



**U.S. Department of Justice**

Office of Justice Programs

*Office for Civil Rights*

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*Washington, D.C. 20531*

**Via Certified Mail**

November 15, 2011

J. Michael Brown, Secretary  
Kentucky Justice and Public Safety Cabinet  
125 Holmes Street  
Frankfort, Kentucky 40601-2108

Re: Supplemental Compliance Review Report for the Kentucky Justice and Public  
Safety Cabinet  
Docket No. 09-OCR-0273

Dear Secretary Brown:

On January 6, 2010, the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) issued a Compliance Review Report regarding the Kentucky Justice and Public Safety Cabinet's (JPSC) compliance with applicable federal civil rights laws as a State Administering Agency for certain DOJ programs. In the Compliance Review Report, the OCR specifically evaluated the JPSC's monitoring procedures for ensuring the compliance of subrecipients with these laws, including the DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 [hereinafter Equal Treatment Regulations].

In an effort to assess whether the JPSC has effective procedures in place to ensure that faith-based subrecipients of DOJ financial assistance comply with the Equal Treatment Regulations, on July 29, 2009, the OCR met with the executive leadership, program staff, and program beneficiaries of two faith-based subrecipients of the JPSC: (1) A New Beginning for Women Cultivating a Rose, Inc. (A New Beginning), in Louisville, Kentucky, which received DOJ funding under the Bureau of Justice Assistance's Edward Byrne Memorial Justice Assistance Grant (JAG) Program for its substance abuse residential facility from July 1, 2008 to June 30, 2010; and (2) Prodigal Ministries, Inc., in Crestwood, Kentucky, for which its Reentry Program has been in receipt of JAG Program funding since July 1, 2008, and has been awarded funds through June 30, 2012.

As a follow up to the OCR's January 6, 2010, Compliance Review Report, the OCR sent the JPSC a draft Supplemental Compliance Review Report regarding A New Beginning and Prodigal

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Ministries on October 14, 2011.<sup>1</sup> In a November 10, 2011, email, the JPSC indicated that it does not have any factual corrections to the draft Supplemental Compliance Review Report.

Based on the information that the OCR obtained from these two subrecipients, along with the OCR's review of the grant application materials that the subrecipients submitted to the JPSC, the OCR concludes that A New Beginning and Prodigal Ministries are not in compliance with the DOJ's Equal Treatment Regulations. The following Supplemental Compliance Review Report provides an overview of each subrecipient's DOJ-funded program and an analysis of whether the program appears to be in compliance with the Equal Treatment Regulations, along with recommendations that the JPSC take corrective action to ensure that, going forward, the subrecipients' use of DOJ funding complies with the Equal Treatment Regulations.<sup>2</sup>

## I. Overview of the Equal Treatment Regulations

The Equal Treatment Regulations require State Administering Agencies such as the JPSC to recognize that "[r]eligious organizations are eligible, on the same basis as any other organization, to participate in any [Justice] Department program for which they are otherwise eligible." 28 C.F.R. § 38.2(a). However, there are some limitations on the types of activities that faith-based organizations may fund with federal financial assistance. The Regulations state the following:

Organizations that receive direct financial assistance from the Department may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the Department. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the Department, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

28 C.F.R. § 38.2(b)(1); *see also* Exec. Order No. 13,559, 75 Fed. Reg. 71,319, 71,320 (Nov. 17, 2010). The Equal Treatment Regulations make clear that a faith-based organization that participates in DOJ-funded programs may continue to carry out its mission, including the practice and expression of its religious beliefs, as long as it does not use direct financial assistance from the DOJ to support inherently religious activities. *Id.* § 38.2(c); *see also* Exec. Order No. 13,559,

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<sup>1</sup> In the January 6 Compliance Review Report, the OCR noted that it would issue a report regarding A New Beginning and Prodigal Ministries under separate cover at a later date.

<sup>2</sup> The OCR understands that at this time, A New Beginning is no longer receiving DOJ funding administered by the JPSC to operate the residential facility that is the subject of this Report. However, should the JPSC award DOJ funding to A New Beginning in the future, the JPSC should take corrective action to ensure that the use of DOJ funding complies with the Equal Treatment Regulations.

