

WR -  
Charitable  
Choice

### Demographic Characteristics of Household Contributions: 1995

	Percentage of all respondents	Average household contribution	Average percentage of household income given
	73.4%	880	2.1%
<u>Gender</u>			
Male	70.3	996	2.2
Female	76.2	781	2.0
<u>Race</u>			
White	76.6	907	2.1
Non-white	54.2	659	2.0
Black	51.0	663	1.8
Hispanic*	65.4	353	1.3
<u>Age</u>			
18-24	57.8	514	1.2
25-34	66.0	520	1.4
35-44	80.4	978	1.8
45-54	80.8	1,241	2.5
55-64	82.0	1,037	2.4
65-74	76.8	1,135	3.9
75+	70.7	666	3.2
<u>Income</u>			
Under \$10,000	47.9	207	2.7
\$10,000 - \$19,999	66.9	332	2.3
\$20,000 - \$29,999	68.1	668	2.7
\$30,000 - \$39,999	81.4	715	2.0
\$40,000 - \$49,999	83.5	572	1.3
\$50,000 - \$74,999	94.0	1,042	1.7
\$75,000 - \$99,999	86.8	1,720	2.0
\$100,000 +	92.3	3,213	3.2
<u>Religion</u>			
Catholic	75.7	508	1.2
Protestant	74.1	969	2.5
Other	83.3	1,406	2.8
None	49.3	848	1.8
<u>Marital Status</u>			
Married	80.5	1,031	2.2
Single	58.7	517	1.3
Divorced, separated, widowed	66.9	648	2.4
<u>Employment Status</u>			
Employed	78.6	968	2.0
Full-time	79.2	956	2.1
Part-time	75.5	1,020	1.6
Not employed	64.8	710	2.4
Retired	73.7	903	3.5
<u>Education Status</u>			
High school or less	63.1	580	1.5
Technical, trade school, or some college	80.5	779	1.8
College graduate	89.6	1,493	2.8

Source: Independent Sector, Giving and Volunteering in 1996

Among contributing households, demographic highlights include:

- Persons reporting religious affiliation reported contributing a higher percentage of their average household income than those with no religious affiliation (2.3 percent compared with 1.1 percent).
- Respondents 55 years of age or older gave above average percentages of their household income: 55-64=3.6 percent, 65-74=2.8 percent, 75 and up=3.7 percent.
- Retirees are the most generous givers; in 1995, they reported giving an average of 4.1 percent of their household income to charitable causes.
- College graduates reported the highest participation of all groups (82 percent).

WR-Charitable  
Choice

Andrea Kane 05/08/2000 09:58 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP@EOP, Eric P. Liu/OPD/EOP@EOP  
cc: Anna Richter/OPD/EOP@EOP  
Subject: charitable choice update

Here's an updated side-by-side comparing House provisions in Watts-Talent to Senate-passed Frist bill and welfare reform, along with status of discussions with House staff.



faithSideXSide\_050500.

Here's a note Cliff Kellogg sent Gene summarizing the major issues



faith0508-CCsumm.d

And, I'll bring over a hard copy of marked up version of bill reflecting changes we expect House to make. We should get revised language tomorrow morning. I'd like to discuss with you because I think Gene is going to start getting more involved in this. He's hearing some concerns from Ds.

**Watts-Talent (Sec. 202) vs. Frist (Sec. 305)**

05/05/00 DRAFT

Section	Watts-Talent (Sec. 202)	Discussion Status	Frist (Sec. 305)	Comments
1. Bill status and summary	The American Community Renewal Act was introduced in House (H.R. 815) and Senate (S.463) in February 1999 to target 100 poorest communities for pro-growth tax and regulatory relief, Brownfields cleanup and home ownership opportunities.		The Youth Drug and Mental Health Services Act (S.976) was introduced in May 1999 and passed in November, and sent to the House. The bill reauthorizes SAMHSA and addresses need to help children deal with violence.	HHS supports the Frist bill
2. Applicable statute	Amends title V of Public Health Service Act.		Amends title V and XIX of the Public Health Service Act.	
3. Applicable programs	Substance Abuse Prevention and Treatment block grant only (\$1.6B in FY00, \$1.631 proposed for FY01).		Substance Abuse Prevention and Treatment block grant (\$1.6B in FY00, \$1.631 proposed for FY01) & substance abuse competitive grants (\$361M in FY00, \$401M proposed for FY01).	
4. Program definitions	Sec. 581(c) on p69, line 8 and Sec. 582(a) on p71, line 16 Defines several terms to make clear the scope of the authority for religious organizations and to explicitly authorize a voucher system.	<b>TENTATIVELY RESOLVED:</b> House leg counsel in conforming definitions to SAMHSA law. We're waiting to see language.	Sec. 1955(b) Generally requires states to consider religious organizations among other nongovernmental providers to provide services.	
5. Use of vouchers	Sec. 581(c)(5)&(10) on p 70, line 1 and Sec. 582(a)(1)(C) &(D) on p71, line 20 States can fund religious orgs through grants, contracts, cooperative agreements, or voucherized assistance, where bene chooses the svc provider and the org is reimbursed.	<b>UNRESOLVED:</b> They reject proposal to drop term "voucher" since welfare law explicitly allows vouchers. We need to consult with HHS re: program implications. Also raises broader policy concerns (we need to check re: Education).	Silent on vouchers.	Welfare law allows vouchers, but SAMHSA law is silent. SAMHSA believes that one state (NM) and several substate areas already use vouchers.
6. Nondiscrimination against religious organizations	Sec. 582(c)(1) on p72, line 18 Finds that the Establishment Clause doesn't require welfare programs to discriminate against faith-based providers or to censor relig character.  Sec. 582(c)(2) on p73, line 3 Prohibits fed and state gov'ts from discriminating against orgs on basis of religious character.	<b>RESOLVED:</b> Agree to drop findings section.  <b>TENTATIVELY RESOLVED:</b> Agree to add language saying law must be implemented consistent with Establishment Clause and the Free Exercise Clause, ensuring that funds don't go to "pervasively sectarian" orgs. Need to see language.	Sec. 1955(a)(1) Prohibits discrimination of nongov'l orgs and individuals on basis of religion.  Sec 1955(b)(2) States can't discriminate against relig orgs "so long as the programs ... are implemented in a manner consistent with the Establishment Clause of the first amendment to the Constitution."	Frist language is similar to welfare law.  Frist language is similar to welfare law.

