



**U.S. Department of Justice
Office of the Inspector General
Evaluation and Inspections Division**

**Review of the Office of Justice Programs'
Paul Coverdell Forensic Science
Improvement Grants Program**

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EXECUTIVE SUMMARY

The Department of Justice (Department) Paul Coverdell Forensic Science Improvement Grants Program (Coverdell Program) provides funds to state and local governments to improve the timeliness and quality of forensic science and medical examiner services and to eliminate backlogs in the analysis of forensic evidence. The National Institute of Justice (NIJ), under the legal and fiscal oversight of the Office of Justice Programs (OJP), distributed almost \$15 million in fiscal year (FY) 2006 Coverdell Program grants. In FY 2007, NIJ distributed almost \$16.5 million in Coverdell Program grants.

Under the *Justice for All Act of 2004* (Act), agencies applying for Coverdell Program grants are required to certify that:

a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of forensic results committed by employees or contractors of any forensic laboratory system . . . that will receive a portion of the grant amount.¹

This requirement addresses negligence and misconduct in forensic laboratories, including false testimony by some forensic laboratory personnel, which led to wrongful convictions in several states. Independent external investigations of allegations of serious negligence or misconduct provide an important safeguard to reduce problems created by inadequate forensic analysis.

In December 2005, the Office of the Inspector General (OIG) issued an inspection report that found that OJP had not enforced or exercised effective oversight over the external investigation certification requirement for the FY 2005 Coverdell Program.² One particular concern identified in the report was that OJP did not require grant applicants to identify the government entities that they certified could perform independent external investigations. After the report was issued and after extensive discussions with the OIG, OJP agreed to require grant

¹ Title I of the *Omnibus Safe Streets and Crime Control Act of 1968*, Part BB, codified at 42 U.S.C. § 3797k(4).

² U.S. Department of Justice Office of the Inspector General, *Review of the Office of Justice Programs' Forensic Science Improvement Grant Program*, Evaluation and Inspections Report I-2006-002 (December 2005).

applicants, prior to receiving funds, to provide the name of the government entity, beginning with the FY 2007 Coverdell Program.

To examine the effectiveness of OJP's administration of the external investigation certification requirement for the FY 2006 Coverdell Program, we obtained the names of the entities (as OJP agreed to begin doing in FY 2007) and contacted the entities to determine whether they had the authority, a process in place, and the capabilities and resources to conduct independent investigations of wrongdoing in forensic laboratories.

RESULTS IN BRIEF

Our review found that, although OJP has complied with the terms of the statute requirement to obtain certifications from applicants, OJP's administration of the external investigation certification requirement needs improvement. We found that not all forensic laboratories that received FY 2006 Coverdell Program grant funds are covered by a government entity with the authority and capability to independently investigate allegations of serious negligence or misconduct. Further, OJP's guidance does not require grantees and sub-grantees (forensic laboratories) to refer allegations of serious negligence and misconduct to entities for investigation.

Although OJP began requiring applicants to provide the names of certified entities in FY 2007, our review showed that OJP does not effectively administer the certification requirement. As a result, in this report we make several recommendations to improve the effectiveness of OJP's grant administration and to better ensure that serious allegations of negligence or misconduct are referred for independent investigations.

Certified entities were not always qualified. During this review, the OIG contacted the certifying officials for the FY 2006 Coverdell Program grant recipients and asked them to identify the entities that they had certified could conduct independent external investigations into allegations of serious negligence or misconduct involving their forensic laboratories. These officials identified a total of 233 entities that they said could investigate allegations of negligence or misconduct.

The OIG contacted 231 of the 233 entities and concluded that at least 78 (34 percent) did not meet the external investigation certification requirement because they lacked either the authority, the capabilities and resources, or an appropriate process to conduct independent external investigations into allegations of serious negligence or

misconduct by the forensic laboratories that received FY 2006 Coverdell Program funds.

For example, one entity named by a certifying official told us that it conducted financial audits and had no authority to conduct investigations of negligence or misconduct in forensic laboratory work. An official from another entity told us that his entity did not have the capabilities and resources to conduct investigations involving DNA analysis and would have to request funds from the state legislature to contract for DNA expertise if it received such an allegation. More than half of all entity officials told us that they had not been previously informed that their entities had been certified to conduct independent external investigations as required by the Coverdell Program.

The OIG identified shortcomings in OJP's administration of the FY 2006 external investigation certification that allowed the above problems to occur. First, OJP did not require applicants to confirm to OJP that applicants had identified government entities that had the authority, a process in place, and the capabilities and resources to conduct independent external investigations of forensic laboratories. In fact, OJP could not ensure that the applicants had identified an entity at all: Five certifying officials told the OIG that when they completed the certification they did not have a specific entity in mind – they merely signed the template OJP provided.

Second, we found that OJP did not adequately review the information it did obtain to ascertain that the certifications submitted by the grantees were properly completed. Each certification must contain specific statements and be signed by a knowledgeable official authorized to make certifications on behalf of the applicant agency. Our review identified certifications from 38 grantees that were signed by individuals who did not appear to be from the applicant agency, including 17 in which the applicant agency named on the certification was different from the applicant agency that submitted the grant application. OJP still awarded grants to these 38 agencies.

Overall, our review found that OJP's administration of the Coverdell Program allowed it to award grants to applicants that did not identify a qualified entity that can conduct independent investigations of serious negligence or misconduct in forensic laboratories.

Guidance and processes are not in place to ensure that allegations of serious negligence or misconduct are referred to the entities. During our review, we examined whether OJP's guidance directs grantees and forensic laboratories to refer allegations of

negligence and misconduct for investigation by the certified entities. When we asked OJP about its guidance regarding handling allegations of negligence and misconduct, we found that OJP has advised a grantee (and the grantee advised forensic laboratories) that it did not have to refer allegations of serious negligence and misconduct to the entity that it certified for an independent investigation. OJP's General Counsel stated to the OIG his belief that, while the reporting of allegations is consistent with the statute, the statute does not require that allegations actually be referred to the entity that was certified for investigation.

Also, we examined whether grantee and forensic laboratory processes are adequate to ensure that allegations of negligence and misconduct by forensic laboratories are referred for investigation by the certified entities, and we found they are not. We asked certifying officials for the FY 2006 Coverdell Program grant recipients whether there had been allegations of negligence or misconduct at the laboratories that received FY 2006 Coverdell Program funds and, if so, whether the allegations were referred to the certified entities. The certifying officials told us of seven allegations of negligence and misconduct. According to the certifying officials, six of the seven allegations were reported to the grant recipients' entities for investigation. However, one allegation of serious misconduct was not investigated by the entity. In that case, the Director of a state crime laboratory reported to the OIG that laboratory management investigated an allegation that two analysts had not been following proper review procedures since 2002. The Director stated that the matter was not reported to the government entity – the state police – because the laboratory was “the best agency to handle the investigation.” The two analysts resigned before the investigation was completed.

Finally, in our discussions with entity officials we found that some of the established processes for responding to allegations of negligence and misconduct would not provide for an independent external investigation. For example, one entity official told us that if there were allegations of negligence or misconduct at the forensic laboratory, the entity (a state council) would be informed, but the laboratory itself – not the entity – would investigate the allegation.

Overall, OJP should improve its administration of the certification requirement by providing guidance that directs grantees and forensic laboratories to refer serious allegations of negligence or misconduct to the certified entities for independent investigation.

CONCLUSION AND RECOMMENDATIONS

We concluded that, although OJP has complied with the terms of the statute to obtain certifications from applicants, OJP's administration of the Coverdell Program external investigation certification requirement is not effective for ensuring that qualified entities are certified, and that allegations of serious negligence or misconduct are referred for investigation. Our review found that one-third of the entities identified by the FY 2006 Coverdell Program certifying officials lacked the authority or capability to independently investigate allegations of negligence or misconduct at forensic laboratories. Beginning with the FY 2007 Coverdell Program, OJP has agreed to require grant applicants, prior to receiving funds, provide the name of the government entity. Obtaining the names of the entities is a step forward and will ensure that applicants do not submit certifications when they have not actually identified entities capable of independently investigating misconduct or negligence. However, as our review demonstrated, requiring only that an applicant provide the name of an entity is insufficient to ensure the entity can conduct independent investigations. To improve its administration of the Coverdell Program, we believe that OJP needs to require that applicants provide sufficient information to ensure that the applicants have accurately assessed the qualifications and independence of the entities they certify.

Moreover, we are concerned that current guidance and procedures do not ensure that allegations of serious negligence or misconduct are actually referred for an independent investigation by a qualified entity. Under OJP's current guidance, the external investigation certification requirement established by Congress is satisfied solely with the submission of a certification form, and nothing more is required if allegations are received. We believe this position undermines and diminishes the utility of the Coverdell Program for improving the oversight of forensic laboratories. OJP should enhance the effectiveness of the Coverdell Program for ensuring the integrity of forensic analysis by requiring that allegations of wrongdoing at forensic laboratories actually be referred to the certified entities for independent investigation.

To improve OJP's administration of the Coverdell Program and better ensure that allegations of negligence or misconduct are subject to independent external investigation, the OIG recommends that OJP take the following actions:

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1. Revise the certification template to require that applicants name the government entities and confirm that the government entities have:

- a. the authority,
- b. the independence,
- c. a process in place that excludes laboratory management,
and
- d. the resources

to conduct independent external investigations into allegations of serious negligence or misconduct by the forensic laboratories that will receive Coverdell Program funds.

2. Provide applicants with guidance that allegations of serious negligence or misconduct substantially affecting the integrity of forensic results are to be referred to the certified government entities.
3. Revise and document the Coverdell Program application review process so that only applicants that submit complete external investigation certifications are awarded grants.

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BACKGROUND

The Office of Justice Programs (OJP) is responsible for developing programs that increase the nation's capacity to prevent and control crime, improve criminal and juvenile justice systems, increase knowledge about crime, and assist crime victims. Led by an Assistant Attorney General, OJP is divided into five bureaus that provide training, collect and disseminate crime statistics, support technology development and research, and administer Department of Justice (Department) grants.³ OJP's Office of the General Counsel provides legal advice to the five bureaus. In fiscal year (FY) 2006, OJP and its bureaus awarded 4,875 grants totaling \$2.5 billion to state and local agencies to assist with criminal justice activities.

The National Institute of Justice (NIJ), one of OJP's bureaus, is the Department's primary research, development, and evaluation agency. NIJ awards grants to educational institutions, public agencies, nonprofit and faith-based organizations, individuals, and certain for-profit organizations to conduct independent research on crime control and justice issues. In addition, NIJ programs include forensic laboratory capacity development, technology development, technology assistance for state and local public safety agencies, social science research and evaluation, and dissemination of information. In FY 2006, NIJ awarded 490 grants totaling over \$185 million.

NIJ Grant Process

NIJ solicits grant applications by posting grant program announcements on its website. Program announcements contain the grant program and eligibility description, the application deadline, instructions for applying, and a list of required documents. Applicants must provide certain information in their applications, including a detailed program narrative and abstract describing the purpose, goals, and objectives of the project to be funded; a budget detail worksheet and narrative; and several standard forms. NIJ's program announcements may also require that applicants make certain assurances in their applications by certifying that they have taken or will take certain actions and will comply with all applicable federal statutes and regulations during the period covered by the grant. If an applicant provides all

³ The five OJP bureaus are the National Institute of Justice, the Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

requested information and qualifies, the NIJ grant program manager forwards the application to the NIJ Director for approval. If the NIJ Director approves or recommends (depending on the funding authorization) the application, OJP awards the grant.

