

Project On Government Oversight

Getting Byrned by Justice: Favoritism in the Department of Justice Byrne Discretionary Grant Program

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666 11th Street, NW, Suite 900 • Washington, DC 20001-4542 • (202) 347-1122
Fax: (202) 347-1116 • E-mail: pogo@pogo.org • www.pogo.org

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Introduction

The Department of Justice (DOJ), through the Office of Justice Programs (OJP), issues grants to work "...in partnership with the justice community to identify the most pressing crime-related challenges confronting the justice system and to provide information, training, coordination, and innovative strategies and approaches for addressing these challenges."¹ In awarding federal grants, it is standard practice for the agency to require that a competitive grant proposal go through a peer review process in order to evaluate the merit of the application. According to the DOJ, "peer review" means a grant application is "reviewed and discussed by a panel of outside experts in fields related to the subject matter of the program."²

OJP's Bureau of Justice Assistance (BJA) administers the Edward Byrne Memorial Discretionary Grants Program.³ (Appendix A) POGO has found that multiple FY2007 Byrne Discretionary Grants appear to have been awarded outside of the peer review process, and believes there are even questions of patronage and conflicts of interest by DOJ appointees. OJP documents obtained by POGO indicate that DOJ awarded 13 grants without evaluating them through the peer review process, and at least two of those grants appear to involve conflicts of interest between the grantee and DOJ appointees in the offices awarding those grants.

Prior to FY2007, Byrne Discretionary Grants had been increasingly allocated through congressional earmarks.⁴ The absence of earmarks in the FY2007 appropriation process provided an opportunity, albeit a challenging one, for OJP to demonstrate that it could award grants based on merit rather than on political patronage.⁵ (Appendix B) In May 2007, DOJ released a Request for Proposal (RFP) announcing that BJA was taking applications for the FY2007 Byrne Discretionary Grants and detailing the requirements and selection criteria. Applications were due by June 25, 2007. However, it appears the FY2007 Byrne Discretionary Grant Program was not as fair as the RFP indicated. (Appendix A)

It has previously been disclosed that another office in OJP (Graphic A), the Office of Juvenile Justice and Delinquency Prevention (OJJDP), did not follow the

¹ Office of Juvenile Justice and Delinquency Programs, Office of Justice Programs, Department of Justice. "About Us." <http://www.ojp.usdoj.gov/about/about.htm> (Downloaded June 18, 2008).

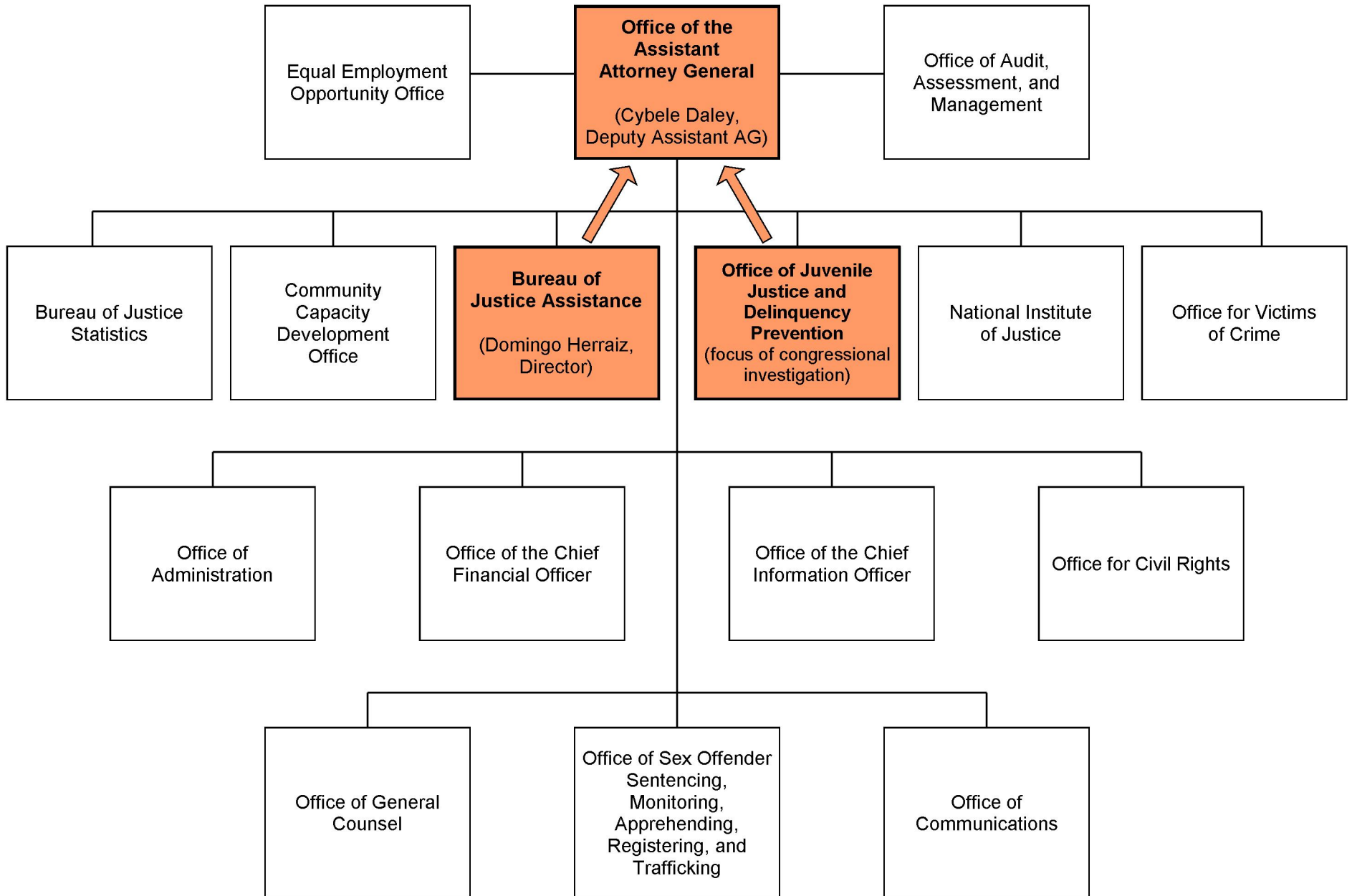
² Office of Juvenile Justice and Delinquency Programs, Office of Justice Programs, Department of Justice. "Frequently Asked Questions." <http://ojjdp.ncjrs.gov/faqs.html> (Downloaded June 18, 2008).