Section	Watts-Talent (Sec. 202)	Discussion Status	Frist (Sec. 305)	Comments
7. Employment practices	Sec. 582(e) on p74, line 3 This section doesn't affect other federal or state laws relating to discrimination in employment on basis of religions. Exception – relig orgs can require employees to adhere to religious beliefs and practices of the org.	<b>TENTATIVELY RESOLVED:</b> Replace with welfare law language, which refer to title VII Civil Rights Act exemption.  However, Section 584(a) provision making aid to individual rather than institution, may still cause a problem. They may see it as a way to get around the employment issue, although whether or not the organization receives federal funds has no bearing on its requirement to comply with Title VII.	Sec. 1955(d) A relig org's exemption from title VII of Civil Rights Act allowing them to hire individual of a particular religion isn't affected by receipt of federal funds under this program.	Frist language is similar to welfare law.
8. Arrangements for alternative providers	Sec. 582(f)(1)-(4) on p74, line 20 If a bene objects to program bc it's a religious org, the org or the non-fed entity shall arrange for an alternative provider.	<b>TENTATIVELY RESOLVED:</b> Agree to conform with welfare law so (1) states provide alternative provider, (2) relig orgs must refer individuals back to state for new placement, and (3) individuals must get list of option, including secular placements. Need to see language.	Sec. 1955(e) If an individual objects to relig character of the org, the appropriate gov'l entity must provide w/in reasonable time period, equivalent svcs from an alternate provider that is accessible to the individual.	Frist is similar to welfare law.
9. Nondiscrimination against beneficiaries	Sec. 582(f)(5)(B) on p75, line 23 Relig orgs can't discriminate against beneficiary on basis of religion or relig belief, except that:  A religious organization may require a beneficiary to actively participate in religious practice, worship and instruction, and to follow rules of behavior that are religious in content	<b>RESOLVED:</b> Agree to drop due to serious constitutional concerns with allowing organizations to require beneficiaries to participate in religious practice.	Sec. 1955(f) Relig orgs can't discriminate on basis of religion, a relig belief, a refusal to hold a relig belief, or a refusal to actively participate in religious practice.	Frist is similar to welfare law.
10. Fiscal accountability	Sec. 582(g)(2) on p76, line 16 Provides special audit procedures for religious organizations, so that only gov't funds are subject to audit by gov't.	<b>UNRESOLVED:</b> Limited audit is consistent with welfare law, but it conflicts with Single Audit Act which subjects all federal government grantees to identical audit rules. Prefer silence, but they want it in.	Sec. 1955(g) Same as Watts-Talent and welfare law.	
11. Limitations on use of funds	Sec. 583(b) on p77, line 7 Allows funds to be used for sectarian worship or instruction in cases where bene can choose where to get svcs such as voucherized assistance.	<b>RESOLVED:</b> Agree to drop.	Sec. 1955(i) Funds provided thru grant or contract to a relig org to provide sub abuse svcs can't be used for sectarian worship, instruction, or proselytization.	Frist language is similar to welfare law, prohibiting use of funds for sectarian worship, instruction, or proselytization
12. Treatment of funds	Section 584(a) on p77, line 13-19 Financial assistance provided to or on behalf of program beneficiaries is aid to beneficiaries, not organizations. Receipt	<b>UNRESOLVED:</b> They will drop the 2 <sup>nd</sup> sentence, and clarify the 1 <sup>st</sup> sentence by striking "provided to or on behalf of program beneficiaries".	N/A	No similar language in Frist or welfare law.

