



COUNCIL *on* FOUNDATIONS

THE ESSENTIALS FOR COLLABORATION BETWEEN **FOUNDATIONS** AND **GOVERNMENT**

By **Daniel Rader**, Senior Counsel, Council on Foundations





The goal of the Public-Philanthropic Partnerships Initiative is to leverage the work of the public and philanthropic sectors to broaden the reach of philanthropy's intellectual and financial capital and the scope of its successes to achieve positive societal change.

The common thread shared by foundations and the government is a determination to use our respective resources to find solutions to meet today's challenges. When we weave our resources together, the fabric of the solution is stronger.

Thread the needle.



COUNCIL *on* FOUNDATIONS

The Council on Foundations is a national nonprofit association of approximately 2,000 grantmaking foundations and corporations. As a leader in philanthropy, we strive to increase the effectiveness, stewardship, and accountability of our sector while providing our members with the services and support they need for success.

Our mission is to provide the opportunity, leadership, and tools needed by philanthropic organizations to expand, enhance, and sustain their ability to advance the common good.

Yes, You Can

It is a common misconception that foundations either can't work with the government or can't accept grants from federal or state governments. Some federal or state grant programs may, under the terms of the appropriation or other legislation authorizing the funding, limit the types of eligible grantees to specific types of nonprofits or foundations. However, no state not-for-profit corporation law or federal exempt organization law prohibits foundations at the point of formation from working with the government or from accepting government funds.

The only places where such limitations may express themselves are in the foundation's articles of incorporation or bylaws, which the foundation and its founders created. Such express limitations are rare. More common are informal policies or institutional apprehensions about soliciting or accepting government funds. And what may have started out as "We *don't* accept federal funds or work with the government" has evolved into "We *can't* accept federal funds or work with the government." Absent an express limitation in the foundation's founding documents, apprehension should not be viewed as a restriction. When foundations share missions and goals with the government, there are few limitations on what they can do.

Getting Started

Working with the government—as a grantee, grantor, co-funder, or partner/collaborator (where there is no exchange of money)—can be a complex affair. Over time, the government has developed formal structures, policies and procedures, and templates that make establishing these relationships fairly straightforward. What may be new for some foundations is that governments and government employees are now regulated by laws and procedures when acting in their roles as grantor, grantee, or partner.

Foundations may perceive this lack of flexibility as a cultural difference. However, it is less an issue of culture than one of comprehensive regulatory oversight of appropriations, authority, program management, policies, and compliance procedures and being subject to the oversight and audit of agency inspectors general, the federal comptroller general, and audit by state authorities. In today's parlance, government's own compliance is essential for both accountability and transparency. Flexibility on the part of foundations will be essential.

As foundations prepare to work with federal, state, and local governments, we have prepared this guide to provide you with some quick tips and several longer topical discussions that will help you in your thinking. Check the Council's PPPI [website](#) for updates. For now, that website includes an [introduction to administrative issues](#) and suggestions on where foundations may find federal and state resources and collaboration opportunities.

Discussion Topics

Topic #1: Co-Funding

Q: My foundation isn't interested in applying for federal funds. We have co-funded projects with other foundations and nonprofits, and are interested in co-funding opportunities with the government. Can we do that?

A: There are two parts to this question: can you work with the government, and can the government work with you? Before getting too far down the road, foundations should determine the answers to both parts of the question.

On the foundation side, your articles of incorporation and bylaws may address the types of activities that you are authorized to engage in. You also may want to look at your Form 1023, which was your application for a federal tax exemption. These documents may or may not expressly identify co-funding with the government, so you may also need to look at the basic charitable purposes of the co-funding activity for consistency with your overall charitable purposes. If the project or opportunity supports your mission, you may be able to engage in the project without any further documentation.

On the government side, the government, by statute or by appropriations law, may limit the types of organizations it is permitted to or intends to work with or fund. For contracts, grants, cooperative agreements, and cooperative research and development agreements, the government may limit vendors/service providers, applicants, or “partners” to commercial entities, public charities, private foundations, academic institutions, or any combination thereof. Generally, where there is a transfer of funds from the government to an outside organization, the limit is

10 Quick Tips

For Grant Proposals:

1. **Complete the proposal:** Proposals that do not respond to a notice of fund availability may be rejected without consideration.
2. **Government deadlines are real deadlines:** Government agencies generally cannot extend proposal deadlines or give you a couple of extra days; extensions are rare, and public notice of the extension is required and must be offered to all potential applicants.
3. **Familiarize yourself with the applicable cost principles:** Governments restrict specific items of cost.

4. **Include the costs necessary for audit:** These audits are different from those foundations generally obtain, and the costs can be substantial.

For Entering into Agreements and Managing the Grant/Cooperative Agreement:

5. **Formation:** Agreements must be entered into in writing by authorized parties of each institution. Government employees must have signature authority to bind the government institution and obligate government funds. The government's grants and contracting officials often are not the program staff or directors the foundation has met with and had discussions with about embarking on

placed on transfers to private foundations to the extent that there are any limitations expressed in relation to 501(c)(3)s. Consult the government's grant, partnership, sponsorship, or other application guidelines and, when in doubt, ask an appropriate representative.

