

**Comments to the Supplemental Report of Investigation of
U.S. Department of Justice, Office of Justice Programs, National Institute of Justice
OSC File No. DI-15-3489
Washington, DC, October 20, 2016**

Dear Mr. President, U.S. Senate Judiciary Committee Chair and Members, and U.S. Office of Special Counsel:

I first blew the whistle on fraud, waste, and abuse within the U.S. Department of Justice (DOJ), Office of Justice Programs (OJP), National Institute of Justice (NIJ) to DOJ's Office of the Inspector General (OIG) in June 2014 and again in September 2014.¹ However, I never received a response from any of my reports to the OIG. Thus, in April 2015 I reported the issues to the U.S. Office of Special Counsel (OSC). After that OSC referral, the following occurred:

- In June 2015, OSC sent a letter to the Attorney General, Hon. Loretta Lynch, requesting an investigation into and report on the allegations contained in my referral.
- Seven (7) months later, in January 2016, after an internal investigation only, OJP provided its report to OSC (OJP Report).
- I then responded to the OJP Report in February 2016 (Response).
- After receiving my Response, OSC requested a supplemental investigation and report from DOJ in March 2016.
- Four (4) months later, in July 2016, again after an internal investigation only, OJP provided a supplemental report to OSC (Supplemental Report).
- Three (3) months later, the Supplemental Report was forwarded to me by OSC on October 17, 2016.²
- Within three (3) business days, the attached Response to the OJP Supplemental Report was provided to OSC.

It's important to note that, although requested by the U.S. Senate Judiciary Committee in its letter to OJP's Assistant Attorney General, Karol Mason, and DOJ's Inspector General,

¹ The June 2014 reports were made directly from my government email account to OIG employee Mr. Kenneth Dieffenbach at kenneth.dieffenbach@usdoj.gov. Mr. Dieffenbach had recently conducted a whistleblowing training at OJP, instructing the attendees that reports of COI or fraud, waste, and abuse could be submitted directly to him (providing the attendees with his email address) or via the OIG's hotline. After receiving no response from Mr. Dieffenbach, I reported the allegations via the OIG hotline (<https://oig.justice.gov/hotline>) in September 2014. Other than confirmation of its submission, I never received a response or follow-up from that report either.

² There was no explanation given as to why, although the agency's Supplemental Report was provided to OSC and time stamped July 15, 2016, it was not forwarded to me for response until over three (3) months later. I can only imagine that it had something to do with delaying the transfer until after my exit from federal service, which occurred on Oct. 1, 2016.

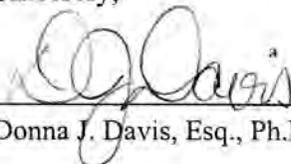
Michael Horowitz, in July 2015,³ and again in the Committee's letter to Attorney General Loretta Lynch and Hon. Michael Horowitz in September 2015,⁴ to date the DOJ's OIG has failed to conduct an investigation into the issues included in my whistleblowing referral. These letters were included as Appendices 6 and 7 to my Response document, but for easy reference, are attached to this Supplemental Response document as well, as Appendices A and B.

The OIG's lack of action to date is particularly glaring in light of the mountain of documentation, including over a thousand screenshots, grant documents, emails, and calendar appointments, I sent to the OIG in 2015 and early 2016. Needless-to-say, that office's lack of action to date is a main factor in my decision to leave NIJ employment, and separate from federal government service entirely, as of October 1, 2016.

The attached is my response to OJP's Supplement Report (Supplemental Response). Upon receiving and reviewing it, it is my hope that the OIG will choose to reverse its course of inaction to date, and investigate the issues with all due speed, or that another independent investigative office will take up the cause. I remain ready and available to be interviewed by the OIG or any other independent investigative office looking into the matter, this time as a private citizen, should they ever choose to do so. I have provided the OIG with my personal contact information, and/or it can be obtained through Senator Grassley's office (202-224-5225) as well.

Thank you for your time and consideration.

Sincerely,



Donna J. Davis, Esq., Ph.D.

³ See Appendix A to this Supplemental Response.

⁴ See Appendix B to this Supplemental Response.

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Comments to the SUPPLEMENTAL REPORT

According to the Office of Justice Program's (OJP's) Supplemental Report, dated July 15, 2016, the U.S. Office of Special Counsel (OSC) requested information from OJP regarding the following six (6) questions:

- A. Do the Grant Manager's Manual (GMM) and Office of Justice Programs (OJP) Order Enforcing the GMM actually apply to Social Science Analysts (SSAs)?
- B. Are the National Institute of Justice (NIJ) Director Rodriguez's requests to applicants "de facto compliant" with policy because of her position?
- C. Why do SSAs appear to provide assistance to individual applicants despite the GMM's outright prohibition on this activity?
- D. Why does OJP appear to admit in the report that it acts in a manner contrary to the OJP Financial Guide requiring a pre-award financial review of grant incentives?
- E. Does the 2014 NIJ incentives policy violate the GMM and 2 CFR 200 and 220?
- F. Why have SSAs been allowed to administer grants where developed relationships appear to violate OJP Office of General Counsel's (OGC) own conflict of interest guidance?

