DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

Office of Audit Services, Region III
Public Ledger Building, Suite 316
150 S. Independence Mall West
Philadelphia, PA 19106-3499

JUN 29 2006

TO: William Nichols, Director for Procurement and Grants Office
Centers for Disease Control and Prevention

FROM: Regional Inspector General for Audit Services

SUBJECT: Review of CDC Grants Issued to the National Latina/o Lesbian, Gay, Bisexual and Transgender Organization (A-03-05-00351)

Attached are two copies of the U.S. Department of Heath and Human Services (HHS) Office of Inspector General's report entitled "Review of Grants Issued to the National Latina/o Lesbian, Gay, Bisexual and Transgender Organization" awarded by the Centers for Disease Control and Prevention (CDC). This review was requested by CDC after the National Latina/o Lesbian, Gay, Bisexual and Transgender Organization announced its closing in August 2004.

We would appreciate your views and the status of any further action taken or contemplated on our recommendations within the next 60 days. If you have any questions, please do not hesitate to contact me at 215-861-4470, or through e-mail at stephen.virbitsky@oig.hhs.gov or Michael Walsh, Audit Manager at 215-861-4480 or through email at michael.walsh@oig.hhs.gov.

Please refer to report number A-03-05-00351 in all correspondence.

Sincerely,

Stephen Virbitsky
Regional Inspector General
for Audit Services

Attachment - as stated

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

REVIEW OF GRANTS ISSUED TO THE NATIONAL LATINA/O LESBIAN, GAY, BISEXUAL AND TRANSGENDER ORGANIZATION

Daniel R. Levinson
Inspector General

June 2006
A-03-05-00351

Office of Inspector General

http://oig.hhs.gov

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OAS FINDINGS AND OPINIONS

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed, as well as other conclusions and recommendations in this report, represent the findings and opinions of the HHS/OIG/OAS. Authorized officials of the HHS divisions will make final determination on these matters.

EXECUTIVE SUMMARY

BACKGROUND

Our audit was prompted by a September 20, 2004, request from the Centers for Disease Control and Prevention (CDC), to review the financial records of the National Latina/o Lesbian, Gay, Bisexual and Transgender Organization (LLEGÓ), a grantee that had received CDC funding for HIV/AIDS prevention activities. CDC's Program Grants Office, Oversight and Evaluation Group, was concerned that LLEGÓ had closed in August 2004, only 5 months into its 12 month funding period and had drawn down $989,255 of its $1.15 million award. Up until LLEGÓ's closing, CDC had not considered LLEGÓ to be a high-risk grantee. CDC renewed the organization's funding and allowed automatic cash draw downs.[1] In addition, recent audits of LLEGÓ performed by an independent certified public accountant pursuant to the Office of Management and Budget (OMB) Circular A-133, "Audits of states, local government and non-profit institutions," revealed no issues regarding the entity's ability to continue as a going concern.

Established in 1987, LLEGÓ operated in Washington, D.C. as a national nonprofit organization representing the Latina and Latino lesbian, gay, bisexual and transgender communities. Since at least 2000, LLEGÓ's primary funding source was CDC, which provided funding for HIV/AIDS prevention activities. In 2000, CDC entered into two multi-year cooperative agreements[2] (hereafter known as grants) with LLEGÓ to provide capacity building services to Latino community-based organizations in the areas of HIV prevention training and intervention. In 2004, CDC entered into a 5-year cooperative agreement with LLEGÓ for similar tasks, providing $1.15 million for the first year beginning April 1, 2004.

LLEGÓ's board of directors told CDC officials, that LLEGÓ could not continue after August 2004 as a going concern primarily because its funding sources were not commensurate with its expenses. As a result of this shortfall, in October 2004, LLEGÓ declared bankruptcy under 11 U.S.C. chapter 7 (Chapter 7).[3] As a result of our audit work, on April 5, 2005, we alerted CDC that it could file a claim in the U.S. Bankruptcy

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[1]Automatic draw downs are a method of grant funds distribution where grantees are allowed to access authorized grant award funds at their own pace and without grantor approvals prior to each withdrawal. This method is offered to grantees that have demonstrated acceptable cash management procedures.

[2]A cooperative agreement is a grant that is to involve substantial interaction between the awarding office and the recipient during performance of the funded activity. This may include collaboration, participation, or intervention in the activity. The PHS Grants Policy Statement applies to cooperative agreements entered into with non-profit organizations. In this report, we use the term "grant" to refer to cooperative agreements.

[3]In a Chapter 7 proceeding, assets are collected and liquidated. 11 U.S.C. chapter 5 establishes the right of a creditor to file proof of a claim on the assets to be liquidated. The private trustee appointed to administer the debtor's estate distributes the proceeds to creditors. 11 U.S.C. § 704 requires the bankruptcy trustee to "…collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest." Parties in interest include outstanding creditors, who may submit proof of claim against the estate pursuant to 11 U.S.C. § 501.

