

In Search of **Regulatory Balance**

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OVERSIGHT AND
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NAVIGATING IN
CHANGING TIMES"

For nearly a decade, the ASU Center for Nonprofit Leadership & Management has hosted an Annual Forum on Nonprofit Effectiveness. These gatherings are designed to stimulate thought and dialogue about best practices and to provide high-level training from leading authorities around contemporary issues facing the nonprofit sector.

The 2006 forum topic, “Aspiring to Excellence: Navigating in Changing Times,” brought to the forefront issues of accountability and other trends that will impact the sector for the foreseeable future. The “Think Tank on Nonprofit Oversight and Regulation,” and the proceedings paper that follows, was initiated as a way to continue that dialogue and build upon it long after the Forum ended. It is expected that the Think Tank model will become a regular feature of the Annual Forum in the years ahead with expectations that a series of papers will be generated to encourage future dialogue and research.

After reading this publication if you have thoughts, feedback or opinions that you wish to share in contributing to the dialogue on this topic, please email us at nonprofit@asu.edu or call us at 602-496-0500.

In Search of Regulatory Balance

Does the nonprofit sector need more oversight and regulations? Yes, no and maybe. The nonprofit sector is known in part as the set of institutions operating in the space between government and business to address issues that citizens care about that result in a growing civil society in America. Despite worthy intentions, however, charges of mission drift to inefficient use of funds to outright criminal acts, means the sector has had its share of scandals and embarrassing revelations. Names such as United Way of America, Covenant House, Adelphi University and the Nature Conservancy spring to mind.

On many fronts, more accountability is being demanded of the nonprofit sector. Donors are asking for detailed financial information before opening their wallets. Many state governments are talking about increased regulation for nonprofits, with Maine, New Hampshire, Massachusetts and California among those that already have approved new measures in the past few years. Congress also has set its sights on the charitable sector, after passing the Sarbanes-Oxley Act in response to corporate scandals like Enron and WorldCom.

But does increased regulation necessarily equate to better accountability? And who should do the regulating – the nonprofits themselves or an outside entity?

Arizona's community leaders have an opinion or two on the subject. During a Think Tank hosted by the ASU Center for Nonprofit Leadership & Management, 17 nonprofit professionals and community leaders convened to share their opinions, experiences and ideas regarding nonprofit oversight and regulation. The conversation was lively and generative, representing a wide range of entities. While no definitive conclusions were drawn, several key points rose to the surface.

In general, panelists see a strong need for striking a balance between costly government-mandated regulation and voluntary self-regulation; for educating their many constituencies about the complexity and diversity of the nonprofit sector itself; and, perhaps first and foremost, for better understanding and leveraging the many regulatory measures currently in place.

**“If we don’t police ourselves,
someone else is
going to police us for us.”**

Roger Hughes,
Executive Director,
St. Luke’s Health Initiatives
and ASU Think Tank Moderator

What is a Nonprofit?

Comparing apples to oranges to grapefruits to berries...

“I would submit that a small to mid-size nonprofit organization providing community and health services, which represents the vast number of nonprofits in the country, is far different than a nonprofit hospital system running on a \$3 billion-a-year annual revenue package. The National Football League is also a nonprofit,” said Roger Hughes, executive director of St. Luke’s Health Initiatives, who served as the panel moderator. “So what does it mean to be a nonprofit?”

The nonprofit sector comprises a vast and diverse set of organizations. According to the organization Independent Sector, there are 1.2 million nonprofits operating in the United States. Of those organizations, nearly 840,000 are charitable nonprofits when separating out other types of nonprofit organizations and when excluding entities such as foundations and religious congregations, according to a recent report by the National Council of Nonprofit Associations (NCNA). Of those, approximately 66 percent are small in size and volunteer-staffed, with annual revenues of less than \$25,000.

From youth centers, animal shelters and civil rights groups, to hospitals, educational institutions and community theaters, charitable organizations exist to serve and promote the common good in our communities every day.

“Yes, nonprofit people are do-gooders, but we are human, and there are going to be internal problems, always, because we are human. I don’t think anybody’s going to have one standard and one law that fits all of us. It’s our responsibility to make that happen... We’ve got to have the internal controls.”