Paul Coverdell Forensic Science Improvement Grants Program

The Paul Coverdell Forensic Science Improvement Grants Program (Coverdell Program), administered by OJP through NIJ's Investigative and Forensic Science Division in the Office of Science and Technology, provides funds to state and local governments to (1) improve the quality and timeliness of forensic science and medical examiner services and (2) eliminate backlogs in the analysis of forensic evidence, including controlled substances, firearms examination, forensic pathology, latent prints, questioned documents, toxicology, and trace evidence.⁴

To request a Coverdell Program grant, an applicant must submit, in addition to all other required documents, a certification that

a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of forensic results committed by employees or contractors of any forensic laboratory system, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount.⁵ [See Appendix I.]

This external investigation certification became a requirement on October 30, 2004, as a result of the *Justice for All Act of 2004*, which amended the *Omnibus Crime Control and Safe Streets Act of 1968*.⁶

Because negligence and misconduct in forensic laboratories can undermine the justice system, the establishment of this external

⁴ "States" include the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. For certain purposes, American Samoa and the Northern Mariana Islands are treated as one state.

⁵ Title I of the *Omnibus Safe Streets and Crime Control Act of 1968*, Part BB, codified at 42 U.S.C. § 3797k(4).

⁶ The *Omnibus Crime Control and Safe Streets Act of 1968*, as amended by the *Justice for All Act of 2004* (Pub. L. No. 108-405), codified at 42 U.S.C. § 3797k(4).

investigation certification helps to provide a necessary safeguard.⁷ Forensic laboratory negligence and misconduct and false testimony by forensic laboratory personnel have led to wrongful convictions in several states. For example, in 2006, Marlon Pendleton was exonerated after serving 10 years for rape and robbery. The faulty analysis of a crime laboratory analyst contributed to his conviction. In 2007, Curtis Edward McCarty was exonerated after serving 21 years for murder. McCarty was convicted and sentenced to death based on the false testimony of a forensic analyst, whose misconduct contributed to at least two other convictions later overturned by DNA evidence.

The 2005 Office of the Inspector General Report

In 2005, the Office of the Inspector General (OIG) evaluated NIJ's implementation of the external investigation certification requirement.⁸ The OIG report concluded that NIJ did not enforce the external investigation certification requirement during the application process or exercise effective oversight of this aspect of the FY 2005 Coverdell Program. Specifically, the OIG found that NIJ did not provide necessary guidance to applicants and did not require applicants to submit the information necessary to permit OJP to evaluate the certifications.

The OIG report recommended that OJP (1) provide guidance to applicants regarding the external investigation certification, (2) require that each applicant provide the name of the government entity that could conduct independent external investigations of serious negligence or misconduct related to forensic laboratories, and (3) consider requiring each applicant to submit a letter from that government entity acknowledging that it had the authority and process to conduct independent external investigations.

OJP agreed with the first recommendation to provide guidance to applicants on independent external processes and did so in the FY 2006 Coverdell Program Announcement. However, OJP initially resisted implementing the second recommendation to require each applicant to provide the name of the government entity that could conduct independent external investigations. Eventually, after much discussion

⁷ In this report, the terms "forensic laboratories" and "forensic laboratory" include medical examiners' offices, coroners' offices, law enforcement storage facilities, and medical facilities.

⁸ U.S. Department of Justice Office of the Inspector General, *Review of the Office of Justice Programs' Forensic Science Improvement Grant Program*, Evaluation and Inspections Report I-2006-002 (December 2005).

with the OIG on this recommendation, OJP agreed to implement this recommendation in FY 2007. However, OJP has declined to implement Recommendation 3, requiring a letter from the government entity identified in the grant application as prepared to conduct independent external investigations.

PURPOSE, SCOPE, AND METHODOLOGY OF THE OIG REVIEW

Purpose

The purpose of this review was to evaluate whether OJP's administration of the Coverdell Program external investigation certification requirement was effective in ensuring that allegations of serious negligence or misconduct are subject to independent external investigations.

Scope

The scope of this review was OJP's administration of the FY 2006 external investigation certification requirement.

Methodology

Document Review. The OIG reviewed the FY 2006 Coverdell Program Announcement and the external investigation certifications submitted by the 87 FY 2006 grantees.⁹ The 87 grantees submitted a total of 118 certifications. Some grantees submitted a single certification, which applied to the grantee and its sub-grantees; other grantees submitted multiple certifications for themselves and each of their sub-grantees; and one grantee did not submit a certification.

Interviews. To obtain the names of the government entities certified, the OIG conducted telephone interviews with the 118 officials who signed the external investigation certifications.¹⁰ The OIG also interviewed a representative from the one grantee that did not submit a certification.¹¹

⁹ OJP awarded 88 Coverdell Program grants in FY 2006, but one of those grants was in response to an FY 2005 application. Therefore, the OIG excluded it from this review.

¹⁰ If a certifying official was no longer in office or did not know if a government entity existed, the OIG interviewed the agency representative who was most familiar with the Coverdell Program and the external investigation certification.

¹¹ Although OJP awarded this grant, at the time of the interview, the grantee had not yet received funds and would not receive funds until it submitted the external investigation certification.

These 119 officials identified 233 government entities in response to the external investigation certification requirement. To assess whether these government entities had the authority, a process in place, and the capabilities and resources to conduct independent external investigations into allegations of negligence or misconduct committed by the forensic laboratories that received Coverdell Program funds, the OIG conducted telephone interviews with representatives from 231 government entities. We spoke either with the entity representative that was identified by name by the certifying official or, in cases where the certifying official did not have a specific point of contact, we called the entity and asked to be directed to the person responsible for investigating allegations of negligence or misconduct in the forensic laboratories that received Coverdell Program funds. The OIG was able to reach representatives from all but two entities.

Within the Department of Justice, the OIG interviewed the Coverdell Program Manager at NIJ, the Acting Chief of the Investigative and Forensic Sciences Division in NIJ, the Deputy Director of the Office of Science and Technology in NIJ, the Acting Principal Deputy Director of NIJ, the General Counsel for OJP, and the OJP Office of General Counsel attorney assigned to the Coverdell Program. The OIG also interviewed the NIJ Acting Principal Deputy Director regarding his role and responsibilities as an OJP Deputy Assistant Attorney General in FY 2006.

RESULTS OF THE REVIEW

Although OJP has complied with the statutory requirement by obtaining external investigation certifications from applicants, OJP's administration of the requirement is not effective for ensuring that government entities that can conduct independent external investigations of forensic laboratories are certified. We found that FY 2006 Coverdell Program grantees certified government entities that did not have the authority, capabilities, or process to independently investigate allegations of serious negligence or misconduct. Moreover, OJP's guidance does not require that grantees and forensic laboratories refer serious allegations of negligence or misconduct to the entities for independent investigation. Although OJP began requiring applicants to provide the names of certified entities in FY 2007, our review showed that OJP's administration of the external investigation certification must be improved so (1) applicants identify entities with the authority and capability to independently investigate allegations of serious negligence or misconduct, and (2) allegations are referred to the entities for investigation.

The following sections describe our examination of qualifications of the entities identified by certifying officials to conduct independent investigations, OJP's guidance to grant applicants for completing certifications, and OJP's internal guidance for reviewing certifications and whether procedures in place were effective to ensure that allegations of negligence and misconduct in forensic laboratories were referred for independent investigations by the certified entities.

Qualifications of Entities Named by Certifying Officials

In FY 2006, the 87 agencies that received Coverdell Program grants submitted a total of 118 external investigation certifications with their applications.¹² The OIG contacted the officials who signed the

¹² "Agencies" in this report refers to state administering agencies and units of local government (grantees). See Appendix II for the names of the grantees (agencies), sub-grantees (forensic laboratories that received Coverdell Program funds), and government entities.

certifications and a representative from the one grantee that did not submit a certification and obtained the names of 233 government entities that the officials stated were the entities that could conduct independent investigations of negligence or misconduct at the forensic laboratories. The OIG contacted 231 entities and concluded that 78 (34 percent) did not meet the external investigation certification requirement because they lacked either the authority, the capabilities and resources, or an appropriate process to conduct independent external investigations into allegations of serious negligence or misconduct by the forensic laboratories that received FY 2006 Coverdell Program funds.

Entities' Authority to Investigate Allegations at the Forensic Laboratories. Of the 231 entities we contacted, we found that 202 (87 percent) had the authority to independently investigate allegations of negligence and misconduct at forensic laboratories. Officials at these entities told us that their entities' authority to conduct investigations was based on a state statute, derivative authority, or a formal Memorandum of Understanding (MOU), which we accepted.¹³

However, 29 of the entities (13 percent) did not have clear authority to investigate allegations at the forensic laboratories. In these cases, entity officials cited informal agreements with the forensic laboratories as their authority or stated that the entity's authority was granted by the forensic laboratories on a case-by-case basis. Moreover, some officials stated that they did not have the authority to conduct the investigations. Of the 29 entities that we determined did not clearly have the requisite authority:

- Officials from 16 entities told us that they did not have the authority to conduct the type of investigation required by the certification. For example:
 - One entity official stated that the entity is an investigative agency but conducts only financial compliance audits.

¹³ Of the 202 government entities that had the authority to conduct independent external investigations, over half (102) based their authority on state statutes or local ordinances. Representatives from 41 government entities stated that the chief of police, sheriff, or internal affairs policy granted them the authority to investigate. Representatives from 28 government entities cited their authority as state or local prosecutors. Representatives from the remaining 31 government entities cited other means of authority, such as a special commission's authority established by the state legislature.

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- Officials from three government entities – two county superior courts and a county crime laboratory – told us that their organizations were not investigative agencies and so did not have the authority to investigate.
 - Officials from four entities stated that the statutory language regarding the entity’s investigative authority was so vague that they did not know if they had the authority to conduct independent external investigations.
 - Officials from nine entities said that they were granted their authority on a case-by-case basis by the forensic laboratory requesting an investigation.
 - Officials from four entities told us that they had informal agreements under which they would arrange for any allegations to be investigated.

Entities’ Capability to Conduct Independent External Investigations. The OIG also examined whether each entity had the capability to investigate allegations of negligence and misconduct at forensic laboratories if such allegations were referred to it. We accepted an entity as being capable if it told us that its staff had the forensic knowledge and technical expertise necessary to investigate allegations related to forensic laboratories, or if the entity had the resources to obtain the needed expertise. Overall, 17 of the 231 entities (7 percent) reported that they lacked either the technical capability or the available resources to investigate allegations of negligence or misconduct at the forensic laboratories. For example:

- The certifying official for one grantee identified the state’s Office of the Inspector General as the entity that would investigate allegations of negligence and misconduct at a forensic laboratory. However, a Senior Assistant Inspector General in that office told us that if the allegation required technical expertise related to DNA, the office would not have the capability to respond immediately because it would have to request funding from the state legislature to contract for DNA expertise.
- The entity identified by another certifying official was a state police board. We asked the president of the state police board if it had the capabilities and resources to conduct the investigations, and he replied, “No, the police board refers

allegations to the appropriate investigative entity. It does not perform investigations itself.” He said that potential criminal activity would be referred to the State Attorney. A personnel matter would be referred to the labor board.

