

Report for Congress

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Faith-Based Organizations and Their Relationship with State and Local Governments: Analysis of Recent Initiatives

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Summary

Federal, state, and local governments have long collaborated with faith-based organizations (FBOs) to provide services to needy citizens. The issue of government funding for FBOs (charitable choice) is controversial and is receiving renewed public attention for two main reasons. First, President George W. Bush made a faith-based initiative a priority of his domestic agenda. His Administration hopes to expand tax incentives for private donations to charities, and to eliminate statutory, regulatory, and administrative barriers perceived to prevent FBOs from receiving federal funds. In December 2002, the President issued Executive Order 13279, instructing selected federal agencies to develop charitable choice policies. The second reason for renewed public attention is the 107th Congress's consideration of H.R. 7, and specifically Title II, the "Charitable Choice Act of 2001." Charitable choice rules are 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 FBOs or the religious freedom of beneficiaries. Title II proposed expanding provisions of charitable choice law to nine new program areas. H.R. 7 passed the House on July 19, 2001.

A Senate bill, the "Charity Aid, Recovery, and Empowerment Act of 2002" (CARE bill), S. 1924, did not contain extensive charitable choice provisions like those found in Title II in H.R. 7. It did, however, seek to prevent potential discrimination against FBOs in the awarding of federal grants.

State initiatives for increasing FBO access to government funds vary considerably. A limited number of states have enacted legislative and regulatory changes to increase such access and educated state and local officials about charitable choice rules. Others have concentrated their efforts on collaboration and awareness campaigns, rather than legislative or regulatory changes. On the other hand, many states have done little in response to charitable choice law. As with the state experience, local efforts to better utilize FBO resources have also varied.

Supporters of the faith-based initiative offered anecdotal information that FBOs can effectively deliver federally funded services in a wide range of program areas. This initiative, however, raises institutional issues about potential FBO effectiveness, accountability, and the working relationship of FBOs and state and local governments. Effectiveness issues include: range of services; lack of evaluative data; qualifications of FBO personnel; inclusion of religious content; and availability of secular alternatives. Accountability issues include: FBO ability to report results; vouchers and accountability; and separation of government funds. To an extent, questions about FBOs' working relationship with state and local governments are based on some adverse impacts of past efforts to incorporate community-based organizations into federally funded services. Some officials are concerned that new charitable choice legislation could disrupt good working relationships between FBOs and state and local governments. This report will be updated as circumstances warrant.

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Introduction

Federal, state, and local governments have long collaborated with faith-based organizations (FBOs) to provide services to needy citizens. FBOs can include a range of organizational types, but they generally fall into three categories: church congregations, national networks, and nonprofit religious organizations.¹ Some FBOs receive a significant amount of federal funding. In FY2001, for example, Catholic Relief Services received \$88 million in federal funds,² and World Vision Inc. received \$124 million.³ Most FBOs provide traditional social services, such as homeless programs and substance abuse programs, while others administer economic and community development programs.

Congress enacted the first charitable choice provision in the 1996 welfare reform law, authorizing states to "... administer and provide services under [certain federal] programs ... through contracts with charitable, religious, or private organizations."⁴ Charitable choice rules are intended to allow religious organizations⁵ 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 beneficiaries.

The issue of government funding for FBOs has received renewed public attention for two main reasons. First, President George W. Bush has made a faith-based initiative a priority of his domestic agenda. In January 2001, the President

¹ John McCarthy and Jim Castelli, *Religion-Sponsored Social Services: The Not-So-Independent Sector*, Nonprofit Sector Research Fund (NSRF), The Aspen Institute, 1999, pp. 53-54. See NSRF web site: [<http://www.nonprofitresearch.org/>], visited Dec. 18, 2002.

² Catholic Relief Services, 2001 Financial Summary, see web site at: [http://www.catholicrelief.org/about_us/financial_information/summary.cfm], visited Dec. 18, 2002.

³ World Vision Inc., 2001 Audited Financial Statement, see web site at: [http://www.worldvision.org/worldvision/comms.nsf/2001ar_home], visited Dec. 18, 2002.

⁴ P.L. 104-193, sec. 104(a)(1); 110 stat. 2161. The 1996 welfare law applied charitable choice rules to program areas under Temporary Assistance to Needy Families (TANF), food stamps, Medicaid, Supplemental Security Income, and child support enforcement.

⁵ Charitable choice legislation uses the term "religious organization." This report, however, uses the term "faith-based organization" (FBO), a more commonly used term.

issued a blueprint for his initiative, *Rallying the Armies of Compassion*.⁶ In the report, the Administration discussed the components of its faith-based initiative, including expanding tax incentives for private donations to charities, and eliminating statutory, regulatory, and administrative barriers that prevent FBOs from receiving federal funds. The President further established an Office of Faith-Based and Community Initiatives in the White House to coordinate the initiative.⁷ The Administration also instructed the Departments of Education, Justice, Labor, Health and Human Services, and Housing and Urban Development to establish faith-based offices. These departmental offices have sought to increase FBO access to federal grants by reducing regulatory, contractual, and other potential administrative obstacles.⁸

The second reason for renewed public attention is the 107th Congress's consideration of legislation with faith-based components. The most assertive proposal was in H.R. 7 (sponsored by Representatives Hall and Watts), and specifically Title II, the "Charitable Choice Act of 2001." The bill would have expanded FBO access to federal funds in nine program areas addressing crime prevention, juvenile delinquency, substance abuse, housing, job training, elderly services, child abuse, and hunger. It also contained a number of protections for FBOs, as well as for recipients of government-funded services. H.R. 7 passed the House on July 19, 2001.⁹

Faith-based legislation was also introduced in the Senate by Senators Lieberman and Santorum. The Charity Aid, Recovery, and Empowerment Act of 2002 (CARE bill), S. 1924, omitted some of the more contentious charitable choice elements in the House bill. As introduced, it contained tax incentives for charitable giving and provisions addressing equal treatment of all nongovernmental service providers, including FBOs.¹⁰ Unlike Title II of H.R. 7, the CARE bill did not seek to expand FBO access in specific federal programs. The equal treatment provisions were subsequently dropped from the Senate bill. In September 2002, however, the Senate Finance Committee filed a "consensus" manager's amendment (S.Amdt. 4719 to H.R. 5005) that restored the equal treatment provisions.¹¹ Although H.R. 5005, the "Homeland Security Act" was enacted, the Amendment did not pass. (All references to the CARE bill in this report refer to S.Amdt. 4719, unless otherwise noted.)

⁶ U.S. President (George W. Bush), *Rallying the Armies of Compassion*, Jan. 21, 2001. See White House web site: [<http://www.whitehouse.gov/news/reports/faithbased.html>], visited Dec. 18, 2002.

⁷ The Office's web site is: [<http://www.whitehouse.gov/government/fbci/>].

⁸ U.S. President (George W. Bush), "Agency Responsibilities With Respect to Faith-Based and Community Initiatives," Executive Order 13198, *Federal Register*, vol. 66, p. 8497, Jan. 31, 2001.

⁹ For an overview of the charitable choice provisions in H.R. 7, see CRS Report RS20948, *Charitable Choice Provisions in H.R. 7*, by Vee Burke.

¹⁰ S. 1924 (as introduced), Title III.

¹¹ S.Amdt. 4719 to H.R. 5005, Title VII.

Title II of H.R. 7, as well as the proposed CARE bill, raised issues about the relationship between FBOs and state and local governments whose agencies administer federally assisted services. Many state and local officials view the faith-based initiative as an opportunity to enhance services to needy citizens. On the other hand, other public officials have concerns about potential FBO effectiveness, accountability, and their working relationship with FBOs.

In December 2002, the Administration, citing the lack of legislation addressing its faith-based proposals, issued Executive Order 13279 instructing agencies to develop policies that ensure equal treatment and protection for faith-based and community organizations. The order seeks to increase FBO access to federal funds in programmatic areas similar to those addressed in H.R. 7 and the CARE Act, such as children's services, job training, counseling and mentoring, literacy, housing, and substance abuse.¹² A subsequent order also established two additional faith-based offices in the Department of Agriculture and the U.S. Agency for International Development.

