

Is Accountability the Same as Regulation? *Not* Exactly.

By Ruth McCambridge

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AS LONG AS I HAVE BEEN WORKING IN this sector, there have been fads organized around words or phrases. My experience with them is that they are circulated until the mere sound of them makes good people think bad things about the topic in general.

Right now, I think that the word “accountability” is in danger of moving into this category. Overly repeated, it means very different things to different people.

But even the smallest nonprofits can’t and shouldn’t sidestep the runaway steamroller of the accountability conversation. Its motor is on and it’s got plenty of gas. Furthermore it is a legitimate issue for us all. Much better we leap aboard and try to help steer the conversation.

Regulatory Configuration

The regulatory configuration surrounding public charities is multidimensional, and its effects vary from one organization to the next. As the diagram on the page 8 shows, the basic structure of that environment includes:

- A nonprofit board’s own practices for ensuring that the organization is properly accountable to its stakeholders.
- The standards promulgated by a self-regulating professional group; these may be used to accredit the overall organization or

various parts of it for a particular type of work.

- The voluntary ethics and accountability standards programs promulgated by organizations such as state associations of nonprofits, the Better Business Bureau, or the Evangelical Council for Financial Accountability.

- The various requirements (be they rigorous, modest, or whimsical) attached to grants and contracts by intermediary funding organizations, foundations, or government agencies.

- State charitable registration requirements implemented by the charities divisions of state attorneys general. Resources for monitoring and enforcement among these offices vary widely, and 12 states have no registration.

- The filing and annual reporting requirements of the IRS and the federal government.

- The increased scrutiny of the public made possible by the National Center for Charitable Statistics, GuideStar, charity watchdog organizations, and the press.

Again, this is a simplified map. A more detailed map describing in greater detail what the regulatory landscape looks like for many nonprofits is available in poster form (inquire at feedback@nonprofitquarterly.org).

For many nonprofits with modestly funded infrastructures and with multiple programs and funding sources, the number and variation of external accountability requirements can seem overwhelming. Since no one wants to deliberately run small to midsize nonprofits out of business (at least not publicly), accountability

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requirements need to be structured so they are reasonable, cohesive, and size-sensitive.

We all need to encourage cohesion and reasonableness in the public regulatory environment. Disclosure and reporting requirements do not need to be further complicated to ensure quality reporting and enforcement—they need to be streamlined and fine-tuned; funding needs to be made available for transparency and enforcement; and a few laws and regulations around a few classes of organizations, primarily in philanthropy, need serious reinforcement.

Setting the Stage

Regulation is important, but it does not equal accountability. In fact, it almost always misses one of the most important elements of accountability: our responsibility to the cause we are established to benefit.

When we at *NPQ* think about the word accountability, the first thing that comes to mind is not external regulation by the IRS or anyone else. Our first thought is about the integrity of the governance system for each individual nonprofit. This internal system has to be the primary mechanism that adjusts and readjusts the organization's direction and strategies to ensure that it is operating in the best interests of those it is designed to benefit.

We operate in trust to them, but the people whose needs we are meeting have no legal "standing." In other words, they can not require accountability of us—although donors can. The first line of defense to keep nonprofits "of use" to

their primary beneficiaries is dependent upon the commitment of the board to provide optimal value. This critical day-to-day accountability is influenced by who is on the board, who board members feel responsible to, and how well the board bases its decision-making in sound transparency and consultation processes with its constituency—specifically by involving them in planning and evaluative research. The nonprofit and foundation regulatory environment does not mandate that we engage with our communities. We must require that of ourselves.

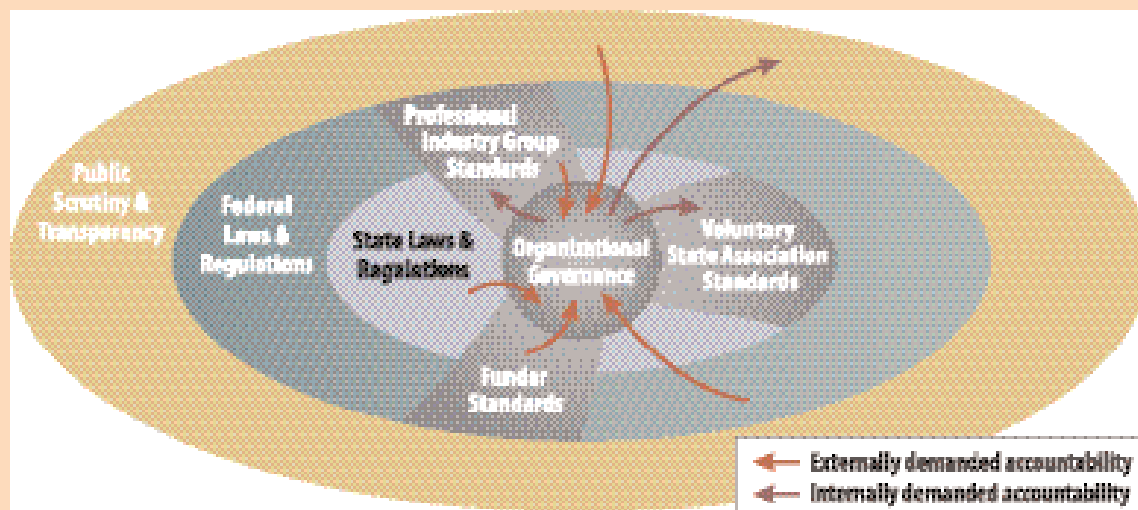
The Regulatory Environment Is Heating Up