After reviewing the OJP Supplemental Report, a document drafted by OJP's Office of Audit, Assessment, and Management (OAAM), according to Assistant Attorney General for OJP, Karol Mason's cover letter, the following is my response to each section of OJP's Supplemental Report:

A. Regarding the first question, in its Supplemental Report, OJP acknowledges that:

the GMM applies to ***all OJP grant administration and management activities***, setting forth the standard policies, procedures, and time-frames for performing specific activities associated with all stages of the grants management process. Accordingly, ***the requirements in the GMM apply to all OJP personnel working with grants***, including programmatic experts, such as SSAs, who are necessarily involved in the substantive aspects of grant administration.⁵

Thus, as stated in my Response document and as acknowledged by OJP in its Supplemental Report, SSAs are required to adhere to all of the aspects of the GMM, including the adherence to fair and open competition regulations in the awarding of grants, and the prohibition on individual aid and pre-award communication for competitive grant awards. Moreover, as OJP's above statement affirms, ***all OJP personnel***, including the NIJ Director, are required to adhere to the GMM with regards to grant award and administration.

B. Regarding its response to OSC's second question, OJP contradicts itself by implying that the NIJ Director has the authority to instruct subordinates to violate the GMM. Specifically, in its Supplemental Report OJP states:

As a general matter, the NIJ Director has the authority to delegate the authority vested in her to subordinate officials, and to establish policies and procedures through which her authority flows to govern actions of subordinates. The Director is the ultimate authority with regard to NIJ's policies and procedures; and she may make exceptions to her own policies/procedures as she may deem appropriate.⁶

What OJP fails to acknowledge or address in its Supplemental Report is that the GMM is not an NIJ policy or procedure. It is an OJP policy and it specifically supersedes NIJ policy. For example, Section 1.2 of the GMM states:

To the extent that any office-level procedures, guidance, or policies conflict with the provision(s) of the manual, the manual is the controlling document, except in

⁵ See Supplemental Report, pg. 1 (emphasis added).

⁶ See Supplemental Report, pgs. 1-2.

cases where the Office of the Assistant Attorney General (OAAG) approves the deviation, per Section 1.3.

NIJ never sought nor obtained a waiver of the GMM's prohibition on any of the \$61.8 million of pre-award communication included in my whistleblowing disclosure. Moreover, on June 28, 2016, the Deputy Assistant Attorney General (DAAG) for OJP, Ms. Maureen Henneberg, sent an email to all OJP personnel, attaching a memo drafted by OAAM, the reported author of OJP's Supplemental Report. Both of these documents are attached to this Supplemental Response document as Appendices C and D respectively. As seen in these documents, all forms of pre-award communication, including NIJ's practice of submitting "clarifying questions" to applicants are expressly prohibited. For example, under the "Fairness" subheading, the OAAM document includes the following restrictions to all OJP staff:

- Do not provide an unfair competitive advantage to any potential applicants or applicants through advance discussion with those applicants of information used to develop any solicitation [**i.e., the pre-solicitation release communication addressed in my Response document**].
- Do not use information from post-submission communications with applicants to impact funding recommendations [**i.e., the violations of fair and open competition while solicitations are still open outlined in my Response document**].
- Do not discuss application information with the applicant after an application is submitted and before awards are made. While communication with applicants may be appropriate during this time in order to obtain revised budget documentation, grant managers ***must not*** discuss details about award status; ***ask clarifying questions which adds content to application narratives; or request other changes to applications that provide an unfair competitive advantage over other applicants*** [**i.e., post-solicitation closing and post-peer review violations discussed in my Response document**].⁷

As seen in Appendices C and D to this Supplemental Response, since both the OAAG email and the OAAM policy memo were distributed approximately two (2) weeks prior to the agency submitting its Supplemental Report to OSC, I respectfully submit that it is the agency, and not I, that is apparently suffering from mental confusion (at best) and outright duplicity (at worst).

⁷ See Appendix D (emphasis added).

