



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail

November 8, 2010

Gwendolyn W. Burrell
Executive Director
Department of Crime Control and Public Safety
North Carolina Governor's Crime Commission
1201 Front Street, Suite 200
Raleigh, North Carolina 27609

Re: Supplemental Compliance Review Report for North Carolina Department of
Crime Control and Public Safety, Governor's Crime Commission
Docket No. 09-OCR-0274

Dear Executive Director Burrell:

This Supplemental Compliance Review Report supplements the Compliance Review Report issued to the North Carolina Governor's Crime Commission (GCC) by the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) on November 23, 2009, regarding the GCC's compliance with applicable federal civil rights laws and its monitoring procedures for ensuring the compliance of subrecipients with these laws.

In an effort to assess whether the GCC has effective procedures in place to ensure that faith-based subrecipients of federal financial assistance comply with the DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 (Equal Treatment Regulations or ETRs), on July 1, 2009, (the July 1 meeting), the OCR met with the executive directors, program staff, and program beneficiaries of two faith-based subrecipients of the GCC: (1) Safer Communities Ministry, for which its Second Chance Reentry Network program received DOJ funding from July 1, 2007, to June 30, 2009; and (2) Higher Level Missions, Inc., for which its Cabarrus Reentry Initiative program has been in receipt of DOJ funding since July 1, 2007, and has been awarded funds through July 30, 2011. The following information contained in this

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Supplemental Compliance Review Report was provided to the OCR by these two subrecipients during the July 1 meeting and through written correspondence with the OCR prior and subsequent to that meeting.

I. The Second Chance Reentry Network

Safer Communities Ministry (SCM) is a faith-based, nonprofit, tax-exempt organization based in Monroe, North Carolina.¹ On its website, SCM describes its mission: "to exhort, equip, and mobilize our partners to be more effective in changing the lives of prisoners, ex-offenders, and their families." During the period July 1, 2007, through June 30, 2009, SCM received a two-year Justice Assistance Grant (JAG) award in the amount of \$179,997.94 for its Second Chance Re-Entry Network (SCREEN) program. SCREEN is a network of faith-based and secular organizations and individuals that work together to provide transitional services to ex-offenders with the goal of reducing recidivism. According to the SCM Executive Director, the grant funded the salary of the SCREEN Coordinator and partially funded the salary of the SCM Executive Director, Program Director, and administrative assistant positions.² In its application materials, SCM provided the following project summary for its SCREEN program:

This project will enable CPM³, through SCREEN, to work with NC DOC Transitional Services & UCC [Union County Correctional] to create a safer community by developing an integrated response to change behavior by creating initiatives for job training, securing viable full time employment, housing, [and] mentoring for ex-offenders.

(2007 Grant Preapplication, p. 1.)

A. Targeting "Life Skills" course participants

SCM's SCREEN program has no official policy that screens or favors beneficiaries based on religion. Those who have a history of drug or alcohol abuse, however, must be enrolled in a substance abuse program, whether through Narcotics Anonymous (NA), Alcoholics Anonymous (AA), or an alternative non-faith-based program. According to the SCM Executive Director, there are no other formal requirements for entry into the program beyond ex-offenders' "willingness to change their lives."

To be sure, in its application materials, SCM states that "ex-offenders who participate in the Life

1 At the time that it applied for funds to the GCC, the organization had been founded and was known as Covenant Prison Ministries; it changed its name to Safer Communities Ministry in August 2008.

2 According to the SCM Executive Director, SCM did not make hiring decisions for the SCREEN Coordinator position or any other program position based on religious considerations.

3 "CPM" refers to Covenant Prison Ministries. See footnote 1, above.

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Skills course at UCC and UC Jail will be primary clients” of the SCREEN program.⁴ *Id.* During the July 1 meeting, the SCREEN Coordinator confirmed that Life Skills participants are “targeted” and “preferred.”⁵ SCM’s Life Skills course is a seven-week program conducted at the Union County Jail.⁶ Each week, a different teaching module is covered, with topics that include, “Understanding 12 steps,” “Dealing With Spiritual Warfare,” and “Personal and Spiritual” development.⁷ (Life Skills Curriculum at 1.) Although the SCM Executive Director emphasized to the OCR that Life Skills program participants may choose not to attend the faith-based components, the SCREEN program beneficiary who attended the July 1 meeting stated that as part of the Life Skills program, “we studied proverbs every day.” This is consistent with SCM’s own explicitly religious characterization of the Life Skills course on its website:

In this intense 7-week program, inmates receive Bible-based instruction to begin their transformation from the inside–out. Community volunteers also lead support groups that offer ex-offenders personal and spiritual support.

