

EVALUATION REPORT

SBA'S FY 2015 AND 2016 CASH GIFTS





EXECUTIVE SUMMARY

SBA's FY 2015 AND 2016 CASH GIFTS

Evaluation
Report 16-21

August 23, 2016

What OIG Reviewed

This report presents the results of our evaluation of the Small Business Administration's (SBA) cash gifts. For fiscal year (FY) 2016, Congress granted SBA the authority to accept gifts up to \$4 million. Employees may solicit and accept gifts on behalf of SBA after proper approvals, including a conflict of interest determination by SBA's Office of General Counsel. The Consolidated Appropriations Act of 2016 provides that any gift, devise, or bequest of cash accepted by the Administrator shall be held in a separate account and shall be subject to semiannual audits by the Inspector General, who shall report his or her findings to Congress.

The objective of the evaluation was to determine whether SBA had adequate controls over the solicitation, acceptance, holding, and utilization of cash gifts. To accomplish our objective, we interviewed key SBA employees and reviewed various management and financial records available for FYs 2015 and 2016. We also reviewed public records, applicable laws, regulations, policies, and procedures, and SBA documents such as internal and external correspondence, financial management system reports, accounting records, and various other documents.

What OIG Found

SBA generally complied with the Act regarding the solicitation, acceptance, holding, and utilization of cash gifts. SBA's Office of Communications and Public Liaison obtained proper approval from the Office of General Counsel for the 2014 National Small Business Week. However, of the 14 entities that cosponsored the 2014 National Small Business Week, 3 were not properly vetted through SBA program offices to ensure no business relationships existed that would cause a conflict of interest. Also, SBA's Office of General Counsel did not confirm whether a conflict of interest existed between SBA and two of those entities.

We also determined that SBA's Office of Communications and Public Liaison did not distribute excess cash contributions in accordance with SBA policy. Specifically, the fiscal agent retained custody of \$75,000 instead of distributing it in accordance with SBA policy.

In addition, SBA did not always use gift funds for allowable expenses in accordance with SBA regulations and policy.

Recommendations

This report contains four recommendations to improve SBA's controls over of cash gifts.

Agency Comments

SBA management agreed with the findings and recommendations in this report. Based on SBA's response, recommendations 1 and 4 are considered closed. For recommendation 2, the Agency will amend language in the cosponsorship agreement template to address excess cosponsorship funds according to the current standard operating procedure. For recommendation 3, SBA offices will seek recovery of the \$1,201 overpayment that was erroneously refunded to a cosponsor.



**U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20416**

Final Report Transmittal
Report No. 16-21

DATE: August 23, 2016

TO: Maria Contreras-Sweet
Administrator

Tami Perriello
Associate Administrator for Performance Management
and Chief Financial Officer

Brian Weiss
Assistant Administrator
Office of Communications and Public Liaison

Melvin F. Williams, Jr.
General Counsel

FROM: Troy M. Meyer /s/
Assistant Inspector General for Auditing

SUBJECT: *SBA's FY 2015 and 2016 Cash Gifts*

This report contains the results of our evaluation of the Small Business Administration's (SBA) fiscal year (FY) 2015 and 2016 cash gifts. The objective of our review was to determine whether SBA had adequate controls over the solicitation, acceptance, holding, and utilization of cash gifts.

We previously furnished copies of the draft report and requested written comments on the recommendations. SBA management's comments are appended and were considered in finalizing the report. The report contains four recommendations that SBA agreed to address. Based on SBA's response, recommendations 1 and 4 are considered closed. Recommendations 2 and 3 will remain open until OIG receives documentation demonstrating that these recommendations have been addressed. Please provide us within 90 days your progress in addressing these recommendations.

Please contact me if you would like to discuss this report or any related issues.

cc: Nick Maduros, Chief of Staff
Martin Conrey, Attorney Advisor, Legislation and Appropriations
LaNae Twite, Director, Office of Internal Controls

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Introduction

The Consolidated Appropriations Act (the Act) gives SBA the authority to accept gifts to carry out its mission.¹ SBA is required to follow specific Federal laws and regulations regarding gifts and donations. All gifts must be used in a manner consistent with the Act and any terms imposed by the donor. The Act, along with SBA regulations in 13 C.F.R. 106 Subpart E and SBA's Standard Operating Procedures (SOP) govern SBA's gift authority. The Act authorizes SBA to provide assistance to small businesses through cosponsored activities with any eligible entity. Assistance generally includes training, education, or disseminating information.²

