



TOWARDS A DIGITAL EQUITY FOUNDATION:

**Best practices
for governance,
accountability,
& transparency
for foundations
established with
public assets**

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INTRODUCTION

In April 2021, New America's [Open Technology Institute](#) (OTI) and the [Philanthropication thru Privatization Project](#) (PtP) released a joint [proposal](#) that the federal government should invest a substantial portion of the windfall proceeds from future auctions of public airwaves (spectrum) to seed a new Digital Equity Foundation dedicated to addressing equity gaps in broadband adoption and affordability, education, telehealth, access to government services, and other critical areas.²

Since that time, momentum for the concept has continued to build. In February 2022, the concept was endorsed by nine prominent national organizations that joined to launch the [Airwaves for Equity](#) initiative: the American Library Association, the Benton Institute for Broadband and Society, Center for Rural Strategies, Common Sense Media, Consumer Reports, National Digital Inclusion Alliance, Open Technology Institute, Public Knowledge, and the Schools, Health & Libraries Broadband (SHLB) Coalition. As of this writing, a growing coalition of more than **75** additional organizations have endorsed the idea of establishing such a foundation with future spectrum auction revenue.

The next step in realizing this vision is now in the hands of Congress and other federal policymakers, as allocation of spectrum auction proceeds to support the creation of a Digital Equity Foundation requires legislation. Policymakers will also play a critical role in establishing the guidelines for the creation of an initial foundation board and mission. This paper serves to help flesh out the options for how that could be accomplished, drawing on a review of existing foundations created with public and nonprofit assets to identify best practices for how to start a foundation with public, quasi-public, or nonprofit funds.

This paper is structured in five parts. In **Part I**, we provide a brief overview of the proposed Digital Equity Foundation; in **Part II**, we examine some key examples of existing U.S. foundations that illustrate the use of public or quasi-public funds to support priority public needs; in **Part III**, we explore ways the proposed Digital Equity Foundation might be structured and organized to achieve its programmatic goals to advance digital equity and inclusion, while operating with appropriate transparency and public accountability; in **Part IV**, we consider additional legal considerations that surfaced in a review of foundations previously established under federal legislation; and in **Part V**, we provide a summary of concrete recommendations for the proposed foundation. Included at the end of this paper are three Appendices providing detail on existing federal Agency Foundations and other comparable institutions.

This paper is dedicated to the late Dr. Lester M. Salamon, our great friend and collaborator, and advocate for creating new foundations to serve the public interest, including the proposed Digital Equity Foundation.

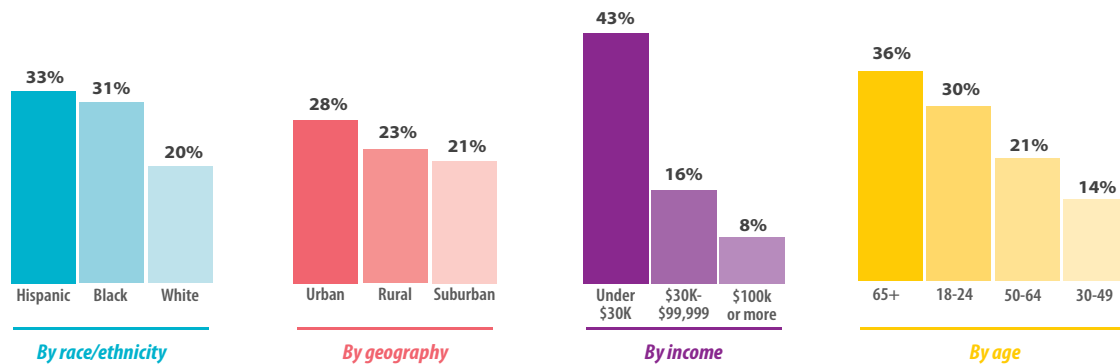
¹ Calabrese, M. A. and Salamon, L. M. (2021). *How to Close America's Digital Equity Gaps: Toward a Digital Futures Foundation: A Concept Note*. (Open Technology Institute at the New America Foundation and the Philanthropication thru Privatization Project). Available at: <https://www.newamerica.org/oti/policy-papers/how-to-close-americas-digital-equity-gaps-toward-a-digital-futures-foundation/>.

PART I

THE PROPOSAL FOR A DIGITAL EQUITY FOUNDATION

More than 1 in 5 Americans still lack broadband internet at home. Low- and moderate-income Americans, people living in rural and remote areas, and people of color are all significantly less likely to have fast broadband or to own a desktop or laptop computer. As the COVID-19 pandemic has made clear, in the 21st century, access to broadband is no longer a luxury. Like electricity, it has become a fundamental necessity for every person, young or old—for education, remote work, health care, public safety, banking, and virtually every other aspect of life. Yet the pandemic has highlighted and exacerbated the digital divide, which disproportionately affects low- and moderate-income people, people of color, seniors, people with disabilities, and people living in underserved and historically disadvantaged communities, as shown in **Figure 1**.

FIGURE 1
Percent of U.S. Adults Who Say They Lack Broadband at Home



Source: Pew Research Center surveys (2021)

The federal infrastructure bill and pandemic relief initiative (CARES Act) adopted by Congress in 2021 dedicate over \$60 billion to broadband deployment and affordability programs. But little funding has been earmarked to address the third driver of the digital divide: the need for digital literacy and inclusion. If people don't know how to use technology, or cannot tap its value for their most basic needs, these efforts to connect them are futile. As noted by Michael Calabrese and Lester Salamon in their April 2021 concept note:

"...[T]he public airwaves, now the critical pipelines for wireless communication, are routinely sold to private companies through multi-billion dollar auctions, effectively privatizing the air. Not surprisingly, the resulting privatized mobile networks end up producing a predictable result: profitable private-sector services are advantaged, but crucial public purposes are neglected, giving rise to a yawning digital equity gap. In economist John Kenneth Galbraith's words, we are thus, in the digital field, as in so many others, 'privately rich but publicly poor.' Digital access and opportunity are plentiful in affluent communities, but grossly limited in less lucrative rural and low-income ones. Video games and other profitable applications proliferate, while critical public-service applications, tools, and training remain grossly under-resourced."

The proposed Digital Equity Foundation would create a more equitable future by investing a substantial portion of spectrum auction proceeds into digital literacy and inclusion initiatives that are currently underfunded by government, the private sector, and private philanthropy. The foundation would have a mission to make sustainable investments to close digital literacy, inclusion, and affordability gaps in the United States, and to mobilize additional private sources of funding and support for these efforts. The foundation would provide grants to nonprofit organizations working to promote digital literacy through training and skills development, such as community-based digital navigator programs, libraries, and community technology centers. These local efforts could also help households to sign up for internet access through the new Affordable Connectivity Program and acquire low-cost or refurbished devices, as some local programs—such as [Digital Charlotte](#) and [Tuscon Connected](#)—already do. The foundation would also support initiatives to develop new and improved applications that will address digital equity gaps in education, telehealth, and disability access, and enable modernized access to online government services.

Since the Federal Communications Commission (FCC) began auctioning licenses to use the public airwaves in 1994, more than \$230 billion has flowed to the Treasury—revenue ultimately paid for by consumers of mobile phone and broadband services. In 2022, Congress is expected to extend the FCC’s auction authority and to decide whether the \$30 to \$50 billion or more in revenue expected over the next 3-to-5 years will be invested into the sector, and for what purpose. By directing a substantial share of future spectrum auction proceeds to endow the proposed Digital Equity Foundation, the federal government can help support local initiatives throughout the country to close digital equity gaps, and ensure that everyone can find affordable broadband service and benefit from advances in technology and telecommunications. The Digital Equity Foundation will directly complement the major new federal investments in broadband access and affordability by ensuring organizations that promote digital literacy and skills development for underserved populations are adequately resourced and that newly-connected citizens have the tools they need to get the most out of their access.

A federally-created Digital Equity Foundation would provide a major new independent source of sustainable funding for nonprofit organizations working to promote digital literacy, inclusion, and affordability. Similar to other nonprofit foundations, the Digital Equity Foundation would provide a long-term mechanism to build capacity and test innovative approaches in the nonprofit sector, to identify and meet unmet needs, and to build promising programs and applications to scale. Among other benefits, the foundation would provide:

- ➔ **Sustainability:** An endowment provides the certainty of support year-after-year, and the ability to evolve to address new digital equity gaps as they emerge.
- ➔ **Expertise:** Advisory groups with a broad range of expertise—and representing diverse stakeholders—can direct and redirect the foundation’s priorities.
- ➔ **Innovation:** A foundation can raise additional funds, fund the development of innovative tools, prototypes, and pilots, and promote public-private-nonprofit partnerships.
- ➔ **Governance & Accountability:** The foundation would be transparent, include federal appointees, and report regularly to the Senate and House Commerce Committees.

THE HUGE BENEFITS OF INVESTING IN DIGITAL EQUITY

In February 2022, nine national founding partners announced their strong support for the proposed Digital Equity Foundation: The American Library Association, the Benton Institute for Broadband and Society, Center for Rural Strategies, Common Sense Media, Consumer Reports, the National Digital Inclusion Alliance, Open Technology Institute at New America, Public Knowledge, and the Schools Health and Libraries Broadband (SHLB) Coalition.² Many additional organizations quickly endorsed the proposal, including the National Hispanic Media Coalition, the National Skills Coalition, the Consortium for School Networking (CoSN), the International Society for Technology in Education (ISTE), Digitunity, and the National Digital Equity Center.

A principal reason to promote digital equity and inclusion is that it supports the entire economy:

- ➔ **For businesses**, a more digitally-literate and online population can expand access to customers as well as the skills and productivity of employees;
- ➔ **For taxpayers**, improved digital platforms and knowledge of how to use them can lower the cost of delivering government services and reduce the time users must dedicate to accessing them;
- ➔ **For health care**, improved telehealth applications and the ability to access them can similarly reduce the costs and wait times of health care delivery, and more.

Expanding broadband adoption and digital literacy so that everyone attains internet access and can actually make effective use of it will benefit the economy and society as a whole. At present, too many individuals are left to navigate access to digital technology on their own and are not even aware of new initiatives, such as the Affordable Connectivity Program enacted by Congress last year, that make internet access affordable for all. Millions more do not possess or understand the value of digital skills as information and opportunities move online. In short, sustainable investments in digital literacy, inclusion and affordable access have a multiplier effect that generate positive externalities for business, communities, local governments, educational outcomes, job skills, productivity, and the economy as a whole.

To make the case for the foundation, the Airwaves for Equity coalition has identified a growing number of innovative, community-based digital literacy and inclusion programs that demonstrate the widespread need for sustainable investments that an endowed Digital Equity Foundation could fund—and the widespread benefits that sustainable investments would bring.³ Some examples include:

1. *Digital Navigator Programs: Community-Based Tech Help Centers*

Community-based NGOs and libraries need sustainable support for Digital Navigator and similar programs that equip, connect, and train residents left behind by the digital divide. These efforts typically leverage local community assets—from volunteers to libraries and community centers—to help residents find low-cost internet options and devices, sign up

² Scorse, Y. (2022). "Nine Digital Inclusion Organizations Launch Airwaves for Equity Coalition," National Digital Inclusion Alliance, February 22, 2022. Available at: <https://www.digitalinclusion.org/blog/2022/02/23/nine-digital-inclusion-orgs-launch-airwaves-for-equity-coalition/>.

³ Airwaves for Equity, "The Benefits of Investing Spectrum Auction Proceeds in Digital Inclusion," February 2022. Available at: <https://www.airwavesforequity.org/resources>.

for subsidy programs, and learn the basic skills needed to use them. Examples of existing programs include [Digital Charlotte's Navigators](#) program; Philadelphia's Digital Navigator Network; and the [Baltimore Digital Equity Coalition](#)—which coordinate access to devices, skills training, and technical support at the community level.

2. Older Americans: Training and Accessibility

Older consumers—particularly those who are low-income or historically marginalized—too often lack the technical skills needed to take part in the internet age. They also have a growing need to access telehealth and other online services. Examples of existing interventions include AARP's partnership with [Older Adults Technology Services \(OATS\)](#); the [Generations Online](#) initiative; and local programs, such as Virginia's [Digital Prince William](#) and South Carolina's Department of Aging initiatives—which provide digital literacy classes, resources, and services to elderly people.

3. Telehealth: Improving Access for Rural and Low-Income Communities

Strengthening access to online healthcare services through training and resource programs is a particularly acute need in rural and tribal communities. Examples of existing interventions include education and access efforts of the [Telehealth Equity Coalition](#); [Virtual Living Room](#), a rural telehealth program for veterans in Kentucky; and recipients of the FCC's USF Telehealth program, the [Connected Care Pilot Program](#).

4. Government: Facilitating Online Access to Services and Benefits

Initiatives to streamline access to government services and benefit programs, which can be complex and opaque, particularly for those without online access or skills. An example is the [New Jersey Career Network](#), which makes the best practices of in-person job search support available online and on demand, guiding job seekers through the difficult process of identifying and applying for jobs and training.

5. Empowering Veterans

Veterans often return from service lacking the tech skills needed for many jobs, training that a Digital Equity Foundation could support and extend. A current example is [Tech For Troops](#), a partnership with the Department of Veterans Affairs that helps veterans to develop skills for an internet-connected age.

6. Education: Learning Technology and Permanently Closing the "Homework Gap"

Since the pandemic turned a pre-existing homework gap into a remote learning crisis, school districts across the country have identified students in need of technology support, leveraged temporary funding, and pioneered partnerships to leverage wireless networks to connect low-income students at home to their school network. Examples include free home Wi-Fi connections provided by [Lindsay Unified School District](#), a farmworker community in California's Central Valley, and private LTE networks connecting low-income students in Castleberry and Fort Worth, Texas.

The foundation could provide additional support for initiatives to connect students to school networks from home, and to support schools in implementing digital inclusion strategies for low income students. Once connected, better digital tools and training for educators can boost the achievement of all students, especially in lower-income communities. Demonstration projects in "lighthouse" districts can generate the data to inform more widespread efforts. Examples of existing efforts include the [Learner Variability Navigator initiative](#) at Digital Promise, and innovators developing AR and VR apps for students with disabilities.

7. Persons with Disabilities: Improving Digital Accessibility

Assistive technology can promote independence and productivity and help people with physical disabilities take full advantage of our increasingly digital world. Examples of current efforts include the [Web Accessibility Initiative](#) and the [Assistive Technology Industry Association](#).

8. Digital Literacy and Citizenship Tools and Resources

Programs leveraging digital tools and apps to enhance traditional critical literacy skills, including digital citizenship, can also play a vital role in promoting equity. Current examples include the Barbara Bush Foundation for Family Literacy, which provides online tools and resources to support families' efforts to gain critical literacy skills, and the [Common Sense initiatives](#) on digital citizenship.

As discussed below, to achieve its mission—and to be responsive and accountable to the public it serves—the Digital Equity Foundation should be developed in close consultation with nonprofit organizations, community groups, and anchor institutions—such as libraries and community technology centers—with experience working to close digital equity and inclusion gaps across the United States. By closely collaborating with organizations that represent underserved populations and service providers, the foundation will be able to develop more effective, inclusive grantmaking programs that meet priority community needs.

Because there are vast needs to address, it is critical that the Digital Equity Foundation receive substantial funding to launch operations and develop its core programs. Over time, as the foundation becomes more established, it can seek additional philanthropic funding from foundations, high net-worth individuals, and technology companies to support building digital equity initiatives to scale throughout the country. By helping to identify, fund, test, and evaluate sustainable opportunities for impactful investments in digital equity and inclusion, the Digital Equity Foundation can help lead the way for other funders to participate in making additional substantial investments in the field.

The foundation can also potentially leverage its resources by offering some matching grants to grantees to leverage additional funding from local, regional, or national funders, and/or by providing seed capital to create matching funds for digital equity at community foundations. As an example, from 1999 to 2009, the Kansas Health Foundation provided challenge grants that helped community foundations in the state grow their asset base from \$19 million to more than \$95 million to support grants related to children's health and social services. The program was so successful in attracting new donors for community foundations that it was extended in a second phase. In 2010, the Kansas Health Foundation invested an additional \$30 million to help a larger group of 39 Kansas community foundations to grow their endowments from \$236 million to \$693 million over the next 9 years.⁴

⁴ Kansas Health Foundation, "KHF Board Approves \$19 million in Core Support for Three Organizations, Kansas Health Foundation," July 28, 2020, <https://kansashealth.org/2020/07/28/july-board-awards/>, and "Giving Resources to Our World (GROW) 20 Year Publication," 2019, <https://kansashealth.org/resources/grow-pub-final/>.

Finally, by linking organizations working for digital equity and inclusion across the country, the Digital Equity Foundation could support its grantees by publicizing their successes and challenges, sharing the results of pilot and demonstration projects, and supporting training, capacity building, and strategic planning activities. These potential “Beyond Grantmaking” benefits of foundations were recently highlighted in a paper examining a group of health conversion foundations, and are listed in **Box 1**.⁵

More details about the proposal to create the Digital Equity Foundation are available from the April 2021 Concept Note⁶ and from the Airwaves for Equity coalition at airwavesforequity.org.

