

NONPROFIT SECTOR STRATEGY GROUP

Government

The Nonprofit Sector
and Government:
Clarifying the
Relationship

A STATEMENT
FOR PUBLIC
DISCUSSION



THE ASPEN INSTITUTE

Nonprofit Sector Strategy Group

The Aspen Institute's Nonprofit Sector Strategy Group (NSSG) is a leadership forum that is addressing the most pressing issues facing the nonprofit sector in America. Formed in 1997, the NSSG convenes meetings to explore innovative ways in which the business, government and nonprofit sector might work together to address shared concerns and promote a healthy civil society and democracy.

The NSSG is an initiative of The Aspen Institute's Nonprofit Sector and Philanthropy Program, which seeks to improve the operation of the nonprofit sector and philanthropy through research and dialogue focused on public policy, management, and other important issues affecting the nonprofit sector.

Other NSSG publications include:

"The Nonprofit Contribution to Civic Participation and Advocacy";

"The Nonprofit Sector and the Market: Opportunities and Challenges";

"The Nonprofit Sector and Business: New Visions, New Opportunities, New Challenges"; and,

"Religious Organizations and Government."

This pamphlet provides an introduction to the work of the NSSG, followed by the group's statement, "The Nonprofit Sector and Government: Clarifying the Relationship."

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Introduction: The Mission of the Nonprofit Sector Strategy Group

By carefully examining the most important challenges and opportunities facing America's private nonprofit organizations, the Nonprofit Sector Strategy Group is working to stimulate a new consensus about the nonprofit sector's roles and responsibilities, and offer practical recommendations to enhance policy, practice, research, and public education on this crucial set of institutions.

America's private nonprofit sector has long played a critical role in American life.¹ Its 1.6 million organizations and associations provide services to meet an extraordinary range of human needs: ministering to the sick through visiting nurses associations, hospitals, clinics, and nursing homes; educating tens of millions in its schools and universities, as well as in community tutoring programs; providing human services such as day care, meals on wheels, adoption, job placement, domestic abuse prevention, and relief for the poor; strengthening spiritual life through churches and religious associations; and promoting arts and cultural activities of all kinds.

Nonprofit organizations also connect Americans to unique opportunities: to volunteer, to advocate for public policy, to promote democratic values, to participate in decision-making processes, and—in doing so—to shape a more just and prosperous democracy.

RESPONDING TO A CHANGING LANDSCAPE

In the past 15 years, the nonprofit sector, like business and government, has had to respond to a dramatically new social and political landscape.

The contours of this landscape include: a new and constantly evolving mix of peoples and cultures; instant and interactive technology in all arenas of life; downsized and devolved governments; a global marketplace; a commercial presence that reaches into almost every aspect of life; and a volatile economy.

These new realities pose a complex mix of opportunities and challenges for nonprofit organizations. On the one hand, they open up the possibility of productive new partnerships

between nonprofit organizations and businesses and new sources of revenues that nonprofit organizations can tap. On the other hand, however, they bring for-profit competitors into traditional nonprofit fields and create commercial pressures that can threaten the ability of nonprofit organizations to remain focused on their public-service missions.

THE WORK OF THE NONPROFIT SECTOR STRATEGY GROUP

This changed environment gives rise to fundamental questions: What are the unique contributions of nonprofit organizations? What traditional nonprofit roles should endure and what new roles need to be imagined? What are the sector's major strengths and weaknesses? How can needed changes best be encouraged?

In 1997, The Aspen Institute, an international nonprofit educational institution headquartered in Washington, D.C., organized the Nonprofit Sector Strategy Group (NSSG) to address these questions, to examine the sector's most important opportunities and challenges and bring constructive ideas and recommendations to public attention. Funded by grants from the W. K. Kellogg Foundation and The Ford Foundation, the NSSG focuses its attention primarily on the public-benefit portion of the nonprofit sector, which encompasses those organizations whose primary mission is to serve a broad public rather than their own members.

