



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

January 7, 2013

VIA E-MAIL AND CERTIFIED MAIL

Taufetee John Faumuina, Jr.
Executive Director
American Samoa Criminal Justice
Planning Agency
Executive Office Building, Third Floor
Pago Pago, American Samoa 96799

Re: Compliance Review of American Samoa Criminal Justice Planning Agency
(12-OCR-0135)

Dear Mr. Faumuina:

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) is responsible for ensuring that recipients of federal financial assistance from the Office of Community Oriented Policing Services, the Office on Violence Against Women (OVW), the OJP, and OJP components comply with federal civil rights laws. As you know, recipients of federal financial assistance have an obligation not to discriminate against protected classes of people either in employment or in the delivery of services.

In carrying out the OCR's civil rights enforcement responsibilities, the OCR is conducting a broad compliance review of all state administering agencies (SAA) in accordance with federal regulation 28 C.F.R. § 42.206. The focus of this review is to determine both compliance with applicable federal civil rights laws and SAA monitoring procedures for ensuring the compliance of subrecipients with these laws. As part of that review, the OCR is evaluating the American Samoa Criminal Justice Planning Agency (CJPA or Agency). Of particular interest to the OCR is the CJPA's compliance with the federal regulations that the DOJ issued in January of 2004, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 (Equal Treatment Regulations or Regulations). The Regulations advise SAAs not to discriminate either in favor of or against faith-based organizations. The Regulations also instruct funded faith-based organizations not to discriminate in the delivery of services or benefits based on religion or to use federal funds for inherently religious activities.

On May 21, 2012, the OCR conducted an onsite visit with the CJPA in Pago Pago, American Samoa, to interview management and program staff; we also provided a training program for Agency representatives about the OCR and the federal civil rights laws that the OCR enforces,

how the OCR enforces civil rights laws, a recipient's obligations to provide services to limited English proficient individuals, civil rights laws that affect faith-based organizations, and effective ways to monitor subrecipient compliance with applicable civil rights obligations. The OCR would like to thank your personnel for assisting the DOJ during its onsite visit.

In regard to the limited scope of this Compliance Review, the OCR concludes that the CJPA is not fully in compliance with the requirements of the federal civil rights laws that the OCR enforces. Specifically, we have reservations about the adequacy of the Agency's (1) guidance to subrecipients about their legal obligations regarding applicable federal civil rights laws, (2) monitoring of subgrantee compliance with their civil rights duties, (3) civil rights training for subrecipients, (4) information and training provided to CJPA personnel on the Agency's employment nondiscrimination policy and procedures, (5) complaint procedures for responding to certain discrimination allegations, (6) efforts to make subawards to nonprofit organizations that may not be tax exempt under 501(c)(3) of the Internal Revenue Code, and (7) monitoring of its faith-based subrecipients' compliance with the Equal Treatment Regulations. The following Compliance Review Report includes recommendations for improving the CJPA's methods for monitoring the civil rights compliance of subrecipients and ensuring compliance with its federal civil rights obligations.

Compliance Review Report: Overview and Recommendations

I. Overview

This Compliance Review Report first examines the CJPA's procedures for monitoring whether subrecipients are meeting their obligations to comply with the federal civil rights laws that are a condition for receiving federal financial assistance. The Report then focuses on the Agency's implementation of the DOJ's Equal Treatment Regulations.

A. General Monitoring Procedures to Ensure Subrecipient Compliance with Applicable Federal Civil Rights Laws

Recipients of federal financial assistance from the OJP are responsible for certifying that contractors and subrecipients under DOJ grant programs comply with applicable federal civil rights laws. In reviewing the CJPA's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR evaluates how the Agency uses the following four tools: (1) standard assurances, (2) onsite visits and other monitoring methods, (3) training programs and technical assistance, and (4) procedures for receiving, investigating, and resolving complaints alleging employment and services discrimination.

1. Standard Assurances

The OCR examines the standard assurances that the CJPA uses in connection with its administration of the following programs: (1) Bureau of Justice Assistance's Edward Byrne Memorial Justice Assistance Grants (JAG), (2) the Residential Substance Abuse Treatment for State Prisoners (RSAT), (3) Victims of Crime Act (VOCA) Victim Assistance Grants, (4) the OVW's Violence Against Women Act Services • Training • Officers • Prosecutors Grants (VAWA STOP), (5) the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Title II Formula Grants (Title II), (6) the OJJDP's Title V Community Prevention Grants (Title V), and (7) the OJJDP's Juvenile Accountability Block Grants (JABG).

The CJPA does not require any of its subrecipients to sign a standard assurances document that apprises them of their federal civil rights obligations. Occasionally, the Agency requires a subrecipient to execute an Independent Contractor Service Contract as a condition of receiving federal funds. While that agreement purports to describe several requirements of the American Samoa Administrative Code, it does not contain any provisions regarding federal civil rights laws. During the OCR's site visit, the CJPA could only identify one subrecipient (Catholic Social Services of the Diocese of Samoa – Pago Pago) that signed this contract. When the Agency subawards funds to another government office, it enters into a one-page memorandum of agreement that fails to describe any applicable obligations under federal nondiscrimination law. Finally, in an especially troubling instance of the CJPA's failure to inform its subrecipients of their obligations under federal law, the CJPA acknowledged during the OCR's site visit that one subrecipient (Teen Challenge) signed no agreement whatsoever as a condition of receiving federal financial assistance from the DOJ.

