



U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF INSPECTOR GENERAL
Washington, DC 20416

AUDIT REPORT

Issue Date: September 24, 2004

Report Number: 4-44

To: Adela Soriano
Associate Administrator for Strategic Alliances

Mike Pappas
Associate Administrator for Field Operations

From: /S/ Original signed
Robert G. Seabrooks
Assistant Inspector General for Auditing

Subject: Audit Report - Summary Audit of SBA-Sponsored and Cosponsored Events
Conducted by District Offices

Attached is a copy of the subject report. The report contains one finding and seven recommendations. You agreed with five recommendations and partially agreed with two. For the recommendations with partial agreements, we will reserve our comments to your responses until SOP 75 2 is updated. In addition, you provided comments concerning portions of the report. As a result of your comments, we modified certain passages in the report. A written evaluation of your comments is included as part of the report, and your comments have been included as an attachment.

The finding in the report is the conclusion of the Office of Inspector General's Auditing Division. The finding and recommendations are subject to your review and corrective action in accordance with existing Agency procedures for audit follow-up and resolution.

Please provide your management response and actions to address the recommendations within 30 days from the date of this report on the attached SBA Form 1824, Recommendation Action Sheet. The SBA Forms should be sent to:

Audit Manager
SBA OIG/Auditing Field Office, Suite 1803
233 Peachtree Street, NE
Atlanta, Georgia 30303

Any questions you may have regarding this report should be directed to Garry Duncan, Director, Credit Programs Group, at (202) 205-[FOIA Ex. 2].

Attachment

**SUMMARY AUDIT OF SBA-SPONSORED AND
COSPONSORED EVENTS BY DISTRICT OFFICES**

ATLANTA, GEORGIA

Audit Report Number 4-44

September 24, 2004

The finding in this report is the conclusion of the OIG's Auditing Division based on testing of SBA operations. The finding and recommendations are subject to review, management decision, and corrective action in accordance with existing Agency procedures for follow-up and resolution. This report may contain proprietary information subject to the provisions of 18 USC 1905 and must not be released to the public or another agency without permission of the Office of Inspector General.

AUDIT REPORT
SUMMARY AUDIT OF SBA-SPONSORED AND
COSPONSORED EVENTS BY DISTRICT OFFICES

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SUMMARY

The purpose of this report is to summarize the areas of noncompliance and discuss the causes applicable to the Small Business Administration (SBA) SBA-sponsored and cosponsored events held by nine district offices. We used information from audits conducted of these events at three district offices and unaudited documentation furnished by the SBA Office of General Counsel (OGC) concerning such events held at six other district offices.

Personnel for the nine district offices were involved in 16 SBA-sponsored and 33 cosponsored events conducted during May 1999, to November 2002. Based on the audit results and unaudited documentation, district actions were summarized into 19 noncompliances. The noncompliances are categorized into three general areas:

- Soliciting and accepting gifts and fees.
- Planning, conducting, and reporting events.
- Accounting for funds and non-cash assets.

Sixteen of the noncompliances were applicable to more than one district office. We believe audits of other district offices would have disclosed the same or similar noncompliances. As a result of the noncompliances, SBA personnel were operating in violation of Federal laws and could not ensure that Federal assets were properly safeguarded.

Noncompliances were caused by: (i) district office personnel not following existing guidance; (ii) guidance not being sufficient or being nonexistent; and, (iii) oversight by headquarters and regional personnel not being sufficient. Correction of these issues is imperative given SBA's current focus of increasing the marketing and outreach responsibilities of district offices.

We recommend that the Associate Administrator, Office of Strategic Alliances: (a) develop a training program for district office employees who will be involved in SBA-sponsored and cosponsored events; (b) develop standard operating procedures, in coordination with OGC, addressing all aspects of SBA-sponsored events; and (c) revise Standard Operating Procedure (SOP) 90 75 2.

We also recommend that the Associate Administrator, Office of Field Operations: (a) ensure that district office personnel receive the appropriate training before planning, conducting, and managing funds related to SBA-sponsored and cosponsored events; and, (b) require that regional office personnel periodically review district office files of events for completeness and compliance.