The NSSG convenes participants from a variety of backgrounds and institutions—including individuals from business, government, academia, nonprofit organizations, foundations, and the media. In addition to gathering participants for regular deliberations, the NSSG shares its findings with and seeks comments from a broad range of opinion leaders, policymakers, academic institutions, nonprofit and business groups, and journalists.

The following pages contain key principles that emerged during an NSSG meeting on the relationship between the nonprofit sector and government. We circulate this document in the hope that it will add to the ongoing dialogue on this topic and provide helpful suggestions for future action.

The Nonprofit Sector and Government: Clarifying the Relationship

I. INTRODUCTION

Government and the nonprofit sector are involved in a wide array of relationships—some cooperative, others adversarial, and still others complementary—but all of them important to the effective functioning of a vital democracy and the successful promotion of the public good.

While operating with a substantial degree of independence, nonprofit organizations often come into contact with government in carrying out their missions. Various levels of government—federal, state, and local—set the broad legal framework within which nonprofit organizations operate. Government policies affect incentives for individual and institutional giving and volunteering. Governments at various levels rely heavily on nonprofit organizations to deliver publicly financed services and provide significant financial support to nonprofit organizations in the process. Governments also turn to nonprofit organizations to assist in the formulation of public policy and in the solution of public problems. Finally, government assists the public in ensuring that nonprofit operations are accountable and legitimate.

Despite its importance, the relationship between government and the nonprofit sector has grown without a great deal of attention or focus. Not surprisingly, therefore, ambiguity exists about the expectations these two sets of institutions have of each other and about how their relationship should best evolve.

Given the importance of this relationship to the quality of American life and to the vitality of American democracy, it seems appropriate at this time to take stock of how it has evolved and how it should evolve in the future.

Accordingly, The Aspen Institute's Nonprofit Strategy Group, comprised of representatives from government, business, and the nonprofit sector, undertook a review of the basic contours of government-nonprofit relations in the United States with an eye toward identifying some of the underlying principles that might usefully guide such relationships in the years ahead. The Group focused particularly on three major areas of government-nonprofit interaction—regulation, promotion of giving and volunteering, and service partnerships.

Out of these deliberations emerged the following basic principles to guide nonprofit-government interaction in the years ahead.

II. KEY PRINCIPLES OF

GOVERNMENT-NONPROFIT INTERACTION

A. REGULATION AND ACCOUNTABILITY

Nonprofit organizations depend critically on the trust of the public in order to carry out their missions, generate charitable support, and bring added value to the pursuit of public purposes. Ultimately, the test of this trust is the willingness of citizens to contribute their time and resources to the sector's organizations. At the same time, however, other safeguards can also be helpful. These safeguards can mostly be found within the nonprofit sector itself, but government also has a role. In particular:

1. *Self-regulation by boards.* Principal responsibility for ensuring the accountability and trustworthiness of nonprofit organizations lies with the organizations themselves, and with their boards of directors in particular; but these boards must take a broad view of what this responsibility entails.

Nonprofit boards have the ultimate responsibility for ensuring the accountability and trustworthiness of the organizations they direct. This involves setting organizational missions, goals, and policies and ensuring performance that is consistent with them. It also involves evaluating the effectiveness with which organizations pursue their goals and ensuring a reasonable degree of transparency in organizational operations.

The accountability obligation of nonprofit boards extends well beyond the narrow confines of program performance, however: it embraces as well a commitment to the values that make this sector special—the promotion of the public good, the improvement of society, the encouragement of citizen participation, and the strengthening of democratic civil society.

Boards must therefore serve not only as the watchdogs and protectors of organizational missions, but also as guardians of the broader values for which this sector stands. To perform these functions effectively, boards need constantly to educate and remind themselves of the special obligations they bear not only to their particular organizations, but to the concept of the sector more generally.

2. *Government's role.* Government also has a legitimate role to play in ensuring the trustworthiness of the nonprofit sector, but this role must be carried out in the most efficient fashion and with the minimum disruption of nonprofit operations.

Government has an important role to play in protecting the public stake in the nonprofit sector. It can do so most effectively by enforcing the legal duties of loyalty and care on the part of nonprofit boards, by assuring reasonable openness on the part of charitable organizations, and by protecting the public against deceptive practices on the part of those soliciting its support. Government also has an obligation to insist on effective performance when nonprofit organizations assist in delivering publicly financed services.

