



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

<b>AUDIT REPORT</b>
<b>ISSUE DATE: January 20, 2004</b>
<b>NUMBER: 4-07</b>

**To:** Mike Pappas, Associate Administrator  
for Field Operations

Adela Soriano, Associate Administrator  
for Strategic Alliances

/S/ Original signed

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

**Subject:** Audit of Puerto Rico & US Virgin Island  
District Office Cosponsored and SBA-Sponsored Activities

Attached is a copy of the subject final report. The report contains one finding and 11 recommendations. You fully agreed with two recommendations, disagreed with two, and did not agree or disagree with seven. The nine recommendations where you disagreed, or did not agree or disagree, will be addressed during the audit resolution process. As a result of your comments, we modified certain passages in the report. A written evaluation of your comments is included as part of the report and your comments have been included as an attachment.

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

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

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

Any questions you may have regarding this report should be directed to Garry Duncan, Director, Credit Programs Group, at (202) 205-7732.

Attachment

**AUDIT OF PUERTO RICO & US VIRGIN ISLAND  
DISTRICT OFFICE  
COSPONSORED AND SBA-SPONSORED ACTIVITIES**

**SAN JUAN, PUERTO RICO**

**Audit Report Number 4-07**

**January 20, 2004**

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

**AUDIT REPORT**  
**PUERTO RICO & US VIRGIN ISLAND DISTRICT OFFICE**  
**COSPONSORED AND SBA-SPONSORED ACTIVITIES**

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## SUMMARY

The audit objective was to determine if the district office operated in compliance with Federal laws and SBA policies and procedures when planning and conducting cosponsored and SBA-sponsored activities. We reviewed the district's cosponsored events conducted between May 1999 and October 2002 and Business Resource Center (BRC) cosponsorships for the period October 1999 to May 2002. There were no SBA-sponsored events during these periods.

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

- Cosponsorship agreements either were not properly approved or prepared and included an ineligible cosponsor.
- Procurements were made without contracting authority.
- Gift funds were solicited and accepted from proscribed (i.e., prohibited) sources.
- Gift funds solicited by the district were not deposited to the Business Assistance Trust (BAT) Fund.
- Fees were charged inappropriately.
- Cosponsor contributions were used for unauthorized purposes.
- Unused Economy Act and gift funds either were not returned or returned untimely.
- Counseling services were improperly included as part of the BRC's activity.
- Amendments to the BRC cosponsorship agreement were executed improperly.
- Plans to use residual cosponsor funds were inappropriate.
- Record keeping, reporting, and asset accountability were inadequate.

In addition, gift funds for district office events may have been used for prohibited purposes.

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

We recommend that the Associate Administrator for the Office of Field Operations: (a) ensure all district personnel are aware of procurement requirements; (b) require the district to establish controls to prevent improper solicitation and acceptance of funds and to prevent funds from being used for prohibited purposes; (c) require both existing and future gift funds solicited by the district to be remitted to the BAT Fund; (d) refund \$7,000 improperly solicited and accepted from a micro-lender; (e) provide training to the district on the appropriate manner of charging fees; (f) establish controls to ensure that BRC cosponsorship funds are used only for authorized purposes; and (g) require the return to Minority Business Development Agency of unused Economy Act funds applicable to FY 2001 and FY 2002.

We also recommend that the Associate Administrator for Strategic Alliances take action to amend the BRC cosponsorship agreement to ensure that the operations comply with the

requirements of the Small Business Act concerning counseling services and establish controls to ensure required reports are received timely from the district.

The Administrators agreed with two recommendations, disagreed with two recommendations, and neither agreed nor disagreed with seven recommendations. They stated that the draft report raised many serious issues and while the Agency agreed with many of the points, there were instances in which the report's language was not clear and some fact-based issues for which details of the occurrences were not given. They also stated that it was necessary for the Agency and the Office of Inspector General (OIG) to use precise and consistent terms and definitions because they believed that the Agency and OIG were not using the same terminology. As a result of their comments, we revised or deleted portions of the audit 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 memoranda or written agreements between the parties. In addition, SBA has statutory authority to accept cash and other types of gifts for use in conducting activities that provide technical and managerial assistance to small business and for other uses in carrying out the purpose of the Act. Section 8(b) (1) (a) also allows SBA to charge fees for cosponsored activities. Per SBA's Office of General Counsel (OGC), this authority allows only minimal charges to be imposed on any small business concern to cover the direct costs of providing the assistance in cosponsored event.

SBA executed a 3-year cosponsorship agreement with four cosponsors in October 1997 to establish the BRC and renewed the agreement in October 2001 with five cosponsors. The cosponsors were the Minority Business Development Agency (MBDA) of the U.S. Department of Commerce, [

( FOIA Ex. 4 ] The BRC was a for-profit cosponsorship because for-profit concerns, the FOIA Ex. 4 were active cosponsors in the conduct of the activity. The purpose of the BRC was to offer standard business information center technology, library services, counseling services by Ex. 4 and the MBDA, and other economic development services. Funding for the BRC consisted of in-kind contributions of parking, space, personnel, literature, and information by the Ex. 4 and SBA, and annual cash contributions by the Ex. 4 and MBDA. The MDBA funds were provided based on Economy Act Agreements that authorized MBDA to transfer funds annually to SBA for disbursement to the BRC. These funds were only available for the fiscal year of issue and with the exception of the first year, unexpended funds were required to be returned annually to MBDA.

Prior to June 2003, SBA's oversight of outreach activities was coordinated through the Office of Business and Community Initiatives (OBCI). This office was the originator of Standard Operating Procedure (SOP) 90 75 2, Cosponsorships. Effective June 11, 2003, SBA created the Office of Strategic Alliances (OSA) to coordinate the formulation, development, implementation, and oversight of outreach activities, including cosponsorships. One of the effects of this change was to make OSA the lead program office for management of the Agency's gift solicitation and acceptance authority, cosponsorship authority, and SBA-sponsored activities.

### B. Objective and Scope

The objective of the audit was to determine if the District was operating in compliance with SBA policies and procedures and Federal law concerning SBA-sponsored and cosponsored events. To answer the objective, we reviewed the district's cosponsored events

and BRC operations conducted between May 1999 and October 2002. During this period, there were four district cosponsored events and two BRC cosponsorship agreements. The district did not have any SBA-sponsored events during this period.

Our review consisted of examining financial records and related documents obtained from the district office, the BRC, vendors, and contributors. We interviewed SBA district office and headquarters personnel, E.A. 4 officials, cosponsorship committee members, and donors. Audit fieldwork was performed in Atlanta, Georgia from May to November 2002. The audit was conducted in accordance with generally accepted Government Auditing Standards.

### **C. Statement on Management Controls**

Our assessment of management controls, policies, procedures, and practices included those applicable to the operational and financial management of the district's cosponsored and SBA-sponsored events and, to a limited degree, those of SBA headquarters to monitor the district's activities for these events. The audit was performed to determine whether the district complied with Federal and SBA requirements when conducting the cosponsored and SBA-sponsored events. A study and evaluation made for the limited purpose described above would not necessarily disclose all material weaknesses in the management controls. Our assessment disclosed material management control weaknesses at the district and SBA headquarters which impacted the district's ability to comply with Federal laws and SBA's policies and procedures and included the following:

- insufficient knowledge by district personnel on how to plan and conduct cosponsorships, manage cosponsorship funds, and use Federal Acquisition Regulations (FAR) for cosponsorship activities,
- inadequate and insufficient policies and procedures addressing collection of fees and the accounting and reporting of sources and uses of fees, donations, and cosponsor contributions,
- insufficient oversight by regional, headquarters, and MBDA management, and
- inadequate reporting by district personnel.

The effects of these weaknesses are fully discussed in the Results of Audit section of this report.

### **D. Prior Audit Reports**

The OIG issued audit reports in August 2002 and December 2003 specifically addressing the conduct of cosponsored and SBA-sponsored events and management and disbursement of event funds by the Georgia and Los Angeles District Offices. The audits found that cosponsored and SBA-sponsored events for these offices were not managed in accordance with SBA and Federal guidance and that event funds were not properly managed. The audits disclosed that the deficiencies occurred because district office senior management did not follow SOP 90 75 2, oversight by regional and headquarters personnel was not

adequate, and formal operating procedures did not thoroughly address cosponsored and SBA-sponsored operations and funds management.



## RESULTS OF AUDIT

### **FINDING    The District's Cosponsorship Events were not Managed in Compliance with Federal Laws and SBA Requirements**

The district and BRC cosponsorship events were not planned and conducted in accordance with Federal law and SBA policies and procedures. The following problems were identified:

- Cosponsorship agreements either were not properly approved or prepared and included an ineligible co-sponsor.
- Procurements were made without contracting authority.
- Gift funds were solicited and accepted from prohibited sources.
- Gift funds solicited by the district were not deposited to the BAT Fund.
- Fees were charged inappropriately.
- Cosponsor contributions were used for unauthorized purposes.
- Unused Economy Act and gift funds either were not returned or returned untimely.
- Counseling services were improperly included as part of the BRC's activity.
- Amendments to the BRC cosponsorship agreement were executed improperly.
- Plans to use residual cosponsor funds were inappropriate.
- Record keeping, reporting, and asset accountability were inadequate.

In addition, gift funds for district office events may have been used for prohibited purposes.

