To avoid legal problems, appoint either the board chair or a staff person to review all discretionary grants before checks are sent, or include a list of proposed discretionary grants in the board docket for consent review by all board members.

Remember, your Form 990-PF is readily accessible to the public on the Internet. The 990-PF lists your foundation’s grants — including discretionary ones. Discretionary grants are written on foundation checks, and the name of your foundation will probably appear on the organization’s list of donors. You may view these as grants from individual board members; the public is not likely to see that distinction.

To avoid confusing or misleading grantseekers about your giving, list your discretionary grants separately from your board-approved grants. Explain the purpose of the discretionary grants and why some may fall outside your stated guidelines.

Taking Risks
With well over one million tax-exempt organizations in the United States, foundations have virtually unlimited funding options. Yet, most foundations fund a relatively small universe of nonprofit organizations. Everyone wants to back winners: programs that have met or exceeded expectations, led to positive changes, or become models for others to replicate. But if all foundations funded them exclusively, think of how many innovative and promising programs would never have a chance to flower.

Foundations are relatively unfettered by government interference or public scrutiny — and for a purpose. They are in a position to find creative solutions to stubborn social problems, and that entails the willingness to experiment and risk failure. No foundation would be foolhardy enough to bet all its money on long shots, but you can take risks on promising — if untried people and projects — and take steps to limit your risk.

Maxine and Jonathan Marshall of the Marshall Fund have not shied away from funding controversial grassroots projects, what they call “leap of faith grants.” One of their first grants — and one of which they are still most proud — was providing seed money for a shelter for prostitutes and their children in South Phoenix. “We got a request from a former prostitute who wanted to offer temporary shelter and AIDS education to prostitutes,” says Maxine, “but she couldn’t get any funding. Our seed grant got her started and enabled her to get a large grant from the Robert Woods Johnson Foundation. Ten years later, the organization is still running.”

The term “discretionary fund” should not be interpreted too loosely. These grants are subject to the same legal requirements as any other grants the foundation makes.