

COMMUNITY MINISTRIES AND GOVERNMENT FUNDING

A Response

to

Questions United Methodists Are Asking
about Faith-based Initiatives

A Cooperative Project of:

The General Board of Church and Society

The General Board of Global Ministries

The General Council on Finance and Administration

of

The United Methodist Church

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Community-Based Ministries and Government Funding

Introduction

This publication responds to questions United Methodists are asking about the Faith-based and Community Initiatives of President George W. Bush. One major objective of the initiatives, announced in late January, 2001, is increased access by faith-based charities to government funds earmarked for social services and community improvement among the poor. This is often referred to as “partnership” between government and private entities. The Bush initiatives are directly related to the bipartisan welfare reform agenda set forth by the U.S. Congress in 1996.

“Faith-based” has gained currency in recent years as a generic term to describe religious or spiritually motivated organizations or programs engaged in public service. While it lacks legal or practical definition, the term is used here to maintain consistency with the government initiative under consideration.

Questions about such a government plan are naturally directed to the General Board of Church and Society, the General Board of Global Ministries, and the General Council on Finance and Administration. The three general agencies are collaborating in following the Faith-based and Community Initiatives.

Church and Society works with public policy issues, including church–state relations. Global Ministries engages in community-based ministries potentially affected by government policies and programs. The General Council on Finance and Administration addresses legal issues that arise, or may arise, in the life of the Church.

The questions United Methodists are asking fall into five broad categories:

- Definitions, including rationale, extent, and operation of the Faith-based and Community Initiatives.
- Implications for church–state relations.
- United Methodist positions on and experience with the use of government funds.
- Potential impacts on existing community ministries.
- Legal issues and implications.
-

What follows addresses these concerns, at times tentatively because this is an unfolding story filled with political overtones, legal debates, and theological interpretations. Strong policy disagreements often tend to obscure the central question: How best to help all Americans escape the grip of poverty. The church has a big role to play in keeping concern for the poor at the heart of the matter.

In preparing this report, the General Board of Global Ministries surveyed 102 board-related and community-based mission institutions, mostly community centers, on what it is like to “partner” with government in funding social programs. Many of these institutions have long received public funds and their perceptions have been extremely valuable, especially regarding issues to weigh in considering application for government funding.

Dialogue on concerns raised is welcomed, and the General Board of Church and Society, the General Board of Global Ministries, and the General Council on Finance and Administration will keep United Methodists informed on developments around the Faith-based and Community Initiatives through publications and Internet sites.

Sandra Kelley Lackore
General Secretary
General Council on Finance
and Administration

Randolph Nugent
General Secretary
General Board of Global Ministries

James Winkler
General Secretary
General Board of Church
and Society

Faith-based and Community Initiatives

1. What Are Faith-based and Community Initiatives?

Both major presidential candidates in the 2000 national election spoke enthusiastically about an expanded role for faith-based organizations in public social service and community improvement programs. Al Gore, the Democrat, and George W. Bush, the Republican, each reflected a widely held perspective that government needs “partners” to achieve the objectives of social legislation effectively. They pointed to the strong track records of religious social ministries and to precedents for faith-based use of government dollars for the general benefit. In addition, a provision in the 1996 welfare reform act strengthened the case for greater access to public funds by religious organizations that provide public services.

Shortly after his inauguration, President Bush signed two executive orders creating the Faith-based and Community Initiatives, with the overall intention of making it easier for faith-based groups to access existing publicly funded programs that “meet the needs of poor Americans and distressed neighborhoods.” The document that describes Mr. Bush’s initiatives is called “Rallying the Armies of Compassion,” and the concept set forth is quite similar to the “Thousand Points of Light” advanced by the Administration of the current President’s father. It also reflects a bipartisan movement toward a “market-driven” approach to social service legislation: that is, what do consumers (the poor in this case) require and how does a free market, perhaps using public money, meet the need?

No new money is allocated by the initiatives for social services and community programs and, to date, no new funding channels or mechanisms have been set up. Mr. Bush said he was “leveling the playing field,” expanding the range of providers and giving faith groups a fairer chance in the competitive process of obtaining government grants and contracts through existing programs. The President refuted allegations that he was “dumping” social programs onto the shoulders of religious and community groups. Government, he said, was not getting out of charity work but was diversifying the delivery systems by allowing funding to go to whichever organizations get the best results.

One executive order set up a White House Office of Faith-based and Community Initiatives and the other created centers of the same name in five federal departments: Education, Health and Human Services, Housing and Urban Development, Justice, and Labor—agencies with extensive funds for social services and community improvement. One announced task of the White House office and the agency centers is to identify programs that faith-based and community groups might access and to make that access easier than it may have been in the past by removing barriers to such access.

In addition, the President asked for legislation providing tax incentives to individuals and corporations that give funds to faith-based and community groups working to overcome poverty. He projected an eventual public-private “compassion fund” to support good work in combating poverty. A major change from the election campaign was the addition of “community” to what had been simply “faith-based” initiatives.

Responses have been strongly polarized. In large measure, reactions followed pre-existing attitudes toward a controversial provision in the 1996 welfare reform act. President Bush says he is building on the concept of “charitable choice.”

Charitable Choice

2. What Is “Charitable Choice?”

“Charitable Choice” was introduced in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“welfare reform”). It stipulates that if a state uses private contractors in the delivery of services aimed at moving persons from welfare to work, that state cannot discriminate against religious providers in the competitive process. The major provisions of charitable choice are summarized in the box below, and the arguments for and against it are shown in the next box. The word “choice” comes from the provision that no public welfare beneficiary can be required to receive services from a religious provider.

While religious-related organizations have for years received government funds for social programs,

charitable choice differs from established practice in notable ways. In the past, religious providers using government money, while they might have religious sounding names, were required to set up nonprofit corporations separate from their “pervasively religious” parent organizations. As the next box suggests, they could not display religious symbols and were subject to laws prohibiting religious discrimination in hiring.

Supporters of charitable choice (see next box) argue that, in the name of fairness, religious groups must be allowed to compete for general public program funds without forfeiting the right to reflect their religious character in the style and content of their services. Opponents (see next box) maintain that charitable choice is unnecessary because religious providers already *have* access to government programs through nonsectarian organizations. Many of the strongest opponents believe that charitable choice is unconstitutional and violates the church–state provisions of the First Amendment of the United States Constitution. For example, this is the position of the General Board of Church and Society.*

*The General Board of Church and Society opposed “charitable choice” when it was introduced in 1996 and on subsequent occasions when it has been included or proposed in other legislation.

<p style="text-align: center;">Charitable Choice: Major Points</p> <p>Section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“welfare reform”) stipulates that “charitable, religious or private organizations” may provide services—through vouchers, contracts and other funding means—under the federal Temporary Assistance to Needy Families (TANF), Medicaid, SSI, and Food Stamp legislation (usually administered through states).</p> <p>The provision:</p> <ol style="list-style-type: none">1. Ensures that religious providers have a fair chance to compete for contracts.2. Permits religious providers to win service contracts without forming separate nonsectarian, nonprofit organizations.3. Allows religious providers to maintain a uniquely religious character by permitting them to display religious symbols in service areas, to use religious criteria in hiring, and to include religious concepts and language as long as secular alternatives are available.4. Prohibits discrimination in delivery of services based on religious affiliation or lack thereof.5. Allows recipients of services to opt out of any inherently religious activities.6. Prohibits the use of public funds for “sectarian worship, instruction, or proselytization,” and applies the same terms of accountability to all providers.

While religious-related organizations have for years received government funds for social programs, religious groups were either uninterested in or unaware of charitable choice in its first four years, and many states virtually ignored it. To date, only a few states have actively promoted the concept, and even then in sometimes limited ways. A study of

congregational response to charitable choice in Indiana suggested three reasons for low church interest in the program: (1) The process is competitive, (2) congregations usually provide social services in a “piecemeal” way rather than systematically, and (3) the world of government funding is “foreign,” requiring proposal writing and results tracking that most are not able to do. The enormous amount of paperwork required to obtain and renew government contracts and grants was also mentioned. (*Congregations and Charitable Choice*, Polis Center, Fall 2000.)

(In the spring and summer of 2001, the inclusion of the provision in additional legislature was under consideration in the Congress.)

In the future, vigorous debate and, perhaps, lawsuits can be expected on the constitutionality of charitable choice. Differences in perspective on the constitutional issues exist within American society and within The United Methodist Church.

