U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF INSPECTOR GENERAL

ADVISORY MEMORANDUM
REPORT NO. 13-21

DATE: September 26, 2013

TO: Frederick Baldassaro, Assistant Administrator for Communications and Public Liaison

Robert Hill, Associate Administrator for Field Operations

Sara Lipscomb, General Counsel

SUBJECT: SBA Enterprise-wide Controls over Cosponsored Activities

This advisory memorandum presents issues that we identified during our limited scope audit of the *Small Business Administration's* (SBA or Agency) *enterprise-wide controls over its cosponsored activities.* Our objective was to determine the adequacy of controls over the SBA's cosponsored activities in accordance with federal laws, regulations,[1] and policies. We did not assess the validity and eligibility of individual expenses for the cosponsored activities.

Summary

We determined that for its cosponsored activities, the SBA did not fully implement effective controls to comply with the requirements stipulated in Title 13, Part 106 of the Code of Federal Regulations (CFR) and Standard Operating Procedure (SOP) 90 75 3, *Outreach Activities*. Specifically, the SBA did not (1) consistently vet and perform conflicts of interest determinations, (2) report on the results of its activities within established timeframes, and (3) control excess funds that remained at the conclusion of those activities.

We concluded that opportunities exist to strengthen SBA's controls over cosponsored activities that include:

- Fully implementing additional controls over cosponsorship approval and closeout procedures;
- Strengthening controls over the maintenance of official cosponsorship files to ensure that all required documentation is obtained; and
- Performing effective Quality Service Reviews[2] on all cosponsored activities to ensure that laws, regulations, and SBA policy were followed.

[1]The Honorable Jeanne Shaheen, U.S. Senate Committee on Small Business and Entrepreneurship, requested the Inspector General to perform an audit of SBA conference expenses to ensure that taxpayer dollars had been spent in accordance with laws and regulations. Our audit of conferences prompted this separate audit of five SBA cosponsored lenders conferences.

[2]The Federal Managers' Financial Integrity Act (FMFIA) requires agencies, on an ongoing basis, to evaluate the ability of their internal control systems to protect federal programs against fraud, waste, abuse, and mismanagement.

To help implement stronger controls and oversight of cosponsored activities, we made eight recommendations to several SBA officials**.**

Scope and Methodology

To perform the audit, we reviewed five SBA cosponsored activities that occurred since January 1, 2005, and were included in the data call that the SBA submitted to the Congress.[3] We obtained an understanding of relevant federal laws**,** regulations, and SBA policies**.** We interviewed relevant SBA officials and cosponsors. We also evaluated and performed analyses using certain financial records and other documents obtained from SBA officials and cosponsors. Throughout the audit, we relied on files, reports, and other data provided by SBA program officials and cosponsors.

We conducted our audit in accordance with *Government Auditing Standards* prescribed by the Comptroller General of the United States, from June 2012 to September 2013. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Background

Section 4(h) of the Small Business Act authorizes the Agency to provide assistance for the benefit of small businesses through cosponsored activities with any eligible entity. This assistance must be for the benefit of U.S. businesses and further the mission of the Agency. Assistance generally includes training, education, or dissemination of information. Agency policies and procedures applicable to cosponsored activities are contained in SOP 90 75 3, *Outreach Activities* and 13 CFR Part 106.

According to the SOP, the Responsible Program Official accountable for a specific cosponsorship activity will be a senior management official from the office originating the activity, i.e., a district director at the district office level or a management board member at the headquarters level. The Office of Strategic Alliances has the general duty to monitor all cosponsorships and address problems and concerns of which the Director is made aware.

In a 2004 audit[4] the OIG noted that improvements were needed in the compliance, guidance, and oversight of SBA-sponsored and cosponsored activities. More specifically, noncompliance issues were categorized in three general areas: soliciting and accepting gifts and fees; planning, conducting, and reporting activities; and accounting for funds and non-cash assets. However, despite the addition of SOP 90 75 3, we concluded that the Agency had not fully implemented or effectively monitored its corrective actions because we found the same or similar conditions continued to exist during this year's audit**.** The OIG is making eight recommendations in this report.

[3] Source: Letter to the Honorable Darrell E. Issa in response to a congressional inquiry on SBA conferences dated April 30, 2012.

[4] OIG Audit Report 4-44, *Summary Audit of SBA-Sponsored and Cosponsored Events by District Offices* dated September 24, 2004.

Results

The SBA did not Always Vet and Perform Conflicts of Interest Determinations for Cosponsors

The SOP 90 75 3 stipulates that all potential cosponsors must be vetted by the originating office or the Office of Strategic Alliances.[5] The General Counsel or designee must sign SBA Form 1615, *Cosponsorship Approval Request*, to document that a legal review was performed, which includes a finding that the cosponsorship is legally sufficient and a conflict of interest determination was performed. This is to ensure that a potential cosponsor's participation in the cosponsored activity would not create an actual or apparent conflict of interest with the SBA.

