



The Vital Need for a NYCON-led Statewide Nonprofit Policy Agenda

Charitable nonprofits are vital to the social, health, educational, environmental, economic and cultural fabric of communities throughout New York State. There are 102,886 nonprofits in the state, of which 65,628 (or 63.8%) are public charities.¹ Overall, nonprofits represent about 18% of the state's taxpaying workforce, whose efforts are supplemented by over a million volunteers.

Charitable nonprofits are dedicated to the public good, not private gain. Our work improves lives, strengthens communities, provides aid in times of crisis, creates jobs and builds the economy, and provides cost-effective solutions for government, taxpayers and society as a whole.

Our state's charitable nonprofits are heavily regulated by the Internal Revenue Service and the State. Our collective ability to be financially viable and to accomplish our various missions in a cost-effective and efficient manner is very dependent on state policy, laws, and regulations including those concerning procurement and contractual practices. Despite this fact, our state has not had a strong, unified or collective voice for charitable organizations; rather, charities have traditionally been divided by mission-driven subsector and constituent differences, funding streams, IRS classification, size, and geographic boundaries and parochialism – particularly “downstate-upstate” and rural-urban divisions.

Small to moderate sized (under \$10M in annual budget) community-based organizations (CBO's) represent the vast majority of charities. They are traditionally under-informed, unorganized, and under-represented regarding their collective policy interests. They often suffer from the fact that their overall interests and practices are increasingly being defined in the eyes of policy-makers, regulators and the public by institutional self-interests and behavior (or misbehavior) of large and well-organized nonprofits. These larger more notable segments includes hospitals, health insurance providers, higher education and those nonprofits who are not 501c3's (authorities, trade associations, unions, private foundations, etc).

There is a saying that, “**if you are not at the table, you are on the menu**”. This is certainly the case for the bulk of the charitable nonprofits when it comes to state policy-making in today's troubled economic and social environment. NYCON's goal, as *the* state association of nonprofits with over 3,000 diverse members throughout the state, is to put forth and aggressively pursue a dynamic, “living and breathing” Statewide Policy Agenda that focuses on the needs and interests of CBO's and issues that have cross-sector appeal. This includes those subsector concerns that have significant implications for the sector as a whole. In advancing this goal, NYCON will work in concert with subsector and regional partners, such as the Human Services Council of New York City, where common interests exist.

Community Focus ♦ **Statewide Impact** ♦ **National Network**

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Framework for a Statewide Policy Agenda

NYCON's Statewide Policy Agenda is organized by the five broad issue areas. For each of area, NYCON has developed and will continue to develop, on an ongoing basis, specific advocacy positions with respect to current and proposed legislation, policies, regulations, processes, etc. This framework and positioning will be multifaceted and nimble so that it will be responsive to our membership (and sector's) needs, interests and changing circumstances.

The five areas are:

1. Tax Policy: Empowering Community Solutions Through The Nonprofit Sector
2. Employment & The Workforce: Strengthening Economic Vitality through Nonprofits
3. The Public-Private Collaborative Partnership: Ensuring Responsible Policy, Budgeting, and Fair & Equitable Business Practices
4. Advocacy Rights: Promoting Freedom of Speech and Protecting Civic Engagement
5. Public Accountability & Compliance: Ensuring the Public Trust

The following provides a summary description of each of the issue areas, outlines core policy objectives, and then provides example of specific policy positions that are related to the objectives.

1. Tax & Charitable Giving Policy: Protecting and Advancing the Public Benefits of Charitable Exemption

Charities have a fiduciary responsibility for the assets they receive and administer and have an affirmative obligation to ensure that those assets are appropriately used for the purposes that they were intended. State policy should protect those assets and promote appropriate accountability. Reflective of this is the fact that exemption from property tax is a constitutional right for the New York's charitable organizations when that property is exclusively used for the exempt purposes and that sales tax and other tax exemptions are respected.

