Making Grants to Individuals

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Common Framing Questions

- Which grants to individuals require special procedures?
- Is the individual performing a service or is the award for his or her benefit?
- Is it an organizational grant even though the ultimate recipient is an individual?
- What about awards to individuals to attend conferences?
4945 Grant to Individual Framework

- If a private foundation pays or incurs any amount to an individual for “travel, study or other similar purposes,” it will be a “taxable expenditure” under the Code unless the grant meets certain requirements. *Code Section 4945(d)(3).*
  - Scholarships, fellowships, internships, prizes, and awards
  - **Excluded:** salaries and service arrangements
Tax Code Requirements

- Awarded on an (i) **objective and nondiscriminatory basis** (ii) pursuant to a procedure **approved in advance by the IRS** AND:
  - grant constitutes a **scholarship/fellowship** and is to be used for study at an educational organization;
  - grant constitutes a **prize/award** and the recipient is selected from the general public; **OR**
  - grant purpose is to achieve a **specific objective**, produce a **report**, or **improve/enhance** grantee’s **capacity, skill, or talent**
    - “**Specific objective**”: sufficiently narrow and definite to use the funds **only** for charitable purposes
Grants should be based on expertise & fairness.

- Not based on whim and personal relationships

Supervision by schools or produce a tangible product, achieve a specific objective, or improve/enhance a skill

IRS advance approval required: (i) objective/nondiscriminatory; (ii) reasonably calculated to result in grantee performance; and (iii) reports
Distinguishing 4945 Individual Grants from Other Grants

- Grants to individuals **not** for *travel* or *study* (e.g., grants to indigent individuals to help them purchase furniture or for disaster relief) are **not** 4945 grants.

- Grants that do not attempt to influence *future* activities of the grantee are **not** 4945 grants.
  - No imposition of future conditions on the recipients
  - Examples: grant for past literary achievement or best book during a particular year

- Grants to **organizations** subsequently paid to individuals are **not** 4945 grants **IF**....
  - No earmarking for a named individual
  - No agreement where the foundation may cause the selection of the recipient by the grantee organization
  - No expenditure responsibility
Grants to ER Intermediaries

- Grants to organizations that require expenditure responsibility (e.g., foreign universities, non-US public charities) for the benefit of an individual will always be treated as a 4945 individual grant.

- Grantee must follow the private foundation’s individual grant rules.

- The above is true even if grantee exercises de facto control over the selection process and makes the selection completely independently of the private foundation.
Grants to PC/Govt Intermediaries

- Grants to **public charities** for a project managed by an individual will **not** be a 4945 individual grant **if**:
  - (i) grant for project supervised by PC; **and**
  - (ii) public charity **controls** selection
    - *Objective manifestation* of the PC’s control “although the selection need not be made *completely independently* of the private foundation.” [Note *veto privileges*]
    - Cannot be a mere “disbursing agent”

- **Governmental agencies** – PF can exercise considerable control.
A researcher, an individual, approaches your PF and describes a project that falls directly within the objectives and goals of PF’s program. PF’s program would like to fund the project, but does not want to deal with the rules around grants to individuals. Accordingly, PF makes the grant through a public charity with the understanding that the public charity will “host” the individual. The public charity will provide some administrative support to him and transfer PF’s payments to him.
4945 Individual Grants are Not Awards for Services

- Payments to those who render services to further the private foundation’s goals or reimbursement for expenses
  - e.g., employee salaries; consultant fees

- Payment (including salaries, consultants’ fees, and reimbursement for travel expenses) to individuals for personal services in assisting a foundation in planning, evaluating, or developing projects or areas of program activity by consulting, advising, or participating in conferences organized by the foundation
Hypo - Services

PF program asks an individual to prepare a research paper that will be used as part of a new series that PF program will be hosting on its website. PF will own all rights to the work.
Renewals and Extensions of 4945 Grants to Individuals

- **Renewals** – can *ignore* 4945 requirements **IF**:  
  - No information that *original grant* was being used for purpose other than original purpose  
  - All *reports* that are due are in; and  
  - Additional criteria and procedures for renewal are *objective* and *nondiscriminatory*

- **Extensions** – not regarded as a grant or renewal
Selection – “Objective and Nondiscriminatory Basis”

- Generally, grants must be awarded through a program that would be consistent with the foundation’s charitable status and certain selection rules.

- Ordinarily requires group from which the grantees are selected be chosen on the basis of criteria reasonably related to the purposes of the grant.

- Group must be sufficiently broad so that the giving of grants to members of such group would be considered charitable.
  - Should be sufficiently large to constitute a charitable class.
PF’s Scholarship program has decided to issue a scholarship to women of Barbadian descent from the South Bronx. There is an extensive application process and independent selection committee.
Selection – “Exceptionally Qualified”

- Group of potential grantees is **not always** necessary.
  - Have to consider the **purposes** of the grant to select only one or several persons because they are **exceptionally qualified** to carry out these purposes.
  - It is otherwise evident that the selection is particularly calculated to effectuate the charitable purpose of the grant rather than to benefit (a) particular person(s).

