

## EXECUTIVE SUMMARY

The welfare reform law of 1996—the Personal Responsibility and Work Opportunity Reconciliation Act—contains provisions that allow faith-based organizations (FBOs) to compete for public funding to provide social services under the Temporary Assistance for Needy Families (TANF) program on the same terms as any other provider, without having to alter their religious character, and at the same time preserving the religious freedom of service recipients. In 2000, Congress enacted similar “Charitable Choice” provisions for certain programs funded by the Substance Abuse and Mental Health Services Administration, the largest of which is the Substance Abuse Prevention and Treatment (SAPT) block grant. Regulations clarifying the TANF and SAPT Charitable Choice rules were issued in 2003.

Although there are slight variations, the basic Charitable Choice rules specified that:

- FBOs were no longer required to remove religious icons, symbols, and scripture while delivering services funded by the federal government and could retain religious standards for organizational governance and staffing.
- FBOs receiving direct government funding were forbidden to use government contracts or grants for “inherently religious activities,” such as religious instruction, worship, or proselytizing.
- FBOs receiving direct government funding were forbidden to discriminate against prospective or current clients on the basis of their religion or lack of religion and to require participation in religious activities as a condition of receiving federally funded services.
- The state or the government agency responsible had to ensure that clients objecting to the religious nature of services were offered an alternative provider to which they did not object on religious grounds.
- Charitable Choice provisions did not preempt state laws or constitutional provisions that restrict the use of state funds for religious organizations.

The Office of the Assistant Secretary for Planning and Evaluation (ASPE), U.S. Department of Health and Human Services (HHS), studied how state and local officials understand and apply these Charitable Choice provisions. The study team—Mathematica Policy Research, Inc. (MPR) with assistance from subcontractors the Hudson Institute, the Center for Public Justice, and the Sagamore Institute of Policy Research—surveyed agencies contracting with TANF or SAPT funds in all 50 states and the District of Columbia, along with local TANF agencies in selected counties.

## A. KEY LESSONS LEARNED

While state TANF funding for faith-based service providers has increased, most TANF and SAPT agencies report that the advent of Charitable Choice law has had little or no effect on their preexisting contracting policies regarding FBOs. In jurisdictions that report few effects from Charitable Choice, the extent to which a level playing field exists for FBOs seeking TANF or SAPT funding in those jurisdictions may depend heavily on the extent to which it existed before Charitable Choice legislation. Despite reports of little change in their policies that govern contracting with FBOs, however, many TANF and SAPT agencies have made significant efforts to reach out to prospective faith-based providers to encourage partnerships with government and to remove barriers.

Nearly all agencies recognize that certain characteristics and behaviors make FBOs ineligible for funding under Charitable Choice. However, several agencies did not appear to know or apply the relevant Charitable Choice provisions that establish the eligibility of certain types of FBOs for TANF or SAPT funding. These discrepancies may indicate a need for greater training of agency staff.

Findings also indicate a need for training agency staff in communicating Charitable Choice provisions to current contractors. Regular communication of important Charitable Choice provisions to faith-based providers was associated with the funding of FBOs without previous government contracting experience and of FBOs that are religiously expressive in their mission, staffing, and interactions with clients. This association was especially strong when agencies used means other than the text of the contract to communicate Charitable Choice provisions to providers.

## B. SUMMARY OF FINDINGS

**Levels of TANF and SAPT Contracting with FBOs.** The overall number of TANF and SAPT agencies contracting with FBOs was relatively high. Contracting with FBOs was more prevalent among state TANF agencies than among local TANF agencies and more prevalent among local TANF agencies than among state SAPT agencies. Of the state TANF agencies administering contracts in 2004, 78 percent had contracts with FBOs. Among local TANF agencies with contracts, 70 percent had contracts with FBOs. Fifty-nine percent of state SAPT agencies with contracts had contracts with FBOs. The proportion of total contract dollars flowing to FBOs was considerably higher for the average state TANF agency than for either the average local TANF agency or the average state SAPT agency.

