

**REVIEW OF SBA PROCEDURES
FOR CASH GIFTS**

AUDIT REPORT NUMBER 5-28

SEPTEMBER 30, 2005

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**U.S. Small Business Administration
Office of Inspector General
Washington, DC 20416**

AUDIT REPORT
Issue Date: September 30, 2005
Number: 5-28

TO: [FOIA Ex. 6]
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SUBJECT: Review of SBA Procedures for Cash Gifts

The Office of Inspector General (OIG) completed an audit of the Small Business Administration's (SBA) procedures for soliciting, accepting, holding, and utilizing cash gifts. This report presents the results of our review.

BACKGROUND

SBA has gift acceptance authority under sections 4(g), 8(b)(1)(g), 5(b)(9) and 7(k)(2) of the Small Business Act (the Act). Employees may solicit and accept gifts on behalf of the Agency after proper approvals, including a conflict of interest determination by SBA's Office of General Counsel (OGC). All gifts must be used in a manner consistent with the Act and any terms imposed by the donor. Cash gifts are required to be held in a separate account called the Business Assistance Trust Fund (BAT Fund).

The Office of Strategic Alliances (OSA) is the lead program office for management of the Agency's gift acceptance authority, although several other SBA offices have roles including OGC, the Office of Field Operations (OFO), the Office of the Chief Financial Officer (OCFO), and the Office of Procurement and Grants Management (OPGM). SBA has provided policies and procedures for using its gift acceptance authority in Standard Operating Procedure (SOP) 90 75 2, *Cosponsorship* (effective August 7, 1995); SOP 70 50 3, *Legal Responsibilities* (effective February 17, 1999); SBA Procedural Notice 2000-677, *Restatement of Procedures for the Business Assistance Trust Fund (BAT Fund)* (effective June 18, 2004); SBA Procedural Notice 7000-154, *Delegation of Authority and New Gift Solicitation/Acceptance Procedures* (effective March 24, 2005); and SBA Policy Notice 0000-1808, *Changes to SBA's Authority Relating to Cosponsored, SBA-Sponsored Activities, and Gifts* (effective February 1, 2005). Attachment 1 contains a detailed depiction of SBA's current procedures for soliciting, accepting, holding and utilizing solicited cash gifts based on our review of applicable policies and procedures, as well as interviews with responsible SBA offices.

SBA's reauthorizing legislation, signed by the President on December 7, 2004, amended the Act and added a new subsection 4(g)(2) that provides, "AUDITS.—Any gift, devise, or bequest of cash accepted by the Administrator shall be held in a separate account and shall be subject to semi-annual audits by the Inspector General of the Administration who shall report his findings to the Congress." Accordingly, we are addressing the new statutory requirement with this audit. The Act was also amended by adding subsection 4(g)(3), which requires that OGC perform a conflict of interest determination on potential donors prior to gift solicitation or acceptance. Before this statutory change, SBA procedures permitted district offices to decide if a conflict of interest was required before soliciting gifts from certain donors.

From December 8, 2004 to May 31, 2005, SBA deposited 18 cash gifts to the BAT Fund totaling \$20,800. All cash gifts were received by the [FOIA Ex. 6] District Office (the District Office).

OBJECTIVES, SCOPE, AND METHODOLOGY

The audit objectives were to determine if SBA was following established procedures for soliciting, accepting, holding, and utilizing cash gifts. We examined all 18 cash gifts deposited to the BAT Fund from December 8, 2004 to May 31, 2005 (2 gifts that were received in 2004 and 16 gifts that were received in 2005). The two cash gifts received in 2004, totaling \$1,250, were captured in our review because they were not posted to the BAT Fund until February 2005. Denver Finance Center (DFC) officials explained that the delay in posting was due to delays in upgrading software for SBA's administrative accounting system. The 18 cash gifts were utilized by the District Office in support of Minority Enterprise Development Week in 2004 and Small Business Week in 2005.

Additionally, we examined documentation related to 184 donor solicitations that resulted in the 18 gifts received during our scope. For FY 2004, the District Office solicited 18 lending institutions and received cash gifts from 5 donors totaling \$9,500. For FY 2005 (through May 31), the District Office solicited 166 potential donors and received cash gifts from 16 donors

totaling \$19,550. Two of the cash gifts received in 2004, totaling \$8,000, are specifically mentioned in this report because the donors were found to be prohibited sources in 2005 and, therefore, the District Office was not permitted to solicit or accept gifts from these donors in 2005.

To examine SBA's procedures for soliciting, accepting, holding, and utilizing cash gifts for the audit scope period, we reviewed applicable laws, policies and procedures relating to the Agency's gift acceptance authority. Additionally, we interviewed officials and examined documentation from the District Office, as well as from OSA, OGC, OFO, OCFO, and OPGM. Further, we reviewed a draft Quality Service Review (QSR) for the District Office that was conducted March 29-31, 2005. Due to resource constraints, we did not test for cash gifts that may have been deposited to accounts through means other than SBA's administrative accounting system.

We performed audit fieldwork from May to August, 2005 in Washington, DC. The audit was conducted in accordance with Government Auditing Standards.

AUDIT RESULTS

Our review found that although the cash gifts reviewed were properly deposited to the BAT Fund, SBA did not perform certain required procedures for soliciting, accepting, and utilizing cash gifts. Specifically, we found that the District Office did not properly perform review and authorization procedures prior to gift solicitation and acceptance of the 2004 gifts we reviewed, which may have resulted in SBA improperly accepting cash gifts totaling at least \$8,000 from prohibited sources. We also found that: (a) OSA did not provide OGC complete information for the 2005 conflict of interest determinations, (b) controls were not adequate to ensure that conflict of interest determinations were completed prior to gift acceptance, (c) OPGM obligations for requisition expenditures were not timely, and (d) the District Office did not properly follow certain record-keeping and accountability procedures. As a result, SBA did not fully comply with applicable requirements for the solicitation and acceptance, as well as record-keeping and accountability, of gifts.

Based on SBA management's response to the draft audit report, we removed draft Finding 2 and Recommendations 2A and 2B, and the "Other Matter" section. SBA management's response is included in its entirety as Attachment 2.

Finding 1: The District Office Did Not Perform Required Procedures for 2004 Gifts

The District Office did not provide evidence that it performed a legal review of both the proposed solicitation and the acceptance of the 2004 cash gifts, as required by SBA procedures. More importantly, the District Office did not determine whether soliciting and accepting the cash gifts would create an actual or apparent conflict of interest. As a result, the District Office may have accepted cash donations from prohibited sources or for impermissible purposes.

District Counsel Did Not Provide Legal Concurrence for 2004 Cash Gifts

The district counsel did not sign SBA Form 1962, Gift Approval Form, for the 2004 cash gifts. As a result, there was no assurance that legal compliance was obtained for the solicitation and acceptance of the gifts.

The Gift Approval Form has two parts. According to SOP 90 75 2, Part 1 must be signed by an approving official, with concurrence by legal counsel as to legal compliance, for all gift solicitations. Part II must also be signed by the approving official, with concurrence by legal counsel as to legal compliance, for all gift acceptances. Legal concurrence on Parts 1 and 2 of the Gift Approval Form indicates counsel's opinion that the solicitation and acceptance of the gift meet applicable requirements. SOP 70 50 3, Chapter 7, states that in reviewing a proposed solicitation, counsel should consider whether:

- the gift is for a permissible purpose,
- the gift is to be donated by a permissible source (legal counsel may conduct a conflict of interest determination of the donor),
- the approving official is authorized to approve the particular gift, and
- provisions of SOP 90 75 regarding special guidance on particular types of gifts is applicable.

SOP 70 50 3 also states that in reviewing the proposed acceptance of a gift, counsel should consider whether:

- the conditions, if any, imposed by the donor are legally permissible;
- the named approving official is authorized to accept the particular gift; and
- Oversight Committee concurrence is necessary.