Scope of This Report. This report analyzes selected institutional issues that arose as Congress considered Title II of H.R. 7 and the CARE bill. These issues are likely to resurface as federal agencies seek to implement E.O. 13279. Congress would also likely address these issues should it decide to authorize expanded FBO access to federal funds. This report does not address constitutional issues of separation of church and state. Readers interested in legal issues related to FBOs should see CRS Report RL31043, *Public Aid to Faith-Based Organizations (Charitable Choice): Background and Selected Legal Issues*, by David M. Ackerman.

Overview of State and Local Faith-Based Initiatives

State and local governments, in general, have a long tradition of collaborating with FBOs to provide services. Since the 1996 charitable choice provisions were enacted, state and local initiatives for increasing FBO-delivered services have varied greatly.

State-level Initiatives. Some states have actively sought to use available FBO resources. These states have undertaken faith-based initiatives by making legislative and regulatory changes to promote FBO access to government funds. Other states have concentrated their efforts on collaboration and awareness campaigns, rather than legislative or regulatory changes. On the other hand, a significant number of states have not acted on existing charitable choice provisions for expanding FBO access to government funds.

By 2000, a few states, such as Arizona, Indiana, Ohio, Texas, Virginia, and Wisconsin, had passed legislation or changed regulations as part of a faith-based

¹² U.S. President (George W. Bush), "Equal Protection of the Laws for Faith-based and Community Organizations," Executive Order 13279, *Federal Register*, vol. 67, p. 77141, Dec. 16, 2002.

initiative.¹³ Indiana has actively worked to incorporate FBOs in service delivery. In late 1999, Governor Frank O'Bannon initiated the "FaithWorks Indiana" program in the state Family and Social Services Administration, designed to promote outreach to the faith community. The primary form of assistance consists of workshops and consultations for FBOs in such areas as understanding charitable choice provisions, improving service delivery, grant writing, and financial management. FaithWorks also operates a toll-free number and web site that answers questions from FBO personnel. The initiative has provided some form of assistance to hundreds of FBOs in Indiana and is attempting to develop ongoing partnerships in all of the state's 92 counties. Since its creation, the program reports that the state has awarded roughly \$4.5 million in contracts to FBOs.¹⁴

Some states have sought to increase FBO access to government funds through awareness campaigns and collaboration, rather than legislative or regulatory changes. At least 15 states have appointed liaisons to the faith community to promote greater communication and collaboration among government agencies, FBOs, and other community-based organizations.¹⁵ Most of these states have appointed liaisons within state departments administering social services or workforce development programs. Oklahoma and New Jersey have created special offices for faith-based initiatives to promote greater awareness of funding opportunities, and to serve as a single-point-of-contact for FBOs to communicate their views to the state.¹⁶ Some states have appointed local faith liaisons to supplement state-level outreach efforts. For example, Virginia has appointed faith-based contacts in each local social services agency and Texas has appointed regional faith-based liaisons, each of which serves several counties.¹⁷

These liaisons and other state officials carry out a variety of activities to facilitate government cooperation with FBOs, including:

- workshops on program development, availability of government funds, charitable choice provisions;
- technical assistance with grant administration;
- help with compliance with federal and state regulations;
- identification of best practices and model programs;
- identification of service gaps; and,
- advocacy on behalf of FBOs to state officials and legislators.

¹³ Center for Public Justice, "Charitable Choice Compliance: A National Report Card," Sept. 2000, [http://www.in.gov/fssa/faithworks/PDFs/Report_6_02.PDF], visited Dec. 18, 2002.

¹⁴ FaithWorks Indiana, Report on first two years activities, 2002. Available at: [<http://www.IN.gov/fssa/faithworks/index.html>], visited Dec. 18, 2002.

¹⁵ States with official faith liaisons include, but are not limited to: Arizona, Arkansas, California, Colorado, Georgia, Indiana, Maryland, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Texas, and Virginia.

¹⁶ See Oklahoma State Office of the Faith-Based Liaison web site: [<http://www.oklaosf.state.ok.us/~faithlinks/>], visited Dec. 18, 2002; and New Jersey Office of Faith-Based Initiatives web site: [<http://www.state.nj.us/dca/dhcr/faith.htm>], visited Dec. 18, 2002.

¹⁷ Telephone conversations with selected state and local officials, June-July 2001.

In 2000, the Center for Public Justice, a self-described Christian research and advocacy group, rated each state on its efforts to exercise charitable choice provisions in existing legislation. The center gave all but 12 states a “F” rating because it felt they had not passed legislation or changed regulations to fully implement existing charitable choice provisions.¹⁸ On the other hand, some research suggests that states are generally increasing their outreach to FBOs and incorporating them in service delivery.¹⁹

Local-level Initiatives. Although the role of FBOs in service delivery has only recently received public attention, local governments have long collaborated with FBOs to serve needy citizens. At the local level, just as at the state level, implementation of existing charitable choice provisions has varied. Localities that have sought to employ FBOs in service delivery have done so in a variety of ways, including formal faith-based initiatives, awareness campaigns, and appointment of liaisons.

Proponents of the increased use of FBOs frequently point to Philadelphia as an example of a city that has successfully collaborated with the faith community. Some suggest that Philadelphia has used the resources of FBOs in a greater quantity and variety of services than any other American city.²⁰ Since taking office in January 2000, Mayor John F. Street has made his faith-based initiative a core component of his plan to improve city services. The mayor and his administration view FBOs as potentially effective partners for delivering specific services, including literacy programs, faith counseling for prison inmates, and counseling for children of inmates, among other things. Mayor Street also hopes to employ FBOs in an effort to reduce the level of truancy in city schools. He has asked FBOs to “adopt” a Philadelphia school and contact the families of truant students. The mayor’s initiative has come mostly through collaboration with FBOs, rather than through public funding of their efforts. Reportedly, most of Philadelphia’s FBOs receive funding from such charitable foundations as The Pew Charitable Trusts.²¹

While most local governments may not have been as active as Philadelphia in collaborating with FBOs, a number of localities has designated liaisons to the faith community. According to a 2001 survey sponsored by the U.S. Conference of Mayors, at least 121 mayors had appointed liaisons to the faith community, and 37 more were planning to appoint liaisons.²² These liaisons are typically charged with facilitating communication between the local government and FBOs, advertising the availability of government grants, and assisting FBOs with grant administration.

¹⁸ Center for Public Justice, “Charitable Choice Compliance: A National Report Card.”

¹⁹ John C. Green and Amy L. Sherman, *Fruitful Collaborations: A Survey of Government-Funded Faith-Based Programs in 15 States* (Charlottesville, VA: Hudson Institute, Sept. 2002).

²⁰ Andrea Billups, “Keeping the Faith, Philadelphia’s Mayor Helps Make a Difference,” *Washington Times*, Apr. 15, 2001, p. A1.

²¹ *Ibid.*

²² Laurie Goodstein, “States Steer Religious Charities Toward Aid,” *New York Times*, July 21, 2001, p. A10.

Analysis of Selected Institutional Issues

Many state and local officials view the faith-based initiative as an opportunity to enhance services. Other officials express concerns about potential FBO effectiveness and accountability, and the working relationship between state and local governments and FBOs. The remainder of this report discusses institutional issues in the relationship between FBOs and state and local governments. It analyzes issues raised in Title II of H.R. 7, the CARE bill, and E.O. 13279, and explores options that might be considered to address them.

Effectiveness of FBOs

Proponents of using FBOs and other nonprofit groups to deliver services to needy citizens believe these organizations can effectively partner with state and local governments. They argue FBOs are able to effectively utilize the resources of their members and the community, and have greater flexibility over program design than government agencies.

