



The National Standards team is receiving a lot of the same questions lately, so I want to address them in the Exchange as well as in individual communications. I will write two posts. The first will answer questions about the value of accreditation and the time frame for submissions. The second will be questions related directly to the application process.

You can always reach us at [submissions@cfstandards.org](mailto:submissions@cfstandards.org) or 703-879-0672.

## **POST 1**

### **QUESTIONS ABOUT NATIONAL STANDARDS VALUE**

The Council on Foundations worked with the National Standards Board to create a webpage and brochure on the value of National Standards that you can share with your community. We also upgraded the National Standards toolkit. All accredited community foundations have access to these materials. If you have trouble accessing these materials, please email [membership@cof.org](mailto:membership@cof.org).

Value of Accreditation: [National Standards for U.S. Community Foundations®](#)

Value of Accreditation E-Brochure: [National Standards](#)

National Standards Marketing Toolkit: <http://www.cof.org/content/national-standards-communications-toolkit>

National Standards Logo and Usage

Guidelines: [http://www.cof.org/sites/default/files/documents/files/NationalStandards-Seal\\_Guidelines.pdf](http://www.cof.org/sites/default/files/documents/files/NationalStandards-Seal_Guidelines.pdf)

Map of Accredited Community Foundations: [Community Foundation Locator | Community Foundations National Standards Board](#)

### **QUESTIONS ABOUT LENGTH OF PROCESS**

**National Standards Application Process Page: [Achieving National Standards Compliance | Community Foundations National Standards Board](#)**

#### **Which Month of Submissions Are in Review Now?**

The National Standards program is currently reviewing December submissions as well as supplemental reviews.

#### **How Long Does the Review Process Take?**

National Standards accreditation takes between 12-18 months. Is this ideal? No. Your first review will take six months and then we will have several rounds of reviews for supplemental materials that

will each take a few months. This is why we ask you to submit 12 months before your accreditation date expires. If you don't know your accreditation expiration date, please visit, [Community Foundation Locator | Community Foundations National Standards Board](#). We've upgraded the map with your accreditation date so that you don't need to email us. NOTE: If the date you see is 12/31/YEAR, you are likely in an extension period for the YEAR listed. When you are in process, we auto extend you to the end of that year, so that your community foundation does not lose accreditation while being reviewed.

### **Why Does the Review Take So Long?**

As you know, the National Standards application is extensive. Once you submit, your application is reviewed by a legal reviewer, a peer reviewer, and the National Standards team. The National Standards team compiles the reviewer comments and reviews any conflicts among reviewers' comments to clarify them to the applicant.

### **Will the Time Frame Ever Change?**

The National Standards program has added staff and reviewers to assist with reviews. Rather than relying solely on volunteers, we have some contracted services. We train all reviewers both at in person trainings and via their reviews. We hope to get the process under 6 months in the next two years (if not sooner).

### **What Can Community Foundations Do to Cut Down Review Times?**

1. Recommend staff to be trained as reviewers by emailing [submissions@cfstandards.org](mailto:submissions@cfstandards.org)
2. Send your comments on how to improve the application to [submissions@cfstandards.org](mailto:submissions@cfstandards.org). We take your recommendations seriously and we've kept the application in BETA, because we continue to receive feedback on how to improve the clarity of questions

## POST 2

### **What Are the Options for Demonstrating Board Approval?**

All items that ask for board approval, need to demonstrate board oversight in one of two ways.

- Option 1: Have the board review and approve items listed for board approval.
- Option 2: Provide documentation of corporate signing authority or board delegation to staff or committee. This information would also be found in board minutes.

### Documentation Required for Delegation

If your board is delegating, we want to know the procedure for keeping them informed of what they've delegated. Please attach a short narrative about how the board is updated.

### **Why is Board Approval or Proof of Delegation Required for What Seem to Be Management Tasks?**

The board of directors is ultimately responsible for the governance of an organization. While delegation of responsibilities is an option, that will not relieve the board of responsibility.

