

## Statement to Senate Finance Committee

June 22, 2004

My name is Derek Bok. I currently serve as faculty chair of the Hauser Center on Non-profits and Philanthropy at Harvard University. In the past, I have served for 20 years as the president of one large non-profit entity (Harvard University), and I am presently the chair of a large citizens' organization (Common Cause) and a medium-size foundation (the Spencer Foundation). I also was a member of an independent committee recently invited by the Nature Conservancy to investigate its system of governance and accountability and recommend changes. My other relevant experience is as a long-time professor of regulation at the Harvard Law School.

I firmly support the Senate Finance Committee's decision to examine the governance and accountability of non-profit and philanthropic organizations. Collectively, these entities have accumulated very large sums of money, perform many important services, and exert considerable influence in many spheres of American life. They also benefit from significant tax advantages. As a result, there is good reason for the government to try to make sure that they meet reasonable and proper standards in their organization and operations.

At the same time, it is important to bear in mind that the non-profit sector is extremely heterogeneous, including everything from billion dollar hospitals and universities to tiny neighborhood organizations and local choral societies. The governance and accountability of these organizations are subjects still in their infancy, having not yet received anything remotely like the attention lavished on government institutions and private corporations. Under these circumstances, at least two risks arise in any attempt to craft general regulatory measures for this sector.

- First, there is a danger that in enacting rules in response to a few particularly flagrant, widely publicized abuses, regulators will impose burdens of paperwork, record-keeping, and other costs on all non-profits that will more than equal any benefits achieved by government intervention.
- Second, in such a heterogeneous sector, it is quite possible that rules enacted with particular organizations in mind will prove inappropriate for other kinds of organizations and thereby lead to unanticipated, undesirable consequences.

Although the staff paper includes several eminently worthwhile proposals, such as timely submission of 990s and electronic filing, several of the other proposals threaten to give rise to one or both of the problems described above. Since space is limited, I will mention only three examples.

1. My first illustration is the requirement that non-profit boards "be comprised of no less than three members and no greater than 15." There may be good reason for establishing some minimum number of members.

After all, a board of one person is hardly a board in any meaningful sense. On the other hand, the reasons for a maximum figure are much harder to discern. In the review of The Nature Conservancy Board, for example, our outside committee concluded that a board of in excess of 15 was necessary to establish a sufficient number of committees to allow adequate oversight while avoiding multiple committee assignments that might cause Board members to spend insufficient time on each committee to do the job properly. Similarly, almost all university boards include more than 15 members, in part because more members are needed to oversee these large and varied organizations properly and in part to strengthen the fund-raising capacities required to raise hundreds of millions of dollars each year. It is not clear to me what legitimate public purpose would be served by prohibiting these practices.

2. A second proposal in the draft would require every non-profit with gross receipts in excess of \$250,000 to “include in its Form 990 a detailed description of the organization’s annual performance goals and measurements for meeting these goals.” An enormous effort would be needed to fulfill this requirement properly in the case of major universities, which typically include literally hundreds of separate programs, most of which have goals too intangible to allow truly meaningful performance measures. Since the development of such measures for non-profits is still at a primitive stage, one can anticipate that many organizations will respond to such a requirement by stating very broad and general purposes with very dubious and self-serving performance analyses. It is not at all clear that the benefits derived from such reports will justify the substantial expenditure of time and effort required to prepare them.
3. The third and last example is the proposal that all non-profits submit periodically to the IRS, “current articles of incorporation and by-laws, conflicts of interest policies, evidence of accreditation, management policies regarding best practices, a detailed narrative about the organization’s practices, and financial statements.” The problem here is the burden that such a requirement will impose on countless tiny local non-profits with amateur part-time executives and boards composed of neighborhood volunteers. Many of these organizations are wonderful examples of local initiative, spontaneity, and enthusiasm. Yet rules such as this one threaten to bring about the disappearance of these small, informal grass-roots organizations, because they will lack the expertise to cope with complex government reporting requirements. Granted, some good may be accomplished, and some mistakes will be avoided. On balance, however, I fear that such rules will have a harmful effect by professionalizing and bureaucratizing local organizations that should be allowed to be operated and controlled by amateurs and volunteers. Rather than risk such a result, Congress might wish to consider imposing such

detailed reporting and financial requirements only on organizations above a substantial size, leaving smaller organizations subject to only minimal restrictions needed to prohibit clear and important abuses.

In conclusion, while supporting the effort to strengthen the accountability of non-profit organizations, I would urge great care in approaching this complex and unfamiliar task. Instead of attempting the difficult feat of crafting model procedures in an effort to encourage optimum performance, or giving the IRS the vast, uncharted task of developing (directly or indirectly) standards for accrediting all non-profits, I would begin by concentrating on curbing reasonably clear abuses. Otherwise the costs resulting from unanticipated problems and excessive administrative burdens may well outweigh the positive results that a more cautious, incremental approach can achieve.