We found no evidence that the district counsel considered these items and performed the necessary review prior to gift solicitation and acceptance. Additionally, when the auditors questioned the district counsel about her legal review of the 2004 gifts, she stated she was unfamiliar with the 2004 solicitation, the Gift Approval Form for that year's solicitation, and the required procedures in SOP 70 50 3 related to gifts. The district counsel later provided an email to the auditors that indicated that she was involved in reviewing the draft solicitation letter for the 2004 gifts, but this email did not provide evidence that a legal compliance review of the gift solicitation and acceptance was performed. Therefore, the solicitation and acceptance of gifts in 2004 was not in accordance with SBA procedures, and the approving official should not have signed the solicitation letters. Due to the fact that SOP 70 50 3 and SOP 90 75 2 were superseded by the enactment of SBA's new statutory gift acceptance authority, we did not include recommendations for this section of Finding 1.

District Office Did Not Perform Conflict of Interest Determinations for 2004 Cash Gifts

The District Office did not provide evidence that conflict of interest determinations were performed for prospective donors in 2004 prior to solicitation. As a result, SBA may have accepted gifts from prohibited sources totaling at least \$8,000.

Prior to statutory changes in SBA's reauthorizing legislation, effective December 7, 2004, Agency procedures permitted district offices to decide if a conflict of interest determination was required before soliciting gifts from certain donors. SOP 90 75 2 states that there are three potential sources of gifts: allowable sources, prohibited sources, and those sources requiring a conflict of interest determination. Sources requiring a conflict of interest determination are defined as having a business relationship with SBA, including Participating Lenders, Certified Development Companies (CDCs), SBA contractors, etc. The approving official, with assistance from legal counsel, must determine whether the gift would create an actual or apparent conflict of interest if accepted. In reaching this decision, the approving official and legal counsel must consider, among other things, the size of the potential gift, the size of the entity, the nature and extent of SBA's business relationship with the entity, and the aggregate number and value of gifts given to SBA by the entity.

According to a district official, all 18 solicited donors in 2004 had a business relationship with SBA. Therefore, the District Office should have performed a conflict of interest determination prior to solicitation. In discussions with the district counsel, she stated she was unaware of the gifts solicited and accepted in 2004 and, consequently, she did not perform a conflict of interest determination. We also requested from the approving official evidence that a conflict of interest determination was performed and he was unable to provide sufficient evidence.

As a result of the District Office not performing the required conflict of interest determinations, SBA may have accepted cash donations from prohibited sources. In 2004, the District Office solicited 18 lending institutions, and received cash gifts from 5, totaling \$9,500, in support of Minority Enterprise Development Week. In 2005, the same organizations were solicited to raise money for Small Business Week. Due to a change in the law, OGC performed the conflict of interest determinations for those prospective 2005 donors and found 2 of the 5 donors to be prohibited sources. One donation, for \$7,500, came from an organization that was a Small Business Lending Company and another, for \$500, came from an organization that had merged with a company that owned more than 70 percent of a Small Business Investment Company. Therefore, two donations accepted by SBA in 2004 came from organizations that were determined by OGC to be prohibited sources in 2005 and we believe that SBA should review the situation and determine if the donations should be returned.

Recommendation

- 1A. We recommend that the Deputy General Counsel/Designated Agency Ethics Official perform a conflict of interest determination for each of the organizations that donated cash in 2004, and if any are found to have been a prohibited source at the time, determine the appropriate course of action regarding the gifted funds.

SBA Management's Response:

SBA management disagreed with Finding 1, but agreed with the related Recommendation 1A. SBA management stated that when the cash gifts at issue were accepted, there was no requirement that legal counsel perform a conflict of interest determination. Instead,

under SOP 90 75 2, the approving official was required to perform the conflict of interest determination with assistance from legal counsel. Furthermore, SBA management acknowledged that legal counsel was required to perform a legal review and sign the Gift Approval Form, but continued that there was no requirement that legal counsel maintain evidence of such a legal review or consider all factors listed in SOP 70 50 3, Chapter 7.

SBA management also questioned whether one of the donations referred to in the finding (in the amount of \$7,500) was actually accepted by the District Office or sent by the donor directly to the DFC.

OIG Evaluation of SBA Management's Response:

We agree with SBA management's response that prior to the Agency's new gift acceptance authority, legal counsel was not required to perform a conflict of interest determination on potential sources of gifts. Instead, it was the responsibility of the approving official, with the assistance of legal counsel, to decide if the gift would create an actual or apparent conflict of interest in accordance with SOP 90 75 2. As a result, we revised Finding 1 to acknowledge that the district counsel was not solely responsible for the District Office not performing a conflict of interest determination in 2004. With regard to the district counsel's required legal review in accordance with SOP 70 50 3, we acknowledge that the SOP did not require counsel to maintain evidence of the review or perform all the procedures. However, when district counsel was questioned about the legal review, she stated that she did not perform a legal review or sign the Gift Acceptance Form. In addition, the General Accountability Office's *Standards for Internal Control in the Federal Government*, cites as examples of control activities that all transactions and other significant events need to be clearly documented and the documentation should be readily available for examination. All documents and records should also be properly managed and maintained.

We also agree that the District Office may not have "accepted" the \$7,500 questioned by SBA management in their response and that the donation may have been sent directly to the DFC who deposited the funds into the District Office's BAT Fund account. As a result, we revised the applicable language in Finding 1.

Finding 2: OSA Did Not Provide OGC Complete Information for Conflict of Interest Determinations

We did not find documentation showing that OSA provided OGC complete information for the conflict of interest determinations of potential gift sources in 2005. By not providing such information to OGC, it is possible that gift sources were mistakenly found not to have a real or apparent conflict of interest with SBA, which may have resulted in the Agency accepting gifts from prohibited sources.

According to OGC and OSA officials, the Conflict of Interest Checklist (the checklist), which can be found in the OGC Handbook, lists the information collected when making a conflict of interest determination on a potential gift donor. The three-page checklist asks such

questions as whether the individual or entity is an applicant for, or recipient of: (1) an 8(a), SDB or HUBZone program certification; (2) an SBIC license; (3) an SBA guaranteed or direct loan; (4) a certificate of competency; (5) a certification as a Microloan Intermediary Lender; (6) a certification as a Small Business Lending Company; or (7) a surety bond guaranty. If the individual or entity is found to have a business relationship with SBA (e.g., a Participating Lender or CDC) the following additional information is required to be provided to OGC:

- the size of the entity in employees, branch offices, and annual revenue;
- nature and extent of SBA's business relationship;
- if there were non-routine matters pending;
- whether the entity was being considered for extension or expansion;
- potential denial of liability; and/or
- if there was significant repair on an SBA guaranty.

OSA was responsible for gathering the information to answer the checklist questions for the District Office's potential cash gift donors in 2005. In reviewing the entities that required a conflict of interest determination for the District Office's 2005 solicitations, 172 were Participating Lenders and 8 were CDCs. Due to the entities' business relationship with SBA, the additional information mentioned above should have been provided to OGC. Based on our review of documentation from OSA and OGC related to OGC's 2005 conflict of interest determinations, OSA did not provide OGC the required additional information or gather documentation to determine if the entity:

- Had an SBA guaranteed or direct loan.
- Had a certificate of competency.
- Had a certification as a Microloan Intermediary Lender.
- Had a contract or grant with SBA.
- Was an affiliate, parent, subsidiary, officer, director, or 20% or more owner of any of the entities found to be a proscribed source.
- Was a 7(j) grant recipient.
- Was the subject of an on-going IG audit or investigation.
- Was an agent or representative of a SBA program applicant or recipient.
- Was a trade association whose members SBA regulates.
- Was a public official.
- Was a member of an SBA advisory council.

