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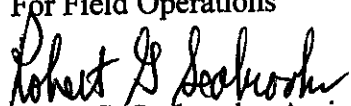
U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF INSPECTOR GENERAL
Washington, DC 20416



AUDIT REPORT
Issue Date: August 26, 2002
Report Number: 2-25

To: David Javdan, General Counsel

David Frederickson, Associate Administrator
For Field Operations

From: 
Robert G. Seabrooks, Assistant Inspector General
For Auditing

Subject: Audit of Georgia District Office Sponsorship Activities

Attached is a copy of the subject audit report. The report contains one finding and seven recommendations. A combined response was received from the Office of General Counsel and the Office of Field Operations due to legal issues discussed in the report. The response indicated agreement with six recommendations and disagreement with one. In addition, you disagreed with some of the conclusions presented in the report. As a result of your comments, we removed the portion of the finding addressing cosponsorships, made minor changes to other areas in the finding, and modified recommendation 1.B.

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

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

Supervisory Auditor
SBA/OIG – Auditing Division, Suite 1803
233 Peachtree Street, NE
Atlanta, Georgia 30303

Attachment

AUDIT REPORT
GEORGIA DISTRICT OFFICE SPONSORSHIP ACTIVITIES

ATLANTA, GEORGIA

AUDIT REPORT NUMBER 2-25

AUGUST 26, 2002

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

AUDIT REPORT

GEORGIA DISTRICT OFFICE SPONSORSHIP ACTIVITIES

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SUMMARY

In a letter dated January 23, 2002, the Deputy Associate Administrator for Field Operations requested the Office of Inspector General to review allegations of fiscal improprieties involving gift acceptance and cosponsorship authority at the Georgia District Office (district). As a result of the letter, an audit was initiated with the objective of determining if district sponsored events were conducted and funds were accounted for in accordance with SBA and Federal policies and procedures. We reviewed five district events conducted during the period September 1999 to January 2002.

We determined that funding for the events was not managed in accordance with SBA and Federal policies and procedures. We did not evaluate the district's compliance with cosponsorship requirements because none of the district's events were cosponsorships as defined by the Small Business Act. Three of the reviewed events qualified as SBA-sponsored and the remaining two events did not meet criteria for cosponsored or SBA-sponsored. We noted the following deficiencies:

- Gifts totaling about \$25,700 were solicited and accepted from Small Business Lending Companies, proscribed sources, and from the fiscal transfer agent for the 7(a) guaranteed loan program, a source requiring a conflict of interest determination. We found no evidence that a conflict of interest determination was made. In addition, gifts totaling about \$23,075 were solicited and accepted from section 7(a) lenders without conflict of interest determinations.
- Gifts received for the events were not deposited into the Business Assistance Trust Fund (BAT Fund) as required. About \$59,325 were received as gifts and deposited in a SCORE checking account pursuant to an agreement between the district and the local SCORE chapter. As of January 31, 2002, the checking account had a balance of \$24,601.
- Gift funds were used for prohibited purposes. At least \$12,714 in excess of registration fees were paid from the custodial checking account to purchase prohibited items such as shirts and alcohol for event participants.
- Excess gift funds totaling \$12,619 were expended for items and services unrelated to the sponsored events without notification to the donors and without use of proper procurement documents.
- Registration and vendor fees totaling about \$79,660 were collected and used by the district even though the SBA did not have specific authority to charge fees.
- The district and SCORE, its fiscal agent, did not have adequate controls in place to ensure full accountability of funds. We were able to account for all funds deposited in and disbursed from the custodial account. However, proper use of the BAT Fund would improve accountability.

These deficiencies occurred because senior district office management personnel stated that they did not believe the requirements of SOP 90 75 2 were applicable to any of the district's events. Additionally, we concluded that oversight by regional and headquarters personnel was not adequate.

We recommend that the Associate Administrator for Field Office Operations (AA/OFO) provide better guidance to district office staff and improve its oversight over district office SBA-sponsored and cosponsored activities. The guidance should address: (a) the distinction between the types of events and the appropriate procedures for planning and conducting cosponsored and SBA-sponsored events, (b) the appropriate sources from whom to solicit and accept gifts, (c) the requirement to obtain conflict of interest case-by-case determinations, (d) the proper procedures for disbursing excess gift funds, (e) the remission of gift funds to the BAT Fund at the U.S. Treasury, (f) the proper accountability of event funds, and (g) the appropriateness of charging fees.

The AA/OFO and the SBA General Counsel (GC) issued a combined response that agreed with six recommendations but disagreed with the recommendation to provide clear instructions to the Georgia District Office. While management's response indicated it disagreed with this recommendation, it did describe planned actions to update legal opinions relevant to the discussed issues and to provide guidance to the field in regular conference calls. [

FOIA Ex 5 and 6

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In addition, the AA/OFO and GC disagreed with OIG conclusions in the draft report that two of the district events were cosponsorships, that conflicts of interests are created when lenders are solicited for funds, that catering for lenders during training is contrary to standard operating procedures, that excess proceeds from the district's events were gift funds and the OIG legal citation concerning SBA's authority to charge and use registration fees.

We evaluated the comments of the AA/OFO and the GC and revised our report to accept their comment about cosponsorships. We also modified other parts of the report as a result of the comments and revised recommendation 1.D. Our evaluations are included on page 10 of the report.

INTRODUCTION

A. Background

The Small Business Act (the Act) gives SBA statutory authority to sponsor a wide variety of training and counseling programs to assist small business. Section 8(b)(1)(a) of the Act authorizes SBA to plan and conduct activities jointly with public or private entities. These activities are referred to as cosponsorships and the Act requires that they be evidenced by a written agreement between the parties. In Management's response dated June 21, 2002, to the OIG draft report, SBA's General Counsel (GC) opined that cosponsorships may be used only to provide training, technical, and managerial assistance directly to small business concerns.

SBA also has authority to provide training and information to intermediaries, who in turn disseminate the training and information to small business concerns. Per the GC, SBA cannot, however, provide the training and information to intermediaries through a cosponsorship, as such training can only be done by SBA as a SBA-sponsored event. An SBA sponsored event, per SOP 90 75 2, Appendix 2, is an event or initiative which promotes technical and managerial assistance to small business, and which is planned and conducted solely by SBA.

The SBA has statutory authority to accept cash and other types of gifts for use in providing technical and managerial assistance to small business and for other uses in carrying out the purpose of the Act. Section 8(b)(1)(A) of the Act also allows SBA to charge fees for cosponsored activities. Per the GC, ζ

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ζ This authority to charge fees would not extend to a SBA-sponsored activity.

B. Objectives and Scope

The objective of the audit was to determine if district sponsored events were conducted and funds were accounted for in accordance with SBA and Federal policies and procedures.

