411 Hot Topics & Emerging Trends in Nonprofit Governance & Transparency

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Mr. Hale is chairman of the Atlanta Historical Society, a past chairman of the Georgia Trust for Historic Preservation and St. Judes Recovery Center, and is the immediate past chair of the State of Georgia's Judicial Nominating Commission. Mr. Hale also serves as a member of the board of curators of the Georgia Historical Society, a trustee of Atlanta Landmarks, Inc., and the Arch Foundation for the University of Georgia, Inc.

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Martha Sullivan is the director of exempt organizations for the Internal Revenue Service. Her responsibilities include strategic planning for the direction of the organization, and managing the Examination Division and the Rulings and Agreements Division, which handles Determinations, PLRs, TAMS, and guidance.

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ASSOCIATION OF CORPORATE COUNSEL

HOT TOPICS & EMERGING TRENDS IN NONPROFIT GOVERNANCE & TRANSPARENCY

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Information current through August 1, 2005.

TABLE OF CONTENTS

I. INTRODUCTION
II. Panel on the Nonprofit Sector
III. Congressional Action
IV. IRS Initiatives
V. State Initiatives
APPENDIX A – LET THE DONOR DECIDE – A PROPOSAL FOR INCREASING NONPROFIT TRANSPARENCY
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APPENDIX B – COMPARISON CHART OF CORPORATE GOVERNANCE AND TRANSPARENCY PRACTICES
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I. INTRODUCTION

Charitable organizations play a valuable role in American society, providing benefits to millions of individuals in the United States and throughout the world. In order to be effective and to maintain the public trust, charitable organizations must demonstrate that they operate with integrity, openness, and accountability. Only then, is the public's generosity protected.

Although a number of governmental entities currently regulate and provide oversight of charitable organizations, and although charitable organizations themselves have implemented various methods of self-regulation, some believe that there should be even greater measures to strengthen charitable organizations' accountability, transparency and governance. In response, the Senate Finance Committee held several hearings in 2004 on the nonprofit sector. Following those hearings, the Committee issued a white paper containing potential reforms for consideration by the nonprofit sector. Further, in September 2004, the chairman of the Senate Finance Committee, Senator Grassley, and ranking member Senator Baucus, asked the Independent Sector to assemble a group of leaders from the nonprofit community to consider and recommend actions to strengthen governance, ethical conduct, and accountability within public charities and private foundations.

In October 2004, the Independent Sector convened the Panel on the Nonprofit Sector (the "Panel"), which consisted of 24 leaders representing a variety of nonprofit organizations. The Panel first established two advisory groups—one consisting of nine community leaders and the other of eight academic and legal experts. In addition, five working groups of approximately 20 persons each were also formed to research specific topic areas. On March 1, 2005, the Panel published its Interim Report containing initial recommendations. After this initial report, the Panel solicited feedback from the nonprofit community as a whole with 15 field hearings throughout the country. The Final Report was issued in June of 2005, superseding the Interim Report with altered and additional recommendations. Recognizing the ongoing need for reform, the Panel also noted that it will release a Supplemental Report this fall addressing suggested improvements to the Forms 990 and 990-PF, ways to achieve uniform financial standards, standards for administrative expenses, guidelines for organizational policies, and examination of accreditation for charitable organizations.

Additionally, Senate lawmakers have indicated that legislation will be introduced to put in place many of the recommendations outlined in the Final Report. As of August 1, 2005, the date of these course materials, no such legislation has yet been introduced or made public for comment. However, if such legislation is forthcoming, it will be made available to the attendees of this Association of Corporate Counsel conference session. Further, the Internal Revenue Service, in its 2005-2009 Strategic Plan has indicated an increasing need to monitor the nonprofit sector. The IRS initiative in this regard includes, among other things, improving Forms 990 and 990-PF. The new forms, which although are not completed, are under review. Finally, since June 2004, a number of states have taken it upon themselves to enact various laws to further regulate the nonprofit sector.

This outline provides a synopsis of the governance and transparency issues contained in the Panel on the Nonprofit Sector Final Report, lists areas of possible Congressional action, indicates various IRS initiatives, and summarizes legislation enacted in a number of States. Additionally, attached to this outline is a specific proposal advocating additional transparency by nonprofit organizations and a chart comparing different approaches to governance and transparency issues.

PANEL ON THE NONPROFIT SECTOR

SYNOPSIS OF GOVERNANCE AND TRANSPARENCY PROPOSALS

The following is a synopsis of the recommendations of the Panel relating to the governance and transparency of charitable organizations. A complete copy of the Final Report is available at www.nonprofitpanel.org.

A. GOVERNANCE

1. BOARD COMPENSATION

Federal tax law currently prohibits payment of excessive compensation to board members and other "disqualified persons." However, with the recent scandals involving the amounts paid to board members, the Panel believes that the current penalties may not be sufficient to deter such compensation.

Recommendations of the Panel:

- Congress should:
  - Amend the Internal Revenue Code to:
    - Impose penalties on board members and other managers who approve of self-dealing or excess benefit transactions, including excessive compensation, if they knew or should have known (failed to exercise reasonable care, such as following the "rebuttable presumption" procedures) that it was improper.
    - Increase penalties on board members who are found to receive or approve excessive compensation to 25% of the excess amount, and retain the current requirement to repay the excess amount to the organization.
    - Increase penalties on board members who approve self-dealing or excess benefit transactions, including excessive compensation in the following way:
      - Increase the first-tier excise tax for approval of excess compensation from 2.5% to 10% of the excess amount.
      - Increase the first-tier excise tax for approval self-dealing transactions from 2.5% to 5% of the transaction amount.
      - Increase the cap on first-tier penalties from $10,000 to $20,000.
      - Give the Secretary of the Treasury authority to abate taxes imposed on managers and disqualified persons whose participation in self-dealing transactions was due to reasonable cause and not to willful neglect.
    - Prohibit loans to board members.
- The IRS should:
  - Revise Forms 990 and 990-PF in order to require charitable organizations to:

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      - Clearly disclose the amount of and reasons for compensation paid to any board member.
      - Indicate the method used to determine the reasonableness of compensation.
      - Distinguish between compensation paid for board service, compensation paid for performance of staff duties, and compensation for any other services provided as an independent contractor.
      - Indicate the estimated hours of service a compensated board member is expected to provide per year, the general duties of a compensated board member, and any special services provided by a compensated board member.
      - Separate compensation of corporate officers who do not serve as board members or trustees from information on board compensation.
- Charitable organizations should:
   - Be discouraged from compensating board members.
   - Where compensation is necessary, review compensation provided by organizations comparable in size, program practice, geographic scope, location and with similar board responsibilities to determine the reasonableness of compensation.
   - Make their compensation information available on request to peer organizations.
   - Provide the full name and city of residence of each board member on their Form 990 or 990-PF.

