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& ASSOCIATES

When Funding is Withdrawn, Negotiating with Funders

Negotiating the terms of the notice period for funding reductions with the funder, so both the agency and funder are clear on the roles and responsibilities.

One of the biggest problems with the winding down of the organizations whose funding is cut has been a lack of clarity of the roles and responsibilities between the funder and the agency board of directors. Serious difficulties have occurred and the short time frame makes sorting out any misunderstandings between the Directors and funders very difficult. For this reason we suggest agencies negotiate a written agreement with the funder specifying the amount and nature of the funding reduction and outlining the terms and expectations of the notice period. We recommend the agreement include:

a) That effective of the date of notification of funding cutback or termination the agency is **no longer required to deliver the service** as specified in the funding contract.

The organization may chose to continue service for a period but it is important that it not be obliged to do so Directors can be free to attend to their wind-up obligations and expenses.

b) The agency **not be required to maintain expenditures within budget lines** for the budget year in question.

The organization needs flexibility to move money around to meet its obligations and you will not be staying within budget lines. Boards do not want to have to renegotiate every time they shift money from one line to another.

c) **An agreed schedule of payments from the funder**. Agencies should be very cautious about agreeing to the funder withholding final payment of funds until the termination date.

Agencies need funds in advance to pay severance and other obligations. Holding back of funding makes closing an agency very difficult and can unnecessarily increase the Directors exposure to liabilities. Any unspent funds at termination must be returned to the funder as per contract agreements.

d.) Clarify that **the agency is responsible for decision-making regarding the winding down of services and termination of staff** since the agency and its directors are responsible for the liabilities of the corporation.

Everyone is tense and anxious during a wind-up so it is important to identify who is responsible for making the decisions. Board members have personal liability exposure in these wind-up situations and need to be free to make decisions for the organization.

f.) Directors need to **negotiate a process for decision-making with regard to the disposal of assets jointly owned with the funder**. E.g. property, buildings

Itemize in the agreement the capital items the funder has call on (usually purchases made with minor or major capital grants) and negotiate a process for their sale or disposition if needed. The agency and the funders' interest in an asset may not always be the same. The agency for example may want to recoup its contribution to the capital asset to meet its obligations while the funder may want to retain the asset for future use.

e.) Ask that **the funder specify in writing their expectations and requirements** of the organization during this termination period.

Some agencies were surprised by requests from the funder part way through the termination period that they had not budgeted for. It is important to know what the funder expects of the agency in the notice period.

More detailed information is available on the management of funding cutbacks in the *Advisory to Boards of Directors of Not-for-Profit Corporations Regarding Agency Management When Significant Funding is Withdrawn on Short Notice.* *www.lynneakin.com*

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