Section	Watts-Talent (Sec. 202)	Discussion Status	Frist (Sec. 305)	Comments
	of program services at an organization shall not constitute Federal financial assistance to the organization.	<p>This raises serious problems: (1) As written, this would apply to all substance abuse grants to public or private entities (per definition of designated program) [Cliff/Paul – see if you agree with this reading. This was the objection we'd raised at the very beginning but I don't think they've fixed it. It's not something that OLC flagged but it appears to be at the minimum a drafting problem]. (2) Declaring that aid is to the individual doesn't have legal effect and determination should be left to the courts.</p> <p>They say this reflects their intent that aid is to help the individual get clean and hope this provision will protect organizations from Constitutional criticism that funds can't go to "pervasively sectarian organizations" though OLC thinks courts will make their own determination. They may also believe this would allow the organization to engage in employment discrimination on the basis of religion but we don't see how it would.</p>		
13. Preemption of State Laws and Constitutions	Section 584(b) on p77, line 20 Allows federal funds to be expended in a religious facility or by a religious organization even if forbidden by state laws or constitutions by segregating federal funds from state funds.	<b>RESOLVED:</b> Agree to drop.	Silent.	Under welfare law, nothing shall be construed to preempt state constitutions or state statutes prohibiting or restricting expenditure of state funds in or by religious organizations.
14. Educational requirements for personnel in drug treatment programs	Sec. 585(b)(1) on p78, line 17 Requires state or locals to treat religious education as equivalent to secular course work in drug treatment. Sec'y may waive state/local qualifications for applicant religious organizations. [Genie, I couldn't find statutory basis for this 2 <sup>nd</sup> sentence.]	<b>TENTATIVELY RESOLVED:</b> They will amend to specify that state/locals shall give credit for substance abuse education and training provided by the religious organization for personnel who provide substance abuse treatment in religious organizations. Also adding language that if State requires educational qualifications unrelated to substance abuse, religious education	None.	Nothing similar in welfare law.

Section	Watts-Talent (Sec. 202)	Discussion Status	Frist (Sec. 305)	Comments
		<p>should be given equivalent credit.</p> <p>Specifying training in substance abuse is an improvement. Remaining concerns:</p> <p>1) Limiting to training provided by the particular organization may be too narrow [could be religious training in substance abuse provided by another entity, such as in the case of pastoral counseling]</p> <p>2) Still raises preemption issue and, unlike welfare law, they do not have a non preemption clause [Paul/Cliff – I'm suggesting this for first time – what do you think? AK</p>		

## Charitable Choice

These provisions would allow States to award federal funds to religious organizations for providing drug treatment services under the Substance Abuse and Mental Health Services Act (SAMHSA). The original ACRA language raised 14 issues in our first pass through the bill. At the staff level, we have negotiated what we believe are acceptable positions on most provisions, but have stated strongly that these must be reviewed by WH, OLC and HHS before final agreement.

### Outstanding Issues

**1. Characterization of Federal Funds:** Rs would like to adopt language that “Financial assistance under a designated program is aid to the beneficiary, not to the organization providing program services”. The Rs have not fully clarified their intent here— whether it’s to try to avoid the Establishment or Free Exercise Clause, or to sidestep the statutory restrictions that normally accompany the receipt of federal funds. They say they want to state for the record their intent that the funds are designed to help people break addiction, not to support organizations.

Neither the welfare reform law nor the Senate-passed Frist substance abuse bill has this language. Rs had previously agreed to silence on this issue. OLC advises that courts would not accept this characterization without conducting their own examination of the facts and circumstances. Thus, as a legal matter, this provision may not have practical effect. However, the provision seems to state a philosophical political position that would raise objections from some quarters. The Rs may see this as part of a longer-term strategy to change the terms of the political discussion.

Next: We can discuss this more fully with Rs to clarify their intent. We can seek further legal advice from OLC on how to curb the proposed language. However, we also need guidance on how to proceed.

**2. Educational Qualifications for Employment:** In determining educational requirements for personnel in SAMSHA-funded facilities, Rs want to specify that (1) substance abuse training provided by the religious organization to its personnel shall given the same credit as secular training in drug treatment, and (2) if the educational requirements include qualifications not specific to substance abuse treatment, then religious education and training shall be given credit equivalent to the secular education and training.

Neither the welfare reform law nor the Senate-passed Frist substance abuse bill has this language. We have three major concerns:

- First, to assure that the training is related to substance abuse and is of acceptable quality.
- Second, not to preempt any state law in licensing, an area where states have traditionally had responsibility.

- Third, a test that preempts state licensing requirements only for religious organizations is particularly vulnerable to a legal challenge.

Reps. Scott, Edwards and Waxman have noted serious policy concerns. Rep. Scott submitted letters from professional, religious and civil liberties groups expressing concern over undermining treatment effectiveness and that drug treatment is a medical service requiring scientific knowledge that is not comparable to religious education.

Next: We can work to further narrow the language, or we can push back hard on the entire provision.

**3. Use of Vouchers:** Rs would like language that permits SAMHSA assistance to come in vouchers for eligible beneficiaries to redeem at qualified service providers.

The underlying SAMHSA statute is silent on vouchers. The Rs want the Welfare Reform Act provisions. The Senate-passed Frist substance abuse bill does not authorize vouchers.

Next: This raises broader policy concerns, including possible implications for school voucher debate (don't know specifics here). We would also seek HHS's input on the programmatic impact.

Other important issues that may not require policy decisions:

**4. Employment practices:** The Rs seek language that says receiving federal funding under SAMHSA would not alter religious organizations' existing exemption from Title VII anti-discrimination laws. This long-standing exemption allows organizations with a "primarily religious purpose" (caselaw) to discriminate on the basis of religion in hiring. In Bowen v. Kendrick, 487 U.S. 589 (1988), the Supreme Court held that organizations that are "pervasively sectarian" cannot receive federal funds. In combination, these provisions imply that an organization that is not pervasively sectarian, but is nonetheless exempt from Title VII because it has a primarily religious purpose, could discriminate in hiring on the basis of religion.