To answer our objective, we reviewed sponsored events held between September 1999 and January 2002. September 1999 was when the district's fiscal agent initiated its automated accounting system. During this period, there were two partnership conferences, a Section 8(a) conference, and two small business week events. For the events, the district raised a total of about \$140,000 by charging registration fees, exhibitor fees, and soliciting gifts (contributions) from donors and cosponsors (see Exhibit A). Our review consisted of examining financial records and related documents and interviewing district office personnel, SBA headquarters personnel, the Service Corp of Retired Executives (SCORE), planning team members, and donors.

Audit fieldwork was performed from January to March 2002 in accordance with generally accepted Government Auditing Standards.

C. Statement on Management Controls

Our assessment of management controls, policies, procedures, and practices was limited to those applicable to the conduct and financial management of sponsored events. The audit was performed to determine whether the Georgia District Office complied with SBA and other Federal requirements when conducting the events. A study and evaluation made for the limited purpose described above would not necessarily disclose all material weaknesses in the management controls. However, our assessment disclosed management control weaknesses that impacted the district's ability to comply with SBA's procedures and other Federal laws. These weaknesses included a lack of training of district personnel on how to conduct sponsored events, a lack of oversight by regional and headquarters personnel to ensure district office compliance with policies and procedures, insufficient instructions by headquarters concerning when fees can be collected, and weak controls for reporting and disbursement of event funds. These weaknesses and their effects are fully discussed in the audit results section of this report.

D. Prior Audit Report

There were no prior audit reports specifically addressing district office conduct of sponsored events and management of event funds. However, between 1990 and 1993, the Office of Inspector General issued three audit reports addressing SBA's administration of funds received from outside sources for small business assistance activities. The audits addressed the maintenance of private accounts by SBA offices for the deposit and disbursement of funds from outside sources, the misclassification of receipts as gifts, SBA's authority to retain and use funds generated from small business assistance events, SBA's authority to solicit gifts, and SBA's management and use of funds that should have been classified as miscellaneous receipts.

We recommended that SBA issue clear and complete policies and procedures and definitions for administration of the Business Assistance Trust Fund (BAT Fund) and that funds in the BAT Fund that were not bona fide donations be remitted to the general fund of the Treasury. SBA issued SOP 90 75 2, "Cosponsorship," on August 7, 1995, and drafted, but never issued SOP 20 14, "Funds Received from Non-Appropriated Sources." Our recommendation concerning transfer of funds from the BAT Fund was not implemented because SBA's General Counsel opined [

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RESULTS OF AUDIT

FINDING The District did not Comply with Sponsorship Requirements

The Georgia District Office did not manage funds for sponsored events in accordance with SBA policies and procedures and Federal law. Our review disclosed that the district did not:

- Refrain from soliciting and accepting gifts from proscribed and unapproved sources or sources that might generate a conflict of interest.
- Deposit gifts into the Business Assistance Trust Fund (BAT Fund).
- Ensure disbursements of excess gift proceeds were used for appropriate purposes and in compliance with existing procedures.
- Determine if it had the authority to collect and disburse registration and vendor fees totaling about \$79,660.
- Ensure there were adequate controls for reporting and disbursing event proceeds.

The aforementioned noncompliances occurred because senior district management officials did not believe that SOP 90 75 2 was applicable to the events conducted. Also, we noted that there was inadequate oversight of the district's activities by regional and headquarters personnel.

Gifts were accepted from prohibited and unapproved sources

The district improperly solicited and accepted gifts for its sponsored events. With the exception of the Section 8(a) conference, program packages sent by the district to lenders and other members of the business community solicited financial support for the events. The solicited financial support was stratified ranging from \$1,000 to \$7,500 for the partner conferences and from \$500 to \$2,500 for the small business week luncheon. Those providing financial support at the lowest level were promised public recognition, and those providing financial support at the highest level were promised public recognition, a vendor table, and multiple registrations. The district employee managing the events stated that the program packages were not submitted to SBA headquarters for legal review and approval.

SBA licensed Small Business Lending Companies (SBLCs) were among the entities who were solicited and then provided gifts. Eight SBLCs provided gifts totaling \$25,700 for the three events. A gift of \$1,000 was also solicited and accepted from SBA's fiscal transfer agent for the Section 7(a) Guaranteed Loan Program.

Paragraph 18 of SOP 90 75 2, states that employees must not solicit or accept gifts on behalf of SBA from proscribed sources. Appendix 2 of the SOP defines proscribed sources as, among other things, program recipients. The appendix includes SBLCs in the definition of program recipients. Paragraph 18 of the SOP also states that prior to soliciting and accepting gifts from sources having a business relationship with SBA, the approving official with assistance of legal counsel must conclude that an actual or appearance of a conflict of interest will not be created. We found no evidence that information was submitted to an approving

official for a determination of whether there was an actual or apparent conflict of interest prior to soliciting SBA's fiscal transfer agent.

Additionally, apparent conflicts of interest occurred when a total of \$23,075 in gifts was solicited and received from lenders who do business with the district office. These lenders submitted loan applications, amendments to loan agreements, and requests for SBA to honor its guarantee to the district for approval. The district considered some of these requests during the same period it was soliciting funds from the lenders.

As previously stated, the SOP precludes the solicitation and acceptance of gifts from proscribed sources by SBA employees. Program recipients, a proscribed source, are defined in the SOP as an individual or entity that is presently receiving benefits from an SBA program. The district, in its marketing to lenders, identifies 11 benefits to lenders from participating in the Section 7(a) guaranteed loan program. Some of these benefits are:

- Immediate liquidity
- Increased return on investment
- Improved regulatory ratios
- Exceed statutory loan limits
- Community Reinvestment Act Credit

Disposition of gifts

Funds received as gifts for the various events were not deposited into the BAT Fund account, as required. Gifts received by Federal agencies are required under 31 U.S.C. §1321(b) to be deposited in a Treasury trust account and disbursed in compliance with the terms of the trust. Pursuant to that law, SBA established the BAT Fund account in the U.S. Treasury in March 1989 to facilitate the receipt and disbursement of monetary donations received under SBA's gift authority. For the partnership conferences and the small business week luncheon, the district received a total of \$59,325 as gifts. These funds were given to SCORE for deposit into the custodial checking account with \$48,870 used to pay event expenses and to purchase items unrelated to the events.

According to SOP 90 75 2, paragraph 21, "employees must deposit cash gifts into SBA's Business Assistance Trust Fund." This paragraph also states that SBA employees cannot establish a separate bank account for any gift funds. Therefore, an agreement should not have been executed to have SCORE accept and disburse event proceeds.

Gift funds may have been used for prohibited purposes

An examination of disbursements made between September 1999 and December 2001 from the custodial checking account revealed that the district office may have expended \$12,714 in gift funds on prohibited items. The following is a description and SBA guidance regarding the prohibited uses.

