



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

AUDIT REPORT
Issue Date: December 17, 2003
Number: 4-03

TO: Mike Pappas
Associate Administrator for Field Operations

Alberto Alvarado
District Director, Los Angeles District Office

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

SUBJECT: Cosponsorship Activities – Los Angeles District Office

Attached is a copy of the subject report. The report contains one finding and five recommendations to the Associate Administrator for Field Operations.

The finding in this report is the conclusion of the Office of Inspector General's Auditing Division. The recommendations in this report are subject to review and implementation of corrective action by your office in accordance with existing Agency procedures for audit follow-up and resolution. Please provide your management decision for each recommendation made to you within 30 days from the date of this report using the attached SBA Forms 1824, Recommendation Action Sheet.

If you have any questions about the issues contained in the report, please contact Garry Duncan, Director, Credit Programs Group, at (202) 205-7732.

Attachments

**COSPONSORSHIP ACTIVITIES
LOS ANGELES DISTRICT OFFICE**

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SUMMARY

The audit objective was to determine if the Los Angeles District Office (District) operated in compliance with Federal laws and Small Business Administration (SBA) policies and procedures when planning and conducting SBA-sponsored and co-sponsored activities. Nine District cosponsored events conducted from January 2000 to November 2002 were reviewed.

We concluded that the events were not planned and conducted in accordance with Federal laws and SBA policies and procedures. The following problems were identified:

- Cosponsorship events were not properly executed.
- Excess registration and gift funds were not identified or disposed of properly.
- Solicited funds were used for activities unrelated to cosponsored events.
- Gift funds were solicited from unapproved and proscribed (prohibited) sources.

As a result, cosponsors inappropriately accumulated \$248,000 in profits from cosponsored events, used \$121,000 for activities unrelated to the events, and received \$7,500 from prohibited sources. In addition, gift funds totaling \$122,500 were solicited by District employees in support of cosponsored activity from donors whose participation could result in a potential conflict of interest.

These deficiencies occurred because: (i) district personnel did not follow the SOP concerning cosponsorships; (ii) oversight of District cosponsorship operations by headquarters personnel was not adequately accomplished; and, (iii) formal operating procedures did not thoroughly address cosponsorship operations and funds management.

We recommend that the Associate Administrator for Field Operations require the Los Angeles District Office to:

- follow Federal law and SBA guidance in executing, conducting and reporting cosponsored events and in soliciting and accepting gifts to the Agency;
- appropriately budget cosponsored events and accurately report the sources and use of all funds;
- deposit excess registration fees with the U.S Treasury, retain them for the next cosponsored event, or return fees to the participants on a pro-rata basis;
- deposit all SBA gift funds in the Business Assistance Trust Fund (BAT Fund) or disburse them per the donors' request; and
- solicit and accept gift funds only from allowable sources or sources that SBA legal counsel has determined not to have an apparent conflict of interest with the Agency.

The Associate Administrator agreed with the recommendations but took exception to some statements in the finding.

A. Background

The Small Business Act (Act) gives SBA the statutory authority to sponsor recognition events as well as a wide range of training and counseling events to assist small business. Section 8(b)(1)(a) of the Act authorizes SBA to plan and conduct activities singularly or jointly with public and private entities. Jointly planned activities are "cosponsorships". The Act requires that cosponsorships and the resulting relationship be evidenced by a written agreement between the parties detailing the responsibilities, expectations of each party relative to event activities, finances, publications, reporting documentation, and access to records. A cosponsorship is any activity, event, or initiative authorized under Section 8(b)(1) of the Act and planned or conducted jointly or identified with SBA through the use of the SBA logo, name, or seal.

The Act also gives SBA the statutory authority to accept cash and other types of gifts for use in providing technical and managerial assistance to small businesses and for any other uses in carrying out the purpose of the Act. Standard Operating Procedure (SOP) 90 75 2, Chapter 2 allows SBA to charge fees for cosponsored activities and events only. The fees SBA and the cosponsor can charge participants are limited to the amount needed to cover the direct costs of events. Chapter 3 of the SOP dictates how SBA solicits and accepts gifts and how they must handle such funds. Chapter 4 details record-keeping and accounting requirements.

B. Scope and Methodology

The objective of the audit was to determine whether District cosponsored events were properly executed and funds were adequately managed and monitored in accordance with Federal laws and SBA policies and procedures.

To answer the objective, all cosponsored events from January 2000 through November 2002 as shown in Appendix A were reviewed. These nine cosponsored events generated \$709,200 through registration and exhibitor fees and contributions (solicited gifts) from participants, donors, and sponsors. During the audit, financial records and related documents were analyzed and District and cosponsor personnel were interviewed.