Specifically, OJP distributed documents internally, from OJP's OAAG and OAAM offices, on June 28, 2016, stating that pre-award communication that routinely occurs in NIJ, and as outlined in my whistleblowing disclosures has resulted in the unfair awarding of at least \$61.8 million in grant funds to date, was strictly prohibited. However, the Supplemental Report that these same offices provided to OSC two (2) weeks later, on July 15, 2016, says the exact opposite, that these actions and NIJ's policy on pre-award communication and "clarifying questions" is allowable, and that the NIJ Director can direct her subordinates to act in this way. It leaves one to wonder as to how the agency can reconcile these actions, other than that it did so believing that the internal communications attached as Appendices C and D to this Response would never be reported to OSC and others.

- C. OJP acknowledges that "under competitive programs, any assistance or information provided to an applicant must be offered to all applicants."⁸ It then goes on to reference procedures in the case of non-competitive awards. However, this is irrelevant since none of the pre-award communication included in my whistleblowing report was in regards to non-competitive awards. All of the awards were competed, and as outlined in my Response document, all of the awards included unallowable pre-award communication, guidance, coaching, and/or direction.
- D. OJP alleges that I may be confused as to what is required regarding financial budget reviews for grant applications. While I appreciate the agency's concern, I want to clearly state that I am in no way confused as to these requirements, as they are all clearly outlined in OJP's Financial Guide (the Guide), and 2CFR 200 and 220. As stated on page 12 of my Response document, this includes the following:

Section 2.1, the Application Process section, of the Guide requires the following:

OJP or the awarding agency is required to ensure that awards meet certain legislative, regulatory, and administrative requirements. This policy requires that OJP or other awarding agency makes sure of the following:

- The applicant is eligible for the specified program.
- ***The costs and activities in the application are for allowable, allocable, necessary, and reasonable costs.***⁹
- The applicant possesses the responsibility, financial management, fiscal integrity, and financial capability to administer Federal funds adequately and appropriately.

⁸ See Supplemental Report, pg. 2.

⁹ Emphasis added.

OJP will complete a financial review of your application to ensure that you are financially capable and have the financial integrity to administer Federal funds. As part of this review, OJP will take all of the following steps:

- Perform a cost analysis of your project.
 - OJP will obtain cost breakdowns, verify cost data, evaluate specific elements of cost, and ***examine data to determine the necessity, reasonableness, allowability, allocability, and appropriateness of your proposed cost.***¹⁰

However, despite this requirement, twice in the OJP Report, NIJ management made the following admissions: “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***”¹¹ and “incentives are ***only reviewed after the grant has been awarded.***”¹² Thus, NIJ is admittedly acting in a way contrary to the OJP Financial Guide, which requires a vigorous financial review prior to grant award, including a determination of allowable and unallowable expenses and the appropriateness of costs.

In its Supplemental Report, OJP states that incentives are “treated as costs.”¹³ As stated in the Guide, the allowability of costs is supposed to be examined prior to award. As outlined in my Response document, and as confirmed internally by OJP’s Office of the Chief Financial Officer (OCFO) once budget reviews have occurred post-award, incentives are unallowable costs under the federal rules and regulations, as they are considered “gifts.” However, twice in the OJP Report, it states that this required pre-award review is not occurring in regards to incentives. Moreover, again in its Supplemental Report, OJP acknowledges that the review of the allowability of costs is not occurring prior to award, again in violation of OJP’s own Financial Guide.

OJP states in its Supplemental Report that the financial holds placed on grants are adequate to address the delays that occur in budget reviews. However, what OJP fails to address is in its report is that the post-award budget reviews do not affect the award amount. For example, if unallowable costs are found prior to award, the award amounts can be reduced by the amount of those disallowed costs, thereby safeguarding taxpayer funds. This is not the case for post-award reviews.

¹⁰ Emphasis added.

¹¹ OJP Report, pg. 8 (emphasis added).

¹² OJP Report, pg. 11 (emphasis added).

¹³ See Supplemental Report, pg. 3.

If incentives are deemed unallowable post-award (which they all should be per the Guide, CFR, and OCFO, but seldom if ever are in NIJ), the award amount is not reduced, rather the grantee is provided the opportunity to reallocate these funds elsewhere; to add costs to the grant project the grantee did not deem necessary or it would have included them in the budget prior to award, thus amounting to waste. In short, even though the financial holds may be an “effective mechanism to ensure unallowable costs are not incurred on an award before a budget is approved and funds made available to recipients”¹⁴ as OJP claims, it is not an effective means of safeguarding taxpayer dollars and avoiding waste, as the pre-award review process would do, and as the OJP Financial Guide purported it to do.

- E. Contrary to OJP’s stance on the issue, as outlined in my Response document, the GMM and 2CFR 200 and 220 disallow incentives in that it states: “Unallowable advertising and public relations costs include the following: Costs of promotional items and memorabilia, including models, *gifts*, and souvenirs.”¹⁵ As such, as referenced above, OJP’s OCFO routinely deems incentives to be “unallowable” after they review the grant budgets post-award.

