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District's Earmark Process Needs Improvement

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EXECUTIVE SUMMARY

PURPOSE

Pursuant to Section 455 of the District of Columbia Home Rule Act, as amended, Public Law 93-198, D.C. Code, Section 1-204.55,[1] and Section D of the Rules of Organization and Procedures for the Council of the District of Columbia (Council),[2] the District of Columbia Auditor (Auditor) conducted an audit of Fiscal Year (FY) 2009 earmarks totaling $47,922,000.

CONCLUSION

The Auditor's examination of Fiscal Year (FY) 2009 earmarks totalling $47,922,000 found significant financial and management deficiencies. The Auditor found that some recipients of the FY 2009 earmarks did not comply with requirements set forth in Section 8003 of the FY 2009 Budget Support Act of 2008 (BSA); and that sufficient internal controls were not developed to effectively ensure that District funds were properly managed, accounted for, and used only for their intended purposes.

The Auditor found that the FY 2009 BSA did not establish specific policies and procedures related to the award and release of earmarks. Specifically, the Auditor found that: (1) there were no standard guidelines detailing the criteria that earmark recipients were required to meet before being considered for an earmark award; (2) a standard earmark agreement was not developed for use by all oversight entities and earmark recipients; (3) there was no credible review process for documents submitted pursuant to Section 8003 of the FY 2009 BSA prior to the release of earmark funds; (4) the FY 2009 BSA did not define the roles and responsibilities

[1] *See* section 455 (b) of the District of Columbia Home Rule Act, approved December 24, 1973 (Pub. L. No. 93-198, 87 Stat. 803); D.C. Code §1-204.55 (b) (2001) which states: "The District of Columbia Auditor shall each year conduct a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures and under such rules and regulations as he [she] may prescribe." *See also,* section 455 (c) of the District of Columbia Home Rule Act, as amended, approved December 24, 1973, (87 Stat. 803, D.C. Code § 1-204.55 (c) (2001) which states: "The District of Columbia Auditor shall have access to all books, accounts, records, reports, findings and all other papers, things, or property belonging to or in use by any department, agency, or other instrumentality of the District government and necessary to facilitate the audit."

[2] *See* Section D-711of the Rules of Organization and Procedures for the Council of the District of Columbia (Res.17-1; DCR 156) which states:"The District of Columbia Auditor shall randomly audit grant recipients. The Auditor shall issue a report on audited grant recipients by January 15th of each year for grants that have been received the preceding fiscal year."

of fiscal agents; (5) the FY 2009 BSA did not define the roles and responsibilities of oversight entities; (6) appropriate standards were not established concerning the amount of earmark funds that recipients' could allocate to general administrative and indirect costs; and (7) approximately $276,450 in FY 2009 earmark funds were not disbursed to earmark recipients and have not been returned to the District's general fund.

The Auditor also found that tax self-certification statements provided by earmark recipients allowed for false representation of earmark recipients' tax compliance status, thus allowing three earmark recipients who owed delinquent taxes totalling approximately $450,000 to receive a FY 2009 earmark. Further, the Auditor found that OTR provided incorrect and unreliable earmark recipient tax compliance status information, which permitted 20 earmark recipients to receive $6,452,000 in earmark funds.

Although there was no requirement in the FY 2009 BSA that earmark recipients comply with District of Columbia business licensing and registration laws and regulations, the Auditor also found that 52 earmark recipients receiving a total of $12,607,000 in earmark funds were not in compliance with applicable District business licensing and registration laws. Finally, the Auditor found that earmarks provided to organizations that were not 501 (c) 3 certified created inefficiencies and some earmark funds awarded to these organizations were not used exclusively to provide services which benefitted District residents.

In conclusion, the Auditor found that although the issuance of earmarks was not a new appropriation method for the District, the lack of a rigorous selection and application process coupled with an ineffective system of financial and programmatic monitoring resulted in a lack of transparency and financial accountability in the use of these District funds.

MAJOR FINDINGS

1. Absence of standard policies and procedures for the issuance, monitoring, and financial management of FY2009 earmarks impeded transparency and accountability for the use of these funds.

2. Tax self-certification statement allowed for false representation of earmark recipients' tax compliance status.

3. OTR provided incorrect and unreliable information on earmark recipients' tax compliance status.

4. Fifty-two earmark recipients failed to obtain a business license and/or register with DCRA.

5. Earmarks provided to some organizations that were not 501(c)3 certified created financial accounting inefficiencies and mismanagement of earmark funds.

MAJOR RECOMMENDATIONS

1. The Council of the District of Columbia should consider establishing guidelines detailing earmark selection and accountability policies and procedures, including criteria that potential earmark recipients must meet in order to qualify for consideration of an earmark appropriation.

2. The Mayor of the District of Columbia should consider amending the City-Wide Grants Manual and Sourcebook to:

    a. require formal policies and procedures for the documentation review process for earmark packages. This formal review process should assess the accuracy, appropriateness and completeness of documentation included in earmark packages. Further, these formal policies and procedures should designate a specific executive branch agency, such as the Office of Partnerships and Grant Services, as the primary accountable office responsible for ensuring the review and verification of the earmark packages prior to the disbursement of earmark funds.

    b. establish a reasonable percentage threshold that earmark recipients can allocate for administrative salaries, fringe benefits, and indirect costs. A useful guideline may be rules that govern federal grants on this subject matter.

   c. establish policies and procedures detailing the fiscal agent's financial management, monitoring, and oversight duties and responsibilities, if they are used in the future. These policies and procedures should also establish the range of fees that fiscal agents may collect from an earmark recipient.

3. The Council of the District of Columbia should consider requiring oversight agencies and the Children and Youth Investment Trust Corporation to return all unspent FY 2009 earmark funds to the General Fund.

4. The Council of the District of Columbia should consider requiring agencies and the CYITC to provide a formal assessment of their designated earmark recipients' program and financial performance at the end of each fiscal year.

5. The Council of the District of Columbia should consider developing legislation requiring the verification and validation of District tax compliance prior to the issuance of earmark funding. The legislation could require earmark recipients to provide: OTR Clean Hands Form, Certificate of Good Standing, Statement of Account, or Tax Certification Affidavit Form as proof that the organization is current with District taxes. The recently released City-Wide Grants Manual and Sourcebook has also addressed this recommendation.

6. The Council of the District of Columbia should consider listing in the Budget Support Act an earmark recipient's organization name rather than, or in addition to, the organization's program name, as well as the name of the sponsor of the earmark.

7. The Council of the District of Columbia should consider requiring earmark recipients to report their Federal tax identification number in order to properly identify the business address and type of organization.

8. The 13 identified earmark recipients promptly pay their DCRA reinstatement fees, totaling $5,518 within 30 days from the date of this report.

9. The Mayor of the District of Columbia consider including in the City-Wide Grants Manual and Sourcebook a requirement that earmark recipients comply with all District

laws and regulations pertaining to business licensing and registration prior to disbursement of an earmark.

10. The Council of the District of Columbia consider requiring an earmark recipient to be a 501(c) 3 organization in order to receive an earmark. This requirement would eliminate the need for fiscal agents and would ensure earmark recipients' are properly established non-profit organizations prior to the disbursement of earmark funds.

PURPOSE

Pursuant to Section 455 of the District of Columbia Home Rule Act, as amended, Public Law 93-198, D.C. Code, Section 1-204.55,[3] and Section D of the Rules of Organization and Procedures for the Council of the District of Columbia (Council),[4] the District of Columbia Auditor (Auditor) conducted an audit of Fiscal Year (FY) 2009 earmarks totaling $47,922,000.

OBJECTIVES, SCOPE AND METHODOLOGY

The objectives of this audit were to determine whether:

1. the recipients of the FY 2009 earmarks complied with the requirements set forth in Section 8003 of the FY 2009 Budget Support Act of 2008; and

2. sufficient internal controls were developed to effectively ensure District funds were properly managed and used only for their intended purposes.

The audit covered the period of FY 2009 (October 1, 2008 through September 30, 2009). In conducting the audit, the Auditor reviewed: the FY 2009 Budget Support Act of 2008 (BSA), relevant amendments to the FY 2009 BSA, the 154 original earmark packages submitted to the Council, FY 2009 earmark agreements, and applicable District laws and regulations. Additionally, the Auditor conducted interviews with relevant staff within: the Department of Consumer and Regulatory Affairs' (DCRA) Business License Center and Corporations Division; the Office of the Chief Financial Officer's (OCFO) Office of Tax and Revenue (OTR); individual earmark oversight agencies; the Children and Youth Investment Trust Corporation (CYITC); and the Council of the District of Columbia's Office of the Budget. Additionally, the Auditor is continuing a more detailed audit of randomly selected earmark recipients. The findings and recommendations from this audit will be presented in a future report.

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[3] *See* section 455 (b) of the District of Columbia Home Rule Act, approved December 24, 1973 (Pub. L. No. 93-198, 87 Stat. 803); D.C. Code §1-204.55 (b) (2001) which states: "The District of Columbia Auditor shall each year conduct a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures and under such rules and regulations as he [she] may prescribe." *See also*, section 455 (c) of the District of Columbia Home Rule Act, as amended, approved December 24, 1973, (87 Stat. 803, D.C. Code § 1-204.55 (c) (2001) which states: "The District of Columbia Auditor shall have access to all books, accounts, records, reports, findings and all other papers, things, or property belonging to or in use by any department, agency, or other instrumentality of the District government and necessary to facilitate the audit."

[4] *See* Section D-711of the Rules of Organization and Procedures for the Council of the District of Columbia (Res.17-1; DCR 156) which states:"The District of Columbia Auditor shall randomly audit grant recipients. The Auditor shall issue a report on audited grant recipients by January 15th of each year for grants that have been received the preceding fiscal year."

The Auditor conducted the audit in accordance with generally accepted government auditing standards. 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. The Auditor believes that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives.

BACKGROUND

For the purpose of this audit, an earmark is defined as a non-competitive funding allocation approved and awarded by the Council or the Executive Office of the Mayor to organizations, institutions, and private sector entities for a specific purpose.[5] The FY 2009 BSA contained 154 earmarks totaling $47,922,000.[6] These approved earmarks ranged from $10,000 to $10,000,000. See Appendix I for a list of all earmark recipients and the amount of each earmark.

In March 2008, the Council included a listing of all legislative and Executive Branch earmark recipients in the proposed FY 2009 BSA, which was approved by the Council on June 3, 2008, and signed by the Mayor on June 26, 2008. Section 8002 of the FY 2009 BSA designated specific District of Columbia agencies, as well as the CYITC[7], to oversee earmarks, based on the purpose of each earmark. The Council Chairman sent letters to earmark recipients informing them of the entity that would provide oversight[8] and of the requirement to submit specific documentation to the Council. See Appendix II for examples of the formal earmark letters sent by the Council Chairman.

On October 1, 2008, the earmark funding was distributed to the oversight agencies and the CYITC. Between October 1, 2008 and January 31, 2009, oversight agencies and the CYITC signed earmark agreements with their designated earmark recipients. Once earmark agreements were signed, the oversight agencies and the CYITC released the funds to earmark recipients pursuant to the terms of their earmark agreement.

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[5] Council of the District of Columbia's Office of Policy Analysis Report 17-02, *Special Allocations of the Council of the District of Columbia*, (dated March 12), 2008, pages 1-2.
[6] *See* Section 8002 of the Fiscal Year 2009 Budget Support Act of 2008, effective August 16, 2008 (D.C. Law 17-219; 55 DCR 7602).
[7] Children and Youth Investment Trust Corporation (CYITC) is an independent non-profit entity, incorporated in 1999, which receives Federal and District government funds, as well as other private funding.
[8] *See* Section 8002 of the Fiscal Year 2009 Budget Support Act of 2008, designated oversight agencies and CYITC to oversee each earmark based on its purpose.