2. CONFLICT OF INTEREST AND MISCONDUCT

Boards of directors must put the interests of the charitable organization above their private interests. Thus, it is imperative that charitable organizations identify and manage potential conflicts of interest.

Recommendations of the Panel:

- The IRS should**:**
   - Revise the Forms 990, 990-EZ and 990-PF to require all organizations to disclose whether they have a conflict of interest policy.
- Charitable organizations should:
   - Adopt and enforce a conflict of interest policy.
   - Establish policies and procedures that encourage individuals to come forward with credible information on illegal practices or violations of adopted policies of the organization.
- The charitable sector should:
   - Educate and encourage all charitable organizations to adopt and enforce policies and procedures to address possible conflicts of interest and to facilitate reporting of suspected malfeasance and misconduct by organization managers.

3. EXECUTIVE COMPENSATION

Current federal tax law permits charitable organizations to pay reasonable compensation for services provided by chief executive officers and other staff. However, there have been several recent media reports of charitable organizations paying excessive compensation and granting large loans to their executives.

Recommendations of the Panel:

- Congress should:
   - Amend the Internal Revenue Code to:
      - Require executives and other disqualified persons who are charged by the IRS with receiving excessive compensation to demonstrate that the compensation they receive is reasonable.
      - Impose penalties on board members and other managers who approve of self-dealing or excess benefit transactions, including excessive compensation, if they knew or should have known (failed to exercise reasonable care, such as following the “rebuttable presumption” procedures) that it was improper.
      - Increase penalties on executives and other disqualified persons who are found to receive excessive compensation to 25% of the excess amount, and retain the requirement to repay the excess amount to the organization.
      - Increase penalties on managers of charitable organizations who approve self-dealing or excess benefit transactions, including excessive compensation in the following way:
         - Increase the first-tier excise tax for approval of excess compensation from 2.5% to 10%.
         - Increase the first-tier excise tax for approval of self-dealing transactions from 2.5% to 5%.
         - Increase the cap on first-tier penalties from $10,000 to $20,000.
         - Give the Secretary of the Treasury authority to abate taxes imposed on managers and disqualified persons whose participation in self-dealing transactions was due to reasonable cause and not to willful neglect.
- The IRS should:
   - Revise Forms 990 and 990-PF to require charitable organizations to:
      - Disclose the full compensation paid to its CEO and other officers (which include the president, CEO, COO, Treasurer, CFO and persons with different titles who perform those functions).
      - Clearly distinguish between base salary, benefits, bonuses, long-term incentive compensation, deferred compensation, and other financial arrangements treated as compensation.
      - Disclose the compensation paid to the five highest compensated employees.
      - Disclose the compensation paid to all employees who are related to a board member or officer of the organization if they are paid more than $50,000 in the tax year.
      - Disclose whether the organization followed the “rebuttable presumption” procedures in determining the reasonableness of compensation provided to the CEO.

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- Charitable organizations should:
  - Approve any change in the compensation of the CEO annually and in advance.
  - Review the organization's staff compensation program periodically, including the salary ranges for particular positions and the benefits provided.

4. STRUCTURE, SIZE, AND COMPOSITION OF GOVERNING BOARDS

A charitable organization's board of directors is in the best position to protect the organization's accountability. However, problems can arise if the board is not knowledgeable, committed or has conflicts of interests. Thus, the Panel seeks to institute certain requirements for board members in order to ensure both an understanding of and adherence to fiduciary responsibilities and best practices.

Recommendations of the Panel:

- Congress should:
  - Direct the Secretary of the Treasury to amend the federal tax regulations to:
    - Require that an organization have a minimum of three members on its governing board in order to meet the 501(c)(3) tax-exempt status.
    - Require that public charities have at least 1/3 of its governing board be independent—meaning individuals who have not received compensation or material benefits directly or indirectly from the organization in the previous 12 months, whose compensation is not determined by other board or staff members, and who is not related to someone who received such compensation.
    - Prohibit individuals barred from serving on boards of publicly traded companies or convicted of crimes directly related to breaches of fiduciary duty in their service as an employee or board member of a charitable organization from serving on the board of a charitable organization for 5 years following their conviction or removal.
- The IRS should:
  - Revise Forms 990 and 990-PF to require a charitable organization to disclose which of its board members are independent.
- Charitable organizations should:
  - Review their board size periodically to determine the most appropriate size to ensure effective governance and to meet the organization's goals.
  - Establish strong and effective mechanisms to ensure that the board members are aware of their legal and ethical responsibilities in ensuring that the organization is governed properly.
  - The board of directors should as a recommended procedure ensure that the positions of CEO, Board Chair and Board Treasurer are held by separate individuals.
- The charitable sector should:
  - Provide information and education to its organizations regarding the roles and responsibilities of board members and the factors that boards should consider in evaluating the appropriate size and structure needed to ensure the most effective and responsible governance.

5. TRAVEL EXPENSES

Under the current law, charitable organizations may reimburse travel expenses so long as they are documented to establish that they were incurred in connection with the individual's work for the organization. Recently, the media has called attention to excessive travel expenditures paid for by charitable organizations. Although these expenditures may not be illegal, they raise ethical questions. Thus, the Panel seeks to set specific limits on travel expenses of charitable organizations.

Recommendations of the Panel:

- The IRS should:
  - Require charitable organizations to disclose on their Form 990 series returns whether or not they have a travel policy.
  - Provide specific information in the instructions to the Forms 990 and 990-PF regarding travel costs that are not permitted or that should be reported as taxable income.
  - Charitable organizations should:
- Prohibit payment or reimbursement of travel expenditures for spouses, dependents, or others accompanying individuals conducting business for the organization.
  - Establish and implement policies that provide clear guidance on their travel rules, including the types of expenses that can be reimbursed and the documentation required.

6. AUDIT COMMITTEES

It is the responsibility of the board of directors to ensure that the charitable organization's financial matters are conducted legally, ethically and in accordance with proper accounting rules. A problem occurs when board members are not objective (*i.e.*, lack "independence") or do not have the expertise to oversee the audit process. Thus, the Panel gives suggestions for how charitable organizations can improve the quality of their board's financial knowledge.