In a combined response, the associate administrators fully agreed with five of our recommendations and partially agreed with two. For the two partial agreements, they stated that updates to SOP 90 75 2 will be made. We will reserve our comments to their response for these two recommendations until the updated SOP is issued.

INTRODUCTION

A. Background

The Small Business Act (the Act) gives SBA statutory authority to sponsor a wide variety of training and counseling programs to assist small businesses. Events planned and conducted solely by SBA are considered SBA-sponsored events. Also, section 8(b) (1) (a) of the Act authorizes SBA to plan and conduct events jointly with public or private entities. These events are referred to as cosponsored events.

SBA has statutory authority to accept cash and other types of gifts for use in conducting events that provide technical and managerial assistance to small businesses and for other uses in carrying out the purpose of the Act. Agency policies and procedures applicable to soliciting, accepting, and managing gifts, as well as planning and conducting SBA-sponsored and cosponsored events, are contained in Standard Operating Procedure (SOP) 90 75 2, Cosponsorships, SBA Procedural Notice 7000-136 and in OGC's Outreach Handbook..

SBA-sponsored and cosponsored events occurred at both the headquarters and district office levels. The responsible program official accountable for a specific cosponsorship event was the district director at the district office level and a management board member at the headquarters level. The Associate Administrator for Business Initiatives (AA/BI) had the general duty to monitor all events, gift solicitations and acceptances, and identify and address problems and concerns. The AA/BI responsibilities were transferred to the Associate Administrator for Strategic Alliances (AA/SA) in June 2003. In addition to the AA/SA, an oversight committee was required to meet to consider issues and concerns and to grant approvals required by the SOP.

B. Objective and Scope

The objective of the audit was to summarize the areas of noncompliance with SBA policies and procedures and Federal laws for specific field offices conducting SBA-sponsored and cosponsored events. To answer the objective, the results of audits conducted of events held by the Georgia District Office (GDO), the Los Angeles District Office (LADO), and the Puerto Rico & Virgin Islands District Office (PRVIDO) were analyzed.¹ The audit periods varied for each office and collectively ranged from May 1999 to November 2002. The audits consisted of reviews of financial records and other documents obtained from SBA, vendors, cosponsors, and donors. Personnel from SBA district offices, headquarters, cosponsors, and donors were interviewed. The audits were accomplished on-site at the GDO and LADO. The audit of the PRVIDO was performed at the OIG Atlanta Field Office. Fieldwork for this summary audit was accomplished during the period November 2003 to January 2004.

The audit was accomplished in accordance with generally accepted Government Auditing Standards.

¹ Audit of Georgia District Office Sponsorship Activities, Report 2-25
Cosponsorship Activities – Los Angeles District Office, Report 4-03
Audit of Puerto Rico & Virgin Island District Office Cosponsored and SBA-Sponsored Activities, Report 4-07

In addition, information about SBA-sponsored and cosponsored events conducted by six other district offices (Mississippi, North Carolina, North Florida, South Florida, St. Louis, and Utah) between October 1999 and September 2002 was utilized. This information was obtained from the district offices and legal documents provided by SBA's Office of General Counsel. The information, however, was not verified.

C. Statement on Management Controls

Our assessment of management controls, policies, procedures, and practices included those applicable to the planning, conducting, and oversight of SBA-sponsored and cosponsored events. The audit was performed to summarize the causes of noncompliances identified during our audits and reviews of unaudited documentation about SBA outreach events. A study and evaluation made for the limited purpose described above would not necessarily disclose all material weaknesses in the management controls. Our assessment, however, disclosed material management control weaknesses applicable to the training, guidance, and oversight applicable to SBA-sponsored and cosponsored events held by district offices. Details of these weaknesses are fully discussed in the Results of Audit section of this report.

RESULTS OF AUDIT

FINDING Improvements are needed in the Compliance, Guidance, and Oversight of SBA-Sponsored and Cosponsored Events

Nine district offices did not operate in compliance with Federal laws and SBA policies and procedures for 16 SBA-sponsored and 33 cosponsored events held between May 1999 and November 2002. The noncompliances identified were categorized as follows:

- Soliciting and accepting gifts and fees,
- planning, conducting, and reporting events, and
- accounting for funds and non-cash assets.

