

BOARD SERVICE POLICY AND GUIDELINES

Table of Contents	1
Policy	2
Guidelines	3
1. Introduction and Purpose.....	3
2. Foundation-Sponsorship of Employees to Serve in Governance Roles	3
2.1 Approved Foundation-Sponsored Scenarios	3
2.2 Annual Review	4
2.3 For Profit Entities.....	4
2.4 Governance Activities Undertaken by Employees as part of Professional Development	4
2.5 Governance Activities Undertaken by Employees in Connection with Community Service	4
3. Alternatives to Board Service.....	5
4. Fiduciary Obligations of Board Members	5
5. Managing Potential Conflicts of Interest	6
5.1 Steps in Managing Conflicts.....	6
5.2 Employee's Role with Respect to Grantee.....	6
5.3 Board Fees.....	6
5.4 Cooling Off Period.....	6
5.5 Other Potential Conflicts of Interest and Assistance	6
6. Training	7
7. Due Diligence and Risk Mitigation	7
7.1 Due Diligence and Review of Risks	7
7.2 Number of Board of Positions; Veto Powers or Supra Majority Voting Rights	7
8. Foundation D&O Insurance Coverage	7
Exhibits:	
<u>Exhibit A</u> -- Confirmation of Foundation Sponsored Board Service (Required for foundation's D&O coverage)	8
<u>Exhibit B</u> -- Checklist for Employees and Managers to confirm Board Service Complies with Foundation's Board Service Policy and Guidelines	9
<u>Exhibit C</u> -- Due Diligence Checklist	10
<u>Exhibit D</u> -- LegalEase.....	11

BOARD SERVICE POLICY

The foundation will sponsor you to serve on the board of directors of a nonprofit organization in specific scenarios listed in the Board Service Guidelines (*attached*) where the service furthers the foundation's mission, achieves specific programmatic objectives and the objectives outweigh the associated potential risks. The following steps to be taken as part of undertaking foundation-sponsored board service (explained more fully in the Board Service Guidelines) are:

- (i) obtain prior written approval from your manager representative on the Management Committee; required to receive coverage under foundation's Director and Officer's liability insurance (Exhibit A),
- (ii) complete the attached checklist to confirm the board service complies with this policy (Exhibit B),
- (iii) conduct due diligence regarding the organization to mitigate potential risks,
- (iv) manage any potential conflicts of interest (Exhibit C), and
- (v) take mandatory training regarding fiduciary obligations of board members and best governance practices.

Because of inherent conflicts of interest, a program officer may not both manage a grant and also serve on the board of the grantee, without prior CEO approval.

You may also serve as a foundation representative on other nongovernance bodies of grantee organizations, such as advisory boards and other similar committees, as further described in the Guidelines, with the prior approval of your manager. If you do not have legal fiduciary duties as part of serving on an advisory board or steering committee, you may also manage a grant to the organization, if your manager approves.

The foundation will cover reasonable expenses (consistent with our Travel and Expense Policy), related to service on foundation-sponsored boards and other nongovernance bodies of grantee organizations, as well as permit reasonable work time for such commitments. The foundation may deny payment for or reimbursement of any expense not permitted under applicable law, including denial of travel and other expenses associated with government contacts made in connection with foundation-sponsored board service. The foundation may also deny payment for or reimbursement of any expense it deems inappropriate or excessive.

In connection with foundation-sponsored board service for organizations that are a U.S. public charity, a U.S. federal, state or local government (or agency or instrumentality), or a nonprofit entity organized outside of the U.S., the foundation will provide Director and Officers' liability insurance coverage, however, you need to complete and submit the required form to Finance. The foundation's D&O insurance does not provide coverage for service on the board of a for-profit entity or government entity outside of the U.S., even if the organization is a grantee or foundation objectives may be achieved through such service.

The foundation also supports engagement by employees in professional development activities and community service through serving on boards of nonprofit organizations. Guidance regarding required approvals, use of foundation time for such activities and reimbursement for related expenses is provided in the Guidelines.

Please contact the Foundation's Ethics & Employment Counsel if you have any questions regarding this Policy or the application of the Board Service Guidelines. Situations that create a compelling reason for an exception to the Board Service Policy or Guidelines require prior review of the foundation's General Counsel, and in certain cases approval of the CEO.