- *Recommendations of the Panel:*
  - Charitable organizations should:
  - Include individuals with some financial literacy on their boards of directors.
  - Consider establishing a separate audit committee comprised of either financially literate board members and non-staff advisors, if state law permits.
- The charitable sector should:
  - Educate charitable organizations about the importance of the auditing function.

B. TRANSPARENCY

1. DISCLOSURE OF PERFORMANCE DATA

Currently, charitable organizations are required to describe their four largest program services on the Form 990 series returns. However, this limited information is not sufficient to indicate the effectiveness of the organization in accomplishing its goals.

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Thus, the Panel seeks to have organizations disclose more information evaluating their services so that the public may make informed judgments about their contributions.

Recommendations of the Panel:

- Congress should ***not***:
  - Authorize the IRS to require charitable organizations to report more detailed statements of program evaluations or performance measures.
- Charitable organizations should:
  - Provide detailed information about their programs, including methods used to evaluate the outcomes of programs, and other statements available to the public through its annual report, website, and other means.

2. FINANCIAL AUDITS AND REVIEWS

The Office of Management and Budget requires non-federal organizations that receive federal awards of $500,000 or more per year to perform an audit of the federal funds received and expended and the programs for which the funds were received. Other than this, there are no other federal requirements for financial audits of charitable organizations. Thus, the Panel hopes to improve the quality of financial information by having charitable organizations follow generally accepted accounting principles and auditing standards.

Recommendations of the Panel:

- Congress should:
  - Amend the Internal Revenue Code to:
    - Require charitable organizations with at least $1 million in total annual revenues to have an audit conducted and attach audited financial statements to their form 990 series returns.
    - Require all charitable organizations with annual revenues between $250,000 and $1 million to have financial statements reviewed by an independent public accountant.
  - Direct the Secretary of the Treasury to specify in regulations that the audited statements should be made available to the public on the same basis as the annual information returns.

3. INTERNAL REVENUE SERVICE REPORTING

IRS Forms 990, 990-EZ and 990-PF are the primary documents providing information about a charitable organization's finances, governance, operations and programs for federal regulators, the public and many state charity officials. Presently many of these forms are not completed accurately, and delays in filing prevent current information from being available to the public.

Recommendations of the Panel:

- Congress should:
  - Amend the Internal Revenue Code to:
    - Permit the IRS to require mandatory electronic filing of all Form 990 series returns.
    - Authorize funding to enable the IRS to move forward with mandatory electronic filing of all Form 990 series returns.
  - Direct the IRS to require that the Form 990 series returns be signed, under penalties of perjury, by the CEO, the CFO, or the highest ranking officer.
    - Require all 501(c)(3) organizations that are currently excused from filing an annual information return to file an annual notice with the IRS with basic contact information.
    - Require charitable organizations to notify the IRS if and when they cease operations and to file a final Form 990 series return.
    - Extend penalties imposed on income tax preparers of personal and corporate tax returns for omission or misrepresentation of information, willful or reckless misrepresentation, or disregard of rules and regulations to preparers of Form 990 series returns.
- The IRS should:
  - Revise the Form 990 series returns to ensure accurate, complete, timely, consistent, and informative reporting, including:
    - Clear and consistent financial and program description summary information.
    - Separate and distinct sections for information relevant only to particular types of organizations.
    - First-page information about the organization's charitable purpose.
    - Clear and consistent definitions of terms.
    - Separate the required disclosure of compensation paid to its board members or trustees, its CEO and all its officers as well as, and the five highest compensated employees.
    - Require disclosure of compensation paid to employees who are related to a board member or officer of the organization who are paid more than $50,000 in the tax year.
    - Require disclosure of which board members are independent.
    - Require disclosure of whether the organization has a conflict of interest policy.
    - Require disclosure of whether the organization has a travel expense policy.
  - Enforce existing financial penalties imposed on organizations and/or their managers for failure to file complete or accurate returns, when existing penalties do not result in compliance by the charity after two consecutive years, the IRS should suspend their tax-exempt status.
- Charitable organizations should:
  - Have their board, or an appropriate committee of the board, review the Form 990 series returns annually.

II. CONGRESSIONAL ACTION

Now that an initial round of hearings have been held, the Senate Finance Committee indicated that the next step would be the introduction of legislation. The makeup of that legislation is currently being debated in the Committee. A Bill is expected to be submitted for consideration in late summer or early fall.

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CHARITABLE REFORM BILL

On April 25, 2005, the Finance Committee gave some insight into what the proposed legislation might cover.

The following are areas for consideration:

- Rules regarding executive compensation.
- Rules regarding joint ventures of nonprofits.
- Rules regarding intermediate sanctions.
- Specific guidelines for nonprofit corporate governance.

III. IRS INITIATIVES

The IRS has considered a number of areas in which it can provide further oversight of charitable organizations and it has given this matter some importance as outlined in its 2005-2009 Strategic Plan. An overview of some of the areas under consideration by the IRS are discussed below.

A. IRS STRATEGIC PLAN FOR 2005-2009

The IRS Strategic Plan provides a roadmap for IRS operations over the next five years. The Plan for 2005-2009 recognizes the increasing need to regulate the charitable sector. One of the Plan's four key objectives addresses this problem specifically. That objective is to:

- Deter abuse within tax exempt and governmental entities and misuse of such entities by third parties for tax avoidance and other unintended purposes.

B. BUDGET INCREASE

In fiscal year 2005, the IRS's Exempt Organization division budget increased 13.8%. This additional funding allowed the IRS to accomplish the following:

- Expand its presence in the community by interacting with a greater number of charitable organizations.
- Add 69 compliance employees.
- Establish two new offices—the Exempt Organizations Financial Investigations Unit and the Exempt Organizations Compliance Unit.

C. REVISION OF FORMS 990 AND 990-PF

The IRS is currently working on improving Forms 990 and 990-PF. The timing of the revision is dependent on the IRS' partners—the states, 37 of which use the Form 990 as a state filing, and software developers. The new form is anticipated to include a separate schedule and/or detailed questions relating to the following:

- Credit counseling activities.
- Supporting organizations.
- Compensation practices.
- Organizational governance.

