



ACLU SPECIAL REPORT:

The Administration's own survey indicates little or no need for the Bush Faith-Based Legislation.

Executive Order 13198, signed by President Bush on January 29, 2001, required five cabinet departments – Justice, Education, Labor, Health and Human Services and Housing and Urban Development – to “identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social services by the department.” The order called for each agency to report its findings to the White House within 180 days – by July 28. Only one of the agencies – HUD – issued a Notice soliciting public comments regarding obstacles faced by faith-based and community organizations, setting July 5 as the deadline for comments. On July 16, it re-opened the comment period until August 15, purportedly in response to the “high degree of interest in, and response to” the first Notice. The public submitted 130 comments in response to the first Notice; as of August 14, fifteen additional comments had been submitted in response to the second Notice.

Meanwhile, without waiting for the results of these efforts, the Administration proposed charitable choice legislation that it claimed would assist faith-based organizations in obtaining federal funding. The bill (H.R. 7), passed by the House on July 19, would allow direct government funding of religion and permit federally funded employment discrimination. The responses to the HUD Notice, however, show that the charitable choice legislation would not only undermine civil rights laws and religious freedom, but would also fail to address the most significant obstacles faced by faith-based and community service providers.

Respondents to the HUD Notice were three times more likely to list non-religious than religious restrictions as barriers. Moreover, of those who did address religion-based restrictions, more organizations and individuals supported maintaining current restrictions than modifying them to expand government-funded religion. Ironically, Congressional supporters of the faith-based legislation claim that their bill would not change most of the types of religious restrictions to which faith-based organizations did object. And the legislation's most significant change – allowing taxpayer-funded employment discrimination – received support from only one of the public comments.

RESULTS OF ADMINISTRATION SURVEY

The responses to the HUD Notice fell into four general categories: 1) those that identified non-religious barriers to the participation of faith-based and community organizations; 2) those that found no barriers, supported existing restrictions, and/or objected to charitable choice; 3) those that identified religion-based restrictions that prevent faith-based organizations from participating in government programs; and 4) those too vague or non-responsive to be categorized.

Only twenty-three organizations reported that they had encountered obstacles based on their religion. The most common complaints were about the “secularizing requirements” of HUD regulations, including 24 CFR 570.200(j) and 24 CFR 583.150(b). These regulations prohibit federal funds from being used for religious instruction, counseling, worship, services, proselytization, or the exertion of religious influence in the provision of public services. Grantees may not discriminate in employment or in the provision of services. HUD regulations also prohibit the acquisition, construction, or rehabilitation of property to be used for religious purposes. The Bush Administration, however, claims that the faith-based initiative would not fund religious worship, instruction, or proselytization.

The bill (H.R. 7) would allow HUD grantees to discriminate on the basis of religion, contrary to current regulations. However, the only organization that explicitly cited federal employment discrimination provisions as an obstacle was the Salvation Army’s Central Territorial Headquarters. The Salvation Army submitted its comments before The Washington Post revealed that the Salvation Army had agreed to actively support the faith-based legislation in return for a firm commitment from the White House to issue a regulation protecting such organizations from state and local anti-discrimination laws.

Reading Berks Conference of Churches (Reading, PA): “We believe the Christian community is sometimes discriminated against because of their ‘up front’ Biblical stance. Specifically ministries that are clearly Christian and actively teach and communicate the Christian message are not able to receive funding even though they are delivering service [sic] that meet the needs within our community.”

Warriors for Christ (location unknown): “[W]e have been trying to get funds for our faith base [sic] church mission and we have been told by city [sic] that we have to leave Jesus Christ at the door. This is not right . . .”

City of Winston-Salem, Housing/Neighborhood Development Department (NC): “The main obstacle in the CDBG and SHP regulations are the requirements at 24 CFR 570.200(j) and 24 CFR 583.150(b), respectively, that primarily religious organizations agree to provide housing and supportive services in a manner that is free from religious influences and that they must provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of housing and supportive services . . . For example, during the 2001 Continuum of Care

process, two faith-based nonprofits declined to apply for SHP funds because ministry and Bible study are integral elements of their treatment programs.”