Entity Processes for Conducting Independent Investigations. The third aspect that the OIG examined to determine if the entities met the certification requirement was whether each entity had the required “appropriate process . . . in place to conduct independent external investigations into allegations” of wrongdoing in forensic laboratories. We found that 62 of the 231 entities (27 percent) did not have an appropriate process in place. Of these 62, officials at 19 entities stated to the OIG that they did not have a process in place or told us that the process was being developed but was not yet in place:

- Officials at 15 entities stated that they did not have a process in place. Five of these officials told us that they were developing processes.
- Officials at four entities stated that, although their entities did not have written procedures, they would create a process if they received an allegation.

In an additional 43 cases, we determined that the processes in place were not appropriate for conducting independent external investigations. In these cases, we concluded that the investigations were not external and independent because the laboratory’s management or employees were involved in or controlled the investigative process. For example:

- The Quality Manager/Acting Deputy Director of a state department of forensic sciences stated that the Director of that department decides whether allegations of wrongdoing will be investigated internally or will be referred to another entity for investigation. If the Director chooses to conduct an internal investigation, it is assigned to an in-house committee. If the committee finds an allegation to be substantiated, it forwards the case to the local District Attorney or the state Attorney General.
- At a state toxicological laboratory, any allegations of negligence or misconduct are referred to the laboratory manager, who notifies the Director of the forensic laboratory services bureau, and the Director informs the investigative entity (a state forensic

investigations council). However, the laboratory itself conducts the investigation of the allegations. The results of the laboratory's investigation are presented to the state forensic investigations council and, if the council decides further investigation is necessary, the matter is referred to the state Attorney General's office or the state patrol for further investigation.

- The named entity for a forensic science services division in a county Sheriff's department was the Sheriff's internal affairs office. Under the process described to the OIG, only the Assistant Sheriff who oversees the forensic science services division can initiate investigations of allegations against the division. If an allegation is submitted directly to the internal affairs office, that office presents it to the Assistant Sheriff, who reviews the allegation and decides whether it should be investigated by the internal affairs office. If the Assistant Sheriff requests an investigation, the internal affairs office conducts the investigation and presents the findings to the Assistant Sheriff, who decides whether the allegation has been sustained.

The requirement that laboratory management not be in a position to determine the course of investigations is addressed in the guidance provided to applicants by OJP. In its FY 2006 Coverdell Program Announcement, OJP provided examples that applicants could use to help them identify entities that meet the certification requirement. For example, OJP's guidance included the following scenario to indicate the independence required for the entity's investigation:

An applicant agency determines that the forensics laboratory director (or some other individual in the chain of command at the laboratory) has sole responsibility to conduct investigations into allegations of serious negligence or misconduct committed by laboratory employees.

Guidance: Under these facts, it would not be appropriate for the applicant to execute a certification because there is no process in place to conduct independent, external investigations into allegations of serious negligence or misconduct committed by laboratory employees and contractors.

In examining the entities' authorities, capabilities, and processes, we also found that there was limited communication between the certifying officials and investigative entity officials about the Coverdell

Program certification requirement. Only 47 of 118 certifying officials (40 percent) told us that they discussed the Coverdell Program certification with a representative from the investigative entity prior to signing the certification. Because most certifying officials did not discuss the certification requirement with an investigative entity representative, representatives from 158 investigative entities (68 percent) did not know about the requirement.¹⁴ One entity official specifically stated that “it would have been nice if [the grantee] had let us know that they were going to name us.” This official told us that his entity had the authority but not the capabilities and resources to investigate allegations involving DNA analysis.

OJP Administration of the Coverdell Program Investigative Requirement

The OIG identified additional shortcomings in OJP’s administration of the FY 2006 Coverdell Program external investigation certification. First, OJP did not require applicants to confirm to OJP that applicants had identified qualified entities. Second, OJP did not adequately review the information it did obtain to ascertain that the certifications submitted by the grantees were properly completed.

Information Required From Grant Applicants. In FY 2006, Coverdell Program applicants were required to sign an external investigation certification form that copied the exact statutory language of the certification requirement (see Appendix I). OJP did not require applicants to confirm to OJP that applicants had identified government entities that had the authority, a process in place, and the capabilities and resources to conduct independent external investigations of forensic laboratories. Moreover, because applicants were not asked to provide the names of the entities they certified, OJP could not know whether an applicant had identified an entity at all. In fact, we found that some had not certified any entity. Five certifying officials told us that when they completed the certification they did not have a specific entity in mind – they merely signed the template that OJP provided.

OJP’s Review of Certifications. In FY 2006, OJP did not sufficiently review the certifications submitted by the grantees to ascertain whether they were properly completed. OJP guidelines required that each certification contain specific statements and be signed by a knowledgeable official who is authorized to make certifications on behalf

¹⁴ Nine representatives stated that they did not know about the certification because they were new to their positions.

of the applicant agency.¹⁵ An OJP official told the OIG that OJP only evaluates each certification “on its face.”¹⁶

Yet, our review of the FY 2006 Coverdell Program certifications identified certifications from 38 grantees that were signed by individuals who did not appear to be from the applicant agency and who thus did not appear to have the authority to make a certification on behalf of the applicant agency. In the certifications submitted by 17 of these 38 grantees, the applicant agency named on the certification was not the agency that submitted the grant application. For example, one application submitted by a state department of community, trade, and economic development contained a certification signed by the Director of a forensic laboratory service bureau. It is not clear that the Director of a forensic laboratory service bureau would be authorized to sign a certification on behalf of the applicant agency. Furthermore, the applicant agency named on the certification was the state patrol and not the department of community, trade, and economic development.

We discussed how certifications should be completed with the Deputy Director of NIJ’s Office of Science and Technology, who confirmed to the OIG that the applicant agency named on the certification should match the agency on the application. Nonetheless, OJP had awarded grants to these 38 agencies.¹⁷

¹⁵ In the FY 2006 Coverdell Program Announcement, OJP instructed applicants to submit an external investigation certification and to use the template in the announcement (see Appendix I). Applicants were also advised that the certification “must be executed by an official who is both familiar with the requirements of the certification and authorized to make the certification on behalf of the applicant agency.”

¹⁶ OJP did not develop specific guidance to its staff for reviewing the FY 2006 Coverdell Program external investigation certifications. Rather, the OJP reviewer simply followed the *OJP Grant Manager’s Manual*, which directs program managers to review “grant applications for completeness” using a generic application review checklist. According to the Deputy Director of NIJ’s Office of Science and Technology, a review should ensure that “on its face the [external investigation] certification looks accurate,” that is, every field was filled out, the applicant agency named on the certification and the grant application were the same, and the certification was signed by someone in a position of authority.

¹⁷ OJP rejected 26 other applications because they did not include an external investigation certification or the certification was not on the required template or was signed in 2005.

Entity Investigations Into Allegations of Wrongdoing

During our review, we examined whether OJP's guidance directs grantees and forensic laboratories to refer allegations of negligence or misconduct to the certified entities for an independent investigation. We were surprised to find that OJP has advised a grantee that it did not have to refer allegations of serious negligence or misconduct to the entity that it certified for an independent investigation. In a November 20, 2006, e-mail, OJP officials advised the grantee, which then advised forensic laboratories, that the certification requirement did not impose an obligation to report allegations of serious negligence or misconduct to the government entities certified. We learned that it is OJP's position that the certification only requires that a government entity exist with a process in place to conduct independent external investigations into allegations of negligence or misconduct, but does not require grantees or laboratories to actually refer such allegations to the entity. OJP's General Counsel told the OIG that he believed that, while the reporting of allegations is consistent with the statute, the statute does not require that allegations actually be referred to the entity that was certified for investigation.

Also, we examined whether grantee and forensic laboratory processes were adequate to ensure that allegations of negligence or misconduct were referred to the certified entities for an independent investigation. We asked certifying officials for the FY 2006 Coverdell Program grant recipients whether there had been allegations of negligence or misconduct at the laboratories that received FY 2006 Coverdell Program funds and, if so, whether the allegations were investigated by the certified entities. These officials told us that, in the 6 months since the FY 2006 grants were awarded, there were seven allegations of negligence and misconduct in forensic laboratories that received grant funds. The following describes the allegations and the action taken on each:

- Allegation 1: The Innocence Project questioned the credentials of a state firearms examiner who had lied about where he went to college. The examiner had worked for the state police since 1991 and had testified in court numerous times. The state police's internal affairs division, the government entity that investigates allegations of negligence or misconduct in the state police, had an investigation in progress at the time of the OIG's review. State police officials had notified State Attorneys, the office of the Public Defender, and the state Attorney General's office that the investigation was under way as of March 2007.

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- Allegation 2: The management of a laboratory investigated allegations that two analysts had not been following proper review procedures since 2002. According to the certifying official, the laboratory's questioned document section implemented a new technical review procedure for reviewing documents in 2002, but the two analysts had not been following the new procedure. The analysts' actions were not identified by laboratory management until October 2006 when one of the two analysts confessed. Both analysts resigned shortly thereafter. The matter was not referred to the certified investigative entity (the state police) because, according to the laboratory Director, the laboratory was "the best agency to handle the investigation." The laboratory contacted every agency that submitted documents to the section since 2002 and asked them to review the cases to see if they wanted the evidence retested. The laboratory also contacted every prosecuting attorney involved. The investigation remained ongoing as of March 16, 2007.
 - Allegations 3, 4, and 5: One certifying official stated that FY 2006 Coverdell Program funds were distributed to 15 forensic laboratories in the state. He told us that there had been three allegations of wrongdoing since September 2006 and all were under investigation by the state commission of investigation.
 - Allegation 6: An inmate filed a lawsuit alleging false laboratory results had been used in the prosecution of his case. According to the certifying official, the inmate alleged that a laboratory technician had reported on five hairs from a stocking cap when only three hairs had been found. The lawsuit included charges against prosecutors and police personnel as well as the laboratory. The laboratory portion of the lawsuit was settled with no admission of wrongdoing.
 - Allegation 7: The certifying official told us that an allegation was made by a crime scene technician against a detective and that the allegation was under investigation by the entity, a police department's internal affairs unit. The certifying official did not describe the alleged wrongdoing, and the entity official declined to confirm or deny to the OIG that the entity was conducting an investigation.

Finally, we examined whether the entities' processes allowed for receiving allegations from any source. Officials from 200 entities told us that they would accept allegations from all sources. For example, 13

entity officials told the OIG that they accepted anonymous complaints, and 2 said they had hotlines anyone could use to report an allegation. However, one entity official stated that, although his entity could accept allegations from any source, outside sources would not know to call his entity with an allegation.

In contrast, officials at 12 entities told us that they would not accept allegations from all sources. Some of these officials stated that their entities would accept allegations only from the forensic laboratories or from sources within the entity itself. Allegations received from outside of these organizations would first have to go through local officials, such as the local District Attorneys or the local police department officials. One government entity representative said he did not know if his entity had the authority to accept allegations from outside sources.

CONCLUSION AND RECOMMENDATIONS

We concluded that, although OJP has complied with the terms of the statute to obtain certifications from applicants, OJP's administration of the external investigation certification requirement needs improvement. Our review found that OJP's administration of the Coverdell Program external investigation certification requirement is not effective for ensuring (1) that grants are awarded only to applicants that have certified entities that can independently investigate allegations of serious negligence or misconduct in forensic laboratories, or (2) that serious allegations of negligence or misconduct at forensic laboratories are referred to the certified entities for investigation.