Section 8003 of the FY 2009 BSA required each earmark recipient to submit the following documentation to the Council's Budget Director:[9]

- The recipient organization's Articles of Incorporation;
- IRS certification that the recipient organization is tax-exempt under section 501(c) of the Internal Revenue Code of 1986.[10] If the recipient organization could not meet this requirement, the organization was required to submit a notarized statement designating a non-profit organization, which did meet this criterion, to serve as its fiscal agent or fiscal sponsor. The fiscal agent was required to submit to the Council's Budget Director:
    a. notarized statement agreeing to serve as fiscal agent or fiscal sponsor, and
    b. the information required by Section 8003 of the FY 2009 BSA;[11]
- The recipient organization's most current financial audit, not more than two years old; or a current financial statement by a certified accountant that shows that the organization is in good financial standing and which delineates the organizations': (1) existing assets and liabilities; (2) pending lawsuits; and (3) pending and final judgments;[12]
- IRS Form 990 covering the organization's most recently completed fiscal year;[13]
- A notarized self-certified statement indicating that the recipient was current on District and federal taxes;
- A comprehensive program statement that includes a detailed:
    a. scope of work, and
    b. budget that describes how the earmark funds shall be spent;
- A statement certifying that the earmark recipient focuses primarily on services to District of Columbia residents and will serve only District of Columbia residents with this earmark; and
- A formal certification from the proposed earmark recipient that the District government shall have access to its financial, administrative, and operational records, including specific consent for the District of Columbia Auditor to access its books, accounts, records, findings, and documents related to the earmark.

[9] *See* Designated Appropriation Allocations Emergency Amendment Act of 2008, signed on August 1, 2008, (D.C. Act 17-0488; 55 DCR 9157), which extended the due date to submit required documents from August 1, 2008 to August 15, 2008; *See* Designated Appropriation Allocations Temporary Amendment Act of 2008, signed on October 1, 2008, (D.C. Act 17-529; 55 DCR 11041), which extended the submission date of August 15, 2008 to September 25, 2008.

[10] Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)).

[11] *See* Designated Appropriation Allocations Emergency Amendment Act of 2008, signed on August 1, 2008, (D.C. Act 17-0488; 55 DCR 9157.)

[12] *See* Designated Appropriation Allocations Emergency Amendment Act of 2008, signed on August 1, 2008, (D.C. Act 17-0488; 55 DCR 9157.)

[13] *See* Designated Appropriation Allocations Emergency Amendment Act of 2008, signed on August 1, 2008, (D.C. Act 17-0488; 55 DCR 9157) which defines most recent financial audit as no more than two years old.

According to the Council's Budget Director, the designated oversight agencies and the CYITC were responsible for monitoring the use of earmark funds based on the terms of the signed earmark agreements. One hundred seven (107) earmarks, totaling $39,062,000, were assigned to District agencies for oversight and 47 earmarks, totaling $8,860,000, were assigned to the CYITC for oversight. Table I lists the 12 oversight agencies and the CYITC, the total number of FY 2009 earmark recipients, and total earmark amounts assigned to them for oversight.

TABLE I
Oversight Agencies and the CYITC

Oversight Agency and/or Corporation	Total Number of Earmark Recipients Designated to the Agency/Corporation	Total Earmark Amount
Alcoholic Beverages Regulation Administration.	1	$ 100,000
Commission on the Arts & Humanities	22	$ 5,750,000
Children & Youth Investment Trust Corporation	47	$ 8,860,000
District Department of Transportation	1	$ 18,000
Department of Housing & Community Development	1	$ 700,000
Department of Human Services	7	$ 750,000
Department of Mental Health	1	$ 200,000
Deputy Mayor for Planning & Economic Development	47	$ 24,739,000
Department of Health	19	$ 5,025,000
Department of Parks & Recreation	2	$ 600,000
Department of Small & Local Business Development	2	$ 130,000
Justice Grant Administration, Office of the City Administrator	3	$ 850,000
Metropolitan Police Department	1	$ 200,000
TOTALS	**154**	**$47,922,000**

Source: FY 2009 BSA for 2008.

Effective January 2, 2009, the Council of the District of Columbia took additional steps to provide some control over future District earmarking. The FY 2010 budget capped funding allocations for non-capital projects at $250,000 and $1 million for all capital projects.[14] On May 12, 2009, the Council approved a budget for FY 2010 that contained 141 earmarks totaling $20,843,359 which was a substantial reduction in the funding from FYs 2008 and 2009 levels. Due to the District's revenue budget shortfall, the Council eliminated these earmarks entirely from the FY 2010 budget.[15]

Additionally, beginning with the FY 2011 budget, "an organization shall not receive a specified funding allocation if the organization has received an award in the prior fiscal year." Further, "an organization that receives a specified funding allocation for a capital project shall be limited to only one capital award, annually."[16]

[14] The Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 18, effective January 2, 2009 (Res. 18-1; 56 DCR 748).
[15] See Fiscal Year 2010 Budget Support Act of 2009, passed on reconsideration on July 31, 2009 (Second Engrossed version of Bill 18-203), (D.C. Act 18-255, 57 DCR 181). Title VIII was amended by an Amendment in the Nature of a Substitute that removed the grants from the 2010 Budget Support Act.
[16] The Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 18, effective January 2, 2009 (Res. 18-1; 56 DCR 748).

FINDINGS

ABSENCE OF STANDARD POLICIES AND PROCEDURES FOR THE ISSUANCE, MONITORING, AND FINANCIAL MANAGEMENT OF FY 2009 EARMARKS IMPEDED TRANSPARENCY AND ACCOUNTABILITY FOR THE USE OF THESE FUNDS

Government Accountability Office (GAO) standards for internal control state, in relevant part, that:

> "Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved: 1) effectiveness and efficiency of operations; 2) reliability of financial reporting; and 3) compliance with applicable laws and regulations.[17] Furthermore, control activities, such as policies, procedures, techniques, and mechanisms, are an integral part of an entity's planning, implementing, reviewing, and accountability for stewardship of government resources and achieving effective results."[18]

The Auditor found that there were inadequate and ineffective formal policies and procedures in place for the issuance, monitoring, payment, and reporting of FY 2009 earmarks. Specifically, the Auditor found the following:

1. There were no standard guidelines detailing the criteria that earmark recipients were required to meet before being considered for an earmark award. The appropriation of earmarks was not a competitive process and could have been misused to support political or personal objectives rather than the achievement of important underfunded or unfunded public policy goals and objectives.[19] Although the issuance of earmarks was not a new appropriation method for the District, failure to establish a rigorous selection and/or application process and effective system of financial and programmatic monitoring resulted in a lack of transparency and financial accountability for the use of these District funds. Establishing a transparent process and effective system of accountability for the award and management of earmarks is vital given the lean economic times facing the

[17] See Standards for Internal Control in Federal Government, GAO/AIMD-00-21.3.1 (11/99) p.4.
[18] See Standards for Internal Control in Federal Government, GAO/AIMD-00-21.3.1 (11/99) p.11.
[19] Council of the District of Columbia's Office of Policy Analysis Report 17-02, *Special Allocations of the Council of the District of Columbia*, (dated March 12), 2008, page 1.

District government and the high risk of loss and misuse of these funds. District earmarks had increased significantly between FY 2005 and FY 2009.[20] Table II presents the total number of earmarks and the total dollar value of earmarks from FY 2005 through FY 2010.

Table II

District Earmarks from FY 2005 through FY 2010

Year	Total Number of Earmarks	Total Dollar Value of Earmarks
2005	2	$ 1,250,000
2006	25	$ 17,510,900
2007	44	$ 29,308,282
2008	99	$ 49,766,576
2009*	154	$ 47,922,000
2010**	141	$20,843,359
TOTAL	**465**	**$166,601,117**

Source: Council of the District of Columbia's Office of Policy Analysis Report 17-02, *Special Allocations of the Council of the District of Columbia*, (dated March 12), 2008, page 2; and FY 2010 budget Support Act.
*FY 2009 BSA Section 8002.
** Due to the District's revenue shortfalls, the Council eliminated earmarks from the FY 2010 budget.

2. A standard earmark agreement was not developed for use by all oversight agencies and the CYITC. Each oversight entity developed its own earmark agreement. As a consequence, there were widespread disparities in reporting, monitoring, and payment policies, procedures, and requirements among the oversight entities.

3. Five of the 13 oversight agencies required earmark recipients or fiscal agents to maintain separate bank accounts for earmark funds, while eight (8) oversight entities did not. Requiring earmark recipients and/or fiscal agents to maintain separate bank accounts for earmark funds would ensure that transactions (deposits, disbursements, transfers, and withdrawals) were properly recorded, managed, and maintained. Without this important internal control element, there was little assurance that earmark funds could be properly tracked, monitored, and accounted for.

[20] Council of the District of Columbia's Office of Policy Analysis Report 17-02, *Special Allocations of the Council of the District of Columbia*, (dated March 12), 2008, page 2.

4. Earmark recipients submitted vague scopes of work. The Auditor found that only 35 of the 154 earmark recipients clearly detailed their scope of work by indicating: 1) the goals, objectives, or activities of the programs or services to be provided; and 2) the estimated number of District of Columbia residents who would benefit from the programs or services funded by FY 2009 earmarks. Without a sufficiently detailed scope of work, oversight agencies and the CYITC could not properly monitor and evaluate programs and services funded by FY 2009 earmarks, or link expenditure of earmark funds with program or service activities.

5. Oversight agencies and the CYITC were not consistent in assuring earmark budget narratives were complete, accurate, and relevant. The Auditor found that 29 of the 154 earmark budgets were incomplete and 125 lacked sufficient details regarding how each budget line item was derived and related to the purpose of the earmark. As a result, the budgets lacked the information necessary to validate the methodology, justification, or purpose for expenditures. For example:

    a. The UDC Fashion Merchandising Program provided a one-line budget allocating the entire $100,000 earmark to support a program officer's full-time salary and benefits. The budget did not indicate the total number of hours the program officer would work or the hourly rate of pay.

    b. The Ward 7 Business and Professional Association provided an incomplete budget for their $100,000 earmark in that the budget lacked adequate justification or explanation of how the earmark would be used to enhance the capacity building and resources of Ward 7 businesses. See Appendix III for Ward 7 Business and Professional Association's $100,000 earmark budget.

    c. Some oversight entities did not include written performance standards in the earmark agreement. For example, the D.C. Commission on the Arts and Humanities (CAH), which had oversight responsibility for 22 earmarks totaling $5,750,000, lacked any written performance standards for the 22 earmark recipients under their purview. Without performance standards, it was not clear what District of Columbia taxpayers received for their tax dollars.

6. There was no credible review process for the documents submitted pursuant to Section 8003 prior to the release of earmark funds to earmark recipients. As a result, the documents submitted by the recipients, or their fiscal agents, were not properly reviewed for accuracy, appropriateness, and completeness. The Auditor found that 84 of the 154 earmark recipients, receiving earmarks totaling $17,677,000, did not submit all of the documents required by Section 8003 of the FY 2009 BSA.

7. The FY 2009 BSA did not define the roles and responsibilities of fiscal agents or establish a permissible fee range that a fiscal agent could charge an earmark recipient. Fiscal agent fees varied from 2% to 12% of the total earmarks reviewed by the Auditor. Without proper definition of the roles, duties, and responsibilities of a fiscal agent, there was no basis upon which to hold a fiscal agent fully accountable for the quantity and quality of the financial management services provided to earmark recipients. As a result, there was a lack of consistency regarding the duties performed and fees charged by fiscal agents for their services. For example:

    a. GALA Hispanic Theatre collected a fee of 5%, or $16,600, of the Horning Brothers' $332,000 earmark. Lydia's House collected 8%, or $6,000, of the $75,000 Ward 8 Clean and Sober, Inc. earmark. Appendix IV provides additional examples of the fees collected by nine[21] fiscal agents from earmark recipients.

    b. The Auditor found that some fiscal agents did not provide any financial management services yet received significant fees for simply being a designated fiscal agent. Other fiscal agents were merely a pass-through for earmark funds. As previously noted, GALA Hispanic Theatre collected 5%, or $16,600, of the Horning Brothers' $332,000 earmark, for serving as a fiscal agent without providing any financial management services. In fact, the Horning Brothers performed their own financial management services for the earmark. Moreover, a GALA Hispanic Theatre official stated the following in a letter to the Auditor (See Appendix V): I would like to clarify that GALA Hispanic Theatre's role is simply as the fiscal agent to pass through the funds for Horning Brothers.[22] Appendix V also includes a letter from GALA to the

[21] Of the 10 fiscal agents reviewed, one fiscal agent did not receive any payment from the earmark recipient for their services because their contract was terminated.
[22] GALA Hispanic Theatre letter dated July 10, 2009.