"[F]ar too many charities have broken the understood covenant between the taxpayers and nonprofits—that charities are to benefit the public good, not fill the pockets of private individuals. Too many well-meaning charities have fallen prey to the charlatans' pitch about easy money. Some charities are blinded by their own mission and the need for additional dollars. These charities are willing to sign onto deals that provide dollars to promoters and insiders but only pennies to the charity. It is the taxpayers who are the losers."

Opening Statement of **Sen. Chuck Grassley**
Senate Finance Committee Hearing on Charitable Giving
Tuesday, June 22, 2004

The Senate Finance Committee has conducted a process to hold nonprofits more consistently accountable. Senators and congressmen are anxious to acknowledge that the large

EZ MAP OF NONPROFIT REGULATORY ENVIRONMENT



majority of nonprofits are acting within reasonable legal limits, but . . . those few bad apples cause this drive for better regulatory controls.

On the East Coast, particularly in Washington, repeated media stories have exposed stolen funds (United Way of the National Capital Area), questionable real estate deals (the Nature Conservancy), and eye-popping private foundation trustee fees (*Boston Globe* series). The IRS raised a series of alarms about nonprofits being used as accommodations to abusive tax shelters, and questioned the actual value of vehicle donations to charities that taxpayers were claiming as tax deductions. Senator Grassley's and Baucus's sponsorship of legislation with tax advantages to land trusts such as the Nature Conservancy, just before the *Washington Post* ran its exposé on the Nature Conservancy's land deals, could not have helped build confidence in the current regulatory framework.

Those in Washington, DC, most concerned with the nonprofit sector are abuzz about the goings-on at the Senate Finance Committee—a typical “inside the beltway” drama with many acts and actors—but how important is it to you?

The truth is that a revision of the “controls” (which in this conversation are largely financial and reporting disclosure mechanisms) is unquestionably needed for everyone's sake, particularly in light of increased public access to information in those reports. Still, such tinkering with the controls is insufficient as a response either to the core accountability problem among nonprofits or to problems that have emerged as the corporate scandals of the sector.

Why is the Regulatory Environment Heating Up?

The online availability of Form 990 is probably the most powerful enhancement of a public charity's accountability in the last 10 years. According to Steve Miller, IRS Chief of Exempt Organizations, it has “changed the face of philanthropy.” The federal government has not been the pivotal player here—philanthropy has, paying most of the freight for the development of GuideStar, which provides public access to public information. The development of a data repository to hold and provide access to 990 reports has opened up a can of worms. We now not only know what any particular nonprofit chooses to report on its 990, but we also know, through a massive research effort conducted by the Urban Institute and the

Center on Philanthropy at Indiana University, that these reports aren't very reliable. This realization has sparked efforts to revise both the report format and related requirements. It has also, along with activity around corporate governance and Sarbanes-Oxley, called audit activities among nonprofits into question.

Is the Regulatory Environment Inadequate?

Some of the conversations around tightening oversight of nonprofits might lead you to believe that we are currently operating in something of a Wild West scenario. This could not be further from the truth for many nonprofits faced with a dizzying array of regulators and others who demand documented accountability. Many nonprofits have federal or state contracts with high regulatory requirements, or are connected to professional associations that accredit all or parts of what they do. Foundations and United Ways have their own, often unique, accountability requirements.

Who/What/Where Is the Problem?

Accountability is always a mix of self and external controls. It is critical to find the right balance of the two. There are many highly regulated situations where the culture is to beat the regulations or to drift to the lowest allowable compliance level. If nonprofits go that way, we violate the expectations of the public that expects more of us (still, thank goodness).

On the other hand, to have no regulations or monitoring where other people's money is being used in trust is absurd. There are simply too many entrepreneurial souls out there looking for the right niche for their next scam. We also need the exercise of discussing what our ethical guidelines should be and agreeing upon a set of basic steps that ensure adherence.

Can reforming audits and the Form 990 do the trick? Not without a whole raft of other activities. Some of these must be aspirational—self-generated at the individual organizational level and association level—and some must, unfortunately, be connected to enhanced reporting, monitoring and enforcement mechanisms.

Let's Talk!

Let's move this topic forward! Any ideas or arguments you'd like to share with the authors and editors? Send us an email, referring to this article at: feedback@nonprofitquarterly.org.

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