BOARD SERVICE GUIDELINES

1. Introduction and Purpose

These Guidelines supplement the foundation's Board Service Policy. The foundation's mission and specific programmatic objectives can be furthered through board service, provided careful thought goes into achieving identified goals and managing potential conflicts of interest and other risks. The fiduciary obligations associated with board service must be honored at all times. The purposes of these Guidelines are to provide guidance regarding:

- When board service will be foundation-sponsored
- Potential alternatives to board service
- Fiduciary obligations of board members
- Managing any potential conflicts of interest
- Due diligence and risk mitigation
- Foundation Director & Officers' insurance coverage

2. Foundation-Sponsorship of Employees to Serve in Governance Roles

2.1 Approved Foundation-Sponsored Scenarios. The following are the limited scenarios under which the foundation has determined that the opportunity to achieve foundation objectives outweighs potential risks associated with sponsoring an employee to serve on an organization's board of directors:

<u>SCENARIO</u>	<u>OBJECTIVES</u>	<u>EXAMPLES</u>
<u>Creation of New Entity</u> : Foundation is creating new entity and providing significant funding*	Provide capacity building for grantee through participation on initial governing body as well as content expertise to ensure success of new entity and implementation of key strategy	AGRA, GAIN, FIND, Thrive by Five, 3ie, Newark Charter School Fund
<u>Source of Significant* Funding</u> : Foundation is significant source of funding for organization	Oversee expenditure by a grantee of significant foundation grant funds and progress of specific foundation funded project(s)	AREAS, Global Fund, GAVI, iOWH
<u>Investment of Significant* Grant Funds</u> : Significant foundation grant funds will be held/invested by grantee for extended time period	Monitor significant investment of grant funds by grantee to ensure proper stewardship and safeguarding of funds	Gates Cambridge Trust
<u>PRIs</u> : Foundation participates in governing body of non-profit entity in which foundation makes investment	Maintain close oversight of management of entity in which PRI is made as well as potentially provide sector expertise	None currently (although we have employees serving on an advisory committee for Aureos/Africa Health Care Fund)

<u>SCENARIO</u>	<u>OBJECTIVES</u>	<u>EXAMPLES</u>
<u>Representative of Nonprofit Sector:</u> Foundation participates in major membership organization focused on nonprofit sector	Employee serves as foundation representative to voice opinions and provide direction as significant leader in nonprofit sector	Philanthropy Northwest, Foundation Financial Officers Group

*The phrase “significant funding” is defined as a grant of more than \$20m or the foundation providing more than 50% of the organization’s funding in any year.

If other scenarios arise where having the foundation sponsor board service for an employee achieves foundation objectives and the employee and their manager believe the benefits justify the relative risks, they should be brought to the attention of the General Counsel for review and CEO approval.

2.2 Annual Review. The foundation may continue to sponsor board service as long as necessary to achieve foundation objectives. Management Committee members will receive an annual report of foundation-sponsored board service and should review the following factors in deciding whether sponsorship should continue: (i) if the organization is a grantee, whether additional sources of funding have been secured by the organization and/or whether the term of the foundation’s grant has been completed, (iii) whether independent board members have been recruited to fulfill oversight functions or provide content expertise for the organization, (iv) whether the objectives of the foundation are actually being achieved through the board service, (v) whether other appropriate alternatives are in place or can be implemented to achieve foundation objectives with less risk to the foundation (See Section 3 below), (vi) whether any risks have arisen creating additional exposure that may outweigh potential benefits, and (vii) the allocation of resources required to provide foundation-sponsored board service.

2.3 For Profit Entities. Due to greater potential legal exposure and lack of coverage under the foundation’s D&O insurance coverage, the foundation will not sponsor employees to serve on the board of a for profit entity, including PRI recipients. Employees must take accrued and available vacation time or approved personal leave for time commitments with respect to serving in a governance role of a for profit entity and also personally pay for all expenses associated with such activities. Employees are also required to discuss any such commitments with their manager to ensure they do not raise potential conflicts of interest or interfere with work responsibilities, and otherwise comply with Section 5 of the foundation’s Conflict of Interest Policy regarding accepting compensated work outside the foundation.

