



U.S. Department of Justice

Office of Justice Programs

Office of the Assistant Attorney General

Washington, D.C. 20531

Carolyn N. Lerner
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JAN 08 2016

Re: OSC File Number DI-15-3489

Dear Ms. Lerner,

I am responding to your letter to the Attorney General dated June 3, 2015, requesting investigation of Office of Special Counsel File No. DI-15-3489, a whistleblower disclosure. Your letter informed the Department of Justice of allegations made by a grants management specialist at the Office of Justice Programs that certain officials may have engaged in actions that constitute a violation of law, rule or regulation, and an abuse of authority.

To fulfill its obligations under 5 U.S.C. § 1213(c) and (d), the Department of Justice delegated the authority to investigate the whistleblower's claims to me. At my request, the investigation was conducted by Ruchi Jain, Senior Counsel for Oversight in the Office of the Assistant Attorney General. A fact-finding inquiry was conducted that included interviews of individuals with information bearing on the allegations as well as an examination of relevant documents and policies. I have reviewed the report, concur with its conclusions, and believe it satisfies the requirements of 5 U.S.C. § 1213. Based on the findings, which are presented in the enclosed report, I have concluded that there was no violation of law, rule, or regulation; gross mismanagement; gross waste of funds; or abuse of authority. Nevertheless, the report identifies significant issues, and my office is developing a corrective action plan to implement stronger management policies and more robust procedures for internal controls.

Thank you for bringing this important matter to our attention. For further assistance, please contact my Chief of Staff, Theron Pride, at 202-514-8110.

Sincerely,

Karol V. Mason
Assistant Attorney General

Enclosure

REPORT OF INVESTIGATION

I. Introduction

In a letter to the Attorney General dated June 3, 2015, the Office of Special Counsel (OSC) informed the Department of Justice of allegations made by a grants management specialist at the Office of Justice Programs (OJP) that certain officials may have engaged in actions that constitute a violation of law, rule or regulation, and an abuse of authority. Specifically, the whistleblower, Donna J. Davis, alleged that:

- 1) Social science analysts (SSAs) in the National Institute of Justice's (NIJ) Office of Research and Evaluation (ORE) engage in widespread communications with grant applicants and awardees in violation of the regulations and policies of the Department of Justice and the Office of Management and Budget; and
- 2) The NIJ Deputy Director and Chief of Staff, Howard Spivak, routinely approves improper incentives to grant research subjects.

A fact-finding inquiry was conducted that included interviews of individuals with information bearing on the allegations as well as a review of relevant documents and policies. Consistent with OSC policy to interview a whistleblower who has consented to the release of her name, OJP's Senior Counsel for Oversight contacted Davis in August 2015 and requested an interview. Davis declined to be interviewed, and the OSC attorney assigned to this file was notified of that decision. The following staff members were interviewed or consulted:

- Nancy Rodriguez, NIJ Director
- Howard Spivak, NIJ Deputy Director and Chief of Staff
- Seri Irazola, Director of ORE, NIJ
- John Picarelli, Director of the Violence and Victimization Research Division, ORE, NIJ
- Phelan Wyrick, Director of the Crime and Crime Prevention Research Division, ORE, NIJ
- Michael Dillon, Supervisory Grants Management Specialist / Acting Director, Office of Grants Management, NIJ
- Bethany Backes, SSA, Violence and Victimization Research Division, ORE, NIJ
- Dara Blachman-Demner, SSA, Violence and Victimization Research Division, ORE, NIJ
- Christine Crossland, SSA, Violence and Victimization Research Division, ORE, NIJ
- Carrie Mulford, SSA, Violence and Victimization Research Division, ORE, NIJ
- Joel Hunt, Computer Scientist, Research Division, Office of Science and Technology, NIJ
- Maria Swineford, Deputy Director of the Grants Management Division, Office of Audit, Assessment, and Management
- Rosemary Cavanaugh Carradini, Deputy General Counsel, Office of the General Counsel
- Charles Moses, Deputy General Counsel, Office of the General Counsel