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

### **Cosponsorship agreements either were not properly approved or prepared and included and ineligible cosponsor.**

Three of the four cosponsorship events conducted by the district were not properly authorized because they did not have written cosponsorship agreements approved by SBA headquarters and the cosponsors. A fourth cosponsorship event, held in fiscal year (FY) 1999, was properly authorized because it was a not-for-profit cosponsorship with a memorandum of understanding executed by the District Director. The three cosponsorships, held in FY 2000, 2001, and 2002, were Small Business Week events jointly planned by district personnel, the White House Conference on Small Business<sup>1</sup> (WHCSB), a not-for-profit entity, and other for-profit and not-for-profit entities. These other entities included banks, Small Business Development Centers, Community Development Companies, a micro-lender, and other local public and private business and trade associations. Minutes of steering committee meetings

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<sup>1</sup> This organization was formed by delegates from Puerto Rico to the White House Conference on Small Business held in Washington, DC in June 1995 and has continued in existence since that time.

showed that these other entities were active in the planning of the cosponsored events, and therefore, were cosponsors as defined by SOP 90 75 2.

For the FY 2000 and 2001 events, agreements were executed by the district director with only one of the cosponsors, WHCSB. The agreements were not submitted to SBA headquarters for approval even though for-profit entities were cosponsors. The district director stated that he thought he had the authority to sign the agreements on behalf of SBA. For FY 2002, an agreement was not prepared for the Small Business Week event.

The Act requires that when SBA provides through cooperation with a profit-making concern, training, information, and education to small businesses, it must develop an agreement executed by an SBA Headquarters' employee. In furtherance of the requirements of the Act, SOP 90 75 2, Appendix 2, paragraph 7 states, in part, that a cosponsorship agreement is a written document required for all for-profit cosponsorships. Chapter 2, paragraph 5.a.(5) of the same SOP states that the Associate Administrator for Business Initiatives (Business and Community Initiatives) or another authorized SBA employee must execute a cosponsorship agreement with each cosponsor. Because the participating for-profit entities met the definition of cosponsors, they should have been parties to the cosponsorship agreements, and the agreements should have been executed in SBA headquarters. Because this was not done, the requirements of the Act were not satisfied and the events were unauthorized. In addition, the SOP categorizes a micro-lender as a prohibited source, and states that such sources cannot be cosponsors. Therefore, the micro-lender was not an eligible cosponsor.

#### **Procurements were made without contracting authority**

District office and BRC purchases totaling \$332,957 were not made in compliance with Federal law and SBA contracting policies and procedures. We identified the following deficiencies:

- *Procurements for Small Business Week (SBW) Events* – District personnel made purchases for cosponsorship events without contracting officer authority. Purchases included contracts obligating SBA to pay \$87,800 for hotel facilities, food, and beverage procurements. Also, \$59,400 was for purchases of supplies and services billed directly to the SBA. The employees admitted to not having contracting officer authority although one individual stated that she thought making these purchases was within the scope of her job description. Purchases were made using funds obtained through solicitations using letters with the SBA logo and signed by the district director. SBA's OGC opined that if SBA is party to the solicitation or if public perception would be that SBA is doing the soliciting, donated funds received are gift funds to SBA pursuant to SBA's gift authority.
- *Procurements for BRC Cosponsorships* – District office employees made \$217,866 in purchases without having contracting officer authority. The district director informed us that the manager was responsible for authorizing purchases, executing transactions, and approving invoices for payment. At least 50 percent of the BRC's funds were Federal monies obtained under annual Economy Act Agreements executed between the

MBDA and SBA and, therefore, were appropriated funds which are governed by the FAR and SBA contracting requirements.

Title 31, subtitle II, chapter 13, section 1341(a)(1) of the US Code states, in part, an employee of the US Government may not involve the government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law. Paragraph 22.b of SOP 00 11 1C, states that the only individual authorized to obligate the Government for procurement of goods and services is a contracting officer and that unauthorized expenditure of government funds or obligation of the Government for procurement of goods or services is a violation of Federal Law. Paragraph 11 of SOP 90 75 2, states that if SBA is the purchaser, SBA is bound by the FAR.

### **Gifts funds were solicited and accepted from prohibited sources**

The district solicited and collected donations totaling \$22,000 from prohibited sources. A micro-lender donated \$10,000 and a lender who was a potential litigant against SBA donated \$12,000. The district did not make a determination as to whether the solicitation or receipt of the gift funds would create an actual or apparent conflict of interest.

Paragraph 18.c. of SOP 90 75 2 states that employees must not solicit or accept gifts on behalf of SBA from prohibited sources. Appendix 2 of the SOP defines such sources as program recipients, including micro-lenders. The district identified the micro-lender's ineligibility for the FY 2002 event and refunded the \$3,000 donated. The \$7,000 donated in prior years was not refunded.

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 from legal counsel, must conclude that an actual or apparent conflict of interest would not be created. The donor of the \$12,000 was a lender in the Section 7(a) loan program and, therefore, had a business relationship with SBA.

Additionally, in the opinion of the OIG, apparent conflicts of interest occurred when a total of \$52,500 in gifts was solicited and received from lenders operating under SBA's Section 7(a) loan program. Each of these lenders had a business relationship with SBA and, therefore, should have a conflict of interest determination done before funds were solicited or accepted. The conflict of interest determinations may have shown that these lenders submitted loan applications, amendments to loan agreements, and requests for SBA to honor its guaranty at the same time they were being solicited for funds. In our opinion, these situations created apparent conflicts of interest. As previously stated, the SOP precludes the solicitation and acceptance of gifts when an actual or apparent conflict of interest is created.

### **Gift funds solicited by the district were not deposited to the BAT Fund**

Donations totaling \$49,000 for the FY 1999, FY 2000, and FY 2001 events were not deposited into SBA's BAT Fund. Of the \$85,500 received for the aforementioned events, \$36,500 was received from entities that can be classified as cosponsors. The balance was

received from donors whose perception was that SBA was a party to and conducting the solicitation. As such, funds donated to the district's events were gifts pursuant to SBA's gift authority and were required to be deposited into the BAT Fund.

Gifts received by Federal agencies under 31 U.S.C. §1321(b) are required 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 1988 (to facilitate the receipt and disbursement of monetary donations received under SBA's gift authority). As stated previously, SBA's OGC opined that if SBA is party to the solicitation, i.e., when SBA's logo is used in the solicitation, an SBA official signs the solicitation, or, if based upon all circumstances, public perception would be that it is SBA doing the solicitation, donated funds received are gift funds to SBA pursuant to SBA's gift authority and must be deposited into the BAT Fund.

In April 2002, SBA issued Policy Notice No. 70001-136 that provided general guidance relating to SBA's authorization to accept and dispose of gifts, including money (referred to herein as "donated funds"), under § 8(b)(1)(G) of the Act. The district subsequently revised its procedures for soliciting, collecting, and managing gifts and deposited the funds solicited for the FY 2002 event into the BAT Fund.

#### **Fees were charged inappropriately**

A portion of the \$37,500 in funds received from donors (called participant sponsors in the district's literature) and exhibitors for the events held in FY1999, FY2000, FY2001, and FY2002 should be classified as fees because the funds did not qualify as gratuitous transfers or voluntary gifts. These funds did not qualify as gratuitous transfers or voluntary gifts because the donors received compensation in the form of rights to exhibit and display their products or services and additional seats to district luncheon and award ceremonies. Details are as follows:

- *"Participant Sponsors"* – For the FY 1999, FY 2000, and FY 2001 events, a total of \$20,000 was collected from donors. Banks paid \$3,000 each and community development companies and trade associations paid \$1,000. In return for their payments, they received: (i) rights to exhibit and display their programs, products, and services; (ii) a listing in promotional materials, and (iii) rights to ten seats at the Luncheon and Awards Ceremony.
- *"Silver and Gold Sponsors" (donors)* – For the FY 2002 event, \$17,500 was solicited and collected from donors designated either as silver or gold based on the amount paid. Sponsors who paid \$1,500 were designated as silver and those who paid \$2,000 were designated as gold. The Silver sponsors received an exhibit table and an opportunity to be listed in SBA promotional materials. The Gold sponsors received an exhibit table and space, opportunity to promote and sell their products and services, a listing in SBA promotional materials and two tickets to the Awards Luncheon.

As fees, the amounts charged were inappropriate because categories of recognition were based on levels of amounts contributed and were not limited to what was necessary to offset the

direct costs of the events. We noted that the correspondence used to solicit these fees sometimes included the SBA logo or the signature of the district director, and SBA personnel were otherwise involved in requesting, collecting, and accounting for the funds. We believe, therefore, that the public's perception would be that SBA was conducting the solicitation.

On February 26, 1991, SBA's OGC agreed with an Office of Inspector General definition of a gift as a gratuitous transfer and further stated that the Agency is permitted to accept funds received through other than purely gratuitous transfers where two conditions are met: (1) any benefit received is not commensurate with the value of the gift, in that it is indirect, intangible, and speculative or de minimis; and (2) the gift is voluntary. Condition (1) was not met as the compensation received by the sponsors was neither indirect, intangible, speculative, nor de minimis.

Also on February 26, 1991, the OGC opined that the setting of levels of recognition based on levels of contribution could turn donations into payments. We noted that the fees charged to banks were \$1,000 to \$2,000 more than the level of fees charged to other donors and exhibitors, and the banks received increased recognition and at least eight additional seats to the district's luncheon and award ceremonies. We believe this resulted in increased recognition for the banks thereby creating a kind of penalty for the small donors.