Recent advances in information technology make it possible to carry out these functions in more efficient and effective ways than in the past, and every effort should be made to take advantage of these advances. Facilitating electronic filing of the basic Form 990 required of most nonprofit organizations, improving the accuracy with which 990 data are tabulated, making possible the use of other economic data sources to generate usable information on the nonprofit sector, and improving the capacity of government to protect the public stake in nonprofit operations, including improving communication between state and federal regulators and systematizing procedures among states, are examples of steps that should be encouraged. These improvements would vastly increase the public's ability to hold nonprofit organizations accountable.

In protecting the public stake in the operation of nonprofit organizations, however, government must ensure that such oversight does not infringe upon nonprofits' ability to perform their distinctive functions. This includes protecting the right of nonprofit organizations to support or oppose public policies, to give expression to particular perspectives, and to promote unpopular causes or groups.

3. *Sector and subsector organization roles. The nonprofit sector has a responsibility to improve its own internal operations, to promote its effectiveness, and to develop its capacity.*

In addition to the efforts of individual organizations, sector-wide and subsector organizations have a responsibility to assist in promoting the accountability and effectiveness of their constituent organizations. This can be done by investigating best practices, by establishing performance measures, by investing in capacity building, by establishing evaluation benchmarks, and by encouraging organizational self-assessments.

Government can be helpful in these efforts by making resources available and by sharing information. Ultimately, however, responsibility for formulating measures of nonprofit performance must rest with the sector itself.

B. PROMOTION OF CHARITABLE GIVING AND VOLUNTEERING

In addition to ensuring a climate of trust, government policies can also influence public support for nonprofit organizations in more direct ways as well, such as through tax policies that encourage giving and volunteering. Key principles that can usefully guide government-nonprofit relations in this area are the following:

4. *Active encouragement of giving and volunteering.* Government should actively encourage charitable giving and volunteering as an explicit objective of its tax policies, consistent with the need to ensure sufficient resources to support needed public programs.

Nonprofit organizations serve a wide variety of valuable public purposes, from the promotion of culture to the education of the young, from the pursuit of environmental protection to the protection of human rights. In view of this, sound public policy should vigorously support the charitable giving and volunteering that such activity requires. At the same time, the nonprofit sector cannot substitute for government in meeting human needs. Promotion of charitable giving and volunteering must therefore be balanced against the need to ensure a reasonable flow of resources to support needed public programs.

5. *Progressive and efficient policies.* Government policies in support of private giving and volunteering should, to the extent possible, be progressive, non-discriminatory, efficient, and supportive of inter-sectoral cooperation.

As a general rule, government policies on giving and volunteering should encourage giving to those in greatest need, not discriminate among particular organizations, deliver the desired encouragement in the most efficient way, promote cooperation among sectors, and recognize the new opportunities that technology offers to increase giving.

Among the steps that could usefully be taken in pursuit of these objectives are the following: extending the charitable tax deduction to non-itemizers, reforming the excise tax on private foundations, reforming—but not repealing—the estate tax, piloting innovative national and community service programs, systematizing charitable solicitation laws among states, and considering the possibility of allowing charitable deductions to be made up to the April 15 filing date for taxes.

C. FUNDING RELATIONSHIPS

In addition to contributing to nonprofit accountability and affecting the levels of giving and volunteering, governments at all levels in the United States also provide direct financial support to nonprofit organizations. Indeed, since the early Corn Tax through which the Commonwealth of Massachusetts financed Harvard College, government at all levels has cooperated with nonprofit organizations to pursue publicly valued purposes such as the promotion of scientific research, the advancement of education, the improvement of health, and the relief of poverty. This cooperation expanded extensively during the 1960s, however, and has continued to grow in more recent years. Reflecting this, government accounts for nearly one-third of the revenues of America's nonprofit organizations at the present time, twice as much as is provided by all sources of private giving combined. Despite its scale, however, this support is not widely recognized by the general public, nor is there a set of guidelines for the relationships it creates. Among the guidelines that could usefully be considered in this connection are the following:

6. *A Relationship Worth Preserving.* Co-operation between government and the nonprofit sector is a fruitful way to promote the public good and serves the interests of both government and the nonprofit sector. As such, it should be preserved and encouraged.

