

Key Issues for an Incoming Board Chair of a Private Foundation

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This article identifies some of the key issues that an incoming (or current) Chair of the Board of a private foundation may wish to consider in the role.² Each organization is different, and context matters as does the experience of the director assuming the role of Board Chair. The history, size, culture, and community presence of the entity can also affect the allocation of tasks and role for a foundation Chair. In addition, people will approach the role of Chair based on their personal style, experience and interests and there is no one size fits all.

With those caveats in mind the following are some key areas or principles for a Board Chair to consider whether assuming a new role as Chair or for a person who has been in that role.

Knowledge of Governance Documents (and where to find them and who to ask)

A Chair should be aware of key governance documents. While the Chair does not need to be the expert on the governance documents, she should know who to ask for technical or detailed answers (often the General Counsel or Secretary). Key documents often include by-laws; Committee charters; conflicts of interest policy; expectations of the conduct of directors; evaluating the Board and directors; and directors' compensation and expense policies.

Board Culture and Keeping the Board in its Proper Role

The Chair, alongside the President, sets the tone at the top for how the Board functions, including ensuring the Board stays focused on governance and strategic functions rather than the management issues reserved to the President.

The Chair should ensure that the Board is attentive to fiscal discipline and prudent investment strategies, whether directly or through appropriate committee structures. Working with the President, the Chair should also be comfortable that the staff has the necessary expertise in these areas.

¹ Title for identification purposes only. The views expressed herein are the personal views of the author based on 28 years at MacArthur Foundation, board member and Chair of various not for profit organizations and active engagement in the philanthropic sector. My peers and I often exchange information about best governance practices and there is a range of approaches among even the most professional organizations depending on their culture, history, and leadership. Special thanks to Martha Minow, Cecilia Muñoz, and John Palfrey, Chairs extraordinaire of private foundations for their input.

² For additional resources and perspective on these issues, see the appendix .

August, 2022

Page 2

It is part of the Chair's duties and responsibilities to ensure that Board members respect their role and to step in to address instances where there may be questions to resolve whether a director has overstepped her role.

It can be helpful to periodically remind the Board about its role (noses in fingers out) and/or have a written document regarding the role of the Board and expectations of directors (MacArthur recently prepared and the Board approved such a document). Nevertheless, even with appropriate documents, the Chair, with the assistance of the President and the General Counsel, needs to be alert to potential issues and address them if they arise.

As part of these responsibilities, it remains important for there to be clarity among the Board, the President, and staff when a board member should reach out to a staff member and vice-versa and the expectations for keeping the President and Chair apprised of such discussions. Similarly, the Chair should help guide other Board members regarding engagements with grantees or in attending site visits.

Review of the Board and of Individual Board Members for Renewal of Terms

Director Assessment

A Chair and Board should also have in place an agreed upon process for reviewing individual directors and the Board as a whole. This should be documented with clear criteria for evaluation and then adhered to unless circumstances dictate a change. There are a variety of approaches that can be used depending on the degree of formality desired. For example, the process can include the Chair consulting with each board member regarding the performance of the director under review based upon identified criteria and discussing with the director up for renewal their self-assessment. If there are opportunities for improvement, the Chair can discuss any issues with the director.

An alternative can be a written evaluation form which each director fills out in confidence. The Chair can receive evaluation forms or input orally and may be assisted by the General Counsel or Secretary depending on the trust between the Chair and the specific people. Some organizations may use an outside service to assist in this process to provide greater independence.

Reviews should be done sufficiently in advance of any decision point, such as extending a term or an annual process so appropriate steps can be taken if steps are warranted.

Board Assessment of the Board

Organizations should also periodically review the performance and operations of the Board as a whole to help ensure best performance as a unit. This review could be managed by the Chair, General Counsel, or an outside service to provide the independence (the choice is a function of the individual organization, cost and relationships among board members and the Chair). This type of review is not needed every

year and should be done as needed but probably every three to four years depending on the terms of directors and the addition of new directors.

The Chair and Board should have a template for the questions to which directors are expected to respond. Examples can be found through Boardsource or other sources³.

Compensation and Other Benefits for the Board

The Chair should ensure that any compensation payable to the Board and other benefits should be reviewed every few years. This should be based on survey data of comparable organizations so the organization understands where it stands relative to its peers and be able to justify its approach. Some foundations do not pay their directors, but provide other benefits such as matching gifts, directed gifts by directors, expense reimbursements and other perquisites.

In all, the Chair and the Board should be comfortable that the entirety of benefits provided are “reasonable” based on comparable data or any special circumstances. It is also tricky for the Board to decide to increase its own pay, but this can be done with sufficient data to support its changes and/or an opinion from an outside consultant. It is important to remember that compensation to foundation directors must be disclosed on the form 990PF and that many other not for profit organizations do not compensate their directors.

