

Curbing Bad Behavior

By Ian Wilhelm and Brad Wolverton. *The Chronicle of Philanthropy*
July 21, 2005

An influential group of nonprofit leaders has released recommendations for new laws Congress should pass to fix problems within the charitable world. But questions remain on how much weight the report will carry with lawmakers as they consider legislation.

The report, put together by a group of more than 175 nonprofit experts, recommends new rules to deal with donor-advised funds, supporting organizations, abusive tax shelters, and many other nonprofit activities. The group was organized by Independent Sector, a Washington coalition of charities and foundations. In addition to recommending what changes in laws are needed, the group made recommendations about how the Internal Revenue Service and state officials could do more to stamp out abuses. And the group made numerous suggestions about what charities themselves could do improve their public accountability.

Lacking 'Substantive Solutions'

While many nonprofit observers praised the report for establishing consensus on a broad range of pressing topics, critics continue to argue that it still does not go far enough in suggesting ways to tighten some rules, such as strategies for preventing charity officials from getting involved in sweetheart deals and other so-called self-dealing arrangements.

The National Committee for Responsive Philanthropy, a watchdog organization in Washington, said in a statement that the report is "micro-inching toward increased nonprofit accountability" and "remains miles and miles away from substantive solutions to the problems facing the sector."

In addition, whether lawmakers will enact any of the ideas in the report remains to be seen. Many of the proposals, if put into law, would cost the federal treasury money. With a federal budget deficit of more than \$400-billion, many members of Congress are pushing to find

measures that do not carry a price tag.

Diana Aviv, president of Independent Sector, acknowledged that some of the recommended changes could cost the government hundreds of millions of dollars. The cost of the proposals pose a "real legitimate issue," she said.

But Ms. Aviv said some of the ideas could help reduce the burden on the federal government. For example, she said, requiring charities to file certain tax forms electronically, as the report proposes, could save the IRS money that it might then use to hire new auditors to look into nonprofit abuses.

Senate Concerns

Aside from budgetary constraints, Senate Finance Committee members may be distracted from dealing with nonprofit issues by more pressing political matters, such as the pending confirmation battle for a new Supreme Court Justice.

"Given everything on the plate and the budget deficits," said Harvey Dale, director of New York University's National Center on Philanthropy and the Law, "the likelihood is that this possible piece of legislation will not pass as one package."

Senate aides, however, have said the Finance Committee hopes to introduce a comprehensive charity legislative package by the end of this month.

Some charity officials are skeptical. "The standard line is that it will be two to six weeks from today," said Erica Greeley, director of strategic policy planning at the National Council of Nonprofit Associations, in Washington. "We've been hearing that since last fall."

In all, the new report offers more than 100 ideas for ending nonprofit abuses and helping charities and foundations become more transparent. But it does not deal with several

controversial topics that lawmakers have raised during their yearlong inquiry into nonprofit organizations, including problems at credit-counseling groups, changes in charitable-solicitation guidelines, and a proposal to accredit charity programs that was floated by Senate staff members a year ago. Ms. Aviv said the group would look into some of those topics and issue additional recommendations, probably in the fall.

The report makes proposals in several key areas:

Loans and compensation. Charities and foundations should include more-detailed information about executive and board compensation and the independence of board members on their informational tax forms, the report says, but should not be required to place limits on what they pay their top officials or board members. Charities should also be prohibited by law from making loans to their board members, but should still be permitted to make loans to their employees.

Noncash donations. No limits should be placed on the deductions that individuals may take for donations of clothing and other household items, but the Internal Revenue Service should develop guidelines to help donors place a value on such contributions.

Distribution of charitable assets. Donor-advised funds should be required by law to give charities at least 5 percent of their total assets every year, the report says, but each donor-advised account should not have to distribute a minimum amount to charity every year, and certain kinds of funds should be excluded from a payout requirement.

Congress should also tighten the rules for some types of supporting organizations, requiring them to distribute 5 percent of their net assets every year to the charitable groups they support, according to the report. Supporting organizations are designed to finance the work of specific charities. Many large nonprofit groups have supporting organizations that generate revenue by investing in stocks or by operating businesses.

