



State Grants to Minnesota Nonprofits: Increasing Effectiveness, Transparency, and Accountability

NOVEMBER 2022

Authors:

Mollie Clark Ahsan
Adam Kolb

University of
Minnesota School of
Law, Mooty
Fellowship

Contributors:

Kari Aanestad,
associate director;

Marie Ellis,
public policy director;
and

Jon Pratt,
senior research fellow,
Minnesota Council of
Nonprofits

Table of Contents

I. Abstract

II. Background

- A. Scope of Grantmaking in Minnesota
- B. Sources of Grantmaking Authority
- C. Developments in the Grantmaking Process
- D. Weaknesses in the Grantmaking System: A Feeding Our Future Case Study

III. Past State and National Reviews of Grants Systems & Recommendations

- A. Minnesota Review
- B. Other State Reviews
- C. National Studies

IV. Issue/Analysis

V. Recommendations

- A. Nonprofit Organizations
- B. State Agencies

VI. Next Steps and Directions for Further Research

VII. Acknowledgements

I. Abstract

Grants create mutually beneficial partnerships between state government and organizations serving communities in every Minnesota county. Over \$1 billion a year is disbursed through grants to nonprofits, allowing Minnesota state government to flexibly undertake a wide scope of work otherwise too dispersed and diverse to accomplish through state agencies alone, enabling them to serve hard-to-reach communities. Of relevance is the customization and cultural competence made possible through support of nonprofits led by and concerning Black, Indigenous, People of Color (BIPOC),¹ who connect with recent immigrants, non-English speakers, and historically underserved communities.

Several recent incidents, most notably the fraud scheme discovered in the organization Feeding Our Future and thirty-two affiliated businesses, have raised public concerns about state agencies and the ways they award and monitor grants.² As of this writing, fifty-one persons have been indicted on federal fraud charges involving \$240 million in misuse of federal child nutrition funds; two of those fifty-one were employees of Feeding Our Future, twelve were connected to six shell nonprofits, and the remaining thirty-three were affiliates of twenty shell companies or LLCs.³ It is important to note that the set of circumstances represented by Feeding Our Future and its affiliates is an appalling anomaly in the world of Minnesota state grants and nonprofits, which overall are well documented to be scrupulous in their performance and use of funds. Nevertheless, there is no question that this case has grabbed the public's and public officials' attention, and while still at the front end of a far reaching and lengthy process, it will set the stage for a deep examination of grant accountability.

To address the set of issues involved in the grantmaking process this paper seeks to (1) describe the context of grantmaking in the state of Minnesota; (2) identify the current grantmaking process and the role of the Office of Grants Management; (3) look to Feeding Our Future as a counter example to help illustrate weaknesses in the current system, (4) analyze the barriers and issues currently challenging the grantmaking process; and (5) propose grant system reforms and useful further inquiry.

The paper presents a recommendation for the formation of a state-convened taskforce on state grantmaking system as well as recommendations for two of the major parties in the granting systems – state agencies and nonprofit contractors. Minnesota's upcoming 2023 legislative session will adopt a new state budget, setting the terms for new rounds of funding and state

¹ See *Resources & Tools: Minnesota BIPOC Nonprofits Index*, MINN. COUNCIL OF NONPROFITS, <https://www.minnesotanonprofits.org/resources-tools/resources-detail/bipoc-nonprofits-index> (last visited Nov. 29, 2022) (Explaining how this paper defines the term “BIPOC organizations”).

² See *infra* Part II.D.

³ See *infra* Part II.D.

grantmaking across the state. Grant system operations and responsibility will be high on the public agenda, and the nonprofit sector will be active participants in the process that follows.

II. Background

A. Scope of Grantmaking in Minnesota

Nonprofit organizations have evolved to provide a wide array of both essential services and supplemental activities that make vital contributions to the health of the state and its many communities. The thousands of active nonprofits in Minnesota provide shelter, food, workforce training, healthcare, education, arts, and many other resources to state residents. Agencies, nonprofits, and communities all benefit when grants facilitate effective service delivery. Instead of providing services directly with their own employees and facilities, government agencies can contract out work to nonprofit organizations in the communities they serve.

In Minnesota, the nonprofit sector represents fourteen percent of the state workforce, meaning nearly one in seven employed Minnesotans work for a nonprofit organization.⁴ The nonprofit share of the workforce has stayed steady at fourteen percent from 2019 to 2021 despite numerous hurdles created by the Covid-19 pandemic.⁵ A central factor in the growth and stability of nonprofit budgets has been the role of regular government funding.⁶ The modern nonprofit sector has come to rely on these sources: in recent years four of the largest state agencies have awarded millions of dollars via grants to nonprofits that have funded programs that positively impacted Minnesotans.

Agency	Number of Grants	Dollar Amount
Department of Employment and Economic Development (DEED)	448 (not including professional / technical work orders)	\$130,755,315
Minnesota Department of Education (MDE)	87 (not including charter or public schools)	\$135,603,485
Minnesota Department of Health (MDH)	264 (not including hospitals, nursing homes, city, county, or tribal governments)	\$138,215,665
Minnesota Department of Human Services (DHS)	827 (not including hospitals, nursing homes, city, county, or tribal governments)	\$617,156,399
Four Agency Total	1,626	\$1,021,730,864

⁴ *Minnesota Nonprofit Economy Report: Covid-19 Impact Update 5.0*, MINN. COUNCIL OF NONPROFITS 3 (Dec. 2021), <https://www.minnesotanonprofits.org/docs/default-source/coronavirus/2021-mn-nonprofit-economy-report---december-2021.pdf>.

⁵ *Id.* at 4.

⁶ See *Minnesota Nonprofit Economy Report: Covid-19 Impact Update 6.0*, MINN. COUNCIL OF NONPROFITS 4 (Dec. 2021), https://www.minnesotanonprofits.org/docs/default-source/coronavirus/2022-mn-nonprofit-economy-report---covid-impact-report-6-0.pdf?sfvrsn=be36c54c_2 (stating that “[g]overnment relief funding played a pivotal role in the nonprofit sector’s ability to function” throughout the COVID-19 pandemic).

Data Source: Data in the table above was compiled through Minnesota Open Checkbook, which provides a snapshot of how public funds are being used according to the State's accounting and procurement system. These specific numbers are from a July 17, 2022 snapshot of state grant contracts active in fiscal year 2023. *See Transparency MN - Contracts and Grants*, MINN. MGMT. & BUDGET, <https://mn.gov/mmb/transparency-mn>.

These four agencies represent a large majority of state grants to nonprofits, though additional grants are made by other branches of state government, including the Arts Board, Housing Finance Agency, Supreme Court and departments of Agriculture, Commerce, Corrections, Public Safety, Revenue, and Transportation.