2. Onsite Visits and Other Monitoring Methods

The CJPA requires its subrecipients to submit quarterly financial and programmatic reports regarding their implementation of DOJ-funded programs; these reports do not contain information related to applicable federal civil rights requirements. The Agency conducts occasional site visits of its subrecipients and relies on such onsite meetings to address any reported complaints about a subgrantee's provision of services or benefits to members of the public or to beneficiaries. Despite this monitoring protocol, the CJPA does not have any procedures in place to evaluate the federal civil rights compliance of its subgrantees.

3. Training and Technical Assistance

The CJPA does not provide any training to its subrecipients on the civil rights obligations that apply to the receipt of federal financial assistance from the DOJ. The Agency, primarily through its program managers, provides ongoing technical assistance to subrecipients. These personnel are available by e-mail and telephone to respond to subrecipient questions about grant requirements that arise during the grant cycle.

4. Complaint Procedures

In reviewing complaint procedures, the OCR evaluates the processes in place for individuals to pursue complaints of employment discrimination against the CJPA, as well as complaints of employment and services discrimination against its subrecipients.¹

As a part of the American Samoa government, the CJPA is subject to American Samoa's personnel rules and regulations, which are administered by the Department of Human Resources and prohibit discrimination in employment based on, among other protected classes, race, color, national origin, religion, sex, and disability. Am. Samoa Admin. Code §§ 4.1101, .1108. These administrative provisions further require the CJPA to designate an Equal Employment Opportunity (EEO) coordinator. *See id.* § 4.1105. During the OCR's site visit, the CJPA did not identify its designated EEO coordinator. The administrative code also explains how employees should internally report discrimination and addresses the Agency's responsibilities to resolve any such complaints. *See id.* § 4.0903. In certain circumstances, a CJPA employee can also file an employment discrimination complaint with the U.S. Equal Employment Opportunity Commission (EEOC) or the OCR. To educate employees about prohibited discrimination in employment, the Department of Human Resources provides regular training to government employees on sexual harassment in the workplace and various federal equal employment opportunity laws. It also developed a brochure, entitled "Your Rights to Equal Employment Opportunities," that provides information to employees on the EEOC's role in protecting employees from discrimination, as well as the process for filing a charge of discrimination with that agency. Despite the availability of these resources, the CJPA provides neither information nor training to new or existing employees on its nondiscrimination obligations or the applicable complaint process for receiving and resolving civil rights complaints.

In monitoring subrecipients, the CJPA does not evaluate whether subrecipients have policies, procedures, or protocols regarding the handling of employment or services discrimination complaints they receive. The Agency also does not determine if subgrantees provide any notification to their employees and beneficiaries about subrecipient processes for handling discrimination complaints or available avenues for filing civil rights complaints.

B. Monitoring Compliance with Faith-Based Regulations

The purpose of the Equal Treatment Regulations is to ensure 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) (2012). The Regulations also circumscribe how faith-based subrecipients may use federal financial assistance. Specifically, such subgrantees may not engage in inherently religious activities with federal

¹ The CJPA does not provide services or benefits to members of the public, beneficiaries, or participants.

funds; nor can they discriminate against potential or actual program beneficiaries on the basis of religion or religious belief. *Id.* § 38.2(b)(1), (d). In evaluating the CJPA's equitable treatment of faith-based organizations, the Compliance Review Report focuses on two issues: (1) the review process for making awards to applicant faith-based organizations; and (2) procedures for ensuring that funded faith-based organizations comply with applicable federal civil rights laws.

1. The Process for Making Awards to Applicant Faith-Based Organizations
 - a. Selecting DOJ-Funded Subrecipients

The CJPA subawards JAG, RSAT, VOCA, VAWA STOP, Title II, Title V, and JABG funds. In order to be eligible to receive any funds, the Agency requires nonprofit applicants to have federal tax exempt status. The Agency relies on the same process to award funds under each of these programs. To announce funding opportunities to potential applicants, the CJPA places a notice of funding availability in the local daily newspaper and broadcasts a public service announcement on a local television channel. In subawarding funds, the CJPA primarily relies on the Territorial Criminal Justice Planning Board (Board), which is comprised of twelve members who are appointed by the Governor. The Agency provides administrative support to the Board. The Board selects successful applicants for each program and determines the amount of funds each subrecipient will receive. In making award decisions, each body seeks to fund programs that will provide the most benefit to those affected by American Samoa's criminal or juvenile justice systems, based on the identified priorities and targeted service population for each program. The Board retains the ultimate authority to select subrecipients and to determine their funding levels. If an applicant does not receive funding, then the CJPA sends a letter to that organization informing it of the Board's decision. An applicant can ask the Agency to provide additional information about the basis for any decision to deny their grant award application.

