



UNLEVEL PLAYING FIELD:

Barriers to Participation by Faith-Based and
Community Organizations in
Federal Social Service Programs

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“The paramount goal is compassionate results, and private and charitable groups, including religious ones, should have the fullest opportunity permitted by law to compete on a level playing field, so long as they achieve valid public purposes.... The delivery of social services must be results-oriented and should value the bedrock principles of pluralism, nondiscrimination, evenhandedness, and neutrality.”

--President George W. Bush
January 29, 2001

BACKGROUND

On January 29, 2001, President George W. Bush issued Executive Order 13198, creating Centers for Faith-Based & Community Initiatives in five cabinet departments—Health and Human Services (HHS), Housing and Urban Development (HUD), Education (ED), Labor (DOL), and Justice (DOJ).¹ The Executive Order charged each Center to conduct:

a department-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social services by the department, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs.

This report summarizes the initial findings from the five cabinet Centers on barriers impeding religious and grassroots organizations that seek to serve the common good in collaboration with the Federal Government.

INTRODUCTION

The role that faith-based and other local, neighborhood-serving groups should play in meeting social needs through Federal Government programs has been debated for decades. These debates have often produced more heat than light because of insufficient evidence on matters ranging from the extent of Federal social service spending and the breadth of existing Federal collaboration with faith- and community-based charities to the existence of specific legal restrictions on these organizations’ participation and legal questions about the constitutionality of government funding of faith-based service groups.

¹ The Department of Justice has established a Faith-Based & Community Initiatives Taskforce. For convenience, the four Centers and the Justice Taskforce will all be called Centers in this report.

This report provides an overview of problems uncovered by the first ever audit of Federal programs undertaken by the newly-created Centers for Faith-Based & Community Initiatives at HHS, HUD, Education, Labor, and Justice. Because of the Centers' recent vintage and limited staff, the shortened turnaround time for the report, and the extensive range of affected agency programs, the audit could not cover every potentially affected program in depth. Thus, the Centers emphasized programs that receive major funding, programs that are covered by existing Charitable Choice laws, programs characteristic of the respective departments, and programs in which participation by faith-based and other community-serving groups would be natural or especially fruitful.

Among the findings of the five Centers' reports are the following:

- A funding gap exists between the government and the grassroots. Smaller groups, faith-based and secular, receive very little Federal support relative to the size and scope of the social services they provide.
- There exists a widespread bias against faith- and community-based organizations in Federal social service programs:
 - Restricting some kinds of religious organizations from applying for funding.
 - Restricting religious activities that are not prohibited by the Constitution.
 - Not honoring rights that religious organizations have in Federal law.
 - Burdening small organizations with cumbersome regulations and requirements.
 - Imposing anti-competitive mandates on some programs, such as requiring applicants to demonstrate support from government agencies or others that might also be competing for the same funds.
- Legislation requires some restrictions on the full participation of faith-based organizations, but many of the regulations are needlessly burdensome administrative creations.
- Congress' remedy to barriers to faith-based organizations – the Federal law known as “Charitable Choice” – has been almost entirely ignored by Federal administrators, who have done little to help or require State and local governments to comply with the new rules for involving faith-based providers.
- Despite these obstacles, some faith-based and community-based service groups receive financial support from the Federal Government, either by winning Federal discretionary grants or gaining a share of Federal formula grants used by State and local governments to deliver social services.
- Few Federal funding programs have undergone a thorough evaluation with an eye to ensuring that expenditures yield the planned-for positive results in the lives of people who need help.

- The Government Performance and Results Act (GPRA), enacted in 1993 to promote performance-based management of Federal programs, has had little discernible impact thus far on either procurement decisions or program outcomes.

HOW MUCH FEDERAL SUPPORT FOR FAITH-BASED AND GRASSROOTS CHARITIES?

The social safety net throughout the United States includes Federal, State, and local government programs, local affiliates of large national organizations (both secular and sacred) for-profit companies, and a great diversity of other groups. Although little attention has been paid to them until fairly recently, faith-based grassroots groups play large and vital roles everywhere. This network is composed of: local congregations offering literally scores of social services to their needy neighbors; small nonprofit organizations (both religious and secular) created to provide one program or multiple services; and neighborhood groups that spring up to respond to a crisis or to lead community renewal. As one study reports:

These religious organizations represent a major part of the American welfare system. Tens of thousands of people in the Philadelphia area are being helped by all kinds of programs, from soup kitchens to housing services, from job training to educational enhancement classes. One can only imagine what would happen to the collective quality of life if these religious organizations would cease to exist.²

Despite the vast, varied, and vital community-serving role of these diverse, sacred, and secular grassroots groups, when the Federal Government reaches out for partners to help fulfill the Nation's social agenda, it mainly ignores them. The nonprofit organizations that administer social services funded by Washington are typically large and entrenched, in an almost monopolistic fashion. Even though "many smaller, community-based nonprofits aspire to secure public funding, they often face serious managerial and political obstacles to that goal."³ Thus, at all levels of government and in inter-governmental social service programs as well, "a relatively select group of large social-service and health nonprofits have long received the bulk of public funding."⁴

What proportion of Federal funding goes to the faith- and community-based organizations that play such key roles in the lives of suffering people and in neighborhoods all across the nation? It

² Ram A. Cnaan, with Robert J. Wineburg and Stephanie C. Boddie, *The Newer Deal: Social Work and Religion in Partnership* (New York: Columbia Univ. Press, 1999), 275f. See, also, e.g., Mary Jo Bane, Brent Coffin, and Ronald Thiemann, eds., *Who Will Provide? The Changing Role of Religion in American Social Welfare* (Bolder, Col.: Westview Press, 2000); E. J. Dionne, Jr., ed., *Community Works: The Revival of Civil Society in America* (Washington, DC: Brookings, 1998); Virginia Hodgkinson, et al., *From Belief to Commitment: The Community Service Activities and Finances of Religious Congregations in the United States, 1993 Edition: Findings from a National Survey* (Washington, DC: Independent Sector, 1992).

³ Peter Frumkin, "After Partnership: Rethinking Public-Nonprofit Relations," in Bane, et al., eds., *Who Will Provide?*, 199.

⁴ Id.

is impossible to know the exact percentage across Federal programs, but we have some indication of the share that such organizations receive from some Federal programs.

At the request of the White House Office of Faith-Based & Community Initiatives, the Office of Management and Budget asked HHS, HUD, Justice, Education, and Labor two questions: (i) what percentage of grant funding in a range of programs goes to nonprofit organizations; and (ii) of *that* percentage, how much has gone to faith-based groups and how much to community-based groups?

Data Collection Issues

The Agencies found it difficult to answer these questions fully, because a significant proportion of funding in their respective departments is distributed by formula grants to State and local governments, rather than via direct allotment to faith-based or other service providers. Formula grant recipients generally do not report back to the Federal Government on how they distributed the money. If a State extensively involves community organizations, for example, Federal officials would not necessarily know that information.