Anecdotal Accounts of Successful Partnerships. Proponents of FBOs have offered much anecdotal evidence about the effectiveness of FBO-delivered programs. A highly publicized example of an effective partnership between a city and its faith community is the Indianapolis Front Porch Alliance, begun in early 1998 by then-Mayor Stephen Goldsmith. Public officials, private citizens, and leaders of FBOs and other community-based organizations serve on the alliance board. Its main function has been to act as a “civic switchboard,” facilitating communication among different service providers and providing referrals on service providers to citizens. The Front Porch Alliance also acts as a liaison between the city government and the faith community. It has claimed several successful instances in which it facilitated the removal of administrative hurdles for FBO-delivered projects. In addition to its role as a community facilitator, the alliance issues grants of up to \$5,000 to FBOs and other community-based organizations that provide crime prevention programs and other community services.²³

Another example of a FBO cited as effectively serving a community is the Metropolitan Housing and Community Development Corporation (MHCDC) in Washington, North Carolina. Public officials and observers of FBOs have credited MHCDC with developing programs to address Washington’s most pertinent problems, including economic depression and a high rate of HIV/AIDS patients.²⁴ Reverend David Moore founded the FBO, which provides a range of services to needy citizens, including a soup kitchen and shelter, classes for prospective entrepreneurs interested in starting their own businesses, and subsidized housing for

²³ David Holmstrom, “Front Porch Alliance Fosters Church-City Cooperation in Indianapolis, City Government Connects with Religious and Community Groups,” *Christian Science Monitor*, May 13, 1998, p. 12.

²⁴ John Manuel, “Building with Vision,” *Duke Magazine*, Vol. 88, July-August 2002. Available at: [<http://www.dukemagazine.duke.edu/dukemag/issues/070802/building3.html>], visited Dec. 13, 2002.

elderly persons. The MHCDC also offers counseling and case management services to individuals with HIV/AIDS and their families.²⁵

Many state and local officials see FBOs as particularly effective in serving rural areas. Some supporters claim they can be crucial for providing services in rural areas where they believe FBOs can supplement the financially limited resources of local government. North Carolina is one state working with FBOs to address the needs of citizens living in rural areas. The state has partnered with a nonprofit, the North Carolina Rural Economic Development Center (REDC), to improve the effectiveness of FBOs serving rural areas. The REDC focuses its outreach efforts on improving FBO financial and administrative capacity, including performance measurement capabilities. The organization is also offering demonstration grants for child care services and programs that assist welfare-to-work participants. To promote effectiveness, and to encourage further collaboration among different FBOs, the REDC awards grants only to coalitions of FBOs involving different religious denominations. Further, the coalitions must serve more than one county.²⁶

Despite these reports, other policy makers and observers have a number of concerns about the effectiveness of FBOs, including the following:

- range of services FBOs can provide;
- lack of evaluative data on FBOs;
- qualifications of FBO personnel;
- inclusion of religious content in federally funded programs; and,
- availability of secular alternatives.

Range of Services. The Administration and other supporters have cited FBO potential to effectively deliver services in a broad range of service areas.²⁷ One study of FBO activities, however, found that they predominantly deliver services that address immediate, short-term needs of beneficiaries. Such services include the provision of food, housing, and clothing. The study also found that few FBOs deliver services requiring long-term face-to-face contact with beneficiaries. These more labor-intensive services include programs for health care, education (excluding religious education), substance abuse, and workforce development. Further, among the limited number of FBOs delivering long-term services, only a small fraction devote a significant amount of money and manpower to those services. The study found that FBOs delivering long-term services do not involve all their members, but rather, have a small group of volunteers that provide the service on a regular basis.²⁸

²⁵ Dave Peterson, "Community Leadership: How One Person Can Make a Difference," June 2001, unpublished article: Raleigh, NC.

²⁶ Diana Jones Wilson, Director of Workforce Development, N.C. Rural Economic Development Center, telephone conversation, July 2, 2001. Also see N.C. REDC web site: [<http://www.ncruralcenter.org/research/faith.htm>], visited Dec. 18, 2002.

²⁷ White House Office of Faith-Based and Community Initiatives, *Rallying the Armies of Compassion*.

²⁸ Mark Chaves and William Tsitsos, *Congregations and Social Services: What They Do*, (continued...)

Legislative Analysis and Policy Options. Currently, charitable choice provisions apply to programs in the areas of Temporary Assistance for Needy Families (TANF), substance abuse services, the Community Services Block Grant, and (to the extent they use contracts or grants) food stamps, Medicaid, and child support enforcement. The House-passed version of H.R. 7 would have expanded charitable choice options to include nine program areas, including juvenile justice, crime prevention and victim assistance, domestic violence, GED equivalency programs,²⁹ after-school programs, and transit commuter programs, as well as programs funded through the Community Development Block Grant program (CDBG), Workforce Investment Act (WIA), and Older Americans Act (OAA).³⁰

The CARE bill took a different approach to establishing a range of activities for FBOs. Rather than specifying federal programs, the bill sought to prevent possible discrimination against FBOs in virtually all social service programs (except education programs). The bill would have prevented federal agencies from rejecting a grant application from community-based organizations, including FBOs, because they had not previously been awarded a grant. It would also have prevented federal agencies from requiring FBOs to remove religious symbols, or alter religious provisions in charters.³¹

Given research suggesting that most FBOs deliver only short-term services, namely food, housing, and clothing, it is possible that many FBOs do not have the capacity to plan and deliver the labor-intensive, long-term services that H.R. 7 and the CARE bill proposed, and which E.O. 13279 covers. It is possible that only larger FBOs with experience administering federal grants would immediately participate in delivery of services in newly authorized program areas. Smaller FBOs with little or no experience handling federal grants might need time to gain the administrative capacity necessary to apply for and deliver federally funded services under any new program.

Both H.R. 7 and the CARE bill contained proposals for technical assistance and grants aimed at increasing the administrative capacity of FBOs. H.R. 7 would have directed the Justice Department to provide technical assistance to small nongovernmental organizations, including FBOs.³² Similarly, the CARE bill would have authorized funds to four departments for grants and technical assistance aimed at enhancing the administrative capacity of FBOs. The CARE bill specified such activities as providing assistance with grant writing, legal assistance with

²⁸ (...continued)

How They Do It, and With Whom, Nonprofit Sector Research Fund, The Aspen Institute, Spring 2001, pp. 12-15. Also, see generally, Avis C. Vidal, *Faith-Based Organizations in Community Development*, The Urban Institute, Prepared for the U.S. Department of Housing and Urban Development (Washington: Aug. 2001).

²⁹ GED programs (General Equivalency Degree) are state and local education programs offering a degree equivalent to a high school diploma.

³⁰ H.R. 7, Title II, sec. 1991(c)(4).

³¹ S.Amdt. 4719, sec. 701.

³² H.R. 7, Title II, sec. 1991(o).

incorporation and obtaining tax-exempt status, and information on best practices.³³ Proponents believe that technical assistance grants could enable smaller FBOs to gain the necessary capacity to deliver long-term services.

An alternative approach could be to distribute funds to state and local governments for the purpose of offering training and technical assistance to FBOs. State and local officials typically have experience administering a wide range of federal grants, which they could draw upon to train FBO personnel. In addition, if states and localities had to apply for grants, then federal assistance could potentially be directed to those jurisdictions most interested in expanding the participation of FBOs and other small nongovernmental organizations. With either approach the definition of faith-based organization could become a contentious issue.

Lack of Evaluative Data. It is sometimes said in the debate on charitable choice that there have been no rigorous, comprehensive studies on the effectiveness of services provided by FBOs, resulting in a lack of objective, quantitative evidence proving or disproving FBO effectiveness.³⁴ In a 1999 report on religiously affiliated nonprofits sponsored by The Aspen Institute, a nonpartisan research organization, two analysts were, "... unable to locate a single credible study assessing the relative effectiveness of religion-sponsored social services that meets the minimum requirements for evaluations." The scholars listed several potential reasons for the lack of evaluative studies, including:

- relatively little study of the nonprofit sector and its size and impact on social services;
- difficulty in evaluating performance due to the wide range of FBO-provided services and lack of service providers to compare against the FBOs;
- emergency nature of FBO-provided services, such as food and shelter programs, which may be cost-effective but are difficult to evaluate; and,
- prohibitive cost of meeting the minimum requirements for a credible program evaluation.³⁵

Other scholars who specialize in the effect of religion on social problems have echoed the lack of evaluative data on FBO effectiveness. For example, Byron R. Johnson, from the Center for Research on Religion and Urban Civil Society at the University of Pennsylvania, has stated there is little reliable research proving the effectiveness of FBO-delivered programs. He further stated that there is also little evidence showing how FBO-delivered programs measure up against government-delivered programs.³⁶

³³ S.Admt. 4719,, Title VIII.