³"The Edward Byrne Discretionary Memorial Discretionary Grants Program ... helps improve the capacity of local adult criminal justice systems and provides for national support efforts such as training and technical assistance projects to strategically address local needs." (Appendix A)

⁴ In FY2007, Congress appropriated money to DOJ through a continuing resolution, and the Byrne discretionary grants were not subject to congressional earmarking. Attorney General Roberto Gonzales. "Questions for the Record for Attorney General Alberto Gonzales. Senate Judiciary Committee DOJ Oversight Hearing on July 18, 2006." http://www.fas.org/irp/congress/2006_hr/071806qfr.pdf (Downloaded June 18, 2008).

⁵ Patrick Boyle. "Former Justice Official Says Juvenile Chief Misled Her." *Youth Today*. http://www.youthtoday.org/publication/article.cfm?article_id=1873&id=92 (Downloaded June 18, 2008).

OFFICE OF JUSTICE PROGRAMS



Graphic A

recommendations of peer reviewers when administering their National Juvenile Justice Program Grants.⁶ That grant program is now the subject of an investigation by the House Committee on Oversight and Government Reform.⁷ However, the significantly larger FY2007 Byrne Discretionary Grant Program has, until now, received little public scrutiny. While there were 23 National Juvenile Justice Program Grants totaling approximately \$80 million, there were 228 Byrne Discretionary Grants totaling approximately \$150 million.⁸ A May 13, 2008, letter from Senator Claire McCaskill to OJP has been the only attempt to shine a light on the questionable manner in which the FY2007 Byrne Discretionary Grants were awarded. (Appendix B)

The RFP for the FY2007 Byrne Discretionary Grants Program was a “Competitive Grant Announcement.” However, the RFP did not state that all grantee submissions must go through a peer review process; rather, it stated that applications “may be reviewed by a panel of reviewers.” The documents indicate that appointees in both the Office of Justice Programs (OJP) and its Bureau of Justice Assistance (BJA) may have abused that leeway to steer grants towards organizations with which they were closely associated. In light of the fact that 13 Byrne grants were awarded without any peer review, and that several OJJDP grants were awarded counter to peer-review recommendations, doubt is cast on the merit of even the peer reviewed BJA grants. (Appendices C-H)

Freedom of Information Act Response

Transparency in grant-making is essential to maintaining credibility and integrity in the award process. Yet, when POGO first began investigating the program, recent Byrne Discretionary Grant recipients were not listed on DOJ’s website. It was only after POGO filed its initial November 2007 Freedom of Information Act (FOIA) request that the grant recipients were posted on the DOJ site. A FOIA request should not have been required to obtain this information; instead the information should have been promptly posted on the DOJ website for review by grant applicants and the public.