We acknowledge that several of these items may not be applicable to the Participating Lenders and CDCs that were solicited by the District Office. Nonetheless, OSA's files should have contained evidence to support that the items were not applicable. Some of the items (such as whether the entity is the subject of an on-going IG audit or investigation, or if an individual representing the entity is a member of an SBA advisory council) are applicable to any type of entity and could indicate a conflict of interest if answered affirmatively.

The OSA official who gathered and provided the information to OGC on the 180 organizations in 2005 no longer works at SBA and, therefore, was not available for comment.

However, we reviewed OSA's files and gave OSA officials the opportunity to provide the missing information, but no additional information was provided as of the report date. The OGC attorney advisor who performed the conflict of interest determination for the 180 organizations stated that all required checklist information was provided by OSA. However, based on a review of OGC's files, we did not find the missing information.

In discussions with OSA, they explained how they gather conflict of interest information for OGC. First, an office provides OSA a list of the organizations they would like to solicit or accept a gift from. OSA then makes requests to designated contact persons in ten SBA program offices to "vet" the organizations and inform OSA if there is a relationship between any of the organizations and their office. The designated contacts have received training and a copy of the checklist so they understand what is required, according to OSA officials. Once all program offices have performed their vetting procedures, OSA gathers the information and reviews the results before providing it to OGC.

Based on deficiencies identified in this finding, we believe that vulnerabilities remain in the current process for gathering the information for a complete conflict of interest determination. We also believe that program offices should be held accountable for providing complete and accurate information.

Recommendations

We recommend that the Deputy General Counsel/Designated Agency Ethics Official:

- 2A. Determine what information OGC attorneys need to perform a complete conflict of interest determination on potential gift donors.

We recommend that the Associate Administrator for Strategic Alliances:

- 2B. Establish a system to gather the information determined to be needed for OGC to perform a complete conflict of interest determination on potential gift donors (per recommendation 2A), and establish controls that will help ensure the information provided by Agency officials is maintained and is complete and accurate.

SBA Management's Response:

SBA management disagreed with draft report Finding 3 (now Finding 2) and Recommendations 3B, 3C, and 3D. They also disagreed with draft report Recommendation 3A as written. SBA management stated that the checklist was created prior to the Reauthorization Act to serve merely as a guideline, and is not approved Agency policy. Accordingly, it is not a required form.

SBA management also stated for the 2005 gift solicitation that OGC and OSA agreed, for efficiency and expediency, that the information presented by OSA could be provided in a different manner than usual. The spreadsheet prepared by OSA provided OGC with all positive hits from the program offices as well as the District Office and does not document negative

information. The spreadsheet, for example, does not show that an entity is not a grantee. Accordingly, if no positive information was provided, OSA and OGC understood the program response was negative. SBA management also stated that while OGC does rely on OSA to provide accurate information, OGC was satisfied that OSA provided the necessary information for OGC to perform a conflict of interest determination.

OIG Evaluation of SBA Management's Response:

We agree with SBA management that the checklist is not a required form per Agency policy. However, based on interviews with OSA and OGC officials, our understanding was that the checklist was the primary tool used by the Agency for gathering the necessary information for conflict of interest determinations on potential gift donors. Additionally, OSA reaffirmed during audit fieldwork that all the information required by the checklist is gathered by their office and provided in summary format to OGC. Accordingly, for the conflict of interest determinations performed in 2005, we expected to find evidence in OSA's files that information was gathered to address the checklist items.

As far as SBA management's description of the 2005 conflict of interest documentation that was provided to OGC by OSA, we do not believe that their description is completely accurate. We acknowledge that OSA prepared a spreadsheet summarizing all the information gathered, but we do not agree that the spreadsheet contained only "hits" or positive information. The spreadsheet provided both positive information (e.g., when an office had a business relationship with the potential gift donor, etc.) and negative information. The negative information appears to be annotated by the statement "clear" in the applicable cells on the spreadsheet and positive information appears to be annotated by the statement "check notes" in the applicable cells on the spreadsheet. OGC was also provided supporting documentation, including emails received by OSA from the program offices that showed both negative and positive information. During audit fieldwork we requested that OSA provide us the missing information detailed in Finding 2. To date, we have not received a response from OSA regarding this matter. As a result, the narrative of the finding remains unchanged.

We did, however, modify the recommendations upon review of SBA management's response and discussions with OGC. We removed draft report Recommendation 3B because OGC stated that it was satisfied OSA provided the necessary information to conduct the 2005 conflict of interest determinations and we believe that they would only make this statement after they had reviewed the conflict of interest determination and supporting documentation. Related draft report Recommendations 3C and 3D were also removed. We modified draft report Recommendation 3A (now 2A) and added a new Recommendation 2B to clarify that it is OGC's role to determine what information is to be gathered for conflict of interest determinations and OSA should develop a process to gather the necessary information and ensure it is complete and accurate.

Finding 3: Management Controls Should Be Strengthened to Help Ensure Conflict of Interest Determinations Are Made Prior to Gift Solicitation and Acceptance

Although SBA has provided guidance and training to employees regarding conflict of interest determinations, we believe that additional management controls should be implemented to help ensure that such determinations are completed for potential donors prior to gift acceptance. According to section 4(g)(3) of the Small Business Act, “—No gift, devise, or bequest shall be solicited or accepted under the authority of this subsection if such solicitation or acceptance would, in the determination of the General Counsel, create a conflict of interest.” We learned through discussions with OSA and OCFO officials that there are no management controls to ensure that employees are complying with Agency guidance by obtaining the required conflict of interest determinations prior to solicitation or acceptance of cash gifts. We believe that such oversight controls are necessary to provide assurance that the Agency is in compliance with the law. Additionally, based on the deficiencies identified in this report, training and guidance have not always been sufficient to ensure employees comply with required gift procedures.

The following are some additional controls related to conflict of interest determinations that could be implemented by OSA. DFC could notify OSA when they receive deposit information designated for the BAT Fund account from the Field Cashiering System (FCS) daily feed. OSA would then review the donation to ensure OGC had performed the required conflict of interest determination on the donor. If the required determination had not yet been made, OCFO could take appropriate action with regard to the deposit until a determination is made.

Another control could be to require the official who inputs the cash deposit information into FCS to certify that OGC had found the donor free of conflict and acceptable. OCFO may be able to create a control within FCS requiring the official's certification before the deposit can be submitted to DFC or the certification could be annotated in the comment box along with other required information. DFC would then check for the required certification prior to posting the donation to the administrative accounting system.

Recommendation

- 3A. We recommend that the Associate Administrator for Strategic Alliances work with the Chief Financial Officer to establish adequate management controls to help ensure that cash gifts deposited to the BAT Fund are not made available for expenditure until a conflict of interest determination has been completed by OGC.

SBA Management's Response and OIG's Evaluation of Management's Response:

SBA management agreed with draft report Finding 4 (now Finding 3), but disagreed with the wording of the recommendation. As a result, the finding remains unchanged and the recommendation was modified to reflect SBA management's suggested wording.

Finding 4: OPGM Obligations for Procurement Expenditures Were Not Timely

For each of the four requisitions reviewed as part of the audit, OPGM had not obligated funds¹ within five working days after the approving official approved the commitment document, as OPGM has agreed to doing as long as submitting offices provide proper documentation, per SBA Procedural Notice 2000-677. For two requisitions, with commitment documents sent January 4, 2005 and June 5, 2005, respectively, funds had still not been obligated as of July 29, 2005. For a third requisition, the commitment document was sent on November 4, 2004, but funds were not obligated until December 14, 2004 (26 elapsed working days). For a fourth requisition, the commitment document was sent on June 6, 2005, but funds were not obligated until June 27, 2005 (15 elapsed working days). We could not determine why the delays occurred for the four requisitions. Although an auditor sent emails marked high importance to OPGM's director on July 25, 2005 to inquire about the delays, the director did not respond in time for release of the draft audit report. Also, when auditors interviewed the director on July 18, 2005, she stated that OPGM has not been able to abide by the five-day rule, but instead tries to establish obligations to expend funds as soon as possible, given current staffing. When OPGM officials are unable to obligate funds in a timely manner, vendors providing goods or services to SBA may not be paid timely, possibly leading to late payment charges.

