



**U.S. Department of Justice**

Office of Justice Programs

*Office for Civil Rights*

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*Washington, D.C. 20531*

March 23, 2011

**CERTIFIED MAIL: RETURN RECEIPT REQUESTED**

Mr. Clayton H. Wilder  
Program Administrator, Office of Criminal  
Justice Grants  
Florida Department of Law Enforcement  
2331 Phillips Road  
Tallahassee, FL 32308

Re: Supplemental Compliance Review Report of Florida Dep't of Law Enforcement  
Docket No. 09-OCR-0058

Dear Mr. Wilder:

On July 31, 2009, the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ or Department) issued a compliance review report regarding the Florida Department of Law Enforcement's (FDLE) compliance with applicable federal civil rights laws as a State Administering Agency for certain DOJ programs. *See* Florida Dep't of Law Enforcement, No. 09-OCR-0058, Office for Civ. Rts. Compl. Rev. Rep. (U.S. Dep't of Justice July 31, 2009). In the report, the OCR specifically evaluated the FDLE's monitoring procedures for ensuring the compliance of subrecipients with these laws, including the FDLE's implementation and monitoring of the DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 [hereinafter Equal Treatment Regulations or Regulations].

During its compliance review, the OCR conducted an onsite visit to Pathways for Change, Inc. (Pathways), a faith-based, nonprofit, tax-exempt organization based in Pensacola, Florida, that receives \$67,000 through the OJP's Residential Substance Abuse Treatment (RSAT) formula grant program.<sup>1</sup> The RSAT program assists state and local governments to develop and implement substance abuse treatment programs in state and local correctional detention facilities and to create and maintain community-based aftercare services for offenders. The FDLE subawards RSAT funds to the Escambia County, Florida, Board of County Commissioners, which in turn further subawards funds to Pathways to provide the RSAT-funded services.

As a follow-up to its July 2009 report, the OCR issues the instant Supplemental Compliance

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<sup>1</sup> In its program materials, Pathways incorrectly suggests that RSAT is a state grant program.

Review Report regarding the Pathways program.<sup>2</sup> Based on its site visit, which included interviews with Pathways leadership and program staff representatives, and its review of pertinent program materials, the OCR concludes that Pathways is not in compliance with the Department's Equal Treatment Regulations because (1) its federally funded program discriminates against prospective and actual program participants based on religion and (2) it uses federal resources for inherently religious purposes.<sup>3</sup> The FDLE should take corrective action to improve its monitoring of Pathways and to ensure that, going forward, the subrecipient uses its federal financial assistance in ways that comport with the Regulations' requirements.<sup>4</sup>

### **I. Monitoring Compliance with Faith-Based Regulations**

The Equal Treatment Regulations require State Administering Agencies, like the FDLE, 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). As discussed in the OCR's July 2009 Compliance Review Report, the FDLE has taken several measures to include faith-based organizations in the award process for pertinent DOJ grant programs. The Regulations also circumscribe how faith-based recipients may use federal financial assistance. Specifically, such grantees may not engage in inherently religious activities with federal financial assistance; nor can they discriminate against potential or actual program beneficiaries on the basis of religion or religious belief. *Id.* §§ 38.2(b)(1), (d); *see also* Exec. Order No. 13,559, 75 Fed. Reg. 71,319, 71,320 (Nov. 17, 2010). The Pathways program does not use RSAT funds in compliance with any of these identified restrictions.

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<sup>2</sup> In the July 2009 report, the OCR noted that it would issue a supplemental report regarding Pathways. Compl. Rev. Rep. at 9. It is the OCR's standard procedure to provide, as a courtesy, a draft compliance review report to a recipient before issuing a final report; the limited purpose of this review is to allow a recipient to provide supplemental, clarifying information about any factual statements contained in the report. Consistent with this practice, on January 19, 2011, the OCR sent the FDLE and Pathways a draft Supplemental Compliance Review Report for review. The FDLE and Pathways responded to that draft Report on February 4, 2011, and March 1, 2011, respectively. In several instances, the final Supplemental Compliance Review Report addresses the salient comments that Pathways provided in its Response to the draft Report. Pathways Response to Draft Supplemental Compliance Review Report (Mar. 1, 2011) (Pathways Response) (on file with the OCR).