Additionally, paragraph 5.a (8) of SOP 90 75 2, Chapter 2, states that fees charged for the cosponsorship shall not exceed a minimal amount to cover the direct costs of providing such cosponsorship. Paragraph 12.b. of the SOP states that registration fees must be carefully calculated to offset the cosponsorship estimated direct costs. We found no evidence that budgets were prepared for the events showing the relationship between the projected revenue and projected expenses. We noted that as expenses approached or exceeded revenues, the district solicited additional donors to try to cover the excess costs.

#### **Cosponsor contributions were used for unauthorized purposes**

The BRC used \$3,314 in cosponsorship funds for unauthorized purposes. We identified \$1,314 that was used to purchase personal gift items for distribution to BRC clients and \$2,000 that was loaned to the district as a down payment on a contract for hotel facilities for the district's Small Business Week event. BRC's funds totaling \$427,828 were received from a cosponsor through the Economy Act Agreements which restricted the use of the funds to pay operating expenses. Personal gift items and loans to the district do not qualify as operating expenses.

Paragraph 17 of SOP 90 75 2 states that "SBA employees may not solicit gifts for gift bags or other souvenirs for distribution to attendees at an SBA-sponsored activity or cosponsorship. Neither appropriated funds nor gift funds can be used for personal gift items." Because SBA's logo was used in the solicitations and the district director signed some of the solicitation and collection documents, SBA can be considered a party to the solicitation and the restrictions of the SOP apply.

### **Unused Economy Act and gift funds either were not returned or returned untimely**

The district did not return unused gift funds to donors and unused cosponsorship contributions to the BRC were not returned timely. Specifically:

- *Unused District Gift Funds* – For the cosponsorship events held in FY 1999 and FY 2001, there were excess funds of \$1,097 and \$27, respectively (see appendix B). The small business week steering committee members approved using unused FY 1999 gift funds to support the district's FY 2000 events, which had a deficit. The 3-year cumulative excess of \$49 was not deposited into the BAT Fund until after SBA notified all field offices of this requirement. The agreement between the district and the WHCSB required the return of any surplus funds to the donors on a pro-rata basis. SOP 90 75 2, paragraph 12.c, states that unused cosponsorship gift funds (funds other than registration fees) must be turned over to SBA as gifts for their discretionary use in accordance with the Act, unless otherwise required by the donor. We found no evidence that donors were notified of the unused funds or that such funds would be used to support the district's FY 2000 events.
- *Unused BRC Cosponsorship Funds* – SBA received funds totaling \$200,000 through Economy Act agreements from the MBDA from FY 1998 to FY 2001. The funds were available for use throughout each fiscal year and, with the exception of the first year; unexpended funds were required to be returned to MBDA at year-end. For each year of operation, the BRC's revenue exceeded its expenditures and, as of August 30, 2002, the BRC had a fund balance of \$219,485. In March 2003, after our identification of the requirements of the Economy Act Agreements, the district returned approximately \$156,000 to MBDA and FOIA Ex. 4 (\$77,899 each). The funds represented unused cosponsorship funds for the period October 1997 to December 2000. Unused MBDA cosponsorship funds for FY 2001 have not been returned.

### **Counseling services were improperly included as part of the BRC's activity**

Counseling was a part of the BRC's operations contrary to SBA's procedures. The cosponsorship agreements establishing the BRC stated that types of assistance to be provided under the cosponsorship would be "Ex. 4 & MBDA" counseling services. The BRC training files and other documentation showed that Ex. 4 and MBDA provided counseling service at the center and that the BRC director monitored the counseling activity. The Bank's active participation in the conduct of the BRC required the BRC to be classified as a for-profit cosponsorship.

Paragraph 4.a. of SOP 90 75 2 states that a for-profit entity is eligible to cosponsor only training activities. Paragraph 5.a (9) of the same SOP states that counseling may not be part of a for-profit cosponsorship. Counseling may occur at a cosponsorship site only if it is kept completely separate from the for-profit cosponsorship activities.

### **Amendments to the BRC cosponsorship agreement were executed improperly**

The district director executed amendments to the BRC cosponsorship agreement without proper authority. The Administrator executed the first BRC cosponsorship agreement in October 1997. The agreement was then amended in February 1998 to provide SCORE's responsibilities. The district director executed this amendment on behalf of SBA. A second amendment, also executed by the district director in March 1998, released the FOIA Ex. 4 as fiscal agent for the cosponsorship. Prior to its expiration, the district director verbally extended the agreement for 3 months. Written approval of the Associate Administrator for Business Initiatives or another appropriate approving official was not obtained.

Paragraph 7.e of SOP 90 75 2, states that all proposed amendments to a cosponsorship agreement must be reviewed and approved by the responsible program official, SBA legal counsel, and the approving official before being executed on behalf of SBA. Additionally, Appendix 2., paragraph 2.a. of the SOP states that the SBA officials authorized to approve amendments to for-profit cosponsorships are only the Administrator, Deputy Administrator, Associate Deputy Administrator for Economic Development, and the Associate Administrator for Business Initiatives. The cosponsorship agreement also states that the agreement can only be amended in writing, so the verbal extension of the agreement's term was not valid.

### **Plans to use residual cosponsorship funds were inappropriate**

The Office of Inspector General issued a management alert memorandum on November 13, 2002, relating to the BRC's planned use of \$120,000 of unused cosponsorship funds to improve an existing structure on the grounds of the FOIA Ex. 4 for use as a training center. Specifically, we questioned: (a) the appropriateness of the construction project in light of the mission of the BRC; (b) the availability of the funds since half should have been returned to the MBDA in accordance with the terms of the Economy Act; and, (c) the reasonableness of spending the funds when the current agreement had less than a year to go and there was no assurance that the Ex. 4 would continue to participate as a cosponsor or donor.

We recommended that the Associate Administrator for the Office of Field Operations and the Associate Administrator for the Office of Strategic Alliances, in consultation with OGC, the SBA Oversight Committee, and the Chief Financial Officer: (a) preclude the expenditure of funds for the proposed training center until consideration is given to the factors cited in the memorandum; (b) consider the appropriateness of the project in light of the BRC's mission; (c) require the BRC to identify the source of unused funds so that there is assurance that the funds could be used for this type of project; (d) require the BRC to return unused funds, if any, to the MBDA or have the MBDA certify that the funds are still available for use and provide permission for SBA to use the funds for the proposed construction project; and, (e) obtain approval from the Ex. 4 for the use of the unused funds for the proposed construction project.

As stated previously, the unused funds were returned to the cosponsors in March 2003. Therefore, there are currently insufficient funds to continue with the aforementioned project.

### **Record keeping, reporting, and asset accountability were inadequate**

The district did not ensure that its activities were conducted in compliance with record keeping and reporting requirements and that BRC assets were properly safeguarded. Details follow:

- SBA headquarters approval of budgetary information for cosponsorship events was not obtained. The district did not prepare a budget for each of the cosponsorship events indicating the planned sources and uses of funds. Chapter 2, paragraph 7.a. of SOP 90 75 2 states that prior to approval of the proposed cost of a cosponsorship, the responsible program official must review the anticipated sources and uses of funds for the cosponsorship. Because these were for-profit cosponsorships, the responsible program official would be in SBA headquarters.
- Required forms for gifts were not prepared for submission to SBA headquarters. When asked about forms required to be completed whenever SBA receives a gift, district personnel stated that the forms were not prepared. Chapter 4, paragraph 25, of SOP 90 75 2 requires each originating office to maintain a file for each gift and requires specific documentation be included in the file. Paragraph 26 of the same SOP requires a gift report be sent to SBA headquarters quarterly.

Assets of the BRC consisted of cash, property, equipment, and other assets. The assets were provided through in-kind and cash contributions by the cosponsors. Because a portion of the cash contributed was Federal money provided by MBDA, we concluded that Federal accountability requirements were applicable. In addition, the BRC manager was an SBA employee acting in his official capacity and, therefore, was subject to Federal and SBA requirements for safeguarding assets. OMB Circular A-123 states that management controls must provide reasonable assurance that assets are safeguarded against waste, loss, unauthorized use, and misappropriation. In addition, SBA SOP 00 02 2, Internal Control Systems, requires SBA to provide reasonable assurance that funds, property, and other assets are safeguarded. The following weaknesses were identified:

- *Specific policies and procedures applicable to BRC petty cash were not established.* Controls over the petty cash funds were weak. We identified 36 of 49 checks written to cash. Of the 36 checks written to cash, only 2 were supported by petty cash vouchers. The BRC manager cashed the checks and used the funds to make purchases. There was no periodic reconciliation of receipts to cancelled checks to ensure that funds were properly accounted for.
- *Overpayment to Furniture Vendor.* About \$900 was overpaid for a furniture purchase. The overpayment was outstanding for 12 months. As a result of our inquiries, the furniture manufacturer refunded \$946.43.



- *BRC equipment could not be located.* An inventory taken in December 2002 by the district and OIG personnel of purchased BRC equipment disclosed that computer, video, and audio equipment totaling \$769 could not be found. A second inventory, however, taken in April 2003 showed that the missing items had been located. The fact that the BRC director could not account for the items during the first inventory demonstrates that the assets were not properly safeguarded.