**Contracting with FBOs by TANF Agencies over Time.** We compared levels of Charitable Choice contracting by state TANF agencies between 2001 and 2004 for 34 states, using 2001 data collected by the (then) U.S. General Accounting Office (U.S. General Accounting Office 2002). The proportion of state TANF agencies with TANF contracts was slightly lower in 2004 than in 2001 (94 versus 97 percent). However, the proportion of currently contracting agencies holding contracts with FBOs rose, from 64 percent in 2001 to 78 percent in 2004. The dollar value of the average agency's TANF contracts fell by 25 percent during the

period (from \$24.4 to \$18.0 million in fiscal year 2004 dollars), but the proportion of dollars going to FBOs rose, from 8 to 36 percent.

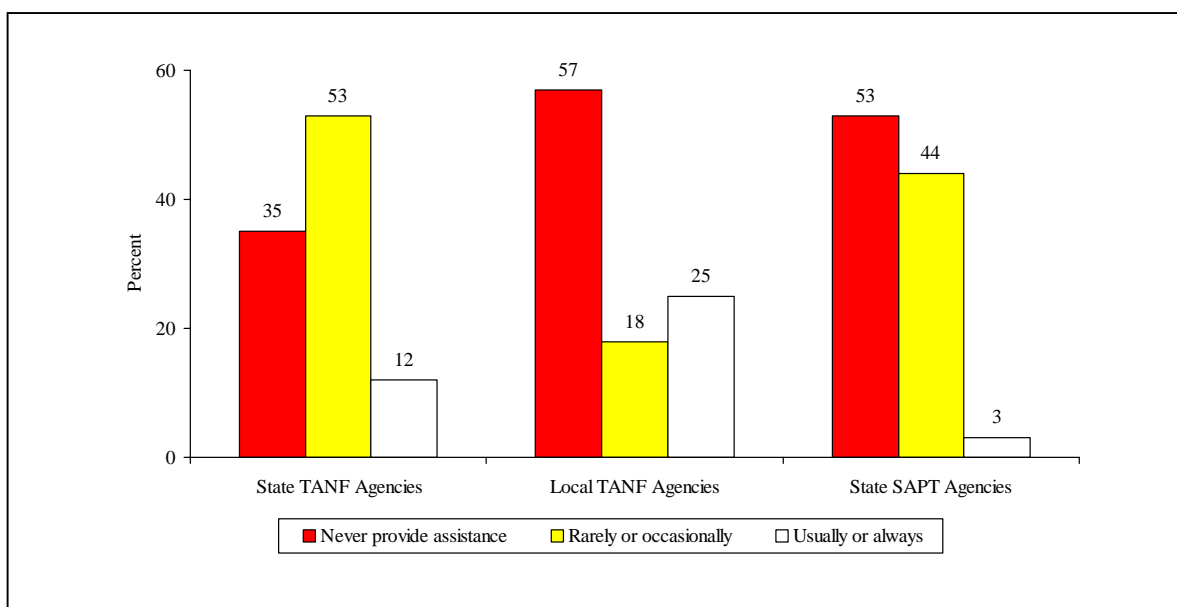
**TANF and SAPT Agency Policies for Contracting with FBOs.** Most TANF and SAPT agencies reported that Charitable Choice legislation had little or no effect on their preexisting contracting policies toward FBOs. Three-fifths of state and local TANF agencies reported no change in their contracting policies regarding faith-based providers since fiscal year 1996, and more than four-fifths of state SAPT agencies indicated no change since fiscal year 2001. Other key findings on contracting policies are:

*Outreach to Faith-Based Providers.* About two-fifths of state TANF agencies, three-fifths of local TANF agencies, and one-third of state SAPT agencies indicated that a statewide faith community liaison (FCL), a regional FCL, or statewide office of faith- and community-based initiatives encouraged FBOs to apply for TANF or SAPT funding. Four-fifths of state TANF agencies, three-quarters of local TANF agencies, and three-fifths of state SAPT agencies indicated that they usually or always adopt at least some strategies to promote partnerships with FBOs, including indicating in funding announcements that FBOs are eligible to apply, maintaining lists of FBOs that could be potential contractors or grant recipients, and relying on advertisements or announcements to inform FBOs of funding opportunities.