- b. Faith-Based Organizations as Subrecipients

This section of the Report discusses the CJPA's efforts to include faith-based organizations in the JAG, VOCA, VAWA STOP, Title II, Title V, and JABG programs. Faith-based organizations are eligible to seek and receive funds from the CJPA under the JAG, VOCA, and VAWA STOP programs. In reviewing the inclusion of faith-based organizations in the subaward process for the Title II, Title V, and JABG programs, it is important to emphasize that these juvenile justice programs limit the ability of such groups to apply to the OJJDP or the Agency for specific funds as follows:

- Title II Program: Faith-based organizations are statutorily ineligible to apply directly to the OJJDP for Title II funds. *See* 42 U.S.C.A. §§ 5631-33 (West 2012). The OJJDP, however, encourages faith-based organizations to respond to requests for proposal from the SAA.

- Title V Program: Faith-based organizations are statutorily ineligible to apply directly to the OJJDP or the Agency for Title V funds. *See id.* § 5783(a). The OJJDP, however, encourages faith-based organizations to access such funds by partnering with governmental subrecipients in developing the required local delinquency prevention plan and implementing the proposed prevention activities.
- JABG Program: Faith-based organizations are statutorily ineligible to apply directly to the OJJDP or the CJPA for funding under the JABG program; however, section 1806 of the Omnibus Crime Control and Safe Streets Act of 1968 permits governmental subrecipients to contract with such groups to implement appropriate JABG purpose areas. *Id.* § 3796ee-6.

In fiscal year 2012, the CJPA did not receive any applications that contemplated the involvement of faith-based organizations in the administration of JAG, VOCA, Title V, or JABG funds. For that same time period, the Agency received applications from one faith-based group (Catholic Social Services of the Diocese of Samoa – Pago Pago (Catholic Social Services)) for VAWA STOP funds and one faith-based organization (Teen Challenge) for Title II funds. In response to their funding requests, Catholic Social Services received a total of \$40,000 to operate its VAWA STOP program, while Teen Challenge received \$15,000 to operate its Title II program.

2. Procedures for Ensuring that Faith-Based Organizations Comply with Applicable Civil Rights Laws

In administering its DOJ program funds, the CJPA does not monitor whether its faith-based subgrantees provide services consistent with the Equal Treatment Regulations, and, in fact, Catholic Social Services and Teen Challenge are not in substantial compliance with the requirements of the Regulations. During its compliance review, the OCR conducted onsite visits to Catholic Social Services and Teen Challenge. Based on these site visits, which included interviews with subrecipient leadership and program staff representatives, and its review of pertinent program materials, the OCR concludes that neither federally funded program complies with the DOJ's Equal Treatment Regulations because (1) both programs use federal resources for inherently religious purposes and (2) Teen Challenge discriminates against prospective and current program participants based on religion.²

² Because Catholic Social Services and Teen Challenge receive VAWA STOP and JJDP funds, respectively, they are 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 pertinent federally funded programs or activities. *See also* 28 C.F.R. §§ 42.201-.214. In addition to breaching the requirements of the Equal Treatment Regulations, Teen Challenge violates the prohibition against religious-based discrimination contained in the Safe Streets Act.

a. Catholic Social Services

Catholic Social Services administers various programs and services, such as educating the public about substance abuse and addiction, providing Alcoholics Anonymous and Narcotics Anonymous meetings, and counseling clients on issues involving violence against women and children, anger management, and loss and grief. To support these efforts, Catholic Social Services uses its VAWA STOP funds as follows: (1) to pay the entire compensation of a counselor who assists victims of domestic violence and sexual abuse, (2) to pay twenty percent of the administrative costs of several buildings where Catholic Social Services administers certain programs and services, and (3) to purchase various ancillary materials, such as office supplies and vehicle fuel, that support its educational and outreach activities. During the OCR's site visit, program representatives emphasized that the organization, as a matter of policy and in practice, provides these DOJ-supported programs and services to all interested members of the public, without regard to their religious background. Its program brochure, which commits to assisting "all who come seeking help," supports this representation. Based on all of the information collected during its compliance review, the OCR concludes that Catholic Social Services does not discriminate against beneficiaries or prospective beneficiaries based on religion or religious belief in providing federally funded services.

While Catholic Social Services satisfies its basic obligation to provide federally funded programs and services free from religious discrimination, it does not adequately separate the federally funded aspect of its operations from its inherently religious activities. In evaluating whether a subrecipient uses federal funds to engage in inherently religious activities, the OCR relies on the Equal Treatment Regulations. The Regulations provide examples of inherently religious activities and state the conditions under which a funded faith-based organization may engage in them:

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. 71,319, 71,320 (Nov. 17, 2010).³ Thus, a subrecipient may only conduct inherently religious activities when it receives

³ 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 Catholic Social Services is a direct subrecipient of federal financial assistance, it cannot avail itself of that provision.

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federal financial assistance if it satisfies the following two elements: (1) such activities are offered 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). Catholic Social Services uses federal resources in ways that are inconsistent with these requirements; stated differently, it uses federal financial assistance to engage in prohibited religious conduct.