D. MANDATORY e-FILING

On January 11, 2005, the IRS released regulations[1] that require charitable organizations with total assets of $100 million or more to file their tax year 2005 Form 990 electronically. Beginning in 2007, the electronic filing requirement will be expanded to include the tax year 2006 tax returns of charitable organizations with $10 million or more in total assets. Additionally, private foundations and charitable trusts will be required to electronically file their Form 990-PF regardless of their asset size. It is important to note that these requirements only apply to charitable organizations that file at least 250 returns, including income tax, excise tax, employment tax, and information returns, during a calendar year. Overall, the IRS predicts that by 2007 up to 10,000 charitable organizations will fall under this requirement.

E. TAX EXEMPT COMPENSATION ENFORCEMENT PROJECT

On August 10, 2004, the IRS announced its new enforcement effort to identify and halt abuses by charitable organizations that pay excessive compensation and benefits to their officers and other insiders.

The purpose of this project is to enhance compliance by:

- Identifying practices organizations use to set compensation.
- Learning how organizations report compensation to the IRS and the public.
- Creating positive tension for organizations as they decide on compensation arrangements.
- Gathering detailed information from 2000 charitable organizations concerning the independence of the governing body that approved the compensation and the duties and responsibilities of these executives.
- Identifying organizations that failed to supply, or did not fully complete, compensation information on Form 990, and requiring them to file amended returns immediately.

In late March of 2005, charitable organizations started receiving letters requesting this information. As of April 5, 2005, the IRS had completed reviews of approximately 500 of the 2000 charitable organizations that it sought to contact.

IV. STATE INITIATIVES[2]

A. STATE LAWS

The following are laws that have been enacted by various States since June 1, 2004.

1. CALIFORNIA

[1] These temporary and proposed regulations amend 26 C.F.R. Parts 1 and 301.
[2] This state information was gathered from a study by the National Council of Nonprofit Associations.

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California was the first state to enact a law specifically aimed at the corporate governance and accountability of charitable organizations. The California Nonprofit Integrity Act was signed on September 29, 2004 and took effect January 1, 2005. It applies to all legal entities that "do business" or "hold property" in California for charitable purposes. The Attorney General's Office opined that "doing business" includes the following activities: soliciting donations by mail, by advertisements and publications, or by any other means from outside California; holding meetings of the board or corporate members in California; maintaining an office in California; having officers or employees who perform work in California; conducting charitable programs in California; or maintaining financial accounts or investments at an office of a financial institution located within California.

The Act includes the following provisions:

- All charitable organizations subject to the jurisdiction of the Attorney General's office are required to register within 30 days of their initial receipt of property or money in California.
- The board of directors or a board committee must review and approve the compensation of the president or CEO and treasurer or CFO to assure that it is "just and reasonable."
  - This review shall occur upon the hiring of the officer, whenever the term of employment is renewed or extended, and whenever the officer's compensation is modified.
- Charitable organizations with gross revenues over $2 million in any year must:
  - Have an independent certified public accountant prepare audited financial statements using generally accepted accounting principles.
  - Have an audit committee appointed by the board, which may not include the president, CEO, treasurer, CFO, or any other staff members of the charitable organization.
    - The audit committee is responsible for the following:
      - Recommending to the board of directors the retention and termination of the independent auditor.
      - Conferring with the auditor to satisfy its members that the financial affairs of the organization are in order.
      - Reviewing and determining whether to accept the audit.
      - Approving performance of non-audit services by the auditing firm.
      - Assuring that any non-audit services performed by the auditing firm conform to standards for auditor independence.
- Any charitable organization that prepares audited financial statement must make these statements available to both the Attorney General's office and the public within nine months after the close of the fiscal year to which they relate.

2. CONNECTICUT

On June 7, 2005 Connecticut passed a law enhancing the oversight and accountability of charitable organizations within the state.

The law makes the following changes:

- Charitable organizations must register annually rather than once.
- Each year charitable organizations must prepare an annual financial report.
- If a charitable organization's gross revenue exceeds $200,000, it must file an audited financial statement.
- Prohibits persons engaged in the conduct of the affairs of the charitable organization from:
  - Engaging in any financial transaction unrelated to the accomplishment of the charitable organization's charitable purpose, or which jeopardizes or interferes with the ability of the charitable organization to accomplish its charitable purpose.
  - Appropriating any property of the charitable organization for private use.
- Charitable organizations are prohibited from spending an unreasonable amount of money for solicitation or management.

3. HAWAII

On July 6, 2004, Hawaii passed a law giving the Attorney General the authority to remove any directors or officers who breach their duties in charitable organizations.

4. MASSACHUSETTS

On July 15, 2004, Massachusetts enacted a law regarding the filing requirements for public charities' financial statements. Charitable organizations with annual gross support and revenue of $500,000 and above must provide a full audit to the Public Charities Division. Charitable organizations with gross support and revenue of more then $100,000 and less than $500,000 must provide a financial review by an independent CPA.

5. NEW HAMPSHIRE

On June 11, 2004, New Hampshire passed a law requiring charitable organizations with revenues of $500,000 or more to file their most recent audited financial report with the Attorney General.

B. PROPOSED STATE LEGISLATION

Legislation has been proposed in the following States.

1. MASSACHUSETTS

The Massachusetts Attorney General has proposed "An Act to Promote the Financial Integrity of Public Charities." As of June 2005, no bill number has been assigned. It is currently in the Judiciary committee.

This proposed legislation would change the existing law in the following ways:
Board leaders and officers of charitable organizations will be required to verify that they have reviewed and accepted the financial filings submitted to the Division of Public Charities.

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Charitable organizations with revenues over $500,000 or with $5 million in assets same provide audits and have an audit committee.
Charitable organizations may not retaliate against whistle-blowing employees who complain about the misuse of charitable assets.
Individual officers and directors may not obtain excessive private benefits.
Charitable organizations must pay only reasonable compensation to employees, officers, or directors, and may allow only appropriate related-party transactions.
The Attorney General may seek penalties of $5,000 per violation, rather than the existing $500.

2. MICHIGAN

There is a proposed bill in Michigan that provides for increased penalties for someone who embezzles money from a charitable organization. This proposed bill has been referred to the Committee on Judiciary.

3. MINNESOTA

There is a proposed bill in Minnesota governing charitable organizations that receive state funds and who have employees whose salaries exceed the salary of the governor (currently $120,303). These charitable organizations must submit a list of the salaries of their three highest paid employees to the Attorney General. This bill sat in the State Government Finance Committee until the end of the session on May 23, 2005. The House Bill will continue to the next session which convenes in February 2006.