³⁴ This observation refers to the lack of comparative evaluations and is not meant to imply that governmental agencies do not audit and evaluate FBOs and other nongovernmental providers delivering publicly funded services.

³⁵ McCarthy and Castelli, *Religion-Sponsored Social Services*, pp. 53-54. Also see Vidal, *Faith-Based Organizations in Community Development*, pp. 3-5.

³⁶ Laurie Goodstein, "Church-based projects lack data on results," *New York Times*, April (continued...)

The Bush Administration has suggested that a lack of evaluative data should not be a reason for limiting FBO access to federal funds. In its report *Unlevel Playing Field*, it argues that there is a lack of evaluative data for all nongovernmental providers receiving federal funds, not just FBOs:

Some critics of expended Federal collaboration with faith-based and community-based organizations complain that there is little proof that these organizations are effective or have the capacity to manage large-scale social service programs. However, as the OMB survey ironically reveals, the Federal Government routinely awards billions in taxpayer support to organizations whose own efficacy and cost-effectiveness have not been validated by careful studies. This record indicates the need for an across-the-board emphasis on demonstrating actual efficiency of the programs that government funds.³⁷

Legislative Analysis and Policy Options. The first stated purpose in Title II of H.R. 7 was “to enable assistance to be provided to individuals and families in need in the most effective and efficient manner.”³⁸ The Administration and supporters of H.R. 7 have presented a substantial amount of anecdotal information that FBOs can effectively deliver services. There have, apparently, been no comprehensive studies of FBO effectiveness or of how FBO-delivered services compare to government-delivered services. As passed by the House, Title II did not require any comprehensive evaluation of the effectiveness of FBOs. This is also true of the CARE bill and E.O. 13279.

Should Congress wish to initiate an evaluation of FBOs, one possible option would be to commission a study by an independent commission or the General Accounting Office (GAO). Congress could direct that the study, to the extent possible, produce quantitative results on FBO program effectiveness, and on how FBO programs compare to government programs. Federal agencies, including those implementing the Executive Order, could be directed to report on the progress of FBO-delivered programs after a specified amount of time. An evaluation that produced objective, quantitative results might confirm or refute the anecdotal information already provided to policy makers or help to isolate and define broader problem areas.

Qualifications of FBO Personnel. Some state and local officials have expressed concern about the qualifications of FBO personnel. These officials believe that, while FBO personnel might have good intentions, they may not have the experience and skills possessed by government service providers.³⁹ Federal grants that provide welfare services typically include training requirements for service providers. Some public officials want to ensure that any charitable choice legislation

³⁶ (...continued)
24, 2001.

³⁷ White House Office of Faith-Based and Community Initiatives, *Unlevel Playing Field: Barriers to Participation by Faith-Based and Community Organizations in Federal Social Service Programs* (Washington: GPO, Aug. 2001), p. 9.

³⁸ H.R. 7, Title II, sec. 1991(b)(1).

³⁹ Avis C. Vidal, *Faith-Based Organizations in Community Development*, pp.16-20.

applies the same training and skills requirements to FBOs that are applied to government agencies. The National Association of Social Workers (NASW) expressed this concern in a policy statement on the faith-based initiative: “NASW believes that all social service agencies, particularly those receiving public funding, must adhere to accreditation standards, licensing, laws, and other regulatory mechanisms that protect consumers and ensure quality service delivery.”⁴⁰

Some state and local governments actively seek to improve the qualifications of FBOs by providing training opportunities to FBOs and other community-based organizations. For example, the city of Roanoke, Virginia, coordinates a training program for organizations serving the area’s homeless. The program, Homeless Educators Linking Providers and Services (HELPS), states its mission is, “To provide a forum for communication, collaboration, and coordination of services among providers for homeless and impoverished individuals and families in the Roanoke Valley.” The program offers training opportunities to all interested service providers. Roanoke’s program also focuses on raising community awareness, legislative advocacy, and improving program administration.⁴¹

Supporters of FBOs have suggested the use of “intermediary organizations” to assist FBO personnel in administering grant programs. These can assist FBOs with program development, grant management, financial accounting, legal services, and intergovernmental coordination. Intermediaries could also help FBOs screen and assist beneficiaries. Large nonprofit organizations most often serve as intermediaries because they typically have experience administering government funds. For-profit organizations, educational institutions, or other FBOs with grant experience may also serve as intermediaries. Some supporters of FBOs advocate using intermediaries because they can improve the capacity of smaller FBOs to deliver services.⁴² With a similar goal in mind, FBOs may form coalitions to share resources and jointly provide services.⁴³ Virginia’s faith-based liaison noted that, in its outreach programs, the state has encouraged smaller FBOs to partner with larger ones with grant experience and a greater administrative capacity.⁴⁴ Some federal agencies, including the Departments of Labor and Health and Human Services, have made grants to intermediary groups to help FBOs improve their programs.⁴⁵

⁴⁰ National Association of Social Workers, NASW Position on Faith-Based Human Services Initiatives, [<http://www.socialworkers.org/advocacy/positions/faith.htm>], visited Jan. 3, 2002.

⁴¹ Carol Wright, Human Services Coordinator, Roanoke City, VA, telephone conversation, July 2, 2001.

⁴² See Oklahoma Faith-Based Liaison: [<http://www.oklaosf.state.ok.us/~faithlinks/intermed.html>], visited Dec. 18, 2002. Also see Kristin E. Holmes, “Faith-based Hispanic Group Has a Pioneering Role,” *Philadelphia Inquirer*, Oct. 20, 2002.

⁴³ Paula F. Pipes and Helen Rose Ebaugh, “Faith-based Coalitions, Social Services, and Government Funding,” *Sociology of Religion*, Spring 2002, pp. 49-68.

⁴⁴ Jane B. Brown, Community and Faith-Based Liaison, VA Department of Social Services, telephone conversation, July 2, 2001.

⁴⁵ Bill Broadway, “Faith-Based Groups Benefit from New Federal Grants,” *Washington* (continued...)

Besides potentially improving FBOs' capacity, intermediaries can also be useful to state and local governments that wish to solicit help from the faith community, but are uncertain of how to recruit them. Some state and local governments award large grants to an intermediary, which then distributes smaller grants to FBOs to directly provide services. For example, the Department of Social Services in Los Angeles awarded a \$5 million contract to Goodwill Industries, a nonprofit serving as an intermediary. Goodwill Industries then awarded grants to community-based organizations, including FBOs. One such FBO was Mobilization for the Human Family, which recruits, trains, and supervises volunteers who serve as mentors to recently employed TANF recipients.⁴⁶

Legislative Analysis and Policy Options. H.R. 7 and the CARE bill did not contain provisions addressing the educational or skill level of FBO personnel that would provide services. Welfare reform legislation enacted in 1996 also contained no educational or skill requirements.⁴⁷ The only example of such a requirement in charitable choice legislation is found in the Community Renewal Tax Relief Act of 2000, which prevents states and localities from discriminating against FBOs that have received appropriate training from other FBOs.⁴⁸

Should the 108th Congress address this issue, it might explore whether this is a problem and could clarify whether FBOs must satisfy any and all educational and skill requirements stipulated in individual grant programs. H.R. 7 and the CARE bill did not specifically instruct federal agencies, or state and local governments, to consider the qualifications of FBO personnel when evaluating FBO applications. E.O. 13279 also does not address this issue. More explicit guidance might encourage FBOs interested in applying for federal grants to improve the qualifications of their staff. On the other hand, FBOs might view such a requirement as overly stringent and might therefore be dissuaded from applying for federal funds.