The SCM Executive Director told the OCR that in his experience, “nonbelievers” are “turned on to Christ” after taking the Life Skills program even though “established religion turned them off” before taking the course. He gave examples of having counseled three non-Christian inmates whom he told need not be “a Christian” in order to be a participant in SCM’s programs—each of whom “found Christ” after he “connected with them” in one-on-one discussions and through the Life Skill course. The SCM Executive Director credits his approach for this phenomenon: that because he is not a “Bible thumper” he has been able to convince those who are skeptical of religion to take the Life Skills program. Consistent with this explanation, the beneficiary with whom the OCR spoke at the July 1 meeting told the OCR that although at first resistant, after

4 SCM noted in its grant preapplication that in 2001-2002, the GCC awarded Union County a grant for CPM to establish the Life Skills program, which is still being conducted at the Union County Jail by SCM.

5 Although the SCM Executive Director told the OCR during the July 1 meeting that no one is “targeted” for the program, the SCREEN Coordinator’s characterization is supported by written materials that SCM provided to the OCR, which expressly state that “SCREEN targets graduates of Life Skills programs conducted at Union County Jail (UCJ), Union County Correctional (UCC), and Union County Community Shelter.” (SCREEN, An Initiative of Safer Communities Ministry, Inc., undated.)

6 The SCM Executive Director told the OCR that he believes the jail keeps information on detainees’ religion but that SCM has not sought access to that information and has no interest in doing so.

7 It is the OCR’s understanding that the twelve-step component of the life skills courses that are offered in prisons and jails follows twelve-step models for recovery from substance abuse, i.e., AA and NA, which have been recognized by federal courts of appeals as inherently religious programs. *See, e.g., Warner v. Orange County Dep’t of Probation*, 115 F.3d 1068, 1075 (2d Cir. 1996); *Kerr v. Farrey*, 95 F.3d 472, 479-80 (7th Cir. 1996). SCM materials provided to the OCR state that this component is taught using resources that SCM uses in its mentor training. The OCR confirmed in the July 1 meeting that these materials include the “Do’s and Don’ts” training materials that are discussed in Section I.D of this Report.

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being persuaded by the SCM Executive Director to stay one week in the Life Skills program, he “gave his life to Christ” approximately one month after he began the course, and is now a mentor for the SCREEN program.

B. Job training, employment services

The SCREEN Coordinator explained to the OCR that his primary role in administering the program is to arrange for classes on education, job readiness, computer skills, budgeting, and other employment services for ex-offenders. In this capacity, he works closely with both faith-based and non-faith-based organizations, including the Employment Security Commission of North Carolina. The SCREEN Coordinator and Executive Director confirmed that there is no religious screening of beneficiaries who wish to avail themselves of these programs and services.

Based on the representations made to the OCR by the Screen Coordinator and the SCM Executive Director at the July 1 meeting, the OCR concludes that SCREEN's employment and job training services are open to non-Christians and that these services are offered to all beneficiaries regardless of faith. Although, upon request, the SCREEN Coordinator may refer ex-offenders to religious programs or activities offered by SCM's faith-based partners, there appears to be no direct funding of religious activities vis-a-vis SCREEN's job training and employment-related services.

C. Transitional housing

SCM partners with both faith-based and non-faith-based providers to make transitional housing referrals to ex-offenders through the SCREEN program. Among the faith-based providers, Restoration House seeks beneficiaries' participation in various religious activities, including daily morning Bible study and attendance at weekly dinners that open with prayer and feature religious speakers. The SCM Executive Director pointed out that most of SCREEN's housing partners, however, are not faith-based organizations, such as UC Community Shelter, New Life houses, and Fresh Start houses.⁸ SCREEN does not operate the Restoration House or any other faith-based provider. The OCR concludes that there appears to be no direct funding of religious activities vis-a-vis SCREEN's transitional housing referral services.

D. Mentoring

At the time that SCM (then, CPM) applied for funding, its website solicited volunteer mentors to “become part of a mentor team to give practical assistance to Christian ex-offenders.” Although the OCR observed similar language in the materials that SCM provided to the OCR in advance

⁸ SCREEN has apparently expanded the reach of its program beyond Union County, as New Life houses and Fresh Start houses are located in Mecklenberg County.