Federal Formula and Discretionary Grant Making

	Total Grants (\$ billions)	Formula Grants (\$ billions)	Discretionary Grants (\$ billions)
DOJ (OJP) (FY 2001)	2.6	2.0 (77%)	0.6 (23%)
DOL (FY 2000)	6.8	6.0 (88%)	0.8 (12%)
HUD (FY 2001)	28.0	25.6 (91%)	2.4 (9%)
ED (FY 2001)	29.0	23.9 (82%)	5.1 (18 %)
HHS (FY 2000)	185.1	160.2 (87%)	24.9 (13%)

To complicate matters, there are no standard Federal definitions of faith-based and community-based organizations, and the databases on discretionary grants do not provide any such identifiers (another indicator of systemic discrimination). Officials can search the grants databases for grantees with “religious sounding” names, but that crude strategy mistakenly organizations that include terms like St. Louis or St. Petersburg, while missing religious organizations such as Georgetown University and ignoring grassroots groups altogether.

A Glance at One Service Area — Child Care

A recent look at faith-based child-care providers notes that nearly one of every six child-care centers is housed in a religious facility. The nation's largest "chains" of child-care services are not KinderCare and La Petite but rather the Roman Catholic Church and the Southern Baptist Convention; and the number of centers in religious facilities is growing faster than the total number of centers (26% vs. 19% from 1997-99).⁵

Congress acknowledged religious charities' large role in this field when it approved Federal funding for child care for low-income families in 1990 and urged states to provide parents with certificates or vouchers that they could redeem at any approved center. Parents can use these vouchers at explicitly religious centers without raising any genuine constitutional questions.

By far, States prefer certificates and vouchers over contracts—in FY 1999, certificates were used to pay for care for 83% of the children helped with Federal funds. But what percentage of Federally funded child-care is provided in *faith-based* centers? No one knows. Asked what percentage of Federal child-care funds are distributed in New York to congregations and other faith-based providers, the head of the program said she did not know—the State, rightly, does not ask centers seeking eligibility whether they are religious or secular. But she pointed out that she had often visited church-based child care facilities that serve parents with Federally funded certificates, so she knew faith-based groups were involved but was unaware of the extent.

Discretionary Grants Directly to Providers

Notwithstanding these fundamental data-keeping problems, some Federal discretionary grants programs *do* keep track of faith and community-based grantees:

- The Office of Justice Programs at DOJ estimates that in FY 2001 it will award only about 0.3% of total discretionary grant funds—one-third of 1%—to faith-based organizations (\$1.9 million of \$626.7 million) and 7.5% to community-based providers (\$47.2 million).
- At the Department of Education, in FY 2000, faith- or community-based organizations received 25 of the 1091 discretionary grants given in 11 programs—about 2% of the grants. The percentage was the same in FY 1999 and slightly less in FY 1998 and FY 1997.

⁵ R. Neugebauer, *Religious Organizations Taking a Proactive Role in Child Care*, Child Care Information Exchange 18 (May 2000).

- In multiple rounds of competitive funding for Welfare-to-Work services (FY 1998 and 1999), Labor sought to include groups not traditionally involved in its programs. More than 1,800 applications arrived—2% of which were from faith-based organizations. Those groups eventually won 2% of the competitive grant funds (3% of the awards).
- HUD's Continuum of Care process for the homeless has collected information to identify faith-based providers and reports that 399 such groups won about 16% of the funds (\$139 million of a total of \$896 million) in the FY 2000 competition.
- In the HHS Adolescent Family Life grants program that funds abstinence education, 21% of the funds going to nonprofits went in FY 2000 to faith-based groups.
- In Labor's Youth Opportunity Grant Program that underwrites employment and job preparation services, in FY 2000, 20% of the funds went to community-based organizations (\$43 million of \$220 million total) and 3% (\$6.7 million) to faith-based groups.

Formula Grants to State and Local Governments

The few solid indicators available concerning formula grant funds that pass through State and local governments suggest that the share received by faith-based and other grassroots groups is equally small.

- The Office of Justice Programs at DOJ estimates that in FY 2001 only about 0.3% of the formula grant funds—or one-third of 1%—will go to faith-based providers (\$8.1 million of \$2.7 billion total) and only about 0.2% to community-based groups (\$5.4 million).
- A special DOL study of the role of faith-based organizations in providing employment and training services in five cities discovered that the workforce investment boards (which receive Federal formula grants under the Workforce Investment Act) in all five cities contracted with faith-based organizations, but the amounts were not large: in Milwaukee, Baltimore, and Ft. Worth, 1% of contract funds went to religious groups; in San Diego 6% went to such organizations; and 10% in Pittsburgh.
- Last year, in Wisconsin, which is one of the relatively few states that have sought to create equal opportunity for faith-based providers, as required by the 1996 Charitable Choice rules that govern the TANF (welfare) block grant, in the various administrative regions, faith-based groups received from a low of less than 1% to a

high of 16% of total contract funds, which are a combination of Federal and State welfare funds.⁶

All of the figures reported should be used cautiously; they are fragmentary and not wholly reliable due to the various data problems identified above. Nevertheless, the numbers are highly suggestive: there is a striking disjunction between the service organizations that Federal grant funds predominately support and the organizations that actually provide most of the critical social services.

Why this disjunction? One reason is that some religious and grassroots organizations are not interested in seeking Federal funds for the services they provide. They may have theological objections to getting Government money for activities that they believe adherents should support, worries about becoming dangerously dependent on a distant funding source that may dry up tomorrow, or concerns about implementing government policies with which they might partially disagree. Most notably, many faith-based groups are concerned that the cost of Federal funds is the putative divestiture of much or all of their religious character.

Despite these concerns, numerous national, regional, and local coalitions of community-serving religious groups have expressed an eagerness to participate more fully in public/private partnerships that deliver social services, if the conditions are right. Likewise, systematic survey data suggest that a large proportion of urban community-serving congregation leaders would welcome a fair chance to help administer Federal social service programs in their neighborhoods.⁷

The neighborhood-based charities, both secular and religious, that daily supply so much indispensable help to needy families and neighborhoods, receive little support from the Federal Government in part because the Federal grants system is inhospitable to their involvement. A careful analysis of the rules and practices in a large sample of programs in the five Cabinet departments shows that these organizations face myriad barriers in seeking Federal support for their vital good works.

⁶ Amy Sherman, Testimony to the Oversight Hearing on “State and Local Implementation of Existing Charitable Choice Programs,” Committee on the Judiciary, Subcommittee on the Constitution, U. S. House of Representatives, April 24, 2001.

⁷ For example, see Ram A. Cnaan and Stephanie C. Boddie, *Black Church Outreach*, Center for Research on Religion and Urban Civil Society, Philadelphia, PA, CRRUCS Report 2001-1, p. 19, reporting that 60% of all community-serving congregation leaders in Philadelphia viewed public collaboration with the Federal government under Charitable Choice as an option they would like to consider. That would mean some 1,200 prospective applicants in Philadelphia alone. See also Mark Chaves, “Religious Congregations and Welfare Reform: Who Will Take Advantage of ‘Charitable Choice’?,” *American Sociological Review*, 64 (1999), who reports that 45% of congregations sampled in a national survey would apply for government funds, and 64% of predominantly African American congregations were interested in government funds.

BARRIERS: A FEDERAL SYSTEM INHOSPITABLE TO FAITH-BASED AND COMMUNITY ORGANIZATIONS

The Federal grants system is intended to put taxpayer dollars to the most effective use by enlisting the best nongovernmental groups to provide various social services, either through discretionary grants (also called competitive grants) awarded directly by Federal officials or through formula grants (including block grants) administered by State and local governments. The funds should go to the providers who can provide the most effective assistance and who can boast the best civic outcomes.