While government and the nonprofit sector can, and do, accomplish much on their own, they can often accomplish even more by working in tandem. Government brings to such relationships the legitimacy of democratically expressed public authority and the resulting ability to generate resources for priority purposes. Nonprofit organizations, for their part, bring familiarity with community needs, the flexibility that comes with smaller scale, diversity, the ability to mobilize voluntary resources, community trust, and sensitivity to local problems and needs.

While not without its problems, cooperation between these two sectors in the provision of publicly financed services makes use of government for what it does best while relying on private organizations, including nonprofit organizations and the business community, for what they do best. As such it needs to be more explicitly recognized and more forcefully endorsed.

7. *Beyond Vendorship.* Government's relationships with the nonprofit sector can take a wide variety of forms depending on the respective interests of both sides.

While government and the nonprofit sector have much to offer each other in the pursuit of their respective missions,

the exact form of the relationship may vary from field to field and over time. In some cases, both sides will be satisfied with a mere contracting relationship restricted to a particular purpose for a particular time. In other cases a more full-fledged partnership may be appropriate in which non-profit organizations not only receive support and deliver a pre-determined service but also take part in the design of the service as well. Whatever the desired pattern, it should be worked out collaboratively between the partners and explicitly acknowledged by both.

8. *Protecting Core Missions.* In entering funding relationships with government, nonprofit organizations should be allowed to protect their core missions and preserve the characteristics and values that make them distinctive.

While some compromise of organizational independence inevitably occurs when funding relationships are formed, special care needs to be taken, consistent with fundamental constitutional principles and reasonable accountability requirements, to protect the mission-critical functions and characteristics of nonprofit organizations when they enter into programmatic relationships with government. Among the practical implications of this principle are these:

- Nonprofit organizations operating in partnership with government must be permitted to pursue their privately supported advocacy activities. As the Strategy Group noted in an earlier statement: "Active participation in the policy process is a fundamental function of the non-profit sector in a democratic society and one that must be encouraged."²
- Faith-based organizations funded by government should be permitted to maintain their faith orientations so long as this does not violate constitutional prohibitions against government support of religious worship. This can be accomplished by ensuring open access to the services these organizations provide with government support and by avoiding use of public funds for explicitly religious activities.
- More generally, nonprofit organizations should not enter into relationships with government that require them to surrender their basic independence or change their fundamental missions, and government should avoid making such requirements a condition of receipt of public support.

9. *Equal Treatment/Reasonable Procedures.* Care must be taken in the structure and operation of government-nonprofit funding relationships to ensure fair treatment of all types of organizations and to minimize cumbersome procedures that effectively limit access to public support.

Despite some efforts at improvement, the funding relationships between governments at various levels and nonprofit organizations are still too often undermined by procedures that are unnecessarily cumbersome, that impose unwarranted pressures on the nonprofit partner, that disadvantage some types of providers, such as community-based agencies, both secular and faith-based, or that give special advantages to for-profit firms over nonprofit agencies. To avoid this, the following steps may be needed:

- Establish penalties for government failure to provide timely payment on contracts;
- Equalize the playing field between nonprofit and for-profit firms by giving nonprofits the same opportunity to build a "margin" into contracts as for-profit firms enjoy;
- Reduce unnecessary reporting requirements and work with nonprofit partners to establish mutually agreeable accountability standards;
- Create institutional mechanisms at various levels of government to work on easing procedural barriers to effective cooperation, such as duplicative and conflicting reporting requirements or conflicting performance measures;
- Make sure that all organizations are held to the same basic standards and reporting requirements.

10. *Capacity Building.* Both governments and nonprofit organizations involved in cooperative relationships have a stake in the effective operation and capacity of the other.