Amy Gibbons

President/Executive Director

Boys & Girls Clubs of Metropolitan Phoenix

Certainly, all should be held accountable for being effective stewards of the charitable funds they receive. Yet, when it comes to regulating the sector, is it possible to create a set of rules that apply to all? Should a local youth sports league, for example, be held to the same financial accountability standards as a nonprofit health system?

Panelists agreed that all non-profits are not alike and should not be painted with the same regulatory brush.

Rob Leslie, Senior Vice President and Director of the Nonprofit Services Division, First National Bank of Arizona and former director for the nonprofit practice division at CBIZ Miller Wagner, LLC, cited the impact of the recent Sarbanes-Oxley Act on small accounting firms to illustrate his concern. “With Sarbanes-Oxley, you’re overlaying the same principles into a small CPA firm as you do an \$8 billion CPA firm with no delineation between these organizations or their resources,” he said.

As noted by Greg O’Brien, President/CEO of Valley of the Sun YMCA. “One could argue we need more regulations...for example, in compensation. It’s only going to take one association out of our many associations to not have a process put into place, as far as self-regulation, that is going to create a problem for the entire YMCA of the U.S.A. We’re doing it ourselves, but does government need to do more too?”

If the government were to pass a similar set of regulations for the nonprofit sector, there should be some delineation between types of organizations and their ability to respond to the requirements. And the panel believes the sector needs to play a greater role in helping Congress and the public at large to understand this need.



Is More Regulation Needed?

Understanding and leveraging the current regulatory framework

Many nonprofit entities already deal with a dizzying assortment of regulatory and accountability requirements through federal and state contracts, professional accreditations and licenses, and private grantors and foundations.

The Phoenix Zoo is a prime example. This large multifaceted 501(c)(3) is currently licensed by the U.S. Department of Agriculture, the Arizona Game and Fish Department, and the U.S. Fish and Wildlife Service. It creates audit reports for its many funding sources, and it has a national professional association that conducts on-site audits of the zoo's best practices every other year.

"There are plenty of agencies, regulations and licensing processes that already require us to be as transparent as we possibly can," noted Jeff Williamson, CEO of The Phoenix Zoo. "I think that's appropriate, but I don't think we need to add to that body of literature. It's there."

Native American Connections (NAC), also is highly regulated, according to its president and CEO, Diana Yazzie Devine. As a health care provider and affordable housing developer, NAC answers to a number of licensing and regulatory entities, including HUD, the Arizona Department of Housing, the Federal Home Loan Bank in San Francisco, and the IRS tax-credit program.

The panelists agreed that regulations are a necessary and important part of running a successful organization, when they create financial transparency and, therefore, help bolster public confidence. However, many see the potential for streamlining and fine-tuning the regulatory process, and for better leveraging the mechanisms already in place. Complying with multiple sets of regulations can be a time-consuming and expensive undertaking – a burden that is felt all the more by small nonprofits.

"We're not opposed to it whatsoever, but the amount of energy it takes for a small organization to comply with multiple requirements is exhausting. Can we take the most stringent requirements and allow those to apply to other regulatory organizations?" suggested Devine. "Will the Department of Housing take the IRS tax credit paperwork? Will the Federal Home Loan Bank take HUD? Is there a way we can reduce or streamline some of the regulatory demands?"

In addition to external regulation, many organizations have internal mechanisms in place. National groups such as Girl Scouts and YMCA have standards that apply to its local organizations. Nonprofits in fields such as health care and education have numerous accreditation bodies. And many organizations have defined internal "codes of conduct" for their operations.

Nonetheless, some believe there still is room – and a need – for more oversight in the sector, especially in areas such as executive compensation. Many were quick to caution, however, that such regulation should be self-imposed and administered, rather than government mandated.

"We're regulated to death now. I can't imagine being a small not-for-profit and having to absorb the cost associated with some of the regulatory things that are in place today."

Keith Mason
President/CEO

Goodwill Industries of Central Arizona

The point also was made that, depending on the nature of the nonprofit, additional regulation could have ramifications beyond the cost of compliance and enforcement.

“With regulation of foundations in particular, I’m concerned it would impact or decrease the ability to innovate,” said Lisa Glow, President and CEO of the Southwest Autism Research and Resource Center, and former director of the Governor’s Office for Children, Youth and Families. “One of the things I know about foundations is that they like to be the risk takers, to help incubate new ideas and programs. Additional regulations might make them more cautious. It could discourage innovation, because you can’t take as many risks.”