The Federal Government, however, has little idea of the actual effect of the billions of social service dollars it spends directly or sends to State and local governments. The policies and practices of Federal grants programs too often make it difficult or impossible for faith-based and grassroots groups to gain support, even though they may have superior results in lifting lives and healing distressed neighborhoods.

Billions of Federal Dollars Spent, Little Evidence of Results

The Federal Government spends billions of dollars annually to assist needy families, individuals, and communities, often using the funds to support services provided by nongovernmental organizations. Although Federal program officials monitor nonprofit organizations, State and local governments, and other groups that receive the funds to ensure that they spend Federal money for designated purposes and without fraud, Federal officials have accumulated little evidence that the grants make a significant difference on the ground.

Routinized Granting Without Performance Monitoring

In some Federal discretionary programs, a small number of organizations perennially win large grants, even though there is little empirical evidence substantiating the success of their services. For example, in the Labor Department's Senior Community Service Employment Program, the same 11 large organizations have ranked among the top-10 grant recipients over the past five years. In addition, since 1984 the Department's Women's Bureau has annually awarded a sole-source grant to the same organization. Similarly, in HHS's Consolidated Health Centers program, the same 12 organizations appear on the lists of the 10 largest grantees over the past five fiscal years; in the Runaway and Homeless Youth Program, only 17 organizations appear on the top-10 lists over the same period.

These apparent Federal Grant monopolists may rank head and shoulders above the rest in terms of quality and performance, but only rarely are Federal programs and grantees examined to determine whether taxpayer funds achieve the desired results. Large grantees are audited annually for their use of Government funds (if they receive more than \$300,000 annually from all Federal sources); and some programs, such as Head Start and Community Services Block Grants, require some form of impact evaluation. Although the Federal Government can ensure that funds are not spent on unauthorized purposes, it cannot ensure that the expenditures have the intended results. According to the OMB survey, despite the billions of dollars the sample of programs has distributed in discretionary and formula grants over the past 5 years, fewer than one in five of the programs has received a General Accounting Office or Agency Inspector General's review to analyze actual performance and results. Moreover, virtually none of the

programs has ever been subjected to a systematic evaluation of their performance that meets rigorous (or, in most cases, even rudimentary) evaluation research standards.

These Federal programs may be doing significant good; and the grantees that routinely win renewed support may be the best available. However, in the absence of meaningful performance reviews, agencies have no concrete basis for concluding so. Although routinized grant-making is administratively easier than competitive grant-making, such a grant-making process poses a high barrier to potential new entrants who, in fact, may be better at serving needy citizens and their neighborhoods.

Some critics of expanded 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.

The Impotence of GPRA in Determining Whether Programs Fly or Flop

Nearly a decade ago, Congress mandated a reform of Federal Government operations to produce on-the-ground changes. The 1993 Government Performance and Results Act (GPRA) requires Federal departments to prepare strategic plans and annual performance reports that look beyond mere gross measures of agency activity (*i.e.*, grants awarded, hours of training given) to measures that examine actual changes in the circumstances of communities and families toward whom the Government activity is directed. The goal of this reform is to identify which Federal programs actually make a meaningful difference.

To date, GPRA has had little positive impact on Government programs, and the reports from the Centers confirm this gloomy evaluation with respect to the measuring of social service grants to faith-based organizations.

- DOJ: The Office of Justice Programs has yet to establish adequate performance goals and measures. Of the discretionary grants programs examined, 12 had no performance measures, 7 had measures but could not or did not say what they were, 4 had only informal measures, and only 4 had specific targets — but these were indicators of mere activity and not results.
- ED: At Education, most program offices were unfamiliar with their programs' GPRA objectives and could not even locate the GPRA reports.
- HHS: The Department's programs use various performance measures, but the HHS report says it is unclear how the results of such analyses are connected to decisions about program design or grantee accountability.
- HUD: The Office of the Inspector General recently completed a thorough review of the department's compliance with GPRA during the previous administration, and

determined that, while HUD is making significant progress, the Department has not achieved full compliance with GPRA requirements.

- DOL: The report notes that, while the Department uses outcome-oriented goals and regards GPRA as an important tool, the process is hampered because officials cannot independently verify information received from grantees.

Despite GPRA and its promise of outcome-based grant-making, the Federal Government has made scant progress in showcasing program performance and managing for results. Too often, GPRA has devolved into a rote paperwork assignment that leverages little real change and influences few officials. GPRA's paramount goal – to herald high-performing programs and spotlight low-performing ones – has barely moved the needle in affecting the real world of making Federal programs work better. Indeed, a recent GAO report examining GPRA compliance showed that, in the 28 Federal agencies surveyed, only in 7 did a majority of managers say they used performance information in setting program priorities, adopting new approaches, allocating resources, coordinating program efforts, or setting job expectations for employees. It gets worse: the GAO survey shows that results-based management under GPRA has actually *decreased* in recent years.⁸

BARRIERS TO FAITH-BASED ORGANIZATIONS SEEKING FEDERAL SUPPORT

The First Amendment to the United States Constitution both secures religious liberty and protects against governmental establishment of religion. When it comes to Federal support for nongovernmental providers of social services, however, officials have focused much more on avoiding the prohibition than on honoring the protection. Congress and Government officials occasionally limit the participation of religious organizations on sound constitutional grounds. But many Federal policies and practices—including regulations, guidelines, program materials, decision-making criteria, awards-committee viewpoints, etc.—go well beyond sensible constitutional restrictions and what the courts have required, sharply restricting the equal opportunity for faith-based charities to seek and receive Federal support to serve their communities. The Government's restrictive policies and practices usually are good-faith efforts to keep within constitutional boundaries. But often they have gone too far, even as the courts adopt less restrictive constitutional guidelines.

Barrier 1: A Pervasive Suspicion About Faith-Based Organizations

There is one overarching impediment to full and equal opportunity for religious service organizations to receive Federal financial support: an overriding perception by Federal officials that close collaboration with religious organizations is legally suspect.

Officials know that there have long been many and varied Federal collaborations with religiously affiliated providers of social services. Some Federal departments, over the past few years, have reached out to faith-based organizations. The Department of Justice's Office of Juvenile Justice

⁸ Stephen Barr, "Survey of Supervisors Finds Little Movement Toward 'Managing for Results'," *The Washington Post* (June 10, 2001), p. C-2; GAO, "Managing for Results: Federal Managers' Views on Key Management Issues Vary Widely Across Agencies," May 2001 (GAO-01-592).

and Delinquency Prevention, for example, works with the National Center for Neighborhood Enterprise in a national campaign to reduce youth violence and with the Congress of National Black Churches to provide training and technical assistance to projects that curb substance abuse and prevent violence. Recent U.S. Supreme Court decisions have shifted markedly over the past few decades toward a neutrality framework that honors evenhandedness and pluralism, allowing the Government to treat all potential providers equally without singling out some as being “too religious” for Government support.⁹

But Federal officials, and State and local officials participating in Federal formula grant programs, often seem stuck in a “no-aid,” strict separationist framework that permitted Federal funding only of religiously affiliated organizations offering secular services in a secularized setting, and deny equal treatment to organizations with an obvious religious character. As the Labor Department’s report notes, reviewers of grant applications assume that Jefferson’s “wall of separation” metaphor automatically disqualifies all but the most secularized providers, leading to Federal resistance to collaborating with religious groups, and thus the actual exclusion of faith-based organizations despite the absence of any constitutional or statutory basis. One Education Department official asserted that the Constitution flatly forbids the use of grant funds even for activities that merely have a religious component. Such restrictive attitudes beget an administrative bias against religion and religious organizations where the Constitution requires that there be none.

