



# New York State's Not-for-Profit Sector

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Comptroller Thomas P. DiNapoli has reached out to leaders in the not-for-profit (NFP) sector across the State to seek solutions that could be implemented to address the serious challenges resulting from this economic downturn. There are a number of promising proposals which could streamline processes and lower administrative burdens for NFPs in contracting and/or improve State accountability and oversight.

## Overview: Not-for-Profits and New York State

New York State's NFP sector has been seriously challenged. NFPs are being called upon to provide more services during this economic downturn, while suffering substantial losses in funding and charitable donations. From youth programs to senior centers, from arts councils to financial education services, the support which helps millions of New Yorkers every day is being threatened.

In 2006, the over 24,000 NFPs, including numerous human service organizations, in New York State reported revenue of \$132.9 billion<sup>1</sup> and provided nearly 1.2 million jobs, about 17 percent of the State's workforce.<sup>2</sup> In June 2009, New York State had nearly 31,000 active contracts with NFPs totaling \$14.6 billion.<sup>3</sup> NFPs also stimulate the State economy, spending their funds in New York and using community-based vendors and suppliers, when possible.

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The ability of NFPs to serve their clients has been significantly challenged by the economic crisis, through State budget cuts, decreased fundraising, and increased demand for services.

Proposed action -- such as standardizing contracts, implementing performance-based contracting, and centralizing audit management -- could help the NFP sector make more effective use of State funds without compromising accountability.

## Issues Facing NFPs in the Current Economic Climate

NFPs have been significantly challenged during the current fiscal crisis. Among the many issues that NFPs must face are:

**Increases in Clients and Demand for Services** – Between November 2008 and November 2009, unemployment in New York State increased from 5.8 percent to 8.9 percent; in New York City, from 6.0 percent to 10.3 percent.<sup>4</sup> Participation in the Food Stamp program increased by 388,003 people or 17.5 percent between January and October 2009.<sup>5</sup> In addition, the number of individuals receiving benefits from the Home Energy Assistance Program (HEAP) increased by 406,548 or 36.3 percent

between September 2008 and September 2009.<sup>6</sup> NFPs across the State have seen a sharp spike in demand for services as more individuals and households have sought assistance of all types.<sup>7</sup>

**State Budget Deficits** – State contracts represent a significant portion of NFP funding. With New York State facing a budget deficit of up to \$4.1 billion for State Fiscal Year (SFY) 2009-10 and a three-year projected deficit of more than \$23 billion through SFY 2011-12, NFPs will continue to be negatively affected as the State struggles to deal with these deficits and subsequent cuts to program funding.

**Decreases in Fundraising and Philanthropy** – The financial crisis has caused personal charitable giving to decline.<sup>8</sup> Further, private corporations and philanthropic organizations, which have long provided significant funding for NFPs, can no longer be counted on to increase or even maintain funding. Between 2007 and 2008, endowments for philanthropic foundations declined by an average of 29 percent. Many foundations indicate that they will continue to decrease the amount of grants and/or restructure grant-making activities as they seek to prioritize investments.<sup>9</sup>

**Contract Delays and Late Payments** – Thousands of NFPs receive funding from the State through contracts supporting their programs and services.<sup>10</sup> In May 2009, a report by the Office of the State Comptroller (OSC) found that up to 87 percent of contracts with NFPs were approved late, forcing NFPs to perform services without a contract in place and without any payments. As a result, an increasing number of NFPs have resorted to borrowing.<sup>11</sup> Further, in a recent survey, 69 percent of NFP respondents indicated that in the last two years they have needed to borrow money due to delayed government contracts and/or payments.<sup>12</sup>

## Proposals for Streamlining the Process

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### Administrative Proposals

The following measures would improve State accountability and oversight of NFP contracts and decrease administrative burdens for NFPs:

**Standardize Contracts** – Currently, 80 percent of State agencies who contract with NFPs utilize a standard boilerplate adopted many years ago. Unfortunately, the amount of variation within that standard (e.g., different-- payment terms; documentation requirements; and budget requirements, etc.) in effect significantly reduce the benefits intended by standardization. Further work is necessary to reap the benefits of standardization allowing standard contract terms across all programs and agencies and reducing the time and expenses for NFPs in contracting with the State. Such a process would also enable greater coordination and efficiency in monitoring and oversight of NFPs which contract with multiple State agencies.