Court prior to April 10, 2005, to recover up to $703,181 of unallowable costs for which LLEGÓ inappropriately applied grant funds.

OBJECTIVE

The objective of our audit was to determine whether LLEGÓ used CDC grant funds in accordance with Federal guidelines for allowability.

SUMMARY OF FINDINGS

Our analysis of available documentation showed that LLEGÓ incurred $703,181 in unallowable costs: $379,022 in unallowable expenses and $324,159 in expenses that occurred in a prior grant period. This was contrary to OMB guidance, which states that Federal funds be used only for the purpose for which they were given. These costs included:

- $379,022 in unallowable expenses including: $257,557 of expenses incurred during the current grant period for activities unrelated to the grant and $121,465 of non-grant related expenses which occurred and were paid during the prior grant period.

- $324,159 of expenses that occurred in a prior period but were paid with current year funds. It was not possible to discern from the documentation whether these were for grant or non-grant purposes.

We were able to determine that LLEGÓ used grant funds to pay for non-grant activities because non-grant expenses exceeded non-grant income for both calendar years 2003 and 2004 and LLEGÓ used CDC grant funds to help offset this shortfall.

EARLY ALERT

The U.S. Bankruptcy Court established April 10, 2005, as the date by which LLEGÓ's creditors had to file for potential reclamation of funds. We determined that LLEGÓ owed CDC an amount totaling $703,181 and issued an Early Alert dated April 5, 2005, to request CDC to file a claim for consideration as a creditor. As of April 10, 2006, the bankruptcy was ongoing. The bankruptcy trustee's accountant told us that the trustee is currently resolving some disputed payments and liquidating the remaining office equipment.

RECOMMENDATION

We recommend that CDC follow up with the U.S. Bankruptcy Court as to the repayment of cooperative agreement funds from the LLEGÓ bankruptcy as allowed by 11 U.S.C. chapter 5.

TABLE OF CONTENTS

Page

INTRODUCTION

BACKGROUND

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Court prior to April 10, 2005, to recover up to $703,181 of unallowable costs for which LLEGÓ inappropriately applied grant funds.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of our audit was to determine whether LLEGÓ used CDC grant funds in accordance with Federal guidelines for allowability.

Scope

Our audit scope included expenses incurred by LLEGÓ for CDC grants from January 2003 through August 2004, as shown in Table 1 below:

Table 1: LLEGÓ Grants From CDC

Cooperative Agreement	Performance Period	Review Period	Amount
U65/CCU318188-04	9/1999-9/2004	9/30/2002-9/29/2003	$1,050,000
U22/CCU318527-04	5/2000-10/2004	10/31/2002-10/30/2003	1,040,000
U65/CCU318188-05	9/1999-3/2004	9/30/2003-3/31/2004	525,000
U22/CCU318527-05	5/2000-3/2004	11/01/2003-3/31/2004	433,333
U65/CCU323695-01	04/2004-3/2009	04/01/2004-3/31/2005	1,150,000

These grants included two 5-year grants funded annually and ending March 31, 2004 and one 5-year grant beginning April 1, 2004, which allocated $1.15 million for the first grant year.

We were unable to review LLEGÓ's internal controls because the organization had ceased operations by the time of our audit.

We performed our review at CDC headquarters in Atlanta, Georgia and LLEGÓ's former office in Washington, District of Columbia.

Methodology

To accomplish our objective we:

- met with CDC grants and HIV/AIDS program officials;

- acquired and reviewed records from LLEGÓ's former offices in Washington, D.C. related to the organization's finances, operations, and personnel;

- reviewed Federal guidelines issued by OMB, including Circulars A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and A-122, "Cost Principles for Non-Profit Organizations," and determined whether LLEGÓ's use of grant funds met these guidelines for allowability;

- reviewed the CDC Notice of Grant Awards for the period 9/30/2002 through 4/01/2004;

- conducted a forensic analysis of LLEGÓ documentation, which involved our reconciling the organization's accounting records to canceled checks and other available source documentation and performing substantive tests of costs recorded in LLEGÓ's general ledger;

- discussed LLEGÓ's operating practices with the organization's former director of finance;

- discussed the payment of grant funds with personnel from the Department of Health and Human Service's Program Support Center who manage the Payment Management System; and

- discussed an unfinished audit of LLEGÓ's calendar year (CY) 2003 financial statements with its Certified Public Accounting firm.