The causes for the noncompliances included:

- field office personnel not following existing guidance;
- inadequate and nonexistent guidance; and,
- insufficient oversight by headquarters and regional personnel.

As a result of the noncompliances, SBA personnel operated in violation of Federal requirements and there was no assurance that Federal assets were properly safeguarded.

Field office personnel did not comply with existing requirements

During the review period, nine district offices held various types of SBA-sponsored and cosponsored events. There were short-term events (less than one week in length) such as Small Business Week Award luncheons and dinners, lender conferences, lender recognition breakfasts and long-term events such as business information centers, business resource centers, and programs with schools and not-for-profit organizations. Funding for each event consisted of one or more of the following: fees, cosponsor contributions, gifts, or in-kind donations.

Based on audits of three district offices and unaudited documentation concerning events at six other district offices, we determined 19 areas of noncompliance occurred during the planning, conducting, reporting, and accounting for funds for 49 SBA-sponsored and cosponsored events (see exhibit A). Sixteen of the noncompliances occurred at multiple district offices. There were, however, three noncompliances that occurred at more district offices than the others.

- *Gifts not deposited into the Business Assistance Trust (BAT) Fund*

According to SOP 90 75 2, employees must deposit cash gifts to SBA into the BAT Fund. Gift funds for events held by eight district offices were not deposited into the Fund. For the three district offices whose events were audited, cash gifts totaling \$345,169 were received but were not deposited as required. The district directors for five of the unaudited district offices stated that they also received cash gifts that were not deposited into the BAT Fund.

- *Conflict of interest analyses*

According to SOP 90 75 2, before a gift may be solicited or accepted from sources having a business relationship with SBA, the approving official, with the assistance of legal counsel, must conclude that the gift would not create an actual or apparent conflict of interest. The OIG believes that lenders authorized to make Section 7(a) loans have a business relationship with SBA.

For events held by seven districts, gifts were solicited and/or accepted from lenders in the Section 7(a) loan program without a conflict of interest determination being made. For the three district offices whose events were audited, the cash gifts totaled \$231,275. Conflict of interest determinations may have shown that the lenders submitted loan applications, amendments to loan agreements, or requests for SBA to honor its guaranty at or around the time they were solicited for gifts. These situations could have created the appearance of a conflict of interest.

- *Fees were collected without authorization*

Section 8(b)(1)(a) of the Act permits SBA to charge minimal fees to small business concerns to cover the direct cost of providing assistance in for-profit cosponsored events. Eight district offices did not comply with the Act when they charged registration and vendor fees for SBA-sponsored and not-for-profit cosponsored events. Audits of three of these district offices showed that a total of \$147,789 in fees was collected contrary to the Act.

Causes for the noncompliances

The noncompliances resulted in the districts being in violation of the Small Business Act, Federal laws, and SOP 90 75 2. Based on our audit results, we determined that the causes for the noncompliances could be categorized into three areas: failure to follow guidance, inadequate or nonexistent guidance, and insufficient oversight. For the first category we found:

- A lack of familiarity with some or all the SOP requirements.
- A belief that the SOP requirements were not applicable to their events.
- A dependence upon district counsel for advice.

For three district offices, personnel indicated that no formal training concerning SBA-sponsored and cosponsored events was received prior to fiscal year (FY) 2002. We did not ascertain if formal training was provided to the remaining district offices. If district office personnel had received formal training, they should have been familiar with the SOP requirements applicable to their events. In turn, this may have resulted in a better understanding of the guidance by all district personnel.

Guidance provided by SBA either was not adequate or nonexistent

Another reason for the noncompliances was the quality of the existing guidance. An SOP for SBA-sponsored events did not exist. Prior to FY 2002, the primary guidance for planning, conducting, and reporting SBA-sponsored and cosponsored events was SOP 90 75 2 which

primarily addressed cosponsorship events. Individual district directors either stated that the SOP did not address all aspects of SBA-sponsored and cosponsored events or that it was incomplete and unclear.

