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Charitable Choice Provisions of H.R. 7

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Summary

H.R. 7, the Community Solutions Act, on July 19 won House passage without amendment by a vote of 233-198. The bill includes basic elements of President Bush's faith-based initiatives: tax incentives for private giving—scaled back from original proposals (Title I)—and expansion of charitable choice (Title II). (Title III deals with individual development accounts.) The House bill would apply to 9 new program areas “charitable choice” rules, which forbid discrimination on grounds of religion against faith-based organizations as providers of specified federally funded services. It includes provisions aimed at protecting the religious independence of faith-based organizations (for instance, the right to hire only co-religionists and retain symbols) and protecting the religious freedom of beneficiaries (for instance, the right to an alternate and accessible provider). The bill bars use of federal grant/cooperative agreement funds (but not voucher payments) for sectarian worship. This report will be updated to reflect major legislative developments.

Charitable choice is a set of provisions in law intended to allow religious organizations to provide federally funded services from designated programs on the same basis as any other nongovernmental provider without impairing the religious character of the organizations or the religious freedom of recipients. Charitable choice contains no earmarked funding for faith-based organizations. The 1996 welfare reform law first enacted charitable choice language, applying it to the new block grant program of Temporary Assistance for Needy Families (TANF) and, to the extent that they use contracts or vouchers, to food stamps, Medicaid, Supplemental Security Income (SSI), and child support enforcement. In 1998, Congress extended charitable choice rules to grants under the Community Services Block Grant Act and, in 2000, to grants for prevention and treatment of substance abuse under the Public Health Service Act.

As modified by the Ways and Means Committee and passed by the House, Title I of H.R. 7 would allow a non-itemizing tax filer in 2002 and 2003 a maximum deduction of \$25 (\$50 for joint filers) for charitable contributions; the amount would increase by stages, reaching \$100 (\$200 for joint filers) in 2010. (This provision is estimated to reduce revenue by \$6.4 billion over 10 years, compared with the original proposal's cost of \$84 billion.) Other tax provisions in the House bill include allowing persons aged 70-1/2 to make tax-free withdrawals from their individual retirement accounts for the purpose of

charitable giving, raising the cap on corporate charitable contributions; and enhancing the tax deduction for charitable donations of food inventories. In marking up Title III of H.R. 7, the committee voted to amend and extend the IDA program under the Assets for Independence Act and to double its authorized funding (rather than to establish a new IDA program financed by income tax credits to financial institutions). For details, see [<http://www.house.gov/jct/x-58-01.pdf>]. The rest of this report summarizes Title II, as modified by the Judiciary Committee and passed by the House. Italics show additions and other changes to the original bill. Many italicized portions are paraphrases, not verbatim quotes. For a side-by-side comparison of the House bill with existing charitable choice law, see RL31042; for background and selected legal issues, see RL31043.

Summary of the Charitable Choice Act (H.R. 7, Title II)

Purposes

- To provide assistance to needy individuals and families in the most effective and efficient manner;
- *To supplement the Nation's social service capacity by facilitating new and expanded efforts by religious and other community organizations in the administration and distribution of government assistance;*
- To prohibit discrimination against religious organizations on the basis of religion in the administration and distribution of government assistance;
- To allow religious organizations to assist in the administration and distribution of assistance without impairing their religious character; and
- To protect the religious freedom of those in need who are eligible for government aid, including expanding the possibility of their choosing to receive services from a religious organization. (**Section 1991(b)**) (The bill adds Section 1991 to Title XXIV of the Revised Statutes.)

Programs Covered

A program using federal funds that carries out activities that are:

- related to the prevention and treatment of juvenile delinquency and the improvement of the juvenile justice system, including programs funded under the Juvenile Justice and Delinquency Prevention Act;
- related to the prevention of crime *and assistance to crime victims and offenders' families*, including programs funded under Title I of the Omnibus Crime Control and Safe Streets Act;
- *related to the provision of assistance* under federal housing laws, including the Community Development Block Grant program;¹
- under the Older Americans Act;
- related to hunger relief activities;

¹ In the original H.R. 7, the Community Development Block Grant was listed separately.