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of the July 1 meeting, SCM appears to have self-corrected since that time; the language that explicitly references Christians as intended beneficiaries no longer appears on the website.

Other materials provided by SCM, however, continue to reference the "Christian perspective" in connection with the SCREEN mentoring program. For example, in a document with the heading "SCREEN Total Care & Support (TC&S),"⁹ the beneficiary is asked to sign an application document that states, among other things:

I do understand that the Bible is issued as a text book and that I will be interacting with people coming from a Christian perspective Approval of this application is based solely on my willingness to accept the advice and counsel of trained volunteers in the Second Chance Re-entry Network (SCREEN) and my desire to return to my community as a productive citizen.

(Safer Communities Ministries, Inc., Commitment.to.TC&C.9.1.08.)

Another document refers to "life coaches," i.e., mentors, as "servant leaders," and lists the "5 L's of mentoring," among them to "Lift prayers for them and with them." (Safer Communities Ministry, Inc., What are Life Coaches.5.09.) These materials are consistent with the following passage on SCM's website, which exhorts SCM volunteers to be "Prayer Warriors":

SCM strongly believes that in order for any of its programs to be successful, each and every effort must be God directed. Therefore, volunteers dedicated to praying for specific programs or events are needed to partition our Heavenly Father for His directions and blessings through the working of the Holy Spirit.

Additional SCREEN materials define life coaches as "disciplers for spiritual growth," whose role is to "encourage and guide a person with loving accountability to grow spiritually and to apply God's Word and their life experience with God to everyday issues." (SCREEN Training Process Overview, SCREEN Vol.to.do.suggestions.Mentor. Roles.11.08.) These mentors are expected to meet at least once a week with their assigned mentee or a group of mentees "in a location conducive to Bible study . . . and prayer or worship," "use approved, proven Bible study materials as part of the meeting," "train and provide accountability for using the Bible and prayer/worship as part of their own devotional life on a daily basis," and "train and provide accountability for all of the areas that Jesus taught about being a disciple. . . ." *Id.* Consistent

⁹ TC&S is a case management program offered by SCM to ex-offenders, administered through the SCREEN program. After three weeks in the Life Skills class, participation in TC&S is made available to each Life Skills participant. This program has inherently religious components that are mandatory for program participants. For example, before entering the program, ex-offenders must commit to meeting on a weekly basis with a mentor or group "for spiritual growth in the religion I choose to pursue." (SCM website, TC&S Understanding and Commitment form.)

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with these materials, SCREEN's mentor application lists under the heading "Spiritual Help," the types of activities that the mentor is expected to engage with the mentee: "bring person to church/Sunday school, invite to Christian events, bring to a Bible study/prayer group for spiritual growth."¹⁰ (SCREEN Volunteer Interest Application, Safer Communities Ministry, 11/12/2008.)

Anyone who wishes to become a life coach for SCM must go through a certification process. Trainings are conducted quarterly and are held at various faith-based organizations, vocational rehabilitation centers, and halfway houses. The mandatory training steps include: (i) attending a mentor training session; (ii) filling out a mentor application and legal release; (iii) attending religious programming of SCREEN's faith-based transitional housing partner, Restoration House; and (iv) passing SCM's "Do's and Don'ts" test after listening to SCM's training CDs and reviewing handout materials. (SCM Training.Certification.11.08.)

SCM's "Do's and Don'ts" training handout materials, which are available for download on SCM's website, provide instruction on mentor interactions with inmates while incarcerated and ex-offenders upon release. Characterized by the SCM Executive Director as "the cornerstone" of the mentoring training program, the materials include the following passages:

1. *Be Prepared Spiritually.* Be prayed-up, given-up, confessed-up with no ought in your heart. Be filled with the Holy Spirit. Pray for your sphere of influence so you'll have no hindrance to do this work. . . .
2. *Be Prepared for Spiritual Battle.* In this kind of ministry, the unnatural resistance that happens in the spiritual battle for souls is sometimes amazing. Believers have Biblical authority for doing spiritual warfare with the evil demonic realm that work in a person's sin nature. In prisons or when just working one on one with an ex-offender, **cover yourself and the volunteer group in prayer.**
3. *Don't Get Into Denominational Issues And Doctrines Not Essential To Salvation.* Do give the Gospel, but **don't preach or make negative remarks against other religions** and practices. Just give them Jesus! Our role is the basics of the faith – to be like the Holy Spirit
6. *Always be aware of and seek to minister to emotional and spiritual issues.* As we all do to some degree, these folks have programmed-in wrong thinking. . . . They carry unresolved spiritual issues As best you can, minister to these issues in Biblical ways.