Some observers were concerned that H.R. 7 provisions that exempted FBOs from Title VII of the Civil Rights Act of 1964 could affect FBOs ability to attract qualified personnel.⁴⁹ This would allow FBOs with federal funding to use religion as a factor in hiring, firing, and other personnel actions. A concern is that FBOs would place a much higher priority on religious factors than other qualifications.

⁴⁵ (...continued)

Post, Aug. 3, 2002, p. B9.

⁴⁶ Amy L. Sherman, "Churches as Government Partners: Navigating 'Charitable Choice,'" *The Christian Century*, vol. 17, July 5, 2000, p. 716.

⁴⁷ P.L. 104-193, "Personal Responsibility and Work Opportunity Reconciliation Act of 1996."

⁴⁸ P.L. 106-554, sec. 584(b).

⁴⁹ H.R. 7, Title II, sec. 1991(d). For a discussion of constitutional issues and civil rights related to this exemption, see CRS Report RL31043, *Public Aid and Faith-Based Organizations (Charitable Choice): Background and Selected Legal Issues*, by David M. Ackerman.

Inclusion of Religious Content. One frequently debated issue in Congress's consideration of expanding FBO access to federal funds was whether or not to allow religious content in federally funded programs.⁵⁰ Some advocates of FBOs contend that the religious component of FBO programs is the reason for their success in helping people with personal problems.⁵¹ Charitable choice provisions prohibit FBOs from requiring beneficiaries to participate in a religious program, leading some FBO supporters to fear that accepting federal funds may diminish their effectiveness. FBOs that accept federal funds and remove religious content from programs might also face challenges, possibly including diminished religious enthusiasm of FBO staff and reduction in voluntary contributions.⁵² One proponent has encouraged federally funded FBOs to offer religious activities such as Bible studies and discipleship training, but to make it clear to beneficiaries that such activities are voluntary. FBOs offering voluntary religious activities must use private funds to finance those activities. This commentator further states that beneficiaries must know they can decline to participate in religious activities without penalty.⁵³

Some interest groups representing elected and appointed public officials have established policies on faith-based initiatives that express concern over this issue. Many interest groups have suggested that charitable choice legislation should include safeguards prohibiting FBOs from including religious content in federally funded programs. The National Association of Social Workers (NASW), for example, states, "Within the faith-based initiative, safeguards must be implemented to assure that services are appropriately coordinated, provided by qualified individuals and without requirements for religious observance."⁵⁴

Legislative Analysis and Policy Options. H.R. 7 addressed the religious content issue by prohibiting FBOs from requiring beneficiaries to participate in religious activities, which some FBO supporters believe is an essential component of their programs.⁵⁵ E.O. 13279 also includes such a requirement.⁵⁶ It is uncertain whether this requirement would encourage or discourage FBOs from applying for federal funds. On the one hand, some FBO leaders have stated that, if government

⁵⁰ Policy makers and observers of this issue debate the constitutionality of including religious material in federally funded programs. For a discussion of constitutional applications, please see the related CRS reports listed at the end of this report.

⁵¹ See generally, Byron R. Johnson, "Objective Hope: Assessing the Effectiveness of Faith-Based Organizations: A Review of the Literature," Center for Research on Religion and Urban Civil Society, March 2002. Available at: [http://www.manhattan-institute.org/html/crrucs-obj_hope_press.htm], visited Dec. 18, 2002.

⁵² Lewis D. Solomon and Matthew J. Vliissides, Jr., *In God We Trust? Assessing the Potential of Faith-Based Social Services*, Policy Report, Progressive Policy Institute (Washington: Feb. 2001), p. 13. See [http://www.ppionline.org/documents/FBOs_v2.pdf], visited Jan. 3, 2002.

⁵³ Amy L. Sherman, *The Charitable Choice Handbook for Ministry Leaders*, Center for Public Justice, 2001, p. 11.

⁵⁴ NASW, Position on Faith-Based Human Services Initiatives, 2001.

⁵⁵ H.R. 7, Title II, sec. 1991(j).

⁵⁶ E.O. 13279, sec. (2)(e).

funds include such provisions, they will not apply for them.⁵⁷ On the other hand, there is evidence that many FBO leaders are enthusiastic about the opportunity to apply for federal funds. Oklahoma's Office of the State Faith-Based Liaison sponsored a survey of FBOs and their willingness to collaborate with government agencies. In its survey of over 800 Oklahoma FBOs, 68% favored "receiving government funds."⁵⁸ Additionally, FBO leaders have testified before Congress that increasing FBO access to government funds will potentially improve FBO programs.⁵⁹

There is some evidence, however, that many FBO leaders are unfamiliar with charitable choice rules. The Oklahoma survey revealed that 87% of FBO leaders considered themselves unfamiliar with charitable choice legislation and over 70% of respondents expressed concern about "possible [government] intrusion into the affairs of the congregation."⁶⁰ Another study of FBOs in Harris County, Texas, suggested that many faith-based groups are unaware of charitable choice opportunities in federal grant programs, and that many FBOs are not interested in obtaining government funds.⁶¹

Many supporters and opponents of the faith-based initiative have emphasized the need for FBOs to separate secular services from religious services. FBO proponent Amy Sherman, in a publication intended to explain charitable choice to ministry leaders, emphasized that, "... [F]aith-based organizations must not use government funds for purposes of 'sectarian worship, instruction, or proselytization,' and they must not require service recipients to participate in religious practices."⁶² A combined statement by charitable choice scholars and observers, issued by the American Jewish Committee, echoed this belief, stating, "Whenever social service programs are funded by government, or participation in such programs is mandated by government, beneficiaries have the right not to participate in religious activities."⁶³

⁵⁷ Nancy Johnson and Jessica Temple, "Faith-based Charities See Pros and Cons in Bush Proposal," *South Bend Tribune*, Feb. 4, 2001, p. 1.

⁵⁸ David P. Knudson, FaithLinks Survey, Summary of Responses, College of Continuing Education, University of Oklahoma, April 16, 2001. See the Oklahoma State Faith-Based Liaison web site: [<http://www.oklaosf.state.ok.us/~faithlinks/surveyresults.pdf>], visited Dec. 18, 2002.

⁵⁹ House Committee on Ways and Means, Subcommittees on Human Resources and Select Revenue Measures, *Hearing on H.R. 7, The Community Solutions Act*, hearing, 107th Congress, 1st sess., June 14, 2001. Statements of Rev. Luis Cortes, President, Nueva Esperanza Inc. and Bill Reighard, President, Food Donation Connection, (From here on referred to as Hearing).

⁶⁰ David P. Knudson, FaithLinks Survey.

⁶¹ Pipes and Ebaugh, "Faith-based Coalitions, Social Services, and Government Funding," pp. 49-68.

⁶² Amy L. Sherman, *The Charitable Choice Handbook*, p. 11.

⁶³ American Jewish Committee and Feinstein Center for American Jewish History at Temple University, *In Good Faith: A Dialogue on Government Funding of Faith-Based Social Services*, p. 8. See Pew Forum on Religion and Public Life web site:

If FBOs wish to deliver federally funded programs that satisfy constitutional requirements, it is likely that they will need to develop programs that separate federally funded services from voluntary religious activities. In this regard, a study to identify “best practices” of FBO programs might be useful. By identifying and distributing information on FBO programs that have successfully separated federally funded services from voluntary religious activities, such a study could assist other FBOs in developing programs that meet this potential requirement. Additionally, illustrating such programs might address some of the concerns of FBO leaders who are reluctant to apply for federal grants because they are uncertain how to structure their programs to comply with such a requirement.