- under *subtitle B or D* of Title I of the Workforce Investment Act;²
 - related to intervention in and prevention of domestic violence, *including programs under the Child Abuse Prevention and Treatment Act or the Family Violence Prevention and Services Act*;
 - under the Job Access and Reverse Commute grant program established by the Federal Transit Act; or
 - to assist students obtain equivalents of secondary school diplomas and activities relating to non-school-hour programs including programs under chapter 3 of subtitle A of Title II³ of the Workforce Investment Act or part I of Title X of the Elementary and Secondary Education Act.⁴
- (Section 1991(c)(4))**

Note: The House bill drops from coverage the Child Care and Development Block Grant (CCDBG), which has its own pre-1996 rules about religious providers.

Inclusion of Religious Organizations as Nongovernmental Providers

For a covered program carried out by the federal government, or by a state or local government with federal funds, the government must consider religious organizations on the same basis as other nongovernmental organizations, *and the program must be implemented*⁵ in a manner consistent with the Establishment and Free Exercise Clauses of the first amendment to the Constitution. (These clauses prohibit Congress from making a law respecting an establishment of religion, or prohibiting the free exercise of religion.) **(Section 1991(c)(1)(A))**

Prohibition on Discrimination Against Religious Organizations

Neither the federal government, nor a state or local government receiving funds under a covered program may discriminate against an organization that provides assistance or applies to provide assistance under the program, on the basis that the organization *is religious* or has a religious character. **(Section 1991(c)(1)(B))**

Funds Not Construed to Be Aid to Religious Organization or Endorsement of Religion or Organization's Religious Beliefs

Federal, state, or local government funds or other assistance received by a religious organization for the provision of services covered by this Act constitutes aid to needy

² Subtitle B provides basic grants to states for adult and youth training. Subtitle D provides grants for special national programs, administered by the Labor Department, including those for Native Americans, veterans, and migrants.

³ This refers to local grants for adult education and family literacy programs.

⁴ Twenty-First Century Learning Centers program. Activities carried out under federal programs providing education to children eligible to attend elementary or secondary schools are not covered unless they are provided under one of the above-listed authorities or are diploma-equivalent or non-school-hour programs.

⁵ The original bill said *if* the program were implemented in a manner consistent with . . .

individuals and families, the ultimate beneficiaries of the services, and not *support for religion or the organization's religious beliefs or practices*.⁶ *Notwithstanding the foregoing provisions, Title VI of the Civil Rights Act of 1964 (which forbids discrimination on the basis of race, color, and national origin) applies to organizations receiving direct assistance funded under any covered program. (Section 1991(c)(2))* The receipt by a religious organization of federal, state, or local government funds or other assistance under this Act is not⁷ an endorsement by the government of religion or the organization's religious beliefs or practices. **(Section 1991(c)(3))**

Religious Character and Independence

A religious organization that provides assistance under a covered program *has the right to* retain its autonomy from federal, state, and local governments, including its control over the definition, development, practice, and expression of its religious beliefs. Neither the federal government nor a state or local government *with federal funds* may require a religious organization to alter its form of internal governance; or to remove religious art, icons, scripture, or other symbols because they are religious, in order to be eligible to provide assistance under a covered program. **(Section 1991(d)(1) and (2))**

Employment Practices

Civil Rights Act exemption. The exemption of a religious organization under Sections 702 or 703(e)(2) of the Civil Rights Act regarding employment practices is not affected by the organization's provision of assistance under, or receipt of funds from, a covered program. *Any provision that is inconsistent with or would diminish the exercise of an organization's autonomy recognized in Section 702 or in this Act shall have no effect. Nothing in this Act shall alter the duty of religious organization to comply with Title 7 nondiscrimination provisions in the use of federal funds. (Section 1991(e))*

Other Nondiscrimination Laws

Nothing in this Act alters the duty of a religious organization to comply with federal laws prohibiting discrimination on the basis of: race, color, and national origin (Title VI of the Civil Rights Act); sex, blindness, and visual impairment (Title IX of the Education Amendments of 1972); disabilities (of otherwise qualified persons) (Section 504 of the Rehabilitation Act); and age (Age Discrimination Act). **(Section 1991(f))** (Note: In a floor colloquy Rep. Watts, bill sponsor, said he was willing to make a commitment to "more clearly address" in conference the issue of the effect of H.R. 7 on state and local anti-discrimination laws. The bill has no provision forbidding their preemption.)

Rights of Beneficiaries

Alternate provider. If a beneficiary or applicant has an objection to the religious character of the organization providing assistance, the appropriate governmental entity must provide, within a reasonable period of time, assistance from an accessible and

⁶ The italicized phrase replaced the words "aid to the religious organization."