Our audit validated the district directors' statements that the SOP either did not address certain aspects of SBA-sponsored and cosponsored events or had incomplete or unclear information.

Examples of aspects that were not addressed in the SOP included:

- Definition of the term "cosponsor contributions."
- Propriety of setting levels of recognition based on levels of contributions.
- Minimal duties of a fiscal agent.
- Accountability of cosponsorship assets.
- Procedures for conducting conflict of interest determinations.
- Procedures describing how and when to deposit and withdraw gift funds from the BAT Fund.

Examples of guidance that were incomplete or unclear in the SOP included the following:

- Conflicting statements about providing counseling during for-profit cosponsorships.
- Which eligibility requirements, if not done, would cause an event to be an unauthorized cosponsorship as opposed to a procedurally flawed cosponsorship.
- Soliciting or accepting of gifts through a third party on SBA's behalf was not clear.
- Solicitations by a cosponsor using SBA's logo or the signature of an SBA official constituted a solicitation by SBA.
- Terms "actively and substantially" as used in the definition of the term "cosponsor" not defined.

SBA issued in FY 2002: Procedural Notice 7000-136, SBA-Sponsored Events, to provide general guidance relating to SBA-sponsored events; in FY 2003, the Outreach Handbook "to place the SOP requirements in a larger context;" and, in FY 2003, issued Procedural Notice 2000-664 addressing use of the Business Assistance Trust Fund. This additional guidance was issued after most of the applicable events were held by the nine district offices. The guidance, however, did not address all of the aforementioned problems.

Oversight by headquarters and regional personnel needed improvement

The noncompliances were not prevented nor identified by SBA because existing oversight procedures were insufficient. As previously stated, the Office of Business and Community Initiatives (OBCI) and then OSA was responsible for monitoring all events, gift solicitations and acceptances, and to identify and address problems and concerns. These offices were supposed to receive quarterly reports for each cosponsored event and all gift activity that occurred during each quarter. Additionally, the SOP requires that district directors maintain files for each cosponsorship and the OSA retain a copy for each for-profit cosponsorship.

These procedures did not include SBA-sponsored events or controls to ensure compliance. For the three audited district offices, we found no evidence that on-site reviews of district office files by headquarters and regional personnel were routinely done. As a result, there was no assurance that OBCI was aware of all events prior to their occurrence or that the districts were operating in compliance with policies and procedures.

Recommendations

We recommend that the Associate Administrator, Office of Strategic Alliances, take the following actions:

- 1. A** Develop a training program for district office employees who will be involved in planning or conducting SBA-sponsored and cosponsored events.
- 1. B** Develop and issue, in coordination with the Office of General Counsel, standard operating procedures addressing SBA-sponsored events.
- 1. C** Revise SOP 90 75 2 to address procedures for:
 - conducting conflict of interest determinations,
 - minimal duties of a fiscal agent,
 - accounting for cosponsorship assets,
 - defining the terms “actively” and “substantially” as used in the definition of a cosponsorship.
- 1. D** Revise SOP 90 75 2 to clarify:
 - when counseling can be provided during all cosponsored events,
 - the minimal requirements for a cosponsorship to be an authorized event,
 - the portion of SOP 90 75 2 addressing SBA employees soliciting or accepting gifts on SBA’s behalf through a third party, and
 - that solicitations by a cosponsor using SBA’s logo or the signature of an SBA official could be considered a solicitation by SBA.
- 1. E** Revise SOP 90 75 2 to require that district offices maintain files for SBA-sponsored events and report the information to SBA headquarters.

We recommend that the Associate Administrator for Field Operations take the following actions:

- 1. F** Ensure that district office personnel receive the appropriate training before being involved in the planning, conduct, and funds management related to SBA-sponsored and cosponsored events.
- 1. G** Ensure that periodic reviews of district office SBA-sponsored and cosponsored event files are done to ensure completeness and compliance with existing requirements.