Recommendation

We recommend that the Assistant Administrator for Administration:

- 4A. Take steps necessary to streamline OPGM's procedures to meet that office's commitment to obligate funds within five working days after the approving official approves the commitment document, provided that submitting offices provide proper documentation. Alternatively, if the five-day rule is unrealistic, ensure that OPGM revises its commitment to obligate funds to reflect an achievable turnaround time, given current staffing.

SBA Management's Response and OIG's Evaluation of Management's Response:

SBA management agreed with draft report Finding 5 and Recommendation 5A (now Finding 4 and Recommendation 4A), noting that it is appropriate for OPGM to revise its five-day timeframe for a commitment to expend funds. We did not make any changes to the finding or its recommendation.

Finding 5: The District Office Did Not Follow Certain Record-Keeping and Accountability Procedures

The District Office could not provide auditors with copies of all the gift letters and forms, and did not report to OSA gifts received in Fiscal Year 2004, as required by SOP 90 75 2. Much

¹ By "obligate funds" we mean where funds are earmarked for a bona fide need, the supplier is defined, and an invoice can be expensed. Invoices cannot be paid unless there is an approved obligation in the administrative accounting system.

of the missing documentation, and the non-reporting of gifts to OSA, was due to oversights, according to the District Office's administrative officer. However, without copies of the required forms and letters maintained in the gift files, there was no record of approvals by the parties involved and no assurance that all the necessary letters and forms were actually created and provided to, and received from, donors. Also, without the timely reporting of gifts, OSA may not have accurately reported the Agency's gift activity to various internal and external audiences. Finally, we found that the District Office's BAT Fund reconciliation spreadsheet could be improved to better meet SBA requirements.

Required Gift File Documents Not Provided

The District Office did not retain copies of certain documents in its gift files, as SBA procedures require. Specifically, we found the following exceptions:

- For the 2004 and 2005 gifts, copies of gift solicitation letters were missing for 17 out of 18 donor organizations.
- For the 2004 and 2005 gifts, copies of the SBA Form 1961, Gift Acceptance Letter, were missing for 17 out of 18 donor organizations.
- For the 2004 gift solicitation, copies of the SBA Form 1960, Declaration of Gift Form, for two donor organizations were not signed by either the donor or an approving SBA official.
- For the 2005 gift solicitation, copies of the Declaration of Gift Form were missing for 6 out of 16 donor organizations. For the 10 that were provided, each was signed by an official of the donor organization, but none were signed by an approving SBA official.

According to SOP 90 75 2, each originating office must maintain a file for each gift it accepts on behalf of SBA. The file must contain the completed Gift Approval Form, the gift solicitation letter, the Declaration of Gift Form, and the Gift Acceptance Letter.

We requested that the District Office provide a copy of the solicitation letter, Gift Approval Form, Gift Acceptance Letter, and Declaration of Gift Form for each of the donations in our audit scope. In response to our request, the District Office's administrative officer stated that the 17 solicitation letters and 17 Gift Acceptance Letters were missing. The administrative officer further stated that a Gift Acceptance Letter was provided to all 18 donors along with a Declaration of Gift Form for the donor to complete and return. The District Office did not have 6 of the 18 Declaration of Gift Forms because the forms had not yet been returned by those donors as of the date of our request. For the 12 Declaration of Gift Form copies that were provided, but not approved by SBA, the official authorized to solicit and accept the gifts stated that he was not aware of the approval requirement.

By not maintaining copies of all the required documentation in the District Office's gift files, there was no record of approvals by the parties involved and no assurance that all the necessary letters and forms were actually created and mailed to donors. Specifically, without a

copy of the solicitation letter for each donor, there was no record of the purpose of the solicitation, who was solicited and when, or who signed the letter. Without a copy of each Declaration of Gift Form, there was no record of the donor's intent for the gift or if any conditions were attached. Without a copy of the Gift Acceptance Letter, there was no record of SBA acknowledging the donor's gift and any conditions that may have been attached thereto.

2004 Gifts Not Reported to OSA

The District Office did not report to OSA gifts received in Fiscal Year 2004, as required by SBA procedures. According to SOP 90 75 2, each responsible program official must submit to OSA quarterly reports for gifts if there has been any such activity during the quarter. The reports must contain, to the extent applicable, the name of the donor, the type of gift, the amount or estimated amount of the gift, the aggregate amount given by that donor during the preceding 12-month period, the specific use of the gift, and the recognition given to the donor by SBA.

The District Office's administrative officer stated that quarterly reports were not written or provided to OSA due to an oversight. The effect of such unreported gifts from this or any other SBA office was that OSA was unable to accurately report the Agency's gift activity, as needed periodically for parties within and outside the Agency.

District Office BAT Fund Spreadsheet Needs Improvement

We reviewed the spreadsheet maintained by the District Office to reconcile BAT Fund deposits and expenditures, and found that it could be improved to better meet the requirements of SBA Procedural Notice 2000-677. Specifically, the Notice contains a requirement for offices to maintain a spreadsheet to track individual BAT Fund expenditures against individual donations and to provide a simple audit trail to verify that the office is spending BAT Funds as intended by the donor. According to an OCFO official, the Notice was sent with an attached spreadsheet that can be used as a model for meeting the Agency's requirements. After reviewing that attachment, we concluded that the District Office's spreadsheet could be improved by more closely following the model, which includes additional columns and other detail. For example, one worksheet is organized *by event*, with rows for deposits to fund that event as well as for expenditures related to that event, which better enables the user to separately track BAT Fund expenditures against individual donations. Another worksheet, used as a summary, shows balances available by program code and includes a column with the appropriate accounting string to query the administrative accounting system for funds availability.

The District Office's administrative officer stated that he did not believe that including other columns and further detail to his reconciliation spreadsheet would add any relevant information. He noted, for example, that all the BAT Fund gifts received by his office were absolute and unrestricted, with no specific conditions attached, so there was no need for a column tracking restricted versus unrestricted gifts. We believe, however, that without the additional columns and other detail provided in the spreadsheet example e-mailed as an attachment to the Notice, it is difficult to separately track BAT Fund deposits and expenditures and provide a simple audit trail to verify that the office is spending BAT Funds as intended by the donor.

Recommendations

We recommend that the District Director for the [FOIA Ex. 6] District Office ensure that:

- 5A. Office gift files and reporting comply with all of SBA's required record-keeping and accountability policies and procedures.
- 5B. The BAT Fund reconciliation spreadsheet maintained by the District Office more closely follows the model provided as an attachment to SBA Procedural Notice 2000-677 to improve compliance with certain requirements of the Notice.

We recommend that the Associate Administrator for Strategic Alliances:

- 5C. Determine if gift reports continue to be a necessary requirement and amend SOP 90 75 2 accordingly.
- 5D. Develop and issue interim guidance, while SOP 90 75 2 is being revised, to inform SBA employees of the current record-keeping and accountability policies and procedures they are required to follow.

SBA Management's Response:

SBA management partially agreed with draft report Finding 6 (now Finding 5), agreed with Recommendation 6C, disagreed with Recommendation 6B, and disagreed with the way Recommendations 6A, 6D, and 6E were written. SBA management stated that due to changes in the Agency's gift authority, subsequent policy and procedural notices have changed the role of district offices in the gift acceptance process. SBA management agrees that district offices should retain documentation for procedures they are required to perform.

Additionally, SBA management stated that the quarterly gift report requirement may no longer be necessary due to the statutory changes in SBA's gift authority. They further stated that because information related to all gifts passes through OSA at some point, OSA should be aware of gift activity and, therefore, does not need to be updated quarterly. Instead, gift reports should be provided upon OSA's request.