Audit fieldwork was performed from September 2002 through February 2003. The fieldwork was performed in Los Angeles and Glendale, CA. The audit was conducted in accordance with generally accepted Government Auditing Standards.

C. Statement on Management Controls

Our assessment of management controls, policies, procedures, and practices included those applicable to the operational and financial management of the District's cosponsorship events and, to a limited degree, those of SBA headquarters to monitor the district's activities. The audit was performed to determine whether the District complied with Federal and SBA requirements when conducting cosponsored 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, did

disclose material management control weaknesses at the District and SBA headquarters level which impacted the District's ability to comply with Federal laws and SBA's policies and procedures.

RESULTS OF AUDIT

FINDING Cosponsored Events were not Adequately Monitored or Managed

Cosponsored events were not planned nor conducted in accordance with applicable Federal and SBA guidelines. Specifically:

- Cosponsored events were not properly executed.
- Excess registration and gift funds were not identified or disposed of properly.
- Solicited funds were used for activities unrelated to cosponsored events.
- Gift funds were solicited from unapproved and prohibited sources.

These deficiencies occurred because: (i) district personnel did not follow the SOP concerning cosponsorships; (ii) oversight of district cosponsorship operations by headquarters personnel was not adequate; and, (iii) formal operating procedures did not thoroughly address cosponsorship operations and funds management. As a result, cosponsors inappropriately accumulated \$248,000 in profits from cosponsored events, used \$121,000 for activities unrelated to the cosponsored events, and received \$7,500 from prohibited sources. In addition, District employees in support of the cosponsored activity, solicited \$122,500 in gift funds from donors whose participation could result in a potential conflict of interest.

Cosponsored events were not properly executed

The Act and SBA guidance outlines the processes and documents required for cosponsorships. Specific requirements include:

- a preliminary financial review,
- completed cosponsorship approval forms,
- an authorization number,
- an executed co-sponsorship agreement or written summary,
- a final financial report, and
- a cosponsored event results assessment.

SBA guidance also states that printed cosponsor material must display the event approval number and contain a disclaimer statement. Further, a file for each cosponsored event must be maintained.

None of the nine cosponsored events fully complied with established requirements. Specifically,

- ***Preliminary Financial Reviews.*** Chapter 2(7) (a) of SOP 90 75 2 requires a preliminary financial review of the cosponsored event's fund sources to ensure adequate funding and SBA must not provide additional financial support. Also charged fees can cover only the direct costs of the cosponsored event. Required reviews were not performed for any of the nine events. The

District did not perform reviews because funding sources or uses were not disclosed nor was a funding analysis performed. As a result, the District could not ensure event funding was adequate or that participants were charged an appropriate fee for their participation in cosponsored events.

- ***Cosponsorship Approval Forms.*** Chapter 2(7)(b)(1) of the SOP states that each proposed cosponsored event must be reviewed by legal counsel and approved by the designated approving official. Review and approval of cosponsored events should be documented on the three-part cosponsorship approval form. None of the events had the required completed approval form or other evidence that the events were reviewed and documented. Therefore, the events were not properly approved.
- ***Authorization Number.*** Chapter 2(7) (c) requires each cosponsored event be assigned an authorization number. Seven of the events were not assigned the required number. Of these, six were the largest and most visible of the District's cosponsored events, SBA's annual Minority Enterprise Development (MED) Week Breakfasts and Small Business Week Luncheons.
- ***Cosponsorship Agreements or Written Summaries.*** Chapter 2(7) (d) (2) requires the District to document in writing the expectations of cosponsored events. The District did not require cosponsorship agreements or written summaries for the six largest events (documentation was not available for the other events). As a result, SBA did not have oversight of event related activities, recourse against improper activities, approval over materials disbursed under the SBA's name, logo, or seal, or knowledge of the use of funds raised and disbursed on behalf of the event.
- ***Final Financial Reports.*** Chapter 4(24)(c) requires the District to obtain and review final financial reports that include:
 - ✓ a list of all (SBA, cosponsors, and donors) financial contributions by name and amount;
 - ✓ a summary of registration or attendance fees;
 - ✓ an accurate description of fund use including the disposition of excess funds after the completion of the cosponsored event; and
 - ✓ the number of attendees.

The District did not require or maintain the required final financial and reporting documents. As a result, it was not known that cosponsors accumulated \$248,000 in profits from cosponsored events, used \$121,000 of this amount for activities unrelated to the events, and received \$7,500 from prohibited sources.

In addition, the District solicited \$122,500 in gift funds from donors whose participation could result in a potential conflict of interest.

