SIN: 4945.00-00

Internal Revenue Service

199937051
Department of the Treasury

Washington, DC 20224

Contact Person

Telephone Number

In Reference to:

Date JUN 23 1999

Dear Sir or Madam:

This is in reference to your letter of March 30, 1999, requesting advance approval of your procedures for the awarding of grants to individuals.

You are exempt under section 501(c)(3) of the Code and have been classified as a private foundation within the meaning of section 509(a).

Selection of grantees will be made by you on an objective and nondiscriminatory basis. In the case of grants based on proposals submitted by individuals, the basis for an award will include the merits of the proposal, the relationship of the purpose of the proposal to your program activities, projects or areas or interest, and their priority in relation to other demands on your funds. On the basis of these criteria, an individual grantee may be selected (i)from a group of qualified candidates; or (ii)without reference to a group of candidates because the individual is exceptionally qualified to carry out the charitable, educational or scientific purposes of the grant or it is otherwise evident that the selection is particularly calculated to effectuate the exempt purpose of the grant rather than to benefit particular persons.

For grants to individuals awarded through publicly-awarded competitions, each such program of grants to individuals is announced in a published prospectus which specifies the purposes and terms of grants, who is eligible, and how grantees will be selected. The prospectus is distributed so as to reach as wide a group as feasible of potentially eligible persons (e.g., primary and secondary teachers, college students, graduate students, etc.). The prospectus will provide for open nomination or application procedures and will specify how nominations or applications may be submitted. From among those who are nominated or apply, and within budget limitations set by your Board of Directors, those directors and/or staff members professionally responsible for the field concerned make selections, with the advice, in writing of at least two experts

or persons with relevant professional experience in the field in which the grants are offered and who are not employed by you. You will take steps to ensure that persons engaged in the selection process are not in a position to derive private benefit, directly or indirectly, if certain potential grantees are selected over others. Your employees are not eligible for grants to individuals awarded through publicly announced competitions.

For grants to individuals awarded on the basis of nomination or application, you may announce these grants in your annual reports or in other general and widely disseminated publications. These announcements will specify how nominations or applications may be submitted. You will consider nominations of individuals by: (i) sponsoring institutions described in section 501(c)(3) of the Internal Revenue Code (e.g., colleges and universities); (ii) governments and governmental agencies or instrumentalities; and (iii) persons not affiliated with you with relevant professional experience in the field concerned. You will also consider applications received directly from individuals seeking grants.

All nominations or applications must be submitted in writing and subject to review by your staff and/or directors. Nominations and applications that meet appropriate standards of quality which are relevant to your program interests are eligible for selection. From among those who are nominated or who apply, and within budget limitations set by your Board of Directors, those directors and/or staff members responsible for the field concerned make selections, with advice, as appropriate, of outside experts. You will take steps to ensure that persons engaged in the selection process are not in position to derive any private benefit, directly or indirectly, is certain potential grantees are selected over others. Your employees are not eligible for grants to individuals awarded on the basis of individual nomination or application.

With respect to scholarship or fellowship grants, you will arrange to receive a report of the grantee's courses taken (if any) and grades received (if any) in each academic period. Such report must be verified by the educational institution attended by the grantee and will be obtained at least once a year. Where study at an institution does not involve the taking of courses but the preparation of research papers or projects, such as the writing of a doctoral thesis, you will require a brief report from the institution on the progress of the paper or project at least once a year. Such a report must be approved by the faculty member supervising the grantee or by another appropriate official of the institution. Upon completion of a grantee's study at an educational institution, a final report will be obtained.

You do not consider it necessary to obtain the foregoing reports if the following conditions are met: (i) The grant is a scholarship or fellowship subject to the provisions of section 117(a) of the Internal Revenue Code and is to be used for study at an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on; (ii) You pay the scholarship or fellowship to the educational institution; and, (iii) The educational institution agrees to use the grant funds to defray the grantee's expenses or pay funds to the grantee only if he or she is enrolled at the educational institution and his or her standing at such institution is consistent with the purpose and conditions of the grant.