4. NEW JERSEY

There is a proposed bill in New Jersey that would require charitable organizations that raise over $150,000 in gross contributions to file an audited financial statement under the "Charitable Registrations and Investigation Act." This proposed bill has been referred to the Assembly Consumer Affairs Commission. The last day of New Jersey's legislative session is January 4, 2006.

5. NEW YORK

A bill introduced in New York would require charitable organizations who contract with professional fundraisers to disclose the percentage of their contributions that go to the fundraiser and to the organization. This proposed bill has been referred to the Committee on Senate Finance.

New York has also proposed another piece of legislation that would regulate the accountability of charitable organizations. This proposed bill would prohibit self-dealing between an officer or director and a charitable organization. It also encourages boards of directors to form executive and audit committees. This proposed bill has been referred to the Committee on the Judiciary. The last day of New York's legislative session is January 4, 2006.

6. NORTH CAROLINA

North Carolina has proposed a bill that would require charitable organizations to spend at least 65% of their budget on the charitable purpose that is the basis of their tax-exempt status. This proposed bill has been referred to the House Committee on finance and the last day of the legislative session is July 29, 2005.

7. TEXAS

There is a proposed bill that would require certain charitable organizations to have their financial statements audited by an independent public accountant. The Senate's version of the bill sets this requirement for charitable organizations with gross revenues of $500,000 or more, while the House bill sets it at $250,000. This audit must be made available to the Attorney General and to the public. Furthermore, an audit committee must be appointed by the charitable organization. At the close of the legislative session, the bill was left pending in the House Business and Commerce Committee.

Texas also proposed a bill requiring that a charitable organization's board of directors complete the financial report within 180 days of the end of the fiscal year.

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APPENDIX A

LET THE DONOR DECIDE

A PROPOSAL FOR INCREASING NONPROFIT TRANSPARENCY

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Let The Donor Decide

A Proposal for Increasing Nonprofit Transparency

F. Sheffield Hale

As the Senate Finance Committee examines abuses in the nonprofit sector, a variety of proposals are circulating as to how to reform the sector to prevent fraud, mismanagement and waste of donor funds. The tenor of many of these proposals is to offer solutions that place a greater emphasis on increasing substantive regulation of nonprofit activities by the government. While many reforms are past due, some of the proposals suggested, such as regulation of nonprofit salaries, travel expenses and the size of nonprofit boards, begin to take the nonprofit sector, whose strength is its independence and flexibility, down a path of government control and one-size–fits-all regulation. The vast majority of the identified charitable abuses that have caused scandals in recent years are already illegal under existing laws. Many nonprofits argue that the solution is to allocate more resources to enforcement. But the reality we face is that the nonprofit sector consists of more than 1.3 million entities with an additional tens of thousands formed each year. The amount of enforcement one can reasonably expect the government to perform even with vastly increased resources will necessarily be limited.

The best approach to resolving these abuses is to increase accountability through a balanced combination of government regulation and enforcement, industry self regulation, and most importantly, increased monitoring by donors, the news media and watchdog groups. The key to success in each of these areas is to increase the mandated disclosure of a nonprofit's mission, operations and effectiveness. With adequate information, the government can set its enforcement priorities in a targeted manner, the public can decide who receives its donations and the news media can expose and shame outlying nonprofits into adopting best practices. This disclosure can be mandated in a way that is not burdensome to the sector.

The increased transparency of nonprofit operations has advantages to both the general public and the nonprofit sector by allowing nonprofits, particularly those which depend upon public support, to make the case for their mission and business models. Donors can choose which nonprofits are worthy of their investment. In a sense, nonprofits that rely on contributed funds are already more "public" than companies traded on the New York Stock Exchange, and they should be treating their disclosure to donors and the general public as though they were a public company. What company is more "public" than one that depends on annual individual investments to carry out its mission (nonprofits are always in the midst of a public offering of their "shares") and whose "capital" consists entirely of goodwill? In addition, the tax exempt status of the sector implies a broader public interest.

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The Internal Revenue Service ("IRS") Form 990 will need major revisions to become an adequate vehicle for increased accountability. As currently constituted the form is extremely difficult to read and understand. It is a tax return not a document designed for disclosure of information to a person of average business knowledge. In addition, the Form 990 does not provide clear information in areas that are today of most concern to regulators (including the IRS), watch dog groups, donors and the public at large: demonstration of a clear nonprofit purpose, good governance practices, and disclosure of meaningful financial information, compensation, and conflicts of interest. The current effort by the Panel on the Nonprofit Sector and two workgroups focused on examining major potential revisions to the Form 990 and Form 990 PF holds great promise for realizing practical and meaningful change.

The most expedient solution may be to replace the non-GAAP financial statements in Parts I-IV of the Form 990 with financial statements filed in accordance with GAAP (including explanatory footnotes) for all filers with over $500,000 of annual revenue (reviewed by an independent public accountant for all over $500,000, audited for all over $2 million). In addition, the disclosure now in Parts V and Schedule A would be replaced with the more meaningful disclosure discussed below. This additional disclosure could be provided in new sections or on an attachment that would contain "plain English" answers (like is now required in public company filings) to the following questions. At the nonprofit's discretion any additional information the nonprofit believes is relevant for a full understanding of its mission and operations may also be included.

The disclosure would include the following:

1. What are the mission activities of the nonprofit?
2. How does the nonprofit evaluate its effectiveness?
3. What were the nonprofit's accomplishments for the past year and what are its goals for the upcoming year (including information on how the nonprofit plans to achieve its goals and improve its mission delivery)?
4. What was the total compensation, including all fringe and retirement benefits for the five most highly compensated employees of the nonprofit for the past three years? Are non-employee directors/trustees compensated? If so, how? (The basic disclosure required in the SEC proxy rules provides a good format for this disclosure)
5. What was the basis for the determination of the total compensation of the executive officers? This type of enhanced disclosure benefits nonprofits that can show a methodical and reasoned process for their compensation decisions. The raw compensation data is currently available but it is provided without any explanation, and the public, armed with the compensation committee's or board's rationale, could make its own determination of whether the compensation is reasonable. The reports of compensation committees found in public company proxy statements provide a useful model.
6. What are the nonprofit's governance practices (e.g., size of board, frequency of board and committee meetings, description of committees)?
7. Does the nonprofit have a code of ethics and conflict of interest policy? Were there any executive officer or director related party transactions in the past three years? If so, please describe.
8. What is the travel reimbursement policy for the nonprofit?
9. For nonprofits with revenue in excess of $5,000,000, their disclosure should include an understandable discussion and analysis by management of the financial statements describing (i) revenue related activities and the associated costs, (ii) mission delivery and associated costs, and (iii) the cost of administration. The report and the discussion should contain two years of comparative financial information and a report of the Audit Committee (see public company proxy statement disclosure). Areas that the IRS and the watchdog groups believe are particularly relevant to judging nonprofits (fundraising or other overhead expenses, for example) could be required to be discussed in detail. The nonprofit would be required not only to provide the raw data of overhead expenses versus mission expenses, which are currently available and one of the primary measures for cross nonprofit comparisons, but also to comment on how it accomplishes its mission and measures its impact - the true return on investment discussion that is currently missing from both nonprofit disclosure and the analysis of third party watchdog groups.
10. Provide electronic copies of documents typically filed by publicly traded companies: articles of incorporation, bylaws, material contracts, code of ethics etc. (These documents would be filed only once, and then could be referenced in future filings until modified.)