B. Sources of Grantmaking Authority

Underlying the state grantmaking process is a complex structure of legal authorities creating the agencies responsible for administration and the grant funds themselves. Agencies have diverse origins, many undergoing numerous name changes and restructurings both prior to and after being recognized as state departments as the system grows. Minnesota state agencies are authorized by the legislature through statute and are administered by the executive branch through commissioners appointed by the Governor and confirmed by the legislature.⁷

The state legislature plays a controlling role by appropriating money for grants and laying the groundwork for their implementation in statute. Both federal grants authorized by congress and state grants authorized by the Minnesota legislature contribute to funding key services and supports delivered by nonprofits on behalf of the state.⁸ In Minnesota, agencies may oversee federal aid applications and control payments to nonprofit partners, channeling federal funds into local organizations in addition to administering state grants.⁹

The State recommends that agencies use a competitive process to select grant recipients,¹⁰ but ultimately each agency's selection process stands on its own, requiring different

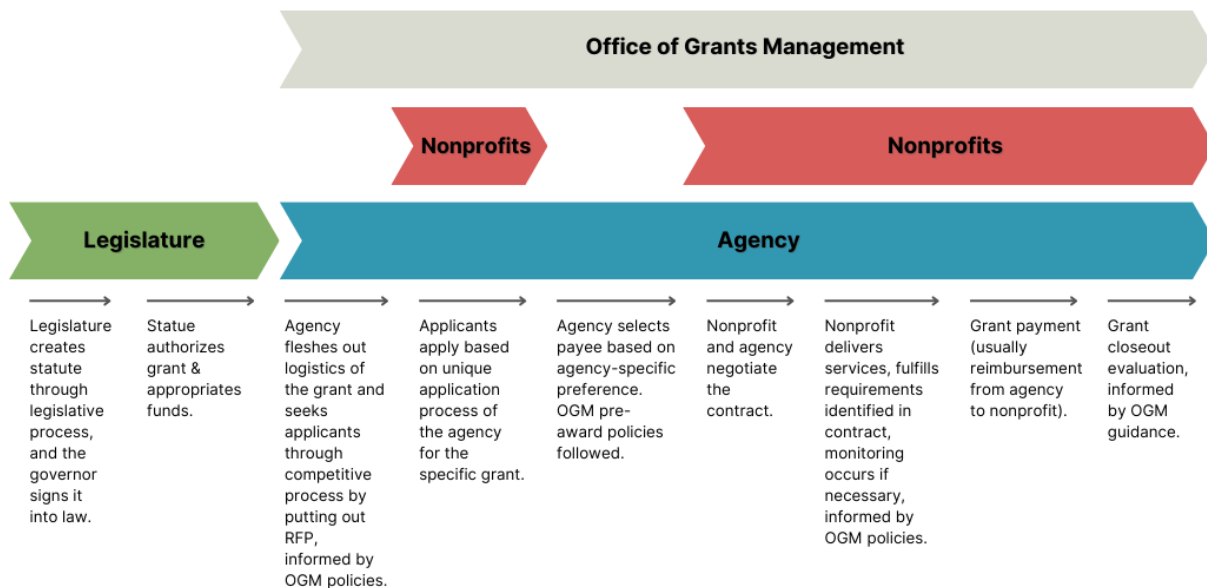
⁷ MINN. STAT. § 15.01 (2021).

⁸ *See generally Where States Get Their Money: FY 2020*, PEW (Feb. 24, 2022), <https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2022/where-states-get-their-money-fy-2020> (explaining that 31% of Minnesota's state revenue is from federal funds).

⁹ *See* MINN. STAT. § 16B.98 subdiv. 6 (2021).

¹⁰ *See Evaluation Report: State Grants to Nonprofit Organizations*, OFF. OF THE LEGIS. AUDITOR 42 (Jan. 2007) [hereinafter *2007 OLA Evaluation Report*], <https://www.auditor.leg.state.mn.us/ped/pedrep/grants.pdf>; *see also Policy 08-07: Policy on Single and Sole Source Grants*, MINN. DEP'T OF ADMIN., OFF. OF GRANTS MGMT. 1 (June 18, 2012) [hereinafter *OLA Policy 08-07*], https://mn.gov/admin/assets/grants_policy2012_08-07_tcm36-207122.pdf (recognizing the recommendation to award grants competitively). This contrasts with the historic practice of identifying grantees in the legislation creating the grant (also referred to as "pass through" or "earmarked" grants). *See Special Review: Minnesota Grants Administration*, OFF. OF THE LEGIS. AUDITOR 3 (Jan. 2002) [hereinafter *2002 OLA*

application content for parties seeking grants. The Office of Grants Management (OGM) also plays a role in this scheme with the goal of “standardizing, streamlining, and improving” grantmaking practices.¹¹ They have issued thirteen policies intended to achieve this goal of standardizing parts of the state’s grantmaking system, with policies addressing topics such as conflict of interest disclosures, rating criteria for competitive grant review, and grant payment methods.¹² However, a large part of grantmaking practices that impact nonprofit applicants remains non-standardized across state agencies, making it difficult to capture the nuances of the grantmaking process. The general scheme is summarized in the flow chart below, from funding authorization to grant closeout and evaluation:



The legislature, agencies (as part of the executive branch), and nonprofits each have distinct vantage points on this process and tend to focus on their own perspective and needs. While the state legislature has a governing role over agency creation, authority, and grant making purposes and processes, it is primarily involved at the front-end of grant creation through appropriations. Nonprofits, though very engaged at the application and award stage, are often unaware of the earlier shaping role of the legislature, which turns into language in the Request for Proposals (RFP). Agencies engaged at the center have limited input into the legislative mandates they administer and may not be well situated to support nonprofits through this complex process.

Special Review], <https://www.auditor.leg.state.mn.us/fad/pdf/fad0206.pdf> (“Some officials see this kind of transaction as a “pass through” appropriation to the organization that is named in law.”).

¹¹ *About the Office of Grants Management*, MINN. DEP’T. OF ADMIN. [hereinafter *About the OGM*], <https://mn.gov/admin/government/grants/about> (last visited Aug. 30, 2022).

