

By Christopher Petermann and Thomas F Blaney
Up On the Hill

The Senate Finance Committee is looking in nonprofits' direction. Here's what it means for you



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By now, most nonprofit leaders are probably aware that they are being watched by lawmakers on Capitol Hill. This is nothing new — and nothing particularly alarming. Still, the thought of legislative oversight can make even the most scrupulous nonprofit executives and board members a little nervous. More than anything, uncertainty feeds our anxiety. What exactly are they doing up on the Hill? Who are they looking at? What is going to change?

Not to worry. We'll offer a summary of the Senate Finance Committee's activities and suggest what it means to your nonprofit.

In June 2004, the Senate Finance Committee released a bipartisan draft document reflecting proposals for reforms and best practices among tax-exempt organizations. Many nonprofit leaders feel that the document was driven by embarrassing newspaper articles on abuses in public charities and private foundations. The draft contained input from board members and directors, tax practitioners, academia, and interested parties — as well as research performed by the committee staff. The discussion draft was a work-in-progress. It was meant to encourage and foster additional comments and recommendations.

Shortly after, Senator Chuck Grassley, chairman of the committee, and ranking Senate member Max Baucus convened a roundtable that allowed people associated with the tax-exempt field to share views and expertise. Approximately 20 roundtable participants and numerous other concerned individuals and organizations made statements or submitted "white papers" in response to the draft.

In September 2004, Senators Grassley and Baucus asked the INDEPENDENT SECTOR (one of the original roundtable participants) to convene a national panel on the nonprofit sector. The panel, which the INDEPENDENT SECTOR named in October, will consider and recommend actions for strengthening governance, ethical conduct, and effective practice of public charities and private foundations.

After reading the initial bipartisan draft document, nonprofits can easily be confused about the scope and direction of the

committee's intentions. The draft covers a wide array of issues. Some sections focus heavily on private foundations. Others take a long look at compensation issues. Some sections concern CEO evaluations. Often it's difficult to discern what issues really concern the committee, what its recommendations are, and what moves nonprofits should make.

A close reading of the draft reveals that there are some areas that the committee clearly thinks are "good ideas," areas in which many nonprofits are in agreement. No one disputes that Congress has appropriated insufficient funds to the IRS to enforce existing regulations. There is also no dispute that there are at least a few "bad apples" among the million-plus nonprofits. What is disputed, however, is how many bad apples there are, and whether there is a public crisis of confidence in charities.

In general, most nonprofit leaders support some of the recommendations, like electronic filing, sharing information between states' attorneys general and the IRS, reforming the Forms 990 and 990-PF, and increasing funding for the IRS's exempt organization division.

But from there, the draft sends what might be considered mixed messages. *There* are two key issues of concern for private foundations, although no clear way to tell how the committee will address them. The most contentious is board member compensation. The other regards foundation expenses. Reading between the lines, it appears that some limitations on administrative expenses are high on the committee's "to do" list.

For public charities, the biggest concern seems to be conflict-of-interest issues. Attorneys general offices and the IRS are seeking clearly stated policies that are more transparent and accountable. The general thrust is: Make sure you go public. Don't hide anything.

The draft also does little to answer the crucial question: What should I do — right now — to ensure that I land on the

right side of whatever recommendations the committee finally settles on?

We would recommend that, at the very least, nonprofit leaders make sure their houses are in order in the following ways:

1. Have a conflict-of-interest statement. The statement should prohibit or limit business transactions with board members and require board members to disclose potential conflicts. Put it in writing and have all board members sign off on it.
2. Make sure your Forms 990 and 990-PF are flawless. There should be few or no errors. We suggest hiring an accountant or a lawyer to help.
3. Embrace electronic filing. Not only will it be easier to file your IRS forms, it will also show that you are unafraid to provide easy access to anyone who wants to see them. The more transparent you are, the better.
4. Limit your travel expenses. Each nonprofit must decide what is excessive. But use common sense. Fly coach. And forget those five-star hotels.

The committee's provisions signal a sweeping overhaul in the future for tax-exempt organizations. But the majority of organizations can comply simply by being more diligent and thorough in the way they conduct business. 0

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Resources:

"Charity Oversight and Reform: Keeping Bad Things from Happening to Good Charities." BoardSource comments on the Senate Finance Committee draft, www.boardsource.org/clientfiles/SenFin.pdf.

For information on the INDEPENDENT SECTOR panel, see <http://www.independentsector.org/panel/main.htm>.