Our audit found that SBA officials did not always perform their due diligence for lenders, grantees, and other entities that cosponsored its activities. Specifically, for one of the cosponsored activities, cash contributions were accepted from lenders and grantees without a documented vetting and conflicts of interest determination. This condition occurred because the Responsible Program Official did not timely request checks on cosponsors added by a joinder agreement.[6] Not properly vetting all cosponsors prior to soliciting and accepting their cash or in-kind contributions could cause an apparent or potential conflict of interest between the two entities.

Official Cosponsorship Files were not Complete

In accordance with SOP 90 75 3, within 60 calendar days after the cosponsored activity occurred, the Responsible Program Official must ensure that all proper documentation and paperwork is completed and submitted to the OSA for the official cosponsorship file which includes[7] the SBA Form 2299, *Final Cosponsorship Report*, final budget, and fiscal agent's final accounting report.[8] The Responsible Program Official is accountable for all income and expenses related to the activity and should use the fiscal agent's final accounting report to prepare SBA Form 2299 and report on the results of the activity.

Based on our review of the official files, we determined that for the cosponsored activities in our sample, required documentation was not always included in the file. For example, the:

- Fiscal agent's final accounting report was missing from all the files; and
- SBA Form 2299, which includes the actual final budget, was missing from three files**,** and two Responsible Program Officials did not submit their reports to OSA within 60 days following the conclusion of the activity.

During this audit, we requested and received the required post activity documentation from the fiscal agents and the Responsible Program Officials**.** The Responsible Program Officials, however, did not always obtain or submit the fiscal agent's final accounting report for their respective activities, as required by SBA's guidance**.** In some cases, the Responsible Program Officials did not report the excess funds that remained from these cosponsored activities on the SBA Form 2299 or to the OSA. We

[5] Vetting entails gathering information about each potential cosponsor in order for the General Counsel or designee to make a conflict of interest determination.

[6] The SBA added cosponsors to an event with a document titled "Joinder Agreement." The new cosponsors were not included in the Cosponsorship Agreement that the SBA originally executed, but became cosponsors by operation of the Joinder Agreement.

[7] The file should include a copy of the fully executed Cosponsorship Agreement; SBA Form 1615, "Cosponsorship Approval Form;" SBA Form 2299, "Final Cosponsorship Report;" and any additional correspondence or documents reviewed by OSA.

[8] This report includes total income (listing of cash contributions from all cosponsors and participant fees collected) and itemized list of expenses paid by the fiscal agent.

summarized our review of the SBA Form 2299 and fiscal agent's final accounting report for the five cosponsored activities in our scope (see Appendix A.**)**

For the cosponsored activities that we reviewed, the Responsible Program Officials did not comply with the SOP requirement to submit the SBA Form 2299, fiscal agent's final accounting report, and final budget to the responsible Headquarters official within 60 days after the conclusion of the cosponsored activity. The Responsible Program Officials submitted these reports between three months and five years after the cosponsored activity occurred**.** This occurred because the (1) OSA did not perform sufficient oversight for these cosponsored activities; (2) cosponsorship agreements refer to the SBA SOP rather than specifying critical closeout roles and responsibilities**;** (3) fiscal agents did not submit an accounting to the Responsible Program Officials at the conclusion of the cosponsored activities; and (4) Responsible Program Officials did not consistently follow-up with the fiscal agents within a reasonable timeframe to obtain an accounting of the cosponsored activities.

The SBA Did Not Always Properly Account for Excess Funds from Cosponsored Activities

In accordance with SOP 90 75 3, all cosponsorship agreements must be accompanied by a proposed budget to demonstrate the cosponsor(s) will not make a profit or accumulate excess funds from the cosponsored activity. However, in the event that excess funds remain in the cosponsorship account after all the expenses are paid, the cosponsors must decide how to handle the excess funds in accordance with this SOP. When the sources of excess funds are cash contributions from cosponsors, the SOP provides that excess funds may be returned to the cosponsors on a pro rata basis. Alternatively, the cosponsors may agree in writing that excess cosponsorship funds will be a gift to the SBA.[9] Cash gifts must be placed in SBA's Business Assistance Trust (BAT) Fund**.** The SOP also provides that a cosponsor may solicit and accept donations on its own behalf for the purpose of meeting its share of the costs of the cosponsored activity.

Our audit showed that in four of the five cosponsored activities, excess funds were not returned to the cosponsors pro rata, or gifted to the SBA and deposited in the BAT Fund. In addition, the remaining fiscal agent, who solicited donations on its own to cover its share of costs, accumulated funds in excess of the expenses paid. We estimated and summarized the amount of funds remaining at the conclusion of the cosponsored activity based on the information provided (see Appendix A). We also determined the status of those funds, and determined whether the funds were accounted for in accordance with the provisions in SOP 90 75 3 (see Appendix B). The OSA was unaware of the final accounting of these cosponsored activities and did not ensure that activities were closed out in accordance with SBA policy. In addition, some excess funds remained in the custody of the fiscal agents**.**

While our objective was not to determine the validity and eligibility of expenses that were paid, our review of closeout documentation showed that certain transactions were not processed in accordance with guidance. For example, one of the fiscal agents billed $8,500 to pay itself an activity management fee and $2,508 for web site alterations and maintenance.[10] A second fiscal agent reimbursed itself $6,000 in payroll costs for staff hours charged to the respective cosponsored activity. The SOP states that cosponsored funds must not be used to pay a cosponsor's overhead costs, including salaries, or other indirect costs of the activity. Further, up to 16 months after the activity occurred, a third fiscal agent issued checks totaling $8,417 to pay expenses that appear unrelated to the cosponsored activity**.**

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[9]SOP 90 75 3 states that excess funds that are given to the Agency must be applied as directed in the SBA's gift procedures outlined in SOP 90 53, *Gifts to the Agency*. However, the SBA deleted this SOP in 2007 and has not had permanent procedures on cash gift acceptance and disposition since that time. OIG Report 12-13, *Review of the SBA's Fiscal Year 2011 Cash Gifts*, dated March 30, 2012, contains a recommendation that the SBA issue permanent policies on Agency acceptance of gifts.