BOX 1: “Beyond Grantmaking”

Value-added services also supported by foundations

A recent paper profiling 33 health care conversion foundations engaged in efforts to address Social Determinants of Health (such as housing, economic well-being, and parenting and early child development) found that foundations engaged in many potentially helpful activities, in addition to direct grantmaking. These “beyond grantmaking” strategies included:

- ➔ Publicizing and/or incentivizing the adoption of evidence-based programs;
- ➔ Convening coalitions, partnerships and problem-solving processes;
- ➔ Building organizational capacity;
- ➔ Leadership development training;
- ➔ Raising public awareness on critical issues;
- ➔ Conducting policy analysis; and
- ➔ Community organizing.

⁵ Bell, C. & Salamon, L. M. (2021). *America's Health Conversion Foundations: A PtP Success Story*. (Baltimore and New York: Johns Hopkins Center for Civil Society Studies and East-West Management Institute). Available at: <https://bit.ly/ptp-health-conv>.

⁶ Calabrese & Salamon, 2021.

PART II

KEY ISSUES IN GOVERNANCE, ORGANIZATIONAL, AND ACCOUNTABILITY STRUCTURES FOR FOUNDATIONS

Historically, most foundations were established by wealthy individuals or families and private companies for particular purposes of interest to the donors, including support for human needs, arts and culture, scientific and medical research, and other purposes. But in recent decades, many newer charitable foundations have been established with revenue flows that originate from the transfer of public or quasi-public resources into private hands, such as the privatization of a public asset or conversion of a nonprofit organization into a for-profit business. This phenomenon has been characterized as “Philanthropication thru Privatization,” or PtP. The late Dr. Lester Salamon of John Hopkins University’s Center for Civil Society Studies was the first to document and analyze this trend in depth, and to explore its fully international character. In a report he published in 2014 and through subsequent research, he found that over 650 PtP-style charitable foundations have been created around the world, conservatively estimated to collectively hold more than \$200 billion in assets.⁷

While the process of creating these PtP foundations generally proceeded independently in each country, Salamon found that there were many similar aspects and features across the entire field. Multiple types of assets have been used to seed PtP foundations, including state-owned enterprises, debt swaps, royalties from regulated industries like lotteries, recovered stolen assets, and penalties for corporate misdeeds. Many of the larger PtP foundations were often formed through the divestiture of public assets, notably the sale of government-owned enterprises such as auto manufacturing plants, steel mills, or banks. In the United States, some other foundations have been created by Congress to pursue a mission complementary to a federal agency or research center, such as the National Institutes of Health. These government-created precedents are highlighted in this paper and compared in the appendixes.

Foundations that are established with funds that originated from public, quasi-public, or nonprofit sources generally are expected to meet a higher level of public accountability and transparency than foundations created by private donors, as the assets in use derived or benefited from public sources or support. While the PtP foundations have varying origin stories, and there is no “cookie-cutter” approach, a set of best practices has emerged from this sizable base of experience to guide how such foundations should ideally be organized and operated in a fair and responsible manner to retain the public’s trust. There is also significant precedent for quasi-independent foundations established by acts of Congress that reflect many of these best practices.

⁷ Salamon, L.M. (2014). *Philanthropication thru Privatization: Building Permanent Endowments for the Common Good*. (New York and Baltimore: East-West Management Institute and Johns Hopkins Center for Civil Society Studies). Available at: <http://p-t-p.org/publications/?did=8>.

BEST PRACTICES FOR FOUNDATION OPERATIONAL AND PROGRAM PERFORMANCE

One of the most widely recognized such standards, formulated by the European Foundation Center (EFC), is reflected in its EFC Principles of Good Practice. These standards identify four core "principles" of foundation operations:

- (1) Independent governance;
- (2) Sound management;
- (3) Transparency; and
- (4) Accountability.

According to the EFC Principles, some of the key attributes of well-functioning foundations include:

- ➔ The foundation has an **identifiable and independent decision-making body** which acts with **high ethical standards** and whose members are **nominated in accordance with established principles and procedures**.
- ➔ The board sets out its **strategic objectives** and ensures that programs, operations, and finances are in line with these objectives.
- ➔ The foundation **holds transparency at the core of all activities** and makes its by-laws, guidelines for funding activities, board and staff lists, annual reports, grant lists, and finances publicly and readily available. Information on grant programs and application procedures are publicly available and user-friendly.
- ➔ Clear **policies to address conflicts of interest** exist for both board members and staff.
- ➔ The foundation promotes **effective and sustainable investment strategies**.
- ➔ Regular **monitoring and evaluation of activities** are a key part of the foundation's operations.

An additional principle that can be added to these relates to the concept of **"broad and inclusive foundation governance."** The foundation's board and staff structure should reflect the community or communities it serves, and those who are intended to benefit from or be served by the programs it funds. Board criteria and selection processes established in the foundation by-laws should ensure diversity along racial, ethnic, geographic, and other categories appropriate to the service area, and the participation of people with expertise in the sector or field the foundation's work addresses. Some foundations also limit board terms to prevent stagnation of leadership and perspectives and impose criteria for board membership to ensure that the board reflects the broad range of expertise and insight needed to achieve the foundation's mission.

IMPORTANT PRECEDENTS AND REFERENCE POINTS

To better understand how foundations established through U.S. government legislative action have developed strong program and governance strategies and succeeded in engaging their communities, we prepared short case studies on several relevant foundations and organizations—including FirstNet, the California Emerging Technology Fund, and several

foundations associated with U.S. federal agencies—to analyze their operations and practices, which are included in detail in Appendix C. We also reviewed how U.S. health conversion foundations—the largest group of existing U.S.-based PtP-type foundations, with more than 300 examples—have approached the establishment of community-responsive boards and operating practices.

A. Publicly-Endowed Technology-Oriented Initiatives

First, it is useful to highlight two important technology-oriented initiatives that were funded with public assets and therefore illustrate how public revenue streams can help to advance the public interest in enabling communications and broadband access through the establishment of new types of independent organizations.

A.1. FirstNet Public Safety Network Trust Fund

There is one major precedent for setting aside spectrum auction revenue for a targeted public-purpose digital use: FirstNet Public Safety Network Trust Fund. In 2012, Congress enacted legislation that extended FCC auction authority for ten years and earmarked the first \$7.5 billion in net proceeds from two future spectrum auctions to provide start-up planning and construction funding for the FirstNet Public Safety Network. This network, initially recommended by the 9/11 Commission, is designed to enable inter-operable wireless broadband communication among the nation's first responders. In addition to \$7.5 billion of spectrum auction proceeds, FirstNet received a set-aside of prime spectrum licenses, which it leases to AT&T (while reserving priority access during emergencies). This illustrates how spectrum license auction proceeds can be turned into endowment-like streams of revenue to support priority public interest purposes.

Although conceptually similar, FirstNet is different in one major respect from most of the other organizations discussed in this report—it is not a foundation, but rather a government authority created by Congress with federal funding and agency oversight. As such, while it does not illuminate the best practices for an independent foundation, *per se*, it does clearly demonstrate how a major national initiative can be capitalized with spectrum auction proceeds to meet a critical public need—in this case, for communications during an emergency. FirstNet operates in partnership with its federal sponsor agency, the National Telecommunications and Information Administration (NTIA), which in turn reports on its activities to the Congressional authorizing committees that oversee NTIA.

To guide its operations, FirstNet has a board made up of 15 members, including three government officials (the Secretary of Homeland Security, the U.S. Attorney General, and the Director of the Office of Management and Budget) and 12 non-permanent members appointed by the Secretary of Commerce. To ensure good coordination with outside stakeholders, FirstNet created a standing public safety advisory committee to assist the board and employees in carrying out their mission to deploy and operate the network.

A.2. California Emerging Technology Fund

A second powerful precedent is the [California Emerging Technology Fund](#) (CETF), which was created in 2005 by the California Public Utilities Commission (CPUC) as a condition for approving two telecommunications mergers in California. CETF funds the deployment and use of broadband facilities, as well as the technology, equipment, content, and training necessary to make broadband service useful to unserved and underserved communities in California. The merging companies agreed to provide a total of \$60 million over five years to capitalize the fund and support its mission to narrow the digital divide.

According to its 2020 Progress report, CETF obtained additional funds, directly managing more than \$117 million in its first decade of existence, and leveraged more than \$126 million in matching funds.⁸

Highlights from the first 10-years of CETF operations include:

- ➔ Leading a 5-year Strategic Action Plan from 2018 to 2022 to achieve ambitious goals of 98% broadband deployment in each region of the state, and a 90% household broadband adoption rate statewide, by engaging a diverse spectrum of stakeholders. As of 2018, 22% of California households were digitally disadvantaged—12% were Unconnected (not online at home) and 10% were Underconnected (have only a smartphone). CETF set an aggressive target of 500,000 new household adoptions of broadband service by 2022 to achieve a net 90% Adoption statewide. This 90% goal was achieved a year early in 2021, while additional funding has been secured to complete the deployment goal by 2027.⁹
- ➔ Managing \$58 million in grants to a network of 100+ community-based organizations and public agencies to support the delivery of digital literacy training to more than 830,000 residents and connect more than 298,800 low-income households with home Internet service.
- ➔ Sponsoring the Governor’s Executive Order on Digital Literacy and advanced statewide workforce training in Information and Communications Technology (ICT) skills.
- ➔ Developing and managing a “School2Home” program to close both the achievement gap and digital divide in 39 schools and 13 districts, ultimately reaching over 20,000 students and their parents and involving more than 1,000 teachers.
- ➔ Providing the vision and seed capital to establish the California Telehealth Network.¹⁰

CETF is led by a 12-to-15 member board of directors. Four of the board members are appointed by CPUC; three are appointed by AT&T; one is appointed by Verizon; and the remaining members are appointed by the AT&T and Verizon-appointed board members.

A.3. New Jersey Civic Information Consortium (NJCIC)

Another example of a technology initiative funded with spectrum auction proceeds is the [New Jersey Civic Information Consortium](#) (NJCIC), a nonprofit organization that funds initiatives to benefit the state’s civic life, and expand access to local news and information.

The New Jersey legislature created the NJCIC in 2018, passing a bill that established a nonprofit fund to receive a portion of the proceeds from the sale of broadcasting licenses for two public TV stations owned by the state. The stations sold their licenses as part of the

⁸ California Emerging Technology Fund, 2020 Progress Report, available at: https://www.cetfund.org/wp-content/uploads/2020/09/CETF_2020_Progress_Report.pdf.

⁹ Ryan Johnston, "California Announces 18 New Broadband Projects to Achieve 98% Deployment," *StateScoop*, November 18, 2021, available at: https://www.cetfund.org/wp-content/uploads/2021/11/211118_StateScoop_California-announces-18-new-broadband-projects-to-reach-98-connectivity-StateScoop.pdf. See also: 2021 CETF Statewide Survey on Broadband Adoption, March 2021, available at: https://www.cetfund.org/wp-content/uploads/2021/03/Annual_Survey_2021_CETF_USC_Final_Summary_Report_CETF_A.pdf.

¹⁰ Ibid.

“incentive auction” for TV spectrum enacted by Congress in the same 2012 legislation that funded FirstNet.¹¹ Led by the nonpartisan advocacy organization Free Press, a coalition of residents, universities, journalists, and lawmakers proposed the NJCIC as a local media and civic-technology project to improve access to news and information in underserved communities. The proposal was strongly supported by legislators who were concerned that local news outlets were declining in their communities, and that many newspapers had closed and laid off their staff.¹²

Per the consortium's website, it provides grants for projects that achieve the following:

- ➔ Improve the quantity and quality of civic information in New Jersey communities.
- ➔ Give residents enhanced access to useful government data and public information through innovative applications, platforms, and technologies.
- ➔ Train students, professionals, and community members in the practice of community storytelling, journalism, and media production.
- ➔ Nurture better civic engagement and dialogue in and between communities.
- ➔ Better meet the information needs of low-income communities and racial and ethnic communities that have been underserved by the media.
- ➔ Invest in research and practices that can help media outlets become more closely connected to their audiences and more sustainable without government support.

The first funding for the NJCIC was not appropriated until 2020, and ultimately the state kept most of the proceeds to fill gaps in the state budget. However, up to \$2 million from the \$332 million in spectrum license sale proceeds was appropriated by the state to support grants for innovative local news and information programs.¹³ These have included support for projects to create a statewide investigative reporting center, a statewide news site to cover news of interest for the state’s disabled community, and an online Creole language radio program for the Haitian community.¹⁴

The Consortium is governed by a 15-member Board of Directors that includes representatives of the five member universities, and is housed within Montclair State University. Eleven members of the board are appointed by member universities, the governor of New Jersey and state legislative leaders, and four members are appointed by the board itself.¹⁵

¹¹ The FCC initiative resulted in the nationwide sale of over \$10 billion in broadcast spectrum owned by 175 television stations. See: Timothy Karr, “Our Last, Best Chance to Reinvent Local News,” *Moyers on Democracy*, November 29, 2016, <https://billmoyers.com/story/last-best-chance-reinvent-local-news> and Samantha Marcus, “N.J. just made a huge deal to sell 2 public television stations,” *NJ.com*, April 17, 2016, https://www.nj.com/politics/2017/04/nj_sold_two_public_television_stations_for_332m.html.

¹² Christine Schmidt, “How Free Press Convinced New Jersey to Allocate \$2 Million for Rehabilitating Local News,” *Nieman Lab*, July 15, 2019, <https://www.niemanlab.org/2019/07/how-free-press-convinced-new-jersey-to-allocate-2-million-for-rehabilitating-local-news>.

¹³ Ibid.

¹⁴ New Jersey Civic Information Consortium, “Groundbreaking New Jersey Initiative Announces Second Series of Grants to Fund Local News and Information,” May 2, 2022, <https://njcivinfo.org/second-round>.

¹⁵ New Jersey Civic Information Consortium, “Board of Directors,” <https://njcivinfo.org/board>.

B. Health Conversion Foundations

In the United States, the best-known example of foundations endowed with quasi-public assets are the more than 300 “health conversion foundations” established through the transformation of nonprofit hospitals, health systems, and insurance plans into for-profit companies that began in the late 1980s. Because nonprofit organizations benefit from public support—including importantly, tax considerations—U.S. law requires that assets held by a nonprofit at the time of conversion be transferred to a nonprofit institution working toward similar ends as the transformed nonprofit. The foundations that were created to administer the funds from these conversions are now worth a collective \$40 billion, and each year make approximately \$2 billion in grants to nonprofit organizations working to improve health care and to expand insurance coverage and access to medical services. As such, these institutions provide a strong example of how independent foundations endowed with quasi-public (in this case, nonprofit) funds can advance the public interest in addressing unmet social needs.

In 2004, Consumers Union and Community Catalyst developed a report entitled “Building and Maintaining Strong Foundations: Creating Community Responsive Philanthropy in Nonprofit Conversions,” which recommended best practices for the establishment of health conversion foundations, many of which overlap with the EFC guidelines cited above. The report emphasized the importance of community involvement in all stages of foundation development and operation to ensure that the resulting foundations remain closely linked to and accountable to the people they are intended to serve. The report argued that “the public should be brought in on the ground floor” in the creation of new foundations, to ensure that their interests would be considered and included in the design and operation of the organization.

Based on interviews with staff and board members at more than 30 foundations, Consumers Union and Community Catalyst recommended four key themes as “good practices:”

- (1) Broad and Inclusive Foundation Governance;
- (2) Transparency and Clear Communication;
- (3) Community Input in Setting and Ensuring Strategic Direction; and
- (4) Accessibility and Good Customer Service Practice.¹⁶

Extensive information about the attributes, performance, and governance of health conversion foundations is available from Grantmakers in Health, a national foundation affinity group.¹⁷ In addition, a 2021 review of the performance of four representative health conversion foundations found that they have performed at a high level of operational and programmatic performance, and served as “model institutions” to engage local citizens in their operations.¹⁸

¹⁶ Consumers Union of U.S., Inc. and Community Catalyst, Inc. (2004). *Building And Maintaining Strong Foundations: Creating Community Responsive Philanthropy in Nonprofit Conversions*, p.28. Available at: https://advocacy.consumerreports.org/wp-content/uploads/2013/03/yourhealthdollar.org_building-and-maintaining.pdf.

¹⁷ Grantmakers in Health. (2021). “Update from the Field: Results of Grantmakers In Health’s 2021 Survey of Foundations Formed from Health Care Conversions Infographic,” available at: <https://www.gih.org/publication/2021-conversion-foundations-infographic/>.

¹⁸ Bell & Salamon, 2021.

C. Federal Agency Foundations

As highlighted in the April 2021 concept note proposing the creation of the Digital Equity Foundation with spectrum auction proceeds, the idea of earmarking the proceeds from the sale of a government-owned or government-subsidized asset to finance a particular public-interest objective has a long lineage in American public policy. As far back as the late 18th and 19th centuries, Congress designated revenues from the sale of federally-owned lands to finance education for all. The Northwest Ordinance of 1787, for example, dedicated funds generated by the sale of public frontier lands to help finance K-12 education in every new state. Later, during the Civil War, the Land Grant Colleges Act, signed by President Lincoln in 1865, transferred 77 million acres of federally-owned land to states for the establishment of land grant colleges.