As part of its activities, Catholic Social Services holds Alcoholics Anonymous and Narcotics Anonymous meetings, which are generally led by the executive director of the organization. These programs are inherently religious. *See, e.g.*, Report to the President, Recommendations of the Interagency Working Group on Faith-Based and Other Neighborhood Partnerships 31, available at <http://www.whitehouse.gov/sites/default/files/uploads/finalfaithbasedworkinggroupreport.pdf> [hereinafter Report to the President]; *Cox v. Miller*, 296 F.3d 89, 107-10 (2d Cir. 2002); *Kerr v. Farrey*, 95 F.3d 472, 479-80 (7th Cir. 1996).⁴ As noted above, the subrecipient uses its VAWA STOP funds to compensate a counselor, to defray a portion of its administrative expenses, and to purchase certain items related to its program operations. Based on the information collected during its compliance review, the OCR found no evidence that Catholic Social Services uses any of the federally funded items in the third category of expenses to

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 under 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 Catholic Social Services receives federal funds directly through the VAWA STOP grant award process, and not indirectly from beneficiaries, it must refrain from using federal financial assistance for inherently religious activities.

⁴ In crafting the Equal Treatment 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; Providing for Equal Treatment of All Justice Department Program Participants, 69 Fed. Reg. 2832, 2834 (Feb. 20, 2004). Consistent with this approach, and after carefully considering pertinent caselaw, the OCR concludes that the Alcoholics Anonymous and Narcotics Anonymous programs providing services to Catholic Social Services clients constitute inherently religious activities under the Equal Treatment Regulations. *See, e.g.*, Puerto Rico Dep't of Justice, 09-OCR-0482, Office for Civ. Rts. Compl. Rev. Supp. Rep. 9 (U.S. Dep't of Justice May 6, 2011), <http://www.ojp.usdoj.gov/about/ocr/pdfs/PR-09-OCR-0482.pdf>; Fla. Dep't of Law Enforcement, 09-OCR-0058, Office for Civ. Rts. Compl. Rev. Supp. Rep. 7 (U.S. Dep't of Justice Mar. 23, 2011), <http://www.ojp.usdoj.gov/about/ocr/pdfs/FL-09-OCR-0058.pdf>.

support its Alcoholics Anonymous or Narcotics Anonymous meetings. The record evidence does suggest, however, that the subrecipient relies on its federally funded counselor to conduct these substance-abuse sessions, and may use federal funds to subsidize the administrative costs related to these sectarian activities.

First, Catholic Social Services uses a portion of its DOJ funds to compensate a counselor. The responsibilities of this position include highlighting issues involving violence against women, assisting victims of domestic violence and sexual abuse, and providing substance abuse treatment services to members of the community. Given the counselor's role, Catholic Social Services occasionally relies on this individual to conduct Alcoholics Anonymous and Narcotics Anonymous meetings.⁵ About once each month, when the executive director is absent, the counselor conducts these substance-abuse-related sessions. This conduct, despite its apparent infrequency, is impermissible under the Equal Treatment Regulations because the counselor, who is compensated with federal funds, is engaging in inherently religious activities.

Second, Catholic Social Services occasionally holds Alcoholics Anonymous and Narcotics Anonymous meetings in office space where the administrative costs are partially paid for with DOJ funds. Typically, the subrecipient conducts these sessions in locations that are separate from those that are directly subsidized by such federal financial assistance. About twice each month, however, Catholic Social Services holds these meetings in office space that is supported by its VAWA STOP funds. The subrecipient makes no effort to, in these instances, demonstrate that federal funds are only being used for the federally funded program, and that they do not support inherently religious activities. As a result, the OCR cannot conclude that the subrecipient is in substantial compliance with the Equal Treatment Regulations' restrictions as to its use of this federal financial assistance.

b. Teen Challenge

Teen Challenge administers programs and services for individuals who range in age from six to thirty-five, although most of its beneficiaries are youths. As part of its services, it provides classes and individual counseling sessions on issues involving peer pressure, drug and alcohol abuse, risk of self-harm, gang prevention and intervention, and stress and anger management. It also engages in public outreach activities that discuss these problems and describe its approach to resolving them. As a complement to its counseling services, the subrecipient provides structured recreational opportunities to beneficiaries, such as the ability to learn how to play a musical instrument. If Teen Challenge lacks the capacity to provide services that will address the needs of an individual, it refers that person to another social services organization that can assist them. To support its activities, Teen Challenge used its Title II funds to purchase the following equipment: (1) a laptop computer (Laptop Computer No. 1), which the subrecipient uses to

⁵ In connection with this position, Catholic Social Services does not adopt preferential employment policies based on religion.

complete administrative tasks, (2) another laptop computer (Laptop Computer No. 2), which the subrecipient uses in connection with its class sessions and public outreach activities, (3) a keyboard, which the subrecipient uses in connection with its musical instruction and public outreach activities, and (4) chairs and tables, which the subrecipient uses in connection with its client counseling, class sessions, and public outreach activities. The organization allocated the entire cost of this equipment to the Title II program.