[10] Upon request, the fiscal agent did not provide a third party invoice for the web site alterations and maintenance.

A fourth fiscal agent invested various increments of the excess $36,941. The Responsible Program Officials should have, but did not, ensure that the excess funds from their activities were returned to the cosponsors pro rata, or deposited in the SBA's BAT Fund.

The fifth fiscal agent conducted fund raising activities to meet its share of the budgeted costs for this specific cosponsorship activity. The final accounting provided by the fiscal agent showed funds received in excess of expenses totaling $34,454**.** However, SOP 90 75 3 states that a cosponsor should not make a profit on these activities. These conditions occurred because the (1) Responsible Program Officials did not perform sufficient oversight of these cosponsored activities; (2) cosponsorship agreements did not adequately specify all closeout roles and responsibilities; (3) fiscal agents did not timely provide an accounting of income and expenses at the end of the cosponsored activity**;** (4) Responsible Program Officials did not follow-up with the fiscal agent to receive the reports, and (5) SOP 90 75 3 did not clearly stipulate a specific timeframe for disposing of excess funds. Consequently, neither the Responsible Program Officials nor the fiscal agents complied with SBA's policy regarding the reporting on and closing out of SBA cosponsored activities. In addition, the SBA had limited assurance that the fiscal agents spent $106,479[11] of private funds on authorized purposes, in accordance with SBA regulations and policies. Lastly, $52,558 remained in the custody of the fiscal agents at-risk of misuse or fraud.

Conclusion

Given the SBA's current focus on increasing its market and outreach responsibilities with its lenders, stakeholders, and small business concerns, correction of the issues in this report is imperative. All SBA officials have a responsibility to be prudent in spending[12] private sector dollars on its cosponsored activities. Implementing sound and rigorous controls to plan, carry out, and report on these activities is essential in meeting these responsibilities. Key to this is ensuring that staff, who plan these cosponsored activities, are trained and knowledgeable regarding their fiduciary responsibilities including the laws, regulations, and policies that govern cosponsored activities. Responsible Program Officials have a responsibility to oversee and account for all funds collected in support of their respective cosponsored activities. Further, Responsible Program Officials and the designated fiscal agent must ensure the disposition of excess cosponsorship funds in accordance with SBA guidance.

By not effectively implementing adequate policies and procedures to address these issues, the SBA will be less able to identify areas of unnecessary spending or opportunities for greater efficiency or cost savings when cosponsoring these activities with public funds. Because of these conditions, SBA personnel did not comply with regulations and SBA policies, and did not ensure that private funds were spent in accordance with the intended purpose.

Recommendations:

We recommend the Assistant Administrator for the Office of Communications and Public Liaison:

1. Collaborate with the General Counsel to update the cosponsorship agreement template to clearly include all specific roles and responsibilities for fiscal agents and all other accountable parties in accordance with SOP 90 75 3.

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[11]Our objective was not to test all expenses and determine whether they were allowable in accordance with SBA policy.

[12]Cosponsored activities are often funded by fees paid by private sector participants, and/or funds contributed by the cosponsors. The Agency rarely uses appropriated funds to pay for cosponsored activities; however, the five lenders conferences reviewed in this audit do represent an anomaly as SBA did pay a registration fee for some of its employees to attend.

We recommend the Office of Strategic Alliances Director:

2. Establish controls, such as a reporting system, to ensure that all activities are timely and properly closed out, and that all required documents and reports, as specified in SOP 90 75 3, are obtained.
3. Conduct periodic reviews of the official cosponsorship files for completeness and compliance with SOP requirements.
4. Provide training for staff that plan cosponsored activities to reinforce their roles and responsibilities.
5. Collaborate with the District Counsel and the General Counsel to ensure that all potential cosponsors are properly vetted prior to soliciting and accepting their cash contributions.

We recommend the Associate Administrator for the Office of Field Operations:

6. Initiate actions to properly account for, and dispose of $36,941 remaining from the 2009 America East Conference and $15,617 remaining from the 2010 Mid-America Lender Conference in accordance with the provisions of SOP 90 75 3.
7. Under the provisions of FMFIA, perform periodic quality service reviews to include cosponsorship files and funds disposition, verifying any expenses paid out of cosponsored income are appropriate.

We recommend the General Counsel:

8. Revise SOP 90 75 3 to include specific procedures and timeframes regarding the disposition of any excess funds that result from SBA-cosponsored activities.