The following staff member did not respond to requests to be interviewed:

- Angela Moore Parmley, Director of the Justice Systems Research Division, ORE, NIJ

The following staff members declined to be interviewed:

- Donna J. Davis, Grants Management Specialist, Office of Grants Management, NIJ (Whistleblower)
- Cathy Girouard, Senior Grants Management Specialist, Office of Grants Management, NIJ

At the outset, it is important to note that interviews revealed a fundamental disparity in the views of management and staff about the state of NIJ and ORE, both of which have been troubled by chronic leadership turnover. Indeed, Rodriguez is the seventh NIJ Director in 10 years; she took the helm in February 2015, after Spivak became Deputy Director in October 2014 and Irazola became Director of ORE in September 2014. This new management, particularly Spivak and Irazola, feels strongly that a cultural shift and procedural updates are needed to preserve or bolster NIJ's credibility. Many of the ORE staff, on the other hand, are fatigued by the frequent organizational changes and are unconvinced that yet more structural changes are needed. Additionally, many of the interviewees – management and staff alike – expressed frustration that these practices were under investigation. Several NIJ employees said that Davis named them, their grants, and/or their actions in retaliation for complaining about her management of their grants or her overall job performance. The substance of those claims is not addressed in this report.

II. Summary of Findings

After a careful review, limited aspects of the allegations were substantiated. Other specific assertions were found to be without merit.

Improper Communication

- Some types of pre-award communication from SSAs could create – and at times have created – an unfair competitive advantage for some applicants and grantees.
- Many of the 72 specific examples of pre- and post-award communication provided by the whistleblower, however, could not be substantiated as giving such an advantage or could not be evaluated.
- At least some of the specific examples of communication provided by the whistleblower were permissible under then-current NIJ leadership and policy. Those communication policies have since changed or are in the process of changing.

Improper Incentives

- Of the 22 specific examples of incentives provided by the whistleblower, 12 were not determined to be “vague,” “not properly justified,” or “inappropriate”; one was determined to be inappropriate; and nine could not be evaluated.
- At the time of the whistleblower's allegations, NIJ had no incentives approval process. It has since implemented one.

III. Allegations Regarding Improper Communication

The OSC letter details Davis's claims that ORE SSAs engage in extensive pre-award communications with grant applicants and thereby provide unfair competitive advantages to specific applicants in violation of NIJ and Office of Management and Budget regulations. As an initial matter, SSAs certainly do engage in pre-award communications with grant applicants. The SSAs describe answering logistical questions about solicitation language and requirements; submitting "clarifying questions" to applicants about their proposals; and in general, regularly interacting with researchers in the scientific communities. These duties have been a longstanding part of the SSA job description, and both management and staff are knowledgeable about the communication. Accordingly, the relevant inquiry is whether that communication creates an unfair advantage for certain applicants, as Davis contends.

Davis provided to OSC a list of 72 ORE grant recipients in Enclosure B, claiming that SSAs engaged in extensive pre-award communication with each of those recipients. When staff from the Office of Audit, Assessment, and Management (OAAM) reviewed pertinent records in the Grant Management System (GMS),¹ however, they found that many documents needed to assess the communications were unavailable. Thus, recreating the specific conversations cited by Davis between NIJ management, grant managers (GMs), SSAs, and applicants became a largely unworkable endeavor. Without additional context provided by Davis, it is difficult to discern which of the communications were 1) generally unallowable; 2) unallowable as an inappropriate "clarifying question"; 3) allowable as an appropriate "clarifying question"; or 4) allowable as other permitted grantee contact. Nevertheless, after interviewing relevant personnel, it is clear that different communications standards exist among SSAs and NIJ management, that at least some of the interactions would not be permitted today, and that clearer guidelines need to be issued. And, as discussed below, at least some practices appear to have given an advantage to applicants in some scenarios. NIJ management, all of whom are relatively new to the agency, are cognizant of these issues and have begun taking steps, detailed below, to modify those practices.