<sup>3</sup> Because it receives RSAT funds, Pathways is also subject to Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Safe Streets Act), 42 U.S.C. § 3789d(c), which prohibits discrimination on the basis of race, color, national origin, religion, or sex in RSAT-funded programs or activities. *See also* 28 C.F.R. §§ 42.201-.214. Pathways' improper use of federal funds under the Equal Treatment Regulations also violates the Safe Streets Act's prohibition against religious-based discrimination.

<sup>4</sup> Because the OCR only evaluated those Pathways activities that implicate the Equal Treatment Regulations, the instant Report should not be viewed as a comment on other aspects of the Pathways program, such as its effectiveness in providing substance abuse treatment services to clients.

### **A. The Pathways Program**

Pathways is a residential probation program that serves men in Escambia County, Florida. To participate in the program, an individual (1) must have been court ordered to the program; (2) must be willing to change his lifestyle; (3) must be diagnosed as substance dependent; (4) must have a local address or, if homeless, have a family member who lives in the area; (5) cannot have convictions or charges related to violent offenses; (6) must pass security, mental health, and medical clearances; (7) must be at least eighteen years old; and (8) must volunteer to be part of a faith-based program. Pathways for Change, *Looking for Services?*, <http://www.pathwaysforchange.org/index.cfm?fuseaction=browse&pageid=38> (last visited Mar. 16, 2011); Pathways, Agreement for Substance Abuse Treatment.

Program leaders instruct clients that religion is a way of life. Throughout the program, clients participate in a series of structured activities, such as individual counseling, which provides the “opportunity, the luxury, of being totally honest with a person who will talk you through your past traumas, investigate your fears and begin the healing that will free you to be the person that God intended.” Pathway for Change, A Guide for the Family 6 (Pathways Family Guide); Pathways for Change Therapeutic Community Member Handbook 25 (Jan. 2009) (Pathways Handbook). Clients also participate in “Most Excellent Way” meetings, which are Christ-centered sessions that use the twelve-step principles of Alcoholics Anonymous and Narcotics Anonymous to provide support and encouragement to live a drug- and alcohol-free lifestyle. *See* Pathways Family Guide at 7; Pathways Handbook at 26. In addition, individuals participate in centering prayer, which Pathways describes as a meditative prayer time that “allows us to face the reality of our human condition and to come out into the full light of intimacy with God.” Pathways Family Guide at 7; Pathways Handbook at 26. According to Pathways, by participating in these activities, a client can recover, at least in part, by getting in touch with God. Pathways Family Guide at 9; Pathways Handbook at 43.

The Pathways program, which lasts between twelve and eighteen months, consists of the following four phases: (1) Phase I – Behavior Modification, (2) Phase II – Addictions Treatment, (3) Phase III – Community Service, and (4) Phase IV – Transition. All phases occur at the Escambia County work-release center. In the initial phase, clients participate in prayer, Alcoholics Anonymous or Narcotics Anonymous meetings, religious classes, and worship services. Once clients successfully complete Phase I, they participate in Phase II and Phase III activities such as prayer, Alcoholics Anonymous or Narcotics Anonymous sessions, religious classes, and worship services. During the final phase, a client meets with his case manager and vocation instructors to determine whether he will participate in a vocational program or pursue employment. Throughout the program, clients must display a willingness to participate fully in the curriculum. *See, e.g.*, Pathways Handbook at 27 (“Participation in all community activities is required.”). If a client remains non-compliant with program rules or non-amenable to treatment, Pathways retains the authority to remove him from the program. *See* Pathways Handbook at 40; Pathways, Agreement for Substance Abuse Treatment.