In order to protect and advance charitable assets and the benefits of nonprofit exemption, NYCON is committed to:

- Preserving the tax-exempt status of charities, particularly CBO's, including protecting property exemption rights guaranteed under the State Constitution. Specifically by:
 - Opposing the imposition of newly created taxes, or tax-like assessments or fees, on charitable organizations.
 - Supporting full compliance by State and municipal government, as well as nonprofits themselves, with the State property tax exemption provided for in the State Constitution – thereby ensuring that the exemption is applied consistently and fairly.
 - Opposing municipal coercion or threats to force voluntary payments in lieu of taxes (PILOTs) on CBO's.
- Strengthening and expanding incentives for individuals to give their time and money to charities whose mission they support. Specifically by:

- Supporting existing, as well as new, tax and other incentives that encourage individuals to contribute their time and resources to the mission and good work of nonprofits.
- Preventing for-profit and private interests from gaining access and thereby eroding the privileges afforded to charitable exempt organizations, by:
 - Opposing current legislative efforts to allow the formation of “Low-Profit Limited Liability Corporations” (L3C’s) and other forms of “hybrid” corporations in New York State.

2. Employment & The Workforce: Strengthening Economic Vitality through Nonprofits

Nonprofits operate in and are embedded in the fabric of every community in New York State. They hold a critical stake in the sustainability and health of the economy and government at all levels. As a significant proportion of the workforce in New York State, as well as proven job creators even in these tough economic times, nonprofits **can and should** be effective participants in the development of job growth policies at all levels of decision-making. Also, nonprofits (like for-profit employers) have a strong interest in maximizing the cost-effectiveness of health care and other benefits to employees, as well as their partners and families, without onerous or unreasonable conditions and reporting requirements.

Under this policy issue area, NYCON is devoted to:

- Endorsing policies that promote job creation and retention across all sectors of the economy and ensuring that these incentives are applied equally to nonprofit employers, by:
 - Advocating for parity with the for-profit sector in job creation incentives.
- Seeking the creation and implementation of additional incentives for those individuals who choose to utilize their talents in the nonprofit sector, by:
 - Supporting the expansion of existing tuition forgiveness programs available at the State through the Higher Education Services Corporation (HESC) for graduates employed by CBO’s for a defined period of time.
 - Advocating for the creation of additional education and other incentives, such as expedited graduate programs, for college graduates to choose employment in the nonprofit sector.
- Preventing or eliminating unnecessary, burdensome and costly employer-oriented regulations by:
 - Supporting the reduction the “base period” of 5 quarters for unemployment insurance contributions.
 - Advocating for the establishment of verification requirements of all unemployment claims prior to their payment.
- Fully recognizing in data gathering and analysis the presence and impact of charitable organizations in the state’s economic health by:
 - Encouraging the Department of Labor and the Empire State Development efforts to collect, compile and disseminate employment and economic impact data of the sector by county and region.

- Preventing the creation of and promoting exemptions from professional credentialing that negatively impacts on the ability of nonprofits to hire or provide services to their constituencies and the communities they serve; including:
 - Extending the deadline for the State Education Department’s Waiver of Corporate Practice Prohibitions for the Social Worker in the Mental Health Professions.

3. Public-Private Collaborative Partnership: Ensuring Responsible Policy, Budgeting, and Fair & Equitable Business Practices

The State of New York has a long and impressive history of supporting, leveraging resources for, and partnering with the charitable nonprofit sector. This financial and business partnership has improved the economic, social, health, housing, and cultural conditions of individual citizens, their families and their communities. The budgeting and expenditure of public assets affects all New Yorkers, and in this time of severe economic hardship these decisions carry immediate and serious consequences for the citizens and communities that nonprofits serve and benefit. Openness and transparency in the process is needed. This is particularly vital for the meaningful participation of charitable nonprofits, as federal and contractual restrictions on our freedom of speech greatly limits our voice and influence.

Resources like time, effort, and money are far too scarce to waste on the inefficiencies of bureaucracy and outdated laws and regulations. Significant streamlining, elimination of duplicative efforts and burdensome requirements are needed with regard to State laws, regulations, contracts, and procurement practices that impede the efficiency and cost-effectiveness of nonprofits who conduct business with the State. Without reform, individuals are deprived of the services they need, taxpayers are denied the full value of the programs they support and communities are hindered from reaching their full potential.