We have pointed out where the original ACRA language went beyond the WRA. We believe Rs would accept the WRA language. Although these provisions were inserted too late in the Welfare Reform debate to get full hearing, they have subsequently come under greater criticism. Therefore, agreeing to WRA language would still be vulnerable to criticism. Furthermore, according to OLC, constitutional law is not settled on this precise point, viz., whether religious organizations with a Title VII exemption that receive federal funds may discriminate in their hiring. Legitimate legal arguments can be marshaled for both positions.

We are inquiring with HHS (under Welfare Reform) and HUD (section 202 Elderly

Housing) whether any grantees currently fit this description (Salvation Army?).

**5. Limited Audit procedures:** In cases where religious organizations segregate federal funds from the organization's other funds, Rs would like to limit federal audits only to the segregated funds.

We are concerned that this violates the Single Audit Act which subjects all federal government grantees to identical audit rules. We prefer silence, but they want it in. A similar provision is in WRA.

VERY CLOSE HOLD

as of 5/5

1 (11) UNIT OF GENERAL LOCAL GOVERN-  
2 MENT.—The term “unit of general local govern-  
3 ment” has the meaning given the term in section  
4 102(a) of the Housing and Community Development  
5 Act of 1974.

6 (12) UNOCCUPIED.—The term “unoccupied”  
7 means, with respect to a residential property, that  
8 the unit of general local government having jurisdic-  
9 tion over the area in which the project is located has  
10 certified in writing that the property is not inhab-  
11 ited.

12 **SEC. 202. PREVENTION AND TREATMENT OF SUBSTANCE**  
13 **ABUSE; SERVICES PROVIDED THROUGH RELI-**  
14 **GIOUS ORGANIZATIONS.**

15 Title V of the Public Health Service Act (42 U.S.C.  
16 290aa et seq.) is amended by adding at the end the follow-  
17 ing part:

18 **“PART G—SERVICES PROVIDED THROUGH RELIGIOUS**  
19 **ORGANIZATIONS**

20 **“SEC. 581. APPLICABILITY TO DESIGNATED PROGRAMS.**

21 **“(a) DESIGNATED PROGRAMS.—**Subject to sub-  
22 section (b), this part applies to each program under this  
23 Act that makes awards of Federal financial assistance to  
24 public or private entities for the purpose of carrying out  
25 activities to prevent or treat substance abuse (in this part

1 referred to as a 'designated program'). Designated pro-  
 2 grams include the program under subpart II of part B  
 3 of title XIX (relating to formula grants to the States).

4       “(b) LIMITATION.—This part does not apply to any  
 5 award of Federal financial assistance under a designated  
 6 program for a purpose other than the purpose specified  
 7 in subsection (a).

8       “(c) DEFINITIONS.—For purposes of this part (and  
 9 subject to subsection (b)):

10           “(1) The term 'designated award recipient'  
 11 means a public or private entity that has received an  
 12 award under a designated program (whether the  
 13 award is a designated direct award or a designated  
 14 subaward).

15           “(2) The term 'designated direct award' means  
 16 an award under a designated program that is re-  
 17 ceived directly from the Federal Government.

18           “(3) The term 'designated subaward' means an  
 19 award of financial assistance made by a non-Federal  
 20 entity, which award consists in whole or in part of  
 21 Federal financial assistance provided through an  
 22 award under a designated program.

23           “(4) The term 'designated program' has the  
 24 meaning given such term in subsection (a).

*will work w/ House  
 leg counsel to  
 streamline defns  
 to be consistent w/  
 SAMHSA; consider  
 Frist bill language.  
 (need to see  
 language)*

1           “(5) The term ‘financial assistance’ means a  
2 grant, cooperative agreement, contract, or  
3 voucherized assistance.

4           “(6) The term ‘program beneficiary’ means an  
5 individual who receives program services.

6           “(7) The term ‘program participant’ has the  
7 meaning given such term in section 582(a)(2).

8           “(8) The term ‘program services’ means treat-  
9 ment for substance abuse, or preventive services re-  
10 garding such abuse, provided pursuant to an award  
11 under a designated program.

12           “(9) The term ‘religious organization’ means a  
13 nonprofit religious organization.

14           “(10) The term ‘voucherized assistance’  
15 means—

16           “(A) a system of selecting and reimbursing  
17 program services in which—

18           “(i) the beneficiary is given a docu-  
19 ment or other authorization that may be  
20 used to pay for program services;

21           “(ii) the beneficiary chooses the orga-  
22 nization that will provide services to him or  
23 her according to rules specified by the des-  
24 ignated award recipient; and

*want to leave  
in - similar to  
welfare reform  
language.*

1                   “(iii) the organization selected by the  
2                   beneficiary is reimbursed by the designated  
3                   award recipient for program services pro-  
4                   vided; or

5                   “(B) any other mode of financial assist-  
6                   ance to pay for program services in which the  
7                   program beneficiary determines the allocation  
8                   of program funds through his or her selection  
9                   of one service provider from among alternatives.

10 **“SEC. 582. RELIGIOUS ORGANIZATIONS AS PROGRAM PAR-**  
11 **TICIPANTS.**

12                   “(a) IN GENERAL.—

13                   “(1) SCOPE OF AUTHORITY.—Notwithstanding  
14                   any other provision of law, a religious  
15                   organization—

16                   “(A) may be a designated award recipient;

17                   “(B) may make designated subawards to  
18                   other public or nonprofit private entities (in-  
19                   cluding other religious organizations);

20                   “(C) may provide for the provision of pro-  
21                   gram services to program beneficiaries through  
22                   the use of voucherized assistance; and

23                   “(D) may be a provider of services under  
24                   a designated program, including a provider that  
25                   accepts voucherized assistance.