More recently, the federal government has established at least 11 “Agency-Related Research Foundations and Corporations” to provide flexible and efficient mechanisms to establish public-private research & development partnerships and to enable the solicitation and use of private donations that supplement the work of federal agencies. Almost all of these entities are indeed private nonprofit foundations, although one (InQTel) was created as a government-backed venture capital company.

The Agency Foundations are most commonly created to augment the work of a particular agency—such as the Centers for Disease Control and Prevention or the National Institutes of Health—by creating longer-term project collaborations, leveraging additional funds from private donors, engaging in partnerships with researchers and others, and incubating innovative programs and solutions in the nonprofit sector. The federal Agency Foundations created to date relied initially on government planning, with senior agency officials designated as the responsible parties to select the board members to establish the foundation’s initial course and direction.

Over the past two years, based partly on the success of this model, Congress has also been considering legislation to establish a similar nonprofit Innovation Foundation to supplement the work of the U.S. Department of Energy. The DOE commissioned a formal review of the Agency Foundations by the National Academy of Public Administration (NAPA), which provides a very helpful summary and analysis of current federal activity in this area.¹⁹ The review examined key federal foundation characteristics and how they vary by foundation, including a description of each foundation’s tax and legal status; an analysis of the enabling legislation; and an examination of the foundations’ governance policies and procedures. According to the review, successful agency-related foundations reinforce the missions of their respective federal agencies, and share similar characteristics, including:

- ➔ *“...They are provisioned with sufficient funding to stand up the foundation and continued funding to support administrative expenses.”*
- ➔ *“They have enabling legislation and governance that clearly articulates the broad mission, the scope of activities, and structure of the foundation, including the design of its board of directors; appropriate governance and oversight mechanisms; and comprehensive conflict of interest policies and procedures covering the relations among*

¹⁹ National Academy of Public Administration (NAPA). (Jan. 2021). “An Innovation Foundation for DOE: Roles and Opportunities.” Available at: <https://napawash.org/academy-studies/an-assessment-of-the-value-of-a-non-profit-foundation-to-promote-department-of-energy-technology-transfer-to-the-marketplace>.

their board of directors, the agency, and with potential and existing donors.”²⁰

Based on this comprehensive analysis, the review concluded that establishing a Department of Energy Innovation Foundation could provide a “flexible and efficient mechanism” to advance priority work carried out with federal research and development funds.

The existence of over a dozen federal Agency Foundations demonstrates ample positive precedent for creating and launching the Digital Equity Foundation. The federal government has repeatedly established quasi-independent foundations to advance the public interest in different sectors—such as health, agriculture, and the environment. The NAPA report provides additional helpful analysis that policymakers could use as a reference point for creating the new Digital Equity Foundation.

Further proof of concept emerged in 2021, when the National Renewable Energy Laboratory launched a charitable foundation to provide new sources of capital to fund research activities, incubate new technologies, and create additional scholarships and STEM activities. The NREL Foundation will “connect the philanthropic world to the cutting-edge research capabilities of NREL,” enable new sources of nonfederal funding, and bring in funding that otherwise would be unavailable to the laboratory. Three other national laboratories within the Department of Energy have also established lab-related foundations.²¹

²⁰ Op. cit., note 1.

²¹ “NREL Launches Nonprofit Foundation to Fund Research, Scholarships,” National Renewable Energy Laboratory News Release, Sept. 7, 2022, <https://www.nrel.gov/news/press/2021/nrel-launches-nonprofit-foundation-to-fund-research-scholarships.html>.

PART III

FORMING A NEW FOUNDATION: AN ORGANIZATIONAL CHECKLIST

At its core, a publicly-endowed charitable foundation is a private nonprofit organization that uses its resources to advance the public good. The public assets are transferred to the private nonprofit foundation, held in trust, and supervised by an independent board of directors that is required to remain dedicated to defined charitable purposes. Board members do not own the assets of a nonprofit, and cannot use them for private gain. Instead, they have the fiduciary responsibility for investing and protecting the assets, and for ensuring they are used effectively to serve the needs of the community. Nonprofit corporation laws protect the assets from diversion to private purposes.

The process for creating a charitable foundation from public or nonprofit revenue sources varies based on the source of funds, but each foundation has common features. For nonprofit organizations converting to for-profit purposes, formation of foundations has generally been overseen by state attorneys general, in their role as regulators of tax-qualified charities.

For the Agency Foundations created by the federal government, the enabling legislation sets forth their mission, board structure, and other attributes, with additional details often further refined and implemented by the foundation board after the initial startup is completed. In some enabling statutes, Congress chose to delegate more tasks to the foundation board than in others. Also, for most of the foundations, Congress created a one-time or ongoing role for government agency officials to make board appointments, and/or to serve as an ex-officio or voting board member (more on this later). Generally, though, the foundation's mission is typically defined broadly enough to allow for flexibility and the evolution to meet changing priorities in the future.

Based on our review of the federal Agency Foundations and other foundations established with public, quasi-public, or nonprofit assets, the checklist in **Table 1** provides a preliminary road map for enabling legislation. We will discuss each aspect in more detail below.

ENCOURAGING PUBLIC ENGAGEMENT IN FOUNDATION PLANNING

Foundation boards and governing structures that are created in publicly-endowed foundation transactions generally operate with a strong mandate to protect and use the foundation's assets for the public's benefit. For this reason, they tend to operate in a transparent, accountable way to reflect the unique public or quasi-public origin of the foundation's assets.

For the approximately 300 U.S. health conversion foundations in particular, significant efforts have been made to ensure that the public can participate in all or many phases of the foundations' operations—including planning, grantmaking, public reporting of grants, and evaluation. In some cases, those foundations were established through the leadership of regulators such as state Attorneys General in their role as charities regulators. For instance, the Attorney Generals in both Missouri and Kentucky convened Community Advisory

TABLE 1
Forming a New Government-Created Foundation: An Organizational Checklist

	Key Attributes for Foundation Governance and Operations	How Created or Defined
1	Mission statement describing the foundation's goals and purposes, focused how the organizations assets will be used to benefit the public	Authorizing Statute
2	Designation of the foundation's tax and legal status	Authorizing Statute (may delegate some aspects to initial board)
3	Governing documents (bylaws, articles of incorporation)	Foundation board can create, with input from policymakers/stakeholders; Authorizing Statute may specify key provisions; model documents are available
4	Board design and composition <ul style="list-style-type: none"> • Who appoints or recruits the initial board • Are there standing external appointment procedures, or does the board appoint its own successor members • Criteria for members (qualifications, representation of people served and stakeholder groups, knowledge and expertise, etc.) • Number of members • Length of board terms • Ex-officio board members and/or government agency representation, if any • Relationship with federal sponsoring agencies (e.g., FCC, NTIA) 	Authorizing Statute
5	Advisory committee structures/ mechanisms for gathering public input	Foundation can create; Authorizing Statute and/or bylaws could also mandate standing Community Advisory Committee or other baseline public participation requirements
6	Funding mechanism (how and when flows of funding will be received to fund initial startup and subsequent operations); authority to raise additional funds from public and/or private sources	Authorizing Statute
7	Finances (e.g., management of endowment, fund development activities)	Foundation board and staff have fiduciary responsibility for organizational finances; annual reporting on finances required under IRS regulations
8	Staffing	Foundation board generally develops job descriptions and staffing plan, with potential input from policymakers/stakeholders
9	Board operations (e.g., how often does the board meet, standing or temporary committees, who participates in grantmaking and program decisions, etc.)	Many aspects addressed in bylaws; Foundation board can create processes, with potential input from policymakers/stakeholders; Authorizing Statute may specify some aspects
10	Governance practices <ul style="list-style-type: none"> • Oversight • Conflict of Interest Policies • Transparency/public reporting • Independence 	Authorizing Statute may specify some baseline practices, such as requiring Conflict of Interest policies and annual audits; other governance practices are set forth in bylaws; the foundation board can further refine and elaborate.

Committees as the respective health conversion foundations were being established to help refine the foundations' missions, define criteria for board membership, and identify initial board members. Those committees continued to function after the foundations began operating, to provide ongoing advice and recommendations for potential board appointments.

The argument for promoting public engagement in foundation planning and operations has been reinforced by the experience of mainstream philanthropy itself. Grantmakers increasingly seek to bring direct community "voices" to bear in their decision-making because it strengthens the impact of their programs and more effectively addresses complex social concerns. Further, attention to the range and diversity of community voices can help ensure that the perspectives of historically disadvantaged or excluded populations are brought into the planning of interventions intended to benefit their communities. The old adage "nothing about us, without us" is highly relevant for deploying and using foundation resources wisely.

Therefore, when new public interest-oriented foundations are created, it is generally best to get the public in "on the ground floor" of planning and launching the new foundation. The new Digital Equity Foundation would be likely to hold substantial assets, and it is critical to get the intended beneficiaries—and the broad range of people and organizations with expertise in the community needs to be met—to provide input into its priorities and grantmaking process.

One hopeful sign is that a number of organizations deeply embedded in digital equity work have already expressed strong support for establishment of the Digital Equity Foundation, and these organizations can be tapped to provide additional suggestions and input as the planning process goes forward. Further, these organizations have links to networks of community-based organizations and underserved communities all across the country, whose opinions and feedback on the foundation can also be solicited. So, to some degree, the public is already at the door, and the next logical step is for Congress and federal policymakers to invite them in.

Drawing from the list outlined in Table 1 above, some of the most important issues that merit engagement with and input from key stakeholder groups and the public include:

1. **A foundation planning process** at the outset that engages, in a substantial way, the perspective and expertise of stakeholder groups and community members who are intended to benefit from the foundation's programs;
2. **Development and vetting of a mission statement** that defines the intended purposes and goals to which the foundation's assets and activities will be dedicated;
3. **Development of board selection criteria** that ensure the governing board will have the appropriate expertise and experience to carry out that mission and will be reflective and representative of the diversity of the communities served;
4. **Establishment of a board selection process that is deliberate, open, and accessible** to those intended to benefit from the foundation's programs, key stakeholder groups, and the broader public, and is free of any conflict of interest; and

- 5. Development of an organizational structure that is open and accountable to the public**, coupled with practices that offer many opportunities for community input, and ongoing, meaningful community involvement in the foundation's programs and operations.

Taken together, these five characteristics can help build community responsiveness and accountability into the foundation's operations from day one, and ensure that it will have a long-term, ongoing relationship with the organizations and individuals who can help its work succeed.

One way that federal policymakers can collect the ideas and perspective of relevant stakeholders as the foundation is being developed is through a series of roundtable meetings and a period of public notice and comment. The meetings could particularly focus on key issues such as: 1) the foundation's mission; 2) priority needs and program areas the foundation's work can address; 3) the proposed board selection process; and 4) development of advisory groups and other ways to ensure ongoing communication with the communities the foundation will serve. The sponsoring federal agencies, which could potentially include the NTIA and/or the FCC, could also interview key groups and hold listening sessions to gather input and feedback. In parallel, one or both agencies could publish a request for comments in the Federal Register, so that any member of the public could provide input or make suggestions on the foundation plan, as it is prepared and finalized.

Finally, an initial Digital Equity Foundation Advisory Committee could also be appointed to help formulate and channel suggestions and recommendations to federal regulators for board structure, governing documents, and board appointments. The members of such a committee could be drawn from organizations and stakeholder groups with an interest in the foundation's mission, including historically disadvantaged and underserved groups who are intended to benefit from its programs and activities, as well as experts with experience in the establishment and operation of similar foundations formed through legislative action or a PtP-style process.

THE DIGITAL EQUITY FOUNDATION: OPTIONS FOR FOUNDATION STRUCTURE AND GOVERNANCE

In this section, we take a deeper dive into each element of the checklist outlined above for creating the foundation, exploring options that draw on our analysis of the approaches taken for other federal Agency Foundations that have been created.

A. Mission Statement

The mission statement included in the articles of incorporation or bylaws will form the framework for the foundation's activities. The mission of the foundation should be both specific to the foundation's general purposes to promote digital equity, and broad and flexible enough to allow the foundation's activities to meet the community's needs as they evolve over time.

The general challenge in drafting a mission statement is to craft one that will guide and focus a new foundation's work without defining it too narrowly, allowing the foundation's board to develop and evolve programs and initiatives in more detail that ladder up to the broad set of goals included in the mission statement.

It is important for foundation planners to carefully consider who the foundation will serve. Many incorporation documents articulate a priority interest in vulnerable populations, and people who are not adequately served by government and private sector activities. When crafting a mission statement, foundation planners must also carefully consider how the foundation can most effectively deploy resources. Should programs focus on immediate short term needs or service gaps, or should they focus on transforming systems to have a broader and more lasting impact? Or a combination of the two? Because it is unlikely that the mission statement would be frequently updated in the enabling statute, care should be taken to make sure it is broad enough to encompass activities that could take place over a long period of time.

While the foundation should be careful to not to replace or supplant other sources of existing public or private funding, one of the key features of a private foundation compared to a government program is the ability of a foundation to raise additional funds—either in the form of subsequent infusions of funds from future spectrum auctions, and/or additional private or public funds raised from other sources. As such, it might be worth explicitly including this purpose in the mission, as has been the case in previous federally-established foundations. This could be as simple as a statement such as “... and to mobilize additional funding and resources to close digital equity gaps.”

In general, the mission statements for the federal Agency Foundations are short and broadly focused, as shown in [Appendix A](#). Some key examples include:

- ➔ The mission of the **CDC Foundation** is: “...to support and carry out activities for the prevention and control of diseases, disorders, injuries, and disabilities, and for promotion of public health.”
- ➔ The mission of the **National Fish and Wildlife Foundation** is to: “(1) to encourage, accept, and administer private gifts of property for the benefit of, or in connection with, the activities and services of the United States Fish and Wildlife Service; and (2) to undertake and conduct such other activities as will further the conservation and management of the fish, wildlife, and plant resources of the United States, and its territories and possessions, for present and future generations of Americans.”
- ➔ “As the official nonprofit partner of the National Park Service, the **National Park Foundation** generates private support and builds strategic partnerships to protect and enhance America’s national parks for present and future generations.”

The Airwaves for Equity coalition has developed broad agreement that the Digital Equity Foundation “*should make sustainable investments in digital literacy, inclusion, and affordable access, including for devices, applications and skills training, to close digital equity gaps in underserved and disadvantaged communities across the United States.*” **Box 2** provides an initial proposed mission statement drawing on this shared support.

BOX 2: Sample Digital Equity Foundation Mission Statement

“To make sustainable investments in digital literacy, inclusion, and affordable access, including for needed skills training, devices, and applications, in order to close digital equity gaps in under-served and disadvantaged communities across the United States, and to mobilize additional funding and resources to support these efforts.”

B. Tax and Legal Status

It is important to consider what legal structure will best promote the foundation's programmatic goals as well as the values of openness, community engagement, and public accountability. There are two broad categories that a foundation can be organized under: Sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code. While both of these forms of incorporation are nonprofit, there are important distinctions between the two that should be considered when deciding on the form of a new foundation endowed by public funds.

To qualify as a 501(c)(3) organization under U.S. tax law, a nonprofit must be "organized and operated exclusively for religious, charitable, scientific ... literary, or educational purposes ... or for the prevention of cruelty to children or animals..."²² 501(c)(3) status recognizes that the organization is created for the public's benefit. Some state laws actually classify 501(c)(3) organizations as public benefit organizations.²³ Because there are strict limitations on a 501(c)(3) organization's ability to engage in lobbying or political activity, the IRS allows donations to them to be tax-deductible.

Within the broad category of 501(c)(3) organizations, there are several further choices for a new foundation:

- ➔ **Private foundation:** If the endowment comes from a single individual, family, or corporate donor, and there is no ongoing pattern of earned or contributed support from diverse sources, the organization is usually classified as a private foundation. Private foundations are subject to the most stringent IRS rules. Many of these rules serve to protect the public interest, including the requirement to distribute at least a specified amount each year for charitable purposes, restrictions on board members' ability to "self-deal,"²⁴ and prohibitions against anyone privately gaining from the activity or business of the foundation. Private foundations also are subject to an excise tax on their net investment income.²⁵
- ➔ **Public charity:** If a foundation derives substantial support from the general public through fundraising or earned income, it may qualify for status as a public charity. A foundation with public-charity status is subject to fewer federal tax rules than a private foundation. The regulations presume that earning broad support through donations or services offered to the public will expose the public charity to at least some level of public scrutiny.
- ➔ **Supporting organization:** A supporting organization is a separate legal entity with a close relationship to at least one established public charity. In the case of a moderately sized endowment, a supporting organization structure may offer cost or management efficiencies while still providing a relatively high degree of community

²² Treasury Regulation § 1.501(c)(4) - 1(a)(2)(i).

²³ For example, Missouri's nonprofit corporations law designates 501(c)(3) organizations as "public benefit" or "mutual benefit" corporations. R.S.Mo. § 355.881(3). California's Nonprofit Corporation Law also renders all charitable and public purpose nonprofits, which includes 501(c)(3)'s, as "public benefit" corporations. Cal. Corp. Code §§ 5111, 7111.

²⁴ Under federal law, self-dealing refers to a wide variety of direct and indirect transactions between a private foundation and its "disqualified persons," i.e., those who are in a position to influence or control the charity's actions, as well as companies controlled by those persons.

