

II. THE ELEMENTS OF THE BUSH ADMINISTRATION'S FAITH-BASED AND COMMUNITY INITIATIVE

Activity in Washington, D.C. is often measured by the proliferation of a customary product in the nation's capital: legislation. But modern presidents – conservatives more so than liberals in recent times – have also sought to achieve their intended ends by using the executive branch's administrative powers rather than working with a fractious Congress. Both techniques were brought to bear by the administration of George W. Bush in an effort to implement his avowed priority of expanding opportunities for government partnerships with religious organizations. As a result, the administrative powers of the presidency were used in ways remarkable and even historic.

The Bush administration's legislative efforts on its faith agenda drew early attention from the press. As the legislative agenda splintered and bogged down, attention focused more on the expression of Bush's personal views on religion and faith-related social services. Although it was not widely reported at the national level, the Bush administration used its executive powers to implement the Faith-Based and Community Initiative throughout the federal government. Few if any presidents in recent history reached as deeply into, or as broadly across, the government to carry out a presidential priority as did the Bush administration in advancing its faith initiative.

A host of steps were taken after Bush's announcement of his Faith-Based Initiative in January 2001. These included changes in federal rules, federal agencies, funding and public outreach advanced by the Bush administration to increase partnerships with faith-based groups to provide a vast array of social services. Religious organizations became involved in government-encouraged activities ranging from building strip malls for economic improvement and patrolling school hallways to promoting child car seats and distributing Medicare prescription cards.

Supporters hailed these moves as a way of ending the exclusion of certain religious groups from public programs and widening the choice of providers. Critics questioned whether efforts to remove barriers facing faith-based organizations (FBOs) also weakened long-standing walls preventing religious groups from mixing spiritual activities with their secular services.

A. THE BUSH FAITH INITIATIVE IN CONGRESS

The Bush administration and its supporters in Congress set out in 2001 with high hopes for adopting laws to expand opportunities for faith-based social service providers in government programs and, through the tax code, to strengthen incentives for charitable contributions to their efforts. Yet what began as a plan for comprehensive legislative authorization for expanded public and private sector partnerships with religious groups gave way to a series of narrower attempts, with few legislative successes over the eight-year period.

The Push for a Comprehensive Bill

The legislative foundation for the Bush administration's Faith-Based Initiative was introduced by Rep. J.C. Watts Jr., R-Okla., on March 29, 2001, three months after Bush became president. The Community Solutions Act of 2001, or HR 7, offered protection for the "equal competition" rights of faith-based providers applying for federal money in 11 program areas. It also would have expanded the range of social services in which these rights were explicitly protected well beyond those already in place under welfare block grants and substance abuse treatment programs. In addition, the proposal called for expanded tax deductions for charitable contributions and encouraged low-income people to save money.

The Community Solutions Act included Charitable Choice provisions that allowed federally funded faith-based service providers to retain their autonomy by keeping their practices and expression of religious beliefs intact. It also would have allowed faith groups to employ staff based on their religious beliefs. There was one limitation however: The bill stated that no federal money could be used for sectarian worship, instruction or proselytizing.

The Bush administration worked behind the scenes with Republican House leaders to draft the legislation. The bill was championed as revolutionary to supporters in private conversations, but publicly its characterization was more muted. In fact, a central element in the public rationale for the bill was that the proposed protections for religious organizations were built on the same provisions enacted in the 1996 welfare reform law during the Clinton administration. Nonetheless, a few voices of opposition began to rally others to their side, arguing that religious protections in existing laws had been added at the last minute and with little notice or consideration. Opponents were determined that this would not happen again under the newly elected Bush. "They were getting [Charitable Choice] legislation through until it got attention," Rep. Robert C. "Bobby" Scott, D-Va., told reporters at the time. "The more they pressed this, the more it smelled. The more it is discussed, the better the chances are that this idea will collapse."⁵

By the time the proposal reached the floor of the House in July 2001, the faith-based provisions had become highly controversial. An amendment to eliminate the religious hiring provisions was pushed forward, but the bill's supporters were able to defeat it. The proposal went on to pass the House by a vote of 233 to 198. "The Community Solutions Act protects exemption for religious organizations established in the Civil Rights Act of 1964," Watts said. "That exemption simply allows religious organizations to maintain their distinct character and mission by hiring staff who share their religious beliefs."⁶

Opponents remained unpersuaded however. "Mr. Speaker, I voted against HR 7 because it is a fundamentally flawed bill that would put in jeopardy one of the bedrock principles of the United States – the separation of church and state," Rep. Diana DeGette, D-Colo., said. "HR 7 would enable a religious organization to engage in discriminatory practices based on religion."⁷

When the Bush administration's faith-based legislation moved on to the Senate, its supporters found the environment even less favorable. The faith-based provisions were dramatically scaled back, and as the legislation moved slowly through committees with opposition, it never reached the Senate floor before the Senate adjourned for the year.

It was during the next session of Congress that Sen. Joseph I. Lieberman, D-Conn., and Sen. Rick Santorum, R-Pa., sought to resurrect the faith-based bill, introducing it as the Charity Aid, Recovery and Empowerment Act (CARE) of 2002. Their legislation sought to reduce the anticipated opposition by omitting the religious hiring provisions, which the sponsors acknowledged would be a major impediment to passage. “Though the question of hiring is not addressed in the bill,” Santorum said at the time, “current laws will continue to apply.”

The legislation did include “equal treatment” provisions ensuring that faith-based organizations that compete for federal funding could display religious icons, have religious names, include religious language in chartering documents, and use religious criteria for their governing boards. The bill also sought to create a \$150 million Compassion Capital Fund to help small community and faith-based organizations partner with the government.

Removal of the hiring rights provisions was insufficient improvement for the bill’s opponents however. Some members of the Senate and House wanted more explicit language barring proselytizing and religious discrimination in employment. Scott said he would oppose the legislation again because it did not expressly prohibit discriminatory practices. “If there is no language that prohibits discrimination, this administration will allow silence to allow discrimination,” Scott said. “I have other concerns about direct federal funding to faith-based organizations. Can they answer these questions: Can you directly fund a church? Can you proselytize during the program funded by government? Can you discriminate based on religion? They haven’t answered any of these questions.”⁸ Several amendments were offered that delayed action, and once again the legislation failed to move to a final vote before the session’s end.

The next step was in January 2003, when Lieberman and Santorum re-introduced the CARE Act but removed all language that explicitly supported the efforts of faith-based groups. The bill retained provisions to encourage charitable giving, to expand the Compassion Capital Fund created a year earlier as an agency budget item, and to restore more than \$1 billion in block grant funding to states for social services for the needy. “I’ve spoken to several members with concerns over the faith-based language that have said if it is off the table, they’ll pass on a fight,” Santorum said at a press conference announcing introduction of the bill.⁹

Santorum explained that he was willing to remove the last remains of explicit faith-based language from the bill because Bush had issued an executive order expanding his Faith-Based Initiative, including reinforcement that federally funded faith-based service providers could consider religion in their hiring decisions. The Bush administration also had sought to change federal regulations to advance its faith-based agenda and met with representatives of civil liberty groups to urge them to support the bill.

The Senate eventually approved the CARE bill and sent it to the House, where it reclaimed the designation HR 7 when Rep. Roy Blunt, R-Mo., and Rep. Harold E. Ford Jr., D-Tenn., introduced their version in May 2003. Although the new HR 7 did not contain the original faith-based language, Blunt said he was not disappointed. “There are better places to do the policy work,” he said, referring to several pieces of pending legislation that included religious hiring provisions. The bill included the \$150 million Compassion Capital Fund, allowing faith-based

and community organizations to apply for program funds. However, it excised provisions restoring social service block grant funding incorporated in the Senate bill.

In an effort to include the faith-based language, the House approved a resolution along with HR 7 that endorsed faith-based organizations as successful agents to deliver services addressing difficult social problems. It also stated that while the work of faith-based organizations should not replace the government, religious groups are valuable partners in meeting society's challenges, and called on Congress and corporations to make more contributions to faith-based groups. However, the resolution had no statutory authority.

By that point in its journey, the CARE legislation had been pared down to a tax bill with incentives for charitable donations and inducements for people to save money. Debates centered not on faith-based provisions, but on how the federal government would compensate for the reduced revenues its tax credits were expected to produce. Also at issue was whether money would be restored for social service block grants for the states, providing expanded grant and contract opportunities for faith-based and other groups that compete for them. But the session of Congress ended without enactment, and even the more-modest tax provisions were therefore doomed.

Bush did not see comprehensive legislation on his Faith-Based and Community Initiative move forward during his tenure. Instead, over the remaining years of his presidency, the legislative agenda on faith-based policy was divided among three types of proposals: legislation creating financial incentives to encourage private giving to religious organizations; statutory authorization to explicitly partner with religious organizations in certain governmental programs; and new programmatic initiatives involving faith-based and other service providers, often as part of omnibus appropriations legislation.

Strengthening Incentives for Charitable Contributions to FBOS

Passage of charitable giving incentives took many years from the time they were first introduced as part of the CARE Act. Throughout all the defeats of the other legislative goals of Bush's faith agenda, provisions to encourage Americans to donate to charities were the single signature legislative element to survive. Legislative proposals used two particular mechanisms to increase incentives for charitable giving. The first permitted older Americans to make charitable contributions from individual retirement accounts without adverse tax consequences. The second allowed the 86 million Americans who do not itemize on their tax returns to claim a deduction for charitable donations above \$250.

In 2006, the provisions were included but then taken out of a general tax cut proposal intended to stimulate the economy. Provisions were subsequently added to a pension reform bill, the Pension Protection Act of 2006, but notably missing was the proposal enabling taxpayers who do not itemize on their tax returns to deduct part of their charitable contributions. Bush signed the pension reform bill containing the remnants of the charitable-giving incentives in August 2006. The incentives are listed below:

- **Donations from IRAs for charitable purposes:** This allowed individuals to donate up to \$100,000 to charity from an individual retirement account without paying income tax on the distributions. The donation had to go to a public charity.
- **Modification of the charitable deduction for food donations:** This provided incentives for businesses and farmers to donate their food inventory to charity. The provision allowed donations from all trades and businesses, and the deduction was equal to the taxpayer's basis plus one-half of the difference between fair market value and basis, or twice the taxpayer's basis in the contributed inventory, whichever was less.
- **Modification of the charitable deduction for book donations:** This added public schools to the list of eligible recipients for book donations by certain corporations.
- **Modifications to encourage contributions of property for conservation purposes:** This provided land-rich, but cash-poor families an opportunity to donate land for conservation purposes by increasing the charitable deduction limit from 30 percent of adjusted gross income to 50 percent if the donation did not prevent the use of the land for farming or ranching. The charitable deduction limit was increased to 100 percent of adjusted gross income for eligible farmers and ranchers. Additionally, the provision allowed a taxpayer to carry forward the deduction for 15 years in certain circumstances.
- **Adjustment to the basis of S corporation stock for charitable contributions:** This leveled the playing field for the donation of stock by small businesses by clearly defining as a charitable contribution the applicable deduction with regard to the donation of S corporation stock.
- **Extension of the enhanced deduction for inventory to include public schools:** This extended the enhanced deduction for inventory property to donations made to public schools.

“These incentives are incredibly important to organizations that will be receiving these donations, but even more so for the people that these nonprofits serve in our communities,” Santorum said of the newly enacted law. Most of these tax incentives were extended through 2009 under subsequent bills signed by Bush.

Removing Statutory Barriers to Government/FBO Partnerships

Expanding statutory protections for religious organizations in more federal programs was one of the central purposes of the comprehensive legislation sought at the outset of the Bush administration. In the absence of a bill, Bush moved forward through executive orders and other means. But there were a number of existing federal programs with statutory provisions that presented barriers, perceived or real, to wider participation of faith-based organizations. Since these provisions were in law, they could not be remedied by presidential order and congressional approval was necessary. When these programs came up for reauthorization, heated debate

centered on whether extending legislation would maintain or change language that permitted or precluded religious organizations receiving federal money from hiring and firing employees based on religious beliefs.