## **B. Pathways' Use of DOJ RSAT Funds**

Pathways uses funds from the DOJ's RSAT program to pay for two staff positions. Specifically, RSAT funds cover the salary and benefits costs of a full-time program manager and a part-time case manager for the Pathways program.<sup>5</sup> Each of these RSAT-funded positions supports the faith-based mission and core activities of the Pathways program, including those program elements that involve prayer, Alcoholics Anonymous or Narcotics Anonymous meetings, religious classes, and worship services. Specifically, the program manager's responsibilities include developing, scheduling, supervising, and conducting programs for clients (including those that, as discussed below, are inherently religious). In the program manager job description, Pathways emphasizes that a candidate will be responsible for aiding in offender rehabilitation in a faith-based setting. The case manager's responsibilities include monitoring client performance with all program components (including the program's religious elements). Pathways does not appear to make hiring decisions for these or other positions based on religious considerations.

## **C. Pathways' Noncompliance with the Department's Equal Treatment Regulations**

Based on its site visit and its review of pertinent program materials, the OCR concludes that Pathways uses federal resources in clear contravention of the Department's Equal Treatment Regulations.

1. The organization's improper, religious-based screening and performance criteria for beneficiaries eligible to receive federally funded services

The Pathways program, as administered, conditions the provision of RSAT benefits on a beneficiary's agreement to participate in religious activities; such a requirement violates the Equal Treatment Regulations. Under the Regulations, a recipient of federal 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. When an organization elects to receive federal funding, the Regulations prohibit it from using any religion-based criteria to deny services to beneficiaries. This safeguard protects all program participants, regardless of their religious beliefs or lack of religious beliefs. Participation in Justice Department Programs by Religious Organizations; Providing for Equal Treatment of All Justice Department Program Participants, 69 Fed. Reg. 2832, 2837 (Feb. 20, 2004) (noting that the "language prohibiting faith-based

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<sup>5</sup> The OCR reviewed a program participation agreement that purports to govern Pathways' use of RSAT funds. This agreement, which expired on September 31, 2010, does not reference any of the federal civil rights obligations that attach to the receipt of federal financial assistance and fails to address the Equal Treatment Regulations or their requirements.

organizations from discriminating against program beneficiaries on the basis of 'religion or religious belief' is sufficiently explicit to include beneficiaries who hold no religious belief"); *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"). Contrary to the express prohibitions in the Regulations, Pathways, according to its own policy statements, withholds federally funded services to eligible program participants (1) by screening prospective beneficiaries based on religious criteria and (2) by reserving the right to deny services to those who decline to participate in the religious aspects of its rehabilitation program.

First, in screening candidates to evaluate their eligibility, Pathways requires, among other factors, that a potential applicant commit to full participation in its religious substance abuse rehabilitation program. During the application process, a program representative fully describes the faith-based nature of the program (Pathways Response at 2) and requires an applicant to sign an Agreement for Substance Abuse Treatment, which explains that failure to participate in any aspect of the curriculum will – not merely may – result in sanctions. Notably, the agreement does not include a provision stating that participation in Pathways' religious activities is voluntary. While Pathways appropriately highlights its faith-based character during applicant interviews, by requiring individuals to expressly agree to participate in every aspect of its program, it introduces a religious-based eligibility requirement that is inappropriate under the Regulations. By insisting that beneficiaries agree to participate in the faith-based aspects of its rehabilitation program, Pathways presents a prospective beneficiary who does not share its belief system with a false choice: either decline to participate in the program or agree to enter the program, knowing that it requires participation in religious activities with which one disagrees. A service provider cannot require a prospective candidate to agree to participate in religious activities to receive federally funded services; such a screening system fails to provide the same level of services to individuals without regard to religion and violates the Equal Treatment Regulations.