*See note in  
definitions p 69  
want to keep  
reference to  
"vouchers," similar  
to welfare  
reform.  
Need to consult  
w/ HHS, but  
also raises  
broader policy  
concerns.*

1           “(2) DEFINITION OF PROGRAM PARTICIPANT.—

2           For purposes of this part, the term ‘program partici-  
3           pant’ means a public or private entity that has re-  
4           ceived a designated direct award, or a designated  
5           subaward, regardless of whether the entity provides  
6           program services. Such term includes an entity  
7           whose only participation in a designated program is  
8           to provide program services pursuant to the accept-  
9           ance of voucherized assistance.

10          “(b) RELIGIOUS ORGANIZATIONS.—The purpose of  
11          this section is to allow religious organizations to be pro-  
12          gram participants on the same basis as any other non-  
13          profit private provider without impairing the religious  
14          character of such organizations, and without diminishing  
15          the religious freedom of program beneficiaries.

16          “(c) NONDISCRIMINATION AGAINST RELIGIOUS  
17          ORGANIZATIONS.—

18                 ~~“(1) FINDINGS.—The Congress finds that the~~  
19                 ~~establishment clause of the first amendment to the~~  
20                 ~~Constitution of the United States does not require~~  
21                 ~~that—~~

22                         ~~“(A) social welfare programs discriminate~~  
23                         ~~against faith based providers of services; or~~

24                         ~~“(B) faith-based providers of services, as a~~  
25                         ~~prerequisite to participation in Federal pro-~~

*will drop(1)*

1        ~~grams, abandon their religious character and~~  
 2        ~~and censor their religious expression.~~

3        “(2) NONDISCRIMINATION.—Religious organiza-  
 4        tions are eligible to be program participants on the  
 5        same basis as any other nonprofit private organiza-  
 6        tion. Neither the Federal Government nor a State  
 7        receiving funds under such programs shall discrimi-  
 8        nate against an organization that is or applies to be  
 9        a program participant on the basis that the organi-  
 10       zation has a religious character.

11       “(d) RELIGIOUS CHARACTER AND FREEDOM.—

12       “(1) RELIGIOUS ORGANIZATIONS.—Except as  
 13       provided in this section, any religious organization  
 14       that is a program participant shall retain its inde-  
 15       pendence from Federal, State, and local government,  
 16       including such organization’s control over the defini-  
 17       tion, development, practice, and expression of its re-  
 18       ligious beliefs.

19       “(2) ADDITIONAL SAFEGUARDS.—Neither the  
 20       Federal Government nor a State shall require a reli-  
 21       gious organization to—

22                “(A) alter its form of internal governance;

23                or

24                “(B) remove religious art, icons, scripture,  
 25                or other symbols;

*Will insert language  
 saying must be  
 implemented  
 consistent w/  
 Establishment  
 Clause & the  
 free exercise  
 clause.*

1 in order to be a program participant.

2 "(e) NONDISCRIMINATION IN EMPLOYMENT.—

3 "(1) IN GENERAL.—Except as provided in para-  
4 graph (2), nothing in this section shall be construed  
5 to modify or affect the provisions of any other Fed-  
6 eral or State law or regulation that relates to dis-  
7 crimination in employment on the basis of religion.

8 "(2) EXCEPTION.—A religious organization  
9 that is a program participant may require that an  
10 employee rendering programs services adhere to—

11 "(A) the religious beliefs and practices of  
12 such organization; and

13 "(B) any rules of the organization regard-  
14 ing the use of drugs or alcohol.

15 "(f) RIGHTS OF PROGRAM BENEFICIARIES.—With  
16 respect to an individual who is a program beneficiary or  
17 a prospective program beneficiary, if the individual objects  
18 to a program participant on the basis that the participant  
19 is a religious organization, the following applies:

20 "~~(1) If the organization received a designated~~  
21 ~~direct award, the~~ <sup>state</sup> organization shall arrange for the  
22 individual to receive program services through an al-  
23 ternative entity.

24 "~~(2) If the organization received a designated~~  
25 ~~subaward, the non-Federal entity that made the~~

will replace w/ welfare reform language which refers to title VII exemption.  
Sec. 584(a) p 77  
will address fact that courts have been interpreting welfare type language as applying to entire institution.

will revise to conform w/ welfare reform so ① states provide non-relig alternative ② require relig.org to refer individuals back to state or other entity for new placement ③ ensure individuals get list of options, including secular placements.

need to add language ② ③ ③

1 ~~subaward shall arrange for the individual to receive~~  
 2 ~~the program services through an alternative program~~  
 3 ~~participant.~~

4 ~~“(3) If the organization is providing services~~  
 5 ~~pursuant to voucherized assistance, the designated~~  
 6 ~~award recipient that operates the voucherized assist-~~  
 7 ~~ance program shall arrange for the individual to re-~~  
 8 ~~ceive the program services through an alternative~~  
 9 ~~provider.~~

10 ~~“(4) Arrangements under any of paragraphs~~  
 11 ~~(1) through (3) with an alternative entity shall pro-~~  
 12 ~~vide for program services the monetary value of~~  
 13 ~~which is not less than the monetary value of the pro-~~  
 14 ~~gram services that the individual would have re-~~  
 15 ~~ceived from the religious organization involved.~~