A. Pre-Award Communication Between SSAs and Applicants

An analysis of the types of pre-award communications that occur between SSAs and applicants and the related policies is below.

1. Administrative questions about solicitations from applicants

Typically, solicitations have contained an SSA's name, phone number, and/or email address as a point of contact for applicants, which has led to any number of phone conversations and email messages between SSAs and applicants. Although it is difficult to determine if any one exchange gave an applicant an advantage, this practice has essentially given some applicants at least the opportunity to seek more information than others.

¹ GMS records are primarily managed by the grant managers, but additional information can be added by others, including SSAs.

The system, however, has evolved since the time period related to Davis’s claims. For the 2015-2016 solicitation cycle, NIJ is using a third-party email service provided by the National Criminal Justice Reference Service (NCJRS) as a central point of contact for applicants. NCJRS will answer basic inquiries about the solicitation – primarily by referring the applicant back to the solicitation language and to the NIJ FAQs – and, if applicable, add information to the online FAQs so the information is equally available to all applicants. NCJRS also will forward more specific questions to SSAs on an as-needed basis. Irazola has asked to review the SSAs’ written answers before they are sent out. Several SSAs noted that they welcomed this change because it will eliminate a high volume of administrative questions they otherwise would have to address. It also, of course, will eliminate a high volume of direct applicant-to-SSA pre-award contact and will reduce the opportunity for applicants to gain an unfair advantage, however inadvertent, by inquiring about a solicitation.

2. *“Clarifying questions” to applicants*

After the applicants’ proposals have been received in response to solicitations, SSAs engage in a practice of asking “clarifying questions” in an effort to fully understand the proposed research and elicit unmentioned specifics. This began as a well-intentioned practice to permit NIJ to select and fund the best research possible and to avoid learning about problematic details of proposals after grants had been awarded. But as NIJ leadership has changed, so has the theory behind the clarifying questions. Previous NIJ leadership encouraged SSAs to “help shape science” and to help prospective grantees craft the best applications possible. Those types of questions, therefore, were sometimes leading and at times implied funding, especially if specific changes to the proposals were mentioned by the SSA.

The OSC letter highlights two instances of pre-award communications with applicants in particular:

University of Southern California (2013-IJ-CX-0025). For a grant on a study of elder abuse, the SSA sent to the applicant three requests, including a suggestion to revise the proposal by replacing the planned focus group with a control group. This request was based on comments from the external peer reviewers. In response, the applicant included a control group and submitted a revised budget and budget narrative.

University of New Hampshire (2014-VA-CX-0012). In clarifying questions sent to this applicant, the SSA noted that the incentives seemed “quite low” and asked if they had considered alternative incentives, such as course credit, for the college students who were participating in a study about sexual violence on campus. (Note that this differs from Davis’s description that the SSA “directed” the applicant to add cash incentives.) The general concern about the incentives again originated in the peer review process. In response, the applicant revised their proposal and budget to include course credit as an incentive.

These are two fitting examples of the types of clarifying questions that were once encouraged and permitted under previous NIJ leadership. They occurred before Spivak and Irazola joined NIJ, and both have said that they would not approve either of these communications today because they are too leading and suggest substantive modifications to the applicants.

Spivak and Irazola noted that addressing this practice has been a principal concern since they joined NIJ in fall 2014. In an effort to establish a neutral, information-seeking baseline for clarifying questions, Irazola described the new process as follows:

- 1) a need for clarifying questions is identified at meetings to review the proposals, either in the first staff briefing with Irazola or the second staff briefing with Rodriguez;
- 2) the SSA drafts the clarifying questions and sends them to the Division Director for approval;
- 3) Irazola (or Spivak, as needed) also signs off on the specific phrasing and purpose of the questions; and
- 4) the questions are sent by the SSA to the applicant.