Partnerships between government and the nonprofit sector operate best when both sides of the partnership have the information and capacity they need to operate effectively. Nonprofits therefore have an obligation to supply government with timely feedback on the problems that both are addressing, on the progress of the programs designed to meet these problems, and on the mechanics of the partnership arrangement. In addition, they have a vested interest in supporting efforts to educate government managers to operate these partnerships fairly and effectively.

In turn, government has a stake in the effective operation and capacity of nonprofit organizations. It should therefore consider investing more seriously in this capacity by providing funds for nonprofit education and technical assistance, encouraging careers in the nonprofit sector through loan

forgiveness and related programs, creating tax and other policies that enable nonprofits to invest in needed technology, supporting research on nonprofit performance, and supporting nonprofit development centers similar to the technology centers that already exist for small businesses.

11. *Embracing Innovation. Nonprofit organizations and government should jointly embrace the spirit of innovation.*

An interesting spirit of innovation is currently at work in relations between government and nonprofit organizations. New forms of government support are gaining ground and new types of organizations are being invited into the cooperative relationships that have long existed. At the same time, nonprofit organizations are developing new forms of accountability that can obviate the need for some of the procedural controls that governments have demanded in the past. While some of these changes pose threats to long-standing procedures, care should be taken to avoid prejudging their results. Rather, nonprofits should encourage genuine dialogue and be open to new approaches that may better meet the needs of those being served while protecting the respective missions that governments and nonprofit organizations espouse.

III. NEXT STEPS

One of the most valued qualities of nonprofit organizations is their ability to take the initiative, to act on their own to respond to human needs, and to do so without the need for official governmental approval. At the same time, while nonprofits can and do accomplish much on their own, they can often accomplish even more in cooperation with government. Such co-operative relationships need to be fostered with patience and care since they hold risks for both government and its nonprofit partners. Nevertheless, properly structured, such partnerships can accomplish a great deal.

The "principles" articulated here provide, at best, an initial foundation for a broader conversation about how government-nonprofit relations might usefully evolve in the years ahead. This conversation needs to proceed on many levels at once—between government at various levels and the nonprofit sector, within the nonprofit sector itself, among levels of government, and between government and nonprofits on the one hand and the private business community on the other. While we make no pretense that this will be the last word on these important issues, we hope they can at least provide a focus for the broader conversation that is needed.

NOTES

1. *The nonprofit sector consists of a broad range of organizations that qualify for exemption from federal income taxes under any of 26 different sections of the Internal Revenue Code. A common characteristic of these organizations is that they do not distribute any profits they might generate to those who control and/or support them. As noted below, the particular focus of the Nonprofit Sector Strategy Group, and hence of this statement, is on a subset of these tax-exempt organizations—namely, those that are eligible for exemption under either Section 501(c)(3) or 501(c)(4) of the tax code. For further detail on the definition of nonprofit organizations, see: Bruce Hopkins, *The Law of Tax-Exempt Organizations* (New York: John Wiley and Sons, Inc., 1992).*
2. *Nonprofit Sector Strategy Group, “The Nonprofit Contribution to Civil Participation and Advocacy,”* (Washington: The Aspen Institute, Fall 2000).

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This statement represents the considered judgment of The Aspen Institute Nonprofit Sector Strategy Group. Group members participated in their individual capacities and the views expressed in the discussions may or may not reflect the official positions of the organizations with which they are affiliated. This document reflects the general sentiments of Strategy Group members who were present at this meeting, but members may not agree fully with each individual point. Outside experts took part in the discussion leading to this statement, but do not necessarily concur with its final conclusions.

The Aspen Institute is a global forum for leveraging the power of leaders to improve the human condition. Through its seminar and policy programs, the Institute fosters enlightened, morally responsible leadership and convenes leaders and policy-makers to address the foremost challenges of the new century.

Founded in 1950, the Aspen Institute is a nonprofit organization with offices in Aspen, Colorado; Chicago, Illinois; New York, New York; Queenstown, Maryland; Santa Barbara, California; and Washington, D.C. Its conference facilities are in Aspen, Colorado, and on the Wye River on Maryland's Eastern Shore. The Aspen Institute operates internationally through a network of partners in Europe and Asia.



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