*Provision of Technical Assistance to FBOs.* Only 12 percent of state TANF agencies, 25 percent of local TANF agencies, and 3 percent of state SAPT agencies said that FBOs usually or always receive technical assistance to help them compete for government contracts and grants (Figure 1). Majorities of local TANF and state SAPT agencies reported that FBOs in their jurisdiction *never* receive such assistance.

FIGURE 1

FEW AGENCIES PROVIDE TECHNICAL ASSISTANCE TO HELP PREPARE FBOs TO COMPETE FOR FUNDING



*Treatment of FBOs Ineligible for TANF and SAPT Funding.* Certain characteristics would make an FBO ineligible for funding under Charitable Choice. These characteristics include (1) using federal funds for religious instruction, worship, or proselytizing; (2) refusing to serve clients on the basis of their religious affiliation and commitment or lack thereof; and (3) requiring clients to participate in prayer or other inherently religious activities. At least 90 percent of each agency type said that a hypothetical FBO with any of these characteristics or behaviors would have at least somewhat diminished chances of receiving TANF or SAPT funding, consistent with Charitable Choice provisions. However, only one-half of state TANF agencies, three-fifths of local TANF agencies, and two-fifths of state SAPT agencies showed that they understood the Charitable Choice provision that any religious instruction, worship, or proselytizing must occur *at a different time or location* than the services provided with government funds.

*Treatment of FBOs Eligible for TANF and SAPT Funding.* Most agencies reported that FBOs eligible for funding under Charitable Choice would *not* have diminished chances of receiving funding. However, a substantial number of agencies expressed reservations about certain behaviors:

- One-third of local TANF agencies reported that FBOs that use religious standards of belief and behavior for hiring and retaining staff supported with federal funds would have diminished chances of receiving funding.
- Nearly half of SAPT agencies reported that FBOs that are religious congregations that lack a separate nonprofit corporation to provide federally funded services would have diminished chances of receiving funding.
- Nearly half of local TANF agencies indicated that FBOs committed to the spiritual transformation of clients in situations in which clients could choose a comparable, accessible alternative if they objected to a provider's religious character would have diminished chances of receiving funding.
- Charitable Choice regulations also specify that successful faith-based providers remain eligible for SAPT funding even if their staff members lack state and local certification, provided that the staff members have comparable experience in FBOs. Three-quarters of state SAPT agencies responded that such FBOs would have diminished prospects of receiving funding, Charitable Choice regulations notwithstanding.

*Treatment of FBOs of Uncertain Eligibility for TANF and SAPT Funding.* The survey asked about the funding chances of hypothetical FBOs for which eligibility under current law is uncertain and may depend on state law, local ordinances, and precise interpretation of federal law. Agencies reported the following funding prospects for such FBOs:

- Sixty-two percent of state TANF agencies, 76 percent of local TANF agencies, and 67 percent of state SAPT agencies viewed funding chances as limited for FBOs that

would refuse, on the basis of religious convictions, to hire staff for the federally funded program on the basis of their sexual orientation.

- Sixty-five percent of state TANF agencies, 62 percent of local TANF agencies, and 37 percent of state SAPT agencies indicated that funding chances would be at least somewhat diminished for FBOs that include religious concepts or themes in their TANF- or SAPT-funded program.
- About three-fifths of state TANF agencies, four-fifths of local TANF agencies, and three-fifths of state SAPT agencies indicated that funding chances would be diminished for FBOs committed to the religious conversion of clients, even if clients who object to a provider's religious character can choose a comparable, accessible alternative provider.

*Agency Efforts to Inform Contractors of Specific Charitable Choice Provisions.* Because of increasing emphasis on the Charitable Choice initiative and its visibility as an Administration priority, we wanted to assess the extent to which contracting agencies informed potential and actual FBO contractors about Charitable Choice provisions. The ability of FBOs to comply with the requirements of Charitable Choice and use its benefits depends on what FBOs know about their rights and responsibilities under the law. The survey asked TANF and SAPT agencies how frequently agency staff inform FBOs, either orally or in writing, of specific provisions. To encourage agency officials to accurately report their communication with providers, the questionnaire did not specify which of the listed provisions were part of the Charitable Choice rules.