¹² *Id.*

C. Developments in the Grantmaking Process

Over the past two decades, the system of grants management in Minnesota has undergone distinct cycles of analysis, adaptation, and reform. In 2002, the Minnesota Council of Nonprofits (MCN) partnered with community stakeholders to survey three hundred nonprofit organizations regarding their experiences and concerns within the Minnesota state grantmaking system.¹³ The survey found that forty-one percent of the responding organizations did not receive state funding and seventy-seven percent of those organizations had never tried to secure state funding.¹⁴ The most common barriers organizations faced in attempting to access state funding included the overall complexity of the system and grant application process, instability of funding, and lack of information about the grant process and funding opportunities.¹⁵

That same year, the Office of the Legislative Auditor (OLA) published a special report reviewing the nearly \$550 million granted to quasi and non-governmental organizations (including nonprofit organizations) in 2000 and 2001.¹⁶ This report addressed the overall effectiveness of the state system for managing grants as well as whether state agencies used appropriate methods to award/monitor grants and complied with applicable legal requirements when expending grant funds.¹⁷

The OLA's report identified inadequacies in the system from the beginning to the end of the grant lifecycle. The OLA found that state agencies struggled to communicate clearly in the grant selection process,¹⁸ lacked consistency in grant monitoring,¹⁹ and failed to consistently comply with legal requirements when paying out grants.²⁰ The report recommended that a set of general guidelines and requirements be established to govern the grants process,²¹ more sufficient monitoring and auditing practices be adopted,²² and more thoughtful consultation be conducted between state agencies and legislators when introducing new grant legislation.²³

¹³ Nicolette Gullickson, Wendy Jones, Lilian Sand & Jiapeng Yan, *Equity in Minnesota State Grantmaking*, MINN. COUNCIL OF NONPROFITS 4 (May 2021), https://conservancy.umn.edu/bitstream/handle/11299/221980/Equity%20in%20MN%20Grantmaking_capstone.pdf.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *2002 OLA Special Review*, *supra* note 10, at 3.

¹⁷ *Id.* at 1.

¹⁸ *Id.* at 9.

¹⁹ *Id.* at 19.

²⁰ *Id.*

²¹ *Id.* at 9.

²² *Id.* at 19.

²³ *Id.* at 29.

In 2007, amid national reports of well-known nonprofits misusing funds²⁴ and the state's continued efforts to formulate grants policies,²⁵ the OLA produced a follow-up report evaluating state grants to nonprofit organizations.²⁶ The report concluded that the grants system was “fragmented and inconsistent” and did not provide for “adequate accountability” and oversight of nonprofits due to a lack of overarching state policies as well as varying and insufficient agency practices.²⁷ The report determined that oversight of grantees was particularly weak when the Legislature named recipients in law, and thus suggested a competitive grants process should always be used.²⁸ It also recommended the creation of a Grants Management Office with the authority to require agencies to follow best practices, audit grants, and ensure that grant funds were being used as intended.²⁹

The Office of Grants Management was established later in 2007, as a small division within the Department of Administration.³⁰ The mission of the OGM is to “standardize, streamline and improve state grant-making practices, as well as to increase public information about state grant opportunities.”³¹ Its main roles, as laid out in Minnesota Statute, are to create and administer a state grants policy framework, be a central point of contact regarding grant policies, provide training and technical assistance to the legislative and executive branches regarding the impact of the framework, and maintain a current listing of available state grants among other tasks.³²

In delegating power to and fashioning the roles of the OGM, state legislation was written broadly to build a state grants system with a coordinating and support duty for the OGM and continued design, management, and implementation responsibilities for state agencies.³³ Through its coordinating role, the OGM brings state agency staff together for information sessions and technical assistance around best practices. The OGM does not have enforcement powers and does not monitor the grants made by state agencies. However, state statute does grant the OGM the power to “create general grants management policies and procedures that are

²⁴ See generally Stephanie Strom, *United Way Says Ex-Leader Took Assets*, N.Y. TIMES (Apr. 14, 2006), <https://www.nytimes.com/2006/04/14/nyregion/united-way-says-exleader-took-assets.html> (detailing misuse of funds at United Way).

²⁵ See *Annual Report to the Governor*, STATE OF MINNESOTA'S DRIVE TO EXCELLENCE 19 (Jan. 2007), <https://www.lrl.mn.gov/docs/2007/other/070018.pdf> (listing “[c]reating general grants management policies and procedures” as a goal for the Drive to Excellence initiative).

²⁶ See *2007 OLA Evaluation Report*, *supra* note 10, at 1–2.

²⁷ *Id.* at 27–37.

²⁸ *Id.* at 37–38, 42.

²⁹ *Id.* at 39–41.

³⁰ *About the OGM*, *supra* note 11.

³¹ *Id.*

³² MINN. STAT. § 16B.97 subdiv. 4(a)–(b) (2021).

³³ See *About the OGM*, *supra* note 11 (referencing a downloadable tip sheet that details the centralized and decentralized responsibilities within the state grants system).

applicable to all executive agencies.”³⁴ If a transfer of funds from a state agency to a community organization meets the statutory definition of a grant agreement,³⁵ then the granting state agency is required to comply with the policies developed by the OGM. Within its centralized authority, the OGM established thirteen policies that govern state agency grantmaking throughout the grants cycle.³⁶

The OGM’s thirteen policies follow the general lifecycle of a grant through three stages:

- Pre-award
 - 08-01 Conflict of Interest
 - 08-02 Competitive Grants Review
 - 08-03 Notice
 - 08-04 Grant Contract Agreements
 - 08-06 Pre-award financial review
 - 08-07 Single/sole source
- Active Grant
 - 08-08 Payment
 - 08-09 Monitoring
 - 08-10 Reporting
 - 08-11 Legislatively-named
 - 08-12 Amendments
 - 08-05 Fraud and Waste Reporting
- Post-Award
 - 08-13 Grant Closeout

Each policy formulated by the OGM sets out minimum requirements for the state agencies, but otherwise provides broad, decentralized agency discretion within policy implementation. Additionally, state statute gives agencies the general executive authority to administer and monitor grants.³⁷ State agencies also are responsible for determining which of its appropriations meet the definition of a grant and ensuring that all appropriations meet specific requirements imposed by the funding source, including for federal funds.³⁸

³⁴ MINN. STAT. § 16B.97 subdiv. 4(a)(1) (2021).

³⁵ See generally MINN. STAT. § 16B.97 subdiv. 1(a)–(b) (2021) (defining grant agreements).

³⁶ *Grants Management Policies, Statutes, and Forms*, MINN. DEP’T. ADMIN., <https://mn.gov/admin/government/grants/policies-statutes-form> (last visited Sept. 1, 2022) (listing all 13 of the current policies).

³⁷ MINN. STAT. § 16B.98 subdiv. 6 (2021).

³⁸ *About the OGM*, *supra* note 11 (referencing a downloadable tip sheet that details the centralized and decentralized responsibilities within the state grants system).

Since the establishment of the OGM and the policy framework, state government has continued to refine the state’s grantmaking system, particularly addressing transparency and diversity within the grants system. The state established the MN Grants website to provide information about available state agency grants and other resources for potential grant seekers.³⁹ The state also created MN Open Checkbook, an online database that makes information about grants and contracts awarded by state agencies available to the public.⁴⁰ Furthermore, as of January 2018,⁴¹ the OGM has built diversity initiatives into the policy framework. These initiatives are intended to make grant funding accessible to a broader array of nonprofits and communities through a variety of strategies, including: writing definitions of “diversity in grantmaking,” “diverse populations,” and “inclusion in grantmaking” into the policies;⁴² requiring state agency competitive RFPs to address equity, diversity, and inclusion in competitive grant process and procedures;⁴³ urging state agencies to expand notice and community outreach methods when issuing RFPs to reach a more diverse group of potential grantees;⁴⁴ adding that grant application review criteria and scoring systems must include how the proposed work would serve diverse populations;⁴⁵ and encouraging grantee inclusion in the

³⁹ See *MN Grants*, MINN. DEP’T OF ADMIN., OFF. OF GRANTS MGMT., <https://mn.gov/grants> (last visited Aug. 31, 2022).