But ineffective communication about the policy, coupled with the staff's organizational change fatigue, has resulted in confusion about the new process. Nearly every SSA described the procedures in a slightly different way, particularly about who in NIJ management needs to approve the questions.

This confusion is exemplified by misunderstanding among NIJ's own leadership. In August 2015, after the new policy had been instituted, Rodriguez instructed staff to contact two applicants with clarifying questions. The staff complied, even though the questions were not sent to Irazola for review and were the types of leading questions the new policy was put in place to prevent. Nearly every ORE staffer interviewed mentioned this incident as a prime example of why the new policy has not yet been effectively communicated or regularly followed. Spivak and Irazola, after learning of Rodriguez's request, reportedly noted the mistake in a staff meeting, but not in writing or with further clarification of the policy itself. When interviewed, Rodriguez maintained that her requests for more information from applicants – by virtue of coming from her as the Director – are de facto compliant with the policy. That view is incompatible with the guidance issued by Spivak and Irazola, and management needs to resolve its own misunderstandings before it can effectively institute these changes with staff. The SSAs also have noted that, besides their own frustrations with inconsistent policies, mixed messages are being sent to the research field and run the risk of damaging NIJ's reputation.

Even with this new approach to clarifying questions, NIJ management and staff need to determine if this practice should still continue. Some interviewees expressed a preference to phase out this practice entirely, while others maintain that it is an integral part of an SSA's role. There remains a basic disagreement about whether SSAs should, for example, impact a research plan by communicating to an applicant that NIJ wants to fund Part 1, but not Part 2 or 3, of a proposal. Those in favor of doing so say that NIJ would otherwise miss out on important research by rejecting the whole proposal; those against say that this practice is uncommon among other science agencies and point to previous suggestions of grantee favoritism by ORE/NIJ.² These are fundamental questions that need to be resolved, and resolved in a way that is supported by both staff and management.

² Several interviewees referred to the conclusions in the report *Strengthening the National Institute of Justice: Committee on Assessing the Research Program of the National Institute of Justice* (2010), available at www.nap.edu/catalog/12929/strengthening-the-national-institute-of-justice.

3. *Other “customer service” contact*

Ultimately, however, NIJ cannot – and should not – monitor all communications between SSAs and applicants/grantees. Many ORE SSAs have been in their roles for a number of years and have developed relationships with the grantee community, leading to what some interviewees identified as the “customer service” aspect of the SSA role. The calendar appointments provided by Davis in Enclosure C reflect this type of permitted contact – conversations with applicants who wanted to discuss comments from the peer review process, understand the NIJ process, and so on. This issue depends on clear guidelines set by management and effective training for staff on what is essentially a judgment issue. If the SSAs are available to anyone who calls – and are vigilant about not offering proposal guidance or answering specific questions about solicitations – is there an unfair advantage to those who do? This is again a fundamental question; NIJ management must determine standards for this type of contact and realistically assess whether the SSAs agree with and abide by those standards.

B. Post-Award Communication By SSAs

The OSC letter also conveys Davis’s claims about prohibited post-award communication by SSAs regarding sub-grant determinations. The relevant language quoted in the OSC letter is not, as cited, part of the GMM but is from the referenced Office of the Inspector General (OIG) report,³ with which the new NIJ management is only somewhat familiar. The GMM does not address post-award contact with any specificity, although new language on the topic is being discussed internally.

The letter highlights two instances of post-award communications in particular:

American Indian Development Associates, LLC (2014-MU-MU-K001). As Davis described, the SSA indeed provided a list of possible new sub-contractors to the grantee. Reportedly, the grantee requested a list after the original sub-contractors withdrew, and the grantee needed to fill an extremely specialized role.