Agency Comments and OIG Response

On February 21, 2013, we provided a draft of this report to the Assistant Administrator for Communications and Public Liaison, Associate Administrator for Field Operations and General Counsel for comment. On September 6, 2013, the Office of General Counsel provided a consolidated response to the draft report, which is included in its entirety in Appendix C. Management provided some technical comments on certain information contained in the draft report, as well as comments on each of the eight recommended actions. A summary of management's technical comments, recommendation-specific comments, and our responses follows.

General Management Comments

The SBA officials appreciated the opportunity to meet with OIG staff to provide clarification on SBA's law and policy governing cosponsored activities prior to the issuance of the draft report. Management's review of the report and underlying files led them to conclude that OIG's findings about the failings of SBA's cosponsorship program as a whole are too broadly stated since the five agreements represent less than one percent of all the cosponsored activities, which took place during that time. Management also emphasized that certain terms of art should not be used interchangeably with SBA cosponsored activities and gifts to the Agency.

OIG Response

We met with Agency officials on the specific issues addressed in this report between February 2013 and May 2013. Based on the Agency's response, we added language to clarify the number of fiscal agents having excess funds remaining at the conclusion of the cosponsored events. For example, we added criteria, which provides that a cosponsor may solicit and accept donations on its own behalf for meeting its share of the costs of the cosponsored activity and these funds should be limited to its share of the budgeted costs for the activity. Further, we received additional documentation after we issued the draft report and thus, revised some amounts and uses of excess funds that we reported in the finding and appendices. Lastly, we revised the number of cosponsors who were not vetted or a conflicts of interest determination did not exist**.**

Management generally concurred with the findings related to reporting and accounting for excess funds. Management disagreed with our finding regarding the vetting and conflict of interest determinations for some cosponsors. We consider management's comments to be generally responsive to six recommendations and partially responsive to two recommendations.

Recommendation 1 - ***Collaborate with the General Counsel to update the cosponsorship agreement template to clearly include all specific roles and responsibilities for fiscal agents and all other accountable parties in accordance with SOP 90 75 3.***

Agency Comments and OIG Response

Management agrees with the intent behind this recommendation but did not agree with the actual recommendation. Management contends that roles are currently identified but what is evident from this audit is that people need to better understand the terms and need more instruction on what and how to report and what to monitor. We consider management's comments to be generally responsive to this recommendation. Above the specific discussion of the individual recommendation, the OIG will evaluate the agency's responsiveness through the audit resolution process.

Recommendation 2 - ***Establish controls, such as a reporting system, to ensure that all activities are timely and properly closed out, and that all required documents and reports, as specified in SOP 90 75 3, are obtained.***

Agency Comments and OIG Response

Management concurs with this recommendation. The SBA has a reporting system that relies heavily on human resources. The Agency is exploring ways to use technology it already owns to collect cosponsorship information and track agreements from conception and approval to close-out. We consider management's comments to be generally responsive to this recommendation. Above the specific discussion of the individual recommendation, the OIG will evaluate the agency's responsiveness through the audit resolution process.

Recommendation 3 - ***Conduct periodic reviews of the official cosponsorship files for completeness and compliance with SOP requirements.***

Agency Comments and OIG Response

Management concurs with this recommendation. The Office of General Counsel (OGC) and OSA will explore ways to leverage OGC staff to assist OSA with this task. We consider management's comments to be generally responsive to this recommendation. Above the specific discussion of the individual recommendation, the OIG will evaluate the agency's responsiveness through the audit resolution process.

Recommendation 4 - ***Provide training for staff that plan cosponsored activities to reinforce their roles and responsibilities.***

Agency Comments and OIG Response

Management concurs with this recommendation. The SBA currently provides annual cosponsorship training to employees and plans to supplement this with some specialized training focusing on roles and responsibilities of fiscal agents. All supplemental materials will be made available through the Agency's intranet website. We consider management's comments to be generally responsive to this recommendation. Above the specific discussion of the individual recommendation, the OIG will evaluate the agency's responsiveness through the audit resolution process.

Recommendation 5 - ***Collaborate with the District Counsel and the General Counsel to ensure that all potential cosponsors are properly vetted prior to soliciting and accepting their cash contributions.***

Agency Comments and OIG Response

Management agrees that vetting is important so they generally agree with this recommendation. While management did not explicitly agree or disagree with this recommendation, we consider the comments responsive to the recommendation.

Recommendation 6 - ***Initiate actions to properly account for, and dispose of $36,941 remaining from the 2009 America East Conference and $15,617 remaining from the 2010 Mid-America Lender Conference in accordance with the provisions of SOP 90 75 3.***

Agency Comments and OIG Response

Management agrees to dispose of $15,617 from the 2010 Mid-America Lender Conference by placing it in the Business Assistance Trust Fund. Management stated that $36,941 from the 2009 America East Lender Conference did not exist or is not available as described in the Draft Report. We consider management's comments to be partially responsive to this recommendation since management concurred with disposing $15,617 remaining from the 2010 conference. However, management contends they are not aware of $36,941 remaining from the 2009 America East Conference. We recommend the District Director immediately collaborates with the fiscal agent, and SCORE, to confirm the status of these funds and, accordingly, follows the provisions of SOP 90 75 3 to ensure the disposition of these excess funds.