In their response to our recommendations, SBA management did not agree that OSA should develop oversight procedures to ensure that all SBA offices maintain gift files and quarterly reports that comply with SBA record-keeping and accountability procedures. They also stated that due to future change's to SOP 90 75 2, including SBA's record-keeping and accountability requirements, time will be wasted developing oversight procedures that may soon be outdated.

OIG Evaluation of Management's Response:

We agree with SBA management that district offices should only retain documentation for procedures they are required to perform. However, OSA officials stated in an interview that

even with the statutory changes to the Agency’s gift authority, SBA officials are still required to complete the solicitation letter, Gift Acceptance Letter, and Declaration of Gift Form when soliciting and/or accepting a gift. Since the completion of these forms and letters continues to be required, we believe that copies of them should continue to be maintained in gift files, and this part of the finding remains as written in the draft report. We did, however, modify draft report Recommendation 6A (now 5A) by removing mention of SOP 90 75 2, and combined draft report Recommendation 6A with 6B.

We also agree with SBA management that quarterly reports may no longer be necessary, but our finding addresses gift solicitations and acceptances performed prior to the changes in SBA's gift authority. Therefore, this part of the finding remains as written in the draft report.

We recognize that revising SOP 90 75 2 is a major undertaking for the SBA offices involved and will likely take some time to be completed. We believe, however, that there is a need for guidance in the interim to inform SBA employees of the record-keeping and accountability policies and procedures that continue to be required since passage of the various statutory changes to SBA’s gift authority. Accordingly, we modified draft report Recommendation 6D (now 5D) and removed mention of “oversight procedures.”

Finally, we removed draft report Recommendation 6E as the Office of Administration addressed the recommendation prior to issuance of the report. Also, the changes mentioned above resulted in draft report Recommendation 6C becoming 5B.

* * * * *

The findings included in this audit report are based on the conclusions of the Office of Inspector General’s Auditing Division. The findings and recommendations are subject to review, management decision and action by your office in accordance with existing Agency procedures for audit follow-up and resolution.

Please provide us your management decision for each recommendation addressed to you within 30 days. Your management decisions should be recorded on the attached SBA Forms 1824, “Recommendation Action Sheet,” and show either your proposed corrective action and target date for completion, or explanation of your disagreement with our recommendations.

Should you or your staff have any questions, please contact Robert G. Hultberg, Director, Business Development Programs Group at (202) 205-[FOIA Ex. 2].

Attachments

Attachment 1

SBA's Current Process for Solicitation, Acceptance, Holding, and Utilization of Solicited Cash Gifts

Solicitation

- Office selects the organization to solicit.
- Office gathers required information about the organization and sends to OSA.
- OSA asks selected SBA program offices to “vet” the organization for business relationships with those offices.
- OSA gathers the vetting results from program offices, reviews the results and forwards to OGC requesting a conflict of interest determination be made for the potential donor organization and SBA.
- OGC reviews the gathered information and provides a conflict of interest determination to OSA.
- OSA provides the originating office with OGC's results. If OGC determines that no conflict of interest exists, then the originating office continues the solicitation process.
- After reviewing the solicitation, the originating office's approving official signs Part I of the Gift Approval Form, naming the organization and official authorized to perform the solicitation.
- Authorized official solicits the organization.



Acceptance

- Donor provides the originating office with a Declaration of Gift Form, describing the gift, the donor's intent, any donor relationship with SBA, and the value of the gift.
- Office reviews the Declaration of Gift Form and the approving official signs the form to approve the gift.
- Office's approving official reviews acceptance of the gift and signs Part 2 of Gift Approval Form, naming the donor organization and authorized official who may accept the gift.
- Office sends donor the Gift Acceptance Letter and receives the cash donation.
- Upon receipt of the donation, the originating office deposits the gift into the Field Cashiering System (FCS).



Holding

- DFC extracts items designated as BAT Fund deposits from the FCS daily log.
- DFC manually inputs the deposit information and creates a billing document, followed by a receipt document.
- When DFC has completed accounting for the deposit in the administrative accounting system, an email is sent to the Office of Planning and Budget (OPB), which allots deposited funds to originating office.
- OPB makes deposited funds available to be spent by originating office.



Utilization

- Office prepares and approves an SBA Form 2 (Requisition for Supplies, Services and Federal Assistance).
- Administrative Officer or Budget Coordinator inputs the commitment document into the administrative accounting system, attaching the Form 2.
- OPGM receives an alert that the commitment document has been submitted and reviews the Form 2 to ensure that funds are not being spent on certain prohibited items (e.g., alcoholic beverages).
- Upon approval of the requisition and after the vendor has been selected, OPGM creates a purchase order, requesting supplies to be ordered, and obligates the approved amount to be paid to the selected vendor to provide goods/services.
- When the originating office receives the vendor's invoice for goods/services received, the administrative officer dates it and forwards it to DFC for payment.



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

Attachment 2

DATE: September 21, 2005

TO: Robert G. Seabrooks
Assistant Inspector General for Auditing
Office of the Inspector General

FROM: Robert L. Gangwere [FOIA Ex. 6] FOR GANGWERE
Deputy General Counsel/Designated Agency Ethics Official
Office of General Counsel

Adela M. Soriano [FOIA Ex. 6]
Associate Administrator for Strategic Alliances
Office of Strategic Alliances

[FOIA Ex. 6]
District Director
[FOIA Ex. 6] District Office Ex 6

Thomas A. Dumaresq [FOIA Ex. 6]
Chief Financial Officer
Office of the Chief Financial Officer

Darryl K. Hairston [FOIA Ex. 6]
Assistant Administrator for Administration
Office of Administration

RE: Response to Office of Inspector General's Draft Audit Report "Review of SBA Procedures for Cash Gifts."

We are responding to the Office of Inspector General's (OIG) Draft Audit Report (draft report) referenced above.

As reported in the draft report, OIG "completed an audit of SBA's procedures for soliciting, accepting, holding and utilizing cash gifts" with the objective of determining whether "SBA was following established procedures." In its audit, OIG "examined documentation related to the solicitation of all donors in 2004 and 2005." We note, that as FY2005 is not yet over, this appears to be an overstatement of the scope of the audit. As discussed below, the Agency raises several objections to the draft report.

The Agency's new gift authority, enacted on December 8, 2004, dramatically impacted the nature of the Agency's gift acceptance authority and its procedures. In particular, the new statutory requirement that the General Counsel make a conflict of interest

determination has rendered many of the Agency's gift acceptance procedures, set forth in Standard Operating Procedure (SOP) 90 75 2, *Cosponsorship*, null and void. In essence, the new statutory gift authority changed the conflict of interest determination from a management decision to a legal determination. As discussed more fully below, OIG in its draft report failed to note these significant changes in authority and procedure and, therefore, applied superseded procedures to gifts solicited and/or accepted after December 8, 2004.

In fairness to OIG, we recognize that OIG had several meetings with Agency staff, including OGC, on gift solicitation and acceptance issues. However, as OIG is aware, the Agency, tasked with, among other things, promulgating regulations required by the new statutory authority and drafting guidance to the field, has been occupied with a host of other issues. Consequently, until presented with OIG's draft report, the Agency had not fully focused on the extent of the impact wrought by the Agency's new statutory gift authority on the existing SOP procedures with regard to the conflict of interest analysis. As discussed below, the Agency has now focused on several key issues raised by OIG's draft report and responds to them in detail.

In addition, as OIG acknowledged in its draft report, the Agency has planned "to revise SOP 90 75 2 after SBA has developed and approved the regulations related to these statutory changes." Agency plans to revise its general gift solicitation and acceptance procedures are part of a much broader effort, started in or about FY2001, to bring about changes in the way SBA conducts its sponsored activities as well as other outreach and marketing activities. OIG is fully aware of these efforts and of the Agency's plans with regard to the drafting of a new SOP. Therefore, the Agency believes it is inappropriate for OIG, at this stage, to attempt to dictate what the Agency will do and the timeframes in which the Agency should do it. As discussed below, the Agency will not agree to recommendations which direct the Agency (and thus subject the Agency to audit management requirements) to do what it had already long planned to do and is, indeed, in the process of doing.

