



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



4945 Individual Grant Statutory/Regulatory Changes

- 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.

Hypo – Intermediary

- 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



Hypo – 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.



Hypo – Committee Composition

- 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. Ct. 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.

Monitoring/Non-compliance/Duty to Investigate

- 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)