⁴⁰ See *Transparency MN - Contracts and Grants*, MINN. MGMT. & BUDGET, <https://mn.gov/mmb/transparency-mn> (last visited Nov. 30, 2022).

⁴¹ See *FY18 Diversity and Inclusion in State Grant Policy Revisions Change Crosswalk*, OFF. OF GRANTS MGMT. (Sept. 2017), <https://mn.gov/admin/government/grants/policies-statutes-forms> (outlining the policy changes that were made to incorporate diversity and inclusion).

⁴² See, e.g., *Policy 08-03: Policy on Writing and Publicizing Grants Notices and Requests for Proposal*, MINN. DEP’T OF ADMIN., OFF. OF GRANTS MGMT. 2 (2022),

https://mn.gov/admin/assets/08-03%20grants%20policy%20revision%20September%202017_tcm36-312048.pdf (definitions).

⁴³ See *id.* at 3. (“Essential elements of a notice of a grant opportunity or RFP include . . . the grant program’s diversity and inclusion needs including how the grant program serves diverse populations . . .”).

⁴⁴ See *id.* at 1. (“Agencies should pursue additional methods to reach potential applicants that may include: targeting communities and parts of the state that have not historically participated in the grant application process, culturally-specific and community-based organizations . . .”).

⁴⁵ See *Policy 08-02: Policy on Rating Criteria for Competitive Grant Review*, MINN. DEP’T OF ADMIN., OFF. OF GRANTS MGMT. 1 (2022), https://mn.gov/admin/assets/08-02%20Grants%20Policy%20Revision%20September%202017%20final_tcm36-312046.pdf (“Competitive grant review criteria and standardized scoring systems must include and identify how a state agency’s grant process will implement diversity in grant-making.”).

grant application review process.⁴⁶ However, these policies have thus far been unsuccessful in increasing small and/or BIPOC-led/serving nonprofits’ access to state funding.⁴⁷

The OLA is currently revisiting its analysis of the grants system by undertaking three evaluation reports. The first report, which was published in August 2022, was an audit of homelessness and housing support grants from the Department of Human Services (DHS).⁴⁸ The report concluded—based on nine specific findings—that DHS “did not have adequate internal controls to ensure compliance with applicable legal [grants management] requirements.”⁴⁹

The other two OLA reports are due for release in early 2023.⁵⁰ The first will examine whether the OGM has established comprehensive policies for managing grants to nonprofits, and state agency compliance with established grants policies.⁵¹ The second report will analyze state agency programs (including grant awards) that support BIPOC communities throughout Minnesota.⁵² This study will look at the amount of money going to these programs and whether resources are being used as intended.⁵³ Overall, the findings from these reports will further inform areas for improvement and continue conversations about how Minnesota can refine its grantmaking processes.

D. Weaknesses in the Grantmaking System: A Feeding Our Future Case Study

The significance and complexity of Minnesota’s grants system became front page news when the Minnesota Department of Education (MDE) suspended its funding of the nonprofit Feeding Our Future and two other child nutrition sponsoring organizations following high profile

⁴⁶ See *id.* at 2 (stating “[i]t is the policy of the State of Minnesota to ensure . . . inclusion in grant-making,” which is defined as, “[a] process that identifies how the grantee community is included in the grant review process”).

⁴⁷ See *infra* Part III.A (discussing a 2021 study that found that the grant system continues to have a negative impact on BIPOC organizations).

⁴⁸ See *Department of Human Services: Homelessness and Housing Support Grants - Performance Audit*, OFF. OF THE LEGIS. AUDITOR (Aug. 2022) [hereinafter *2022 OLA Financial Audit of DHS*], <https://www.auditor.leg.state.mn.us/fad/pdf/fad2205.pdf>.

⁴⁹ *Id.* at 3.

⁵⁰ See *Oversight of State-Funded Grants to Nonprofit Organizations: Project Description*, OFF. OF THE LEGIS. AUDITOR (July 2022) [hereinafter *2022 OLA Oversight of Grants*], <https://www.auditor.leg.state.mn.us/announce/gno22.pdf>; *Programs Supporting Minnesotans Who Are Black, Indigenous, or People of Color: Project Description*, OFF. OF THE LEGIS. AUDITOR (June 2022) [hereinafter *2022 OLA Supporting Minnesotans*], <https://www.auditor.leg.state.mn.us/announce/psm22.pdf>.

⁵¹ See *2022 OLA Oversight of Grants*, *supra* note 50.

⁵² See *2022 OLA Supporting Minnesotans*, *supra* note 50.

⁵³ *Id.*

FBI raids and fraud charges.⁵⁴ The crisis response by MDE, the legislature, and the Office of the Attorney General highlighted weaknesses in several processes related to grantmaking and exposed areas where regulation and enforcement could change the way the state and nonprofit partners do their work.⁵⁵

The state of Minnesota has had constitutional authority over schools and E-12 programs since statehood, with the Department of Education created in 1919 to administer public education.⁵⁶ Statutory language authorizing MDE and the Commissioner of Education outlines the duties and responsibilities of the department and includes financial tools for the department to use to support schools.⁵⁷ The state legislature over the years has modified and grown statutory requirements for the department, amending statutory language as recently as the 2021 special session.⁵⁸ Today, MDE employs 400 staff, serving 850,000 students, over 52,000 teachers, and 1,835 public schools while accounting for 38.5% of the state budget.⁵⁹ MDE plays a key role in distributing federal funding, often working to approve applications for federal grants and distributing funds.

MDE's administration of federal funding was brought into question in 2020 over a number of US Department of Agriculture grants aimed at feeding students over summers when they weren't receiving school meals.⁶⁰ The Summer Food Service Program (SFSP) authorized by Congress in 1975 to provide meals to low-income communities⁶¹ fed 2.7 million children in the summer of 2019, dispersing \$481 million in funds across the US.⁶² One of the nonprofits that

⁵⁴ Stephen Montemayor & Kelly Smith, *Feds Investigate Nonprofit Feeding Our Future for Alleged Fraud*, STAR TRIB. (Jan. 20, 2022), <https://www.startribune.com/fbi-investigates-nonprofit-feeding-our-future-for-alleged-fraud-millions-misused/600137966>.

⁵⁵ See generally *id.* (describing MDE's response to the situation).

⁵⁶ Annette Atkins, *Learning in the Land of Lakes: Minnesota's Education History*, MNOPEdia (July 30, 2021) <https://www.mnopedia.org/learning-land-lakes-minnesota-s-education-history>.

⁵⁷ See MINN. STAT. §§ 127A.01-127A.852 (2021).