- One of the most famous legal cases is the Sibley Hospital case. In *Sibley*, the board had delegated the organization's investment function to the treasurer and did not provide any oversight. The court held that each of the board members breached their fiduciary duties by failing to supervise management with respect to the investment activities.
- In *Verret v. United States*, a federal district court in Texas determined that the chairman of a nonprofit hospital's board of trustees was personally liable for the hospital's nonpayment of withholding taxes. Responsibility for payment of the withholding taxes had been delegated to staff, but the board was ultimately responsible.
- In the Pennsylvania case [\*In re Lemington Home for the Aged\*](#), No. 13-2707 (3rd Cir., 2015), board members failed to supervise staff managing a charitable organization with serious financial problems. In this case, individual board members were each found personally liable for \$2.25M in damages for providing inadequate oversight, relying on incompetent officers and in failing to take adequate action once they knew there were problems.

In all these cases, proper board oversight could have protected the board members individually.

This idea is also found in state law. Section 5210 of the California corporations law is very clear on this point where it states:

- *“The board may delegate the management of the activities of the corporation to any person or persons, management company, or committee however composed, provided that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board.”*
- A foundation organized in California should take this heart and ensure that the board is given the opportunity to provide that oversight.

State Charities Officials tackled this topic at their conference last year. They identified five key issue areas:

1. Absentee boards – busy volunteers, failure to attend meetings, one person domineering over others, engaged in non-arm’s length contracts with friends and relatives.
2. Board versus senior staff role reversal also known as phantom board syndrome – a key example is when the executive director seems to be hiring and firing board members.
3. Lack of internal controls and oversight – serial embezzlers take advantage. We’ve seen this happen at a community foundation.
4. The bobblehead board - An easily pressured board that shuns unpleasantness or discord and avoids dissent.
5. Donor Intent – issues of staff failure to keep records including whether a fund is endowed, and “borrowing” from endowments.
6. Other issues brought up included: conflicts of interest, excess compensation, online banking, reporting fundraising expenses, and board lack of awareness of what’s in the 990 and how to read it.

*Excerpts from remarks of Terry Knowles, Assistant Director, Charitable Trusts, Office of New Hampshire Attorney General, at October 5 NASCO meeting. From the Desk of Paul Streckfus, Editor, EO Tax Journal, 2015-195*

### **Does My Foundation Meet the NS1: Definition of a Community Foundation if Our Current Development Plan Doesn't Emphasize Endowment Funds? Also applies to NS 11**

Some community foundations mention that their current development plan may not be building endowment funds, but building funds for immediate needs. The National Standards program understands that your community foundation must decide the development plan and process that works best for your community in periods of time. Therefore, if your community foundation has an endowment that is monitored by delegated staff or committee and is

focusing on another area of giving while maintaining the endowment, you would meet the definition of a community foundation.

#### What Treasury Regulation Outlines the Elements of a Community Foundation?

- The federal government provides guidelines for establishing a community trust in Treasury Regulation § 1.170A-9(f)(10)-(11), and community foundations rely on these guidelines.
- The components of a community trust include (summarized)
  - (1) a single entity with component funds;
  - (2) a name that conveys an endowment fund that supports charitable activities;
  - (3) a common governing instrument;
  - (4) a common governing body,
    - (a) with powers of modification and removal (sole discretion/exclusive legal control/variance power),
    - (b) committed to exercise of powers, and
    - (c) committed to taking steps to produce a reasonable return; and (6) common reports (periodic financial reports for all component funds).

#### Who Decided the National Standards Definition?

- The definition of community foundation in National Standards originally came from a working group that became the Standards Action Team under the Community Foundation Leadership Team.
- For the 2015 revisions, the Standards Action Team, including members of the National Standards Board, reviewed the 41 National Standards and made updates.
- Once those updates were in final draft form, they were submitted to the field for a public comment period. After final revisions, the National Standards were approved by the Council on Foundations and the National Standards Board convened a revisions committee to align key elements with the new 26 Standards.
- For more information, please visit: [History | Community Foundations National Standards Board](#) and [2015 National Standards Revisions](#).
- The National Standards Board will keep the National Standards application in Beta through 12/31/2016 as the field continues to provide feedback we can use to explain and improve our process.
- *If you or someone you know would like to join the Community Foundation National Standards Board, please contact [submissions@cfstandards.org](mailto:submissions@cfstandards.org), and we will forward your information to the Nominations Committee. We accept applications in the Fall.*

#### **Why Does the Application Require Minutes Reflecting a Discussion on Board Diversity?**

We ask that the board discuss diversity, equity, and inclusion, and memorialize this information in minutes, a report, or other form of formally recognized work product. (Protocols for board approval or delegation described above again apply here).

