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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
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