HUD reports that no faith-based organization received any of the Self-Help Homeownership Opportunity Program’s \$20 million funding in FY 2000. In fact, Habitat for Humanity, International, won just over half of the total funding, and Habitat, of course, is a faith-based organization (it calls itself “a nonprofit, ecumenical Christian organization”). With mind-bending logic, HUD officials apparently reasoned that since the government may not aid religion, and yet HUD funds Habitat, then Habitat must not be a faith-based organization. (In HUD’s own scheme, since Habitat provides “essentially secular housing services,” it is not a “primarily religious” organization and thus is not excluded from Federal funding).

⁹ See, e.g., Douglas Laycock, testimony before the Committee on the Judiciary, Subcommittee on the Constitution, U.S. House of Representatives, June 7, 2001; Carl H. Esbeck, testimony before the Committee on the Judiciary, Subcommittee on the Constitution, U. S. House of Representatives, June 7, 2001; Report 107-138, Part 1, to H.R. 7, “Community Solutions Act of 2001” (Committee on the Judiciary, Chairman F. James Sensenbrenner, Jr., U.S. House of Representatives, 107th Congress, 1st Session), 11-40; Douglas Laycock, “The Underlying Unity of Separation and Neutrality,” *Emory Law Journal*, 46 (1997); Ira C. Lupu, “Government Messages and Government Money: Santa Fe, Mitchell v. Helms, and the Arc of the Establishment Clause,” *William and Mary Law Review*, 42 (2001); Eric W. Treene, “Religion, The Public Square, and the Presidency,” *Harvard Journal of Law & Public Policy*, 24 (Spring 2001), 573-621; Stephen V. Monsma and J. Christopher Soper, eds., *Equal Treatment of Religion in a Pluralistic Society* (Grand Rapids, Mich.: Eerdmans, 1998).

Barrier 2: Faith-Based Organizations Excluded from Funding

Some Federal programs ban outright all religious organizations from applying for funding. For instance, HUD's Section 202 and 811 programs that fund supportive residences for the elderly and for persons with disabilities, respectively, do not permit "religious organizations or ones that have religious purposes" to be project owners, although they may be *sponsors* who initiate a project. This ownership restriction is stated explicitly in the program handbooks and is portrayed as a constitutional requirement, but it has neither a constitutional nor a statutory basis. (Ironically, over the more than 35-year history of the Section 202 program, more than two-thirds of the sponsors of the housing for the elderly have been religious organizations).

The problem, however, is usually more subtle: religious organizations face an unwelcoming environment or are required not to be overtly religious to be eligible for funding. Given the widespread presumption that funding faith-based groups is constitutionally suspect, the absence of affirmative language in program rules and funding announcements listing religious organizations as eligible easily can be taken by program officials and by potential religious applicants as mandating their exclusion. This impression is strengthened when the silence about eligibility is accompanied by a lengthy list of prohibited religious activities. The Department of Education's general grants regulations include an extended list of prohibited religious practices. Some Labor solicitations for grant applications similarly say nothing about the eligibility of religious organizations but itemize various prohibited activities.

It is, of course, possible that the listed activities may in fact be constitutionally prohibited uses of government grant funds, in which case they must be forbidden and the restrictions should be brought to the attention of potential applicants. *However, when restrictions on religious activities are listed without an equally strong affirmation of eligibility and equally emphatic positive guidance about how faith-based providers can legitimately collaborate to deliver assistance, correct information about restricted practices may have the effect of chilling participation by religious service groups.*

Some Federal programs divide religious organizations into two categories and then exclude groups in one category from funding. Organizations considered "pervasively sectarian" or "too religious" are suspect; those that are ruled "secular enough" can apply. Such invidious categorizations, gleaned from trolling through an institution's religious beliefs, is pervasive at HUD, which uses the term "primarily religious" for faith-based organizations considered to be problematic.

HUD's regulations—though not the enabling statutes—for Community Development Block Grants, which provide Federal funds to localities to support nongovernmental services, and for the HOME program, which gives funds to localities that in turn enlist community groups to rehabilitate housing, prohibit funding "as a general rule" from going to "primarily religious" organizations, "for any activities, *including secular activities*(emphasis added)." Under the HOME program, a "primarily religious" organization can establish a "wholly secular entity" that may then take part in the program. In the CDBG program, a further regulation provides that a "primarily religious" organization may take part, if it agrees to a long list of restrictions—

including forfeiting its well-established freedom under Federal law as a religious organization to staff on a religious basis.

Such HUD regulations were developed in response to now obsolete Supreme Court cases with the intention of increasing involvement by religious organizations. Faith-based charities do get some funding under these programs when the rules are flexibly applied. However, the convoluted provisions cast doubt on the eligibility of faith-based groups with a distinct and overt religious character and put them under pressure to marginalize or eliminate various aspects of their religious character and autonomy.

Some faith-based organizations, uncertain of their welcome and latitude within HUD programs, have requested written lists of acceptable and unacceptable practices. HUD staff have refused to provide such guidance. The officials' own uncertainty is such that one official, when asked on the phone by a religious group to give specific guidance about restricted practices, asked if the conversation was being recorded, fearing a permanent record of guidance that might turn out not to conform to HUD religious policy.

The division into acceptable and problematic religious organizations is not required by current Supreme Court precedent.¹⁰ Lacking a clear and fixed meaning, the categorization requires an intrusive case-by-case determination by HUD staff, who are forced to delve into the authenticity of religious beliefs, an inquiry that a recent Supreme Court plurality derided as “not only unnecessary but also offensive.”¹¹ Because there is no clear guidance, HUD field officials and their State and local government partners apply the rules inconsistently even within a single program, creating additional complications for faith-based applicants.

Similar problems occur in the Department of Education's “Even Start Family Literacy Program,” that gives formula grants to States to fund local partnerships between schools and other local entities, including nonprofit organizations. The authorizing statute does not exclude religious nonprofit organizations. However, the Agency addresses that “pervasively sectarian” organizations may not be directly funded by government. Thus they can become part of a Federally funded partnership only if they are subordinate to “nonsectarian” partners. Other Department staff, while not ruling out funding for “pervasively sectarian” organizations in general, believe that eligibility can only be established after a case-by-case assessment of a group's religious character.

Barrier 3: Excessive Restrictions on Religious Activities

Some government rules require faith-based providers to endure something akin to an organizational strip-search. Certainly, some restrictions on how religious organizations can spend government grants are plainly required by the Constitution. But given the general wariness about the constitutional propriety of funding faith-based organizations, and the

¹⁰ See the sources listed in footnote 9 for discussion of the concept and of the Supreme Court's changing interpretive framework.

¹¹ *Mitchell v. Helms*, 530 U.S. 793, 828 (2000).

heightened suspicion about collaboration with “pervasively sectarian” or obviously religious groups, Federal grant programs can be inappropriately restrictive.

