

Committee of Nonprofit Leaders Issues Set of Accountability Guidelines

By Marty Michaels

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A committee of experts on nonprofit governance and management has issued guidelines designed to help nonprofit groups avoid ethical and legal improprieties.

The report, issued by a committee appointed by Independent Sector, sets forth 33 principles that charities and foundations can use as benchmarks to evaluate their policies for ensuring that they comply with the law and are monitoring their finances closely. In addition, the guidelines focus on how charities can be certain they are disclosing relevant information to the public, governing their organizations effectively, and conducting ethical fund-raising efforts.

Critics of the new guidelines say they are too weak and do not do enough to stave off bad behavior, while others say they worry that many charities, especially small ones, will struggle to follow the new standards.

A draft proposal circulated last winter elicited hundreds of comments that Independent Sector, a Washington coalition of approximately 600 charities and foundations, says helped shape the final set of principles, along with studies of more than 50 "self-regulatory systems" used by both nonprofit and for-profit groups.

The draft proposal comprised 29 principles; after reviewing the suggestions it received, the committee added new principles that deal with codes of ethics and how to manage potential legal risks to an organization.

The committee added extra weight to its recommendations that charitable groups not pay travel expenses for spouses and others not conducting business and that boards set clear guidelines as to the length of board terms and the number of consecutive terms a member can serve.

Other topics include protection for whistleblowers, board compensation and diversity, loans to board members and executives, "donor intent," solicitation materials, and the need for policies that can help a group "determine whether accepting a gift would compromise its ethics, financial circumstances, program focus, or other interests."

In general, the authors of the report say that "self-regulation begins with good governance," and that the principles are directed primarily — but not exclusively — at board members and chief executive officers. The onus is on the governing board to ensure that an organization "lives up to its legal and ethical obligations to its donors, consumers, and the public," says the

report.

To critics who questioned how a "one size fits all" approach could meet the needs of the vast array of American nonprofit groups, the report says that the principles should be clear and practical enough to suit a wide variety of organizations, yet flexible enough to allow each group's board and chief executive "to adapt them to the dictates of that organization's scope and mission."

Response to Senate

Independent Sector created the Panel on the Nonprofit Sector in October 2004 at the request of the Senate Finance Committee. More than 90 private foundations, community foundations, corporate-giving programs, and nonprofit groups have made grants totaling \$3.5-million to support the work of the committee, which included 24 foundation and charity leaders.

The committee advised lawmakers as they forged a package of laws, passed last summer, intended to strengthen the accountability and governance of charitable organizations.

The panel then turned its attention to ways through which nonprofit groups could police their own actions. In spring 2006 it created a 34-member advisory committee on self-regulation led by Joel L. Fleishman, professor of public-policy studies and law at Duke University, and Rebecca W. Rimel, president of the Pew Charitable Trusts, in Philadelphia.

Over the past 18 months, the advisory committee analyzed charity laws, accreditation policies, association guidelines, and other examples of self-regulatory activity to come up with the set of guidelines.

The process was at times contentious, with some groups saying that the windows of opportunity to comment on the draft proposal were too short. Moreover, some observers felt that certain recommendations were too lenient.

"They're perfectly fine principles and a good first step for donors," said Trent Stamp, executive director of Charity Navigator, a watchdog group in Mahwah, N.J. While acknowledging the overall credibility of the panel members, he said that the principles are "a buffet of milquetoast. I cannot fathom how the discussion groups must have gone where people had the nerve to argue against any of them."

And some nonprofit officials have questioned whether self-regulation is the best way to make organizations more accountable, as well as how the principles can be enforced. They suggested that the emphasis should be on tightening existing legislation and regulations.

"Self-regulation is great," said Aaron Dorfman, executive director of the National Committee for Responsive Philanthropy, in Washington, "but it's not sufficient."

"The IRS tax-exempt division is woefully understaffed and underfunded, and if we want true accountability in the sector, it requires both robust self-regulation and robust oversight and

enforcement by the government. The guidelines are good, but there's no mechanism for bad actors to be rooted out," said Mr. Dorfman.

Mr. Stamp agrees, saying "there are just too many bad apples, too many people on the fringes, and too many groups that we think are reputable, that will give lip service to the standards and then won't follow them in the long run."

No Enforcement

Diana Aviv took on these criticisms at Independent Sector's annual meeting last week, saying that it wasn't the role of her organization to police its member groups and others in the charity world.

"There was a long discussion on the panel about whether we should have an oversight function and an enforcement function, and in the end the panel decided that that is the responsibility of Congress and of the state oversight officials," she said. "Our responsibility is to get organizations to voluntarily embrace this because the more they do it voluntarily, the more likely they are to live up to the spirit of it and its intentions."

She also sought to assuage some organizations' concerns that Congress and regulators would use the principles as a basis for shaping new laws.

"Instead of this being a baseline for mandatory additional regulations, we think it's a way of saying, You don't need to go there because we are going there ourselves," she said.

But convincing members of Congress that the principles go far enough toward ensuring good governance could prove tough.

Ms. Aviv said that she had received an e-mail message from someone in Congress who called the principles, "very weak, very weak, very weak." She declined to identify the person who sent the message.

"There was a general sense that they were hopeful we would be much tougher. But we also got lobbied the other way as well," she said. "We will work with Congress on this."

Mr. Stamp believes additional government regulations on charities are highly unlikely, noting that when Sen. Max Baucus, the Montana Democrat, took over as chair of the Senate Finance Committee in January, "he went out of his way to immediately announce that he had no interest in proposing any nonprofit regulation."

"Baucus wanted everyone to know that he wasn't interested in doing anything about nonprofits," says Mr. Stamp, "and that he had bigger fish to fry. So the best we can hope for is that these principles of self-governance actually help donors figure out which groups are playing by the rules and which ones aren't."

Distribution Plan

At the Independent Sector meeting, participants said it would be important to distribute the principles widely. Some participants questioned whether smaller nonprofit groups, in particular, would have the time and energy needed to adopt the principles.

They urged Independent Sector to help charities and foundations learn about the principles, perhaps by including case studies on its Web site describing the process that organizations have used to carry out the goals of the standards.

Ms. Aviv agreed that unless the principles become known and accepted among nonprofit organizations, they won't have much chance of success in staving off Congressional scrutiny or improving how organizations are run.

"Many people have said that in the end the principles aren't worth the paper they're written on if organizations don't engage with their boards and their staff in thinking about them, embracing them, and acting on them," she said. "This for us is just the beginning."

A "reference edition" of the report, "Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations," is available for download at <http://www.nonprofitpanel.org>. It provides background materials on each principle, including detailed footnotes, a glossary of terms, summaries of two studies commissioned by the panel, and other information.

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