

U.S. Department of Justice
Office of the Inspector General

Improving the Grant Management Process for Department of Justice Tribal Grant Programs



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Introduction

One of the priorities recently identified by Department of Justice (DOJ) leadership is supporting criminal justice activities in American Indian and Alaska Native Tribal Country. In support of this goal, among other things DOJ is accelerating its distribution of grants to Tribal communities.

Therefore, in addition to the \$50 million in appropriated grant funding that DOJ awarded to American Indian and Alaska Native Tribes (Tribes) in fiscal year (FY) 2009, DOJ also received \$248 million in funding under the *American Recovery and Reinvestment Act of 2009* specifically targeted at Tribal populations. Of that \$248 million, \$225 million is available for the Correctional Facilities on Tribal Lands Grant Program, \$20.8 million for Indian Tribal government grants, and \$2.8 million for Tribal Domestic Violence and Sexual Assault Coalitions grants.¹ In addition to these funds, Tribes are also eligible to apply for several DOJ Recovery Act competitive grant programs available to states, local governments, and other entities. Examples of these grant programs include the Edward Byrne Memorial Competitive Grant Program, the Assistance to Rural Law Enforcement to Combat Crime and Drugs Program, and the State and Local Law Enforcement Assistance Program. The Community Oriented Policing Services Office (COPS) and the Office on Violence Against Women (OVW) administer additional DOJ Recovery Act grant programs for which Tribes may apply.

While DOJ is increasing the distribution of grants to Tribes, it has recognized that only a fraction of the nation's 563 federally recognized Tribes traditionally submit grant applications to DOJ. In addition, many of the Tribal organizations that apply for grants have inadequate accounting and management infrastructure to properly account for the funds.

As part of its efforts to expand the number of DOJ grants awarded to Tribal organizations, DOJ asked the Office of the Inspector General (OIG) for recommendations relating to Tribal grant management and oversight. Recently, the OIG issued a report to DOJ on improving the overall grant management process. That report includes recommendations for DOJ to consider taking in an effort to help minimize waste, fraud, and abuse in grant programs. This report focuses on grants to Tribes and provides our analysis and recommendations on additional actions DOJ can take to promote the overall effectiveness and integrity of DOJ funding awarded to Tribal governments.

The OIG based this report on our extensive audit and investigative experience regarding Tribal grants and Tribal criminal justice issues. This

¹ We currently are conducting an audit of Recovery Act funding provided through the Bureau of Justice Assistance's Correctional Facilities on Tribal Lands Grant Program.

work has identified various concerns, both from Tribes and about the Tribes' handling of funds.

OIG Audits of American Indian and Alaska Native Tribal Grants

Over the years, the OIG has conducted several “internal audits” that examined the overall effectiveness of DOJ Tribal grant programs and more than 60 “external audits” that examined specific Tribal organizations that received DOJ grant funds.² In addition, the OIG has conducted various criminal fraud investigations related to misuse of Tribal grant money.

In previous OIG audit work that examined Tribal grant programs and grant recipients, Tribal representatives told us that historically they have not received an equitable share of federal grant funds because: (1) they were not adequately informed about grant funding available through DOJ, (2) grant funding was not adequately coordinated among DOJ components, and (3) they did not have the expertise necessary to prepare competitive grant applications. DOJ officials said one goal of their initiative is to increase the percentage of American Indian and Alaska Native Tribes who participate in DOJ grant programs.

Our past audit and investigative work raises two primary concerns that we believe DOJ should consider when managing its Tribal grant programs: (1) the need for coordination of all aspects of the Tribal grant program among the three separate components of DOJ who award grants to Tribes and among other federal agencies who award large amounts of grants to Tribes, and (2) the need to provide assistance and oversight to Tribes with inadequate accounting systems.

The OIG has prepared this document to assist DOJ in its efforts to improve its management of the Tribal grant process as it attempts to expand the reach of grant programs to a greater number of Tribes.

Addressing Issues Stemming From Lack of Coordination

DOJ grants to Tribes are administered by three separate DOJ components, the Office of Justice Programs (OJP), COPS, and OVW. Within OJP several different components, such as the Bureau of Justice Assistance

² Internal audits assess overall grant program management in areas such as awarding grants, monitoring grantees, and assessing program performance. External audits assess a specific grantee's compliance with grant conditions, including budget management and control, drawdown and reimbursement requests, subgrantee oversight, matching funds, and financial and program reporting.

(BJA) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP), administer additional grants.