Council's Budget Director further emphasizing their role as a pass-through with no responsibility for the execution or reporting of the Horning Brothers FY 2009 earmark funds.

8. The FY 2009 BSA did not establish any standards regarding the amount of earmark funds recipients could allocate to administrative salaries, fringe benefits, and indirect costs (general operating costs). The Auditor found that 52 earmark recipients, receiving $11,407,000, allocated over 50% of their earmark funds to cover administrative salaries and fringe benefits expenditures. The Auditor also found that seven earmark recipients, receiving $11,298,000, allocated 100% of their earmark towards developing or improving their own organizational infrastructure instead of using the funds to support actual delivery of programs or services as specified in their earmark agreement.

9. The FY 2009 BSA did not define the roles and responsibilities of the oversight entities or authorize all entities to charge an administrative oversight fee. As a result, monitoring of compliance with the terms of earmark agreements was inconsistent or non-existent among the oversight entities. For example:

    a. The release of earmark funds to recipients was inconsistent. The majority of oversight agencies released 100% of the earmark funds to earmark recipients. However, the CYITC placed their earmark recipients on an allocation plan in which earmark funds were distributed in five installments[23] and tied to specific reporting requirements.

    b. The FY 2009 BSA approved a 3% earmark administrative fee for CYITC to cover administrative costs for each of their 47 earmark recipients. Of the total $8,860,000 in assigned earmarks, CYITC collected approximately $265,800 in administrative fees. District of Columbia agencies that were to provide oversight to earmark recipients were not authorized to collect any administrative fees. As a result, this may have adversely impacted the quality and level of earmark monitoring and oversight by accountable District agencies.

[23] The CYITC FY 2009 earmark agreement, Section H.6 (Payment).

10. Some oversight agencies conducted site visits to monitor and evaluate the earmark recipients' operations while other oversight agencies did not. For example, the CYITC conducted at least one site visit to each of their 42[24] earmark recipients during the fiscal year.[25] Other oversight agencies such as the Office of the Deputy Mayor for Planning and Economic Development (DMPED) and CAH did not conduct any site visits. According to DMPED and CAH officials, site visits were not conducted because the agencies lacked sufficient staff resources to perform this task.

11. Some oversight entities required periodic reports from earmark recipients while other entities did not. For example, some earmark recipients were required to report periodically (monthly or quarterly) to their oversight agency or CYITC detailing program activities and expenditures. Other oversight agencies did not require earmark recipients to file any written program or financial reports until the end of the fiscal year. The Auditor found that CAH's failure to require periodic reporting resulted in East of the Anacostia Performing Arts State Center utilizing $167,930 to pay for expenditures not in compliance with the terms of the earmark agreement or the FY 2009 BSA.[26]

12. Oversight agencies and the CYITC approved earmark budgets; however actual expenditures related to the budget were not verified to ensure that expenditures were appropriate and consistent with the terms of the earmark agreements. For example:

    a. The CAH entered into an earmark agreement with Friends of Carter Barron Foundation of the Performing Arts, on behalf of the East of the Anacostia Performing Arts State Center earmark. The earmark agreement stated that the $200,000 earmark budget would be used to support planning for a performing arts center to be built east of the Anacostia River.[27] Instead of using the $167,930[28] earmark consistent with the FY 2009 BSA and earmark agreement, a substantial portion of these funds were used to financially support a summer youth employment program. The Auditor found that CAH

[24] Of the 47 designated earmark recipients assigned to the CYITC, per Section 8002 of the FY 2009 BSA, the CYITC only disbursed earmarks funds to 42 recipients, totaling $8,317,750. CYITC released the funds to the 42 earmark recipients pursuant to the terms of their earmark agreement.
[25] The CYITC payment and site visit report dated August 31, 2009.
[26] Friends of Carter Barron financial accounting reports (bank statements, Accountant memorandum, and cancelled checks).
[27] CAH earmark award letter #CAI-7468-14-2009.
[28] The President of Friends of Carter Barron received a $30,000 salary as the Program Director of East of the Anacostia Performing Arts State Center. A $2,000 payment was issued to the Friends of Carter Barron accountant and a $70 payment was issued to DCRA for licensing fees. The remaining $167,930 appears to have been used for purposes that failed to comply with the appropriation. As a consequence, this matter will be referred for further investigation by appropriate law enforcement authorities.

was unaware until this audit, that $167,930 of the earmark was used to support a program unrelated to the earmark agreement or the FY 2009 BSA.

b. The DMPED entered into an earmark agreement with Behavioral Environmental Academic Program on behalf of the Ward 7 Business and Professional Association, to receive and manage its $100,000 earmark. However, DMPED did not verify that a formal employment contract for the Ward 7 Business and Professional Association executive director's salary of $65,000 existed prior to the release of salary payments.

13. Earmarks that were not distributed to the designated recipient were not returned to the District. As of August 19, 2009, the CYITC had a total of five FY 2009 earmarks totaling approximately $276,450 that were not distributed to the designated earmark recipient.[29] According to CYITC officials, they will retain the funds until direction is obtained from the Council of the District of Columbia. CYITC officials stated that their preference is to redirect this "surplus" to other organizations.

14. Some oversight entities submitted or planned to formally report to the Council on the overall performance of their assigned FY 2009 earmark recipients, while other oversight agencies planned not to file an end-of-year report. For example, the CYITC and DMPED intend to provide the Council with a report on the overall performance of their assigned earmark recipients, while other oversight agencies did not.

RECOMMENDATIONS:

1. The Council of the District of Columbia should consider establishing guidelines detailing earmark selection and accountability policies and procedures, including criteria that potential earmark recipients must meet in order to qualify for consideration of an earmark appropriation.

2. The Mayor of the District of Columbia should consider amending the City-Wide Grants Manual and Sourcebook to:

[29] CYITC memorandum dated August 31, 2009.

a. require formal policies and procedures for the documentation review process for earmark packages. This formal review process should assess the accuracy, appropriateness and completeness of documentation included in earmark packages. Further, these formal policies and procedures should designate a specific executive branch agency, such as the Office of Partnerships and Grant Services, as the primary accountable office responsible for ensuring the review and verification of the earmark packages prior to the disbursement of earmark funds.

b. establish a reasonable percentage threshold that earmark recipients can allocate for administrative salaries, fringe benefits, and indirect costs. A useful guideline may be rules that govern federal grants on this subject matter.

c. establish policies and procedures detailing the fiscal agent's financial management, monitoring, and oversight duties and responsibilities, if they are used in the future. These policies and procedures should also establish the range of fees that fiscal agents may collect from an earmark recipient.

3. The Council of the District of Columbia should consider requiring oversight agencies and the CYITC to return all unspent FY 2009 earmark funds to the General Fund.

4. The Council of the District of Columbia should consider requiring agencies and the CYITC to provide a formal assessment of their designated earmark recipients' program and financial performance at the end of each fiscal year.

TAX SELF-CERTIFICATION ALLOWED FOR FALSE REPRESENTATION OF EARMARK RECIPIENTS' TAX COMPLIANCE STATUS

Section 8003(a) (5)(A-B) of the FY 2009 BSA required earmark recipients to submit a notarized self-certified statement affirming that the organization was current on District and federal taxes. This statement was to serve as evidence that earmark recipients did not have any outstanding tax liens or liabilities.

The Auditor found that self-certifications were an unreliable means of validating earmark recipients' tax compliance status. Self-certification allowed for false representation on the part of some earmark recipients regarding their compliance with District and federal tax laws and regulations. As a result, earmark recipients who were delinquent with District taxes received earmark awards. Table III presents three FY 2009 earmark recipients who were delinquent with District of Columbia taxes.

TABLE III

FY 2009 Earmark Recipients Who Were Delinquent On District Taxes

FY 2009 Earmark Recipients	Total Earmark Awarded
National Conservancy of Dramatic Arts	$50,000
Positive Choices	$100,000
National Association of Former Foster Care Children of America, Inc.	$300,000
TOTAL	**$450,000**

Source: OTR listing, Earmark cancelled checks and Interviews

Adequate validation of earmark recipients' tax compliance status could have been verified if the recipients were required to provide any of the following OTR tax forms as valid proof of tax compliance:

1. Clean Hands Form- OTR certification that the corporation does not owe more than $100 to the District government as a result of fees, penalties, interest, or taxes.
2. Certificate of Good Standing- OTR certification that the business is in good standing (has no outstanding tax balance and has met their annual filing requirements) with the District as of the date of the formal letter.
3. Statement of Account- OTR provides a statement of account letter which indicates that the business does not have an outstanding District tax balance.
4. Tax Certification Affidavit Form- OTR verification that the business is current on all of the following District taxes: Sales and Use, Employment Withholding, Ball Park Fee, Corporation Franchise, Unincorporated Franchise, Personal Property, Real Property, and Individual Income.

RECOMMENDATION

The Council of the District of Columbia should consider developing legislation requiring the verification and validation of District tax compliance prior to the issuance of earmark funding. The legislation could require earmark recipients to provide: OTR Clean Hands Form, Certificate of Good Standing, Statement of Account, or Tax Certification Affidavit Form as proof that the organization is current with District taxes. The recently released City-Wide Grants Manual and Sourcebook has also addressed this recommendation.

OTR PROVIDED INCORRECT AND UNRELIABLE INFORMATION ON EARMARK RECIPIENTS' TAX COMPLIANCE STATUS

GAO standards for internal control state: "All transactions and other significant events need to be clearly documented and the documentation should be readily available for examination. All documentation and records should be properly managed and maintained."[30]

Section 8003(a) (5) (A-B) of the FY 2009 BSA required earmark recipients to submit a notarized self-certified statement affirming that the organization was current on District and federal taxes. This statement was to serve as evidence that earmark recipients did not have any outstanding tax liens or liabilities. The self-certified statement authorized the Council's Budget Director to verify the organization's tax status with OTR, and authorized the District of Columbia Auditor full access to the organization's books, accounts, records, findings, and documents related to the earmark.

The Auditor found that OTR provided the Council and Auditor with insufficient evidence of earmark recipients' tax compliance status. Creditable validation of the FY 2009 earmark recipients' tax compliance status could not be performed by OTR because earmark recipients provided out-dated business addresses, P.O. Boxes, or invalid organization names. For example, Camp Imagine (awarded a $40,000 earmark), National Cherry Blossom Festival (awarded a $200,000 earmark), and ProUrban Youth (awarded a $200,000 earmark) were names of programs not organization or business names. Despite these major deficiencies, OTR inexplicably reported to the Council's Budget Director that 134 earmark recipients were in compliance with District tax laws.

[30] See Standards for Internal Control in Federal Government, GAO/AIMD-00-21.3.1 (11/99) p.15-16.

The Auditor subsequently requested tax compliance verification evidence for 42 of the 134 earmark recipients[31] receiving earmarks totaling $11,522,000. OTR would only provide verification of property tax compliance status. Further, OTR could not verify the property tax compliance status of 20 of the 42 earmark recipients, receiving $6,452,000 in earmark funding, based on the business name and address provided by the earmark recipient.[32] Yet OTR had previously indicated to the Council that these 20 earmark recipients were in compliance with District tax laws.

RECOMMENDATIONS

1. The Council of the District of Columbia should consider listing in the Budget Support Act an earmark recipient's organization name rather than, or in addition to, the organization's program name, as well as the name of the sponsor of the earmark.

2. The Council of the District of Columbia should consider requiring earmark recipients to report their Federal tax identification number in order to properly identify the business address and type of organization.