²⁵ Under 26 U.S.C. §4940, a private foundation pays 2% (or, in some cases, 1%) tax on its investment income each year.

accountability.²⁶

An additional issue to consider is whether the new foundation will function as a **grantmaking philanthropy** or as an **operating foundation** that offers its own programs and services to the community. Grantmaking foundations operate primarily through the provision of funding to other organizations that then use those funds to carry out work in line with both their and the foundation's missions. Operating foundations decide on the work to be done and employ their own staff or contractors rather than granting funds to other organizations. Operating foundations may use advisory boards or other community guidance to shape their activities. Some public interest foundations have a blended character, operating one or more community facing programs—such as health clinics or educational campaigns in-house, for example—but also awarding grants to outside organizations to carry out their own programs.

Based on the goals and purposes articulated thus far for the Digital Equity Foundation, our working assumption is that it would be organized primarily as a grantmaking foundation, because there are many nonprofit organizations already working in the field that can be supported to implement programs and projects to advance digital equity and inclusion.

These are the basic structural choices available when forming a foundation from public or quasi-public assets. While private foundation status has historically been preferred by communities in the case of health care conversion foundations because of the greater public protections required, **all eleven federal Agency Foundations are designated as 501(c)(3) public charities**, and this status has also been proposed for the new Department of Energy Innovation Foundation.²⁷ Based on these precedents, the major support expected from the federal government, and the potential to raise additional funds from donors, we recommend the Digital Equity Foundation be designated as a 501(c)(3) public charity.

Nonprofit organizations are usually incorporated in a specific state or territory, so the enabling legislation could potentially designate the location of incorporation (e.g., Washington, DC) or leave that choice to the foundation board. The National Forest Foundation and the National Fish and Wildlife Foundation were directed by statute to incorporate as foundations under the laws of Washington, DC, while the Henry Jackson Foundation for the Advancement of Military Medicine was directed to be incorporated in Maryland. Other enabling statutes for federal agency foundations did not specifically address this point.

C. Governing Documents

Principles guiding the ongoing work of any foundation rest in its governing documents: the **articles of incorporation** and the **bylaws**. The articles of incorporation include the basic information required under state law to form a charitable corporation. They: (1) limit the foundation to nonprofit purposes; (2) articulate the specific mission; (3) provide for the disposition of assets if the foundation is discontinued; and (4) indicate how bylaws can be amended. The bylaws, in turn, create the governance structure and formal guidelines under which the board, staff, and advisors must function. The initial foundation planning process should develop governing documents that clearly state the mission of the foundation,

²⁶ See, "Creating Supporting Organizations: An Option for Conversion Foundations," by Consumers Union of U.S., Inc., 1998, <https://advocacy.consumerreports.org/research/creating-supporting-organizations-an-option-for-conversion-foundations>

²⁷ NAPA, 2021, p. 19. See also: "Public Charities," Internal Revenue Service, available at: <https://www.irs.gov/charities-non-profits/charitable-organizations/publiccharities>.

establish board qualifications and the selection process (if not provided by statute), and formalize commitments to community engagement. If the foundation will be organized as a public charity, supporting organization, or a 501(c)(4) corporation, the bylaws can and should include private foundation restrictions to protect the public interest.

Although the enabling legislation may include specific provisions in the bylaws—such as board membership, term length and limits, conflict of interest policy, board size, and the number of ex-officio members—nonprofit foundations and organizations generally make these decisions for themselves.²⁸

Model conversion foundation [bylaws](#) and [articles of incorporation](#) developed by Consumers Union and the Community Catalyst Charitable Health Assets Project can provide a starting point for developing the governance documents.²⁹ The bylaws and articles of incorporation for many other federal Agency Foundations are available for review and can be consulted for further guidance.

D. Board Design and Composition

D.1. Relationship with federal sponsoring agencies

All federal Agency Foundations have had at least one primary federal sponsoring agency designated in its enabling statute. The sponsoring federal agency or agencies play a key role in the foundation launch by engaging in the initial stages of foundation planning and working to put an organizational structure in place to carry forward the mission and expected program activities defined in the authorizing statute. The federal agency may also have ongoing oversight and reporting obligations, as NTIA does with FirstNet, for example.

For the proposed Digital Equity Foundation, we anticipate that one or more federal agencies would be designated to assist in foundation startup by initially soliciting input from stakeholders and the public concerning how the foundation should be organized and its priorities. As provided in the authorizing statute, federal agency officials would then appoint an initial board of directors to incorporate the foundation and set up a structure to oversee and manage the federal funds made available from auction proceeds. Going forward, the sponsoring agencies would have an ongoing role in providing advice and suggestions for the foundation's programs and operations. For this role, as is the case in other federal Agency Foundations, designated senior officials from the sponsoring agencies could serve as ex-officio, non-voting members of the foundation board, enabling the agencies to stay informed as program initiatives are developed; and the agency and foundation would keep in close touch about program initiatives as they are developed.

There are two federal agencies that have a longstanding interest and expertise in the national policy goal of universal broadband access and digital equity and inclusion: the Federal Communications Commission (FCC) and the National Telecommunications and Information Administration (NTIA).

²⁸ NAPA, 2021, p. 23.

²⁹ Bylaws available at: http://web.archive.org/web/20150917001145/http://consumersunion.org/wp-content/uploads/2013/04/urhealthdollar.org_model-bylaws.pdf; Articles of Incorporation available at: http://web.archive.org/web/20151016143209/http://consumersunion.org/wp-content/uploads/2013/04/urhealthdollar.org_model-articles-of-incorporation.pdf.

- ➔ **The Federal Communications Commission** regulates interstate and international communications by radio, television, wire, satellite, and cable in all 50 states, the District of Columbia, and U.S. territories. An independent federal agency overseen by Congress, the Commission is the primary authority for communications law, regulation, and innovation. As part of its work, the FCC sponsors a wide range of initiatives to expand the accessibility and affordability of broadband services, most notably by overseeing the Universal Service Administrative Company (USAC). Created by statute, USAC administers the Universal Service Fund that finances four component programs aimed at expanding broadband access in rural and other high-cost areas; providing Lifeline subsidies to people who cannot afford telephone or broadband services; subsidizing high-capacity internet connections and internal networks for schools and libraries; and promoting telehealth and related efforts to improve medical care in rural areas. The FCC also distributes the funding Congress appropriated in 2021 to subsidize broadband for low-income households (the Affordable Connectivity Program) and to connect students to school networks and community members to library networks during the pandemic emergency and its aftermath (the Emergency Connectivity Fund).
- ➔ **The National Telecommunications and Information Administration (NTIA)** is engaged in a range of efforts to increase broadband Internet access and adoption in the United States, which supports economic growth, job creation, and improved education, health care, and public safety. NTIA's BroadbandUSA program serves communities, industry, and nonprofits that want to expand broadband infrastructure and promote digital inclusion. BroadbandUSA focuses on encouraging public-private partnerships, supporting planning efforts, disseminating best practices, and helping to identify funding. In 2021, as part of the bipartisan infrastructure bill, Congress charged NTIA with distributing more than \$45 billion in grants for broadband access and affordability, most of it through grants to the states.

Our working assumption is that Congress will designate either the NTIA or the FCC as the federal agency sponsor for the Digital Equity Foundation. It is also possible that they could jointly lead the process to help launch the foundation and appoint at least its initial board, with input from stakeholders and the public. After the foundation is incorporated and launched, 1 or 2 senior officials from each agency could be designated as ex-officio, non-voting board members to serve as an ongoing liaison to the foundation. The officials would attend board meetings, provide advice and suggestions for foundation programs and operations, and facilitate ongoing coordination and communication to maximize the impact of both government and foundation activities and to avoid overlap of efforts. One or both of these agencies could also be designated to conduct fiscal and programmatic oversight, including a requirement to report their findings on an annual or bi-annual basis to the authorizing House and Senate committees.

D.2. Ensuring a representative and accountable board

Formation of the governing board (known as the “board of trustees” or “board of directors”) is among the most important early decisions in the establishment of a new foundation. The authorizing statute must specify if the sponsoring agency or some other mechanism will determine who is appointed to serve on the foundation's initial board and how board members will be qualified and selected in the future. The selection of board members should follow from an analysis of leadership needs, the development of criteria for individual trustees and for the foundation as a whole, and a nominating and selection process designed to open the board to participation by diverse stakeholder groups and constituencies.

The public's stake in digital equity should be recognized and reflected explicitly at the level of the board of directors. Creating governing boards that include people with diverse backgrounds and people from different areas of the community served will enhance the expertise and effectiveness of the foundation. It is important to seek representation from groups intended to benefit from the foundation's programs, including community-based organizations and local institutions (e.g., libraries) that have direct experience working with underserved populations. To ensure this, an ongoing commitment and defined process to establish and maintain a diverse and broadly representative governing board should be clearly stated in the foundation's bylaws.

D.3. Determining the size of the board

While key stakeholder groups and underserved communities should be well represented, concern for inclusiveness should not get in the way of a board's effectiveness. Boards of foundations range considerably in size, with the median size for health conversion foundations being fourteen members.³⁰ Larger bodies often assign significant authority to more limited executive committees, but an overly-large board may make it difficult for full board meetings to operate in an efficient manner and on a regular schedule, and may result in a "too many cooks in the kitchen" scenario where achieving agreement becomes difficult.

As such, a very large board may not serve the goal of providing opportunities for broad participation and meaningful representation of communities and stakeholder groups. The goal of achieving community voice may be better served by realizing a balance of knowledge, skills, demonstrated experience, expertise, and community representativeness on the board of directors itself, coupled with many additional opportunities for membership on advisory committees to the foundation, rather than by creating an unmanageably large board. Approximately half of the federal Agency Foundations created to date have a board of 16 or fewer.³¹

D.4. Board selection process and membership criteria

Once the size of the board is determined, the next key consideration is to define the process for selecting the first board of the new foundation and to establish the qualification criteria for board membership.

The process for selecting board members addresses two goals:

- ➔ Forming a governing board that is reflective of the mission of and the communities to be served by the new foundation; and
- ➔ Securing the leadership, skills, and connections needed for the foundation to be successful from the outset.

Reflecting this, the enabling statutes for the existing federal Agency Foundations created general criteria for specific professional knowledge and expertise of prospective board members, which are shown in **Appendix B** in italics. In several cases, the criteria provide a more specific rubric for board selection to ensure different stakeholder groups were

³⁰ Grantmakers in Health. (2017). "Update from the Field: Results of Grantmakers in Health's 2015 Survey of Foundations Formed from Health Conversions." Available at: <https://www.gih.org/wp-content/uploads/2019/10/Health-Conversion-Survey-2017.pdf>.

³¹ See Appendix B.

included. For example, in structuring the Reagan-Udall Foundation for the FDA:

- Congress directed four federal officials—the FDA Commissioner, the NIH Director, the CDC Director, and the Director of the Agency for Healthcare Research and Quality—to appoint the initial board members from candidates provided by the National Academies of Science, Engineering, and Medicine (NASEM), patient and consumer advocacy groups, professional scientific and medical societies, and industry trade organizations.
- Subsequent to these initial appointments, board vacancies are to be filled through appointment by the board. According to the foundation’s bylaws, the board of directors shall comprise no more than 17 appointed members, including no more than 5 members from the general pharmaceutical, device, food, cosmetic, and biotechnology industries; at least 3 members from academic research organizations; 2 members representing patient or consumer advocacy organizations; and 1 member representing health care providers.

Similarly, the Foundation for the National Institutes of Health was required to have 4 representatives from the general biomedical field; 2 representatives from the general biobehavioral field; and 5 representatives from the general public.

The foundation planning process for the proposed Digital Equity Foundation should include a list of the types of functional and substantive expertise that should be represented on the governing board. This analysis will help shape the subsequent search for board member prospects, priorities for recruitment, and the selection process itself.

First, the foundation planners should work to **define general board membership criteria that all board members should meet**, including, for example, a demonstrated commitment to closing digital equity gaps, sensitivity to community needs, a record of voluntary service, and community or foundation leadership experience (see **Box 3**).

Second, the planners can also **formulate categorical distribution criteria for board membership**, that one, some, or a small group of board members should meet. These might include public policy or systems expertise; advocacy skills; expertise in designing and/or delivering services; experience in developing and implementing technological innovations; financial and investment management; experience in philanthropy or nonprofit management; legal expertise; and/or board leadership skills. The planners can also designate substantive knowledge or experience needed to accomplish the foundation’s program’s goals, such as knowledge of particular types of community needs or experience in developing pilot programs to close particular service gaps.

In some ways, categorical distribution criteria may be challenging to formulate, because there may be many different capacities and voices that the planners wish to have reflected on the board. Further, there are many underserved communities and groups who potentially should have a voice in the foundation’s operations. On

BOX 3: Potential criteria for Digital Equity Foundation board members

- ➔ Demonstrated knowledge and commitment to working for digital equity and inclusion
- ➔ Knowledge and experience related to community needs for digital inclusion, and/or expertise in developing programs for under-served communities and individuals
- ➔ Experience in developing digital literacy and training programs, and/or public-purpose digital applications, such as education technology and telehealth
- ➔ Experience in philanthropy and nonprofit management and/or board leadership skills

the other hand, many individuals have multiple capacities and strengths, diverse professional experience, experiences in different aspects of technology development, grantmaking, community advocacy, and service delivery, to choose just a few dimensions.

The foundation's board can also be viewed as an opportunity to develop community capacity and leadership for groups not traditionally represented on foundation boards of directors. Although foundations often favor appointing established leaders with demonstrated skills in finance and management, or established fundraising connections, board service should be regarded as an opportunity to develop skills in community members with a demonstrated commitment to the foundation's mission. Community representatives can provide unique connections, experience, and perspectives highly relevant to the foundation's mission that are frequently not represented on foundation boards. The foundation must deliberately calculate the balance of skills and experience that are needed for an effective board, while looking for opportunities to appoint board members who are committed to the organization and to learning new skills. The foundation should provide educational processes for all board members concerning their responsibilities to the organization and its purposes.

As with other nonprofits, when board members are appointed, it is important to remember that they will have a fiduciary duty to engage in deliberations and make decisions that advance the interests of the foundation and its mission. Board members may bring substantial knowledge and expertise to the job because of their affiliations; however, when they are deliberating in the boardroom, they are there to work together as individuals to make decisions in the public interest. Under IRS regulations, the majority of board members must be independent, and must not be compensated by the nonprofit or a related organization.

The responsibility of the board should be to make sure that there is good governance overall, so that the foundation operates in a highly responsive and consultative way and in accordance with its mission. Similar to the discussion about board size, the discussion about board membership criteria will likely reinforce the need to create other channels for input, such as advisory committees, so that diverse perspectives can be fully included.

D.5. Ex-officio board members

As noted in the National Academy of Public Administration report on the proposed Innovation Foundation for the Department of Energy, the majority of federal Agency Foundations have a few ex-officio board members who participate in board deliberations, but generally serve as non-voting members. These officials are either standing positions (e.g., the Director of the Forest Service in the case of the National Forest Foundation) or they are specifically designated by the sponsoring agency and may play a role in selecting and appointing all or some of the board.

For most federal Agency Foundations, the designated federal officials also serve on the foundation boards as ex-officio, non-voting members to provide guidance and advice for foundation programs and operations. The typical number is one or two executive branch officials, although in a couple of cases more federal agency officials were involved in making initial board appointments. We have documented the number of federal officials involved with each foundation in [Appendix B](#).

D.6. A public and open search process

Once board membership criteria are established, there should be a public and open process to search for qualified candidates. The sponsoring federal agencies (and/or initial advisory committee) should disseminate the criteria for board membership, widely publicize the call for nominations, provide ample opportunity for many people to respond with suggestions, and be prepared with clear answers to any questions regarding how final selections will be determined.

In some cases, Planning Committees and foundations have hired executive search firms to help identify and recruit board candidates who represent the diversity of the state that a foundation serves.

D.7. Appointment to the board

At the end of the outreach and nomination process, the initial foundation board must be selected. As outlined above, we anticipate that designated senior officials from the FCC and/or NTIA would manage a recruitment and nomination process, and appoint the initial foundation board.

For most of the federal Agency Foundations, the default practice for board selection has been for designated officials from the federal sponsoring agency to identify and appoint candidates for the initial foundation board. However, the process has varied somewhat from agency to agency, as outlined in Appendix B. In some cases, the federal agency officials have selected candidates nominated by stakeholder groups or professional bodies, such as the National Academies of Science.

Three interesting examples of varying board appointment processes include:

- ➔ In the case of the **Reagan-Udall Foundation for the FDA**, the sponsoring federal agency officials were directed “to appoint the initial board members from candidates provided by the National Academies of Science, Engineering, and Medicine, patient and consumer advocacy groups, professional scientific and medical societies, and industry trade organizations.”
- ➔ In the case of the **Foundation for the National Institutes of Health**, four federal health agency officials appoint the board members “...from a list of candidates to be provided by the National Academies of Science, Engineering, and Medicine which will include representatives of: 1) the general biomedical field; 2) experts in pediatric medicine and research; 3) the general biobehavioral field, which may include experts in biomedical ethics; and 4) the general public, which may include representatives of affected industries. Not less than three-fifths agreement from the ex-officio members is required for the appointment of members to the board.”
- ➔ In the case of the **Foundation for Food and Agricultural Research**, five federal agency officials (who also serve as ex-officio board members) appoint 15 members to the board by majority vote, of whom 8 are selected from a list of candidates provided by the National Academies of Science, Engineering, and Medicine and 7 from a list of candidates provided by industry.