In an April 2008 response to POGO’s FOIA request, the OJP General Counsel wrote that he had enclosed the summary list of applicants, the list of the applicants that were sent for peer review, the list of the applicants that were rejected on technicalities, and the list of

⁶ Patrick Boyle. “For Juvenile Justice, A Panel of One: New grants skip top-scoring bids. Did Administrator Flores play favorites?” *Youth Today*. January 1, 2008. http://www.youthtoday.org/publication/article.cfm?article_id=949 (Downloaded June 18, 2008); and Brian Ross, Anna Schecter, and Murray Waas. “Justice Department Official Awards \$500,000 Grant to Golf Group: Former Staffer Tells ABC News Anti-Crime Funds Given to Programs With The ‘Right’ Connections.” *ABC News*. June 9, 2008. <http://abcnews.go.com/Blotter/story?id=5033256&page=1> (Downloaded June 18, 2008).

⁷ Henry A. Waxman. “Letter to the Honorable Michael B. Mukasey.” March 13, 2008. <http://oversight.house.gov/documents/20080313131640.pdf> (Downloaded June 18, 2008).

⁸ Patrick Boyle. “For Juvenile Justice, A Panel of One: New grants skip top-scoring bids. Did Administrator Flores play favorites?” *Youth Today*. January 1, 2008. http://www.youthtoday.org/publication/article.cfm?article_id=949 (Downloaded June 18, 2008); and Department of Justice, Bureau of Justice Assistance. <http://www.ojp.usdoj.gov/BJA/grant/07ByrneAwards.pdf> (Downloaded June 18, 2008).

the applicants that received grants, and that they were all “appropriate for release in full and without excision.” The comprehensive nature of the lists allowed POGO to cross-reference different categories with the knowledge that those lists provided a complete picture of the grants that were awarded. (Appendices C-H)

Although the actual peer review scores were considered predecisional information and were redacted from the documents provided through FOIA, POGO was able to determine which awarded grants had completely avoided the peer review process. By cross-referencing OJP’s list of grant recipients with OJP’s list of peer-reviewed applicants, POGO was able to develop a list of grantees that had received grants without going through the peer review process.

Although those lists were comprehensive, there were other documents that were not produced in response to POGO’s FOIA request. Only one Decision Memo,⁹ for the “Targeting Violent Crime” Byrne Discretionary Grants (Category I), was provided to POGO through FOIA. DOJ did not provide any Decision Memos for the other five grant application categories, nor did they reference any additional approved Decision Memos that had been withheld.¹⁰ The remaining five grant application categories for which there apparently was no final decision memo are:

- “Preventing Crime and Drug Abuse” (Category II)
- “Enhancing Local Law Enforcement” (Category III)
- “Enhancing Local Courts” (Category IV)
- “Enhancing Local Corrections and Offender Reentry” (Category V)
- “Facilitating Justice Information Sharing” (Category VI)

However, attached to the Category I Decision Memo were four pages of grant recipients from the remaining five categories. It appears the process for those remaining five categories was at best chaotic, and requires further inquiry.

At Least 13 Grant Applicants Were Given Special Treatment in FY2007

According to OJP documents, there were 1,496 applicants for FY2007 Byrne Discretionary Grants. Of those, 95 of them were immediately eliminated from consideration because they failed to meet RFP technicalities such as font and margin size or page limit, and so were not considered for peer review. (Appendices A, D, F)

Yet, POGO’s analysis reveals that 13 of the Byrne Discretionary Grant recipients appear to have received special treatment: they did not go through the peer review process at all, but were awarded grants anyway. (Appendices E, H)

⁹ Recommendations for grant awards are sent from BJA to the OJP Assistant Attorney General (AAG) in a Decision Memo. The AAG then has the option to either “Approve” or “Disapprove” the grant awards with their signature.

¹⁰ FOIA law requires that all documents be provided, or if they are not provided, to cite a specific exemption to releasing the document.