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75 Fed. Reg. at 71,320. While the Equal Treatment Regulations specifically list worship, religious instruction, and proselytization as examples of inherently religious activities, this list is not exhaustive; in drafting the Regulations, the DOJ explicitly declined to "establish an acceptable list of all inherently religious activities." *Participation in Justice Department Programs by Religious Organizations; Providing Equal Treatment of All Justice Department Program Participants*, 69 Fed. Reg. 2832, 2834 (Jan. 21, 2004).

Additionally, under the Equal Treatment Regulations, a recipient of DOJ financial assistance "shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief." 28 C.F.R. § 38.2(d); *see also* Exec. Order No. 13,559, 75 Fed. Reg. at 71,320. Accordingly, when an organization elects to receive DOJ financial assistance, the Equal Treatment Regulations prohibit it from using any religion-based criteria to exclude potential beneficiaries or to discriminate against current beneficiaries. It is important to note that this provision protects individuals who hold no religious belief as much as those who adhere to a particular religion. *Participation in Justice Department Programs by Religious Organizations; Providing for Equal Treatment of All Justice Department Program Participants*, 69 Fed. Reg. at 2837; *see also* Exec. Order No. 13,559, 75 Fed. Reg. at 71,320 (explaining that recipients "should not be allowed to discriminate 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 attend or participate in a religious practice").

In regard to employment practices by faith-based organizations, the Equal Treatment Regulations set forth the following:

A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when the religious organization receives direct or indirect financial assistance from the Department. Some Department programs, however, contain independent statutory provisions requiring that all grantees agree not to discriminate in employment on the basis of religion. Accordingly, grantees should consult with the appropriate Department program office to determine the scope of any applicable requirements.

28 C.F.R. § 38.2(f). Thus, while a recipient faith-based organization maintains its exemption from the prohibition against employment discrimination on the basis of religion contained in Title VII of the Civil Rights Act, the particular DOJ program under which the recipient receives funding may contain its own statutory prohibition on discriminating on the basis of religion in employment decisions. In such instances, the OJP has determined that a faith-based organization may receive DOJ funds and continue to consider religion when hiring staff if it meets certain criteria and the faith-based organization certifies to the following: (1) the faith-based

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organization will offer all federally-funded services to all qualified beneficiaries without regard for the religious or non-religious beliefs of those individuals; (2) any activities of the faith-based organization that contain inherently religious content will be kept separate in time or location from any services supported by DOJ funding and will be offered only on a voluntary basis; and (3) the faith-based organization is a religious organization that sincerely believes that providing the services in question is an expression of its religious beliefs, that employing individuals of a particular religious belief is important to its religious exercise, and that having to abandon its religious hiring practice to receive federal funding would substantially burden its religious exercise. Faith-based organizations that are seeking an exemption to the funding program's prohibition against religious discrimination in employment must complete and retain a signed Certificate of Exemption for Hiring Practices on the Basis of Religion and attach it to the grant file. See [www.ojp.usdoj.gov/funding/other\\_requirements.htm](http://www.ojp.usdoj.gov/funding/other_requirements.htm).

Both A New Beginning and Prodigal Ministries receive JAG funding and are therefore subject to Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), 42 U.S.C. § 3789d(c), which prohibits discrimination on the basis of race, color, national origin, religion, or sex in employment practices and the delivery of services. Therefore, both of these faith-based organizations are subject to the Safe Street's Act's prohibition against religious discrimination in employment.

## II. A New Beginning's Substance Abuse Residential Facility

### A. Overview of Funded Program

According to A New Beginning's grant applications for JAG Program funding, A New Beginning is a substance abuse residential facility for women who have been recently incarcerated for substance- and alcohol-related offenses and are facing homelessness upon release from prison. A New Beginning also accepts women referred from other treatment facilities who want to make a change in their lives. During the OCR's July 29, 2009, onsite visit to A New Beginning, the executive director explained that A New Beginning has eight beds, and that women generally reside in the facility for six to twelve months. The executive director said that women receive counseling and education while at the residential facility, such as chemical dependency education and counseling, counseling from a licensed social worker, domestic violence education, and social skills education. Beneficiaries also go on social outings while residing at the facility, such as trips to museums, picnics, and sporting events. According to information provided by the JSPC, A New Beginning received \$40,950.00 in JAG Program grant funding for the period of July 1, 2008 to June 30, 2009, and received a continuation award in the amount of \$47,000.00 for the period of July 1, 2009 to June 30, 2010. A New Beginning did not receive funding in 2010 or 2011.