- **Results Assessments.** Chapter 4(24) (e) requires an assessment of cosponsorship results. Assessments were not identified for any of the events. Discussions with SBA, cosponsor senior management, and event-planning personnel indicated successes and areas of improvement were examined following each event. Neither the district office nor the cosponsor, however, had documented result assessments.
- **Printed Cosponsorship Materials.** According to Chapter 2(8), printed cosponsorship material must: (i) display the event's authorization number; (ii) indicate the event is not an endorsement of the co-sponsor, its opinions, services, or products; and (iii) offer reasonable accommodations for the disabled. None of the printed materials for the six largest events contained the required disclaimers and statements. Documentation for the remaining three events was not available for review.
- **Cosponsorship File.** Chapter 4, (24) requires the District to maintain a complete file for each cosponsored event. The file must contain a cosponsorship agreement or written summary, a completed Cosponsorship Approval Form, a final financial report, and a results assessment of the event. Six of the nine events did not have files. Documentation for the remaining three events did not meet the SOP's requirements.

Excess funds not identified or disposed of properly

Chapter 4(24)(c)(3) of SOP 90 75 2 required the District to maintain accurate descriptions of all receipts, expenditures, and disposition of any excess funds. Chapter 2(12)(b) and (c) details how to dispose of excess funds either by deposit with the U.S. Treasury or use for the next cosponsored event. According to 31 USC Section 1321(b), excess gift funds must be deposited in the BAT Fund or disbursed per the donors' request.

Excess funds of \$243,644 (\$6,800 in registration fees and \$236,844 in gift funds) were collected during the MED Week and Small Business Week events (see Table 1). Additional registration fees of as much as \$7,500 for three other cosponsorships may have been collected but this could not be determined because the District did not require final financial reports.

Table 1. Excess Funds Collected During Co-sponsored Events (2000-2002)

	<u>Total Event Costs</u>	<u>Fees Collected</u>	<u>Excess (Deficit) Income from Fees</u>	<u>Gifts Received</u>	<u>Excess (Deficit) Sponsorship Funds Collected</u>
MED Week 2000	\$119,180 ^{1/}				\$109,765 ^{2/}
MED Week 2001	116,365 ^{1/}				44,990 ^{2/}
MED Week 2002	161,459 ^{1/}	\$5,219	(\$156,240)	\$183,200	26,960
Small Business Lunch '00	^{3/}				
Small Business Lunch '01	41,566	32,995	(8,571)	27,500	18,929
Small Business Lunch '02	24,805	31,605	6,800	36,200	36,200
La Opinion-#99-914-27	^{4/}				
US-Philippine Business Council, Inc.	^{4/}				
City of Long Beach/CSULB	^{4/}				
Excesses Generated			<u>\$6,800</u>		<u>\$236,844</u>
			Amount to be Deposited to BAT Fund		<u>\$236,844</u>

1/ The District did not get the required final budget information for the co-sponsored event.

2/ The Minority Business Opportunity Committee did not have financial reports from 2000 & 2001 MED Week events. The California Community Foundation, the 3rd-party fiduciary body for the events, provided financial reports. The reports did not distinguish between registration and other event fees and gift funds received. MED Week 2002 and 2001 resulted in annual excesses of \$109,765 (\$228,945 less \$119,180) and \$44,990 (\$161,355 less \$116,365), respectively

3/ The Los Angeles Chamber of Commerce did not have information for the 2000 event.

4/ The co-sponsorship file did not contain the required final financial budget.

Solicited funds were used for activities not related to cosponsored events

According to SOP 90752, funding received in support of cosponsored events must be used to pay cosponsorship expenses. Alternatives are provided for proper disposition of excesses, none of which allow the direct use of funds for non-cosponsorship activities or expenses. Approximately \$121,000 donated on behalf of the MED Week cosponsored events from 2000-2002 were spent on expenses not related to the events. Details of individual transactions follow:

- Med Week funds totaling \$77,000 were transferred to an account to reimburse the [FOIA Ex. 4] for unidentified expenses and what purportedly was SBA's unpaid share of FOIA Ex. 4 expenses.

Description	2000	2001	2002	Total
Transferred to Ex. 4 accounts	\$31,000	\$46,000	\$0	\$77,000
Totals	\$31,000	\$46,000	\$0	\$77,000

- Funds of \$19,856 were used to pay for receptions, breakfasts and luncheons, as well as retreats hosted by and for the cosponsor.

Description	2000	2001	2002	Total
General Membership Appreciation Breakfast	\$10,528			\$10,528
Ex. 4 Holiday Reception	4,509			4,509
Ex. 4 Appreciation Celebration/Thank-you Luncheon	2,790			2,790
General Membership Meeting	1,334			1,334
Ex. 4 Staff Retreat		\$695		695
Totals	\$19,161	\$695	\$0	\$19,856

- Funds of \$14,123 were spent on office expenses and fees for managing MED Week accounts. In addition, duplicate billings for two entries were identified but no support was found for another.