Even NIJ’s own “policy” on incentives acknowledges the unallowability of these costs. For example, the policy states: “***Although incentives are typically considered gifts and thus often unallowable***, under specific circumstances, NIJ may approve the use of incentives, provided the incentive and amount proposed meet the definition of reasonable.”¹⁶

NIJ is mistaken when it states that incentives are not “typically” or “often” considered unallowable gifts. As stated, numerous times by OJP’s OCFO, they are always considered unallowable as gifts. Moreover, there is nothing in the Guide, CFR, or other federal regulation that gives a government office the right to make exceptions for unallowable gifts; i.e., there are no “specific circumstances” where unallowable gifts can be made allowable.

However, as required by OJP’s Financial Guide, the review of allowability of costs is not occurring pre-award, as required by OJP policy. Specifically, incentive costs, and all other budget expenses, should be reviewed for allowability pre-award, as required by the Guide; they should be deemed unallowable, as required by the Guide and CFR, and recommended by OJP’s OCFO; and the grant award should be reduced by the amount of unallowable costs included in the application budget, thus ensuring that no

¹⁴ See Supplemental Report, pg. 3.

¹⁵ 2 CFR Part 220(f) (emphasis added).

¹⁶ <http://www.nij.gov/funding/Pages/research-participant-costs-and-incentives.aspx> (emphasis added).

taxpayer funds go towards these unallowable expenses. If this had happened for the grants I included in my original OSC referral, approximately \$10 million of federal taxpayer dollars would have been safeguarded.

- F. Finally, it is interesting that OJP claims that it is unaware of any conflicts of interest (COIs) involving SSAs in NIJ. As outlined in my response document, and provided via additional documentation to OSC and DOJ's OIG, both before and after I blew the whistle on wrongdoing within OJP to external offices, I reported COI problems, numerous times, internally to OJP. Among other things, this includes the submission of my whistleblowing spreadsheets¹⁷ to OAAG's first investigative representative and the author of the OJP Report (and the then Special Counsel to AAG Mason), Ms. Ruchi Jain, in August 2015, detailing numerous instances of COIs.

In addition, prior to August 2015, I made numerous reports to high-level OAAM officials, wherein I was repeatedly informed that the allegations amounted to personnel issues only and did not concern that office.

As outlined in my Response document, I reported the issues to numerous attorneys in OJP's Office of General Counsel (OGC), the office that provides the OJP Ethics Training referenced in OJP's Supplemental Report and that provided the guidance regarding Conflicts of Interest, referenced in my Response document and OSC's request for a supplemental investigation and report. My reports to OGC similarly went unheeded and/or unacknowledged, requiring me to accelerate the matter and report the issues to external investigative offices instead.

Finally, after attending one of OJP's Ethics Trainings in June 2014, provided by OGC and a member of OIG's staff, Mr. Ken Dieffenbach, I reported my allegations on the Advocates for Human Potential grant referenced in my Response document, directly to Mr. Dieffenbach as well as internally to OGC.¹⁸ Although I sent Mr. Dieffenbach numerous emails (as he directed us to do during the Ethics Training), I never received a reply.

Conclusion

As detailed in this Supplemental Response and my February 2016 Response document, the OJP Report and Supplemental Report are deficient at best and contradictory at worst. As requested by the U.S. Senate Judiciary Committee in 2015, and in my Response document and

¹⁷ See Appendices 1-5 of my Response document.

¹⁸ See Response document, pgs. 37-39.

this Supplemental Response, the matter should be immediately referred to a trained investigative office, such as DOJ's OIG or other independent investigative office, for an appropriate full-scale audit and investigation of wrongdoing within NIJ.

END OF COMMENTS.

List of Appendices

Appendix A – U.S. Senate Judiciary Letter to OJP's AAG Mason and DOJ's IG Horowitz – July 14, 2015

Appendix B – U.S. Senate Judiciary Letter to Attorney General Lynch and DOJ IG Horowitz – September 15, 2015

Appendix C – Email from DAAG Maureen Henneberg to All OJP Personnel – June 28, 2016

Appendix D – Policy Memo from OAAM – Attached to DAAG Henneberg's June 28, 2016 Email (i.e., Appendix C)

Appendix A

U.S. Senate Judiciary Letter to Assistant Attorney General Mason

& DOJ's Inspector General Horowitz

July 14, 2015



United States Senate

July 14, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Karol V. Mason
Assistant Attorney General
Office of Justice Programs (OJP)
U.S. Department of Justice