52 EARMARK RECIPIENTS FAILED TO OBTAIN A BUSINESS LICENSE AND/OR REGISTER WITH DCRA

Businesses within the District are required to be properly licensed and registered with DCRA. D.C. Code §47-2851.03(d) states: "A General Business License shall be required for all businesses engaging in any business transaction in the District that have a business tax identification number and who are not otherwise required to obtain an endorsement under a license endorsement category under this chapter."[33] District law defines a "business" as "any trade, profession, or activity which provides or holds itself out to provide goods or services to the general public or to any portion of the general public, for hire or compensation in the District of Columbia".[34]

[31] The names of the 42 earmark recipients were the original names submitted to the Council's Budget Director. These names were submitted to OTR by the Council's Budget Director in 2008.
[32] E-mail from OTR Assistant General Counsel, dated September 23, 2009.
[33] *See* D.C. Official Code§ 47-2851.03(d) (2001).
[34] *See* D.C. Official Code§ 47-2851.01(1B)(A) (2001).

Businesses must apply for a business license at DCRA's License Center. The type of activities a business conducts defines the type of business license that is required. DCMR Title 16, Chapter 13 (Charitable Solicitation), requires all organizations to obtain a Charitable Solicitation License from DCRA if their funding is obtained through fundraising efforts, grants, bazaars, auctions, or other events outside of their own members.[35] Charitable solicitation also includes seeking funds from federal and local governments, or grants. DCRA business licenses must be renewed every two years.[36]

For-profit and non-profit corporations, partnerships, or limited liability companies must also be registered in the District through DCRA's Corporations Division[37] and maintain good standing status.[38] To maintain good standing status within the District of Columbia, the corporation must file required reports and pay all applicable fees to DCRA's Corporations Division. The Auditor found that, as of September 9, 2009:

1. 38 FY 2009 earmark recipients, awarded $11,282,000 in earmark funding, were not properly licensed or registered with DCRA's Licensing Center or Corporations Division.

2. 3 FY 2009 earmark recipients, awarded $295,000 in earmark funding, were found to have valid DCRA business licenses, however, they failed to properly register their organization with DCRA's Corporations Division, as required by D.C. Code, Section 29-101.99.

3. 11 FY 2009 earmark recipients, awarded $1,030,000, were registered with DCRA's Corporations Division as required by law, however, the earmark recipients failed to obtain valid business licenses to conduct business legally in the District.

Additionally, the Auditor found that 13 earmark recipients were not in good standing because DCRA had revoked their corporate status, yet these earmark recipients were awarded $2,230,000 in earmark funding.

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[35] DCMR Title 16 § 13 (1998).
[36] *See* D.C. Official Code § 47-2851.09 (2001).
[37] *See* D.C. Official Code § 29-101.99 (2001).
[38] DCRA website (www.dcra.dc.gov).

Although the FY 2009 BSA did not require prospective earmark recipients to comply with the District's business licensing and registration law such requirements, 52 recipients who failed to adhere to applicable District business licensing and registration laws intended to protect District consumers, received $12,607,000 in earmark funds.

RECOMMENDATIONS

1. The 13 identified earmark recipients promptly pay their DCRA reinstatement fees, totaling $5,518 within 30 days from the date of this report.

2. The Mayor of the District of Columbia consider including in the City-Wide Grants Manual and Sourcebook a requirement that earmark recipients comply with all District laws and regulations pertaining to business licensing and registration prior to disbursement of an earmark.

EARMARKS PROVIDED TO SOME ORGANIZATIONS THAT WERE NOT 501(C) 3 CERTIFIED CREATED FINANCIAL ACCOUNTING INEFFICIENCIES AND MISMANAGMENT OF EARMARK FUNDS

The amendments to the FY 2009 BSA substituted 501 (c) certification for the original 501(c) 3 organization[39] requirement for qualifying as a FY 2009 earmark recipient. If an earmark recipient could not meet the IRS 501 (c) certification requirement, the recipient was required to submit a notarized statement designating a 501 (c) organization to serve as its fiscal agent. The Council's Budget Director stated that the role of the fiscal agent was to: 1) facilitate earmark recipients in the process of obtaining their 501(c) 3 status to receive their FY 2009 earmark funds, and 2) provide some financial monitoring of the earmark recipients' funds.

According to the National Education Association (NEA) Foundation, a fiscal agent is an organization that agrees to accept and be responsible for grant money on behalf of an organization. A fiscal agent is a non-profit organization and thus is able to accept the funds without tax liability. The fiscal agent is authorized, by the organization, to represent the

[39] See 26 U.S. C. §501(c), *to be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual. Organizations described in section 501(c) (3) are commonly referred to as charitable organizations. Organizations described in section 501(c) (3), other than testing for public safety organizations, are eligible to receive tax-deductible contributions in accordance with Code section 170.*

organization, specifically in the receipt, disbursement, and oversight of the funds. The responsibilities of the fiscal agent include, but are not limited to:

- receiving and safeguarding funds;
- maintaining separate records of disbursements related to the funds;
- disbursing the funds;
- making financial records available upon request; and
- retaining receipts and records for at least 3 years following the receipt of the funds.[40]

The Auditor reviewed 10 fiscal agents' contracts and financial oversight practices with regard to the handling and accounting for earmark funds. The Auditor found:

1. Some fiscal agents were used by earmark recipients to circumvent FY 2009 BSA requirements. Fiscal agents were used in instances where earmark recipients were not 501 (c) organizations, were not organizations properly licensed or registered with DCRA, or were non-compliant with District tax laws. For example:

    a. Ward 8 Clean and Sober, Inc. and Ward 8 Clean and Green were not 501 (c) 3 organizations or officially licensed and registered with DCRA. As a result, Ward 8 Clean and Sober, Inc. designated Lydia's House as their fiscal agent and Ward 8 Clean and Green designated Behavioral Environmental Academic Program as their fiscal agent. However, as of September 30, 2009, these organizations had not obtained their 501 (c) 3 certification or had not been licensed and registered with DCRA.

    b. The National Association of Former Foster Care Children of America, Inc. (NAFFCCA), a 501(c) 3 organization, designated Inner Thoughts, Inc., as their fiscal agent. NAFFCCA required a fiscal agent because NAFFCCA filed for bankruptcy in July 2008, had unpaid federal and District tax liabilities of approximately $221,896, unpaid District unemployment tax of $5,136,[41] and had not filed a federal IRS 990 tax return since 2007. Rather than being required to address these deficiencies before being awarded an earmark, NAFFCCA used a fiscal agent as a means of obtaining a $300,000 earmark.

[40] NEA Foundation website (www.neafoundation.org).
[41] Formal memorandum from Kano & Associates, NAFFCCA Certified Public Accountant, dated October 14, 2009.

2. Some fiscal agents did not properly account for the deposit of earmark funds. For example, some fiscal agents did not establish a separate bank account for the earmark funds and, instead, deposited the earmark in a pre-existing bank account. Therefore, the earmark funds were commingled with the fiscal agents' general operating funds, along with other funding sources. As a result, transactions (deposits, disbursements, transfers, and withdrawals) were not properly recorded, managed, and maintained. For example:

    a. Parklands Community Center, the fiscal agent for Washington East of the River Academy, Inc., deposited the $400,000 Washington East of the River Academy, Inc. earmark funds into a pre-existing Parklands bank account. Commingling the funds resulted in inadequate accounting for the Washington East of the River Academy earmark related expenditures because Parklands Community Center's Executive Director complicated accountability for these and other earmark funds through commingling. Thus, it was difficult to isolate or separate actual expenditures related to the earmark from those used for Parklands Community Center's operations.

    b. Friends of Carter Barron Foundation of the Performing Arts, the fiscal agent for East of the Anacostia Performing Arts State Center, deposited the $200,000 East of the Anacostia Performing Arts State Center earmark funds in a pre-existing Friends of Carter Barron bank account. Additionally, the Auditor found that there was a lack of separation of duties between the Friends of Carter Barron Foundation of the Performing Arts and East of the Anacostia Performing Arts State Center. The President of Friends of Carter Barron was also the Program Director of East of the Anacostia Performing Arts State Center and maintained full control of the $200,000 earmark without any independent financial management and oversight.

3. Some fiscal agents released earmark funds directly to the earmark recipient without performing any type of financial management and oversight, yet the fiscal agent received a fee from the earmark recipient for simply acting as a pass-through entity. For example, Inner Thoughts Inc., the fiscal agent for NAFFCCA, and Friends of Carter Barron the fiscal agent for East of the Anacostia Performing Arts State Center, both released earmark funds directly to the earmark recipient without providing any type of financial management and oversight. Inner Thoughts, Inc. received $14,550 and Friends of Carter

Barron Foundation of the Performing Arts received $2,000 for acting as a pass-through entity.

Permitting earmark recipients to use fiscal agents because the earmark recipient was not a 501(c) organization resulted in poor oversight, inadequate monitoring, and in some cases misuse of District funds. A total of $96,266.50 in earmark funds were used solely to cover fiscal agent fees, rather than funding actual programs or services intended to benefit District residents. See Appendix IV for a listing of the fees collected by nine fiscal agents.[42]

RECOMMENDATION

The Council of the District of Columbia consider requiring an earmark recipient to be a 501(c) 3 organization in order to receive an earmark. This requirement would eliminate the need for fiscal agents and would ensure earmark recipients' are properly established non-profit organizations prior to the disbursement of earmark funds.

[42] Of the 10 fiscal agents reviewed, one fiscal agent did not receive any payment from the earmark recipient for their services because their contract was terminated.

CONCLUSION

The Auditor's examination of Fiscal Year (FY) 2009 earmarks totalling $47,922,000 found significant financial and management deficiencies. The Auditor found that some recipients of the FY 2009 earmarks did not comply with requirements set forth in Section 8003 of the FY 2009 Budget Support Act of 2008 (BSA); and that sufficient internal controls were not developed to effectively ensure that District funds were properly managed, accounted for, and used only for their intended purposes.

The Auditor found that the FY 2009 BSA did not establish specific policies and procedures related to the award and release of earmarks. Specifically, the Auditor found that: (1) there were no standard guidelines detailing the criteria that earmark recipients were required to meet before being considered for an earmark award; (2) a standard earmark agreement was not developed for use by all oversight entities and earmark recipients; (3) there was no credible review process for documents submitted pursuant to Section 8003 of the FY 2009 BSA prior to the release of earmark funds; (4) the FY 2009 BSA did not define the roles and responsibilities of fiscal agents; (5) the FY 2009 BSA did not define the roles and responsibilities of oversight entities; (6) appropriate standards were not established concerning the amount of earmark funds that recipients' could allocate to general administrative and indirect costs; and (7) approximately $276,450 in FY 2009 earmark funds were not disbursed to earmark recipients and have not been returned to the District's general fund.

The Auditor also found that tax self-certification statements provided by earmark recipients allowed for false representation of earmark recipients' tax compliance status, thus allowing three earmark recipients who owed delinquent taxes totalling approximately $450,000 to receive a FY 2009 earmark. Further, the Auditor found that OTR provided incorrect and unreliable earmark recipient tax compliance status information, which permitted 20 earmark recipients to receive $6,452,000 in earmark funds.

Although there was no requirement in the FY 2009 BSA that earmark recipients comply with District of Columbia business licensing and registration laws and regulations, the Auditor's review also found that 52 earmark recipients who had failed to comply with applicable District business licensing and registration laws intended to protect District consumers, received $12,607,000 in earmark funds. Finally, the Auditor found that earmarks provided to organizations which were not 501 (c) 3 certified created inefficiencies, and some of the earmark funds awarded to these organizations were not used exclusively to provide services which benefitted District residents.

In conclusion, the Auditor found that although the issuance of earmarks was not a new appropriation method for the District, the lack of a rigorous selection and application process and an ineffective system of financial and programmatic monitoring resulted in a lack of transparency and financial accountability in the use of these District funds.