<i>Prohibited Uses of Funds</i>	Amount
Gift Shirts (Polo and Golf) ¹	\$ 9,824
Hosted Bar – Alcohol ¹	742
Catering/Food unrelated to the 5 events reviewed	1,028
Lender's Appreciation Day	725
Retirement Party for deputy district director	395
Total	\$12,714

- *Gift shirts* – \$12,694 for golf and polo shirts purchased with proceeds from the 1999 and 2000 partner conferences and distributed to conference attendees. The amount shown represents the amount that can be applied to excess gift funds. The balance can be applied to fees.² Paragraph 17.a. of the SOP states that neither appropriated funds nor gift funds can be used for personal gifts and SBA employees may neither solicit gifts for distribution nor distribute gifts to attendees.
- *Hosted Bar* – \$4,905 for an open bar for conference attendees during the 1999 and 2000 partner conferences. The amount shown represents the amount paid with gift funds. The balance was paid with fees.³ Paragraph 17.b. of the SOP states that gifts may not be used to supply or purchase alcohol.
- *Catering/Food* – \$1,028 for food provided to lenders during training sessions. Paragraph 17.b. of the SOP states that gift funds may be used to pay for food and drink only if it is a necessary and integral part of the SBA-sponsored or cosponsored event.
- *Lender Appreciation Day* – \$725 for luncheon to honor lenders. Same SOP reference as catering and food.
- *Retirement Party for Deputy District Director* – \$395 of the proceeds was used to buy food for a party attended by SBA personnel for the deputy district director. Paragraph 17.b. of the SOP states that gift funds cannot be used to provide food or drink primarily or solely for SBA employees.

Excess funds were used in a noncompliant manner

The district did not use proper procurement procedures when spending \$12,619 in excess funds and did not notify donors prior to using excess funds. The district received fees and donations for four of the five events. These funds were co-mingled when received. After the

¹ These items were included in cost of partner conferences.

² It is probable that fees should not have been used for these purchases, as well. We did not explore this issue because SBA had no authority to collect fees.

³ It is probable that fees should not have been used for these purchases, as well. We did not explore this issue because SBA had no authority to collect fees.

final accounting for each event, funds remaining in excess of expenses were used for various purposes. Because event funds were co-mingled, we could not determine if the excess funds were from fees or from donations. The excess funds were used to purchase items and services unrelated to these events. The purchases were made by checks drawn on the SCORE checking account. The following table shows the type and amount of uses.

Uses of Excess Funds	Amount
Equipment Purchases	\$5,894
Administrative Supplies and Services	\$3,995
Non Cosponsored Event Printing and Publications	\$2,380
District Office Staff Training on Time Management	\$350
Total	\$12,619

- Equipment purchase - purchased equipment for use within the district office.
- Administrative supplies and services – multiple instances of the purchase of supplies and services for which appropriated funds could have been used.
- Non-event printing and publications – publication of various documents to assist small business concerns.
- District office staff training – time management training provided to district personnel.

Paragraph 20 of SOP 90 75 2 requires that donors be notified in advance that excess gift funds from SBA-sponsored activities will be used for other SBA technical and managerial assistance to small business. We found no evidence that the district provided the required advance notification to donors of the excess funds.

Also, paragraph 21 of the SOP requires employees to deposit cash gifts made to SBA into the BAT Fund account and to disburse funds in accordance with a written purchase order, procurement contract, cooperative agreement, grant, or other legal document. Funds were not deposited to the BAT Fund account and there was no evidence that disbursement of gift funds were supported by the required documents.

SBA, generally, is not authorized to charge, collect, and expend fees (see next paragraph). Therefore, none of the identified purchases should have been made if the source of the excess funds was fees.

Registration and vendor fees were collected and used without authorization

The district collected \$79,660 in registration and vendor fees without proper authority. Fees ranging from \$15 to \$200 were charged for the events and comprised 57 percent of the total funds collected by the district. The fees were insufficient to cover the cost of the individual events. SOP 90 75 2 addresses the collection of fees for cosponsored events, but is silent on fees for SBA-sponsored events.

Section 5(b)(12) of the Small Business Act states that the Administrator may:

- (12) impose, retain, and use only those fees which are specifically authorized by law or which are in effect on September 30, 1994, and in the amounts and at the rates in effect on such date, except that the Administrator may, subject to approval in appropriations Acts, impose, retain, and utilize, additional fees -
- (A) not to exceed \$100 for each loan servicing action (other than a loan assumption) requested after disbursement of the loan, including any substitution of collateral, release or substitution of a guarantor, reamortization, or similar action;
 - (B) not to exceed \$300 for loan assumptions;
 - (C) not to exceed 1 percent of the amount of requested financings under title III of the Small Business Investment Act of 1958 (15 U.S.C. 681 et seq.) for which the applicant requests a commitment from the Administration for funding during the following year; and
 - (D) to recover the direct, incremental cost involved in the production and dissemination of compilations of information produced by the Administration under the authority of this chapter and the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.). . . .

Pursuant to this statutory constraint, the Agency could only charge such fees in a SBA-sponsored event if there was other explicit statutory authority or they were in effect on September 30, 1994. We found no such authority and the AA/OFO and GC confirmed that they were unaware of any authority permitting the Agency to charge registration fees or exhibit fees at SBA-sponsored events.

Controls over reporting and disbursements were not adequate

The district office and its agent did not have adequate controls in place to ensure that all fees and gifts for the events were properly recorded and used in support of district sponsored activities. In March 1998, the district entered into an agreement with the Atlanta Chapter of SCORE to manage funds for sponsored events, maintain books and records, submit reports to the district, and account for receipts and disbursement of all funds. In return for this service, the district office paid an administrative fee to SCORE from the funds collected and deposited the funds in the custodial bank account. A review of SCORE control procedures disclosed material weaknesses in its managing and accounting for these funds. Specifically, we found that:

- Final financial reports were not prepared for the FY 2000 Partners' Conference, FY 2000 Small Business Week Luncheon, and the 8(a) Workshop.
- Monthly reconciliations of the custodial checking account were not performed.
- Some checks were either missing, not recorded in the check register, signed in blank, or made out to "cash."

Paragraph 21.a. of the SOP states that SBA employees must handle gift funds in a manner that ensures full accountability. In our opinion, this includes depositing gifts funds to the BAT Fund and using procurement documents for subsequent disbursements from the BAT Fund.

Reasons for noncompliance

We believe that there were two reasons for the noncompliances. First, senior district office management believed that SOP 90 75 2 was not applicable to the events that were conducted.

Second, we found no evidence that regional or headquarters personnel reviewed the district's events to ensure compliance with SBA policy and procedures. District personnel stated that regional and headquarters personnel attended the events and had not provided any criticism of how the events were managed.