Recommendation 7 - ***Under the provisions of FMFIA, perform periodic quality service reviews to include cosponsorship files and funds disposition, verifying any expenses paid out of cosponsored income are appropriate.***

Agency Comments and OIG Response

Management concurs with this recommendation. Cosponsored activities are one of the activities already included in the Field Accountability Review (formerly called QSRs) and the Agency agrees to revisit the list of cosponsorship-related questions to see if there are ways to improve this portion of its peer-to-peer review process. We consider management's comments to be responsive to this recommendation

Recommendation 8 – *Finalize and issue the draft Gift SOP including specific procedures and timeframes regarding the disposition of any excess funds that result from SBA-cosponsored activities.*

Agency Comments and OIG Response

Management agrees to finalize and issue the Gift SOP. Management stated that the Gift SOP will cross reference SOP 90 75 3 as appropriate. We consider management's comments to be partially responsive to this recommendation. Management contends that SOP 90 75 3, not the Gift SOP, is the appropriate place to address the procedures for disposing of these funds since they stem from cosponsored activities. Accordingly, we will change the wording of this recommendation as follows: Revise SOP 90 75 3 to include specific procedures and timeframes regarding the disposition of any excess funds that result from SBA-cosponsored activities. Above the specific discussion of the individual recommendation, the OIG will evaluate the agency's responsiveness through the audit resolution process.

Action Required

Please provide your management decision for each recommendation on the attached SBA Form 1824, *Recommendation Action Sheets*, within 30 days from the date of this report. Your decision should identify the specific action(s) taken or planned for each recommendation and the target date(s) for completion. Consistent with OMB Circular A-50, *Audit Follow-up*, your response should include the corrective action(s) taken or planned for each recommendation and the target date(s) for completion.

We appreciate the courtesies extended to staff during this audit. If you have any questions regarding this report, please contact Jeffrey R. Brindle, Director, Information Technology and Financial Management, on (202) 205-7490.

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/s/
Robert A. Westbrooks
Deputy Inspector General

Appendix A. Summary of Required Documentation for Cosponsored Activities

Cosponsored Activity	Fiscal Agent Report	SBA Form 2299	Funds Remaining After Activity as Noted by OIG	Excess Funds Reported by the Responsible Program Official
2010 America East Lenders Conference	*Portland Regional Chamber's final accounting report dated 9/12/12 showed total income $160,175, total expenses $113,688.41, and excess funds $46,600.34. However, our review of the report showed that an additional $6,000 was used to reimburse the fiscal agent for staff hours spent planning and coordinating the America East Conference.	Dated 5/25/11 represented $160,175 as the final budget amount, which is the same amount reported for cash collected, and notation that "Excess funds would be spent on education and training programs for small business customers.	$52,600	$46,600
2009 America East Lenders Conference	*SCORE's final accounting report dated 8/22/12 showed total income $134,183.21, total expenses $97,242.60, and $36,941 excess funds.	*Dated 9/17/12 represented $97,243 as the final budget and $134,183 as cash collected; no dollar amount for excess funds and notation that "SCORE has not disposed of any of the excess funds and has deposited those funds in a separate account."	$36,941	$0
2010 Mid-America Lenders Conference	*Louisiana Minority Supplier Development Council's final accounting report dated 10/3/12 showed a ledger of in- and outgoing cash transactions that occurred between 2/28/10 and 4/13/12, and $15,617.45 excess funds. However, our review of the report showed that between 2/11/11 and 4/13/12 an additional $8,417 was used to pay expenses that appear unrelated to the cosponsored activity.	*Dated 10/5/12 represented $118,453.18 as the final budget; total cash collected $118,150; no dollar amount for excess funds; and notation that "Funds will be transferred to BAT Fund for LA District Office."	$24,034	$0
2011 America East Lenders Conference	*SCORE's final accounting report dated 10/26/11 showed total income $167,592 and total expenses $167,592. Invoice for final check issued to SCORE indicates $11,008 for SCORE direct costs regarding an activity management fee and for web site alterations and maintenance.	Dated 11/21/11 represented $167,592 as the final budget amount; total cash collected $167,592; and a notation "Excess funds: Due to lesser than expected attendance, final budget came in lower than projected."	$11,008	$0
2007 America East Lenders Conference	*Rhode Island Small Business Development Center at Johnson and Wales University's final accounting report dated 12/4/07 showed total income $127,011, total expenses $92,557.16, and net income $34,453.84.	*Dated 9/7/12 represented $93,209.06 as the final budget; $93,209.06 as cash collected and no reference to excess funds.	$34,454 (rounded)	$0
		Total	**$159,037**	**$46,600**

*Received in response to OIG audit request.