Respectfully submitted,

Deborah K. Nichols
Deborah K. Nichols
District of Columbia Auditor

APPENDICES

APPENDIX I

LISTING OF THE 154 FY 2009 EARMARK RECIPIENTS

EARMARK RECIPIENTS	EARMARK AMOUNT
Access Housing Incorporated, DC	$500,000
Adams Morgan Main St, Group, Inc.	$100,000
AEDC	$700,000
Alliance of Concerned Men	$200,000
Anacostia Community Outreach Center/Woodland Tigers Youth Sports	$100,000
Asian American Leadership Empowerment and Development for Youth and Families	$100,000
Avalon Theatre	$100,000
Because We Care Health Training	$25,000
Behavior Environmental Academic Program (BEAP)	$50,000
Boys and Girls Club of Greater Washington	$500,000
Boys and Girls Club of Greater Washington	$325,000
Byte Back	$100,000
Calvin Woodland, Sr. Foundation	$50,000
Camp Ernest W. Brown	$200,000
Camp Imagine	$40,000
Capital Area Asset Builders	$150,000
Capital Breast Care Center	$250,000
Capital Breast Care Center	$250,000
Capital Fringe Festival	$250,000
Capitol Hill Community Foundation	$25,000
Cease Fire…Don't Smoke the Brothers	$200,000
CHAMPS	$30,000
Chinatown Cultural Center	$100,000
CHOICE Inc.	$100,000
City Dance	$300,000

Columbia Heights Youth Club	$100,000
Columbia Heights/Shaw Family Support Collaborative	$1,000,000
Community Council for the Homeless at Friendship Place	$100,000
Concerned Citizens on Alcohol and Drug Abuse, Inc.	$100,000
Cool Capital Challenge	$150,000
Crystal Meth Working Group	$100,000
Cultural Development Corp	$200,000
Cultural Tourism DC	$500,000
Cultural Tourism DC	$100,000
D.C. Area Health Education Center	$50,000
D.C. Assembly for School-Based Health Care	$100,000
D.C. Campaign to Prevent Teen Pregnancy	$250,000
D.C. Hospital Association	$75,000
D.C. Primary Care Association	$1,500,000
Dance Institute of Washington	$300,000
DC Caribbean Carnival	$150,000
DC Central Kitchen	$250,000
DC Economic Partnership	$1,000,000
DC Special Olympics	$200,000
DC VOICE	$100,000
DC Vote	$500,000
DC Youth Orchestra	$100,000
Dinner Program for Homeless Women	$100,000
District of Columbia Birth Center	$200,000
District of Columbia Birth Center	$200,000
Dress for Success	$250,000
Duke Ellington Jazz Festival	$500,000
Earth Conservation Corps	$500,000
East of Anacostia Performing Arts State Center	$200,000

East of the River Family Strengthening Collaborative	$250,000
Ethiopia Community Service & Development Council	$100,000
Everybody Wins!	$300,000
Field of Dreams	$200,000
Fiesta DC	$100,000
Fiesta DC	$100,000
Food and Friends	$300,000
Food and Friends	$300,000
Food and Friends	$200,000
Ford's Theatre Society	$10,000,000
Fort DuPont Ice Arena	$250,000
Friends of Book Hill Park	$50,000
Friends of Hillcrest Recreation Center	$10,000
Friends of Kennedy Playground	$50,000
GALA Hispanic Theater	$118,000
Girls, Inc.	$100,000
Greater Washington Fashion Chamber of Commerce	$100,000
Greater Washington Sports Alliance	$500,000
Greater Washington Urban League, Inc.	$400,000
GreenSPACE	$250,000
High Tea Society	$50,000
Higher Achievement Program	$75,000
Historical Society of Washington	$600,000
Hoop Dreams Scholarship Fund	$500,000
Horning Brothers	$332,000
Humanities Council	$300,000
Inner Thoughts, Inc.	$50,000
Institute for the Prevention and Eradication of Violence	$50,000
Jobs Coalition	$50,000

Keely's Boxing and Youth Center	$232,000
Kids Set Sail Program of the National Maritime Heritage Foundation	$200,000
Life Pieces to Masterpieces	$200,000
Lincoln Theatre	$1,000,000
Lower Georgia Avenue Job Training Center at 633 Park Rd, NW	$100,000
Marshall Heights Community Development Organization	$250,000
Mary's Center	$500,000
Melvin Deal	$200,000
Mount Airy Baptist Church	$50,000
Mt. Pleasant Main Street	$100,000
My Buddy Notes	$25,000
National Association of Former Foster Care Children of America, Inc.	$300,000
National Building Museum	$300,000
National Capital Poison Center	$250,000
National Cherry Blossom Festival	$200,000
National Conservancy of Dramatic Arts	$50,000
National Foundation for Teaching Entrepreneurship-Greater Washington	$100,000
Neighbors' Consejo	$100,000
Neighbors United	$150,000
Northeast Performing Arts Group	$50,000
OIC/DC	$2,000,000
Old Takoma Park Business Association	$30,000
Parklands Community Center	$200,000
Peaceoholics	$1,000,000
Perry School	$50,000
Positive Choices	$100,000
ProUrban Youth	$200,000
Reeves Recovery Group, Inc.	$100,000
ROOT, Inc.	$100,000

Safe, Inc.	$50,000
Sasha Bruce Youthwork, Inc.	$500,000
Set Point, Inc.	$65,000
So Others Might Eat, Inc. (SOME)	$50,000
Southeast Tennis and Learning Center	$50,000
Southeastern University	$1,500,000
Southeastern University	$500,000
Sports 4 Kids	$22,000
St. Phillip Episcopal Church	$100,000
Takoma Theatre	$100,000
THEARC	$2,000,000
Thelonius Monk Jazz Institute	$300,000
Time Dollar Youth Court Diversion Program	$400,000
Training Grounds	$100,000
Transgender Health Empowerment, Inc.	$150,000
U Street Theatre Foundation	$200,000
UNIFEST	$100,000
University of the District of Columbia Fashion Merchandising Program	$100,000
Vietnamese-American Community Service Center	$100,000
Visitor's Services Center	$125,000
Ward 7 Arts Collaborative	$100,000
Ward 7 Business and Professional Association	$100,000
Ward 7 Education Initiative	$60,000
Ward 7 Nonprofit Consortium	$100,000
Ward 8 Business Council	$100,000
Ward 8 Clean and Green, Inc.	$75,000
Ward 8 Clean and Sober, Inc.	$75,000
Ward 8 Education Council	$75,000
Ward 8 Health Council	$75,000

Ward 8 Tennis & Education Council	$100,000
Ward 8 Workforce Development Council	$75,000
Ward 8 Youth Leadership Council, Inc.	$75,000
Washington Area Bicyclist Association	$18,000
Washington Area Women in Trades	$200,000
Washington Ballet	$1,000,000
Washington East Foundation	$50,000
Washington East of the River Academy/Youth on the Rise	$400,000
Washington National Opera	$500,000
Washington Parks and People	$200,000
Washington Parks and People	$140,000
Washington, D.C. International Film Festival	$400,000
Young's Memorial Church	$50,000
TOTAL	**$ 47,922,000**

Source: FY 2009 BSA

APPENDIX II

EXAMPLES OF THE FY 2009 EARMARK LETTERS ISSUED BY CHAIRMAN GRAY

July 1, 2008
Access Housing Incorporated, D.C.
Gregory Crawford
820 Chesapeake Street, S.E.
Washington, D.C. 20032

Dear Gregory Crawford:

The "Fiscal Year 2009 Budget Support Act of 2008," contained a "Designated Appropriations Allocations," title which specified a number of one-time, nonrecurring grants to be made to various community organizations. As I am sure you are aware, your organization was awarded $500,000 to operate veterans housing.

This year, not only are we expecting, as in years past, that you will expend funds in accordance with the stated purpose of the grant you were given, but we are requiring that you submit additional information on which the receiving of your grant is contingent. To receive a grant pursuant to section 8002 of the Fiscal Year 2009 Budget Support Act of 2008, each named grantee shall be required to submit the following not later than August 1, 2008:

(1) Articles of Incorporation;
(2) IRS certification that the organization is 501(c)(3) tax exempt;
(3) Financial Audit for the organization's most recently completed fiscal year;
(4) 990 form covering the organization's most recently completed fiscal year;
(5) Evidence that the organization is current on District and federal taxes; and
(6) A detailed program statement containing the following information:
    (A) Detailed scope of work;
    (B) A detailed budget setting forth how the funds provided in this grant shall be spent;
    (C) Statement certifying that the organization focuses primarily on services to District of Columbia residents and will serve only District of Columbia residents with this grant; and
    (D) A formal certification from the proposed grantee that the District government shall have access to its financial, administrative, and operational records, including specific consent for the District of Columbia Auditor to access its books, accounts, records, findings, and documents related to this grant.

Additionally, you should note that the District of Columbia Auditor will randomly audit grant recipients. The Auditor will then issue a report regarding these grant audits no later than January 1st of the fiscal year immediately following the year for which the grant was awarded. In order to comply with all of the aforementioned requirements please submit all of the required information to the Office of the Budget Director, 1350 Pennsylvania Avenue, N.W., Suite 508, Washington, DC 20004. The Budget Office will keep a record of everything submitted as of August 1 for the period beginning October 1, 2008 and shall notify the Chief Financial Officer of those grants which can be issued. Those recipients not meeting the August 1st deadline will not receive funding.

Both myself and the Council as a whole, take the allocation of these one-time grants very seriously, and I am confident that you will submit this required information in a complete and timely fashion. I know that the work you do in the District is invaluable, and we look forward to working with you to provide the best possible service to the citizens of the District of Columbia. Should you have any questions, please do not hesitate to contact the Office of the Budget Director at (202) 724-8139.

Sincerely,

Vincent C. Gray
cc: Councilmembers of the District of Columbia
Honorable Adrian M. Fenty, Mayor of the District of Columbia

APPENDIX II

July 24, 2008

Adams Morgan Main Street Group, Inc.
Janet Lugo
1815 Adams Mill Road, N.W.
Washington, D.C. 20009

Dear Ms. Lugo:

This letter is a follow-up to my previous communication, in which I explained the information that was required to be submitted to the Council to receive the one-time, designated grant that your organization was awarded in section 8002 of the *Fiscal Year 2009 Budget Support Act of 2008*. As I explained in my earlier letter, this year, not only are we expecting, as in years past, that you will expend funds in accordance with the stated purpose of the grant, but we are requiring that you submit additional information upon which receiving the grant is contingent.

As you know your organization was awarded $100,000 to go toward the costs for preservation and restoration of the historic elements on the Avalon building's facade and exterior.

I am pleased to inform you that on July 15, 2008 and July 17, 2008 the Council of the District of Columbia amended the "Designated Appropriations Allocations" title of the "Fiscal Year 2009 Budget Support Act of 2008" to increase the flexibility of some of the submission criteria based on discussion with some organizations that expressed difficulty meeting the initial requirements. The changes were as follows:

- Grantees were given a two week extension to submit required information. Grantees now have until August 15, 2008 to submit the required information;

- The Council has allowed all 501(c)'s who were awarded grants to receive them. The previous legislation allowed only 501(c)(3)'s;

- The Council had required "a financial audit for the organization's most recently completed fiscal year." Some organizations expressed concerns about the costs and time needed to complete an audit. The revised Council legislation creates an option to provide a current financial statement by a certified accountant that shows that the organization is in good financial standing and which delineates its existing assets and liabilities, pending lawsuits, and pending and final judgments in place of an audit;

- The Council had required "evidence that the organization is current on District and federal taxes." Many organizations found it difficult to provide this evidence. The Council has amended this requirement to allow an organization to self-certify that they are current on all taxes and to authorize the Office of Tax and Revenue to certify to the Council whether the organization is current on District taxes; and

- The Council recognized that some organizations may not be able to meet these submission requirements. In response to this problem, those organizations will be allowed to submit a notarized statement designating a non-profit organization that does meet the criteria to serve as its fiscal agent or fiscal sponsor by August 15, 2008. The fiscal agent or fiscal sponsor shall be required to submit a notarized statement agreeing to serve as fiscal agent or fiscal sponsor as well as all of the information required by subsection (a) of section 8003 postmarked or hand delivered no later than August 25, 2008.

Below is the section from the legislation entitled the "Designated Appropriation Allocations Emergency Amendment Act of 2008" that established the new, more flexible requirements:

Sec. 8003. Grant allocations requirements.