CITIZEN SERVICE ACT OF 2002

One of the first of these proposals was the Citizen Service Act of 2002, introduced by Rep. Peter Hoekstra, R-Mich., to reauthorize and extend the Corporation for National and Community Service, which operates programs to support volunteerism in the United States. The corporation is an independent agency that oversees federally funded national service programs such as AmeriCorps, Senior Corps, and Learn and Serve America. Although the statute authorizing these programs expired at the end of fiscal 1996, the programs were continued through annual funding legislation.

The Bush White House and supporters like Hoekstra sought several changes in the corporation to: overhaul and strengthen existing programs; implement accountability measures for grantees; and make the corporation more effective in leveraging volunteers among its service organizations. Bush proposed funding an additional 25,000 AmeriCorps members and increasing spending on domestic volunteer programs by 40 percent. The proposal also eliminated existing provisions barring grantees and contractors, religious organizations included, from considering religious beliefs in their employment practices.

The objective was to reflect “whether the protection of religious staffing rights is prudent and good public policy for programs administered by the corporation,” Hoekstra said at the time. “This is a matter of concern for some of us because under the current national service laws, faith-based groups are denied the protections of the Civil Rights Act that would otherwise allow them to hire employees or accept participants on a religious basis if they accept federal funds.”¹⁰

The Citizen Service Act’s hiring rights provision generated opposition from the Democratic minority in the House. But the proposed expansion of the program also drew significant opposition from House Majority Leader Richard K. Armey, R-Texas, and others of Bush’s own party, who said the Clinton-created program ran counter to Republican goals of smaller government and more personal responsibility. The bill made it out of committee in 2002 but never went to the House floor and did not advance in the Senate.

Another, final attempt to extend and expand volunteer programs under the Corporation for National and Community Service was made in 2008 and renamed the Generations Invigorating Volunteerism and Education (GIVE) Act. Although it was devoid of the hiring rights provision that bogged down the Citizen Service Act, it met the same fate as its predecessor. The nation’s volunteer programs never received long-term reauthorization during the Bush years. However, on April 21, 2009, President Barack Obama signed the Edward M. Kennedy Serve America Act reauthorizing the Corporation for National and Community Service and its programs through 2014, expanding the number of national service participants to 250,000 by 2017, and establishing funds to leverage more local volunteers and resources to improve communities throughout the country.

WORKFORCE INVESTMENT ACT

The same fight over religious hiring rights also weakened the ground beneath the Workforce Investment Act, enacted in 1998 as the nation's main program for training and assisting people looking for work. The act consolidates and formalizes planning and delivery of training and employment services for youths and adults through a system of regional workforce boards and One-Stop Career centers. These "one-stops" serve as delivery sites where job seekers have access to labor market information, job counseling, job training, job placement services, adult education and literacy classes. Under the program's authorizing statute, participating job training providers – faith-based or otherwise – are prohibited from hiring or firing staff based on their religious beliefs.

Legislation to extend and modify the Workforce Investment Act was proposed in 2003. The Workforce Reinvestment and Adult Education Act, sponsored by Rep. Howard P. "Buck" McKeon, R-Calif., and Rep. John A. Boehner, R-Ohio, aimed to streamline the multiple programs offered at the One-Stop Career centers, shift more control and oversight responsibilities to state and local jurisdictions, and encourage the government to work with faith-based and community organizations to provide the services.

This House Republican proposal was developed with the Bush administration, and it sought to increase opportunities for government partnerships with faith-based and community organizations in two main ways. The bill would have allowed the use of vouchers permitting individuals to shop around and select providers, including those with religious content, for training or support services. This proposed voucher system would have gone well beyond an experiment with Individual Training Accounts permitted under the 1998 act. A second provision would have eliminated the law's prohibition against religiously based hiring. "We will ask states to diversify providers at the local level," said Assistant Secretary of Education Carol D'Amico, the Bush administration official responsible for overseeing vocational and adult education programs. "We will also ask states to build the capacity of community-based organizations, including faith-based organizations, to provide these services."¹¹

The voucher and religious hiring provisions in the bill quickly became flashpoints for controversy. Opponents criticized the voucher component on the grounds that under the bill, faith-based organizations and other private providers would not technically have been considered "recipients" of federal aid and therefore would no longer have been required to adhere to civil rights laws and related requirements that attach to that status. The legislation would have eliminated the provisions under the Workforce Investment Act that barred religious organizations from using the exemption in the antidiscrimination provisions of Title VII of the Civil Rights Act, thus allowing such groups to consider religious beliefs when making staffing decisions.

Supporters argued that religious organizations should be able to retain their autonomy and identity by hiring staff with similar religious beliefs. But civil rights groups voiced loud opposition, and on new rhetorical ground. As had been the case with the CARE Act and the Citizen Service Act, the provision permitting religiously based hiring was characterized as tantamount to "allowing discrimination." Even worse, critics alleged, it removed existing protections against discrimination.

“This discrimination provision undermines the basic tenets of our country and sends a terrible message to people in our country,” said Rep. Chris Van Hollen, D-Md., who offered an amendment to preserve the existing workforce investment law prohibiting federally funded job training providers from discriminating in hiring based on religion. “This would be the first time Congress repeals a law that prohibits discrimination. I believe the American people would be appalled if billions of dollars in federal job training programs could be diverted to job training programs that hire only Christians or only Jews,” Van Hollen added.¹²

Boehner, chairman of the House Education and Workforce Committee and lead sponsor of the bill, maintained that the legislation did not support discrimination. “We just don’t want to restrict faith-based organizations,” he said. Others joined in alongside Boehner. “The power of these organizations is their faith,” then-Rep. Jim DeMint, R-S.C., explained. “We can’t divide the faith component from what they’re doing. They are proving their effectiveness, and we want our money to flow through them. Don’t pretend that you’re not dividing and diluting the power of these faith organizations because that’s what you’re doing.”

The Workforce Investment Act reauthorization followed a path similar to the Citizen Service Act. The bill made it out of committee on a party-line vote and was passed by the House on May 8, 2003. From there, freighted with controversy, it moved over to the Senate, where it found a committed opposition. The brewing debate over religious hiring rights and the voucher provision stalled any further progress for the balance of that year and the next.

Bush complained about the lack of progress on the workforce legislation in March 2005, speaking before a group of religious and civic leaders in Washington. “When it comes to programs such as the Workforce Investment Act, Congress has required faith-based groups to forfeit the right,” he said, referring to the ability of religious organizations to select employees on the basis of their religious beliefs. “And so I want this issue resolved,” Bush continued. “Congress needs to send me the same language protecting religious hiring that President Clinton signed on four other occasions. And if we can’t get it done this year, I’ll consider measures that can be taken through executive action.”¹³

The following day, the House voted mostly along party lines for a five-year extension of the Workforce Investment Act with a change that would have allowed religious organizations offering job training services to consider a person’s religious beliefs when employing staff. An amendment offered by Democratic Rep. Scott to retain the act’s original ban against religiously based hiring by contractors receiving money under the act failed.

The outcome in the Senate was a different scenario. Despite Bush’s admonition and a Republican majority, the Senate in 2005 refused to eliminate the religious hiring prohibition. That prompted a complaint from the Bush administration. But even Sen. Michael B. Enzi, R-Wyo., the bill’s sponsor and chairman of the Senate Health, Education, Labor and Pensions Committee, asserted that the issue of religious hiring rights was one of the most problematic barriers to getting the legislation through. No agreement on extending the act was reached before the end of the Bush administration, and its programs were continued year to year through annual appropriations.

Yet, as early as July 2003, the Department of Labor was awarding millions to better than a dozen states and scores of organizations around the country to specifically link faith-based and community organizations to the One-Stop Career system. Bills reauthorizing the Workforce Investment Act are expected to be introduced year.

HEAD START

Many of the same religious hiring protagonists lined up on legislation to extend and modify Head Start, a popular and generally noncontroversial program providing preschool services since 1965. Head Start had last been reauthorized in 1998 and was due for renewal in 2003. Like the Workforce Investment Act, the Head Start program's existing statutory authorization included a provision barring participating providers from employment discrimination but did not explicitly note religious beliefs as an element of that. The Head Start program pays for approximately 198,000 teachers and staff and includes 1.4 million volunteers.

This time Republicans offered an amendment to eliminate the existing ban against religious-based hiring in Head Start programs. The House Education and Workforce Committee took up the Head Start reauthorization in June 2003. Boehner, lead sponsor of the proposal, argued that the measure would make the Head Start program consistent with other laws that allow faith-based organizations to consider religious beliefs when making hiring decisions. "The Civil Rights Act of 1964 allows religious organizations to hire and fire based on religious beliefs," Boehner said. "Over the years, federal laws have trampled on this right, including Head Start, and it's just wrong. President Clinton signed four bills that do the same thing, although our colleagues on the other side disagree."¹⁴

Opponents countered that the amendment would eliminate an existing prohibition against discrimination and would allow religious tests to be required for positions paid for with public funds. "This language means that private groups could receive public tax dollars to hire and fire employees who pass a religious test," said Van Hollen. "This makes a mockery of the Free Exercise Clause of our Constitution." Van Hollen said the bill allows "religious discrimination and bigotry using federal money."¹⁵

Following heated debate among committee members and a party-line vote, Boehner's Head Start proposal moved to the House floor, where it passed by a one-vote margin. Capitol Hill observers predicted the Head Start bill would face stiff resistance in the Senate.

The Senate's expected action on the measure was foreshadowed during a 2003 hearing on Head Start held by the Health, Education, Labor and Pensions Committee at around the same time as the House was acting on its bill. Sen. Jack Reed, D-R.I., asked hearing witness Windy Hill – the associate commissioner for the Head Start Bureau in the Department of Health and Human Services – how many faith-based groups participated in Head Start and if existing federal employment laws had been an obstacle to FBO participation. Hill reported that 115 of 1,500 grantees were faith-based and that faith-based groups had participated in Head Start since 1965. "Many faith-based organizations have attempted to participate but have not been successful for a variety of reasons," Hill said. "The administration has proposed an elimination of barriers to that participation."

Reed also asked G. Reid Lyons – chief of the Child Development and Behavior Branch of the National Institutes of Health – if research had been conducted comparing the difference between “religious-unified” teaching and “religious-diversified” teaching. Lyons said his office had not researched the religious affiliation of Head Start teachers in determining the quality of teaching. “We have studied their background and training, but religious affiliation has been far down on the list,” Lyons said. Summarizing from his line of questioning, Reed stated, “The House bill has employment language that will be very controversial. Hiring doesn’t seem to be a barrier in the [faith-based] organizations’ participation, and there’s no scientific basis that affects whether children can read or not. I hope we can avoid that language.”¹⁶

The religious hiring provision in the Head Start reauthorization was a perennial point of debate over the balance of 2003 and 2004. With progress stalled, the House Republican leadership tried a somewhat different tack in 2005. The School Readiness Act, a bill to reauthorize and overhaul the Head Start program, passed the Education and Workforce Committee by a bipartisan and unanimous vote of 48-0. This time the bill did not include the hiring provision – as an element of strategy, not a change in policy.

