

## Fiscal Sponsors: The COVID Conversations – Session 93 – April 19, 2022

Oliver: Hi everybody. Whoa, big group. Welcome back. I was just saying that there is no amount of automation in fiscal sponsorship that replaces the person to person contact that often has to happen to help people, and we do our very best to do that. Just to finish my thought with Rosa... Rosa, who's just joined INN and is new to fiscal sponsorship saying, "This is hard." And I was like, "Yes, this is hard."

Okay. Welcome everybody. Today, we're supposed to be talking about paying people. I think what we're going to do, because we don't have a presentation here, is we're going to go into groups of probably five, Andrew. We want to talk today about the various ways that practices pay people, and the challenges that you encounter, and how you over those challenges.

Often, we would love to hear and share with each other about what are projects bringing to you? How do they want to do it? So, very often we have projects saying they want to provide someone a stipend, or an honorarium, or a gift card. They have no idea exactly how to do it, and we have to try and steer them in the right direction. That's the goal today, is for people to share about how they pay people. What kind of things do you encounter, and do you overcome those things? We're a California-based practice here at Social Good Fund. We were deeply impacted, like a lot of other practices, with the law known as AB5, which made it much more difficult to classify people as contractors. And that put us into a lot of challenge with our projects.

We had to take what we were being told and translate that to projects. And of course, it felt, to a lot of people, like it was just us making a decision and doing that to projects, which is not the case, so there's a lot of communication that has to happen. There's a lot of clarity, education that needs to happen. It's not an easy thing, the paying people thing. So, we're going to go into small groups. We're going to do about 20 minutes at first. We'll come back, we'll see where we are. We might go into another group. So, all of your paying people questions, comments, concerns, successes, and challenges, this is the time that we hope you'll share about that. Any questions before we jump in? Anything anyone would like to add? Feel free to unmute yourself and make a comment. Nope? Okay. Well thanks for being here, Andrew, when you're ready, please do your magic and let's get into it.

[BREAKOUT SESSION]

Wow, that was fascinating. We're at 14 minutes to the hour. I have a couple of questions. I would love to hear any comments that groups want to share in the larger group, but I have kind of a selfish question here that I would like to ask everyone. For those practices who practice Model A sponsorship, if your Model As have an advisory committee of some kind, would you pay advisory committee members if asked, and if so, how would you pay them as an employee, or a contractor?

Amanda: We're literally in the middle of that conversation, right? And we got switched out. I don't know if Stef wants... Do you want to finish what you were saying, because it was really helpful?

Stef: Sure. So, Oliver and I both work at Social Good Fund, which is, I think, why this is coming up. We've had a huge number of projects recently want to pay their steering committee members. Generally, projects are tying us back to equity, which we support and we want to find the right mechanism, but after our last year's IRS audit, we're struggling to find the right mechanism for how to make this payment. So, like stipends, they're not participating in a charitable program, so that doesn't seem to fit. Honorariums aren't really for work performed, they're to honor one's time, whether it's like speak in an engagement, or performance, et cetera, so that doesn't really fit. And then that leaves fellowships. Well, it's not an educational program, so that doesn't really fit, and then it leaves contracting and employment.

And for us, we have been given some advice from the IRS auditor around who we can contract with and what that looks like, and we've been asked to really beef up our evidence that our contractors are truly in business for themselves. So generally, board members are not in business to serve on boards. They're not serving on multiple boards as their business, and they're not advertising themselves as, "I'd love to be on your board. I'm the best business board person there is."

Generally, they have full-time jobs outside of this duty. So, that doesn't typically fit, which means that we're kind of left... the safest route that we've felt has been paying people as employees, but most of our board members are getting paid maybe \$1,200 a year. So then it feels a little bit weird to bring someone on to pay them \$1,200 a year, and also, shouldn't a board member be an employee? I mean project board member. But it creates this weird cycle, so we're just struggling with how best to... What mechanism exists. Or if we, kind of, knowingly make payments outside of... If we kind of ditch the, is this the right mechanism, and just make the payments anyway. So super curious if anyone else is paying their project board members, and how they might be doing that.

Carl: Yeah, I would

Stef: It's this weird circle.

Carl: Yeah, I would agree with you. I mean, it's just pretty easy to research, Oliver, because you can just check on the IRS 990 of different organizations, because you need to disclose it there, but in general, I would agree. It's what your role is. Is it a role as an employee, or providing value, or are you, basically... I think, as it says in that NEO Law article, that it's a expectation industry, is that you're... for nonprofits, is you're not going to be paid, you're volunteering your skills, knowledge and experience.

Craig: Also, wouldn't the bylaws of the fiscal sponsor define compensation for board members? And wouldn't the programs running under your 501(c)(3) be a subject to those same bylaws?

