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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: MAY 7 1999
OP:E:EO:T:2

Contact Person:

ID Number:

Telephone Number:

Employer Identification Number:

LEGEND: X =
y =

Dear Sir or Madam:

This is in reply to your letter of December 17, 1998, as supplemented by your letter of March 15, 1999, requesting advance approval of a grant-making program designed to strengthen leadership in the fields of urban and rural community development and affordable housing.

You have been recognized as exempt under section 501(c)(3) of the Code and are a private foundation within the meaning of section 509(a). You were established by X and have received substantial funding from X.

X operates in the secondary mortgage market. It does not originate loans but purchases loans from mortgage lenders. You were originally established by X to make grants to various organizations that are described in Section 501(c)(3) of the Code with an emphasis on those organizations involved in the field of housing. This new program is designed to recognize and reward professionals for their work in the areas of community development and affordable housing. It will seek to improve and cultivate their professional skills and to foster the development of creative solutions to housing issues.

Candidates for grants will be nominated through a process you have designed to identify a wide variety of qualified candidates. Nominations will come from a broad spectrum of organizations, both nonprofit and for-profit and individuals with experience and exposure to qualified candidates in the fields of affordable housing and community development. However, approximately y percent of the nominations will be made by representatives of X's local partnership offices, your field and regional offices, your employees, board members and former board members. Candidates will not be eligible to participate in this program if they are employees of or family members of employees of X or you or if they are family members of individual nominators or members of the program review committees or selection committee. You have established criteria to select grantees from amongst the nominees in an objective and nondiscriminatory manner. Final selection will be made by a 5 member committee. This committee will be comprised of the Chair of your Board of Directors or a designee; your President and CEO or a designee; and three individuals associated with national foundations, academia or other nonprofit organization who do not have any affiliation with either X or yourself.

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Re:

You have established procedures to continuously review the grant and the expenditures of each grantee. You have also indicated that where a grantee fails to follow through on their proposal you will refuse to make additional payments, request that funds be returned and resort to such other measures as may be economic and prudent. You will also maintain complete records regarding the selection process, expenditures, and reports regarding the program undertaken by the grantee.

You expect that the grant recipients will work with your staff to improve housing opportunities in the country. This may include designing a plan that may include affordable housing and community development issues, research, establishing academic and in-service studies, mentorship opportunities, internships and other activities designed to enhance the individual's skill and learning in the field. It is hoped that this program will permit exploration of new solutions to current affordable housing and community development issues. The program will also recognize individuals who are making significant contributions to community development and the field of affordable housing, increase leadership and profession skill in the area, create new solutions to housing problems and perhaps influence your long-term strategies in the area.

As previously stated you have requested advance approval of your procedures for administering this grant program pursuant to the requirements of section 53.4945-4(c) of the Foundation and Similar Excise Tax Regulations.

Section 501(c)(3) of the Code exempts from Federal income tax organizations organized and operated exclusively for charitable or educational purposes.

Section 509(a) of the Code provides that, unless specifically excepted, a domestic or foreign organization described in section 501(c)(3) is a private foundation and subject to the excise taxes of Chapter 42.

Section 4945(a) of the Code imposes an excise tax on each taxable expenditure made by a private foundation.

Section 4945(d)(3) of the Code provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or similar purposes by such individual, unless such grant satisfies the requirements of section 4945(g).

Section 4945(g)(3) of the Code provides that section 4945(d)(3) shall not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary, if it is demonstrated to the satisfaction of the Secretary that the purpose of the grant is to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching or other similar capacity, skill, or talent of the grantee.

Section 53.4945-4(a)(1) of the regulations defines the term 'grants' as including, but not limited to, such expenditures as scholarships, fellowships, internships, prizes, and awards. The term 'grants' do not ordinarily include salaries or other compensation to employees.

Section 53.4945-4(a)(3)(ii) of the regulations provides that under section 4945(g), a grant to an individual for travel, study, or other similar purposes is not a 'taxable expenditure' only if:

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Re:

(a) The grant is awarded on an objective and nondiscriminatory basis (within the meaning of paragraph (b) of this section);

(b) The grant is made pursuant to a procedure approved in advance by the Commissioner; and

(c)(3) It is demonstrated to the satisfaction of the Commissioner that the purpose of the grant is to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

If a grant is made to an individual for a purpose described in section 4945(g)(3) and such grant otherwise meets the requirements of section 4945(g), such grant shall not be treated as a taxable expenditure even if it is a scholarship or a fellowship grant which is not excludable from income under section 117 or if it is a prize or award which is includible in income under section 74.

Section 53.4945-4(a)(5) provides that a grant by a private foundation to an individual, which meets the requirements of section 4945(d)(3) and (g), is a taxable expenditure by such foundation under section 4945(d) only if:

(i) The grant is earmarked to be used for any activity described in section 4945(d)(1), (2), or (5), or is earmarked to be used in a manner which would violate section 4945(d)(3) or (4),

(ii) There is an agreement, oral or written, whereby such grantor foundation may cause the grantee to engage in any such prohibited activity and such grant is in fact used in a manner which violates section 4945(d), or

(iii) The grant is made for a purpose other than a purpose described in section 170(c)(2)(B).