The hiring rights provision was held back and offered by Rep. Charles W. Boustany Jr., R-La., when the bill came before the House. Boehner explained that the timing of the amendment was designed to expedite its passage. “I do realize it is divisive,” Boehner said. “I do realize there are strongly held views on both sides, but we should let the House take its vote. Including the amendment later adds comity to the issue. I thought it wise not to bring issues that divide us. Let the House speak on this issue again.”¹⁷

Opponents saw the move differently, charging that the sudden addition of the hiring rights provision converted an otherwise bipartisan bill into a contentious piece of legislation. “This is an ill-conceived and harmful amendment,” said Rep. Emanuel Cleaver, D-Mo. “Proponents of this amendment say this amendment preserves religious freedom. As a pastor, I take offense at that claim. How is religious freedom served when we force a teacher to choose between her faith and her job?” he continued. “How is religious freedom served when we tell children they can lose their teacher because she or he is from the wrong faith?”¹⁸

Again the arguments became heated. “Faith-based organizations should not have to relinquish their rights under the Civil Rights Act to provide services to poor children who desperately need their help,” Boehner said. “If you disagree with that, go to the Judiciary Committee and rewrite the 1964 Civil Rights Act.”¹⁹ “If they can’t freely hire, we will force them out of providing services,” Rep. Melissa A. Hart, R-Pa., added in Boehner’s support. “They should hire the best people and those who can carry out their mission.”²⁰

Rep. Chet Edwards, D-Texas, a leading voice on separation of church and state, saw the matter in starkly different terms. “What is right about hanging out a sign that says no Catholics or Jews need apply for a government job?” he asked. “What’s right about that?”²¹ “You’re trying to inflame what is unreasonable,” Hart countered. “The point of faith-based providers is that they are mostly church people who have a mission. They want to provide a service. They are not discriminating against others. They are encouraging service within their church, and we should allow them to provide that service because we know they have the best track record for

success.”²² The issue could not be resolved in 2005 or 2006, and Head Start was funded instead through annual appropriations bills.

Debate over reauthorization of Head Start was rejoined in March 2007, but with large changes in strategic positioning among the antagonists. The pattern over the prior five years had been for the Democrats in the minority to try to stave off revisions proposed by the Republican majority in Congress that would remove existing prohibitions against religious-based hiring. But with control of Congress switched in the 2006 midterm elections, the committee proposal adopted and moved to the House floor in the 110th Congress extended Head Start without changing the program’s provisions on hiring discrimination.

“The fact that the majority previously has been able to include this in prior statutes doesn’t mean it’s right or that it’s constitutional. It just means they had more votes to put it in,” said Rep. Robert E. Andrews, D-N.J., referring to past attempts to include similar language in other social service bills. “So in a few minutes, we’re going to take a vote. And those of us who believe this is the wrong way to go are going to cast our votes. And those who believe this is the right way to go are going to cast their vote, and we’ll see what happens. But what I hope never happens is that a dollar of my taxpayer money can be used to deny someone a job because of their religious faith.”²³

Andrews was referring to a proposed amendment put forth by Republicans on the Education and Workforce Committee to allow FBOs participating in Head Start to consider religious beliefs in their hiring decisions. As in the past, both sides saw the other as committing ‘discrimination.’ “This would shift the weight of the federal government from standing behind the victims of discrimination to standing behind the right to discriminate with federal funds,” said Rep. Dale E. Kildee, D-Mich. “That is repugnant. This 110th Congress should not be the Congress that begins the rollback of those protections.” But others saw that it was religious groups who were subject to discrimination. “Opposition to this amendment comes close to discrimination against people of faith who want to participate and want to be positive promoters of justice and nondiscrimination in society today,” said Rep. Timothy Walberg, R-Mich. “See that true civil rights are given to all.”²⁴

The Head Start reauthorization bill reached the House floor in May 2007. The Bush White House issued a statement before the vote strongly encouraging the House to add the religious hiring proposal because “such provisions should be applied to all federally funded social service programs so faith-based organizations may operate on an equal level with every other organization competing to provide services.” The Bush administration said it could not support the measure without removing the religious hiring ban and urged the House to amend the bill “to ensure that faith-based organizations are not asked to forfeit their religious hiring autonomy as a condition of receiving Head Start grants.”²⁵

“As a person of faith who believes strongly in the good work of faith-based groups, I rise to passionately oppose this ill-advised motion, a motion also opposed by the Baptist Joint Committee, the American Jewish Committee, the Episcopal Church and the NAACP,” said Rep. Edwards, referring to a motion to send the bill back to the Rules Committee to reinstate the hiring rights provision. “Our principle is simple but deeply profound: No American, not one,

should ever have to pass another American's private religious test to qualify for a tax-funded federal job – not one American," Edwards said.

The House by a vote of 365-48 passed legislation to reauthorize Head Start, making improvements in teacher quality and pay, adding eligibility for as many as 10,000 more preschoolers, and leaving intact the program's existing language barring participating providers from discrimination in employment. The House bill noted that faith-based and community organizations have participated in Head Start since the enactment of the program in 1965 and continued to serve more than 90,000 children and their families. "Faith-based and community-based organizations continue to be eligible, on the same basis as other organizations, to participate in any program under this subchapter for which they are otherwise eligible," the legislation stated.²⁶

By November 2007 and for the first time in almost a decade, the House and Senate together approved a five-year overhaul of Head Start and sent the reauthorization to Bush for his signature. The bill, entitled the Improving Head Start for School Readiness Act of 2007, passed with widespread bipartisan support. In the end, it did not include changes on hiring rights sought by Bush and his allies in Congress. Nevertheless, Bush signed the measure into law on Dec. 12, 2007.

"I am concerned that the bill authorizes spending levels higher than those proposed in my budget," Bush said at the bill signing. "Approval of this legislation is not an endorsement of these funding levels or a commitment to request them. I am also disappointed that the bill fails to include my proposal to protect faith-based organizations' religious hiring autonomy."²⁷

COMMUNITY SERVICES BLOCK GRANT

The matter of religious hiring rights emerged again as a pivotal issue when the Community Services Block Grant (CSBG) came up for reauthorization in the fall of 2003 and into 2004. The CSBG program distributes federal money through the states to more than 1,100 Community Action Agencies to help low-income people find jobs and adequate housing and to provide emergency food services. The CSBG also represents one of the early programs with Charitable Choice provisions adopted during the Clinton administration.

The controversy on reauthorization of the CSBG, which already allowed religious organizations to consider faith when employing staff with government money, was the inverse of the fight over the Workforce Investment Act and Head Start legislation. The impetus for changing the existing hiring rights language this time came from members in the Democratic minority in the House, who sought to repeal the provisions. Their efforts were not successful. The Republican majority voted down Democratic amendments to eliminate religious-based hiring and sent the bill to the Senate, where it languished again because of the religious hiring issue.

EXTENSION OF CHARITABLE CHOICE MEASURES

The Charitable Choice provisions had their origin, as noted, in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the welfare reform law. The statute authorized Temporary Assistance for Needy Families (TANF), the principal federal program

providing financial assistance and related services to needy families via block grants to states. The law's Charitable Choice protections for faith-based groups providing assistance to welfare recipients were adopted for a period of five years, expiring in September 2002.

Supporters in the House sought to continue the Charitable Choice protections for religious groups serving the needy in subsequent bills reauthorizing PRWORA. But these bills, which included the Personal Responsibility, Work and Family Promotion Act of 2003 and similar measures in 2004 and 2005, also expanded work requirements and family responsibility measures, which hindered passage. Each time, renewal of PRWORA failed to gain approval in the Senate because of differences over the new work requirements for welfare recipients. In the absence of a reauthorization, Congress moved to continue the aid programs and the Charitable Choice provisions in PRWORA through temporary extensions, until a long-term agreement could be reached.

Finally, with the approval of a \$40 billion spending cut bill in February 2006, Bush was able to sign into law the first and only bill during his presidency containing the core provisions of his Faith-Based and Community Initiative. The spending bill incorporated a five-year extension of provisions encouraging faith-based groups to provide publicly funded social services to welfare recipients. Authorized through 2010, the Charitable Choice provisions outline a core set of precepts:

- **Nondiscrimination in funding:** If a state contracts with nongovernmental organizations as providers of welfare-related services, it cannot exclude religious organizations from participating on the basis of their religious character.
- **Preservation of religious character:** Faith-based groups that participate in services funded by federal or federal-state funds cannot be forced to remove religious symbols from their facilities, alter the structure of their governance or remove religious references from their names.
- **Protection of religious liberty of participants:** Faith-based groups may not require clients they serve to engage in religious practices as a condition of service.
- **Religious activities proscribed:** Public funding may not be used for religious worship, instruction or proselytization.
- **Religious hiring rights preserved:** Faith-based groups that receive public funding to provide services do not forfeit their exemption from the Civil Rights Act's prohibition on religious discrimination in employment.
- **Limited audits:** Government audits of organizations participating in covered programs will be limited to accounts through which the public funds have passed and not include privately financed activities.

Programmatic Initiatives Through Legislation

By 2004, as legislative efforts continued on a comprehensive bill and activities persisted to remove statutory barriers in selected programs, the Bush administration and supporters in Congress turned to the appropriations process as another method to advance their faith agenda. For example, the Compassion Capital Fund did not come to fruition as part of the Community Solutions Act or the CARE Act in its many incarnations. Instead, the Bush administration created and financed the Compassion Capital Fund in 2002 as part of omnibus appropriations legislation financing the Department of Health and Human Services and other portions of the federal government.

In a similar fashion, the Bush administration and congressional leaders used annual appropriations legislation to implement a host of other initiatives that were key elements in the faith agenda when they were unable to win approval for the programs in separate bills with long-term statutory and funding authorization. These included a Healthy Marriage Initiative, a Responsible Fatherhood Initiative, the Mentoring Children of Prisoners program, and abstinence education programs to prevent teen pregnancy.

BENEFICIARY CHOICE THROUGH VOUCHERS

Budgetary support for the Substance Abuse and Mental Health Services Administration in 2004 included financing for an Access To Recovery program, which provided block grants to states for use in voucher-based services for substance abuse treatment. The program encouraged more religious organizations to provide an array of government social services, including drug and alcohol rehabilitation. Vouchers, a form of indirect government funding, allow recipients to choose among service providers that meet standards monitored by an oversight agency. The courts have held that if the indirectly funded service has a secular purpose and recipients have a “genuine and independent choice” among providers in a voucher program, the government is not held responsible for endorsing religious content that may be part of the service.

Vouchers have therefore been proposed as a way for the federal government to pay for services provided by faith-based groups without breaching the constitutional separation of church and state. In the context of drug rehabilitation, health care professionals and civil liberty groups are concerned that people in need of drug treatment may not have the necessary capacity to make a free and informed choice of service provider and may be susceptible to coercion or to receiving treatment by unqualified care-givers.

The Mentoring Children of Prisoners program also used vouchers as part of a pilot program to expand mentoring services, especially to faith-based groups that had been actively providing mentors and matching mentors to children. The program sought to direct \$30 million or more per year for mentoring grants to organizations. It called for 3,000 mentoring vouchers in the first year, 8,000 vouchers the second year, and 13,000 vouchers for subsequent years. These vouchers were available for one year with an option to extend to three years.

Of course what the appropriations process giveth it can also taketh away. As an example, faith-based and community organizations appeared to receive two different messages about government funding in fiscal 2007. Bush’s proposed budget for that year included a \$323 million

increase for five programs he highlighted in his State of the Union addresses as being part of his Faith-Based Initiative. But the same budget also included a proposal to cut 141 domestic programs, including at least 18 that religious and community groups were urged to apply for as government partners in the delivery of social services.

THE LEGISLATIVE LEGACY

A final effort was made in 2005 to write into law Bush's administrative changes implementing the Faith-Based Initiative. Rep. Mark Green, R-Wis., introduced legislation to make the White House Office of Faith-Based and Community Initiatives (FBCI), and the FBCI centers in federal agencies permanent fixtures of government. The proposed bill would have kept the offices intact until the statute was repealed.

"I believe we must show that government is committed to helping our citizens by making the Faith-Based Initiative a statutory feature in our executive branch and ensure equal treatment for all," Green said at a hearing on his bill. "This long-term commitment provides critical predictability to community groups and lets them know this is not a passing government enterprise that will end abruptly with a new president. We've now had the executive orders on the books for three years," Green said. "It seems to be working quite well, common sense is being applied, there are guidelines as to what you can do and cannot do. There are guides put out for faith-based organizations – particularly smaller organizations which might not have the same level of sophistication – and it's working."