### **Possible prohibited use of gift funds**

The district may have used some gift funds to pay for the purchase of alcohol, a prohibited purpose. The district received gift funds of \$85,500 and fees of \$29,640 for the Small Business Week events for FY 1999, FY 2000, and FY 2001 and commingled the funds in one account (WHCSB checking account). Disbursements from the account were not identified by the source (gift or fee). Purchases of food and alcohol during this same period totaled about \$5,231. Because the expenditures were not segregated by source, it is possible that gift funds were used to pay for alcohol purchases. District management admitted that alcoholic beverages were served with meals at the luncheon and award ceremonies but did not consider this to be a material noncompliance. SOP 90 75 2, paragraph 17.c, states that gifts funds may not be used to supply or purchase alcohol or tobacco products.

### **Reasons for noncompliance**

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

- District personnel stated that they had not received formal training on the conduct of cosponsorships and were unfamiliar with the requirements of SOP 90 75 2. In calendar year 2002, training was provided to the district personnel.
- Prior to May 2002, SBA headquarters' oversight of the district's cosponsorship activities consisted of reviewing information received from the district and approving for-profit cosponsorship agreements and budgetary information. Regional oversight consisted of providing input for decisions on BRC operations. In May 2002, SBA headquarters, as a result of an anonymous letter and other correspondence, did a Quality Service Review (QSR) of the district's operations. The results of the QSR had not been formally issued as of April 2003.
- SBA SOP 90 75 2 was the only SOP that specifically addressed cosponsorship activities. The SOP is incomplete because it does not:
  - ✓ address the issue of levels of recognition based on levels of contribution,
  - ✓ state when or describe how funds were to be deposited into the BAT fund,
  - ✓ provide a procedure for identifying prohibited sources,
  - ✓ define cosponsor contributions,
  - ✓ define the minimal duties and responsibilities of a fiscal agent, or

- ✓ address asset accountability within a cosponsorship.
- In April 2002, SBA issued additional guidance on SBA sponsored activities and in November 2002, an Outreach Handbook that was issued in draft provided information about planning and managing SBA-sponsored, cosponsored and other outreach activities. These items improved upon the existing guidance, but did not address most of the above-mentioned problems or areas needing clarification in the SOP. (Note the SBA response acknowledges a lack of clarity in the SOP)

## **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 its cosponsored events:

- 1. A** Ensure that all district office and BRC personnel are aware of Federal requirements and SBA policies and procedures for procuring supplies and services.
- 1. B** Establish controls to prevent the district office from soliciting or accepting funds from prohibited sources and to ensure that sources requiring a conflict of interest case-by-case determination are submitted to the appropriate SBA office for review before solicitation.
- 1. C** Require existing gift funds to be remitted to the BAT Fund.
- 1. D** Remind the district office of the requirement to deposit all gift funds to SBA into the BAT Fund.
- 1. E** Refund \$7,000 solicited and accepted from a micro-lender, a prohibited source, for the FY 1999, FY 2000, and FY 2001 cosponsorship events.
- 1. F** Provide training to district office personnel concerning the appropriate manner of charging fees.
- 1. G** Require the district to establish controls to ensure that BRC cosponsorship funds are used only for authorized purposes.
- 1. H** Require the return to MBDA of all unused funds obtained through Economy Act Agreements for FYs 2001 and 2002.

We recommend that the Associate Administrator for Strategic Alliances:

- 1. I** Amend the existing BRC cosponsorship agreement to preclude counseling from being part of its mission.
- 1. J** Ensure that future district and BRC cosponsorships are executed in a manner to comply with the requirements of the Act.

## **Management's Comments**

The Associate Administrator for Field Operations and the Associate Administrator for Strategic Alliances, in conjunction with the Office of General Counsel (collectively referred to as SBA management), responded that the audit report raised many serious issues and while the Agency agrees with many of the points raised by the OIG, there were some detail areas of disagreement. They stated that there were instances in which the draft report language was not clear and for which additional facts were needed in order for SBA to know if the conclusions are warranted. Because of the specific nature and extensiveness of their comments, we elected not to synopsize the comments and have attached them in their entirety (see Appendix D).

SBA management agreed with recommendations 1.E. and 1.H. They disagreed with recommendations 1.C. and 1.I. For recommendation 1.C., they stated that SBA did not actually know that the funds at issue were gift funds, and for recommendation 1.I., they stated that the BRC cosponsorship agreement complies with the SOP. For recommendations 1.A., 1.B., 1.D., 1.F., 1.G., 1.J., and 1.K., SBA management referred to SBA's Outreach Handbook, SOP 90 75 2, and Procedural Notice 2000-664 and did not elaborate further.

## **Evaluation of Management's Comments**

As a result of management's response to both the subject matter in the audit report and to the recommendations, portions of the report were deleted or reworded to make the report more accurate and clearer. For the same reason, recommendations 1.B. and 1.F. were revised. An evaluation of management comments by report subsection follows:

*Cosponsorship agreements either were not properly approved or prepared and included an ineligible cosponsor.*

We reworded portions of this section to clarify that each of the cosponsorships discussed were planned in conjunction with multiple for-profit and not-for-profit entities in addition to the WHCSB. Because for-profit entities participated in the planning of the events, the events must be classified as for-profit cosponsorships and are required to have formal agreements executed by authorized SBA headquarters personnel. We were told that the WHCSB was a not-for profit corporation, but were unable to obtain documentation supporting this statement. In addition, we added the fact that an ineligible concern, a SBA micro-lender, was a cosponsor for the events.

Concerning the phrase "the events were not authorized", it is the OIG's position that the events discussed were technically flawed because they were not authorized by appropriate SBA headquarters personnel. The fact that the Agency could ratify the events after the fact, does not dispute the fact that they were not properly authorized at their inception as required. We noted that even though SBA was made aware of the facts surrounding the events in July 2003, no post-event ratification has occurred as of October 2003.

*Procurements were made without contracting authority.*

SBA management did not disagree with the facts presented in this subsection of the report.

*Gift funds were solicited and accepted on SBA's behalf by a third party.*

Based on management's comments, we re-evaluated our audit work and determined that the gift funds were for cosponsorship purposes. Therefore, a noncompliance did not occur.

*Gifts funds were solicited and accepted from prohibited sources.*

We disagree with SBA management's statement that there are insufficient facts stated in the report to assess whether the donation for the lender discussed in the report was inappropriate. The SOP requires that before a gift is solicited a case-by-case determination be made that a gift from a source having a business relationship with SBA will not create an actual or apparent conflict of interest. The SOP defines participating lenders as having a business relationship with SBA. As stated in the finding, no case-by-case determination was made for this lender. The business relationship creates the appearance of a conflict of interest. We believe this situation is aggravated by the fact that the lender had requested SBA to honor the guaranty on a loan at about the same time the solicitation took place. Absent a negative conclusion from SBA about the apparent conflict, no funds should have been solicited or accepted from the lender.

For the reasons cited above, the OIG believes that an actual or apparent conflict of interest is created whenever SBA solicits or accepts gifts from participating lenders. Each of these lenders has a business relationship with SBA, and therefore, a case-by-case determination that an actual or apparent conflict of interest does not exist must be made.

*Gift funds were not deposited to the BAT Fund.*

This section was rewritten to state that \$49,000 should have been deposited into the BAT Fund. We subtracted contributions from cosponsors totaling \$36,500.

*Fees were charged inappropriately.*

The funds received from "participant sponsors" were not from entities that participated in the planning of the events. The term "participant sponsors" was used by the district and was not based on the level of involvement the entity had in planning or conducting the cosponsored event. SBA management's statement that the OIG has concluded that anything given by SBA to a donor automatically turns the donor's gift, in its entirety, into a fee is not accurate. The finding does not make this statement. The finding states that the donors received additional seating, exhibition space, and recognition for their donations at the events. The cost basis of attendance at each event was about \$25 per person and the cost basis for the exhibition space was at least \$124 per donor. Therefore, we estimate that the cost of the benefits received by donors ranged from \$124 for a "silver" donor at the FY2002 event to least \$374 for a donor to the FY 1999 event. Based on this information, the benefits received by donors were not de minimis.

The finding was reworded to state that a portion of the funds received should be classified as fees. SBA management stated that it agrees that the value of the benefits received should be subtracted from the donations and the excess classified as a gift. We are therefore in agreement. A determination of how much of the funds should be classified as fees and how much as gifts remains to be made by SBA.

*Cosponsor contributions were used for unauthorized purposes.*

The \$2,000 loaned to the District for use as a down payment for hotel facilities were from funds provided by cosponsors to support the BRC cosponsorship. We could not determine if the contributions were from the for-profit cosponsors or from the appropriated funds provided by MBDA. Regardless of the source, this use of BRC cosponsorship funds did not comply with the Economy Act Agreements or the Cosponsorship Agreements. With regard to the personal gift items, we believe the wording of the SOP is clear. Management's response indicates that the SOP may need to be revised to reflect the criteria discussed in its response.

*Unused Economy Act and gift funds either were not returned or returned untimely.*

The cosponsorship agreement between SBA and the WHCSB required the return of all unused gift funds to the donors. The Economy Act Agreements for the MBDA funds contributed to the BRC also required the return of unused funds. Unused funds from the district's events were not returned at all and unused BRC funds were not returned until we alerted management of the problem.

*Counseling activities were improperly included as part of the BRC's activity.*

Management's response indicates that this is an issue that needs clarification. Action should be taken to clarify the SOP in regards to what counseling services cosponsors can provide during a for-profit cosponsorship.

