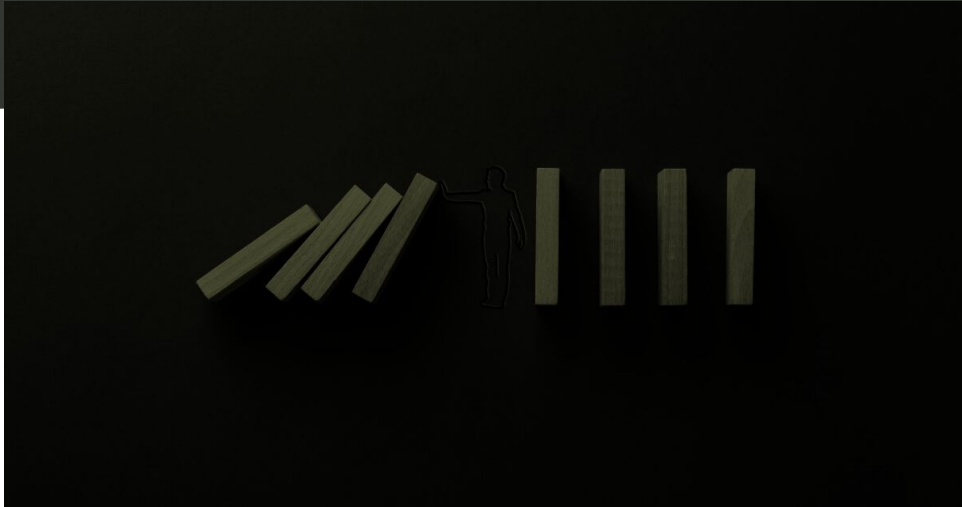




NONPROFITS: BOARD GOVERNANCE

Nonprofits in Crisis: Alternatives to Closing (Part One)

02.16.21 | Linda J. Rosenthal, JD



“Covid-19 is poised to become an [extinction-level event](#) for America’s nonprofits.” That was the alarm sounded from many quarters beginning in the earliest days of the pandemic.

This devastating result would be avoided only if government and philanthropy were to respond with massive and ongoing aid. Almost a year into this crisis, we now know the history of that response. Funders stepped up generously and with flexibility, but the magnitude of this economic and health crisis was so great that philanthropy alone could not possibly provide sufficient assistance. Only government – and specifically at the federal level – has had the capability of meeting this enormous need. But after the first waves of fulsome aid, more relief was blocked until late December 2020. The current almost-two-trillion-dollar supplemental aid package endorsed by President Biden may be approved (likely through the reconciliation process requiring only 51 Senate votes) in the coming weeks.

From the first surveys on how well the nonprofit sector was faring under COVID-19, there were reports that about “a third of nonprofits [expect to close](#) within a year.” In more analyses continuing through the summer of 2020, that same estimate was mentioned; namely, that “one-third of organizations [may not survive](#)” the pandemic and recession.

Compare, though, a somewhat less doomsday viewpoint in [About Those Never-ending Projections of Nonprofit Failure](#) (August 4, 2020) Ruth McCambridge, *The Nonprofit Quarterly* (NPQ). “I know we are not supposed to critique articles projecting doom for nonprofits—it breaks ranks—but some survey reports and articles are just so much fluff, and hardworking nonprofits deserve better.” Editor-in-chief McCambridge called readers’ attention instead (if they had not already seen it) to the



remarkably prescient series that *NPQ* had posted beginning in mid-March 2020. That was the same week that California's governor issued the first statewide lockdown order. The *NPQ* series was the culmination of a comprehensive study undertaken in late 2019 in advance of economists' forecast of a significant recession in 2020. The study was designed as a lookback to the Great Recession a decade ago; its purpose was to objectively confirm or dispel some of the urban myths about how individual nonprofits fared during that 2008-09 economic crisis.

In any event, for the rest of 2020 – as the COVID-19 pandemic raged on and the desperately needed federal aid was held up unnecessarily for many months – we heard more and more about organizations “shutting down,” “going out of existence” or “dissolving.” And it's widely believed there will continue to be, at least through the first half of 2021, a further “contraction of the nonprofit sector.”

Of course, this is not a one-size-fits-all matter. For some categories of organizations, there has been a sharp uptick in demand for services and at least enough interim band-aid funding to keep them afloat. For other groups – the arts sector, for instance – the prognosis is grim. In between are the vast majority of America's tax-exempt organizations, many of them small and medium groups which, even in normal times, tend to dance on financially thin ice. In recent years, the calls for funders to help end this “Starvation Cycle” by changes in their policies, practices, and payouts have grown steadily with some success. But it's been nowhere near widespread enough to cushion the nonprofit sector against the crushing blow of COVID-19.