Arguments For and Against Charitable Choice

FOR

The provision may:

- 1. Expand the delivery system of social and community programs.**
- 2. Establish government neutrality toward religious providers (“level the playing field” by removing barriers to religious providers).**
- 3. Raise visibility and enhance reputations of religious providers, thus opening up new foundation and other private sources of funding.**
- 4. Allow religious groups to maintain their unique religious character and autonomy while accessing public funds.**
- 5. Require the same accountability of religious providers as of other nongovernmental groups that use tax dollars.**
- 6. Protect—by the “choice” provision—the religious liberty of beneficiaries.**
- 7. Extend the ability of religious providers to hire, if they desire, persons of the same religious outlook.**
- 8. Permit religious concepts to be included in publicly funded programs.**
- 9. Broaden the scope of religious participation in social service and community improvement partnerships.**

AGAINST

The provision may:

- 1. Permit government to define, advance, or inhibit religion in ways inconsistent with the First Amendment of the U.S. Constitution.**
- 2. Allow government to determine through financial allocations the social and community ministries of religious groups.**
- 3. Mute the prophetic voices of churches (including criticism of government).**
- 4. Result in religious coercion.**
- 5. Sanction religious discrimination in hiring in government programs.**
- 6. Lead to unhealthy reliance on an unpredictable source of funding.**
- 7. Weaken a strong sense of stewardship and spirit of volunteerism.**
- 8. Open the door to government review of religious practices and administration.**
- 9. Lead to unhealthy competition among religious groups and between religious and secular agencies for public funds.**
- 10. Result in a significant increase of paperwork in order to comply with government rules, regulations, and audits.**

The United Methodist Church, Charitable Choice, and Faith-based Initiatives

3. What Is the Denomination's View of Charitable Choice and Faith-based Initiatives?

Only the General Conference, which meets every four years, speaks for The United Methodist Church and it has not directly addressed either charitable choice or the Faith-based and Community Initiatives of the Bush Administration. The 2000 General Conference did adopt a resolution laying out guidelines for church use of government funds. (See page 10.)

A few congregations have applied for and received job training grants under the charitable choice provision. Others engage in welfare-to-work mentoring projects, many of them ecumenical, that receive public assistance under the charitable choice rubric—notably in California, Texas, Indiana, and North Carolina.

Far more common are job training and placement programs conducted by United Methodist community centers under regular government contracts. To date, charitable choice has been a moot point for these institutions, which are themselves nonprofit corporations with long histories of nonsectarian community service.

There seems to be little doubt that the fact of charitable choice has to some degree influenced the decisions of faith-based groups to seek funding, especially for welfare-related programs, from a variety of local, state, and national agencies. A few states, also influenced in part by the spirit of charitable choice, set up competitive funding streams for community and faith-based organizations in advance of President Bush's 2001 announcement. California is an example.

The Zeferia Shalom Zone Agency at Wesley United Methodist Church in Long Beach was one of 20 successful competitors out of 230 faith-based organizations to receive funds from a \$5 million workforce development pool set up by the governor of the state. The separately incorporated agency, part of the United Methodist Communities of Shalom network, was able to use relatively small denominational grants (a total of \$26,000), primarily from the Women's Division of the General Board of Global Ministries, as leverage in winning the state funds.

With the church money, Zeferia had created a Back to Work initiative that helped 20 persons—some with criminal records or no work experience—to obtain jobs, enroll in school, or enter long-term training. The excellent placement record was a factor contributing to success in getting public support.

Some United Methodist congregations and agencies report good partnership experience with government while others report troubled relationships that were discontinued by the church groups. Several stories illustrating the range of United Methodist churches' use of public funds and their experiences begin on page 15.

The United Methodist Church and Welfare Reform

4. How Has Welfare Reform Affected Thinking about the Church's Role in Overcoming Poverty?

One powerful and potentially lasting result of welfare reform, which introduced the charitable choice concept, is renewed religious awareness of the pervasiveness of poverty in the world's most prosperous nation. Welfare reform brought to light both the facts and the perceptions of poverty in the United States.

The poverty rate stood at 11.8 per cent in 1999, the lowest figure in twenty years but still high for a country as affluent as the United States. (All figures from the U.S. Bureau of the Census Population Report, 1999.) The poverty threshold in 1999 was \$17,023 for a family of four and the median income was \$40,816. While poverty rates for all ethnic/racial groups fell from 1998 to 1999, the rate for African Americans was 23.6 percent; for Hispanics (a term including several races but one language group), 22.5 percent; for Asians/Pacific Islanders, 10.7 percent; and Native Americans, 25.9 percent. The poverty rate for non-Hispanic whites stood at 7.7 percent, although the largest *number* of people in poverty are white because of the size of the white population. Poverty rates vary across the country from a low of 7.6 percent in Maryland to a high of 20.8 percent in New Mexico. It is also quite clear that moving persons from welfare to work does not always move them out of poverty. In 1999, a working mother with one child would be in poverty if her income were below \$10,075.

Assumptions about why people are poor have come under scrutiny as a result of welfare reform. The very name of the welfare reform legislation—the Personal Responsibility and Work Opportunity Reconciliation Act—assumes that personal irresponsibility and lack of initiative are among the major causes of poverty. The answer in this scenario is “workfare” and the building of a sense of responsibility and self-sufficiency. But other analyses suggest a broader list of causes and more complex goals and potential outcomes. Other causes can be natural disasters, lack of opportunity, personal or family problems, exploitation/oppression, and political-social-economic structures. For instance, changes in the system and in relationships between the powerful and the powerless may be pivotal in the long-term reduction of poverty. (See Anne Hope and Sally Timmel, *Training for Transformation*, 2000.) The Social Principles of The United Methodist Church state: “Increasing technology, when accompanied by exploitative economic practices, impoverishes many people and makes poverty self-perpetuating. Therefore, we do not hold poor people morally responsible for their economic state” (*Book of Discipline 2000*, ¶ 163).

One result of welfare reform is an increase of faith-based programs to foster economic empowerment and meaningful job development within poorer communities. The Women's Division and the Community Ministries Unit of the General Board of Global Ministries have collaborated in one broad-based effort to encourage mission institutions and local ministries to respond creatively to human problems arising from welfare reform.

Anticipating the hardships and unmet needs of persons leaving the welfare rolls under the reform plan, the Women's Division set aside more than \$2 million for Emerging Ministries with Women, Children and Families, designed to assist United Methodist institutions and programs seeking long-term solutions to welfare crisis situations. The program, administered by Community Ministries, literally spanned the nation, from Tacoma Community House, Tacoma, Washington, to the Open Door Community House, Columbus, Georgia. It included not only national mission institutions, such as Tacoma and Open Door, but also annual conference institutions, such as McDowell Mission in West Virginia, and district and local work, such as

Wesley Community Center, a project of the Miami Valley United Methodist Mission Society, Dayton, Ohio.

Across the United Methodist connection, such ministries can engage individuals, congregations, districts, annual conferences, institutions, general agencies, and ecumenical coalitions. Some of this work can be enhanced by careful, well-considered partnerships with government.

United Methodist Guidelines on the Use of Government Funds

5. Does the United Methodist Church Have Guidelines on the Use of Government Funds?

Yes. The Social Principles of the denomination declare that the state (that is, government) “should not attempt to control the Church, nor should the Church seek to dominate the state. ‘Separation of Church and state’ means no organic union of the two, but it does permit interaction.”

In the spirit of that affirmation, the General Conference in 1980 adopted and in 2000 revised and readopted a lengthy statement on “Church and State.” One section covers “Church participation in providing social services,” a recognition that many such programs already exist, ranging from local food banks to international relief and refugee settlement; from child care to senior services. Recipients include congregations, community centers, cooperative ministries, annual conference projects and national agencies. The General Conference Resolution (No. 228) anticipates many of the questions being raised in the debate over faith-based initiatives. It states:

Governmental provision of material support for church-related agencies inevitably raises important questions of religious establishment. In recognition, however, that some health, education, and welfare agencies have been founded by churches without regard to religious proselytizing, we consider that such agencies, under certain circumstances, be proper channels for public programs in these fields. When government provides support for programs administered by private agencies, it has the most serious obligation to establish and enforce standards guaranteeing the administration of such programs and the accountability of such agencies to the public authority.

The resolution then sets forth six “minimum criteria” to be met by church recipients of government funds:

- The services . . . shall meet a genuine community need.
- The services . . . shall be designed and administered in such a way as to avoid serving a sectarian purpose or interest.
- The services . . . shall be available to all persons without regard to race, color, national origin, creed, or political persuasion.
- The services . . . shall be performed in accordance with accepted professional and administrative standards.
- Skill, competence, and integrity in the performance of duties shall be the principal considerations in the employment of personnel and shall not be superseded by a requirement of religious affiliation.
- The right to collective bargaining shall be recognized by the agency.

The General Conference statement recognizes that all the “values involved” in church sponsorship of a social program may not be fully expressed if the agency is permanently reliant upon government funding.