Ultimately, several offices must cooperate to approve the solicitation or acceptance of a gift to the Agency. Specifically, the Code of Federal Regulations (CFR) states:

1. Authorized SBA officials must sign written documentation for each gift solicitation or acceptance.
2. SBA's General Counsel or designee must determine whether there is a conflict of interest before soliciting or accepting any gift. If it is determined that there is a potential conflict of interest, that gift shall not be solicited or accepted.
3. All cash gifts donated to SBA under the authority cited in 13 C.F.R. §106.500 must be deposited in an SBA trust account at the U.S. Department of the Treasury.³
4. Any gift, devise, or bequest of cash accepted by the Administrator shall be held in a separate account and shall be subject to semiannual audits by the Inspector General who shall report her findings to Congress.

SBA SOP 90 53, *Gifts to the Agency*, describes the legal authority, policy and procedure for soliciting, approving, accepting and using cash and in-kind gifts to the Agency, including the procedures for administration of the Business Assistance Trust Fund (BAT Fund).⁴

Cash Contributions to Support Cosponsored Activities

At the beginning of fiscal year (FY) 2015, the BAT Fund had a starting balance of \$162,294, with \$65,742 in deposits,⁵ expenses of \$18,844,⁶ and a \$209,192 balance at the end of the fiscal year. Also, SBA spent \$2,382 between October 2015 and February 2016.

Objective

Our objective was to determine whether SBA controls over soliciting, accepting, holding, and utilizing cash gifts were adequate during FYs 2015 and 2016.

¹The Consolidated Appropriations Act, 2016 (P.L. 114-113, December 18, 2015) grants SBA's Administrator the authority to solicit, accept, hold, administer, utilize, and dispose of gifts, devises, and bequests of cash, certain property, subsistence, and services.

² In addition to the Small Business Act provisions, SOP 90 75 3, *Cosponsored Activities*, establishes SBA policy on all Agency outreach activities.

³ SBA established the Business Assistance Trust Fund as a revolving trust for which all donated funds must be deposited.

⁴ In lieu of cash, SBA and cosponsors may contribute products and services that may be used to provide logistical or administrative support to the cosponsored activity.

⁵ Of this, \$12,913.69 was audited in 2015. *SBA's 2014 and 2015 Cash Gifts*, SBA OIG [Report 15-08](#) (March 18, 2015).

⁶ Expenses for FY 2015 were \$18,839.77 plus \$4.43 in interest.

Finding: SBA Could Improve its Cash Controls

In 2014, SBA received \$380,000 in cash contributions from 14 cosponsoring entities to defray costs for National Small Business Week 2014, which took place at SBA Headquarters and four regional offices. SBA spent \$213,795 of the \$380,000 to support this activity. The excess \$166,205 was distributed as follows: \$75,000 remained in the custody of the fiscal agent,⁷ \$52,828 was gifted to SBA for future Small Business Week activities and deposited in the BAT Fund, and \$39,621 was refunded to certain cosponsors.⁸

Our evaluation found that SBA generally complied with the Small Business Act when soliciting, accepting, and holding cash gifts. However, we found exceptions in three areas: (1) vetting cosponsors and performing conflict of interest determinations, (2) distributing cash contributions, and (3) using gifts for allowable purposes.

SBA Did Not Always Vet and Perform Conflict of Interest Determinations for Cosponsors

SOP 90 75 3 stipulates that all potential cosponsors must be vetted by either SBA's originating office or the Office of Strategic Alliances in order for the General Counsel or designee to determine if a conflict of interest exists. Per the SOP, the following entities are ineligible to cosponsor activities with SBA: a recipient of 8(a), Small Disadvantaged Business, or HUBZone program certification, an SBA-guaranteed loan, or a certificate of competency or surety bond guarantee, or in litigation with SBA. For all other entities, the General Counsel or designee must sign SBA Form 1615, *Cosponsorship Approval Request*, to acknowledge approval of the activity after performing a conflict of interest determination. The Office of Strategic Alliances is the administrative office with the authority and responsibility to coordinate the development, implementation and oversight of SBA's cosponsored activities. The Office of Strategic Alliances receives the cosponsorship agreement from the originating office, and once satisfied the required documentation is in order, it will seek approval from the Administrator or designee.⁹ Once the agreement is approved, the originating office will have all cosponsors sign the agreement. SBA adds new cosponsors not included on the cosponsorship agreement with a joinder agreement.