- Provisions indicating that religious congregations may receive TANF or SAPT funds without establishing a separate nonprofit corporation were communicated regularly by only 30 percent of state TANF agencies, 7 percent of local TANF agencies, and 4 percent of state SAPT agencies.
- Provisions indicating that providers may display religious symbols at the location where services are delivered with TANF or SAPT funds were communicated regularly by only 23 percent of state TANF agencies, 11 percent of local TANF agencies, and 12 percent of state SAPT agencies.
- Provisions indicating that providers may use religious standards for determining membership on their governing boards were communicated regularly by only 21 percent of state TANF agencies and 8 percent of local TANF agencies and state SAPT agencies.
- Provisions indicating that providers may use religious standards for hiring staff with TANF or SAPT funds were communicated regularly by only 18 percent of state TANF agencies and 8 percent of local TANF agencies and state SAPT agencies.
- Provisions indicating that clients must be served by the TANF- or SAPT-funded program regardless of clients' religious affiliation, religious commitment, or lack

thereof were communicated regularly by 52 percent of both state TANF agencies and state SAPT agencies, and 74 percent of local TANF agencies.

- Provisions indicating that clients must not be required to participate in prayers or other inherently religious activities were communicated regularly by 57 percent of state TANF agencies and 63 percent of local TANF agencies, but by only 28 percent of state SAPT agencies.
- Provisions indicating that clients who object to a provider's religious character must be offered a comparable, accessible alternative were communicated regularly by 47 percent of state TANF agencies and 54 percent of local TANF agencies, but by only 28 percent of state SAPT agencies.
- Provisions specifying that TANF and SAPT funds may not be used to fund religious instruction, worship, or proselytizing were communicated regularly by 61 percent of state TANF agencies, 70 percent of local TANF agencies, and 44 percent of state SAPT agencies.
- Provisions specifying that any religious instruction, worship, or proselytizing must be held at a separate time or in a separate location from TANF- and SAPT-funded activities were communicated regularly by 34 percent of state TANF agencies, 41 percent of local TANF agencies, and 17 percent of state SAPT agencies.
- Provisions specifying that the same rules that apply to prime contractors must also apply to subcontractors were communicated regularly by 68 percent of state TANF agencies, 89 percent of local TANF agencies, and 54 percent of state SAPT agencies.

For the 10 important Charitable Choice provisions already mentioned, only 23 percent of state TANF agencies, 17 percent of local TANF agencies, and 5 percent of state SAPT agencies indicated that they usually or always communicate six or more provisions to faith-based providers (Figure 2).

*Agency Actions to Protect the Religious Freedom Rights of Providers and Clients.* The survey measured the extent to which agencies seek to protect the religious freedom rights of providers and clients under Charitable Choice (Figure 3):

- Thirty-nine percent of state TANF agencies, 19 percent of local TANF agencies, and 8 percent of state SAPT agencies reported that they regularly provided information on the procedures for protecting religious freedom rights.
- Forty-four percent of state TANF agencies, 54 percent of local TANF agencies, and 35 percent of state SAPT agencies regularly inform clients about their right to an alternative provider if they object to a current provider's religious character.
- Twenty-eight percent of state TANF agencies regularly assess client satisfaction with their provider, compared with 34 percent of local TANF and state SAPT agencies.