It discusses approaches to social service delivery and then states:

In dealing with the elimination of the conditions of poverty and hunger, churches should have no stake in programs that contribute to promote dependency or embody attitudes and practices that fail to promote self-sufficiency.

We believe that churches have a moral obligation to challenge violations of the civil rights of the poor and marginalized. They should direct their efforts toward helping the poor overcome the powerlessness that makes such violations of civil rights possible. Specifically, churches should protest such policies and practices by welfare personnel as unwarranted invasions of privacy and oppose any requirement of attendance at church activities in order to qualify for social services.

(The Book of Resolutions of The United Methodist Church, 2000, ¶ 228)

In Considering the Use of Government Funds

6. Which Issues Matter Most in Considering the Use of Government Funds?

The General Conference guidelines are helpful in shaping response to and involvement in the current Faith-based and Community Initiatives of the federal government. In light of the guidelines, the following questions should be taken into account by a congregation or church-related institution considering application for government funds:

- **What do you want to accomplish through community-based ministries, regardless of the funding source?**

A clear vision of the theological and humanitarian purposes of community ministry is important. A mission agenda rather than potential funding best determines community outreach and service; in other words, “What does God want you to do in your community?” Pray and weigh your assets.

- **Does the public program you seek to access correspond to your objectives?**

Government programs usually fund specific programs with particular results expected. Your goals and those of the public program should be in sync, and you should be able to produce the results for which you may be given funding.

- **Can you accept the conditions (the “strings”) that are likely to come with government funds?**

All grants and contracts—regardless of the source—come with conditions regarding the use of funds, timeframes, accountability, and reporting requirements. The terms may be easy or hard to fulfill depending on the source, the task, and the amount of money involved. You should always carefully investigate all the “strings” attached to any grant or contract. Some government programs—including most of the welfare-to-work contracts—operate on the basis of vouchers extended to people, who then decide where they will redeem the vouchers. Voucherized programs entail less day-to-day interaction between faith-based groups and government, although the state must certify agencies as approved for the voucher programs.

- **Could you work with other religious or with secular organizations in achieving your community**

objectives?

Collaboration is a hallmark of much effective community service and development today. Funders, including government, often favor a “partnership” approach among faith-based and community organizations. For instance, several United Methodist congregations are part of Nueva Esperanza, a Philadelphia community-development corporation and service organization set up by 40 small Hispanic churches of various denominations.

- **Do you have the organizational capacity, the location, and the potential personnel to conduct the public program?**

Government programs require extensive paperwork, both in application and reporting; they demand accurate record keeping regarding expenditures, outcomes, and persons served. Most government grants and contracts are “performance-based;” that is, you do not get the money until after the service is delivered. Expenses are reimbursed, meaning that you may need to have up front money of your own in order to get the program underway. (Two of the six stories in the appendix mention the challenge of performance-based contracts.) Service agencies need to be located close to populations served and professional skills are usually required to product expected results.

- **Do you have the appropriate legal and operational structure for the job?**

The United Methodist Church strongly encourages congregations and all agencies to set up tax-exempt not-for-profit organizations to conduct community services utilizing government and, sometimes, foundation and corporate funds. These are called 501(c)(3) organizations, named for a section of the U.S. Tax Code. A major reason for this strong recommendation is to protect the local church and the church at large from liability claims arising from the community service. All United Methodist community centers and many other social service and community agencies are already separate corporations. A congregation active in community service may set up multiple nonprofit corporations. For example, the Windsor Village United Methodist Church in Houston, Texas, the largest congregation in the denomination, has established eight separate corporations to foster community-based objectives. These cover social services and education as well as community economic development and housing.

Any United Methodist church or institution considering receipt of public funds should consult the chancellor (lawyer) of the annual conference, the legal staff of an appropriate denominational agency, and its own legal

This publication includes an extensive overview of the legal issues that should be evaluated in consultation with legal counsel. See page 21 and following.

- **Can government funds be used for religious activities?**

The answer depends in part on how “religious” is understood. Virtually all federal legislation, including charitable choice, prohibits the use of public dollars for “sectarian worship, instruction, or proselytization.” Some laws are even stricter on what are termed “pervasively religious” organizations. Charitable choice, as noted above, permits religious content; allows the display of religious art, symbols, and objects; and allows the provider to disseminate religious information. However, clearly religious activities must be separate and voluntary on the part of program participants. Care must be taken to

respect church–state boundaries, which are not always clearly defined. It seems to be acceptable to offer Bibles, religious literature, and worship opportunities to participants in government programs delivered by faith-based groups as long as private funds are utilized.

- **If you take public money, will the government intervene in your religious affairs and, possibly, restrict your religious liberty?**

Maybe. The maker of any grant or contract retains the right to inspect financial and program records to make sure that money is spent as it was intended and program objectives are achieved. A faith-based group which has its own separate structure or which keeps careful separate books on grants and/or contracts, should not face invasion of its strictly religious activities. Intermingling of funds could trigger audits of all church books and should be avoided, chiefly by setting up the distinct nonprofit organization.

Many United Methodist community centers report good experiences in working with government programs. Few feel that their basic religious purposes are compromised. They do point to the extensive paperwork and, often, slow reimbursement. Community center directors strongly advise the development of close personal ties with staff members of government programs providing funds to church-related agencies. Such relationships are helpful in clarifying regulations and avoiding pitfalls. The denomination has more limited experience with congregations as recipients of public funds, or with running programs certified for government vouchers.

- **Are faith groups restricted in hiring when using public funds to provide general services?**

To a large extent, it depends on the program. Before the enactment of charitable choice, religious providers of government–funded programs were covered by federal antidiscrimination hiring policies regarding religious affiliation. As included in the welfare reform law, religious grant or contract holders may, if they desire, hire only those sharing their religious views. The rationale is that this permits the retention of a distinct religious character. Supporters assert that religious providers have a right to take part in public programs without having to become “secular.” Opponents say that this provision violates the First Amendment by giving religion special consideration in a public program. They contend that it is retrogressive in respect to fair hiring practices. *The United Methodist Book of Resolutions 2000* (p. 570) urges United Methodist organizations receiving government funds to put skills and competencies in job performance above religious affiliation in hiring.

- **Can you be sure that you will receive a public grant or contract if you apply?**

No. Most government funds are allocated on the basis of a competitive process. This is not likely to change under the Faith-based and Community Initiatives of the Bush Administration. Choices are made on the basis of the strength of the proposal, track record, and capacity, as well as the likelihood of productive results.

- **How would you learn about public programs that faith-based groups might access?**

Many federal agencies and their state and local counterparts provide social service and community development funds that can be accessed by a range of nonprofit and faith-based organizations. The U.S. Departments of Agriculture, Education, Health and Human Services, Housing and Urban Development, Justice, and Labor fund literally thousands of programs. You can learn about these from an Internet site, www.firstgov.gov. A congregation or institution needs to take a local perspective on likely opportunities.

Funds are rarely disbursed from Washington, D. C.; indeed, most federal programs are conducted in collaboration with state governments, which may pass dollars through to cities and counties. A large number of federal programs—including welfare reform—operated through “block grants.” Every congregation or institution concerned about its community should be familiar with “Community Development Block Grants” (or comparable funds in small-population areas). Public social and community programs cover drug-abuse prevention and rehabilitation, youth services, child care, homelessness, AIDS/HIV housing and services, elder care and housing, crime prevention, job training and placement and services for ex-offenders and their children. Check the Internet sites of the five U.S. Departments that have centers on faith-based and community initiatives. (These are Health and Human Services, Housing and Urban Development, Education, Labor, and Justice. The Department of Agriculture also has programs that can be accessed by nonprofit organizations.) Check the status of your local Workforce Reinvestment Board (a new government entity mandated for every locale).

Would government expect you to continue work started with public money once the funding stopped?

No, but you should carefully consider the future support and the community impact of any new community effort. Most government grants and contracts are for relatively short periods of time. Some can be renewed again and again; others are time-restricted. Be clear about the conditions. Also weight the local implications of starting, for example, a youth program that might have to be discontinued if government funds were cut back. What would that do to your image and reputation in the community?

What if you obtain public funds for a program that you have trouble doing or find that you do not like to do?

All nonprofit organizations, including religious ones, are legally obliged to complete the terms of grants and contracts whether the funding is public or private, unless there are specific opt-out provisions. Do the very best you can in the situation and, if you have problems, obtain outside professional or technical assistance. After the terms of a grant or contract are met, you could discontinue participation, or simply decide not to reapply for funding should that be possible.