Description	2000	2001	2002	Total
Account Fees (Close-out, Management, Unrealized Gains/losses)	\$3,691	\$3,028		\$5,719
Office Expenses	5,307			5,307
Duplicate Billings	2,030			2,030
Unidentified			\$67	67
Totals	\$11,028	\$3,028	\$67	\$14,123

- Funds totaling \$10,000 were used to establish a scholarship fund for a thirteen-year-old.

Description	2000	2001	2002	Total
FOIA Ex. 4	\$10,000	\$0	\$0	\$10,000
Totals	\$10,000	\$0	\$0	\$10,000

Funds were inappropriately solicited, accepted, and documented

Chapter 3(18)(a) of SOP 90 75 2 states donors whose gift would create a conflict of interest may not be solicited or accepted. The SOP specifically restricts solicitation and acceptance from SBA grantees, awardees, or potential litigants. A case-by-case legal counsel determination is required for any source having a business relationship with SBA. Each gift solicitation and acceptance must be documented on SBA Forms 1960 and 1962. In addition, a cumulative log of all gifts received must be maintained.

District personnel solicited gift funds totaling \$7,500 from FOIA Ex. 4 a prohibited source. Also gifts of \$122,500 from 15 lenders were solicited without the benefit of case-by-case determinations to ensure there were no conflicts of interest. The potential for a conflict of interest existed because these same lenders received about \$12 million in loan guaranty purchases over the three-year period under review (see Appendix B).

Reasons for noncompliance

The noncompliances occurred due to a lack of adherence to SOP 90 75 by the District, inadequate oversight by SBA headquarters and regional personnel, and insufficient guidance concerning cosponsorship activities.

- As noted, the District ignored many of the requirements called for in SOP 90 75 2.
- Prior to May 2002, SBA headquarters oversight of the district's cosponsorship activities consisted of reviewing information received from the district and approving for-profit cosponsorship agreements and budgetary information.
- SOP 90 75 2 was the only procedure that specifically addressed cosponsorship activities. Specifically, it did not:
 - ✓ restrict the collection of fees to only for-profit cosponsorships,
 - ✓ clearly describe procedures for depositing funds into the BAT fund,
 - ✓ provide a procedure for identifying prohibited sources, or
 - ✓ address asset accountability within a cosponsorship.
- In April 2002, SBA issued additional guidance on SBA sponsored activities. Then in November 2002, a draft version of the SBA Outreach Handbook providing information about planning and managing sponsored, cosponsored, and other outreach activities was disseminated to key agency personnel. While prior guidance was improved, the situations discussed in this report were not covered.

Recommendations

We recommend that the Associate Administrator for Field Operations require the Los Angeles District Office to take the following actions:

- 1.A. Follow Federal law and SBA guidelines in executing, conducting, and reporting cosponsored events and soliciting and accepting gifts to the Agency.
- 1.B. Appropriately budget cosponsored events and accurately report the sources and use of all funds.
- 1.C. Deposit excess registration fees with the U.S Treasury, retain them for the next cosponsored event, or return fees to the participants on a pro-rata basis.
- 1.D. Deposit all SBA gift funds in the Business Assistance Trust Fund (BAT Fund) or disburse them per the donors' request.
- 1.E. Solicit and accept gift funds only from allowable sources or sources that SBA legal counsel has determined not to have an apparent conflict of interest with the Agency.

Management Comments

The Associate Administrator for Field Operations agreed with the recommendations but took exception to some statements in the finding. From the facts provided, the Associate Administrator stated it appears that the nine cosponsored events were not planned and conducted by the LADO in accordance with Federal law and SBA policies and procedures. He did not agree, however, that headquarters oversight was inadequate under current SBA policy. Further, SBA's formal operating procedures (SOP 90 75 2) are considered adequate to provide field offices the general guidance they need to properly conduct and document cosponsored activities. The Associate Administrator's comments are summarized as follows (See Appendix C for the full text of the comments).

Cosponsored events were not properly executed

While SBA cannot reach firm conclusions about the actual execution of these nine events based on the draft report alone, it is agreed that the cosponsorships were either not properly approved or, if properly approved, not properly documented.

Excess funds not identified or disposed of properly

It appears from Table 1 in the draft report that attendee fees exceeded the event costs at one event only, the Small Business Lunch '02. In that case, \$6,800 should have been returned to the attendees on a pro-rata basis and in accordance with the law and SBA policy, or retained by the cosponsor for a future cosponsored event. In all other instances, no records are available or the attendee fees did not exceed the stated expenses.