The executive director told the OCR that A New Beginning is not affiliated with any particular

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religion, but that she considers A New Beginning to be a faith-based organization due to the organization's philosophy that everything an individual does to help others is based on faith. According to the executive director, beneficiaries are referred to A New Beginning from jails and correctional institutions, probation officers, law enforcement officers, and hospitals, and that several women know the executive director from when she served as a mentor in a local jail. The executive director said that A New Beginning does not take religion into account when deciding who can participate and does not ask a prospective beneficiary's religion on the application, but that the organization does notify prospective beneficiaries of the organization's belief that there is a power greater than oneself. The Executive Director further said that A New Beginning does not require its employees to have a particular religious affiliation.

According to A New Beginning's grant applications for the initial and continuation grant awards, in order to successfully complete the conditions of the program beneficiaries must attend the following meetings or courses: twenty-eight Recovery Dynamic sessions, which is a systematically structured approach to the twelve-step recovery program underlying Alcoholics Anonymous (AA) and is taught by a certified recovery dynamic teacher; twenty-four sessions of a Corrective Thinking Class, which guides participants to more productive thinking patterns; and consistent attendance to weekly AA meetings, "12-Step Journey sessions" led by a licensed counselor, a "12 and 12 Step Program" that is peer-led,<sup>3</sup> mental health counseling sessions, and various educational sessions as necessary to meet individual goals. The OCR understands that all classes are held at the residential facility. The applications state that A New Beginning also provides aftercare services for beneficiaries for six months to one year after transitioning from the residential facility, during which time a case manager monitors attendance at AA meetings.

The executive director told the OCR that a typical day for beneficiaries begins with morning meditation, where each woman is required to develop a thought for the day; the executive director stated that the meditation does not contain a religious component. She explained that the women participate in classes throughout the day, which include life skills classes and classes featuring the twelve-step model for recovery from substance abuse such as AA. The executive director provided the OCR with a daily program schedule, which indicates that beneficiaries participate in Recovery Dynamics sessions three times per week, Big Book<sup>4</sup> studies at least once per week, a 12-Step Journey class once per week, and an in-house AA group once per week. The schedule also indicates that once per week there is a "Bible Study (Optional);" the executive director told the OCR that participation in this class is completely voluntary, and that if a beneficiary does not wish to participate in Bible study, the beneficiary chooses an alternative

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<sup>3</sup> The OCR understands that the 12-Step Journey sessions and the 12 and 12 Step Program both focus on the twelve-step principles for recovery that AA is based upon.

<sup>4</sup> The OCR understands that the "Big Book" is the self-help text on alcoholism used by AA.

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activity during that timeframe such as participating in a counseling session, going to a medical appointment, engaging in a recovery-focused activity, or reading a book. The executive director also told the OCR that if the beneficiaries want to attend church A New Beginning will transport them there, but if a particular beneficiary does not wish to attend, the beneficiary may go to the library instead. According to the executive director, several times per month volunteers from local churches will take the beneficiaries on a social outing such as bowling or to play Bunco, and that the executive director instructs the volunteers that they should not encourage beneficiaries to join their church.

During the OCR's onsite visit, the executive director said that A New Beginning uses JAG Program grant funds for the salary and benefits of the positions of clinical service supervisor, case manager, office manager, and house manager. According to A New Beginning's grant application for the continuation grant award, the clinical service supervisor is responsible for providing beneficiaries with education and counseling related to drug and alcohol use, for assessing assigned beneficiaries and administering a treatment plan, and for participating in case review. The case manager consults with each beneficiary on a weekly basis and maintains records of progress, and coordinates and refers beneficiaries for needed services. The office manager administers the payroll, operates the accounting system and ensures the timely payment of all bills, and completes required reports to ensure compliance with JAG Program grant conditions, and the house manager coordinates the completion of chores by beneficiaries, administers medications to beneficiaries, ensures that beneficiaries are adhering to facility rules and regulations, and provides crisis intervention and conflict resolution as necessary.