Appendix B. Status of Excess Cosponsorship Funds

Cosponsored Activity	Name of Fiscal Agent	Status of Excess Funds	Were Excess Funds Accounted for in Accordance with Regulations and SBA Policy?
2010 America East Lenders Conference	Portland Regional Chamber'	These funds were spent on the fiscal agent's payroll cost and other activities to support small business education and consulting activities.	No. Excess funds should have been returned to cosponsors pro rata or gifted to the SBA and deposited in the BAT Fund.
2009 America East Lenders Conference	SCORE	Bank statements reflect $38,702.07 as follows: $21,729.08 invested in muni funds, $9,998 invested in securities, and $6,974.99 held in a checking account. Three years after the conclusion of the activity, the District Director asserted to us that he was unaware these excess funds existed.	No. Excess funds should have been returned to cosponsors pro rata or gifted to the SBA and deposited in the BAT Fund.
2010 Mid-America Lenders Conference	Louisiana Minority Supplier Development Council	Of this amount, $8,417 was used to pay expenses that appear unrelated to the cosponsored activity, and the residual $15,617 remains in the custody of the fiscal agent. The District Director asserted to us that he was unaware that excess funds remained from this activity.	No. Excess funds should have been returned to cosponsors pro rata or gifted to the SBA and deposited in the BAT Fund.
2011 America East Lenders Conference	SCORE	The fiscal agent paid itself an $$8,500 activity management fee and $2,508 for web site alterations and maintenance.	No. Excess funds should have been returned to cosponsors pro rata or gifted to the SBA and deposited in the BAT Fund.
2007 America East Lenders Conference	Rhode Island Small Business Development Center at Johnson and Wales University	Funds were used to pay for consulting services to small businesses from October to December 2007.	No. Donations collected by the cosponsor should have been limited to meeting the share of its costs for the cosponsored activity.

Appendix C: Agency Comments

U.S. SMALL BUSINESS ADMINISTRATION

WASHINGTON, DC 20416

Date: September 6, 2013

To: John K. Needham, Assistant Inspector General for Auditing

From: Frederick Baldassaro, Associate Administrator for Communications and Public Liaison

Robert Hill, Associate Administrator for Field Operations

Sara D. Lipscomb, General Counsel

Subject: Advisory Memorandum Assignment 12013: Draft Report on SBA Enterprise-wide Controls over Cosponsored Activities

This is SBA's initial response to the Office of Inspector General's (OIG) Draft Report entitled "Draft Report on SBA Enterprise-wide Controls over Cosponsored Activities." We appreciate the opportunity to comment on this Draft Report.

General Comments

SBA appreciated the opportunity to meet with OIG staff prior to the issuance of this Draft Report to clarify SBA's law and policy governing cosponsored activities. Nevertheless, the Draft Report still reflects a misunderstanding of the nuances of SBA's cosponsorship program. For example, the Appendices reflect excess funds from America East 2007 when under SBA policy, there weren't any excess funds. The Appendices also provide some incorrect assumptions as to fiscal agents' use of cosponsorship funds. The Conclusion references the need for adequate policies to identify areas of unnecessary spending or opportunities for greater efficiency or cost savings, but these concepts apply to appropriated funds not cosponsorships, which are supported with private dollars. Finally, there seems a misunderstanding of SBA's vetting and conflict of interest determination requirements.

SBA's cosponsorship authority is a tool to leverage public and private resources to provide a benefit for U.S. small businesses at little or no cost to taxpayers. The Draft Report summarizes what OIG characterizes as failures by SBA officials to implement effective controls to comply with its applicable regulations and policy. Our review of the report and underlying files leads us to conclude that OIG's findings about the failings of SBA's cosponsorship program as a whole are too broadly stated. From 2007 to 2011, SBA executed more than 600 cosponsorship agreements. The five agreements that are the subject of this audit represent less than one percent of all the cosponsored activities which took place during that time period. It is not clear to us why such sweeping statements would be made about a program given the statistically insignificant number of activities examined.

It's important to note SBA uses the terms "cosponsor," "donor" and "gift" as terms of art. SBA's ability to conduct cosponsored activities stems from one section of the Small Business Act (15 USC 633(h)) and its ability to solicit and accept gifts from another (15 USC 633(g)). These are two distinct authorities and programs. To avoid confusion, SBA does not use the associated terms interchangeably. The Draft Report, at times, confuses the authorities and issues, which is perhaps one reason SBA and OIG have obtained different conclusions. A section-by-section analysis of the Draft Report follows.

Background

In the background section, OIG mentions a 2004 audit and states the three, broad noncompliance categories highlighted in that audit still exist today: soliciting and accepting gifts and fees; planning, conducting and reporting activities, and accounting for funds and non-cash assets. While we understand OIG reviews its previous audits as part of a current audit, to avoid confusion we note the many changes that have occurred since the 2004 audit.

While comparison of isolated issues that cross over from 2004 to today may be warranted, it is not accurate and potentially confusing to the uninformed reader to categorically compare the OIG 2004 audit of SBA-sponsored activities, cosponsorships and gifts with five cosponsored activities conducted under the new law and policy.

First, none of the gift issues or recommendations raised in the 2004 audit are applicable to this audit. Therefore, the first category of noncompliance, "soliciting and accepting gifts and fees" should not be referenced in this Draft Report. Second, the noncompliances listed in the 2004 audit do not directly correlate to the 2004 findings or recommendations so it is difficult to understand what from the 2004 audit is relevant or still applicable to the current cosponsorship law and policy[13]. Last, SBA implemented recommendations from the 2004 audit. The 2004 recommendations largely focused on the need to develop additional policy on SBA-sponsored and cosponsored activities. A side-by-side comparison of SOP 90 75 2 (on which the 2004 audit is based) and the revised cosponsorship policy in SOP 90 75 3 demonstrates that SBA made the applicable recommended policy changes from the 2004 audit.