Overall, one-third of 231 entities identified by the FY 2006 Coverdell Program certifying officials lacked the authority or capability to independently investigate allegations of negligence or misconduct at forensic laboratories. Beginning with the FY 2007 Coverdell Program, OJP has agreed to require grant applicants to name the investigative entities that they certified have a process in place to conduct independent external investigations. Obtaining the name of the entity is a step forward and will ensure that applicants do not submit certifications when they have not actually identified entities capable of independently investigating misconduct or negligence. However, as our review demonstrated, obtaining the name of an entity is insufficient to ensure that an applicant certifies an entity that can conduct independent investigations.

Moreover, we are concerned that current guidance and procedures do not ensure that allegations of serious negligence or misconduct are actually referred for an independent investigation by a qualified entity. Under OJP's current guidance, the external investigation certification requirement established by Congress is satisfied solely with the submission of a certification form, and nothing more is required if allegations are received. We believe OJP's position undermines and diminishes the utility of the Coverdell Program for improving the oversight of forensic laboratories.

We concluded that OJP's administration of the Coverdell Program external investigation certification requirement should be improved to reduce the chance that the administration of justice is based on inadequate forensic analysis. To improve its administration of the Coverdell Program, the OIG believes that OJP needs to require that applicants provide sufficient information on the certification form to

ensure that applicants have accurately assessed the qualifications and independence of the entities they certify, and OJP must diligently review the certifications submitted. Further, OJP should enhance the effectiveness of the Coverdell Program for ensuring the integrity of forensic analysis by requiring that allegations of wrongdoing at forensic laboratories actually be referred to the certified entities for independent investigation.

To improve OJP's administration of the Coverdell Program and ensure that allegations of negligence or misconduct are subject to independent external investigations, the OIG recommends that OJP take the following actions:

1. Revise the certification template to require that applicants name the government entities and confirm that the government entities have:
 - a. the authority,
 - b. the independence,
 - c. a process in place that excludes laboratory management, and
 - d. the resources

to conduct independent external investigations into allegations of serious negligence or misconduct by the forensic laboratories that will receive Coverdell Program funds.

2. Provide applicants with guidance that allegations of serious negligence or misconduct substantially affecting the integrity of forensic results are to be referred to the certified government entities.
3. Revise and document the Coverdell Program application review process so that only applicants that submit complete external investigation certifications are awarded grants.

**APPENDIX I: FY 2006 EXTERNAL INVESTIGATION CERTIFICATION
TEMPLATE**

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
NATIONAL INSTITUTE OF JUSTICE

**FY2006 Coverdell Forensic Science Improvement
Grants Program**

Certification as to External Investigations

On behalf of the applicant agency named below, I certify the following to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice:

A government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results committed by employees or contractors of any forensic laboratory system, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount.

I have authority to make this certification on behalf of the applicant agency.

Signature of Certifying Official

Printed Name of Certifying Official

Title of Certifying Official

Name of Applicant Agency

Name of Applicant State or Unit of Local Government

Date

APPENDIX II: GRANTEES, SUB-GRANTEES, AND GOVERNMENT ENTITIES CERTIFIED IN FY 2006

GRANTEE	SUB-GRANTEE	GOVERNMENT ENTITY
Alaska Department of Public Safety, Scientific Crime Laboratory	None	Alaska State Troopers
Municipality of Anchorage	Anchorage Police Department, Forensic Crime Laboratory	Municipality of Anchorage, Internal Auditor
		Anchorage Police Department, Internal Affairs
Alabama Department of Economic and Community Affairs	Alabama Department of Forensic Sciences	Alabama Attorney General's Office
		Alabama Bureau of Investigation
		Alabama Department of Forensic Sciences
Arkansas Department of Finance and Administration	Arkansas State Crime Laboratory	Arkansas Division of Legislative Audit
		Arkansas State Police
Arizona Criminal Justice Commission	Pima County Office of the Medical Examiner	Pima County Superior Court Arizona Medical Board
	Maricopa County Office of the Medical Examiner	Maricopa County Superior Court
	Mohave County Office of the Medical Examiner	Mohave County Superior Court
	Arizona Department of Public Safety, Crime Laboratory	Arizona Attorney General's Office
		Arizona Department of Public Safety, Office of Professional Standards
	Tucson Police Department, Crime Laboratory	Tucson Police Department, Oversight Committee
	Phoenix Police Department, Crime Laboratory	Phoenix Police Department, Professional Standards Bureau
	Mesa Police Department, Crime Laboratory	Arizona Attorney General's Office
Mesa Police Department, Internal Affairs		
Maricopa County	Maricopa County Office of the Medical Examiner	Maricopa County Superior Court
County of Ventura	Ventura County Sheriff's Department, Forensic Sciences Laboratory	Ventura County District Attorney's Office
		Blue Ribbon Grand Jury

GRANTEE	SUB-GRANTEE	GOVERNMENT ENTITY
California Governor's Office of Emergency Services, Law Enforcement and Victim Services Division	California Department of Justice, Bureau of Forensic Services	California Department of Justice, Mission Support Branch
	Kern County District Attorney's Office, Forensic Science Division	Kern County District Attorney's Office, Bureau of Investigations
	Sacramento County District Attorney's Office, Laboratory of Forensic Services	Sacramento County District Attorney's Office, Bureau of Investigations
	Santa Clara County District Attorney's Office, Crime Laboratory	Santa Clara County District Attorney's Office, Bureau of Investigations
	Alameda County Sheriff's Department, Crime Laboratory	Alameda County Sheriff's Department, Internal Affairs
	Contra Costa County Sheriff's Department, Forensic Services Division	Contra Costa County Sheriff's Department, Administrative Services Bureau
	Los Angeles County Sheriff's Department, Scientific Services Bureau	Los Angeles County Sheriff's Department, Internal Criminal Investigations Bureau
		Los Angeles County Sheriff's Department, Internal Affairs Bureau
	Orange County Sheriff-Coroner Department, Forensic Science Services	Orange County Sheriff-Coroner Department, Internal Affairs
	San Bernardino County Sheriff Department, Scientific Investigations Division	San Bernardino County Sheriff Department, Internal Affairs
	San Diego County Sheriff Department, Crime Laboratory	San Diego County Sheriff Department, Internal Affairs
	San Mateo County Sheriff's Department, Forensic Laboratory	San Mateo County Sheriff's Department, Services Bureau
	Ventura County Sheriff's Department, Forensic Sciences Laboratory	Ventura County District Attorney's Office
	El Cajon Police Department, Forensic Laboratory	El Cajon Police Department, Internal Affairs
	Long Beach Police Department, Crime Laboratory	Long Beach Police Department, Internal Affairs
Long Beach Police Department, Detective Division		

GRANTEE	SUB-GRANTEE	GOVERNMENT ENTITY
	Los Angeles Police Department, Special Investigations Division	Los Angeles Police Department, Internal Affairs
	Oakland Police Department, Criminalistics Division	Oakland Police Department, Internal Affairs
	San Francisco Police Department, Forensic Services Division	San Francisco Police Department, Management Control Division
	San Diego Police Department, Crime Laboratory	San Diego Police Department, Internal Affairs
Colorado Division of Criminal Justice	Colorado Bureau of Investigation, Forensic Laboratory	Colorado Attorney General's Office
City of Colorado Springs	Colorado Springs Police Department, Metropolitan Crime Laboratory	Colorado Springs District Attorney's Office
		Colorado Springs Police Department, Office of Professional Standards
Connecticut Office of Policy and Management	Connecticut State Department of Public Safety, Forensic Science Laboratory	Connecticut State Attorney General's Office
	Office of the Chief Medical Examiner	Connecticut Auditor of Public Accounts
Connecticut Office of Policy and Management	Office of the Chief Medical Examiner	Connecticut State Police, Internal Affairs
		Metropolitan Police Department, Office of Professional Responsibility
District of Columbia Justice Grants Administration	Metropolitan Police Department, Firearms Examination Section	Metropolitan Police Department, Office of Professional Responsibility
Delaware Criminal Justice Council	Medical Examiner's Office	Delaware Attorney General's Office
Florida Department of Law Enforcement	Florida Department of Law Enforcement, Forensic Services	Florida Department of Law Enforcement, Executive Investigation Section
	Florida Medical Examiners	Florida Medical Examiners Commission
	Palm Beach County Sheriff's Office, Technical Services Division	Palm Beach County Sheriff's Office, Internal Affairs
	Miami-Dade Police Department, Crime Lab Bureau	Florida Department of Law Enforcement, Forensic Services
	Broward County Regional Crime Laboratory	
	Pinellas County Forensic Laboratory	
	Indian River Crime Laboratory	St. Lucie County Sheriff's Office, Internal Affairs

GRANTEE	SUB-GRANTEE	GOVERNMENT ENTITY
Hillsborough County	Hillsborough County Medical Examiner Department	Hillsborough County Clerk of the Circuit Court
		Consumer Protection and Professional Responsibility Agency
City of North Miami	North Miami Police Department, Crime Scene Unit	North Miami Police Department, Office of Professional Compliance
Miami Police Department	Miami Police Department, Crime Scene/Technical Services Unit	Miami Police Department, Internal Affairs
		Civilian Investigative Panel
City of Gainesville	Gainesville Police Department, Forensics Laboratory	Gainesville Police Department, Internal Affairs
		Florida Department of Law Enforcement
Georgia Criminal Justice Coordinating Council	Georgia Bureau of Investigation, Division of Forensic Sciences	Georgia Bureau of Investigation, Office of Professional Standards
Cherokee County	Cherokee County Sheriff's Office	Cherokee County Sheriff's Office, Internal Affairs
Guam Bureau of Planning	Guam Police Department, Crime Laboratory	Guam Police Department, Internal Affairs
Hawaii Department of the Attorney General	Department of Public Safety, Narcotics Enforcement Division	Hawaii Department of the Attorney General
	City and County of Honolulu, Department of Medical Examiner	
Iowa Governor's Office of Drug Control Policy	Iowa Department of Public Safety, Division of Criminal Investigation, Crime Laboratory	Iowa Department of Public Safety, Professional Standards Bureau
	Iowa Department of Public Health, Medical Examiner's Office	Iowa Department of Public Health, Iowa Office of State Medical Examiners, Forensic Operations
		Iowa Office of Citizens' Aide/Ombudsman
		Iowa Department of Public Safety, Division of Criminal Investigation
Idaho State Police	Idaho State Police, Forensic Services	Idaho State Police, Office of Professional Standards
Twin Falls County	Twin Falls County Central Forensics Facility	Idaho State Police

GRANTEE	SUB-GRANTEE	GOVERNMENT ENTITY
Illinois Criminal Justice Information Authority	Illinois State Police, Division of Forensic Services	Illinois Office of Executive Inspector General
	Du Page County Crime Laboratory	Du Page County Sheriffs Department, Office of Professional Conduct and Standards
	Northeastern Illinois Regional Crime Laboratory	Illinois Police Board
Indiana Criminal Justice Institute	Indiana State Police Forensic Laboratory	Indiana State Office of the Inspector General
	Marion County Forensic Agency	
Office of the Governor of Kansas	Sedgwick County Forensic Science Laboratories	Sedgwick County District Attorney's Office
		Sedgwick County Counselor's Office
	Kansas Bureau of Investigation, Forensic Science Laboratory	Oklahoma State Bureau of Investigation
	Johnson County Sheriff's Office, Crime Laboratory	Johnson County Sheriff's Office, Professional Standards Unit
		Kansas Attorney General's Office
Johnson County	Johnson County Sheriff's Office, Crime Laboratory	Johnson County Sheriff's Office, Professional Standards Unit
		Kansas Attorney General's Office
Sedgwick County Forensic Science Laboratories	Sedgwick County Forensic Science Laboratories	Sedgwick County District Attorney's Office
		Sedgwick County Counselor's Office
Kentucky Justice and Safety Cabinet	Office of the Medical Examiner	Kentucky Cabinet Office of Investigations
	Kentucky State Police, Forensic Laboratory	Kentucky Cabinet Office of Investigations
		Kentucky State Police, Internal Affairs