Our review found that of the 14 entities cosponsoring National Small Business Week 2014, 3 were not properly vetted through SBA program offices to ensure no business relationships existed that would cause a conflict of interest. Also, SBA's Office of General Counsel did not confirm whether a conflict of interest existed between SBA and two of those entities for the purpose of the cosponsorship agreement. Consequently, the Agency accepted cash contributions totaling \$125,000 from entities for which a conflict of interest determination was not conducted by SBA's Office of General Counsel. For one of these entities, the Agency accepted a \$100,000 cash contribution from the public relations firm representing a financial institution that participates in SBA's 7(a) and 504 Loan Guaranty Programs, which could create a conflict of interest. As demonstrated by the acceptance of this cosponsor's cash contribution, the Offices of Strategic Alliances and the General Counsel did not perform their due diligence for all cosponsors, which significantly increases the risk that the Agency is not fully compliant with the Act, its regulations, or procedures.

⁷ The fiscal agent refers to the cosponsor with responsibility for collecting, managing and disbursing the cosponsorship funds.

⁸ Of the \$39,621 refunded to five cosponsors, one cosponsor was overpaid \$1,201 in error. In addition, the Office of Strategic Alliances made a \$43 mathematical error when calculating the excess funds.

⁹ The cosponsorship agreement is an approved document that contains the parties' respective rights, duties, and responsibilities for planning and implementing the cosponsored activity.

Cash Contributions Were Not Fully Distributed in Accordance with SBA Policy

SOP 90 75 3, *Cosponsored Activities*, states that all cosponsorship agreements must be accompanied by a proposed budget to demonstrate the cosponsors will not make a profit or accumulate excess funds from the cosponsored activity. In the event cosponsorship funds remain in the cosponsorship account after all the expenses have been paid and the source is cash contributions from cosponsors, the excess funds may be returned to the cosponsors on a pro rata basis or the cosponsors may agree in writing that excess cosponsorship funds (except any funds contributed by an SBA grant recipient) will be a gift to the Agency. All gift funds must be placed in SBA's BAT Fund.

As previously discussed, the excess cash contribution of \$166,205 from National Small Business Week 2014 was distributed as follows: \$75,000 remained in the custody of the fiscal agent (SCORE), \$52,828 was gifted to SBA for future Small Business Week activities and kept in the BAT Fund, and \$39,621 was refunded to certain cosponsors. According to the SOP, the excess \$166,205 remaining from the Agency's National Small Business Week 2014 may have been distributed to the cosponsors on a pro rata basis or gifted to the Agency. Consequently, per the language in the SOP, there is no basis for the \$75,000 to have been retained by the fiscal agent in the cosponsorship checking account.

This occurred because the cosponsorship agreement for this activity stated that excess funds up to \$75,000 would remain in the account maintained by the fiscal agent to be used for future National Small Business Week activities.¹⁰ When we spoke to officials in the Offices of Communications and Public Liaison and General Counsel, they stated that the provision for the fiscal agent to retain \$75,000 in the account was based on the language in a future revision to SOP 90 75 3. In August 2015, OIG provided comments on the draft SOP. In these comments, the OIG did not agree with the new provision for a fiscal agent to retain custody of certain funds at the conclusion of a cosponsored activity. Nevertheless, by following future, tentative SOP revisions rather than the established policy, SBA effectively circumvented established controls over custody of private funds.

By circumventing its established controls, SBA put these funds at risk of not being used for authorized purposes. For example, a 2013 OIG audit reported that fiscal agents had retained excess funds after the conclusion of certain cosponsored activities instead of the program offices distributing the funds in accordance with SOP 90 75 3.¹¹ In turn, the fiscal agents used these funds to reimburse payroll costs, pay themselves, pay for seemingly unrelated expenses, and make inappropriate investments (See Table 1). With these risks in mind, SBA should reconsider our comment to the draft SOP 90 75 3.

¹⁰ We reviewed the checking account statements for the periods ending September 30, 2014 and February 29, 2016, which showed balances of \$175,443 and \$399,765, respectively.

¹¹ *SBA Enterprise-wide Controls Over Cosponsored Activities*, SBA OIG [Report 13-21](#) (September 30, 2013).