*Amendments to the BRC cosponsorship agreement were executed improperly.*

SBA management's comments as to whether the amendments can be ratified by the Agency at a later date are not germane to the noncompliance cited in the finding. As stated in the finding, the amendments to the cosponsorship agreements were not executed by the proper program officials. We also noted that district and BRC personnel were not informed of this fact by SBA management prior to our audit and that no post event ratification has occurred to date.

*Plans to use residual cosponsorship funds were inappropriate.*

SBA management did not disagree with the facts presented in this subsection.

*Record keeping, reporting, and asset accountability were inadequate.*

SBA management's comments did not disagree with the facts presented in this subsection.

*Possible prohibited use of gift funds.*

While we agree that fees are deemed to be the first source of funds used, there is no assurance that the available fees were not expended on other costs and that the remaining gift funds were used to pay for alcohol. The BRC's inability to resolve this point underscores the need for better funds control, budget submissions to SBA headquarters, and oversight by SBA management.

An evaluation of management's comments to the recommendations follows:

- Management's agreement with recommendations 1.E and 1.H are acceptable. For Recommendation 1.C, if management is uncertain about the facts presented in the audit report, it should determine for itself whether the district has excess gift funds that should be in the BAT Fund. Concerning recommendation 1.I, the comments made by management indicate that SOP 90 75 2 is unclear concerning counseling at for-profit cosponsorships. Therefore, in lieu of disagreeing with our recommendation, management should consider clarifying the SOP.
- Recommendations 1.B and 1.F were reworded to better state the corrective action we believe is necessary. Concerning recommendations 1.A, 1.D, 1.G, 1.J, and 1.K, management's response referred to the Outreach Handbook, SOP 90 75 2, and Policy Notice 2000-664. We noted that the Handbook has not been formally issued as SOP or policy and, therefore, employees may not be required to adhere to it. Also, the existence of the handbook, the SOP, and the Policy Notice does not ensure that SBA personnel are aware of and understand the requirements. Positive action needs to be taken and controls need to be established to obtain compliance

Description of Cosponsored Events

**FY 1999 Small Business Week, May 19 to May 28, 1999**

The Small Business Week activities included workshops and seminars held at various American University of Puerto Rico campuses and an award luncheon held at The Bankers Club, Hato Rey, Puerto Rico. The events provided training and recognition to Puerto Rico small business owners and included a presentation of awards.

**FY 2000 Small Business Week, May 18 to May 26, 2000**

The Small Business Week activities consisted of a Proclamation Ceremony held at Advanced Instruments, in Carolina, Puerto Rico; a conference held at the Hyatt Dorado Beach Hotel in Dorado, Puerto Rico; and a luncheon and award ceremony held at The Bankers Club, Hato Rey, Puerto Rico. These activities provided training and recognition to Puerto Rico small business owners and advocates.

**FY 2001 Small Business Week, May 2 to May 11, 2001**

The Small Business Week activities consisted of a Proclamation Ceremony held at The Bankers Club, Hato Rey, Puerto Rico; a conference held at the Mayaguez Resort & Casino, in Mayaguez, Puerto Rico; and a luncheon and award ceremony held at The Bankers Club, Hato Rey, Puerto Rico. These activities provided training and recognition to Puerto Rico small business owners and advocates and included a presentation of awards.

**FY 2002 Small Business Week Events, May 3 to May 10, 2002**

The Small Business Week activities consisted of a Proclamation Ceremony held at the University of the Sacred Heart, in Santurce, Puerto Rico, a conference held at the Ponce Hilton & Casino, Puerto Rico; and an award ceremony held at The Bankers Club, Hato Rey, Puerto Rico. These activities provided training and recognition to Puerto Rico small business owners and advocates and included a presentation of awards.

**Business Resource Center Cosponsorship (3 year period ending December 1999)**

The SBA Business Resource Center offered basic business development services that included: orientation, assistance when building a business plan, access to a business library, automated resources and internet services, and specialized business-related courses. These services were custom designed for the particular needs of the Business Resource Center clientele and addressed the needs of the cosponsoring organizations. Onsite counseling was provided by members of the Minority Business Development Center's Puerto Rico representatives and by SCORE volunteers.

**APPENDIX B**

<b>Sources and Uses of Funds For District Office Cosponsored Events</b>						
<b>May 1999 to October 2002</b>						
<b>Sources</b>	<b>(WHCS B) 1999 Small Business Week</b>	<b>(WHCSB) 2000 Small Business Week</b>	<b>(WHCSB) 2001 Small Business Week</b>	<b>(WHCSB Total) 1999 - 2001 Small Business Week</b>	<b>(BAT Fund) 2002 Small Business Week</b>	<b>TOTALS</b>
Contribution - Lenders	\$21,000.00	\$24,000.00	\$16,500.00	\$61,500.00	\$17,000.00	\$ 77,500.00
Contribution - CDC	\$ 3,000.00	\$ 2,000.00	\$ 3,000.00	\$ 8,000.00	\$ 4,000.00	\$ 12,000.00
Potential litigant lender	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$9,000.00	\$ 3,000.00	\$ 12,000.00
Micro-lender donations	\$1,000.00	\$ 3,000.00	\$ 3,000.00	\$ 7,000.00	\$ 3,000.00	\$ 10,000.00
Contribution - Trade Organization	\$ 2,000.00	\$ 3,000.00	\$ 3,000.00	\$ 8,000.00	\$ 2,000.00	\$ 10,000.00
Fees from Other Entities	\$ 0.00	\$ 5,000.00	\$14,500.00	\$19,500.00	\$ 8,000.00	\$ 27,500.00
Luncheon Fees (1)	\$ 0.00	\$ 2,140.00	\$ 0.00	\$ 2,140.00	\$ 0.00	\$ 2,140.00
<b>Total Receipts</b>	<b>\$30,000.00</b>	<b>\$42,140.00</b>	<b>\$43,000.00</b>	<b>\$115,140.00</b>	<b>\$36,000.00</b>	<b>\$151,140.00</b>
Advertising	\$ 2,983.00	\$ 5,250.00	\$ 00.00	\$ 8,233.00	\$ 00.00	\$ 8,233.00
Audio/Visual	\$ 150.00	\$ 00.00	\$ 3,825.00	\$ 3,975.00	\$ 00.00	\$ 3,975.00
Flowers	\$ 1,545.00	\$ 925.09	\$ 815.00	\$ 3,285.09	\$ 00.00	\$ 3,285.09
Food/Catering	\$ 3,128.63	\$ 200.00	\$ 00.00	\$ 3,328.63	\$ 345.00	\$ 3,673.63
Food/Alcoholic Beverages (2)	\$ 1,500.00	\$ 00.00	\$ 3,730.80	\$ 5,230.80	\$ 00.00	\$ 5,230.80
Hotel/Food/Beverages	\$ 7,121.99	\$27,890.77	\$27,576.05	\$62,588.81	\$25,255.00	\$ 87,843.81
Music	\$ 230.00	\$ 00.00	\$ 465.00	\$ 695.00	\$ 00.00	\$ 695.00
Rental - Equipment/Space	\$ 2,283.50	\$ 505.00	\$ 00.00	\$ 2,788.50	\$ 00.00	\$ 2,788.50
Supplies - Flyers/Posters/ Photo/Printing/Misc.	\$ 9,837.86	\$ 8,365.00	\$ 6,491.00	\$24,693.86	\$ 6,542.00	
Bank Fees	\$ 122.70	\$ 80.00	\$ 70.00	\$ 272.70	\$ 0.00	\$ 272.70
<b>Total Uses of Funds</b>	<b>\$28,902.68</b>	<b>\$43,215.86</b>	<b>\$42,972.85</b>	<b>\$115,091.39</b>	<b>\$32,142.00</b>	<b>\$147,233.39</b>
Excess / Deficit Funds	\$ 1,097.32	-\$ 1,075.86	\$ 27.15	\$48.61	\$ 3,858.00	\$ 3,906.61
Refund - Program Recipient	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	-\$ 3,000.00	\$ 3,000.00
<b>Total Excess Funds</b>	<b>\$ 1,097.32</b>	<b>-\$ 1,075.86</b>	<b>\$ 27.15</b>	<b>\$ 48.61</b>	<b>\$ 858.00</b>	<b>\$ 906.61</b>
(1) The luncheon fee was \$10 versus actual cost of \$21.50. (2) The \$1,500 includes both food and alcoholic beverage costs - unable to separate. (3) Actual checking account balance was \$49.31. The \$0.70 difference is due to rounding.						