- Foundations can thus impose **reasonable restrictions** on the group of potential grantees.
In-House Travel Grants Programs

- Often exists to allow individuals to attend conferences, trainings, seminars, etc. in a field of interest to the foundation.

- Typically, a qualified candidate must be:
  - Exceptionally qualified in the field of interest OR
  - In a unique position to benefit from or contribute to the event/benefit the field

- TGP should have written Guidelines that staff must follow.
Hypo – Travel Grant

- An individual approaches PF for funding to attend an upcoming conference where the topic is within PF’s program’s focus.
- Can you support this individual with a travel grant?
- What if the individual were speaking at the conference?
- What if the conference were co-sponsored by PF?
Selection Process

- *Criteria* used should be *related* to the purpose of the grant.
  - *e.g.*: Scholarship criteria: prior academic performance, instructor recommendations, interviews, standardized tests
- *Cannot* give preference to *family* members/relatives
- *Wide solicitation* (e.g., institutions, newsletters ...avoid word of mouth, PF friends)
- *No* grants to PF managers, trustees, directors, and officers (or their family members)
Hypo – Solicitation

PF is interested in creating a new fellowship program where fellows will conduct research on human rights issues in closed societies throughout the world. The PF plans to have a large applicant pool and has shared its objective selection criteria with its partners and grantees in the field.
Selection Committee

- Committee members **cannot** derive private benefit from selection of certain grantees.
- Use outside experts if necessary.
- Establish *review* procedures for grants awarded by one person.
- Develop procedure for conflict of interest disclosure.
A public charity approaches PF with a fellowship idea for 10 individuals. The public charity places you, as a PF representative, on the selection committee. The grant will be paid by the public charity and the public charity will have full control over the fellows.
Discrimination

- Programs *favoring minorities* are permissible, but *limits* exist. (The “*Finnish*” Line (1978 IRS ruling))

- Discrimination *against minorities* is prohibited.
  - Bob Jones University (1983 S. Crt. Case)

- Present Day: These situations require a *facts and circumstances* approach.
  - Can grants to individuals be based on ethnic characteristics?
  - Can ethnic characteristics so pervade the applicant pool as to result in discrimination?
  - Is foundation required to show that class is sufficiently large compared to number of scholarships to prevent private benefit?
Hypo – Discrimination

PF’s Scholarship program has decided to issue a scholarship to women of Finnish descent from the South Bronx to attend any college of their choice in the United States.
Supervision of Scholarship/Fellowship Grants

- **Ordinarily** need *annual “verified”* report if grantee is receiving grades
  - **Exception**: If grant is paid to school directly and school agrees to pay funds only if grantee is enrolled *and* is in good standing. (*no duty to investigate*)
- If *no courses* are taken, PF must receive an *annual* progress report from grantee that is *approved* by university.
- **Other 4945 grants**: PF needs *at least* annual reports on the use of the funds and the progress made by the grantee.
  - **Travel Grants** – need short narrative report, receipts
Public Disclosure

- IRS reporting requirement on the private foundation.

- Grant Letter language: You hereby acknowledge and agree that [PF] is required by law to disclose your name, your address, the amount of any funds paid to you or on your behalf by [PF] and the purpose of the Fellowship on [PF]’s tax return (Form 990PF) which is filed with the U.S. Internal Revenue Service and the Attorney General for the State of [New York] and that, as a result, this information will become public.
Monitoring/Non-compliance/Duty to Investigate

- Travel or study grants that do not comply with pre-approved IRS requirements are considered taxable expenditures if foundation does not investigate and correct.
  - Substantial penalties for both foundation and management
- If PF believes from reports that grant is not being used for its purpose, PF has a “duty to investigate.”
  - Failure to submit reports also triggers this duty.
  - PF must withhold further payments until okay to pay.
Program Staff **must inform** GM of any *diversion* of funds or *noncompliance*.
- GM/PF will take next steps.
- Consequences: **Do Not Fund List**

**Earmarked Grants** used for prohibited purposes
- Can *sometimes* be **attributed** to the private foundation if (i) *earmarked* for *prohibited* activity; (ii) *agreement* exists that may cause grantee to engage in *prohibited* activity; or (iii) grant is made for *noncharitable* purpose
Retention of Records

- PF **must** retain records for *all* 4945 individual grants.

- Records **must be retained** for each year grant is given *plus 4 years*.

- Records **must include**:
  - Identification of the Grantee
  - Amount and purpose of the grant (grant letter)
  - Why Grantee was selected (and application)
  - Approval Memo listing grantee, program, and grant amount
  - Follow up information (reports, investigations)