Under the Workforce Investment Act, core or basic worker training activities are provided at Federally funded One-Stop Centers, with additional Federally funded services provided by independent vendors through a voucher-like system in which the individual selects the program or provider that suits him or her best. Notwithstanding the indirect nature of the funding, DOL requires States to agree to not permit Federal workforce development funds to be used to train or employ a participant in “sectarian” jobs or activities. However, the U. S. Supreme Court has made it clear that when a program or provider is chosen by a private citizen and not designated by Government, such a restriction is not justified. *In the landmark 1986 case, Witters v. Washington Dep’t of Services for the Blind, 474 U.S. 481 (1986), the unanimous Supreme Court ruled that a blind student could use State vocational funds to obtain seminary training. Despite this 9-0 decision from the Nation’s highest court, the Department of Labor has resisted the notion that voucher-funded employment training as a church janitor, mosque receptionist, or landscaper for a synagogue is constitutionally acceptable.*

Head Start programs are often located in houses of worship, that are sometimes locally pressured to remove or cover up religious art, symbols, and other items, although there is no such requirement in the statute, regulations, or official HHS guidance. HUD regulations for Community Development Block Grants, among other programs, expressly require religious organizations not only to agree to avoid giving “religious instruction or counseling” but even to affirm that they will “exert no religious influence” at all in providing the Federally funded assistance. Such exceedingly vague language chills the participation of many faith-based providers, who have no intention of conducting government-funded worship services, but who fervently believe that their social services should be informed and prompted by their religious impulse and that the lives of staff members should set a good example and influence others positively. Some faith-based organizations applying at the local level for CDBG funds have been informed that they would qualify for the support only if they first removed references to “God” from their mission statements or stripped their walls clean of religious symbols.

The Education Department’s “Even Start” program, as noted above, permits a “primarily religious” organization to collaborate via a partnership, but not to administer the Federal funds. Only the partnership as a whole (if it is incorporated) or a non-sectarian partner—any nonsectarian partner—can be entrusted with the funds.

It is not Congress, but these overly restrictive Agency rules that are repressive, restrictive, and which actively undermine the established civil rights of these groups. Such excessive restrictions unnecessarily and improperly limit the participation of faith-based organizations that have profound contributions to make in civil society’s efforts to serve the needy.

Barrier 4: Inappropriate Expansion of Religious Restrictions to New Programs

Relying on outdated application of obsolete case law, HHS has not only restricted participation of faith-based organizations in the Adolescent Family Life Program that funds abstinence education (\$24.3 million in FY 2001), but has also extended guidance beyond that program to other abstinence programs by HHS’s Maternal and Child Health Bureau (MCHB).

In enacting the AFL program (Title XX of the Public Health Services Act) in 1982, Congress specifically authorized the participation of religious groups to address problems of teenage promiscuity and nonmarital pregnancy. When the Supreme Court ruled, in 1988, on a challenge to the Program's constitutionality, it upheld the statute; but, using reasoning it has now backed away from, the Court ruled that providers determined to be "pervasively sectarian" could not receive funding (*Bowen v. Kendrick*). A subsequent court settlement agreement imposed specific limitations on the program. The Office of Public Health and Science at HHS, which runs the AFL program, developed a checklist to ensure that grantees were not "pervasively sectarian," asking, for example, to what extent an applicant was controlled by a church or other religious body, whether clergy or other religious leaders served as staff or volunteers, and whether the applicant's mission statement was religious. Applicants received a statement, "Guidance to AFL Grantees," detailing the restrictions on religious providers, such as an instruction to remove or cover up, if possible, religious symbols in the places where social services were to be offered.

The AFL settlement agreement expired in 1998. The Court has now all but abandoned the "pervasively sectarian" standard it used in the AFL case, and it has loosened other restrictions on religious activity. Nevertheless, OPHS has maintained many of the restrictions on faith-based involvement in the AFL program. The Maternal and Child Health Block Grant (MCHB) references many of those AFL restrictions as guidance in two entirely separate, though related, abstinence education programs that it runs. The Abstinence Education Grant Program (Title V of the Social Security Act) was authorized under the 1996 Federal welfare reform law and provides \$50 million per year in formula grants to States to support abstinence education by community groups. Community-Based Abstinence Education projects received \$20 million for FY 2001 under the SPRANS allocation of the MCHB to States. States and potential grantees that request guidance from MCHB receive restrictive advice for religious involvement modeled on the now-outdated AFL settlement, sometimes including the "Guidance to AFL Grantees."

By maintaining the settlement restrictions in the AFL program beyond the deadline and expanding them without statutory or court justification to two completely separate programs—in the face of several intervening Supreme Court decisions embracing a theory of neutrality and nondiscrimination—HHS unnecessarily chills faith-based participation in some \$94 million of funding for programs that have a strong values orientation that might best be provided by groups rooted in the wide diversity of America's religious and values communities.

Barrier 5: Denial of Faith-Based Organizations' Established Right to Take Religion Into Account in Employment Decisions

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, national origin, gender, and religion, while simultaneously permitting religious organizations to staff on a religious basis. This provision, which allows covered religious groups to take religion into account in hiring, is itself a *vital civil rights safeguard* enshrined in Federal law for more than a generation. Congress passed this protection 37 years ago, and reaffirmed and extended it in the Equal Employment Opportunity Act of 1972 to cover not only core religious staff but also those engaged in a ministry's non-religious service activities. In a

unanimous 1987 ruling, *Corporation of the Presiding Bishop v. Amos*, 483 U.S., 327 (1987), the U.S. Supreme Court upheld the constitutionality of this core safeguard.

Moreover, from 1964 forward, this statutory religious staffing protection has been available irrespective of whether a charity receives Government funds. Several courts, both State and Federal, have considered this precise issue and ruled that a religious group's ability under Title VII to foster what the Supreme Court in *Amos* called a "shared religious vision" isn't forfeited just because it delivers Government-funded social services.¹² (Title VII does *not*, however, exempt religious charities from the ban on employment discrimination based on race, color, national origin, or sex. Moreover, if delivering Federally funded social services, faith-based groups must serve clients of *any* background).

Unless the specific statute authorizing a Federal funding program includes different rules on employment discrimination, the time-honored freedom to staff on a religious basis afforded by Title VII remains the baseline for covered religious groups and is the controlling Federal law. Nevertheless, Federal agencies sometimes require faith-based social service charities interested in partnering with Government to surrender their long-held freedom to define their religious mission by hiring like-minded, like-hearted staff, even when Congress, when enacting the program, refused to limit the Title VII religious staffing protection of participating faith-based groups.

The consequence of this administrative misapplication of the law is, at best, widespread confusion about requirements on the part of officials and religious organizations. All too often, religious applicants for Government funding are required to sacrifice their well-established right to select staff in a manner that upholds their religious vision even though Congress (affirmed by a unanimous Supreme Court) has assured them of that right through venerable civil rights laws. The result is a climate of tremendous legal uncertainty, that ultimately harms our most needy and neglected citizens and those grassroots Samaritans, both sacred and secular, who serve them. Additionally, charities' employment rights and religious liberty are violated; faith-based providers are tentative and operate in fear of losing funding; many groups are discouraged altogether from opening up new social-welfare initiatives or expanding their good works; and people in distress are deprived of effective and enhanced service options.