We found in our past audit work that these grant-making agencies do not consistently coordinate with each other when considering grant applications and, historically, rarely consult with each other about prospective grantees. As a result, the different DOJ components may not be aware that they are awarding overlapping awards to the same Tribe for similar purposes.

In addition, the components often do not share important information about particular grantees who have been identified as high risk. We believe that efforts to address Tribal governments' criminal justice needs through DOJ grants should include a clear process within DOJ to coordinate information about grant applicants and awards.

For example, we noted this lack of coordination in a 2005 OIG audit that examined the administration of DOJ grants awarded to Native American and Alaska Native Tribal governments. In its response to a recommendation in this audit, DOJ established the Justice Programs Council on Native American Affairs (JPCNAA) to serve as DOJ's coordinating body to identify programs, opportunities, and issues of concern to the Native American community. JPCNAA was intended to facilitate information sharing among OJP, COFS, and OVW about Tribal grant programs and grant monitoring, as well as to serve as a forum to develop and provide training to staff responsible for administering and monitoring Tribal-specific grant programs. In 2007, the JPCNAA created a working group to focus on Tribal grants policy and training and technical assistance.

While we believe the establishment of the JPCNAA and the working group was a positive step towards increased coordination, DOJ needs to ensure that this working group is achieving its goal of increasing coordination.

Moreover, even with a working group whose mission is to focus on Tribal grant issues, coordination among DOJ components remains difficult because responsibility for Tribal programs falls across several sub-components. For example, the BJA has divided its Tribal-specific grant programs into the Tribal Courts Assistance Program, the Indian Alcohol and Substance Abuse Program, and the Correctional Facilities on Tribal Lands Program. The BJA informed us during our 2005 audit that it was planning to combine these programs into a Tribal Justice Assistance Grant Program to streamline the grant application process and to minimize duplication of monitoring efforts. However, the BJA ultimately decided not to create this program and still maintains these three separate Tribal grant programs. We believe that DOJ's decision not to combine these three programs increases the need for the BJA to coordinate its three grant programs and to coordinate with related grant programs managed by other DOJ components.

We note that COPS, OJP, and OVW recently have initiated efforts with all of their grant programs, Tribal and non-Tribal, to better communicate on grant award issues through shared contact lists, training, meetings, and other methods. For example, according to OJP, its Office of Audit, Assessment, and Management (OAAM) has acted as the coordinator of the high-risk grantee designation program for OJP and OVW since April 2009. In addition, OAAM has shared the high-risk list and related documentation with COPS since April 2009. We believe that efforts such as these will help DOJ share information about high-risk grantees, avoid awarding duplicative grants, and help ensure that DOJ's outreach efforts to grantees are consistent.

However, it is important that DOJ's coordination efforts include Tribal Liaisons at U.S. Attorney's Offices and non-DOJ agencies, such as the U.S. Department of the Interior's Bureau of Indian Affairs. By coordinating grant management efforts among these organizations, DOJ granting components can both increase the likelihood that relevant information about high-risk grantees becomes known to other grant administrators and also eliminate duplicative grants being awarded by separate agencies.

Oversight Issues Stemming From Weak Accounting Systems

Appropriate accounting of the use of DOJ grant funds is a significant challenge for many Tribes. We have observed in our previous audits and investigations that many Tribes lack an adequate accounting system and are unable to adequately segregate and track grant funds. This problem can be exacerbated when the Tribe is in a remote location where it is difficult to hire employees or contractors who have adequate backgrounds in accounting or when the Tribe has experienced high staff turnover.

In our experience, fraud is most likely to occur where the grantee has a poor financial recordkeeping system, a lack of internal control structures, or serious deficiencies in enforcing its internal controls. As a result, we believe DOJ should recognize when it reaches out to Tribes who have never before applied for DOJ grants that many of them may lack adequate accounting systems and be at a higher risk for fraud, waste, or abuse.

Therefore, we recommend that DOJ consider actions to ensure adequate oversight of the funds it distributes. By improving its program solicitations, grant applications, award process, and monitoring and training, DOJ can help ensure that the Tribes improve their accounting systems and that DOJ has adequate oversight of these funds.

Program Solicitations

As noted above, in our previous audit work Tribal officials described difficulties in obtaining DOJ grant funding. We also found that Tribes often

did not have the technical expertise necessary to prepare competitive grant applications. This made it difficult for Tribes to adequately describe how they intended to use the grant funds they were seeking. While DOJ granting agencies have attempted to address this concern through grantee conferences and by distributing educational materials, as a threshold matter it is important for a grantee to clearly describe how it plans to meet the grant program's objective.