Diversity can mean different things to different people. The [D5 Coalition](#) – advancing diversity, equity, and inclusion in philanthropy – broadly defines diversity to encompass the demographic mix of a specific collection of people, taking into account elements of human difference, but focusing particularly on:

- Racial and ethnic groups: Asian Americans and Pacific Islanders, Hispanics/Latinos/Latinas, African Americans and blacks, and American Indians and Alaska Natives
- LGBT populations
- People with disabilities
- Women

D5 uses this broad definition of diversity for three reasons.

1. This is what diversity looks like in the 21st century.
2. The definition encompasses populations that historically have been—and remain — underrepresented in grantmaking and among practitioners in the field, and marginalized in the broader society.
3. To be a national leader, organized philanthropy must get in front of diversity, equity, and inclusion issues and do so in a comprehensive way. We acknowledge and respect this is one of many ways to define diversity, a concept that can encompass many other human differences.

Ideally, National Standards applicants would demonstrate that the board uses these [D5 indicators](#):

- Has the organization made an **expressed commitment** to DEI? (with 3 indicators)
- Has it authorized DEI in **organizational policy**? (with 6 indicators)
- Has it implemented DEI practices in its **operations**? (with 11 indicators)
- Has it implemented DEI practices in **grant-making/other programmatic areas**? (with 11 indicators)
- Does it utilize **accountability mechanisms** to monitor DEI? (with 11 indicators)

Resources:

- D5 Coalition Website: <http://www.d5coalition.org/>
- Diversity Wheel: <http://www.canatx.org/CAN-Initiatives/ccdi/diversityWheel.php>

- USG Health Resources and Service Administration:  
<http://www.hrsa.gov/hr/nofearact/forms/diversity.pdf>
- Attorneys General Viewpoint, See pages 4-5 on public charity board diversity:  
<http://www.mass.gov/ago/docs/nonprofit/guide-for-board-members.pdf>
- Frederick Goff Legacy, See webpage, [Cleveland Foundation - Connecting Donors and Meaningful Causes](#) and See page 6, <http://www.rockarch.org/publications/resrep/sacks.pdf>

### **Why Does the Application Ask about Consistent Mission Across Communications?**

- As community foundations work through strategic and development plans, reviewers pick up on inconsistencies this is a friendly reminder to work on consistency, especially on your website.
- The number one noncompliance issue reported to National Standards is information on a community foundation's website inconsistent with information submitted in the application process.
- Part of the Standards role is to aggregate information for our community foundations and share with you as the field thinks about their business practices, consistency is part of that discussion.
- NOTE: Asking if the mission is consistent when stated, does not mean that the mission statement must be stated on ALL communications.

### **Do Conflicts of Interest Disclosures Need to Be Signed Each Year, by Whom?**

- There are several materials related to conflicts of interest.
  - Conflicts of Interest Policy – one time signed acknowledgement this policy was received
  - Conflicts of Interest Annual Disclosure – annually signed because conflicts can change over time
  - Procedure for What to Do When a Conflict Arises – not signed, but staff and board awareness (at a minimum executive committee and committee chairs understand this procedure)
- Policies to identify and address perceived, potential, and actual conflicts (the policy must apply to all aspects of community foundation operations). Policies that apply solely to

grantmaking or investments, for instance, or any discrete portion of operations, do not meet the related standard.

- Application of policies to **all** of the following (define covered persons):
  - board members
  - staff members
  - individuals serving on standing board committees (this is any volunteer that serves on a committee of the board but is not serving on the board)
- Procedures for handling disclosures of conflicts
- Evidence of disclosures of conflicts of interest are provided for:
  - board members
  - staff members
  - individuals serving on standing board committees (This is any volunteer that serves on a committee of the board but is not serving on the board)
- Policy may apply to other volunteers, contractors and consultants, but this is optional.