Availability of Secular Alternatives. Another concern of some state and local policymakers is charitable choice provisions that would require governments to provide secular alternatives for services administered by FBOs, but do not provide additional federal funds for those alternative services. This requirement could potentially strain local financial resources, since governments might be placed in a position of awarding a contract to an FBO, as well as funding a secular alternative. Others have expressed concern that future reductions in federal revenues, due to tax reductions or a slowing economy, may result in less funding to social service programs, further straining the financial resources available to state and local governments to provide secular alternatives.⁶⁴ From the opposing perspective, some policy analysts and legislators believe the provision of a secular alternative to FBO-delivered services is a minimum requirement necessary to allay constitutional and political concerns.⁶⁵ One Member of Congress testified that, if legislation requires state and local governments to provide secular alternatives to services, but does not provide new funds, this could constitute an unfunded mandate.⁶⁶ Few state and local officials, however, have voiced strong concern about federal faith-based legislation resulting in unfunded mandates.

Legislative Analysis and Policy Options. Title II of H.R. 7, as introduced, would have required governments to provide a secular alternative for services. In the House-passed version, beneficiaries who object to the religious character of an FBO must have access to an alternate provider which is not objectionable on religious grounds.⁶⁷ By making this change, Title II arguably gave state and local governments more flexibility in providing alternative services to beneficiaries who object to the religious character of certain FBOs. If a beneficiary objects to the religious character

⁶³ (...continued)

[<http://www.pewforum.org/publications>], visited Dec. 18, 2002.

⁶⁴ House Committee on Ways and Means, hearing, Statement of Representative Jerrold Nadler of New York.

⁶⁵ OMB Watch, “Analysis of Bush Administration’s Charitable Choice Initiatives,” April 23, 2001, p. 7.

⁶⁶ House Committee on Ways and Means, hearing, Statement of Representative Jerrold Nadler of New York, hearing, June 14, 2001. See also U.S. Congress, House Committee on the Judiciary, *Community Solutions Act of 2001, Report to Accompany H.R. 7, 107th Cong., 1st sess., H.Rept. 107-138, Part I* (Washington: GPO, 2001), p. 300.

⁶⁷ H.R. 7, Title II, sec. 1991(g)(1) and (3).

of a FBO, the government would not necessarily have to finance an alternative service, so long as there was another service provider in the community willing and able to serve the beneficiary and whom the beneficiary did not find religiously objectionable. If a community had only religious service providers, however, and a beneficiary requested a secular one, then the government would be responsible for meeting this requirement. The CARE bill and E.O. 13279 did not address secular alternatives.

Large communities with a number of community-based organizations providing services might not have difficulty meeting such a requirement. They may be able to satisfy all beneficiaries by dividing a contract for a specific service among several service providers. Larger communities may also be able to subsidize the transport of beneficiaries to adjacent communities with acceptable providers.⁶⁸

Although this provision may have given states and localities a degree of flexibility in providing alternative services, smaller localities with limited government resources and few community-based organizations might still have difficulty meeting such a requirement. For example, a rural locality might award federal funds to a FBO to provide a specific service. If beneficiaries had an objection and requested an alternative provider, the local government might have difficulty financing or procuring that provider.

Policy options would be available to assist small localities with limited resources who may have difficulty meeting a requirement to provide alternative services. For the programs to which Title II of H.R. 7 would have applied, Congress could instruct federal agencies to reserve a portion of program funds to assist small communities in meeting this requirement. While such a measure might help small localities meet the requirement, it could result in a disproportionate amount of federal funds being directed to communities that contract with FBOs. Reserving program funds for this specific purpose could subtract from the overall funds used in formula allocation programs. It could also affect the cost and efficiency of service delivery.

Another option would be to leave responsibility for providing alternative services to state and local governments. Some policy-makers have expressed concern that this might be considered an unfunded mandate. The House Ways and Means Committee states in its accompanying report, however, that H.R. 7 does not impose an unfunded mandate on state and local governments.⁶⁹ Although state and local governments have not expressed concern about this issue, should legislation similar to H.R. 7 become law, state and local governments might call on Congress for assistance in satisfying the alternative services requirement.

⁶⁸ Stanley Carlson-Thies, *Charitable Choice for Welfare and Community Services: An Implementation Guide for State, Local, and Federal Officials*, Center for Public Justice, Dec., 2000, p. 21.

⁶⁹ U.S. Congress, House Committee on Ways and Means, *Community Solutions Act of 2001, Report to Accompany H.R. 7, 107th Cong., 1st sess., H.Rept. 107-138, Part II* (Washington: GPO, 2001), p. 38.

Regarding the notification of beneficiaries of their right to alternative providers, Title II would have placed the responsibility with the appropriate federal, state, or local government.⁷⁰ If there were concern with ensuring this right, a provision could be included in statutes, regulations, or grant-making provisions requiring FBOs to notify beneficiaries. This might improve beneficiaries' awareness of the right to an alternative provider, since FBO personnel would have direct contact with the beneficiary, while government officials may not have direct contact, depending on program structure. On the other hand, monitoring such a requirement would be difficult and could lead to what some consider undue intrusion into FBO activities.

Accountability for Results

In addition to providing services in an effective manner, service providers using public funds must be able to account for their results. Some public officials and observers of FBOs have concerns about the ability of FBOs to report financial and programmatic results. Some observers have suggested that a voucher system could lead to better accountability. Other observers have suggested that if FBOs separate government funds from other revenues, they would not only improve accountability, but could also better assure a separation between secular and religious activities.

FBO Ability to Report Results. Some public officials and observers of FBOs have concerns about FBOs' ability to report financial and programmatic results. One analyst stated generally of nonprofit organizations that they, "typically lack meaningful bases for demonstrating the value of what they do."⁷¹ The National Association of Counties (NACO) addressed this concern in its resolution on the President's faith-based initiative: "There must be sufficient accountability for the use of funding, and any such programs must be coordinated within counties to maintain efficient delivery of services to the client population."⁷² Historically, nonprofit organizations have sometimes resisted government efforts to modify their operations, arguing that such efforts might decrease their autonomy and ability to deliver services.⁷³

Some observers of nonprofit organizations suggest that government could build public trust in nonprofit-delivered services if they are held accountable for programmatic and financial results.⁷⁴ Some state and local governments are attempting to improve the accountability of government funded FBOs in their jurisdiction. For example, North Carolina's Rural Economic Development Center, which acts as an intermediary between the state and rural FBOs, has made

⁷⁰ H.R. 7, Title II, sec. 1991(g)(2).

⁷¹ Lester M. Salamon, *America's Nonprofit Sector* (Washington: The Foundation Center, 1999), pp. 173-175.

⁷² National Association of Counties, General Resolution on the President's Initiative on Faith and Community-Based Organizations, NACO web site: [<http://www.naco.org/leg/platform/resfaith01.cfm>], visited Dec. 18, 2002.

⁷³ Salamon, *America's Nonprofit Sector*, pp. 173-175.

⁷⁴ Charles L. Glenn, *The Ambiguous Embrace: Government and Faith-Based Schools and Social Agencies* (Princeton, NJ: Princeton U. Press, 2000), p. 285.

accountability a major criterion in its grant-making decisions. A discussion among REDC's staff and participants resulted in the following observation:

It is essential for faith-based organizations to have the capacity to take on countywide human services, the competency to handle eligibility and case management functions, plus track their outcomes through an established monthly/annual reporting system. This means that faith-based organizations should apply for funds only if they have existing services or have spent an adequate amount of time in capacity/competency/collaborative building before launching into new territory.⁷⁵

Other state and local governments, however, do not highly emphasize accountability. Many governments impose only minimal requirements, such as an annual report from grant recipients.⁷⁶

Almost all federal grants have reporting requirements that include programmatic and financial results. Most long-term grants require monthly reports, while short-term project grants may only require a report upon the project's completion. All grant recipients who expend \$300,000 or more in federal funds in a year undergo an audit and must satisfy the accountability standards established by OMB Circular A-133. These general reporting requirements apply to all grant recipients, whether state, local, or nonprofit agencies.⁷⁷

Legislative Analysis and Policy Options. Title II of H.R. 7 addressed the issue of accountability by stating that FBOs receiving federal funds would be held to the same standards of accountability as secular nonprofits. The bill specifically stated "... a religious organization providing assistance under any program ... shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles"⁷⁸ Title II further required FBOs to conduct annual self-audits and report findings to the appropriate federal, state, or local official.⁷⁹ Members of Congress who supported H.R. 7, including Representative Watts, one of the bill's sponsors, emphasized that charitable choice legislation must focus on results and insist on accountability. Some of the bill's supporters also stated that, if the federal government gives FBOs equal opportunity to compete for grants, then it must hold them equally accountable for results.⁸⁰

⁷⁵ N.C. Rural Economic Development Center, Discussion Summary, Faith-Based Initiatives Conference Call, Feb. 2, 2001.

