

cause "widespread disruption" to the health care system, but rather he supported looking at and addressing its "real inefficiencies" (219 DTR G-5, 11/13/08).

"I guess I would just come back and say there are lots of different ways of doing it," Orszag testified. "And if it were put on the table as part of health reform, lots of things that would need to be worked out." He said everything was on the table as the Congress and administration move forward on writing a plan.

Baucus said he and Grassley were continuing to work toward their goal of having a committee markup on a comprehensive health care bill in June and putting a bill on Obama's desk over the summer.

BY HEATHER M. ROTHMAN

Statements from the hearing are available at <http://finance.senate.gov/sitepages/hearing031009.htm>.

Exempt Organizations

Proposal to Cap Charitable Contribution Deductions Not Best Solution, Grassley Says

Sen. Charles Grassley (R-Iowa) said March 10 he is not convinced proposals to cap the deductibility of charitable contributions by wealthy individuals are the best solution for funding health care reforms.

"I am not an advocate for changing the tax deductibility that we have had and putting limits on it," the ranking Senate Finance Committee Republican told a gathering of tax-exempt executives at a breakfast meeting hosted by Buchanan Ingersoll & Rooney PC in Washington, D.C. "I think it serves a very good purpose," he said. "We need to maintain that."

Grassley said that one of his overarching reasons for undertaking oversight of the tax-exempt sector over the last seven years has been to protect the credibility of the tax deduction and make sure it is used for the purpose for which it was intended.

In his fiscal year 2010 budget blueprint, President Obama proposed reducing the charitable contributions that could be deducted for taxpayers earning more than \$250,000 from a 35 percent rate to a 28 percent rate as a way to pay for national health coverage.

Grassley said he questioned the wisdom of creating any disincentive to giving during the current economic crisis. He said more discussion would be forthcoming from the Senate Finance Committee on the proposal, and promised it would be fully explored during the budget process.

"If it is part of the budget and there is reconciliation, it might be something to worry about," he said, "but otherwise I would say, don't worry."

It is unclear at this point what, if any, legislation regarding charities and charitable deductions will be enacted by Congress, but he reminded the group that legislation is only one tool for ensuring accountability.

Other Proposals. Other proposals brought to Grassley that did not make it into recent stimulus legislation, including a federal bridge loan fund proposal that would have helped small charities not being paid timely on their contracts with state and local governments, have some merits, Grassley said. However, they raise questions about why various grant-making entities and funds would not be able to pool their resources to do

the same thing or increase their payouts to other charitable organizations.

Instead, he said it might be better to work toward a law mandating that states have to be timely in their payments to charities.

The proposal to simplify the private foundation excise tax also is worthy of consideration, Grassley said, but not necessarily as stimulus. Some foundations have decided it is the right thing to do to increase their payout now and worry about the additional excise tax later.

"That makes me wonder if foundations that are lobbying for this rule change would actually increase their giving if Congress was to enact it this very day," Grassley said.

Another proposal would have loosened the private foundation rules and regulations to more easily fund certain for-profit entities. There is very little information about the new entities, known as low-profit limited liability companies, he said. Neither Finance nor the House Ways and Means Committee have conducted any hearings about this approach, so Grassley said he was somewhat surprised that it showed up as a stimulative initiative. He said it is too early for his staff to consider this proposal.

Grassley also noted that a large foundation that decides it wants to continually fund a small charity might actually tip that charity into private foundation status, or if it increases its payout, it may be subject to an increased excise tax on its investment income down the road.

"For those foundations that view the 5 percent threshold as a floor rather than a ceiling, there is no reward," he said. "They get treated the same as those who treat the 5 percent as a ceiling and don't pay out any more money," he said.

Meanwhile, the longstanding proposal to expand the individual retirement account rollover provisions to increase the amount and allow individuals to rollover their money into donor-advised funds seemed more about helping individuals reduce their tax liability than helping people in the front lines, he said. "It's hard to see how rolling over money into a fund with no payout requirements gets money to where it can help the people who were intended to be helped," he said.

Walks Like a Duck. Grassley also addressed the application of the private foundation rules to public charities that "walk and talk" like private foundations, saying "it seems fair to me to ask why these private foundation rules shouldn't apply to them."

"Some are struggling because of poor decisions," he said. "Harvard's investment in illiquid private equity and hedge funds means they have to take out a loan to issue bonds to increase liquidity. Those who invested in Madoff [Bernard L. Madoff Investment Securities] appear to have boards that looked the other way in return for the promise of high earnings."

Both those examples raise questions of why the Internal Revenue Service jeopardy investment excise tax should only apply to private foundations, he said. On the other hand, he said, some of those rules create "perverse incentives for private foundations to give out more money."