Recommendations

We recommend that the Associate Administrator for Field Operations take the following actions to ensure the district's compliance with SBA's policies and procedures and Federal law concerning sponsored events:

- 1.A. Provide more comprehensive oversight over district office activities involving SBA-sponsored and cosponsored events. Such oversight should include, as a minimum, comparison of district office calendars to cosponsorship and gift reports and reviews of BAT Fund deposits and withdrawals.
- 1.B. Provide clear instructions to Georgia District Office personnel concerning the appropriate procedures for planning and conducting cosponsored and SBA-sponsored events.
- 1.C. Require the district office to establish controls to ensure funds are not solicited from proscribed sources and that sources requiring a conflict of interest case-by-case determination are submitted to the appropriate SBA office for review.
- 1.D. Remind the district office of the requirement to deposit all gift funds for any future SBA-sponsored events into the BAT Fund at the U.S. Treasury, and require existing gift funds to be remitted to the BAT Fund.
- 1.E. Remind the district office of the requirement to notify donors of SBA's intent to use excess gift funds from SBA-sponsored activities and of the requirement to use legally appropriate disbursement documents to obtain gift funds from the BAT Fund.
- 1.F. Require the district office to establish controls such as using standard procurement practices to ensure that funds are not used for prohibited purposes.

- 1.G. Require the district office to cease charging registration fees until a determination is made by the Office of General Counsel that such activity is authorized.

Management Comments

The AA/OFO stated that oversight of field office SBA-sponsored and cosponsored activities could be accomplished by incorporating review criteria into the Quality Service Review process. He further stated that his office would work with the GC and the OIG to establish review criteria.

The AA/OFO and GC issued a combined response for the remaining recommendations. They agreed with six of the recommendations (1.A., 1.C., 1.D., 1.E., 1.F., and 1.G.) but disagreed with recommendation 1.B. For recommendation 1.B., they stated that they believe clear guidance already existed and that the Georgia District Office appeared to have ignored it. However, they added that the Office of General Counsel (OGC) plans to proactively update legal opinions relevant to the issues found in the Georgia District Office and will provide guidance in regular conference calls with field counsel. □

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In addition to the disagreement with recommendation 1.B., the AA/OFO and GC disagreed with other OIG conclusions presented in the draft report. Details of these disagreements are discussed below.

Cosponsorships

Management disagreed with the conclusion in our draft report that the two partner conferences conducted by the district were cosponsorships. They stated that Section 8(b)(1)(A) of the Small Business Act, the authority for cosponsorships, cannot be applied to lender conferences because small businesses were not being trained. They further stated to the extent any earlier OGC opinions might indicate that cosponsorships could be used to provide training to intermediaries rather than directly to small businesses, those prior opinions are overruled.

Conflicts of Interest

Management disagreed that there is always a conflict of interest when a district office solicits gifts from lenders doing business with it or that lenders are program recipients. They stated that a case-by-case analysis must be done in each instance in which a district office seeks donation from lenders.

Use of Gift Funds and Excess Funds

Management disagreed that the providing of food to lenders during training sessions was, without more explanation of circumstances, per se improper. They referred to SBA procedural Notice 7000-136, issued April 2002, which states that funds may be used to pay for food at an

SBA-sponsored event under certain circumstances. They also stated that they did not agree with the OIG conclusion that the funds in excess of expenses were excess gift funds. They concluded that because the district has no authority to collect fees, the gift funds should be applied toward expenses first. Therefore, the excess funds were unauthorized registration and vendor fees that should be remitted to the general fund of the U.S. Treasury.

Authorization to collect Fees

Management agreed that SBA currently does not have the authority to collect fees for SBA-sponsored activities ☐

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Evaluation of Management Comments

We consider management's responses to recommendations 1.A., 1.C., 1.D., 1.E., 1.F., and 1.G. to be responsive. While management's response to recommendation 1B indicated its disagreement, it did describe actions planned to update legal opinions relevant to the discussed issues and to provide guidance to the field in regular conference calls. Also, they stated ☐

FOIA EX. 5 and 6

☐ We consider the actions planned to be responsive to this recommendation. Our evaluation of management's other comments follow.

Cosponsorship

In our draft report, we classified the Georgia District Office's partner conferences as cosponsorships, based on the definition cited in SOP 95 75 2. This definition was in effect at the time the events were planned and conducted and was the definition management had available for use. The SOP does not limit training and managerial assistance provided during cosponsorships to small business concerns. ☐

FOIA EX. 5

☐ However, because the Georgia District Office: a. did not enter into a required written cosponsorship agreement with the outside sponsor, and b. the SBA inappropriately collected funds directly through its fiscal agent, we agree that the events were not cosponsorships. Therefore, we deleted this section from the report.

Conflict of Interest

As stated in the audit report, we concluded that lenders are program recipients because they receive a benefit from participation in the program. This is the definition of a program recipient in SOP 90 75 2. We concluded that they should also be considered proscribed sources because of their relationship with district offices and because they sometimes meet the definition

of a proscribed source. It is likely that a lender would be influenced to make a contribution when solicited because the district office can impact the lender's eligibility to participate in the program, the approval of its loans, and SBA's honoring of the loan guarantee. By the same token, there is an appearance of partiality when funds are received from a lender for whom the district has recommended or subsequently recommends continued program participation, expansion, or an upgrade in lending status.

The practicality of conflict of interest determinations must also be addressed. To properly ascertain the lender's relationship with SBA and to avoid the appearance of a conflict of interest, SOP 90 75 2 requires the district director or other SBA official to know, among other things, the aggregate number and value of gifts given by the lender to all SBA offices in a given year and whether the lender is involved in litigation with SBA. Currently, there is no process or procedure that allows a district director or other SBA official to readily access this information.

Use of Gift Funds and Excess Funds

The events discussed in the audit report occurred prior to the issuance of SBA procedural Notice 7000-136 and were reviewed for compliance with SOP 90 75 2, paragraph 17. Each of these events was planned and conducted by SBA staff and was attended solely by lenders and SBA personnel. Paragraph 17.b. of the SOP states that gift funds can be used to pay for food and drink only if the food and drink are a necessary and integral part of the event and the food and drink advances the purpose for which the funds were donated. The SOP gives the example of networking over food and drink at a widely-attended public function. Attendance at the events in question was limited to lender and SBA personnel and, for that reason, cannot be considered widely-attended public functions.

Concerning the classification of the excess proceeds as gift funds, it must be noted that gift funds, registration fees, and vendor fees were received at various points in time and were commingled in one account. There is no evidence to support management's conclusion that gift funds were expended first and the source of the excess funds were fees. Our conclusion that the excess funds were gift funds is based on the SOP requirement that expenses be paid from fees first. Because there is no way to validate which conclusion is correct, we will not challenge management's conclusion.

Authorization to collect fees

We revised this section of the finding addressing SBA's authorization to collect fees to better express the basis for our opinion.