¹⁰ The application asks for the prospective mentor's church affiliation and ministry name; when asked why at the July 1 meeting, the SCM Executive Director told the OCR that this information is used for reference-checking purposes only.

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7. *Be Determined to Be A Friend, No Matter What.* ***Your primary role*** is to walk alongside as a friend, to build a relationship and to be Christ to them.

22. *Do Evangelism Without Trying To Be Evangelistic.* Often these programs reach inmates who do not attend the worship services and Bible studies held at the unit.

7. *Be Very Careful About The People To Which They Are Exposed.* Too many Christians don't really live out the Christian walk. You must help your ex-offender avoid people who might confuse him or her, lead them down a wrong track, or just get them in trouble.

(CMP – Do's & Don'ts Training 8.29.2007.) (emphasis in original).

Upon completion of the certification process, mentors are required to sign a "Volunteer Release," which states, among other things:

I agree that I will not advance religious beliefs or doctrines contrary to CPM's Statement of Faith. I will respect all other participating ministries' statements of faith. I agree to not teach any doctrines that are known to cause divisiveness in Christian churches.

Id.

When asked about the religious content of these training materials, the SCM Executive Director told the OCR that there are life coaches who provide non-religious goal-setting on various topics such as job training, budgeting skills, and obtaining a driver's license. It is evident from the SCM training materials provided to the OCR, however, that goal-setting mentors, too, are required to provide guidance from a Christian prospective and to teach goal-setting behaviors through the prism of the teachings of the Bible. Among other things, the goal-setting training materials expressly instruct mentors to use SCM's "J.E.S.U.S. Get The Picture, Make A Plan Sheet," and "the Lord's Prayer Hand Model" as tools for the mentoring ex-offenders. (5/24/2007 Summary Sheet: Goal Setting: Sabotage or Success Seminar.)

E. Noncompliance with Equal Treatment Regulations

The OCR concludes that SCM's SCREEN program is discriminating against program applicants and beneficiaries on the basis of religious belief and using federal financial assistance for

inherently religious purposes in violation of the Equal Treatment Regulations.

The ETRs state that a recipient of Federal financial assistance “shall not, in providing services, discriminate against a program beneficiary *or a prospective program beneficiary* on the basis of religion or religious belief.” 28 C.F.R. § 38.1(d) (emphasis added). As discussed in Section I.A of this Report, SCREEN “targets” and “preferences” those inmates who have participated in SCM’s Life Skills program—one that has several religious components, including lessons on “Understanding 12 steps,” “Dealing With Spiritual Warfare” and “Personal and Spiritual” development. Although the SCREEN Executive Director told the OCR that participants in the Life Skills program may opt out of its religious components, the statement by the SCREEN beneficiary that in the Life Skills program, “we studied proverbs every day,” coupled with SCM’s own characterization of the program as rooted “Bible-based instruction,” indicates that the approach of the Life Skills program is an inherently religious one. This conclusion is reinforced by the statements of the SCM Executive Director that prospective beneficiaries of SCREEN who were initially skeptical of religion “found Christ” after being persuaded by him to participate in the Life Skills program. Indeed, the SCREEN beneficiary with whom the OCR spoke stated that although at first resistant, after being convinced by the SCM Executive Director to stay one week in the Life Skills program, he “gave his life to Christ” approximately one month after he began the course.

Regardless of whether the Life Skills program violates the ETRs,¹¹ it appears that those inmates who participate in this program are preferred for selection into SCREEN over those inmates who do not wish to attend this inherently religious program. By favoring those who have participated in the Life Skills program, SCREEN has employed a method of selection that ultimately takes religious belief into account. Thus, even assuming that the Life Skills program falls within the parameters of what is permissible for a jail to provide in the way of religious services to inmates under the ETRs and other applicable laws, by targeting and preferring those who attend the Life Skills program, SCREEN is in effect excluding those who do not wish to participate in inherently religious programming; this is tantamount to preselection of program beneficiaries on the basis of religion.¹² For this reason, the OCR concludes that SCM’s SCREEN program is discriminating against prospective applicants on the basis of religion or religious belief in

11 The Life Skills program is not the subject of this review and the OCR is not suggesting that the program is unlawful. To the contrary, it appears that the program may be consistent with the ETRs. See 28 C.F.R. § 38.1(b)(2) (“The restrictions on inherently religious activities set forth in paragraph (b)(1) of this section do not apply . . . where Department funds are provided to religious or other organizations in prisons, detention facilities, or community correction centers, in which such organizations assist chaplains in carrying out their duties.”). According to the SCM Executive Director, members of the SCM staff serve as chaplains in the Union County Jail.