With an eye towards preserving and growing this essential partnership, NYCON is dedicated to:

- Supporting replication by the State of the best features and accomplishments of the City of New York’s contracting reform along with the State Comptroller’s 2010 Administrative Proposals. This includes:
 - Creating of a Shared Electronic Data Vault that will allow nonprofits to upload nearly all of the documents required to do business with the State once and update them periodically as needed.
 - Establishing of “Prequalification” for contractors with proven performance success.
 - Developing standardized contracts including a Master Service Agreement that aligns and can incorporate multiple funding streams including when more than one state agency is involved.
 - Adopting Standardized Contracts including reporting requirements.
 - Implementing Centralized Audit Procedures.
 - Reform of the Overhead Rate to ensure that all contracting nonprofits receive reasonable reimbursement.
 - Granting of non-line item, fully funded contracts.
 - Collaboratively developing of performance measures across common funding streams & programs.

- Establishing mandatory 3-5 Year contract terms when appropriations permit.
- Advocating for enforcement of and full compliance with State Prompt Payment Laws, by:
 - Developing a clear and consistently applied enforcement mechanism through the Attorney General's Office.
 - Developing an understanding at the State level that prompt payment should not be delayed or waived under the various state contracts awarded.
- Supporting a focused, coordinated and comprehensive approach by the Executive Chamber with respect to policies and practices that improve the State's partnership with nonprofits, by:
 - Creating, preferably through legislative action, a sustained Cabinet-level position possessing the resources and mandate to serve as a liaison amongst charitable nonprofits and the executive agencies that they contract with and/or are regulated by.
- Easing regulatory and contractual barriers for nonprofits to merge, consolidate, dissolve, share services, or otherwise affiliate, by:
 - Advocating for the Attorney General's Office to prioritize, standardize and streamline the timeline and process for mergers, consolidations and dissolutions.
 - Supporting a change in the Article 8 Amendment provisions of the Not-For-Profit Corporation Law (NFPCL), creating parity with the Attorney General's changes to no-assets dissolution, ensuring that any additions to the stated mission will not necessitate burdensome judicial oversight.
 - Clarifying responsibilities and procedures, as well as reducing redundant or duplicitous functions, assigned to the Attorney General and the New York State Education Department (with specific reference to chartered entities).
 - Promoting contractual language that provides for reassignment, without necessitating a bidding process, to a parent or subsidiary corporation.
 - Easing the transfer of organizational licensure received for the delivery of services (such as clinics, day care providers, etc.) to a surviving (successor) corporations in a merger or consolidation or to a related parent or subsidiary corporation.
 - Exempting CBO's who contract with a parent or subsidiary corporation from contractual limitations on the reallocation of personnel-related costs to other costs that maintain the effective provision of services.
- Supporting a more business-friendly budget process that provides ample opportunity for advocates of all means and influence to participate, by:
 - Advocating for meaningful and legitimate cost-benefit analysis in the budget process regarding the impact of proposed policies on CBO's and the communities they serve, prior to their implementation.
 - Supporting existing regulations that encourage an on-time budget process; as well as the creation of new rules that will prohibit an entirely closed-door process, allow for testimony by all affected organizations and provide legitimate and public justifications for budgeting decisions (particularly when deciding on spending cuts).
 - Opposing arbitrary, sweeping, and across-the-board State budget cuts.
 - Opposing state mid-year reductions in executed contracts and, should they occur, removing requirements that the nonprofit perform at levels commensurate with the original allocation of resources.

4. Advocacy Rights: Promoting Freedom of Speech and Protecting Civic Engagement

The nonprofit sector is of critical importance to the success of our democracy; the rights of the people to gather through nonprofit organizations and exercise their First Amendment rights to speak freely about policies affecting the public good and a more just and equitable society must be preserved.

Nonprofits often provide a voice for disenfranchised individuals and groups who are not adequately represented in our system of government and who desire the empowerment needed to advocate fully and freely within the boundaries of the law. Likewise, nonprofits share in the responsibility to promote greater engagement of the electorate, free and fair elections, and transparency in government.

