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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: OCT 15 2002

Contact Person:

Identification Number:

Telephone Number:

SIN: 4945.00-00

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EIN:

Legend:
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Dear Sir or Madam:

This is in reference to a letter dated May 13, 2002, requesting advance approval of your grant-making procedures under section 4945(g) of the Internal Revenue Code.

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

In furtherance of your exempt purposes, you propose to operate two grant programs. The C program will award scholarship and fellowship grants on an annual basis to one or more seniors and graduates of B who have participated or are currently participating in either or both of its G programs for the purpose of enabling grant recipients to attend graduate or professional school. The G programs are special programs designed to provide broad and varied educational experiences to capable students who, due to academic under-preparation and limited financial resources, might otherwise not have an opportunity to attend college.

The D program will award scholarship grants on an annual basis to one or more immigrants to the United States from any of the countries that comprised the former L who are of a particular faith for the purpose of enabling grant recipients to integrate into American life and establish productive careers in the United States. These individuals must provide a detailed plan for the accomplishment of a specific objective or the enhancement of a capacity or

skill for the purpose of establishing him or herself permanently in the United States and/or the applicant must be enrolled, or about to enroll, in one or more courses at a qualified educational institution.

Under C program procedures, grant recipients will be chosen from a class of individuals comprised of seniors and graduates of B who have participated or are currently participating in its G programs. The basic criteria for selection will be the applicants: (a) prior academic performance; (b) performance on GRE, LSAT, MCAT or other relevant test designed to measure ability and aptitude for graduate, post-graduate or professional school; and (c) financial need.

A grant recipient must be a candidate for a graduate, post-graduate or professional degree at a qualifying educational institution, defined as an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at a place where the educational activities occur.

You will contact administrators at B to advise them of the availability of C program grants and to request that they publicize the scholarships and encourage qualified students to submit completed application forms to you. A committee established by you will select the grant recipients from among students who submit completed applications. Each grant will be paid by you directly to the relevant qualified educational institution for the use of the grant recipient.

Each educational institution must agree in writing to use the grant funds to defray the grant recipient's expenses and to pay the excess, if any, to the recipients only if the recipient is enrolled at such educational institution and his or her standing at such educational institution is consistent with the purposes and conditions of the grant. An express condition of each grant will be that the grant be used only for qualified tuition and related expenses within the meaning of section 117(b)(2) of the Code (for tuition and fees required for the enrollment or attendance of the grantee at a qualified educational institution and for fees, books, supplies, and equipment required for courses of instruction at such an educational institution) and room and board related to the attendance of the grantee at an qualified educational institution. An additional condition of the grant will be that no part of the grant be used as payment for teaching, research, or other services by the grant recipient.

All grants will be awarded on an objective and nondiscriminatory basis. No grants will be awarded to your creator, any member of the committee or any disqualified person with respect to you within the meaning of section 4946(a) of the Code. In addition, no grant will be awarded for a purpose that is inconsistent with the purposes described in section 170(c)(2)(B) of the Code.

You will retain records pertaining to all C program grants, including the following: (a) all information used to evaluate the qualifications of potential grant recipients; (b) identification of each grant recipient, including any relationship to you sufficient to cause the recipient to be a disqualified person with respect to you within the meaning of section 4946(a)(1) of the Code; (c) specification of the amount and purpose of each grant; and (d) reports and other follow-up information obtained pursuant to your procedures.

Under D program procedures, grant recipients will be chosen from a class of individuals comprised of K immigrants to the United States. The basic criteria for selection will be: (a) the strength of the applicants plan for achieving a specific objective or enhancing a capacity or skill through education; (b) a demonstrated capacity by the applicant for achieving an objective or a demonstrated capacity or skill by the applicant that may be enhanced by education; and (c) the applicant's financial need.

Grants may be awarded (i) for qualified tuition and related expenses within the meaning of section 117(b)(2) of the Code (tuition and fees required for the enrollment or attendance of the grantee at a qualified educational institution and for fees, books, supplies, and equipment required for courses of instruction at such education institution) and for room and board related to the attendance of the grantee at a qualified educational institution or (ii) to achieve a specific objective or enhance a capacity or skill . Each grant will be awarded for a particular period (generally, one year or less). The amount of the grant for the purpose of achieving a specific objective or enhancing a capacity or skill will not exceed the anticipated cost of the particular educational activity designed to achieve that specific objective or to enhance that capacity or skill. The purpose of each grant must be to assist the recipient to develop fully and productively his or her skills in order to establish himself or herself economically and socially in the United States.

