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ACF POLICY REVISIONS: WHY and WHY NOW?

Memorandum from the Diversity, Equity and Inclusion Committee for ACF Board of Trustees Consideration at December 5, 2023 and First Quarter 2024 Board Meetings

Executive Summary and Recommendation for Board Action

The Diversity, Equity and Inclusion (dEi) Committee recommends adoption of a proposed Anti-Hate Policy Statement and associated revisions to the form Donor Advised Fund (DAF) Agreement at the December 5, 2023 Albuquerque Community Foundation Board of Trustees meeting. Over the last couple of years, the Foundation has adopted: (a) a new Mission Statement, (b) new Vision and Values principles, and (c) a strategic plan. This work serves to incorporate diversity, equity and inclusion principles as an integral part of the Foundation's direction. Following those efforts, the next logical step in the adoption of new and revised policies that align with our work to date. The dEi Committee, with the advice and cooperation of other trustees, committees, staff, and outside advisors, has developed and now recommends the proposed Anti-Hate Policy Statement for formal Board of Trustees consideration. In parallel with that work, the Advancement Committee, if we may speak for that Committee, also recommends the Board's adoption of revisions to the form DAF Agreement. These documents are included in the Board packet for the December 5, 2023 meeting.

The discussion that follows provides further background, support, and related information regarding the referenced recommendations. While not before the Board at its December 5, 2023 meeting, this memorandum serves also as material for the Board's consideration when proposed revisions to the Foundation's Gift Acceptance Policy and Grantmaking Policy are presented in the First Quarter, 2024.

Introduction

Following on prior robust discussions at the March, 2023 and September, 2023 Forums, this memorandum seeks to further inform the Board regarding the steps the dEi Committee, in conjunction with input from other ACF Committees, has taken regarding the work undertaken to align certain key Foundation policies with ACF's recently revised bylaws, Mission Statement, Vision and Values. Our work has focused specifically on (a) revisions to our existing Gift Acceptance and Grant Distribution Policies and our various Fund Agreements to align those documents with our unanimously adopted changes to our Bylaws, Mission, Values and Vision statements; (b) development of a free-standing Anti-Hate Policy Statement, which is also a central piece of the values-aligned revisions to other policies; and (c) modernization of portions of these policies as dictated by learnings and other developments since the existing policies were last reviewed.

We now pass the baton to you, the full Board of Trustees to consider, and we hope to approve, our work. As you take up these matters, it is critical in our judgment that the Board not only approve the proposals, but also understand them and be prepared to discuss them in the community as conversations may arise with donors, grantees, and other interested members of the community. The background and related discussion here is presented with that in mind. In that vein, we ask for your indulgence in undertaking a close review of this memorandum.

The work we have pursued has had the blessing and support of our Executive Committee, recognizing – of course, that any policy revisions will necessarily need to be vetted and ultimately approved by the Board of Trustees after due consideration. To underscore that the dEi Committee has not been functioning on a “frolic of its own,” we have collaborated – **at least** -- with the Advancement Committee, chaired by Bob Bowman, and the Community Impact Committee, chaired by Emily Allen. And, as issues arise or where input from other committees is indicated, we have reached out to engage others. And, of course, we would not be where we are with the policy revisions proposed without the substantial commitment of time and effort of Marisa Magallanez, Khia Griffis, Celia Yapita, Danielle Griego, Denise Nava Wyrick, Nick Williams, Tiffany Rawls, Letisha Spencer, and Randy Royster, to name a few of our staff, in researching how to best proceed with these efforts. When this note refers to “we” in the discussion that follows, please understand that our outstanding staff has been integral to this work.

In addition to drawing on the wisdom of other Committees, we also sought to learn from the experience and work of other Community Foundations, the Council of Foundations, and other similar philanthropic and philanthropic-support organizations who are working (or have worked) on these same issues. For example, the Council of Foundations has had a recent exchange of views and approaches to address grant making to controversial charities. That exchange provided some very helpful ideas about the range of considerations applicable to existing donor advised funds, for example, in comparison to what may be appropriate for wholly discretionary Foundation-driven grant making.

At this point, we acknowledge the year-long process (to date) we have pursued and want to advise further that whenever our current policy revision work is “concluded,” the journey will not end. These policies (and others that will be revised to reflect the spirit and content in the policies under consideration now) should be reviewed periodically as we learn how implementation of the revisions has worked (or not worked).