Committee Assignments

Depending on the organization’s bylaws and governance protocols, the Chair, in consultation with other directors and the President (and the General Counsel/Secretary), may appoint the chairs of the Board Committees and the members of those Committees. This provides leadership opportunities for other directors who may serve as Chairs and the chance to provide valuable input to the Committee’s deliberations even if not the Chair. In other cases, committees may elect their own chairs with input from the Chair.

Role on Committees

In many organizations, the Board Chair serves ex officio as a member of all committees. The Chair should in any event have a working knowledge of the work, agendas, and charters of all committees and should consult regularly with the committee chairs and the president regarding the priority of the committees.

New Board Members and Transitions

The Chair should play a central role for the consideration of new Board members working with a nominating or governance committee, if there is one, or with other directors to solicit ideas and pursue

³ Readers interested in MacArthur’s form should contact the author.

potential candidates. The Chair should be clear about what is needed for the Board to function effectively, the fit of prospective candidates with the current Board, and what additional skills, temperament and expertise is needed.

The Chair should ensure the organization has a clearly defined set of characteristics or other criteria for new board members, a written process guiding selection, The organization and Chair should also have in mind the optimal number of directors so that the board can operate effectively as a whole.

The Chair should also take care that the President be kept apprised of these efforts and an opportunity for input as the President has a keen interest on the composition of the Board to whom she reports.

Some organizations use a search firm or other outside service to identify potential board members and to interview prospective candidates, at least initially. Others, including MacArthur, use the Nominating Committee, and Board (and solicit recommendations from Staff) to identify and vet candidates.

In general, the Chair should have an active and leading role in first discussing interest with potential candidates unless she determines that it is more useful for somebody else to take that task in a specific.

Similarly, the Chair should take care to oversee the appropriate departure of directors whose terms are ending or, for other reasons, should leave the Board before the end of a term. This can include both appropriate recognition for a job well done, as well as a steady hand in transitions that are best for the organization but that may be more difficult because of various circumstances facing the transitioning director.

Orientation of New Board Members

The Chair should be aware of the orientation process for new Board members and the Chair should check in with new Board members more frequently than with existing Board members. Some organizations use a “buddy” or “mentor” system for new board members where a specific board member is “assigned” to the new board member. Some new Board members may be very experienced directors who do not feel the need for a mentor or any oversight. Even experienced directors may benefit, however, from understanding the culture and needs of the foundation which she recently joined.

In any event, the Chair should assist a new Board member to become acclimated to the culture and approach of the Board and organization and check in periodically with new board members.

Relationships with Board Members

The Chair should consult periodically with other Board members. It is often a matter of personal style, culture, and the need to discuss issues how often this occurs between Board meetings but establishing a regular cadence is a good practice. This helps avoid surprises, allows the Chair to understand individual’s

perspectives and helps identify understand problems that can be addressed before they ripen into significant issues.

The Chair Role at Board meetings

The Chair and President should have consensus on the orchestration of board meetings and who will do what. The Chair should, at a minimum, be prepared to open the meeting, moderate board discussions to allow all voices to be heard while keeping the meeting on track, and, usually, synthesize conclusions, outcomes, and next steps. The Chair must be prepared to step in as well to ensure respectful engagement among Board members and Board members and staff and, when necessary, speak with a recalcitrant or disruptive board member.

Many Chairs opt to speak last, or not at all, during discussions to provide maximum time for other directors. While this is a matter of personal preference, the Chair's perspective as a director remains important and the Chair should not hesitate to provide her own perspectives during or at the end of a discussion.

Leading Executive Sessions

The Chair should set and lead executive sessions at each board meeting to cover issues where the Board can speak freely on sensitive or confidential issues without most staff present. The agenda can be set in consultation with the President and other Board members should be invited to add any issues they wish to discuss. A separate executive session without the President present may also be helpful from time to time. Doing this more regularly helps dispel any concerns that there is something amiss in the relationship between the Board and the President.

Review of the President

The selection, oversight, review, and, if necessary, termination and replacement, of the President is one of the most important functions of the Board and the Chair. This should include an annual review and, as appropriate, a more comprehensive review at the four- or five-year mark depending on the expected length of tenure.

The Board and Chair should be clear on the process for the annual review and the respective roles of the Board and Chair. Best practices suggest that the President identify annual goals that could include near term, mid-term, and long-term goals together with her assessment of progress towards the prior year goals, challenges faced, and opportunities presented. The goals and assessment should be shared with the Chair and Board and concurrence reached on the goals.

The Chair should lead the review of the President and should consult with the Board (or depending on the size of the Board, constitute a subcommittee). An executive session without the President present is often a useful tool to ensure feedback by all Board members and allows interaction among Board

members. A Chair may prefer individual conversations with directors, but the overriding purpose is to ensure that directors fulfill their duty by providing input on the performance.