But other speakers offering testimony challenged the need for the Faith-Based Initiative and its level of success. "There is no prohibition against these organizations from participating now," Democratic Rep. Scott said. "Any program that could be funded under the Faith-Based Initiative could be funded without the Faith-Based Initiative, as long as they agree not to discriminate in employment." Rep. Danny K. Davis, D-Ill., added, "It's difficult for me to rationalize the need; to suggest that the only way these individuals are going to know that they can develop programs and apply for federal resources is that we have a Faith-Based Initiative operated out of the president's office. I just have some serious difficulty understanding that."²⁸

Two former deputy directors of the White House Office of FBCI noted the need for improved performance of the office and not just codification. And one of these officials, as well as the chairman of the House committee holding the hearing, faulted the effort as falling prey to politics. The legislation granting permanency to the faith initiative did not advance.

Efforts to grant any permanency to the Bush's administrative efforts to expand partnerships with religious groups were more likely to fail after the midterm elections in November 2006, which gave Democrats control of Congress for the first time since 1994. The politics of religious hiring rights proved too difficult for Congress to resolve. Inclusion of hiring rights provisions doomed attempts to reauthorize the Workforce Investment Act, which was extended only temporarily and without desired reforms. Congress approved a five-year overhaul of Head Start in 2007 but only by excising the proposal backed by Bush to allow faith-based groups to consider religion when employing Head Start staff. A number of program initiatives were adopted via appropriation bills during the Bush presidency that potentially included faith-based groups in the mix of providers but not as front-and-center to the effort.

In part, this legislative record reflects the disinclination of Democrats in the highly charged partisan climate following the contested election of 2002 to go along with a personal initiative of the Republican president. But the legislation also lacked a strong external constituency to support passage in Congress. Conservative Christian organizations, one natural base, were somewhat divided; some groups believing the initiative to encourage too much government intervention with religion. Another possible base of support – the low-income and mostly minority communities most likely to receive government services from faith-based organizations – lacked the coalescence, infrastructure and connections with leadership necessary to be a formidable force with members of Congress. Even the strongest supporters in Congress and the White House were dismayed.

B. INSTITUTIONAL AND ORGANIZATIONAL REFORMS

“I got a little frustrated in Washington because I couldn’t get the bill passed out of the Congress. They were arguing process. I kept saying, ‘Wait a minute, there are entrepreneurs all over our country who are making a huge difference in somebody’s life; they’re helping us meet a social objective. Congress wouldn’t act, so I signed an executive order – that means I did it on my own. It says we’re going to open up billions of dollars in grant money competition to faith-based charities. And that’s what’s happening and that’s what we’re here to talk about today.” – President Bush, speaking to faith-based leaders in Los Angeles, March 3, 2004

In the absence of new legislative authority, Bush moved aggressively to advance the Faith-Based Initiative through executive orders, rule changes, managerial realignment in federal agencies and other innovative uses of the prerogatives of his office. Among those innovations was the creation of the high-profile special White House Office of Faith-Based and Community Initiatives. Housed in a brownstone row house off Lafayette Park across the street from the White House, the White House Office of FBCI was charged by Bush’s Executive Order 13199 with actively seeking to “enlist, equip, enable, empower and expand” the work of faith-based and community groups. The office also was to help “the federal government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet social needs in America’s communities.” One of the office’s central tasks was to “eliminate unnecessary legislative, regulatory and other bureaucratic barriers that impede effective faith-based and other community efforts to solve social problems.”²⁹

Complementing the White House Office of FBCI were centers for FBCI created by executive order in 11 government agencies. They were responsible for distributing federal grants, and each had a carefully selected director and staff, empowered to articulate, advance and oversee coordinated efforts to win more financial support for faith-based social services. Other agencies and quasi-governmental entities established similar offices and functions in areas ranging from national service programs and homeownership and business development to energy conservation.

Bush’s executive orders directed all federal agencies to review their rules and internal operations to ensure that they provided equal treatment for faith-based groups. Although federal

departments had long worked with faith-based organizations such as Catholic Charities and Jewish Family Services, the administration wanted the federal government to move beyond the traditional strict-separationist framework and partner with smaller faith-based organizations and congregations. Because many smaller groups lacked the staff and experience to apply for or administer federal grants, the centers for FBCI offered legal, logistical and technical assistance in navigating the bureaucracy.

These agency offices were “the engines of administrative reform,” according to one Center for FBCI staff member, and their directors met regularly with White House Office of FBCI staff to promote and coordinate partnerships with religious groups. The centers for FBCI did not themselves make grants, but they provided notices of grant availability and eligibility as well as contact information to ease the application process. Each Center for FBCI maintained an extensive website and displayed a host of information at regional and national White House Office of FBCI conferences.

This administrative apparatus gave the Faith-Based Initiative a spinal column and nerve center established at the White House and connected to arms and legs operating among a cadre of federal agencies and programs. That the initiative gave rise to the creation of this new bureaucracy was ironic. Paradoxically, the roots of the faith initiative lay in a conservative ideology favoring less government, and yet here was a new growing government apparatus created to leverage private interests. Perhaps the government’s overall role in providing social services would eventually be reduced as private interests assumed a greater role, although the Bush administration contended the initiative attempted to leverage private resources to supplement, not replace, the government’s work.

The First Wave – Centers for FBCI in Five Federal Agencies

On Jan. 29, 2001, Bush issued Executive Order 13198 creating centers for FBCI within five federal agencies: the departments of Health and Human Services, Housing and Urban Development, Labor, Education, and Justice.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The Department of Health and Human Services (HHS) plays a major role in potential federal partnerships with faith-based social service groups. HHS is the federal government’s largest grant-making agency, with responsibility for more than 300 grant programs and a \$460 billion annual budget. It oversees a majority of the government’s social service programs. The department’s faith-based partnerships emphasized programs promoting marriage as a means of reducing poverty, abstinence-only programs to reduce teen pregnancy and infectious disease, efforts to mentor children of incarcerated parents, and an array of other programs.

HHS administered the Compassion Capital Fund (CCF), the only new funding stream dedicated to the Faith-Based and Community Initiative, which was created in 2002 as an HHS budget item. The CCF Demonstration Program funded intermediary recipients, which were established social service organizations, that then provided technical assistance, training and mentoring to newer social service startups, including faith groups. Intermediary grantees ranged from Catholic Charities in New Mexico to Mennonite Economic Development Associates in Pennsylvania, and

included Operation Blessing International, run by the evangelical leader Reverend Pat Robertson, who had criticized the Faith-Based Initiative because non-Christian groups might receive funding. The intermediaries made sub-grants to the smaller organizations they trained, which provided such services as shelter, food and care for at-risk children, drug rehabilitation and Welfare-to-Work assistance.

The CCF Communities Empowering Youth program sought to address the issues of gang involvement, youth violence, and child abuse and neglect. The program funded experienced organizations that, in turn, worked to build the organizational capacity of their collaborating partners in the community. The CCF Targeted Capacity-Building Program also included a small-grant program for social service organizations that had not previously received federal funding.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

A report called *Unlevel Playing Field* commissioned by the White House to determine where religious groups faced barriers in receiving federal grants revealed that the Department of Housing and Urban Development (HUD) imposed burdensome regulations on faith-based groups. The impediments to such groups included a partial ban on faith-based partnerships in two housing programs and a complicated grant application process. Spurred by this report and early attention from the White House Office of FBCI, HUD expanded and refined its long history of partnerships with faith-based organizations. These partnerships focused on promoting homeownership, providing emergency shelter and transitional housing for the homeless, building affordable housing for the elderly and people with disabilities, and promoting economic development in neighborhoods. HUD also sought to enlist more faith-based partners in providing services to residents of public housing.

DEPARTMENT OF LABOR

The White House considered the Department of Labor critical to the Faith-Based Initiative because the agency ran many Welfare-to-Work job-training and placement programs. However, the Labor Department's internal reviews early in the Bush presidency found that most agency programs other than Welfare-to-Work had ignored the Charitable Choice provisions of the 1996 welfare reform law. In Welfare-to-Work programs the department had focused on informing faith-based and community-based organizations that they were eligible and provided assistance to facilitate applications and to ensure that grantees fulfilled requirements. The Welfare-to-Work program received an unusually large number of grant applications, and six faith-based organizations received a total of about \$16 million. However, program audits found that the department did not elaborate on religious provisions in its Welfare-to-Work grants, leaving that responsibility to the states.

In other Labor Department programs, including its One-Stop Career centers operated under terms of the Workforce Investment Act, an audit found that the department imposed overly burdensome restrictions on faith-based organizations and wrongfully prevented states from using federal funds – including through vouchers – to train or employ clients in sectarian jobs.

The Labor Department Center for FBCI coordinated the agency's faith-based efforts in three main programs: Workforce Investment Boards, which are appointed by locally elected officials and distribute 85 percent of federal job-training funds; One-Stop Career centers, which also

provide job-training and placement services; and Ready4Work, a three-year pilot program that helped ex-offenders find jobs.

DEPARTMENT OF EDUCATION

The Department of Education expends billions each year to aid schools and conduct and disseminate educational research. This department is also responsible for implementing the No Child Left Behind Act of 2001, which fundamentally changed the federal government's role in education by holding public schools accountable for student achievement. Under the act, all students in public schools are expected to perform at adequate academic levels by designated deadlines. The department cited thousands of schools as needing additional after-school tutoring services under the act, and the legislation spurred funding to improve student skills through "supplemental educational services" provided by state-certified organizations, including faith-based groups.

The Department of Education Center for FBCI encouraged faith-based and community groups to apply for grants to tutor children in math and language arts, to address the academic and social needs of at-risk youths, and to create and expand centers that give urban and rural residents access to information technology and training. The Office of Elementary and Secondary Education administered most of the grants for which faith-based organizations were eligible, while other grants were available through the Office of Vocational and Adult Education.

DEPARTMENT OF JUSTICE

The Department of Justice had a history of working with faith-based organizations before 2001. For instance, the department's Office of Juvenile Justice and Delinquency Prevention joined with the National Center for Neighborhood Enterprise and the Congress of National Black Churches in the late 1990s in a national campaign to reduce youth violence and provide training and technical assistance to programs aiming to curb substance abuse and prevent violence. The FBCI center at Justice – created and known as the Task Force for Faith-Based and Community Initiatives – focused on building additional partnerships with religious and other groups in programs on gang-reduction, prisoner reentry and domestic violence.

The Second Wave – Two More Centers and International Outreach

On Dec. 12, 2002, Bush signed Executive Order 13280 creating centers for FBCI in two more federal agencies.

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

The U.S. Agency for International Development (USAID) was one of two agencies that added faith-based centers that became operational in 2003. The addition was important because it expanded Bush's Faith-Based Initiative to the international level, where a large proportion of humanitarian relief organizations are religiously based. The agency operates under the State Department and helps developing countries respond to disasters, provide food and health care, and encourage economic growth. USAID has worked with faith-based organizations since its inception in 1961. Approximately one-fourth of USAID partners are faith-based, including

Catholic Relief Services, World Vision and Samaritan's Purse. But the Center for FBCI reached out to new, smaller partners based in and indigenous to native countries.

There was especially strong interest in bringing together USAID programs and faith-based partnerships to address the HIV/AIDS crisis. A September 2003 report from the agency concluded that "faith-based organizations can make a considerable contribution to mitigation, prevention and care activities. Indeed, faith-based organizations are often the only genuine nongovernmental organizations in many rural parts of poor countries, or at a minimum, they are the strongest and most influential."

DEPARTMENT OF AGRICULTURE

The Department of Agriculture also established a Center for FBCI that became operational in 2003. The department built its outreach to faith-based and community groups on a history of relationships with nonprofits, including religious groups, in both domestic and international food and nutrition programs, housing assistance and environmental protection. The agency encouraged faith-based and community organizations to develop single and multi-family housing, as well as community facilities, including day care centers, hospitals, nursing homes, veterinarian clinics, fire stations and libraries, and provided grants to nonprofit groups that finance housing for domestic farm laborers.

The Third Wave – Three More Centers

On June 1, 2004, Bush signed Executive Order 13342 creating centers for FBCI at three more federal agencies: the Department of Veterans Affairs, the Commerce Department and the Small Business Administration.