Choices

So what are individual nonprofits (particularly in the large segment of the nonprofit world that has been most catastrophically affected) to do now and in the coming months until America emerges on the other side of this pandemic?

Now is *not* the time to make unalterable, no-turning-back decisions including giving up hope and throwing in the towel. Nor, for that matter, is it the time to place all hopes in an imaginary fairy godmother who will wave her magic wand and poof! find you a merger or restructuring partner tomorrow who will solve all your problems in twenty-four hours.

We're almost a full year into the pandemic; we know much more than we did in the fog and confusion of last spring. There may be an end in sight. Certainly, the FDA's emergency-use approvals of two vaccines so far (and others likely coming soon) may be the game-changer we need. But there are still uncertainties including vaccine-hesitation and disease mutations. And, of course, there's a real likelihood of more funding from the new Congress and new Administration that may make a huge impact on how 2021 plays out for individual struggling nonprofits and for the sector as a whole.

So – back to the “what to do” question. We're firmly in the camp of *Nonprofits: Update Your Scenario Planning* and *[Review Your]...Mission In The Age of Coronavirus*, not coincidentally our two most recent posts on a positive and forward-looking approach to the challenges ahead of us this spring, this summer – and beyond.



The “Snooze” Alternative

For now, we’re not discussing how to formally end an organization’s legal existence or tax-exempt status. There are state as well as federal procedures that must be followed. For a useful overview, see the National Council of Nonprofits’ [Dissolving a Nonprofit Organization](#). But the actual “winding down” of an organization “takes time, and ... is likely to continue for several months after operations have ceased.” And at least a certain number of the board members will have to remain in place until it’s completed. Dissolution is a long process and a “...difficult and emotional” one.

“In usual times, nonprofits don’t die, they linger , observed William F. Meehan III in *Forbes* last summer. And these – he added: “... are very unusual times.” See [Our Sputtering Engine Of Impact: Your Nonprofit Must Focus On Mere Survival](#) (July 29, 2020).

So let’s not talk right now about “dying” or “dissolving” or even “lingering.” Let’s talk about “suspending temporarily” or “snoozing.”

Bear in mind that, particularly during the first lockdown, much of the economy was *ordered* by the government to suspend temporarily for emergency health reasons. The shutdowns affecting a large swath of the nonprofit sector were mandatory. (Even the Internal Revenue Service largely shut down from March 2020 through at least June 30, 2020.) And the first wave of orders to lock down or operate only at reduced levels was followed by subsequent retrenchments. And, with the pandemic raging, even without any formal government orders, members of the general public who ordinarily happily attend and support nonprofit programs, venues, and special events had legitimate health reasons to stay away.

Hard data confirms that the pandemic’s impact was significant almost right away. See [Nearly a Third of Nonprofits Have Cut Staff or Suspended Operations](#) (May 9, 2020) [philanthropynewsdigest.org](#). There are at least 1.5 million tax-exempt organizations in the U.S.; almost 2/3 of those are 501(c)(3)s. That’s a lot of nonprofits in the same boat or – using an analogy from our last post – on a flooding submarine in the open ocean.

In April 2020 , Don Kramer, Esq., whose *Nonprofit Issues* newsletter each week fields and answers nuts-and-bolts topics [tackled this question](#): “If we suspend operations, do we file a special form with IRS?” His answer: “No. The IRS has no special reporting requirements for organizations that temporarily suspend their operations.” Indeed, if there were, then – based on the statistics we’ve cited – the IRS mail room would have been hopelessly overwhelmed by the avalanche of “suspended operations” notices the moment it reopened last July 1st.

Attorney Kramer points out, of course, that the annual information return, Form 990, has a question 3 in Section III that asks “about whether the organization ceased conducting or made any significant changes in how it conducts any program services.” (It doesn’t specifically ask about “suspension” of services.) The due date for the calendar year 2020 is May 15, 2021. That’s where you should report how your organization responded to the COVID-19 emergency.

All “snoozing” organizations should continue to make all required federal and state filings. And the directors should continue to hold (virtual) meetings in which there are at least scenario-planning



exercises or other contingency discussions and planning.

Conclusion

In Part Two, after briefly introducing the wide spectrum of possible choices traditionally available to nonprofits in troubled circumstances, we'll move on to some ideas and examples of how nonprofits around the nation are creatively innovating for the time being and informally collaborating with other groups to keep going over the next several months.

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