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice

Dear Assistant Attorney General Mason and Inspector General Horowitz:

According to a news report, OJP's National Institute of Justice (NIJ) awarded a \$3 million grant to the University of Pennsylvania in 2014, days before NIJ's former Acting Director left his position at the U.S. Department of Justice (DOJ) to join the faculty at that university.¹ NIJ's former Acting Director apparently recused himself from this funding decision, but questions remain regarding the alleged role of his now-retired subordinate in the award of that grant and the lack of transparency and objectivity in NIJ's grant-making process as a whole.² NIJ claims that it uses a peer-review process to select grant recipients, but has allegedly refused to reveal to the public and applicants the raw scores and rankings that resulted from those reviews.³ I write to request this and other information on behalf of this Committee.

These allegations pertain to NIJ's handling of grants issued under the Comprehensive School Safety Initiative, but I have been contacted by a whistleblower who reiterates this core allegation as to the administration of National Mentoring Grants, which is handled by a different component within OJP, the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Specifically, the whistleblower alleges that OJJDP awards mentoring grants to certain organizations that score lower than other organizations that are not selected as grant recipients. Allegedly, even organizations with top scores and rankings have not been awarded grants during the current OJJDP Administrator's tenure.

In addition, the whistleblower alleges that OJJDP issues mentoring grants to organizations that knowingly use those funds to serve individuals who are not minors, in violation of the Juvenile Justice and Delinquency Prevention Act (JJDP Act). The whistleblower also asserts that OJJDP awards mentoring grants to organizations that falsify the number of mentoring matches that these organizations are required to make within the grant period. In addition, OJJDP is allegedly failing to monitor and enforce the requirement that OJJDP National

¹ Jim Walls, "'Transparent' NIJ Grant Process Withholds Information from Public," *YouthToday*, June 22, 2015, <http://youthtoday.org/2015/06/transparent-nij-grants-process-withholds-information-from-public/>.

² *Id.*

³ *Id.*

Mentoring grantees pass through 90% of the entire grant to local affiliate programs where the services to youth are actually provided.

Finally, the whistleblower alleges that OJJDP mentoring grantees are using funds for purposes that exceed the scope of activities authorized by the grant, thereby improperly supplanting or displacing existing federal funds that have been designated for those activities. For example, the whistleblower alleges that organizations like YouthBuild USA use OJJDP mentoring grants to pay construction instructors whose activities have already been funded by grants received from the Department of Labor or the Corporation for National and Community Service (CNCS). This allegation finds independent support in a December 2014 report provided by the CNCS Office of Inspector General (CNCS OIG):

From 2007 until 2014, YouthBuild USA . . . improperly assigned 74 AmeriCorps members to serve as teacher's aides in locations throughout the United States, although assisting in classroom instruction was not authorized service under the terms of the [CNCS] grant. . . . YouthBuild's grant provided in essence that students working towards a high school diploma or GED would participate in AmeriCorps half-time, by assisting in their communities with housing construction, renovation, and energy efficiency projects. Nothing in the [CNCS] grant contemplated that full-time AmeriCorps members would participate in the classroom instruction of the part-time members.

Given that YouthBuild USA may be using both OJJDP mentoring grants and CNCS AmeriCorps grants to fund activities outside their designated scope, there is a question as to whether such organizations are double-charging federal taxpayers for activities that may have already been funded under grants administered by the Department of Labor, or with other funds. As co-chair of the Senate Caucus on Foster Youth, I am working to improve our child welfare system so that minors have the resources and services they need. As Chairman of the Senate Judiciary Committee, I want to ensure that DOJ pursues this goal in a fair and transparent manner that does not waste or mismanage taxpayer funds.

Accordingly, please provide written responses to the following by July 31, 2015:

1. Assistant Attorney General Mason:
 - a. Please provide the raw scores and rankings of all applicants and recipients of NIJ grants under the Comprehensive School Safety Initiative.
 - b. Please provide the raw scores and rankings of all applicants and recipients of OJJDP Mentoring Grants for every Fiscal Year since and including FY 2009.
 - c. In awarding mentoring grants, how does OJJDP ensure that recipients use funds to serve juveniles and not adults?
 - d. Since and including FY 2009, has YouthBuild USA used any OJJDP mentoring grant funds to serve adults? If so, what proportion of OJJDP funding is used by YouthBuild USA to serve adults rather than juveniles?
 - e. How does OJJDP ensure that recipients of mentoring grants accurately report the number of mentoring matches achieved in a given year?