Management Comments

In a combined response, dated September 20, 2004, the Associate Administrator for Strategic Alliances and the Associate Administrator for Field Operations agreed with five of the recommendations and partially agreed with two recommendations. For the agreed upon recommendations, the administrators stated that corrective actions are in process or have already been implemented. For the two recommendations with partial agreements the administrators stated that SBA's plans to update SOP 90 75 2 will resolve the issues. In addition to their response to the recommendations, the administrators also provided editorial comments concerning the content of the report.

Evaluation of Management Comments

Management's responses to the recommendations are acceptable. Concerning the two partially agreed to recommendations, we will reserve our comments until the updated SOP is issued. We considered their comments concerning the report's contents and made changes where necessary.

		<u>Audited District Offices</u>			<u>Unaudited District Offices #</u>						
		<u>Georgia</u>	<u>Los Angeles</u>	<u>Puerto Rico</u>	<u>Mississippi</u>	<u>N. Carolina</u>	<u>N. Florida</u>	<u>S. Florida</u>	<u>Utah</u>	<u>St. Louis</u>	<u>Totals</u>
<u>SBA-sponsored events</u>		3	0	0	3	1	2	2	5	0	16
<u>Cosponsored events</u>		2	9	6	2	5	4	2	2	1	33
NONCOMPLIANCES											
Soliciting and Accepting Gifts and Fees											
1	gifts solicited and accepted from proscribed sources	X	X	X			X				4
2	gifts solicited and accepted without conflict of interest determinations (other than section 7(a) lenders)	X				X	x				3
3	gifts from 7(a) lenders with no conflict determination	X	X	X		X		X	X	X	7
4	gifts to SBA not deposited into the BATF	X	X	X	X	X	X	X	X		8
5	gift funds or cosponsor contributions used for prohibited purposes	X		X		X					3
6	fees collected without authorization	X	X	X	X	X	X		X	X	8
7	fees charged inappropriately	X		X			X				3
Accounting for Funds and Non-Cash Assets											
8	excess funds (gifts and fees) not identified and returned to donors/payees.	X	X	X				X			4
9	funds (gifts and fees) were not disposed of or were used improperly.	X	X	X							3
10	accounting for funds (commingled gifts, cosponsor contributions, fees)	X	X	X		X	X	X			6
11	controls for disbursement of funds	X		X							2
12	accounting for event assets			X							1
Planning, Conducting and Reporting Events											
13	pre-event documents not prepared or prepared improperly or executed improperly		X	X							2
14	pre-event documents not submitted to HQ.	X	X	X							3
15	gifts forms not prepared, filed, and submitted to HQ			X		X	X			X	4
16	proscribed cosponsor			X							1
17	procurements made without contracting authority	X		X		X					4
18	counseling activities were improperly included			X							1
19	post event reporting			X			X				2

noncompliances cited for the unaudited district offices were based on statements made by district directors during interviews with OGC and plaintiff counsels. There may have been additional noncompliances.

DATE: September 20, 2004

TO: Robert G. Seabrooks
Assistant Inspector General for Auditing

FROM: Adela Soriano
Associate Administrator for Strategic Alliances

Mike Pappas
Associate Administrator for Field Operations

SUBJECT: Draft Report – Summary Audit of SBA-Sponsored and Cosponsored Events Conducted By District Offices

This is SBA's formal response to the Office of Inspector General's (OIG) Draft Audit Report, referred to above. We have previously discussed issues concerning SBA-sponsored and cosponsored events with Mr. James Hudson, Director, Auditing Division, Atlanta and we appreciate the opportunity to comment on your Draft Report.

This Draft Report summarizes violations and identifies possible underlying management reasons in 49 SBA-sponsored and cosponsored events that were planned and conducted by SBA district offices during the period May 1999 to November 2002. The Draft Report finds that all but three of the 19 specific violations were found in more than one district office's event(s). Information from 20 events audited and analyzed in the Georgia, Los Angeles, and Puerto Rico audits were re-analyzed for this Draft Report, along with information from 29 events which occurred in six other district offices and were analyzed for this Draft Report from documents provided by SBA's Office of General Counsel (OGC) but which were not verified or otherwise audited by OIG. The Draft Report finds that "Improvements are needed in the Compliance, Guidance, and Oversight of SBA-sponsored and Cosponsored Events," based on three "causes for the noncompliances:" 1) failure of field personnel to follow existing guidance (based on findings of a lack of familiarity with some or all the SOP requirements, a belief that the SOP requirements were not applicable to their events, and a dependence upon district counsel for advice); 2) insufficient or nonexistent guidance; and 3) insufficient oversight by headquarters and regional office personnel.