DEPARTMENT OF VETERANS AFFAIRS

The Department of Veterans Affairs' (VA) involvement in Bush's Faith-Based Initiative predated creation of its Center for FBCI. Beginning in 2001, the VA used the faith initiative as an opportunity to expand upon its previous work with faith-based groups. The VA formed an FBCI Task Force with representatives in Washington, D.C. and regional field offices to explore additional ways to partner with faith-based groups. The White House's *Unlevel Playing Field* report included the VA in its survey of federal agency activities and administrative procedures affecting partnerships with faith-based groups. The VA task force and the department's internal audit found that faith-based activities were most prevalent among VA programs for the homeless, especially the Homeless Providers Grant and Per Diem Program, which provided grants and payments to help organizations establish and operate new housing and service centers for homeless veterans.

DEPARTMENT OF COMMERCE

The Department of Commerce also had a tradition of working with faith-based organizations but sought to expand those efforts under the Bush administration. One program in particular that included faith-based groups as grantees was the Technology Opportunities Program, which awarded grants for projects demonstrating innovative uses of telecommunications and

information technologies to provide educational, health care and other information in the public and nonprofit sectors.

SMALL BUSINESS ADMINISTRATION

The Small Business Administration (SBA) sought to work with faith-based organizations that promote and facilitate greater economic development among low-income and minority businesses and populations. In particular, the SBA worked with nonprofit organizations, including FBOs, to promote entrepreneurship and small business growth models. The SBA initiated a program in which more than 10,000 working or retired business leaders coached the leaders of faith-based and community organizations on business planning and management to make their organizations more competitive and sustaining.

The Fourth Wave – National Security, Disaster Relief and Corporate Outreach

DEPARTMENT OF HOMELAND SECURITY

Bush signed Executive Order 13397 on March 7, 2006, creating a final new Center for FBCI in the Department of Homeland Security. Creation of this center followed reports criticizing government responses and lauding religious group reaction to widespread damage and unmet, emergent human needs in the aftermath of major hurricanes along the Gulf Coast. The department's Center for FBCI concentrated on better integrating and coordinating with the efforts of religious groups active in emergency preparedness and response.

OTHER ENTITIES

A number of other federal agencies and quasi-governmental entities instituted companion efforts that promoted the Bush faith initiative without the impetus of an executive order. In some instances, faith-based groups had partnered with the government in these programs for years and the relationships were expanded after the announcement of the initiative. In other cases, the efforts reflected a then-growing recognition that churches and faith-based organizations provided a good grassroots base for disseminating program information and recruiting participants in federal programs.

The Corporation for National and Community Service, which operates AmeriCorps, Senior Corps, and Learn and Serve, has a history of working with faith-based organizations to serve poor communities. To expand its efforts, the corporation created the Faith and Communities Engaged in Service Initiative – an undertaking similar to the agency-designated centers for FBCI.

While Bush did not initiate a Center for FBCI at the Corporation for National and Community Service, he did issue an executive order in March 2004 directing the corporation to review its operations and report back in six months on several policy and management changes. One aspect of the review was to determine how to increase the involvement of faith-based and community organizations. According to the corporation, more than 14 percent of AmeriCorps Vista's members as of 2007 were assigned to projects that supported the work of FBOS. Rather than provide direct services to these organizations, the members help them increase their financial, technological, administrative and volunteer capacity.

Two of the nation's largest mortgage financiers – the quasi-public agencies Fannie Mae and Freddie Mac – launched partnerships with FBOs during the Bush administration to spread the word about the virtues of homeownership. Fannie Mae established an outreach program with 100 churches, synagogues, mosques and other faith-based institutions. A Fannie Mae program called Walk to Worship Mortgage underwrote loans for homes located within one mile of a designated church. Fannie Mae also started employer-assisted housing programs for the employees of two Catholic hospitals. Freddie Mac began an education and technology program that included faith-based organizations.

The lenders incorporated some creative techniques to suit homebuyers' religious beliefs. In one program, an Islamic finance institution entered an agreement with Fannie Mae to enable American-Islamic families to buy a home without violating the prohibition in Islamic Law on paying or collecting interest on debts.

The National Credit Union Administration, which ensures the soundness of the credit union system, launched a special effort to provide support to smaller credit unions. In 2001, it began outreach efforts such as newsletters, workshops and letters to credit unions to introduce them to partnering opportunities with government-sponsored agencies that were focused on wealth-building for minority and low-income individuals, including a number involved in the Bush administration's Faith-Based Initiative. The National Credit Union Administration sponsored a series of national workshops to guide credit unions on how to partner with organizations, including faith-based groups, provide financial services to minorities and low-income families, encourage homeownership and promote economic development.

The Federal Deposit Insurance Corporation (FDIC) is an independent agency created by Congress in 1933 to supervise banks, insure deposits and maintain a stable banking system. Part of the agency's mission is to advance financial education through alliances with financial institutions, bank trade associations, state and local agencies, nonprofit organizations and consumer-based groups. The agency expanded its work with faith groups for these purposes through a program called Money Smart, which helps people with little or no banking experience increase their savings, buy homes and develop financial skills. The FDIC also formed partnerships with faith-based groups and community organizations that were leading Earned Income Tax Credit outreach campaigns across the country and operating Volunteer Income Tax Assistance sites in low-income neighborhoods.

The Federal Home Loan Bank, created in 1932 to stimulate mortgage financing, promoted partnerships with locally based organizations, including faith groups, to connect low- and moderate-income people and businesses with its programs to finance housing projects.

C. REGULATORY CHANGES

On Jan. 29, 2001, Bush ordered internal audits of department regulations, rules, orders, procurement procedures, and other administrative policies and practices to identify barriers to the participation of faith-based and community organizations in the delivery of social services. The department audits also examined outreach activities that “discriminated, discouraged or

disadvantaged” faith-based and community organizations that attempted to participate in federal programs.

Seven months later, the White House released *Unlevel Playing Field*, which assessed a pervasive belief among federal officials that collaboration with faith-based organizations was legally suspect. This attitude in turn promoted malaise and uncertainty among religious organizations regarding their ability to participate in federal programs, the report noted. It also said that some grant programs maintained outright bans on funding religious organizations, restricted their faith-based activities, and did not allow them to employ staff based on their religious beliefs. According to the report:

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

More specifically, *Unlevel Playing Field* listed 15 barriers that the FBCI centers in each federal agency would begin to dismantle. The barriers included:

1. A pervasive perception and bias by federal officials that collaboration with religious organizations was legally suspect.
2. Explicit bans against the receipt of federal funds by faith-based organizations. Program handbooks emphasized prohibited activities and eligibility rather than including affirmative language to encourage faith-based participation.
3. Restrictions on religious activities that amounted to an “organizational strip-search” and had a chilling effect on the relationship between faith-based groups and the government.
4. The expansion of application restrictions to new programs beyond the original purview.
5. Denial of the ability of religious groups to use federal funds to employ staff based on religion. Confusion and inconsistency was prevalent in applying this provision.
6. The failure of the executive branch to abide by the Charitable Choice provisions of the 1996 welfare reform law.
7. Limited accessibility of government grant information, which appeared only in the Federal Register and on department websites.
8. Excessive regulations and requirements (about 50 applied across the board to federal grants) and a complicated and intimidating application process.
9. Extensive financial and administrative requirements on organizations competing for federal grants.
10. Complex and unwieldy grant applications and grant agreements.
11. A bias in favor of previous grantees. One department awarded extra points for topical and managerial experience and past receipt of a government grant.
12. A requirement that organizations apply for grants in collaboration with likely competitors. Each FBCI center identified at least one program in which grant applicants had to show support from other providers.

13. A requirement that grantees establish 501(c)(3) nonprofit status. By statute, many federal discretionary and formula grant programs require applicants to be nonprofit organizations. However, federal officials imposed this requirement unilaterally, even in the absence of statutory authorization.
14. Inadequate attention to faith-based and community organizations in the government-wide effort ordered by Congress to simplify and streamline the grant application process.
15. Favoritism toward faith-based groups. One instance was cited in which a grant program limited eligibility to faith-based organizations and to youth-serving organizations collaborating with faith-based groups. The report recommended discontinuing this practice because it could prove constitutionally problematic.

Unlevel Playing Field became the backbone of an administrative strategy to encourage governmental partnerships with faith-based organizations.

On Dec. 12, 2002, Bush signed Executive Order 13279, which laid out the key policy guidelines governing the work of the centers for FBCI in federal agencies and the White House Office of FBCI. The executive order also encouraged a coordination of their efforts. As described by Roundtable Legal Research Directors Ira Lupu and Robert Tuttle, there were six core elements:

- Any organization that provides *direct* federal funding for social welfare services should be prohibited from using such funds for “inherently religious activities.”
- By implication from the first element, any organization that receives *indirect* government funding – i.e., as a result of the “genuine and independent private choice” of a program beneficiary – should not be required to segregate the financed service from “inherently religious activities.”
- The government should provide a “level playing field” in federal grant programs for social welfare services; religious organizations should be able to compete for government grants on the same terms as private non-religious institutions.
- Religious organizations that participate in federal grant programs should be able to do so “without impairing their independence, autonomy, expression or religious character.”
- Any organization that participates in a federally funded grant program should be prohibited from discriminating against “current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.”
- Where permitted by law, any religious organization that participates in a federally funded grant program should be able to prefer its co-religionists for employment. This executive order exempts faith-based organizations from a prior executive order forbidding religious discrimination by any entity with whom the federal government enters into a procurement contract.

Of particular importance to legal scholars and other interested observers was the Bush administration’s use of the words “inherently religious” to define that which the government may not fund directly. In agency rule-making and in guidance documents provided by the federal government to faith-based and other groups, the Bush administration noted that government

funds may not directly pay for worship, religious instruction or proselytization. If an organization undertakes religious activity, it needs to be separated by time or space from activities that are paid for by the government through direct contract fees or grants. Groups paid indirectly for services through vouchers need not separate these activities.

The difficulty seen in this guidance, however, is that the term defines only a set of activities that may never be paid for by direct government expenditure and suggests a false conclusion that everything that is not “inherently religious” may be paid for with public funds. “Such an understanding is legally unsound,” Lupu and Tuttle write. “Training, education, counseling and other service activities are not ‘inherently religious,’ but they may be conducted in highly religious ways. Recent federal court decisions involving FBOs have held impermissible direct financing of social services that have explicitly religious content.”

There were calls for greater transparency and clearer guidelines on how government money could be spent by religious organizations. “The problem is not that federal money is going to religious entities, but that the rules have been changed and that money is going without constitutional protections in place,” said K. Hollyn Hollman, general counsel for the Baptist Joint Committee on Public Affairs, which had long opposed the use of tax dollars to advance religion.

The White House and its respective federal agencies discovered that in lieu of statutory authority, it could carry out the goals of its faith initiative through administrative actions.

“It would be great to have legislation, but there’s a ton of stuff I can do without it.” – Bobby Polito, director of the HHS Center for Faith-Based and Community Initiatives

With assistance from the White House Office of FBCI, federal agencies instituted a series of new regulations concerning service partnerships with faith groups. The Department of Veterans Affairs, for example, no longer required faith-based social service providers to certify that they exerted “no religious influence.” The Bush administration also allowed federally funded faith-based groups to build and renovate structures used for both social services and religious worship. The Justice Department permitted religious organizations to convert government-forfeited property to religious purposes after five years, replacing the previous policy prohibiting such conversions. And the Labor Department allowed students to use federal job-training vouchers to receive religious training leading to employment at a church, synagogue or other faith-based organization. Regulations at the Department of Education applied Charitable Choice principles to all federal- and state-administered grant programs, including academic mentoring of at-risk children and after-school computer labs.

The regulatory changes encompassed reversals of longstanding policy on constitutional interpretation by the government. One of these changes proved to be the most controversial action taken by the Bush administration in carrying out the Faith-Based Initiative: allowing faith-based groups receiving federal funds to consider religion when employing staff.

Religious-Based Hiring

A previous executive order signed by President Lyndon Johnson prohibited all government contractors from discriminating in employment based on race, creed, color or national origin.