(a) To receive a grant pursuant to section 8002, each named grantee shall be required to submit the following, postmarked or hand delivered no later than August 15, 2008:

(1) The organization's Articles of Incorporation;

(2) Internal Revenue Service certification that the organization is tax-exempt under section 501(c) of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c));

(3)(A) The organization's most recent financial audit, not more than 2 years old; or

(B) A current financial statement by a certified accountant that shows that the organization is in good financial standing and which delineates its:

(i) Existing assets and liabilities;

(ii) Pending lawsuits; and

(iii) Pending and final judgments.

(4) Internal Revenue Service Form 990 covering the organization's most recently completed fiscal year;

(5) A notarized statement from the grantee certifying that:

(A) The organization is current on District and federal taxes;

(B) The Council of the District of Columbia is authorized to verify the organization's tax status with the District of Columbia Office of Tax and Revenue;

(C) The organization focuses primarily on services to District of Columbia residents and will serve only District of Columbia residents with this grant; and

(D) The District government shall have access to its financial, administrative, and operational records, including specific consent for the District of Columbia Auditor to access its books, accounts, records, findings, and documents related to the grant; and

(6) A comprehensive program statement that includes a detailed:

(A) Scope of work; and

(B) Budget that describes how the grant funds shall be spent.

(b) Grantees shall be notified that the District of Columbia Auditor will randomly audit grant recipients.

(c) The District of Columbia Auditor's report shall be issued no later than January 1st of the fiscal year immediately following the year for which the grant was awarded.

(d) Nothing in this act shall be construed as waiving the requirements to submit information required of all grantees by the grantor agencies or organizations.

(e)(1) If an organization cannot meet the submission requirements established in subsection (a) of this section, the organization shall be required to submit a notarized statement designating a non-profit organization, that does meet the criteria, to serve as its fiscal agent or fiscal sponsor postmarked or hand delivered no later than August 15, 2008.

(2) The fiscal agent or fiscal sponsor shall be required to submit the following, postmarked or hand delivered no later than August 25, 2008:

(A) A notarized statement agreeing to serve as fiscal agent or fiscal sponsor; and

(B) The information required by subsection (a) of this section.

The required information must be postmarked or hand delivered to the Office of the Budget Director, 1350 Pennsylvania Avenue, N.W., Suite 508, Washington, DC 20004 by August 15, 2008. The Budget Office will keep a record of everything submitted as of August 15th for the period beginning October 1, 2008 and shall notify the Chief Financial Officer of those grants which can be issued. Those recipients not meeting the August 15th deadline will not receive funding.

Please be aware that the agency overseeing your grant is the Deputy Mayor for Planning and Economic Development (DMPED). The DMPED may require additional information, which you must provide in order to receive funding. The contact person at the DMPED is Tawana Stewart. Ms. Stewart's phone number is (202) 724-7648 and e-mail address is tawana.stewart@dc.gov. Please contact Ms. Stewart to set up a time to discuss your proposed work program for the grant and to discuss any additional submission criteria that may be required by the DMPED.

As I stated in my first letter, both myself and the Council as a whole, take the allocation of these one-time grants very seriously, and I am confident that you will submit this required information in a complete and timely fashion. I know that the work you do in the District is invaluable, and we look forward to working with you to provide the best possible service to the citizens of the District of Columbia. Should you have any questions, please do not hesitate to contact the Office of the Budget Director at (202) 724-8139.

Sincerely,
Vincent C. Gray

cc: Councilmembers of the District of Columbia
Honorable Adrian M. Fenty, Mayor of the District of Columbia

WARD 7 BUSINESS AND PROFESSION FY 2009 EARMARK BUDGET

Addendum B

Ward 7 Business and Professional Association Budget

Salaries	$65,000.00
Fringes benefits	$13,000.00
Accounting/Fiscal	$5,000.00
Rent	$3,000.00
Dues	$2,000.00
Office Supplies	$3,500.00
Website/listserv	$1,500.00
Consultants	$5,000.00

TOTAL FEES COLLECTED FROM 9 FISCAL AGENTS

EARMARK RECIPIENT	TOTAL EARMARK AMOUNT	DESIGNATED FISCAL AGENT	TOTAL FEES COLLECTED BY THE FISCAL AGENT	PERCENTAGE OF FISCAL AGENT FEES COLLECTED
Set Point, Inc.	$65,000.00	Double Nickels Theatre Company, Inc.[43]	$1,891.50	3%
Washington East of the River Academy/Youth on the Rise	$400,000.00	Parklands Community Center [44] Training Grounds, Inc.[45]	$ 9,725.00 $9,000.00	5%
East of the Anacostia Performing Arts State Center	$200,000.00	Friends of Carter Barron Foundation of the Performing Arts	$8,000.00	4.0%
National Association of Former Foster Care Children of America, Inc.	$300,000.00	Inner Thoughts, Inc.	$14,550.00	4.9%
Horning Brothers	$332,000.00	GALA Hispanic Theatre	$16,600.00	5%
Ward 8 Health Council, Inc.	$75,000.00	Lydia's House	$6,000.00	8.0%
Ward 8 Clean and Sober, Inc.	$75,000.00	Lydia's House	$6,000.00	8.0%
Ward 8 Clean and Green, Inc.	$75,000.00	Behavioral Environmental Academic Program	$6,000.00	8.0%
Ward 8 Education Council	$75,000.00	Behavioral Environmental Academic Program	$6,000.00	8.0%
Ward 7 Business and Professional Association	$100,000.00	Behavioral Environmental Academic Program[46] and CAM-FAM III Incorporated[47]	$10,000.00 $2,500.00	12.5%
TOTALS	**$1,697,000.00**		**$65,041.50**	

Source: Fiscal Agent Contracts and/or Memorandum of Understanding

[43] Set Point, Inc. originally designated Marshall Heights Community Development Organization (MHCDO) as their fiscal agent. MHCDO agreement was terminated in December 2008. Double Nickels Theatre Company, Inc. was designated as Set Point, Inc. fiscal agent in January 2009 to provide fiscal services on the remaining balance of the earmark, totaling $63,050.

[44] Parklands Community Center and the Washington East of the River Academy Youth on the Rise terminated their fiscal agent agreement effective March 31, 2009.

[45] Washington East of the River Academy Youth on the Rise designated Training Grounds, Inc. as their fiscal agent in May 7, 2009.

[46] Behavioral Environmental Academic Program and Ward 7 Business and Professional Association terminated their fiscal agent agreement effective April 30, 2009.

[47] Ward 7 Business and Professional Association designated CAM-FAM III Incorporated as their fiscal agent on July 28, 2009.

GALA

P: 202-234-7174
F: 202-332-1247
E: INFO@GALATHEATRE.ORG
WWW.GALATHEATRE.ORG

JUL 14 2009

Ms. Deborah K. Nichols
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th St. NW. Suite 900
Washington, DC 20005

July 10, 2009

Dear Ms. Nichols:

I am responding to your letter of July 8 notifying us of the audit of the $332,000 earmark grant to the Horning Brothers, scheduled for August 3. I would like to clarify that GALA Hispanic Theatre's role in this grant is simply as the fiscal agent to pass through the funds for Horning Brothers.

I would be happy to attend an audit entrance conference, if you feel it is necessary, but I have designated Mr. David Roodberg of Horning Brothers as the knowledgeable person to serve as the audit liaison. As president of Horning Brothers and overseer of this project, Mr. Roodberg can provide all of the documentation you need regarding the execution of the mural restorations and the fulfillment of the grant requirements.

In the meantime, I am enclosing a copy of the agreement executed between Horning Brothers and GALA Hispanic Theatre, wherein it is stated that GALA's sole role is as the fiscal agent for the grant. It further states that GALA will retain an administrative fee of 5% of the grant, as the fiscal agent. In anticipation of any documentation you may need for the audit, I have also enclosed a copy of the January, 2009 bank statement from Wachovia, indicating that GALA received the funds of $332,019.77, and that GALA issued a check to Tivoli Partners Commercial (Horning Brothers) for $315,400, which is the grant minus the agreed upon administrative fee.

Please feel free to contact me if you need further information or need me to attend any audit meetings. Thank you for your time and attention.

Sincerely,

Rebecca Medrano
Executive Director

cc: David Roodberg, Horning Brothers
Stefan Lopatkiewicz, Dorsey Law

PRESENTED BY TARGET

GALA

T: 202.234.7174
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HUGO MEDRANO, PRODUCING ARTISTIC DIRECTOR
ABEL LOPEZ, ASSOCIATE PRODUCING DIRECTOR

APPENDIX V

Eric Goulet
Budget Director
The Council of the District of Columbia
1350 Pennsylvania Ave NW 5th floor
Washington, DC

July 30, 2009

Dear Mr. Goulet:

It was good to meet you, if only from a distance, when I delivered our application for the designated funds for the restoration of the dome at GALA Theatre.

I an enclosing for your records the official letter of agreement between GALA and Horning Brothers by which GALA agrees to be the fiscal agent for Horning Brother's grant of $332,000. We want to make it clear that we are in no way responsible for the execution or reporting of the use of these city funds. GALA has been a recipient of several grants passed through the DC Commission on the Arts & Humanities, and their reporting requirements are stringent (the submission of copies of cancelled checks and other documents).

The enclosed letter, which was drafted by GALA's legal counsel and indemnifies our organization, should have been part of the application submitted to you by Horning Brothers.

I appreciate your attention to this matter and your collaboration.

Sincerely,
Rebecca Medrano
Rebecca Medrano
Managing Director

cc: Lionell Thomas, Interim Director, DC Commission on the Arts & Humanities

Thanks Eric! See you soon.

FORMAL COMMENTS

<u>FORMAL COMMENTS</u>

On December 16, 2009, the District of Columbia Auditor (Auditor) submitted this report to the Council of the District of Columbia (Council). The Auditor received written comments from the Councils' Budget Director, Councilmember Jim Graham, and the Office of the Chief Financial Officer's, Office of Tax and Revenue. The written comments are included in entirely with this report. The Auditor also offers a formal response to certain comments and recommendations.

AUDITOR'S RESPONSE TO COMMENTS AND RECOMMENDATIONS

The Auditor reviewed the written comments to the audit report entitled, "District's Earmark Process Needs Improvement." Where applicable revisions to the report were made. The Auditor also reviewed the City-Wide Grants Manual and Sourcebook issued by the Mayor subsequent to this report on December 30, 2009. Based upon policies and procedures contained in the City-Wide Grants Manual and Sourcebook the following audit recommendations have been sufficiently addressed by the Executive Branch and thus removed from the report.

Recommendation 1(c). Establishing a standard earmark agreement. The standard earmark agreement should include, but not be limited to, specific performance measures, payment schedules, a requirement that separate bank accounts be established for earmark funds, a requirement for periodic monitoring and reporting, and the establishment of procedures for the accounting of unspent earmark funds.

Recommendation 1(d). Requiring the establishment of uniform monitoring policies and procedures that all oversight agencies and the CYITC, must follow. These monitoring policies and procedures should set forth the oversight agencies' and CYITC's roles, responsibilities, and duties with regards to earmarks.

The Auditor offers the following response to certain comments from the Council's Budget Director with regard to:

Recommendation 1(a). Requiring formal policies and procedures for the documentation review process for earmark packages. This formal review process should assess the accuracy, appropriateness and completeness of documentation included in earmark packages. Further, these formal policies and procedures should designate a specific District agency, with the requisite experience and resources, to be responsible for the review and verification of earmark packages.

Council Budget Director's Comment: There is only 56-day window from the time the Mayor submits his proposed budget, until the council must take final action. Given that a reasonably firm draft list of earmarks will not emerge until after Committee mark-ups, any additional procedures or steps in this process will make it impossible for my office to complete the necessary work on the budget within the 56-day window.

<u>Auditor's Response</u>: The Auditor's recommendation addresses activities that occur will beyond the 56-day budget process. Further, one of the assumptions underlying the Auditor's recommendation is that the earmark documentation collection and review process is an Executive Branch function that the Council's Budget Office is neither equipped nor qualified to handle. The recommendation specifically focuses on the time period of July through September 30th, in which earmark recipients had been notified of their earmark funding, earmark requirements, and designated to an oversight agency. Further, the Executive Office of the Mayor has established a new procedure manual, "City-Wide Grants Manual and Sourcebook," which establishes "best practice" policies and procedures for the application for, acceptance of, and disbursement of private, federal and local grant monies. The Auditor found that the Mayor of the District of Columbia should consider amending the City-Wide Grants Manual and Sourcebook to designate a specific Executive Branch agency, such as the Office of Partnerships and Grant Services, as the primary accountable office responsible for ensuring review and verification of the earmark packages prior to the disbursement of earmark funds.