Table 1. Use of Excess Funds Held by Fiscal Agents

Fiscal Agent	Amount Spent	Use of Funds
1	\$8,500 \$2,508	Inappropriately paid itself an activity fee and web site alterations and maintenance.
2	\$6,000	Inappropriately reimbursed payroll costs for staff hours charged to the activity.
3	\$8,417	Issued checks to pay expenses that appeared unrelated to the cosponsored activity up to 16 months after the activity.
4	Undetermined	Inappropriately invested certain increments of the excess \$36,941. ¹²

Gift Funds Were Not Always Used For Allowable Purposes

Additionally, while SBA appropriately maintains an available balance in the BAT Fund, these funds were not always used for allowable purposes. During the period of our evaluation, SBA officials spent \$21,081 of existing BAT Funds to support certain Agency outreach activities.¹³ While \$20,712 of this amount was spent in accordance with SBA regulations and policy, approximately \$369 was used to purchase wine at a networking reception that SBA hosted. SBA’s own regulations and SOP specifically restrict the Agency from using donated funds to purchase alcohol products.¹⁴

Recommendations

We recommend the Assistant Administrator for Communications and Public Liaison:

1. Reinforce guidance to ensure that cosponsors added by a joinder agreement are properly vetted and obtain documented evidence that no conflict of interest exist with those entities and SBA.
2. Ensure that future cosponsorship agreements include appropriate controls regarding excess funds remaining at the conclusion of a cosponsored activity in accordance with SOP 90 75 3.
3. Recover the \$1,201 overpayment to the cosponsor that was erroneously refunded \$3,602 instead of \$2,401.

We recommend the Associate Administrator for Field Operations:

4. Include Small Business Week in the annual field accountability reviews and assess whether all expenses paid out of cosponsored income are appropriate and excess funds distributed in accordance with SOP 90 75 3.

Analysis of Agency Response

SBA management provided formal comments that are included in their entirety in Appendix II. SBA management substantially agreed with our recommendations, and its planned actions resolve all four of our recommendations.

¹² For fiscal agent 4, we recommended that the Associate Administrator for Field Operations initiate actions to properly account for, and dispose of \$36,941 remaining from the cosponsored activity in accordance with the provisions of SOP 90 75 3. This recommendation remains open.

¹³ None of the excess \$52,828 in the BAT Fund was expended prior to this evaluation.

¹⁴ 13 C.F.R. §106.503; SOP 90 53 Ch. 2, ¶ 7.

Summary of Actions Necessary to Close the Report

The following provides the status of each recommendation and the necessary actions to either resolve or close the recommendation.

- 1. Reinforce guidance to ensure that cosponsors added by a joinder agreement are properly vetted and obtain documented evidence that no conflict of interest exist with those entities and SBA.**

Closed. Office of Communications and Public Liaison (OCPL) management will work with the Office of Strategic Alliance to reinforce guidance to ensure that all cosponsors added by a joinder agreement are properly vetted. OCPL management will also work with the Office of General Counsel to provide the vetting results for each cosponsor and obtain documented evidence that no conflicts of interest exist between those entities and SBA.

- 2. Ensure that future cosponsorship agreements include appropriate controls regarding excess funds remaining at the conclusion of a cosponsored activity in accordance with SOP 90 75 3.**

Resolved. OCPL management will revise the current cosponsorship agreement template to address excess cosponsorship funds according to SOP 90 75 3. This recommendation can be closed upon OCPL providing evidence that the current provisions regarding excess funds were added to the cosponsorship agreement template.

- 3. Recover the \$1,201 overpayment to the cosponsor that was erroneously refunded \$3,602 instead of \$2,401.**

Resolved. OCPL management will work with the Office General Counsel to recover \$1,201 that was overpaid to the cosponsor that was refunded \$3,602 instead of \$2,401 in error. This recommendation can be closed upon OCPL providing evidence that the \$1,201 was deposited to the BAT Fund.

- 4. Include Small Business Week in the annual field accountability reviews and assess whether all expenses paid out of cosponsored income are appropriate and excess funds distributed in accordance with SOP 90 75 3.**

Closed. OCPL management met with management in the Office of Field Operations who agreed to include Small Business Week in the annual field accountability reviews and assess whether all expenses paid out of cosponsored income are appropriate and excess funds distributed in accordance with SOP 90 75 3.

Appendix I: Scope and Methodology

Our objective was to determine whether SBA controls over soliciting, accepting, holding, and utilizing cash gifts were adequate during FYs 2015 and 2016. To accomplish our objective, we interviewed key SBA employees and reviewed various management and financial records available for FYs 2015 and 2016. We also reviewed public records, applicable laws, regulations, policies and procedures, and SBA documents such as internal and external correspondence, financial management system reports and accounting records, and various other documents.

Our scope included an assessment of activity for cash gifts during FY 2015 and the first 5 months of FY 2016. To identify these transactions, we obtained a download of BAT Fund activity from the Office of the Chief Financial Officer's Denver Finance Center. The Excel file included three worksheets: collections totaling \$52,828, open obligations totaling \$24,156, and cumulative expenditures totaling \$70,223. We filtered the data in each of the worksheets to identify transactions that occurred during FYs 2015 and 2016.