To What End? Regulation vs. accountability

“This whole conversation begs the question: what are the problems we’re trying to solve or issues we’re trying to address through any new accountability measures?” said Patrick McWhorter, president of the Alliance of Arizona Nonprofits.

A handful of scandals have brought the issue of accountability to the forefront, and rightfully so. Yet, to take an isolated case and generalize the issues for the entire nonprofit sector is problematic.

Regulation is important, but it does not equal accountability. There are many highly-regulated environments where the culture is to somehow beat the regulations or achieve the lowest allowable compliance level. Thus, accountability has more to do with leadership and how nonprofit leaders view their responsibility to the cause that their organizations were established to benefit. It’s a standard of excellence that must be set and enforced internally, from the top down.

When looking at the many scandals that have occurred in the recent past, in both the corporate and nonprofit organizations, it was noted that the failures often occurred in highly-regulated sectors. In most cases, it was the internal monitoring component that faltered.

“You can have the best set of financial policies and procedures, but if nothing is happening in terms of monitoring, there will be a failure,” said Dave Howell, vice president for community and government relations for Wells Fargo Arizona. “In the cases, that have made the news, the problems were not for a lack of regulation; there was an abuse that was not internally governed appropriately. And they were exposed, and the organizations involved paid, in some cases the ultimate price and went out of existence. So I would argue that the current system works.”

Mistakes are made, and bad people do bad things, regardless of how many rules may be in place. Successful accountability, then, must be a balanced mix of inspired leadership, self-regulation, and external oversight.

“You get in trouble in any business when you are perceived to be hiding something... [you need] that openness, that disclosure... if you don’t do it as an industry yourself, you run the risk of having somebody impose that on you. “

Dave Howell
Vice President for Community and
Government Relations
Wells Fargo Arizona

“Looking at the regulation component itself... the economics, whether it’s self-regulation or government regulation, it’s an expensive proposition.”

Rob Leslie
Senior Vice President and Director
Nonprofit Services Division
First National Bank of Arizona



Surviving in a Market-Driven World

Dealing with the economics and delivering on a promise

Accountability directly relates to the long-term survival of any organization competing in a marketplace economy. Like it or not, nonprofits compete with one another (and with any number of for-profit entities) for funding and other support.

“Whether we are for profit or nonprofit, it’s market driven,” said Keith Mason, president and CEO of Goodwill Industries of Central Arizona. “Citibank last week missed their projections by one penny per share, and they were punished dramatically on Wall Street. United Way of America has some things happen over two decades ago, and they were punished. When you don’t deliver on a promise, you’re punished. But if we deliver on the promise, we’ll be rewarded.”

For nonprofits, the challenge is that their so-called “promise” is often less tangible than a financial projection. The nonprofit sector contributes to the day-to-day vitality of its communities, be it through health and human services, arts and education, or environmental and conservation efforts. With ingenuity and forethought, progress in these areas can be tracked and measured. Yet, increasingly, the pressure is on many organizations to also justify their worth in terms of economic development.

While the emphasis on economic drivers has some nonprofit leaders concerned, it also is viewed by others as a chance to step up their efforts to operate more efficiently and, ultimately, deliver on the promise.

Panelists agreed that, with the right type of encouragement and opportunities, most nonprofits would voluntarily participate in efforts to become better at what they do. They cited ASU’s Nonprofit Self-Assessment Program as an important example. The program (which has since evolved in a new program called ENSTEP) helps organizations build capacity through self-assessment and strategic planning.

“So much of what we’re discussing will depend upon the messaging and how we communicate the value of good governance and good standards,” noted Allison Rapping, CEO of the Alliance of Arizona Nonprofits. “If nonprofits perceive it to be regulation, they may respond to it differently than if they see it as an opportunity for them to do their work better, to do their work more effectively.”

Where Do We Go From Here? Continuing the dialogue

If any conclusion or consensus could be drawn during the Think Tank discussion, it's that there still is a great deal more to discuss – and the dialogue must continue.