In this regard, as you know, we have bifurcated the Board’s consideration of our values-aligned policy work. What the Board will consider at its December 5, 2023 Board meeting will be a part – albeit a **very key part** – of that work. Further Board consideration of the balance of our existing policy work¹ will occur in the First Quarter, 2024.

¹ We use the phrase “existing policy work” because, following Board consideration of this first phase of our work, additional work will be necessary to consider updates and alignment of other Board policies, other fund agreements, certain Committee Charters, and related materials.

Our dEi Journey To This Point

- A. **Present at the Creation²:** Julie Weaks Gutierrez, our Board Chair in 2018, announced that she/we were initiating a two-year pilot project to consider and develop **more purposeful and intentional work** on diversity, equity and inclusion, recognizing that the Foundation was already cognizant of the importance of dEi in our work. This initiative, in turn, led to:
- B. **Formation of a full-blown dEi Committee, following the work of an initial “task force.”**
- C. **Bylaws Revisions (completed in 2022), which now include language such as:**
- Article I, Purpose:
 - “Providing donors with opportunity to consider total community needs” -- this reflects ACF’s responsibility to educate donors
 - “Giving special attention to current and changing community needs”
 - Article XVI, a new dEi Article, which states the: “Board . . . committed to incorporating the values of dDEi in the governance and operations of this Foundation”
 - Article XVI also states that dEi Values “shall be codified in a dEi policy adopted by the Board.”
 - The dEi Policy, adopted with the bylaws revision, states in part:

“The Foundation is committed to . . . the diversity of our key stakeholders and being a leader and change agent that contributes to an inclusive, equitable and just community that champions our rich diversity.”
- D. **New Mission Statement** – Unanimously adopted by the Board at its September 26, 2023 Forum at the National Hispanic Cultural Center, provides:
- “Our Mission is to serve our community by mobilizing and stewarding resources to create equitable opportunity for all.”
- E. **New Vision and Values Statements** – Unanimously adopted by the Board in December 2022 as part of the adoption of the Strategic Plan, following robust discussion over more than one meeting.
- F. **Our Values Now Include:**
- “We value equity, and we will address ongoing injustice and work to change systems of oppression and harm.”

² With apologies to the late Secretary of State Dean Acheson.

- “Systems” are not limited; internal and external
- “We value trust, and we work to build relationships based in authenticity, actionable change, adaptability, and cultural humility.”
 - Commitment to “build relationships”
 - Relationships can evolve based on actionable change and adaptability - - meaning: we have opportunity (as do our donors) to educate each other regarding evolution in thinking and priorities
 - Relationships are most beneficial when they are long-term
- “We value accountability . . . transparent . . . in our journey toward becoming our community’s Foundation.”
 - Core value undergirding our effort to broaden our donor base
 - Does raise tension: All or only those aspiring to our values and vision?

G. Our Vision Statement Now Also Includes:

- The Foundation built by and for all people
- We work toward equity, justice and hearing by addressing systems of oppression and harm
 - Racial justice

Respectfully, Now is the Time to Act at a Policy Level: To Align our Policies with our Mission, Vision and Values: “Values-Aligned Policies”

Considering our work since at least 2018, now is the time to look at our more specific policies and related documents to be sure they align with our unanimously adopted revised and updated bylaws, Mission, Vision and Values Statements.

As noted above, we are not alone in pursuing this work: According to CF Leads³, 75% of foundations are no longer just focused on grant-making but are insisting on racial equity and seeking to influence systemic community challenges.

Moreover, the Trust-Based Philanthropy Project⁴ also espouses this view: “As grant-makers, we have a responsibility to confront the ways our sector has contributed to systemic inequities, both in the ways wealth is accumulated and in the ways its dissemination is controlled.” Racism and other forms of oppression, according to the TBP Project, are at the root of every social issue nonprofits seek to address.

These words sound a lot like the views espoused by Darren Walker, the visionary CEO of the Ford Foundation and author of “From Generosity to Justice: A New Gospel of Wealth,” a resource many of us have read.