2.4 Governance Activities Undertaken by Employees as part of Professional Development. Separate from serving as a foundation representative, an employee may undertake board service or participate on advisory boards or steering committees to further their professional development in connection with their work responsibilities at the foundation with the prior approval of the Director, comparable supervisor within the Operations teams, or the CEO in the case of Management Committee Members. The approver should evaluate the scope of the commitment, including impact on work responsibilities. The foundation will reimburse for reasonable travel and expenses associated with these activities approved by the employee’s manager.

2.5 Governance Activities Undertaken by Employees in Connection with Community Service. The foundation supports engagement by employees in community service, including through serving in a governance capacity on behalf of nonprofit organizations, subject to

compliance with the foundation's Conflict of Interest Policy. As long as the activities are charitable in nature, you are not required to use accrued vacation or personal days for time devoted to these activities, provided you coordinate with your manager, as necessary, should a commitment have the potential to interfere with your work responsibilities. Prior approval of your manager is otherwise not required. Reimbursement for travel or other expenses incurred in connection with these activities should be requested from the organization for which you are volunteering or otherwise be paid for by you personally.

3. Alternatives to Board Service

Alternative mechanisms may be available to effectively achieve foundation objectives while reducing potential conflicts, legal exposure and other risks associated with board membership, which should be considered in each case before foundation-sponsored board service is approved. These include:

- Having an individual not employed at the foundation take a board seat as a foundation representative, such as an independent subject-matter expert
- Having a foundation employee serve as a board observer, reducing fiduciary obligations, conflicts of interest and other potential legal exposure
- Creating a parallel and advisory "funders" board distinct from the governing board
- Requesting and reviewing copies of board materials, minutes and other information provided to board members and/or impose other additional reporting obligations as a way of closely monitoring and managing a grant by the foundation to the grantee
- Having a foundation employee serve on an advisory board or an investment committee, especially in the case of a program-related investment involving a for-profit entity or situation where significant foundation grant funds will be held/invested by a grantee for an extended time period

The foundation will reimburse reasonable expenses (consistent with our Travel and Expense Policy) incurred in connection with participation in alternative governing bodies when they are directly in furtherance of the foundation's mission. Approval of your direct manager should be obtained prior to undertaking these types of commitments on behalf of the foundation.

4. Fiduciary Obligations of Board Members

One of the biggest challenges of board service is ensuring board members fully understand and observe the fiduciary duties applicable to directors. These fiduciary duties can (i) be at direct odds with the underlying reasons the foundation may have for wanting a board position with a grantee, and (ii) compromise the foundation representative's ability to act solely in the best interests of the board while fulfilling their duties as an employee on behalf of the foundation.

Specifically, every board member is required by law to observe the duties of care and loyalty:

- Duty of Care: This requires a director to act with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A director is required to be fully informed and to exercise independent judgment when participating in board decisions and providing oversight of an organization's management.
- Duty of Loyalty: This requires a director to act solely in the best interests of the entity on whose board they serve, irrespective of other entities with which the director is affiliated, employed, or to which the director owes his or her board appointment. Thus, a program officer's service on a board would result in a greater duty of loyalty to the grantee organization than the duty owed the foundation as an employee, even though they may

be serving on the organization's board as a foundation representative and their expenses are paid for by the foundation. The duty of loyalty has two subcomponents:

- Conflict of Interest: Even though the director receives no personal monetary or other tangible benefit as a result of the grant or board service, a conflict of interest can exist if a director has an employment relationship with the foundation that provides funding to an organization. For example, where a grantee organization is considering its annual strategy, a conflict would arise if one option may be better for the organization's long-term health if there is an alternative option that is much more closely aligned with the foundation's long-term strategy.
- Confidentiality of Information: A director must abide by the organization's confidentiality policy. In the absence of a policy, the law provides that a director generally should not disclose information about such organization's activities or its proprietary information unless the information is already known by the public or is of public record. This includes not sharing nonpublic information with the foundation without the grantee's prior consent. This can create particularly challenging situations when a program officer learns potentially negative information about a grantee in their role as a board member that would be critical to decisions being made by the foundation as a major funder of the grantee.