i. Teen Challenge's inherently religious activities

Teen Challenge is not in substantial compliance with the Equal Treatment Regulations because it directly uses DOJ-funded items to foster its sectarian objectives and provides insufficient evidence to the OCR that participation in such religious activities is voluntary.⁶ The subrecipient appears to engage in the following inherently religious activities, as contemplated by the Equal Treatment Regulations: (1) prayer, (2) religious instruction, and (3) evangelism. *See* Participation in Justice Department Programs by Religious Organizations, 69 Fed. Reg. at 2833-34; Report to the President 31. In its brochure, which describes its federally funded programs and services, the subrecipient repeatedly emphasizes the religious nature of its program. It notes that Teen Challenge's purpose is to enable students to "function as a Christian in society," which it accomplishes by "applying Biblical principles" to a client's relationships, including those in the local church. Through its program, it encourages participants to become "spiritually alive." In that same document, Teen Challenge describes several of the services it provides, including classes on "Biblical Foundations for Problem Solving," "Finding Solutions – A Christian Approach," "Christian Principles of Problem Solving," and "Sexuality in God's Design." During the OCR's site visit, it learned that counselors may begin these classes with the recitation of a prayer. The brochure also includes references to Psalm 118:7 and Romans 12:2, which are scriptural passages from the Bible.

Teen Challenge also conducts public outreach activities that contain religious content. Each month, participants travel to a local market and provide a musical performance for members of the public. As part of these outreach efforts, program participants play musical instruments and sing songs that, in many instances, have Christian themes, as evidenced by their references to God in their titles or lyrics. The subrecipient controls the selection of songs that may be performed during these events. Twice a month, the organization also relies on participants to distribute information about its services to members of the public and to recruit additional people to participate in the program. During this outreach, program leaders encourage participants to discuss the religious aspects of their experience in the program.

⁶ Because Teen Challenge receives federal funds directly through the Title II grant award process, and not indirectly from beneficiaries, it must refrain from using federal financial assistance for inherently religious activities. *See supra* note 3.

During its onsite visit, the OCR received conflicting information from a program administrator about whether a participant is required to engage in inherently religious activities. In describing the organization's religious instruction and outreach activities, the manager noted that individuals volunteer to participate in those activities and are not disciplined for any failure to engage in them. But at the same time, she acknowledged that staff members encourage children in the program to discuss their religious experiences and to describe how faith-based solutions have assisted them. In describing the incorporation of music into the subrecipient's curriculum, this representative equivocated about whether participants must sing the organization's religiously themed songs, suggesting at one point that youths must participate in this aspect of the program.

As a threshold matter, the OCR finds that Teen Challenge fails to offer its religious programming in a way that satisfies the separate-in-time-or-place requirement of the Equal Treatment Regulations. Indeed, in providing services to youths, the subrecipient neither acknowledges the applicability of the Regulations nor endeavors to ensure that it appropriately separates sectarian activities from secular services. Rather, it has used, and perhaps continues to use, each identified DOJ-purchased piece of equipment to engage in at least one inherently religious activity, in clear contravention of the Regulations.

- Laptop Computer No. 1: Teen Challenge used this computer to print its program brochure, which, as noted above, includes extensive content that can be characterized as evangelism. *See* Report to the President 10 (“Neither staff nor materials used in these programs [supported by direct federal financial assistance] should promote, endorse, or favor religious beliefs over non-religious beliefs . . .”).
- Laptop Computer No. 2: The subrecipient uses this computer to coordinate its classes, several of which involve prayer and religious instruction, and in connection with its public outreach and recruitment efforts, which involve activities that constitute evangelism.
- Keyboard: Teen Challenge uses this keyboard during its public musical performances to play songs that have religious themes. As with several of the subrecipient's other outreach activities, this conduct constitutes evangelism.
- Chairs and Tables: The subrecipient uses these items during its classes, several of which involve prayer and religious instruction, as well as during its public outreach and recruitment efforts, which involve activities that constitute evangelism.

Even if the OCR concluded that Teen Challenge appropriately separated its religious activities from other, permissible activities funded by the DOJ, we have strong reservations about whether participation in the organization's inherently religious activities is voluntary. As an initial

matter, we note that the subrecipient primarily provides its services to youths and young adults, which automatically raises heightened concerns about whether such persons have the ability to make truly voluntary decisions about participating in certain religious activities. *See Teen Ranch v. Udow*, 389 F. Supp. 2d 827, 846 (W.D. Mich. 2005), *aff'd*, 479 F.3d 403 (6th Cir. 2007); *see also* Report to the President 10 (emphasizing that staff “should not express judgment with regard to religious beliefs or non-belief, or seek to influence the beliefs of participants with respect to religion”). In administering its federally funded programs and services, Teen Challenge is encouraging children as young as six years old to engage in religious activities like prayer and religious instruction. When a participant in a federally funded program is so young, a subrecipient should be especially careful to ensure that it does not improperly subject them to inherently religious activities. Unfortunately, Teen Challenge does not appear to share this concern regarding the unique vulnerabilities of these individuals. In connection with its review of Teen Challenge, the OCR found absolutely no safeguards to inform children, or their parents or legal guardians, that they may refrain from participation in inherently religious activities. Such a lax approach to consent is troubling. *See* Report to the President 35 (explaining that, in a federally funded program that serves youth, securing parental consent “will help ensure that any participation [in inherently religious activities] is voluntary”). Instead of notifying participants of their rights under the Equal Treatment Regulations, and rather than exercising caution in conveying religious messages to beneficiaries, the subrecipient actively encourages youths to participate in inherently religious activities that are prohibited by the Regulations.