16 ~~“(5) NONDISCRIMINATION.—~~

17 ~~“(A) IN GENERAL.—Except as provided in~~  
 18 ~~subparagraph (B) or as otherwise provided in~~  
 19 ~~law, a religious organization that is a program~~  
 20 ~~participant shall not in providing program serv-~~  
 21 ~~ices discriminate against a program beneficiary~~  
 22 ~~on the basis of religion or religious belief.~~

23 ~~“(B) LIMITATION.—A religious organiza-~~  
 24 ~~tion that is a program participant may require~~  
 25 ~~a program beneficiary who has elected in ac-~~

will drop (B)

1 ~~accordance with paragraph (1) to receive program~~  
 2 ~~services from such organization—~~

3 ~~“(i) to actively participate in religious~~  
 4 ~~practice, worship, and instruction; and~~

5 ~~“(ii) to follow rules of behavior de-~~  
 6 ~~vised by the organizations that are reli-~~  
 7 ~~gious in content or origin.~~

8 “(g) FISCAL ACCOUNTABILITY.—

9 “(1) IN GENERAL.—Except as provided in para-  
 10 graph (2), any religious organization that is a pro-  
 11 gram participant shall be subject to the same regula-  
 12 tions as other recipients of awards of Federal finan-  
 13 cial assistance to account, in accordance with gen-  
 14 erally accepted auditing principles, for the use of the  
 15 funds provided under such awards.

16 “(2) LIMITED AUDIT.—With respect to the  
 17 award involved, if a religious organization that is a  
 18 program participant maintains the Federal funds in  
 19 a separate account from non-Federal funds, then  
 20 only the Federal funds shall be subject to audit.

*want to keep;  
 similar to  
 welfare reform.*

21 “(h) COMPLIANCE.—With respect to compliance with  
 22 this section by an agency, a religious organization may  
 23 obtain judicial review of agency action in accordance with  
 24 chapter 7 of title 5, United States Code.

1 "SEC. 583. LIMITATIONS ON USE OF FUNDS FOR CERTAIN  
2 PURPOSES.

3 "(a) IN GENERAL.—Except as provided in subsection  
4 (b), no funds provided directly to an entity under a des-  
5 ignated program shall be expended for sectarian worship  
6 or instruction.

7 ~~"(b) EXCEPTION.—Subsection (a) shall not apply to~~  
8 ~~assistance provided to or on behalf of a program bene-~~  
9 ~~ficiary if the beneficiary may choose where such assistance~~  
10 ~~is redeemed or allocated.~~

*will drop (b)*

11 "SEC. 584. ADMINISTRATION OF PROGRAM AND TREAT-  
12 MENT OF FUNDS.

13 "(a) FUNDS NOT AID TO INSTITUTIONS.—Financial  
14 assistance under a designated program ~~provided to or on~~  
15 ~~behalf of program beneficiaries~~ is aid to the beneficiary,  
16 not to the organization providing program services. ~~The~~  
17 ~~receipt by a program beneficiary of program services at~~  
18 ~~the facilities of the organization shall not constitute Fed-~~  
19 ~~eral financial assistance to the organization involved.~~

*will revise as  
shown.  
Intent is to  
reflect Congress  
intent that  
funds are aid  
to individual,  
not institution.*

20 ~~"(b) PROHIBITION ON STATE DISCRIMINATION IN~~  
21 ~~USE OF FUNDS.—No provision in any State constitution~~  
22 ~~or State law shall be construed to prohibit the expenditure~~  
23 ~~of Federal funds under a designated program in a reli-~~  
24 ~~gious facility or by a religious organization that is a pro-~~  
25 ~~gram participant. If a State law or constitution would pre-~~  
26 ~~vent the expenditure of State or local public funds in such~~

*agreed to  
drop (b)*

1 ~~a facility or by such an organization, then the State or~~  
 2 ~~local government shall segregate the Federal funds from~~  
 3 ~~State or other public funds for purposes of carrying out~~  
 4 ~~the designated program.~~

5 "SEC. 585. EDUCATIONAL REQUIREMENTS FOR PERSONNEL  
 6 IN DRUG TREATMENT PROGRAMS.

7 "(a) FINDINGS.—The Congress finds that—

8 "(1) establishing formal educational qualifica-  
 9 tion for counselors and other personnel in drug  
 10 treatment programs may undermine the effective-  
 11 ness of such programs; and

12 "(2) such formal educational requirements for  
 13 counselors and other personnel may hinder or pre-  
 14 vent the provision of needed drug treatment services.

15 "(b) LIMITATION ON EDUCATIONAL REQUIREMENTS  
 16 OF PERSONNEL.—

17 "(1) TREATMENT OF RELIGIOUS EDUCATION.—

18 If any State or local government that is a program  
 19 participant imposes formal educational qualifications  
 20 on providers of program services, including religious  
 21 organizations, such State or local government shall  
 22 treat religious education and training of personnel  
 23 as having a critical and positive role in the delivery  
 24 of program services. In applying educational quali-  
 25 fications for personnel <sup>to religious organizations</sup> in religious organizations,  
 who provide substance abuse treatment

*Propose revised language as shown to clarify that religious training must be related to substance abuse*

1 such State or local government shall give credit for  
 2 ~~religious~~ <sup>substance abuse</sup> education and training <sup>provided by the religious organization</sup> equivalent to credit  
 3 given for secular course work in drug treatment or  
 4 ~~any other secular subject that is of similar grade~~  
 5 ~~level and duration.~~ <sup>If the education qualifications established by States</sup>  
 6 ~~for providing substance abuse treatment includes education qualifications not~~

7 “(2) RESTRICTION OF DISCRIMINATION RE-  
 8 QUIREMENTS.—

8 “(A) IN GENERAL.—Subject to paragraph  
 9 (1), a State or local government that is a pro-  
 10 gram participant may establish formal edu-  
 11 cational qualifications for personnel in organiza-  
 12 tions providing program services that contribute  
 13 to success in reducing drug use among program  
 14 beneficiaries.