Thus, grant solicitations should clearly articulate program objectives and requirements and include a description of the accounting standards that will have to be met by the grant recipient. This will help reduce confusion over the purpose of the program, what will be required of the grantee, and how their performance will be measured.

Grant Applications

The grant application is the primary tool available to granting agencies to assess a Tribal government's ability to successfully implement a project in accordance with applicable laws, regulations, and program policies. The application is also the vehicle for Tribal governments to make as compelling a case as possible for obtaining the grant.

While some Tribal governments are experienced grantees who employ sophisticated grant writers, others may never have applied for a DOJ award. To assist this latter category, DOJ could make available to new grant applicants examples of "best practice" applications that illustrate what information DOJ requires.

In addition, DOJ grant administrators can use the application process to identify potential "red flags" for granting agencies to follow up prior to making the awards. These can include: (1) an assessment of a Tribal government's internal controls over grant funds; (2) a review of prior audit findings or open investigations; (3) requiring submission of a plan for collecting and supporting financial and performance data; (4) a thorough evaluation of the Tribal government's accounting and financial systems, utilizing OJP's financial capability questionnaire; and (5) a review of the Tribal government's record-retention policy. This risk-based grant award approach enables granting agencies to identify Tribal governments that are in a position to best complete the grant objectives in a timely, cost-effective, and accountable manner.

For example, our audits often have found that Tribal grantees do not maintain timesheet documentation for personnel costs. To address this potential shortcoming, the application process could either require applicants to provide verification that timesheets for all personnel are maintained to

document hours worked for grant and non-grant related activities, or require a similar mechanism to ensure adequate accounting for personnel costs.

Award Process

To promote transparency in the award process, granting agencies should clearly document key aspects of the process, such as the: (1) basis for noncompetitive awards, (2) peer reviewers' agreement with the peer review consensus report, (3) basis for award selections that differ from peer review or program manager recommendations, and (4) procedures used to identify and remedy conflicts of interest among agency staff and external experts involved in the peer review process. In May 2008, in a response to an OIG audit recommendation, the Associate Attorney General directed the heads of each DOJ granting agency to document the reasons for specific award decisions that were not based strictly on peer reviews. The new guidance still allows DOJ grant agency officials to use discretion to select awardees, but the officials must justify and document the reasons for awarding grants to lower-scoring applicants over higher-scoring applicants. It is important that granting agency officials adhere to this requirement to ensure that awards decisions are fair and transparent.

In addition, to decrease the risk of unknowingly awarding funds to a high-risk Tribal grantee, we recommend that DOJ consider establishing a DOJ-wide procedure that allows granting agencies to share information on high-risk grantees prior to awarding funds. Granting agencies should also consider requiring special conditions for high-risk grantees, such as maintaining separate bank accounts for each award the grantee has received. These types of special conditions would make use of grant funds more transparent and reduce a grantee's ability to hide improper use of grant funds.

We also recommend that granting agencies determine a Tribal grantee's progress on implementing prior grants before awarding additional grants for similar purposes.

It is also important for granting agencies to establish criteria to gauge the potential risk associated with new Tribal grantees. In doing so, we believe granting agencies should conduct background checks to verify proper payment of withholding taxes, credit standing, and other indicators of problems. In addition, granting agencies should conduct Internet searches or other reference checks to identify negative information that should be considered prior to granting an award. In circumstances where the grantee is not a Tribal government but rather a non-profit or other organization closely linked to a Tribe, granting agencies should coordinate these awards with Tribal leadership to ensure the Tribe is aware of the grantee and can provide additional oversight as necessary.

Moreover, granting agencies should consider open OIG audit and inspections reports to determine whether a grantee's progress in implementing corrective action is sufficient to merit its receiving additional grants. In addition, as discussed in our report on improving the grant management process, granting agencies should check to make sure there are no ongoing OIG or other criminal investigations before making awards.

Monitoring

Proper monitoring of grant programs helps ensure that program funds are meeting program objectives. Monitoring also holds grantees accountable to the terms and conditions of the awards.

For high-risk grantees, granting agencies should consider the use of special monitoring conditions such as requiring: (1) third-party management of grant funds so that all expenditures are authorized and completed by a third party with no vested interest in the grantee, (2) authorization to proceed with the next phase of a project based on evidence of acceptable performance, and (3) more detailed financial reports.