**Establish Performance-Based Contract Measures Collaboratively** – Outcome or performance-based contracting is a viable means for State policy makers to make informed, strategic decisions on program funding. Contract language should reflect that outcome-based contracts and performance measures should be collaboratively established and negotiated between the government agency and the provider.

**Centralize Monitoring and Audit Management** – For NFPs that contract with multiple State agencies or local governments, designate a “lead” oversight agency and adopt a “single audit” approach by the lead agency, which would share significant audit findings with all State and local funders. This would provide for more efficient use of State and NFP resources and decrease processing time.

**Address Prompt Contracting Issues** – OSC, based on a review of State agency compliance with prompt contracting, has issued new regulations to clarify how interest should be calculated when State agencies approve NFP contracts late. OSC will continue to monitor this matter and consider additional steps to improve the performance of State agencies in contracting with NFPs as needed.

## Financial Proposals

The following actions would help to stabilize the financial viability of the NFP sector:

**Make Contract Payments Timely** – Late payments to NFPs, largely caused by late approval of contracts, are forcing them into positions where it is difficult to make payroll, pay bills to maintain offices and continue to provide services effectively. More timely release and management of requests for proposals for multiyear State grants is also needed to ensure that NFPs can properly plan and start newly approved and funded projects.

**Prioritize State Funding** – The State can best achieve cost savings through a prioritization process to eliminate or reduce funding for programs that are inefficient and not cost-effective. An across-the-board approach applied without regard to a program's performance history, or to the importance of its place in a continuum of service delivery, can result in considerable setbacks for effective programs and services.

**Encourage Financial Support** – Given the high percentage of NFPs that have had to borrow money during this economic downturn, efforts should be made to encourage nongovernmental financial support of NFPs.<sup>13</sup>

The Human Services Council, working with New York City officials, has made progress on a number of these proposals, including: a standardized human services contract; a Master Service Agreement for procurement; and centralized monitoring and audit management of contracts. These accomplishments suggest some effective means to achieve similar results for New York State.

## Assistance by the Office of the State Comptroller

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As the State's Chief Fiscal Officer, the Comptroller has a responsibility to oversee compliance with the New York's Prompt Contracting Law, which recognizes the need for timely contract review and approval, and corresponding payments to NFPs in order to avoid service interruptions and financial hardships.

OSC works to review and approve NFP contracts expeditiously, and pay NFPs timely. While OSC does process NFP contracts expeditiously, State agencies do not always do so. Under the law, State agencies must pay interest to NFPs when contracts are approved late, the NFP received a written directive authorizing them to begin work, and services have been provided and payment is late as a result of the contract being approved late.

In May 2009, OSC issued its annual prompt contracting report. The report found that in 2008, 87 percent of NFP contracts valued at more than \$50,000 were not approved by the start or renewal date, forcing NFPs to perform services without a contract in place and without any payments. In total, OSC found 5,260 of 6,033 contracts, valued at \$2.7 billion, were approved late in 2008 — an average of 184 days late. Analysis of a sample of 95 late contracts between NFPs and State agencies approved over a four-month period in 2008 found:

- New contracts were approved almost nine months after the contract start date on average.
- On average it takes State agencies and NFPs 233 days from the renewal notification date to the date OSC approves the renewal contract, far exceeding the 90-day timeframe required by law. Consequently these contracts were approved an average of 145 days, or 5 months late.

- State agencies failed to notify NFPs within 90 days of expiration whether their contracts would be renewed, leaving some organizations with little time to plan for a loss of funding.
- No interest was paid to the organizations in the sample. OSC estimated that approximately \$102,000 in interest should have been paid to these NFPs, as required by State law.

Further, in 2008, State agencies processing late NFP contracts paid only \$144,906 in interest overall, a 29 percent decrease from 2007. OSC has now put regulations into effect which clarify the procedure for calculating the interest due to NFPs.