Police Foundation (2012-IJ-CX-0039). Davis reported that the SSA engaged in direct communication and issued directions to a grant subcontractor. The SSA, however, had no record of doing so. The only direct communications the SSA was able to identify were 1) a September 2015 conference where the subcontractors made a presentation on this very grant; and 2) a subcontractor who participated on an NIJ peer review panel in summer 2015 on a different solicitation.

Without further context, neither of these examples appears to violate NIJ policy or demonstrates improper SSA post-award communication with grantees.

³ The language “All sub-grant determinations will generally be at the discretion of the grantee. Effective immediately, no NIJ staff member may require or infer that a grantee should use a specific sub-grantee to perform work related to a grant without compelling, contemporaneously documented reasons and specific prior approval of the NIJ director.” is from the September 2009 report *The National Institute of Justice’s Practices for Awarding Grants and Contracts in Fiscal Years 2005 Through 2007*, available at <https://oig.justice.gov/reports/OJP/a0938.pdf>.

C. Remaining Concerns and Recommendations

Although some of the communications guidelines have changed, other issues remain.

Clear delineation of GM and SSA duties. As described in the OSC letter, ORE has been undergoing an organizational restructuring for some time. The Office of Grants Management, which houses the GMs, has now been formed, and a GM-SSA working group is drafting a procedures document that should help clarify the different roles and reduce the conflicts and confusion among staff. Considering their existing frustrations, this final phase of the restructuring should be used as an opportunity to unite the staff under a shared vision.

Written guidance for staff. NIJ management should address the lack of written guidance for its staff, particularly in light of the high rate of leadership turnover. As the OSC letter mentions, OJP's Grant Manager's Manual (GMM) addresses pre-award communications, including that "OJP staff members may not provide individual assistance to competitive applicants." SSAs, however, expressed differing views on whether the GMM applies to them because they technically no longer "manage" grants after the ORE reorganization. There are also conflicting reports about whether a separate SSA manual exists. These questions need to be resolved, and a collaborative effort to create up-to-date instructions may prove useful in resolving the differences in opinions among NIJ staff. It will also help NIJ management identify and incorporate previously-issued guidelines (e.g., the 2009 OIG report).

GMM updates and training. The GMM is updated by OAAM on a rolling basis, with periodic emails and a newsletter (currently defunct) to alert staff to changes. OAAM should reconsider this approach, which does not allow for a specific staff training period on the changes and assumes that staff are actually monitoring the developments. Previous attempts to conduct bi-annual reviews were unsuccessful after OJP staff did not provide comments in a timely manner. For the sake of standardizing the review, OAAM should attempt again to create a review schedule with specific deadlines for comments. Periodic mandatory GMM training for all staff members who work on grants, including GMs and SSAs, is also recommended.

Responsiveness of the Office of the General Counsel. OJP's Office of the General Counsel (OGC) needs to be more attentive to the changes NIJ management is trying to implement. In December 2014, when Irazola sought OGC's approval for a template on clarifying questions, an OGC attorney responded with initial reservations in January 2015 but did not actually provide a final response of approval or guidance on the issue. Irazola followed up again in February 2015 but never received a response.⁴ When OGC failed to respond in February, NIJ management moved forward with the language. As it stands, OGC has expressed serious concerns about NIJ's ability to preserve an open and fair competition while issuing clarifying questions; it should therefore be an active participant in determining whether the practice continues. OGC should not just counsel NIJ on technical legality but provide a comprehensive ethical and risk analysis to enable management to make a fully informed policy decision.

⁴ Irazola's December 2014 and February 2015 emails and the template were included in Enclosure A. Enclosure A also contained a number of documents related to travel for ORE staff. The OSC letter did not contain any language related to travel budget or policy, and, because Davis did not consent to being interviewed, no allegations on this topic could be addressed or substantiated.