Description of Sponsorship Events

1. Partnership Conference for 1999

Held at the Marriott Hotel in Savannah, Georgia, from December 1 to 3, 1999. The event focused on training small business lending and resource partners in the state of Georgia. A 10-member planning committee (2 SBA, 2 SBA affiliated, and 6 lender personnel) planned most aspects of the conference. The majority of attendees were representatives of lenders.

2. Partnership Conference for 2000

Held at the Sheraton Colony Square hotel in Atlanta, Georgia, on May 16, 2000, to celebrate Small Business Week. The event provided recognition to Georgia small business owners, lenders, and advocates and included a reception, dinner, presentation of awards, and speeches by business, media and other professionals. Lenders and entities who participated in the lending process comprised the majority of the attendees.

3. Small Business Week Banquet

Held at the Radisson Hotel in Augusta, Georgia, from November 1 to November 3, 2000. The event focused on training for 504 and 7(a) program lenders. A 9-member planning committee (2 SBA, 1 SBA affiliated, and 6 lender personnel) planned most aspects of the conference. The majority of attendees were representatives of lenders.

4. Small Business Week Luncheon

Held at the Cobb Galleria Centre in Marietta, Georgia, on May 3, 2001, to celebrate Small Business Week. The event provided recognition to Georgia small business owners and advocates and included a presentation of awards. Lenders and entities who participated in the lending process comprised the majority of the attendees.

5. Georgia 8(a) Contractors Conference

Held at the Sam Nunn Federal Center in Atlanta, Georgia, on August 15, 2001. The conference was held to provide training to section 8(a) contractors and included panel discussions on various subjects of interest to section 8(a) firms. Most attendees were 8(a) firms.

APPENDIX B

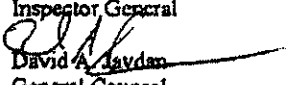
Sources and Uses of Funds For District Office Activities September 1, 1999 to December 31, 2001						
Sources	1999 Partners Conference	2000 Partners Conference	2000 Small Business Week	2001 Small Business Week	8(a) Workshops	TOTALS
Registration Fees	\$31,425.00	\$22,800.00	\$10,870.00	\$6,650.00	\$1,690.00	\$73,435.00
Vendors Fees	\$3,000.00	\$3,225.00	\$0.00	\$0.00	\$0.00	\$ 6,225.00
Gifts	\$26,075.00	\$21,500.00	\$4,850.00	\$6,900.00	\$0.00	\$59,325.00
Interest/Other Deposits	\$49.77	\$272.29	\$62.03	\$663.30	24.88	\$1072.27
Total	\$60,549.77	\$47,797.29	\$15,782.03	\$14,213.30	\$1,714.88	\$140,057.27
Uses of Funds	-\$36,165.07	-\$41,580.97	-\$11,291.05	-\$15,379.09	-\$3,058.57	(\$107,474.75)
Excess Funds	\$24,384.70	\$6,553.06	\$4,490.98	(\$1,165.79)	(\$1,343.69)	\$32,582.52
Beginning Balance as of September 1, 1999						\$9,905.56
Other Deposits and Adjustments						\$618.79
Excess Funds						\$42,488.08
Other Expenditures (1)						-\$22,746.52
Excess Funds As of December 31, 2001						\$20,360.35
(1) Does not equal total of noncompliant uses of funds because some of those items are included in event costs.						




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

DATE: June 21, 2002

TO: Phyllis K. Fong
Inspector General

FROM: 
David A. Hayden
General Counsel


David Frederickson
Associate Administrator
Office of Field Operations

RE: Response to OIG Draft Audit Report
Georgia District Office Sponsorship Activities

We are hereby jointly responding to the Office of Inspector General's ("OIG") Draft Audit Reports ("Draft Report") dated April 29, 2002 and May 31, 2002 referenced above.¹

As indicated by OIG in the Draft Report, OIG reviewed five Georgia District Office events conducted during the period September 1999 to January 2002. The Draft Report characterized two of the events (the "partnership conferences") as cosponsorships and the other three events (an 8(a) conference and two small business week events) as SBA-sponsored events. The Draft Report concludes that the Georgia District Office did not comply with "sponsorship requirements" because (i) the District Director did not believe the "partnership conferences" were cosponsorships; (ii) the Georgia District Office lacked familiarity with SBA's Standard Operating Procedure ("SOP") 90 75 2; and (iii) there was inadequate oversight of Georgia District Office activities by regional and headquarters personnel.

As a basic matter, we agree with the essence of OIG's Draft Report, that certain Georgia District Office actions relating to these events were clearly improper and that remedial action must be taken to ensure that going forward, the highest levels of integrity remain intact. We will accept no less.

We are constrained to note, however, that while we agree with the central theme of the Draft Report, we disagree with some of the details. We concur with OIG that three of the events were SBA-sponsored events, but we disagree that the two "partnership conferences" were cosponsorships. OIG's conclusion that these two "partnership

¹ We received the April Report initially. Thereafter, OIG issued the second. We see no discernible difference in the two Reports and have attempted to meet all the issues listed in both.

conferences" were cosponsorships colors much of the rest of the Draft Report. Also included in the Draft Report are OIG's one finding (with six subparts) and five recommendations. As discussed below, while we agree with OIG's findings and recommendations generally, to the extent that they are based on the conclusion that the two partnership conferences were "cosponsorships," we disagree.

Generally, except as stated, we believe that the underlying facts of this audit represent a significant challenge for the Agency at this time and in going forward. Below, we address the OIG's finding (and each subpart) and the recommendations set forth in the Draft Report.

DISCUSSION OF OIG'S FINDINGS GENERALLY

Cosponsorships and SBA-Sponsored Events

As stated above, the overall conclusion of the OIG in its Draft Report was that the Georgia District Office did not comply with "sponsorship requirements." The OIG's use of the term "sponsorship" or "sponsored" throughout the Draft Report confuses cosponsorships with SBA-sponsored events. These are distinct types of events. When the Agency participates, plans and conducts an event, it has two avenues to pursue: (1) a cosponsored event or (2) an SBA-sponsored event. The distinction is important because different legal and policy rules apply. (See e.g., SOP 90 75 2 and Procedural Notice 7000-136 (April 22, 2002)).

The Draft Report states, "[a]ctivities or events which are planned and conducted jointly by SBA and one or more co-sponsors are considered co-sponsored. A cosponsor is an entity that actively and substantially helps SBA plan or conduct a co-sponsored program." Because the factual evidence demonstrates that outside entities were involved in the planning of the "partnership conferences," the OIG concluded that the events were cosponsorships. We disagree with this conclusion. The above-quoted statement is accurate only to the extent it involves programs or events that provide technical and/or managerial aid to small businesses. The "partnership conferences" at issue here were lender conferences where there was no training of small businesses. By law, cosponsorship authority does not extend to lender training events in the absence of something more. Pursuant to SBA's statutory authority to enter into cosponsorships, Section 8(b)(1)(A) of the Small Business Act ("Act"), it is clear that lender conferences cannot be cosponsorships because small businesses are not being trained.