5. Managing Potential Conflicts of Interest

5.1 Steps in Managing Conflicts. A foundation-sponsored board member must: (i) identify potential conflicts of interest to the organization as required by the organization's and/or foundation's Conflict of Interest Policy, (ii) recuse him- or herself from participating in board discussions regarding grants or contracts from the foundation, and (iii) not be the final approver of a foundation grant or contract to the organization. As a matter of good corporate practice, the organization's records should reflect the disclosure and the abstention during any board discussions regarding the foundation. Similarly, the board affiliation should be noted in the foundation's PAR, which should describe the process by which the conflict is managed.

5.2 Employee's Role with Respect to Grantee. To avoid the inherent conflicts of interest triggered by an employee having overlapping fiduciary obligations to both a grantee as a board member and the foundation as its employer, an employee responsible for managing a grant may not serve as a board member for the grantee, without prior approval of the CEO. Such approvals will generally be limited to situations where the foundation is in the process of forming a new entity. In these cases, a program officer may serve as part of the initial board while recruiting additional board members.

5.3 Board Fees. Employees serving on a grantee's board on behalf of the foundation may not accept board fees, compensation or honorariums, consistent with the foundation's Conflict of Interest Policy.

5.4 Cooling Off Period. The foundation will not sponsor board service for an individual who previously worked for the organization, either as an employee or independent contractor, until a minimum 12-month cooling off period occurs in order to reduce potential conflicts and confusion regarding the employee's role and relationship with the grantee.

5.5 Other Potential Conflicts of Interest and Assistance. Please refer to the foundation's Conflict of Interest Policy for additional guidance regarding managing potential conflicts of interest that may arise in connection with board service. The foundation's Legal team is also available to help work through any conflict of interest issues relating to board service.

6. Training

Each employee who undertakes foundation-sponsored board service will be required to take training on (i) the fiduciary obligations of directors, (ii) managing conflicts of interest, and (iii) best practices of board governance. Courses will be offered by Legal on a periodic basis.

7. Due Diligence and Risk Mitigation

7.1 Due Diligence and Review of Risks. Nonprofit boards have traditionally been subject to fewer claims than corporate boards, but are still subject to potential governmental investigations and private lawsuits. Reviewing the risks associated with holding a particular board position should be part of the due diligence conducted prior to accepting the board seat. Examples of the types of risks that should be considered include (i) reputational risks should the organization encounter public relations issues that might, in turn, impact the foundation, (ii) programmatic risks that could be exacerbated by the conflicting loyalties of key foundation personnel, (iii) legal and financial risks for the individual and the foundation in the event of organizational mismanagement, and (iv) risks that may arise if a foundation representative serving as a board member does not properly discharge their fiduciary obligations. Additionally, holding positions such as chair of the board or a committee further increases the level of risks, which should be considered prior to accepting such leadership positions. Exhibit C provides a checklist of items to assist in a due diligence review prior to accepting a board position.

7.2 Number of Board Positions; Veto Powers or Supra-Majority Voting Rights. It is critical for tax and other reasons that grantees remain independent of the foundation. The number of board positions the foundation sponsors for any one organization should be limited to (i) reduce legal and other exposure, (ii) manage stewardship of foundation resources, (iii) avoid risks that “tipping” safe harbors will be jeopardized, and (iv) ensure the foundation’s grants to the organization count towards “payout.” In no instance should the foundation’s representatives constitute a majority of a grantee’s board, be given veto rights over actions of the board, or be given supra majority voting rights.

8. Foundation D&O Insurance Coverage

The foundation carries Director and Officers’ liability insurance that provides coverage to employees who undertake foundation sponsored board service. To be covered, the employee must have written approval from their manager that he or she is serving on the board at the foundation’s request (Exhibit A). The executed form should be provided to the Ethics and Employment Counsel who coordinates making such information available to the foundation’s insurance company. Key elements of the foundation’s Director and Officers’ liability insurance include:

- Coverage requires approval of the employee’s manager.
- Coverage is only for a U.S. public charity, a U.S. federal, state or local government (or agency or instrumentality), or a foreign nonprofit—it does not cover employees serving on boards of for-profit entities or foreign government entities, even if a grantee.
- Coverage protects individuals only during their employment with the foundation.
- Coverage does not extend to advisory board positions, committee memberships or other similar types of nongovernance roles.