These examples suggest several possibilities for how the appointment model could be developed for the Digital Equity Foundation:

- a) The FCC and/or NTIA could be directed to engage in a collaborative planning process with stakeholder groups and the public, and to appoint and select board members based on qualifications, relevant experience, knowledge, and diversity criteria using recommendations and insights that are developed through that process.
- b) The FCC and/or NTIA could appoint a Digital Equity Foundation Advisory Committee that helps identify and nominate individuals who are qualified, interested, and able to serve as a primary source of nominations for potential candidates. The Committee could also recommend a specific slate of candidates to the agencies.
- c) The FCC and/or NTIA could develop criteria for selecting board members based on qualifications, relevant experience, knowledge, and diversity, and invite stakeholder groups and the public at large to submit nominations.
- d) The FCC and/or NTIA could develop criteria for selecting board members based on qualifications, relevant experience, knowledge, and diversity, and then hire an executive search firm to identify potential candidates.

Another option would be for the enabling legislation to designate a foundation planning committee to select initial board members. This is the process followed in the case of the **CDC Foundation**, where Congress directed the CDC director to create a five-person planning committee to make these decisions.³²

D.8. Future board appointments

Most nonprofit foundation boards are self-replicating, and develop their own nominating committees to fill vacancies when terms expire. This gives the foundation the capacity to recruit board members who are appropriate for its current needs and to fill gaps in expertise, knowledge, diversity, and relationships. This also provides the board with the capacity to respond effectively to emerging needs and changes in its program plans and/or the external environment.

In addition, some nonprofit health conversion foundations supplement their board-driven recruitment processes with community recommendations for who should serve on the board. For example, under its bylaws, the Missouri Foundation for Health (MFH) established a standing Community Advisory Committee to provide advice and recommendations regarding program priorities and community needs. The bylaws also created an annual public outreach process to identify qualified board prospects and forward nominations for each vacancy. Under this process, the MFH widely publishes the criteria for service on the board, including on its website and in paid newspaper advertisements. The call for nominees contains a summary of board responsibilities, such as attending monthly meetings and serving on at least one board committee. Interested individuals are invited to complete an application form and submit a resume of their professional and community service experience. The Community Advisory Committee then interviews and ranks all eligible individuals and selects the nominees to be forwarded to the foundation board. This consultative and

³² CDC Foundation authorizing statute, Amendment to the Public Health Service Act, 1992 (106 Stat 3474), available at: <https://www.govinfo.gov/content/pkg/STATUTE-106/pdf/STATUTE-106-Pg3469.pdf#page=6>.

collaborative approach helps ensure a process of ongoing public involvement in setting the strategic direction of the foundation and providing input into board operations.

Limited terms of board service and the requirement for rotation of new members onto the governing board are sound principles of nonprofit management and should be provided for in the bylaws. Having new board members nominated by a Community Advisory Committee helps to bring current needs and thinking to the board's decision-making. Rotating terms so that no more than a minority of board members change at any one time will preserve the institutional memory and continuity of the Board.

Among existing federal Agency Foundations, the legislation varies in terms of procedures to appoint an initial board versus establishing a standing system for federal officials to fill vacancies. In general, however, a hybrid system that allows for some federal agency direction and voice in the foundation's operations, while at the same time providing room for community input, is generally preferable to an approach where federal officials continue to appoint or re-appoint every board member.

D.9. Board member compensation and reimbursement

In general, it is not considered best or common practice among public and community foundations for board members to receive compensation for their service. However, it is reasonable to reimburse board members for the costs of travel and other expenses associated with their service on the board. It may also be reasonable to provide the option for reimbursement for loss of income or childcare expenses, or to offer an optional modest stipend in order to make board service feasible for low-income and historically disadvantaged people. Such issues should be addressed in the foundation bylaws and/or determined by foundation operating policies under the control of the board.

D.10. Potential trade-offs between specificity and flexibility in the enabling legislation

It is worth noting that some of the enabling statutes for federal Agency Foundations are much more prescriptive than others with regard to board design and composition. It is not possible to anticipate every issue or need in advance, and too much definition on the front end can potentially constrain flexibility over the long period of time the foundation will likely be operating.

As noted by NAPA:

“There is a trade-off between less and more prescriptive legislation for the foundation board. A less prescriptive approach allows for greater flexibility and efficiency, as the board is able to draft a greater range of procedures in the bylaws. More prescriptive legislation provides greater oversight as members of Congress or other agency representatives can play larger roles in the board as ex-officio members. The value of additional oversight is a trade-off in return for less board flexibility and efficiency. Foundation boards that have a political approval process, by the agency Secretary or even the White House, struggle with the timeliness of board approvals and can often be left with vacancies which, in some cases, reduce a foundation's ability to fundraise effectively and carry out other critical activities. For example, the National Park Foundation experienced delays in filling vacancies due to political approval processes that ultimately limited fundraising ability.”³³

³³ NAPA, 2021, p. 23.

In a discussion of the balance between specificity and flexibility for the proposed DOE Innovation Foundation, NAPA also observed:

“Broader enabling legislation combined with a clear, concise, and actionable statement of purpose defined by Congress in the enabling legislation is seen as optimal, providing foundations the flexibility to grow with changing environments. A DOE foundation would benefit from legislation that outlines a clear and actionable purpose and scope of activities that is broad enough to provide flexibility as environmental factors change but detailed enough to provide guidance and clarity to internal DOE stakeholders.”³⁴

D.11. Board operations

Most issues relating to board operations—including frequency of board meetings, standing or temporary committees, participation in grantmaking and programmatic decisions, and board-staff relationships, are generally determined by the foundation board itself. Some of the authorizing statutes for the federal Agency Foundations specify a minimum number of board meetings must be held each year, however.

E. Community Advisory Committee Structures/Mechanisms for Gathering Public Input

As mentioned above, because the number of board positions are limited, Advisory Committees can play a highly useful role in providing public and stakeholder input into the foundation’s strategic direction and operations. A permanent, standing Digital Equity Foundation Community Advisory Committee could be created in foundation bylaws with one or more of the following functions:

- ➔ **To serve as an outside nominating committee** to recommend candidates to fill vacancies on the foundation board of directors and as a training ground for potential board members;
- ➔ **To act as an ongoing liaison with the community**, particularly with respect to identifying community needs and priorities for future efforts of the foundation; and
- ➔ **To conduct critical assessments of the foundation's interaction with the communities it serves** and periodic reviews of the performance of the foundation in meeting its mission from the community's perspective.

In order to have adequate standing and a level of autonomy, it is important that this primary Digital Equity Foundation Community Advisory Committee report directly to the foundation board. Ideally, the Committee will be formed early in the foundation planning process so that it can play a meaningful role in selection of the initial foundation board, as outlined above. The Community Advisory Committee can assist foundation board and staff by suggesting methods to ensure public input in all facets of the foundation, thereby creating an information exchange and sustained dialogue between the foundation and the community it serves.

As is true for any representative body, the Community Advisory Committee members should therefore be reflective of the stakeholders and the communities the foundation serves, and should possess the leadership, skills, experience, and connections to assist the committee in fulfilling its roles. As such, it is vital that the Committee represent all of the di-

³⁴ Ibid., p. 21.

verse communities and stakeholders that the Foundation is intended to serve. For example, representatives of low-income rural and urban communities should be represented, as well as each geographic region of the nation. The Committee should also reflect diversity among beneficiary groups, including communities of color, senior citizens, people with disabilities, and veterans.

If a Community Advisory Committee is included within the structure of the Digital Equity Foundation, it should fully and clearly state in the bylaws the Committee's purpose, role, authority, assignment, duration (perpetual or otherwise), and key activities. It is likewise important that the bylaws clearly distinguish the advisory role and responsibilities of the Community Advisory Committee from the governance role of the foundation board. Bylaws may include a reference to staff or other resource support to the Community Advisory Committee commensurate with its assigned responsibilities.

Once established, the foundation could also create additional program-related or functional advisory committees to provide input on the development of particular initiatives, and/or to develop responses to unmet needs. For example, the foundation could establish dedicated advisory committees or roundtables focused on:

- ➔ **Advising on key foundation program priorities**, such as public purpose apps, skills training and evaluation, education technology, telehealth and public health, disability access, and modernized online access to public benefits and services.
- ➔ **Providing input and guidance regarding program strategy** to support community-based Navigator Programs and library and community technology centers.
- ➔ **Providing grassroots input from advocates and consumers** from underserved communities, regarding on-going and emerging community needs, resource gaps, and potential solutions.

F. Funding Mechanism

Following the model of FirstNet and other federal agency Foundations, the enabling legislation for the Digital Equity Foundation should specify how the flows of funding will be designated and transferred to the new foundation.

The "First Responder Network Authority" or FirstNet was authorized and initially funded with \$7.5 billion in future net auction proceeds in legislation that extended the FCC's auction authority, enacted as part of the Middle Class Tax Relief and Job Creation Act of 2012.³⁵ FirstNet was tasked with providing a single interoperable platform for emergency and daily safety communications to serve and interconnect local public safety agencies. The legislation directed the FCC to deposit a portion of the auction proceeds into a Public Safety Trust Fund for FirstNet's initial deployment and operations. The FCC also allocated 20 MHz of spectrum for FirstNet from band 14. While FirstNet has priority access to that spectrum, it receives value by sharing it with AT&T, which as a contractual partner provides FirstNet with co-located access to the AT&T wireless infrastructure.

³⁵ 47 USC 1421 et seq, available at: <https://www.law.cornell.edu/uscode/text/47/chapter-13/subchapter-II>.

In the case of a Digital Equity Foundation, Congress could similarly dedicate a specific amount of future spectrum auction revenue to establish the foundation, or it could adopt a provision dedicating a percentage of net proceeds from future net spectrum auction proceeds that the FCC would, after each auction, deposit into the foundation's endowment. Because spectrum auction proceeds are sporadic and uncertain—and because they are paid by wireless telecommunications firms and, ultimately, customers who include most Americans—we believe the latter approach, dedicating a substantial share of each future auction, is the most appropriate way to address the enduring and evolving challenge of digital equity gaps.

G. Finances

As a publicly-endowed foundation, the Digital Equity Foundation would create and manage an endowment that would operate within the standards of the 501(c)(3) IRS rules and regulations, including submitting an annual Form 990. The foundation's board of directors and senior staff would be responsible for ensuring that the foundation effectively manages the endowment to maintain and grow its real value and that the foundation meets federal requirements to pay out at least 5% of its net assets in grants and qualified distributions each year. As part of its core operations, the foundation would retain professional investment advisors to help maintain and grow the value of the endowment. This will ensure the foundation is actively meeting its obligations to utilize its assets to meet the needs of the communities it is serving.

As noted by Dr. Lester Salamon, foundations are not simply charitable institutions supporting activities designed to contribute to community betterment. They are also investment management institutions charged with overseeing the endowments that make this funding sustainable over long periods of time. How they manage this investment function is therefore as important as how they operate their charitable activities. Foundations may, of course, choose to devote more than the required share of their endowments to their charitable objectives as a matter of policy. A foundation that does this over time is likely to experience a slow growth, or actual decline, in its asset value not because of any lack of skill on the part of those charged with managing its investments, but because of policy and programmatic choices made by its board. Yet, many foundations are able to nevertheless grow their asset base over time, creating an even larger corpus that can expand funding for grants and other program activities.

The Digital Equity Foundation could augment and supplement the core assets it receives from auction proceeds by **seeking additional funding from private foundations and donors**. It could also enter partnerships with other foundations that want to serve as funding partners for particular initiatives. Because there are few funders with a mission or national perspective similar to the Digital Equity Foundation, it would likely inspire and attract additional funding over time, after it has demonstrated proof of concept and raised the visibility of funding opportunities in this field. For example, a successful demonstration project funded by the foundation could be replicated on a larger scale through matching contributions by other foundations, school districts, library systems, or other stakeholders in communities across the country.

With sufficient flexibility, the Digital Equity Foundation should also be able to evolve and adopt new mechanisms that advance its mission to promote digital equity—including making Program Related Investments (PRIs), Recoverable Grants, or establishing a revolving loan fund—that could advance its mission of promoting digital equity and inclusion.

As defined by the Internal Revenue Service, PRIs are those in which: a) the primary purpose is to accomplish one or more of the foundation's exempt purposes; b) production of income or appreciation of property is not a significant purpose; and c) influencing legislation or taking part in political campaigns on behalf of candidates is not a purpose.

Recoverable Grants are loans issued to a nonprofit group that are repaid under flexible, lenient terms. They are used "as a financial tool in which nonprofits agree to repay private investors the principal amount and possibly an interest rate, based on their overall financial performance or that of a specific program, [and] are an emerging form of patient, affordable, and flexible capital in the United States."³⁶

PRIs and Recoverable Grants might be an appropriate option in cases where new nonprofit ventures are being tested and capitalized and where there is a possibility to develop sustainable sources of earned revenue. An additional possibility is that the Digital Equity Foundation might capitalize a revolving loan fund to help nonprofits that lack liquidity to operate their programs because of barriers due to the lag and timing of payments received from government or private sources.

H. Governance Practices

For publicly-endowed foundations, issues relating to good governance are especially important, because their funds come from public sources and must be used in an accountable and transparent way.

Key issues relating to good governance practices include: 1) mechanisms to ensure ongoing public and community oversight of foundation programs and activities; 2) strong conflict of interest policies; 3) procedures for public reporting of foundation programs, grants, and finances; and 4) measures to ensure the foundation's independence from government or private influence that could compromise its operations.

H.1. Public and community oversight

Baseline reporting requirements on foundation programs and grants can be required through the authorizing statute. Most Agency Foundations are required by law to submit annual reports, document engagement with the sponsoring agency or agencies, and hold public board meetings. In addition, from the outset, an agency-related foundation board generally understands its activities will be held to a high standard of public scrutiny, so the board also establishes its own public reporting requirements and practices to ensure public transparency of its operations and programs. Most federal agency foundation enabling statutes also require annual audits to be completed.

Furthermore, to maintain their 501(c)(3) status, foundations are required to file an annual nonprofit tax return (the AR-990), which provides detailed information on foundation income, expenses, and grantmaking operations.

As noted in the NAPA report: "...through legislation, authority is delegated to the foundation board, not the agency, to determine structural elements of the foundation. The board has over-

³⁶ Alexandra Chamberlain, "France's 'Soft Loan' Model Paves Way for Recoverable Grants in US," Stanford Social Innovation Review, June 5, 2019, https://ssir.org/articles/entry/frances_soft_loan_model_paves_way_for_recoverable_grants_in_us.

sight of the CEO, including selection, compensation and performance.”³⁷ The designated senior officials from the federal agencies can monitor foundation finances and operational performance, and as ex-officio board members, bring any concerns to the attention of foundation board, as part of their oversight role.

H.2. Conflict of Interest (Col) policies

Strong conflict of interest policies are among the most important elements to include in governing documents. These provisions serve to protect the community from any improper conduct by board members, staff, advisors, vendors, or others connected to the foundation that might put the charitable assets at risk. Conflict of Interest policies prohibit self-dealing or any action for private gain by board members, staff, advisors, consultants, and/or others associated with the foundation.

At least four potential types of conflicts of interest are potentially of concern: 1) direct financial gain or benefit to board members, staff, or others connected to the organization; 2) indirect financial gain or benefit, such as for family members of board member or employees; 3) non-financial gain or benefits, such as free or in-kind services provided to organizational insiders; and 4) conflicts of loyalty, where board members, staff members, or others have outside relationships that might conflict with those of the foundation and its grantees.³⁸

Bylaws should include a clear Col policy appropriate to the needs of a grantmaking institution. The goal is not to prevent individuals who provide leadership for important constituencies from serving on the board. Rather, it is to ensure that foundation decisions are not unduly influenced by anyone with a competing interest at stake and that there is no appearance of a conflict of interest, either of which could undermine public confidence in the new foundation. Sound policies generally require board members to declare their affiliations (and those of close family members) with other nonprofits, including employment contracts, membership, or service on governing boards. The bylaws should, at minimum, require that a board member leave the room prior to a vote on any business involving an organization with which he or she has a relationship. The member also should not participate in board discussions about that organization.

According to Grantmakers in Health, a foundation Conflict of Interest policy often includes the following components:

- ➔ A general statement of the foundation’s values and commitment to avoiding any actual or potential conflicts of interest in grantmaking or business operations;
- ➔ Requirements for what type of relationships or interests must be disclosed;
- ➔ An explanation of the form of disclosure, including how a disclosure of interests is to be made, when, and how often it should be updated;
- ➔ An explanation of when to abstain from voting and how to so note in board minutes;
- ➔ An explanation of when a board member should be required to excuse himself from a meeting;

³⁷ NAPA, 2021, p. 30.

³⁸ David O. Renz, "Charity Conflicts of Interest: A Guide," *Nonprofit Quarterly*, October 13, 2019, <https://nonprofitquarterly.org/charity-conflicts-of-interest-a-guide/>.