³ See <https://cfleads.org/>

⁴ See <https://www.trustbasedphilanthropy.org/>

So, Where To From Here:

Board Consideration of Revisions to Key Policies and Donor-Advised Fund (“DAF”) Agreement (which will serve as a proxy for other fund agreement revisions staff will make to be consistent with the DAF Agreement revisions) is both **important and urgent** to ensure that those documents align with our bylaws and with our values and vision.⁵

- ❖ This work has been challenging, but we believe it will serve the Foundation and the Community well.
- ❖ As an initial step for the December 5, 2023 Board meeting, we provide several documents for Board consideration, and if appropriate, we propose Board approval of the proposed Anti-Hate Policy Statement as well as an interim delegation of authority from the Board to the Executive Committee (or Board officer should an EC quorum be unavailable within a reasonable time. The documents include:
 - Anti-Hate Policy Statement (action item);
 - Donor Advised Fund (“DAF”) Agreement (action item);
 - Interim Implementation Protocol (primarily information; action on interim delegation of authority pending approval of other policies); and
 - Draft Communication Plan (for information);
 - Internal Assessment Framework (for information); and
 - Draft donor and website communications.

The dEi Committee requests that the Anti-Hate Policy Statement, DAF Agreement revisions, as well as the proposed interim delegation of authority be effective immediately.

You may ask what this “interim delegation of authority” is all about. If so, you ask a good question. Here is the thinking: The current grantmaking policy in effect now delegates full and final authority to Staff to make decisions on DAF donor requests; there is no trustee role currently. The draft proposed gift acceptance and grant making policies include a built-in delegation to the EC (or Board officer should an EC quorum not be available in a reasonable time to meet ACF or donor needs) to make a final decision, for example, on a rejection of a donor’s requested grant based on our new policy prescriptions. Without those newly proposed policies in place and without other Board action, staff would have the final say in accepting or rejecting a donor’s request prior to the adoption of the new policy revisions.

While we may get to a point where everyone (including donors generally) is comfortable with eliminating Board (acting through the EC/officer) oversight, the current prevailing wisdom is that, as an initial matter, ACF should use the protocol established this summer, which included a final EC decision on the controversial DAF requests. This view necessitates interim authority

⁵ Please note that any Board consideration or approval of the DAF Agreement revisions should be understood not to serve as precedent requiring Board approval for other fund agreement revisions, which traditionally and as a long-standing practice have been left to the discretion of the Foundation’s staff.

for the EC/Officer role to consider potential rejection of a donor’s request, until the other policies are formally approved.

As a formal matter, the DAF Agreement need not be the subject of Board action, but Board approval (formal or informal) will provide staff with appropriate guidance concerning parallel revisions to other donor-focused agreements.

The documents made available “for information” are provided so that the Board will understand Staff’s current communication and implementation plans. Those plans do not require Board approval and should not be subject to Board approval from a good governance perspective, as it is important for Staff to have flexibility in implementation and the ability to modify those internal process documents as implementation experience may dictate.

With respect to the Gift Acceptance Policy and Grantmaking Policy (and Procedures), these items and related documents will be considered for Board approval in the First Quarter, 2024.

Some “Daylight” Informing our Work and the Proposed Documents

- ❖ In developing the proposed policies, we have considered several constituencies, each with different perspectives regarding our work: (i) existing donors; (ii) potential donors; (iii) new donors from diverse committees the Foundation has not traditionally engaged with – LGBTQ+, Hispanic, Black Americans, Native Americans, People with Disabilities, etc.; (iv) the wide range of non-profits serving the community, including those seeking grants, etc.; and (v) staff who are doing the public-facing work in soliciting/building donors or working with potential grantee organizations. Staff need our support, guidance and clear direction going forward.
- ❖ All these constituencies deserve policy documents that provide clear guidance regarding the Foundation’s evolution in determining how best to serve an evolving community, and information about what we can – and what we cannot – support.
- ❖ Our revamped policies are broad – that is intentional. Broad policies will provide staff with appropriate discretion as they implement the policies. And, through that implementation, we will learn lessons that will inform future policy revisions and potentially evolution in the manner in which ACF implements the policies. Of course, Board oversight is appropriate, certainly in the early periods of policy implementation. This is particularly important where investigations suggest that ACF might reject, for example, a DAF holder’s proposed grant to a controversial grantee.
- ❖ Our work has involved not only seeking alignment with our mission, vision, and values, but has necessarily involved careful consideration of ACF’s ability to enforce and implement policy prescriptions.
- ❖ Policies and agreements have been structured so that staff should be able to implement them effectively, efficiently and fairly. Of course, time will tell whether this is the case. And, that experience will inform further policy revisions. We expect that further revisions to these policies will follow, as we learn from implementation and discussion in the community.

- ❖ As we learned in the small group September Forum discussions regarding various hypothetical scenarios, our mission, values, and vision may be more difficult to apply to some controversial subjects than others. That is the nature of this work. It is not easy.