Current and future policy on “clarifying questions.” NIJ management should refine the details of its current policy on clarifying questions. If the Division Director, or Irazola, or Spivak is unable to attend the briefings or is otherwise unavailable, who approves the questions and how? What happens to the process if and when any of these positions becomes vacant? And if the consensus is to eliminate the questions altogether in the near future, NIJ should consider doing so immediately. An incremental policy shift is leaving the staff (and likely the applicants) confused and frustrated.

IV. Allegations Regarding Improper Research Incentives

An analysis of the whistleblower allegations and NIJ policies, past and present, related to evaluating the research incentives in proposals submitted by grant applicants is below.

A. Incentives Review Policy at the Time of Whistleblower Disclosures

The OSC letter also details Davis’s claims that Spivak “routinely approves grants with incentives that are vague, not properly justified, or inappropriate.” A grant applicant’s proposal to use incentives as part of a research plan is reviewed only during the final budget review, after the grant has been awarded. When Spivak became Deputy Director and Chief of Staff of NIJ in October 2014, no official review policy for incentives existed. As described in the OSC letter, NIJ’s only policy on incentives at that time was that they were “generally unallowable,” unless they were specifically approved by the Deputy Director as “reasonable” and “properly justified.” There were also no submission guidelines in place for grant applicants on incentives, meaning that different applicants provided different information. Accordingly, Spivak described the 2014-15 review period, his first, as one during which he was developing a “reasonable” and “justifiable” standard of review in real time.

Davis provided a list of 22 incentives in Enclosure D from the 2014-15 review period. Those incentives are reviewed in the chart below with the following notations:

Stipend, not incentive: Although described as an incentive, the grantee is actually offering a stipend to participants. NIJ policy is that stipends are allowable, with some specific conditions, and do not require the same level of review as incentives. Several staff remarked that applicants often use the terms interchangeably, although the concepts are quite different.

Justification provided: Brief restatements of the specific rationales provided in GMS for why incentives are required for the study (e.g., involving a population that is difficult to recruit or requiring multiple points of contact over time).

Insufficient documentation: No correspondence or supporting documents regarding incentives were recorded in GMS. Without further context provided by Davis, the limited details provided in Enclosure D were insufficient to evaluate the deliberative process for that particular grant.

Award Number	Grantee	Determination on Incentives Proposal
2014-MU-MU-K001	American Indian Development Associates, LLC	Approved; incentives required by solicitation
2014-IJ-CX-0026	Arizona State University	Accepted as proposed; stipend, not incentive
2014-MU-CX-0111	Arizona State University	Accepted as proposed; part stipend, part incentive; justification provided (population hard to recruit, multiple data points)
2014-CK-BX-0001	Center for Court Innovation	Accepted after modification (removing student payment); stipend, not incentive
2014-R2-CX-0007	Center for Court Innovation	Accepted as proposed; stipend, not incentive
2014-MU-CX-0003	Medical University of South Carolina	Accepted as proposed; justification provided (low dollar amount, follow-up study required same participants)
2014-VA-CX-0066	New York University	Accepted as proposed; part stipend, part incentive; justification provided (time needed, multiple data points, lab samples)
2014-IJ-CX-0044	New York University	Accepted as proposed; justification provided (population hard to recruit, multiple data points, lab samples)
2014-IJ-CX-0103	San Diego Association of Governments	Accepted as proposed; justification provided (population hard to recruit)
2014-NE-BX-0009	University of Alabama at Birmingham	Accepted as proposed; stipend, not incentive
2014-R2-CX-0009	University of Texas at El Paso	Discussed below
2014-MU-CX-0001	Wayne State University	Insufficient documentation
2014-CK-BX-0013	Puget Sound Educational Service District	Insufficient documentation
2014-CK-BX-0104	Columbus County Schools, LEA, NC	Discussed below
2014-CK-BX-0011	Wisconsin Department of Public Instruction	Insufficient documentation
2013-VA-CX-0002	University of Colorado Denver	Insufficient documentation
2012-R2-CX-0007	University of Kentucky Research Foundation	Insufficient documentation
2012-R2-CX-0012	Pennsylvania State University	Insufficient documentation
2012-IJ-CX-0034	South Carolina Research Foundation	Insufficient documentation
2012-IJ-CX-0039	Police Foundation	Insufficient documentation
2010-WG-BX-0009	University of Iowa	Insufficient documentation
2014-VA-CX-0012	University of New Hampshire	Discussed below