Stories of United Methodist Congregational or Agency Use of Government Funds

7. United Methodist Community Ministry Partnerships with Government Agencies: Six Stories

Chollas View Workfirst Center and San Diego Youth at Work

Metro United Methodist Urban Ministries
San Diego, California

Metro United Methodist Urban Ministries of San Diego is a 35-year-old organization described by its director, John Hughes, as a “faith-based incubator,” and it has grown dramatically over the last several years since it more actively began to access public programs linked in large part to welfare reform and related federal measures. “Our mission is to help churches help people,” says Hughes. Metro is a managing partner of the Workfirst Center housed at the Chollas View United Methodist Church in southeast San Diego, a predominantly Hispanic and African-American neighborhood. It is a major player in San Diego Youth at Work, which provides job training, educational incentives, and assistance with general life skills.

The Chollas View Workfirst Center, which has 14 other partners, developed initially because the church parking lot was used as a pickup and dropoff point for persons in an early workfirst van driving training program. It is now a multiservice program funded by U.S. Department of Labor money through a competitive process. The center provides vocational training, paid work experience, support services, on-site child-care, transportation, employment readiness training, job placement, and employment retention services. The Chollas View Church is itself a collaborating agency, as is All Congregations Together, an interfaith organization that primarily offers mentoring services to persons leaving welfare.

San Diego Youth at Work targets young people aged 14–21. It too is funded primarily by the federal Department of Labor and will likely last three or perhaps five years, according to Hughes. It has three components: (1) The matching of talents with needed and available resources, such as determining the interests and abilities of young people and finding the right program or educational opportunity to develop their abilities. (2) A program of mentoring by coaches from the community who help young people map their futures. (3) Support services, including food, clothing, rent, tires, and other material needs. Many of these services are supplied by one of Metro’s two Good Neighbor Centers.

Metro itself provides relatively few direct services. It is more of a broker, a builder of networks. At present, some 95 percent of Metro’s budget comes from government sources; the other 5 percent comes from churches and private donations. What about religious content that might seem relevant in the public-funded programs? Hughes says, “We make it clear that we are faith-based, that we are part of The United Methodist Church. We do not limit services based on religion, and we hire persons of many faiths or no faith, depending on their abilities. We do pray at meetings. We are a Christian organization. Our philosophy on this point is that of St. Francis: ‘Preach the gospel at all times and, if necessary, use words.’”

Hughes noted that Metro over the years has learned to “speak church and speak social service.” He worries about new faith-based players that may not have both vocabularies and may lack the capacity to produce the results expected by government funders. Consequently, he and colleagues in San Diego are

exploring the possibility of a local faith-based institute to identify and train strategic leaders and to develop the idea that some faith-based groups may best serve as brokers and legitimizers. Hughes foresees a growing need for an institute that could offer faith-based consultation and, possibly, build a pool of funds for faith-based social service providers.

Families First of North Carolina

Moore County
Southern Pines United Methodist Church
Southern Pines, North Carolina

Henderson County
First United Methodist Church
Hendersonville, North Carolina

Families First is part of Project Jubilee, a program of the North Carolina Council of Churches that educates churches in the state about welfare reform and organizes them to assist families who are in transition for welfare to work or who may get lost in the system. It engages in advocacy for fair welfare policies and encourages faith-based services. Families First specifically matches faith teams in congregations with individuals or families leaving welfare for the purposes of mutual learning and support. Families First has affiliate groups in 19 counties, where public departments of social services have provided funds for “faith coordinators” to facilitate the program and train the teams. Barbara Earls, director of Project Jubilee, says that in all the counties United Methodist leaders and congregations are the most active in both the advocacy and service dimensions of the program.

Families First operates somewhat differently from county to county. Here are glimpses of United Methodist involvement in two counties.

Moore County. The Reverend Mark Wethington, pastor of the 875-member Southern Pines United Methodist Church, was a primary organizer of the Moore Caring Community in the Spring of 1999. Using a two-year grant from the county, the new organization hired a coordinator to organize faith teams in the county of 75,000 people southeast of Raleigh. Moore County has become one of the golf capitals of the world. Home to Pinehurst and other professional-quality golf courses, it attracts well-to-do retirees but contains sharp economic contrasts. Nine teams, including one in Southern Pines UMC, have worked with several dozen individuals or families, assisting them with such challenges as transportation and child care as they engage in “workfirst” programs. The teams, trained by the coordinator, the Reverend Emily Jackson, an evangelist, were also available for spiritual and psychological support. Because transportation is a major challenge to gainful employment in the area, Moore Caring Community made an arrangement with Good Samaritan Cars in Fayetteville, North Carolina, to provide dependable, reconditioned automobiles at nominal cost. The Families First Affiliate contributed \$1,600 to put each car in working order. The families getting the vehicles paid \$800 over two years, plus insurance after the first two months. Many of the donated cars came through the church connections.

The Moore County Department of Social Services elected not to renew the grant to Moore Caring Community beyond the spring of 2000, according to Rev. Wethington. “We are in transition,” says the pastor, noting that the experience had been good for enhancing ecumenical relations in the county and for mobilizing efforts to eradicate poverty. “We have so much underemployment here,” he said. “Many of the jobs on the

golf courses and in the hotels are seasonal and pay no benefits.” Moore Caring Community is being merged into the Sand Hill Hospitality Network, part of a nationwide movement concerned with homelessness. Rev. Wethington said that it would be hard to maintain both programs, since the county has opted out. The faith teams will be continued by volunteers and through private support.

Henderson County. Families First in Henderson County operates through Interfaith Assistance Ministries, set up in 1984 to respond to acute human needs when President Ronald Reagan reduced federal public assistance programs. As in Moore County, funds for the coordinator come from the county government. Prominent among the participating congregations is the First United Methodist Church of Hendersonville, a 1,950 member church in a county of 90,000 people, 11.3 percent of whom are below the poverty line. “We are a county of great wealth and great poverty,” said Beverly Kelly, a social worker who is the local faith coordinator. To date, the Henderson County Families First has worked with 44 families, four of which are assigned to First Church.

The Reverend Wannie Hardin, pastor of the congregation, explained that the church has a lay-led committee that relates to both the advocacy and service components of Families First. Faith teams make at least a one-year commitment to work with families or individuals, and sometimes the agreements are renewed. At First Church, Rev. Hardin explained, Families First works cooperatively with “My Sister’s Closet,” a ministry that provides clothing to people going for job interviews or school training. In fact, he says, the clothes closet is available to all the congregations engaged in Families First regardless of denomination.

Prospects for the future of Families First in Henderson County look good. A “Faith Summit” held on May 1, 2001, was designed to increase awareness that getting a job is not the sole answer to poverty. “Reasons are also systemic,” said Ms. Kelly, who is a United Methodist, as is Barbara Earls, director of Project Jubilee, who was speaker at the May 1 event.

Family Pathfinders

Smiley United Methodist Church
Smiley, Texas

Volunteers within the United Methodist Church of Smiley Texas, 60 miles east of San Antonio, were already helping people prepare for meaningful work before they learned about Texas Family Pathfinders, a state-initiated program that enlists and makes small grants to faith-based and community groups engaged in welfare-to-work programs. And the people at Smiley Church are still doing the work after the state grant is gone. In fact, they did not reapply because, says Nelda Patteson, who spearheaded the ministry, “We just didn’t have the money to keep taking state grants.” A paradox? Not really. Reimbursements were notoriously slow and the small congregation—100 members with an average Sunday attendance of 50—did not have the up-front funds needed to carry the formal program.

It all started at Smiley like so many things churches do: Someone had a dream. In this case, it was Nelda Patteson, who over a period of time had helped a young woman become a Licensed Practical Nurse (LPN). But the young nurse had a hard time keeping jobs, so Ms. Patteson saw a need to “get smarter about how to help people.” She became certified to lead a program called “Survival Skills for Women,” consisting of 10 sessions over five weeks. She offered the training to five women coming off welfare, mostly from a local housing project. Things went well.

“About that time [1998],” she continued, “we learned that the state had some money for faith-based

programs. We applied and received \$10,000 to help nine TANF-certified women receive computer training and literacy education at a center in Gonzales, the county seat. We were one of five recipients out of 100 applicants at that time.” The funds came through Family Pathfinders, a Texas effort to mobilize and encourage faith groups to get involved in welfare-to-work training and mentoring. In Smiley, the money went to pay for the computer course and child care in Gonzales and for travel back and forth. Volunteers led the “Survival Skills for Women” course at the church. The results were positive on all counts, including the relationships established with the women coming off welfare.

The church realized no money from the program and that was not a problem. “We liked what the money went for,” said Ms. Patteson, “but the state was so slow in paying the reimbursement that we couldn’t continue. As it was, we had to borrow \$1,500 from the local United Methodist Women to pay the initial tuition, child care, and travel costs. That was paid back when the check arrived.”

Ms. Patteson and others at the Smiley church stay in touch with the women who went through the program. They have also offered to share the techniques of their success with other churches in the region. “Maybe a larger congregation would have the funds to tide it over,” Ms. Patteson said.