A Word About Risks and Rewards

- ❖ Adoption of our values-aligned policies presents risks and rewards, both of which are difficult to quantify. Risk to ACF's reputation may be paramount, although there are other risks as well.
- ❖ Reputational risks are myriad. First, the media loves juicy controversy. Need we say more?
- ❖ There are risks associated with the adoption of the proposed policies, and there are risks that arise if we do not adopt them. The community, while perhaps unaware of the details of our work, is watching. As we have discussed, there will be existing donors who may not agree with the policy direction we outlined. (However, in our view, we believe that most donors and the vast majority of the community will find the adoption of a thoughtful Anti-Hate Policy Statement unobjectionable, if not downright appropriate in this day and age.)
- ❖ For existing donors who find our policy revisions a concern, we may lose some of those donors who would prefer to move their DAF to another foundation (or to Vanguard or Fidelity, etc.). And, other existing donors may choose to spend down their fund or will choose not to augment their fund. These are operational or financial risks.
- ❖ We are hopeful that most existing donors will be open to dialog and education or explanation of the Foundation's action so that potential DAF losses can be mitigated or minimized. Of course, there are no guarantees.
- ❖ Another risk is legal. Our outside counsel has advised that the Foundation's position that it has the sole and absolute discretion to make grants from DAFs and that related legal positions are defensible. Nonetheless, our litigious society is such that an aggrieved donor could find a lawyer to represent the donor in a lawsuit against the Foundation. While the costs of such litigation should be borne, at least in the short run, by insurance coverage, pending lawsuits against the Foundation would still be "expensive" in terms of management and Board time devoted to the Foundation's defense as well as the mental and emotional drain such actions can take on the staff. Finally, it is important to understand that clever lawyers can sometimes convince judges and juries of their cause.
- ❖ Finally, assuming ACF adopts the proposed policies, there are risks associated with the implementation of those policies. Some segments of the community may support the policies but may have concerns about how they are implemented. Facially, the policies may be well received in some circles, but as the policies are implemented, they may be implemented in a way that some find objectionable. Some may find the implementation too strict and others too lenient.

- ❖ Juxtaposed against various risks, there are rewards, we believe, associated with these valued-aligned policy proposals.
- ❖ We believe this work will provide and support substantial opportunities to grow and diversify our donor base – the strong positive response from the LGBTQ+ community at the recent “lunch and learn” where the formation of the new Pride Giving Circle was announced may be representative of these opportunities.
- ❖ Fundamentally, by implementing our Mission, Vision, and Values in values-aligned policies, we expect to attract a diverse donor base. Of course, that will not occur overnight, but should come as our staff and Board work to connect the Foundation with segments of our community who are underrepresented in our donor base.

Possible Post-Approval Elevator Speech

Should the Board approve the proposed Anti-Hate Policy Statement, you may find yourself in a conversation with community members about the reasoning behind our action in establishing this policy (and the others that follow). To that end, please consider the following rough elevator speech as a starting point for any talking points you might want to have in mind:

“Ours is a multicultural community and as the community’s foundation we stand for supporting all manner of diverse groups and stand against efforts to marginalize or foment hateful activities directed at, for example, the LGBTQ, disabled, and other groups and firmly oppose efforts to incite anti-semitism, Islamophobia, and racism of any shape or form.”

Of course, use language with which you are comfortable!

Proposed Board Actions

1. For the Board’s December 5, 2023 Meeting, the dEi Committee recommends the following actions:
 - a. Adoption of the proposed Anti-Hate Policy Statement;
 - b. Approval of the revisions to the DAF Agreement, as recommended by the Advancement Committee; and
 - c. Approval of an interim delegation of authority, discussed above, to the Executive Committee (or Board officer, if an EC quorum is not readily available) to make any final decision rejecting a donor’s proposed grant that conflicts with the Anti-Hate Policy Statement, which delegation would sunset upon the Board’s adoption of a revised Grantmaking Policy in First Quarter, 2024.
2. For the Board’s First Quarter, 2024 Meeting, the dEi Committee, following its due consideration of the proposed policies, will recommend:
 - a. Adoption of a revised Gift Acceptance Policy; and

b. Adoption of a revised Grantmaking Policy.

Thank you for your attention and for your active engagement in this effort. We appreciate your consideration of these proposed documents. And, standby for further presentation regarding other policies, Committee charter revisions, and related matters. This work will continue!

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