ii. Teen Challenge’s assessment of program participants

In addition to Teen Challenge’s failure to separate its inherently religious activities from its federally funded programs and services, the subrecipient does not substantially comply with the Equal Treatment Regulations because it discriminates against program beneficiaries based on religion. To evaluate prospective and current participants in its program, the subrecipient administers a survey that includes the following questions regarding the individual’s religious background and beliefs:

- What is your religious background, if any?
- Did you accept Christ in your heart?
- What is your favorite scripture verse? Explain why.
- What Bible character do you most identify with, and why?
- Describe some other significant faith-based experience you have had during the program.
- What is one answer to prayer you have experienced?

- What is one prayer that has not yet been answered?
- What has enabled you to grow the most spiritually while in the program?⁷

Despite the explicitly religious nature of these questions, a program administrator suggested that Teen Challenge does not use religion as a basis for screening services provided to potential or actual participants. Instead, the organization relies on the answers given to these questions to tailor services for those persons who have pre-existing religious beliefs. The administrator also explained that Teen Challenge does not require participants to belong to a particular church, and that several program participants are unaffiliated with any church.

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 a subrecipient elects to receive federal funding, the Regulations prohibit it from using any religion-based criteria to exclude beneficiaries. This safeguard protects all program applicants, regardless of their religious beliefs. Indeed, the Regulations protect applicants who belong to no religion as much as those who adhere to a non-Christian faith. *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 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”).

In evaluating who will participate in its federally funded programs and services, Teen Challenge asks beneficiaries to provide information about their religion and religious beliefs. This practice is improper. As explained above, a beneficiary’s religion should play no role in determining whether he can participate in a DOJ-funded program. Despite this restriction, the subrecipient asks each participant invasive questions about their experience with Christianity that, viewed collectively, show that Teen Challenge uses religious-based criteria in providing its federally funded programs and services. The organization appears to challenge this conclusion; however, it simply is not plausible to suggest that, in order to participate in federally funded secular programs or services, a beneficiary needs to identify their favorite scripture verse or Bible character. In fact, all of the questions listed above are irrelevant to determining whether someone is eligible to receive those programs and services that are supported with DOJ funds. Moreover, the survey questions, as written, strongly suggest that anyone who rejects the religious

⁷ The last page of the survey quotes Job 23:10, which is a scriptural passage from the Bible.

views of the organization will receive different and inferior services than those who adhere to the religious tenets of the organization. Coupled with its extensive reliance on inherently religious activities, the subrecipient, in using this survey, communicates to beneficiaries that, unless they share its religious perspective, they are not welcome in its federally funded program.

II. Recommendations

The CJPA already has in place a number of procedures to monitor the compliance of its subrecipients with various grant requirements. To strengthen the Agency's civil rights monitoring efforts, the OCR offers the following seven recommendations: (1) develop grant agreement provisions regarding federal civil rights/nondiscrimination obligations, (2) develop a monitoring protocol that covers items regarding federal civil rights laws, (3) provide training to all subrecipients regarding their obligations to comply with federal civil rights laws, (4) provide information and training to CJPA personnel on the Agency's employment nondiscrimination policy and procedures, (5) develop a comprehensive policy for addressing discrimination complaints, (6) allow subrecipients to demonstrate their nonprofit status by any of the means identified in the DOJ's Equal Treatment Regulations, and (7) ensure that Catholic Social Services and Teen Challenge comply with the requirements of the Equal Treatment Regulations.⁸

A. Develop Grant Agreement Provisions Regarding Federal Civil Rights/Nondiscrimination Obligations

The CJPA should ensure that all DOJ subrecipients agree to grant agreement assurances that accurately reflect their federal civil rights obligations. To that end, the OCR recommends that the Agency develop a grant agreement that includes the following language or substantially similar language, which would apply to all applicants for and subrecipients of DOJ funding, regardless of the amount of federal financial assistance at issue:

LANGUAGE APPLICABLE TO ALL DOJ PROGRAMS:

Recipient will comply (and will require any subgrantees or contractors to comply) with any applicable federal nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act) (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. § 10604(e)); the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29

⁸ Most of these recommendations directly relate to the Methods of Administration that the CJPA must implement as a condition of administering fiscal year 2012 funds as an SAA under covered programs. See Letter from M. Alston, Director, to SAA Points of Contact (Aug. 1, 2012); Other Requirements for OJP Applications, http://www.ojp.usdoj.gov/funding/other_requirements.htm (last visited Dec. 27, 2012).