The growth of the congregation’s awareness of poverty and the people caught in it is an important outcome of the temporary partnership with a government program, according to Ms. Patteson. “Before, some people in the church thought anyone who lived in a housing project was just lazy. Now they know that’s not so. There is more caring about persons now.”

**Martha Ward, director of Family Pathfinders, reports that across the state of Texas more United Methodist congregations are involved in the program than congregations of any other denomination.*

Louisville Works and Kairos Business Services

Wesley House Community Services
Louisville, Kentucky

Wesley House Community Services, Louisville, has leveraged a grant from Emerging Ministries with Women, Children and Families (funded by the Women’s Division) into ongoing public funding for two programs that help women leaving welfare to build solid lives. Louisville Works, a computer training program, and Kairos Business Services, an internship program, do prepare people for work in offices, but the objectives are bigger.

Its not enough to get the students into “just any jobs” so that they leave the welfare rolls, according to Katie Chapman, director of the two programs. The two programs aim at equipping participants to deal with the ups and down of real life, and to feel a sense of security in knowing that Wesley House is there should they need a safe, caring place. Wesley House is a United Methodist national mission institution (linked to the General Board of Global Ministries), which serves children, youth, families, and seniors.

Since the Women’s Division seed grant was received in 1997, Louisville Works and Kairos have trained a total of 200 people. Much of the current funding comes through the Kentucky version of Temporary Assistance for Needy Families (TANF). State government reimburses Wesley for student tuition. Other funding comes from church and other private sources. Kairos is an eight-week internship that goes beyond basic computer training. Case management for students in each program is provided by the Jefferson County social service agency. One measure of the success at Wesley is the fact that the computer instructor in the spring of 2001 was a single mother of four who was herself a graduate of Louisville Works and of Kairos. Her ability to identify and communicate with the students is seen as a major reason attendance is excellent

in the classes.

Near Southside Employment Coalition and Youth Opportunity Program

Kingdom House
St. Louis, Missouri

Kingdom House is a 99-year-old community center of the Missouri East Annual Conference with a long history of partnerships with government and private agencies. It is a major sponsor of and until recently housed the Near Southside Employment Coalition, an ecumenical program whose director is paid by Kingdom House. Near Southside serves an area south of downtown St. Louis with a mixture of public housing and “gentrified” residences. Almost all of the public housing residents are African Americans, many of them single women serving as heads of households. Near Southside’s workforce development program was 15 years old and had a good track record when welfare-to-work was mandated. The employment coalition entered into a performance-based contract with the state to provide job training services to 75 persons. The experience was a less than happy one, according to Near Southside director William McRoberts. Besides the fact that relatively few people were initially referred to the agency, the training period was too short, the procedures were unclear, and the bureaucracy was heavy-handed. McRoberts says that his agency did not “staff up” at the outset (that is, hire additional people), and so Near Southside did not lose as much money as did some nonprofits with TANF contracts in the early days of welfare reform. The state was reimbursing services providers at \$1,800 per individual, while the actual cost was closer to \$4,500 per person, according to McRoberts.

Near Southside did not reapply for a direct state contract, but it did sign on to a pilot project funded by a combination of state and private foundation money. The pilot involves training people to work in customer services, primarily through “call centers,” a growing field that pays \$9 or \$10 per hour. The funding partners are the Annie E. Casey Foundation, through its Jobs Partnership Program, and the Missouri State Department of Social Service Block Grants. Near Southside provides customer services, job readiness training, and computer literacy courses.

Kingdom House in 1997 was certified to receive Youth Opportunity Program (YOP) tax credits from the state of Missouri. Under this arrangement, individuals and corporations who give money to YOP at Kingdom House receive a 50 percent credit on their state income taxes. YOP is a social development program for low-income, “at risk” youth. It provides recreational and other after-school activities. Since 1997, Kingdom House has received \$1 million through the tax credit plan, according to Ralph Lewis, director of development.

Transitional Journey Program

Cookman United Methodist Church
Philadelphia, Pennsylvania

The Transitional Journey Program of the Cookman United Methodist Church in Philadelphia is, according to a University of Pennsylvania research report, the only real charitable choice venture in the state; indeed, it is one of very few in the whole country. It got underway in 1998 with a \$150,000 state allocation for welfare-to-work training, placement, and follow-up. For the first year, the money was in the form of a performance-based contract and some of the staff members were not paid for months while Cookman waited for reimbursement. “We worked on hope and despair,” says the Reverend Donna Jones, pastor of the small-membership congregation in economically depressed North Philadelphia. The second year was easier because part of the money was a grant and additional funding came from local and national United Methodist agencies.

Cookman worked with 192 persons leaving welfare in the first three years of Transitional Journey, which has a job placement rate of 87 percent and an overall job retention rate of 60 percent, which is quite high. Some of the program graduates change jobs in the first year but are counted as working if the break is short. “People quit or get fired and come back to our doorstep, and we help them find another job,” says Pastor Jones. The program has a small staff of case workers. It has received some in-kind contributions, including computers and other equipment from the Dupont Corporation

Most of the program participants are women, and 80 percent have no high school diplomas. Transitional Journey offers a GED program and training in English as a Second Language. Counseling is offered, and children of the women are invited to take part in the church’s activities for children and youth, including recreation.

As a charitable choice contractor, Transitional Journey includes religious content in its training; however, it must use nongovernment funds to buy the Bibles it distributes to people who want them. Pastor Jones recalls that during the first year, one student called the state to complain of “too much” religious content. Jones says that the program now has all its students sign waivers, “so that they know that our program is Christ-centered, but the religious part of it is strictly voluntary.” For example, a Muslim who came through the program excused herself from the sessions of faith and selfhood. “Sisters of Faith,” a related program encourages a deeper faith commitment and builds skills to “live faith daily.”

The initial state grant was wrapped up in March 2001, with a second application pending. It was expected to become effective in June 2001.

ANDREWS & KURTH L.L.P.

ATTORNEYS

HOUSTON
WASHINGTON, D.C.
DALLAS
LOS ANGELES
NEW YORK
THE WOODLANDS
LONDON

1701 Pennsylvania Avenue, N.W. , Suite 300
WASHINGTON, D.C. 20006-3805

TELEPHONE: 202.662.2700
FACSIMILE: 202.662.2739

THOMAS E. STARNES
DIRECT: (202) 662-2767

E-mail address:
tstarnes@akllp.com

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FAITH-BASED PROVIDERS OF GOVERNMENT-SPONSORED SOCIAL SERVICES: PRACTICAL IMPLICATIONS FOR PARTICIPATING CHURCH ORGANIZATIONS

Introduction

On January 29, 2001, President Bush unveiled a plan to broaden the participation of church organizations as providers of government-funded social service programs. Building on the so-called "charitable choice" provisions of the 1996 Welfare Reform Act,¹ the president's new "Faith-Based Initiative" aims to expand the concept beyond the few welfare programs described in the earlier statute and to clear "bureaucratic barriers" that, from the president's perspective, presently discourage the government and churches from working together to address social problems. Explaining the overall thrust of the initiative, the president announced, "[When] we see social needs in America, my administration will look first to faith-based programs and community groups, which have proven their power to save and change lives. We will not fund the religious activities of any group, but when people of faith provide social services, we will not discriminate against them."

Focus on Practical Guidance

There is much debate, of course, about whether the initiative—in broad terms or in its yet undeveloped particulars—is consistent with the Establishment Clause of the First Amendment. But the debate is not confined to the initiative's constitutionality. Many are concerned, for example, that accepting government funds might ultimately *undermine*, not enhance, the "success" of church organizations in addressing social ills—if not by dampening gifts from the churches' own members and making churches over-dependent on government funds, then by diluting (if not supplanting) the churches' prime focus on the theological mandate for their missions with a more pragmatic focus on meeting government-ordained standards or sustaining government oversight aimed at ensuring that public funds are spent in accordance with such standards.