Bush changed that by instructing federal agencies to revise their rules so that religious organizations contracting to provide government social services could, within the parameters of the law, hire and fire staff members based on their religious beliefs. As a result, HUD proposed changes to its regulations to state that religious organizations participating in HUD programs could take into account religion in hiring decisions. And the VA eliminated a requirement that religious organizations providing homeless services forfeit their religious hiring rights.

Opponents of these rule changes noted during a public review period that some ran afoul of existing federal law. For instance, after Rep. Barney Frank, D-Mass., pointed out that statutory provisions prohibited employment discrimination based on religion in two HUD programs, the proposed changes were not implemented for those programs. Other laws also prohibited job discrimination based on religion, including the Workforce Investment Act, which provides job-training grants.

Even among federal laws, there are conflicting prohibitions or allowances for religious-based hiring for federal programs, and several congressional attempts since 2001 to establish consistency in religious employment laws have stalled. To spur legislative action, the Bush White House in June 2003 sent Congress a report entitled, *Protecting the Civil Rights and Religious Liberty of Faith-Based Organizations: Why Religious Hiring Rights Must Be Preserved*. “President Bush believes that – regardless of whether government funds are involved – faith-based groups should retain their fundamental civil rights, including their Title VII right to take their faith into account when they make employment decisions,” the report stated. “As the Civil Rights Act of 1964 recognizes, for a faith-based organization to define or carry out its mission, it must be able to choose its employees based on its unique vision and beliefs. Such a right is rooted in the values of religious pluralism on which our nation was founded.”

In promoting these changes, the Bush administration pointed to the 1996 welfare reform law and four other federal laws passed between 1998 and 2000 that allowed for religious-based hiring in government programs. The laws were based on Title VII of the Civil Rights Act, which exempts religious organizations from the prohibition on religious discrimination in hiring contained in the nation’s nondiscrimination laws – an exemption upheld by the U.S. Supreme Court in 1987.

The Bush administration’s hiring rights report sparked immediate opposition from civil liberty groups and some members of Congress, who maintained that allowing religious groups to discriminate in hiring with government money would institutionalize further discriminatory employment based on race and gender. These critics argued that Title VII applies to employment by religious groups using private rather than public funds and that government funding should not be used to discriminate in hiring or firing. “I feel this support of discrimination with federal money by religious groups will spread throughout every nook and cranny of this country,” Democratic Rep. Edwards said of the report. “I think we all understand how important this battle is.”

The Bush report on hiring rights did not address a critical aspect of the debate: what happens at the state and local level, since state laws vary in their regulation of religious hiring practices, and these laws are not superseded unless expressly preempted by federal law. “The White House policy statement is aggressive about what the federal law should be but surprisingly passive

about state and local law,” said Roundtable legal scholars Lupu and Tuttle. “The White House stops short of urging Congress to preempt state or local nondiscrimination law. This is in contrast to earlier legislation that called for federal preemption of state and local law.”

Religious Buildings

Since at least 1991, federal policy had forbidden federal grants to be used for repair or preservation of structures devoted to worship or religious instruction. The government based this policy on principles of constitutional law, derived both from the history of the Establishment Clause and from several Supreme Court opinions dating to the early 1970s. But Bush administration changes in regulations and policy interpretations permitted the construction or rehabilitation of structures owned by religious organizations “to the extent that they are used for eligible activities” and awarded funds for the preservation of houses of worship.

The Bush administration asserted that HUD’s policy allowing the use of government funds to build centers used for religious worship or instruction would allow groups like California’s Orange County Rescue Mission to receive grants without forming a separate secular branch, renaming its chapel an “auditorium,” or discontinuing all religious activity at the facility. Legal scholars noted the policy required government officials to monitor the uses of buildings occupied by faith-based organizations and to characterize those uses as secular or religious, raising constitutional problems of potentially excessive entanglement between church and state.

To reinforce the policy change, the Bush administration awarded grants to faith-based organizations formerly denied federal funding for building renovations. For example, in December 2002 Bush announced that the Federal Emergency Management Agency had approved an emergency grant previously denied to the earthquake-damaged Seattle Hebrew Academy in Nisqually, Wash.

And the National Park Service changed its grant application process in 2003 to facilitate a series of new grants. In May 2003, the National Park Service announced a \$317,000 grant under the Save America’s Treasures program for the historic preservation of Boston’s Old North Church, where Paul Revere signaled the start of the American Revolution. “Today we have a new policy that will bring balance to historic preservation and end the discriminatory double standard that has been applied against religious properties,” announced Interior Secretary Gail Norton.

In November 2003, three more Save America’s Treasures program grants totaling \$950,000 were awarded for restoration of houses of worship. Grant recipients included the Touro Foundation, a nonprofit organization dedicated to preserving Touro Synagogue in Newport, R.I., the nation’s oldest synagogue; the Eldridge Street Project in New York City for restoration of the Eldridge Street Synagogue, the first constructed in the United States by Eastern European Jews; and Mission Concepción in San Antonio, Texas to improve water drainage to protect the oldest unreconstructed Spanish Colonial church in the United States. The grants departed dramatically from previous administrative and legal practice.

The U.S. Supreme Court had ruled in three cases since 1971 that grants to religious institutions could not be used to build a facility in which worship or other sectarian activities occurred. And

the Department of Justice had concluded since 1981 that the Constitution forbids the use of federal grants to restore properties actively used for worship or religious instruction. Some legal scholars say the funding of historically significant houses of worship is legally permissible because it will preserve American history, not advance religion or worship. But others maintain that it violates the constitutional separation of church and state because it puts public money into the collection plate for the church's building fund. The day after the Old North Church grant was announced, the Department of Justice released two opinions supporting the legality of the grants to both the Old North Church and the Seattle Hebrew Academy. Yet according to Lupu, "The question remains whether the law has changed enough to reverse Supreme Court rulings."

Other Regulatory Changes

Following publication of *Unlevel Playing Field*, each federal agency launched an aggressive campaign to revamp internal procedures that may have posed barriers to participation by faith-based groups. For example, many grant announcements pointed out that faith-based and community-based groups were eligible to apply for federal grants and made outreach to these organizations a priority.

HHS' Family and Youth Services Bureau eliminated a bonus point system favoring existing grantees, to open the door to new applicants, including FBOs. The Office of Refugee Resettlement's Social Services Notice encouraged state governments to contract with ethnic community-based organizations, including faith-based groups. Many programs simplified their applications to enable small faith-based and community organizations to participate. Some federal departments reduced the length and complexity of their grant applications while others simplified the language to facilitate newcomer applicants and encouraged faith-based groups to partner with other organizations that provided social services.

HHS PROGRAMS AFFECTED BY REGULATORY CHANGES

The *Unlevel Playing Field* report criticized HHS for doing little to ensure that state and local governments complied with the Charitable Choice directives in the 1996 welfare reform law. The faith-based directives in that law applied to \$20 billion in funding for Temporary Assistance for Needy Families, the nation's chief mechanism for welfare assistance and work opportunity services for needy families; the Substance Abuse and Mental Health Services Administration (SAMHSA); and the Community Services Block Grant. HHS responded to its own internal audit by issuing new rules for those three programs.

Of particular note was the rule governing employment in SAMHSA-funded programs, which took a much more expansive view of the controversial Religious Freedom Restoration Act (RFRA) of 1993 than previously asserted by the federal government or the courts. Although a statute appeared to prohibit religious-based hiring decisions in SAMHSA-funded programs, the rule interpreted RFRA to exempt religious grantees from that prohibition.

Unlevel Playing Field pointed to overly burdensome regulations requiring that Head Start programs housed in religious buildings remove or cover up religious symbols, and noted that HHS was extending such restrictions to new programs. For example, the agency had extended the restriction against contracting with "pervasively sectarian" organizations to the Adolescent

Family Life Program and to other abstinence programs funded through the Maternal and Child Health Bureau. Bush administration HHS rules eliminated all such restrictions and required equal treatment of faith-based providers in all HHS programs.

HHS and the Centers for Disease Control (CDC) put extra emphasis on abstinence-only programs in their approach to preventing unwanted pregnancies, HIV/AIDS and other sexually transmitted diseases among youths. HHS actively promoted the involvement of FBOs in abstinence programs. For example, faith-based, community and school-based programs were encouraged to apply for Adolescent Family Life demonstration projects, which promoted abstinence as the most effective way to prevent unintended pregnancy and sexually transmitted diseases.

The Bush administration's approach stirred controversy within the scientific community. In February 2004 a group of Nobel laureates and noted scientists issued a report criticizing the administration's use of "distorted" scientific information for policy goals, including promoting abstinence-only programs to prevent AIDS. The report chastised the administration for discontinuing outcome measures for abstinence-only programs and lamented that the CDC had ended its Programs That Work initiative, which provided comprehensive sex education to teenagers.

The Bush administration ranked mentoring children as a priority area in advancing the Faith-Based Initiative. The White House Task Force for Disadvantaged Youth released a report in 2004 recommending mentoring programs for high-risk youths, and the administration partnered with faith-based groups to provide such programs. Bush heralded the Amachi program, which oversees mentoring for children of incarcerated parents, as a leading example of faith-based efforts in action. Amachi works with a consortium of church members, faith-based organizations, and national youth programs to screen and match mentors with children in communities across the U.S.

Encouraging healthy marriage to alleviate poverty among children was another Bush administration priority. HHS redirected money within the Temporary Assistance for Needy Families program for this purpose. "We created a social service infrastructure that for the last 40 years has been afraid to bring up the subject of marriage," said Assistant Health and Human Services Secretary Wade Horn. "That's no longer the case."

SAMHSA was the first HHS agency to formally incorporate faith-based organizations in its discretionary block grant programs. SAMHSA's Community Substance Abuse Prevention Partnership Program was run by a full-time coordinator and enlisted more than 800 faith-based and community partners.

HUD PROGRAMS AFFECTED BY REGULATORY CHANGES

HUD responded to the 2001 White House report by making numerous rule changes that proved as dramatic and controversial as those at HHS. HUD's internal audit found that the department banned some participation by faith-based groups in its Section 202 and 811 programs, which support housing for the elderly and people with disabilities. According to *Unlevel Playing Field*, HUD maintained that "religious organizations or ones that have religious purposes" cannot be

project owners, although they may sponsor projects. The report specifically cited barriers to faith-based participation in HUD's HOME grants to states to provide affordable housing.

HUD's internal audit found that the department required faith-based organizations receiving Community Development Block Grants to avoid giving religious counseling and instruction and to exert no religious influence in providing government-funded services. The Bush administration cited an example of a homeless shelter denied a HUD grant because it offered voluntary prayers before meals and cited examples where HUD required groups to remove religious symbols and references to God in their mission statements. The audit also found that HUD required grantees to set up a separate secular entity and prohibited them from employing staff based on religion. According to the Bush White House, a lack of clear guidance prompted federal and state officials to apply these rules inconsistently.

To fulfill Bush's equal-treatment principles, HUD's revised regulations repealed most of these provisions and allow faith-based groups to compete under eight programs. The regulations ended a prohibition on religious preference in employment by faith-based grantees and allowed such groups to use public funds to pay for buildings used for both government-supported social services and religious activities, as long as the buildings (or particular, government-supported rooms in the buildings) were not a "principal place of worship." The change represented the first time the federal government approved public funding for social services in structures also used for religious worship and instruction. The rules further allowed faith-based service providers to retain their religious practices and identities.

LABOR PROGRAMS AFFECTED BY REGULATORY CHANGES

The Department of Labor issued rule changes nine months after HUD and HHS. For years Labor had required government contractors and subcontractors to take steps to treat employees and applicants without regard to race, color, religion, sex or national origin. Because Bush's executive order exempted religious corporations, associations and educational institutions from nondiscrimination requirements with respect to religion, the department changed its rules to allow federal contractors and subcontractors to hire on the basis of religion.

In July 2004, the Labor Department issued new regulations to clarify that faith-based and community organizations could participate in the agency's social service programs without regard to their religious character or affiliation. The revised rule stated that religious organizations could not use Labor Department money for inherently religious activities, and if those activities occurred, they had to be separated by time or space from government-sponsored services. "This restriction does not mean that a DOL [Department of Labor] social service provider cannot engage in inherently religious activities. Such activities are permissible, but DOL social service providers that receive DOL support directly must take steps to separate, in time or location, their inherently religious activities from services that they offer with direct DOL support." The restrictions on inherently religious activities did not apply when Labor Department funds were received through indirect means such as vouchers.