> **Recommendation 8. The Council of the District of Columbia should consider requiring earmark recipients to comply with all District laws and regulations pertaining to business licensing and registration prior to disbursement of an earmark.**

<u>Council Budget Director's Comment</u>: The recommendation by the D.C. Auditor that the Council require a check of business licensing is infeasible given the constraints of the Council's 56-day budget process with the existing number of staff in the Council Budget Office.

<u>Auditor's Response</u>: Again, the Auditor notes that this recommendation is not relevant to the Council's Budget Office or the 56-day budget process. The recommendation focuses on the time period of July through September 30th, in which earmark recipients have been notified of their earmark funding, earmark requirements, and designated to an oversight agency. Further, the Mayor of the District of Columbia should consider requiring in the City-Wide Grants Manual and Sourcebook that earmark recipients comply with all District laws and regulations pertaining to business licensing and registration prior to disbursement of an earmark.

The Auditor offers the following response to certain comments from the Office of the Chief Financial Officer's Office of Tax and Revenue:

<u>Office of Tax and Revenue (OTR) Officials stated the following in comments to this report</u>:
When contacted by Council staff with the request for information regarding the tax status of

approximately two hundred potential earmark recipients, OTR developed an extensive process that not only verified the identification of the entity for which tax information was to be provided, but ensured that no violation of federal or District tax non-disclosure laws occurred. The Council initially provided Federal Employer Identification Numbers for approximately one-third of the earmarked organizations.

Auditor's Response: The comments provided by OTR were unsupported by any evidence and therefore were unsubstantiated, which is not sufficient to cause any changes to the Auditor's finding.

AGENCY COMMENTS

COUNCIL OF THE DISTRICT OF COLUMBIA
THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

December 23, 2009

Deborah K. Nichols
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, N.W., Suite 900
Washington, DC 20005

Dear Ms. Nichols:

As the director of the Council Office that was charged with reviewing and approving information for designated grants under D.C. Law 17-219, the "Fiscal Year 2009 Budget Support Act of 2008" (FY 2009 BSA), I am providing responses to the major recommendations in your draft report, entitled "District's Earmark Process Needs Improvement".

I. DESCRIPTION OF EARMARK REFORM EFFORTS

A. Fiscal Year 2009 Earmark Requirements

First, I would like to provide a contextual background on the earmark reform efforts the Council has undertaken. I believe it is important to keep in mind that prior to Chairman Gray moving to amend the FY 2009 BSA to require grantees to submit basic information to the Council, there was no formal process in place for regulating earmarking in the District of Columbia. This effort was the first step at reforming a process, which before this action, was almost entirely unregulated. In previous years, monitoring of earmarks varied dramatically, agency-by-agency. Some agencies, such as the Children and Youth Investment Trust Corporation and the Department of Health, required certain documentation, whereas for other agencies, there was little required.

The FY 2009 BSA contained $23.5 million in earmarks originating from the Mayor and $24.3 million originating from the Council. Part of the Chairman's amendment was a requirement that organizations receiving earmarked funds be randomly audited by the District of Columbia Auditor: this was the impetus for your draft report, dated December 16, 2009. The Chairman directed the auditor to audit earmark recipients to ensure that organizations spent funds in accordance with required grant spending plans and that agencies were provided appropriate grant oversight.

The Council amended the requirements of the FY 2009 BSA in Bills 17-873 and 17-874, the "Designated Appropriation Allocations Emergency and Temporary Amendment Acts of 2008". The purpose of this legislation was to allow for a number of informally organized, volunteer-based community groups to utilize a fiscal agent, while their 501(c)(3) status was pending. The intent was to give these new organizations an opportunity to receive 501(c)(3) approval, but not to have the services of a fiscal agent indefinitely.

It is important to note that the Council's requirements were never intended to serve as a substitute for entering into formal grant agreements with District agencies or the grant monitoring and oversight that agencies provide. These functions appropriately reside within the Executive branch and my office has neither the time, the staffing, nor the day-to-day subject matter expertise to perform these functions. The Council's information submission requirements were always intended to be a floor, rather than a ceiling, for the information that would be required of grantees. In fact, Chairman Gray made this fact clear in a letter he sent to each grantee in July 2008, evidence of which can be seen from the following excerpt from a letter he sent to an organization awarded an earmarked grant through the Commission on Arts and Humanities:

> "Please be aware that the agency overseeing your grant is the Commission on Arts and Humanities (CAH). The CAH may require additional information, which you must provide in order to receive funding. The contact person at the CAH is Lionell Thomas. Mr. Thomas's phone number is (202) 724-5613 and e-mail address is lionell.thomas@dc.gov. Please contact Mr. Thomas to set up a time to discuss your proposed work program for the grant and to discuss any additional submission criteria that may be required by the CAH."

Further, the Council's Budget Office reached out to the grants manager in each agency to encourage each agency to require whatever additional information was needed to provide the necessary oversight of grants. I believe that my staff did an exemplary job, under a very tight time frame, in reviewing all submissions of grantee information to ensure that the Council's legislative requirements were met. Upon ensuring that these grantees had met the minimum criteria required by the FY 2009 BSA, this information was sent to the agency overseeing the grant funds and to the Office of the D.C. Auditor.

B. <u>Fiscal Year 2010 Earmark Requirements</u>

In January 2009, the Council took further steps to provide additional oversight and control of District earmarking. In Resolution 18-1, the "Rules for the Council of the District of Columbia, Council Period 18 Resolution of 2009", Chairman Gray institutionalized the existing earmarking requirements by placing these requirements in the Council Rules. Chairman Gray also added new requirements to bring greater control to the equity of earmarking of District funds.

The Chairman moved to prohibit an organization from receiving earmarks in consecutive years, because earmarks are intended to be one-time funding. An organization is not supposed to develop a reliance on earmarks and thus, inappropriately build the need for these funds into its annual budget. Additionally, Chairman Gray set limits on earmarked grants of $250,000 for non-capital projects and $1 million for all capital projects.

These changes to the Council's earmark rules were celebrated in a January 18, 2009 *Washington Post* editorial, entitled "Better Budgeting: The D.C. Council Imposes Some Useful Curbs on Earmarks". The editorial stated, "The Council is taking steps to overhaul the practice so that taxpayers will be better served…The aim is not to deny money to groups that in many cases provide worthwhile public services but to bring transparency, fairness, and accountability to the system."

On May 12, 2009, the Council approved a budget for Fiscal Year 2010 that contained earmarked grants totaling $20.8 million, of which $6.9 million originated from the Mayor and $13.9 million originated from the Council. On June 22, 2009, District of Columbia Chief Financial Officer, Dr. Natwar Gandhi, revised Fiscal Year 2010 revenue downward by $150.2 million. In his revised FY 2010 budget proposal, the Mayor reduced all earmarks 60%, from $20.8 million to $8.3 million. As part of a gap-closing plan, which necessitated cumulative gap-closing of $340.2 million in Fiscal Year 2009 and 2010, Chairman Gray proposed to strike all earmarks from the budget for Fiscal Year 2010. The Chairman's proposal was moved before the Council as an amendment-in-the-nature-of-a-substitute and was unanimously approved.

C. Future Plans for Earmark Reforms

I recently had the opportunity to speak with Chairman Gray about his ideas for future reforms of the District earmark process. Chairman Gray reiterated his strong preference to avoid including any earmarked grants in the District budget, especially considering the severe financial constraints under which the District is operating.

Chairman Gray also reiterated comments he made during the Fiscal Year 2010 budget gap-closing discussions. The Chairman stated that if his colleagues or the Executive were able to garner support to include earmarked funds in the Fiscal Year 2011 budget, and he were unsuccessful at making these grants competitive awards, then he would only move forward with funding for organizations that had 501(c)(3) non-profit status and had filed articles of incorporation. This would preclude an organization from utilizing the fiscal agent option, which was previously available under the FY 2009 BSA and Council Period 18 Rules. Finally, Chairman Gray advised me that he would seek to ensure that any agencies awarded funding through earmark grants were also awarded sufficient funds to properly oversee the expenditure of grant funds.

II. RESPONSES TO THE NINE MAJOR RECOMMENDATIONS FOUND IN THE AUDITOR'S REPORT

I would like to provide responses to each of the nine major recommendations contained in your report. In my response to these recommendations, I do not take a personal position on whether the District should continue earmarking. That will be a policy decision made by the Chairman and Councilmembers. These responses are my recommendations under a hypothetical scenario, in which earmarked grants are once again being included in the District's budget.

D.C. Auditor Recommendation 1 Intro

The Council of the District of Columbia should consider establishing legislative guidelines detailing earmark selection and accountability polices and procedures, which should include criteria that potential earmark recipients must meet in order to qualify for consideration. The Council should consider establishing legislation:

D.C. Auditor Recommendation 1(a)

...requiring formal polices and procedures for the documentation review process for earmark packages. This formal review process should assess the accuracy, appropriateness and completeness of documentation included in earmark packages. Further, these formal polices and procedures should designate a specific District agency, with the requisite experience and resources, to be responsible for the review and verification of the earmark packages.

Council Office of the Budget Director Response to 1(a)

I have a number of concerns with this recommendation. First, I believe the FY 2009 BSA did establish the minimum guidelines earmark recipients were required to meet before receiving earmarked funds. I do not believe that there was no credible review process for the documents submitted pursuant to Section 8003, and I do not believe that 84 of the 154 earmark recipients failed to submit all of the documents required by Section 8003 of the FY 2009 BSA. As I stated earlier, I believe that my staff did an exemplary job, under a very tight time frame, in reviewing grantee information to ensure that the Council's legislative requirements were met.

My office should not be determining whether a scope of work or a grant expenditure budget is sufficiently detailed to meet the minimum criteria of the Budget Support Act. These decisions are best left to the agency grant officers who will be working with the grantee to complete a signed grant spending plan. Grant officers can and should request supplemental information from a grantee if the original scope of work and grant spending plan submitted to my office needs further elucidation. I also do not believe there is any one single agency within the District of Columbia Government that has the expertise to do so, and that the individual agencies with specialized grant-making authority are best suited to oversee these grants.

I am opposed to my office expanding its role in reviewing the submission of earmark information packages. The review process in Fiscal Years 2009 and 2010 consumed a huge amount of staff time during our most busy time of the year, and that was simply to process this required basic information. There is only a 56-day window from the time the Mayor submits his proposed budget, until the Council must take final action. Given that a reasonably firm draft list of earmarks will not emerge until after Committee mark-ups, any additional procedures or steps in this process will make it impossible for my office to complete the necessary work on the budget within the 56-day window.

There would be a different and even more daunting problem if in trying to pre-qualify groups before the list of earmarked grants was settled, because an office would have to review upwards of 500 requests for organizations who hope to receive an earmark, when only a small fraction of these groups will actually receive funding. This would be an incredible waste of staff time, whether it would be the Council or the Executive that would be reviewing earmark information packages.

In conclusion, I believe that if the fiscal agent exception is removed, the existing requirements for earmark information packages in the Council Rules will set a sufficient minimum bar to ensure that only qualified groups become eligible for funding. The programmatic oversight of these funds is then appropriately left to grant officers in the Executive branch agency through which the grant is awarded.

D.C. Auditor Recommendation 1(b)

…establishing a reasonable percentage that earmark recipients can allocate for administrative salaries, fringe benefits, and indirect costs.

Council Office of the Budget Director Response to 1(b)

Establishing what is a reasonable percentage that earmark recipients can allocate for administrative salaries, fringe benefits and indirect costs should be an Executive Branch function. For instance, certain research grants may be more focused on hiring staff with grant funds, while other grants may involve direct services that require minimal administrative overhead or staffing.