Eugene Davis (Tyler, TX): (Regarding HUD’s HOME program) “Under this area faith based groups are prohibited from participating, at least that is how some, such as the Salvation Army, interprets [sic] it. In addition Home Funds specify that the boards must be voluntary. Some groups have boards that are made of ministers, who due to their position or assignment, who work for the organization.”

Gateways Beit T’Shuvah (Los Angeles, CA): “Beit T’Shuvah has never applied for government grants or funding due to the fact that we are a faith based organization. Current proposed legislation would provide government funding to faith based organizations but would not be able to be used for religious programming or content. Because Torah (Bible) study and religious ritual practices are an integral part of our program this current legislation would preclude us from qualifying for funding.”

Eighty-one of the 145 responses identified obstacles that were not specific to religious organizations. These barriers include inadequate funding for housing programs, a cumbersome application process, excessive reporting requirements, and a variety of problems with specific HUD programs and regulations, as well as small service providers’ own lack of infrastructure and capacity. These obstacles confront religious and secular entities alike and are not addressed by charitable choice legislation. Many organizations identified lack of funding as the single biggest obstacle. Yet the Administration has proposed reductions in a variety of federal housing programs. Furthermore, many of these respondents specifically objected to relaxing current requirements as part of an effort to favor faith-based organizations. For example, many of those who complained about financial and bureaucratic obstacles supported mandating the establishment of 501(c)(3) organizations and prohibiting employment discrimination.

Interfaith Housing of Western Maryland: “I could list many other problems with your list of HUD programs, but access to HUD programs by Faith-Based organizations like ours is not one of them. Any place of worship or groups of religious entities can form a 501(c)(3) as we did and start putting their faith into action. If they are not willing to do that, I would question their mission and their ability to take on something as complex as affordable housing.”

Catholic Charities of the Diocese of Honolulu: “No HUD funds have been set aside specifically for faith-based organizations (FBOs). Of greater concern, no new funding has been allocated for FBO initiatives. The end result is that any new FBO project funded simply moves money from one hand to the other hand (among the current providers/developers to new FBO providers/developers). Services and affordable housing development projects cannot expand without new funding.”

B’nai B’rith (International HQ, Washington, DC): “Our members agree that faith-based organizations must be nonsectarian in their activities and must meet all the

appropriate obligations placed on recipients of federal funds. We believe that creation of a separate 501(c)(3) is necessary, and we would oppose anything that would create a preference for any faith-based group over other qualified nonprofits . . . A major concern for faith-based and other groups alike is the inadequate funding available and the lack of national priority or attention to the need for adequate affordable housing across the country . . . If the Administration is seeking to encourage greater participation in the provision of supportive housing services by faith-based and other community-based providers, then the pool of funds for which these groups compete must be expanded.”

Thirty-five respondents either reported no obstacles, reported that the current requirements were appropriate, or specifically objected to the Administration’s faith-based initiative. Most of these comments were submitted by religious and religiously-affiliated organizations and individuals.

Covenant House (New York, NY): “There has been no indication that the amount of funds made available to localities will be increased to allow the inclusion of faith-based and other community organizations in addition to the programs already being funded so this inclusion will have to come at the expense of those programs . . . The regulations have not proved to be too constricting . . . Whenever an organization accepts a grant from the taxpayers’ money, it takes on a responsibility to those taxpayers. If the organization does not want to assume such an obligation, then it should not seek funds from this source . . . These grants have in no way compromised the faith-based principles of our organization.”

United Methodist Church, General Board of Global Ministries (New York, NY): “Some persons and groups may view as “barriers” the current statutory or regulatory prohibitions on the use of HUD funds for sectarian education, worship and proselytization. We do not consider such provisions as barriers but as necessities, and hold . . . that such language must remain in the laws and regulations.”

Interfaith Housing Center of the Northern Suburbs (Winnetka, IL): “Our main concern is that the Request for Comments implies that “facially discriminating against or otherwise discouraging” faith-based organizations (or others) from “delivering social services” by HUD is wrong. Faith-based groups by definition conduct in worship, sectarian instruction and, sometimes, evangelism. This is inappropriate when the task at hand is the delivery of social services within a particular geographic area . . . when government funding is involved, these groups must understand and respect separation of church and state . . . We are also concerned that HUD’s focus is on discrimination against organizations instead of the individuals who would be served by the organizations . . . The Interfaith Housing Center will never support discrimination in employment based on any of the protected classes, including religion, in the delivery of public programs. Nor does Interfaith support a “religious atmosphere” or religious symbols in a public venue. Again, this is blurring the distinctions of church and state, in addition to being offensive to those applying for the service. While we understand that an

individual has a right to refuse to be served by a faith-based group, it seems like a waste of taxpayers funds to have to support separate agencies delivering the same services, simply because the government is allowing religious organizations to put their own needs over those of their applicants.”