GRANTEE	SUB-GRANTEE	GOVERNMENT ENTITY
Louisiana Commission on Law Enforcement	North Louisiana Crime Laboratory System	Louisiana Attorney General's Office
	Louisiana State Police, Crime Laboratory	
	Acadiana Crime Laboratory	
	New Orleans Police Department, Crime Laboratory	
	Jefferson Parish Sheriff's Office, Crime Laboratory	
	Southwest Louisiana Crime Laboratory	
Massachusetts State Police	Boston Police Department	Massachusetts Attorney General's Office
		Massachusetts Office of the Inspector General
	Massachusetts State Police	Massachusetts Attorney General's Office
		Massachusetts Office of the Inspector General
Governor's Office of Crime Control And Prevention	Anne Arundel County Crime Laboratory	Maryland Forensic Sciences Advisory Board
		Anne Arundel County Police Department, Internal Affairs
	Office of the Chief Medical Examiner	Maryland Forensic Sciences Advisory Board
	Maryland State Police, Computer Forensic Laboratory	Maryland Forensic Sciences Advisory Board
		Maryland State Police, Internal Affairs
	Baltimore City Police, Crime Laboratory	Maryland Forensic Sciences Advisory Board
		Baltimore City Police Department, Internal Affairs
	Baltimore County Police Department	Maryland Forensic Sciences Advisory Board
Baltimore County Police Department, Internal Affairs		
City of Baltimore	City of Baltimore Police Department, Crime Laboratory	Maryland State Police, Crime Laboratory
Anne Arundel County	Anne Arundel County Police Department, Crime Laboratory	Anne Arundel County Police Department, Internal Affairs
		Baltimore County Crime Laboratory

GRANTEE	SUB-GRANTEE	GOVERNMENT ENTITY
Maine Department of Public Safety	Office of the Attorney General, Chief Medical Examiner's Office	Maine Office of the Attorney General Maine State Police
	Department of Public Safety, Maine State Police, Crime Laboratory	Maine Office of the Attorney General
	Department of Human Services, Public Health Laboratory	
Michigan Office of Drug Control Policy	Michigan State Police, Forensic Science Division	Michigan State Police, Internal Affairs Michigan State Attorney General's Office
	Detroit Police Department, Crime Laboratory	Detroit Police Department, Internal Affairs
Minnesota Department of Public Safety	Minnesota Department of Public Safety, Bureau of Criminal Apprehension Laboratories	Minnesota Department of Public Safety, Internal Affairs
	Hennepin County Sheriff's Office, Crime Laboratory	Hennepin County Sheriff's Office, Internal Affairs
City of Minneapolis	Minneapolis Police Department, Crime Laboratory	Minnesota Bureau of Criminal Apprehension
St. Louis Metropolitan Police Department	St. Louis Metropolitan Police Department, Forensic Laboratory	Missouri State Highway Patrol, Crime Laboratory
Missouri Department of Public Safety	None	Missouri State Highway Patrol, Crime Laboratory
Mississippi Division of Public Safety Planning	Mississippi Crime Laboratory	Mississippi Bureau of Investigation, Internal Affairs
		Mississippi Highway Patrol
Montana Board of Crime Control	Montana Department of Justice, Forensic Science Laboratory	Montana Forensic Science Laboratory Advisory Board
North Carolina Department of Crime Control And Public Safety - The Governor's Crime Commission	Office of the Chief Medical Examiner	North Carolina State Bureau of Investigation
	Charlotte-Mecklenburg Police Department, Crime Laboratory	
	North Carolina State Bureau of Investigation, Crime Laboratory	North Carolina Bureau of Investigation, Professional Standards Division
North Dakota Office of Attorney General	North Dakota Office of Attorney General, Crime Laboratory Division	North Dakota Office of Attorney General, Bureau of Criminal Investigation

GRANTEE	SUB-GRANTEE	GOVERNMENT ENTITY
Nebraska State Patrol	Nebraska State Patrol, Crime Laboratory	Nebraska Attorney General's Office
	University of Nebraska Medical Center, Human DNA Identification	
New Hampshire Department of Justice	State Medical Examiner's Office	New Hampshire State Police
	New Hampshire State Police, Forensic Laboratory	New Hampshire Department of Justice, Public Integrity Unit
New Jersey Department of Law and Public Safety	New Jersey Regional Forensics Laboratory	Federal Bureau of Investigation
	Union County Laboratory	Union Police Department, Internal Affairs
	Burlington County Laboratory	Burlington County Prosecutor's Office
	Cape May County Laboratory	Cape May County Prosecutor's Office, Internal Affairs
	Essex County Ballistics Laboratory	Essex County Police Department, Internal Affairs
	Bergen County Ballistics Laboratory	Bergen County Sheriff's Office, Internal Affairs
	Somerset County Ballistics Laboratory	Somerset County Prosecutor's Office, Internal Affairs
	Morris County Sheriff's Office	Morris County Sheriff's Office, Internal Affairs
	Hudson County Prosecutor's Office, Laboratory	New Jersey State Police, Office of Forensic Sciences
	Ocean County Laboratory	Ocean County Prosecutor's Office
	Newark Police Department Laboratory	Newark Police Department, Internal Affairs
	Bergen County Medical Examiner's Office	Bergen County Prosecutor's Office
	Middlesex County Medical Examiner's Office	Middlesex County Prosecutor's Office
	Northern Region Medical Examiner's Office	New Jersey State Medical Examiner's Office
	Southern Region Medical Examiner's Office	
	Atlantic County Medical Examiner's Office	
	Monmouth County Medical Examiner's Office	
	New Jersey State Police, Anthropology Laboratory	New Jersey State Police, Office of Professional Standards
	New Jersey State Police, Firearms Laboratory	

GRANTEE	SUB-GRANTEE	GOVERNMENT ENTITY
New Mexico Department of Public Safety	Office of the Medical Investigator	Office of the Medical Investigator Board
		University of New Mexico Police Department
	Albuquerque Police Department, Crime Laboratory	Albuquerque Police Department, Internal Affairs
	Department of Public Safety, Forensic Laboratory	New Mexico State Police, Standards Bureau
Broome County	Broome County, Security Division, Computer Analysis and Technical Services Laboratory	Broome County, Security Division
		Broome County District Attorney's Office
New York State Division of Criminal Justice Services	Erie County Department of Central Police Services, Forensic Laboratory	New York State Commission of Investigation
	Monroe County Public Safety Laboratory	
	Monroe County Office of the Medical Examiner, Forensic Toxicology Laboratory	
	Nassau County Police Department, Laboratory	
	New York City Office of the Chief Medical Examiner	
	New York State Police, Forensic Investigation Center	
	Niagara County Sheriff's Department, Forensic Laboratory	
	Onondaga County Center for Forensic Sciences	
	Suffolk County Crime Laboratory	
	Suffolk County Office of the Chief Medical Examiner, Toxicology Laboratory	
	Westchester County Department of Laboratories & Research, Forensic Science Laboratory	
	Westchester County Office of the Chief Medical Examiner	
	Westchester County Department of Public Safety, Crime Laboratory	

GRANTEE	SUB-GRANTEE	GOVERNMENT ENTITY
Nassau County	Nassau County Medical Examiner's Forensic Toxicology Laboratory	New York State Commission of Investigation
County of Westchester	Westchester County Department of Laboratories and Research, Division of Forensic Sciences, Trace Evidence Section	New York State Commission of Investigation
Monroe County	Monroe County Office of the Medical Examiner	Monroe County District Attorney's Office
		Monroe County Law Department
City of Utica	Utica Police Department, Identification Unit	New York State Attorney General's Office
		Oneida County District Attorney's Office
		Utica Police Department, Professional Standards Unit
Ohio Office of Criminal Justice Services	Cuyahoga County Coroner's Office	Ohio Attorney General's Office, Bureau of Criminal Investigation
		Cuyahoga County Prosecutor's Office
		Cuyahoga County Sheriff's Office
	Columbus Police Department, Crime Laboratory	Ohio Attorney General's Office, Bureau of Criminal Investigation
		Columbus Police Department, Internal Affairs
	Franklin County Coroner's Office	Ohio Attorney General's Office, Bureau of Criminal Investigation
		Cuyahoga County Coroner's Office
		Hamilton County Coroner's Office
		Ohio State Highway Patrol, Crime Laboratory
	Hamilton County Coroner's Office, Crime Laboratory	Ohio Attorney General's Office, Bureau of Criminal Investigation
		Hamilton County Prosecutor's Office
		Hamilton County Sheriff's Office
	Lake County Regional Forensic Laboratory	Ohio Attorney General's Office, Bureau of Criminal Investigation
		Lake County Sheriff's Office

GRANTEE	SUB-GRANTEE	GOVERNMENT ENTITY	
	State Fire Marshal's Office, Forensic Laboratory	Ohio Attorney General's Office, Bureau of Criminal Investigation	
		Ohio Department of Commerce, Legal Counsel	
	Bureau of Criminal Identification, Central Crime Laboratory	Ohio Attorney General's Office, Bureau of Criminal Investigation	
		Ohio State Highway Patrol, Crime Laboratory	
	Ohio State Highway Patrol, Crime Laboratory	Ohio Attorney General's Office, Bureau of Criminal Investigation	
		Lake County Crime Laboratory	
		Miami Valley Regional Crime Laboratory	
	Miami Valley Regional Crime Laboratory	Ohio Attorney General's Office, Bureau of Criminal Investigation	
		Montgomery County Sheriff's Office	
		Ohio Ethics Commission	
	City of Cleveland	Cleveland Division of Police, Forensic Laboratory	Cuyahoga County Prosecutor's Office
	Oklahoma District Attorneys Council	Ardmore Police Department	Oklahoma State Bureau of Investigation
Broken Arrow Police Department			
Office of the Chief Medical Examiner			
Oklahoma County District Attorney's Office			
Tulsa Police Department			
Oklahoma State Bureau of Investigation		Kansas Bureau of Investigation	
Oregon Department of State Police	Oregon Department of State Police, Forensic Services Division	Oregon Department of State Police, Office of Professional Standards	
Lane County	Lane County Medical Examiner	Lane County District Attorney's Office	
City of Hillsboro	Northwest Regional Computer Forensics Laboratory	Oregon State Police	
		Oregon Attorney General's Office	
		Federal Bureau of Investigation	