The OCR spoke with two program beneficiaries during its onsite visit; one beneficiary identified herself as being Baptist, and the other beneficiary said that she does not have a particular religion. The beneficiaries confirmed that AA meetings are mandatory. The beneficiaries also confirmed that the weekly Bible study class is optional and that beneficiaries can choose to do other work instead, and that while program staff will take beneficiaries to church, a beneficiary could choose to stay at the residential facility go to the library instead.

#### B. Analysis of Compliance with Equal Treatment Regulations

Based upon the information that that OCR gathered from the executive director and from the OCR's review of A New Beginning's grant applications, the OCR concludes that when A New Beginning was receiving DOJ funding, several of its educational and counseling courses appeared to violate the Equal Treatment Regulations. As discussed in Section I of this Supplemental Compliance Review Report, the Equal Treatment Regulations prohibit recipients from using DOJ financial assistance on inherently religious activities, such as worship, religious instruction, or proselytization; a recipient must ensure that any inherently religious activities are offered separately in time or location from permissible DOJ-funded activities and participation by beneficiaries in religious activities must be voluntary. 28 C.F.R. § 38.2(b)(1). Additionally,

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recipients shall not discriminate against a program beneficiary or prospective beneficiary based on religion or religious belief. *Id.* § 38.2(d). It is well settled under federal law that AA and other programs or courses that feature the twelve-step model for recovery from substance abuse are religious programs. *See, e.g., Cox v. Miller*, 296 F.3d 90, 107-10 (2<sup>nd</sup> Cir. 2002); *Warner v. Orange County Dep't of Probation*, 115 F.3d 1068, 1075 (2<sup>nd</sup> Cir. 1997); *Kerr v. Farrey*, 95 F.3d 472, 479-80 (7<sup>th</sup> Cir. 1996). A New Beginning clearly did not conduct AA or its other twelve-step recovery classes separate in time or location from DOJ-funded services. A New Beginning used DOJ funds for the salary and benefits of the clinical service supervisor, who is responsible for providing beneficiaries with education and counseling related to drug and alcohol use and administering their treatment plan. Thus, the clinical service supervisor is presumably an active participant in classes featuring the twelve-step recovery model. The DOJ-funded case manager position is responsible for the overall coordination of beneficiaries' services and for monitoring attendance at AA meetings during the aftercare phase. A New Beginning did nothing to ensure that individuals in these DOJ-funded positions engaged in these religious activities at a different time or in a different location from permissible, secular activities. Moreover, even if the OCR concluded that A New Beginning appropriately separated its religious twelve-step programming from other, appropriate activities funded by the DOJ, the organization would remain in noncompliance with the Equal Treatment Regulations because participation in AA and the other twelve-step programming is mandatory for all beneficiaries, not voluntary.

In addition to using DOJ financial assistance to conduct inherently religious activities, by requiring beneficiaries to agree to participate in AA and other twelve-step programming, A New Beginning is discriminating against prospective and current beneficiaries based on religion. While A New Beginning does not inquire as to a prospective beneficiary's religion and the executive director said that it does not take religion into account when selecting beneficiaries, A New Beginning does notify prospective beneficiaries of its belief that there is a power greater than oneself. As AA and other twelve-step recovery programs are required elements of the residential treatment program, the OCR presumes that prospective beneficiaries who do not agree to participate in these activities will not be accepted into the program, and that current beneficiaries who decline to participate will be removed from the program. While A New Beginning may, in practice, include beneficiaries regardless of their religious faith, it has a facially discriminatory policy that excludes individuals who do not agree to participate in inherently religious activities. Accordingly, the OCR concludes that A New Beginning was not in compliance with the Equal Treatment Regulation's non-discrimination provision during the implementation of DOJ funding.<sup>5</sup>

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<sup>5</sup> As discussed in Section I of this Supplemental Compliance Review Report, A New Beginning is also subject to the Safe Street's Act prohibition against religious discrimination. Therefore, A New Beginning's improper use of DOJ funds under the Equal Treatment Regulations also violated the Safe Streets Act's prohibition against religious discrimination.