- ➔ A requirement that a board member must practice confidentiality of acquired information;
- ➔ A statement that the policy will be reviewed annually; and
- ➔ Implementation of the policy by the board's governance or other designated committee.³⁹

For the federal Agency Foundations, the authorizing statutes include general provisions prohibiting financial and ethical conflicts of interest, and directing the foundation to have a Col policy in its organizational bylaws. If the foundation expects to engage in fundraising, foundation operating and conflict of interest policies should also be developed for acceptance of donations and gifts from donors and/or members of the public.

Sample Conflict of Interest Policies are available from the [National Council of Nonprofits](#), the [Council on Foundations](#), the [American Institute of Certified Public Accountants](#) (AICPA), and the [Internal Revenue Service](#).

H.3. Transparency and public reporting

Transparency and clear communications are core elements of public accountability. The foundation can help grantees, stakeholders, and the public to understand its decisions by clearly describing programs with current and projected dollar allocations, and by providing uniform, meaningful information about current grants and the grantmaking process. Through annual reports and websites, foundations should communicate detailed information about program interests and conduct; foundation grantmaking criteria; requests for proposals and application processes; and lists of grants awarded each year, stating the amount and purpose of each grant. This information will empower the public, federal agencies, stakeholder groups, and current and prospective grantees to understand the key details of how foundation funds are being used to advance the foundation's mission and program goals. Further, foundation staff should be accessible and available to the public, and follow good customer service practices in terms of responsive timelines, timely follow-up communications, feedback on why a grant application was selected or not selected, etc., so that grantees and stakeholders are treated with dignity and respect.

Another key element for long-term foundation oversight and accountability is ensuring regular public input into setting and ensuring strategic direction. When the foundation is launched, the board should commission a comprehensive needs assessment to better understand the nature, scope, and extent of unmet needs and service gaps, whom they effect, and promising interventions. In some cases, there may be existing research with much of this information that can be compiled in a literature review; in other cases, a community listening tour or series of roundtables may be useful. The foundation may also need to do a deeper dive on unmet needs and service gaps in each vertical program area, and to map out other funders or organizations that could be engaged in joint efforts to meet needs in that area.

By documenting and “thinking out loud” about the unmet needs it proposes to address, the foundation can engage in more effective dialogue with its prospective grantees and stake-

³⁹ Roling, S. (2007). "Strong Ethics Policy Creates A Culture of Transparency, Views from the Field," Grantmakers in Health. Available at: https://www.gih.org/files/usrdoc/Strong_Ethics_Policy_Creates_a_Culture_of_Transparency.pdf.

holders about proposed programs and grantmaking decisions. The foundation can also hold annual roundtables and listening sessions to interact with grantees and organizations working in the field, to solicit feedback on its programs, emerging needs and trends, and program strategy issues. Foundations can also find ways to engage, survey, interview, and include the grassroots people who are the “ultimate beneficiaries” of grants and programs, to make sure their voices are heard and that the foundation’s programs are effectively addressing real needs. Also, as discussed above, the Community Advisory Committee can manage and coordinate some of foundation processes to help ensure ongoing community input and communication.

H.4. Foundation independence

While a publicly-endowed foundation is in effect created by government, and can include a strong voice for government in its operations, it should remain formally independent from government and for-profit interests so that it can best pursue its long-term mission. Independence is required under existing federal nonprofit tax laws to ensure that the board retains fiduciary responsibility and decision-making authority over all aspects of finances, programs, and operations. Further, the foundation’s capacity to bring long-term innovative solutions to complex, difficult, intractable problems could be compromised if undue influence is permitted for any particular stakeholder groups, including government. Finally, with excessive government influence, issues can emerge where a foundation might be pressured to use its resources to fill short-term spending gaps or act in other ways that are contrary to its mission and the public interest.

By creating an independent Digital Equity Foundation, the federal government would be creating a new independent philanthropic organization to engage civil society and stakeholder groups to pilot and develop new strategies to address a wide range of gaps and disparities. Foundation programs should not be seen as a tool to supplant or replace existing public commitments to fund broadband access and affordability. Similar to the proverb that “seed corn should not be ground,” it is important to conserve and focus the foundation’s resources to support initiatives that can take root and grow over time to meet unmet and emerging needs. As summarized in **Box 4**, an independent foundation has a number of advantages and offers unique benefits in addressing long-term challenges that government programs are often unable to accomplish on their own.

BOX 4: Why do we need independent foundations?

Although foundation funding is typically much smaller than government funding, it is nevertheless very significant because it often brings with it innovative and pluralistic approaches to the solution of public problems. Foundations do this by supporting:

- Research, particularly “blue skies” research that often requires freedom from short-term political and commercial constraints.
- Experimental programs involving risk-taking and often requiring long periods to test.
- Neglected topics, such as preventative action.
- Disadvantaged groups that are often overlooked by large government programs, pose new needs, or present new problems.
- Citizen engagement and advocacy that nourishes democracy and gives voice to the voiceless.
- A vibrant third sector that keeps alive the special importance of charitable giving and volunteering, fosters bonds of trust, and nourishes the important value of individual initiative for the common good.

Adapted with permission from a summary prepared for the P4P Project by Nigel Siederer, Good Foundations.

PART IV

ADDITIONAL LEGAL CONSIDERATIONS

As part of our review of the options for establishing the Digital Equity Foundation, we asked an independent law firm to examine the founding documents from a selection of the federal Agency Foundations to determine what statutory authority, constraints, or legal objections might arise with regard to forming the proposed the Digital Equity Foundation funded with proceeds from the broadcast spectrum auctions. The firm carefully examined the enabling statutes for the foundations and other sections of federal law relating to spectrum auctions, and found that in general, there is a strong constitutional and legislative basis to support the proposal.

The review of publicly available legislative history found that there has been limited debate regarding the formation by Congress of various independent nonprofits seeded with public funds, including the Federal Agency foundations. The review found significant arguments that align with the proposal's reasoning for the need for the private Digital Equity Foundation, specifically: 1) the value of independence from political pressures; 2) the ability of an independent entity to respond to issues that have not yet attracted sufficient government attention, and to supplement the funding provided from government sources through private donations; and 3) the flexibility of such a foundation to respond to and address emerging issues quickly.

STATUTORY AUTHORITY AND CONSTRAINTS

The review included a careful examination of the specific enabling statutes for several legislatively-established foundations, and then broke out criticisms, if any. The analysis found, that, in general, Congress has broad legislative power to create various types of quasi-governmental organizations, including quasi-official agencies. Examples include: the National Railroad Passenger Corporation (AMTRAK); government-sponsored enterprises (e.g., Federal National Mortgage Association, aka, Fannie Mae); federally funded research and development centers (e.g., Mitre Corporation, Aerospace, and the Institute for Defense Analyses); agency-related nonprofit organizations (e.g., the National Fish and Wildlife Foundation and the Henry M. Jackson Foundation); and venture capital funds (e.g., In-Q-Tel), among others. Congress's stated goals in creating agency-related nonprofit research foundations, for instance, include: 1) providing a flexible and efficient mechanism for establishing public-private research and development (R&D) partnerships; 2) enabling the solicitation, acceptance, and use of private donations to supplement the work performed with federal funds; 3) increasing technology transfer and the commercialization of federally funded R&D; 4) improving the ability of federal agencies to attract and retain scientific talent; and 5) enhancing public education and awareness regarding the role and value of federal R&D.

We also asked the firm to identify any legal criticisms regarding the constitutionality and legality of Congressional authorization to create a federal agency foundation along the lines proposed for the Digital Equity Foundation. The most significant issue that emerged in relation to the federal Agency Foundations was that it is probably not a constitutional practice to appoint active members of Congress to serve on Agency Foundation governing

boards. For instance, both Presidents Reagan and Trump indicated in presidential signing statements that they had concerns about members of Congress being appointed to the Board of the Henry M. Jackson Foundation for the Advancement of Military Medicine, which they viewed as a violation of the constitutional separation of powers doctrine. While Congress has substantial power to structure agencies and other federally-chartered entities, and to prescribe how officers are appointed and removed, the President has general authority under the Appointments Clause to appoint the principal officers of the United States. The general understanding of this section of the Constitution is that principal officers are subject only to supervision by the President, and by extension, the appointment of board members and ex-officio non-voting board members is more appropriately carried out by executive branch officials.

Because the Henry Jackson Foundation was the only federal Agency Foundation that had active members of Congress appointed to its board, it is an outlier in terms of this practice, but future foundations would be wise to avoid this potential legal conflict.

In conclusion, the law firm we consulted stated that their review of related enabling statutes and other federal laws supported the creation of the private Digital Equity Foundation as a congressionally-created and independent nonprofit organization. While the constitutionality and legal authority to create a foundation with spectrum proceeds would depend on the specific bill that is drafted, the precedents established by other federal Agency Foundations, and other legal arguments and counterarguments that can be reasonably anticipated, provided strong support for the concept.

PART V

CONCLUSION & SUMMARY OF RECOMMENDATIONS

As the late Dr. Lester Salamon, emeritus professor, Director of the Johns Hopkins Center for Civil Society Studies, and founding Director of the Philanthropication thru Privatization Project wrote: *“The enormous equity gaps in America’s increasingly vital digital system present a serious challenge. But the opportunity to develop a major new foundation seeded with spectrum auction sale proceeds offers the country a sensible path to address this challenge, backed by a solid and reliable financing strategy. **Now is the time to seize this option and begin investing the proceeds that spectrum auctions generate in a Digital Equity Foundation that will help foster public goods and the skills to access them, and thus open our digital future more fully to all.**”*⁴⁰

Below we present four concrete steps to take to achieve that vision.

GET THE PUBLIC IN ON THE GROUND FLOOR OF FOUNDATION PLANNING

As noted above, one of the most important steps in creating a community-responsive foundation endowed with public assets is to invite the public and key stakeholder groups to get involved in the early stages of planning and development. We have identified many options for involving the public, including roundtable meetings and listening sessions with key stakeholders, public comment opportunities, engaging consultants, and/or appointing a Community Advisory Committee to advise the bill drafters and/or the sponsoring federal agencies.

For a federal Agency Foundation, the proposed Community Advisory Committee could be created as part of the foundation bylaws. It is somewhat more difficult to formalize the community involvement in the early stages, because until a law is passed, the sponsoring agencies do not have a designated role to create such a committee, and it is unlikely Congress could do so. However, in the earlier stages of foundation planning, an ad hoc advisory committee can take shape from the organizations who are advocating for the creation of the foundation, and policymakers can seek broad input and suggestions from potential stakeholders as the enabling statute is developed.

CAREFULLY DESIGN AND PLAN THE FOUNDATION

The five key steps for forming a community responsive foundation are:

1. **Creating a foundation planning process** at the outset that engages, in a substantial way, the perspective and expertise of stakeholder groups and community members who are intended to benefit from the foundation’s programs;

⁴⁰ Lester M. Salamon, "How a Publicly Funded Foundation Can Lower Digital Inequality," *Nonprofit Quarterly*, April 21, 2021, <https://nonprofitquarterly.org/how-a-publicly-funded-foundation-can-lower-digital-inequality>.

- 2. Developing a mission statement** that broadly defines the intended purposes and goals to which the foundation's assets and activities will be dedicated;
- 3. Developing board selection criteria** that ensure the governing board will have the appropriate expertise and experience to carry out that mission and will be reflective and representative of the diversity of the communities served;
- 4. Establishing a board selection process that is deliberate, open, and accessible** to those intended to benefit from the foundation's programs, key stakeholder groups, and the broader public, and is free of any conflict of interest; and
- 5. Developing an organizational structure** that is open and accountable to the public, coupled with practices that offer many opportunities for community input, and ongoing, meaningful community involvement in the foundation's programs and operations.

Board composition will be particularly important for the success of the Digital Equity Foundation. As discussed above, the governing board must reflect a balance of expertise and diversity (including geographic diversity) that reinforces the foundation's mission to promote digital inclusion and equity in low-income communities nationwide. We recommend that the enabling statute either ensure, or direct the sponsoring agency to ensure, that the governing board include individuals representing a wide variety of backgrounds and perspectives from among both constituencies (e.g., rural, low-income, seniors, communities of color) and providers (e.g., libraries, digital inclusion, civil rights and other community-based organizations, state and local government programs). Considering the foundation's mission and the constituencies with the greatest need, we suggest that both the governing board and a Community Advisory Board include individuals affiliated with the following stakeholders: digital inclusion practitioners, rural-focused programs, civil rights advocates, consumer advocates, seniors, libraries, education, and private sector internet service providers.

Taken together, these five foundation characteristics can help build community responsiveness and accountability into the foundation's operations from day one, and ensure that it will have a long-term, ongoing relationship with the organizations and individuals who can help its work succeed.

WORK WITH POLICYMAKERS TO DEVELOP A SOUND & EFFECTIVE ENABLING STATUTE

Because spectrum auction proceeds must be specifically dedicated by Congress to fund the foundation, many of the key details relating to its mission, goals, and governance should be written into an enabling statute, similar to the laws that created the other federal Agency Foundations. The enabling statute should include the foundation mission statement and general criteria for board members, but can delegate the details relating to board recruitment and selection to the sponsoring agencies, to be determined in consultation with the advisory committee and stakeholder groups. The bill drafters can fortunately be guided by the helpful precedents from the other federal Agency Foundations, which are cited in this paper and described in more detail in the appendices.

As part of the bill drafting process, legislative staff should develop language to formalize and define the roles of the National Telecommunications and Information Administration (NTIA) and/or the Federal Communications Commission (FCC) as sponsoring agencies for

the Digital Equity Foundation. The enabling statute can further designate a senior official from each agency to play a lead role in launching the foundation, soliciting nominations and confirming the board appointments, and participating in foundation board meetings as ex-officio, non-voting members. The statute can also describe any continuing oversight by the Senate and House Commerce Committees, such as a requirement that the agency sponsor(s) report each year or two on the activities and finances of the foundation.

The bill drafters can refer to the additional elements in the **Organizational Checklist in Part III** above to determine what other issues should be addressed in the enabling statutes, and compare the provisions adopted for other federal agency foundations listed in the appendices.

SHARE THE DIGITAL EQUITY FOUNDATION PLAN WITH THE PUBLIC, AND INVITE PUBLIC COMMENT

At each stage in the process, the Congress and then the sponsoring agencies can invite public comment on the Digital Equity Foundation plan, and consider the suggestions of stakeholder groups and the public. Policymakers should be prepared to address and answer questions about the foundation plan, and to answer the questions that others have about why the foundation is being created and what it would fund. The Digital Equity Foundation is being created with the public's money, so it is important to provide ample opportunities for the public to provide suggestions and participate in the foundation's work.

APPENDIX

FEDERAL AGENCY FOUNDATION DETAILS

Appendix A: *Federal Agency Foundations Mission & Purpose*

Appendix B: *Federal Agency Foundations Board Design & Composition*

Appendix C: *Federal Agency Foundations Summary Profiles*

A • FEDERAL AGENCY FOUNDATIONS MISSION & PURPOSE

Foundation	Year	Annual Appropriations	Total Revenue	Endowment	Initial Appropriation	# of Voting Board Members	Tax Status	State	Mission	Origin
FirstNet	2012	n/a	\$7.5B	YES (?)		15	Gov't Authority within NTIA	n/a	"...to provide a single interoperable platform for emergency and daily safety communications to serve and interconnect the local public safety agencies." Operates a nationwide high-speed wireless broadband network using the 700 MHz spectrum (band 14) solely for uses benefiting public safety."	Established by Congress and President through passage of the Middle Class Tax Relief and Job Creation Act of 2012, directing the FCC to deposit a portion of the proceeds from spectrum auctions authorized by the legislation into a Public Safety Trust Fund for FirstNet's initial deployment and operations. The FCC also allocated 20 MHz of spectrum from band 14.
California Emerging Technology Fund (CETF)	2005	n/a	\$50M in assets (2020)	YES	\$60M over five years	Minimum of 12, up to 15	501(c)(3)	CA	"CETF funds the deployment and usage of broadband facilities, funds technology, equipment, content, and training necessary to make broadband service useful to unserved and under-served communities in California.	CETF is a foundation/fund created by the California Public Utilities Commission (CPUC) as a regulatory condition for a merger approval for SBC-AT&T and Verizon-MCI in 2005. The merger approval required the creation of an independent nonprofit entity—CETF—and for each company to contribute a combined total of \$60 million over five years (\$45m from AT&T and \$15m from Verizon).
Centers for Disease Control Foundation (CDCF)	1992	\$1.25M	\$80.2M	YES	\$0.5M	16	501(c)(3)	GA	"...to support and carry out activities for the prevention and control of diseases, disorders, injuries, and disabilities, and for promotion of public health."	Established by the CDC with Congressional Approval through an amendment (106 Stat 3474) to the Public Health Service Act in 1992.
Foundation for Food and Agriculture Research (FFAR)	2014	Match of \$200M every 5 years	\$96.4M	NO	\$200M	17	501(c)(3)	DC	"The purposes of the Foundation shall be— (1) to advance the research mission of the Department by supporting agricultural research activities focused on addressing key problems of national and international significance including— (A) plant health, production, and plant products; (B) animal health, production, and products; (C) food safety, nutrition, and health; (D) renewable energy, natural resources, and the environment; (E) agricultural and food security; (F) agriculture systems and technology; and (G) agriculture economics and rural communities; and (2) to foster collaboration with agricultural researchers from the Federal Government, State (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103)) governments, institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)), industry, and nonprofit organizations."	Established by Congress with the passage of the Agricultural Act of 2014 (128 Stat 904)
Foundation for the National Institutes of Health (FNIH)	1990	\$0.5M	\$56.4M	YES	\$0.5M	25	501(c)(3)	MD (?)	"The purpose of the Foundation shall be to support the National Institutes of Health in its mission (including collection of funds for pediatric pharmacologic research), and to advance collaboration with biomedical researchers from universities, industry, and nonprofit organizations. (Additional section enumerates key activities of the foundation)."	Established by NIH with Congressional approval through an amendment (104 Stat. 3224) to the Public Health Service Act in 1990.