With respect to grants to individuals other than scholarships and fellowships, you will require reports from the grantee at least once a year on the use of the funds and the progress made toward achieving the purposes for which the grant was made. Upon completion of the undertaking for which the grant was made, the grantee is required to submit a final report describing the grantee's accomplishments with respect to the grant and accounting for the funds received under such grant.

A director and/or staff member assigned by you has responsibility to follow the progress of the individual grant, including to review each report submitted by the educational institution or individual; to make a determination as to whether the grant purposes are being or have been fulfilled; and to look into any questions requiring further scrutiny or investigation.

If you determine that any part of the grant has been used for improper purposes, you will take all reasonable and appropriate steps to recover diverted grant funds or to insure the restoration of diverted funds and the dedication of other grant funds held by the grantee to the purposes being financed by the grant. No grant may be awarded to any member of your Board of Directors, to any "disqualified person" with respect to you, or for a purpose which is inconsistent with the purposes described in section 170(c)(2)(B) of the Code.

You will retain records pertaining to all grants to individuals. These records will include all information obtained by you to evaluate the qualifications of potential grantees, the identification of grantees (including any relationship of any grantee to you or to a director or officer), the purpose and amount of each grant, the terms of payment of each grant, and any additional information you may have secured as part of the grant administration process.

Section 4945 of the Code provides for the imposition of taxes on each taxable expenditure of 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 other similar purposes by such individual, unless such grant satisfies the requirements of section 4945(g).

Section 4945(g)(1) 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 grant constitutes a scholarship or fellowship grant which is subject to the provisions of section 117(a) and is to be used for study at an educational institution described in section 170(b)(1)(A)(ii) of the Code.

Section 4945(g)(3) of the Code provides, in part, that the provisions of section 4945(d)(3) will not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance if 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 similar capacity, skill, or talent of the grantee.

Section 53.4945-4(c)(1) of the Foundation and Similar Excise Taxes Regulations provides that, in order to secure the advance approval required by section 4945(g), a private foundation must demonstrate to the satisfaction of the Commissioner that (1) its grant procedures includes an objective and non-discriminatory selection process; (2) this procedure is reasonably calculated to result in performance by grantees of the activities that the grants were intended to finance; and (3) the foundation plans to obtain reports to determine whether the grantees have performed the activities that the grants are intended to finance. No single procedure or set of procedures is required.

Based upon the information submitted, and assuming your program will be conducted as proposed, with a view to providing objectivity and nondiscrimination in the awarding of scholarship grants, we rule that your procedures for the awarding of scholarship grants comply with the requirements of section 4945(g)(1) of the Code. Thus, expenditures made in accordance with these procedures will not constitute "taxable expenditures" within the meaning of section 4945(d)(3) of the Code, and as such

257

are eligible for the exclusion from income provided for in section 117(a) of the Code to the extent that such grants are actually used for qualified tuition and related expenses within the meaning of section 117(b)(2) of the Code.

Your procedures for selecting non-scholarship grant recipients, as described above, satisfy the requirements of section 4945(g)(3) of the Code and the accompanying regulations. The grants made in support of study, travel or other similar purposes will be awarded on an objective and non-discriminatory basis with the purpose of encouraging grantees to become further involved in research projects or study under your direction and supervision. The grants will serve to further the professional development of the grantees. Thus, the grants are not taxable expenditures described in section 4945(d)(3)

This ruling is conditioned on the understanding that there will be no material changes in the facts upon which it is based. It is further conditioned on the premise that no grants will be awarded to creators, officers, directors, trustees, or members of the selection committee, or for a purpose inconsistent with the purposes described in section 170(c)(2)(B) of the Code.

Please note that this ruling is only applicable to grants awarded under your program as outlined above. Before you enter into any other scholarship programs you should submit a request for advance approval of that program.

We are informing the EP/EO key district office of this action. Please keep a copy of this ruling with your permanent records.

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

Sincerely yours,

Gerald V. Sack

Gerald V. Sack
Chief, Exempt Organizations
Technical Branch 4