Under the Equal Treatment Regulations, Bible study classes and attendance at church are clearly inherently religious activities. However, the executive director and the program beneficiaries with whom the OCR spoke indicated that both of these inherently religious activities are optional, and are not part of the mandatory programming. It does not appear that any of the DOJ-funded positions had any significant involvement in overseeing beneficiaries' attendance at Bible study, and the Bible study class occurred at a separate time from secular activities. Attendance at church occurred at a location completely separate from the residential facility. Both program leadership and program beneficiaries felt that participation in these activities was voluntary, and if a beneficiary opted not to participate in Bible study or attend church, secular alternatives were provided. Accordingly, to the extent that these activities were separate from DOJ-funded secular activities and participation was truly voluntary, A New Beginning's offering of these activities complied with the Equal Treatment Regulations.

### III. Prodigal Ministries' Reentry Program

#### A. Overview of Funded Program

According to Prodigal Ministries' initial grant application submitted to the JPSC, Prodigal Ministries is a "Christian-based aftercare program designed to help men and women avoid a return to prison by providing faith-based case management services, mentor services, transitional housing, employment assistance and recovery support." The grant application further states that, "[r]ecovering from addiction is supported, and active participation in Twelve Step programming is encouraged." During the OCR's onsite visit, the executive director told the OCR that Prodigal Ministries operates three transitional houses, with one house containing beds for six women, one house containing beds for eight men, and the third house containing beds for fifteen men. Based upon information provided by the JPSC, the OCR understands that Prodigal Ministries has received the following amounts of JAG program grant funding for its reentry program: \$24,220.00 for the period of July 1, 2008 to June 30, 2009; \$31,000.00 for the for the period of July 1, 2009 to June 30, 2010; \$31,488.00 for the period of July 1, 2010 to June 30, 2011; and \$31,488.00 for the period of July 1, 2011 to June 30, 2012.

To solicit beneficiaries, the executive director said that representatives of Prodigal Ministries visit local prisons to discuss the reentry program with offenders who are about to be released. According to Prodigal Ministries' initial grant application, if an offender applies to participate, Prodigal Ministries staff or volunteers interview the prospective beneficiary to determine readiness for the reentry program, and the prospective beneficiary sets goals related to reentry. The executive director told the OCR that Prodigal Ministries does not take religion into account when deciding who can participate, and its initial grant application states that it accepts Christian and non-Christian beneficiaries. However, in regard to employees, the executive director said that Prodigal Ministries only hires Christian individuals.



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The executive director told the OCR that Prodigal Ministries relies upon volunteers from the community to provide programming and support for beneficiaries; according to Prodigal Ministries' initial grant application, volunteers and Prodigal Ministries staff meet with a beneficiary during his or her incarceration and a volunteer is appointed at that time to serve as a mentor to support and assist the beneficiary throughout participation in the reentry program. The executive director provided the OCR with a brochure on Prodigal Ministries' reentry program; according to this brochure, volunteers may come from churches, businesses, or families within the community, and volunteer opportunities include preparing meals for beneficiaries; taking beneficiaries out to a restaurant or a movie; and transporting beneficiaries to church, Bible study, counseling, or a twelve-step program. The executive director told the OCR that volunteers may also teach Bible study classes at the transitional houses, and that beneficiaries are not required to participate in Bible study or to attend church but rather have the freedom to choose whether to do so.

According to Prodigal Ministries' initial grant application, once a beneficiary is released from incarceration and enters one of the Prodigal Ministries' transitional houses, the beneficiary undergoes a chemical dependency assessment by an addiction specialist and is required to follow any recommendations regarding treatment. The application notes that Prodigal Ministries offers diverse programming to meet the individualized needs of each beneficiary, and available programming includes attendance at recovery meetings, engagement in community service activities, attendance at community skills meetings, attendance at Bible study, and attendance at group therapy sessions. During the OCR's onsite visit, the executive director said that all beneficiaries are required to attend community skills meetings, and that beneficiaries must also find two other meetings within the community to attend, such as an AA meeting or similar recovery programming. The executive director said that Prodigal Ministries provides beneficiaries with a list of substance abuse recovery programs in the community, and that all of these programs are based on the twelve-step principles of recovery. The executive director told the OCR that all beneficiaries attend AA meetings or meetings of similar recovery programs. Based on the OCR's discussion with the executive director and Prodigal Ministries' grant application for its 2010 JAG Program award, the OCR understands that Prodigal Ministries also offers a "Jobs for Life" training course for beneficiaries designed to assist beneficiaries in developing their employment skills.