The purpose of this memorandum, however, is *not* to discuss the merits of President Bush's Faith-Based Initiative. This memorandum *assumes* that a church organization has resolved the various constitutional, theological and policy debates in *favor* of participating as a provider of government-sponsored social services, but then asks what are the *practical* implications of doing so.² The first section identifies various burdens or risks a church takes on by pursuing that course. The second section identifies steps the church might take to minimize those burdens or risks.³

Disclaimer

Providing practical guidance to potential faith-based providers of social services is hindered because the initiative has yet to be enacted into legislation. Indeed, draft legislation submitted in the U.S. Senate differs markedly from the bill pending in the House of Representatives. Choosing to "'claim the common ground' of support for *private* efforts to address social problems," the Senate bill's sponsors have presented a bill that focuses on tax incentives

designed to promote "private contributions" to faith-based social service providers, while deferring the "thorny questions" posed by public funding.⁴ In contrast, public funding provisions are front and center in the House version: "Allowing religious organizations equal footing to compete for government money 'is the entire thrust of the legislation,'" explained one of the House bill's sponsors.⁵

Even if comprehensive legislation were already enacted, however, two factors would preclude churches from relying on this memorandum as sufficient guidance on the practical legal implications of embarking on a plan to provide government-sponsored social services. First, the full ramifications of becoming a faith-based social services provider will undoubtedly differ depending on a host of case-specific circumstances, such as:

- *The nature and structure of the "provider" organization in question*—Is it a "church," in the classic sense, or a separately incorporated entity with a single focus?
- *The nature of the services that the organization wishes to provide*—Are the services relatively risk-intensive, like caring for children or counseling the mentally ill, or less risk-prone activities such as literacy training? Are the services largely a matter of supplying "material" needs, like food or shelter for the homeless? Or are they instead focused on problems, such as drug addiction, that faith-based groups are believed to be well-equipped to address insofar as they involve a moral or spiritual dimension?
- *The identity of the federal or state agency that administers the program*—Does the agency, for example, have unique regulations or impose problematic terms in its contracts with providers, or does the state in question have statutory or constitutional provisions that are not preempted by the federal legislation?⁶

Secondly, projecting the practical implications of becoming a faith-based provider of government-funded social services requires an analysis not merely of the language of the pertinent statutes and regulations but also of how that language is likely to be received by the courts. This is not to say that churches should stand on the sidelines until the legislation withstands judicial testing. It merely recognizes that the landscape against which the legislation will be judged could change dramatically between now and the time any legislation is passed. By then, one or more courts—perhaps even the Supreme Court—may well have addressed the validity of the "charitable choice" provisions in the Welfare Reform Act that appear to be the model for (at least the House version of) the new initiative, or the Supreme Court may have otherwise further defined the scope of the Establishment Clause, or one or more of the Supreme Court's current justices may have retired and been replaced by someone with different views on the relevant issues. Such developments should be carefully analyzed before any church organization embarks on the course of becoming a faith-based provider of government-sponsored social services.

Practical Implications

1. Constraints on Church Autonomy—Generally

The "charitable choice" provisions of the Welfare Reform Act were designed to let faith-based providers compete for federal funds not merely "on the same basis as any other nongovernmental provider," but "*without impairing the religious character of such organizations.*" 42 U.S.C., § 604a(b) (emphasis). Congress provided that a participating religious organization "shall retain its independence from federal, state, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs." *Id.*, § 604a(d)(1). In addition, the religious organization would not be required to eliminate all references to its religious beliefs, or hide its religious character, in the course of delivering the social services. In particular, Congress expressly forbade the federal and state governments from requiring a religious organization either to "alter its form of internal governance" or to "remove religious art, icons, scripture, or other symbols," in order "to be eligible" to receive funding. *Id.*, § 604a(d)(2). Similarly, Congress decreed that churches who received funding could continue to claim an exemption from the *religious* discrimination provisions of Title VII; they would not forfeit their ability to reserve employment positions to members of their own faith or denomination by accepting government funds. *Id.*, § 604a(f).

Opposition to the new initiative may cause one or more these autonomy-preserving elements of the charitable choice provisions to be watered down. But even if legislation enacted to implement the administration's new initiative echoes such provisions, a church organization's autonomy from government oversight will be far from

complete. Government funds inevitably come with strings attached, and not all of those strings will be loosed in the interest of preserving church autonomy. Among other things, there will be restrictions, varying from program to program, on how the funds can be spent; audits to ensure that the funds are properly spent; and standards to meet that may require the faith-based provider adjust the definition of its mission or the means it will employ to fulfill that mission.

2. Audits

Any autonomy church organizations may retain when legislation implementing the faith-based initiative is enacted will surely *not* include exemption from government audits. Indeed, consistent with the government's general duty to demand accountability for its funds, the precursor provisions in the Welfare Reform Act made clear that "any religious organization contracting to provide assistance funded under any program described in [the act] shall be subject to the same regulations as other contractors to account, in accord with generally accepted auditing principles, for the use of such funds provided under such programs." *Id.*, § 604a(h)(1). To ameliorate the intrusion, however, Congress allowed faith-based providers to limit the scope of the audit by "segregat[ing] federal funds provided under such programs into separate accounts." *Id.*, § 604a(h)(2). If that is done, "then only the financial assistance provided with such funds shall be subject to audit." *Id.*

In most cases, religious organizations—especially houses of worship and other entities whose core functions are inherently or predominantly religious or ecclesiastical—should insulate themselves from government audits (not to mention numerous other risks) by taking the additional step of establishing a distinct corporate entity to operate as the government-funded social service provider. In a few cases, such a step may not be cost-efficient, such as when a church receives relatively nominal amounts to assist in providing meals to the poor. Even in those cases, however, the church should always separately account for those funds.

3. Restrictions on Using Public Funds for Religious Purposes

Although the charitable choice concept generally envisions allowing faith-based organizations to provide social services without "impairing" their "religious character," any legislation regarding the new initiative is sure to include a provision restricting the expenditure of government funds "for sectarian worship, instruction, or proselytization." *Id.*, § 604a(j).⁷ The trick is to harmonize such restrictions with the legislature's simultaneous objective of preserving a faith-based group's essentially religious character, such as by not conditioning eligibility for government funding on a religious group's removing religious art, scripture, icons and symbols. This raises a question about which kinds of activities fall within the proscribed category of "sectarian worship, instruction, or proselytization," and which are permissible even though they may include a religious component or impart some religious message.

The new legislation may clarify matters, as may litigation regarding the existing provisions in the Welfare Reform Act. Additional guidance will also be provided in post-enactment regulations issued by the participating agencies, but the specifics will vary from program to program, and agency to agency. For example, some programs are currently governed by regulations that allow an opening prayer at meetings convened by religious groups holding public contracts; others are not; and still others are governed by regulations that do not speak to the question at all. The organization's staff must be thoroughly familiar with the rules of the particular program, and legal counsel should be consulted for advice on any gaps or ambiguities in the pertinent statutes and regulations.

The line-drawing may be difficult in the context of programs, such as substance abuse counseling, where the success of faith-based providers has been attributed, at least in part, to the incorporation of spiritual or moral concepts. For example, does teaching drug addicts about the "twelve-step" concept of a "higher power" constitute sectarian instruction? Drawing the lines would undoubtedly be easier for programs in which the provider is meeting basic material needs, such as providing shelter or meals for the homeless.

Keep in mind that the concern here is not precisely whether a given activity is religious, but whether government money is *funding* the religious activity. *Id.*, § 604a(j). Thus, exacting accounting procedures may provide a useful tool in harmonizing the aim of allowing faith-based providers to maintain and express their essentially religious character without running afoul of constraints imposed on the use of government funds. In other words, a faith-based provider may engage in religious activities, but it must be able to demonstrate that such activities were privately funded (and, as explained below, that participation in those activities by the service beneficiaries is not required in order to be eligible to receive government-funded services).

4. Possible Loss of Exemption from Employment Discrimination Laws

Under current law, churches are allowed to practice religious discrimination. They may lawfully restrict *all* employment positions to members of their own faith, even employees whose functions are essentially secular, such as custodians and secretarial staff. (See, e.g., 42 U.S.C., § 2000e-1.) Furthermore, courts have overwhelmingly held that employment discrimination provisions of all types—that is, not just those that proscribe religious discrimination, but those that proscribe discrimination based on race, gender, age, and other protected categories as well—cannot constitutionally be applied to the relationship between a church and its own clergy, (see, for example, *Minker v. Baltimore Annual Conference of The United Methodist Church*, 894 F.2d 1354, D.C. Cir. 1990), or, indeed, between a religious institution and any employee, "whether ordained or not, whose primary functions serve its spiritual and pastoral mission" (*EEOC v. Catholic Univ. of America*, 83 F.3d 455, 463, D.C. Cir. 1996), such as a director of Christian education or a music minister.⁸

The first of these exemptions—the exemption from the religious discrimination provisions of Title VII—was expressly preserved in the charitable choice provisions of the Welfare Reform Act, 42 U.S.C., § 604a(f), but it remains an open question whether that exemption will be carried over to any legislation enacted to implement the administration's new initiative. Many opponents of the initiative have made "government-funded discrimination" a focal point of their attack. Supporters argue that extending the exemption is consistent with—and perhaps even crucial to achieving—the goal of tapping into the success of faith-based organizations in meeting social needs; employees who espouse the organization's religious beliefs are, on balance, likely to be more motivated to accomplish the organization's social service mission.