- Coverage does not extend to governance activities undertaken as part of community service or professional development if the employee is not serving as a representative of the foundation.

Exhibit A

**Bill & Melinda Gates Foundation
CONFIRMATION OF FOUNDATION SPONSORED BOARD SERVICE
REQUIRED FOR FOUNDATION D&O COVERAGE**

Participation by the undersigned employee on the Board of Directors of _____ **[organization name]**
for the anticipated term of _____ **[start date and end date]**
is part of the employee's responsibilities at the foundation and is furtherance of the foundation's mission. A discussion regarding the scope and nature of the employee's activities has occurred between the employee and their manager prior to the execution of this confirmation.

_____ **[organization name]**
is (i) exempt from United States federal income taxation either as an organization described in sections 501(c)(3) of the Internal Revenue Code or as a U.S. federal, state or local government (or an agency or instrumentality thereof) **OR** (ii) is a foreign non-governmental organization that is a not-for-profit organization under the laws of the jurisdiction in which it is formed.

By execution below, both the employee and manager confirm that such board service is in compliance with the foundation's Board Service Policy and related Guidelines.

Print name of individual employee

Signature of individual employee/board member

Date

Print name of foundation manager

Signature of foundation Manager

Date

Title

**PLEASE SUBMIT THIS DOCUMENT TO SONIA CUDD,
ETHICS AND EMPLOYMENT COUNSEL**

Exhibit B

Checklist for Employees and Managers to Confirm that Board Service on a Board of Directors is in Compliance with Foundation's Board Service Policy and Guidelines

____ Service on the board of directors of the organization is part of the employee's work responsibilities and directly furthers the foundation's mission, and the organization is a U.S. public charity, a U.S. federal, state or local government (or agency or instrumentality thereof) or a foreign nonprofit or its equivalent.

OR

____ Service on the board of directors of the organization is being approved as part of the employee's professional development in connection with the employee's work responsibilities at the foundation.

____ The board service falls within one of the approved scenarios (see section 2.1 of the Board Service Guidelines) where achievement of a foundation objective has been deemed to outweigh potential risks associated with board service or an exception has otherwise been reviewed by the General Counsel and approved by the foundation's CEO.

____ Alternatives to having the employee serve as a board member have been considered and it has been determined that having the foundation sponsor the employee's board service is necessary as the most effective means to achieve foundation objectives.

____ The employee has conducted due diligence to assess the potential risks of serving on the board of the organization and determined the risks are manageable in light of the foundation objectives that will be achieved.

____ The employee does not manage a grant by the foundation to the organization.

____ The employee has either taken or is scheduled to take the training offered by the foundation regarding the responsibilities of serving as a board member.

____ The employee will not receive any compensation for serving on the board of the organization.

____ The employee has not been an employee or served as an independent contractor for the organization during the last 12 months.

____ The employee and manager have executed the document (Exhibit A) confirming the foundation is sponsoring the board membership as required for the employee to be covered by the foundation's director and officers' liability insurance.

Signature of individual employee/board member

Date

Signature of foundation Manager

Date

**PLEASE SUBMIT THIS DOCUMENT TO SONIA CUDD,
ETHICS AND EMPLOYMENT COUNSEL**

Exhibit C

Due Diligence Checklist

Asking the following questions will assist an employee and their manager to assess and reduce potential risks associated with serving on an organization's board:

- Does the organization produce regular financial statements and are they regularly audited?
- What internal financial controls are in place at the organization?
- If the organization has an endowment, does it have an investment policy and, if so, is it followed?
- Has the organization filed its federal and state tax returns on a timely basis?
- Is the organization authorized to solicit contributions in each jurisdiction where it engages in solicitations?
- Does the organization properly pay its employment taxes?
- Does the organization engage in lobbying or political activity, and if so, is it familiar with and does it comply with any applicable restrictions?
- Does the organization have current and complete organizational documents?
- Does the organization conduct its affairs in a manner consistent with its governing documents?
- Does the board meet on a regular basis?
- Are the other directors respected members of the community?
- Can the employee devote the time required to discharge the fiduciary obligations required of a board member?
- Does the organization have a conflict of interest policy and if so, does it adhere to it?
- Does the employee have any significant conflicts of interest that could impair their ability to serve on the board?
- Does the organization have directors' and officers' liability insurance and, if so, what are the policy limits, exclusions, deductibles and copayments?
- Does the organization's governing documents provide for indemnification and, if so, under what circumstances and with what limitations?