During the OCR's onsite visit, the executive director said that Prodigal Ministries uses JAG Program grant funds for the salary and benefits of the positions of program director and case manager at one of the transitional houses for men. According to Prodigal Ministries' grant application for the 2010 JAG Program award, the program director is responsible for client development and her duties include overseeing the operations at the transitional houses, providing case management services for female beneficiaries, scheduling house and community meetings, and working closely with the advisors and counselors associated with twelve-step

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recovery programs regarding the needs of beneficiaries. The case manager provides intensive case management services for beneficiaries, including assisting beneficiaries in determining the appropriate types of programming, working closely with advisors and counselors associated with twelve-step recovery programs regarding the needs of beneficiaries, and meeting with beneficiaries on a regular basis to assist beneficiaries with their individual needs. Additionally, the case manager assists with reviewing applications of potential beneficiaries and conducting interviews.

During the OCR's onsite visit, the OCR spoke with a beneficiary at the transitional house for women. The beneficiary said that she does not practice any particular type of religion but considers herself to be non-denominational. The beneficiary indicated that she participates in a substance abuse recovery program called "Celebrate Recovery," which she described as a Christ-centered program based on the twelve steps to recovery. The beneficiary said that volunteers have taught Bible study at the house, but that beneficiaries have a choice of whether to participate.

#### B. Analysis of Compliance with Equal Treatment Regulations

Based on the information that the executive director relayed to the OCR during its onsite visit and on the OCR's review of Prodigal Ministries' grant applications, the OCR has determined that Prodigal Ministries' use of DOJ funding in connection with AA and other twelve-step recovery programs violates the Equal Treatment Regulations. As discussed in Section II.B of this Supplemental Compliance Review Report, AA, NA, or other programs that feature the twelve-step model for recovery from substance abuse are religious programs. Based on the position descriptions for the DOJ-funded positions of program director and case manager, it appears that each position "works closely" with the advisors and counselors associated with twelve-step recovery programs to address the needs of beneficiaries. Furthermore, Prodigal Ministries' grant applications and a brochure on its reentry program state that "[r]ecovering from addicted illness is promoted, including active participation in Twelve Step programs." By encouraging beneficiaries to participate in twelve-step programming, which is an inherently religious activity, Prodigal Ministries staff are engaging in proselytization and are actively advancing the religious objectives of the program. Accordingly, this inherently religious programming is not being conducted separately in time or location from permissible secular activities.

Even if the twelve-step programming could be construed to be separate in time or location from permissible DOJ-funded activities, based on the information obtained, it is the OCR's understanding that all beneficiaries *must* participate in AA or other similar programming based on the twelve steps to recovery. The Prodigal Ministries staff provide beneficiaries with a list of recovery programs to choose from, and the executive director stated that all of the listed programs involve the twelve steps to recovery. Therefore, participation in inherently religious activities is not voluntary for beneficiaries, and this required participation violates the Equal

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#### Treatment Regulations.

Additionally, by requiring beneficiaries to participate in AA or other twelve-step programming, Prodigal Ministries is discriminating against prospective and current beneficiaries based on religion. As AA and other twelve-step recovery programs appear to be required elements of the reentry program, the OCR presumes that prospective beneficiaries who do not agree to participate in these activities will not be accepted into the program, and that current beneficiaries who decline to participate will be removed from the program. While Prodigal Ministries states that it does not take religion into account when selecting beneficiaries and accepts Christian and non-Christian individuals, it has a facially discriminatory policy that excludes individuals who do not agree to participate in inherently religious activities. Accordingly, Prodigal Ministries is not in compliance with the Equal Treatment Regulation's non-discrimination provision in regard to the twelve-step substance abuse recovery programs associated with its reentry program.<sup>6</sup>