Assistant Attorney General Mason and Inspector General Horowitz

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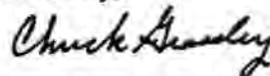
- f. How many mentoring matches did YouthBuild USA report in each Fiscal Year since and including FY 2009?
- g. How does OJJDP ensure that recipients of mentoring grants pass through 90% of grants to local affiliate programs?
- h. Did YouthBuild USA pass through 90% of the \$8,840,914 it received in mentoring grants in FY 2009,⁴ and 90% of the \$1,753,465 it received in mentoring grants in FY 2014?⁵
- i. How does OJJDP ensure that YouthBuild USA and other mentoring grantees do not use those funds to supplant or displace existing funds?

2. Inspector General Horowitz:

- a. In 2009, your office found various problems within NIJ's practices for awarding grants and contracts, including failure to maintain adequate documentation of pre-award records and instances where NIJ staff who had potential conflicts of interest were allowed to participate in the approval process for the grants in question.⁶ Please review whether NIJ still suffers from these or other deficiencies and whether NIJ grant award practices are based on fair and open competition. Please also review the NIJ grant awarded to the University of Pennsylvania in 2014.
- b. Please contact my staff to arrange an interview with the whistleblower who alleges OJJDP's mismanagement of mentoring grants. Please investigate all OJJDP-related allegations referenced above, independent and regardless of any concurrent review undertaken by the Department.

Please number your responses according to their corresponding questions. If you have any questions, please contact Jay Lim of my Committee staff at (202) 224-5225. Thank you.

Sincerely,



Charles E. Grassley
Chairman

cc: The Honorable Deborah J. Jeffrey
Inspector General, Corporation for National and Community Service

The Honorable Scott S. Dahl
Inspector General, U.S. Department of Labor

⁴ U. S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, National Mentoring Programs, "FY 2009 OJJDP Grant Awards," <http://www.ojjdp.gov/funding/fy09/NationalMentoring.pdf>.

⁵ U. S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Awards Made for "OJJDP FY 14 National Mentoring Programs: Category 2: Group Mentoring," <http://grants.ojp.usdoj.gov:85/selector/title?solicitationTitle=OJJDP%20FY%2014%20National%20Mentoring%20Programs:%20Category%202:%20Group%20Mentoring&po=OJJDP>.

⁶ U. S. Department of Justice, Office of Inspector General, "Audit of the National Institute of Justice's Practices for Awarding Grants and Contracts in Fiscal Years 2005 Through 2007," Audit Report 09-38, September 2009, <https://oig.justice.gov/reports/OJP/a0938.pdf>.

Appendix B

U.S. Senate Judiciary Letter to Attorney General Lynch

September 15, 2015



September 15, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Loretta Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Lynch and Inspector General Horowitz:

On July 14, 2015, I wrote to the Justice Department and the Department's Office of Inspector General (OIG) regarding allegations that the Office of Justice Programs (OJP) improperly awarded research grants¹ and illegally awarded mentoring grants. One common element in those allegations was that OJP selectively awarded grants to entities that scored lower than others in peer-reviews, without providing an adequate justification. I have since been contacted by additional whistleblowers who reiterate and expand on these allegations.

According to these new whistleblowers, OJP routinely violates federal regulations and policies established by the Office of Management and Budget (OMB) and OJP itself – all of which require fair and open competition in awarding grants. For example, OJP's National Institute of Justice (NIJ) allegedly engages in prohibited "pre-award" communications with a favored group of applicants that allows them to gain an unfair advantage over other applications.

Allegedly, NIJ essentially coaches favored applicants so that they can obtain grants at the expense of others that scored higher through the peer-review process, but did not get the same opportunity to subsequently enhance their applications based on pre-award feedback from NIJ. NIJ allegedly engaged in this practice with 63 grants in 2014, involving more than \$50 million in federal taxpayer funds. In addition, at least \$8.6 million in 2015 grant funds have allegedly been tainted by this practice.

¹ Jim Walls, "'Transparent' NIJ Grant Process Withholds Information from Public," *YouthToday*, June 22, 2015, <http://youthtoday.org/2015/06/transparent-nij-grants-process-withholds-information-from-public/>.

As another example, NIJ allegedly encourages applicants to budget in their applications improper research grant incentives. While offering reasonable stipends or support costs to encourage participation in research is allowable, NIJ allegedly approves and facilitates the submission of applications with unjustified incentives.

In one illustrative case in 2014, NIJ allegedly awarded a grant to an applicant who provided almost \$35,000 in gift cards to parolees who participated in the study. NIJ allegedly approved this application despite the applicant's express disclosure that the form of payment to participants (gift cards) was chosen for the specific purpose of circumventing the requirements of that state's victim restitution law. Presumably, gift cards were chosen rather than cash to ensure that parolees would not have to give some or all of that payment to the state's victim restitution fund.