Results

A. *The SBA Did Not Always Take Measures to Document Whether Conflicts of Interest Existed for Cosponsors*

SBA's policy requires all potential cosponsors to be vetted and a conflict of interest determination performed by the General Counsel or designee. Vetting an entity and making a conflict of interest determination are two different processes. Vetting is the process of gathering information about an entity to see if it has any relationship with SBA. The conflict of interest determination is the legal determination of whether a potential cosponsor has an actual or apparent conflict of interest with SBA. The results

[13] In December 2004 SBA cosponsorship and gifts laws changed and subsequent regulations and new policy were issued.

of the vetting process are used by the General Counsel or designee during the conflict of interest determination. Vetting results are included in the cosponsorship file. SBA policy does not require the conflict of interest determinations to be documented anywhere other than on Form 1615 (Part Two is for signature of legal counsel).

Vetting results for all cosponsors, with the exception of one activity in Louisiana[14], are available in the cosponsorship files (which were reviewed by the OIG). Additionally all five activities have a Form 1615 signed by the appropriate legal counsel. Legal counsel performed conflict of interest reviews for all original cosponsors and all additional cosponsors joined to the agreement at a later date, with the exception of Louisiana. SBA policy does not require legal counsel to draft a legal memorandum for each conflict of interest determination performed.

B. Official Cosponsorship Files were not Complete

We agree that four of the five Final Cosponsorship Reports, SBA Form 2299, were not submitted to the Office of Strategic Alliances (OSA) in a timely manner. We also agree that the Responsible Program Officials need to be reminded of their responsibilities to close out a cosponsored activity. We disagree that adding the specific roles and responsibilities of a fiscal agent to the cosponsorship agreements is more effective than a cross reference to the governing document (SOP 90 75 3). We believe the SOP and supplemental guidance are the better vehicles to provide this detailed information. This is further addressed in Recommendation 1.

C. The SBA Did Not Always Properly Account for Excess Funds from Cosponsored Activities

We agree that in several cases the funds remaining after all activity expenses were paid were not handled in accordance with SBA policy; however, we disagree with the Draft Report's characterization of some of the funds as outlined in Appendices A and B. SBA independently reviewed the activities. In some instances, we found different results than those reflected in the Draft Report. Each activity listed in the Draft Report Appendices A and B is addressed below and reflects the findings of our internal review. We also note that the Draft Report has several inconsistencies between data reported in this section and data reported in the Appendices. We provide our event-by-event analysis below.

1. <u>2007 America East Lenders Conference (Rhode Island)</u>: The Draft Report indicates that event expenses were $92,557 and event income was $127,011 yielding excess funds of $34,454. There was only one cosponsor for this event (the SBDC). The sources of the funds to pay for this event were registration fees ($65,511) and the SBDC (the balance, $27,046). Since there were no additional cosponsors of the event, there were no excess funds to be returned to a cosponsor. The SBDC (through its host institution) is authorized to raise funds to support its program. The mistake and source of confusion was with the reporting obtained from the SBDC. The SBDC erroneously included its internal funding efforts on the cosponsorship final report. In the future, SBA will provide supplemental information to cosponsors/fiscal agents as to what and how they need to report to SBA. As a result, the Draft Report should be updated to reflect $0 excess funds for this event.

2. <u>2009 America East Lenders Conference (Rhode Island)</u>: The Draft Report states there is $36,941 in excess funds which the fiscal agent deposited into a muni fund "under an SBA account." SBA's review of the fiscal agent's bank statements shows the fiscal agent does

[14] The file for the 2010 Mid-America Lenders Conference in Louisiana shows that the vetting and conflict of interest for the primary cosponsors was completed and a Form 1615 was signed. The District Office joined additional cosponsors later but documentation on additional vetting is missing from the file.

maintain an investment account but the account is in its own name (SCORE). It is not in SBA's name and it is not an account for SBA.

3. <u>2010 American East Lenders Conference (Maine)</u>: The Draft Report says the fiscal agent reimbursed itself $8,970 based on the final accounting report showing two expenses labeled "internal transfer." SBA asked the fiscal agent for more detail regarding these transfers. The fiscal agent provided documentation illustrating $2,970 was to pay for the 3% credit card transaction fees directly associated with the registration of this activity. This is an allowable expense under SBA's policy. The $6,000 transfer was confirmed to be event management services provided by the cosponsor/fiscal agent which is not allowed under SBA policy. Appendices in the Draft Report should be updated to reflect this information.

4. <u>2010 Mid-America Lenders Conference (Louisiana)</u>: The Draft Report states there were $24,033 in excess funds which remained in the hands of the fiscal agent. Of that $24,033, $8,416 was used to pay for other non-conference related expenses, leaving $15,617 still in the cosponsor's account. SBA confirmed that although the intent of the cosponsors was to donate the excess funds to SBA, the transfer of funds to SBA's Business Assistance Trust Fund (BATF) never occurred. If the transfer had occurred, the non-conference expenditures would have been appropriate as all expenses supported SBA initiatives. We also found a slight correction to the numbers in the Draft Report. Upon request for clarification of the $8,416 spent after the conference, it was discovered that $371 was spent on conference-related expenses (replacing damaged awards). The final numbers should be $24,034 in excess funds with $8,045 spent on non-conference expenses and $15,617 remaining in the fiscal agent's account.