## APPENDIX C

SCHEDULE OF SOURCES AND USES BRC COSPONSORSHIP FUNDS Fiscal Years Ending September 30					
	FY 1998	FY 1999	FY 2000	FY 2001	Totals
<b>Cash Contributions</b>					
FOIA Ex. 4	\$ 97,828	\$ 50,000	\$ 50,000	\$ 30,000	\$ 227,828
Minority Business Development Agency	50,000	50,000	50,000	50,000	200,000
FOIA Ex. 4		2,600			2,600
Fee Income			270		270
Other Income		18		87	105
<b>Total Cash Contributions</b>	<b>\$147,828</b>	<b>\$102,618</b>	<b>\$100,270</b>	<b>\$ 80,087</b>	<b>\$ 430,803</b>
<b>Cash Expenses</b>					
Bank Charges	\$ 129	\$ 10	\$	\$ 15	\$ 154
Maintenance		950	2,975	1,145	5,070
Meetings Expense	217	69			286
Office Expense	100	5,985	7,999	7,914	21,998
Conference & Seminar Expense			646	1,262	1,908
Supplies Expense	800	1,320	3,565	3,098	8,783
Telephone Expense	163	4,250	6,256	12,210	22,879
Prepaid Internet Expense	1,099	4,060			5,159
Capitalized Furniture, Fixtures, Property & Equipment	54,923 <sup>1</sup>	32,336	5,001	6,947	99,207
Professional Services - Temporary Labor		20,694	10,960	2,875	34,529
Other		9,348	4,667	8,560	23,422
Leasehold Improvements	605	3,222	2,195	1,300	6,475
Advance to Small Business Week 2001				2,000	2,000
<b>Total Cash Expenses</b>	<b>\$ 58,036</b>	<b>\$ 82,244</b>	<b>\$44,264</b>	<b>\$ 47,326</b>	<b>\$ 231,870</b>
Accounts Payable as of 9/30/01				5,685	5,685
<b>Total Purchases</b>					<b>\$ 237,555</b>
Unused Cash	\$ 89,792	\$110,166	\$166,172	\$198,933	\$ 198,933 <sup>2</sup>
<b>In-Kind Contributions</b>					
<b>U.S. Small Business Administration (SBA)</b>					
One Full-Time Staff Person	\$ 44,588	\$ 48,000	\$ 49,000	\$ 52,000	\$ 193,588
Additional Full-Time Staff Person(s)			39,000	64,000	103,000
Donated Software & Hardcopy, BIC	28,462				28,462
Donated Hardware	40,661				40,661
<b>Total SBA In-Kind Contribution</b>	<b>\$ 13,711</b>	<b>\$ 48,000</b>	<b>88,000</b>	<b>\$116,000</b>	<b>\$ 365,711</b>
FOIA Ex. 4					
Donated Facilities Improvement	50,000				50,000
Imputed Cost - Rent	28,415	28,415	28,415	28,415	113,660
Imputed Cost - Other	7,584	7,584	7,584	7,584	30,336
<b>Total USH In-Kind Contribution</b>	<b>\$ 85,999</b>	<b>\$ 35,999</b>	<b>\$ 35,999</b>	<b>\$ 35,999</b>	<b>\$ 193,996</b>
Compaq Caribbean - Equipment				\$ 32,000	\$ 32,000
Polycom - Video Conferencing Equipment			\$ 12,000		\$ 12,000
<b>Total In-Kind Contributions</b>	<b>\$ 99,710</b>	<b>\$ 83,999</b>	<b>\$135,999</b>	<b>\$ 83,999</b>	<b>\$ 603,707</b>
Note <sup>1</sup> - Includes \$3,345 provided by SBA and unreimbursed by FOIA Ex. 4					
Note <sup>2</sup> - The balance differs from the balance shown in the alert memo due to the net effect of additional funds received and expended during the three month period that the cosponsorship was extended.					



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

**DATE:** October 20, 2003

**TO:** Robert G. Seabrooks  
Assistant Inspector General for Auditing

**FROM:** FOIA Ex. 6  
Mike Pappas  
Associate Administrator for Field Operations

Adela Soriano Ex. 6  
Associate Administrator  
Office of Strategic Alliances

**SUBJECT:** Ex. 6  
Draft Report – Audit of Cosponsorship Activities  
Puerto Rico & Virgin Island District Office

This is SBA's formal response to the Office of Inspector General's (OIG) Draft Audit Report (revised), dated September 25, 2003, referred to above. ("Draft Report" or "Report"). References to the "SOP" herein will mean SOP 90 75 2 unless otherwise specified and the "Act" will mean the Small Business Act of 1953, as amended.

The Draft Report makes one Finding: "The District's Cosponsorship Events were not Managed in Compliance with Federal Laws and SBA Requirements" and cites 11 problems (referred to herein as subfindings, numbered a – k).<sup>1</sup> OIG concludes that "[t]hese deficiencies occurred because: (i) district personnel did not follow the SOP [90 75 2] concerning cosponsorships; (ii) oversight of district cosponsorship operations by headquarters and regional personnel was not adequate; and (iii) formal operating procedures did not thoroughly address cosponsorship operations and funds management."<sup>2</sup>

The Draft Report raises many serious issues and while the Agency agrees with many of the points raised by OIG, this response sets forth in some detail areas where there is disagreement.<sup>3</sup>

<sup>1</sup> One additional potential problem is cited separately and referred to as subfinding l: "In addition, gift funds for district office events may have been used for prohibited purposes."

<sup>2</sup> While SBA agrees that the SOP could be written more artfully and comprehensively, we do not agree that it is inadequate to guide a District Office through a cosponsorship. The Agency believes that the existing SOP (90 75 2) does provide field offices sufficient guidance regarding the issues discussed in the Draft Report, especially since the SOP has been supplemented by procedural notices and guidance from other program offices. For example, the Office of General Counsel's draft "Outreach Handbook" has been issued to the field, which provides legal guidance relating to appropriations law, ethics rules, travel rules and other related topics (but was not intended to be a procedural manual). This document was also the subject of formal presentation and discussed in open forum with the District Directors at the November 2002 Management Conference. Field offices successfully complete cosponsorships all the time, and in accordance with existing law and SBA policy and procedures.

<sup>3</sup> Not all the issues raised by the Report will be addressed in this response, given the short time allowed and SBA reserves the right to address those issues in the future.

SBA IS AN EQUAL OPPORTUNITY EMPLOYER AND PROVIDER

There are instances in which the Draft Report language is not clear.<sup>4</sup> A clarification would be helpful, so that the Agency can have the full value of the OIG's concerns and recommendations. In addition, some issues are fact-based, but details of the occurrences are not given. In such instances it is difficult to know if the conclusions are warranted.

Also, for purposes of this discussion, the Agency has assumed, based on the context of the references, that a "district event" refers to a cosponsored event. See pages 2 and 3. Please note that the terms, "district event," "sponsored event," "sponsor" (See page 2.), and "participant sponsor" (See page 6) are not statutorily recognized terms nor are they terms used by the Agency. Finally, there are several contradictory statements in the Draft Report about the number and characteristics of the events reviewed.<sup>5</sup> The Agency has assumed for purposes of this analysis, that OIG reviewed four cosponsored Small Business Week events (1999, 2000, 2001, and 2002), no SBA-sponsored events, and the cosponsored Business Resource Center (BRC).

It is necessary for the Agency and OIG to use precise, consistent terms and definitions as we analyze facts of cosponsorship audits. Based on the discussion at Subfinding 1, for instance, we do not believe that we are using the same terminology. For instance, we interpret cosponsorship "contributions" to be cash injections, not gifts or fees.

SBA's analysis and discussion of OIG's "problems" (subfindings) and recommendations follows.

#### **Subfinding a: Cosponsorship Agreements Either Were Not Properly Approved or Prepared**

On page 3, the Draft Report states "[f]or the FY 2000 and 2001 events, agreements were executed by the district director with one cosponsor, [White House Conference on Small Business] WHCSB."<sup>6</sup> The Draft Report states that WHCSB is an organization, without specifying whether it is a legal entity. If WHCSB is not a legal entity, any legal conclusion would have to be based on facts not included in the Report. If it is a legal entity, it is unclear what kind of entity it is, and the factual analysis and legal conclusions are affected by that fact. Assuming it is a non-profit entity, a formal cosponsorship agreement is not required by the Act or SOP. If an agreement is used nonetheless, the district director (DD) would have the authority to sign it and it would not be required to be sent to headquarters (HQ). Clearly, if in the same cosponsorship there were additional for-profit cosponsors, then formal agreements would have been required and should have been sent to headquarters (HQ) for approval.

On page 4 of the Draft Report, OIG concludes that because the agreements were not signed by HQ, "the events were unauthorized." The Agency does not agree that OIG has adequately stated the legal meaning of this phrase, and suggests that it may be more accurate to describe the agreement under these facts as simply not properly approved. If a cosponsorship is technically or

<sup>4</sup> For instance, the bullets (or subfindings) on page i (Summary) and page 3, are not identical, and the corresponding headers and discussion on page 5 are different still.

<sup>5</sup> For instance, see the discussion at subfinding a.

<sup>6</sup> The facts contained in the previous paragraph on page 3 of the Draft Report are in sharp conflict. We are told that the 2000 and 2001 events were jointly planned by for-profit and non-profit entities, including, banks, Small Business Development Centers (SBDC), Community Development Companies (CDC), and other local public and private business and trade associations. It is not clear from the Draft Report whether these other entities are cosponsors (they planned the event and should have signed the agreement) or donors (the funds they provided should have been deposited into the BAT Fund). These other entities are treated and discussed as both cosponsors and donors throughout the Draft Report. As we have previously pointed out, the distinction is important because different rules apply. The confusion on this point makes it extremely difficult to follow and comment on OIG's Draft Report.

procedurally flawed, (as these seem to be) because it has not been properly approved or authorized, for instance, the Agency has the authority to ratify the cosponsorship after the fact, making them valid in all respects. This is to be clearly distinguished from an event that could not be a cosponsored event at all because it falls outside the legal definition of a cosponsorship, such as a lenders' conference.

#### **Subfinding b: Procurements Were Made Without Contracting Authority**

Procurement issues were clarified for the field in the draft SBA Outreach Handbook.

#### **Subfinding c(1): Gift Funds Were Solicited And Accepted On SBA's Behalf By A Third Party<sup>7</sup>**

The Draft Report takes issue with solicitation of gifts by a cosponsor for use in cosponsorship events. The OIG apparently equates this to solicitation of a gift by a third party on SBA's behalf and considers it to be a violation of SOP Paragraph 16.g, which states, "Employees may not solicit or accept gifts on SBA's behalf through a third party." The Agency agrees that Paragraph 16.g. could cause confusion and should be clarified, but does not agree with OIG's interpretation.