13 Grants Not Peer Reviewed

Organization Title	Award Amount	Byrne Award Category	Project Description	Decision Memo Notes
Fraternal Order of Police of Ohio	\$603,000	Category II: Preventing Crime and Drug Abuse	Ohio School Alert System	<i>Not Listed on Decision Memo</i>
Ohio Office of Criminal Justice Services	\$296,168	Category III: Enhancing Local Law Enforcement	City of Columbus' Anti-Gang Initiative	<i>Not Listed on Decision Memo</i>
Simon Wiesenthal Center, Inc	\$2,000,000	Category II: Preventing Crime and Drug Abuse	Tools for Tolerance	"AAG Approved National Program"
National Forensic Science Technology Center	\$1,000,000	Category III: Enhancing Local Law Enforcement	Enhancing Local Law Enforcement	"Previous Congressional Earmark"
University of Mississippi	\$999,874	Category IV: Enhancing Local Courts	National Center for Justice and the Rule of Law	"AAG Approved National Program"
Partnership for a Drug-Free America	\$2,500,000	Category IV: Enhancing Local Courts	Methamphetamine Demand Reduction Program	"AAG Approved National Program"
Alaska Native Justice Center Inc	\$1,100,000	Category V: Enhancing Local Corrections and Offender Reentry	ANJC: Yagheli Ten	"AAG Approved National Program"
Alabama Center for Law & Civic Education	\$1,200,000	Category II: Preventing Crime and Drug Abuse	ACLCE Play by the Rules National Project	"AAG Approved National Program"
University of Tennessee, Knoxville	\$2,446,519	Category III: Enhancing Local Law Enforcement	The National Forensic Academy	"Previous Congressional Earmark"
Mothers Against Drunk Driving	\$2,498,419	Category II: Preventing Crime and Drug Abuse	MADD Victim Services, Prevention, and Awareness	"Previous Congressional Earmark"
Utah Council for Crime Prevention	\$100,000	Category II: Preventing Crime and Drug Abuse	Expansion of McGruff House and McGruff Truck programs	"Previous Congressional Earmark"
College of William and Mary	\$499,204	Category IV: Enhancing Local Courts	The Center for Legal and Court Technology	"Previous Congressional Earmark"
National Association for Court Management	\$250,000	Category IV: Enhancing Local Courts	NACM Excellence IV	"Previous Congressional Earmark"

On the list of grant recipients attached to the only Decision Memo provided to POGO through FOIA, the vast majority of the grants were labeled by their project titles, such as “Violence Reduction Partnership” or “Offender Reentry Program.” However, of the 13 grants that were awarded without peer review, 11 were labeled as either “Previous Congressional Earmark” or “AAG Approved National Program.” The two remaining non-peer reviewed grants do not appear on this list at all: the grants to the Ohio Office of Criminal Justice Services (OCJS) and the Fraternal Order of Police (FOP) of Ohio. (Appendices G, H)

Ohio Office of Criminal Justice Services

The Director of BJA, Domingo Herraiz, came to the Department of Justice in 2003 from Ohio, where he was the Director of the Ohio OCJS from 2000 to 2003.¹¹ Ohio OCJS received a \$296,168 FY2007 Byrne Discretionary Grant described as helping to aid the City of Columbus’ anti-gang initiative. (Appendix I) This grant is one of the two grants that OJP documents indicate were neither peer reviewed nor identified as a “Previous Congressional Earmark” or “AAG Approved National Program.” That Herraiz was able to award a grant to his former employer, let alone circumvent the peer review process, raises the question of conflicts of interest in the Byrne Discretionary Grant program.

Fraternal Order of Police of Ohio

The FOP of Ohio was awarded a FY2007 Byrne Discretionary Grant for \$603,000. OJP documents indicate this grant never went through the peer review process. (Appendices E, H, I)

The OJP Deputy Assistant Attorney General at the time of the Byrne Discretionary Grant award to FOP of Ohio was Cybele Daley.¹² According to the RFP, her boss, the OJP Assistant Attorney General, makes the final determination of Byrne Discretionary Grant awards. (Appendix A) Daley is married to the Executive Director of the National FOP, James Pasco.¹³ Although Daley does not have decision-making authority for grant awards, this possible conflict of interest should have at least required that grant proposals from any FOP organization be peer reviewed. However, as with the grant awarded to Ohio OCJS, this grant is neither on the list of peer reviewed grants nor is it identified as a “Previous Congressional Earmark” or “AAG Approved National Program.” (Appendices E and G)

Although the Byrne Discretionary Grant is listed in DOJ documents as being awarded to the FOP of Ohio for the Ohio School Alert System, that system is actually run by a

¹¹ Office of Criminal Justice Services, Ohio Department of Public Safety. “Taft Announces Departure of Criminal Justice Services Director: Domingo Herraiz Leaves OCJS for Bureau of Justice Assistance.” www.ocjs.ohio.gov/Press/Domingorelease07102003.pdf (June 18, 2008).

¹² Office of Justice Programs, Department of Justice. “Speeches 2007.” http://www.ojp.usdoj.gov/newsroom/speeches/07_speeches.htm (June 18, 2008).