15 “(B) EXCEPTION.—The Secretary shall  
 16 waive the application of any educational quali-  
 17 fication imposed under subparagraph (A) for an  
 18 individual religious organization, if the Sec-  
 19 retary determines that—

20 “(i) the religious organization has a  
 21 record of prior successful drug treatment  
 22 for at least the preceding three years;

23 “(ii) the educational qualifications  
 24 have effectively barred such religious orga-

specific to substance  
 abuse treatment,  
 religious education  
 and training should  
 be given credit  
 equivalent to  
 secular education  
 and training not  
 related to substance  
 abuse services.

1 nization from becoming a program pro-  
2 vider;

3 “(iii) the organization has applied to  
4 the Secretary to waive the qualifications;  
5 and

6 “(iv) the State or local government  
7 has failed to demonstrate empirically that  
8 the educational qualifications in question  
9 are necessary to the successful operation of  
10 a drug treatment program.”

11 **SEC. 203. CRA CREDIT FOR INVESTMENTS IN COMMUNITY**  
12 **DEVELOPMENT ORGANIZATIONS LOCATED IN**  
13 **RENEWAL COMMUNITIES.**

14 Section 804 of the Community Reinvestment Act of  
15 1977 (12 U.S.C. 2903) is amended by adding at the end  
16 the following new subsection:

17 “(c) INVESTMENTS IN CERTAIN COMMUNITY DEVEL-  
18 OPMENT ORGANIZATIONS.—In assessing and taking into  
19 account, under subsection (a), the record of a regulated  
20 financial institution, the appropriate Federal financial su-  
21 pervisory agency may consider, as a factor, investments  
22 of the institution in, and capital investment, loan partici-  
23 pation, and other ventures undertaken by the institution  
24 in cooperation with, any community development organi-  
25 zation (as defined in section 234 of the Bank Enterprise

WR -  
Charitable choice

**S. 997 Summary**  
**INTERNAL WORKING DRAFT—NOT TO BE DISSEMINATED**  
**June 9, 2000**

*These comments reflect initial reactions from DPC and very preliminary reactions from, HHS, HUD, White House Counsel, OLC.*

**Title 1: Assistance to States in Providing Charity Tax Credits**

- Section applies to states with a charity tax credit – a nonrefundable credit against state income tax – or a comparable benefit. Qualified charities must be 501(c)(3), assist primarily poor people, and spend at least 75% of expenses on anti-poverty programs serving individuals and families below 185% of the Federal Poverty Line (approximately \$21,225 for a family of three). Collection organizations (such as United Way or Federal Combined Campaign) count as a qualified charity if donor designates in writing that contribution is to a qualified charity and which distributes 90 percent of its gifts and grants received that are designated for such qualified charities.
- States may use up to 50% of the federal funds provided under TANF, CCDF, SSBG, CSBG, LIHEAP, JTPA, and CDBG, for any purpose (presumably to offset state revenue lost through the charity tax credit). The total aggregate amount used for broader purposes is capped at 100% of revenue lost from the charity tax credit. Any excess amount (state charity tax credit revenue losses above the 50% cap) can count toward state TANF MOE.
- Effective January 1, 2000 (though presumably this would be updated).

*We believe this is extremely problematic because it would:*

- Reduce total funding available to assist low-income families in a state by offsetting dedicated block grant funding to reimburse the state for revenue lost to the credit.
- Allow use of the funds for 'any purpose.'
- Divert funds from the stated purpose of the block grant to other purposes: CCDBG funding could be used for emergency shelter instead of child care. Depending on state choices, this could potentially divert tens of billions of dollars of federal funding for low-income programs to state coffers. (See table below.)
- Spend federal dollars without accountability; no provision for needs assessment or outcome measures. There would be no contracts, no goals, no measurement of success, and no ability to decertify a charity for poor performance.
- Redistribute block grant funds within state without consideration of geographic need or block grant formula. Federal anti-poverty programs were created in part because poor communities were not able to provide services based solely on ability to collect local taxes, or charitable contributions. Congress developed complex funding formulas based on assessment of need. A state would likely find that wealthier communities have a greater capacity to use charity credits – diverting block grant funds from areas with great need.
- Create incentive for donations to charities on the basis of larger tax benefit (credit instead of the usual charitable deduction), interfering with donor choice. Donors would be provided an

incentive to give to 'qualified charities' diverting funding from the arts, education, etc.

- The definition of qualified charity is very limiting. Many charities do not currently – and would not have the capacity to – determine income eligibility for all services. Many charities provide a mix of services to families and would not meet the requirement to spend a minimum of 75% of total funds on 'poverty program expenses'. This is particularly true, since a maximum of only 25% of total funding is available for all management, fundraising, services to families with income above the charity tax credit threshold, legislative advocacy, and legal services.
- Charities cannot count legal services or legislative advocacy as poverty services.
- In 1998, the reauthorizing language for CSBG gave states authority to use leftover administrative funds to pay for a charity tax credit. The charity tax credit language in CSBG is similar to the proposed language in S. 997. No state has taken advantage of that authority.