Even if the latter group carries the day in Congress, the courts have not yet spoken on whether extending the religious discrimination exemption to government-funded church groups violates the Establishment Clause. Nor have the courts determined what effect the receipt of federal funds may have on the more broad-based insulation of churches from government scrutiny of their employment relationships with their ministers and other employees who are hired to perform essentially religious tasks.

The risk of government constraints on a church's hiring decisions—particularly of personnel who perform core religious functions—is yet another factor that counsels in favor of establishing a separate corporation to receive the government funding and provide the services. Such a course would not eliminate the need to ensure that the provider's employment practices conform to the law as it emerges,⁹ but it should confine the impact of those laws to the provider entity itself, leaving the affiliated church entities protected by existing law and precedent.

5. Restrictions on Discrimination against Beneficiaries

While it is uncertain whether Congress will preserve (or the courts will sustain) a religious organization's preference to hire its own members to provide government-funded social services, there is little doubt that Congress will carry over existing provisions that preclude faith-based organizations from discriminating against potential beneficiaries of government-funded services "on the basis of religion, a religious belief, or refusal to actively participate in a religious practice." 42 U.S.C., § 604a(g).

Broad support for the principle of not discriminating against beneficiaries on religious grounds, however, does not mean that compliance can be taken for granted. Compliance should be a straightforward matter when the faith-based provider is supplying "material" sustenance, such as food or shelter. But compliance may be much harder to judge or manage in other contexts. Consider prisoner rehabilitation services or drug counseling, where a number of providers believe that recovery depends upon the beneficiaries' willingness to incorporate a religious or spiritual dimension into their lives. One might understand that it violates the anti-discrimination principle to *condition* the receipt of any of the provider's rehabilitation or counseling services upon a beneficiary's willingness to espouse a frankly religious belief or to adopt its practice, but what about *encouraging* beneficiaries to explore—through prayer, meditation, or reading—the possible benefit of cultivating the spiritual component of their lives? Is there a risk that the beneficiary might perceive such encouragement—or any disappointment expressed by the provider's staff if the suggestion is declined—as discrimination based on religion or a "refusal to actively participate in a religious practice"?

6. Miscellaneous "Red Tape"

It should be clear from the foregoing discussion that a church organization's participation as a provider of government-funded social services will inevitably entail several layers of regulation with which many churches are

unfamiliar. Putting aside the question of the impact such regulation has upon a church's autonomy, the time and expense associated with understanding and ensuring compliance with all pertinent contracts and regulations—filling out the paperwork, setting up and monitoring segregated accounts, applying for the grants, ensuring timely payments—may be daunting. Establishing the infrastructure needed to handle these responsibilities may, as a practical matter, make it very difficult for smaller churches to be viable candidates to provide government-funded social services.

It may be an overstatement to predict that "officials of faith-based charities may end up spending more time reading the *Federal Register* than the Bible," 69 U.S.L.W. 2590 (April 3, 2001), but no church should take the bureaucratic burdens lightly. The religious, constitutional, and public policy issues raised by the administration's new initiative are crucial and fascinating, but no church group can afford to give short shrift to seemingly more mundane logistical matters of complying with the government's red tape.

7. State Issues

Many of the programs in which "charitable choice" provisions may operate are, in fact, carried out at the state level, using grants from the federal government. That has at least two important ramifications. First, states may have their own rules. Second, many states have *not* embraced charitable choice. This is all the more reason, of course, for a church organization to ensure that its analysis of the legal and practical ramifications are very specific to the particular program and agency involved.

8. Miscellaneous Legal Issues

The foregoing discussion focuses on practical implications or risks that go along with accepting government money. There are numerous other potential legal implications or risks that arise merely because the church organization is venturing into a new activity, irrespective of who funds it. The prominence of the debate over charitable choice and its particular implications should not cause a potential faith-based provider to lose sight of these other matters.

It is beyond the scope of this memorandum to identify all of the more generalized legal issues that may be implicated when a church undertakes social service activities. The implications will vary dramatically depending on the nature of the activity, the structure of the provider entity, the jurisdiction in which the entity operates, and a host of other factors. Some that come to mind, however, are the following:

- a. Enhanced risk of civil liability.** Focus on the nature of the services. Are the activities relatively risk-intensive, such as providing counseling services to vulnerable populations or working with children?
- a. Land use, zoning.** Do local ordinances permit such activities to be conducted at the church? If not, can or should a variance be sought? What costs are entailed in that process? What response do you expect from the community?
- c. Leases.** If a pre-existing affiliated entity will be the provider, does that entity already operate under a lease that allows the new activities? If a new entity is established, should that entity lease space from the church, and on what terms?
- d. Tax implications.** If the provider entity leases space from the church, how will the income to the church be treated for tax purposes? Is it possible that local property taxing authorities will regard the activities as a nonexempt use of the property, opening the property (or some portion of it) to taxation?

Limiting the Risks and Burdens

1. *Put Faith First*

No religious organization should embark on the course of becoming a faith-based provider of government-funded social services before deciding that it fits the organization's *religious* mission. It makes no sense to incur any of the aforementioned burdens without first determining what services, precisely, the church is *called* to supply to the community. That is essentially a theological question, which should be informed primarily by the correspondence between the church's beliefs and the needs of the community. Government funding should be considered only if (a) it is available to address needs that the church has *already* determined it is called to help solve, and (b) those needs are not already being adequately addressed by others. Even if those criteria are satisfied, a church must still ask itself whether restrictions on the use of government funds—or any of the other burdens or risks associated with accepting such funds—might ultimately impair, rather than enhance, the church's ability to accomplish its objectives.

In short, "don't chase the money." Let faith define the mission; the money issue should follow.

2. *Refine the Mission—Assessing the Level of Commitment*

A church organization might focus on the following additional questions in examining whether its mission corresponds with becoming a provider of government-funded social services:

- Is there a consensus among the members of the organization that the group should, as a matter of policy and theological principle, be involved as a government-funded social service provider? If not, it may be difficult to develop and sustain the effort at a level that makes it worthwhile to take on the burdens in the first place.
- Do the organization's members have relevant experience, whether in providing the kinds of services in question, or in establishing or operating government-funded programs?
- What financial resources can the organization devote or advance to the effort? Although the objective would be to have the expenses covered by government funding, the organization needs to consider that (a) it will inevitably incur start up costs; (b) it may not be awarded the grants or contracts for which it applies; and (c) government payments may be apportioned over an extended schedule, or may simply be delayed, leaving periods in which the organization is advancing the costs.
- Will there be "staying power"? In assessing the organization's commitment to a social service project, it is vital to measure not just the organization's present resources and enthusiasm; one should also assess whether the commitment will be lasting. Vulnerable beneficiaries of social services, as well as the communities in which they reside, require dependability and continuity in the delivery of services. It would ill serve everyone involved if the venture were undertaken without reasonable assurances that the provider organization has a long-term perspective and will be prepared to ensure continuity of leadership, staff, and material resources.

3. *Consider Alternatives to Public Funding*

The church should also carefully consider alternative "partnerships" with the government that do *not* include accepting public funds. These alternatives pose little, if any, risk of undermining church autonomy and of burdening the enterprise with regulatory compliance. The following points, borrowed from a helpful list prepared under the auspices of Pew Charitable Trust, suggest that church autonomy will not be compromised if the government:

- Provides information to the public or those in need of social services about the availability of programs offered by religious organizations.
- Provides access to education and training opportunities to employees or volunteers of church-based service providers.
- Invites church representatives to join community-wide task forces regarding social service programs.

- Draws attention to the successes achieved by church-based social service providers.
- Provides letters of recommendation that help faith-based organizations raise funds from other sources.
- Advises social service beneficiaries of resources available from religious organizations.
- Includes religious organizations among lists of organizations that may provide community service placements to welfare recipients.
- Makes information about the community—such as census data, directories of service providers, or needs assessments—available to help religious organizations and other community service providers plan, network, and organize.
- Encourages charitable contributions through appropriate tax relief.

4. Form a Separate Corporation

It has already been mentioned that it is usually advisable to establish the faith-based provider as a distinct corporate entity, legally separate from (albeit affiliated with) the church or other core religious entity. A chief reason for doing that in this context is to preserve the core church's autonomy by confining the scope of government audits, restrictions, and general oversight to the affiliated social service provider. But it would be wise to consider establishing a distinct corporation even if government funding was not in the picture, if only to contain the liability risks associated with the provider's activities, which may often be more risk-intensive than the core church's basic activities.

5. Purchase Insurance

The religious organization should also take care to ensure that the social service activities are adequately insured. If a new entity is established to provide the services, either that entity should secure its own insurance, or the new entity must clearly be included as an additional insured under an existing policy. In the latter case, or in the exceptional case in which a separate corporation is not established to be the provider, the existing policy should also be examined closely to ensure that the new activities are within the scope of the existing coverage and that the policy limits are adequate to cover any enhanced risks associated with those activities.