You will contact administrators at a public charity exempt from federal income tax under section 501(c)(3) of the Code, to advise them of the availability of scholarship grants and to request that they publicize the availability of the D program grants and encourage K immigrants applicants to submit completed application forms to you. Your selection committee will chose the grant recipients from among the K immigrants who submit completed applications.

Tuition and related expense grants may be paid by you directly to the relevant qualified educational institution for the use of the grant recipient. With respect to such grants, the qualified educational institution must agree in writing to use the grant funds to defray the grant recipient's expenses and to pay the excess, if any, to the recipient only if the recipient is enrolled at such educational institution and his or her standing at such educational institution is consistent with the purpose and conditions of the grant. An additional condition of such grant will be that no part of any such grant may be used as payment for teaching, research or other services by the grant recipient.

You will require recipients of your grants to achieve a specific objective ("Direct Grants") to submit written reports at least annually on the use of the grant funds and the progress made by the recipient toward achieving the purposes for which the grant was made. You will also require a final report from each Direct Grant recipient describing the recipient's accomplishments and accounting for the funds received. If the recipient fails to submit one or more reports or you have reason to believe that the grant funds are not being used for their intended purposes, you will withhold further payments.

If the required reports or any other information received by you indicate that all or any portion of a Direct Grant is not being used in furtherance of the purposes of such grant, you will investigate. You will withhold further payments until any delinquent reports have been

submitted. If grant funds have been used for improper purposes, you will take all reasonable and appropriate steps to recover the grant funds or to ensure restoration of the diverted funds to the purposes of the grant. If such a diversion occurs, you will withhold any further payment to the grant recipient until you have received the recipient's assurance that further diversions will not occur and that the recipient will take extraordinary precautions to prevent future diversions from occurring. If a recipient has previously diverted funds received from you and you determine that any part of a grant has again been used for improper purposes, you will also withhold further payments until the diverted funds are in fact recovered or restored.

You will retain records pertaining to all D program grants, including the following: (a) all information used to evaluate the qualifications of potential recipients; (b) identification of each recipient, including any relationship to you sufficient to cause the recipient to be a disqualified person with respect to you within the meaning of section 4946(a)(1) of the Code; (c) specification of the amount and purpose of each grant; and (d) reports and other follow-up information obtained pursuant to your procedures.

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).

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 4945-4(b)(2) of the Foundation and Similar Excise Taxes Regulations provides that ordinarily, selection of grantees on an objective and nondiscriminatory basis requires that the group from which grantees are selected be chosen on the basis of criteria reasonably related to the grant and that the group must be sufficiently broad so that the giving of the grants to members of such group would be considered to fulfill a purpose described in section 170(c)(2)(B) of the Code.

Section 53.4945-4(c)(1) of the 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 include an objective and non-discriminatory selection process; (2) these procedures are 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.

Section 53.4945-4(c)(3) of the regulations provides that a private foundation shall require reports on the use of funds and the progress made by the grantee toward achieving the purpose for which the grant was made.

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 in the C and D programs comply with the requirements of section 4945(g)(1) of the Code. 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 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 Direct Grant recipients in the D program, as described above, satisfy the requirements of section 4945(g)(3) of the Code and the accompanying regulations. The grants will be made to achieve a specific objective, produce a report or similar product, improve or enhance a literary, artistic, musical, scientific, teaching or similar capacity, skill or talent of the grantee. Thus, these grants are not taxable expenditures described in section 4945(d)(3).

We note that grantees in your D program appear to be selected on an objective and nondiscriminatory basis on the basis of criteria reasonably related to the grant, and that the group will be sufficiently broad so that the giving of grants to members of the group would be considered to fulfill a purpose described in section 170(c)(2)(B) of the Code.

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 understanding that no grants will be awarded to your organization's 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.

The approval of your grant-making 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)(1) and 4945(g)(3) of the Code. Thus, approval will apply to succeeding grant 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 are informing the TE/GE office of this action. Please keep a copy of this ruling with your organization's 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.

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.

Sincerely,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4