While increased disclosure would require additional work by nonprofits, I do not believe that requiring this type of disclosure would be unduly burdensome. It is clearly less onerous than substantive regulation, and the level of disclosure could be tiered based upon the size of the entity with certain very small organizations being exempted entirely. The process of requiring an annual public articulation of purpose and reflection on the prior year's activities should help nonprofits focus on accomplishing their mission in accordance with best practices and such disclosure could be a powerful development tool.

These "annual reports" could be easily accessible for free and available to the widest audience possible through the Internet. Prospective donors could be directed to these reports on all solicitation materials. The increased openness of nonprofits will no doubt discourage indefensible practices and encourage the adoption of more efficient and effective ones.

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With this approach we would provide the best environment for an efficient and responsive nonprofit sector in a much more immediate and constructive manner than the government could hope to achieve through regulation. The Panel's recommendations, especially those with respect to increased transparency and accountability, promise to be major steps forward in best practices for the nonprofit sector which will lead to increased public trust in the nonprofit sector.

F. Sheffield Hale is the Chief Counsel of the American Cancer Society, Inc. Prior to joining the American Cancer Society in 2002, he was a Partner practicing corporate and securities law with the Firm of Kilpatrick Stockton, LLP.

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APPENDIX B

COMPARISON CHART OF CORPORATE GOVERNANCE AND TRANSPARENCY PRACTICES

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COMPARISON OF CORPORATE GOVERNANCE AND TRANSPARENCY PRACTICES

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Issue	Senate Finance Committee Draft Proposal	Current 990 or BBB Disclosure	10-K/Proxy/NYSE Disclosure Equivalent	Panel on the Nonprofit Sector Recommendations
Executive Compensation	The Finance Committee draft proposal makes no specific recommendations with respect to the disclosure of compensation information for executive officers of non-profit entities other than that it must be publicly disclosed, explained and justified.	Part V of the Form 990 requires a list of the officers, directors, trustees and key employees, as well as the compensation for such individuals. In its presentation in the 990, the compensation is broken down into three categories: (i) salary, fees, bonuses and severance payments; (ii) all forms of deferred compensation and future severance payments (whether or not funded, whether or not vested and whether or not the deferred compensation plan is a qualified plan); and (iii) taxable and nontaxable fringe benefits. Deferred compensation under a non-qualified plan is reported twice – once when it is accrued and again when it is paid. Schedule A of Form 990 requires the disclosure of the compensation for the five employees (other than officers, directors and trustees) with the highest annual compensation over $50,000.	The information required by Item 402 of Regulation S-K, which is required to be included in form 10-K (usually incorporated by reference to the proxy statement) and the proxy statement if certain matters are to be voted on by shareholders, is to be set out for the Chief Executive Officer and the four most highly compensated executive officers whose compensation exceeds $100,000. Item 402 requires clear and concise disclosure in tabular format (disclosure in the table is usually footnoted to provide precise information). The table format separately lists salary, bonus, other annual compensation, long term compensation (including restricted stock and securities underlying options or SARS which is not applicable to non-profits) and all other compensation.	Congress should amend federal tax laws to: Require executives and other disqualified persons who are charged with receiving excessive compensation to demonstrate that the compensation they receive is reasonable. Impose penalties on board members and other managers who approve of self-dealing or excess benefit transactions, if they "knew" or "should have known" that it was improper. Increase penalties on executives and other disqualified persons who are found to receive excessive compensation to 25% of the excess amount, and retain the requirement to repay the excess amount to the organization.

Issue	Senate Finance Committee Draft Proposal	Current 990 or BBB Disclosure	10-K/Proxy/NYSE Disclosure Equivalent	Panel on the Nonprofit Sector Recommendations
		Form 990 also states that the organization "may" also provide an attachment to explain the entire year's compensation. The Better Business Bureau Wise Giving Alliance does not prescribe any specific disclosure of executive compensation.	Other annual compensation includes prerequisites and other personal benefits unless the aggregate amount of such compensation is the lesser of $50,000 or 10% of the total annual salary and bonus. Each prerequisite or other personal benefit exceeding 25% of the total prerequisites and other personal benefits for a named officer must be identified by type and amount in a footnote. All other compensation includes amounts paid, payable or accrued in connection with resignation, retirement or any other termination or a change in control, amounts contributed by the organization to vested and unvested defined contribution plans and the dollar value of insurance premiums paid by, or on behalf of, the organization. In addition to the tabular presentation of executive compensation, Item 402 requires tabular disclosure of any defined benefit or actuarial plan. The pension plan table (which applies to any plan under which benefits are determined by final compensation or average final compensation and years of service) shows estimated annual benefits payable upon retirement (including amounts attributable to any	Increase the excise tax on managers who approve self-dealing or excess benefit transactions. The first-tier tax for approval of excess compensation should be increased from 2.5% to 10%. The first-tier tax for approval of self-dealing transactions should be increased from 2.5% to 5%. The cap on first-tier penalties should be increased from $10,000 to $20,000. The IRS should revise Forms 990 and 990-PF to require charitable organizations to: Disclose the full compensation paid to its CEO and other officers. Clearly distinguish between base salary, benefits, bonuses, long-term incentive compensation, deferred compensation, and other financial arrangements. Disclose the compensation paid to the five highest compensated employees.