An increasing number of organizations have been unable to make payroll or risked losing other funding because their State contracts were significantly delayed.<sup>14</sup> It is important that NFPs know their rights under the Prompt Contracting Law. OSC has conducted training sessions for NFPs regarding their rights and responsibilities under the prompt contracting law and is committed to continuing that training effort.

Comptroller DiNapoli remains committed to assisting the NFP sector, achieving more effective use of State dollars without compromising accountability. OSC has enabled the public to see all active contracts and to see who is doing business with the State through *Open Book New York* ([www.OpenBookNewYork.com](http://www.OpenBookNewYork.com)), and put resource information online at *Your Money New York* ([www.YourMoneyNewYork.com](http://www.YourMoneyNewYork.com)) to benefit consumers and those served by NFPs. OSC's VendRep (Vendor Responsibility) enables registered NFPs to see when their contract has been received by OSC and its status quickly and easily.

The Comptroller welcomes comments on these resources, as well as suggestions on other ways that OSC can aid NFPs and the people of New York. For further information, please contact Elliot Pagliaccio, Assistant Comptroller, Division of Strategic Planning at (518) 473-7520 or [epagliaccio@osc.state.ny.us](mailto:epagliaccio@osc.state.ny.us) or Angela S. Dixon, Deputy Comptroller, Human Resources and Administration at (518) 474-5512 or [adixon@osc.state.ny.us](mailto:adixon@osc.state.ny.us). For contract related questions, please contact Margaret Becker, Deputy Comptroller, Division of Contracts and State Expenditures at (518) 486-9544 or [mnbecker@osc.state.ny.us](mailto:mnbecker@osc.state.ny.us).

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<sup>1</sup> National Center For Charitable Statistics. <<http://nccsdataweb.urban.org/PubApps/nonprofit-overview-sumRpt.php?v=sumFilers&t=pc&f=0>>. Includes organizations that report gross receipts of more than \$25,000 in a fiscal year which are generally required to file with the IRS a return for an organization exempt from income tax (Form 990) unless they are religious congregations, denominations, or controlled by a congregation or denomination.

<sup>2</sup> New York State Department of Labor.

<sup>3</sup> Office of the State Comptroller.

<sup>4</sup> *Ibid.*

<sup>5</sup> New York State Office of Temporary and Disability Assistance. Temporary and Disability Statistics. January 2009 and October 2009, Table 2. <<http://www.otda.state.ny.us/main/bdma/>>.

<sup>6</sup> New York State Office of Temporary and Disability Assistance. Temporary and Disability Statistics. September 2008, pg. 26, Table 25 <<http://www.otda.state.ny.us/main/bdma/2009/2009-09-stats.pdf>>. September 2009, pg. 26, Table 25 <<http://www.otda.state.ny.us/main/bdma/2009/2009-09-stats.pdf>>.

<sup>7</sup> United Way of New York. In 2009, 2-1-1 information and referral centers in the State handled over 330,000 calls seeking help with basic needs, a 43 percent increase over 2008. Updated Jan 7, 2010. Independent Sector. <[https://www.independentsector.org/programs/gr/Nonprofit\\_Bridge\\_Loan\\_Program.htm](https://www.independentsector.org/programs/gr/Nonprofit_Bridge_Loan_Program.htm)>.

<sup>8</sup> New York Times. "Charitable Giving Declines, a New Report Finds." June 10, 2009.

<sup>9</sup> "Many Foundations Have Lost Almost One-Third of Their Assets, Chronicle Study Finds." *Chronicle of Philanthropy*. National Council of Nonprofits. Jan. 21, 2009.

<sup>10</sup> Office of the State Comptroller.

<sup>11</sup> Independent Sector. <[https://www.independentsector.org/programs/gr/Nonprofit\\_Bridge\\_Loan\\_Program.htm](https://www.independentsector.org/programs/gr/Nonprofit_Bridge_Loan_Program.htm)>.

<sup>12</sup> New York Council of Nonprofits, Inc. Jan 14, 2010

<sup>13</sup> Independent Sector. <[https://www.independentsector.org/programs/gr/Nonprofit\\_Bridge\\_Loan\\_Program.htm](https://www.independentsector.org/programs/gr/Nonprofit_Bridge_Loan_Program.htm)>.

<sup>14</sup> *Ibid.*