⁷⁶ Telephone conversations with selected state and local officials, June-July 2001.

⁷⁷ U.S. General Services Administration, *Catalog of Federal Domestic Assistance* (Washington: GPO, 2001), p. xviii.

⁷⁸ H.R. 7, Title II, sec. 1991(i)(1).

⁷⁹ H.R. 7, Title II, sec. 1991(i)(3).

⁸⁰ Office of Rep. Watts, Jr., H.R. 7 Community Solutions Act, Information Packet, June 2001.

H.R. 7 would have instructed the Attorney General to allocate funds for technical assistance grants to “small non-governmental organizations,” including FBOs. Among the list of eligible activities for these grants, the House included information and referrals to nongovernmental organizations to provide training in accounting and program development.⁸¹ Similarly, the CARE bill would have authorized a total of \$150 million, divided among four federal departments, for grants and technical assistance to FBOs to enhance their administrative capacity. The Senate bill specified such activities as grant management training and information on best practices.⁸² One option would be to add specific activities to such legislation to clarify that programmatic and financial accountability would be eligible activities under technical assistance grants. E.O. 13279 does not address reporting requirements or accountability.

Vouchers and Accountability. Some advocates of FBOs suggest using a voucher system of payment, maintaining that vouchers would allow beneficiaries to choose an organization that best suits their preferences, whether a public agency, FBO, or private agency.⁸³ A voucher system could also potentially improve accountability, since the organization that provides services to the most beneficiaries would receive the most federal assistance. Besides providing a surrogate performance measure, proponents believe that vouchers could offer other potential benefits, such as giving recipients greater choice in service providers and preserving the independence of FBOs. One analyst stated:

Voucher arrangements are better than contracting for preserving the independence of faith-based organizations and giving recipients choice. Where possible, [public officials should] redesign services and procurement policies so that a range of organizations can provide services and each recipient has the chance to select the most effective and compatible provider.⁸⁴

Opponents of the voucher approach counter that vouchers still raise concerns under the establishment clause of the Constitution, notwithstanding that government assistance is not provided directly to the FBO.⁸⁵ They also argue that a voucher assumes there is a competitive marketplace for social services, when in most localities there are few, and sometimes no, providers of services. Opponents also believe vouchers hinder an organization’s ability to budget effectively and plan for services.⁸⁶

⁸¹ H.R. 7, Title II, sec. 1991(o)(1) and (o)(2).

⁸² S. 1924, Title V.

⁸³ Charles L. Glenn, *The Ambiguous Embrace*, p. 285.

⁸⁴ Stanley Carlson-Thies, “Charitable Choice: Top 10 Tips for Public Officials,” Center for Public Justice, 1999. See web site at: [<http://downloads.weblogger.com/gems/cpj/138.pdf>], visited Dec. 18, 2002.

⁸⁵ For more information, see CRS Report RL31043, *Public Aid and Faith-Based Organizations (Charitable Choice): Background and Selected Issues*, by David M. Ackerman.

⁸⁶ OMB Watch, “Analysis of Bush Administration’s Charitable Choice Initiatives,” p. 9.

Legislative Analysis and Policy Options. The Senate's CARE bill and E.O. 13279 did not address vouchers. Title II in H.R. 7, however, would have given discretion to cabinet secretaries to determine when vouchers are a suitable payment method in particular programs.⁸⁷ Voucher payment systems, when authorized by the department secretary, might have more potential to improve accountability in more populous communities where there is a large number of service providers. In such areas, beneficiaries would have a choice of provider, which theoretically would direct the most federal funds to the most popular provider. This assumes that beneficiaries would have adequate information to make such choices, which may or may not be the case. A voucher system would have less potential to improve accountability in small communities where there may be only one service provider.

One option to address concerns would be to provide department secretaries with specific criteria for deciding when to use voucher systems. For example, Congress could craft language instructing secretaries to consider the number of service providers (both secular and religiously-affiliated) in the service area.

Separation of Government Funds. Both supporters and opponents of using FBOs have suggested that FBOs can satisfy accountability requirements and better preserve their independence and religious identity by keeping all government funds in a separate account. Religious organizations have historically been exempt from many IRS reporting requirements, unlike secular nonprofits, which are not exempt. Some observers contend that FBOs that did not separate grant funds would open themselves to public scrutiny of their religious activities, and not just their social service activities. Separated grant accounts offer a potential means of enhancing accountability while preserving the independence of FBOs.⁸⁸ The Commonwealth of Virginia points out this option to FBOs, stating:

Religious organizations contracting to provide assistance are subject to the same regulations as other service providers and will be subject to audits. If these organizations segregate Federal funds into separate accounts, only those funds will be audited. Finally, programs must be operated in compliance with federal and state laws, and funds may not be used for worship, religious instruction, or proselytizing.⁸⁹

Legislative Analysis and Policy Options. The CARE bill did not, and E.O. 13279 does not, address separation of funds. H.R. 7, however, would have required FBOs to separate government funds they receive through grants and contracts. Only the separated government funds would be subject to audit. Further, if an FBO received government funds through vouchers it *could* separate the funds, and only separated government funds would be subject to audit.⁹⁰ These provisions would likely have enhanced the ability of federal officials to audit FBO programs.

⁸⁷ H.R. 7, Title II, sec. 1991(1).

⁸⁸ OMB Watch, "Analysis of Bush Administration's Charitable Choice Initiatives," p. 7.

⁸⁹ Virginia Community and Faith-Based Initiatives web site: [http://www.dss.state.va.us/community/291.html], visited Dec. 18, 2002.

⁹⁰ H.R. 7, Title II, sec. 1991(i)(2).

Additionally, these provisions could help allay the concerns of those officials and citizens who believe FBOs might use government funds for religious activities.

Some concerned observers stated that Congress should further improve accountability in voucher systems by requiring FBOs to separate funds received through vouchers, rather than giving them the option to separate them, as provided in H.R. 7. The point was that if the funds are not separated, then they are not subject to government audit. Requiring these funds to be separated and subject to audit would improve the ability of federal officials to audit the program. Such a requirement could result in quantitative evidence (financial records) showing that FBOs do separate federally funded services from religious activities.

The House included a provision in H.R. 7 giving states and localities discretion in co-mingling their funds with federal funds when the state or locality is contributing to a program. When states and localities co-mingle funds, all the government funds are subject to federal audit.⁹¹ Another approach would have been to encourage those state and local governments that keep their funds separated, to undertake their own audits of state and local funds.

Working Relationship Between FBOs and State and Local Governments

There is a long history of FBOs receiving funds from all levels of government to provide services. For example, in the 19th century, the federal government worked through FBOs to assist Native Americans and refugees. The “Great Society” programs of the 1960s expanded the variety of programs administered by FBOs to such areas as welfare services and community development. During the early 1980s, grants-in-aid funding was substantially reduced, but President Ronald Reagan’s “New Federalism” initiative still emphasized the use of FBOs and other nonprofit organizations. One observer of FBOs and nonprofits wrote: “[They] retain a significant foothold in virtually every sphere of human service, and in many cases have been able to expand their activities as a direct by-product of government involvement.”⁹²

New federal legislation or initiatives to expand FBO access to federal funds could potentially disrupt good working relationships between FBOs and state and local governments. Past efforts to use community-based organizations in federal programs, whether religious or not, have sometimes produced competitive relationships between state and local governments and those community-based organizations.