⁷ The House bill omits the phrase "and should not be perceived as."

alternate provider *that is unobjectionable to the person on religious grounds*⁸ and that is at least equal in value to the aid that would have been received from the religious organization. The appropriate federal, state or local governmental entity must guarantee that notice of beneficiary rights to service from an alternative provider is given to beneficiaries or applicants for assistance under a covered program. **(Section 1991(g)(1)(2) and (3))**

Nondiscrimination against beneficiaries. A religious organization providing assistance through a grant or *cooperative agreement*⁹ may not discriminate, in carrying out the program, against a recipient or applicant on the basis of religion, a religious belief, or refusal to hold a religious belief. A religious organization providing assistance through a voucher, certificate, or other form of indirect assistance under a covered program *may not deny a recipient or applicant admission into the program*¹⁰ on the basis of religion, a religious belief, or refusal to hold a religious belief. **(Section 1991(h))**

Limitation on Use of Funds for Sectarian Activities

No funds provided through a grant or *cooperative agreement* to a religious organization for assistance may be spent for sectarian worship, instruction, or proselytization. *If the religious organization offers such an activity, it must be voluntary for the individuals receiving services and offered separate from the program funded under this Act.* Each recipient organization must file a signed certificate *certifying that it is aware of and will comply with*¹¹ the above rules. **(Section 1991(j))**

Authority for Secretary to Require Voucher/Certificate Use

When consistent with the purpose of a covered program, the Secretary of the department administering the program may direct that some or all of the funds be in the form of indirect assistance, provided this is determined to be feasible and efficient. Indirect assistance constitutes assistance in which an organization receiving funds through a voucher, certificate, or other form of indirect disbursement receives these funds only because of private choices of individual beneficiaries and without government endorsement of any particular religion, or of religion generally. **(Section 1991(l))**

Fiscal Accountability

A religious organization providing assistance *through a grant or cooperative agreement* is subject to the same regulations as other nongovernmental organizations to account for use of funds received in accord with generally accepted auditing principles. *If the organization provides assistance through a grant or cooperative agreement, it must segregate government funds provided under the program into a separate account or*

⁸ The original bill said that the government must provide assistance from an alternative provider, “including a nonreligious one.”

⁹ The House bill uses the term “cooperative agreement” in place of “contract.”

¹⁰ This phrase in the House bill replaces the words “shall not discriminate.”

¹¹ The original bill required “assurance” that the organization would comply.

accounts; if it provides assistance *through a voucher, certificate, or other form of indirect assistance, it may segregate government funds.*¹² Only the government funds are subject to audit by the government. *An organization providing services under any covered program must conduct annually a self-audit for compliance with its duties under this Section and submit a copy of the audit to the appropriate government agency, along with a plan to correct any variances.* **(Section 1991(i))**

Effect on State and Local Funds

If a state or local government contributes funds to carry out a covered program, the state or local government may segregate its funds from the federal funds or may commingle them. If funds are commingled, the provisions of this Act apply in the same manner, and to the same extent, as they apply to federal funds. **(Section 1991(k))**

Treatment of Intermediate Grantors

If an intermediate grantor¹³ (a nongovernmental organization acting under a grant or other agreement with a government entity) is given authority to select nongovernmental organizations to provide assistance under a covered program, the intermediate grantor has the same duties under this Act as the government when selecting or otherwise dealing with subgrantors; but if the intermediate contractor is a religious organization, it retains all other rights of a religious organization under this Act. **(Section 1991(m))**

Compliance

A party alleging that a state or local government has violated its rights under this Act may bring a civil action *for injunctive relief* against the *state* official or *local* government agency that has allegedly committed the violation. A party alleging that the federal government has violated its rights under this Act may bring a civil action *for injunctive relief*¹⁴ in Federal district court against the official or government agency that allegedly committed the violation. **(Section 1991(l))**

Training and Technical Assistance for Small Nongovernmental Organizations

Authorizes up to \$50 million annually for training and technical assistance to small nongovernmental organizations, as determined by the Attorney General, including religious organizations. This assistance may include help in creating Section 501(c)(3) corporations and in grant writing; referrals to other nongovernmental organizations providing expertise in accounting, legal issues, tax issues, program development and other organizational areas; and guidance on how to comply with federal nondiscrimination provisions. Reserves at least \$5 million for service to the disabled. **(Section 1991(o))**

¹² The original bill required segregation of funds whether received by contract or voucher and had no self-audit provision.

¹³ The House bill uses the term “intermediate grantor” in place of “intermediate contractor.”

¹⁴ The original bill allowed a civil action “for appropriate relief.”