Second, under Pathways policy, once participants enter the program, administrators possess the authority to discriminate against them if they decline to participate in religious activities. In its application and program materials, Pathways expressly reserves the discretion to penalize participants who decline to engage in the curriculum, which, as discussed below, contains various inherently religious program activities, including prayer, participation in Alcoholics Anonymous or Narcotics Anonymous, religious instruction, and worship. *See* Pathways, Agreement for Substance Abuse Treatment ("Should I refuse to participate in any aspect of the therapeutic community (TC), once I have been transferred to the (TC) housing unit, I will be subject to disciplinary action up to and including dismissal [sic] from the program.") (emphasis in original); *see also* Pathways Handbook at 40 (emphasizing that Pathways can remove a client if he is "non-compliant with program rules" or "non-amenable to treatment"). Because Pathways, as evidenced by its agreement and program materials, retains the ability to punish an

individual for failure to participate in religious activities, which could result in the revocation of the beneficiary's probation, we conclude that it is in noncompliance with the Regulations' nondiscrimination provision.

2. The organization's improper use of federal funds for inherently religious activities

In addition to its improper screening and evaluation criteria for beneficiaries, Pathways uses federal resources for inherently religious purposes in violation of the Equal Treatment Regulations. The Regulations provide in pertinent part as follows:

Organizations that receive direct financial assistance from the Department under any Department program 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. at 71,320.<sup>6</sup> Thus, an organization may only conduct inherently religious activities despite its receipt of direct federal financial assistance if it satisfies the following two elements: (1) such activities are offered

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<sup>6</sup> The Equal Treatment Regulations contemplate that a religious organization can, in certain circumstances, engage in inherently religious activities with federal funds it receives indirectly from beneficiaries; however, because Pathways is a direct subrecipient of federal financial assistance, it cannot avail itself of that provision. The Regulations clearly distinguish the obligations a faith-based organization has depending on whether it receives direct or indirect funding:

To the extent otherwise permitted by Federal law, the restrictions on inherently religious activities set forth in this section do not apply where Department funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary, provided the religious organizations otherwise satisfy the requirements of the program. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

28 C.F.R. § 38.2(i). Because Pathways receives federal funds directly through the RSAT grant-award process, and not indirectly from beneficiaries, it must refrain from using federal financial assistance for inherently religious activities.

separately, in time or location, from the programs or services provided with federal aid, and (2) participation in such activities is voluntary for program beneficiaries. 28 C.F.R. § 38.2(b)(1). Pathways uses federal resources in ways that are inconsistent with these requirements; stated differently, it uses federal financial assistance to engage in prohibited religious conduct.

Pathways engages in the following inherently religious activities, as contemplated by the Equal Treatment Regulations: (1) prayer, (2) participation in Alcoholics Anonymous and Narcotics Anonymous, (3) religious instruction, and (4) worship. *See id.* In discussing the Regulations, the DOJ reiterates that inherently religious activities include prayer meetings, religious instruction, and worship services. Participation in Justice Department Programs by Religious Organizations, 69 Fed. Reg. at 2833. In addition, it is well-settled under federal law that Alcoholics Anonymous and Narcotics Anonymous are inherently religious programs. *See, e.g., Cox v. Miller*, 296 F.3d 89, 107-10 (2d Cir. 2002); *Kerr v. Farrey*, 95 F.3d 472, 479-80 (7th Cir. 1996).<sup>7</sup> In engaging in these activities, the subrecipient is not in substantial compliance with the Regulations' restrictions because it directly uses RSAT funds to foster its sectarian objectives and requires beneficiaries to participate in all of the identified religious conduct.

As reflected in the following schedule for January 26 to April 17, 2009, the Pathways residential probation program integrates various inherently religious activities throughout its curriculum; in italics and parantheses, the OCR notes the nature of each inherently religious activity.