GRANTEE	SUB-GRANTEE	GOVERNMENT ENTITY
Pennsylvania Commission On Crime And Delinquency	Cumberland County Computer Forensic Laboratory	Pennsylvania Attorney General's Office
	Dauphin County Coroner	Dauphin County District Attorney's Office
	Berks County Forensic Laboratory	Pennsylvania State Police, Internal Affairs
	Pennsylvania State Police	Pennsylvania State Police, Internal Affairs
	Lehigh County Coroner's Office	Lehigh County District Attorney's Office
	York County Coroner's Office	York County District Attorney's Office
	Allegheny County Coroner's Office	Allegheny County Police Department
Instituto de Ciencias Forenses de Puerto Rico (Puerto Rico Forensic Sciences Institute)	None	Government Ethics Office
		Comptroller of Puerto Rico
		Puerto Rico Department of Justice
		Federal Bureau of Investigation
Rhode Island Justice Commission	Rhode Island State Crime Lab	Rhode Island Department of the Attorney General
	Department of Health, Forensic Science Laboratory	
South Carolina Department of Public Safety	Columbia Police Department	South Carolina State Law Enforcement Division
	Hartsville Police Department	
	Spartanburg Public Safety Department	
	Richland County Sheriff's Office	
South Dakota Office of The Attorney General	South Dakota Forensic Laboratory	North Dakota Attorney General, Division of Criminal Investigation
		Minnehaha County Sheriff's Office
City of Rapid City	Rapid City Police Department, Crime Laboratory	South Dakota Attorney General's Office
Tennessee Department of Finance and Administration	Tennessee Bureau of Investigation	Tennessee State Comptroller
		Tennessee State Attorney General
	Tennessee Medical Examiner's Office	Tennessee Bureau of Investigation
		Tennessee Medical Examiner's Board

GRANTEE	SUB-GRANTEE	GOVERNMENT ENTITY	
Dallas County	Southwestern Institute of Forensic Sciences	Texas Department of Public Safety	
		Texas Forensic Science Commission	
		Dallas County District Attorney's Office	
		Dallas County Sheriff's Office	
City of Fort Worth	Forth Worth Police Department, Crime Laboratory	Tarrant County District Attorney's Office	
		Texas Department of Public Safety, Crime Laboratory Service	
City of Houston	Houston Police Department, Identification Division	Houston Police Department, Internal Affairs	
		Houston Office of the Inspector General	
		Texas Forensic Science Commission	
Texas Office of the Governor, Criminal Justice Division	Texas Department of Public Safety	Texas Department of Public Safety, Crime Laboratory Service	
		Texas Forensic Science Commission	
	City of Austin	Texas Department of Public Safety, Crime Laboratory Service	
		Texas Forensic Science Commission	
	Jefferson County	Texas Department of Public Safety, Crime Laboratory Service	
		Texas Forensic Science Commission	
	Harris County	Texas Department of Public Safety, Crime Laboratory Service	
		Texas Forensic Science Commission	
	City of Houston	Texas Department of Public Safety, Crime Laboratory Service	
		Texas Forensic Science Commission	
	City of Pasadena	Texas Department of Public Safety, Crime Laboratory Service	
		Texas Forensic Science Commission	
	City of Austin	Austin Police Department, Forensics Laboratory	Texas Department of Public Safety

GRANTEE	SUB-GRANTEE	GOVERNMENT ENTITY
Jefferson County	Jefferson County Regional Crime Laboratory	Jefferson County Sheriff's Department, Internal Affairs
		Texas Forensic Science Commission
City of Tooele	Toole City Police Department	Utah Attorney General's Office, Investigations Division
		Utah Department of Public Safety
		Utah State Crime Laboratory
Utah Department of Public Safety	Utah State Crime Laboratory	Utah Attorney General's Office
Virginia Department of Criminal Justice Services	Department of Forensic Science	Virginia Forensic Science Board
		Virginia Scientific Advisory Committee
	Medical Examiner's Office	Virginia Attorney General's Office
		Virginia Department of Health Professions
		Virginia State Police
		Virginia Office of the Inspector General
Fairfax County Police Department	Fairfax County Police Department, Criminal Intelligence Division, Computer Forensic Section	Fairfax County Police Department, Internal Affairs
Virgin Islands Bureau of Corrections	Virgin Islands Department of Justice, Office of the Attorney General	Office of the Virgin Islands Inspector General
Vermont Department of Public Safety	Office of the Chief Medical Examiner	Vermont State Police
		Vermont Attorney General's Office
		Vermont Department of Human Resources
		Vermont State Agency of Human Services
	Vermont Department of Public Safety, Forensic Laboratory	Vermont Attorney General's Office
		Vermont State Police
Spokane County Board of Commissioners	Medical Examiner's Office	Washington State Forensic Investigation Council
	Spokane County Sheriff's Office, Forensic Unit	
Washington Department of Community, Trade, & Economic Development	Washington State Toxicological Laboratory	Washington State Forensic Investigation Council

GRANTEE	SUB-GRANTEE	GOVERNMENT ENTITY
Kenosha County	Kenosha County Division of Health, Laboratory	Wisconsin State Laboratory of Hygiene
		Wisconsin Department of Justice
	Kenosha County Medical Examiner's Office	Wisconsin State Laboratory of Hygiene
		Wisconsin Department of Justice
Wisconsin Department of Justice	Milwaukee Medical Examiner's Office	Wisconsin Department of Justice, Division of Criminal Investigation
West Virginia Division of Criminal Justice Services	West Virginia State Police, Forensic Laboratory	West Virginia Commission on Special Investigations
Wyoming Office of the Attorney General	Wyoming State Crime Laboratory	Wyoming Office of the Attorney General, Criminal Investigations Division

APPENDIX III: THE OFFICE OF JUSTICE PROGRAMS RESPONSE



U.S. Department of Justice

Office of Justice Programs

Office of the Assistant Attorney General

Washington, D.C. 20531

JAN 14 2008

MEMORANDUM TO: Glenn A. Fine
Inspector General

THROUGH: Paul A. Price
Assistant Inspector General for Evaluation and Inspections

FROM: Jeffrey L. Sedgwick *Jeffrey L. Sedgwick*
Acting Assistant Attorney General

SUBJECT: Draft Report on Review of Office of Justice Programs'
Forensic Science Improvement Grants Program,
Assignment Number A-2007-001

This memorandum responds to the draft report of the Office of the Inspector General (OIG) issued January 10, 2008, regarding a review of the Paul Coverdell Forensic Science Improvement Grants Program administered by the Office of Justice Programs (OJP). The OIG focused on the "external investigation certification requirement" established by section 311(b)(3) of the Justice for All Act of 2004, which amended section 2802 of the Omnibus Crime Control and Safe Streets Act of 1968 to add a requirement that States or units of local government requesting Coverdell grants submit—

a certification that a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results committed by employees or contractors of any forensic laboratory system, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount.

42 U.S.C. § 3797k(4).

ANALYSIS OF THE OIG REVIEW AND DRAFT REPORT

The Coverdell Program is designed to improve the timeliness and quality of forensic science and medical examiner services and to eliminate backlogs in the analysis of forensic evidence. As acknowledged by the OIG in its draft report, OJP has complied with the external investigation certification requirement added by the Justice for All Act. As a matter of policy, however, the OIG has indicated that OJP could improve the administration of the Coverdell

Program to provide greater assurance that allegations of serious negligence or misconduct involving forensic laboratories are investigated fully and independently.

OJP and the OIG share a common interest in the improvement of the practice of forensic science. The Coverdell Program has been administered successfully by OJP for several years. As part of its program management, OJP collects four different certifications from the Coverdell grant applicants, including the one at issue in the OIG draft report. As of Fiscal Year (FY) 2007, OJP requires Coverdell grant applicants, prior to receiving funds, to provide the name of the government entity (or entities) with a process in place to conduct independent external investigations into allegations of serious negligence or misconduct. OJP forwards Coverdell applications that have a competitive component to independent peer review to ensure that competitive funds are awarded to agencies where the funding will have the most benefit. OJP attaches special conditions to each Coverdell award to help ensure compliance with various federal statutes, regulations, and policies designed to provide assurance that federal funds are used appropriately. In FY 2007, as many as 17 special conditions were attached to individual grant awards. OJP reviews Coverdell applicants' budgets to ensure they are in keeping with the work promised in the grant application and consistent with Coverdell Program statutory and policy requirements. OJP monitors grantees through the Grants Progress Assessments program to review laboratory practices and grant compliance. OJP collects performance data for each grant. OJP views the management controls outlined here as the most critical for effectively managing the Coverdell Program.

OJP remains committed to providing federal leadership in the improvement of forensic practice and enhancing the administration of justice through the expansion of forensic science capacity. OJP's forensic programs have made great progress in the improvement of forensic practices through the Coverdell Program, DNA assistance programs, research and development, training activities, and many related efforts. These award-winning programs have assisted in the investigation of thousands of cases of violent crime and provided historic levels of support to the forensic laboratories. With OJP funding, the National Academy of Sciences has undertaken a full review of forensic practice in the United States, an effort that is expected to provide important recommendations to extend current efforts and improve the governance and standards of forensic disciplines.

With respect to the external investigation certification requirement of the Coverdell statute, one question is whether OJP has complied with the statutory requirement by obtaining external investigation certifications from applicants. The OIG in its draft report acknowledges that OJP has done so. The statute requires Coverdell Program applicants to provide a particular certification and OJP collects that certification. Moreover, in keeping with recommendations from a prior OIG review of this matter, OJP now requires that, prior to receiving funds, applicants name the government entity (or entities) that has an appropriate process in place to conduct independent external investigations in the relevant cases.

A second, separate, question with respect to the external investigation certification requirement is whether the statutory requirement itself is effective to accomplish what appear to be its intended purposes. From the draft report, it appears that this is the OIG's principal

concern. For example, the OIG indicates that allegations of serious negligence or misconduct should be referred for investigation to a government entity with an appropriate process in place to conduct independent external investigations. While OJP certainly agrees that such referrals are consonant with the external investigation certification requirement, the statute itself imposes no requirement for referrals. OJP's proper administration of the statute therefore may not be sufficient to achieve the policy objective. Failure to achieve a policy objective not incorporated into the statute, however, is not something for which OJP should be held responsible. Rather, it appears that the more appropriate approach may be through the legislative process. Absent amendment of the statute, OJP must honor the certification basis it establishes. As we all recognize, no law pursues its goals at all costs, and the substantive limitations contained in a statute are no less an indication of its intention than its substantive grants of authority are.

In this context, it is not surprising that the OIG identified cases in which investigations of alleged wrongdoing might be conducted, at least in part, within the forensic laboratory. The Coverdell Program statute does require a government entity with an appropriate process in place to conduct independent external investigations. It does not require that every possible allegation be referred to that entity for investigation, however, regardless of scope or merit. The requirement that a government entity exist with a process in place for independent external investigations thus does not preclude the use of internal processes by state and local officials, prior to or in lieu of referral to a government entity.

Separately, with regard to the OIG observation that 38 grantees submitted certifications that were signed by individuals who "did not appear" to be *from* the applicant agency, OJP has reviewed a list of the 38 grantees provided by the OIG, has re-examined the associated certifications, and has found that many were signed by individuals who (even if not officers or employees of the government agency) appeared to have the appropriate *authority* to sign the certification *with respect to* that agency. For example, a state attorney general or a police chief with oversight of the forensic laboratory would appear to have the proper authority to sign the certification. (In addition, many questions as to authority would seem to be obviated by the fact that the grantee itself submits the certification as part of its grant application, which alone suggests that the grantee makes the certification its own, regardless of who may have signed it.) OJP acknowledges that in some instances, the grantee state administering agency submitted multiple certifications on behalf of the forensic laboratories that actually were going to be the ultimate recipients of the grant funds, rather than a single certification from the state administering agency itself. While such sub-grantee certifications will not be accepted in lieu of a grantee certification in future years, OJP nonetheless notes that the certifications that were obtained, though insufficient under the law, honored much of its apparent intent.