In not a single one of the five Departments under review do the statutes for all of the Department's funding programs require religious organizations to relinquish their statutory ability to staff on a religious basis in order to take part. But officials are often very careless about the law's actual requirements. For example, none of the Education Department's grant programs that were reviewed, whether formula or discretionary, statutorily limits the Title VII

¹² Nothing in the congressional debate over Title VII, either in 1964 or when Congress expanded it in 1972, suggests that the religious staffing protection is forfeited when a religious charity receives Federal financial assistance. See Carl H. Esbeck, testimony before the Committee on the Judiciary, Subcommittee on the Constitution. See also, e.g., *Hall v. Baptist Memorial Health Care Corp.*, 215 F.3d 618, 625 (6th Cir. 2000); *Siegel v. Truett-McConnell College*, 13 F. Supp.2d 1335, 1343-45 (N.D. Ga. 1994), *aff'd*, 73 F.3d 1108 (11th Cir. 1995); *Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991); *Ward v. Hengle*, 706 N.E.2d. 392, 395 (Ohio App. 1997), *app'l denied*, 692 N.E.2d 617 (Ohio 1998). A wide variety of religious hospitals, colleges, even K-12 schools, can and do assert their Title VII safeguard when hiring faculty, professional, and administrative staff, even though the entity receives Federal assistance.

hiring ability of religious organizations. Nevertheless, many program officials have the mistaken impression that religious groups do not have this Title VII protection. Program application materials and the Department's standard form for most grantees nowhere reference the Title VII religious staffing safeguard for faith-based groups but instead include general statements about nondiscrimination in services and employment that sow confusion about the rights of faith-based charities.

The Workforce Investment Act, administered by the Department of Labor, requires that programs funded under the Act may not discriminate on religious or other grounds in providing services or in employment. DOL interprets this requirement broadly to cover every provider that is in any way "assisted" by the new One-Stop employment centers. It seems that a faith-based employment service that is co-located at a One-Stop might have give up its right to hire on a religious basis, even if the organization's funding is from the Welfare-to-Work program or the TANF welfare program, both of which include Charitable Choice language that explicitly preserves the Title VII protection. Worse, it is certain that the DOL policy means a faith-based training program that is offered totally without charge loses its right to select staff on a religious basis if it merely agrees to locate at the One-Stop so that trainees can have maximum access to its free services.

Barrier 6: Thwarting Charitable Choice: Congress' New Provision for Supporting Faith-based Organizations

The Charitable Choice concept was crafted in the mid-1990s to remedy overly restrictive rules and confusion about the constitutional requirements for Government collaboration with faith-based providers. It aims to challenge and eliminate perverse bureaucratic rules and regulations that have often hampered civic-minded, public-spirited partnerships between Government and faith-based social service providers.

Under the old rules, community-serving religious groups seeking support often had to conceal, and sometimes even compromise, their distinct religious character – the very quality that sparked and sustained their success in mobilizing volunteers and achieving uncommon results. Charitable Choice was written to respond point-by-point to various inappropriate restrictions by explicitly protecting religious charities from pressures to secularize their programs, abandon their religious character, or sacrifice their autonomy. At the same time, it includes specific provisions to uphold the religious liberty of clients and to fulfill the constitutional requirements concerning Government funding of religious activities.

In sum, Charitable Choice attacks the anti-religious bias that pervades too many statutes, regulations, and practices, ensures that groups use Government funds for public purposes, and provides a clear set of guidelines to discipline and structure these needed collaborations. Further, it accomplishes the following:

- It clarifies and codifies the right of faith-based groups to participate by clearing away misperceptions and doubts about whether religious groups may deliver Federally-funded social services;

- It replaces government suspicion of religious providers with a welcoming environment by giving a “green light” to expanded collaboration with Government and making such partnerships plausible and possible;
- It ratifies and gives a legal foundation to current flexible practice by clarifying that the Constitution does not require 100% secularism, but neutrality and equal opportunity instead;
- It overcomes anti-faith barriers in Federal programs by overturning restrictions on participation and activities that are not necessitated by the Constitution;
- It has enriched the mix of service providers where it has been implemented by States, like Democrat-led Indiana and Republican-led Texas that have been able to offer people a wider variety of providers;
- It enables formerly excluded groups to offer their effective services by freeing local officials to create new collaborations that involve faith-based charities that had earlier been wary of partnering with Government;¹³
- It helps current religiously affiliated providers to better fulfill their service mission by permitting established groups like Lutheran Social Services to get rid of the excessive Government-imposed limits that have wrongly hobbled services offered by religious groups and thus kept them from better integrating a moral dimension into their programs; and
- It builds on successful principles in other areas of Federal funding – including internationally – by borrowing fruitful lessons from other Federal models where the Charitable Choice principles of accountability, performance, pluralism, and religious liberty are valued and applied.

By stressing evenhandedness and prizing performance over process, Charitable Choice eliminates the anti-religious bias and the secularizing pressures aimed at religious charities. It requires officials to ask not “Who are you?” but rather “What can you do, and how well can you do it?” It guarantees that faith-based groups have an equal opportunity – no better, no worse – to deliver Government-funded social services. It does not grant religious charities any special favors but ends the special burdens that have often hampered them. Charitable Choice prohibits the Government from using religion as a line-drawing criterion for receiving Federal funds. Administrative prejudice is forbidden; and so is administrative favoritism.

Repeatedly since 1996, and always by bipartisan majorities, Congress has acted multiple times to bring Federal grants programs under these new rules. For example, Congress:

¹³ Amy Sherman, *The Growing Impact of Charitable Choice: A Catalogue of New Collaborations Between Government and Faith-Based Organizations in Nine States* (Washington, DC: Center for Public Justice, March 2000).

- Enacted Charitable Choice as part of the 1996 Federal welfare reform law (PRWORA) to cover state and local spending of TANF funds to obtain services;
- Placed the new specialized Welfare-to-Work program for hard-to-employ recipients under the same provision in 1997;
- Added Charitable Choice language in 1998, when it reauthorized Community Services Block Grants, which provide core funding for Community Action Agencies and;
- Extended Charitable Choice in 2000 to cover SAMHSA's Federally funded substance abuse prevention and treatment services.

The literal language of the statutes makes it clear that these new rules are not optional for Federal, State, or local officials using the covered funds. These are *mandatory* rules to be followed, whenever these funds are used to purchase services from nongovernmental providers. However, save for one limited exception, Charitable Choice has been essentially ignored by Federal administrators.

The exception is Welfare-to-Work (WtW) competitive grants, a 2-year, mandatory grant program operated by the Department of Labor. In keeping with the intent of Charitable Choice, Labor worked hard to inform faith-based (and community-based) organizations that they were eligible for the funding, to facilitate their applications, and to ensure that they were able to fulfill grant requirements and provide effective assistance. An unusually large number of applications were received and six faith-based organizations received a total of about \$16 million dollars (about 2% of the total competitive grant funds).

However, except for noting the eligibility of faith-based groups, DOL did not elaborate on the requirements of Charitable Choice in its WtW competitive grants. And in administering WtW formula grants to States, DOL merely noted that Charitable Choice was part of the governing legislation, otherwise leaving it up to State and local governments to comply with or to ignore the new rules, at their own discretion. Application of Charitable Choice to the Labor program did not result in any thorough examination of how the landmark rules should affect grant standards or the Department's interpretation of constitutional requirements.