Our audit was conducted in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATION

Our analysis of available documentation showed that LLEGÓ incurred $703,181 in unallowable costs: $379,022 in unallowable expenses and $324,159 in expenses that occurred in a prior grant period. This was contrary to OMB guidance, which states that Federal funds be used only for the purpose for which they were given. These costs included:

- $379,022 in unallowable expenses including: $257,557 of expenses incurred during the current grant period for activities unrelated to the grant and $121,465 of non-grant related expenses which occurred and were paid during the prior grant period.

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We were able to determine that LLEGÓ used grant funds to pay for non-grant activities because non-grant expenses exceeded non-grant income for both CYs 2003 and 2004, and LLEGÓ used CDC grant funds to help offset this shortfall.

FEDERAL GUIDELINES AND REQUIREMENTS

OMB Circular A-122, "Cost Principles for Non-Profit Organizations," establishes the principles for determining costs of grants, contracts and other agreements with non-profit organizations. The principles are designed to ensure that the Federal Government bears its fair share of costs except where restricted or prohibited by law. Specifically, to be allowable under an award, costs must meet the following general criteria:

- be reasonable for the performance of the award and be allocable under these principles;

- conform to limitations or exclusions set forth in the award;

- be given consistent treatment;

- be determined in accordance with generally accepted accounting principles; and

- be adequately documented.

OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," governs the advancement of cooperative agreement funding to Federal grantees.

- Section 22 states, "Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project."

- Section 28 states, "Where a funding period is specified, a recipient may charge to the cooperative agreement only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency."

According to CDC's Program Announcement 04019, under which the latest CDC funding was provided, funds must support Capacity Building Assistance that improves the grantee's capacity to implement, improve, and sustain programs that support the delivery of effective HIV prevention services for high-risk minority populations.

UNALLOWABLE COSTS

Our analysis of available documentation showed that LLEGÓ incurred $703,181 in unallowable costs: $379,022 in unallowable expenses and $324,159 for expenses that occurred in a previous grant period. These costs included:

- $379,022 of non-grant expenses: In addition to its grant-related functions, in CYs 2003 and 2004, LLEGÓ engaged in activities not covered by CDC's program announcement, including lobbying, fund raising, and advocating on behalf of gay issues. Because LLEGÓ did not have sufficient funds to cover these activities, it tapped CDC funds, among other methods, to cover shortfalls. Table 2 summarizes non-grant income and expenses for CYs 2003 and 2004:

Table 2: LLEGÓ Non-Grant Income, Expenses, and CDC Funds Used

Year	Income	Expense	Net Gain (Loss)	CDC Funds Used
2003	$225,409	$740,028	($514,619)	$121,465
2004	206,648	615,022	(408,374)	257,557
Totals	**$432,057**	**$1,355,050**	**($922,993)**	**$379,022**

- $324,159 of expenses incurred in a prior period: This amount represents costs incurred but not paid as of April 1, 2004, which is the beginning of the current grant period. An internal memorandum of March 29, 2004, claimed that about $300,000 in bills for services through March 2004 remained unpaid because no funds were available. We reviewed this claim and verified unpaid expenses of $324,159 for services provided through March 2004. Documentation showed that, on April 8, 2004, after receiving the 2004 CDC grant funds, LLEGÓ drew down $239,000 and over the next 2 days issued checks totaling $220,351.03 to cover a portion of the costs incurred prior to the current grant period. The remaining balance was paid in the following months.

  Since LLEGÓ was placed on automated draw downs, it could access grant funds directly on its own schedule. Although LLEGÓ generally recorded as grant expenses only those costs that appeared to be related to grant activities, it drew down additional funds to cover non-grant expenses. OMB Circular A-110 section 22 guidance allows cash advances for amounts needed for immediate cash requirements and only for the purpose of the grant.

EARLY ALERT

The U.S. Bankruptcy Court established April 10, 2005, as the date by which LLEGÓ's creditors must file for potential reclamation of funds. We determined that LLEGÓ owed CDC an amount totaling $703,181 and issued an Early Alert dated April 5, 2005, to request CDC to become listed as a creditor. As of April 10, 2006, the bankruptcy was ongoing. The bankruptcy trustee's accountant told us that the trustee is currently resolving some disputed payments and liquidating the remaining office equipment.

RECOMMENDATION

We recommend that CDC follow up with the U.S. Bankruptcy Court as to the repayment of cooperative agreement funds from the LLEGÓ bankruptcy as allowed by 11 U.S.C. chapter 5.

ACKNOWLEDGMENTS

This report was prepared under the direction of Stephen Virbitsky. Other principal Office of Audit Services staff who contributed include:

Michael Walsh, *Audit Manager*
Wayne Good, *Senior Auditor*
Ken Lewis, *Lead Auditor*
Richard Polen, Auditor

Camille Bacon-Smith, *Editor*

Office of Audit Services Headquarters Staff
Carol Lessans, Director
Lisa Ladonne Cohen, Audit Manager

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