Engaging in the Debate of Philanthropic Accountability

By Melissa Johnson

The National Committee for Responsive Philanthropy (NCRP) has long advocated for significantly improved accountability and transparency in the philanthropic sector. The activities leading up to the very founding of NCRP in 1976 set the question in place that we continue to struggle with today — *how can the philanthropic sector maintain a healthy accountability to the public?*

Questions of accountability and transparency have emerged into a growing debate that has grabbed the attention of many. The nonprofit sector as a whole now is more aware of accountability issues, and many groups have formulated their own ideas of what, if anything needs to change. The healthy debate for the nonprofit sector is finally gearing up to an interesting and necessary public discourse on philanthropic accountability.

HOW IS THE PHILANTHROPIC SECTOR ACCOUNTED FOR?

Currently, organizations in the philanthropic sector are accounted for by their boards of directors, state regulators, the IRS and Congress. A nonprofit board ensures legal and ethical integrity and maintains accountability for the actions of the organization. The board ultimately is responsible for ensuring adherence to legal standards and ethical norms.[1] A charitable organization also is required to maintain a charitable license within the state or states of the communities that it serves. Under the guidance of the U.S. Department of Treasury, the Internal Revenue Service is the government agency responsible for tax collection and tax law enforcement. It receives and reviews the tax and legal requirements of foundation entities and is responsible for collecting these tax forms, ensuring compliance with tax laws, and enforcing the laws to the best of its ability.[2] Congress writes the many laws that govern nonprofits and foundations. Because NCRP principally is concerned with ensuring accountability for the grantmaking side of philanthropy, this article will focus on private foundations and other grantmaking entities, rather than attempt to discuss all nonprofit accountability efforts.

The Senate Finance Committee and the House of Representatives' Committee on Ways and Means set forth the guidelines that the IRS uses to design and evaluate reporting documents. Under current regulations, there are minimal requirements for grantmakers. Two of the most prominent are that most dollars have to be distributed to a charitable purpose organization and that 5 percent of the total assets of a private foundation have to be given away each fiscal year or spent on allowable administrative purposes. Public charities that operate donor-advised funds do not have to disclose information for individual funds. For corporations that make charitable grants, the bulk of their giving is not disclosed to the public at all. Thus, the only required and enforceable means of accounting for how and where philanthropic organizations give their money is rooted with the IRS.

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DEVELOPING THE DEBATE – WHO IS SAYING WHAT?

As the conversation on philanthropic accountability has resurfaced in the nonprofit sector, many have embraced the need for more transparency and accountability. There are some basic agreements: 1) the philanthropic sector is granted great autonomy under the tax code; 2) some basic ethical and governance principles should be upheld; and 3) accountability is becoming increasingly important as the sector grows and societal needs become more complex. There are, however, differing opinions on how higher accountability can be achieved. Here are some notable voices on the subject:

Independent Sector

In October 2007, The Panel on the Nonprofit Sector, convened by Independent Sector, released a set of 33 *Principles for Good Governance and Ethical Practice*. The panel is "dedicated to finding ways to strengthen governance, transparency and ethical standards within the charitable community."[3] With an impressive panel and advisory committee guiding the development of these principles and numerous opportunities for public input, these principles demonstrate an embracing of the need for standards in the field. For example, principle No. 7 states that "a charitable organization should make information about its operations, including its governance, finances, programs and activities, widely available to the public." This principle states up front that the annual filing of tax returns for charitable organizations is the primary and only source of legally required disclosure for governance, finances, programs and activities that are made public. Nonprofits are encouraged to provide additional information through annual reports and make governance information more publicly available.

While the *Principles* put forth by Independent Sector (IS) generally are positive, NCRP has a major concern that voluntary compliance with the principles will be minimal. It is unlikely, if not naïve, to think that a majority of the nation's 1.8 million charitable organizations will adopt the principles. Additionally, other entities, like the Maryland Nonprofit Association, have criticized the IS principles for being weak. NCRP always has been a supporter of voluntary accountability efforts, but we believe that robust oversight and enforcement also are needed. Self-regulation won't discourage those who are determined to abuse philanthropy for personal or political gain.

Council on Foundations

The Council on Foundations (COF) has invested much energy into constructing principles, practice options and sample documents for corporate, family and community foundations. For community foundations, the Council and its Community Leadership Team developed the *National Standards for Community Foundations*. The team invites community foundations in the U.S. to adopt the standards as an act of commitment to operational excellence. Again, a self-regulatory effort is a deeper level of commitment, but there still is no monitoring or ensuring that the foundations actually adhere to the standards.

In 2007, COF CEO Steve Gunderson began a concerted effort to form a Philanthropy Caucus in Congress to discuss issues that affect the charitable world. The Philanthropy Caucus, which currently has 25 members, is intended to "increase communication and dialogue between government and the foundation community with a common goal of increasing philanthropy and opportunities for all of our citizens."[4] From the NCRP perspective, this caucus is essentially a cheerleading team for philanthropy within Congress. Accountability efforts are not represented in its intended work, and the caucus is likely to remain irrelevant to issues of transparency and accountability. If anything, it is likely that the caucus is intended to thwart efforts for increased congressional oversight or new regulation.