In addition, we understand that OIG's conclusion finding two cosponsorships is based upon its reading of legal opinions issued by the Office of General Counsel ("OGC") over eleven years ago [

[
FOIA Ex. 5
]

DISCUSSION OF SPECIFIC OIG FINDINGS

Finding 1a

In its first finding, OIG states that cosponsorship approvals and agreements were not obtained for the two conferences it finds to be cosponsorships. This finding is based upon the OIG's conclusion that the two "partnership conferences" reviewed are cosponsorships. As we disagree with this factual conclusion, we also disagree with the OIG's first finding. The approvals and agreements referenced in OIG's Draft Report are only required under SBA's SOP 90 75 2 governing cosponsorships. Because these two "partnership conferences" were not cosponsorships, there was no requirement that the Georgia District Office execute a cosponsorship agreement; nor was there any need for the Georgia District Office to seek approval of such an agreement from Headquarters pursuant to the SOP.³

Findings 1b-d Generally

Gifts

OIG also made three findings relating to gifts: i) that gifts were accepted from prohibited and unapproved sources; ii) that gifts were not deposited in the Business Assistance Trust Fund ("BATFund"); and iii) that gift funds were used for prohibited purposes.

SBA has specific statutory authority to accept gifts under certain limited circumstances. Section 8(b)(1)(G) of the Act authorizes SBA to accept gifts, including "services and facilities," if such gifts assist SBA in carrying out its functions under the Act. Nevertheless, before accepting such gifts, SBA must consider each potential donor's relationship, if any, with SBA. Donors with no relationship with SBA are "allowable" sources, proscribed sources and grantees are "prohibited" sources, and donors with a "business relationship" with SBA require a case-by-case determination of whether the particular relationship gives rise to a conflict of interest. (See SOP 90 75 2, ¶ 18.)

² As part of its efforts to address the problems raised by the Draft Report, OIG intends to proactively issue new legal opinions related to certain subject matters at issue in this OIG Draft Report. As they are still in the drafting stage, we do not refer to them here.

³ We note for the record that we agree with the Georgia District Director here that the partnership conferences were not cosponsorships. As detailed herein, however, we take issue with the methods he employed to effect these meetings and to that extent concur with OIG.

Specific Findings

Finding 1b

In the Draft Report, OIG stated that the Georgia District Office improperly solicited and accepted gifts for its "sponsored" events. Specifically, the OIG noted the following improprieties:

The District Office solicited financial support with levels of recognition;

The District Office solicited financial support and accepted gifts from SBLCs, who are proscribed sources under SOP 90 75 2;

The District Office solicited and accepted financial support from Colson Services, an SBA contractor, and several SBA lenders without making a "case-by-case determination" of the existence of an actual or apparent conflict of interest before the gifts were solicited (and before such gifts were accepted) as is required for sources having a business relationship with SBA.⁴

Conflicts of interest did occur when the District Office solicited and accepted gifts from lenders who did business with the District Office; and

Lenders are program participants and are thus proscribed sources.

We agree that specific levels of recognition based solely upon contribution are not appropriate because they appear to provide a "quid pro quo" by SBA for the gift from the outside source to SBA. A gift, however, is just that: by its nature a *quid pro quo* cannot be required for a gift. (See Procedural Notice 7000-136 (April 2002), page 5).⁵

We agree that SBLCs are proscribed sources and that to the extent gifts were solicited and accepted from SBLCs, the District Office acted improperly.

We also agree that pursuant to Paragraph 18 of SOP 90 75 2, the District Director, as the approving official (as defined by ¶ 2, Appendix 2, SOP 90 75 2), was required to make a "case-by-case determination" as to whether accepting the potential gift from a contractor

⁴A business relationship is defined as "(the association of SBA with a Participating Lender; a Certified Development Company (CDC); a surety or insurance company participating in an SBA program; a trade association whose members SBA regulates; a contractor, other than an 8(a) program participant; or a parent, subsidiary, or affiliates of any of the above." SOP 90 75 2, Appendix 2, Paragraph 3. The approving official (see Paragraph 2, Appendix 2, of SOP 90 75 2) must conclude that the gift "would not create an actual or apparent conflict of interest." Factors to be considered in that analysis are set forth in Paragraph 18 of SOP 90 75 2.

⁵ To the extent that this analysis specifically conflicts with any prior opinion issued by OGC, such opinion is expressly overruled. Moreover, we refer the OIG to the Procedural Notice of April 2002 as the appropriate current guidance (see page 5).

or lender would create an actual or apparent conflict of interest. Such a determination should have been made before any gift was solicited or accepted on behalf of SBA from an SBA contractor or SBA lender, both sources having a business relationship with SBA. We agree that a conflict analysis should have been conducted for Colson Services and each lender doing business with the Georgia District Office. We agree that none of this analysis was performed by the Georgia District Office as required by SOP 90 75 2.

We do not agree as a general matter, and absent a specific case-by-case analysis, that there is always a *per se* conflict of interest when any District Office solicits gifts from any lender doing business with it. Nor do we agree that lenders are program recipients. We are aware of OIG's stated position that lenders are "program recipients" and against District Office solicitation of lenders for gifts. The Agency's current policy, however, is reflected in SOP 90 75 2: that it is appropriate to solicit gifts from donors (cosponsors are not donors) in support of an SBA-sponsored event. (Paragraph 16b of SOP 90 75 2). We continue to hold the position that a case-by-case analysis must be done in each instance in which a District Office seeks donations from lenders, and that when the District Office fails to do so, it has violated current Agency policy.

Finding 1c

In the Draft Report, OIG found that gift funds received for various Georgia District Office events were not deposited into the BATFund as required by 31 U.S.C. § 1321(b) and SBA SOP 90 75 2, ¶21. Instead, according to OIG, gift funds were transmitted or directed to SCORE as the Georgia District Office's fiscal agent for deposit in SCORE's custodial checking account. OIG concluded that an agreement with SCORE should not have been executed by SBA requiring that SCORE accept and disburse agency gift funds. We agree with the facts as stated by the OIG in the Draft Report. Assuming that the gift checks were intended for use by SBA for the conferences, they should have been deposited in the BATFund, and this was not done. Therefore, to the extent that SBA accepted cash from donors pursuant to SBA's gift acceptance authority and the gift money was not deposited in the BATFund, we agree that they should have been deposited in the BATFund, were not, and therefore, failure to do so constituted a violation of 31 U.S.C. 1321(b), as well as SBA's BATFund requirements set forth in SOP 90 75 2.