5. <u>2011 American East Lenders Conference (Buffalo)</u>: The Draft Report states the fiscal agent paid itself $11,148 as a management fee. SBA asked the fiscal agent for clarification of the $11,148, marked as paid to SCORE (the fiscal agent) on the final accounting report. SBA received a break-down of the $11,148 and found that $2,508 was spent on conference website maintenance, $140 on Pay Pal expenses (Pay Pal was used to collect conference registration fees) and $8,500 on administrative costs for registration. Of the $11,148, only $8,500 was confirmed to be services provided directly by the cosponsor/fiscal agent.

Conclusion

SBA's ability to cosponsor activities with non-Federal entities stems from statutory authority in the Small Business Act. Cosponsored activities are collaborative activities between SBA and one or more outside entities. The purpose is to leverage public and private resources in order to provide a benefit to small businesses. With this understanding of cosponsored activities, we find the Draft Report's conclusions to be confusing and potentially misleading but agree that SBA bears responsibility to ensure these activities are executed as contemplated in the cosponsorship agreement.

Recommendations

1. [AA/OCPL] Collaborate with General Counsel to update the cosponsorship agreement template to clearly include all specific roles and responsibilities for fiscal agents and other accountable parties in accordance with SOP 90 75 3.
    a. Agree with the intent behind this recommendation but do not agree with the actual recommendation. Based on our review of the files we have concluded that supplemental guidance is a better approach than including roles and responsibilities in the actual cosponsorship agreement template because we can provide examples and explanations in a way that is not appropriate in the cosponsorship agreement. Roles are currently identified but what is evident from this audit is that people need to better understand the terms and need more instruction on what and how to report.

2. [OSA] Establish controls, such as a reporting system, to ensure that all activities are timely and properly closed out and that all required documents and reports as specified in SOP 90 75 3 are obtained.
    a. Agree. SBA has a reporting system that relies heavily on human resources. The Agency is exploring ways to use technology it already owns to collect cosponsorship information and track agreements from conception and approval to close-out.

3. [OSA] Conduct periodic review of the official cosponsorship files for completeness and compliance with SOP requirements.
    a. Agree. OSA would like to be more proactive; however, it needs more staff in order to accomplish these tasks. OGC and OSA will explore ways to leverage OGC staff to assist OSA with this task.

4. [OSA] Provide training for staff that plan cosponsored activities to reinforce their roles and responsibilities.
    a. Agree. SBA currently provides annual cosponsorship training to employees and plans to supplement this training with some specialized training focusing on roles and responsibilities of fiscal agents. All supplemental materials will be made available through the Agency's intranet website. OGC and OSA will also explore ways to leverage OGC staff to assist OSA with this task.

5. [OSA] Collaborate with OGC to ensure that all potential cosponsors are properly vetted prior to soliciting or accepting their cash contributions.
    a. We agree vetting is important but we disagree with this recommendation as the audit does not demonstrate a deficiency with the vetting process. Only one cosponsorship file did not contain all the requisite vetting information.

6. [AA/OFO] Initiate actions to properly account for, and dispose of $36,941 remaining from the 2009 America East Conference and $15,617 remaining from the 2010 Mid-America Lender Conference in accordance with the provisions of SOP 90 75 3.
    a. Agree. SBA will dispose of the $15,617 from the 2010 Mid-America Lender Conference by placing it in the Business Assistance Trust Fund. All cosponsors have indicated it was their intent that excess funds be donated to SBA and will complete documentation to demonstrate their intent.
    b. Existence of excess funds of $36,941 from 2009 America East Conference is still unclear, as according to our internal review, these funds do not exist or are not available as described in the Draft Report.

7. [AA/OFO] Under the provisions of FMFIA, perform periodic quality service reviews to include cosponsorship files and funds disposition, verifying any expenses paid out of cosponsored income are appropriate.
    a. Agree. Cosponsored activities are one of the activities already included in the Field Accountability Review (formerly called QSRs) and the Agency agrees to revisit the list of cosponsorship-related questions to see if there are ways to improve this portion of its peer-to-peer review process.

8. [GC] Finalize and issue the draft gifts SOP including specific procedures and timeframes regarding the disposition of any excess funds that result from SBA-cosponsored activities.
    a. Disposition of excess cosponsorship funds is outlined in SOP 90 75 3, Outreach Activities. There is no requirement that excess funds be gifted to SBA. Funds can also be refunded to the cosponsors. Because of the options available, we think SOP 90 75 3 is the appropriate place to address the procedures for disposing of these funds since they stem from cosponsored activities. If cosponsors decide to make a gift to the Agency of any remaining cosponsorship funds, such funds are treated like any other cash gift to the Agency. The Agency is in the process of issuing a new Gift SOP which cross references SOP 90 75 3 as appropriate.