In drafting Paragraph 16, the Agency did not intend that cash injections to a cosponsorship that a cosponsor alone solicited be treated as gifts to the Agency. This interpretation is supported by other SOP provisions. Paragraph 21.b.(1) states that "a donor may make a cash gift directly to a cosponsor, contractor, or vendor to pay for goods or services to be used in support of a cosponsorship. In that case, it is not a gift to SBA ..." SBA interprets this paragraph to mean that a cosponsor may solicit for donations of cash to itself, but such a gift is considered to be a gift to the cosponsor, not a gift to SBA. If the cosponsor chooses, it can then bring that money to the table as part of its contribution to the cosponsorship.

SBA also has authority to solicit gifts in support of a cosponsorship, as stated in SOP Paragraph 16.a., including cash (SOP Paragraph 16.d.), which must be deposited in the BAT fund (SOP at Paragraph 21.a.(1)).

A solicitation by a cosponsor, using SBA's logo or the signature of an SBA official could constitute a solicitation by SBA, although this is less than clear in the SOP. Such solicitation and gift of cash would be a gift to SBA. It would not, however, be a violation of the policy stated in Paragraph 16.c.

A better interpretation of the words "on SBA's behalf" in Paragraph 16.g. would be "for SBA's general use other than an activity where gifts are allowed by statute, such as a cosponsorship." That is, the paragraph is best read to mean that SBA cannot have a third party solicit or accept money for SBA's unrestricted, general use, and especially where SBA's role is not disclosed. Again, this paragraph in the SOP needs to be clarified. But to the extent that OIG uses the term "improper solicitation" in the Draft Report to mean solicitation by a cosponsor for its use in a cosponsorship, OIG does not agree that this is an improper solicitation of a gift or that the resulting gift is a gift to SBA.

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<sup>7</sup> Both parts of subfinding 3 were listed as the "problem" in the "Results" section of the Draft Report (page 3). Subfinding c was broken into two separate discussions within the Draft Report, so we have responded as though they were two different "problems."

### Subfinding c(2): Gift Funds Were Solicited and Accepted From Prohibited [Proscribed] Sources<sup>8</sup>

OIG states in its list of problems that “Gift funds were solicited and accepted on SBA’s behalf by a third party or from prohibited sources.” We interpret the usage of the term “prohibited sources” as meaning “proscribed” sources and will use that term accordingly.

OIG correctly states Agency policy: “[E]mployees must not solicit or accept gifts on behalf of SBA from proscribed sources.” (See SOP, Paragraph 16.e.) Microlenders are proscribed sources. (See SOP Paragraphs 20 and 21 of Appendix 2.) To the extent that the District Office solicited or accepted gifts from a Microlender without a waiver of policy, it was a violation of policy.

A participant lender is not a proscribed source. The Agency’s long-established policy allows donations from Participant Lenders on a case-by-case basis after a conflict of interest determination is made. There are times when a donation from a Participating Lender would not be appropriate. There are insufficient facts in the Draft report, however, to assess whether this might be the case in the instance cited in the Draft Report – namely where the District Office was considering the request for a loan purchase at the same time it was soliciting and accepting a gift.<sup>9</sup>

The Agency does not agree that the mere existence of a purchase review, even one “with issues,” would necessarily mean that a conflict of interest exists that would preclude a gift. However, if the issues were substantial enough to warrant denial of liability; if there existed contention over the resolution of the issues and the two parties could not agree; if a denial of liability or litigation appeared likely; and/or the size of the gift was substantial, then the appearance of a conflict of interest would be substantial and solicitation or acceptance of a gift should not have occurred. Again, absent detailed facts, which are not presented, an accurate assessment cannot be made as to the appropriateness of the gift source.<sup>10</sup>

The Draft Report discusses participant lenders under the sub-heading “Additional sources that should be prohibited.” It is apparently OIG’s opinion that an appearance of a conflict of interest arises automatically when SBA solicits and/or accepts a gift from a Participant Lender. We disagree. We are aware of OIG’s position on the propriety of soliciting lenders for gifts, but as of now, the Agency’s long-standing policy is reflected in SOP 90 75 2. The Agency’s statutory gift acceptance authority found at Section 8(b)(1)(G) of the Small Business Act, as amended, does not restrict the kinds of donors from whom the Agency may accept gifts. The Agency’s determination of who it will accept a gift from is based on a conflict of interest analysis (or balancing of interests drawn from ethics principles) set forth in the SOP. Participant lenders are not proscribed sources because they are not considered to be recipients of “SBA Assistance,” as

<sup>8</sup> The term “prohibited sources” is used instead of the correct term, “proscribed sources.” The term “prohibited source” is a term of art used in government ethics regulations. The term “proscribed sources” is a term of art defined in the Definitions Section, Appendix 22 of SOP 90 75 2, to mean entities that cannot be cosponsors or donors. We understand that the SOP is confusing in this regard. SOP 90 75 2, Paragraph 18(c) *prohibits* the solicitation or acceptance of gifts on behalf of SBA from proscribed sources. To the extent that the SOP uses the term “prohibited sources,” it should be read as “proscribed sources.”

<sup>9</sup> Again, the Participant Banks are characterized as cosponsors, not donors, in Subfinding a, and elsewhere in the Draft Report.

<sup>10</sup> Language in the SOP and the proposed handbook states that “potential litigation” is one key in determining conflict of interest. The word “potential” can have varied meanings, however. Strictly speaking, there is always litigation potential with a participant lender. However, as used by SBA, it is the potential for litigation when coupled with some event that indicates a stronger probability or likelihood of litigation or similar confrontation that would seem to be the essential consideration.

defined at 13 C.F.R. § 105. The acceptance is not without restrictions, however, and as expressed in the SOP, the acceptance may not be proper if an appearance of a conflict of interest is created by particular circumstances. Put another way, donations from Participant Lenders may be accepted on a “case-by-case” basis where no appearance of a conflict of interest is found.

If the District Office failed to complete the required case-by-case determination and properly document the analysis before solicitation and acceptance of a gift from a Participant Lender, as required by SBA policy, SBA agrees that such funds were not solicited, accepted, or documented properly. It does not follow, however, that such funds could not ultimately be accepted by SBA under current policy, as discussed above. Again, this assumes that the donors were truly donors and not cosponsors, a fact not clear from the Draft Report.

**Subfinding d: Gift Funds Solicited By The District Were Not Deposited [In]to the Business Assistance Trust (BAT) Fund**

Cash gifts solicited and accepted by SBA must be deposited into the BAT Fund in accordance with SOP Paragraph 21.a.(1). Again, this assumes that the funds are gift funds donated to the Agency by a donor and not actually cosponsorship funds brought to the table by a cosponsor, that is, a cash injection from a cosponsor.

The funds cannot at the same time be donations and cash injections, just as the entity cannot at the same time be a donor and a cosponsor. The Draft Report at Page 3 clearly states that the cosponsorships for the FY 2000, 2001, and 2002 events were jointly planned by SBA and entities that included banks, SBDCs, CDCs and other local public and private business and trade associations. In fact, this subfinding concludes that the events were “unauthorized” because, in part, these entities did not sign cosponsorship agreements – meaning OIG thinks they are cosponsors. Subfinding c, however, finds OIG critical of the \$85,500 in gift funds that were raised by the cosponsor using SBA’s name – meaning OIG believes that they are both gift funds and cosponsorship funds. According to Appendix B, all funds, with the exception of funds from the Microlender, were cash injections to the cosponsorship. That is, the \$86,500 for 1999, 2000, and 2001 are characterized as cash injections to the cosponsorship.

The funds at issue here are either: 1) gifts to SBA and the “donors” are not cosponsors and the agreements need not have been executed in Washington, D.C. because the DD had authority to execute, and, thus should have been deposited in the BAT Fund, or, 2) the cosponsor’s cash injection to the cosponsorship for which SBA’s name should not have been used to solicit. From the facts presented, the Agency believes the funds were not gift funds to SBA. The funds were cash injections to the cosponsorship and should, therefore, not have been deposited in the BAT Fund.

**Subfinding e: Fees Were Charged Inappropriately.**

The Draft Report states at page 6, “Funds received from “participant sponsors” (donors) and exhibitors totaling \$37,500 should be classified as fees because they did not qualify as gratuitous transfers or voluntary gifts.”<sup>11</sup> Assuming that these are the same funds that have been discussed above, the funds at issue in this Draft Report have now been characterized as fees, as well as gifts and cosponsors’ cash injection to the cosponsorship. The source of the \$37,500 is not clear from the Draft Report (or the Table at Appendix B), and a “participant sponsor” is nowhere defined. A determination must be made as to the character of these funds, before the Agency can definitively

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<sup>11</sup> It is not clear how OIG arrived at the sum of \$37,500 and it is not apparent from the Table in Appendix B of the Draft Report.

comment. What follows is a theoretical discussion of the assumption that the funds were actually a donation where the donor received a quid pro quo, not a cosponsor's cash injection.