FIGURE 2

FEW AGENCIES COMMUNICATE KEY CHARITABLE CHOICE PROVISIONS TO FAITH-BASED PROVIDERS

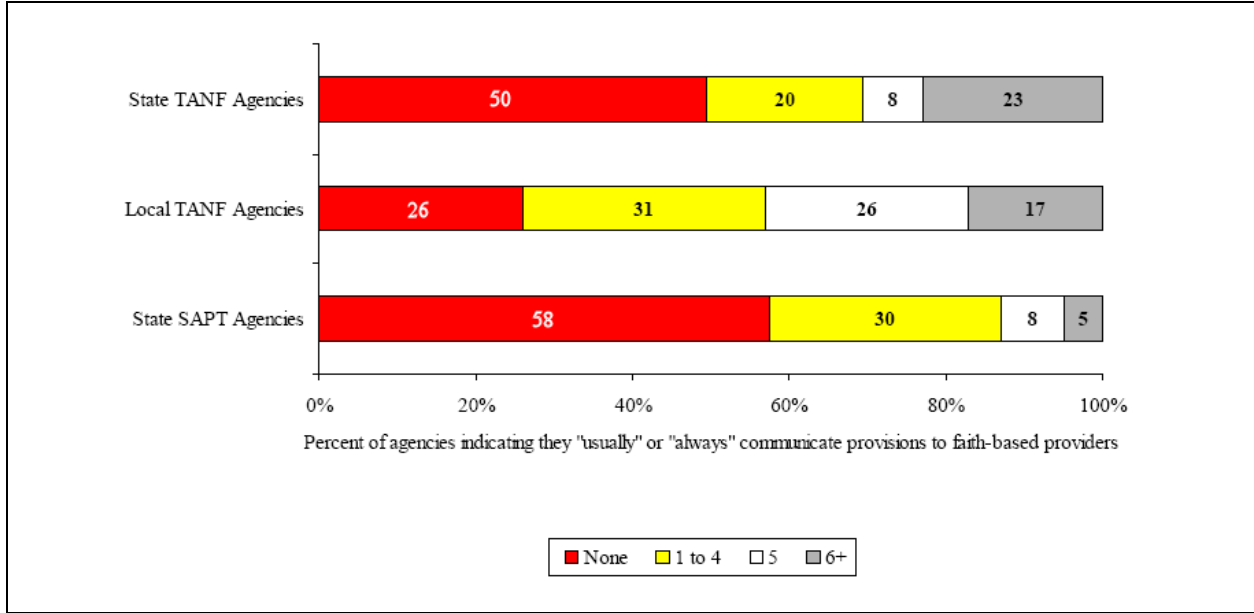
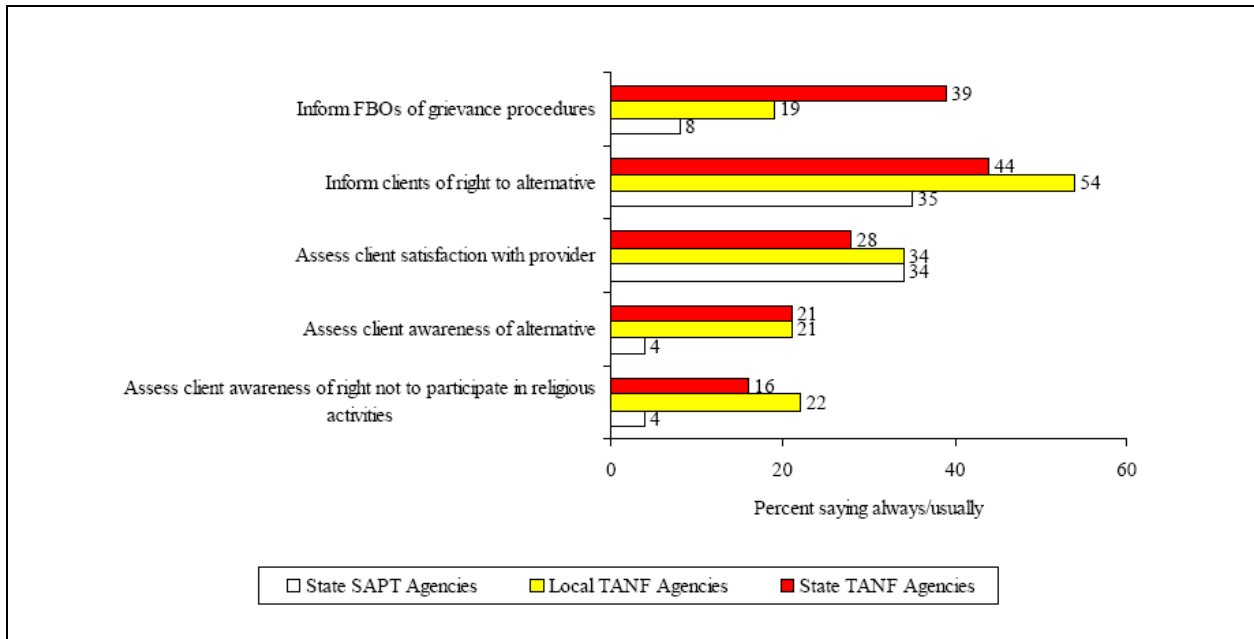