In addition, DOJ's granting agencies should consider the use of regulated purchase cards for distributing grant funds to grantees considered high risk. These cards can include restrictions on certain purchases based on dollar limits and vendor codes. Use of these cards could be monitored by Tribal leaders, DOJ grant managers, and other appropriate parties to identify transactions that are inconsistent with the objectives of the grant program or are otherwise unusual. These types of controls may help prevent and detect misuse of grant funds.

Granting agencies should also consider requiring Tribal grantees, especially those designated as high risk, to provide supporting documentation such as receipts, timecards, and invoices related to a randomly selected drawdown request or Financial Status Report to demonstrate that they have adequate supporting documentation related to these transactions. This procedure can assist in early identification of grantees that may require technical assistance or other forms of oversight.

Moreover, granting agencies should increase their monitoring of high-risk Tribal grants through sufficient site visits and review of financial and progress reports for accuracy, completeness, and alignment with project goals. In turn, significant findings should be shared with other granting agencies. This practice is particularly important for new grantees and grantees with past problems managing grants.

In addition, it is important that granting agencies develop a process to ensure that all instances of alleged misuse of grant funds are documented and timely reported to agency authorities and the OIG.

Training

In previous OIG audits, we concluded that DOJ has not effectively implemented training programs to address the unique issues related to Tribal governments. In our judgment, DOJ should establish a process to train staff responsible for administering and monitoring Tribal-specific grant programs. We believe such training should be provided at least annually and focus on: (1) the wide range of issues specific to Tribal governments; (2) cultural awareness, including the history of the relationship between the federal and Tribal governments; (3) the sovereign status of Tribal governments; and (4) the jurisdictional complexities and limitations in Indian Country.

In addition, key Tribal officials (such as the Tribe's Chief Financial Officer and the individual submitting Financial Status Reports) should be given annual grant administration training that covers financial and programmatic requirements and fraud awareness. This training could be implemented through an interactive, on-line training program that assesses the grantee's understanding of basic grant requirements.

For example, OJP in cooperation with COPS and OVW, hosted a seminar on the Internet to instruct grant applicants on specific Recovery Act reporting requirements. This training was intended to supplement the Office of Management and Budget's existing guidance on recipient reporting. This webinar provides a good example of how DOJ could implement such training in other areas, such as for Tribal grantees.

Granting agencies should also provide opportunities for Tribal grant administrators to discuss questions and problems to ensure consistent treatment by the granting agencies. These opportunities for feedback and discussion can also serve as a tool for developing future training topics.

For example, in past reviews we have noted that many Tribes have challenges arising from related-party transactions, such as hiring family members or buying goods and services from a vendor where there is less than an arm's length between the buyer and the seller. Related party transactions can cause conflict-of-interest issues in both appearance and fact. Through training, grant administrators can be made aware of this issue and of the need for Tribal grantees to ensure that all potential conflict-of-interest issues are appropriately disclosed and reviewed.

We note a recent example in which DOJ held this type of training. In August 2009, OJP, COPS, and OVW hosted an "Interdepartmental Tribal

Justice, Safety, and Wellness Conference” in Oklahoma with the Department of Interior, the Department of Housing and Urban Development, and others to address Tribal grant issues such as grant writing, effective criminal justice strategies, and program and grants management practices. At the invitation of OJP, the OIG Investigations Division gave a presentation to the Tribal members attending the conference on grant fraud prevention and detection. In December 2009, DOJ coordinated a similar Tribal justice conference in Alaska and is planning to hold other such events in the future. We believe that DOJ should continue to routinely hold these types of sessions in order to educate as many potential Tribal grantees as possible. By holding information-sharing sessions with Tribal grantees that focus on responsibilities, accountability, and performance expectations, granting agencies encourage adherence to the terms and conditions of grant programs.

Conclusion

As DOJ increases its outreach to Tribes to encourage them to participate in DOJ’s Tribal grant programs, it is important that it also increase its efforts to provide adequate training and oversight for this initiative. Our past audit and investigative work indicates that DOJ should focus on increasing the coordination of its Tribal grant programs, both within DOJ and with external agencies, and on providing assistance and oversight to Tribes with inadequate accounting systems. We have described a series of potential steps DOJ should consider regarding DOJ’s program solicitations, grant applications, award process, and monitoring and training of Tribal grantees. By implementing these recommendations, DOJ can help ensure that it improves the Tribal grant process, ensures appropriate use of grant money, and exercises sufficient coordination and oversight of Tribal grant funds.