OIG's conclusion is that anything, including recognition given by SBA to a donor, automatically turns the donor's gift, in its entirety, into a "fee." OIG provides no authority for this conclusion, and, in fact, not only is it not required by the law, but considerable legal support exists to the contrary. SBA strongly disagrees with OIG's legal conclusion. OIG and SBA disagree on whether and to what extent recognition or other value received by the donor will turn a gift into something else, such as a fee. OIG concludes any recognition or benefit received by the donor changes the gift into a fee (and then finds that the "fees" were inappropriately handled). SBA believes that mere recognition does not deprive a gift of its status as a gift.

The Agency's position is expressed in the draft SBA Outreach Handbook which states: "...if something of value is given in return for the gift, it loses its nature as a gift to the extent of the value given." It further states that "SBA must be careful to distinguish between giving reasonable recognition and giving the donor something of value in exchange for the donation (i.e., free exhibition space or a free table at the...activity." This position is supported by IRS rules for valuing certain donations. This is not an either/or proposition. A donation is a donation up to the level of the quid pro quo. The Agency strongly believes, and has held expressed this belief for many years, that mere recognition is de minimis and does not rise to the level of a quid pro quo. We agree that the value of any quid pro quo should be deducted from the value of the donation for purposes of a tax deduction or the amount that the Agency acknowledges as a gift. And further, just because a donation loses its character as a gift up to the value of the quid pro quo, does not necessarily turn the excess into a fee.

In order to discern the amount of the donation less the quid pro quo, we must know more facts than were provided by the Draft Report. For instance, we must know how much an exhibit booth was worth; that is, how much others were charged for the same amount of space. That amount should be subtracted from the donation amount. See page 6 of the Draft Report. Likewise, we must know how much each seat was sold for before we can calculate the value of ten seats at the Luncheon and Awards Ceremony. As noted above, we disagree that mere recognition constitutes other than de minimis value.

#### **Subfinding f: Cosponsor Contributions Were Used For Unauthorized Purposes**

The Draft Report states that OIG identified "\$2000 [of cosponsorship funds] that was loaned to the District as a down payment on a contract for hotel facilities for the district's Small Business Week event." Insufficient facts are provided in the Draft Report to support any comment.

The Report also states that money from BRC funds were used to purchase personal gift items for distribution to BRC clients. If such items were promotional in nature -- having an SBA or business message -- and not inherently valuable, then there may not be a problem with such use of those funds. Again, this would depend on facts not contained in the Report

#### **Subfinding g: Unused Economy Act and Gift Funds Either Were Not Returned or Returned Untimely**

The Draft Report states at page 7, "the district did not return unused gift funds to donors, and unused cosponsorship contributions to the BRC were not returned timely."

Again, because OIG has confused gifts with cash injections to the cosponsored events, it is impossible to determine the appropriate disbursement of the unused funds because there are different return policies for each type of funds.

## APPENDIX D

It is Agency policy that:

- Leftover attendee fees should be returned to the attendees on a prorata basis, or returned to the U.S. Treasury,<sup>12</sup> or retained by the cosponsor for future cosponsored events – the latter most practical suggestion so long as the small businesses have not been overcharged on the attendee fees. SOP Paragraph 12.b.
- Leftover cash injections by a cosponsor should be retained by the cosponsor (in practice they should be distributed on a prorata basis to each of the cosponsors). (See Handbook at “Model Event C Cosponsorship.”) The cosponsors have the option of donating the returned cosponsorship contribution to SBA as a gift that will be deposited into the BAT Fund.
- Leftover donated funds remain in the BAT Fund to be expended in accordance with the terms of the trust.

#### Subfinding h: Counseling Services Were Improperly Included As Part Of The BRC's Activity

OIG stated that the BRC was a “for-profit cosponsorship,” which is a correct statement in terms of the procedural classification of the cosponsorship. Because a for-profit entity was involved in the BRC cosponsorship as well as Ex. 4 the Agency classified it as a for-profit cosponsorship. The Draft Report states that “[c]ounseling activities were improperly included as part BRC's activity.” OIG correctly focused on SOP Paragraph 5.a.(9) which states that, “Counseling may not be part of a for-profit cosponsorship. Counseling may occur at a cosponsorship site ...” While we agree that this paragraph of the SOP appears to be contradictory (and definitely could be more artfully written), reason and policy must control.

The policy rationale for the SOP provision is to prevent counseling by a for-profit cosponsor. The Agency does not want a for-profit cosponsor to directly promote its products and services in the context of a cosponsorship, especially one-on-one with the small business attendees. FOIA Ex. 4 can counsel any time – in fact, that is the reason for its existence. SBA has a cooperative agreement with Ex. 4 to provide counseling to small businesses – that is what it does – and if it joins a cosponsored event, SBA expects it to fulfill its responsibility to counsel small businesses within the context of that cosponsorship. There is little doubt that counseling may be included as a separate element in a cosponsorship that includes for-profit or non-profit entities.

#### Subfinding i: Amendments To The BRC Cosponsorship Agreement Were Executed Improperly

An issue is raised on page 8 of the Draft Report regarding amendments to the BRC agreement. The original agreement was properly executed by the Administrator. One amendment added FOIA Ex. 4 as a cosponsor, and a second released a for-profit cosponsor. Any modification to a cosponsorship could be later ratified by the Agency.

#### Subfinding j: Plans To Use Residual Cosponsor Funds Were Inappropriate

No comment.

<sup>12</sup> This is a suggestion which we think is not legally sound because attendee fees are not “money for the government,” but it remains, nevertheless, in the SOP at Paragraph 12.b.



**Subfinding k: Record-keeping, Reporting, And Asset Accountability Were Inadequate**

The statute requires that for-profit cosponsorships be approved in Washington, D.C.

The SOP requires that files must be kept on each gift accepted and quarterly reports must be submitted to Headquarters for cosponsorships and gifts.

**Subfinding l: In Addition, Gift Funds For District Office Events May Have Been Used For Prohibited Purposes**

It is not entirely clear that the funds being discussed here are actually gift funds, or whether they are cash injections by the cosponsors. Again, the character of the funds determines the analysis. The Draft Report states on page 10, "The district may have used some gift funds to pay for the purchase of alcohol, a prohibited purpose." SBA agrees that it is against policy to use gift funds to purchase alcoholic beverages. (SOP Paragraph 17.c.) We are not certain whether the funds are gift funds but we provide the following analysis for the sake of argument.

According to the SOP at Paragraph 12.b., fees are deemed to be the first source of funds used, so it is highly unlikely that gifts (and if not gifts, the cosponsors' cash injection) were used to pay for food or alcohol in either the 2000 or 2001 cosponsored events. The expenses column at Appendix B shows no Food/Alcoholic Beverages expenses for 2000. The expenses column at Appendix B shows Food/Alcoholic Beverages expenses for the 2001 event to be \$3,730.80. That amount is easily paid out of the \$14,500 collected as attendee fees, requiring no expenditure from either gifts or cosponsor cash injections.

The Draft Report at page 10 states that the district received gift funds of \$85,500 and fees of \$29,640 for small business week events for fiscal years 1999, 2000, and 2001 and commingled the funds into one account (a WHCSB checking account). If those funds were really cash injections by the cosponsors, this is an entirely appropriate way of safeguarding the money. If the funds were really gifts to the Agency, they should have been deposited into the BAT Fund.

**Recommendations for the Associate Administrator For Field Operations:**

**1.A** Ensure that all district office and BRC personnel are aware of Federal requirements and SBA policies and procedures for procuring supplies and services.

See Handbook at page 2 of "Model Event C – Cosponsorship" and Handbook at page 7 of Section III "Cosponsored Activities."

**1.B** Require the district office to cease soliciting or accepting funds from [proscribed] sources and that sources requiring a conflict of interest case-by-case determination are submitted to the appropriate SBA office for review before solicitation.

Established policies set forth in SOP 90 75 2 address both issues. Also see Handbook at page 4 of Section III "Cosponsored Activities."

**1.C** Require existing gift funds to be remitted [sic] to the BAT Fund.

We do not actually know that funds at issue in this audit report are gift funds. SBA Procedural Notice 2000-664, "SBA Field Office's New Procedures-Business Assistance Trust Fund (BAT Fund)" delineates the procedures and requirements for deposit and of cash gifts to SBA.

**1.D** Remind the district office of the requirements to deposit all gift funds to SBA into the BAT Fund.

All cash gifts accepted by the Agency must be deposited into the BAT Fund in accordance with Procedural Notice 2000 – 664, dated 7-24-03. Also see Handbook and SOP.

**1.E** Refund \$7,000 solicited and accepted from a microlender, a [proscribed] source, for the FY 1999, FY 2000, and FY 2001 cosponsorship events.

Agree.

**1.F** Instruct the district on the appropriate manner of charging fees.

See Handbook at page 1 of “Model Event c – Cosponsorship” and Handbook at page 3 of Section III Cosponsored Activities.

**1.G** Require the district to establish controls to ensure that BRC cosponsorship funds are used for authorized purposes.

See SOP 90 75 2 and Handbook.

**1.H** Require the return to MBDA all unused funds obtained through Economy Act Agreements for FYs 2001 and 2002.

Done.

**Recommendations for the Associate Administrator for Strategic Alliances:**

**1.I** Amend the existing BRC cosponsorship agreement to comply with the Small Business Act concerning providing counseling services.

We believe the agreement complies with the SOP in this regard.

**1.J** Ensure that future district [sic] and BRC cosponsorships are executed in a manner to comply with the requirements of the Act.

All cosponsorships must comply with the Act and Agency policy and procedures.

**1.K** Establish controls to ensure that required reports are timely received from the district.

Reports are required by SOP 90 75 2.

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