Time	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
7:45-8:10 a.m.	Centering Prayer <i>(Prayer)</i>			Centering Prayer <i>(Prayer)</i>			
8:30 a.m.		Centering Prayer <i>(Prayer)</i>	Centering Prayer <i>(Prayer)</i>		Centering Prayer <i>(Prayer)</i>		
9:00-10:00 a.m.			Phase I: "Bible Basics" <i>(Religious Instruction)</i>				Phase I and II: In-House Church Services <i>(Worship)</i>  Phase III B-D: Church of

<sup>7</sup> In crafting the Regulations, DOJ declined "to establish an acceptable list of all inherently religious activities" but explained that Establishment Clause precedent should inform decisions about which additional conduct is inherently religious. Participation in Justice Department Programs by Religious Organizations, 69 Fed. Reg. at 2834. Consistent with this approach, and after carefully considering pertinent caselaw, the OCR concludes that the Alcoholics Anonymous and Narcotics Anonymous programs providing services to Pathways clients constitute inherently religious activities under the Equal Treatment Regulations. Moreover, Pathways implicitly concedes in its program materials that its substance abuse treatment programs are Christ-centered and inherently religious. Pathways Family Guide at 7; Pathways Handbook at 26.

Time	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
							Choice (Worship)
10:30-11:30 a.m.		A.A. Meeting (Alcoholics Anonymous)	Phase I: Big Book Study (Alcoholics Anonymous and Narcotics Anonymous)	Phase II: Big Book Study (Alcoholics Anonymous and Narcotics Anonymous)			
12:00-1:15 p.m.		Phase I: "Growing Strong in God's Family" (Religious Instruction)  Phase II: Big Book Study (Alcoholics Anonymous and Narcotics Anonymous)	Phase II: Big Book Study (Alcoholics Anonymous and Narcotics Anonymous)	Phase I: Big Book Study (Alcoholics Anonymous and Narcotics Anonymous)			May listen to Big Book Study as a self-facilitated group (Alcoholics Anonymous and Narcotics Anonymous)
3:45-4:45 p.m.			Phase I and III A: Big Book Study (Alcoholics Anonymous and Narcotics Anonymous)				
5:00 p.m.							Phase I, II, and III: Centering Prayer (Prayer)
6:00-7:15 p.m.	Phase I: "Introduction to Centering Prayer" (Religious Instruction)	Phase I and II: "Purpose Driven Life Discussion" (Religious Instruction)	Phase I and II: A.A. Meeting (Alcoholics Anonymous)  Phase III: "The Mind of Christ" (Religious Instruction)	Phase I, II, and III: A.A. Meeting (Alcoholics Anonymous)	N.A. Meeting with Sponsors (Narcotics Anonymous)		4th and 5th Sundays with Pastor Humphries and Team (Worship)



Time	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
			<i>Instruction)</i>				
7:30 p.m.					N.A. or A.A. Speaker or Seminars <i>(Alcoholics Anonymous and Narcotics Anonymous)</i>		
8:05-8:25 p.m.		Phase III B-D: Can go out to A.A. or N.A. meeting with approval <i>(Alcoholics Anonymous and Narcotics Anonymous)</i>	Phase III B-D: Can go out to A.A. or N.A. with approval <i>(Alcoholics Anonymous and Narcotics Anonymous)</i>	Phase III B-D: Can go out to A.A. or N.A. with approval <i>(Alcoholics Anonymous and Narcotics Anonymous)</i>		Phase III B-D: Can go out to A.A. or N.A. meeting with approval <i>(Alcoholics Anonymous and Narcotics Anonymous)</i>	Phase III B-D: Can go out to A.A. or N.A. meeting with approval <i>(Alcoholics Anonymous and Narcotics Anonymous)</i>
8:30-9:30 p.m.	Centering Prayer on your own <i>(Prayer)</i>	Centering Prayer on your own <i>(Prayer)</i>	Centering Prayer on your own <i>(Prayer)</i>	Centering Prayer on your own <i>(Prayer)</i>		Phase I: Nine Addictions meetings Phase II: Ten Addictions meetings/classes Phase III: Five “in-house” meetings, with the added option of four “outside” A.A./N.A. meetings <i>(Alcoholics Anonymous and Narcotics Anonymous)</i>	