There are many questions yet to be asked and answered with regard to nonprofit regulation and oversight. There also is an underlying concern about preserving the autonomy of the nonprofit sector – and its ability to raise funds, recruit board members, maintain quality staffing and, ultimately, deliver value and service to the community.

Panelists believe responsibility lies within the sector itself to develop a spirit of collaboration among nonprofits, government officials, donors and the public to help ensure a healthy balance between government-mandated regulation and voluntary self-policing.

Through increased education and knowledge building, the sector can help mitigate the knee-jerk reaction of creating sweeping regulation in response to isolated abuses. It can instead be proactive in creating a variety of tools and guidelines for achieving effectiveness among the many sub-sectors within the nonprofit world.

“It's easy to get wrapped up in our own organizations and day-do-day activities, and to forget to pay attention to the bigger picture,” the panel moderator Hughes said. “But we have to keep asking the questions. What's next? And how do we get ready for it, and how do we work with each other to achieve it?”

Summary

More accountability is being demanded of the nonprofit sector on many fronts. But does increased regulation necessarily equate to better accountability? And who should do the regulating – the nonprofits themselves or an outside entity?

Arizona's nonprofit leaders have an opinion or two on the subject. In general, Think Tank panelists see a strong need for:

- ✧ striking a balance between costly government-mandated regulation and voluntary self-regulation;
- ✧ educating their many constituencies about the complexity and diversity of the nonprofit sector itself; and
- ✧ better understanding and leveraging the many regulatory measures currently in place.

About The Participants

Diana Yazzie Devine

President/CEO, Native American Connections

Devine has worked with Native American urban and tribal entities since 1972. She volunteers her time to numerous organizations and committees, and was named Phoenix Valley Leadership Woman of the Year 2003.

Amy Gibbons

President/Executive Director, Boys & Girls Clubs of Metropolitan Phoenix

Gibbons has worked in the nonprofit sector for more than 25 years. She has served as an executive for organizations such as the United States Tennis Association, Los Angeles Olympic Organizing Committee, and YWCA of Maricopa County.

Lisa Glow

President/CEO for the Southwest Autism Research and Resource Center (SARRC)

Prior to her work with SARRC, Glow served as director of the Governor's Office for Children, Youth and Families. Before the Governor's office, she practiced law at the Arizona Attorney General's Office where she worked on many policy initiatives aimed at improving children's services.

Dave Howell

Vice President for Community and Government Relations, Wells Fargo Arizona

Howell facilitates the bank's corporate philanthropic activities and its interaction with elected officials. Prior to joining Wells Fargo, he held high-level executive positions in education and banking organizations, and spent 20 years as a television journalist. Howell also serves as a board member for several local nonprofit organizations.

Roger Hughes (Moderator)

Executive Director, St. Luke's Health Initiatives

Hughes has spent more than 25 years working in the field of philanthropy. Prior to joining St. Lukes, he served as the first executive director of the Roy J. Carver Charitable Trust in Iowa and as president of the Iowa College Foundation. He also has held development and faculty positions at St. Norbert College in Green Bay, Wisconsin; the University of Wisconsin-La Crosse; and Indiana University.

Irv Katz

President/CEO, National Human Services Assembly

Katz oversees a multitude of aspects for this association of the nation's leading nonprofit health, human services and community development organizations. Prior to that, he enjoyed a 23-year career with United Way.

Rob Leslie

Senior Vice President and Director of the Nonprofit Services Division, First National Bank of Arizona

Prior to his bank position, Leslie was director of the Nonprofit Practices Division, for CBIZ Miller Wagner, LLC. He is well known for his teaching, speaking and publishing on nonprofit financial management, including development of the financial management course for nonprofit organizations at ASU's Nonprofit Management Institute.

Keith Mason

President/CEO, Goodwill Industries of Central Arizona

Since 1992, Mason has instituted a major overhaul of the fundraising division of his organization, increasing revenues more than ten-fold. In 2003 he was named Executive Director of the Year for Large Nonprofit Organizations by the Organization of Nonprofit Executives.

Patrick McWhorter

President/CEO, Alliance of Arizona Nonprofits

Before leading the Alliance, McWhorter founded and served as the first CEO of NPower Arizona, one of a network of affiliates across the country helping nonprofits access and use technology. McWhorter also has served on numerous nonprofit boards in Arizona.