Solicited funds were used for activities not related to cosponsored events

SBA assumes that when OIG refers to “solicited funds” it is referring to a cosponsor’s cash injection into the cosponsorship and not a gift to the Agency under SBA’s gift acceptance authority. Based on that assumption, SBA agrees that it is inappropriate to spend such cosponsorship funds on anything other than the planned cosponsorship activity. Thus, if the funds labeled “Gifts Received” under Table 1 of the Draft Report are really cosponsors’ cash injection, then, the \$26,960 left over from MED Week 2002, for example, could have, depending on the understanding between the parties, reverted to the cosponsor for its own use. Likewise, Small Business Lunch ’01 had \$18,929 left over after expenses, and that could have been returned to the cosponsor for its own use.

Funds were inappropriately solicited, accepted, and documented

To the extent that the District failed to complete the required case-by-case determination and properly document that analysis, as required by SBA policy, before soliciting and accepting gifts from participant lenders, SBA agrees that such funds were not solicited, accepted, and documented appropriately. It does not follow, however, that such funds could not ultimately be accepted by SBA under current policy.

Recommendations

The Associate Administrator concurred with the recommendations but provided suggested changes to the wording.

OIG Evaluation of Office of Field Operations Comments

The comments were responsive to the recommendations. Suggested changes were made to Recommendations 1.A., 1.B, 1D, and 1.E. Recommendation 1.C. was modified to include SBA’s recommended change plus an additional step--that excess fees could be deposited with the U.S. Treasury.

The Associate Administrator took issue with our position relative to oversight responsibility, the adequacy of SOP guidance, and “actual” execution of the reviewed events. While there is significant guidance in the SOP, there are areas in need of clarification or improvement. We will address the adequacy of SOP guidance and oversight responsibilities in a follow on report. Our evaluation of SBA’s comments to the finding is included below.

Cosponsored events were not properly executed

Based on the Draft Report alone, the Associate Administrator indicated he cannot reach firm conclusions about the actual execution of these nine events. He stated that SBA does agree that the nine cosponsorships were either not properly approved or, if properly approved, not properly documented.

As stated in the report, the “actual execution” of the events is not limited to the District actions at the actual event, but encompasses all actions taken from the conception of the event until all closeout transactions and reports are completed and submitted. As such, the OIG position remains that the reviewed activities were not properly executed.

Excess funds not identified or disposed of properly

SBA’s comments are noted and accepted by the OIG.

Solicited funds were used for activities not related to cosponsored events

Under the assumption that “solicited funds” were the cosponsor’s cash injection, Office of Field Operations concluded excess funds used for non-cosponsorship activities were conceivably the property of the cosponsor and could be used in any way the cosponsor liked. OIG found the “solicited funds” were provided by donors and were therefore subject to the requirements set forth in SOP 90 75 2, Chapter 2-12. Allowing excess funds to be used for non-cosponsorship activities absent specific donor directions is contrary to SBA policy.

Funds were inappropriately solicited, accepted, and documented

SBA’s comments are noted and accepted by the OIG.

List of Cosponsored Events Reviewed

Appendix A

<u>ID#</u>	<u>Co-Sponsor Name</u>	<u>Event/Activity</u>	<u>Date</u>
1	[1 on 1 tutoring between established and new business owners	FY1999-2000
2		Financing breakout session	1-Nov-01
3		US Philippine Trade & Cultural Expo	1-Aug-00
4		MED Week 2000	1-Nov-00
5	FOIA	MED Week 2001	31-Oct-01
6	Ex. 4	MED Week 2002	8-Oct-02
7		SBA Week 2000	1-Mar-00
8		SBA Week 2001	1-Mar-01
9]	SBA Week 2002	1-Mar-02

Gift Sources that Required Case-by-Case Determinations

Appendix B

<u>Event</u>	<u>Year</u>	<u>Donor</u>	<u>Gift Amount</u>	<u>Guaranty Purchase Request During the Year</u>	<u>Number of Loans Purchased</u>	<u>Amount Paid on Purchase(s)</u>
MED Week	2000		\$5,000	Yes	2	\$96,046
MED Week	2000		\$5,000	Yes	1	\$41,256
MED Week	2000	FOIA	\$5,000	Yes	2	\$85,628
MED Week	2000		\$5,000	Yes	1	\$59,297
MED Week	2000		\$5,000	Yes	4	\$487,042
MED Week	2000	Ex. 4	\$25,000	Yes	1	\$70,902
MED Week	2000		\$5,000	Yes	8	\$1,057,487
Donation			\$5,000	Yes	5	\$588,832
FY 2000 Totals			\$60,000	8	24	\$2,486,490
MED Week	2001		\$10,000	Yes	60	\$1,611,221
MED Week	2001		\$2,500	Yes	4	\$724,828
MED Week	2001	FOIA	\$2,500	Yes	1	\$48,912
MED Week	2001		\$2,500	Yes	5	\$674,528
MED Week	2001	Ex. 4	\$15,000	Yes	6	\$173,458
FY 2001 Totals			\$32,500	5	76	\$3,232,947
MED Week	2002		\$10,000	Yes	22	\$1,441,164
MED Week	2002		\$5,000	Yes	3	\$476,959
MED Week	2002	FOIA	\$2,500	Yes	3	\$887,300
MED Week	2002		\$2,500	Yes	3	\$1,555,275
MED Week	2002	Ex. 4	\$10,000	Yes	17	\$1,858,120
FY 2002 Totals			\$30,000	5	48	\$6,218,818
Grand Total			\$122,500	18*	148	\$11,938,255