In order to further the cause of promoting and protecting these rights, NYCON is devoted to:

- Ensuring maximum advocacy rights for nonprofits by:
 - Opposing advocacy restrictions including contractual limitations to speech on public matters and voter registration/mobilization efforts.
- Supporting clarity, consistency, and fairness in lobbying reporting requirements, by:
 - Creating a single statewide definition and reporting mechanism for lobbying activities that satisfies both State and municipal requirements, including New York City and other County-based regulations.
 - Advocating for an annual upward adjustment of the state lobbying disclosure threshold that is reflective of the rate of inflation.
 - Supporting the re-establishment of community educational trainings by the Commission on Public Integrity particularly an aggressive educational training program for CBO's regarding lobbying reporting as well as other ethical and legal obligations surrounding advocacy.

5. Public Accountability & Compliance: Ensuring the Public Trust

NYCON acknowledges that the success of charitable organizations depends on public trust being earned and fully respected. An appropriate balance must be struck that recognizes and respects the independent activities of nonprofits as private corporations that operate for the public good, while maintaining the necessary oversight that elevates CBO's as trusted agents of the public well-being. In addition, regulations and contractual requirements should support good governance and management practices that are proven by quantitative data to be effective and not based on qualitative or anecdotal information.

To protect and expand the public's faith in the nonprofits industry, NYCON is will remain steadfast in its commitment to:

- Supporting improvements in the NFPCL that strengthen and improve nonprofit Board governance, by:

- Supporting a clear definition of Fiduciary Duty in replacement of, or addition to the Duty of Care (Article 7).
- Maintaining the prohibition on multiple board officer positions being held by the same board member.
- Upholding the prohibition of corporation employees having voting seats on the CBO's board of directors.
- Maintaining the gross negligence privileges of NFPCL 720a for Type B corporations.
- Supporting an increase in the minimum number of directors from three (3) to five (5).
- Encouraging changes in the NFPCL to better reflect contemporary nonprofit practices by:
 - Supporting an update to the statutorily authorized 708(b) to permit, explicitly, notice by email and submission of signed "AWOM" consents by email.
- Ensuring that federal and state laws and regulations are enforced that protect charitable assets and prevent private inurement, by:
 - Supporting diligent efforts to root out excessive benefit and compensation abuses as defined by the IRS.
 - Opposing efforts by the State to establish compensation limits, caps or policies that discriminate against charitable nonprofits by mission, funding stream, etc.
 - Opposing efforts by the State to establish burdensome regulatory and other criteria for charitable nonprofits doing or seeking to do business with the State that unfairly provides competitive advantages to competing for-profit business entities.
 - Opposing any new reporting or other compensation regulations by the State until such time that the Executive Chamber and/or Attorney General have fully utilized existing reporting mechanisms for enforcement of compensation and other restrictions.
 - Supporting enhanced education and enforcement by the Attorney General's Office with respect to fiduciary accountability and excessive compensation.
- Ensuring that State requirements for independent auditing services that result in cost-effective improvement in accountability that are commensurate with the proportion of organizational resources allocated to them, by:
 - Supporting an increased minimum revenue threshold for mandatory independent audits not in excess of \$350,000.
- Maintaining IRS tax law provisions as the sole regulation of, and guidance for, nonprofit employee compensation, by:
 - Opposing State contracting, licensing and regulatory agencies from requiring additional compensation restrictions on CBO's.
- Protecting the independence of nonprofits in the conduct of their business in full recognition of their role as private corporations, by:
 - Opposing efforts to extend State and local open meeting laws by contract, legislation or regulation to those that are not currently or otherwise legally obliged to operate under those conditions.

- Advocating for the continuation and expansion of current statewide board governance training efforts to educate and train board members, protecting and advancing the mission of the organizations they serve, by:
 - Supporting expansion of the State Board Training Consortium to include all State agencies that contract with CBO's.
 - Supporting State contractual and regulatory obligations for board members to receive approved board training.
- Protecting charities from being used or exploited for partisan gain by elected officials, by:
 - Developing and enforcing ethics regulations that hold elected officials accountable for acts that endanger the legal or ethical welfare of CBO's, including utilization of nonprofit affiliation for campaign purposes that may jeopardize the mission of the CBO.