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Why Don't Charities and Lawmakers Want to Curb Nonprofit Abuses?

By Pablo Eisenberg

After a torrent of news articles during the past five years about nonprofit scandals and almost three years of Senate Finance Committee hearings on the subject, neither legislators nor charities and foundations themselves have been able to do much to ensure that nonprofit groups uphold the public trust.

Despite continued reports of inappropriate nonprofit expenditures, excessive compensation, sweetheart deals, and other misdeeds, the situation is unlikely to change, except at the perimeters. No new, strong legislative or regulatory measures that might put an end to egregious nonprofit behavior are likely to be adopted by federal officials, nor will members of Congress make any serious efforts to increase the capacity of the Internal Revenue Service and state attorneys general to effectively oversee and police the nonprofit world.

For all the talk about the need for change, most of what has come out of the Senate hearings and the interminable round of discussions and the deliberations of nonprofit organizations has been rhetoric and mush.

Missing have been the determination and courage needed for real change. It is as though nonprofit groups and legislators don't have the heart and will to tackle the issue of public accountability. Nor do they seem to care.

Behind this massive policy failure are numerous forces.

First and foremost is the reluctance and, in many cases, the opposition of charities and foundations to make significant changes in the way they function. They like operating with few regulations and not much oversight. They have become increasingly comfortable in adopting a corporate style, characterized by questionable ethics, excessive compensation, special executive perks, cozy financial arrangements, and boards that operate under the control of the organization's management, not independent directors.

Still seething over the Tax Reform Act of 1969, which imposed stiffer regulations on foundations, grant makers dread government interference and intervention, often overlooking the fact that their privileged tax status requires their public accountability and responsible behavior.

Their colleagues at nonprofit organizations share this point of view.

Whatever changes need to be made, nonprofit leaders argue, can be accomplished by self-regulation, yet they have not had the will or courage to do much to police themselves and their colleagues.

During exhaustive Senate hearings, only a handful of the witnesses from nonprofit groups advocated strong measures that could end the types of inappropriate behavior that have undermined public confidence.

Among the proposals that the witnesses suggested:

- Eliminating the loophole in regulations that ends up allowing foundation officials to give their friends and relatives special financial deals — and then applying the tightened restrictions on "self-dealing" to all nonprofit groups, not just foundations.
- Setting tight limits on fees paid to trustees of nonprofit organizations.
- Prohibiting charities from paying for first-class travel, and offering their donors and executives loans and other perks.
- Controlling excessive compensation through tougher standards enforced by the Internal Revenue Service.
- Requiring the IRS to undertake periodic reviews to determine whether groups deserve their tax-exempt status.
- Making substantial increases in the government aid provided to the IRS and state attorneys general to enforce nonprofit laws.

With the blessing of the Senate Finance Committee, Independent Sector, a coalition of 550 of the largest nonprofit groups and foundations, established a lengthy process of consulting with its members and outside experts to produce specific recommendations to lawmakers.

After an expenditure of almost $4-million — money from foundations and other donors that could have gone to needy nonprofit groups — Independent Sector issued both an interim and a final report that shied away from dealing with foundations and avoided tough measures to make charities more accountable. To nobody's surprise, it was big on self-regulation and best practices, with no serious prescriptions for regulations and enforcement. It was just what the big nonprofit doctors ordered.

While the opposition of nonprofit groups is the main reason so little legislation has been passed, lawmakers themselves are also at fault.

Other than Sen. Charles Grassley, the Iowa Republican who chairs the Senate Finance Committee, few senators have demonstrated much interest in curbing the lack of accountability by nonprofit organizations.

Sen. Max Baucus, of Montana, the lackluster senior Democrat on the committee, did little to energize his colleagues to focus on new regulations. Few members of the committee regularly attended the hearings on nonprofit groups, a sign of legislators' lack of interest.

While Republican staff members of the Senate Finance Committee tried their best to move the panel to action, their efforts could not overcome the indifference of the senators. The House of Representatives showed even less interest, except for some concern it has expressed about the performance of nonprofit hospitals.

The long, drawn-out process of the Senate Committee's deliberations, as well as Independent Sector's tedious consultations, helped to undermine any sense of urgency about the need for changes in the way nonprofit groups are regulated.

After its burst of attention to nonprofit misadventures, which first drew the Senate Finance Committee's attention, the news media gradually relaxed its energetic coverage. *The Boston Globe, The New York Times*, and the *San Jose Mercury News* — the newspapers that had spearheaded the initial, intense reporting — turned to other priorities.

The reduction in pressure from journalists made it easier for both charities and legislators to avoid taking action. Independent Sector now says it will press Congress to provide additional funds for oversight and enforcement by government regulators, but it is not making any big pushes for change.

What is remarkable about the current state of affairs is that every day local newspapers across the country publish articles about nonprofit organizations that continue their abusive behavior, their boards of directors apparently unable or unwilling to be responsible overseers. Gary R. Snyder, author of *Nonprofits: On the Brink,* regularly posts on his Web site details of the most recent scandals and abuses. It is not a pretty picture.

To his credit, Senator Grassley has called some nonprofit organizations, including American University, the Nature Conservancy, and the Smithsonian Institution, to account, but he has little force, other than moral suasion, behind him.

Despite the egregious behavior of its former president and Board of Trustees, American University still retains a number of board members responsible for the excessive compensation and perks awarded to the leader it was forced to oust last year. Three newly appointed trustees from the faculty and student body weren't even made voting members. Not much has changed.

Steven J. McCormick, president of the Nature Conservancy when it was accused of offering too many perks to its donors and taking other questionable actions, is still at the helm. What happened to the notion of personal responsibility?

And the J. Paul Getty Trust, tarnished by the actions of a greedy chief executive who was forced to resign, continues to operate under the direction of trustees who failed to oversee the institution's past operations.

Clearly, the nonprofit world is facing a serious ethical crisis. Its code of behavior is rapidly eroding, giving way increasingly to a spirit of "everything goes."

In Illinois, nonprofit hospitals have been opposing efforts to require them to provide a minimal amount of care for indigent patients, even though that is the reason such institutions receive tax-exempt status.

Salaries and compensation packages of CEO's of universities and colleges, hospitals, foundations, and nonprofit groups are going though the roof, their salaries expanding at rates far higher than the annual cost of living, while the compensation of lower-ranking employees lags far behind.

Hundreds, if not thousands, of charities fail to pay taxes on earnings that are not related to their charitable missions. And many nonprofit boards of directors are failing to exercise their fiduciary and policy responsibilities.

It is hard to imagine how much worse matters have to get before policy makers and the public decide that enough is enough. When will government officials impose the regulation and enforcement necessary to maintain public accountability? When will charity leaders summon the courage to challenge their errant colleagues and demand those changes?

Given today's climate, it may take some time. In the meantime, we need Senator Grassley and watchdog groups that have sought change, such as Charity Navigator and the National Committee for Responsive Philanthropy, to keep plugging away.

The stakes are too high to stop trying.

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