just accept their certification that they're needy, but you're gonna accept their word for what their income and expenses are.

Violeta (53:11):

Correct. 1099s are needed for all resources given, correct?

David (53:19):

No.

Violeta (53:20):

Okay.

David (53:22):

For charitable assistance, we don't have to 1099 them, unless it was then returned for work. In which case it's not charitable assistance, it's a form of employment.

Violeta (53:30):

Great. What is considered a large amount of money?

David (53:34):

You know, there's not an IRS bright line on that. But what I've seen in, you know, working with all of these organizations that if you're giving someone something in the matter of hundreds, you know, three, four, five, six, seven, 800 as a onetime thing there's not a lot of concern. If you're giving them money into the thousands where you're paying their mortgage for them for six months and the mortgage, just do thousand a month and you're looking at some serious money, you know, $12,000 over six months, then you are to the point where you really need to be carefully documenting with more actual, you know, bank statements and and you know, that when they sign the form, there's a, you know, the the, you know, I affirm every same information I've given is true with you know, penalties of perjury, et cetera, kinds of things where you're really making sure if you're giving them thousands that they are an appropriate beneficiary of your health.

Violeta (54:29):

Do you... Is there... I mean, and I think you've answered this throughout, but is there a money limit or a money number that triggers you think the attention or is there a higher level of scrutiny once you hit that?

David (54:45):

Yeah. You know there is not anywhere in the IRS guidelines and regulations, any money, any sir... particular money amounts that would trigger it. It really is facts and circumstances. And and you know, how long you gave the money, how much you gave the money on. I'm, I'm thinking of a situation here in which families of firefighters who died in the line of duty in a big blaze down in South the Southwest United States and an organization raised hundreds of thousands of dollars on fundraising for the families of those people. And then got into some, some trouble because they, you know, a year later, we're still dishing out large amounts of money to people who had lost a family member and, and we all, you know, our hearts go out to them, but many of them didn't actually need the assistance anymore. So, you know, they were stuck.

David (55:39):

They'd raised money improperly for those particular firefighters. So that was one problem. And then the families are saying it's our money. And they were really struck between lawsuits, threatening them, but they didn't give the money to those people. But the big thing was they kept giving them money and that's where they got into trouble with the IRS. So, you know, the, the there's no bright line whatsoever, but certainly giving money in larger amounts over a long period of time and that sliding scale of scrutiny with the more you give and, the longer you give, the more likely you are to come to their attention.

Violeta (56:14):

Right. I don't see any more questions coming in and we're about two minutes out. Oh, clarifying question. So we don't need to 1099 someone if we are paying them in exchange for services. Is this $600 threshold only applicable if we are giving it away?

David (56:32):

Oh, good question. The $600 level is if you have someone who is doing work in exchange for payment of some kind, whether it's payment and gift cards or payment in cash, if you've given them $600 payment, then you have to file a 1099 for them or the organization can be penalized for it. So if you're giving them, if you're giving them charitable assistance, I don't believe you have to 1099 them at all because it's not work. It's not earnings. So they don't need to report it in that same way. But I'll pose that question to the to the CPA that I'm going to put a call through today and put the answer to that in the in the material I send you.

Violeta (57:12):

Okay. And then we just have a, so one more question. What data should not be collected to keep undocumented clients safe? Yeah.

David (57:21):

Right. And there's a where there you're giving money to someone and they may be undocumented. You want to make sure that your not just failing to collect their social security number or their, or their immigration status for them. You want to make sure your program just doesn't collect it from anybody. And so with that in mind, the IRS rules for documentation is the name and address and amount distributed to each recipient. But you don't have to ask and shouldn't ask about their, their immigration status or their residency status for any of them, whether or not you suspect they're, they're documented or undocumented. So again, that "Don't ask, don't tell" because if you keep the information you could be required to divulge it.

Violeta (58:07):

Fantastic. Yeah, so we are very close to time. And we do want to respect your time, David. So we're gonna let you go. Everyone, we will ... I'll be sending you all the recording and the transcript for the call so that you have all of this in writing. And yeah, I'll, I'll give you some more, more, some more information in the email. But thank you so much, David for this, all the time that you have given us and all the questions are you have answered. We really appreciate it.

David (58:42):

You are so welcome. Truly, it's an honor and a pleasure to get, to be able to be a part of your team and help out. Thank you all for the wonderful work you're doing out there and keep it up. Take care. Thank you everyone.