Hebrew Rehabilitation Center for Aged/ Jack Satter House (Boston): “I am very concerned with the administration’s consideration of including religious groups in their grant-funding programs. I believe no Constitutional principles are as important as non-discrimination in publicly supported facilities and the clear separation of church and state and that religious groups should not be included in HUD’s grant funding programs. I am particularly concerned about the effect the proposed changes may have on the availability of housing and other community-based services if religious groups . . . are able to siphon off limited funds for a specified segment of the population to the exclusion of others.”

City of Atlanta: “We find the existing regulations to be entirely adequate to allow the participation of capable, qualified faith-based organizations in carrying out activities that meet our grant programs’ goals.”

Manna (Washington, DC): “Manna, Inc. is a faith-based and community-based non-profit affordable housing and community development organization . . . We are not aware of or have experienced restrictions with [HUD] programs as a result of our faith-based or community-based background. And, by the way, we do **not** support the President’s faith-based initiative. The programs work sufficiently well without it.” (*Emphasis in original*)

River Garden Hebrew Home (Jacksonville, FL): “[W]e have never faced more onerous regulation or felt more constrained by prevailing policy because of our overtly Jewish identity. I can say the same for hundreds of my colleagues directing community service agencies rooted in various faith traditions . . . We view participation in federal programs as an opportunity to put our religious ideals into practice by offering exemplary elder care services. It is not an opportunity to propagate religious practice at public expense . . . There are no particular barriers to those whose religious traditions motivate them to become providers of community and human services. Those wishing to receive public funds can do so by establishing related secular agencies.”

Utah Issues/Center for Poverty Research and Action: “Our main concern with the faith-based initiative is that it doesn’t seem to address the real need for additional funding. Without significant new money to meet these needs, the faith-based initiative has the potential to cripple existing organizations as funds are diverted to new faith-based charities.”

Multi-Service Center (Federal Way, WA): “I see no need to change the requirements to allow faith-based organizations to access federal dollars, as they currently are able to apply just as any other non-profit. The allocation of tax dollars by the Federal Government should assure these dollars are being distributed to organizations that have the capacity to carry out the work, do not

discriminate in their delivery of service, and are able to report back on the success of the projects over time. To do anything less would be an abuse of the taxpayer dollar.”

Jewish Senior Services of Toledo (Ohio): “We have not experienced obstacles to participation because we are faith-based. We support faith-based organizations as recipients of public funds that do public work. However, we oppose government funds going to religious organizations such as churches, mosques and synagogues . . . Obstacles in the form of requirements of non-discrimination in hiring, in serving residents, clients and patients, and that require conformance with health, safety and performance standards, etc. should apply equally to any organization applying for and using federal funds. To permit religious organizations to use federal funds in contravention of Constitutional protections and without the standards that other agencies must meet is to cut an inadequate federal “pie” into even less adequate pieces while shredding religious freedom protections.”

St. John’s United Methodist Church (Houston, TX): “Our only concern is that HUD diligently explore the background, capacity, and experience of individuals or agencies professing the status of faith based entities.”

UJA-Federation of New York (faith-based organization): “In our many years of developing such housing, neither we nor our affiliated agencies have encountered restrictive conditions which impede the participation of our faith community . . . On the contrary, we believe that HUD’s policies and practices have struck a successful balance in engaging faith based communities while maintaining the constitutionally mandated separation between church and state . . . The requirements of HUD are not onerous when viewed in the context of assuring that public dollars go to organizations capable of carrying out the complex and long term responsibilities inherent in these programs . . . In fact, the major impediment which we face in our efforts is that substantially more funding is needed for the Sections 202 and 811 Programs in order to address the ongoing and burgeoning demands for this housing.”

Dated: August 16, 2001