⁵⁸ See generally *Minnesota Statutes Affected by Session Laws: Statute Actions During the 2021 Regular and 1st Special Session*, OFF. OF THE REVISOR OF STATUTES, https://www.revisor.mn.gov/statutes/table2?search_term=127A&year=2021 (last visited Aug. 10, 2022) (listing 2021 amendments impacting MDE).

⁵⁹ *Careers at MDE*, MINN. DEP'T OF EDUC., <https://education.mn.gov/mde/about/jobs> (last visited Aug. 10, 2022); *General Fund Pie Chart: Where the General Fund Dollars Come From?*, MINN. DEP'T OF MGMT. AND BUDGET (July 14, 2022), <https://mn.gov/mmb-stat/documents/budget/operating-budget/enacted/2022/eos22-fba-pie-charts.pdf>.

⁶⁰ See Montemayor & Smith, *supra* note 54.

⁶¹ *Summer Food Service Program History*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <https://www.fns.usda.gov/sfsp/program-history> (last visited Aug. 10, 2022).

⁶² Joey Peters, *Mekfira Hussein's Meal Programs Have Been Feeding 5,000 Children a Day in the Twin Cities. A State Effort to Discipline an Intermediary Nonprofit Forced Her to Suspend*

received federal SFSP funds in Minnesota was the nonprofit organization Feeding Our Future. MDE authorized grants to Feeding Our Future which then functioned as an intermediary to distribute funding to dozens of daycares, afterschool centers, restaurants, and other businesses.⁶³ However, the relationship between Feeding Our Future and MDE was fraught with administrative disputes and litigation, beginning in November of 2020 when Feeding our Future alleged that MDH had failed to process dozens of applications for new distribution sites and had changed its process to add “administrative and procedural hurdles.”⁶⁴ The department responded that Feeding Our Future had failed to properly audit their program and committed numerous accounting errors and had multiple complaints filed against the organization.⁶⁵ In total, Feeding Our Future was alleged to have facilitated the misappropriation of more than 40 million dollars of funds distributed by MDE stemming from federal grant programs.⁶⁶

In July of 2021, Ramsey County District Judge John Guthmann ruled in favor of Feeding Our Future, finding that the department failed to quickly process applications and wrongfully withheld money, resulting in MDE having to transfer \$47,000 to Feeding our Future.⁶⁷ However, the conflict between Feeding Our Future and the department continued. In 2021, MDE alerted the FBI about their suspicions, resulting in an FBI raid that exposed a “massive fraud scheme.”⁶⁸ Warrants for the raid alleged that millions of dollars meant to provide meals to low income students were instead funneled to two employees including Feeding Our Future’s executive director.⁶⁹ After months of legal battles with MDE and an FBI investigation resulting in the 2022

Operations, SAHAN J. (May 13, 2021), <https://sahanjournal.com/food/minnesota-feeding-our-future-food-programs>.

⁶³ *Id.*

⁶⁴ Deanna Weniger, *Nonprofit Wins Small Battle in Lawsuit with the MN Dept. of Education Over Funding for Meals for Low-Income Children*, PIONEER PRESS (June 30, 2021), <https://www.twincities.com/2021/06/30/non-profit-wins-small-battle-in-year-long-lawsuit-against-the-mn-dept-of-ed-over-funding-for-meals-for-low-income-children>.

⁶⁵ *Id.*

⁶⁶ Jeffrey Meitrodt, *Feeding Our Future Sought Minneapolis Aid with the State*, STAR TRIB. (Mar. 29, 2022), <https://www.startribune.com/feeding-our-future-sought-minneapolis-help-with-the-state/600160494>.

⁶⁷ Josh Verges, *Feeding Our Future Drops Lawsuit Against State After FBI Alleges ‘Massive Fraud’*, PIONEER PRESS (Jan. 28, 2022), <https://www.twincities.com/2022/01/28/feeding-our-future-drops-lawsuit-against-state-after-fbi-alleges-massive-fraud>; see also Order Denying Motion for Contempt, *Feeding Our Future v. Minnesota Department of Education*, No. 62-CV-20-5492 (D. Minn. Nov. 20, 2020).

⁶⁸ David A. Fahrenthold, *F.B.I. Sees ‘Massive Fraud’ in Groups’ Food Programs for Needy Children*, N.Y. TIMES (March 8, 2022), <https://www.nytimes.com/2022/03/08/us/politics/food-aid-nonprofits-fraud-investigation.html>.

⁶⁹ See generally Joey Peters, *Confused About the Alleged Fraud at Feeding Our Future?*, SAHAN J. (Jan. 21, 2022), <https://sahanjournal.com/news/feeding-our-future-fraud-allegations-minnesota-search-warrants-investigation-faq> (explaining the money was later used on expenditures including purchases of private cars and real estate “as far away as Kenya”).

raid, Feeding Our Future filed for dissolution with the Office of the Attorney General and the District Court.⁷⁰

In the aftermath, Minnesota agencies, legislators and nonprofit leaders and fundraisers are searching for answers about what went wrong in the grantmaking process, and what needs to be done to prevent its recurrence. The legislature attempted to address this in the 2022 session, proposing the addition of intensive reporting requirements, including requiring background checks for all nonprofit board members and for nonprofits to be in existence for two years before becoming eligible for state grants.⁷¹ However, nonprofit stakeholders expressed extreme concern. They argued that the bill would have created duplicative and overly burdensome requirements that would disadvantage new (and often BIPOC) organizations without addressing the root issues at the core of state grantmaking that led to the controversy surrounding Feeding Our Future.⁷² Ultimately, after further MCN-led advocacy efforts in opposition, the proposed legislation was defeated.⁷³

To the extent that Feeding Our Future and some related organizations were incorporated under Minnesota's Nonprofit Corporation Act⁷⁴ and approved by the IRS as exempt charitable organizations, these groups operated essentially as shell nonprofit organizations, formed for the single purpose of qualifying for federal nutrition funds, without other sources of revenue showing community support, such as charitable contributions or foundation grants, they lacked functioning boards to hold them accountable, lacked required financial systems and controls, and engaged in sporadic and minimal public accountability to the IRS and Minnesota AG office. Minnesota benefits from using nonprofit organizations to administer state grants and has established accountability systems to monitor the use and reporting of funds to make certain they are used for proper purposes, but several parts of that accountability system broke down in these transactions.

⁷⁰ See generally *In re* The Voluntary Dissolution of Feeding Our Future, No. 19HA-CV-22-657 (D. Minn. Mar. 3, 2022).

⁷¹ *Duplicative and Unnecessary Government Oversight of Nonprofits: Two Legislative Proposals*, MINN. COUNCIL OF NONPROFITS (June 30, 2022) [hereinafter *Duplicative Oversight of Nonprofits*], <https://www.minnesotanonprofits.org/about-mcn/news-detail/2022/06/30/duplicative-and-unnecessary-government-oversight-of-nonprofits-two-legislative-proposals>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See generally MINN. STAT. § 317A (1989).