This occurred, for example, in the 1960s when Congress authorized private, nonprofit agencies called Community Action Agencies (CAAs) to receive and

⁹¹ H.R. 7, Title II, sec. 1991(j).

⁹² Stephen V. Monsma, *When Sacred and Secular Mix* (Lanham, MD: Rowman & Littlefield Publishers, Inc., 1996), pp. 6-7.

administer federal anti-poverty funds.⁹³ CAAs were charged with achieving “maximum feasible participation” of community residents in the use of federal funds. During those years, some CAA officials said that their role as advocates for the poor led to adversarial relationships with local governments. Some local elected officials argued that it was inappropriate to channel federal funds away from elected governments to community organizations that were not politically accountable to the entire local electorate. As a result, CAAs and local governments sometimes competed for authority over the distribution of funds and benefits in federal programs.⁹⁴ In some cities, there were reports of mistrust between citizens and local officials, which led to arguably ineffective implementation of programs. For example, a CAA in Philadelphia reported:

We only succeeded when we insisted that the politicians live up to their promises, and when we demonstrated that we had some power If you allow yourself to be kept busy reacting to the government’s ... mountain of bureaucratic requirements, you get diverted from the really important task of initiating, refining, and acting on your community’s agenda.⁹⁵

Congress considered the views of local government officials when it created the Model Cities program in 1966, which gave local elected officials increased responsibility for certain federally funded programs.⁹⁶ Local officials, however, were required to provide “citizen participation structures [with] ‘... clear and direct access to the decision-making process’” Legislation further required local officials to provide technical assistance to community organizations administering community services.⁹⁷

Although funding the activities of FBOs is not a new proposal, some state and local officials are concerned that increasing FBO access to federal funds could result in a similar environment of competition between FBOs and state and local governments. One community services official in Michigan also questioned whether using more FBOs could disrupt existing productive relationships between FBOs and state and local governments, as well as relationships among FBOs.⁹⁸ A representative of the American Federation of State, County and Municipal Employees (AFSCME), a public employees’ union, expressed concern that the faith-based initiative, when combined with the federal tax cuts, “... will pit religious,

⁹³ Economic Opportunity Act of 1964, P.L. 88-452; 78 Stat. 516.

⁹⁴ John H. Strange, “Citizen Participation in Community Action and Model Cities Programs,” *Public Administration Review*, vol. 32, Oct. 1972., p. 660.

⁹⁵ As told to Sherry R. Arnstein, “Maximum Feasible Manipulation,” *Public Administration Review*, vol. 32, Sept., 1972, p. 388.

⁹⁶ Demonstration Cities and Metropolitan Development Act of 1966, P.L. 89-754; 80 Stat. 1255.

⁹⁷ John H. Strange, “Citizen Participation,” pp. 655-657.

⁹⁸ Steve Walker, Executive Director, Genesee County Community Action, quoted in Gary Heinlein, “GOP Wants Religious Groups to Take Over Welfare Tasks,” *Detroit News*, Feb. 26, 2001.

secular nonprofit, and public agencies against each other for a declining share of federal funds”⁹⁹

On the other hand, one analyst asserted that, “[c]ompetition for funds may happen, but I don’t necessarily see that as a bad thing. We want the money to go to the most efficient [organizations].”¹⁰⁰ Several officials from the federal, state, and local levels of government have stated that while harmful competition is possible, they are unaware of any instances in which FBOs and state and local governments have had conflicts over competition for funds or program authority.¹⁰¹

Some public officials are reporting that state-level faith-based initiatives are enhancing the relationship between FBOs and government. One Indiana state official testified to Congress that her state’s FaithWorks program, “... has not created any new burden on the system or the state—rather it has helped create broadened partnerships in providing services that bring new perspectives and approaches to supporting individuals in need.”¹⁰² Other states, like Virginia, have launched awareness campaigns to communicate to FBOs the state’s willingness to coordinate programs with them.

Legislative Analysis. Neither H.R. 7, the CARE bill, nor the more recent E.O. 13279, contained provisions addressing competition between FBOs and state and local governments. Charitable choice provisions like those in H.R. 7, if enacted, would likely affect the working relationship through its effectiveness and accountability provisions.

Friction between the institutions could develop if FBOs that accept government funds feel government regulations have a secularizing effect on their organization. Some FBO leaders have expressed concern over secularization, because of requirements that religious content be separated from programs receiving direct federal funding. Conversely, FBO proponent Amy L. Sherman testified before Congress that, in her interviews with FBO leaders and public officials, she found no evidence that FBOs “... felt their religious expression had been ‘squelched’ in their collaborative relationship with government.”¹⁰³

⁹⁹ House Committee on Ways and Means, hearing, Statement of Nanine Meiklejohn, AFSCME.

¹⁰⁰ Steven Lazarus, Senior Policy Associate, Center for Public Justice, quoted in Gary Heinlein, “GOP Wants Religious Groups to Take Over Welfare Tasks” *Detroit News*, Feb. 26, 2001.

¹⁰¹ Telephone conversations with selected federal, state, and local officials, June 2001.

¹⁰² House Committee on Ways and Means, hearing, Statement of Katherine Humphreys, Secretary, Indiana Family and Social Services Administration.

¹⁰³ U.S. Congress, House Committee on the Judiciary, Subcommittee on the Constitution, Oversight Hearing on State and Local Implementation of Existing Charitable Choice Programs, hearing, 107th Cong., 1st sess., April 24, 1976. See House Judiciary Committee web site: [http://www.house.gov/judiciary/sherman_042401.htm], visited Jan. 3, 2001.

It is also possible that expanding charitable choice could lead to competition among FBOs. Rev. J. Brent Walker, a scholar and executive director of the Baptist Joint Committee on Public Affairs, testified before Congress that charitable choice “encourages unhealthy rivalry and competition among religious groups.” He further expressed concern that by expanding FBO access to federal funds, the federal government could potentially be forced to choose one religious denomination over others, or at least give the impression of doing so.¹⁰⁴ Such a scenario is possible because U.S. citizens hold a wide range of religious beliefs. If the number of FBOs applying for federal funds increased, then federal, state, and local governments may give the perception of awarding grants to one particular denomination or FBO. Those FBOs who are not awarded funds may believe they were discriminated against on a religious basis.

Conclusion

In announcing his faith-based initiative, President Bush declared that “Government cannot be replaced by such organizations, but it can and should welcome them as partners.”¹⁰⁵ A significant number of state and local government officials agree with the President that FBOs can be effective partners. On the other hand, others argue there are a number of complex institutional issues Congress should consider and resolve legislatively or through oversight of an expanded role for FBOs in the delivery of federally assisted services.

Related CRS Products

CRS Report RL31042, *Charitable Choice: House-Passed Version of H.R. 7 Compared With Existing Charitable Choice Laws*, by Vee Burke.

CRS Report RS20948, *Charitable Choice Provisions of H.R. 7*, by Vee Burke.

CRS Report RL31043, *Public Aid to Faith-Based Organizations (Charitable Choice): Background and Selected Legal Issues*, by David M. Ackerman.

Resources on Charitable Choice Issues

White House Office of Faith-Based and Community Initiatives
[<http://www.whitehouse.gov/government/fbci/>]

American Civil Liberties Union
[<http://www.aclu.org/ReligiousLiberty/ReligiousLibertyMain.cfm>]

¹⁰⁴ House Committee on Ways and Means, hearing, Statement of J. Brent Walker, Executive Director, Baptist Joint Committee on Public Affairs.

¹⁰⁵ U.S. President (George W. Bush), “Establishment of White House Office of Faith-Based and Community Initiatives,” E.O. 13199, *Federal Register*, vol. 66, p. 8499, Jan. 31, 2001.

Aspen Institute—Nonprofit Sector Research Fund
[<http://www.nonprofitresearch.org/index.htm>]

Hudson Institute
[<http://www.hudsonfaithincommunities.org/>]

Pew Forum on Religion and Public Life
[<http://pewforum.org/>]

The Roundtable on Religion and Social Welfare Policy
[<http://www.religionandsocialpolicy.org/>]