In its draft report, OIG made six findings with fourteen recommendations, each of which is addressed below. To the extent OIG's findings and recommendations are based on the above, we disagree with them.

DISCUSSION OF OIG'S FINDINGS

- A. As to Finding 1, the Agency disputes statements in the draft report regarding what procedures were required in FY2004 for gift solicitation and acceptance.

OIG's Finding 1 in the draft report stated, "The District Office Did Not Perform Required Procedures for 2004 Gifts." In support of the above finding, the OIG found 1) that the District Office did not provide evidence that its district counsel performed a legal review of the solicitation and the acceptance of the 2004 cash gifts as required and 2) the district counsel did not perform a conflict of interest determination for the prospective donors.

The OIG concluded that the district office may have accepted cash donations from “prohibited sources or for impermissible purposes.”

In FY2004, SOP 90 75 2 set forth the “required procedures” for soliciting and accepting gifts. At paragraph 18(b), the SOP states, in pertinent part:

Sources Requiring a Case-by-Case Determination. 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. In reaching a decision, the *approving official* ... must consider the size of the potential gift; the size of the entity; the nature and extent of SBA’s business relationship with the entity, including any relevant contracting history; whether the same SBA program office and unit of the entity are involved in the relationship and in the potential gift; the aggregate number and value of gifts made by the entity to SBA, SCORE, SBDCs and SBIs during the preceding 12-month period; and any other relevant factors.

(emphasis added). At paragraph 20(a) & (b), the approving official, with concurrence by legal counsel as to legal compliance, is required to execute Part I (for solicitations) and Part II (for acceptance) of the SBA Form 1962, “Gift Approval Form.”

SOP 70 50 3, *Legal Responsibilities*, required district counsel to “concur with proposed gifts to SBA both prior to solicitation and prior to acceptance.” Chapter 7, Para. 2(a). Counsel’s signature on Parts 1 and 2 of SBA Form 1962 “indicate[d] [counsel’s] opinion that the solicitation and acceptance [met] applicable requirements.” *Id.* Paragraphs 2(b) & (c) set forth guidelines which counsel “should consider” but were not mandatory. Specifically, Paragraph 2(b)(2) stated that legal counsel “may need to conduct a conflict of interest analysis regarding the donor.”

Therefore, the Agency takes issue with OIG’s interpretation of what is required when soliciting and accepting gifts. In FY2004, when the cash gifts at issue were accepted, there was no “requirement” that legal counsel perform a conflict of interest determination. Under Agency procedure at the time (SOP 90 75 2), it was the approving official who was required to perform (with assistance from counsel) the conflict of interest determination. The draft report is silent as to whether the approving official actually performed such a conflict analysis. Counsel was, however, required to perform a legal review and sign the Gift Approval Form. However, there was no requirement that counsel maintain evidence of such legal review or that counsel must consider all factors listed in SOP 70 50 3, Chapter 7. We agree that counsel was required, upon completion of the legal review, to sign the Gift Approval Form.

In the draft report, OIG noted that two donations “accepted” by the District Office in 2004 came from organizations that were determined by OGC to be prohibited sources in 2005. Based upon our review of documentation provided by the District Office, there is

some question as to whether one of these donations, in the amount of \$7,500, was actually “accepted” by the District Office or whether it was sent by the donor directly to the Denver Financial Center (DFC). In any case, as discussed below, OGC agrees to do a conflict of interest determination on all cash gifts accepted in FY2004.

B. As to Finding 2, the Agency disagrees with OIG regarding the SOP procedures required for gifts solicited and/or accepted after December 8, 2004.

OIG Finding 2 states, “The District Office did not perform required procedures for 2005 gifts.” In support of this finding, OIG found that 1) the approving official did not authorize the gift solicitations and acceptances prior to their occurrences, noting that the approving official signed the Gift Approval Forms after the gifts had been solicited; 2) the district counsel did not approve the cash gifts for legal compliance because she did not sign the Gift Approval Form for legal concurrence; and 3) as a result of these deficiencies, there was no assurance that the approving official and district counsel performed proper review procedures. As discussed below, the Agency disagrees with OIG on these findings.

OIG’s findings are premised upon certain procedures set forth in SOPs 90 75 2 and 70 50 3 relating to the approving official and district counsel’s responsibilities. However, many of these administrative procedures were superseded by the enactment of the Agency’s new statutory gift acceptance authority and/or were changed by SBA Policy Notice #0000-1808, *Changes to SBA’s Authority Relating to Cosponsored, SBA-Sponsored Activities and Gifts*, effective February 1, 2005.

On December 8, 2004, the President signed into law the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (Reauthorization Act). Pub. L. 108-447, Division K, 118 Stat. 2809-644(2004). Among other things, the statute expanded SBA’s gift acceptance authority and made significant changes to the approval process for gift acceptance. Specifically, the Reauthorization Act added Section 4(g)(3) to the Small Business Act which states:

CONFLICTS OF INTEREST. No gift, devise, or bequest shall be solicited or accepted under the authority of this subsection if such solicitation or acceptance would, in the determination of the General Counsel, create a conflict of interest.

On February 1, 2005, the Agency issued SBA Policy Notice #0000-1808, highlighting the recent statutory changes made by the enactment of the Reauthorization Act and setting forth amendments to SOP 90 75 2, which became effective immediately. Specifically, Paragraph 18 of the SOP was amended, substituting the responsibility for conflict of interest determinations from the approving official to the General Counsel. Paragraphs 20(a) & (b) were also amended, by replacing the words “legal counsel” in both paragraphs with “General Counsel.” According to the Notice, Agency personnel were to continue “to refer to SOP 90 75 2 as amended *for guidance* with respect to,

[among other things], solicitation and acceptance of gifts to the Agency.” (emphasis added).

OIG’s claim that the district counsel was deficient for not providing legal concurrence is simply wrong. Pursuant to the amendments to SOP 90 75 2, the General Counsel, not the district counsel, bore the responsibility for the legal compliance review. This review was completed by OGC attorneys at headquarters prior to the solicitation of the gifts and was documented. The fact that OGC did not sign the actual Gift Approval Form raises form over substance.

Further, the approving official obviously approved the gift solicitations (after OGC clearance) because he signed the solicitation letters. The approving official indicated that the delays in signing Parts 1 and 2 of the Gift Approval Forms were due to catching up on paperwork. While the Agency agrees that the proper paperwork should be completed, the Agency does not agree that there were no assurances that the approving official and the General Counsel performed proper review procedures prior to gift solicitation.

In its draft report, OIG stated that, “because SBA has not yet updated SOP 90 75 2 to reflect recent statutory changes, SBA officials may not have a clear understanding of their roles and responsibilities for soliciting and accepting gifts.” We agree that there may be misunderstanding, especially as OIG, after having reviewed the procedures did not come away with a clear understanding of them. As OIG has acknowledged, the Agency has planned to revise SOP 90 75 2 after it has promulgated final regulations implementing the statutory changes brought about by the Reauthorization Act. As part of this revision, the Agency will review and revise as necessary any required gift forms. The Agency does not agree that this endeavor should be part of an audit response, subject to OIG time lines and other audit response requirements. The revision of SOP 90 75 2 is a huge endeavor, encompassing not only the Agency’s gift acceptance authority but many other subject matter areas including but not limited to cosponsored and SBA-sponsored activities, Strategic Alliance Memorandums (SAMs), and other external agreements. While the revision of SOP 90 75 2 is a priority for the Agency, work on the revision must be balanced with other work issues and availability of staff.