* There were 18 requests for payments on SBA guaranteed loans from 15 different lenders.

DATE: October 14, 2003

TO: Robert G. Seabrooks
Assistant Inspector General for Auditing

FROM: Mike Pappas
Associate Administrator for Field Operations

SUBJECT: Draft Report – Audit of Cosponsorship Activities
Los Angeles District Office

This is SBA's formal response to the Office of Inspector General's (OIG) Draft Audit Report, dated August 27, 2003, referred to above.¹

OIG reviewed nine Los Angeles District Office (LADO) cosponsored activities conducted between January 2000 and December 2002. The Draft Report concludes that the LADO did not comply with Federal laws and SBA policies and procedures in planning and conducting the nine events. Specifically, 1) cosponsorship events were not properly executed; 2) excess registration and gift funds were not identified or properly disposed of; 3) solicited funds were used for activities not related to the cosponsored events; and 4) gift funds were solicited from unapproved and [proscribed] sources. According to the Draft Report, the nine events reviewed by OIG generated \$709,200 through registration and exhibitor fees and "contributions (solicited gifts) from participants, donors, and sponsors."²

OIG concluded that "[t]hese deficiencies occurred because: (i) district personnel did not follow the SOP [90 75 2] concerning cosponsorships; (ii) oversight of district cosponsorship operations by headquarters personnel was not adequately accomplished; and (iii) formal operating procedures did not thoroughly address cosponsorship operations and funds management.

OIG has determined that the Recommendations are prospective only.

SBA agrees that from the facts provided, it appears that the nine cosponsored events were not planned and conducted by the LADO in accordance with Federal law and SBA policies and procedures. For example, because of the lack of documentation at the district office level, OIG could not make specific findings with regard to the financing of each event. OIG did conclude, however, that "cosponsors accumulated \$248,000 in profits from cosponsored events, used \$121,000 for activities unrelated to the cosponsored events, and received \$7,500 from proscribed sources. In addition \$122,500 in gift funds from donors whose participation could result in a

¹ After a telephone discussion with OIG's Los Angeles Office, it was agreed that the recommendations contained in the LADO Draft Report are prospective in nature. The Agency was also granted a two-week extension to respond to the Draft Report. The new deadline is October 14, 2003.

² We assume that "contributions (solicited gifts) from participants, donors, and sponsors" really means attendee fees, donations made to SBA pursuant to SBA's gift acceptance authority, and cash injections made by a cosponsor in support of the cosponsored activity.

potential conflict of interest was solicited by Los Angeles District Office employees in support of the cosponsored activity.” SBA does not agree that headquarters oversight was inadequate under current SBA policy or that SBA’s formal operating procedures (SOP 90 75 2) are inadequate to provide field offices the general guidance they need to properly conduct and document cosponsored activities. If the SOP had been followed by the LADO, the problems noted in the Draft Report could have been avoided.

Included in the Draft Report is one finding with four subparts, and five recommendations.

DISCUSSION OF SPECIFIC OIG FINDING AND SUBFINDINGS

Finding: Cosponsored Events Were Not Adequately Monitored or Managed

As stated above, SBA agrees that from the facts provided, it appears that the nine cosponsored events were not planned and conducted by the LADO in accordance with Federal law and SBA policies and procedures. SBA does not agree that headquarters oversight was inadequate under current law or SBA policy, or that SBA’s formal operating procedures are inadequate as they relate to the nine events covered by the Draft Report. All nine cosponsored events were conducted with a single non-profit cosponsor, and each event was valued at less than \$200,000. Therefore, under current law and SBA policy, these nine cosponsored events did not require oversight by SBA’s headquarters. The LADO District Director had the authority to approve each of the nine cosponsorships covered by the Draft Report, and SBA’s Oversight Committee in Washington, D.C. was not required to approve them. SBA does agree, however, that the results of this and previous audits suggest that, even though the Small Business Act does not require it, SBA should re-evaluate its current approval policies.