III. Past State and National Reviews of Grants Systems & Recommendations

A. Minnesota Review

In 2021 amid anecdotal evidence that BIPOC and rural nonprofits were underrepresented in state grant application pools, recipient lists, and in the amount of money received within successful grants, graduate research conducted by students in the University of Minnesota Humphrey School of Public Affairs, in conjunction with MCN, investigated the potential inequities and barriers underlying the grants system.⁷⁵ In its initial study, the numbers and stories painted the picture of a complex grants system having negative impacts on BIPOC organizations.

The Humphrey students' quantitative analysis found that BIPOC organizations that received grants from one of four specific state agencies between 2018 and 2020 were generally underrepresented in grant recipient pools when compared with the state's overall BIPOC population percentage.⁷⁶ The Humphrey students also determined that only one of the four studied state agencies granted larger average grants to BIPOC organizations⁷⁷ than non-BIPOC organizations.⁷⁸ Interviews and surveys with state agencies and BIPOC-nonprofits overwhelmingly summarized a burdensome grants system that tests the capacity of small, BIPOC organizations and may favor incumbent and well-resourced organizations.⁷⁹ The complexity of the system is limiting funding of BIPOC organizations.

To counteract the apparent limiting effect of the system, the report recommended that state agencies be more proactive and transparent with nonprofit grant seekers by providing notes from grant proposal review sessions, a checklist of negotiable and mandatory elements to the grant process, and specific feedback for nonprofits who submitted unsuccessful grant proposals.⁸⁰ It also recommended that agencies simplify applications, better utilize community members in the grant review processes, and set more equitable reporting requirements.⁸¹ Finally, the report suggested that MCN work to reduce capacity issues reported by some BIPOC

⁷⁵ Gullickson et al., *supra* note 13, at 3.

⁷⁶ *Id.* at 13. The number of BIPOC organizations who received grants varied from 20.9% to 13.4% of total grantees (for DEED and DHS respectively), while BIPOC communities make up 20.6 % of Minnesota's total population. *Id.*

⁷⁷ *See generally supra* note 1 (Explaining the definition of a "BIPOC organization" takes into consideration who is served by the organization, who serves in managing roles, who serves in governing roles, etc.).

⁷⁸ Gullickson et al., *supra* note 13, at 14. The only state agency for which the average grant to BIPOC organizations was higher than non-BIPOC organizations was MDH, and only slightly. *Id.*

⁷⁹ *Id.* at 17–24.

⁸⁰ *Id.* at 27.

⁸¹ *Id.*

organizations by providing grants, mentorship programs, and training opportunities that nonprofits could utilize to improve their grant writing skills.⁸²

B. Other State Reviews

The barriers to equitable and effective grantmaking in Minnesota identified by the Humphrey study have also been seen in other states.⁸³ State-led reviews of nonprofit contracting in California, Washington, and New Jersey have found that certain systemic factors create inequitable challenges for nonprofits.⁸⁴ Each report emphasized the importance of nonprofits in delivering key services and support to the state, and the need for reform to better utilize this partnership to its fullest potential.

All three states identified the following barriers:

- Complex and duplicative reporting requirements are unduly burdensome on nonprofits.
- That nonprofits are forced to “front” expenses and receive reimbursement after delivery of services.
- Government funding often does not cover administrative costs, leaving nonprofits to subsidize payment of their competitive and qualified staff.

At least two of the states identified the following barriers:

- Lack of information sharing and lack of coordination between departments/agencies creates confusion, and complexity. (Wash., N.J.).
- Their state fails to comply with new Office of Management and Budget recommendations to cover indirect costs of fulfilling a contract (Cal. & N.J.).
- Delayed payments create undue hardship for nonprofits delivering services who rely on reimbursements. (Cal. & N.J.).

These barriers were introduced by one state:

- Lack of flexibility in contract modifications during emergencies made it difficult to adapt to changing community needs. (Cal.)

⁸² *Id.* at 28.

⁸³ *See generally id.* at 12–24 (takeaways from Humphrey study).

⁸⁴ Jan Masaoka, *Government Contracting Letter June*, CAL. ASS’N OF NONPROFITS (June 2022), https://docs.google.com/document/d/1TK8o7mHAojeTbsVFyBVc52k_ZnFKM2sVa4cZIMy14nU/edit; *The Nonprofit Experience with Government Contracting*, NONPROFIT ASS’N OF WASH. (Mar. 2022), <https://nonprofitwa.org/download/2022-washington-nonprofits-government-contracting-report/?wpdmdl=10850&refresh=62c60071bc90d1657143409>; Linda M. Czipo, *Enhancing Programs and Services For New Jerseyans By Improving Government/Non-Profit Contracting* (Sept. 10, 2015), https://njnonprofits.org/wp-content/uploads/2021/10/RedTape_09102015_FINAL.pdf.

- Delayed renewal of contracts or lack of multi-year contracts led to nonprofits financially struggling between renewal periods. (Cal.)

Both California and Washington emphasized that BIPOC nonprofits are disproportionately impacted by these barriers.⁸⁵ These reports viewed these barriers as a fundamental detriment to the benefits of nonprofit and state partnership and suggested various ideas for state level reform.

C. National Studies

Nationwide studies from the Urban Institute confirm these findings and the longevity of these barriers. A 2010 national study focused on human service nonprofits identified that a major issue was complexity and time required for reporting.⁸⁶ A 2013 survey found that nearly half of nonprofit respondents reported limits on the amount of funding that could be used for program and administrative costs.⁸⁷ A quarter reported they had to share the cost of the contract and half had a matching requirement.⁸⁸

Agencies also face capacity barriers of their own. State governments often face shifting fiscal challenges, changing political dynamics, and are placed within a complex web of external state and federal requirements.⁸⁹ Thus, agencies may not have the flexibility or capacity to enact changes internally even if problems are identified.

⁸⁵ Masaoka, *supra* note 84, at 4; *The Nonprofit Experience with Government Contracting*, *supra* note 84, at 1.

⁸⁶ See Elizabeth T. Boris, Erwin de Leon, Katie L. Roeger & Milena Nikolova, *Human Service Nonprofits and Government Collaboration: Findings from the 2010 National Survey of Nonprofit Government Contracting on Grants*, URB. INST. 13 (Oct. 2010), <https://www.urban.org/sites/default/files/publication/29221/412228-Human-Service-Nonprofits-and-Government-Collaboration-Findings-from-the-National-Survey-of-Nonprofit-Government-Contracting-and-Grants.PDF>.

⁸⁷ Sarah L. Pettijohn & Elizabeth T. Boris with Carol J. De Vita & Saunji D. Fyffe, *Nonprofit Government Contracts and Grants: Findings from the 2013 National Survey*, URB. INST. 19 (Dec. 2013), <https://www.urban.org/sites/default/files/publication/24231/412962-Nonprofit-Government-Contracts-and-Grants-Findings-from-the-National-Survey.PDF>.