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Issue	Senate Finance Committee Draft Proposal	Current 990 or BBB Disclosure	10-K/Proxy/NYSE Disclosure Equivalent	Panel on the Nonprofit Sector Recommendations
			defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Certain narrative disclosure is required for any defined benefit or actuarial plan under which benefits are not determined primarily by final compensation or average final compensation and years of service.	Disclose the compensation paid to all employees who are related to a board member or officer if they are paid more than $50,000/tax year. Disclose whether the organization followed the "rebuttable presumption" procedures in determining the reasonableness of compensation provided to the CEO. Charitable organizations should approve any change in the compensation of the CEO annually and in advance, and review the organization's full staff compensation program periodically.
Signature by Chief Executive Officer	The Finance Committee proposal suggests requiring the Chief Executive Officer (or equivalent officer) of tax-exempt organization sign a declaration under penalties of perjury that the CEO has put in place processes and procedures to ensure that the organization's Federal information return	Form 990 requires that an officer of the organization sign the 990. The signature block of the 990 includes the following statement: "Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete, and that I am authorized to prepare this form."	CEOs and CFOs of public companies are required to provide two certifications with respect to periodic reports. The first certification certifies that, to the signer's knowledge, the report does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made not misleading, the financial statements and other financial information presented fairly presents in all material respects the	Congress should direct the IRS to require that the Form 990 series returns be signed, under penalties of perjury, by the CEO, the CFO, or the highest ranking officer, or, if the organization is a trust, by a trustee.

Issue	Senate Finance Committee Draft Proposal	Current 990 or BBB Disclosure	10-K/Proxy/NYSE Disclosure Equivalent	Panel on the Nonprofit Sector Recommendations
	and tax return complies with the IRC and that the CEO was provided reasonable assurance of the accuracy and completeness of all material aspects of the return.	The BBB has no such requirement.	financial condition of the company, the company's officers have established and maintained disclosure controls, and have established and maintained internal controls. In the second certification the signer certifies that the report is in compliance with Section 13(a) and 15(d) of the Securities Act and the information presented fairly represents, in all material respects, the financial condition and results of operations of the company.	
Electronic Filing	The Finance Committee proposal suggests that the IRS require tax exempt organizations to file electronically.	No current requirements.	The Securities and Exchange Commission requires electronic filing of nearly all filings through its EDGAR filing system.	Congress should: Authorize funding to enable the IRS to move forward with mandatory electronic filing of all Form 990 series returns. Amend federal tax laws to permit the IRS to require all charitable organizations to file their Form 990 series returns electronically.
Financial Statements	The Finance Committee proposal suggests the filing of financial statements with the form 990 (i.e., public disclosure of financial statements).	BBB requires financial statements prepared in accordance with GAAP.	Audited financial statements must be filed with Form 10-K.	Congress should: Amend the tax laws to require all charitable organizations that are required to have audited financial statements to attach them to the Form 990.

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Issue	Senate Finance Committee Draft Proposal	Current 990 or BBB Disclosure	10-K/Proxy/NYSE Disclosure Equivalent	Panel on the Nonprofit Sector Recommendations
				Direct the Secretary of the Treasury to specify in regulations that the audited statements to should be made available to the public on the same basis as the annual information returns.
Independent Audit/Auditor Requirements	The Finance Committee proposal suggests the implementation of a requirement that the 990 be reviewed by an independent auditor. The auditor's report would be attached to the Form 990 and would be a public document. For exempt organizations with over $250,000 of gross receipts, an independent audit of the organization's financial statements would be required, including a certification regarding the organization's exposure to unrelated business income tax. A new auditor would have to be used at least every five years.	Form 990 has no requirements. BBB requires that when an organization's total gross income exceeds $250,000, the financial statements be audited in accordance with GAAP and the auditor should issue an unqualified opinion. (Many states have a similar requirement.)	Audited financial statements must be filed with Form 10-K. The Audit Committee has the right to hire and fire the auditors. While the audit firm does not have to rotate, lead and concurring partners on the account must rotate every five years (with a five year cooling off period) and all other audit partners must rotate every seven years (with a two year cooling off period). In addition, there are extensive regulations regarding Audit Committee approval of audit services, prohibited auditor services, auditor independence, and disclosure of fees paid for audit services.	Congress should amend federal tax laws to require: Charitable organizations that are required to file a Form 990 or 990-PF and that have at least $1 million in total annual revenues to have an audit conducted of their financial statements and operations. Charitable organizations that are required to file a Form 990 or 990-PF and that have at least $250,000 and under $1 million in total annual revenues to have financial statements reviewed by an independent public accountant.

Issue	Senate Finance Committee Draft Proposal	Current 990 or BBB Disclosure	10-K/Proxy/NYSE Disclosure Equivalent	Panel on the Nonprofit Sector Recommendations
Affiliations	The Finance Committee proposal suggests a chart setting forth the organization's affiliation with exempt and nonexempt organizations, as well as enhanced disclosure of taxable subsidiaries.	No current requirements.	Form 10-K requires the inclusion of a list of subsidiaries of the company, including state or other jurisdiction of incorporation or organization and the names under which subsidiaries do business.	No current recommendations.
Organizational Performance/ Goals	The Finance Committee proposal suggests that for charitable organizations with over $250,000 in gross receipts, the 990 include a detailed description of the organization's annual performance goals and measurements for meeting those goals (as determined by the organization's board of directors). In addition, all charitable organizations would be required to disclose material changes in activities, operations or structure.	Part III of Form 990 requires an organization to state its exempt purpose, as well as give a description of its exempt purpose achievements in a clear and concise manner. In addition, in Section VI, Form 990 requires the organization to report if it engaged in any activity not previously engaged in by the organization. The BBB standards require the Board of Directors to assess, no less than every two years, the organization's performance and effectiveness of determining future actions required to achieve its mission. The BBB standards also requires that a written report that outlines the results of the performance and effectiveness	Item 303 of Regulation S-K (Management's discussion and analysis of financial condition and results of operations), which is required to be included in Form 10-K, requires public companies to discuss their financial condition and results of operations. The discussion is to include certain information with respect to liquidity, capital resources, and results of operations and also other information the company believes to be necessary to an understanding of its financial condition and results of operations. Item 101 of Regulation S-K, which is to be included in Form 10-K, requires that a company give a description of the development of its business during the past five years, financial information on its segments and a narrative description of the business.	Congress should *not* authorize the IRS to require charitable organization to report more detailed statements of program evaluations or performance measures. Every charitable organization should, as a recommended practice, provide detailed information about its programs, including methods it uses to evaluate the outcomes of programs, and other statements available to the public.