Finding 1d

In examining the disbursements made by the Georgia District Office between September 1999 and January 2002, OIG found that the Georgia District Office used gift funds for prohibited purposes and in a manner not in compliance with SBA policy and procedures. Specifically, OIG states that the Georgia District Office used gift funds for polo and golf shirts for participants at the "partnership conferences," for alcohol at an open bar for conference attendees at the 1999 "partnership conference" and the 2001 Small Business Week luncheon, and for food provided to lenders during various training sessions. We agree that to the extent that the Georgia District Office's use of gift funds for personal gifts (*i.e.*, shirts) and for alcohol, such use was improper. (See SOP 90 75 2, ¶ 17). We

do not agree that use of gift funds to provide food to lenders during training sessions was, without more explanation of circumstances, *per se* improper. In fact, pursuant to SBA Procedural Notice 7000 – 136 (April 22, 2002), donated funds may be used to pay for food at an SBA-sponsored event as long as: i) the activity furthers the Agency mission; ii) the activity is consistent with the purpose for which the funds were given; iii) the activity is an official SBA activity; and iv) the expenditure is essential or necessary to the furtherance of SBA's purposes. Therefore, the use of gift funds for food expenses might have been allowable and acceptable, but there are not sufficient facts set out in the OIG Draft Report for management to make a determination of propriety in these circumstances.

OIG also found that the Georgia District Office improperly kept and retained what OIG characterizes as "excess gift funds." OIG found that the Georgia District Office did not notify donors prior to using these "excess gift funds" and failed to use proper procurement procedures when expending such funds. Specifically, OIG found that "excess gift funds" were improperly used for the costs for lender's appreciation day, for a retirement party for the Deputy District Director, for District Office equipment and administrative supplies and services, printing and publication costs for different events, and Georgia District Office staff training on time management.

First, we wish to make clear that we agree that the Georgia District Office clearly improperly used funds leftover from these events. We do not agree with OIG's characterization of such "excess" funds as "excess gift funds." In the Draft Report, to find misuse of the "excess gift funds," OIG relies upon the requirement in SBA SOP 90 75 2 that fees received for each event must be applied to the event's costs first. However, this rule only applies to *cosponsorships*; it does not apply to any of the SBA-sponsored events reviewed by the OIG. As discussed below, it is our view that the Georgia District Office had no "excess funds" to spend because it had no authority to charge registration or vendor fees for SBA-sponsored events in the first place. Thus, gift funds, not registration or vendor fees, *should have been used* to pay for the costs of the events. Because (based upon the figures set forth in the Draft Report) the Georgia District Office did not have sufficient gift funds to cover the costs of the five SBA-sponsored events at issue here, any funds left over constitute unauthorized fees collected by the Georgia District Office that should have been deposited into the general fund of the U.S. Treasury pursuant to the Miscellaneous Receipts Act, 31 U.S.C. 3302(b).

Finding 1e

OIG, in the Draft Report, found that the Georgia District Office collected substantial sums in registration and vendor fees without proper authority. Although we agree with the OIG's factual conclusion that the Georgia District Office improperly collected (and thereafter spent) substantial funds from unauthorized fees, we do not agree with the legal basis for OIG's conclusion.

OIG cites to Section 5(b)(12) of the Act, which states that the Administrator may:

impose, retain, and use only those fees which are specifically authorized by law or which are in effect on September 30, 1994 and in the amounts and at the rates in effect on such date, except that the Administrator may, subject to approval in appropriations Acts, impose, retain, and utilize, additional fees --

(A) not to exceed \$100 for each loan servicing action (other than a loan assumption) requested after disbursement of the loan, including any substitution of collateral, release or substitution of a guarantor, reamortization, or similar action;

(B) not to exceed \$300 for loan assumption;

(C) not to exceed 1 percent of the amount of requested financings under title III of the Small Business Investment Act of 1958 for which the applicant requests a commitment from the Administration for funding during the following year; and

(D) to recover the direct, incremental cost involved in the production and dissemination of compilations of information produced by the Administration under the authority of this Act and the Small Business Investment Act of 1958...

Based upon this provision of the Act, OIG concluded that "absent authority from a specific appropriations Act, SBA does not have the authority to charge and use registration and vendor fees." OIG misreads the language of section 5(b)(12). Section 5(b)(12) only allows SBA to charge fees: 1) when authorized by statute; 2) in effect on or before September 30, 1994; or 3) as outlined in subparts (A) through (D), where approved in appropriations acts. None of the fees enumerated in subparts (A-D) are remotely related to the registration and exhibit fees charged at SBA-sponsored events. Therefore OIG's reliance on the appropriations Acts in this instance is misplaced.

In our view, the more appropriate analysis under Section 5(b)(12) is whether the Agency has statutory authority to charge such fees or whether any such registration and/or exhibit fees were in effect as of September 30, 1994. We were unable to find any statutory authority that permits the Agency to charge registration fees or exhibit fees at SBA-sponsored events.

FOIA Ex. 5

Under Section 5(b)(12), the Agency may still charge such registration or vendor fees if such fees were "in effect on September 30, 1994." Prior to the enactment of Section

5(b)(12) in October 1994, the Agency was able to impose fees under the Independent Offices Appropriation Act (known as the "IOAA" or "User Charge Statute") which is codified at 31 U.S.C. § 9701. To assess fees under the IOAA, an agency was required to first issue regulations.⁶ We are not aware of any regulations in effect as of September 30, 1994 allowing SBA to impose registration and/or vendor fees at or for SBA-sponsored events.

Moreover, under the Miscellaneous Receipts statute, 31 U.S.C. § 3302(b), money, received by the SBA or an agent for the use of the government, must be deposited in the general funds of the Treasury, unless there is statutory authority to do otherwise. Here, SBA charged conference attendees and exhibitors a fee to cover the costs of the SBA-sponsored event. Although the checks were made out to SCORE rather than SBA, SCORE served as SBA's fiscal agent for purposes of these SBA-sponsored events. Based upon the facts, as set out by OIG, there is no question that the registration and vendor fees charged at the SBA-sponsored events, and used by SBA to pay for the costs of such events, constituted money for the use of SBA.

Without statutory authority to collect, retain and use the registration and vendor fees, the Georgia District Office should have deposited such fees in the general funds of the U.S. Treasury. Instead, the Georgia District Office kept the fees and spent a portion of them. Because we agree that the Georgia District Office did not have authority to collect and retain and use these fees, it is our opinion that the Georgia District Office violated the Small Business Act in charging the fees and the Miscellaneous Receipts Act in keeping them.

Finding 1f

OIG's Draft Report noted that the Georgia District Office and its agent (SCORE) did not have adequate controls in place to ensure that all fees and gifts were properly recorded and used in support of Georgia District Office-sponsored activities. OIG also found that to ensure full accountability for gift funds, SBA employees must deposit gift money in the BATFund and use proper procurement procedures for disbursement of such funds. We do agree that gift funds must be deposited into the BATF fund pursuant to ¶21 of SOP 90 75 2 and that proper procurement procedures should have been used to disburse gift funds from the BATFund and that they were not. Nonetheless, because there is insufficient information and discussion in the Draft Report to determine what OIG means when it states that SBA and SCORE did not have "adequate controls" on recordation of the gifts, we cannot agree or disagree with that particular finding.