12 As noted above, SCM also prefers participants of its Life Skills program to be placed into SCM’s Total Care and Support case management program, which is an inherently religious program administered in connection with the SCREEN program.

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violation of the ETRs.

The ETRs also prohibit organizations that receive Federal financial assistance from:

engag[ing] in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance. 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. § 38.1(b)(1) (emphasis added). According to DOJ guidance interpreting these Regulations, inherently religious activities include worship services and prayer meetings. Participation in Justice Department Programs by Religious Organizations; Providing Equal Treatment of All Justice Department Program Participants, 69 Fed. Reg. 2832, 2833 (Fed. 20, 2004).

SCM's mentor training program, which exhorts SCREEN mentors to do "spiritual battle," violates the prohibition against engaging in inherently religious activities. Although mentors are volunteers of SCM, and as such, are not beneficiaries of the SCREEN program, SCM's grant application and the SCREEN materials provided to the OCR demonstrate that SCM is using federal funds to train its mentors or life coaches to be "spiritual warriors," "servant leaders," "prayer warriors," and "disciplers for spiritual growth" in providing services to their mentees, who are program beneficiaries.

As discussed above, mentors are expected to guide ex-offenders by using the Bible "as a text book" and to "lift prayers for them and with them." SCM's training materials instruct mentors to meet and pray with SCREEN program beneficiaries on at least a weekly basis to "in a location conducive to Bible study," as well as to bring the ex-offender to church and to invite them to "Christian events." Mentors are also instructed to "seek to minister to spiritual issues" in "Biblical ways," and to "be Christ" to their mentees. Mentors must also certify that they will only teach "Christian doctrines" that are consistent with CPM's Statement of Faith. Based on these written materials and the interviews conducted by OCR with the SCM Executive Director and the SCREEN Coordinator at the July 1 meeting, the OCR concludes that federal resources are being used for religious instruction, proselytization, and prayer in violation of § 38.1(b)(1) of the ETRs.

Under the ETRs, SCM may conduct inherently religious activities despite its receipt of federal financial assistance provided that (1) such activities are offered separately, in time or location, from the programs or services funded with the federal financial assistance; and (2) participation in such activities is voluntary for program beneficiaries. 28 C.F.R. § 38.2(b)(1). Here, SCM

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cannot satisfy either element in its administration of the SCREEN program. First, SCM's "Do's and Don'ts" mentor training materials are, according to the SCM Executive Director, "the cornerstone" of the federally-funded SCREEN mentoring program that requires individuals to, among other things, pledge their allegiance to SCM's Christian teachings in carrying out their mentoring roles. Moreover, SCM preferences applicants who enroll in SCM's inherently religious Life Skills course over those who do not wish to participate in this programming, thereby effectively blurring the distinction between the religious programming offered by SCM in jail and the programming offered to ex-offenders through the SCREEN program. Second, it follows from the above that program beneficiaries are compelled to receive mentoring services and religious instruction from SCM's Christian evangelical perspective.

II. Cabarrus Reentry Initiative

Higher Level Missions, Inc., (HLM) is a faith-based, nonprofit, tax-exempt organization based in Kannapolis, North Carolina. On its website home page, HLM describes itself as a "God change agent," that "exists for one reason only," to be "a tool of God, giving hope to hundred's of men and women returning to our communities from incarceration." During the period July 1, 2007, through June 30, 2009, HLM received a two-year JAG award in the amount of \$479, 896 for its Cabarrus Reentry Initiative program (CRI), which provides reentry services and programming for ex-offenders that includes transitional housing and employment services. In FY 2009, HLM received another two-year JAG award in the amount of \$479, 896 for CRI. According to the HLM Executive Director, this federal money has funded and will continue to fund staff salaries¹³ and operating expenses of CRI, which includes the operation of HLM's transitional housing program, Operation New Eden, as well as the operation of Women's Reentry Outreach program, the newest of the CRI programs that focuses on addressing the needs of female ex-offenders. In its initial application materials, HLM provided the following project summary of The Cabbarus Reentry Initiative:

This project will provide reentry services and programming for ex-offenders returning to society after active prison sentences. This program provides pre and post release services accomplished through intensive case management to include transitional housing and employment services.