While SBA agrees that the SOP could be written in a more comprehensive manner, we do not agree that it is inadequate to guide a district office through a cosponsored activity. Had the LADO followed the current rules and kept the required records, the outcome of this audit would have been different. For instance, SBA Form 1615 requires that the Responsible Program Official sign a certification that he or she review the anticipated sources and uses of funds for the proposed cosponsorship and specifically determine that, “[h]aving considered the objectives, participants, and agenda of the Cosponsorship, the statutory limitations upon cosponsorships, conflict of interest principles, and the preliminary financial review, I find that the Cosponsorship complies with the provisions of SOP 90 75 2 and request legal clearance.” This form was not executed, therefore there is no record that these determinations were made or that a formal legal review was conducted. The process of making those determinations and the conduct of a formal legal review should have identified and corrected many of the problems noted in the Draft Report.

Finding 1a: Cosponsored Events Were Not Properly Executed.

Based on the Draft Report alone, SBA cannot reach firm conclusions about the actual execution of these nine events. SBA does agree that the nine cosponsorships were either not properly approved or, if properly approved, not properly documented. In addition, the Small Business Act and SOP 95 70 2 require that the appropriate SBA official approve all printed cosponsorship material in advance and that it contain a prominent disclaimer (that the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the

cosponsor). The SOP also requires that all non-profit cosponsorships be documented by a memorandum to the file and that the SBA authorization number be displayed on cosponsorship material, as well as a statement that "All SBA programs are extended to the public on a nondiscriminatory basis", if applicable. These requirements were not followed by the LADO.

Finding 1b: Excess Funds Not Identified or Properly Disposed Of.

Section 8(b)(1)(A) of the Small Business Act requires that "only minimal charges may be imposed on any small business concern to cover the direct costs of providing the assistance." This requirement is also stated in the SOP. If a cosponsorship is funded by both attendee fees and cash injection from a cosponsor, attendee fees must be the first source of funds used to pay expenses. SOP 90 75 2, ¶ 12.b. (If a cosponsor's money is left over and attendance fees were charged, that is a clear indication that attendees were charged too much.) If there are leftover fees, these fees should be returned to the attendees on a pro-rata basis or be retained by the cosponsor for future cosponsored events. The last option is the most practical suggestion, so long as the small businesses have not been "overcharged" by design.

Leftover cash injection from cosponsors should be returned, on a pro-rata basis, to each of the cosponsors. Instead of accepting such returned funds, cosponsors could donate it to SBA under SBA's gift acceptance authority. Such funds, however, must be deposited into the Agency's revolving trust account at Treasury, commonly known as the Business Assistance Trust Fund (BAT Fund). Any such donations must be accepted in furtherance of the Agency's mission and spent in accordance with the terms of the gift (trust).

It appears from the Draft Report, Table 1, that attendee fees exceeded the event costs at one event only, the Small Business Lunch '02. In that case, \$6,800 should have been returned to the attendees on a pro-rata basis and in accordance with the law and SBA policy, or retained by the cosponsor for a future cosponsored event. In all other instances, no records are available or the attendee fees did not exceed the stated expenses.

Finding 1c: Solicited Funds Were Used For Activities Not Related to Cosponsored Events.

SBA assumes that when OIG refers to "solicited funds" it is referring to a cosponsor's cash injection into the cosponsorship and not a gift to the Agency under SBA's gift acceptance authority. Based on that assumption, SBA agrees that it is inappropriate to spend such cosponsorship funds on anything other than the planned cosponsorship activity. Thus, if the funds labeled "Gifts Received" under Table 1 of the Draft Report are really cosponsors' cash injection, then, the \$26,960 left over from MED Week 2002, for example, could have, depending on the understanding between the parties, reverted to the cosponsor for its own use. Likewise, Small Business Lunch '01 had \$18,929 left over after expenses, and that could have been returned to the cosponsor for its own use.

Finding 1d: Funds Were Inappropriately Solicited, Accepted, and Documented.

According to the Draft Report, LADO personnel solicited a \$7,500 cash gift from the FOIA Ex. 4 FOIA Ex. 4 a small business development center (SBDC) and an SBA grantee. We agree that the solicitation and acceptance of a gift from an SBA grantee is a violation of Agency policy. SOP 90 75 2, ¶ 18.c. states that, "[e]mployees must not solicit or

accept gifts on behalf of SBA from proscribed sources, SBDCs, SBI's, SCORE chapters, 7(j) program providers, or other SBA grantees." The making of such a gift by the grantee may also be a violation of the Office of Management and Budget's Circulars #21 and #87, which prohibit Federal grantees from making such donations.