C. As to Finding 3, the Agency disagrees with OIG as to what is required information for a conflict of interest determination.

OIG’s Finding 3 stated, “OSA did not provide OGC required information for a conflict of interest determination.” In support of this finding the OIG stated that it did not find documentation to show that OSA provided the required information to OGC. According to the OIG, the required information is listed on the Conflict of Interest Checklist found in the OGC Handbook. The Agency disagrees with this finding.

In the first instance, the Conflict of Interest Checklist was created prior to the Reauthorization Act to serve merely as a guideline, and is not approved Agency policy. As such, it is not a required form.

Furthermore, the 2005 gift solicitations at issue herein were an anomaly in that the district office was seeking to solicit from 182 potential donors at one time. To facilitate the provision of information and the conflict of interest determination, OGC and OSA agreed, for efficiency and expediency in this case, that the information presented by OSA could be provided in a different manner than usual. The spreadsheet prepared by OSA provided OGC with all positive “hits” from the program offices as well as the district office. The note section described the “hit” and included other district office and program office information. What the spreadsheet does not do is document negative information. That is, the spreadsheet does not indicate, for example, that an entity is not a grantee. However, OGC understood that if an entity was a grantee, that would be positive information or a “hit” which would show up on the spreadsheet. Accordingly, if no positive information was provided, OSA and OGC understood the program response was negative. Therefore, based upon this understanding, it was not necessary to document the negative information.

While OGC does rely on OSA and the underlying program offices to provide accurate information, OGC was satisfied that OSA provided the necessary information for OGC to perform a conflict of interest determination.

D. The Agency does not disagree with Finding 4.

OIG’s Finding 4 stated, “Management Controls Should be Strengthened to Help Ensure Conflict of Interest Determinations are made prior to Gift Solicitations and Acceptance.” The Agency does not disagree with this finding. The Agency agrees that the AA/OSA will work with the OCFO to establish adequate management controls to help ensure that cash gifts deposited in the BAT Fund are not made available for expenditure until a conflict of interest determination has been made by OGC.

E. As to Finding 5, the Agency agrees that it would be appropriate to revise the five day time frame for approval.

OIG’s Finding 5 stated, “OPGM’s Obligations for Procurement Expenditures were not Timely.” According to the Office of Administration, all payments processed and approved for payment from funds deposited in the BAT Fund were completed in a manner to ensure compliance with SBA Procedural Notice 2000-677, *Restatement of Procedures for the Business Assistance Trust Fund (BAT Fund)*. As such, these payments were made in the time frame required to ensure the inclusion of proper documentation and approval of appropriate expenditures. While SBA Procedural Notice 2000-677 places ultimate responsibility with the approving official for determining whether the expenditures of gift funds are within SBA’s gift authority and can be expended for a particular purpose, it is prudent practice for OPGM to review the documentation to make certain that inappropriate expenditures are not authorized and paid. With this being the experience of OPGM, it would be appropriate to revise the five day timeframe for approval.

F. The Agency does not agree with OIG Finding 6 in its entirety.

OIG Finding 6 states, “The District Office did not follow certain record keeping and accountability procedures.”

As previously stated, district office responsibilities under the Agency’s gift acceptance authority have changed under the Reauthorization Act and subsequent policy and procedural notices, particularly as those responsibilities relate to conflict of analysis determinations and legal compliance reviews. The District Office, thus, has no responsibility for keeping records on functions that it no longer performs. However, the District Office does agree that it should comply with those recordkeeping requirements relating to the gift solicitation/acceptance/approval functions still performed in the District Office.

In addition, as previously stated, SOP 90 75 2 remains guidance for the Agency with respect to solicitation and acceptance of gifts to the Agency. Quarterly reports were required on the part of the district offices when the district office had full responsibility for approving and accepting gifts under \$25,000. The quarterly reports thus provided OSA with information it did not already have. Under the Reauthorization Act and subsequent policy and procedural notices, every gift solicitation and acceptance must now go through OSA as part of the conflict of interest determination. Because OSA already knows the district office activity regarding gift solicitation and acceptance, there is not the same need for quarterly reports from the district offices. The Agency agrees that the district offices will provide OSA with reports on gift activity for reconciliation purposes upon request by OSA.

RECOMMENDATIONS

- 1A. We recommend that the Deputy General Counsel/Designated Agency Ethics Official perform a conflict of interest determination for each of the organizations that donated cash in 2004, and if any are found to have been a proscribed source at the time, determine the appropriate course of action regarding the gifted funds.

The Deputy General Counsel/Designated Agency Ethics Official agrees to this recommendation.

- 2A. We recommend that the Associate Administrator for Strategic Alliances make updating SOP 90 75 2 a top priority, and establish target dates for the completion of that task, to clearly explain the roles and responsibilities of the approving official, counsel, and the official authorized to solicit and accept gifts. The roles and responsibilities of counsel should reflect applicable requirements from SOP 70 50 3, Chapter 7.

The Agency disagrees with this recommendation. As OIG has acknowledged, the Agency has planned to revise SOP 90 75 2 after it has developed and approved the regulations related to the statutory changes brought about by the Reauthorization Act.

Agency plans to revise its general gift solicitation and acceptance procedures are part of a much broader effort, started in or about FY2001, to bring about changes in the way SBA conducts its sponsored activities as well as other outreach and marketing activities. The revision of SOP 90 75 2 is a huge endeavor, encompassing not only the agency's gift acceptance authority but many other subject matter areas including but not limited to cosponsored and SBA-sponsored activities, SAMs, and other external agreements. While the revision of SOP 90 75 2 is a priority for the Agency, work on the revision must be balanced with other work issues and availability of staff. Based upon the policy and procedural notices issued after the enactment of the Reauthorization Act and the instruction to continue to use SOP 90 75 2 as guidance, the Agency believes it has sufficient guidance and controls over the Agency gift acceptance process in the interim, until the revised SOP is completed. In addition, final regulations relating to, among other things, the Agency's gift acceptance authority are in clearance and upon publication in the Federal Register will become final.

OIG is fully aware of these efforts and of the Agency's plans with regard to the drafting of a new SOP. Therefore, the Agency believes it is inappropriate for OIG, at this stage, to attempt to dictate what the Agency will do and the timeframes in which the Agency should do it. Therefore, the Agency will not agree to recommendations which direct the Agency (and thus subject the Agency to audit management requirements) to do what it had already long planned to do and is, indeed, in the process of doing.

In addition, OGC disagrees with the specific recommendation that the roles and responsibilities of counsel should be set forth in the revised SOP 90 75 and reflect applicable requirements from SOP 70 50 3. The General Counsel (and other OGC attorneys by written delegation) has statutory responsibility for making a legal determination regarding conflict of interest. The General Counsel (and other agency attorneys by delegation) is also responsible for reviewing gift solicitations and/or acceptances for legal sufficiency. Both of these responsibilities are legal determinations within the province and judgment of counsel. It is not appropriate that OSA set forth the legal requirements for OGC attorneys to follow in the performance of their legal responsibilities.

2B. We recommend that the Associate Administrator for Strategic Alliances revise Agency gift forms as necessary, particularly SBA Form 1962, Gift Approval Form, to reflect current policy requiring OGC to provide a conflict of interest determination prior to the solicitation or acceptance of gifts from those sources.

The Agency disagrees with this recommendation. As stated above, the Agency does not agree that the SOP revision, which the Agency has already planned to do, should be part of an audit response, subject to OIG time lines and other audit response requirements. The revision of SOP 90 75 2 is a huge endeavor, encompassing not only the Agency's gift acceptance authority but many other subject matter areas including but not limited to cosponsored and SBA-sponsored activities, SAMs, and other external agreements. As part of this revision, the Agency will review and revise as necessary any required gift

forms. While the revision of SOP 90 75 2 is a priority for the Agency, work on the revision must be balanced with other work issues and availability of staff.