(2007 Grant Preapplication, p. 1.) Prospective applicants are required to fill out a "Service Assessment Form" while in prison or on probation or parole; on this form, applicants are asked to identify, among other things, the underlying reasons for their incarceration, e.g., substance abuse, anger management. Applicants are not asked to provide their religious affiliation.

A. Transitional housing – Operation New Eden

¹³ The HLM Executive Director told the OCR that HLM did not make hiring decisions for the CRI program positions based on religious considerations.

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Described by the HLM Executive Director as “part and parcel” of the CRI program, Operation New Eden is “[a] Christ-centered ministry of Higher Level Missions, Inc.,” which provides supervised independent living to male ex-offenders, including “services to help them grow spiritually in a lifestyle of faith.” (Operation New Eden brochure.) This faith-based transitional housing program currently houses 8 to 12 ex-offenders, but due to budgetary constraints, the HLM Executive Director told the OCR that he anticipates reducing the number of beds to eight in the next fiscal year. HLM charges beneficiaries program fees of \$160.00 per week, which cover the costs associated with housing, food, supplies, program-related materials, utilities, transportation to program-related activities, and the job search process.

Among the admission criteria for entry into the program, applicants must provide evidence of participation in a “life skills” program while in prison.¹⁴ In addition, those who have a history of substance abuse are required to participate in twelve-step counseling once in the program; the HLM Executive Director estimated that currently, over 90% of program participants receive counseling through NA or AA.

Applicants must also be able to self-administer their medications and those taking benzodiazepines will not be admitted to the program. (Operation New Eden brochure.) The HLM Executive Director told the OCR that HLM staff screens applicants for mental illness and those with a history of certain types of mental illness will be referred to other programs; the reasons for this policy, explained the HLM Executive Director, are that HLM is not a therapeutic program and it would be too administratively burdensome to monitor or administer ex-offenders’ use of these medicines.

According to the HLM Executive Director, there is no religious screening of applicants; program participants, however, “understand that Church is part of the program.” Of the 12 residents of Operation New Eden, the HLM Executive Director estimated that 8 are not Christian and that all 12 residents attend in-house church services each morning, as well as begin each meal with prayer.¹⁵ The HLM Executive Director stated that since October of 2001, even those who do not

14 As stated in footnote 7 above, it is the OCR’s understanding that life skills programs offered in prisons and jails follow a twelve-step approach that has been recognized by federal courts of appeals as inherently religious programming. The HLM Executive Director told the OCR during the July 1 meeting that only Operation New Eden applicants are required to participate in a life skills program; those who wish to participate in the other aspects of the CRI program, including the Women’s Reentry Outreach program, are “strongly encouraged” but not required to participate. If, however, a program participant is referred to a life skills program, does not follow CRI’s recommendation, and lapses into addiction or some other undesirable behavior, the HLM Executive Director told the OCR that CRI will withhold services.

15 The HLM Executive Director and CRI Case Manager told the OCR that residents may choose to participate in non-faith-based community service in lieu of going to church services. The example they related to the OCR was of a Muslim resident who volunteered to operate sound equipment at a church

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identify as Christian upon admittance to the program still attend church "in most cases." Other components of the program include twelve-step spiritually-based meetings and daily Bible study.

B. Case management services

CRI provides intensive case management services to aid ex-offenders with their reentry into society. As noted above, while in prison or while on parole, program beneficiaries are required to complete a Service Assessment form that seeks information concerning the reason(s) for their incarceration and the types of services they believe they will need upon release.¹⁶ Referrals for services are then tailored to each ex-offender's unique needs and a Coordinated Case Plan is created for each ex-offender that documents the steps that are being taken to direct the ex-offender towards services in identified areas.¹⁷ According to the CRI Case Manager, most ex-offenders are immediately referred to the Employment Security Commission, where CRI has office space to help ex-offenders pursue job leads. Because most program beneficiaries need additional assistance beyond employment services, the CRI Case Manager also works with them, on a case-by-case basis, to obtain emergency housing, Section 8 housing, and referrals to substance abuse programs.¹⁸ The HLM Executive Director and Case Manager confirmed that there is no religious screening of beneficiaries who wish to avail themselves of CRI's case management services.