We have identified two general points of clarification that pertain to the entire Draft Report. First, as noted in the Draft Report, the Office of Strategic Alliances (OSA) was established in June 2003, approximately seven months after November 2002, the end of the period analyzed in the Draft Report. The Draft Report acknowledges the transfer of responsibility in June 2003, but nevertheless states that, "...OSA was responsible for monitoring all events, gift solicitations and acceptances...." (Page 5 under heading "Oversight by Headquarters...".) The Draft Report also states on page 6, first paragraph that, "...there was no assurance that the OSA was aware of all events prior to their occurrence or that the districts were operating in compliance with policies and procedures." The events analyzed for this audit were all planned and conducted prior to OSA's existence. Since OSA was not yet operational during the period examined by the Draft Report, it should not be held responsible for deficiencies. Since OSA was created and relevant responsibilities were transferred from the Associate Administrator for Business and Community Initiatives (AA/BCI) to the Associate Administrator for Strategic Alliances (AA/OSA), a number of items recommended in the Draft Report have been accomplished. Second, reference to "sponsored" events in the Draft Report are confusing because the Agency has not defined the term and does not use the term. The Agency has authority to conduct cosponsored events and SBA-sponsored events. The distinction is important because different rules apply to each.

The following are noted as points of clarification, agreement/disagreement, or correction as related to the Draft Report summary, introduction, finding, and recommendations.

Discussion of Summary and Introduction

Summary

The third general area of noncompliance is “*accounting* for funds and non-cash assets,” yet in Exhibit A, the general category of noncompliance is entitled, “*accountability* for funds and non-cash assets.”

We understand that all but three of the 19 specific violations of policy or procedure, referred to in the Draft Report as “noncompliances,” were found in more than one district office.

Introduction

A. Background

Page 1, Paragraph 2: We agree that SBA has statutory authority to accept gifts, including cash, to carry out its functions under the Small Business Act, including for use in conducting events that provide technical and managerial assistance to small businesses.

It is more accurate to refer to “agency policies and procedures,” rather than “procedures and prohibitions.”

SBA-sponsored events are mentioned in SOP 90 75 2 only cursorily. Guidance for such events is found in SBA Procedural Notice 7000-136 and in OGC’s Outreach Handbook.

Page 1, Paragraph 3: The district director and local counsel have authority to clear/authorize cosponsorships with nonprofits without headquarters’ approval or oversight, so long as the dollar value of the event does not exceed \$200,000 or involve public officials. If the value exceeds \$200,000 or a public official is involved in the cosponsorship, the Oversight Committee must concur. *See* SOP 90 75 2, ¶ 13. Such events are reported but oversight relies on field awareness and applications of established procedures.

B. Objective and Scope

The objective of the audit was to summarize areas of noncompliance of certain or specific field offices, not *all* field offices conducting SBA-sponsored and cosponsored events. (*See* paragraph 1.)

C. Statement on Management Controls

No comment.

Discussion of OIG Findings and Recommendations

Finding: Improvements are needed in the Compliance, Guidance, and Oversight of SBA-sponsored and Cosponsored Events. Based on the Draft Report, SBA cannot reach firm conclusions about the actual execution of the subject events and their compliance or noncompliance with the statute, or Agency policy and procedures. SBA’s general comments follow:

- 1. Field office personnel did not comply with existing requirements.** The Draft Report determined that the “noncompliances” occurred because field office personnel either did not follow or did not understand the requirements. SBA maintains that field offices successfully complete cosponsorships all the time, both before the time covered by the Draft Report and since. SBA’s general comments on three specific topics raised in the Draft Report follow:
 - **Gifts not deposited into the Business Assistance Trust (BAT) Fund.** SBA agrees that cash gifts to SBA must be deposited into the BAT Fund. Based on the Draft Report, however, SBA is not certain that all cash gifts discussed were, in fact, gifts to SBA. SBA’s cosponsors bring a variety of goods and services to cosponsorships. A cosponsor, according to its own rules, may solicit and accept donations or contract for goods and services and, in turn, offer them, including cash, in support of a

cosponsorship with SBA. Cash, brought to a cosponsorship by the cosponsor is not classified as either “a gift to the cosponsorship” or “a gift to SBA.” It is simply a contribution to the cosponsorship, known to SBA as a cash injection, which must be placed in the fiscal agent’s account and NOT in the BAT Fund. Because a cosponsorship is an agreement, not an entity, it cannot accept a gift, only an entity may do so. In summary, a cosponsor may accept a gift which it then provides in support of a cosponsorship. Such an item is not considered a gift to SBA and need not be deposited into the BAT Fund if it is cash. On the other hand, SBA may accept a gift in support of a cosponsorship, but it must be deposited into the BAT Fund if it is a cash gift.

- **Conflict of interest analysis.** SBA is aware of OIG’s concerns relating to the propriety of soliciting and accepting gifts from SBA participant lenders, and agrees that lenders authorized to make Section 7(a) loans have a business relationship with SBA, that a gift from a participant lender could only be accepted on a case-by-case basis after a conflict of interest analysis has been performed. SOP 90 75 2, ¶ 18.b. Neither the existence of a loan application or a request to honor SBA’s guaranty on a particular loan, however, have ever, in and of themselves, been deemed to create an apparent or actual conflict of interest with the participant lender. To the extent that district offices failed to complete and document the required case-by-case analysis as required by established SBA policy before soliciting and accepting gifts from participant lenders, SBA agrees that SBA policy has been violated. It does not follow, however, that such funds could not ultimately be accepted by SBA under current policy.
 - **Fees were collected without authorization.** The SOP states that only minimal charges may be imposed on any small business concern to cover the direct costs of a cosponsorship, and that such fees must be the first source of funds used to pay cosponsorship expenses. *See* SOP 90 75 2, ¶ 12.b. Neither the SOP nor the Small Business Act limits the ability of SBA to charge a fee at a cosponsorship that does not include a for-profit cosponsor. This legal issue was settled by an OGC legal opinion dated February 26, 1991. Based on the information provided in the Draft Report, SBA is unable to comment on the assertion that \$147,789 in fees was collected contrary to the Act.
2. **Guidance provided by SBA either was not adequate or nonexistent.** SBA believes that the existing SOP (90 75 2) provides field offices sufficient guidance regarding many if not all of the issues identified and discussed in the Draft Report, especially since the SOP has been supplemented by procedural notices, training, and guidance from several SBA program office, including OGC, since the events occurred. Field offices successfully complete SBA-sponsored and cosponsored events regularly, both during the time covered by the Draft Report, and now, and in accordance with existing law and SBA policy. Additionally, the Draft Report details the long list of actions taken by SBA between the close of the period covered by the Draft Audit and today providing guidance and training to the field on the issues that arise in planning and conducting SBA-sponsored and cosponsored events. The Draft Report fails to mention that all attorneys were trained in-person in November 2002.
 3. **Oversight by headquarters and regional personnel needed improvement.** While SBA agrees that the SOP (90 75 2) could be written in a more comprehensive manner, we do not agree that it is inadequate to guide a district office through a cosponsored event. Additionally, there is no current requirement for on-site reviews of district office files by headquarters or regional office personnel. The Office of Field Operations will be working with the Office of Strategic Alliances to add a review of cosponsorship files to QSR reviews of field offices.

Recommendations:

1.A Develop a training program for district office employees who will be involved in planning or conducting SBA-sponsored and cosponsored events. Agree. OSA has implemented a series of training presentations which are being provided via web-enabled conference calls to the field between August and October 2004. The materials will be loaded to Field Operation’s webpage and to OSA’s soon-to-be-released webpages. Additional materials will

be made available to all SBA employees on SBA's intranet to allow for continuous training on SBA-sponsored and cosponsored events. All field attorneys were trained in-person in November 2002.