Note: Partnership is a legal term, and most collaborative agreements you will enter into, for purposes of minimizing exposure to liability, will include "no partnership" clauses.

Q: *What co-funding opportunities may be available?*

A: Federal, state, and local governments often use a different vocabulary than the one used by exempt organizations. For purposes of this discussion, "co-funding" will exclude direct grants from the government to the foundation. "Co-funding" with governments may take a variety of forms and may be accomplished through a variety of relationships:

- Matching grants: Co-funding by a private foundation or public charity that provides the nonfederal match to a public charity grantee of the federal government
- Cooperative agreements: For federal government agencies, this is the form of the agreement that must be used where "(t)he principal purpose of the relationship is to transfer a thing of value to the state, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States...and substantial involvement is expected between the executive agency and the state, local government, or other recipient when carrying out the activity contemplated in the agreement." [31 U.S.C. 6305](#).

10 Quick Tips *continued*

a relationship. So, foundations have to work with both program and administrative officials.

- 6. Amendments:** When implementing a grant, changing the foundation's course or approach in a way that necessitates budgetary changes requires coordination with government counterparts. Grant budgets are not flexible, and grantees have limited ability to "reprogram" funds from one cost category to another. Amendments must be approved in writing in advance by authorized grant/contract officials. It is easier to ask for permission than forgiveness.
- 7. Contracts and subgrants:** These may or may not be permitted under the terms of the agreement/grant. Governments generally require grantees to have procurement procedures in place to maximize competition.
- 8. Government ethics and procurement policies:** These rules strictly prohibit grantees from entering into contracts, grants, or other relationships that benefit disqualified persons. These rules are stricter than those that generally apply to foundation operations under state or federal exempt organization laws.
- 9. Program income:** Government agencies have different requirements for whether grantees are permitted to retain program income and spend it in furtherance of the grant; foundations may be required to turn income back to the government periodically or when the grant period ends.
- 10. Deadlines:** Deadlines for spending the grant funds are also real deadlines.

Cooperative agreements may or may not include:

- The transfer of funds from government to foundation or vice versa
- The transfer of technology, capacity/services, or equipment between government and foundation
- See [OMB Circular A-110](#)
- [Grants to government](#). See also “[Unusual Grants: An Online Legal Guide for Public Charities](#).”
- [Sponsorships](#) and [cosponsorships](#).
- [Sharing staff](#). (See also [this document](#) from the National Science Foundation.)
- [Cooperative research and development agreements](#).
- [Prizes and other transactions](#).

Q: How do I get started?

A: For more information about co-funding, grants, and cooperative agreements with the federal government, as well as state and federal issues, a good starting place is the Council on Foundation’s Public-Philanthropic Partnership Initiative [website](#).

Topic #2: Lobbying and Public Policy Advocacy

Q: Can I lobby with federal government funds?

A: No. OMB Circular A-122 provides that lobbying costs are not allowable costs; they cannot be charged to federal grants. See A-122, Att. B. ¶.25. This restriction also would flow down to program, formula, or block grants administered by state governments. Additional state restrictions on lobbying also may inhibit lobbying with state grant funds. Based on how states pass legislation, certain activities at the state level may constitute prohibited/restricted lobbying.

Q: What impact does accepting a grant have on my current lobbying and public policy advocacy practices if my foundation is a community foundation or public charity?

A: For community foundations and public charities, we recommend reviewing CF Standards, “[What You Need to Know: Getting Involved in Public Policy](#).”

Q: What impact does accepting a grant have on my current lobbying practices if my foundation is a private foundation?

A: When considering engaging in lobbying, private foundations, including operating foundations, need to look at state and federal laws. The Council does not provide information concerning state laws, but the W.K. Kellogg Foundation

provides a link to a [state locator for state lobbying guides](#). Kellogg suggests that the foundation's state association of nonprofits also may provide additional resources and may have some lobbying policy templates or be able to point you in the right direction. State associations of nonprofit organizations may be located through the website of the [National Council of Nonprofits](#).

Q: If my private foundation is restricted from lobbying, how may we engage in the public policy discussions of the day?

A: The Council has developed a guide on private foundation engagement, the "[Top 10 Ways Private Foundations Can Influence Public Policy](#)," that you may find helpful. The Center for Lobbying in the Public Interest (CLPI) provides [key resources](#) that address what private foundations may do in terms of lobbying and advocacy, including [specific guidance](#) obtained from the IRS at the end of 2004 and guidance CLPI subsequently issued to the field, "[Funding Nonprofit Organizations that Lobby](#)." The IRS has extensive materials on lobbying; a good starting place is [www.irs.gov/charities](#). We also recommend the Exempt Organization's continuing professional education (CPE) text on lobbying. See Judith E. Kindell and John Francis Reilly, [Continuing Professional Education Text: Lobbying Issues, 1997](#).

The Alliance for Justice (AFJ) also has a number of relevant resources, including "[Private and Public Foundations May Fund Charities that Lobby](#)". In addition, AFJ's [resources page](#) includes a list of fact sheets that cover most factual scenarios.