⁸⁸ *Id.*

⁸⁹ Saunji D. Fyffe, *Nonprofit-Government Contracts and Grants: The State Agency Perspective*, URB. INST. 4–8 (Oct. 2015), <https://www.urban.org/sites/default/files/publication/72526/2000496-Nonprofit-Government-Contracts-and-Grants-The-State-Agency-Perspective.pdf>.

IV. Issue/Analysis

A deeper dive into the 13-policy framework of the grants system that the OGM has laid out since its establishment confirms that the system is still a complex, fragmented, burdensome, and inconsistent system due to its reliance on agency-level implementation. This conclusion can be seen by looking at language within a few specific OGM policies and the impact policy implementation can have on agencies and nonprofits alike.

First, grants policy requires that state agencies use a written grant contract or corresponding grant award notification for all grants.⁹⁰ This policy further requires each contract or award notification to have certain common elements, including: liability clauses, work timelines, expected duties, and information on payments.⁹¹ Beyond the listed requirements, state agencies have control over whether to use a contract or award notification and what is included in their documentation of choice. Past research shows that some BIPOC nonprofits find state funding to be restrictive and may lead these organizations to forgo pursuing the state as a worthwhile funding source.⁹² Inclusion of agency-specific contract terms regarding reporting, payment, or duties could ultimately complicate and impact whether certain nonprofits pursue or accept grants.⁹³ Extensive requirements in contracts may also further test agency capacity to effectively monitor, administer, and perform outreach for current and future grants.⁹⁴ Though varying based on the agency, these contracts often are dozens of pages including multiple provisions, hyper-technical language, complex exhibits, and amendment documents.⁹⁵

Second, grants policy requires that grantees submit at least one annual grant report but leaves the responsibility of determining the report timelines and requirements to each agency.⁹⁶ National and state-level research has found that grant reporting requirements can already be

⁹⁰ *Policy 08-04: Policy on Use of Grant Contract Agreements and Grant Award Notification*, MINN. DEP'T OF ADMIN., OFF. OF GRANTS MGMT. 1 (Nov. 24, 2020), https://mn.gov/admin/assets/08-04%20Policy%20on%20Grant%20Contract%20Agreement%20and%20Grant%20Award%20Notice%20FY21_tcm36-438963.pdf.

⁹¹ *Id.*

⁹² Gullickson et al., *supra* note 13, at 21.

⁹³ *See id.*

⁹⁴ *See id.* at 18.

⁹⁵ These observations are based on contracts requested and received from the Minnesota Department of Health and the Minnesota Department of Human Services under the Minnesota Government Data Practices Act. Additional requests were also made to the Minnesota Department of Employment and Economic Development as well as the Minnesota Department of Education. However, at the time of publishing, these contracts had not been received.

⁹⁶ *Policy 08-09: Policy on Grant Progress Reports*, MINN. DEP'T OF ADMIN., OFF. OF GRANTS MGMT. 1 (Dec. 8, 2008).

burdensome and/or fail to capture the full story of each nonprofits work.⁹⁷ This agency-determined reporting structure can thus lead to nonprofits having their capacity tested trying to adhere to the reporting requirements and dissuade others who perceive daunting reporting burdens from even applying. The structure could also end up further testing agency capacity when it comes time to review the reports and monitor each nonprofit.⁹⁸

Third, reimbursement is recognized within policy as the preferred form of payment.⁹⁹ Advanced payments can only be made if the state agency is “confident that the grantee will be able to account for the grant funds and abide by the terms of the grant...based on their past performance as a grantee of and recent financial statements as required by OGM Polic[y].....”¹⁰⁰ Advanced payment also requires written justification from the proper authority within the agency.¹⁰¹ Preference for reimbursements is a noted barrier for smaller, less-resourced BIPOC nonprofits as paying program costs up front may require them to dip into other monetary accounts to the effect of their bottom-line.¹⁰²

While the state grants system contains an umbrella authority in the OGM that did not exist 15 years ago, the system’s reliance on agency discretion within policy implementation allows for a level of fragmented, inconsistent, and burdensome practices to continue within the system.¹⁰³ These practices can have the effect of adding complexity to the system and increasing the possibility of adverse outcomes for nonprofits (particularly BIPOC organizations) and agencies.¹⁰⁴ Without further additions of authority, restructuring, and/or guidance for agencies and nonprofits, both will continue to struggle to effectively navigate the grants system. Nevertheless, while the high-profile nature of the Feeding Our Future case further amplifies the call for change and accountability to the system, the full implications of the investigations are

⁹⁷ See Pettijohn et al., *supra* note 87, at 24–29 (summarizing the reasons nonprofits found applications and reporting requirements complex and time-consuming); Gullickson et al., *supra* note 13, at 21 (explaining that surveyed nonprofits found that grant applications were cumbersome, reporting requirements often did not measure actual impact, and state funding was too restrictive).

⁹⁸ See generally Gullickson et al., *supra* note 13, at 18 (finding that capacity issues already pose barriers within state agencies); 2022 OLA Financial Audit of DHS, *supra* note 48 (demonstrating the difficulty state agencies can have in completing all the monitoring, record keeping, and review tasks that are legally required).

⁹⁹ Policy 08-08: Policy on Grant Payments, MINN. DEP’T OF ADMIN., OFF. OF GRANTS MGMT. 1 (Apr. 12, 2021), https://mn.gov/admin/assets/08-08%20Policy%20on%20Grant%20Payments%20FY21%20_tcm36-438962.pdf.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See Gullickson et al., *supra* note 13, at 21; Masaoka, *supra* note 84, at 4; *The Nonprofit Experience with Government Contracting*, *supra* note 84, at 1.

¹⁰³ See generally 2007 OLA Evaluation Report, *supra* note 10, at 21, 27.

¹⁰⁴ See Masaoka, *supra* note 84, at 4; *The Nonprofit Experience with Government Contracting*, *supra* note 84, at 1.

still playing out, and potential over-reactive legislation that places uncoordinated administrative duties on nonprofits and agencies could burden each in ways that do not improve accountability or effectiveness of the grantmaking system.¹⁰⁵

V. Recommendations

A. Nonprofit Organizations

Minnesota's nonprofit sector serves as a key delivery mechanism to provide over \$1 billion a year in public services through grants from state agencies. These partnerships have proven to be both an effective and efficient implementation strategy for taxpayers and a key contributor to the stability and quality of Minnesota's nonprofit sector.

Imagine a world where nonprofit staff equipped with a deep knowledge of the work that needs to be done are consulted by the legislature and state agencies about how the law is written, what questions are on the application, how outreach is done, and the metrics by which success will be measured. Nonprofits have opportunities to be active participants in reviewing and improving the grants system and its administration.