As a threshold matter, Pathways fails to offer its religious programming in a way that satisfies the separate-in-time-or-location requirement. Indeed, in providing services to clients, Pathways neither acknowledges the applicability of the Equal Treatment Regulations nor endeavors to ensure that it appropriately separates sectarian activities from secular services. Pathways receives RSAT funds to support program and case manager positions. The program manager is responsible in part for coordinating many of the religious activities highlighted in the weekly calendar, while the case manager ensures that clients fully participate in the program’s activities, including those that are inherently religious. These employees are responsible for implementing and monitoring compliance with all aspects of the Pathways program, including the inherently religious components that pervade the program.<sup>8</sup>

<sup>8</sup> To the extent that these federally funded staff members encourage beneficiaries to participate in inherently

Moreover, even if the OCR concluded that Pathways appropriately separated its religious activities from other, permissible activities funded by the DOJ, the organization's use of RSAT funds would remain problematic under the Regulations because participation in the identified inherently religious activities is not voluntary. As the organization emphasized during the OCR's site visit and highlights in its program materials, Pathways reserves the discretion to discharge a client who refuses to participate in all aspects of the program curriculum, including religious activities. Because Pathways fails to offer inherently religious activities that are separate in time or place from other, permissible federally funded activities and requires beneficiaries to participate in those religious activities, it impermissibly uses RSAT funds to engage in prohibited religious conduct.

## **II. Recommendations**

As discussed in Section I.C. of the Supplemental Compliance Review Report, Pathways, in administering its federal RSAT funds, permits religious-based discrimination against prospective and actual beneficiaries and engages in inherently religious activities. As a result, Pathways is not in compliance with the Equal Treatment Regulations. Because of its role as a State Administering Agency, the FDLE must take corrective action to remedy administrative violations of the Department's regulations by subrecipients, including faith-based organizations. As a preliminary matter, the FDLE should work with the Escambia County Board of County Commissioners to ensure that Pathways agrees to appropriate assurances of nondiscrimination as a condition of receiving federal financial assistance. To ensure that DOJ funds are used properly, the FDLE should also take appropriate measures to address the additional concerns we raise in the Supplemental Compliance Review Report and to secure Pathways' voluntary compliance with the Regulations' restrictions.

## **III. Conclusion**

We find that the FDLE should implement the OCR's recommendations to ensure compliance with the Equal Treatment Regulations. No later than thirty days after receipt of this Supplemental Compliance Review Report, which is a public document, please provide a written status report to the OCR about the steps the FDLE has taken to ensure that Pathways complies with its legal obligations. On request, the OCR is available to provide technical assistance to the FDLE in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible FDLE official contact Attorney Advisor Christopher Zubowicz to develop a timeline and goals for implementing the OCR's recommendations.**

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religious activities, they may be engaging in proselytization or advancement of religion; both types of activities fall within the ambit of the term "inherently religious activities" contained in the Regulations. *See* Participation in Justice Department Programs by Religious Organizations, 69 Fed. Reg. at 2833-34.

Clayton H. Wilder, Program Administrator, Office of Criminal Justice Grants  
Florida Dep't of Law Enforcement  
March 23, 2011  
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Thank you for your cooperation and the assistance of your staff during the compliance review process. If you have any questions, please contact Mr. Zubowicz at [REDACTED]

Sincerely,

/s/ Michael L. Alston

Michael L. Alston  
Director

cc: Ms. Debra J. Armenti, Grants Coordinator  
Escambia County Board of County Commissioners

Ms. Connie Bookman, Executive Director  
Pathways for Change, Inc.