### **Do Confidentiality Forms Need to be Signed Each Year, by Whom?**

#### Who must comply with the policy?

- Members of the board (required)
- Employees (required)
- Volunteers, including members of committees (good practice)
- Contractors, including consultants (good practice)

#### What information should the policy cover?

- General rule – all information deemed confidential
- Information about donors and prospective donors
  - Identity, gift amounts, nature of gift
  - Any exceptions to non-disclosure such as annual report

- Are donors within an exception deemed to consent if they have not specifically requested otherwise?
- Anonymity – who will know the donor’s identity?
- Information about grantees and prospective grantees including both organizations and individuals
- Information about the foundation
  - Finances
  - Fundraising
  - Investments including performance of investment managers
  - Personnel
  - Internal discussions
  - Grants and contracts
  - Board discussions, including positions taken by individual board members

What exceptions apply?

- Disclosure to attorneys, accountants and other professionals providing assistance to the foundation
- Disclosure to tax authorities, government agencies, courts
- Disclosure required by law

Who may authorize disclosure?

- President and CEO
- Governance committee
- Executive committee

How is confidential information protected?

- Who may access the information?
- Can paper files be removed from the office and under what circumstances?
- Can information be copied or scanned to personal devices – laptops, phones, tablets?

How is the policy communicated and enforced?

- Providing a copy of the policy
- Requiring a signature acknowledging that the signer understands and agrees to comply
- Formal training

Other confidentiality matters

Applications for scholarships may include a range of sensitive material such as the student’s Social Security number and financial information demonstrating need. Foundations should take

great care to safeguard all of this information. Volunteer members of scholarship selection committees are among those that should be asked to execute the confidentiality policy. This is also the case for funds that provide emergency and disaster assistance to individuals.

Although not typically included in a confidentiality policy, foundations should be aware that certain highly-sensitive information, such as credit card information and Social Security numbers, are subject to federal and state laws prohibiting disclosure. Foundations that receive such information should have policies in place to safeguard it. In addition, foundations with websites should have and publish a website confidentiality policy. Foundations that issue charitable gift annuities or make loans to individuals (e.g., for education or in hardship situations) need a policy governing the confidentiality of financial information they collect and must disclose that policy to affected individuals.

### **NS 18.3 Requires Grant Guidelines for All Foundation Grants, Please Provide Specifics**

Reviewers are asking that each time a grant – of any type – is distributed that the following information is included:

- Use of grant funds for a charitable purpose
- If the grant is from a donor advised fund, you must include language prohibiting private benefit and reimbursements, such as:
  - *Grants may not result in benefits, goods, or services to the donor, the fund advisor, members of their families, and businesses they control. Failure to observe this restriction can subject the fund advisor to tax penalties. Benefits include the payment of pledges, event tickets, meals, sponsorships, registration fees, discounted merchandise, preferred parking and/or seating, and memberships unless the membership confers nothing of value.*
  - *Expense reimbursements, loans, compensation, and other similar payments are not permitted from a donor advised fund to a donor, fund advisor, or related party.*
- If the grant requires expenditure responsibility, you must also include a prohibition against lobbying activity, such as: *To not expend any grant funds for any political or lobbying activity or for any purpose other than one specified in section 170(c)(2)(b) of the Code.*
- If the grant is from a scholarship fund, you must include language explaining :
  - The scholarship must be used for “qualified educational expenses.”

Be Careful in These Circumstances:

- Unless otherwise provided in the fund agreement, the Foundation will **pay Scholarship Grants directly to the educational institution** for the scholarship recipient. The educational institution must agree to use the grant funds to defray the scholarship recipient's expenses or to pay the funds (or a portion thereof) 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 purposes and conditions of the grant.

- If the **scholarship is paid directly to a student**, the foundation must receive a report on the funds awarded annually. This report must include a summary of the funds awarded, and the grantee's courses taken (if any) and grades received (if any) in each academic period. This report must be verified by the educational institution. A final report is also required.
- **Recipients of Awards and Prizes** to Achieve a Specific Objective or, if appropriate, the organization supervising the grantee's work, will be required to provide a written report to the Foundation about their activities and use of funds at the end of the grant period. If the grant is for a term of longer than one year, periodic written reports will be required at least annually. Any funds not expended for the award must be returned to the Foundation for furtherance of its mission and the charitable purposes of the particular Fund under which such award was made.

This information can be included via written communications such as email, letter, and grant agreement.

**For More Helpful Tips, please visit:** <http://www.cfstandards.org/process/legal-policies-procedures>