It is timely to discuss the proposals now because some charities are legitimately struggling during the current economy, he said. Credit lines are no longer accessible, charitable donations and grants are down, and

state and local governments with which they have contracts have not paid up, he said.

Selective Subsidization. Roger Colinvau, an associate law professor at Catholic University, said the real question with the charitable deduction cap on the wealthy is who and what parts of the sector would be affected.

Colinvau said a recent study by the University of Indiana and Bank of America showed that giving to the arts would be affected first.

"So if there's a reduction in giving by the wealthy, what you would want to ask is which charities would be affected and does that bother you if those are the charities that are affected? Are we worried about those that are providing for the poor, the needy and homeless, or are we worried about all charities?" he asked. Colinvau said he looks at the proposal as an opportunity to think about who the country wants to subsidize "in a deliberate, rational way."

Congress also could tweak the proposals, he said. One approach could be to disfavor certain types of contributions, such as property, already disfavored in the tax code as a way to save money and drive cash to charity, as opposed to certain types of property contributions.

Redefining Charity. The definition of charity has been on the minds of minority staff members for some time, said Theresa Pattara, tax counsel for Senate Finance minority staff.

In terms of legislation, she said Grassley truly believes in self-correction and will step in when the sector does not police itself well enough. Grassley also wants to further the conversation on the distinction between public charity and private foundation status, and Pattara said the timing could not be better. Given the conversation the administration wants to have about deductions, exemption standards will come up as well, she said.

For instance, when it comes to universities and hospital, she said, it is fair to ask whether the standard for exemption should be the same as for a soup kitchen or a homeless shelter.

Pattara said it is difficult to see how some tax-exempt organizations are different from for-profit ones. She reminded the audience that on credit counseling Congress wrote into the tax code the standards that needed to be met, so it makes sense to consider that again for tax-exempt hospitals, which are one of the two largest parts of the exempt sector.

On private foundations that pay out more of their money for charitable purposes than others, Pattara said some foundations are not looking at the required 5 percent payout as a ceiling and have made a target that they want to spend their money now or at some period of time. The question has become why the rules continue to treat them the same as organizations that want to stay in existence for perpetuity. These are questions the staff has just started asking, she said, but it's fair to say there should be a comprehensive look at what existing regulations have done with an eye to leveling the playing field.

BY DIANE FREDA

Text of Grassley's prepared remarks is in TaxCore.

Health Care

Keep Employer-Based System but Address Employer Cost Shifting, Rep. Andrews Urges

Employer-based health care should be the basis of health care reform, but reform needs to address employer cost shifting, Rep. Robert E. Andrews (D-N.J.), chairman of the House Education and Labor Health Subcommittee, said March 10.

At a hearing on strengthening employer-based health insurance, Andrews noted the significant costs associated with providing insurance to every worker. Employers that provide health insurance to their own employees also pay for employees whose employers do not provide it, resulting in shifting costs from one employer to another, he added.

Andrews said cost shifting occurs because employees who do not have employer health insurance incur health costs that are passed on to hospitals that charge patients with health insurance more to recover those costs. That results in increased health insurance premiums to the employers that do provide health insurance to their employees, he said.

The focus of the hearing, the first in a series on health care reform, was to examine why this cost shifting is occurring and whether "shared responsibility" among all employers is essential to reforming the health care system in the least disruptive way, Andrews said. Everything is under consideration and nothing is outside of consideration, including mandates and subsidies, he said, adding, "I am for whatever works."

Do Not Undermine ERISA, Rep. Kline Says. "While we explore solutions, I want to caution against proposals that would undermine the Employee Retirement Income Security Act," Rep. John Kline (R-Minn.), ranking subcommittee member, said, referring to ERISA's preemption of state insurance laws.

"However well-intentioned, doing so would be an invitation to add benefit mandates and increase taxes on employers, which would likely stifle job creation and seriously undermine employer's ability to provide efficient, affordable health care coverage," Kline said.

Mark Derbyshire, owner of Aberdeen, Md.-based Park Moving and Storage, told the subcommittee that "businesses like mine that do provide health insurance end up bearing the brunt of the costs for the uninsured workers of other companies."

He testified that "when those uninsured workers end up at the emergency room, the cost of that care shows up on the hospital bills for my workers. My insurance company passes on those higher costs to me in higher premiums."

If all businesses were required to offer health insurance, the burden would be lightened for those who already provide insurance, Derbyshire added.

"Unfortunately, the underlying dynamics of our health care economy are not sustainable," John Sheridan, chief executive officer of Camden, N.J.-based Cooper University Hospital, told the subcommittee.

"As costs are shifted to the paying patients, premiums rise, and individuals and businesses are unable or unwilling to pay for health insurance coverage," Sheridan said. "This increases the number of uninsured and underinsured, which leads to further cost shifting, and