The OSC letter highlights two incentives in particular:

Columbus County Schools (2014-CK-BX-0104). For this grant, Davis claimed \$276,000 in incentives that “lack specificity or detail about their purpose.” Davis cited \$54,000 for school incentives; \$108,000 for teacher incentives; and \$60,000 for student incentives. These numbers, however, were part of the grantee’s original incentive proposal, not the incentives approved by NIJ. In a discussion captured in GMS, Spivak eventually permitted \$252,000 in incentives, with detailed explanations from the applicant’s budget submission for why incentives were needed for schools (to cover the costs of using school computer labs for data collection) and teachers (to compensate teachers for extra hours spent planning teen court sessions and recruiting student volunteers) in this study. The student incentives were removed after Spivak expressed concerns that providing funds to minors could be coercive. Given that the grantee provided justifications for the incentives and modified the proposal for involved minors, the review process appears to have functioned appropriately in this instance.

University of Texas at El Paso (2014-R2-CX-0009). This incentive, on the other hand, is the most troubling example provided. The grantee proposed providing \$34,666 to parolees in gift cards, a format that was specifically chosen to circumvent state victim restitution requirements. This precise rationale was detailed in the grantee’s budget documents and again in communication with the grant manager. Although Spivak expressed discomfort with the grantee’s approach, he asked only for the language to be removed – which they did not – and ultimately signed off on the proposal. Today, Spivak readily acknowledges that he would not approve this incentive again. Regardless of the technical legality or final language in the proposal, NIJ should not award a grant of federal funds to an applicant knowing that the applicant plans to circumvent state law.

Another grant cited by Davis illustrates the complications of this process, including that the incentives are only reviewed after the grant has been awarded and that these particular grants were awarded under different NIJ leadership:

University of New Hampshire (2014-VA-CX-0012). As discussed above, the grantee included course credit as an incentive for college students at the suggestion of an SSA. Spivak voiced his dissatisfaction that this study had been funded at all, as well as his extreme discomfort with allowing course credit, which has a high cash value, as an incentive. The incentives have been modified several times after extensive internal discussion, including with OGC; in the latest (but not yet final) iteration, the course credit has been eliminated and the dollar value of gift cards that the participants will receive has been reduced. This appears to be a reasonable compromise, given that the study had already been funded and that the grantee received conflicting guidance on course credit from NIJ.

Davis also indicated that “a number of grants at issue appear to provide large cash incentive payments directly to minors without informing their parents.” There is no NIJ guidance specifically on whether this practice is allowed. Three of the reviewed incentives provide payments to minors:

New York University (2014-IJ-CX-0044). For participating in a study on reducing crime for girls in the juvenile justice system, 300 girls, ages 12-17, are receiving \$150 over four assessment visits. Spivak expressed reservations about the youngest participants receiving cash, but noted that the incentives should be consistent across the age groups and that a previous pilot study using incentives with the same age group was approved by the institutional review board (IRB).⁵ The IRB ultimately required the grantee to obtain parental consent for the incentives before giving the cash directly to the participants.

New York University (2014-VA-CX-0066). For participating in a study on teen dating violence, 200 teenage couples are receiving \$250 each in cash, Paypal, and electronically issued gift cards. The payment, which was part stipend and part incentive, covered transportation, meal, and various other costs, as well as the teens' time over 11 hours, including a three-hour laboratory visit and 12 follow-up online questionnaires. The grantee provided clear justification for the incentive generally and for the payment going directly to the participants, not the parents.