## **Title II: Budget Offset**

Reduces the EITC to single, childless workers.

*Our understanding is that this might be dropped.*

## **Title III: Tort Reforms**

Frees businesses of liability for injuries or deaths caused by donated equipment or at business facility except in cases of gross negligence or misconduct.

*Our understanding is that this might be dropped.*

## **Title IV: Charitable Choice Expansion Act**

- Religious organizations must be considered on the same basis as other nongovernmental organizations for any federal, state or local program (through grants, contracts, certificates, vouchers, or other forms of disbursement), as long as implemented consistent with Establishment Clause.
- The bill excludes programs under: section 14101 of Elementary and Secondary Education Act, Higher Education Act, Head Start, and Child Care and Development Block Grant.
- Funds provided through a grant or contract can't be used for sectarian worship, instruction or proselytization.
- Religious organizations can require employees to adhere to religious tenets, teaching, and rules forbidding alcohol or drug use.
- Non-governmental organizations under contract with the federal, state or local government, that can subcontract to other non-governmental organizations, have the same duties as the government but retain rights of a non-governmental organization.

- Religious organizations providing assistance through grants or contracts can't discriminate against beneficiaries in carrying out the program on basis of religion, a religious belief, a refusal to hold religious belief, or refusal to actively participate in religious practice. If assistance is through voucher, certificate or other indirect disbursement, the organization can't deny anyone admission into the program on basis of religion, a religious belief, of refusal to hold religious belief. (Similar to welfare reform, but distinguishing between type of disbursement could be problematic.)
- State or local funding for religious organizations can be segregated or commingled with federal funds. (Not in welfare reform or other bills.)
- Religious organizations must segregate government funds into separate account, and only those funds are subject to audit. (Same as welfare reform.)
- Religious organizations shall retain independence and can't be required to alter its form of governance or remove religious icons or symbols. (Same as welfare reform and agreed upon substance abuse language.)
- Accepting federal funds does not interfere with a religious organization's title VII exemption under the Civil Rights Act which allows them to hire individuals of a particular religion. (Same as welfare reform and agreed upon substance abuse language.)
- If a beneficiary objects to religious character of organization, the appropriate federal, state or local governmental entity must provide accessible alternative organization in timely manner. The governmental entity must ensure that individuals are notified of their rights. (Similar to welfare reform and agreed upon substance abuse language.)

*We believe this raises serious legal and policy concerns as follows:*

- The bill vastly expands the scope of charitable choice, and does so in a way that raises constitutional concerns. Several provisions in this version of charitable choice go beyond provisions the Administration has accepted in the past. The agencies have not had an opportunity to assess how charitable choice might apply in a broad new array of federal programs. Currently, charitable choice has only been enacted for welfare reform and CSBG. The Justice Department has said these particular provisions can and must be construed and implemented in a manner that is consistent with the constitutional line between church and state. The Administration has agreed to similar provisions in the areas of substance abuse prevention and treatment.
- While the bill appears to exclude most children's programs, there may be others that are not excluded. Applying charitable choice to any program serving children raises particularly serious legal and policy concerns.

- Allowing religious organization to require their employees to engage in religious practices may raise serious constitutional problems as well policy and political problems, and has not been included in any charitable choice bill signed by the President. A similar provision was included in Watts-Talent as introduced, but was dropped from the charitable choice provisions negotiated by the Administration and Speaker Hastert.
- The term “vouchers” raises policy problems in the education area and was dropped from the substance abuse charitable choice provisions negotiated by the Administration and Speaker Hastert.
- Implies that funds provided through vouchers, certificates and other forms of disbursement can be used for sectarian worship, instruction or proselytization. Allowing any funds for such religious purposes would raise serious policy and legal concerns.
- It appears that the bill would have weaker non-discrimination protections for beneficiaries who participate through vouchers, certificates or other forms of disbursement. This may raise constitutional concerns(?).
- Unclear what the impact of the subcontracting provision would be, but it *potentially* raises constitutional issues (Larkin v. Grendel’s Den) insofar as it allows religious organizations to make subawards. This was an issue the Administration worked hard to avoid in the substance abuse charitable choice provisions negotiated with the House.

**Title V: Tax-free Distributions from an Individual Retirement Accounts**

*Our understanding is that this might be dropped.*

Amends section 408 of IRS Code of 1986. Charitable distributions from an individual retirement plan to an organization described in section 170(c) or to a charitable trust, fund or annuity are not included in the individual’s gross income. Charitable distributions that were treated as an investment in the contract are now treated as income under section 664(b)(1).

BACKGROUND FOR TITLE I

*Maximum* potential funds that could be diverted from anti-poverty programs as result of Title I (if all states were to enact a charity credit that resulted in revenue losses equivalent to 50% of all affected block grant funds and their TANF MOE).

<b>Program</b>	<b>FY 2000 Funding Level</b>
TANF block grant	\$16.689B
Child care development block grant	\$1.182B
Child care entitlement	\$2.367B
SSBG	\$1.775B
CSBG	\$593

LIHEAP	\$1.1B
JTPA	\$5.4B
CDBG	\$4.8B
Total	\$33.906B
Up to 50%	\$16.953B
TANF MOE at 75%	\$10.426B
<b>TOTAL</b>	<b>\$27.379B</b>