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

199930051

Date: MAY 7 1999

OP:E:EO:T:2

Uniform Issue List: 4945.04-04
4945.04-05
501.03-23

Contact Person:

ID Number:

Contact Number:

Legend:

F =
N =
R =
S =
T =
U =
V =
W =
x =
y =

Dear Sir or Madam:

This is in reply to your rulings request of June 5, 1998, requesting approval in advance of your interdisciplinary science research grant program N under section 4945(g)(3) of the Internal Revenue Code, and providing updating information on your six grant programs R through W.

You, F, are as exempt from federal income tax under section 501(c)(3) of the Code and are a private foundation under section 509(a) of the Code.

I. Grant Program N

Under your grant program N, you will pay grants of money to universities for specific interdisciplinary science research projects that you approve from proposals submitted to you. Your approval includes approval of the principal scientist(s) involved in the project. Each grant can be paid for a five year period and the maximum grant can be x dollars.

You will select the N grantees through an objective and non-discriminatory selection process, based on grant applications that you will widely solicit. You will evaluate grant requests and grantees with the help of your own advisory panel of experts. Your private foundation's disqualified persons under section 4946 of the Code will not be eligible for the grants.

You will obtain annual and final reports from your grantees as to the uses of the grants, as required by section 53.4945-4(c)(3) of the Foundation and Similar Excise Taxes Regulations, below.

You will retain adequate records pertaining to the selection of the grantees and the uses of the grant funds, to the extent required by section 53.4945-4(c)(6) of the regulations, below.

If a report or other information suggests any misuse of your grant funds, you will investigate and withhold further grant funds or recover any misused grant funds, as required by section 53.4945-4(c)(4) of the regulations, below.

296

II. Grant Programs R through W

Your rulings request of June 5, 1998, also includes updating information about your grant programs R, S, T, and U. Your grant-making procedures for your grants under these programs are already approved by the Service under section 4945(g) of the Internal Revenue Code.

Your letter also updates us about your grants made to colleges and universities under grant programs V and W, for which approval by the Service under section 4945(g) of the Code is not required.

Your grant program R provides funds to further scientific research being conducted by younger scientists at universities. Your grant procedures for R are already approved under section 4945(g) of the Code by the Service. Your rulings request of June 5, 1998, informs us that, as to program R, the number of science fellows will increase from 20 to 24; the annual amount per fellow will increase from $10y to $12y per year; unused funds can be carried over for two or three years; and a fellowship will continue if the fellow moves from one university to another.

Your grant program S provides funds for a scholars in residence program in which researchers conduct studies of the health, education, and welfare issues related to vulnerable children. Your grant-making procedures for S are already approved under section 4945(g) of the Code by the Service. Your request informs us that, as to program S, grants are not being made while the program is under review by you.

Your grant program T provides funds for graduate fellowships in science at historically black colleges and universities and is already approved under section 4945(g) of the Code by the Service. Your request informs us that, as to program T, more fields of study are allowed; grants can be for six years, instead of only five; professors can do reporting to you on behalf of the grantees; and a laptop computer is given to students.

Your grant program U provides funds for student scholarships at Native American tribal colleges. Your grant-making procedures for U are approved by the Service. Your letter informs us as to program U that grants are under review so funds are now for only one year. Under program U, students can attend four-year or two-year colleges.

Your grant program V provides funds to improve science education at historically black colleges and universities. Your grant program W provides funds to improve science education at Native American colleges and universities. These grants programs V and W provide grants to educational institutions exempt from federal income tax under section 501(c)(3) of the Code that are not private foundations under section 509(a) of the Code and, thus, approval by the Service under section 4945(g) of the Code is not required.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations organized and operated exclusively for charitable and/or educational purposes.

Section 509(a) of the Code provides that certain organizations exempt from federal income tax under section 501(c)(3) are private foundations subject to the provisions of Chapter 42 of the Code.

Section 4945 of the Code imposes excise tax on a private foundation's making of any "taxable expenditure" as defined, in pertinent part, by sections 4945(d)(3) and 4945(d)(5).

Section 4945(d)(3) of the Code provides that a taxable expenditure includes an amount paid by a private foundation as a grant to an individual for study or other similar purposes by such individual, unless the grant meets the requirements under section 4945(g) of the Code for approval in advance by the Service.

Section 4945(g)(3) of the Code indicates, in pertinent part, that no taxable expenditure occurs with respect to a grant to an individual for study or research if the grant is awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary and it is demonstrated that the purpose of the grant is to achieve a specific objective, or to produce a report or other similar product pursuant to the foundation's exempt purposes.