The revised rules clarified that religious organizations receiving Labor Department funds were exempted from provisions of the Civil Rights Act that forbid discrimination in employment based on religion. The revised rule, however, did not affect statutory language in the Workforce

Investment Act that prohibits religious discrimination in hiring. The rules gave state and local Workforce Investment Boards the ability to issue vouchers for job training and permitted beneficiaries to choose to use their vouchers to seek employment at churches, synagogues, temples and other faith-based organizations, provided that religious training resulted from private, independent choice and that providers were on a state or local list of eligible entities.

EDUCATION PROGRAMS AFFECTED BY REGULATORY CHANGES

The *Unlevel Playing Field* report found that statutes did not exclude faith-based nonprofit groups from participating in Education Department programs, but the agency had not specified that they were eligible to receive funding on the same basis as other organizations. The department changed its rules to clarify that it would not consider the religious character or affiliation of qualified grant applicants. The agency also removed rules prohibiting grantees and sub-grantees from using federal funds to pay for the activities of a religiously affiliated school or a divinity department. The Education Department allowed grantees to use federal funds to pay for construction, remodeling, repair, operation and maintenance of any part of a facility used for department-related activities. It also encouraged parents of low-income children to use vouchers provided through its Office of Innovation and Improvement to obtain after-school help from state-approved providers, which included faith-based groups. The agency's Center for FBCI helped faith-based and community organizations become state-approved providers.

JUSTICE DEPARTMENT PROGRAMS AFFECTED BY REGULATORY CHANGES

The Department of Justice focused on expanding partnerships with faith-based organizations to address juvenile delinquency, prisoners and their families, the victims of crime, domestic violence, and drug-related issues. Because faith-based organizations often work directly with neighborhood residents, the department emphasized partnering in programs that help released prisoners reenter their communities, mentor the children of inmates, and reduce and prevent drug use and crime.

Unlevel Playing Field found that the complexity of the agency's application procedures hampered the ability of faith-based groups to apply for grants. The application for one assistance program was 58 pages, accompanied by 1,000 pages of federal statutes. Another grant program for which faith-based organizations were eligible distributed a 74-page application with references to 1,300 pages of federal statutes. An internal audit also found restrictions on faith-based participation in property forfeiture, in which the government transfers low-income housing and community centers valued at \$50,000 or less to local groups offering social services. The department prohibited faith-based entities in perpetuity from using such properties for religious purposes.

The agency responded by simplifying its grant application process and changing the asset forfeiture policy. The revised rules treated religious and non-religious organizations the same.

USAID PROGRAMS AFFECTED BY REGULATORY CHANGES

The U.S. Agency for International Development (USAID) revised its rules to ensure that faith-based organizations could compete for government funds on the same basis as secular organizations. The revised rules stated that FBOs could participate in USAID programs and still

retain their religious character. Because of the potential implications for U.S. foreign policy associated with USAID programs, a provision was added that permitted the secretary of state to waive all or any part of the rule in a particular case “where the secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States.”

USAID also placed a stronger emphasis on behavior changes, such as abstinence and fidelity, in its sexual education and sexually transmitted disease prevention programs and shifted an initial \$350 million in AIDS funding to faith-based and community providers. USAID reports sought to document the contributions of FBOs and strongly supported behavioral change as a method for preventing HIV/AIDS and unwanted pregnancies and faith-based organizations as agents of that change.

USDA PROGRAMS AFFECTED BY REGULATORY CHANGES

Consistent with Bush’s December 2002 executive order, the Department of Agriculture (USDA) revised its rules to allow faith-based organizations to participate in a variety of USDA programs, as long as they did not use federal funds directly to support inherently religious activities. Like HUD, the USDA also revised rules regarding the use of federal funds to build centers available for both social programs and religious worship. The revised rules further clarified that faith-based organizations receiving federal grants were, as provided by the Civil Rights Act of 1964, exempt from a prohibition on religious discrimination in hiring.

The USDA also clarified aspects of its rules concerning the participation of faith-based organizations in The Emergency Food Assistance Program (TEFAP). Congress created TEFAP in 1993 to make USDA commodities available to public and nonprofit emergency food banks – the vast majority run by faith-based organizations. The new language stated that the groups could make political speeches or offer public prayers before a meal if they made clear that such activities were not part of TEFAP or endorsed by the USDA, ensured that participation was not a condition of receiving TEFAP services, and made sure that the activities did not interrupt the services. In this regard, USDA rules quoted the Bush White House Office of FBCI manual for faith-based groups, which stated: “A church that receives direct government aid to provide shelter to homeless individuals may not require those individuals to attend a Bible study or participate in a prayer preceding a meal as part of the government-funded services they provide. But they may invite those individuals to join them, so long as they make clear that their participation is optional.”

VETERANS PROGRAMS AFFECTED BY REGULATORY CHANGES

The Department of Veterans Affairs (VA) revised a series of rules that were finalized on May 28, 2004, four days before the VA Center for FBCI was formally created by Bush. Among the rule changes was a reversal in regulations that allowed religious organizations receiving VA homeless awards to consider faith when employing staff.

“We had a provision that said you could not either restrict or discriminate, depending on your perspective, as to who you would hire in your organization,” said Peter H. Dougherty, director of VA homeless programs and chairman of the VA FBCI Task Force “Obviously, some religious-

oriented organizations wanted to have people of the same religious belief that they had. We did not find that that would interfere with their ability to provide service to veterans, and so we are deleting that provision in the new regulations. We did not delete the provision that said you cannot proselytize your religious belief, and you can't make it a condition of participation in a program. We took out what we thought was reasonable to take out and kept in what we thought was reasonable to protect the veteran.”

VA rule changes also specified that the application of regulations to voucher programs offered by the VA would comply with federal law. Based on public comments in reaction to the new rules, the VA modified its final rule to include a subsection that clarified that “restrictions on inherently religious activities do not apply where VA funds are provided to religious organizations through indirect assistance as a result of genuine and independent private choice of a beneficiary.”

HOMELAND SECURITY PROGRAMS AFFECTED BY REGULATORY CHANGES

In 2006, the Department of Homeland Security was the last agency instructed via executive order from Bush to establish a Center for FBCI and to engage in the process of agency and regulatory review to identify barriers to faith-based partnerships. Unlike the other departments, at the time of the FBCI Center's inception, the principal regulatory changes had already been made by the component of the Homeland Security Department most engaged in activities of interest to religious social service groups: the Federal Emergency Management Agency (FEMA).

In the aftermath of hurricanes Katrina and Rita, FEMA announced plans to reimburse faith-based organizations that assisted in the relief and recovery effort for expenses that the entities incurred to provide shelter, food, and other goods and services needed for disaster relief. FEMA deemed eligible for reimbursement a wide array of costs, such as those for basic provisions (food, water, blankets); facilities (rental, costs of operation, modification and repair); and services (medical care, counseling, security). Critics alleged that the reimbursement plan permitted FBOs to use funds for proselytizing, religious counseling or other religious activities, and they charged FEMA with providing constitutionally impermissible aid to religious entities. But FEMA defended the reimbursement plan as both constitutional and necessary given the enormity of the disaster and recovery effort along the Gulf Coast.

In their analysis of these actions, the Roundtable's legal experts, Lupu and Tuttle, distinguished three categories of aid in FEMA's plan, with varying issues. The first category comprised aid for specific goods provided to or required for the shelter of those displaced by the storm, such as food, water, medical supplies, bedding and similar items. Such goods posed a relatively low risk of being diverted to an FBO's religious use.

The second category included expenses directly related to the structures used for providing shelter to those displaced by the disasters. FEMA identified eligible activities for reimbursement as including: modifications to shelter buildings, including the addition of recreation equipment; facility lease or rental costs; facility operating costs, such as power, water and telephone service; and costs incurred to clean, maintain and make minor repairs to return the facility to its pre-shelter condition.

Lupu and Tuttle said that direct public financing of structures owned by religious entities and used for religious activities raised significant legal issues, since FEMA reimbursement might subsidize the congregation's religious functions as well. The government would likely have a difficult time drawing the line between religious and non-religious uses of the rooms and monitoring observance of that line. According to Lupu and Tuttle, where a program inseparably intertwines religious and secular activities, the government may not provide that program direct financial support. But where an FBO segregates its shelter from its religious activities, the costs of operating the shelter should be reimbursed.

The third category included services provided by FBOs through their employees or other agents. Some services had a secular character and were unlikely to be controversial, like shelter security, basic medical care and meal preparation. Others, like counseling, were more complicated. Lupu and Tuttle said that if the same individuals offered both secular and religious counseling, it might be impossible to reliably distinguish between secular counseling, for which an FBO may be reimbursed, and religious counseling, for which it may not receive aid.

A second and related regulatory change involving FEMA was less controversial. On Oct. 18, 2005, the White House announced that faith-based organizations would be eligible to apply for federal grants to repair or rebuild some facilities, including schools and nursing homes, damaged in the Gulf Coast hurricanes. In deciding that the government could finance the repair of a religious school or other facility operated by an FBO and damaged by the disaster, the administration relied on an earlier opinion from the Justice Department's Office of Legal Counsel, dated Sept. 25, 2002. The eligibility criteria cited in the Oct. 18 announcement was deemed to be solidly grounded in the applicable statute, regulation and recent agency practice.³⁰

D. TRAINING AND OUTREACH

To advance the Faith-Based and Community Initiative, the White House Office of FBCI spearheaded an outreach campaign during the eight years of Bush's two terms as president by sponsoring more than a dozen regional conferences in cities such as Atlanta, Denver, Chicago, Minneapolis, Philadelphia and Los Angeles, and national conferences in Washington, D.C. Tens of thousands of religious leaders attended these conferences to learn how to compete for a piece of the government pie, and Bush appeared at a number of them, stressing his resolve to aggressively pursue his faith-based agenda.

The White House Office of FBCI published a 67-page catalogue of almost 150 federal grant programs representing more than \$50 billion for which faith-based and community organizations could apply. Bush administration officials conference organizers distributed tens of thousands of these catalogues and also posted the information on the White House Office of FBCI website, which included legal dos and don'ts because "dealing with the federal government isn't always easy," it said on the site.

The catalogue also mentioned that more money was available for programs administered by states and localities than from the federal government, with the \$25 billion awarded in direct grants by HHS in fiscal 2001 far surpassed by the \$160 billion awarded to states and localities, much of which passed through to nongovernmental organizations. "So, in addition to finding out

more about grants from the federal government, you will probably want to look into partnering with your state and local government,” the catalogue advised.

To encourage participation in providing government services, the White House Office of FBCI sent e-mail updates to more than 13,000 faith-based organizations announcing conferences, grant postings, grant review opportunities, technical assistance and the availability of resources. One 12-page message, for example, promoted a Smart Marriages Conference Grant Writing Workshop in Dallas; A Pastor’s Guidebook for HIV/AIDS Ministry Through the Church, published by The Ark of Refuge of San Francisco; and HIV/AIDS prevention grants awarded through the U.S. Conference of Mayors.

Critics complained, and a Wisconsin association of agnostics and atheists filed a lawsuit contending that faith-based groups received favorable treatment in competing for dwindling social service funds. But the White House insisted that it was only trying to ensure a level playing field.

FBCI offices in each federal agency also sponsored dozens of national, regional and local workshops offering technical assistance in applying for federal funds. Some of these sessions were infused with overt religious messages and references. One conference in Washington, D.C., sponsored by the Justice and Health and Human Services departments, featured a gospel singer and a preacher, and according to attendees, resembled more of a tent revival than a government-sponsored information session. “The Lord Jesus deserves our praise,” the soloist sang at the conference podium, as 100 faith-based providers rose to their feet, pumped their palms in the air, and chanted “Amen” and “Hallelujah.” A federal employee sat next to the singer on the dais and swayed and clapped her hands to the rhythm of the music.

