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 American Jewish Committee
 American Jewish Congress
 Anti-Defamation League
 B'nai B'rith
 Hadassah
 Jewish Labor Committee
 Jewish Reconstructionist Federation
 Jewish War Veterans
 National Council
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 Union for Reform Judaism
 Union of Orthodox Jewish
 Congregations of America
 United Synagogue
 of Conservative Judaism
 Women's American ORT
 Women's League
 for Conservative Judaism

MEMORANDUM

Date: December 29, 2008

To: Joshua Dubois, Obama-Biden Transition Project
 Mark Linton, Obama-Biden Transition Project

CC: Valerie Jarrett, Co-Chair, Obama-Biden Transition Project
 John Podesta, Co-Chair, Obama-Biden Transition Project
 Peter Rouse, Co-Chair, Obama-Biden Transition Project
 Michael Strautmanis, Director of Public Liaison and
 Intergovernmental Affairs

From: Steve Gutow, President and CEO
 Ethan Felson, Associate Executive Director
 Hadar Susskind, Washington Director

Re: Improvement of the Faith-Based and Community Initiatives

Introduction and Overview

On behalf of the Jewish Council for Public Affairs, we encourage you to review systematically the current Faith-Based and Community Initiatives (FBCI). President-elect Obama has the opportunity to strengthen our network of social service institutions by reshaping the FBCI. We believe this program can be significantly improved and strengthened in a way that will both protect religious liberties and meet critical social services needs. A renewed FBCI can and should more actively engage the broad array of service providers and more vigilantly protect the rights of those who benefit from or may staff these publicly funded programs.

Our current economic crisis portends to deepen the despair of the millions of Americans already living at or near poverty. Millions more may join them as our nation struggles through recession. Our already overburdened social service infrastructure is showing significantly more signs of strain. Undoubtedly, further repercussions will be felt through the criminal justice and prison system, school and early childhood programs, health care





including mental health and substance abuse treatment programs, and many other components of our social safety net. Partnerships between the government and neighborhood based service providers, including faith-based organizations, will strengthen both. At this precarious time, we believe the partnership and cooperation between the public and non-profit sectors is critically important. Nonprofit institutions harness philanthropic dollars and volunteer services, in addition to bringing considerable expertise and passion to solving societal problems. Religious and religiously affiliated institutions are part and parcel of our nation's non-profit and charitable communities.

The Jewish Council for Public Affairs (JCPA) is the consensus-driven representative voice of the American Jewish community. JCPA is comprised of 14 national member agencies and 125 local Jewish federations and community relations councils. Since our inception in 1944, we have been deeply engaged in civil rights and liberties issues, including religious liberty. As a religious minority in the United States, we are particularly sensitive about the relationship between religion and state. Likewise, throughout our history, JCPA has strived to build a more just society. Our agency has strong emphasis on social justice and economic opportunity. Over the past two years, JCPA has renewed its commitment to fighting poverty with our "There Shall Be No Needy Among You" Anti-Poverty Campaign. We are deeply committed to uplifting and protecting those who are the most vulnerable and needy among us. Both of these values, our cherished religious liberty and deep dedication to social justice, inform our view and understanding of the Faith-Based and Community Initiatives (FBCI).

Competing Principles

Religious organizations provide critical services to millions of Americans. We recognize however, that when government resources are used to support programs sponsored by religious organizations, important safeguards must be in place to prevent First Amendment violations and to protect the religious freedom of grant recipients, program beneficiaries, and employees of service providers.

The FBCI invites a degree of tension between several important principles

- Public resources should advance public interests
- Religion is part of the fabric of American life and religious communities can play a vital role in the repair of our society
- Individuals seeking services should be free from discrimination and proselytization
- Public dollars should not be used in a manner that is discriminatory
- Religion should be unencumbered by governmental intrusion to the maximum extent possible

These ideals come into conflict when certain faith based groups seek a role in advancing the public interest using public resources. The challenge we face is how best to allocate precious resources for the good of all, without invidiously excluding religion from the equation, and without yielding our paramount concern for individuals and how public dollars are spent. Particular attention needs to be paid to government funds that might flow to pervasively sectarian entities.