U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131-34); the Education Amendments of 1972 (20 U.S.C. §§ 1681, 1683, 1685-86); the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); 28 C.F.R. pt. 31 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Exec. Order No. 13279 (equal protection of the laws for faith-based and community organizations); Exec. Order No. 13559 (fundamental principles and policymaking criteria for partnerships with faith-based and other neighborhood organizations); and 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations).

In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the OCR and the Criminal Justice Planning Agency (CJPA).

Recipient will provide an Equal Employment Opportunity Plan (EEO) to the OCR and the CJPA, if it is a state government, a local government, or a for-profit entity that has 50 or more employees and receives a single award for \$500,000 or more that is subject to the administrative provisions of the Safe Streets Act; otherwise, it will provide a certification to the OCR and the CJPA that it has a current EEO on file, if it has 50 or more employees and receives a single award for \$25,000 or more, but less than \$500,000, that is subject to the administrative provisions of the Safe Streets Act. For state governments, local governments, and for-profit entities receiving less than \$25,000, or for state governments, local governments, and for-profit entities with fewer than 50 employees, regardless of the amount of the award, no EEO is required. Information about civil rights obligations of grantees can be found at <http://www.ojp.usdoj.gov/ocr/>.

LANGUAGE APPLICABLE TO TITLE II, TITLE V, AND JABG PROGRAMS:

Recipient will designate a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements, assurances, and conditions are met and who shall act as a liaison in all civil rights matters with the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs and the Office for Civil Rights (OCR), Office of Justice Programs.

Recipient will inform the public and subgrantees of affected persons' rights to file a complaint of discrimination with the OCR for investigation.

The CJPA may also consider including in the grant agreement the following language or substantially similar language regarding language assistance services, which would apply to all

DOJ programs:

As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, recipient must take reasonable steps to ensure that LEP persons have meaningful access to its programs and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Recipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing its budgets and in conducting its programs and activities. Additional assistance and information regarding your LEP obligations can be found at <http://www.lep.gov>.

The Agency may also wish to add a sentence to the grant agreement stating that, in accordance with federal civil rights laws, the subrecipient shall not retaliate against individuals for taking action or participating in action to secure rights protected by these laws.

B. Develop Appropriate Monitoring Protocol

As part of its responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the CJPA should ensure that it conducts periodic monitoring of its subrecipients' compliance with federal civil rights requirements. Going forward, it should develop monitoring materials to ensure that it evaluates the various civil rights requirements that apply to all DOJ-funded subrecipients (e.g., whether the subrecipient has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act; whether the subrecipient has a grievance procedure and a designated coordinator as required by section 504 of the Rehabilitation Act and Title IX of the Education Amendments of 1972; and whether the subrecipient is taking reasonable steps to provide meaningful access to programs and activities for LEP persons). This monitoring tool should also include questions that evaluate whether the subrecipient is complying with the DOJ's Equal Treatment Regulations, including the prohibitions against using federal funds to engage in inherently religious activities and discriminating against program beneficiaries on the basis of religion. In an effort to assist the CJPA in refining its monitoring materials, the OCR has prepared a sample Federal Civil Rights Compliance Checklist, which is enclosed for the Agency's review.

C. Provide Training to All Subrecipients Regarding Their Obligations to Comply with Federal Civil Rights Laws

The CJPA should ensure, through periodic and mandatory training, that all subgrantees are aware of their obligations under applicable federal civil rights laws. The Agency should provide this training at least once during a grant cycle, whether it provides the training in person, during a

teleconference, or through other means. The OCR has developed training modules that explain a recipient's various civil rights obligations, and which are available at <http://www.ojp.usdoj.gov/about/ocr/assistance.htm>. The Agency may wish to incorporate these videos into its own subgrantee training program. The OCR is also available to provide the Agency with additional technical assistance in developing its civil rights training programs. In addition, the CJPA should continue to provide ongoing technical assistance to subrecipients regarding their statutory and contractual obligations.

D. Provide Information and Training to CJPA Personnel on the Agency's Employment Nondiscrimination Policy and Procedures

The CJPA does not have any mechanism in place to educate its employees about applicable employment nondiscrimination policy and related procedures. To address this deficiency, the Agency, in coordination with the Department of Human Resources, should provide information and training to new and existing employees on the CJPA's nondiscrimination obligations and the applicable complaint process for receiving and resolving employment discrimination complaints.

E. Develop Comprehensive Policy for Addressing Discrimination Complaints

As previously noted, the CJPA has procedures in place to respond to discrimination complaints from its own employees, and the EEOC and the OCR are also available to resolve certain discrimination complaints. Nonetheless, the Agency has an obligation as a recipient of federal financial assistance to have in place a policy that comprehensively addresses how it responds to employment and services discrimination complaints that it receives from subgrantee employees and beneficiaries. Specifically, it should ensure that it has a policy for addressing discrimination complaints that includes at a minimum the following elements:

- designating a coordinator who is responsible for overseeing the complaint process;
- notifying appropriate subrecipient employees and beneficiaries of prohibited discrimination in funded programs and activities and the CJPA's policy and procedures for handling discrimination complaints;
- establishing written procedures for receiving discrimination complaints from subgrantee employees and beneficiaries;
- investigating each complaint internally or referring it to the appropriate agency, such as the EEOC or the OCR, for investigation and resolution;
- notifying the complainant that he or she may also file a complaint with the OCR;

- training CJPA program staff members on their responsibility to refer discrimination complaints or potential discrimination issues involving subrecipients to the Agency's complaint coordinator for processing as soon as the alleged discrimination comes to their attention;
- ensuring that subrecipients have procedures in place for responding to discrimination complaints that employees and beneficiaries file directly with the subrecipient; and
- ensuring that subrecipients notify their employees and beneficiaries of prohibited discrimination and the procedures for filing a complaint of discrimination.