SBA is aware of OIG's concerns relating to the propriety of soliciting and accepting gifts from SBA participant lenders, but, for now, SBA's long-standing policy is reflected in SOP 90 75 2. SBA's statutory gift acceptance authority (15 U.S.C. 637(b)(1)(G)), does not require a conflict of interest analysis or declare that SBA cannot accept gifts from participant lenders or any other entity conducting business with SBA. Nevertheless, SBA has established an internal policy requiring that a conflict analysis be completed before any entity or individual is solicited for a gift. This would include participant lenders, but they are not "proscribed sources" under the SOP because they are not recipients of "SBA Assistance" (as that term is defined under Part 105 of SBA's regulations). Therefore, before a gift can be solicited or accepted from a participant lender the Responsible Program Official must determine, after receiving advice of counsel, that an apparent conflict of interest does not exist. SOP 90 75 2, ¶18.b. Thus, gifts from participant lenders may be accepted on a "case-by-case" basis. The existence of a request to honor SBA's guaranty on a particular loan, however, has never, in of itself, been deemed to create an apparent conflict of interest with the bank involved in the purchase request.

To the extent that the LADO failed to complete the required case-by-case determination and properly document that analysis, as required by SBA policy, before soliciting and accepting gifts from participant lenders, SBA agrees that such funds were not solicited, accepted and documented appropriately. It does not follow, however, that SBA could not ultimately accept such funds under current policy.

Guidance Provided by SOP

We believe that the existing SOP (90 75 2) does provide field offices sufficient guidance regarding many if not all of the issues discussed in the Draft Report, especially since the SOP has been supplemented by procedural notices and guidance from other program offices. For example, the Office of General Counsel's draft "Outreach Handbook" has been issued to the field, which provides legal guidance relating to appropriations law, ethics rules, travel rules and other related topics (but was not intended to be a procedural manual). Field offices successfully complete cosponsorships all the time, and in accordance with existing law and SBA policy. The Draft Report correctly cites eight different SOP requirements not adhered to by the LADO in the execution of the nine cosponsored events at issue. It also states that some of the reasons for noncompliance by the LADO were the failure of the SOP to provide specific guidance on 1) procedures for depositing money in the BAT Fund, 2) procedures for identifying proscribed sources, or 3) address asset accountability within a cosponsorship. In addition, the Draft Report states that the SOP should restrict the collection of fees to only for-profit cosponsorships. SBA response to these issues is as follows:

- Although the SOP requires that gift funds be deposited in the BAT Fund, it is true that it does not contain specific procedures for using the BAT Fund. See SOP 90 75 2, ¶ 21. The procedures for depositing and withdrawing money from the BAT Fund are contained in Procedural Notice #2000-664, issued by the Office of the Chief Financial

Officer. The CFO's office is the appropriate program office to provide such guidance, since it is the office that administers the BAT Fund.

- The SOP does clearly identify proscribed sources. See ¶¶ 20 and 21 of Appendix 2 of the SOP.
- Although the SOP does not set forth detailed asset accountability requirements, it does require that the Responsible Program Official and legal counsel conduct a preliminary financial review before authorizing a cosponsorship (and a budget is required for legal clearance), a financial report must be maintained in the DO, and the DO must file a quarterly report to headquarters that contains sources and uses of all funds. See ¶ 26.
- 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 cosponsored expenses. See ¶ 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. [FOIA Ex. 5

FOIA Ex. 5

]

Thus, if the SOP and other Agency guidance had been followed by the LADO, many if not all of the problems covered by the Draft Report would have been avoided.

Recommendations and SBA's Response

The Draft Report recommends that the Associate Administrator of Field Operations require the LADO to:

- 1.A** Follow SBA guidelines in executing cosponsored events. *SBA agrees: however the recommendation should be reworded as follows: "Follow Federal law and SBA policy and procedures in executing, conducting and reporting cosponsored events, and in soliciting and accepting gifts to the Agency."*
- 1.B** Appropriately identify excess registration and gift funds. *SBA agrees: however the recommendation should be reworded as follows: "Appropriately budget a cosponsored event and accurately report the sources and uses of all funds."*
- 1.C** Deposit excess registration funds with the U.S. Treasury or retain for the next cosponsored event. *SBA agrees: however the recommendation should be reworded as follows: "Return excess registration fees on a pro-rata basis to the attendees or have cosponsor retain for future cosponsored events."*
- 1.D** Deposit excess gift funds in the Business Assistance Trust Fund (BAT Fund) or disperse them per the donor's instructions. *SBA agrees: however the recommendation should be reworded as follows: "Deposit all SBA gift funds in the Business Assistance Trust Fund (BAT Fund) and disperse them in accordance with the terms of the trust."*
- 1.E.** Solicit gift funds only from approved sources. *SBA agrees: however the recommendation should be reworded as follows: "Solicit and accept gift funds only from allowable sources or sources that SBA legal counsel has determined not to have an apparent conflict of interest with the Agency at that time."*

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