Nonprofits have benefited over the years from thoughtful involvement in the legislative process, engaging in opportunities to improve services and supports before they are written into law. Open and honest communication with lawmakers and stakeholders on the front end of this process can help create statutory authorization that is realistic and beneficial for all parties involved. However, the interactions within the legislative process may be unfamiliar to community organizations. Thus, additional training and support may be required to build a common understanding of the legislative process that is necessary to effectively engage with lawmakers.

Nonprofits' legal ability to engage with lawmakers is often misunderstood. While charitable organizations are subject to expenditure limitations on lobbying activities, most nonprofit advocacy activities—like educating decision-makers, educating the public, organizing communities, and researching issues—are not limited by federal law.¹⁰⁶ In addition, nonprofit organizations are explicitly permitted to directly lobby lawmakers and organize others to lobby (grassroots lobbying), if they stay within limits outlined in federal law. Nonprofits have an important role to play in informing the effective use of state resources through bringing local

¹⁰⁵ See generally *Duplicative Oversight of Nonprofits*, *supra* note 71.

¹⁰⁶ The IRS definition of “lobbying” is narrow, requiring that the organization contact an elected official to influence specific legislation. *Lobbying*, IRS, <https://www.irs.gov/charities-non-profits/lobbying> (definition). Educating lawmakers without advocating for or against specific legislation is advocacy, not “lobbying.” See *id.*

knowledge and awareness of community needs to lawmakers, providing input on the structure of potential funding, and advising state agencies on effectiveness, and application and reporting priorities.

Nonprofits have many reasons to develop strategies to apply their community knowledge and experience to negotiate beneficial terms and conditions in grant contracts with state agencies. Contract language given to them by each agency is not set in stone and can be negotiated to better serve both parties interests. Nonprofits will likely need support in this process as contractual negotiation can be tedious, technical, and complex. Nonprofits with legal resources should contribute to this process and help create norms that allow nonprofits to be active participants in crafting contracts with agencies. Further, we recommend that nonprofit organizations:

- Designate a person (maybe the executive director) to monitor changes in law, public policy, and appropriations affecting the organization, its activity area, and the people it serves. Make this work a part of their job description and support it accordingly.
- Introduce their organization to local and state public officials in their service area to inform them of their role and contributions in the community, and what their community needs from government
- Join and participate in coalitions or associations in their activity area (arts, human services, early childhood education, etc.) to educate state agencies and legislators about their work, including influencing appropriation language that later establishes criteria for grant programs.
- Take an active role in identifying variable and potentially negotiable terms within the contract relationship and build organizational capacity to negotiate contractual language with state agencies.

B. State Agencies

Minnesota state agencies play a central managing role in the grantmaking system. Through standardized and improved practices, these agencies could increase accountability and reduce friction and wasted effort in the system. Because nonprofit organizations deliver a large portion of state-funded services, the agencies that contract with them should regard these entities as partners and essential customers and include them in the designing and planning of the grant process. This could occur either through legislative reform or through internal agency changes in practice. Many of these recommendations could also be proposed and implemented by enhancing the Department of Administration's role. We recommend that state agencies:

- Regularly review application and reporting requirements for utility and compliance. State agencies should aim to reduce unnecessary paperwork and data collection burdens—a

comparable policy goal to that of the Federal Paperwork Reduction Act, which recognized the problems caused by administrative accretion.¹⁰⁷ The Department of Administration could also administer burden reduction provisions and provide support on best practices.

- Adopt practices to provide substantive feedback to unsuccessful applicants for grants, allowing nonprofits to address concerns and improving overall transparency about competitive grantmaking.

VI. Next Steps

The scandal involving Feeding Our Future and the Minnesota Department of Education shone a spotlight on the size and complexity of the grantmaking system in Minnesota. The story, litigation, and changes needed are still playing out and will continue to change the ways we think about how grantmaking can be most effective. Minnesota has a rich history of nonprofit coordination and collaboration with government through grants, and an eye on the issues currently challenging the system.

Minnesota's 2023 legislative session will adopt a new state budget, setting the terms for new rounds of funding and state grantmaking across the state. It is also highly likely that grant system accountability will be high on the public agenda. Nonprofits should watch for legislation that would impact their ability to achieve their mission, and be prepared to connect with their elected officials to share concerns or advise on preferable courses of action.

Directions for Further Research

Minnesota's state grants system is a huge and growing resource undergoing major challenges and reforms, with several avenues where additional facts and analysis could improve the system.

An examination of the processes and content of requests for proposal and grant contracts from multiple state agencies would help compare variation, adaptation, and successful innovations in how each agency administers state grants policies. Particular interest could be paid to how agencies promote inclusion and support for BIPOC organizations in the grants process. Investigation of communication and materials would illuminate common and distinctive agency practices and the effects on potential and successful grantees. Such research could be a start toward identifying a potential list of promising practices and beneficial policy changes to advance efforts to develop a more efficient and equitable grants system.

¹⁰⁷ See generally *A Guide to the Paperwork Reduction Act*, DIGITAL.GOV, <https://pra.digital.gov/about> (last visited Sept. 2, 2022) (summarizing the Paperwork Reduction Act).

Additionally, surveys could be conducted with nonprofits and state agency leaders to better understand the process and negotiation (if any) of grants contracts. The 2021 MCN *Equity in Minnesota Grantmaking* report made it clear that many nonprofits find the grants process overly burdensome and that state agencies have the desire to promote more diverse grantmaking.¹⁰⁸ When it comes to grant contract agreements, what flexibility exists for nonprofits to negotiate grant terms? Are state agencies presenting take-it-or-leave-it, boilerplate contracts? To the extent negotiation is allowed, a broadly cast survey would help build a navigation guide to inform nonprofits what power they have at the contract stage of the grants process.

Further, a broader longitudinal study of state grants could be undertaken to explore further potential factors that may be limiting the grant opportunities available to new, smaller, and BIPOC organizations. One such factor to calculate is the percentage of grant recipients at various agencies who are incumbent grantees. Incumbent grantees are grantees that have received grant money from a specific state agency for multiple years. Large percentages of incumbent grantees limit the amount of grant money available to new, smaller, and BIPOC nonprofit organizations with limited resources.

Finally, competitive state grants could be compared and contrasted with state agency professional/technical service contracts regarding the role each plays in the state-funding structure and the decision making process used to allocate both sets of funds.¹⁰⁹ Specifically, the research would be set out to answer: what are the perceived advantages for state agencies and nonprofits to transfer and receive funds as a professional/technical and service contract instead of a competitive grant?

VII. Acknowledgements

The Minnesota Council of Nonprofits would like to express our appreciation to the University of Minnesota School of Law and the John W Mooty Foundation for support to make this project possible.

The authors would like to thank Lenny Jones and Nonoko Sato as well as Bruce and Tracy Mooty. Your expertise, passion, and generosity were critical to this project.

¹⁰⁸ See Gullickson et al., *supra* note 13, at 17–24.

¹⁰⁹ See generally MINN. STAT. § 16C.08 subdiv. 1 (2014) (defining “professional or technical services”).