Senate Finance Committee

When leadership on the Senate Finance Committee[5] transferred from Senator Charles Grassley (R-IA) to Senator Max Baucus (D-MT), the level of commitment to philanthropic accountability changed dramatically in the Senate. Senator Grassley was known for his aggressive efforts in areas of oversight. Senator Baucus's work has proven to be considerably less vigilant and vocal on philanthropic accountability issues, although he has been championing the cause of rural nonprofits, urging foundations to give more to rural areas. As ranking member of the committee, Senator Grassley continues to exert significant influence on charitable accountability issues and Senator Baucus appears at least mildly interested in continuing this focus.

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House Committee on Ways and Means, Subcommittee on Oversight

The 110th Congress's House Committee on Ways and Means[6] held three hearings in 2007 that have implications for the nonprofit sector.[7] In July, a hearing was held that provided members with a broad overview about the state of the nonprofit sector. Testimonies and written statements spoke to the growth and size of the sector. Another hearing was intended to allow for input and comments related to the Pension Protection Act, passed in 2006. Among the more than 30 provisions relating to charitable organizations, one that did not have the full discussion needed was to increase accountability among donor-advised funds. Thus, Congress instructed the Treasury Department to conduct a study about donor-advised funds, analyzing the tax breaks and what they are required to give away, and how this impacts the charitable intent of the gifts donated. NCRP hopes this study, originally scheduled for an August 2007 release, will be released soon. Donors receive the privilege of tax deduction for charitable donations and tax exemption on investments. Foundations and other philanthropic institutions, therefore, have a responsibility to use their resources for the public good.

In September 2007, the subcommittee held another hearing to explore to what extent charitable organizations serve the needs of diverse communities. NCRP submitted testimony raising concern that "foundations generally fail to provide significant support for low-income communities, communities of color and other marginalized groups."[8] Other groups, like the Greenlining Institute, also provided comments that echoed these concerns, as they shared some of their findings from studies and legislative hearings in 2006 in California.[9]

It is clear from these hearings that the House Committee on Ways and Means, and especially the Subcommittee on Oversight, shares some of NCRP's concerns about philanthropy. Members of Congress who represent districts with large black or Latino populations are asking why their constituents don't seem to get a very big slice of the pie.

Internal Revenue Service

The IRS oversees the design, review, sharing and enforcement of annual legal requirements for charitable organizations. In 2007, a revised 990 tax form was released and changes are being implemented to take effect in the 2008 tax year. The IRS also announced that the form for private foundations, 990PF, will be undergoing revisions over the next few years. NCRP, Guidestar, and others submitted comments about the process encouraging the IRS to be thorough with this revision process. In early November, Steven Miller, commissioner of Tax Exempt and Government Entities at the IRS, provided some interesting comments at the Philanthropy Roundtable conference. His remarks described the possible shift in the IRS's role as the charitable sector evolves. The three trends that may affect the IRS's role include: increase in the number of tax-exempt organizations, growth in the economic power of the sector, and rise of technology and the Internet. He applauded the charitable sector as a whole for "engaging in a forthright program of self-criticism and self-examination.[10]

NCRP has long voiced concern about the capacity of the IRS to conduct its job as thoroughly as necessary and called for a doubling of the budget for the division of the IRS responsible for oversight of tax exempt entities. The department is extremely understaffed and underfunded and cannot possibly provide the level of oversight that is needed to uphold the public trust without additional staff.[11]

GET ENGAGED IN THE DEBATE

While NCRP will continue to submit statements and provide official testimony on public policy issues, raising awareness of the issues around accountability and transparency, it is not enough. *Accountability to whom, for what, and to what end?* —these are the questions that will have a tremendous impact on a shift in philanthropic accountability. Your voice will be crucial to success. NCRP will be developing campaigns around these questions in the coming months and years, and we hope that thousands of people who share a vision for true philanthropic accountability will engage with NCRP in the debate.

NOTES

1. Ten Basic Responsibilities of Nonprofit Boards, by Richard T. Ingram, BoardSource
2. http://www.irs.gov/irs/article/0,,id=98141,00.html
3. "Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations" – October 2007, Panel on the Nonprofit Sector convened by Independent Sector
4. http://philanthropy.com/news/government/index.php?id=3120
5. Members of the committee and brief profiles of each may be found at http://www.ncrp.org/downloads/PDF/senatefinancemembers.pdf
6. Members of the committee and brief profiles of each may be found at http://www.ncrp.org/downloads/PDF/waysandmeansmembers.pdf
7. http://waysandmeans.house.gov/hearings.asp?formmode=all&comm=3
8. *Creating a Philanthropic Sector that is More Responsive to the Needs of Diverse Communities, September 25, 2007 – Submitted to House Committee on Ways and Means, Subcommittee on Oversight*, by Aaron Dorfman, executive director of NCRP.
9. Legislative Hearing Before the California State Legislative Black Caucus, Latino Legislative Caucus, Asian Pacific Islander Legislative Caucus on Foundation Giving to Minority-led Nonprofits, April 24, 2006.
10. "The IRS's Role in an Evolving Charitable Sector," remarks of Steven T. Miller, Commission, Tax-Exempt and Government Entities, Philanthropy Roundtable Conference, November 10, 2007.
11. NCRP testimony from a 2005 hearing of the House Committee on Ways and Means may be viewed at http://www.ncrp.org/downloads/STATEMENT-04-05-StatementtoHouseWaysandMeans.pdf