Based on CRI's written materials and the representations made to the OCR by the HLM Executive Director and CRI Case Manager at the July 1 meeting, the OCR finds that CRI's case management services are offered to all program beneficiaries regardless of faith. Among these services, ex-offenders may be referred to faith-based substance abuse programs from among several options that include non-faith-based programs. The OCR concludes that there appears to be no direct funding of religious activities vis-a-vis CRI's case management services.

C. Mentoring, Counseling

function and soon thereafter joined the church and participated in the inherently religious programming of Operation New Eden.

¹⁶ The form lists the following services: clothing, education/ABE, education/GED, employment, housing, identification, job readiness, job training, mental health/substance abuse, mentoring, parenting class, childcare assistance, utilities assistance, child support, and medical services. The form does not contain any reference to religious services. (Cabarrus Reentry Initiative/One Step Center Service Assessment.)

¹⁷ Program beneficiaries also work with CRI staff to identify their objectives in receiving these services. Possible objectives listed on the Coordinated Case Plan form include: Budgeting, Savings, and Debt Management; Credit and Housing Barriers; Employment and Job Training; Emotional; Physical and Mental Health; and Childcare and Parenting. No religious or spiritual objectives are listed on this form. (Coordinated Case Plan.)

¹⁸ According to the CRI Case Manager, non-residential program beneficiaries are referred to both faith-based (NA, AA) and non-faith-based (Daymark) substance abuse programs.

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As indicated above, Operation New Eden residents are required to have substance abuse mentors if they have indicated on their assessment form that they have addiction issues.¹⁹ Otherwise, non-residential program participants are required to participate in job counseling that is not faith-based in nature, according to the HLM Executive Director and CRI Case Manager. The HLM Executive Director noted at the July 1 meeting, however, that as a practical matter, most non-residential program participants do not have assigned mentors because of a lack of interest on the part of the volunteer community to provide this type of counseling; for this reason, most of the job-related mentoring is carried out by the CRI Case Manager.

CRI's volunteer service application asks applicants to state their religious affiliation. The HLM Executive Director told the OCR that religious affiliation is considered as one of many factors in matching mentors to mentees for Operation New Eden residents only.

The OCR concludes that CRI's non-residential mentoring program, which is in the form of secular job counseling carried out primarily by CRI's Case Manager, does not violate the ETRs.

D. Noncompliance with Equal Treatment Regulations

HLM's faith-based residential housing program, Operation New Eden, which the HLM Executive Director characterized as "part and parcel" of the CRI program, has structured inherently religious programming that includes daily Bible study, in-house church services, and prayer. The OCR concludes that CRI's Operation New Eden program is in violation of the ETRs because it requires beneficiaries to engage in worship and religious instruction "as part of the program funded with direct financial assistance." 28 C.F.R. § 38.1(b)(1).

In addition, HLM only admits into the Operation New Eden program those applicants who have participated in a "life skills" course offered in prison, which the OCR understands to be a twelve-step spiritually-based program. Further, it appears that most beneficiaries are required to continue inherently religious counseling once in the program; this conclusion is supported by the HLM Executive Director's estimation that over 90% of program participants receive counseling through NA or AA. By requiring program beneficiaries to participate in life skills and twelve-step substance abuse programs, CRI's Operation New Eden is in effect excluding those who do not wish to participate in inherently religious programming in prison and is thus discriminating against prospective beneficiaries on the basis of religion or religious belief in violation of the ETRs. See 28 C.F.R. § 38.1(d) (recipient of Federal financial assistance "shall not, in providing services, discriminate against a program beneficiary *or a prospective program beneficiary* on the

¹⁹ Both program beneficiaries with whom the OCR met on July 1 are residents of Operation New Eden; both stated that they consider the Executive Director of HLM to be a spiritual advisor and that they have an additional mentor through NA, with whom they pray and attend church services.