To assist the CJPA in developing an appropriate complaint policy, the OCR encloses discrimination complaint procedures that were adopted by several other state administering agencies. While the Agency's adoption of these procedures would satisfy the instant recommendation, the OCR also recognizes that there may be other, equally effective complaint procedures that accomplish the same objectives. Additional information about the applicable laws, complaint forms, and the investigative process can be found at <http://www.ojp.usdoj.gov/ocr/crc>.

F. Allow Subrecipients to Demonstrate Their Nonprofit Status by Any of the Means Identified in the DOJ's Equal Treatment Regulations

The CJPA generally requires nonprofit organizations to obtain federal tax exempt status under 26 U.S.C. § 501(c)(3) to be eligible for funding. Unless 501(c)(3) status is required under the particular grant program (e.g., programs funded under the federal Juvenile Justice and Delinquency Prevention Act), the CJPA should be mindful that applicants can also demonstrate nonprofit status by any of the following means identified in the DOJ's Equal Treatment Regulations: (1) proof that the Internal Revenue Service recognizes the organization as being tax exempt under 501(c)(3) of the Internal Revenue Code; (2) a statement from a state taxing body or state secretary of state certifying that the organization is a nonprofit organization and that no part of the organization's net earnings may benefit any private shareholder or individual; (3) a certified copy of a certificate of incorporation or similar document establishing nonprofit status; and (4) any of the above, if it applies to a state or national parent organization, with a statement by the state or national parent organization that the applicant is a local nonprofit affiliate. 28 C.F.R. § 38.2(g).

G. Ensure that Catholic Social Services and Teen Challenge Comply with the Requirements of the Equal Treatment Regulations

The CJPA should take corrective action to improve its monitoring of Catholic Social Services and Teen Challenge and to ensure that, going forward, these subrecipients use their federal

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financial assistance in ways that comport with the requirements of the Equal Treatment Regulations. To ensure that both organizations understand their obligations under this regulatory provision, the CJPA should provide a copy of the Regulations to each subrecipient's executive director. It should also require all of the employees of both subrecipients to watch the OCR's training video on the responsibilities of faith-based recipients of federal financial assistance; the video is available at <http://www.ojp.usdoj.gov/about/ocr/assistance.htm>. In addition, as to Catholic Social Services, the Agency should prohibit that subrecipient from relying on its federally funded counselor to conduct Alcoholics Anonymous or Narcotics Anonymous meetings. It should also ensure that these inherently religious activities are not supported by any federally funded administrative resources, which may require the subrecipient to hold all of its substance-abuse sessions in a meeting space that does not benefit from federal financial assistance. As to Teen Challenge, the Agency should ensure that the subrecipient (1) removes those provisions of its brochure that promote, endorse, or favor religion, (2) refrains from using federally funded equipment to engage in any inherently religious activity, (3) obtains parental consent to invite a youth to any separate and distinct religious activities, (4) discontinues its reliance on religious-related questions in evaluating those beneficiaries who participate in federally funded programs or services, and (5) removes the reference to scripture on the last page of its youth assessment survey. In evaluating any application from Catholic Social Services or Teen Challenge for future DOJ grant funds, the CJPA should carefully consider whether either applicant remains in noncompliance with the Equal Treatment Regulations. If the Agency decides that either organization is in fact qualified to receive another grant award, it should include a special condition in the governing grant agreement that describes in detail the applicable requirements of the Regulations.

III. Conclusion

We find that the CJPA should implement the OCR's recommendations to ensure substantial compliance with the federal civil rights laws that the OCR enforces. On request, the OCR is available to provide technical assistance to the Agency in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible CJPA official contact Attorney Advisor Christopher Zubowicz to develop a timeline and goals for implementing the OCR's recommendations.**

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Thank you for your cooperation and assistance during the Compliance Review process. If you have any questions, please contact Mr. Zubowicz at 202.305.9012.

Sincerely,

/s/ Michael L. Alston

Michael L. Alston
Director

Enclosures

cc: Leonard Seumanutafa, Deputy Director
American Samoa Criminal Justice Planning Agency (Via E-Mail)

Rev. Fr. Petelo Siliako Auva'a, Executive Director
Catholic Social Services of the Diocese of Samoa – Pago Pago (Via E-Mail)

Rev. Otto Haleck, Jr., Executive Director
Teen Challenge Samoa (Via E-Mail)