Finally, language in the OIG draft report suggests that the OIG may have concerns as to whether certain certifications submitted in FY 2006 were false. Any false certifications are a matter of grave concern to OJP. Although the certification regime established by the statute authorizes OJP to rely upon applicants' certifications as *prima facie* evidence of what they certify, OJP is, of course, prepared to take appropriate oversight action – for example, if it were to receive credible information that suggests that a certification were false. OJP, however, was not a party to the OIG conversations with the officials in question and at this time has no proper

basis for action, such as referral, as appropriate, for investigation, prosecution, or other disposition as may be appropriate (*cf.* 18 U.S.C. § 1001). (Here, OJP is not even aware of which applicants or officials may be involved.) If OJP should become aware of specific facts concerning false certifications, the OIG will be asked to conduct an appropriate investigation into the matter. OJP has referred similar matters in the forensic programs and other OJP grant programs to the OIG in the past.

Additional Clarifications

In addition to the foregoing, the following comments are offered to address and clarify certain statements in the OIG draft report:

On page i of the Executive Summary (and on numbered pages 3-4), in connection with the discussion of the December 2005 OIG report and the OIG finding that OJP had not enforced the external investigation certification requirement, it is appropriate to note that the OIG's own General Counsel later agreed with OJP, as memorialized in an August 3, 2006, letter from the Department's Office of Legal Counsel, that ". . . OIG, like OJP, believes that section 3797k(4) is satisfied as a legal matter when OJP receives a basic certification from an applicant that replicates the language of section 3797k(4), and that OJP's certification practices have been in full compliance with the legal requirements of section 3797k(4)."

On page ii of the Executive Summary and elsewhere, the draft report refers to "certified entities" (or "government entities certified" or "entities certified") in connection with the FY 2006 Coverdell Program. It is important to clarify that the FY 2006 certification form did not request the name of the government entity (or entities). In connection with FY 2006, the OIG uses these terms to refer not to entities identified in the certifications (no identification having been requested), but to entities identified after the fact to the OIG by individuals who may or may not have been the individuals who signed the certifications to OJP.

On numbered page 10, the draft report indicates that the OIG determined that, with respect to 43 entities and although there were processes in place, they did not deem those processes "appropriate." OJP notes that, given the certification basis of the Coverdell statute as it pertains to eligibility and external investigations, it is the applicant State or unit of local government that, based on its understanding of the law (including OJP's guidance), in principle must determine if the process in place is "appropriate."

On numbered page 11, the draft report notes that some certifying officials did not discuss the certification with a representative of the "government entity" before making it. OJP notes that the Coverdell statute imposes no such requirement. In this connection, OJP observes that if OJP were to certify that the FBI has the authority to investigate violations of Federal law, the certification would not be weakened or false or otherwise flawed if OJP did not notify the FBI that it would be making the certification.

On numbered page 13, in footnote 15, the draft report states that "In the FY 2006 Coverdell Program Announcement, OJP instructed applicants to submit an external investigation

certification and to use the template in the announcement” To clarify, the FY 2006 solicitation did indicate that an external investigation certification was required to request a grant; the solicitation also clearly stated, however, that “Applicants are expected to review the requirements of each certification carefully before determining whether the certification properly can be made. Any certification that is submitted must be executed by an official who is both familiar with the requirements of the certification and authorized to make the certification on behalf of the applicant agency. Applicants must use the certification templates”

RESPONSE TO THE OIG RECOMMENDATIONS

The OIG draft report contains three policy recommendations. For ease of review, each of the three recommendations included in the draft report is restated in bold, followed by our response to the recommendation:

- 1. Revise the certification template to require that applicants name the government entities and confirm that the government entities have:**
 - a. the authority**
 - b. the independence**
 - c. a process in place that excludes laboratory management, and**
 - d. the resources**

to conduct independent external investigations into allegations of serious negligence or misconduct by the forensic laboratories that will receive Coverdell Program funds.

OJP will, as it did in FY 2007, require Coverdell grant applicants, prior to receiving funds, to provide the name of the government entity (or entities) with a process in place to conduct independent external investigations into allegations of serious negligence or misconduct. OJP also intends – in order to further reinforce the serious legal implications of the certification – to modify its certification form to include these statements: “I personally read and reviewed the section entitled “Eligibility” in the Fiscal Year 2008 program announcement for the Coverdell Forensic Science Improvement Grants Program,” and “I acknowledge that a false statement in this certification or in the grant application that it supports may be subject to criminal prosecution, including under 18 U.S.C. § 1001.”

OJP disagrees with the recommendation to include other additional language on the certification form. The certification form already includes the complete language of 42 U.S.C. § 3797k(4) as enacted into law. OJP is reluctant to impose eligibility requirements other than those contained in the statute. To the extent that significantly stricter eligibility requirements would further policy objectives that appear to underlie the statute, OJP believes the matter is properly left to the legislative process.

2. Provide applicants with guidance that allegations of serious negligence or misconduct substantially affecting the integrity of forensic results are to be referred to the certified government entities.

As indicated earlier, OJP certainly agrees that referrals of allegations of serious negligence or misconduct to government entities with a process in place to conduct independent external investigations are consonant with the statute, although not required by it. In keeping with the statute, therefore, OJP agrees to provide applicants with guidance that encourages such referrals.

3. Revise and document the Coverdell Program application review process so that only applicants that submit complete external investigation certifications are awarded grants.

OJP agrees to require applicants to provide a complete external investigation certification prior to receiving funds. While an award may be made due to fiscal year time constraints, grantees will not have access to grant funds until a completed certification as to external investigations is submitted. Much as it did in FY 2006 and 2007, OJP will review certifications to ensure that they are filled out completely and follow the language of the certification form, and will use a spreadsheet to document that an external investigation certification is received for each State or unit of local government that receives a grant. In addition, OJP will provide the OIG with written program management guidelines for the Coverdell Program that will encompass the review of applications for the external investigation certification as well as other requirements of the program.

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APPENDIX IV: OIG'S ANALYSIS OF THE OFFICE OF JUSTICE PROGRAMS RESPONSE

On November 5, 2007, the Office of the Inspector General (OIG) sent a copy of the draft report to the Department of Justice's (Department) Office of Justice Programs (OJP) with a request for written comments. On January 9, 2008, the OIG met with OJP and received verbal comments, some of which we incorporated into the draft report. On January 14, 2008, OJP provided its final written response to the draft report in which it disagreed with the OIG's conclusion that OJP's administration of the Coverdell Program external investigation certification requirement is not effective for ensuring that allegations of serious negligence or misconduct are subject to independent external investigations. In addition, OJP concurred with two of the OIG's three recommendations and disagreed with one.

In essence, OJP's position was that the Coverdell Program statute required only a certification from the grantee, that OJP had complied with this requirement, and that therefore its oversight of the requirement was not deficient.

We disagree with OJP's narrow view of its responsibilities in administering this important grant program. We believe that OJP's responsibility extends beyond the bare minimum of compliance with the literal terms of the statute. Rather, OJP has a responsibility to ensure that the required certifications are meaningful and that grantees actually have the means and intention to follow through on their certifications should an allegation of serious negligence or misconduct arise. This is especially true when, as our reviews have identified, the certifications from current grant recipients are incomplete and inaccurate, and when the entities certified by the grantees report that they do not meet the certification requirement. In short, OJP has a responsibility to monitor and oversee the grant program, which includes ensuring that the grantees' certifications are correct. As we discuss in this analysis of OJP's response, we believe that OJP's actions, and its response, take an inappropriately limited view of its responsibilities and attempt to shift responsibility for the deficiencies in the administration of the Coverdell Program to others.

The following sections summarize and analyze the main points of OJP's response to the report findings and recommendations.

SUMMARY AND OIG ANALYSIS OF OJP RESPONSE

OJP's Comments on the OIG Report

OJP Administration. After introductory comments, the OJP response states that “(t)he Coverdell Program has been administered successfully for several years” and lists examples of program management activities that OJP has in place to administer the program. These include applying special conditions, peer review of applications, collecting performance data, monitoring grantees through the Grants Program Assessment program, and requiring that applicants name the government entity they certify meets the external investigation certification requirement. OJP also states its commitment to improving forensic science.

OIG Analysis. While the OIG did not review every aspect of OJP's administration of the Coverdell Program, our review found that OJP's administration of the external investigation certification requirement was not effective. For example, as we describe in this report and in our December 2005 report, OJP failed to provide adequate instruction to grant applicants; failed to require applicants confirm to OJP to that applicants identified entities capable of conducting independent external investigations of wrongdoing; did not effectively review the certifications to ensure that they were completed accurately; and provided questionable guidance to an inquiry from a grantee regarding whether forensic laboratories are expected to refer allegations of serious wrongdoing for independent investigation. Moreover, as we will describe in later sections, OJP manifests a continuing unwillingness to act upon information that should alert it that, notwithstanding the certifications it collects, many grantees and sub-grantees lack the processes for having serious allegations of wrongdoing independently investigated. Consequently, we disagree with OJP's assertions that it has successfully administered the Coverdell Program.

Statutory Requirements. OJP next contends that it has complied with the Justice for All Act's requirements because it collected the certifications called for by the Act. OJP raises two questions related to this point. According to OJP, “With respect to the external investigation certification requirement of the Coverdell statute, one question is whether OJP has complied with the statutory requirement by obtaining external investigation certificates from applicants.” The second question OJP poses is “...whether the statutory requirement itself is effective to accomplish what appear to be its intended purposes.”

OIG Analysis. Regarding the first “question,” the OIG has not and does not question whether OJP has complied with the minimum statutory requirement to collect certification forms. We acknowledge that OJP has complied with the terms of the statute by collecting these certifications. However, we disagree that OJP has fully and effectively discharged its duties to effectively manage the program merely by collecting the forms or that OJP’s responsibility is properly limited to strict compliance with the bare minimum statutory requirement.

Because the OIG believes that the certification must have meaning beyond the mere collection of a signed statement, we obtained the FY 2006 certifications from OJP in order to review whether the grantees actually certified government entities that were capable of conducting independent investigations. As we detailed in this report, many were not. We find OJP’s often-stated position that it has fulfilled its duty to administer the Coverdell Program’s external investigation certification requirement merely by collecting certification forms is troubling.

Regarding the second “question,” we believe it is inappropriate for OJP to shift responsibility for the problems our review identified with its administration of the Coverdell Program to Congress. In its discussion of this second “question,” OJP asserts that because Congress did not give specific direction beyond requiring the collection of the certifications:

OJP’s proper administration of the statute therefore may not be sufficient to achieve the policy objective. Failure to achieve a policy objective not incorporated into the statute, however, is not something for which OJP should be held responsible.

We could not disagree more. The language Congress included in the Act makes clear that federal funding to improve forensic laboratories was to be granted to applicants that have in place established processes to conduct independent investigations into allegations of serious wrongdoing. This is the clear policy objective of the certification requirement. As the responsible federal agency, OJP must develop the mechanisms to effectively implement the legislation and to enforce the law in a meaningful way. Commensurately, we believe that the statutory directive to collect certifications must have meaning beyond the mere act of collecting signed certifications.