Foundation	Year	Annual Appropriations	Total Revenue	Endowment	Initial Appropriation	# of Voting Board Members	Tax Status	State	Mission	Origin
Henry M. Jackson Foundation for the Advancement of Military Medicine (HJF)	1983	n/a	\$490M	YES	\$10M	9	501(c)(3)	MD	"It shall be the purpose of the Foundation (1) to carry out medical research and education projects under cooperative arrangements with the Uniformed Services University of the Health Sciences, (2) to serve as a focus for the interchange between military and civilian medical personnel, and (3) to encourage the participation of the medical, dental, nursing, veterinary, and other biomedical sciences in the work of the Foundation for the mutual benefit of military and civilian medicine."	Established by Congress (97 Stat 200) through the Foundation for the Advancement of Military Medicine Act of 1983 (10 USC 178)
National Forest Foundation (NFF)	1990	\$3M	\$20.4M	YES	\$3M	24	501(c)(3)	DC	"The purposes of the Foundation are to (1) encourage, accept, and administer private gifts of money, and of real and personal property for the benefit of, or in connection with, the activities and services of the Forest Service of the Department of Agriculture; (2) undertake and conduct activities that further the purposes for which units of the National Forest System are established and are administered and that are consistent with approved forest plans; and (3) undertake, conduct and encourage educational, technical and other assistance, and other activities that support the multiple use, research, cooperative forestry and other programs administered by the Forest Service."	Established by Congress through the National Forest Foundation Act of 1990 (16 US Code 583j).
National Fish and Wildlife Foundation (NFWF)	1984	\$7M (Nat'l Fish & Wildlife Service) \$3M (Nat'l Forest Service)	\$304M	NO	NONE	28	501(c)(3)	DC	"The purposes of the Foundation are— (1) to encourage, accept, and administer private gifts of property for the benefit of, or in connection with, the activities and services of the United States Fish and Wildlife Service; and (2) to undertake and conduct such other activities as will further the conservation and management of the fish, wildlife, and plant resources of the United States, and its territories and possessions, for present and future generations of Americans."	Established by Congress through the National Fish and Wildlife Foundation Establishment Act (98 Stat 107). The Foundation is normally reauthorized by Congress every 5 years. Funds were approved for 2021-2025 as follows: \$15 million to the Secretary of Interior; \$5 million to the Secretary of Agriculture; and \$5 million to the Secretary of Commerce.
National Park Foundation (NPF)	1967	\$5M	70.9M	YES	NONE	25	501(c)(3) (Note: not required to file AR 990, but decided in 2012 to file voluntarily)	DC	"As the official nonprofit partner of the National Park Service, the National Park Foundation generates private support and builds strategic partnerships to protect and enhance America's national parks for present and future generations".	Chartered by Congress in 1967, the National Park Foundation is rooted in a legacy that began more than a century ago, when private citizens from all walks of life took action to establish and protect our national parks. Today, the National Park Foundation carries on that tradition as the only national charitable nonprofit whose mission is to directly support the National Park Service.

Foundation	Year	Annual Appropriations	Total Revenue	Endowment	Initial Appropriation	# of Voting Board Members	Tax Status	State	Mission	Origin
Reagan-Udall Foundation for the Food and Drug Administration	2007	\$1.25M	\$2.4M	NO	\$0.5M	14	501(c)(3)	DC	"The Reagan-Udall Foundation for the Food and Drug Administration is an independent 501(c)(3) organization created by Congress "to advance the mission of the FDA to modernize medical, veterinary, food, food ingredient, and cosmetic product development, accelerate innovation, and enhance product safety." The Foundation embodies FDA's vision of collaborative innovation to address regulatory science challenges of the 21st century and assist in the creation of new, applied scientific knowledge, tools, standards, and approaches the FDA needs to evaluate products more effectively, predictably, and efficiently, and thereby enhance the FDA's ability to protect and promote the health of the American public. The Foundation serves as a crucial conduit between FDA and the public, providing a means for FDA to interact directly with stakeholders, including industry and consumers. The Foundation does not participate in regulatory decision-making or offer advice to FDA on policy matters."	Established by Congress in 2007 as part of amendments to the Federal Food Drug and Cosmetic Act (FFDCA), Chapter 9, Sub-chapter 7 (21 USC 379dd).
U.S. Institute of Peace	1984	\$72.7M (2018)	n/a	YES (affiliated organization)	n/a	15	501(c)(1) Has affiliated 501(c)(3) endowment—the Endowment of the U.S. Institute of Peace.	DC	"...To serve the people and the Government through the widest possible range of education and training, basic and applied research opportunities, and peace information services on the means to promote international peace and the resolution of conflicts among the nations and peoples of the world without recourse to violence."	Established by Congress through the National Forest Foundation Act of 1990 (16 US Code 583j).

Sources:

FirstNet: <https://www.law.cornell.edu/uscode/text/47/chapter-13/subchapter-ll>
 California Emerging Technology Fund (CETF): https://www.cetfund.org/wp-content/uploads/2019/12/001_004_005_CPUC_Merger_approval_release_051019.pdf
 Centers for Disease Control Foundation (CDCF): <https://www.govinfo.gov/content/pkg/STATUTE-106/pdf/STATUTE-106-Pg3469.pdf#page=6>
 Foundation for Food and Agriculture Research (FFAR): <https://www.govinfo.gov/content/pkg/STATUTE-128/pdf/STATUTE-128-Pg649.pdf#page=256>
 Foundation for the National Institutes of Health (FNIH): <https://www.law.cornell.edu/uscode/text/42/290b>
 Henry M. Jackson Foundation for the Advancement of Military Medicine (HJF): <https://www.law.cornell.edu/uscode/text/10/178>
 National Forest Foundation (NFF): <https://www.law.cornell.edu/uscode/text/16/583j>; <https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg2954.pdf#page=17>
 National Fish and Wildlife Foundation (NFWF): <https://www.govinfo.gov/content/pkg/STATUTE-98/pdf/STATUTE-98-Pg107.pdf>
 National Park Foundation (NPF): <https://www.govinfo.gov/content/pkg/STATUTE-81/pdf/STATUTE-81-Pg656.pdf#page=1>
 Reagan-Udall Foundation for the Food and Drug Administration: [https://uscode.house.gov/view.xhtml?req=\(title:21%20section:379dd%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:21%20section:379dd%20edition:prelim))
 US Institute of Peace: <https://tA9L12/www.law.cornell.edu/uscode/text/22/chapter-56>

B • FEDERAL AGENCY FOUNDATIONS BOARD DESIGN & COMPOSITION

Foundation	Board Composition (Board Member Attributes in Italics)	# of Initial Board Members	# of Voting Board Members	# of Executive Branch Board Members	# of Legislative Branch Board Members	# of Ex-Officio Board Members	Do Government Official(s) Appoint the Board?
FirstNet	<p>The 2012 bill created a Governing Board composed of 15 members—three permanent and up to 12 non-permanent members (with no less than three non-permanent members).</p> <ul style="list-style-type: none"> - Permanent members: Secretary of Homeland Security, Attorney General, and Director of the Office of Management and Budget. Permanent members do not have a term limit—whoever holds these offices are automatically on the board. - Non-permanent members are appointed by the Secretary of Commerce for three-year terms and can serve no more than two consecutive terms. - The Secretary of Commerce also chooses from among the appointed non-permanent members a Chair who serves a two-year term. <p><i>All board members must be U.S. citizens. All non-permanent members should have experience in any one or more of the following four fields: public safety, technical expertise, network experience, and financial expertise. It's required that a minimum of one non-permanent member have experience in each of the following: public safety, technical expertise, or network experience.</i></p>	15	15	3	0	0	1 Executive Branch Official (Secretary of Commerce) appoints up to 12 non-permanent members
California Emerging Technology Fund (CETF)	<p>The CETF governance structure—detailed in the bylaws—includes a Board of Directors, which has a minimum of 12 seats and up to 15. Four of the board members are appointed by CPUC, three appointed by SBC-AT&T (one may be an AT&T employee), one appointed by Verizon, and the remaining four are appointed by the AT&T- and Verizon-appointed board members.</p> <p><i>There is no requirement for these remaining four board members, but the merger order states: “We encourage the board to make the final four appointments based upon the goal of making broadband as ubiquitous as possible in California.”</i></p>	12	Minimum of 12, up to 15	0	0	0	CPUC (state utility regulator, executive branch) appoints 4 board members
Centers for Disease Control Foundation (CDCF)	<p>The Secretary of HHS made a grant to a temporary 5-person committee working with the Director of the CDC, to develop the foundation bylaws, incorporate the foundation, and appoint the initial board members (process described in section [j] of authorizing statute).</p> <p>An initial board was established with a Board of Directors consisting of 7 people. All board members are voting members. Board can amend the bylaws to increase total number of board members, which has occurred. Board members serve 5 year terms and are not compensated for service to the board. The board elects a chair from among the members.</p> <p><i>All board members should “collectively possess education or experience appropriate for representing the general field of international health, and the general public.”</i></p>	7	16	0	0	0	0 (CDC Director worked with foundation startup committee); After start-up, became self-perpetuating
Foundation for Food and Agriculture Research (FFAR)	<p>FFAR is governed by a Board of Directors composed of ex-officio and nonvoting members. Ex-officio members include:</p> <ul style="list-style-type: none"> - The Secretary. - The Under Secretary of Agriculture for Research, Education, and Economics. - The Administrator of the Agricultural Research Service. - The Director of the National Institute of Food and Agriculture. - The Director of the National Science Foundation. <p>Board members serve 5-year terms. There are currently 17 appointed board members. The bylaws established a maximum of 21 board members. No Federal Government employees may be an appointed board member and appointment to the board does not constitute Federal employment (7 USC 5939(e)).</p> <p><i>Ex-officio members appoint 15 others to the board by majority vote, 8 of which are selected from a list of candidates provided by the National Academy of Sciences and 7 from a list of candidates provided by industry. Ex-officio members ensure a majority of appointed members have “actual experience in agriculture or agricultural research and, to the extent practicable, represent diverse sectors of agriculture.”</i></p>	20, incl. 15 voting + 5 ex-officio	17, up to 21	5 ex-officio non-voting	0	5	5 non-voting executive branch officials appoint the 15 governing board members
Foundation for the National Institutes of Health (FNIH)	<p>FNIH has a Board of Directors with 4 ex-officio members and at least 6 appointed members, no more than 32. The ex-officio members include: Chairman and ranking minority member of Subcommittee on Health and the Environment (Committee on Energy and Commerce); Chairman and ranking minority member of Committee on Labor and Human Resources; Director of NIH; and Commissioner of Food and Drugs. Board members serve 3- to 5-year terms. Members can serve after the expiration of their term until a successor is appointed.</p> <p><i>The ex-officio members appoint to the Board individuals from among a list of candidates provided by the National Academy of Science which will include representatives of: 1) the general biomedical field; 2) experts in pediatric medicine and research; 3) the general biobehavioral field, which may include experts in biomedical ethics; and 4) the general public, which may include representatives of affected industries. Not less than three-fifths agreement from the ex-officio members is required for the appointment of members to the board. No NIH employees can be appointed to the Board.</i></p>	10, incl. 6 voting + 4 ex-officio	25	2 ex-officio non-voting	4 ex-officio non-voting	4	4 non-voting legislative branch and 2 non-voting executive branch officials appoint the governing board members

Foundation	Board Composition (Board Member Attributes in Italics)	# of Initial Board Members	# of Voting Board Members	# of Executive Branch Board Members	# of Legislative Branch Board Members	# of Ex-Officio Board Members	Do Government Official(s) Appoint the Board?
Henry M. Jackson Foundation for the Advancement of Military Medicine (HJM)	<p>HJM has a Council of Directors that consists of the following:</p> <ul style="list-style-type: none"> - Chairmen and ranking minority members of the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives (or their designees from the membership of such committees) who serve as ex-officio members. - Dean of the Uniformed Services University of the Health Sciences, serving as an ex-officio member. - Six appointed members who serve four-year terms. 	10, incl. 6 voting + 4 ex-officio	9	1 ex-officio, non-voting	4 ex-officio non-voting	5	4 legislative branch and 1 executive branch officials appoint the governing board members
National Forest Foundation (NFF)	<p>NFF has a governing Board of Directors that can have a maximum of 30 Directors, all of which are required to be citizens. The Secretary of Agriculture appoints the board members, who serve 6-year terms, and can serve no more than 12 consecutive years. A Chairman is elected by the board for 2-year terms and can be re-elected anytime during their tenure on the board. The Chief of the Forest Service is an ex-officio non-voting member.</p> <p><i>A majority of board members must be "educated or have actual experience in natural or cultural resource management, law, or research." The Board should also represent diverse points of view related to natural and cultural resource issues.</i></p>	Max. of 31, incl. 30 voting + 1 ex-officio	24	1 ex-officio, non-voting	0	1	1 executive branch official (the Secretary of Agriculture) appoints up to 30 board members
National Fish and Wildlife Foundation (NFWF)	<p>MFWF has a governing Board of Directors which consist of nine members, all of whom must be U.S. citizens. Board members are appointed by the Secretary of the Interior. Directors are appointed for terms of six years; except that the Secretary, in making the initial appointments to the Board, was directed to appoint three Directors to a term of two years, three Directors to a term of four years, and three Directors to a term of six years. A vacancy on the Board shall be filled within sixty days of said vacancy in the manner in which the original appointment was made. Members may not serve more than two consecutive terms as a Director. The Director of the United States Fish and Wildlife Service shall be an ex-officio nonvoting member of the Board. Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purposes of any Federal law.</p> <p><i>Members must be U.S. citizens and: (1) six must be knowledgeable or experienced in fish and wildlife conservation; and (2) three must be educated and experienced in the principles of fish and wildlife management. The membership of the Board, to the extent practicable, shall represent diverse points of view relating to fish and wildlife conservation.</i></p>	10, incl. 9 voting + 1 ex-officio	9	1 ex-officio, non-voting	0	1	1 executive branch official (the Secretary of Interior) appoints up to 9 board members
National Park Foundation (NPF)	<p>NPF's board members include the Secretary of the Interior and the Director of the National Park Service (ex-officio), and no fewer than 6 private citizens of the United States appointed by the Secretary of the Interior whose initial terms shall be staggered to assure continuity of administration. Thereafter, the term shall be six years, unless a successor is chosen to fill a vacancy occurring prior to the expiration of the term for which his predecessor was chosen, in which event the successor shall be chosen only for the remainder of that term. The Secretary of the Interior shall be the Chairman of the Board and the Director of the National Park Service shall be the Secretary of the Board. Membership on the Board shall not be deemed to be an office within the meaning of the statutes of the United States.</p>	8+, incl. at least 6 voting + 2 ex-officio	25	2 ex-officio, non-voting	0	2	1 executive branch official (the Secretary of the Interior) appoints 6 or more board members
Reagan-Udall Foundation for the Food and Drug Administration	<p>Congress directed 4 federal officials—FDA Commissioner, NIH Director, CDC Director, and the Director of the Agency for Healthcare Research and Quality—to appoint the initial board members from candidates provided by the National Academy of Sciences, patient and consumer advocacy groups, professional scientific and medical societies, and industry trade organizations. Subsequent to these initial appointments, board vacancies are to be filled through appointment by the board.</p> <p><i>According to the foundation's bylaws, the board of directors shall comprise no more than 17 appointed members, including no more than 5 members from the general pharmaceutical, device, food, cosmetic and biotechnology industries and at least 3 members from academic research organizations, 2 members representing patient or consumer advocacy organizations, and one member representing health care providers.</i></p>	19, incl. 14 voting + 4 ex-officio (2 permanent)	14	2 ex-officio, non-voting	0	4 ex-officio at inception; 2 permanent	4 executive branch officials appointed 14 members of the board at inception; after startup, became self-perpetuating.
U.S. Institute of Peace	<p>By the advice and with the consent of the Senate, the President appoints the Institute's bipartisan Board of Directors. It comprises 12 members from outside Federal service; plus four ex-officio members from inside Federal service: one each from the State Department, Department of Defense, the National Defense University, and the USIP President, who serves on the Board as a non-voting member. Members serve 2-year terms and may serve no more than two terms total. Members must be confirmed by the Senate and sworn in.</p> <p><i>No more than eight voting members may be from the same political party. All should have appropriate experience in peace and conflict resolution.</i></p>	16, incl. 15 voting + 1 ex-officio	15	3	0	1 ex-officio (the US Institute of Peace president)	The President appoints the 12 non-government board members, with the advice and consent of the Senate

Sources:

FirstNet: <https://www.law.cornell.edu/uscode/text/47/chapter-13/subchapter-II>
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C • FEDERAL AGENCY FOUNDATIONS SUMMARY PROFILES

1. First Responder Network Authority (FirstNet)

Congress established FirstNet not as a foundation but as an independent government authority with start-up funding from future spectrum auction proceeds. FirstNet is overseen by National Telecommunications and Information Administration (NTIA), an agency within the US Department of Commerce that manages all federal spectrum assignments. FirstNet's mandate, initially recommended by the 9/11 Commission, is to enable inter-operable wireless broadband communication among the nation's first responders. FirstNet was created under the Middle-Class Tax Relief and Job Creation Act of 2012 as part of a bill extending FCC auction authority and requiring certain spectrum auctions. The legislation specifically dedicated \$7.5 billion in revenue from two future spectrum auctions, as well as 20 MHz of spectrum, specifically to build and operate the FirstNet public safety broadband network. FirstNet is the primary precedent for setting aside spectrum auction revenue for a targeted public-purpose digital use.