Under the Equal Treatment Regulations, Bible study classes and attendance at church are clearly inherently religious activities. However, the executive director and the program beneficiary with whom the OCR spoke indicated that both of these inherently religious activities are optional, and are not part of the mandatory programming. It does not appear that any of the DOJ-funded positions have any significant involvement in overseeing beneficiaries' attendance at Bible study or church, and attendance at church occurs at a location completely separate from the transitional housing. It appears that Bible study may occur at an external facility or at a transitional house. Bible study and church services also occur at a separate time from other DOJ-funded activities. Both program leadership and program beneficiaries felt that participation in these activities is voluntary, and that beneficiaries may chose to do something else instead. Accordingly, to the extent that these activities are separate from DOJ-funded secular activities and participation is truly voluntary, Prodigal Ministries' of these activities complies with the Equal Treatment Regulations.

During the OCR's onsite visit, the executive director stated that Prodigal Ministries does take religion into account when hiring staff. As discussed in Section I of this Supplemental Compliance Review Report, under the Equal Treatment Regulations, recipients of DOJ financial assistance are still subject to any nondiscrimination provisions associated with a particular DOJ funding program, and must consult with the DOJ funding office to determine the scope of any provisions. 28 C.F.R. § 38.2(f). The Safe Streets Act, under which Prodigal Ministries receives funding, prohibits recipients from discriminating on the basis of religion in employment decisions. Faith-based organizations that are seeking an exemption to a funding program's prohibition against religious discrimination in employment must complete and retain a signed

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<sup>6</sup> Prodigal Ministries' improper use of DOJ funds under the Equal Treatment Regulations also violates the Safe Streets Act's prohibition against religious discrimination.

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Certificate of Exemption for Hiring Practices on the Basis of Religion and attach it to the grant file. As it does not appear that Prodigal Ministries has prepared a Certificate of Exemption for Hiring Practices on the Basis of Religion and submitted it to the JPSC, Prodigal Ministries' religious preference in hiring currently violates the Safe Streets Act. Moreover, since Prodigal Ministries is currently using DOJ funding to support inherently religious activities and such activities are not voluntary for beneficiaries, Prodigal Ministries cannot provide the necessary certifications at this time.

#### IV. Recommendations

As discussed in Sections II and III of this Supplemental Compliance Review Report, A New Beginning and Prodigal Ministries, in implementing DOJ financial assistance, are not in compliance with the Equal Treatment Regulations. Because of its role as a State Administering Agency, the JPSC must take corrective action to remedy administrative violations of the DOJ's regulations by subrecipients, including faith-based subrecipients. To ensure that DOJ funds are used properly, the JPSC should take appropriate measures to secure Prodigal Ministries' voluntary compliance with the Equal Treatment Regulations, such that Prodigal Ministries does not use DOJ funding to engage in inherently religious activities and does not discriminate against beneficiaries based on religion by requiring participation in inherently religious activities. Once the JPSC secures Prodigal Ministries' compliance with the Equal Treatment Regulations, it should ensure that Prodigal Ministries completes and submits to the JPSC a Certificate of Exemption for Hiring Practices on the Basis of Religion. While we understand that A New Beginning is not currently receiving DOJ funds, should A New Beginning receive DOJ funding in the future, the JPSC should take appropriate corrective action to ensure compliance with the Equal Treatment Regulations.

#### V. Conclusion

For the reasons detailed above, we find that A New Beginning's use of funds in connection with its substance abuse residential facility and Prodigal Ministries' use of funds in connection with its reentry program do not comply with the Equal Treatment Regulations. The JPSC should implement the OCR's recommendations to ensure compliance with the Regulations. No later than thirty days after receipt of this Supplemental Compliance Review Report, please provide a written status report to the OCR about the steps the JPSC has taken to ensure that Prodigal Ministries complies with its legal obligations, along with what steps the JPSC plans to take should A New Beginning apply for DOJ funding in the future. On request, the OCR is available to provide technical assistance to the JPSC in addressing the concerns raised in this Report.

Thank you again for your cooperation and the assistance of your staff throughout the compliance review process. If you have any questions about this Supplemental Compliance Review Report,

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please contact OCR attorney Shelley Langguth at (202) 305-2353.

Sincerely,  
/s/  
Michael L. Alston  
Director