Some foundations allow for input from other parties, such as Staff through a 360-review process or outsiders who have a particular perspective that might be of value. Care should be taken to be clear about the use of such input, who will be included, and the relative weight of the feedback. This might be done every few years, if at all.

Once input is gathered, the Chair should provide necessary feedback to the President (this can be orally or in writing, but it is usually wise to have some record of the feedback and response).

The Chair should also always be alert to potential issues that could derail the success of the President or organization. Early intervention and an opportunity for the President to correct real or perceived weaknesses can often help avoid the need to make a change and ensure the long-term success of the incumbent President.

In any event, the Chair and the Board should have consensus on a succession plan⁴, as well as identify the person who might temporarily take over the duties of the President if the President is incapacitated or leaves suddenly.

Determining Compensation

The Chair should also lead a review of any change in compensation.⁵ If a change in compensation is warranted based on performance or change in the market, it is best practice to have data on comparable organizations from a consultant or drawn from the most recent 990PF of the comparative organizations. While there is no precise number of organizations required, a broad representative sample should be considered based on similar characteristics, including size, complexity, nature of operations and similar features. (MacArthur has used a group of roughly 16 private foundations). The data should be a reference point for deciding on compensation, with tenure, performance, and other relevant circumstances considered to arrive at a conclusion. It is helpful if the organization has articulated a compensation philosophy in advance to help guide decisions (e.g., the president should be at or above the median or the organization is comfortable being at or near the top of the comparator group depending on performance and tenure).

Relations with the President and planning for board meetings

⁴ Some foundations have term limits for Presidents so being prepared to commence a search for a new President as the term nears an end is critical. In addition, a board could determine a change is warranted, a President could decide to retire earlier than expected or suffer health issues that would prompt the need for a search. For an article on the steps for a successful search, see the article by Josh Mintz, *Suggested Steps to Help Ensure an Effective Search for a New President of a Foundation*

⁵ It is also a best practice for the Chair, or the chair of a compensation committee, to annually review the expenses of a President if the person authorizing expenditures is a person (such as the Chief Financial Officer) who reports to the President.

Establishing a constructive working relationship with the President is a critical part of the Chair's role. She should be a sounding board for the President while discussing collaboratively the levels of risk-taking, community presence, board meeting priorities and agenda, and other priorities over time. At the same time, the Chair must be able to bring a critical eye to any performance or other issues of the President to be able to help the President address issues before they ripen into deeper problems.

For these reasons, it is critical that the Chair and the President have a regular line of communication and firm understanding of the regular sequence of such discussions absent a crisis which would precipitate more frequent consultation. Many Chairs will meet, virtually or in person, with the President before each Board meeting and debrief thereafter. This is a useful device to ensure effective communications, that they are on the same page and head off any significant issues.

The Chair should be sure to keep the Board informed of any significant issues that may arise while maintaining a relationship of trust with the President.

Discussions with General Counsel

It is a good governance practice for the General Counsel to have a direct line to the Chair of the Board because the General Counsel of a foundation represents the organization although reporting directly to the President in most organizations. In theory therefore the General Counsel should have a dotted line to the Board. This can include being present during most executive sessions and the opportunity to talk to the Chair periodically. It can be helpful to have a more regular set of meetings so that a conversation does not have high stakes because it is seen as unusual by the President but rather part of good governance.

Speaking for the Foundation

In most foundations, the President is the principal spokesperson for the organization on issues germane to the organization, its mission, and values. Nevertheless, there may be times when it is necessary for the Chair to speak on behalf of the Board and implicitly the foundation. The Chair and President should coordinate messaging, including when it is necessary or important to speak out, and who should do so. The Chair and President should further develop an agreed upon process for when, if at all, the Chair and/or the Board wants to review a statement of the President before it is issued.

Changing Aspects of Philanthropy and Board Governance

There is increasing attention on philanthropy and models of governance, including who sits on boards, how the board relates to management and staff, whether specific communities are represented, and how the Board might engage with the community. The Chair, Board, and President should have a shared understanding of how the organization is approaching these issues and should speak with one voice on such matters.

August, 2022

Page 8

Conclusion

The role of a Board Chair of a private foundation will differ depending upon the person, culture of the organization, its history and the desires of the Board and President. Even so, there are certain fundamental best practices that a wise Board Chair should keep in mind to ensure the Board operates as effectively as possible within its role and fiduciary duties.

Other Resources

There are a wide range of resources for incoming Board Chairs. This includes the following which is in no way meant to be inclusive:

Board Source (<https://boardsource.org/>)

Council on Foundations

National Association of Corporate Directors (<https://www.nacdonline.org/>)

Boardable.com

<https://boardable.com/resources/board-chair/#:~:text=The%20role%20of%20the%20nonprofit,key%20executives%20and%20staff%20members>

National Council on Non-Profits. <https://www.councilofnonprofits.org/tools-resources/board-roles-and-responsibilities>