Nomenclature

Language is one of the many obstacles we face when discussing the Faith-Based and Community Initiative. The term “faith-based” itself is vague and can obscure certain complex social, legal, and policy issues. Some “faith-based” organizations are entirely secular in their structure and approach to the provision of services. These groups strictly separate the religious nature of their mission from the services they provide. Other “faith-based” organizations are expressly sectarian and do not separate the religious nature of their mission from the services they provide. Many exist along a continuum between these points. If we are not careful, under the rubric of “faith-based,” we may confuse these secular but religiously affiliated groups with the others, including pervasively sectarian institutions—ultimately merging the two together and blurring important distinctions.

All religious organizations function in the complicated legal realm that strives to balance the interests of the state and the rightful autonomy of these institutions. The pairing of the Free Exercise Clause alongside the Establishment Clause secures for Americans freedom of religion and freedom from governmental imposition of religion. We believe the FBCI should be constructed in a way that protects the religious liberties of all Americans. The government should neither favor one set of intuitions over another, nor should any government support be used to further sectarian religious goals.

Providing funds to pervasively sectarian institutions raises serious Establishment Clause issues. Public funds should be used exclusively for secular governmental interests. Government resources should not support programs that require religious worship or study, that proselytize among service recipients, or conflate religious doctrine with evidence-based methods. While such religious programs are an important part of nation’s service provision infrastructure, they should not receive public funding.

Proposals for Reform

In this time of need, it is essential that our national government provide the necessary social services to all Americans. It is important that we take an “all-hands-on-deck” approach. The government should expand partnerships for social service provision that already exist and look broadly to build new relationships. The weakening economy has created a situation where many privately funded social service providers no longer have the resources they require. We face the possibility of service provision in the United States contracting as the need for these valuable services is expanding.

Faith-based organizations provide critical services. Many of these organizations, agencies and institutions, or those like them, have been providing social services much longer than the government. Yet, government funding of these organizations is particularly complex. The pluralistic fabric of American democracy has created a society that is strong and diverse. Our collective notion of religious liberty, codified in the First Amendment of the Constitution, is one of America’s most important attributes. The FBCI should be revised to reflect more appropriately our commitment to a division between religion and government.



It is critical that no government funded service provider discriminate on the basis of religion in the delivery of their publically funded assistance. Government funded projects should be available to all Americans. Likewise, organizations that receive government grants for services should abide by all applicable civil rights laws and ensure the principle of non-discrimination for employment positions substantially funded by public monies. These government funded positions should be open to all qualified applicants.

The current administration has incorrectly interpreted the Religious Freedom Restoration Act to allow religious organizations to discriminate on the basis of religion in employment decisions for federally funded positions. Further rules and guidance have been issued to support this interpretation. We believe the government has a stake in the operations of these programs and these funds should be used according to the principles of non-discrimination.

Though many religious organizations provide exceptional services, providing federal funds to pervasively sectarian organizations can be troublesome. For instance, the principle of non-entanglement demands that houses of worship not be required to make annual tax filings nor undergo annual public audits. This complicates the critical responsibility of the government in ensuring that the programs it funds are accounted properly and directed only to the services provided. The fungibility of dollars makes even more complex the concern that government funds not be used to underwrite other aspects of an entity, especially one exempt from ordinary financial reporting requirements. We suggest that pervasively sectarian organizations should be required to establish separate non-profit entities to administer government funded programs. This will help alleviate many of these problems. This simple structure will allow all religious organizations—including houses of worship—to participate in the public grant process. The government's interest, ensuring that the public funds are used appropriately and for secular purposes, and the religious organizations interest, governmental non-interference, will both be protected.

Lastly, we believe that the federal government should more aggressively engage all community and neighborhood based service providers. Faith-based organizations are one important component of this outreach. We suggest the Obama Administration engage the full panoply of community organizations. The lessons learned and infrastructure built through the Faith-Based and Community Initiative can be applied more broadly. For example, technical assistance with the federal grants process should be revised, expanded and made accessible to all community providers. A concerted effort should be made to engage grassroots and neighborhood groups, colleges and universities with community outreach programs, corporations committed to improving the communities in which they operate, and other potential providers, alongside the extensive engagement of faith-based organizations. Many of these providers can offer excellent community-based services and would benefit tremendously from additional support.



Thank you very much and we appreciate this opportunity to offer our suggestions about how to improve the FBCI. If you have any questions, please feel free to contact Ethan Felson or Jared Feldman. Ethan can be reached at (212) 684-6951 or by email at efelson@thejcpa.org. Jared can be reached at (202) 212-6038 or by e-mail at jfeldman@thejcpa.org.