Oliver: Josh, we can't hear you. Josh, we can't hear you. No. He was about to provide us the whole answer right there. Come on, Josh. Maybe type it in the chat. Well, just, Craig... Maybe someone else wants to respond to Craig before I jump in.

Anne: I just have a question which is, could board members be considered experts in their field, and from that point of you be considered consultants who do have the expertise? I know there's at least one advisory board for one of our projects that we, sort of, pay like that, of this person has expertise in graphic design, and they're serving on the advisory board and getting compensated for their time in that role, if that makes sense.

Craig: I want to revise my comment, by the way. I was thinking the board of the fiscal sponsor, not the advisory board, so scratch everything I just asked.

Oliver: Okay. So, as it relates to the board of the fiscal sponsor, I think the NEO Law article is really, really helpful, as it relates to advisory boards of internal programs, AKA Model A projects, whole other ball of wax. Yeah, Pam?

Pam: Yeah. We changed their name. They are not boards, they are committees.

Oliver: Yep.

Pam: Because we don't want them to be confused in thinking they have either legal responsibility or anything else, but here in the state of California, what I know is California labor law overrides everything else. And so I think that before we pay anybody, we look at the AB5, and the legal requirements for how to pay people in California, and then we operate accordingly. So, if somebody wants to be an independent contractor, they need to fit all of the criteria that is legally required in the state of California. And if they do, then we ask to see their general liability insurance as a business, because we can really only pay businesses as independent contractors, from our reading and it's been verified by a couple of attorneys in the state of California. So, to me, that would be the logic I would follow to figure out... And on your program here, we had Ellen, what's her name, from Nyack, and she said stipends are wages, so that's my two cents, rather than keep fighting for the workaround. You know?

Oliver: Indeed. Any anyone else want to jump in with a comment here? Go ahead and unmute yourself. No? Yes? No? All right. I just want to point out something that Pam just said, and maybe we need to have a session on this, semantics in fiscal sponsorship really matter. It really matters to our regulators. It really matters, potentially, to the courts, and more than anything, we're discovering that it really matters to projects.

As an example, here at Social Good Fund, we've now moved from... We used to have a team called the project services team, and this team is responsible for all care, and nurturing, and ongoing needs of projects that are not accounting or HR-specific. And we've now changed that to project support team, in reaction to a court case that we're aware of, where a judge, basically, invalidated a Model A agreement, because the way that the sponsor behaved and talked was as if the project was a client, or customer, and not an internal project, not a program of the sponsor. So, getting your language clear,

very, very helpful to regulators and to projects. And I do agree Pam, calling it a committee helps. We've had instances where a... Well, one recently, where a project director was treating his committee like a governing board.

And that came back to bite him really hard when, really, his advisory committee decided to start throwing their weight around like a governing board. They were unhappy with his performance. They didn't think he was meeting his expectations. They blah, blah, blah, blah, and they started pointing to the meeting minutes, and the voting that they do. And all of these systems that the project director, really without our knowledge, was setting up with this board to get them being productive for him. Which was not the wrong reason, but he created a mess for himself. And this particular case, some of these board or committee members had control of project assets, like their Facebook account, and their Google Suite account and things like that. And when he told them you're not governing members of this board, they said, "Well, you can't have the Facebook. I created it myself." So, a big knot that we created. Anyway, all I have to say is, yes, language matters in this.

Hey, thanks for joining us. I just want to run through really quick. What's upcoming for us, April 26th, working with international projects. This is a session we're hosting in partnership with Social Impact Commons, and Josh will get his audio straightened out. This is a part of a two-part series on the same topic. If you would like to attend part one, please check out Social Impact Commons's website, because part one is this Thursday, is that in two days time? At 3:00 PM Eastern, noon Pacific time. Please go to the Social Impact Commons's website to check that out. And then the second part will be on the 26th, I think it's okay if you miss one, but probably you get the most material if you come to both.

May 3rd, we have a special guest from GrantWatch, that'll be fascinating. Find out what's happening in the world of grant-making. May 10th is a to be determined. May 17th, the return of Gregory Colvin, and then May 24th special guest, Community Music Centric... Sorry. Community-Centric Fundraising, so we have a lot of cool things coming up, as always. Thank you so much for spending your time with us today. We do this because you keep showing up. We want to keep improving this. If you have ideas for us, please shoot them our way. We're always happy to hear it. If you would like to host a session, or if you have a guest speaker, you would like us to meet, reach out, we'll organize it. We'll figure it out. This is supposed to be a forum for all of us.

Thank you for being here. If you're new to fiscal sponsorship, we also have a mentee-mentor relationship program. Reach out to Andrew, his email is right there on his picture tile, and he can set you up with a mentor or a mentee. We need more mentors. If you've been around a little while and you'd like to share some of your wisdom, please let Andrew know. Otherwise, please stay safe. Stay sane. Stay positive. We can get through this together. Have a great productive week, everybody. Thanks for joining us.