Exhibit D
Board Service LegalEase

LEGALEASE

BOARD SERVICE



Foundation Sponsored Board Service

The foundation will sponsor your service on the board of directors of a nonprofit organization where service furthers the foundation's mission, achieves specific programmatic objectives and the objectives outweigh the potential risks. Following are the limited scenarios where the foundation will sponsor an employee to serve on an organization's board of directors:

Creation of a New Entity: Foundation is creating a new entity and providing significant funding.

Source of Significant Funding: Foundation is a significant source of funding for the organization.

Investment of Significant Grant Funds: Significant foundation grant funds will be held/invested by the grantee for extended period of time.

PRIs: Foundation participates in governing body of non-profit entity in which the foundation makes investment.

Representative of Nonprofit Sector: Foundation participates in major membership organization focused on the nonprofit sector.

REQUIREMENTS

1. Obtain prior written approval from your manager representative on the Management Committee, evidenced by signing the form required for coverage under the foundation's D&O insurance.
2. Complete a checklist that confirms the board service complies with the foundation's Board Service Policy.
3. Mitigate potential risks by conducting due diligence regarding the organization and manage potential conflicts of interest.
4. Take **mandatory** training regarding your fiduciary obligations/best governance practices.

FIDUCIARY OBLIGATIONS OF BOARD MEMBERS

Duty of Care: Board Directors are required to be fully informed and to exercise independent judgment when participating in board decisions and providing oversight.

Duty of Loyalty: Directors must act solely in the best interest of the entity on whose board they serve, irrespective of other entities with which the director is affiliated, including through employment.

- ♦ **Confidentiality:** A director may not disclose information unless it is already known by the public or is of public record or the duty of confidentiality has been waived by the organization.
- ♦ **Conflict of Interest:** Can exist if a director has an employment relationship with the foundation and we provide funding to the organization.
 - ◇ You may not accept board fees, compensation or honorariums.
 - ◇ You must recuse yourself from participating in discussions regarding grants or contracts from the foundation.
 - ◇ You may not be the final approver of a foundation grant or contract to the organization.
 - ◇ Without prior approval of the CEO, **you may not manage a grant to an organization for which you also serve as a member of the board of directors** (this restriction does not apply to advisory boards or steering committees).
 - ◇ The foundation will not sponsor service on a board of directors if you have previously worked for the organization as an employee or independent contractor in the previous 12 months.



TURN OVER

SUMMARY OF REQUIRED APPROVALS, USE OF TIME, EXPENSES & D&O INSURANCE

Nature of Commitment	Foundation Approval Required?	Use of Foundation Time?	Foundation Reimbursement Permitted?	Availability of Foundation D&O Insurance?
◇ Foundation-sponsored service on a board of directors	Yes Manager representative on the Management Committee	Yes Undertaken as part of work responsibilities	Yes Part of foundation business	Yes
◇ Service on non-governance body of grantee organization (i.e., advisory board or steering committee)	Yes Manager approval	Yes Undertaken as part of work responsibilities	Yes Part of foundation business	No
◇ Service on board or other non-governance body as part of professional development	Yes Approval of Director, comparable supervisor within the Operations teams, or CEO in the case of MC members	Yes Coordinate with Manager if impacts work responsibilities	As determined by Manager	No
◇ Service on board or other non-governance body as part of community service	None	Yes Coordinate with Manager if impacts work responsibilities	No Paid for by nonprofit or personally by employee	No
◇ Service on for profit board	Generally N/A unless you are paid for such activities and hold the position of PO or higher or Manager, in which case approval should be obtained from your Director, President or MC representative, as appropriate.	No Activity must be undertaken on personal time, using accrued vacation or unpaid personal leave, coordinating with Manager if impacts work responsibilities	No Paid for by for profit or personally by employee	No



WANT TO LEARN MORE? REVIEW THE FOUNDATION'S BOARD SERVICE POLICY AND GUIDELINES OR CONTACT THE ETHICS & EMPLOYMENT COUNSEL IN LEGAL.

Rev. 3/1/2010