Topic #3: Audits

Many members are concerned about the audit requirements associated with receiving a federal grant under OMB Circular A-133, "Audits of State, Local Governments, and Nonprofit Organizations." Circular A-133 requires audits for organizations receiving grants directly from federal departments and agencies and as sub-recipients of federal grants, such as when the nonprofit receives the federal funding through the state government.

Q: How would my audit as a federal grantee differ from my organization's regular audit?

A: Federal grantee audits are designed to expand upon the organization's audit of its own financial statements to determine whether they contain material misstatements. Federal grantee audits specifically include detection and reporting of fraud; noncompliance with law, regulation, grant, and contractual agreements; internal control weaknesses; and risk.

Q: Are there award thresholds for federal grantee audits?

A: Yes. Circular A-133 requires different types of audits for different types of grantees, different federal programs, and different total grant award amounts. A-133 generally will require a "single" or "program-specific" audit of nonfederal entities that expend \$500,000 or more in a year in federal awards. A single audit is required when the entity has met the \$500,000 threshold for awards under multiple federal programs. Excluding R&D awards, an entity may elect to undergo a program-specific audit only if it expends awards under one federal program and the agency administering

the awards does not require a financial statement audit. For example, if a nonprofit expends federal grant funding equal to or greater than \$500,000 in a year under two federal programs (AmeriCorps and Federal Highway Administration), the nonprofit would not be eligible to elect a program-specific audit. A third type of audit, a “major program audit,” may be required based upon a variety of factors that affect the scope of the audit; factors considered by the auditor include but are not limited to:

- determination that the award qualifies as a major program based on the size of the program and the award to the nonprofit
- the risk inherent to the program itself, including risk associated with prior grantee audit findings that demonstrate weak internal controls
- weak systems for monitoring subrecipients
- potential for significant impact on federal programs

Entities that expend less than \$500,000 a year in federal awards are exempt from federal audit requirements for that year, except that federal agencies, their inspectors general, and the Government Accountability Office are permitted to conduct other audits of the entity (for example, financial audits, performance audits, major program audits, evaluations, inspections, and reviews). Where the auditor determines that the grantee is a low-risk auditee, the auditor similarly may reduce the scope of the audit with the approval of the federal agency responsible for the grant.

Q: *What are the differences among these types of audits?*

A: The scope of the different types of audits varies significantly.

A *single audit* is an audit of the entity’s financial statements and federal awards. The single audit is conducted in accordance with generally accepted government accounting standards (GAGAS) and covers the entire operations of the entity audited. However, the auditee may elect to undergo a series of audits of those parts of its operations that expended or administered the federal awards during the year, including financial statements and schedule of expenditures for the same fiscal year.

The audit will include:

- an opinion regarding whether the entity’s financial statements of the federal program fairly present and conform with generally accepted accounting principles (GAAP) and whether the schedule of expenditures is fairly presented in relation to the entity’s financial statements
- a report on internal controls, risk assessment, and testing results
- a report on compliance in conjunction with the agency’s compliance supplement, if any
- a schedule of findings and questioned costs (including, but not limited to, a summary of auditor results that GAGAS requires auditors to report; OMB has produced a general brochure that outlines single audits)

Major program audits are triggered under two circumstances: (1) the auditor utilized A-133’s risk-based approach to determine the federal program is a major program or (2) a federal agency or pass-through intermediary has requested

an auditee to have a particular federal program audited as a major program in place of the federal agency conducting or arranging for the additional audit. As indicated above, a major program audit is broader in scope than the single audit; additional requirements are detailed in A-133. An example of an audit that includes major program audits is the Defense Contract Audit Agency's A-133 Audit Program.

A program-specific audit is an audit of one federal program. It will be dictated by the terms of GAGAS and the federal agency's program-specific audit guide, to the extent that the agency has created one.

If there is no program-specific audit guide, then the audit will be conducted like a major program audit of a single program. In summary, the auditor will:

- audit the financial statements of the federal program in accordance with GAGAS
- evaluate and test the entity's internal controls to assign a risk level that will be used to determine the scope of the audit
- determine whether the entity complied with laws, regulations, and the terms of grant and contractual agreements
- produce report(s), including an opinion or disclaimer stating whether or not the entity's financial statements of the federal program fairly present and conform with accounting policies, a report on internal controls, and testing results
- a report on compliance, a schedule of findings, and questioned costs

Q: *Who pays for these audits? Does this come out of my grant?*

A: Audit costs are generally allowable charges to federal awards, unless otherwise restricted. How costs are charged will be determined by the cost principles applicable to the award, such as OMB Circular A-122. Assuming the audit is properly chargeable to the grant as a cost, your grant proposal should include the projected cost of the audit. Note that the cost of audits conducted under the Single Audit Act Amendments of 1996, 31 USC 7501 et seq., that are not conducted in accordance with OMB Circular A-133 are not allowable. Audits for nonprofits that are exempt from the audit requirement as a result of not meeting the \$500,000 threshold are similarly not chargeable to the grant.