

Not-for-Profit Governance Reform: A Long Hot Summer?

NFP Governance Reform heated up this week on Capitol Hill. Both the House Ways & Means Subcommittee on Oversight (Oversight) and Senate Finance Committee (SFC) started hearings on NFP Governance Reform. Ways & Means Chair Thomas promised a “very long series” of hearings, and SFC staff published a “*Discussion Draft*” white paper that proposes unprecedented reforms to how NFPs are governed and how federal/state regulators monitor and enforce reform. Collectively, these and other flash points in the states and class action lawsuits on behalf of the uninsured spotlight broad frustration, real and imagined, with the way NFP’s do business.

The Oversight hearing covered the recurring debate on hospital billing practices and whether hospitals provide enough care to the uninsured. The SFC hearing, attended by Venable’s Sam Olchyk, featured some twelve witnesses and 200 pages of testimony. Support for NFP Governance Reform came from diverse sources: law reviews from Hawaii, Iowa, Harvard; charitable giving and insurance consultants; and a report on present regulation of NFP’s by the Joint Committee on Taxation.

In this *NFP Governance E-lert*, we list some Governance hot buttons that are energizing calls for reform. Then, we list some points in the SFC white paper that the staff said were to “*encourage and foster additional comments and suggestions. . . [for] possible legislation.*” In future *E-lerts*, we will report developments and share information to help you decide where and when to invest Governance reform energy and resources. Often there is a difference between “best practice” and “right practice” for your organization.

Key Hot Buttons for NFP Governance Reform

- Congress needs **revenue**; NFP’s are fertile ground (Assets: \$2.1 trillion – Revenue \$940 billion) for fees, fines, excise taxes
- Boards making **poor investments** that destroy the organization – horror stories
- Misuse of charities by wealthy, shrewd planners with **tax-avoidance schemes**
- **Board competence**; some “inattentive, ill-informed and self-interested”
- Continued irritation with **executive compensation** and “golden parachutes”
- **Form 990 reporting** too slow for regulators, stakeholders to react timely
- Improve **federal/state NFP regulatory alliances**: share information and regulatory clout
- Federalize NFP Governance **duties and standards of care**

Senate Finance Committee Staff Proposals in Draft White Paper (selected)

- IRS **tax-exempt status review every 5 years**; revoke if fail review; processing fees.
- Apply private foundation **related party rules** to public charities; amend **intermediate sanctions**
- Travel, meals **reimbursements capped at government rate**; penalty fees for excess
- IRS deputize **states to pursue tax law violations** by exempt organizations
- Stiffen **Form 990 standards**, penalty fees; deadlines
- **Post to your Web site**: Form 990 penalties paid, financial statements and audit results
- New Form 990 **disclosures**: audit report, affiliations chart, insider and ancillary deals, **tax opinions**, annual **performance goals and measurements**, number of **Board meetings with and without CEO** present.
- **Internal Governance Reforms** (*selected*)
 - Federalize “**prudent person**” duty standard

- Board member with special skill or expertise **held to standard of that skill**
- Executive compensation approved in advance, **examined by Board annually in “understandable” manner**
- Independent **auditor limited to five years**
- **Board size** at least 3, not more than 15; **one-fifth must be independent**
- Federal funds to **charity accreditation**; **federal grants limited to accredited** charities
- **Tax Court jurisdiction** to include equity powers; hear cases to remove board members

For more information on **Governance Reform** and "best practices" for not-for-profit organizations, please contact: [Robert Waldman](#), [Connie Baker](#), [Ted Ramirez](#), [Sam Olchyk](#) or [Jeff Tenenbaum](#).

If you have questions or comments on the content of this newsletter, please direct them to the Editor, [Ted Ramirez](#).

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