It is my view that an Executive agency grant manager, with expertise in grant oversight is in the best place to determine the percentage that the grantee should be allowed for administrative expenses. An agency grant manager should have the flexibility to negotiate these amounts as part of the grant agreement between the agency and the grantee. Moreover, each agency would be in a position to establish guidelines for administrative expenses without being inordinately prescriptive.

D.C. Auditor Recommendation 1(c)

…establishing a standard earmark agreement. This standard earmark agreement should include, but not be limited to, specific performance measures, payment schedules, a requirement that separate bank accounts be established for earmark funds, a requirement for periodic monitoring and reporting, and the establishment of procedures for the accounting of unspent earmark funds.

Council Office of the Budget Director Response to 1(c)

I will work with the Councilmembers and Council staff to determine whether a standard grant agreement is preferable, or whether it is better to let each agency develop its own specialized standards. In this analysis, I believe it would also be prudent to develop this agreement in conjunction with the Executive branch, because the programmatic review of grant expenditures is ultimately an Executive function.

D.C. Auditor Recommendation 1(d)

...requiring the establishment of uniform monitoring policies and procedures that all oversight agencies and the CYITC, must follow. These monitoring polices and procedures should set forth the oversight agencies and CYITC's roles, duties, and responsibilities with regards to earmarks.

Council Office of the Budget Director Response to 1(d)

I believe monitoring policies for grants will differ by agency and by grant. I also believe this is an Executive branch function and that the Executive should be responsible for determining how to provide programmatic review of grants.

D.C. Auditor Recommendation 1(e)

...establishing policies and procedures detailing the fiscal agent's financial management and monitoring oversight duties and responsibilities. These polices and procedures should also establish the range of fees that fiscal agents may collect from an earmark recipient.

Council Office of the Budget Director Response to 1(e)

My response to this recommendation is similar to the one above. While it is clearly important to establish details on the fees and responsibilities of a fiscal agent, I also believe this is an Executive branch function and that the grants manager should be given the authority to negotiate these terms as part of the grant agreement.

D.C. Auditor Recommendation 2

The Council of the District of Columbia should require oversight agencies and the CYITC to return all remaining FY 2009 earmark funds to the General Fund.

Council Office of the Budget Director Response to 2

I disagree with this recommendation, as it relates to the Children and Youth Investment Trust Corporation (CYTIC), which is an independent agency. If an organization that received an earmark did not meet the grant submission criteria and, thus, lost its earmarked grant, then a traditional Executive branch agency should be able to reprogram those funds for other needs. Similarly, if a grantee, who received an earmark through CYITC did not submit the required materials or did not properly spend their funds within the fiscal year, then I feel it would be fully within the power of CYITC, as an independent agency, to use those funds to award other citywide youth grants, within the parameter of its mission and by-laws.

D.C. Auditor Recommendation 3

The Council of the District of Columbia should require oversight agencies and the CYITC to provide a formal assessment on their designated earmark recipient's program and financial performance at the end of the fiscal year.

Council Office of the Budget Director Response to 3

I agree with this recommendation.

D.C. Auditor Recommendation 4

The Council of the District of Columbia should develop legislation requiring the verification and validation of District and federal tax compliance prior to the issuance of earmark funding. The legislation should require earmark recipients to provide: OTR Clean Hands form, Certificate of Good Standing, Statement of Account, or Tax Certification Affidavit form as proof that the organization is current with District taxes.

Council Office of the Budget Director Response to 4

The recommendation by the D.C. Auditor that the Council require a checklist of different forms is infeasible within the constraints of the Council's 56-day budget process given the existing number of staff in the Council Budget Office. These recommendations could be considered as requirements of an agency releasing any earmarked funds.

D.C. Auditor Recommendation 5

The Council of the District of Columbia should list earmark recipients' organization names rather then, or in addition to, the organization's program names in the appropriation law.

Council Office of the Budget Director Response to 5

I agree with this Auditor's recommendation. I believe that a lack of official organization names is the main reason the Office of Tax and Revenue was unable to capture all organizations that owed District taxes. I believe that, contrary to the Auditor's report, the Office of Tax and Revenue provided the best information possible with the information it was given.

D.C. Auditor Recommendation 6

The Council of the District of Columbia should require earmark recipients to report their Federal tax identification number in order to properly identify the business address and type of organization.

Council Office of the Budget Director Response to 6

I agree with this recommendation.

D.C. Auditor Recommendation 7

The 13 identified earmark recipients promptly pay their DCRA reinstatement fees, totaling $5,518 within 30 days from the date of this report.

Council Office of the Budget Director Response to 7

I agree with this recommendation.

D.C. Auditor Recommendation 8

The Council of the District of Columbia should require potential earmark recipients to comply with all District laws and regulations pertaining to business licensing and registration prior to issuance of an earmark.

Council Office of the Budget Director Response to 8

The recommendation by the D.C. Auditor that the Council require a check of business licensing is infeasible given the constraints of the Council's 56-day budget process with the existing number of staff in the Council Budget Office. These recommendations could be considered as requirements of an agency releasing any earmarked funds.

D.C. Auditor Recommendation 9

The Council of the District of Columbia should consider requiring an earmark recipient to be a 501(c)(3) organization in order to receive an earmark. This requirement would eliminate the need for fiscal agents and would ensure earmark recipients' are properly established non-profit organizations prior to the award of earmark funds.

Council Office of the Budget Director Response to 9

I agree with this recommendation. It should be noted that during the Fiscal Year 2010 budget gap-closing discussions in July 2009, the Council discussed the pros and cons of striking all earmarked funds. On the first day of these discussions, Chairman Gray stated that if any earmarked funds were going to be approved in the Fiscal Year 2010 budget he would not support any groups using a fiscal agent to meet the requirements for 501(c)(3) non-profit status and articles of incorporation. Two days later, Chairman Gray decided to strike all earmarked funds. Since no earmarks to specific organizations were included in the FY 2010 budget, a legislative change to strike the ability of an organization to utilize a fiscal agent was unnecessary at that time.

III. CONCLUSION

Thank you for the opportunity to provide management comments to the recommendations in your draft audit report. To summarize, since my office does not take policy positions, I will not insert my personal beliefs about whether earmarks are sound public policy. I believe that, if the Council does decide to fund earmarks in the future, the option to select a fiscal agent should be removed, because it is too complicated to administer.

I am opposed to my office being required to review any further information from earmarked grant recipients. Given the stringent requirements of the 56-day budget process, it would be impossible to do this effectively. The determination of the sufficiency of grantee's scope of work and spending plan, the negotiation of grant agreements, and the programmatic oversight of grants are functions that belong within the Executive Branch.

The actions of the Council and Chairman Gray significantly increased the transparency of the earmark process, and for the first time, brought these grants into the mainstream oversight process of District agencies. The Council's requirement that the auditor issue an annual report on earmarked grantees, ensures that there will be an independent review of whether grantees selected by the Auditor, spent funds in accordance with the grant spending plans and whether the agency grant manager provided appropriate programmatic review of grant spending.

To reiterate, it is important that the final Auditor's report provide a context for earmarks, including the increased transparency, accountability, and oversight introduced during the past two years. This draft Auditor's report, itself, emanated from these increased oversight efforts. Since there are no earmarks to specific organizations in FY 2010, and if they are reintroduced in the future, there is an excellent window of opportunity to better perfect the procedures and approaches already introduced, which include limiting the amount of an earmark and guarding against an unhealthy and unrealistic dependence on earmarks by prohibiting receipt in consecutive years.

Sincerely,

Eric J. Goulet

Eric J. Goulet, Budget Director
Council of the District of Columbia

cc: Councilmembers of the District of Columbia
Dr. Natwar Gandhi, Chief Financial Officer

JIM GRAHAM

COUNCILMEMBER, WARD ONE
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Chairperson
Committee on
Public Works and Transportation

Chairman
Board of Directors, Washington
Metropolitan Area Transit Authority

December 29, 2009

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JAN 05 2010
OFFICE OF THE DC AUDITOR

Deborah K. Nichols
District of the Columbia Auditor
717 14th St. NW, Suite 900
Washington, DC 20005

Dear Ms. Nichols,

I am writing to offer clarification and recommend a change in the language in the December 16, 2009 Auditor's report "District's Earmark Process Needs Improvement".

In speaking with Rebecca Medrano, Executive Director of the GALA Hispanic Theatre, a clarification needs to be made regarding the Theatre's role as the fiscal agent for the restoration of the historic murals at the Tivoli. I am well acquainted with GALA Hispanic Theatre as an organization with a local, national, and international reputation for excellence. It is an organization that has served the District for over thirty-five years, providing valuable cultural and educational services to low-income Latino families and at-risk youth and children. In addition, I know from my years of experience in working with GALA that it adheres faithfully to the administrative requirements of its public funding. The tone of the audit report on page 8 is disparaging to this organization and could damage its standing with other funders in the future.

As your report points out, GALA had no statutory or administrative guidance regarding its role as a "fiscal agent" for Horning Brothers in the Tivoli project. In its notarized agreement with Horning Brothers, executed as a condition of accepting the city pass-through, GALA accepted the role of grant manager, whereas Horning Brothers retained the role of project manager. In this manner, the two organizations allocated responsibilities consistent with their respective capabilities.

Ms. Medrano has ample documentation of the time and effort she spent to (1) provide proper documentation of GALA's qualification to serve as a grant recipient, (2) assure that the murals were completed and installed in a timely fashion, and (3) assure that the project was shared with the general public and impacted the community as intended. All this was in keeping with the requirements of the agency disbursing the funds, the DC Commission on Arts and Humanities.

After consulting with Ms. Medrano and Stefan Lopatkiewicz, GALA's legal counsel, I suggest that the last two sentences of paragraph 3 of page 8 be modified to state: *"As previously noted, GALA Hispanic Theatre collected 4.8%, or $16,000, of the Horning Brothers' $332,000 earmark for serving as a fiscal agent and grant manager for the project, providing all reports and necessary documentation as requested by the city. The Horning Brothers oversaw the execution of the project."*

Please let us know if you have any questions.

Bests,

Ji Graham

JG/jd

cc Rebecca Medrano

Government of the District of Columbia
Office of the Chief Financial Officer

Natwar M. Gandhi
Chief Financial Officer

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JAN 13 2010
OFFICE OF THE DC AUDITOR

January 8, 2010

Ms. Deborah K. Nichols
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, NW Suite 900
Washington D.C. 20005

Dear Ms. Nichols,

Thank you for providing the Office of the Chief Financial Officer (OCFO) and the Office of Tax and Revenue (OTR) the opportunity to respond to the D.C. Auditor's report entitled, "District's Earmark Process Needs Improvement (The Report)."

The OCFO strongly disagrees with the Report's assertions that:

> 1. "OTR provided incorrect and unreliable earmark recipient tax compliance status information, which permitted twenty earmark recipients to receive $6,452,000 in earmark funds."
>
> 2. "OTR provided the Council and the Auditor with insufficient evidence of earmark recipients' tax compliance status. Credible validation of FY2009 earmark recipients' tax compliance status could not be performed by OTR because earmark recipients provided out of date business addresses, P.O. Box, or invalid organization names. Despite these major deficiencies, OTR inexplicably reported to the Council's Budget Director that one hundred thirty four earmark recipients were in compliance with District tax laws."

When contacted by Council staff with the request for information regarding the tax status of approximately two hundred potential earmark recipients, OTR developed an extensive process that not only verified the identification of the entity for which tax information was to be provided, but ensured that no violation of federal or District tax non-disclosure laws occurred. Based upon the list provided by the Council, a waiver form was sent to each potential earmark recipient granting OTR permission to release its tax status to the Council. Once the signed waivers were returned, OTR contacted Council staff and requested the Federal Employer Identification Number (FEIN) for each entity to allow the sufficient identification of the entity for the compliance verification. The Council initially provided FEINs for approximately one-third of the earmarked organizations.

Contrary to the Auditor's assertions, tax compliance information was not provided for entities that could not be sufficiently identified. The process undertaken to provide accurate tax compliance information to the Council was thorough, deliberate, and in accordance with current law and regulations.

Again, thank you for the opportunity to respond to the Report. If you have any questions, please feel free to contact me at 202-727-2476.

Sincerely

Natwar M. Gandhi