American Indian Development Associates, LLC (2014-MU-MU-K001). The NIJ solicitation required applicants to include incentives for American Indian and Alaska Native youth who participate in a study on violence and victimization. The grantee proposed \$20 per hour for youth ages 12-20 and included plans for obtaining informed consent from parents. The grantee also developed a research protocol to evaluate the effectiveness of using incentives with youth.

None of these examples violates NIJ policy, and ultimately only one grantee is providing cash directly to minors without parental consent. The claim of cash payments to children in foster homes could not be substantiated within the list of incentives reviewed. Thus, of the 13 incentives that were reviewed, only one, the University of Texas at El Paso, was determined to be inappropriate. Finally, contrary to Davis's claims, none of the reviewed correspondence contained a clear recommendation by a GM to Spivak to deny approval. Most of the reviewed correspondence did not reflect the opinions of the GMs on the incentives, only their questions and other commentary.

B. Revised Incentives Review Policy

In early 2015, in an effort to streamline the submitted descriptions of incentives and standardize the review, Spivak and NIJ staff drafted five questions that must be answered by all applicants who seek funding for a study that involves incentives. These questions were reviewed and approved by OAAM and OGC. As explained on the NIJ website,⁶ to receive approval for an incentive, the applicant must appropriately justify the details and purpose of an incentive by answering:

⁵ Institutional review boards are independent committees that review and approve research involving human subjects. Their review includes a detailed examination of suggested incentives and often results in modifications to the proposals.

⁶ See www.nij.gov/funding/Pages/research-participant-costs-and-incentives.aspx.

- What specific form will the incentive take (gift card, charitable donation, check, cash, money order, etc.)?
- What evidence leads you to believe that participation is unlikely without the use of an incentive?
- What is the estimated impact without the use of an incentive?
- How will incentives be distributed and tracked?
- What is the justification for the amount to be considered?

The policy also notes that proposals to offer incentives to vulnerable populations (children, pregnant women, and prisoners) may be given particular scrutiny and that every incentives proposal must be approved by NIJ leadership.

The 2015-2016 review of incentives using these questions is now underway, and Spivak reports that about 50-75% of the applicants are providing adequate information on their incentive proposals. For the remaining 25-50%, Spivak is asking the GMs to submit clarifying questions to the applicants.

C. Remaining Concerns and Recommendations

Although the incentives approval process has been improved by the questions posed to applicants, other issues remain.

Single-point review. As described above, Spivak is essentially the only decision-maker on incentives proposals. Although Spivak has refined his process, a one-person review without any checks or balances leaves NIJ vulnerable to the perception of bias or other notions of unfairness. Thus, it may be beneficial to include the GMs and SSAs as a matter of course and to seek input from Irazola, OGC, and/or NIJ's Human Subjects Protection Officer on an as-needed (but more frequently than he does now) basis. When doing so, Spivak should proactively ask for opinions and not rely on only cc'ing staff on the email chain.

Scientific rationale for incentives standards. Some SSAs expressed doubt that Spivak's standards, particularly on vulnerable populations, are scientifically-based. Others noted that although the questions are helpful, approving an incentives proposal should be an issue for IRBs. NIJ management should establish and distribute basic guidelines and supporting research on incentives so that the staff can review the underlying principles, even if they do not personally agree. It may also invite a useful conversation on incentives generally between management and staff and provide guidelines for future staff.

GMS documentation. The records maintained in GMS are inconsistent and often do not capture the full exchange of information and ideas among NIJ staff and between NIJ and applicants. NIJ should formalize what information is recorded for incentives and possibly for other decision points as well. NIJ management should consider creating a template that, for example, notes 1) in standardized language, Spivak's reasons for approval or disapproval; and 2) the recommendations of the GMs and SSAs. This would preserve a clear record of the deliberative process on incentives and reduce the amount of informal, conversational, and sometimes inappropriate messages that are currently included in GMS.