Apart from the legality of this grant applicant's use of gift cards in this manner, NIJ's decision to approve this application raises concerns as to the level of policy coordination between NIJ and other components within OJP. The Office for Victims of Crime (OVC), for example, administers the Crime Victims Fund, which was established by the Victims of Crime Act of 1984 (VOCA).² According to VOCA's mandated allocation process, OVC disburses millions of dollars in formula grants each year to all fifty states and most territories for victim compensation.³ One of the main VOCA-funded streams support state crime victim compensation programs that reimburse victims of violent crimes for out-of-pocket expenses that result from the crime.⁴ Yet, NIJ apparently awarded a research grant to an entity that intentionally designed its study to evade laws enacted in furtherance of this policy goal. If true, this alleged decision of NIJ warrants explanation.

In addition, there is an allegation that NIJ engages in improper post-award communications in violation of a policy that generally prohibits NIJ staff from attempting to influence grantees in their selection of sub-grantees. Specifically, through these prohibited communications, NIJ allegedly offered a promise of selection to a potential subcontractor in one grant in 2013 and approved of nepotism in another grant in 2012.

Disturbingly, the whistleblowers claim that NIJ management and OJP's Office of General Counsel (OGC) approved of these practices despite multiple notifications of their impropriety and likely illegality, and despite notification of a 2009 OIG report that found problems in similar NIJ practices. The whistleblowers also claim that those who sought to raise these issues to OJP management suffered retaliation in violation of 5 U.S.C. § 2302(b).

These are serious allegations that merit a thorough and independent investigation. In June 2015, the U.S. Office of Special Counsel (OSC) found that there is a substantial likelihood that these allegations expose wrongdoing at OJP, and referred these allegations to the Attorney General for investigation and report, under 5 U.S.C. § 1213.

² U.S. Department of Justice, Office for Victims of Crime, *OVC Fact Sheet*, <http://ojp.gov/ovc/pubs/crimevictimsfundfs/intro.html>.

³ *Id.*

⁴ *Id.*

However, I have been informed that Attorney General Lynch has tasked OJP's OGC with investigating these allegations, even though OGC is one of the subjects of some of the allegations. If true, this arrangement raises questions as to whether these allegations will be investigated with the necessary independence, and why these allegations were not referred to OIG or at the very least, a Department component external to OJP, for investigation.

Accordingly, please provide written responses to the following by October 2, 2015:

Attorney General Lynch

1. After receiving the June 2015 OSC referral referenced above, to whom did you refer the matter for investigation and report?
2. If you referred the matter to OJP OGC for investigation and report:
 - a. Were you aware of the allegations that OJP OGC at least tacitly approved the allegedly improper and possibly illegal practices in question?
 - b. Why did you decide against referring these allegations to the independent Inspector General for investigation?
3. Has OSC referred to you for investigation and report, any other allegation involving OJP which you did not refer to OIG? If so, what is the allegation, when did you receive the allegation, to whom did you refer the allegation, and why?
4. In order to allow the Committee to properly assess these allegations, please provide the Committee with all Department records that comprise or relate to pre-award communications, communications involving research incentives, and post-award communications, for all 2014 and 2015 grant applications considered by NIJ's Office of Research and Evaluation (ORE).
5. Do you believe it is appropriate for one component of OJP—the National Institute of Justice—to knowingly award grants to applicants who state that they will use those funds to circumvent the legal requirements of a state program that receives support from another component of OJP—the Office for Victims of Crime? If so, and if NIJ did in fact award a grant to such an applicant, please explain why the grant was awarded at the expense of other applicants whose proposed studies did not conflict with the policy goals of OVC or other OJP components.
6. In the interests of fair and open competition, will you consider publicizing for all grant applications considered by OJP, the peer-review raw scores, consensus scores, and rankings, along with a written justification for why grants were awarded to certain applicants but not others? If not, please explain.
7. What is the Department's policy regarding pre-award and post-award communications with grant applicants, and the use of research incentives by those applicants?

Inspector General Horowitz

1. Please contact my staff to arrange an interview with the whistleblowers referenced in today's letter. Please investigate all of the allegations referenced in this letter and provide a report of your findings, independent of any internal investigation undertaken by the Department.

Please number your responses according to their corresponding questions. If you have any questions, please contact Jay Lim of my Committee staff at (202) 224-5225. Thank you.