¹³ Fraternal Order of Police. “National Legislative Office.” <http://www.fop.net/legislative/index.shtml> (Downloaded June 18, 2008).

company based out of Columbus, Ohio, called US ComCorp.¹⁴ According to FOP of Ohio's May 1, 2007, newsletter, the organizations were collaborating on both the "School Alert" and "Photo Alert" projects.¹⁵

The month after FOP of Ohio received the Byrne Discretionary Grant, its parent organization, the National FOP, entered into a contract with that same company, US ComCorp, to partner in promoting the National PhotoAlert Network. According to US ComCorp's website, "Our partnership with the National Fraternal Order of Police has proven to be critical in the development of the National Photo Alert Network."¹⁶ Under this contract with US ComCorp, the National FOP receives benefits, including receiving "naming rights" over that network.

According to a September 19, 2007, US ComCorp press release:

US ComCorp has signed an official contract with the National Fraternal Order of Police to partner in promoting the National PhotoAlert Network. The contract outlines the benefits of the system for the FOP as well as grants naming rights to the organization. The official name of the system is now "The Fraternal Order of Police National PhotoAlert Network." US ComCorp hopes that this partnership will successfully build the alert recipient database as well as create a great level of confidence and trust with the Network's customers.¹⁷

Given the above transaction, it appears the National FOP, led by the husband of the then-OJP Deputy Assistant Attorney General, may have benefited from the award of the Byrne Discretionary Grant to the FOP of Ohio.¹⁸

Department of Education Grant Program: Grant Programs Can Be Transparent and Fair

The grant system utilized by the Department of Education can serve as a model for how DOJ should increase transparency in its own grant-award process. The Department of Education makes its RFPs more publicly available than does the DOJ by posting RFPs on

¹⁴ US ComCorp. "Press Room." http://www.uscomcorp.com/Press_Room.html (Downloaded June 18, 2008); and Department of Justice, Bureau of Justice Assistance.

<http://www.ojp.usdoj.gov/BJA/grant/07ByrneAwards.pdf> (Downloaded June 18, 2008).

¹⁵ Fraternal Order of Police of Ohio, Inc. "New Ohio FOP Vice President to be Appointed May 5" Ohio FOP E-Focus. Vol.1, Issue 1. May 1, 2007. <http://www.fopohio.org/files/Focus/2007/2007%20May%20E-Focus.pdf> (Downloaded June 18, 2008).

¹⁶ US ComCorp. "Partners." <http://www.uscomcorp.com/Partners.html> (Downloaded June 18, 2008).

¹⁷ US ComCorp. "Press Room." http://www.uscomcorp.com/Press_Room.html (Downloaded June 18, 2008).

¹⁸ Another issue that may be worthy of further investigation is raised by the fact that National FOP partner US ComCorp renamed the Ohio School Alert System (which is offered free of charge) to the National School Alert System, for which US ComCorp charges user fees. According to the DOJ RFP, for-profit Byrne Discretionary Grant recipients "must agree to waive any profit or fees for services." In this instance, it appears US ComCorp may have been able to avoid this restriction because FOP of Ohio was awarded the grant on their behalf. US ComCorp. "Press Room." http://www.uscomcorp.com/Press_Room.html (Downloaded June 18, 2008); and <http://www.nationalschoolalert.com/ServiceFees.html>

its website as well as listing available grants in the Federal Register. The Department of Education also makes public a step-by-step guide to the methodology used by the Department when selecting grants.¹⁹ In addition, unlike DOJ, the Department of Education has a searchable, comprehensive grant award database.²⁰ The database features searches by list, date range, text string, and abstract. Searches yield information such as the amount awarded, the name of the grant winner, the project director, and contact information for the project director. Through these tools, the Department of Education significantly increases the transparency of the federal grant process.

Recommendations

Congress and the DOJ Inspector General should review all FY2007 Byrne Discretionary Grant awards in order to determine whether conflicts of interest or patronage played a part in the decision-making process.

All Byrne Discretionary Grant applicants should be subject to a uniform process and equal scrutiny in order to preserve a merit-based competitive process.

All Byrne Discretionary Grant recipients should be promptly posted on the DOJ website.

The Byrne Discretionary Grant system should not return to the bad old days of congressional earmarking, which precludes fair and open competition and is not merit-based.

¹⁹ Department of Education. "Grantmaking at ED—5. Getting Funded."
<http://www.ed.gov/fund/grant/about/grantmaking/pt5.html> (Downloaded June 18, 2008).

²⁰ Department of Education. "Grant Award Database."
<http://wdcrobcolp01.ed.gov/CFAPPS/grantaward/start.cfm> (Downloaded June 18, 2008).