Urging Charities to Act

The majority of suggestions in the document call on nonprofit organizations -- not the federal

government -- to clean up their own operations, in part by clarifying their financial reporting. The document suggests nearly a dozen ways groups could become more transparent by providing additional information on their federal tax returns.

The 115-page report was produced in response to a Senate Finance Committee request last fall to develop ideas on how to improve governance and accountability in the nonprofit world.

At a news conference on Capitol Hill last month, Sen. Charles E. Grassley, an Iowa Republican and chairman of the Finance Committee, and Mark W. Everson, the Commissioner of Internal Revenue, said they were pleased to see proposals designed to prevent people and organizations from hoarding money that was set aside in tax-exempt funds.

"If there are abuses in charitable organizations, there are concerns that Americans will lose faith in charities and they will stop giving, and those in need will suffer," Mr. Everson said.

Senator Grassley said that his goal is to encourage more money to flow to charities, which he hopes will ensure that the dollars are spent wisely. He added that he believes the nonprofit committee's work will help him get comprehensive charity legislation passed this year.

But a broad charity bill has failed to pass Congress in the past four years, and many nonprofit lobbyists and observers believe that the senator will focus on passing narrow legislation designed to put an end to specific nonprofit problems.

In May, Senator Grassley and Sen. Max S. Baucus of Montana, the top Democrat on the Finance Committee, introduced a bill to crack down on individuals and companies that improperly benefit from charity-owned life-insurance policies.

Senate aides say the lawmakers intend to introduce other measures soon to deal with abusive tax shelters and donors who take tax deductions for contributions to donor-advised funds but fail to distribute money to charities.

Lawmakers also expect to propose legislation that would place tighter restrictions on certain types of supporting organizations.

More than 45,000 supporting organizations with cumulative assets of approximately \$76-billion now operate, according to the Congressional Research Service.

Some members of Congress worry that many of those groups do not distribute money to the organizations they are supposed to support, and that some people who have set up supporting organizations have made loans to themselves and improperly benefited from the groups they established. Some of the strongest language in the nonprofit report concerns ways to prevent donors from personally benefiting from organizations they set up to support charities.

For example, the recommendations suggest imposing a penalty on managers of donor-advised funds who "knowingly and willingly" make payments that reimburse donors for their expenses. Donors or their advisers who receive any compensation from such charitable funds should also be penalized, the document says.

To help prevent abuses of donor-advised funds, the nonprofit committee calls on Congress to prohibit grants, loans, and other payments from donor-advised accounts to any private foundation in the United States.

The committee also suggests giving the federal government the authority to suspend the tax exemption of a donor-advised fund manager -- such as a community foundation -- that commits "multiple egregious or flagrant violations" in which donors personally benefit from their association with a donor-advised fund.

Although the nonprofit committee urges lawmakers to establish a payout requirement for donor-advised funds, the committee says that some donor-advised funds should be excluded from such a requirement because they were set up to accumulate assets for many years before making large contributions toward specific charitable causes, such as an endowed chair at a university.

Many colleges and universities also benefit from having supporting organizations set up to hold and manage certain kinds of assets, the report says. The legal flexibility of supporting organizations allows colleges, universities, and other charitable organizations to oversee certain assets independently, which otherwise they would not be able to do, the report says.

The report also outlines several other reasons that supporting organizations should be permitted to exist, explaining that they add value to the nonprofit world and cannot be replaced by other types of organizations. For those reasons, the nonprofit committee's report strongly opposes eliminating certain types of supporting organizations, as Senate aides have said is a possibility.

But the report also suggests ways to clamp down on donors who put assets in supporting organizations with little intention of giving them to charity and then receive tax deductions for setting them up.

In addition to enacting a payout requirement for such organizations, the nonprofit committee says, Congress should prohibit grants, loans, compensation, and other payments from certain types of supporting organizations to the donor who established the organization or any person related to the donor. The committee also says that lawmakers should limit the number of entities a supporting organization may support.

To see a copy of the nonprofit panel's report, go to <http://nonprofitpanel.org>.