

Frequently Asked Questions

Regarding the
Capacity Building and Oversight Not-for-Profit Vendor Review Report

1. Board members are not all recruited primarily to oversee the finances or have financial expertise, why are you asking them to look at this form?

Here is the relevant language from the NYS Not-for-Profit Corporation Law (NPCL) § 717:

(a) Directors and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions. In the administration of the powers to make and retain investments pursuant to section 512 (Investment authority), to appropriate appreciation pursuant to section 513 (Administration of assets received for specific purposes), and to delegate investment management of institutional funds pursuant to section 514 (Delegation of investment management), a governing board shall consider among other relevant considerations the long and short term needs of the corporation in carrying out its purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

(b) In discharging their duties, directors and officers, when acting in good faith, may rely on information, opinions, reports or statements including financial statements and other financial data, in each case prepared or presented by: (1) one or more officers or employees of the corporation, whom the director believes to be reliable and competent in the matters presented, (2) counsel, public accountants or other persons as to matters which the directors or officers believe to be within such person's professional or expert competence or (3) a committee of the board upon which they do not serve, duly designated in accordance with a provision of the certificate of incorporation or the bylaws, as to matters within its designated authority, which committee the directors or officers believe to merit confidence, so long as in so relying they shall be acting in good faith and with that degree of care specified in paragraph (a) of this section. Persons shall not be considered to be acting in good faith if they have knowledge concerning the matter in question that would cause such reliance to be unwarranted. Persons who so perform their duties shall have no liability by reason of being or having been directors or officers of the corporation.

While Board members are entitled to rely upon information they receive from the organization's staff and officers, the duty of care is personal. Fiduciary responsibilities cannot be delegated so that only certain Board members exercise them. Good faith requires some measure of individual accountability. Thus, we are asking that the Board review the contents and attachments of the Not-for-Profit Review Report. We expect that the review process itself will contribute to a greater understanding of the organization's policies and procedures, and a greater appreciation of best practices.

2. *Is one original signature on a check from a board member a best practice?*

Two original signatures are a best practice on signed checks above a designated amount. Depending on the size and complexity of an organization, it may be appropriate for one of the designated signatures to be a Board Officer on checks over a designated amount. Some organizations use stamped or printed signatures on checks to save time. However, organizations that implement this practice are susceptible to misuse of these checks unless there are strong fiscal controls and internal oversight in place.

3. *How is executive compensation analyzed by CBO in regards to salary compensation?*

CBO does not expect to analyze the specifics of any one organization's compensation of any one (or more) executives. Rather, CBO is seeking to review whether the organization's practice as to how it sets such compensation levels comports with best practices. CBO Reviews will focus on the review and approval procedures for executive compensation and, specifically, oversight of such decisions by the Board of Directors.

4. *Does the City require non profits to have separate bank accounts for city contracts?*

For some programs, the City has contractually required organizations to hold separate bank accounts for each individual contract. This question should be answered by reviewing your own contracts with the City to determine whether individual accounts are so mandated. In virtually all cases, City funds may not be commingled or mixed with money from other funding sources, so each vendor must have at a minimum of one segregated bank account for the deposit of City monies.

5. *What constitutes financial expertise (for members of the Board of Directors)?*

Any relevant experience or familiarity with budgets, financial statements, funds reports, audits, etc. may qualify. Such expertise may be derived from professional experience in the financial sector, education and/or particularized training. In other instances, lay persons may develop sufficiently detailed knowledge of the financial operations of particular organizations so as to be able to well-exercise independent oversight of those operations. There is no single formula for expertise.

6. *Will CBO issue a formal evaluation/report on organizations once the unit has completed its review?*

CBO does not anticipate issuing formal reports, but will notify each reviewed organization when the review is concluded, and if applicable, whether any recommendations are being made.