Greg O'Brien

President/CEO, Valley of the Sun YMCA

As President and CEO of Valley of the Sun YMCA, O'Brien serves one of the leading nonprofit human service organizations, serving all of Maricopa County, Flagstaff and Yuma. This involves leadership to hundreds of staff and volunteers who serve through 14 branches, 4 extensions, 2 campuses and nearly 60 program sites throughout the community.

Maria Ort

CEO, Duckmint Partnership, Inc.

Ort founded this consulting firm specializing in participatory group facilitation for defining mission, core values development, strategic planning and creative problem-solving. For more than five years, she was the lead consultant for the ASU Center for Nonprofit Leadership & Management's Nonprofit Organizational Self-Assessment Project.

Barbara Poley

Executive Director, The Hopi Foundation

As executive director of the Hopi Foundation for more than a decade, Poley provides leadership to one of the first independent foundations in Indian Country. The foundation is located in Hotevilla, Arizona and is an organization based on the principle that native people's cultural values should shape their lives. Previously she served as staff assistant to the Chairman of the Hopi Tribe and in staff and executive director roles with Native Americans for Community Action, among other positions of leadership.

Alison Rapping

Former CEO, Alliance of Arizona Nonprofits

Rapping served as CEO of the Alliance during its inaugural year as the newest state affiliation of the National Council of Nonprofit Associations. Previously she served as President/CEO of Phoenix-based Make A Difference, a position she held for over a decade. During her tenure, Make A Difference became a powerful force in empowering and mobilizing a diverse group of volunteers in an equally diverse set of community projects.

Brian Spicker

Senior Vice President of Community Impact, Valley of the Sun United Way

Spicker has served in the nonprofit sector for more than 27 years. Prior to joining United Way he was executive director of Body Positive, an HIV and AIDS research and resource center. Earlier in his career he pioneered the first group homes for the developmentally disabled in Arizona.

Jeff Williamson

CEO, The Phoenix Zoo

Williamson has been with The Phoenix Zoo since 1993. He is an advocate for sustainable community and is involved with many conservation organizations. Williamson is routinely a panelist on state lands, water, urban development and wildlife habitat conservation issues, as well as panels regarding other community issues.

About The Center

The mission of ASU's Center for Nonprofit Leadership and Management is to help build the capacity of the social sector by enhancing the effectiveness of those who lead, manage, and support nonprofit organizations. Through a comprehensive portfolio of research, education, technical assistance and conference activities, the Center provides stakeholders with knowledge and tools that enhance their effectiveness and impact.

Robert F. Ashcraft, Ph.D.

Director, Center for Nonprofit Leadership and Management, Think Tank Participant

Ashcraft is founding director of the ASU Center for Nonprofit Leadership and Management (CNLM) and associate professor of nonprofit studies in the School of Community Resources and Development at ASU. CNLM has emerged as the leading nonprofit academic center in the region offering research, education, technical assistance and conference activities within its capacity building slogan: "knowledge and tools for nonprofit effectiveness." Ashcraft teaches courses and researches in the field bringing years of nonprofit practice experience prior to joining the academic community.

Patricia Lewis

Sr. Professional-in-Residence, Faculty Associate, Think Tank Organizer

Lewis has more than 30 years professional experience in not-for-profit management, governance and fundraising. In addition to her work at ASU, Lewis is a distance-teaching adjunct faculty member at George Mason University in Virginia, where she taught from 1998 to 2002 and managed the graduate Nonprofit Management Studies area. She is a trainer for the Leader-to-Leader Institute and has served as chief operating officer of the National Center for Nonprofit Enterprise. She also has served on numerous not-for-profit boards and currently serves as treasurer of the AARP Foundation.

With Thanks

Think Tank Moderator

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Panel on the Nonprofit Sector (<http://www.nonprofitpanel.org/>) The panel, composed of leaders from America’s charitable organizations offer recommendations to Congress and the nonprofit sector as part of its continuing effort to strengthen the accountability of the nation’s 1.3 million charitable organizations.

Nonprofit Congress (<http://www.nonprofitcongress.org/>) Organized in 2006 by the National Council of Nonprofit Associations, the Nonprofit Congress brought together hundreds of delegates and advocates to champion a better known and more effective nonprofit sector.