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		assessment and recommendations for future actions be submitted to the organization's governing body.		
Website Disclosure	The Finance Committee proposal suggests requiring exempt organizations to maintain a website that would include any return that is required to be made public by present law, the organization's application for tax exemption, the organization's determination letter from the IRS and the organization's financial statements for the most recent five years.	The BBB standards require that the information required to be included in annual reports (organization's mission statement, summary of the past year's program service accomplishments, roster of officers and members of the board of directors and financial information that includes total income in the past fiscal year, expenses in the same program, fundraising and administrative categories as in the financial statements and ending net assets), the mailing address of the charity and the charity's most recent Form 990 be included on any website that solicits for contributions.	Public companies are required to disclose in Form 10-K the company's website address, if it makes its periodic reports available on its website, if not, the reasons it does not do so and if the company will provide electronic or paper copies of its periodic reports upon request. Public companies are required to post their Section 16 reports (reports of insider holdings) or a link to their Section 16 reports on their website. NYSE requires its member institutions to include its corporate governance guidelines, code of business conduct and ethics and the charters of its most important committees.	No current recommendations.
Compensation Decisions and Use of Consultant	The Finance Committee proposal suggests that all compensation arrangement be explained, justified and publicly disclosed. Compensation for all management positions must be approved in	Form 990 requires public disclosure of executive compensation as described above.	Item 402(k) of Regulation S-K requires a Board compensation committee report on executive compensation. The report must include a disclosure of the compensation committee's compensation policies applicable to the company's executive officers,	The IRS should require charitable organizations to disclose on the Forms 990 and 990-PF whether the organization followed the "rebuttable presumption" procedures in determining the reasonableness of compensation provided to the CEO.
	advance annually unless there is no change to compensation other than an inflation adjustment. In addition, any compensation consultant utilized must be hired by and report to the board and must be independent.		including the specific relationship of corporate performance to executive compensation for the last completed fiscal year. In addition, the compensation committee report must include a discussion of the compensation committee's bases for the CEO's compensation reported for the last completed fiscal year, including the factors and criteria upon which the CEO's compensation was based. The report must include a specific discussion of the relationship of the company's performance to the CEO's compensation for the last completed fiscal year, describing each measure of the company's performance, whether qualitative or quantitative, on which the CEO's compensation was based. NYSE rules require the compensation committee to be composed entirely of independent directors. The compensation committee is to review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and, either as a committee or together with the other independent directors (as directed by the Board), determine and approve the CEO's compensation level based on this evaluation, make recommendations to the Board with	If the board of directors chooses to use a compensation consultant to evaluate the compensation of the CEO, then, as a recommended practice, the consultant should be independent and should be hired by and report to the board or a designated board committee.

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			respect to non-CEO compensation, incentive-compensation plans and equity-based plans, and produce the compensation committee report to be included in the company's proxy statement or Form 10-K. Under NYSE rules, the compensation committee's charter should give the compensation committee the sole authority to retain and terminate a consulting firm, including the sole authority to approve the firm's fees and other retention terms.	
Audit Control/Audit Committee	The Finance Committee Proposal suggests that the Board review and approve the auditing and accounting principles and practices used in preparing the organization's financial statements and have the authority to retain and replace the organization's independent auditor.	The BBB standards required the Board to annually receive the organization's audited financial statements and auditor's management letter.	Section 301 of the Sarbanes-Oxley Act provides that national securities exchanges and associations may not list a company unless each member of the company's audit committee is independent (as that is defined under Section 301), the audit committee is directly responsible for the appointment, compensation, retention and oversight of the work of the company's auditor, and the auditor reports directly to the audit committee. Under the NYSE rules, the audit committee's charter must address the committee's purpose which is to (a) assist Board oversight of the integrity of the company's financial statements, the company's compliance with legal	Every charitable organization that has its financial statements independently audited, whether legally required or not, should consider establishing a separate audit committee of the board. If the board does not have sufficient financial literacy, and if state law permits, it may form an audit committee comprised of non-voting, non-staff advisors rather than board members.

Issue	Senate Finance Committee Draft Proposal	Current 990 or BBB Disclosure	10-K/Proxy/NYSE Disclosure Equivalent	Panel on the Nonprofit Sector Recommendations
			and regulatory requirements, the independent auditor's qualifications and independence, and the performance of the company's internal audit function and independent auditors; and (b) prepare a report as required to be included in the company's proxy statement. Item 306 of Regulation S-K, which is required to be included in a company's proxy statement, requires a company's audit committee to submit a report that states: (a) that the audit committee has reviewed and discussed the audited financial statements with management; (b) the audit committee has discussed with the independent auditors the matters to be discussed by SAS 61; that the audit committee has received written disclosures and the letter from the independent accountants required by Independence Standards Board Standard No. 1 and has discussed with the independent accountant the independent accountant's independence; and (c) based on the review and discussion of such matters, the audit committee recommended to the Board that the audited financial statements be included in the company's Annual Report on Form 10-K.	

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Conflict of Interest Policy	The Finance Committee draft proposal suggests requiring the Board of Directors to establish a conflicts of interest policy, which would be required to be disclosed in the organization's 990, and require a summary of conflicts determinations made during the 990 reporting year.	The BBB standards require a charity's Board of Directors to adopt a conflict of interest policy and regularly monitor it to ensure adherence. In addition, the BBB standards require that a charity not have any transactions in which any Board or staff members have material conflicting interests with the charity resulting from any relationship or business affiliation. Form 990 require organizations to disclose if they have directly or indirectly engaged in (a) the sale, exchange or leasing of property, (b) the lending of money or other extension of credit, (c) the furnishing of goods, services or facilities, the payment of compensation or (d) the transfer of any part of the organization's income or assets with substantial contributors, trustees, directors, officers, creators, key employees or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary.	The NYSE rules requires listed companies to adopt and disclose a code of business conduct and ethics for directors, officers and employees, and promptly disclose any waivers of the code for directors or executive officers. Under the NYSE rules, the code should address conflicts of interest, corporate opportunities, confidentiality, fair dealing, protection and proper use of company assets, compliance with laws, rules and regulations and encouraging the reporting of any illegal or unethical behavior. SEC rules require companies to adopt a code of ethics that covers their CEO, CFO, chief accounting officers and controller, or persons performing similar functions.	Every charitable organization as a matter of best practice should: Adopt a conflict of interest policy. Establish policies and procedures that encourage individuals to come forward with credible information on illegal practices or violations of adopted policies. The IRS should revise the Form 990 series returns to require disclosure of whether a charitable organization has a conflict of interest policy.

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