FirstNet designed and maintains a nationwide high-speed wireless broadband network using the 700 MHz spectrum (band 14) solely for uses benefiting public safety. The licenses to this spectrum are leased to AT&T, but FirstNet retains priority access to the spectrum, as well as access to AT&T wireless internet infrastructure.

The 2012 legislation establishing FirstNet (47 USC 1421 et seq.) included specific provisions for structure, governance, management, and funding of the new authority. The Board of Directors includes three permanent members: Secretary of Homeland Security, Attorney General, and Director of the Office of Management and Budget. These permanent members do not have a term limit, but rather retain permanent board positions as long as they hold these positions. The board also consists of up to 12 non-permanent members, no less than three of whom are appointed by the Secretary of Commerce for three-year terms and can serve no more than two consecutive terms. It's required that a minimum of one non-permanent member have experience in each of the following: public safety, technical expertise, or network experience. Non-permanent members should have expertise in the above areas, with the addition of financial expertise.

The Board of Directors' meetings are all public and eight members constitute a quorum for decision items, of which at least six must be non-permanent members. The board has discretion over expenditure and financials, as well as the hiring and firing of staff. FirstNet and the Board have the power to create standing committees, as well as additional ad hoc panels to carry out their duties. The board is required to provide annual reports and independent financial audits to Congress and relevant subcommittees that outline activities, updates, and any changes in governance made by the board. FirstNet has an actively reviewed and distributed Conflict of Interest policy and a Summary of Ethics Rules that was most recently published by the Ethics Office of the U.S. Department of Commerce in 2021.

2. California Emerging Technology Fund (CETF)

CETF is a foundation and fund created by the California Public Utilities Commission (CPUC) as a condition on the approval of a merger between SBC-AT&T and Verizon-MCI in 2005. CPUC merger approval required the creation of an independent and nonprofit 501(c)(3) entity—CETF—and for each company to contribute a combined total of \$60 million over five years (\$45 million from AT&T and \$15 million from Verizon). This term was included in the merger agreement to ensure Californians were supported by a not-for-profit entity dedicated to achieving ubiquitous access to broadband and advanced services in the state, as well as increased adoption and usage. Pursuant

to this broadly-defined mission, CETF funds the deployment and usage of broadband facilities, technology, equipment, content, and training necessary to make broadband service useful to unserved and under-served communities in California. Since CETF's inception, it has undertaken sweeping broadband deployment goals, supported community-based digital literacy initiatives, and collaborated with stakeholders to address the "homework gap" in the state.

The CETF governance structure—detailed in the bylaws—includes a Board of Directors with a minimum of 12 seats and up to 15. The CPUC appoints four board members, AT&T appoints three (one may be an AT&T employee), one is appointed by Verizon, and the remaining four are appointed by the AT&T- and Verizon-appointed board members. There is no requirement for these remaining four board members, but the merger order states: "We encourage the board to make the final four appointments based upon the goal of making broadband as ubiquitous as possible in California."

The board requires a simple majority for a quorum in voting and has the power to create additional committees from the existing members. Three standing committees of the board are required under the bylaws: (1) an Executive Committee consisting of the officers of the corporation and other directors appointed by the Board; (2) an Audit Committee consisting of non-officers elected by the board; and (3) a Nominating Committee consisting of non-officers elected by the board. The board can also create advisory committees consisting of any composition of both directors and non-directors. These advisory committees have no legal authority to act for CETF—they report their findings and recommendations to the board. CETF publishes regular annual reports and audits, which the bylaws state should be completed by independent accountants, or otherwise clearly noted. CA Public Utilities Code requires that the PUC report all financials and activities for CETF in a report to the Joint Legislative Budget Committee and appropriate fiscal and policy committees of the Legislature.

3. Reagan-Udall Foundation for the Food and Drug Administration

The Reagan-Udall Foundation is a 501(c)(3) foundation established by Congress in 2007 as part of amendments to the Federal Food Drug and Cosmetic Act (FFDCA), Chapter 9, Subchapter 7 (21 USC 379dd). The foundation's mission is to further the FDA's goal of modernizing medical, veterinary, food, and cosmetic product development; accelerate innovation; and broadly enhance product safety. The foundation serves as a channel for the FDA to interact with industry and consumer stakeholders. The foundation does not participate in regulatory decision-making or offer advice to FDA on policy matters.

Congress designated four federal officials—the FDA Commissioner, the NIH Director, the CDC Director, and the Director of the Agency for Healthcare Research and Quality—to appoint the initial board members from candidates provided by the National Academy of Sciences, patient and consumer advocacy groups, professional scientific and medical societies, and industry trade organizations. Following the appointment of this initial board, vacancies are filled by appointment from the existing board. The foundation's bylaws provide for no more than 17 appointed members, including no more than five members from the general pharmaceutical, device, food, cosmetic, and biotechnology industries; at least three members from academic research organizations; two members representing patient or consumer advocacy organizations; and one member representing health care providers.

The Board of Directors in office can designate and appoint an Executive Committee, a Governance Committee, and a Finance Committee, may designate and appoint one or more

other committees each of which shall consist of two or more directors, and may delegate to such committees certain delegated powers of the Board of Directors that are outlined in the bylaws. A majority of board members constitutes a quorum for purposes of conducting business and voting in meetings. The board is required to hold at least one meeting annually, which is open to the public, at which an Annual Report is published, discussed, and made available to the public. The bylaws don't require an annual audited financial statement, but the foundation has regularly provided an independent audit with financial statements. The bylaws contain a conflict of interest policy that all board members must agree to annually.

4. Centers for Disease Control Foundation (CDCF)

CDCF is a nonprofit 501(c)(3) corporation established by the CDC with Congressional approval through an amendment to the Public Health Service Act in 1992 (42 USC 280e-11). The CDC Foundation's mission is defined broadly to support and carry out activities for the prevention and control of diseases and the broad promotion of public health. This includes fellowships for state and local public health officials to work and study with CDC and similar programs to forward public health and prevention goals.

CDCF was established with a seven-member Board of Directors, which was later increased to 15 by the existing board through their ability to amend the bylaws. Board members serve five-year terms, and the board elects a Chair from among its existing members. An Executive Director is appointed, who serves at the discretion of the board, and the board sets the rate of compensation for the Executive Director.

The board establishes the bylaws and is required to create policies for: (1) the selection of the officers, employees, agents, and contractors of the foundation; (2) policies, including ethical standards, for the acceptance and disposition of donations to the foundation and for the disposition of the assets of the foundation; and (3) policies for the conduct of the general operations of the foundation. The Executive Director is responsible for managing employees, donations, financial agreements, and any legal matters (42 USC 280e-11(g)).

CDCF provides clear grant guidelines and publishes a regular list of grantees. An annual report is required in the founding statute, and it must be provided to the appropriate committees of Congress. Biennial audits are also required and must be made available to the Secretary and the Comptroller General of the U.S. All board members are required to agree to a Conflict of Interest policy annually.

5. Foundation for Food and Agriculture Research (FFAR)

FFAR is an independent 501(c)(3) nonprofit corporation established by Congress with the passage of the Agricultural Act of 2014, also known as the 2014 Farm Bill (7 USC 5939(c)). FFAR's mandate is to advance the research mission of the Department of Agriculture by supporting agricultural research activities focused on addressing key problems of national and international significance.

The FFAR Board of Directors is composed of appointed voting members as well as the following non-voting ex-officio members: the Secretary of Agriculture; the Under Secretary of Agriculture for Research, Education, and Economics; the Administrator of the Agricultural Research Service; the Director of the National Institute of Food and Agriculture; and the Director of the National Science Foundation. These ex-officio members appoint 15 others to the board by majority vote, eight of whom are selected from a list of candidates provid-

ed by the National Academy of Sciences and seven from a list of candidates provided by the agricultural industry. No more than 21 board members are allowed per the bylaws, and board members serve five-year terms. The bylaws establish an Executive Committee for day-to-day operations. The board establishes ethical standards, policies for Conflict of Interest standards, general operation standards including expenses, and the specific duties of the Executive Director, Chair, Vice-Chair, Secretary, and Treasurer.

FFAR provides annual reports on all activities, and is required to provide annual financial audits and make them and all other documents available to the Secretary and the Comptroller General of the U.S. (7 USC 5939(f)(3)). All reports and audits must be published online. FFAR is additionally required to hold annual public meetings to summarize the foundation's activities. Finally, FFAR has a routinely-reviewed Conflict of Interest policy published in the bylaws that applies to the board and the Executive Committee.

6. *Foundation for the National Institutes of Health (FNIH)*

FNIH is a 501(c)(3) nonprofit corporation established by National Institutes of Health (NIH) with Congressional approval through an amendment to the Public Health Service Act in 1990 (42 USC 290). FNIH supports the NIH in its mission to advance collaboration with biomedical researchers from universities, nonprofit organizations, and industry.

FNIH has a Board of Directors comprising six ex-officio members, a minimum of six appointed members, and no more than 32 members total. The ex-officio members include the Chairman and ranking minority member of the Subcommittee on Health and the Environment (Committee on Energy and Commerce), the Chairman and ranking minority member of the Committee on Labor and Human Resources, the Director of NIH, and the Commissioner of the Food and Drug Administration. Ex-officio members appoint other board members from among a list of candidates provided by the National Academy of Science, which must include representatives from the biomedical field, pediatric medicine and research, the biobehavioral field, and the general public from affected and adjacent industries. Board members serve three- to five-year terms and a simple majority constitutes a quorum. The board members elect officers to serve as the Chair, the Vice Chair(s), Secretary, and Treasurer and appoint the Executive Director of the foundation.

The Board has the ability to create committees consisting of two or more directors, and to delegate a number of powers to these committees, with some exceptions noted in the bylaws. Per the bylaws, the Executive Director manages day-to-day operations, along with members of the Executive Committee. FNIH is required to publish annual reports and make them available to the relevant committees of Congress. They are also statutorily required to provide annual financial audits and make them and all other documents available to the Secretary and the Comptroller General of the U.S. The bylaws require that the board adopt a Conflict of Interest policy that members must agree to annually.

7. *National Forest Foundation (NFF)*

NFF is a 501(c)(3) nonprofit foundation established by Congress through the National Forest Foundation Act of 1990 (16 US Code 583j). Congress gave the foundation a broad mission to leverage incoming funding and in-kind gifts to further the activities and services of the Forest Service of the Department of Agriculture, as well as to conduct and encourage educational, technical, and other activities that support programs administered by the Forest Service.

NFF has a governing Board of Directors that can have a maximum of 30 directors, all of whom are required to be citizens; a majority of board members must have experience or education in natural or cultural resource management, law, or research. Congress provided that the board should represent diverse points of view related to natural and cultural resource issues.

The Secretary of Agriculture appoints the board members, who each serve six-year terms, and can serve no more than 12 consecutive years. A Chairman is elected by the board for a two-year term and can be re-elected anytime during their tenure on the board. The Chief of the Forest Service is an ex-officio, non-voting member of the board. A majority of the board constitutes a quorum, and they are required to meet at least once a year. The board has the power to appoint employees, adopt bylaws/constitution, and take other actions in line with statutory requirements of the board.

NFF operates under the direction of the board, with Executive Committee members having decision-making power, and specifically the Treasurer in regard to the expenditure and investment of funds. The foundation is required to produce annual reports and financial audits and must transmit the annual report to Congress and the appropriate committees. The founding statute delineates limitations and Conflict of Interest terms (16 US Code 583j(c)).

8. National Fish and Wildlife Foundation (NFWF)

NFWF is a 501(c)(3) charitable and nonprofit corporation established by Congress in the 1984 National Fish and Wildlife Foundation Establishment Act (16 USC 3701 et seq). NFWF primarily administers grants for conservation efforts and to benefit other activities and services of the United States Fish and Wildlife Service.

NFWF has a 30-member Board of Directors. The director of the U.S. Fish and Wildlife Service and the Under Secretary of Commerce for Oceans and Atmosphere serve as Chairs of the Board. The agency co-chairs submit recommendations to the Secretary of Commerce to fill the remaining 28 board seats. Board members serve six-year terms and should have experience in the conservation of fish, wildlife, or other natural resources, as well as represent a balance in expertise across ocean, coastal, freshwater, and terrestrial resource conservation. A Chairperson is elected by the full board to serve a two-year term, and the board appoints an Executive Director, who serves as CEO of the foundation.

The board is required to meet at least once a year and a simple majority constitutes a quorum. The board's general powers include appointing officers and employees, adopting a constitution or bylaws, and any necessary acts to forward the aforementioned goals. NFWF is required to prepare annual reports to the House Committee on Resources and the Senate Committee on Environment and Public Works. The annual reports must include a summary of all activities and: (1) a complete statement of receipts, expenditures, and investments; (2) a description of all acquisition and disposal of real property; and (3) a detailed statement of the recipient, amount, and purpose of each grant made (16 USC 3706). Board members are required to sign a Conflict of Interest agreement annually, and to disclose any potential new conflicts of interest at regular board meetings.

9. National Park Foundation (NPF)

NPF is a 501(c)(3) nonprofit foundation created by Congress via the National Park Foundation Act in 1967 (54 USC subchapter II). NPF generates private support and builds strategic partnerships to protect and enhance America's national parks for present and future generations.

NPF's Board of Directors includes the Secretary of the Interior and the Director of the National Park Service as ex-officio members, and no fewer than six private citizens that are appointed by the Secretary of the Interior. Board members serve six-year terms. The Secretary of the Interior serves as Chairman of the Board and the Director of the National Park Service serves as the Secretary of the Board. A majority of members of the board constitutes a quorum for decision-making and the board is required to meet at least once a year.

The NPF founding statute does not explicitly require annual reports, financial audits, or reporting requirements to Congress, but NPF dutifully publishes annual reports and financial statements. NPF also has a Conflict of Interest policy, which is delineated on their IRS tax form 990.

10. Henry M. Jackson Foundation for the Advancement of Military Medicine (HJF)

HJF is a 501(c)(3) nonprofit established by Congress in the Foundation for the Advancement of Military Medicine Act of 1983 (10 USC 178). HJF is dedicated to advancing military medicine by serving military, medical, academic, and government clients by administering, managing, and supporting preeminent scientific programs that benefit members of the forces and civilians.

HJF is governed by a Council of Directors comprised of five ex-officio members (the Chairman and ranking minority members of the Senate and House Committees on Armed Services (or their designees from the membership of such committees) and the Dean of the Uniformed Services University of the Health Sciences) and an additional six directors chosen by these ex-officio members and serve four-year terms. The Council of Directors elects a Chairperson and appoints an Executive Director, who manages the day-to-day operations of the foundation.

As of writing, HJF did not have any publicly available bylaws. They do have an active Conflict of Interest policy that is available by request. The founding statute requires annual reports on activities and financial position, as well as a separate annual report to the President, but does not explicitly require fiscal audits.

TOWARDS A DIGITAL EQUITY FOUNDATION: Best Practices for Governance, Accountability, and Transparency for Foundations Established with Public Assets

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The Open Technology Institute at New America | newamerica.org/oti

The Wireless Future Project is part of the Open Technology Institute at New America. New America is a nonprofit policy institute dedicated to renewing the promise of our nation's highest ideals, honestly confronting the challenges caused by rapid technological and social change, and seizing the opportunities those changes create. OTI and Wireless Future work at the intersection of technology and policy to ensure that every community has equitable access to digital technology and its benefits. We promote universal access to communications technologies that are both open and secure, including spectrum policies that encourage more ubiquitous, high-capacity and affordable wireless broadband connectivity for all Americans.

The Philanthropication thru Privatization Project | p-t-p.org

The Philanthropication thru Privatization (PtP) Project seeks to promote an option for the creation of independent charitable foundations around the world by capturing all or a portion of an assortment of "privatization" transactions involving the transformation of publicly-owned or -controlled assets into private wealth. The Project has thus far identified nearly 650 foundations with assets over US\$200 billion that have emerged from such transactions, including some of the largest foundations in the world. The PtP Project, founded by the late Dr. Lester M. Salamon of Johns Hopkins University, is now housed at the East-West Management Institute, an independent nonprofit organization that has played an instrumental role in building sustainable civil society institutions worldwide.

A joint product of the Open Technology Institute at New America and the PtP Project