RECOMMENDATIONS

OIG has made five recommendations in the Draft Report, three of which involve providing guidance or reminding the Georgia District Office of certain requirements,

⁶ See Principles of Federal Appropriations Law, Vol IV, Chapt. 15, 15-139 (March 2001).

policies and/or procedures. As a general matter, many of the issues presented in the Draft Report have legal underpinnings. OGC recognizes the need for clear and updated legal guidance to the field on these issues and the Office of Field Operations recognizes the need for communication. As previously stated, OGC plans to proactively update legal opinions in subject matters relevant to the factual issues found in Georgia. OGC will also provide guidance in regular conference calls with field counsel (recently instituted by OGC). Such conference calls will also help OGC to keep abreast of activities in the field, allowing OGC to proactively prevent problems. Further, OGC intends to provide field counsel with a directory of Headquarters' attorneys annotated with the attorneys' areas of expertise and will encourage District Counsels to call or email Headquarters' attorneys for advice. OGC has also requested funds for an attorney conference (or series of conferences) where OGC Headquarters attorneys will have an opportunity to train and/or refresh field counsel on relevant law and policy, as well as new (and old) procedures where appropriate. Areas to be addressed will likely include rules for cosponsorships and SBA-sponsored events; appropriations law, ethics, guidance on SBA's gift acceptance authority, and grant law (rules for working with grantees such as SCORE). Where necessary, OGC will provide intense training to specific field counsel in these areas.

OFO also believes that guidance and training should be provided to DD's where appropriate.

We address each of OIG's recommendations below:

Recommendation LA: Provide clear instructions to Georgia District Office personnel concerning the appropriate procedures for planning and conducting cosponsored and SBA-sponsored events.

We disagree. While some aspects of the rules pertaining to cosponsorship and government-sponsored events may be difficult to understand, we believe that clear guidance already does exist and the Georgia District Office appears to have ignored it. No reading of the rules, no matter how tortured, would permit the activities in which the Georgia District Office engaged. SOP 90 75 2, to the extent it provides rules on gift acceptance procedures, use of the BATFund, and conflict of interest analysis, already provides adequate procedures for planning and conducting events like those at issue where gift funds are accepted and used. To the extent that the Georgia District Office did not follow the guidance set out in the SOP on gift acceptance, conflict analysis or use of the BATFund, we do not believe it is because the guidance was unclear. Moreover, SBA Procedural Notice 7000-136 (dated 4-22-02) now provides guidance on SBA-sponsored events more generally. Additionally, OGC field attorneys have been invited to discuss specific factual questions with OGC Headquarters attorneys whenever they need to do so. We further believe that the addition of the Procedural Notice guidance in April of 2002 meets the OIG's concerns for "further" guidance on SBA-sponsored events.

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cosponsorships and government-sponsored events and we will conduct such training for any other offices that request it.

Recommendation 1.B.: Require the District Office to establish controls to ensure funds are not solicited from proscribed sources and that sources requiring a case-by-case determination are submitted to the appropriate entity for review.

We agree. Specific controls should be instituted at the local level to require proper case-by-case analysis of gifts from sources outside the Agency. We believe that in general SOP 90 75 2, Chapter 3 addresses appropriate sources from whom to solicit and accept gifts, and it appears that the Georgia District Office failed to rely upon that SOP or simply ignored it. As previously stated, we are aware of OIG's position on the propriety of soliciting lenders for gifts, but as of now, the Agency's policy is reflected in SOP 90 75 2. We do not believe that at this time it ought to be changed.

Recommendation 1.C.: Remind the District of the requirement to remit all funds for any future SBA-sponsored events to either the BATFund or the U.S. Treasury (depending upon the nature of the funds), and require existing funds to be remitted to the BATF.

Based upon the facts outlined in the Draft Report, we agree that the Georgia District Office needs to be reminded of the requirement to deposit all gift funds into the BATFund. We believe, in fact, that the Agency has already provided such reminder in Procedural Notice 7000-136 (April 2002). Further guidance will be coming from the Office of Field Operations, the Office of Procurement and Grants Management, and the Office of the Chief Financial Officer on streamlined procedures for depositing gift funds into the BATFund and procurement procedures for disbursing funds from the BATFund.

We also agree that the Georgia District Office needs to be reminded of the fact that it has no current statutory authority to charge registration or vendor fees at SBA-sponsored events.⁷ [

FOIA Ex. 5

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We disagree that the funds remaining from the SBA-sponsored events reviewed in this audit should be remitted to the BATFund. We believe these funds constitute unauthorized fees collected by SBA that must now be deposited in the general fund at the U.S. Treasury. We agree nonetheless that the Georgia District Office should not have kept these excess funds nor spent them improperly on costs for lender's appreciation day,

⁷ To the extent that this holding contradicts prior OGC legal opinions, those opinions were overtaken by the 1994 change in the Small Business Act, section 5(b)(12), and in lieu of the statutory change, cannot be legally binding.

for a retirement party for the Deputy District Director, for District Office equipment and administrative supplies and services, on printing and publications costs for different events or on Georgia District Office staff training in time management.

Recommendation 1.D: Remind the District of the requirement to notify donors of SBA's intent to use excess gift funds from SBA-sponsored activities and of the requirement to use appropriate legal disbursement documents to obtain funds from the BATF.

We agree. SBA's existing policy is that the use of excess gift funds should be addressed in the donor's written declaration of gift to SBA and in SBA's standard gift acknowledgement letter. (See Appendix 6 and 7, SOP 90 75 2). We agree that existing policy was not followed. In the future, if the gift is unrestricted, we do not believe that a donor needs specific notification of the use of excess funds thereafter.

Recommendation 1.E: Require the District Office to establish controls such as using standard procurement practices to ensure that funds are not used for prohibited purposes.

We agree.



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

Appendix C
Page 13 of 13

DATE: July 12, 2002
TO: Robert G. Seabrooks,
Assistant Inspector General for Auditing
FROM: David W. Frederickson, *DWF*
Associate Administrator for Field Operations
SUBJECT: Draft Audit Report - Georgia District Office Sponsorship Activities

Pursuant to your recent e-mail requesting responses to Recommendation 1A and 1G of the above referenced draft audit report, the Office of Field Operations provides this response.

Recommendation 1A suggests that OFO should provide more comprehensive oversight over district office activities involving SBA-sponsored and co-sponsored events. We believe this could be accomplished by incorporating review criteria into the Quality Service Review (QSR) process. OFO will work with your offices, OGC and others to formulate appropriate review criteria which will be incorporated into the FY2003 QSR Manual and the review process going forward.

It is my understanding that discussions between OFO and OIG have resulted in the agreement that Recommendation 1G was sufficiently addressed in our previous response, and that no further action is necessary.

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