The other three programs covered by Charitable Choice are administered by HHS. The new rules for funding substance abuse services were adopted relatively recently and SAMHSA is still working out the consequences for its discretionary and formula grant programs. But Charitable Choice has been the governing law for TANF block grants since 1996 and for Community Service Block Grants and CSBG discretionary grants since 1998. Yet HHS has done very little to apply the rules to its own grant making or to ensure that the State and local governments that received covered funds adjusted their own procurement rules to comply with the congressional directives.

In the case of TANF funds, Congress limited the authority of HHS to promulgate regulations and did not authorize Charitable Choice regulations. Nevertheless, although HHS routinely provides

other forms of information and advice to guide the expenditure of formula grants, it has supplied virtually no guidance at all to States about the landmark Charitable Choice requirements. Some attention was paid to Charitable Choice as an element of welfare reform through a few conferences and in other minimal ways. However, the only specific guidance given on this significant topic was a single-paragraph reply to an e-mail query from one State. When States submitted their welfare reform plans they were not asked how they would comply with Charitable Choice and States are not asked now whether they have created the required level playing field for faith-based providers, when they annually spend their billions of Federal dollars to contract for services from nongovernmental organizations.

After Charitable Choice was added to the CSBG formula grant program, HHS issued some guidance to States about the new rules, but the guidance left out key provisions, such as the affirmation of the right of religious organizations to take religion into account in their employment decisions and the prohibition on the use of Government funds for inherently religious practices such as worship and proselytization. Although HHS does monitor State compliance with CSBG requirements, it has not evaluated implementation of Charitable Choice. In the absence of clear HHS guidance, misleading information about the requirements has been disseminated by special interest groups. Only within the last few weeks has HHS, with the assistance of the HHS Center, started to provide specific guidance on the implications of Charitable Choice for CSBG formula grant recipients.

BARRIERS TO COMMUNITY-BASED ORGANIZATIONS AND OTHER SMALL AND NEWCOMER ORGANIZATIONS

The routine design and operation of Federal competitive and formula grant programs are overwhelming and off-putting to smaller-scale organizations, both sacred and secular, and to those considering collaborating with Government for the first time. Some aspects of the programs are intimidating or create nearly insuperable barriers for small or new groups. To be sure, the ability of applicants to fulfill requirements ought to be strengthened. At the same time, burdensome requirements that cannot be sufficiently justified, or whose aims can be accomplished in other, less onerous, ways, should be eliminated or modified.

Barrier 7: The Limited Accessibility of Federal Grants Information

Federal discretionary grant programs typically announce the availability of funds in the Federal Register and on the program's or the respective Department's Website. These sources are not everyday reading for small faith-based and community groups; these places are regular information sources only for organizations that have already decided that they might have a chance to win Federal funds and that can dedicate staff attention to monitoring funding announcements. Moreover, grant information organized by Department and program is fully accessible only to seekers who have figured out in advance which Department, and thus which Website—or rather, which several Departments, and thus which several Websites—might be funding a service that their organization offers or is interested in developing. (There is a joint Website, the Federal Commons (www.cfda.gov/federalcommons/) which provides help by serving as a single point of entry, listing broad subject categories that in turn lead to programs in the various Departments with links to further information).

Most Federal social service funding is distributed via formula grants to State and local governments rather than directly to nongovernmental organizations through Federal discretionary grants. Thus, groups that somehow hear of a major new Federal funding initiative should usually look to State and local officials to discover how to compete for the funds, rather than trying to figure out which Federal program has control of the funds. However, news about Federal spending does not usually explain the difference between formula and discretionary grants and the resulting difference in application pathways.

Even without this additional complexity it is difficult for newcomers to move from the sidelines to the frontlines. The audit of Education programs noted that there is no natural starting point for newcomers on the Department's Website and that the Department's guide to its grants process could be located only with difficulty.

An experienced Pittsburgh faith-based organization with a \$3 million dollar annual budget to serve the poor has found the Federal grants application process to be so complex that it was forced to resort to a professional grant consultant to identify and apply for likely Federal grants.

Barrier 8: The Heavy Weight of Regulations and Other Requirements

Applicants for Federal support encounter a dizzying array of statutory and regulatory requirements. Each program has its own specifications and guidelines. Departments have additional rules. In addition, some 50 separate Federal requirements apply across the board to Federal grants. Each of these regulations and requirements reflects important social, environmental, legal, and health concerns. However, the collective weight of these can make it exceedingly difficult for smaller, community-based, and grassroots organizations to compete for Federal social service dollars. While many of these requirements are irrelevant to many social service providers, all applicants are nonetheless required to affirm compliance with all of them.

In the case of formula grants, one crosscutting Federal rule authorizes state and local governments to add to the Federal regulations their own usual procurement rules, so long as these do not conflict with specific Federal requirements. Thus, applicants may find themselves subjected to an additional layer of requirements beyond those authorized by the Federal program statute and regulations and the additional across-the-board Federal mandates referenced above.

Barrier 9: Requirements to Meet Before Applying for Support

The Labor Department's Employment and Training Administration discretionary grants are typically multi-million dollars in size. To ensure that funds are appropriately spent, DOL requires grantees to have an extensive financial and administrative management system. This means that, in order to compete to win a grant, an organization must already have the systems in place to handle the additional income that will come from winning a DOL grant.

For an Education grantee to be able to charge to a Federal grant indirect costs that it incurs to provide the services, it must have negotiated an approved indirect cost rate with the Department. Without knowing what that rate is, an applicant for funding cannot figure out whether it will be able to provide the services within the offered grant funds. But establishing the indirect cost rate

takes at least 90 days while the typical time between publication of an Education application notice and the deadline for applications is only 60 days. In other words, before ever competing for an Education Department grant, an organization must first have negotiated with the Department to get an approved indirect cost rate.

Barrier 10: The Complexity of Grant Applications and Grant Agreements

Solicitations for grant applications at Labor are repetitive and overly long, stating eligibility and other requirements more than once, lifting technical language directly from the authorizing statute, and including information from the legislative history that is only marginally pertinent and contributes to the complexity of the document.

Grant agreements at HUD and other Departments typically only cross-reference many of the applicable regulations and statutes, leaving it up to the grantee to track down, order, and assimilate a huge number of documents.

At DOJ, the application kit for the Edward Byrne Memorial State and Local Assistance Discretionary Program totals 58 pages. Approximately 1,000 pages of Federal statutes are referenced in the application process. For the DOJ’s Weed and Seed Grant Program, the application kit for new applicants is 74 pages long, and it references some 1,300 pages of Federal statutes—a stack of paper nearly 6 inches tall.

Education has prepared a user-friendly, non-technical explanation of its discretionary grants application process, a 33-page document. However, the guide emphasizes that applicants must not rely on it as their sole source of information and it directs them to the department’s general regulations—some 300 pages of legal details.

Barrier 11: Questionable Favoritism for Faith-Based Organizations

Despite the general Federal wariness about Government funding of religious organizations, occasionally Federal programs veer sharply in the opposite direction, specifying that *only* faith-based providers are eligible to participate. Earlier this year, for example, the Center for Substance Abuse Prevention, part of SAMHSA at HHS, announced funding to expand capacity for groups battling substance abuse and HIV in minority communities. Because of the “well-documented acceptance and trust” of faith-based organizations in minority communities, the announcement limited eligibility to faith-based organizations and to youth-serving organizations in collaboration with faith-based groups. Notwithstanding the good intentions, such a requirement raises constitutional questions and, of course, it creates a barrier for secular programs, some of which themselves have won “acceptance and trust” in their communities.