- 3A. We recommend that the Associate Administrator for Strategic Alliances develop and implement procedures to ensure that all required information is gathered for OGC to make a complete conflict of interest determination. In developing the procedures, OSA should consider, at a minimum, what information needs to be reviewed, how the information is best assessed, and whether an official should certify as to the accuracy of the information.

The Agency disagrees with this recommendation as written. As the conflict of interest determination is a legal judgment within the purview of counsel, it is not appropriate for OSA to determine the information necessary to make that legal determination. However, the Agency does agree that OGC should indicate to OSA the types of information it will need to make the required conflict of interest determinations and recommend from which offices OSA should collect the necessary information.

- 3B. We recommend that the Deputy General Counsel/Designated Agency Ethics Official review the District Office 2005 conflict of interest determination to determine if any necessary information was not provided to accurately make the determination. If there was missing information, decide whether that information affects that determination and take appropriate action. Ex 6

The Deputy General Counsel/Designated Agency Ethics Official disagrees with this recommendation. The Office of General Counsel, not the District Office, made the conflict of interest determination for the 2005 gifts at issue in this audit. As previously stated, the 2005 gift solicitations were an anomaly in that the district office was seeking to solicit from 182 potential donors at one time. To facilitate the provision of information, OGC and OSA agreed that the information would be presented in a different manner than usual. OGC must rely on OSA and the underlying program offices to provide accurate information; but in any event, OGC is confident that OSA provided the necessary information for OGC to perform a conflict of interest determination. Ex 6

- 3C. We recommend that the Deputy General Counsel/Designated Agency Ethics Official require the OGC attorneys who make conflict of interest determinations thoroughly review the request submitted by OSA to ensure that all required information was provided. If any needed information is missing, the request should be returned to OSA for OSA personnel to either obtain the missing information or give a justification as to why that information is unnecessary.

The Deputy General Counsel/Designated Agency Ethics Official disagrees with this recommendation. OGC counsel undertook a thorough review of the information provided and made appropriate legal determinations as to whether a conflict of interest existed. See also response to Recommendation 3B above.

- 3D. We recommend that the Deputy General Counsel/Designated Agency Ethics Official work with the Associate Administrator for Strategic Alliances to revise

SOP 90 75 2 to include the required elements for a complete conflict of interest determination.

The Deputy General Counsel/Designated Agency Ethics Official disagrees with this recommendation. The General Counsel (and other OGC attorneys by written delegation) now has statutory responsibility for making a conflict of interest determination. This conflict of interest determination is a legal determination within the province and judgment of counsel. It is not appropriate that OSA set forth in an OSA SOP the requirements for OGC attorneys to follow when performing this legal analysis.

- 4A. We recommend that the Associate Administrator for Strategic Alliances work in conjunction with the Chief Financial Officer to implement management controls to help ensure that conflict of interest determinations are completed by OGC on potential donors prior to the acceptance of cash gifts.

The Agency disagrees with this recommendation as written. The Agency does agree that the AA/OSA will work with the OCFO to establish adequate management controls to help ensure that cash gifts deposited in the BAT Fund are not made available for expenditure until a conflict of interest determination has been made by OGC.

- 5A. We recommend that the Assistant Administrator for Administration take steps necessary to streamline OPGM's procedures to meet that office's commitment to obligate funds within five working days after the approving official approves the commitment document, provided that submitting offices provide proper documentation. Alternatively, if the five day rule is unrealistic, ensure that OPGM revises its commitment to obligate funds to reflect an achievable turnaround time, given current staffing.

The AA for Administration agrees that the five day rule is unrealistic and agrees that it would be appropriate to revise the five day timeframe for approval.

- 6A. We recommend that the District Director for the District Office ensure that office gift files comply with all the record-keeping and accountability requirements of SOP 90 75 2. Ex 6

The Agency disagrees with this recommendation as written. As previously stated, district office responsibilities under the Agency's gift acceptance authority have changed under the Reauthorization Act and subsequent policy and procedural notices, particularly as those responsibilities relate to conflict of analysis determinations and legal compliance reviews. The District Office, thus, has no responsibility for keeping records on functions that it no longer performs. However, the District Office does agree that it will comply with those recordkeeping requirements relating to the gift solicitation/acceptance/approval functions still performed in the District Office.

- 6B. We recommend that the District Director for the District Office ensure that quarterly reports of gift activity are submitted timely to the DAA/OSA.

Ex 6

The Agency disagrees with this recommendation. As previously stated, SOP 90 75 2 remains guidance for the Agency with respect to solicitation and acceptance of gifts to the Agency. Quarterly reports were required on the part of the district offices when the district office had full responsibility for approving and accepting gifts under \$25,000. The quarterly reports thus provided OSA with information it did not already have. Under the Reauthorization Act and subsequent policy and procedural notices, every gift solicitation and acceptance must now go through OSA as part of the conflict of interest determination. Because OSA already knows the district office activity regarding gift solicitation and acceptance, there is not the same need for quarterly reports from the district offices. The Agency agrees that the district offices will provide OSA with reports on gift activity for reconciliation purposes upon request by OSA.

- 6C. We recommend that the District Director for the District Office ensure that the BAT Fund reconciliation spreadsheet maintained by the District Office more closely follows the model provided as an attachment to SBA Procedural Notice 2000-677 to improve compliance with certain requirements of the Notice.

Ex 6

The District Director agrees that the BAT Fund reconciliation spreadsheet maintained by the District Office will more closely follow the model provided as an attachment to SBA Procedural Notice 2000-677.

- 6D. We recommend that the Associate Administrator for Strategic Alliances develop oversight procedures to ensure that all SBA offices maintain gift files and quarterly reports that comply with the record-keeping and accountability requirements of SOP 90 75 2 and SBA Procedural Notice 2000-677.

The Agency disagrees with this recommendation as written. As the OIG is aware, the Agency has plans to revise the standard operating procedures relating to the Agency's gift acceptance authority. In light of the fact that every gift must now come through headquarters, it is highly likely, as part of the SOP revision, the Agency will change the record keeping, reporting and accountability requirements. To expend time and effort on oversight procedures on what may soon be outdated SOP requirements is simply a waste of time. The Agency's time and energy are better spent on revising the SOP.

As previously stated, the Agency does not agree that the SOP revision, which the Agency has already planned to do, should be part of an audit response, subject to OIG time lines and other audit response requirements. The revision of SOP 90 75 2 is a huge endeavor, encompassing not only the agency's gift acceptance authority but many other subject matter areas including but not limited to cosponsored and SBA-Sponsored activities, SAMs, and other external agreements. As part of this revision, the Agency will review and revise as necessary any record keeping, reporting, and accountability requirements.

While the revision of SOP 90 75 2 is a priority for the Agency, work on the revision must be balanced with other work issues and availability of staff.

- 6E. We recommend that the Chief Financial Officer make SBA Procedural Notice 2000-677, and its spreadsheet attachment, available on SBA's Intranet Site.

The Chief Financial Officer disagrees with this recommendation as written. Posting procedural notices on SBA's intranet site falls within the purview of the Office of Administration. That office has posted SBA Procedural Notice 2000-677 on SBA's Intranet Site.

OTHER MATTERS

At the end of the draft audit report, OIG includes a discussion of a recent Quality Service Review (QSR) of the District Office. As this matter is extraneous to the audit at issue, the Agency requests that this section be deleted from the final audit report.

Ex 6

In addition, the Agency notes that Attachment 1 to the draft audit report is not entirely accurate. Attachment 1 purports to set forth the Agency's process for solicitation, acceptance, holding and utilization of cash gifts. In the first instance, the process as set forth by OIG does not take into account unsolicited gifts. Further, it does not take into account the changes made to the gift solicitation/acceptance procedures wrought by the Reauthorization Act and subsequent procedural and policy notices. The Attachment should either be corrected or deleted.

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