Sincerely,



Charles E. Grassley
Chairman

cc:

The Honorable Carolyn N. Lerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

Appendix C

Email from DAAG Maureen Henneberg to All OJP Personnel

June 28, 2016

From: Henneberg, Maureen
Sent: Tuesday, June 28, 2016 5:32 PM
To: OJP All Federal Staff <OJPAllFederalStaff@ojp.usdoj.gov>
Subject: Tips and Reminders for Redbook Season

Good afternoon all –

As we are well into the Redbook season, with application submissions, peer review, and award decisions being made, it is important to keep in mind the fundamental principles of our work – upholding and promoting fairness, accountability, and transparency throughout the grants process. OJP is committed to adhering to these principles.

To help clarify existing policy and guide our actions as we carry out the application and award process, OAAM has developed the attached guidance document, *Tips and Reminders for a Fair, Accountable, and Transparent Grants Management Process*. This guidance is intended for all staff supporting OJP's work as a grant-making agency. OAAM will be providing additional guidance in a series of tip sheets to include topics such as grantee risk management, monitoring and oversight, and hosting a program audit.

We take great pride in being responsible, prudent stewards of Federal funds. Never is that more important than during this busy time of year. Please take the time to review the tips sheet, and, if you have any questions or need further information, please contact Maria Swineford, Deputy Director, OAAM, 202-616-0109, or Ralph Martin, Director, OAAM, at 202-305-1802.

Thank you for your continued dedication to the work and mission of OJP.

Maureen

Maureen A. Henneberg
Deputy Assistant Attorney General
for Operations and Management
Office of Justice Programs
U.S. Department of Justice
Office: 202-616-3282

Appendix D

**Memo Drafted by OAAM and Attached to
DAAG Henneberg's June 28, 2016 Email (i.e., Appendix C)**



OJP Application and Award Process

Tips and Key Reminders for a Fair, Accountable, and Transparent Grants Management Process

As the first in the series of Tips and Reminders for a Fair, Accountable, and Transparent Grants Management Process, the guidance provided embodies OJP's values and principles of upholding and promoting fairness, accountability, and transparency throughout the application and award process. This guidance is applicable to all staff supporting OJP's work as a grant making agency and is intended to help shape and guide our actions as we carry out our responsibilities as stewards of Federal funds.

Fairness

- Do not provide an unfair competitive advantage to any potential applicants or applicants through advance discussion with those applicants of information used to develop any solicitation.
- Do not use information from post-submission communications with applicants to impact funding recommendations.
- Do not discuss application information with the applicant after an application is submitted and before awards are made. While communication with applicants may be appropriate during this time in order to obtain revised budget documentation, grant managers must not discuss details about award status; ask clarifying questions which adds content to application narratives; or request other changes to applications that provide an unfair competitive advantage over other applicants.
- Distribute information provided to one potential applicant to all potential applicants (e.g., update the solicitation, publish in an FAQ, and/or send eBlast emails).
- Identify conflicts of interest and report them to your supervisor in a timely manner.

Accountability

- Monitor and keep current the Grants Forecast Tool with solicitation and workload planning information.
- Ensure solicitations are prepared in a timely manner to allow thoughtful and meaningful review by OJP leadership.
- Post solicitations early in the fiscal year to provide applicants with sufficient time to develop quality applications.
- Maintain a proper level of checks and balances during the award decision process when determining funding tiers, when recommending funding, justifying application selections from lower tiers, and documenting risk review of applications (e.g., high-risk designation, pre-award risk review).
- Adhere to funding recommendations policy (competitive and non-competitive). Utilize the OJP templates and ensure inclusion of the Office of the General Counsel's (OGC) consultation on noncompetitive memos prior to application submission.
- In accordance with the Grants Management Manual, follow all requirements of the application review and award processes. Ensure the inclusion of all required application documentation (e.g., Disclosure of Lobbying Activities (SF-LLL), Disclosure of Pending Applications, and Disclosure of High Risk Status)
- Document all communications for purpose of audit, records management, and succession planning between grant manager reassignments in the Grants Management System (GMS)—GMS is the system of record for grants.
- Confirm correspondence and notes captured in GMS specifically relate to the correct award (e.g., technical assistance or guidance provided, unresponsive outreach attempts, and budget adjustments)

Transparency

- Respond to inquiries from applicants within one business day and without providing information that would create an unfair competitive advantage while a solicitation is open to the public.
- Know what you are allowed – and not allowed – to communicate to applicants during the application and pre-award stages. Always make every effort to provide clear information to applicants, at the same time being cognizant of never providing information that could create a situation of treating applicants inconsistently and/or providing an unfair advantage to an applicant. Promoting fairness in the competitive process is paramount.
- Do not direct applicants to perform work on proposed grant activities until an official award notification has been sent and a final Financial Clearance Memo has been issued (unless an approved pre-agreement cost letter exists).
- Uphold high ethical standards in OJP/grantee relationships (i.e., maintain professionalism through all encounters).