1.B Develop and issue, in coordination with the Office of General Counsel, standard operating procedures addressing SBA-sponsored events. Agree. SBA will soon be issuing standard operating procedures for SBA-sponsored events which, as recommended in Recommendation 1.E, below, will contain file maintenance and reporting requirements.

1.C Revise SOP 90 75 2 to address procedures for:

- **Conducting conflict of interest determinations.** Agree. SBA plans to update SOP 90 75 2, and any revision will include an updated conflict of interest checklist.
- **Minimal duties of fiscal agent.** Agree. SBA plans to update SOP 90 75 2, and any revision will include minimal duties of a fiscal agent.
- **Accounting for cosponsorship assets.** Agree. SBA plans to update SOP 90 75 2, and any revision will include procedures for accounting and disposition of excess cosponsorship funds. All relevant "assets" utilized in a cosponsorship will belong either to the cosponsor or to SBA. A cosponsorship is an agreement, not an entity, so it cannot hold or own property. If goods are purchased with a cosponsor's cash injection, it must be agreed which party will own the goods at the close of the cosponsorship, or the cosponsor has the option of donating the goods to SBA at the close of the cosponsorship.
- **Defining the terms "actively" and "substantially" as used in the definition of a cosponsorship.** SBA disagrees that those two words require special definition. SBA plans to update SOP 90 75 2 and any revision will include definitions that firmly differentiate between "donors" and "cosponsors."

1.D Revise SOP 90 75 2 to clarify:

- **When counseling can be provided during all cosponsored events.** Agree. SBA plans to update SOP 90 75 2 and any revision will include guidance on counseling at cosponsored events.
- **The minimal requirements for a cosponsorship to be an authorized event.** SBA does not agree that "authorized event" is a term that requires definition or explanation in formal Agency policy. However, if a cosponsorship is technically or procedurally flawed because it has not been properly approved, for instance, the Agency has the authority to ratify the cosponsorship after the fact, making it valid in all respects. This is to be clearly distinguished from an event that could not be a cosponsored event at all because it falls outside the legal definition of a cosponsorship, such as a lenders conference. SBA plans to update SOP 90 75 2 and any revision will include requirements for authorizing events.
- **The portion of SOP 90 75 2 addressing SBA employees soliciting or accepting gifts on SBA's behalf through a third party.** Agree. SBA plans to update SOP 90 75 2 and any revision will include a discussion of the concept of "cash injection." The Agency does not intend that goods, services or cash which are solicited by a cosponsor alone and brought to the cosponsorship as the cosponsor's contribution are to be treated as gifts to the Agency. Additionally, SBA cannot have a third party solicit or accept money for SBA's unrestricted, general use.
- **That solicitations by a cosponsor using SBA's logo or the signature of an SBA official could be considered a solicitation by SBA.** Agree. SBA plans to update SOP 90 75 2 and any revision will include a clarification that solicitations using SBA's logo or the signature of an SBA official could be considered a solicitation by SBA.

1.E Revise SOP 90 75 2 to require that district offices maintain files for SBA-sponsored events and report information to SBA Headquarters. See response to Recommendation 1.B, above.

1.F Ensure that district office personnel receive the appropriate training before being involved in the planning, conduct, and funds management related to SBA-sponsored and cosponsored events. Agree. The Office of Field Operations (OFO) is committed to on-going training for the proper conduct and management of SBA-sponsored and cosponsored events. OFO is working in conjunction with OSA to efficiently provide adequate training to all district office personnel involved in SBA-sponsored and cosponsored events, including district directors, deputy district directors, public information officers, and RCD (?). All field attorneys were trained by OGC in November 2002.

1.G Ensure that periodic reviews of district office SBA-sponsored and cosponsored event files are done to ensure completeness and compliance with existing requirements. SBA agrees and is exploring available options. As cited earlier, the Office of Field Operations will be working with the Office of Strategic Alliances to create such periodic reviews.

Again, thank you for the opportunity to review and comment on your Draft Audit Report. If you have any questions regarding the items or updates cited above, please contact either of us to discuss the matter.

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