

Panel Report Goes To Congress And IRS

By Paul Clolery. *The Nonprofit Times*
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When, or if, agencies will take action remains an open question

Summertime and the living isn't easy -- in Washington, D.C. anyway. Congress is out, but sitting on the desk of Sen. Charles Grassley, R-Iowa, is the final report by The Panel on the Nonprofit Sector. The report was presented to Grassley, Internal Revenue Service (IRS) Commissioner Mark Everson and Sen. Max Baucus, D-Mont.

The Panel's report is described by Independent Sector (IS), organizer of the group, as "a comprehensive series of recommendations intended to strengthen the ability of the nation's 1.3 million charities and foundations to serve as responsible stewards of the public's generosity."

The Panel recommended more than 120 actions to be taken by charitable organizations, by Congress, and by the IRS, intended to strengthen the sector's transparency, governance, and accountability.

Diana Aviv, president and CEO of IS, said that, if implemented, the recommendations would "constitute the most sweeping changes to the governance, operations and regulation of charities and foundations in three decades."

The suggestions, which remain mostly unchanged from the March interim report although there were 15 field hearings, include:

- To strengthen governance, the panel recommended that charitable organizations adopt,

implement and publicize audit procedures and policies on travel expenses, conflicts of interest and whistleblower protection.

- To make financial information more reliable, Congress should require audits by charitable organizations with annual revenues of \$1 million or greater and an independent accountant's review for organizations with annual revenues between \$250,000 and \$1 million.

This was the only area changed substantially from the interim report, increasing the limits and reports required in order to reduce the burden on smaller charities.

The panel also called for Congress to require mandatory electronic filing of charitable organizations' annual information returns, the Forms 990; the IRS to improve the design of and instructions for Forms 990; and charitable organizations to have their CEOs or CFOs certify the accuracy of their information returns.

- To prevent abuse of charitable entities, the panel recommended that Congress establish clearer legal guidelines for donor-advised funds, Type III supporting organizations and participation by tax-exempt entities in potentially abusive tax shelters. It also urged Congress to tighten up rules and strengthen penalties to help prevent transactions that benefit donors, rather than the public.

- To ensure that non-cash contributions support charitable causes, rather than provide improper tax deductions for donors, the Panel recommended that Congress establish clearer rules for valuing donated property and mandate stricter guidelines for appraisals of land and other appreciated property.

- To address instances of excessive executive compensation, the Panel recommended that Congress strengthen the penalties levied on board members who approve and executives who receive excessive compensation, that the IRS revise the Forms 990 to make the total compensation of executives clearer to the public and regulators and that charitable organization boards approve executive compensation each year.

The Panel was convened in October 2004 at the encouragement of Grassley, the Senate Finance Committee chairman, and Baucus, the Ranking Member. Concerned about perceived ethical lapses in governance, fundraising and other practices, both the Senate Finance Committee and the House Ways and Means Committee have held hearings during the past year about the operations of nonprofit organizations. The IRS is also reviewing the practices of charities and foundations.

Depending on whom you talk to in the nation's capitol, Grassley was either waiting for the report before crafting legislation for greater oversight of the sector or already had the legislation written and was politely waiting for the report before introducing it. Those who think nothing will come of this point to the upcoming battle for the U.S. Supreme Court and expect the Senate to grind to a halt and little or no action, unless they are revenue raisers.

"It seems that IS has taken some pretty clear issues and potentially clear solutions and found a way to 'wait out' Congress and undermine the momentum for action that existed as of the Senate Finance Committee's hearings last June and July," said Rick Cohen, executive director of the National Committee for Responsive Philanthropy. "Even the purportedly 'final' panel report promises yet another report addressing critical issues that have been on the agenda since 2003, including the composition and levels of foundation administrative costs that were addressed in the language of the original Charitable Giving Act of 2003 (H.R.7) until undone by foundation sector lobbyists."

And while the panel had wide participation from the nation's major charities and foundations, there are others in the sector wondering aloud what it all means and if the work is for nothing. Aviv, in a conference call with reporters, admitted that she didn't expect immediate action on most of the recommendations.

OMB Watch, a watchdog group in Washington, D.C., called the panel's report a "study on contrasts." The National Committee For Responsive Philanthropy said in a statement that, "Notwithstanding the undoubtedly positive motivations of many of the people in the Independent Sector's nonprofit panel effort, NCRP finds little in the panel's latest report to warrant the more than \$3 million that IS has reportedly raised for this entire process."

According to Gary Bass, founder and executive director of OMB Watch, the report "purports to have involved 'thousands of people representing diverse organizations' and lists many of them in the report. It's an impressive display of nonprofit sector engagement. On the other hand, the process was largely an inside-the-beltway style of operation that mostly engaged very elite players. Community-based groups, to the extent they were consulted, were invited to comment on recommendations that were already developed and limited to a narrow scope of topics."

Bass said that the report's first recommendation is to provide greater enforcement with calls for

Congress and the IRS to get more involved in the regulating of the sector. "Yet the message of the report conveyed by the Panel, its director, the press release and even the title is mostly about self-regulation and voluntary compliance (e.g., greater transparency)," said Bass.

In the conference call with reporters, Aviv said that IS would not require its member organizations to comply with all of the recommendations, saying IS is an organization of voluntary organizations and leaves it to its members for self-enforcement.

According to Bass, "The Panel provides tough-minded recommendations in a very small number of areas (e.g., donor-advised funds), but simply avoids some of the biggest issues entirely, such as the abuses noted in the media regarding foundations. There is no cap proposed for foundation trustee fees, and compensation for board members beyond reimbursement for expenses is not discouraged, only subjected to explanation and disclosure."

Some of what the panel suggests for oversight is already being done, although unofficially.

"The Panel report places great reliance on numerous changes to the Form 990. However, the nonprofit sector, led by the Urban Institute, has been proposing improvements to Form 990 for years," said Bass. "The IRS has been in the process of revising it for a long time, without result. But there is no evidence that having myriad check-offs on the 990 will create greater accountability. It certainly will, however, create more busy work for nonprofits. The greater detail in financial reporting, along with the increased penalties proposed, moves in the right direction."

Another contrast with the report and potential for change regards state charity officials.

"The report makes a brief statement recommending authorizing the IRS to share information with state regulators, but fails to follow through on the potential this sharing can have. For example, as the primary regulators of nonprofits, many states require all organizations to file annual reports, or register if they raise funds in the state," said Bass. "The National Association of State Charity Officials has a Unified Registration Statement program that is an effort to consolidate the information and data requirements of all states," said Bass.

According to Cohen, "The nonprofit sector faces several huge challenges, not the least of which is the inadequate leadership of national leadership organizations on issues of accountability. Trying to thwart Congressional momentum and substitute substantive public accountability laws and regulations with nonprofit self-regulation, albeit dressed up in new rhetorical clothing, may staunch new regulatory oversight, but it won't lead to a stronger nonprofit sector."

Said Bass, "Why can't the leadership of the nonprofit sector -- from foundations to grantseekers -- put the same level of energy and resources into addressing the threats that nonprofits really face as it has into addressing the threat of abuse by a few bad apples?"