Section 53.4945-4(b) of the Foundation and Similar Excise Taxes Regulations requires that grantees under section 4945(g)(3) of the Code must be selected on an objective and nondiscriminatory basis. The criteria for selection of grantees must be related to the exempt purpose of the grant. Selection of grantees may be limited to experts where, for example, selection is limited to those who are scientists. The persons selecting the grantees must 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)(3) of the regulations provides that, with respect to a grant made under section 4945(g)(3) of the Code, the private foundation must require reports on the use of the funds and the progress made by the grantee toward achieving the specific purposes for which the grant was made. Such reports must be made at least once a year. Upon completion of the undertaking for which the grant was made, a final report must be made describing the grantee's accomplishments with respect to the grant and accounting for the funds received under such grant.

Section 53.4945-4(c)(4) of the regulations provides that, if grantee reports submitted or other information, including failure to submit reports, indicate that any part of a grant is not being used for purposes of the grant, the grantor foundation is under a duty to investigate and, while conducting its investigation, must withhold further payments to the extent possible. If the grantor determines that any part of the grant has been used for improper purposes or for any use not in furtherance of purposes specified in the grant, the grantor must take all reasonable and appropriate steps either to recover the grant funds or to insure the restoration of the diverted funds and any other grant funds held by the grantee to the purposes being financed by the grant. Further, the grantor must withhold any further payments until it receives the grantee's assurances that future diversions will not occur and that the grantee will take extraordinary precaution to prevent any more future diversions from occurring. The grantor's reasonable and appropriate steps to recover misused grant funds must include legal action where appropriate, unless legal action would, in all probability, not result in satisfaction of execution on the judgment.

Section 53.4945-4(c)(6) of the regulations provides that the grantor private foundation must retain adequate records on all of its grants to individuals for study or similar purposes under section 4945(d)(3) of the Code. Such records include: all information which the foundation secures to evaluate the qualifications of potential grantees; identification of all grantees (including any relationship of a grantee to the grantor foundation sufficient to make such grantee a disqualified person under section 4946 of the Code); specification of the amount and purpose of each grant; and the follow-up information which the grantor obtains from the grantees under sections 53.4945-4(c)(3) and (4) of the regulations, cited above.

Section 53.4945-4(d)(3) of the regulations provides that if, by the 45th day after a request for approval of grant procedures has been properly submitted to the Internal Revenue Service, the private foundation has not been notified that its grant-making procedures are not acceptable, its grant-making procedures shall be considered as approved from the date of submission of its request for approval until receipt of actual notice from the Internal Revenue Service that such procedures do not meet the requirements of section 4945(g) of the Code.

In regard to your grant program N, your representations and information submitted indicate that your grant-making procedures for new grant program N will be in accordance with all of the grant-making procedure requirements of section 53.4945-4 of the regulations, described above, including exempt purposes of the grants, objective selection of grantees, adequate reporting from grantees, and recovery of any misused grant funds.

Also, we concur that the current facts and information in your June 5, 1998, ruling request letter as to your grant programs R through W, some of which facts are mentioned above, do not involve any material changes in your grant procedures and, thus, do not alter the approvals by the Service under section 4945(g) of the Code that are already in effect for those grant programs.

Accordingly, we rule that:

1. Your grant procedures to be used by you for grants under your grant program N will be objective and nondiscriminatory as required by section 4945(g) of the Code. Accordingly, based on the information submitted, and assuming your grant program N will be conducted, as described, with a view to providing objectivity and nondiscrimination in the awarding of the grants, we rule that your procedures in awarding the N grants will comply with the requirements of section 4945(g)(3) of the Code and expenditures made in accordance with these procedures will not be taxable expenditures under section 4945 of the Code. This ruling is conditioned on the understanding that there will be no material change in the facts upon which it is based. It is further conditioned on the premise that no grants will be made to your organization's creators, officers, directors, trustees, or members of the selection committee, or for any purpose inconsistent with the purposes described in section 170(c)(2)(B) of the Code. This approval of your grant-making procedures is a one-time approval of your system of standards and procedures for selecting recipients of grants that meets the requirements of section 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 this request.

2. Your grants under grant program N will be for purposes described in section 4945(g)(3) of the Code.

3. Your grants under your grant program N, made in accordance with the grant procedures described in your ruling request, will not constitute taxable expenditures under section 4945(d)(3) of the Code.

4. Your grant procedures for your grant programs R, S, T, and U do not differ materially from the grant procedures already approved by the Service and, thus, the approvals of those grant procedures by the Service under section 4945(g) of the Code remain in effect. Your adjustments such as the educational institutions solicited by you, the number of grantees selected, the fields of study eligible, the total amounts of the grants, and the duration of the grants are not material changes in your approved grant-making procedures for purposes of section 4945(g) of the Code.

Because this letter could help to resolve any questions, please keep it in your permanent records.

This ruling letter 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.

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2

300