FIGURE 3

MOST AGENCIES DO NOT CONSISTENTLY SAFEGUARD THE RELIGIOUS FREEDOM RIGHTS OF FAITH-BASED PROVIDERS AND THEIR CLIENTS



- Twenty-one percent of state and local TANF agencies and 4 percent of state SAPT agencies regularly contact clients to determine if they are aware of their right to an alternative provider.
- Sixteen percent of state TANF agencies, 22 percent of local TANF agencies, and 4 percent of state SAPT agencies regularly contact clients to determine if they are aware of their right not to participate in religious activities.

*Guidance Provided to Agency Staff Regarding Charitable Choice Provisions.* Sixty-five percent of state TANF agencies, 56 percent of local TANF agencies, and 39 percent of state SAPT agencies reported that their agency staff had ever received any training, workshops, legal guidance, procurement manuals, policy statements, or other assistance concerning provisions affecting contracting with FBOs. For state TANF and state SAPT agencies, the most common source of technical assistance on contracting with FBOs came from a federal agency. In contrast, for local TANF agencies, the most common source of assistance was their state.

### **C. RELATING FBO CHARACTERISTICS AND BEHAVIOR TO AGENCY POLICIES**

To compare the characteristics and behavior of faith-based providers with the policies and perspectives of the corresponding agencies, we linked agency responses to the responses of faith-based TANF and SAPT contractors surveyed in 2001. We found that:

- Faith-based providers holding TANF or SAPT contracts with agencies publicizing contracting opportunities for FBOs are more likely to be religiously expressive than other FBOs but less likely to train their staff in appropriate ways of sharing their faith.
- Agencies preferring that TANF or SAPT providers not be committed to the religious conversion of clients were more likely to contract with FBOs that hire staff regardless of religion and that do not offer religious programming to clients in the government-funded program.
- Compared with FBOs holding contracts mentioning most of the Charitable Choice provisions, FBOs receiving notification of the provisions only through other means were more likely to be religious congregations and more likely to indicate that spiritual transformation was important for program outcomes; less likely to report that most of their paid staff share their faith; less likely to make program staff available to discuss spiritual matters with clients; more likely to seek personal involvement with clients regarding matters of faith; and more likely to offer clients the option of participating in religious programs.
- FBOs contracting with agencies that regularly contact clients to ensure that they know their religious freedom rights were more likely than other FBOs to notify clients of their right to choose an alternative provider. FBOs contracting with agencies communicating the safeguard procedures to faith-based contractors were disproportionately religious congregations, were more likely than other FBOs to have



been recruited by the agency for their current contract, and were less likely to have held government contracts before 1996.

#### **D. AREAS FOR FURTHER RESEARCH**

This study leaves several unresolved issues that may merit further research. New data collection could support the study of trends in state SAPT and local TANF contracting and could provide nationally representative samples of local TANF agencies and of FBOs contracting with TANF or SAPT agencies. Analysis of TANF and SAPT contract documents from a representative group of agencies would shed light on the extent to which the contracts reflect Charitable Choice provisions. Interviews with state FCLs would be valuable for learning about their activities and linking their responses to responses from the agencies in their states. Data collection on program clients would shed light on clients' satisfaction with their providers and their awareness of their rights under Charitable Choice. Studies of the structure and implementation of vouchers and other mechanisms by which clients choose a social service provider would give more information to policymakers interested in establishing such mechanisms. Finally, rigorous studies of the impacts of vouchers could increase understanding of how expanding clients' choice of providers affects client well-being and how expanding access to faith-based providers affects the religious affiliation and commitments of clients.