6. Retain Competent Professional Advice

It should go without saying that a religious organization should retain a qualified attorney and accountant to guide it through this process. Both types of professionals should have significant experience with advising nonprofit organizations engaged in providing government-funded services. It would be a welcome advantage if the professionals also had experience with the charitable choice provisions of the Welfare Reform Act, in particular, but they must certainly have a working knowledge of the legal and accounting considerations generally faced by providers of government-sponsored services.

In addition, the religious organization should make sure that the attorney is experienced at addressing First Amendment issues that impact religious organizations. One might suppose that the attorney should focus on whether the receipt of government funding is consistent with the Constitution, but that would highlight the constraints imposed on the government, not the constraints imposed on the church. From the church's perspective, it is far more important that the attorney understand, and help the church develop mechanisms to avoid or ameliorate, the potential erosion of church autonomy safeguarded by the First Amendment. Providing that kind of advice requires an analysis that is fundamentally different from asking whether the Constitution permits the government to fund services supplied by faith-based providers.

A church group may also consider hiring a consultant that specializes in guiding religious and other community organizations through the process of developing and implementing government-funded programs. A veritable industry has developed to provide such assistance, which may include helping the church identify programs that are available and consistent with the church's objectives; writing grants; and establishing and managing the organization. The church should take special care, however, to select a consultant firm that is well-regarded in the

community, has a significant track record, understands the unique aspects of a faith-based organization, and is responsive to the church's particular mission and concerns. Some firms have been around for years; others entered the market in the wake of the 1996 charitable choice provisions; and many more are no doubt starting up now. A church should not rule out retaining one of the newer firms; they may well have creative suggestions and energy that some older firms might lack. Some effort should be made, however, to weed out opportunistic firms that may be driven primarily by the chance of taking a percentage of the funding intended for organizations whose relative lack of experience in such matters hampers their ability to judge the value of the consultant's services.

Conclusion

Summary of Practical Implications

Any religious organization that is considering providing faith-based social services should carefully study the practical ramifications of such a venture. Key ramifications include:

1. *Constraints on church autonomy*, especially through:
 - a. *Exposure to audits.*
 - b. *Possible restrictions on hiring practices.* (Will the new legislation preserve the charitable choice provision that upholds faith-based social service providers' right to discriminate on the basis of religion? Will there be any contraction of the church's freedom from regulatory and judicial scrutiny when it hires clergy and other employees who perform essentially religious functions?)
2. *Restrictions against using funds for sectarian/inherently religious purposes* (although there may be leeway to incorporate a religious/spiritual component in social services for which the provider is "paid" by the beneficiary using a voucher, rather than directly by the government).
3. *Prohibition against discrimination on religious grounds in delivery of services.*
4. *General burdens of complying with regulations—red tape.*
5. *Enhanced liability risks associated with engaging in new, potentially risk-intensive activities.*
6. *Required consistency of new activities with zoning laws, leases, tax exemptions, etc.*

Summary of Protective Measures

Religious organizations should take a number of steps to address these issues and reduce risk.

1. *Put faith first!* First, decide what the church's mission is. Only then ask whether there is government funding available. Then carefully assess whether the church has the resources and commitment to take on the burdens, manage the risks, and make it work. Consider partnerships with government that do not involve accepting public funds. Don't just "chase the money."
2. *Retain a competent attorney and CPA* who are sensitive to the unique needs of churches and their special legal rights, as well as experienced in handling matters for nonprofit organizations that participate in government-funded programs.
3. *Carefully consider establishing the social service provider as a separate corporation.* This will serve the usual function of limiting liability, but it will also facilitate strict accounting for government funds, limit the scope of government audits, and reduce the risk of exposing the core church entity to employment regulation from which it is generally exempt.

Notes

¹ The full title of that act was the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The

"charitable choice" provisions are codified at 42 U.S.C., § 604a.

² The focus here on practical (especially legal) implications fits the focus of the General Council on Finance and Administration of The United Methodist Church as a resource on such matters. There may well be other general agencies that are studying the Faith-Based Initiative from different perspectives—perspectives that may speak to issues such as theology, social justice, and public policy.

³ It is difficult to fulfill the charge of listing the practical implications of the Faith-Based Initiative without sounding like Chicken Little. It is not my intention, however, to discourage any church organization from participating in the program. I believe that the practical implications are formidable and important, but not insurmountable if the church that is considering the venture plans adequately and is blessed with the human and material resources needed to take on the burdens.

⁴ "Faith-Based Bills Feature Tax Breaks; 'Charitable Choice' Provisions Criticized," 69 U.S.L.W. 2589 (April 3, 2001).

⁵ *Id.* at 2589-90.

⁶ To the extent that any new legislation builds upon the "charitable choice" provisions of the 1996 Welfare Reform Act, Congress may chose to include in it a caveat that "nothing in [the new law] shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations." 42 U.S.C., § 604a(k).

⁷ In the Welfare Reform Act, this restriction is confined to funds *the government* "provide[s] *directly*" to the provider of social services pursuant to contracts authorized by § 604a(a)(1)(A), as distinct from "payments" the provider receives *from beneficiaries* in the form of redeemable "certificates, vouchers, or other forms of disbursement" described in § 604a(a)(1)(B). Different treatment of the two types of funds was presumably intended to reflect a perceived constitutional distinction between the two situations. Direct government funding of "sectarian worship, instruction, or proselytization" creates a problem under the First Amendment's Establishment Clause because, among other things, it implies *the government* chose to fund activities that have an inherently religious purpose. Some maintain that Establishment Clause concerns are absent (or not nearly as great) when the beneficiary pays the faith-based provider with a voucher, because in that case, a private citizen, not the government, is deciding who ultimately gets the money. The government's constitutionally legitimate purpose in providing the voucher is ostensibly simply to lighten the beneficiary's economic burden; the government stays "neutral" on where the beneficiary redeems the voucher, leaving it to the beneficiary to decide, for private reasons, whether to obtain the social services from a faith-based provider or a wholly secular provider. It remains to be seen whether this distinction will be preserved in any new legislation or sustained by the courts.

⁸ Such holdings apply even to churches that belong to denominations that share the government's anti-discrimination policies. Even then, the courts hold, the church has a constitutional right to select employees who will perform essentially religious functions without regulatory or judicial oversight (1) because those employees are vital to the church's ability to define and deliver its religious message, and (2) because civil review of discrimination claims filed by such employees would almost always require the court to resolve fundamentally religious questions (such as whether a given employee was otherwise "qualified" to perform what are essentially religious functions) that the church is entitled to resolve for itself. (*See Minker, supra.*)

⁹ Failure to comply with employment discrimination laws can lead to severe consequences, including treble damages, fines, the personal liability of officers and directors for fines, and even imprisonment.

Where to Find More Information

For more information providing a range of opinions on faith-based initiatives, charitable choice, and access to government funds, contact the following:

Americans United for Separation of Church and State (opposed to charitable choice).

518 C Street N.E.
Washington, D.C. 20002
202-466-3234, www.americansunited.org

Baptist Joint Committee on Public Affairs (cautious on charitable choice).

200 Maryland Avenue N.E.
Washington, D.C. 20002
202-544-4226, www.bjcp.org

Center for Public Justice (enthusiastic about charitable choice)

P.O. Box 48368
Washington, D.C. 20002-0368
866-275-8784 (toll-free), www.cpjustice.org

Children's Defense Fund (concerned about the impact of welfare reform on families)

25 E St. N.W.
Washington, D.C. 20001
202-628-8787, www.childrensdefense.org

Feinstein Center for American Jewish History (provides information on pros and cons)

Temple University
117 S. 17th St., Suite 1010
Philadelphia, PA 19103
215-665-2300, www.temple.edu/feinsteinctr

The Independent Sector (a nonpartisan research organization)

1200 18th St. N.W.
Washington, DC 20036
202-467-6100, www.independentsector.org

The National Congress for Community Economic Development (provides politically neutral information)

Faith-Based Initiative
1030 15th St. N.W.
Washington, D.C. 20005
202-289-9020, www.ncced.org

Pew Forum on Religion and Public Life (on-line source of articles and studies)

1150 18th St, NW, Suite 775
Washington, DC 20036
202-955-5975, www.pewforum.org

The United Methodist Church

General Board of Church and Society

Public Witness and Advocacy
100 Maryland Ave. NE
Washington, DC 20002
202-488-5600, www.umc-gbcs.org

General Board of Global Ministries

Community and Institutional Ministries Unit
475 Riverside Drive
New York, NY 10115
212-870-3711 or 870-3843, www.gbgm-umc.org

General Council on Finance and Administration

Legal Department
1200 Davis St.
Evanston, IL 60201
847-869-3345, www.cgfa.org