For purposes of this subparagraph, a grant by a private foundation is earmarked if such grant is given pursuant to an agreement, oral or written, that the grant will be used for specific purposes.

Section 53.4945-4(b)(1) of the Regulations sets forth standards for determining whether grants to individuals awarded under section 4945(g) of the Code are made on "an objective and nondiscriminatory basis."

Sections 53.4945-4(b)(2), (3) and (4) of the regulations require that the group from which the candidates are selected is sufficiently broad, the selection is made by criteria reasonably related to the purposes of the grant and that the persons making the selection not be in a position to derive a private benefit, directly or indirectly, if certain potential grantees are selected over others.

Section 53.4945-4(c)(l) of the regulations provides that to secure the necessary prior approval of a grant-making program a private foundation must demonstrate to the satisfaction of the Commissioner that--

(i) Its grant procedure includes an objective and nondiscriminatory selection process (as described in paragraph (b) of this section);

(ii) Such procedure is reasonably calculated to result in performance by grantees of the activities that the grants are intended to finance; and

Re:

(iii) The foundation plans to obtain reports to determine whether the grantees have performed the activities that the grants are intended to finance.

Sections 53.4945-4(c)(3) and (4) require that progress records regarding a 4945(g)(3) grant be maintained, jeopardized grants be investigated and reasonable efforts be made to recover the grant monies.

Section 53.4945-4(c)(6) of the regulations requires that a private foundation shall retain records pertaining to all grants to individuals for purposes described in section 4945(d)(3). Such records shall include:

(i) All information the foundation secures to evaluate the qualification of potential grantees;

(ii) Identification of grantees (including any relationship of any grantee to the foundation sufficient to make such grantee a disqualified person of the private foundation within the meaning of section 4946(a)(1));

(iii) Specification of the amount and purpose of each grant; and

(iv) The follow-up information which the foundation obtains in complying with subparagraphs (2), (3), and (4) of this paragraph as applicable.

Section 53.4945-4(d)(l) of the regulations describes the contents of a request for approval of grant procedures. The approval procedure does not contemplate specific approval of particular grant programs but instead one-time approval of a system of standards, procedures, and follow-up designed to result in grants which meet the requirements of section 4945(g). Thus, such approval shall apply to a subsequent grant program as long as the procedures under which it is conducted do not differ materially from those described in the request to the Commissioner.

The information you have submitted establishes that the individuals selected to receive these grants will work with your staff to design a plan or plans in the fields of affordable housing and community development. The program is designed to enhance the individual's skill and learning in the field, as well as to permit exploration of new solutions to current affordable housing and community development issues. The results of this program will be to recognize individual who are making significant contributions to community development and the field of affordable housing, increase leadership and profession skill in the area, create new solutions to housing problems and perhaps influence your long-term strategies in the area. It does not appear that the program or grants are earmarked to be used for any activity described in section 4945(d)(1), (2), or (5), or is earmarked to be used in a manner which would violate section 4945(d)(3) or (4). There is no apparent agreement, oral or written, whereby you may cause the grantee to engage in any such prohibited activity and such grant is in fact used in a manner which violates section 4945(d). Nor are the grants made for a purpose other than a purpose described in section 170(c)(2)(B).

We recognize that you and X will nominate a large number of the candidates for these grants, will influence the selection of the grantees and that you may potentially benefit from their projects. However, we have concluded that any benefit you or X may receive is insubstantial when compared with the overall benefit to the public. Accordingly, we have concluded that this grant-making program will further your charitable purposes.

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Re:

We have considered your procedures under section 4945(g) of the Code. Based on the information submitted and assuming your grant program will be conducted as proposed, with a view to providing objectivity and nondiscrimination in awarding grants, we have determined that your procedures in awarding these grants comply with the requirements of section 4945(g)(3), and that monies granted according to these procedures will not be "taxable expenditures" to you within the meaning of section 4945(d)(3).

This ruling is conditioned on the understanding that there will be no material change in the facts upon which it is based and is limited to the facts as stated in your letters of December 17, 1998, and March 15, 1999. It is further conditioned on the premise that no grants will be awarded to your organization's creators, officers, directors, trustees, or members of the selection committee, or for a purpose that is inconsistent with the purposes described in section 170(c)(2)(B) of the Code.

The approval of these procedures is a one time approval of your system of standards and procedures for selecting recipients of grants that meet the requirements of section 4945(g)(3) of the Code. Thus, approval will apply to succeeding programs only as long as the standards and procedures under which they are conducted do not differ materially from those described in your request.

We express no opinion as to the tax consequences of your grants to the recipient under any section of the Code. Further, we not that you have stated that you will comply with applicable reporting requirements with respect to amounts paid to your grant recipients.

This ruling is directed only to the organization that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

A copy of this letter is being sent to your key District Director.

Sincerely Yours,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2

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