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basis of religion or religious belief.”) (emphasis added). Further, by “strongly encouraging” other CRI program beneficiaries to participate in certain religious programs at the risk of being denied services for failure to do so, *see* footnote 14, above, CRI is effectively requiring beneficiaries to engage in religious instruction as part of the federally-funded program. Under the ETRs, HLM may conduct inherently religious activities despite its receipt of federal financial assistance provided that (1) such activities are offered separately, in time or location, from the programs or services funded with the federal financial assistance; and (2) participation in such activities is voluntary for program beneficiaries. 28 C.F.R. § 38.2(b)(1). Here, HLM cannot satisfy either element in its administration of the CRI program. First, as discussed above, HLM’s “Christ-centered” Project New Eden, with its structured religious programming, is “part and parcel” of the federally-funded CRI program. Moreover, HLM preferences those applicants who have taken inherently religious life skills courses for entry into the program over those who do not wish to participate in religious programming, thereby effectively blurring the distinction between the religious programming offered in prison and the programming offered to ex-offenders through CRI. Second, the structured religious programming of Project New Eden is mandatory for all CRI program beneficiaries who wish to be accepted into HLM’s Operation New Eden residential housing program.

E. Noncompliance with Section 504 of the Rehabilitation Act

As noted above, those taking benzodiazepines will not be admitted into HLM’s Operation New Eden program. The HLM Executive Director explained to the OCR that CRI staff will screen applicants for mental illness and those with a history of certain types of mental illness will be referred to another program.

Section 504 of the Rehabilitation Act of 1973 provides that “[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a); 28 C.F.R. § 42.503(a). This applies even when the discrimination is “on the ground that other specialized aid, benefits, or services for [individuals with disabilities] are available.” 28 C.F.R. § 42.503(b)(2). Additionally, a recipient may not “utilize criteria or methods of administration that either purposely or in effect discriminate on the basis of [disability].” 28 C.F.R. § 42.503(b)(3).

Although HLM’s CRI program does not have a blanket policy rejecting all mentally ill applicants, CRI’s screening procedures for Operation New Eden applicants have the effect of weeding out potentially otherwise qualified individuals with a disability. If HLM has concerns about specific patterns of behavior that are threats to the stability of its cooperative living environment, it should tailor its CRI Operation New Eden screening process to identify those problematic behaviors. By screening applicants for a history of mental illness and then referring mentally ill applicants to other services in the community, HLM is employing methods of

administration that have the effect of discriminating against a class of individuals with disabilities in violation of Section 504 of the Act. *Id.*

III. Recommendations

A. Take Corrective Action to remedy SCM's violations of the Equal Treatment Regulations in the administration of its SCREEN program

As discussed in Section I.E of this Report, SCM's SCREEN program is discriminating against applicants and beneficiaries on the basis of religious belief and using direct financial assistance from the DOJ to fund inherently religious activities. As a result, SCM is not in compliance with its obligations under the ETRs. Because of its role as a State Administering Agency, the GCC must take corrective action to remedy administrative violations of the Department's regulations. Utilizing whatever rehabilitative measures are at the GCC's disposal, it must secure SCM's voluntary compliance with the ETRs to ensure that DOJ funds are used properly.

B. Take corrective action to remedy HLM's violations of the Equal Treatment Regulations and Section 504 of the Rehabilitation Act in the administration of its CRI program

As discussed in Section II.D of this Report, HLM's CRI program is discriminating against applicants and beneficiaries on the basis of religious belief and using direct financial assistance from the DOJ to fund inherently religious activities. As a result, HLM is not in compliance with its obligations under the ETRs. Additionally, as discussed in Section II.E of this Report, the CRI program is discriminating against persons with mental disabilities in violation of Section 504 of the Rehabilitation Act. Utilizing whatever rehabilitative measures are at the GCC's disposal, it must secure HLM's voluntary compliance with the ETRs and Section 504 to ensure that DOJ funds are used properly.

IV. Conclusion

For the reasons detailed above, we find that SCM's SCREEN program and HLM's CRI program are not in compliance with the Equal Treatment Regulations that the OCR enforces. Based on the concerns we have raised in this Supplemental Compliance Review Report and those raised in the Compliance Review Report issued November 23, 2009, we further find that the GCC is not sufficiently monitoring its faith-based subrecipients in regard to their use of federal financial assistance to discriminate in the delivery of services on the basis of religious belief and to fund inherently religious activities. No later than 30 days after receipt of this Supplemental Report, please notify the OCR in writing what steps the GCC has taken to ensure that SCM's SCREEN program and HLM's CRI program comply with their legal obligations.

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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, please contact OCR attorney Kimberly Scheckner at [REDACTED]

Sincerely,

/s/

Michael L. Alston
Director

cc: Rev. Al Lewis, Jr., Executive Director, Safer Communities Ministry
Pastor Aaron R. Wells, Executive Director, Higher Level Missions, Inc.