Critics accused the administration of using these efforts to build political cachet among low-income constituencies. In the summer preceding the close 2002 congressional elections, federal faith-based officials appeared at Republican-sponsored events and alongside Republican candidates in at least six states. The events often targeted black audiences, including one South Carolina event sponsored by the state Republican Party and attended by 300 black ministers, who later received letters on GOP stationery containing instructions on how to apply for grant money. In the days before the election, White House Office of FBCI Director Jim Towey also made a 20-city tour to promote the Faith-Based Initiative.

The same patterns and criticisms were seen with respect to the presidential election in 2004, and the congressional midterm elections in 2006; White House Office of FBCI regional conferences were held in battleground states where votes might prove decisive in the outcome.

Bush steadfastly maintained that his Faith-Based Initiative was apolitical, and he cited as proof his appointment of Towey, a self-avowed Democrat who said he put service to the needy above politics. Upon naming him faith-based czar in February 2002, Bush said that Towey “understands there are things more important than political parties. And one of those things more important than political parties is to help heal the nation’s soul.” White House officials pointed out that Towey spoke to groups regardless of race or political affiliation, citing one appearance with a Democratic House member in New York. Yet Rep. Elijah E. Cummings, D-Md.,

countered that it was naïve to think the faith initiative wasn't political. Much to his dismay, he said, he was no longer welcome to speak to some black congregations in his district that receive federal grants because they recognized Republicans as the source for government money.

Wilson Goode, the former Democratic mayor of Philadelphia who works with Amachi, the federally funded faith-based mentoring program, acknowledged the initiative's political overtones. However, he pointed out that faith communities were working to provide social services long before Bush became president. "We need to be practical on how we're going to help people in our neighborhoods," he said. "I take money from the government because it's my money too."

The HHS Center for FBCI had a particularly active public outreach campaign – including press conferences, workshops and seminars – to promote the department's emphasis on prevention and to recruit faith-based partners. For example, John Walters, the national drug czar, appeared at a press conference with Towey to announce Pathways to Prevention, which promoted faith as a deterrent to substance use among youths. "Faith plays an important role when it comes to teen marijuana prevention," Walters said. "We are urging youth ministers, volunteers and faith leaders to integrate drug prevention messages and activities into their sermons and youth programming." He cited a study reporting that only 2 percent of congregations had supported substance abuse programs in a single year.

Pathways to Prevention featured a website for faith communities and parents, an e-mail newsletter, brochures and a 100-page activity guide for faith youth leaders. In one exercise, leaders were instructed to bring a six-pack of beer to student group sessions and suggest that students say a prayer and ask for divine help in deciding what to do with the beer. Another activity suggested that students imagine a dialogue between the six-pack and a holy book. "What values does the holy book communicate regarding alcohol? What stories does it tell? What would the alcohol say in return?" the guide listed as questions to ask the students.

The largest Compassion Capital Fund intermediary, the Institute for Youth Development, sponsored workshops in dozens of cities to help faith-based and community organizations produce competitive grant applications. The HHS Center for FBCI also coordinated free workshops for nonprofits, such as the all-day Smart Marriages Conference Grant Writing Training Program. The White House Office of FBCI, the Compassion Capital Fund, and the HHS Center for FBCI websites also listed a full menu of grants as well as workshops, such as "The Faith-Based Initiative and Your Organization," "Grant Writing, How and When to Borrow Money" and "Servicing Ex-Offenders."

The Substance Abuse and Mental Health Services Administration also sponsored workshops and conferences for faith-based organizations. One conference in Washington featured medical experts who emphasized that religion can help people recover from substance abuse. Abdul Basit, director of the Division of Multicultural Mental Health Services at the University of Chicago's Center for Psychiatric Rehabilitation, said at the conference that religion and spirituality have become prominent and accepted aspects of efforts to cure addiction. "I wouldn't have been able to make this speech here 10 years ago," he said.

The HHS Center for FBCI issued guidebooks for faith-based and community applicants that listed funding opportunities, Web resources, information on the Compassion Capital Fund , and details on how nonprofits could become grant reviewers. *Developing Competitive SAMHSA Grant Applications: A Participant Manual* described the application process. A comprehensive HHS website – www.grants.gov – offered information on 800 grant programs involving all 26 federal grant-making agencies.

In another outreach effort, the Office of Child Support Enforcement produced a video on strengthening the role of faith-based organizations in collecting child support and encouraging parental involvement with children. HHS also issued a call for FBOs to help evaluate applications for Community-Based Abstinence Education Grants, the Compassion Capital Fund and the Mentoring Children of Prisoners program.

The HUD Center for FBCI in worked with 71 field liaisons and 10 regional liaisons within the department to help faith-based organizations apply for grants. The agency also sponsored outreach programs, including live Internet webcasts that explained the Faith-Based Initiative.

The Department of Labor launched an active campaign to recruit and educate faith-based organizations in the grant application process and to nurture partnerships among such groups, the private sector and the government. The department sponsored workshops to enable FBOs to tap federal funds to help foster economic development. The groups receiving these funds seek employment for hard-to-serve populations, including ex-offenders, welfare recipients and out-of-school youths. The agency also offered faith-based and community groups information on developing strategic partnerships with businesses in high-growth industries.

The Labor Department published two guides as part of its effort. One guide outlined business models and provided advice on fostering employment. The guide also described best practices such as Job Partnership, a program in 27 cities through which faith-based groups referred workers to jobs and then mentored those workers until their employment was secure. The guide cited a faith-based program in Ohio that included 40 hours of job-skills training and mentoring both inside and outside the workplace. The guide further suggested that faith-based organizations might become headhunters, offering fee-for-service arrangements to businesses. The second guide offered technical assistance to enable Workforce Investment Boards in Memphis and Milwaukee to integrate faith-based groups into planning and contracting.

Other efforts by the Labor Department included “strategic business partnership conference calls,” in which corporate representatives talked with faith-based and community organizations about fulfilling private workforce needs. In one such call, representatives of the Save-a-Lot grocery chain talked about jobs in the industry and the skills people needed to obtain them. In another call, a representative of CVS Pharmacy and the pastor of a Washington, D.C. church and interfaith network discussed a partnership through which churches would host job fairs to help meet the needs of area businesses.

Labor’s Center for FBCI also began the Touching Lives and Communities website to facilitate dialogue between faith-based and community organizations, Workforce Investment Boards, One-Stop Career centers and businesses. Registered visitors were able to tap into and contribute to a

“discussion area” and a “learning circle” on mentoring programs, prisoner reentry programs, success stories and business partnerships. Specific topics included the role of “tough love” and techniques for boosting retention rates for ex-offenders enrolled in high school equivalency programs. The department offered a 10-minute webcast highlighting the faith-based Exodus Transitional Community prisoner reentry program, based in East Harlem, N.Y., which was part of the Ready4Work program.

E. LIFTING UP AND REACHING OUT

During the last years of the Bush administration, efforts on the Faith-Based Initiative shifted from an emphasis on federal grant-making to extolling the work of nonprofits in their communities. This came at the direction of Jay Hein, the White House Office of FBCI’s third director following DiIulio and Towey. “Jay Hein has worked hard to recapture the original vision, to support the dozens of state and local faith-based offices, and to reposition his own office while yet building on the good things that Jim Towey was able to do,” said DiIulio, now the Frederic Fox Leadership Professor of Politics, Religion and Civil Society at the University of Pennsylvania.

“Jay Hein took up his post with a particular passion to make sure that the good intentions of the Faith-Based and Community Initiative are translated as much as possible into improved practice,” said Stanley Carlson-Thies, founder and president of the Institutional Religious Freedom Alliance, a nonpartisan think tank, who worked at the White House Office of FBCI under both DiIulio and Towey. Carlson-Thies said that Hein directed the federal office to work closely with states, examined the internal workings of federal agencies to ensure that they were consistent with the initiative’s goals, and showcased inspiring stories of faith-based organizations’ work. “There have been fewer fireworks inside the Beltway but, I think, more substantive reforms, a deepening of implementation of the principles,” Carlson-Thies said of Hein’s tenure.

“Jay realizes the time is short and we have to embed this initiative,” said Pam Pryor, then the vice president for government operations for We Care America, a Christian-centered social service organization since disbanded. “He understands he has to take this big idea and make it thrive at the state level so it will last beyond his time.”

“Hein is not as prominent in the media as predecessors like Towey and DiIulio, but he has appeared at workshops and conferences all over the country to spread the administration’s faith-based gospel,” said Rev. Barry Lynn, executive director of Americans United for Separation of Church and State, among the most consistent and vocal opponents of Bush’s faith initiative from its inception.

Hein’s strategy for advancing the initiative – which included promoting the work of faith-based organizations and expanding similar efforts at the state and local level – was on full display in November 2007 when the White House Office of FBCI hosted a series of conferences, forums and workshops with a frequency that rivaled a rash of holiday parties. The events began on Nov. 5 and 6, as more than 800 faith-based and community leaders joined Indiana Gov. Mitch Daniels and Hein in Indianapolis for a regional White House conference on faith-based initiatives. It was

the 33rd conference sponsored by the White House since 2001, and it placed greater emphasis on the states' role than events of previous years. "When we take a White House conference to a state, we're able to say specifically to the governor and the nonprofits in that state, 'How can we help you in this region grow deeper and stronger?'" Hein said at the time.

A similar White House conference in Alaska was hosted by Gov. Sarah Palin and Lt. Gov. Sean Parnell; another in Arizona in May 2007 was hosted by Gov. Janet Napolitano. In the middle of November of that year, Hein opened the doors to the White House three times in nine days to business leaders, faith-based service providers and a group called Conservatives for Social Justice to highlight the work of religious organizations and encourage partnerships among the government, nonprofits and the business community.

One of the three events was a Compassion in Action Roundtable, a monthly event that Hein hosted beginning in January 2007 to praise the work of faith-based and community organizations on a specific area of social service. Depending on the theme – HIV/AIDS, homelessness, substance abuse, human trafficking, job training or malaria – typically more than 100 nonprofit, government and business leaders were invited to join in a two-hour presentation of success stories.

At the end of November 2007, the staffs of the White House Office of FBCI and several federal agencies flew to Los Angeles to host a national summit on prisoner reentry. It mirrored another White House-hosted national summit in September in Washington, D.C. on Hispanic youth, which was attended by 1,500 people, by focusing on a specific theme of social service delivery.

Training sessions were held year-round. But in November 2007, federal agencies sponsored at least eight training workshops in: Atlanta, Ga.; Montgomery, Ala.; Takoma, Wash.; Nashville, Tenn.; and Jackson, Miss. Participants learned how to write grants or become after-school tutors or substance abuse treatment providers. Other three-day workshops taught participants how to measure, manage and communicate the results of job-training programs. Another forum in Houston showcased faith-based and community organization models of economic development in poor neighborhoods. Federal agencies hosted another five workshops in various cities in December of that year. The U.S. Agency for International Development's Center for FBCI even held its first international outreach conference, in the Eastern European country of Moldova.

In addition, the federal FBCI centers were also busy holding training and capacity-building sessions for faith-based and community organizations throughout the nation. The Bush White House estimated that since 2001 the White House Office of FBCI had hosted 40 regional, national and international conferences and trained more than 35,000 nonprofit leaders from all 50 states. In addition, the White House Office of FBCI and federal agencies combined had trained more than 150,000 faith-based and community leaders in workshops since 2001.

A June 2008 White House Office of FBCI conference in Washington served to highlight the research and policy changes under the Faith-Based Initiative, especially in areas of welfare assistance, job training, housing, marriage promotion, HIV/AIDS prevention and disaster relief. The White House intended the session as a way to provide information about challenges to moving forward and the factors that contribute to successful service delivery.

In an address at this June conference, Bush ranked his administration's efforts to encourage more partnerships between government and religious groups among the most significant accomplishments of his presidency. "I truly believe the Faith-Based Initiative is one of the most important initiatives of this administration.... We've laid the foundation for an effort that will continue transforming lives long after I've been back to Texas," he told an audience of about 1,500 people.