7. *Will CBO mandate training for all members of not-for-profit Boards of Directors?*

The City's goal is to ensure that all vendor organizations have well-qualified, independent Directors who are able to read, understand and question the organization's financial statements and financial practices. Most organizations' Boards will probably easily satisfy this standard. Organizations that already have procedures for initiating and training their new Board members, by informing them of their fiduciary responsibilities and of the policies in place regarding financial controls, and that recruit at least some of their Board members for fiscal management skills, will have no difficulty satisfying the City's goals. The City will recommend additional training for Board members if it appears, however, that a particular organization's Board members do not fully understand or cannot exercise their legal obligations to safeguard the City's interests.

8. *Why are board minutes being collected? Don't auditors already look at Board Meeting minutes?*

Board meeting minutes provide an excellent indicator of the organization's practices regarding sharing of information with the Board of Directors, and of the Board's exercise of its oversight responsibilities. The CBO initiative is explicitly intended as the City's effort to review such practices on a preventive basis. Audits, by definition, come into play after funds have been spent or misspent. City agencies review audits in determining whether or not to renew or continue contracts. The CBO initiative aims to identify weaknesses before major problems, of a type that could result in negative audit findings or other negative responsibility information, may arise. The CBO's overarching goal is to preserve the organization's viability as a City vendor.

9. *What if board meetings don't always include a review of financial statements?*

To effectively oversee the organization's finances, the Board of Directors should regularly review financial statements, generally at least once a quarter. If Board meetings occur more frequently than quarterly, then it is less likely that every meeting would include such a review. The request in connection with the Not-for-Profit Review Report is simply for a copy of the most recent meeting which did include a review of the organization's financial documents.

10. *Why do professional titles need to be included in the board roster?*

The inclusion of this information provides one ready tool for assessing levels of relevant expertise possessed by each organization's Board of Directors. While this is only one potential measure of expertise, it is a useful one, and likely to be much less burdensome than requiring detailed biographies of each member.

11. *Why is the City getting involved in organizational capacity building?*

New York City contracts with many community based, nonprofit organizations that provide essential services in neighborhoods across the five boroughs. We take seriously the City's responsibility to ensure that these services are provided to all New Yorkers without interruption. Thus, when situations arise whereby a vendor's lack of organizational capacity and proper fiduciary oversight has jeopardized the uninterrupted delivery of essential public services, we look to remedy both the individual problems precipitating such a crisis and, to the extent we can, the kinds of systemic gaps that made it possible for large amounts of City funds to flow to organizations that could not properly administer them. We recognize that there are already many resources available to help organizations develop capacity, so we are working with existing technical assistance providers to expand those opportunities to nonprofits who need them. By supporting best practices in the nonprofit sector, we are ensuring continued competition for City contracts and increasing the quality of services that are delivered to New Yorkers.

12. *How can a small organization implement best-practice fiscal controls if there are not enough staff members to segregate fiscal responsibilities?*

In conducting reviews, CBO will certainly consider the organization's size and the level/type of fiscal controls appropriate to that size. Even if an organization's small fiscal/executive staff means that there are not enough people to segregate all fiscal responsibilities, best practices may include depositing checks as soon as they are received, independent periodic oversight/auditing done by another staff member, etc.

13. *What is the Board Chair certifying? What does it mean to share the "implications" of this report?*

The certification has been modified. It now requires that the Not-for-Profit Vendor Review Report has been shared with the full Board of Directors to give them an opportunity to comment, and further, that the Board's input has been duly incorporated as per any directives issued by the Board.

14. *Why do you need to know whether the organization uses an automated payroll?*

In the City's experience, an automated payroll (either through an outside service or an in-house capability) most often provides a better audit trail and safeguard of legally compliant payroll practices. Manual payroll accounting systems may also prove satisfactory, provided that other strong internal fiscal controls are in place. However, in general, at the dollar level (> \$1 million in City contract funds) to which most CBO reviews are being targeted, we would expect to see an automated payroll accounting system of some sort.