

# INCREASED GOVERNMENTAL SCRUTINY OF NONPROFIT ENTERPRISES

*Summary by Richard W. Meyer, Attorney at Law (1 / 2005)*

## CONGRESSIONAL ACTION AND PROSPECTS

--The long shadow of the **Sarbanes-Oxley Act** (nonprofit corporations may be roped in)

--**H.R. 7** (2004) --How will Congress “fix” the nonprofit world? Sen. Charles Grassley of Iowa, Chair of the Senate Finance Committee, is intent on tightening of nonprofit activities and reporting. Ranking Democratic member Sen. Max Baucus of Montana agrees that the I.R.S. is not enforcing against fraud and misrepresentation in the nonprofit sector. Proposals from H.R. 7 hearings in 2004:

- Recurring review of a nonprofit’s tax-exempt status by the I.R.S
- Expanding the reach of the Sarbanes-Oxley Act (which regulates publicly-traded corporations) to increase reporting and personal accountability of nonprofit executives and directors
- Performance reviews as part of the nonprofit’s annual I.R.S. Form 990 filing
- More fees for nonprofit filers, to pay for increased I.R.S. enforcement
- “Accreditation” of larger nonprofits
- Establish federal standards for board duties such as compensation and conflict of interests

The House Ways and Means Committee chair, Rep. Bill Thomas of California, may act, too.

## I.R.S. ENFORCEMENT AND PROPOSALS

- Increase I.R.S. audits of nonprofits (very few formal audits at present)
- “Light” I.R.S. visits / inquiries at 2,000 nonprofits promised in late 2004
- Change required reporting on Form 990 and verification by person(s) signing the return
- Excessive executive compensation now subject to “intermediate sanction” rules
- Hot issues for I.R.S. audits: car donations; donor-advised funds; tax shelters; salaries; connections between 501(c)(3), (c)(4), and “527” entities; use of charities by foreign terrorists

## BEST PRACTICES – POLICING BEYOND THE MARGINS – SPILLOVER ISSUES

- Even if Congress or the I.R.S. do not act decisively, trends and “best practices” in the nonprofit sector can compel intensified reporting and tighter operations
- States can enact legislation similar to H.R. 7 proposals (California has done so)
- The Independent Sector is chairing stakeholder groups to propose legislation, advocate best practices, standard codes of ethics, etc.
- Audit standards for nonprofits can be amended by accountancy boards
- Government agencies and foundation grant makers can require compliance with industry standards as a prerequisite to funding
- Misconduct and illegal practices in major national organizations have made headlines and will drive demands for reforms in accountability and transparency in the nonprofit sector