We tested the applicable transactions in each worksheet to assess whether SBA's controls were effective. Specifically, we verified whether the Office of Strategic Alliance and General Counsel cooperated to ultimately approve the acceptance of \$380,000 in cash contributions for the cosponsored activity. We also assessed whether the program offices adequately collaborated with the Office of the Chief Financial Officer to obligate BAT Funds prior to expenditure. We further determined whether BAT Funds were spent in accordance with the Act and SBA policy. We did not find any significant concerns with the effectiveness of controls regarding the areas we tested.

We conducted this evaluation in accordance with the Council of Inspectors General on Integrity and Efficiency (CIGIE) quality standards for inspection and evaluation. Those standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our objectives.

Use of Computer-Processed Data

We relied on data prepared by SBA program offices, as well as reports that were generated from the Joint Administrative and Accounting Management System (JAAMS). SBA identified the entities who donated cash and gifts to the Agency. Additionally, we reviewed JAAMS-produced documentation during our evaluation. We believe the information is reliable for the purposes of this evaluation.

Review of Internal Controls

The Office of Management and Budget Circular No. A-123 provides guidance to Federal managers on improving the accountability and effectiveness of Federal programs and operations by establishing, assessing, correcting, and reporting on internal controls.¹⁵

SBA's internal control systems' standard operating procedure provides guidance on implementing and maintaining effective internal control systems, as required by OMB. According to OMB, effective internal control systems improve the accountability and effectiveness of Federal

¹⁵ *Management's Responsibility for Internal Control*, Office of Management and Budget Circular No. A-123 (December 21, 2004).

programs and operations by establishing, assessing, correcting, and reporting on internal controls.

Prior Coverage

Small Business Administration-Office of Inspector General Reports

Evaluation of SBA's 2014 and 2015 Cash Gifts, SBA OIG Report 15-08 (March 18, 2015).

Evaluation of SBA's 2013 and 2014 Cash Gifts, SBA OIG Report 14-17 (August 27, 2014).

Evaluation of SBA's 2012 Cash Gifts, SBA OIG Report 13-20 (September 30, 2013).

SBA Enterprise-wide Controls over Cosponsored Activities, SBA OIG Report 13-21 (September 30, 2013).

Review of the SBA's Fiscal Year 2011 Cash Gifts, SBA OIG Report 12-13 (March 30, 2012).

SBA
OFFICE OF COMMUNICATIONS AND PUBLIC LIAISON'S
RESPONSE TO EVALUATION REPORT



**U.S. Small Business Administration
Washington, DC 20416**

Date: August 2, 2016

To: Troy M. Meyer
Assistant Inspector General, Auditing Division

From: Brian Weiss
Associate Administrator
Office of Communications and Public Liaison

Subject: Proposed Management Decisions for Recommendations No. 1 - 4

Attached are the signed SBA Form 1824's, Recommendation Action Sheets based on the audit review of SBA's 2015 and 2016 cash gifts.

OCPL agrees with recommendation number 1. The AA/OCPL will work with the Office of Strategic Alliance (OSA) to reinforce guidance to ensure that all cosponsors added by a joinder are properly vetted. OCPL will work directly with OGC to provide the vetting results for each cosponsor in order to obtain documented evidence that no conflicts of interest exist between those entities and SBA.

OCPL agrees with recommendation number 2. The AA/OCPL will ensure that future cosponsorship agreements include appropriate controls regarding excess funds remaining at the conclusion of a cosponsored activity in accordance with SOP 90 75 3. New language will be inserted within the cosponsorship agreement template to address excess cosponsorship funds according to the current SOP 90 75 3.

OCPL agrees with recommendation number 3. The AA/OCPL will recover the \$1,201 overpayment to the cosponsor that was refunded \$3,602 instead of \$2,401 in error. OCPL will work with OGC to prepare a letter from SBA to the cosponsor explaining the error made by the fiscal agent and to request that the funds be returned to the SBA. When the check is received from the cosponsor, OCPL will submit the check to the CFO's office for deposit into the BATF.

OFO agrees with recommendation number 4. The DAA/OCPL met with the AA and DAA/OFO and they agreed that OFO will include Small Business Week in the annual field accountability reviews and assess whether all expenses paid out of cosponsored income are appropriate and excess funds distributed in accordance with SOP 90 75 3.