Referrals of allegations. OJP also provides comments regarding the lack of any specific statutory directive that grantees actually refer allegations of wrongdoing for investigation by the certified entity. In its discussion of the quality of the statute, OJP states that “while OJP

certainly agrees that such referrals are consonant with the external investigation certification requirement, the statute itself imposes no requirement for referrals.” In the next paragraph of its response, OJP states it is not surprised that the OIG identified cases in which forensic laboratories conducted their own investigations of wrongdoing because “[t]he Coverdell Program statute does require a government entity with an appropriate process in place to conduct independent external investigations. It does not require that every possible allegation be referred to that entity for investigation....”

OIG Analysis. In our view, OJP’s position again demonstrates an inadequate appreciation of its responsibilities. Because the statute does not explicitly state that OJP should provide guidance regarding referrals, OJP apparently does not believe it has any obligation to do so. Yet, as the administrator of the grant program OJP is responsible for providing applicants with appropriate guidance on a variety of issues, which we believe includes informing grantees that – consistent with their certifications – allegations of serious negligence or misconduct substantially affecting the integrity of forensic results should be referred for review or investigation to the government entities they have identified. We believe that without such guidance the certification has little meaning and Congress’ clear intent in requiring grantees to identify a government entity to independently investigate allegations is thwarted.

Certifications from individuals not in the applicant agency. OJP next addresses the OIG’s observation that 38 grantees submitted certifications that were signed by individuals who did not appear to represent the applicant agency. OJP states that it reviewed a list of the 38 questionable certifications, and that it appeared that “many were signed by individuals who (even if not officers or employees of the government agency) appeared to have the appropriate *authority* to sign the certification *with respect to* that agency.” [Emphasis in original] OJP acknowledges that some grantees submitted certifications from forensic laboratories instead of from the agency applying for the grant, and states that in the future such certifications will not be accepted in lieu of certifications from the grantees. However, OJP adds that, while these certifications were “insufficient under the law, [the certifications] honored much of its apparent intent.”

OIG Analysis. As stated in the external investigation certification template issued by OJP, the certifications are required to be signed by an individual authorized to make the certification on behalf of the applicant agency. The OIG agrees that certifications signed by individuals who are in a position of authority to sign on behalf of an applicant agency, even if the individuals are not from the applicant agency, are acceptable.

However, the 38 certifications we questioned were signed by individuals who did not appear to be from the applicant agency and who were not clearly in a position of authority over the applicant agency. For example, OJP's response confirms that some of the certifications were from sub-grantees and were therefore not sufficient. Clearly, sub-grantees have no authority over the grantee. We also believe that OJP's decision not to approve applications that contain certifications only from sub-grantees recognizes this point and is a step in the right direction.

Responsibility for addressing potentially false certifications. OJP next comments that "language in the OIG draft report suggests that the OIG may have concerns as to whether certain certifications submitted in FY 2006 were false." OJP further states that false certifications are a matter of "grave concern" to it. OJP states that it is not aware of which applicants or officials may be involved, but if it is made aware of potentially false certifications it will ask the OIG to investigate the matter.

OIG Analysis. OJP mischaracterizes the OIG's concern. The OIG's concern is that the problems we identified in the FY 2005 and FY 2006 Coverdell Program provide strong indications that OJP's administration of the external investigation certification requirement is inadequate to prevent and identify improper or insufficient certifications. For example, the guidance provided by OJP did not require that applicants confirm to OJP that they had identified entities capable of conducting independent external investigations of wrongdoing. Further, OJP did not effectively review the certifications to ensure that they were accurately completed or that on their face they did not indicate deficiencies. We remain concerned that OJP's failure to improve its administration leaves open the potential for it to accept invalid certifications.

In addition, the OIG is concerned that the OJP response attempts to shift the responsibility for assuring the validity of grantees' certifications to the OIG, stating that if OJP "should become aware of specific facts concerning false certifications, the OIG will be asked to conduct an appropriate investigation into the matter." While the OIG has the authority to review all activities of Department components or grantees, our primary focus is on improving the management of the Department. OJP has the primary responsibility for administering grant programs effectively to ensure the grantees comply with grant requirements. It is not the OIG's responsibility to review the certifications on an ongoing basis – it is OJP's responsibility. Yet, because of OJP's resistance to acting on the problems uncovered in our December 2005 report and our resulting recommendations, the OIG believed it necessary to conduct this follow-up review. And,

notwithstanding that we again found strong indications that OJP's processes are often inadequate to ensure independent external investigations into allegations of serious wrongdoing in forensic laboratories, OJP's response indicates that it remains reluctant to fulfill its responsibilities to administer the statute in a meaningful way.

OJP's Additional Clarifications

In addition to the general comments discussed above, OJP provided several "Additional Clarifications" regarding certain statements in the OIG report. Each of OJP's clarifications is discussed below.

OIG legal assessment. OJP states that, in discussing the December 2005 report, it is appropriate to note that the OIG's General Counsel agreed with OJP that "...section 3797k(4) is satisfied as a legal matter when OJP receives a basic certification from an applicant that replicates the language of section 3797k(4) and that OJP's certification practices have been in full compliance with the legal requirements of section 3797k(4)."

OIG Analysis. OJP's representation of the OIG General Counsel's statement is correct, but again misses the point. As we described earlier, although our report acknowledges that OJP has complied with the minimum terms of the statute requirement by collecting the certifications from applicants, we believe that this is an overly narrow reading of OJP's responsibility as the administrator of the Coverdell Program. Rather than focus on whether it has complied with the minimum required, OJP should be concerned with taking the steps necessary to ensure that the certifications it collects are accurate and meaningful.

Meaning of "certified entities." OJP states that it is important to clarify that the FY 2006 certification form did not request the name of the government entity. OJP also states that the OIG uses the terms "certified entities" and "entities certified" not to refer to entities identified in the certifications, but to entities identified after the fact to the OIG by individuals who may or may not have signed the certifications submitted to OJP.

OIG Analysis. The OIG report is clear in stating that the names of the entities were not included on the FY 2006 Coverdell Program certifications. Indeed, a primary purpose of this review was to identify the government agencies that the certifying officials had in mind when they signed the certifications because OJP failed to obtain that information in the first instance. The majority of individuals we contacted were the individuals who signed the certifications.

Appropriate processes. OJP states that, with respect to 43 entities the OIG found lacked appropriate processes, “the certification basis of the Coverdell statute...is [that] the applicant State or unit of local government...must determine if the process in place is appropriate.”

OIG Analysis. The OIG agrees that the applicants have the primary responsibility for determining that the entities they certify have in place appropriate processes to investigate allegations of serious wrongdoing in forensic laboratories. Yet, when we contacted the entities identified to us by the certifying officials, many told us that they did not have appropriate processes for conducting the investigations called for in the Coverdell Program. In other cases, we found that the forensic laboratory exercised control over the investigation – such as by granting the authority for the entity to conduct investigations on a case-by-case basis – that effectively undermined the independence of the investigative process. OJP’s statement again appears to ignore its responsibilities as the grant administrator. We concluded that OJP’s administration must be improved to ensure that the applicants fulfill their responsibility to ensure appropriate processes are in place.

Certifying officials notice to government entities. Regarding the OIG’s reporting that certifying officials often did not discuss or notify the entities about the external investigation certification, OJP states that the statute does not require that certifying officials discuss the certification with a government entity representative.

OIG Analysis. In assessing the certifications submitted by applicants, the OIG contacted the entities that the certifying officials told us they had in mind when they signed the certifications. In many cases, the entities were unaware that they had been identified as having a process in place to conduct independent investigations of wrongdoing in forensic laboratories. However, some of these entities also told us that they did not have the capability or authority to conduct such investigations. While it may not be explicitly required in the statute, OJP’s encouragement of communication between the applicants and the entities they certify would help ensure that applicants certify government entities that have the authority, a process in place, and the capability and resources to conduct independent external investigations of the forensic laboratories that will receive Coverdell Program funds. We do not believe that OJP should wait – or require the Congress to direct them in a statute – to take appropriate steps to administer the program.

FY 2006 grant application instructions. OJP notes that in its FY 2006 solicitation it not only required applicants to submit a certification using the template, but also advised the applicants that they were “expected to review the requirement of [the] certification carefully before determining whether the certification properly can be made.” Further, OJP states, the applicants were notified that the certification must be executed by an official familiar with the certification requirements and authorized to make certifications on behalf of the applicant agency.

OIG Analysis. The OIG does not dispute that the cited language was included in the Coverdell Program announcement. Our concern remains, however, that OJP’s overall administration of the Coverdell Program external investigation certification requirement was insufficient to ensure that applicants actually identified entities capable of conducting independent external investigations of wrongdoing in forensic laboratories.

OJP RESPONSE TO OIG RECOMMENDATIONS

Recommendation 1. Revise the certification template to require that applicants name the government entities and confirm that the government entities have:

- a. the authority,
- b. the independence,
- c. a process in place that excludes laboratory management,
and
- d. the resources

to conduct independent external investigations into allegations of serious negligence or misconduct by the forensic laboratories that will receive Coverdell Program funds.

Status. Unresolved – open

Summary of the OJP Response. OJP did not concur with the OIG’s recommendation to revise the certification form to include additional language. OJP stated that it will continue to require that applicants name the government entity or entities to prior to receiving funds and will modify the certification form to include two new statements. However, OJP does not agree that the statements the OIG recommended are necessary, and states that it [OJP] “is reluctant to impose eligibility requirements other than those contained in the statute.” OJP concludes that “to the extent that significantly stricter

eligibility requirements would further policy objectives that appear to underlie the statute, OJP believes the matter is properly left to the legislative process.”

OIG Analysis. The OIG does not accept OJP’s reasoning. The additional language recommended by the OIG would not establish any new eligibility requirements for the Coverdell Program. Any entity that meets the certification requirement must have the authority, independence, processes, and resources to conduct investigations into allegations of serious wrongdoing at forensic laboratories. The modifications we propose would only have the applicants specifically confirm to OJP that the entities they certify meet these qualifications. Such a certification is needed because, as we have described throughout this report, the OIG identified repeated instances in which OJP’s administration of the certification requirement was ineffective to ensure that grantees certified appropriate entities. Finally, we disagree with OJP’s assertion that Congress must dictate exactly what the certification must contain or specifically direct OJP how to effectively administer the Coverdell Program.

To resolve this recommendation, we request that OJP reconsider its decision not to add the needed language to the certification template and inform the OIG of its determination and proposed corrective action by March 1, 2008.

Recommendation 2. Provide applicants with guidance that allegations of serious negligence or misconduct substantially affecting the integrity of forensic results are to be referred to the certified government entities.

Status. Resolved – open

Summary of the OJP Response. OJP concurred with the recommendation and states that it will provide applicants with guidance that encourages referrals of allegations of serious negligence or misconduct to government entities for independent external investigation.

OIG Analysis. The actions planned by OJP are responsive to our recommendation. To close the recommendation, by May 15, 2008, please provide the OIG with a copy of the guidance for FY 2008 Coverdell Program applicants.

Recommendation 3. Revise and document the Coverdell Program application review process so that only applicants that submit complete external investigation certifications are awarded grants.

Status. Resolved – open

Summary of the OJP Response. OJP concurred with the recommendation and agreed to require applicants to provide a complete external investigation certification prior to receiving funds. In addition OJP agreed to provide the OIG with written program management guidelines for the Coverdell Program that will encompass the review of applications for the external investigation certification as well as other requirements of the program.

OIG Analysis. The actions planned by OJP are responsive to our recommendation. To close the recommendation, by May 15, 2008, please provide the OIG with a copy of the written program management guidelines for the Coverdell Program.