Barrier 12: An Improper Bias in Favor of Previous Grantees

It is natural for experienced grant applicants to have a competitive edge in applying for funds. They more readily find out about funding opportunities, know the application process, and are familiar with the grants management requirements. They also have an edge because of their relationship with program and grants managers.

Some Federal programs deliver further unfair advantage to previous Government grantees by building a bias into the application process. DOL's "Susan Harwood Training Grant" program funds groups to train employers and employees to recognize, avoid, and prevent workplace safety and health hazards. The program requires applicants to demonstrate not only topical and managerial experience but also either past receipt of a Government grant or a firm commitment of collaboration from an organization that has managed Government funds previously. The awards process for the Education Department's "Fund for the Improvement of Education" gives extra prior experience points to applicants who operated a program during the previous funding cycle.

Barrier 13: An Inappropriate Requirement to Apply in Collaboration with Likely Competitors

Requiring grantees to coordinate their services with other service providers can be an important way to ensure that Federal funding achieves maximum results. But a requirement that grant applicants must demonstrate support from other providers who may be competitors can instead result in the exclusion of effective organizations. But this peculiar requirement exists in some Federal programs. Each Center identified at least one program with such an anti-competitive application requirement:

- HHS: The National Family Caregiver Support Program required applicants to gain the support of the respective Area Agency on Aging, which is simultaneously a coordinating mechanism and a competitor for the same grants. (The Administration on Aging at HHS has now removed the condition).
- DOJ: OJP grants in many cases require an applicant or grantee to cooperate with other non-governmental organizations, which can leave a faith-based or community-based provider at the mercy of groups, whether faith-based or secular, who do not share its unique vision or concept of service.
- DOL: The Welfare-to-Work formula grants required nongovernmental applicants to submit their applicants in conjunction with the local workforce investment board, which was a competitor. (However, if the local board refused to cooperate, the applicant could sidestep the requirement by showing it had made a reasonable request in a timely manner).
- HUD: The Continuum of Care process to comprehensively address homelessness requires extensive coordination. The government agencies and larger providers that may need to be involved in order to administer the system may not have much interest in involving smaller and newer organizations. In addition, a successful application by any one group depends on the quality of the proposed or existing overall system over which the applicant may have little or no control.
- ED: The GEAR UP program (Gaining Early Awareness and Readiness for Undergraduate Programs) and two bilingual education programs limit eligibility for grants to nongovernmental groups that can demonstrate a partnership with the local

education authority—which may, be unwilling to work with a qualified community-based or faith-based organization.

Barrier 14: Requiring Formal 501(c)(3) Status without Statutory Authority

By statute, many Federal discretionary and formula grant programs require applicants to be nonprofit organizations. Some programs permit applicants to prove nonprofit status by giving evidence of nonprofit incorporation under State law (or even by demonstrating that the organization provides services in the public interest and uses its net proceeds to improve or expand such services). Incorporation under State law is relatively uncomplicated and inexpensive. However, many Federal programs routinely require applicants not merely to demonstrate nonprofit status but also to demonstrate formal 501(c)(3) status under the Internal Revenue Code. This is a heavier burden, often requiring hundreds of dollars in filing and attorney’s fees and requiring a number of months to prepare the application and then win approval from the IRS. This heavy burden is often imposed unilaterally by Federal officials despite the absence of any statutory authorization for it.

At HHS, many programs require 501(c)(3) status, despite the lack of a statutory requirement, because program managers treat an IRS status letter as a verifier of nonprofit status. Despite silence in both statutes and regulations, some HUD programs require applicants for discretionary grants to prove 501(c)(3) status, and other HUD programs impose the requirement through the formula grant system on applicants seeking Federal funding through State or local governments. Program officials and attorneys for the Community Technology Centers program at Education insist that applicants must prove 501(c)(3) status, although there is no such statutory or regulatory requirement. At DOJ, applicants routinely are required to demonstrate 501(c)(3) status to prove that they are nonprofits, even though only the Juvenile Justice and Delinquency Prevention Act does not contain that specific statutory requirement.

Barrier 15: Inadequate Attention to Faith-Based and Community Organizations in the Federal Grants Streamlining Process

Because all of the Federal Government’s service partners, including large nonprofit organizations and even State Governments, encounter significant difficulties in applying for and managing Federal grants, Congress directed all of the major Federal grant-making organizations work together to simplify and improve in 1999, that the grants process. The Initial Plan required by the Federal Financial Assistance Management Improvement Act was sent to Congress in May 2001. It outlines a detailed plan to determine how the various grants programs work and how they can be improved. The report also includes a summary of comments received from grantees and other interested parties. The grants reform process—the Federal Grant Streamlining Program—holds considerable promise to eliminate or minimize barriers that particularly hobble smaller and newcomer organizations.

However, without reform of the reform process itself, it is unlikely that the Federal grants process can be made as welcoming to faith-based and community-based organizations as it should be. HHS, the lead Department in the reform process, solicited comments about problems of the grant process and the draft reform plan through typical Federal channels—publication in

the Federal Register, information on the HHS Website, and five consultation meetings with grant constituencies. Although faith-based and community-based organizations face the highest barriers in the Federal grants process, they seem not to have been full participants in the comments process: Of the comments received from 77 sources and summarized in the Interim Plan, only a handful, at most, came from such organizations. Almost all of the comments are from larger, traditional recipients, such as State Governments and their associations, Indian tribes, universities, and large nonprofit service organizations.

Similarly, the workgroup structure for the streamlining process includes only two grantee subgroups—one subgroup for “universities and research nonprofits,” and a second one, for “State, local, and tribal governments and other non-profits.” But the faith-based and community-based organizations that face the highest hurdles in seeking Federal support have distinct concerns not likely to be given sufficient attention if collapsed into an “other nonprofits” residual category.

CONCLUSION

No faith-based service group has an automatic right to obtain Federal funding either through direct discretionary grants or through State and local governments’ provision of Federal formula grants. Similarly, community-based organizations have no automatic right to Federal funding. But both faith-based and community organizations should have an equal opportunity to obtain such funding, if they choose to seek it. A sensible, results-driven policy requires the Government to examine outcomes—that is, what an organization achieves with the funds—rather than to the character of the organization. That is, whether it is too religious, “too religious,” or “secular enough.” Federal agencies should use grants to underwrite the most effective programs. Because grassroots organizations, sacred and secular, are close to, and trusted by, communities, families, and individuals in need, the Federal grants process should welcome rather than discourage the contributions of such groups that offer effective programs.

The Federal Grants process, despite a few exceptions and a growing sensitivity to and openness toward both faith-based and community groups, does more to discourage than to welcome the participation of faith-based and community groups. That is the overwhelming message trumpeted in the reports of the Centers for Faith-Based & Community Initiatives at HUD, HHS, Justice, Education, and Labor. Too much is done that discourages or actually excludes good organizations that simply appear “too religious”; too little is done to include groups that meet local needs with vigor and creativity but are not as large, established, or bureaucratic as the traditional partners of the Federal government. This is not the best way for government to fulfill its responsibilities to come to the aid of needy families, individuals, and communities.

Government must do a far better job at equipping and empowering America’s social entrepreneurs—the quiet heroes, from North Central Philadelphia to South Central Los Angeles, that are conquering social ills in every corner of America.