BRADV Questions: OAG Referral from the D.C. Auditor

The following questions were provided to ODCA by the Board of Review for Anti-Deficiency Violations (BRAD-V). Responses were drafted by Assistant Deputy Auditor for Finance Will Singer, the principal author of the report, Reserve Fund Allocations Violated District Law, and were presented at a BRAD-V meeting on July 8, 2026.

1. Was money appropriated into the Emergency Reserve Fund, the Contingency Reserve Fund, or the Fiscal Stabilization Reserve Fund for the time periods examined?

    If so, did the Auditor consider whether this language could be read to mean that amounts available in the funds were available in an appropriation for use by an agency?

    If the Auditor considered this, would you please walk me through your analysis?

Mr. Singer: I'm pretty sure I understand this question, but I might be misunderstanding the term "appropriated into." To be precise, this answer begins with principles and assumptions.

An appropriation is not necessary to *deposit* money *into* a reserve account, because the deposit is not an obligation or expenditure. This is consistent with the Reserve Management Policy, which says that money can be directed to the reserves through an annual or supplemental budget or reprogramming (both of which involve budget authority) *or* by OCFO during the year-end closing process (without budget authority).

Once deposited, money remains in the reserve account as cash (or invested in cash equivalents) until it is transferred to a different District account (called the Concentration Account) that is drawn down by District expenditures.

Sometimes, but not always, an appropriation will be needed to spend the money that is transferred out of a reserve. It depends on the character of the transfer:

- In the case of a transfer for cash flow management, budget authority is unaffected because the transfer is a cash transaction that supports existing appropriations.

- When a reserve is used as a rainy-day fund to support the appropriations in an approved (or revised) budget, the transfer is treated as a one-time addition to spendable resources on the revenue side of the budget. The money that was made available from the reserve is not treated any differently from the other Local Funds that are appropriated through the budget.
- But when money is allocated from the Contingency Reserve to fund nonrecurring or unforeseen needs arising during the fiscal year, the allocation increases the amount of Local Fund budget authority available to the agency receiving the allocation. Likewise if all or part of the allocation is later replenished before the fiscal year closes, then the replenishment appears as a reduction to the agency's Local Fund budget authority. (Within the financial system, a "fund detail code" is used to distinguish Contingency Reserve funds from all the other Local Funds in agency budgets.)

Because Contingency Reserve allocations increase the overall amount of budget authority, an appropriation is necessary for an agency to obligate or expend the resources that were allocated *from* the Contingency Reserve.

Now, to answer the question: ODCA *assumed* that the amounts available on deposit in all four reserves were appropriated for expenditure in accordance with the purposes of the respective reserves during each fiscal year of the audit period. But in light of our audit objectives, we did not design a fieldwork step to test whether the amounts in the reserves were appropriated.[1]

We determined that the District Anti-Deficiency Act was violated when agencies expended or obligated amounts that exceeded the sum of 1) the agencies' initial appropriations and 2) the net adjustments to the agencies' appropriations that had occurred by the time of the expenditure or obligation. In other words, *an antideficiency violation is not cured by appropriating additional funds to an agency that has already overspent its budget*.

Our determination is true to the text of D.C. Official Code § 47-355.02(1). This section means District employees are not allowed to "[m]ake or authorize an expenditure or obligation exceeding an amount available in an appropriation for an agency, fund, or capital project."[2]

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[1] The annual Local Budget Acts make annual appropriations of the amounts deposited in the Cash Flow Reserve and Fiscal Stabilization Reserve; however, they do not contain similar language for the Emergency Reserve or Contingency Reserve. We did not search through Congressional enactments for a no-year appropriation or permanent appropriation relating to the Emergency and Contingency Reserves.

[2] D.C. Official Code § 47-355.02(2) forbids District employees to "[o]bligate the District for the payment of money before an appropriation is made . . . unless authorized by law." The District Anti-Deficiency Act is based on the two key provisions of the federal Antideficiency Act. See Government Accountability Office, Principles of Federal Appropriations Law, 3rd ed., 2006 rev., ch. 6, GAO-06-382SP, at 6-38 (analyzing 31 U.S.C. § 1341(a)(1)).

Once an agency has fully obligated or expended its budget, making further payments (without additional appropriations) violates the District Anti-Deficiency Act. *The violation is not cured by a subsequent allocation from the Contingency Reserve to increase the agency's budget*.

2. On p. 10, the Report states that agencies may not act beyond their statutory authorization.

   Does the Auditor agree or disagree with the idea that an agency's authorization includes the authority to take action, not prohibited but not expressly spelled out, to exercise the agency's statutory authority? Please explain.

   I could not find any express authorization for the District to make payments during the close-out period (from sources other than the Funds) for obligations incurred during the relevant fiscal year. Did I overlook something? If so, can you please tell me what I missed?

      If not, does the Auditor think that such payments are, nevertheless, permissible? Please explain.

   I could not find anything expressly prohibiting the CFO from making payments from the Funds during the close-out period. Did I overlook something? If so, please tell me what I missed.

Mr. Singer: An agency's statutory authority includes authority to take actions that are neither prohibited nor expressly spelled out, *so long as they are implied by a statute*. *See Office of the People's Counsel v. Water & Sewer Auth.*, 313 A.3d 579, 584-85 (D.C. 2024).

"Agencies are creatures of statute and their authority and discretion are limited to that which is granted under their founding statutes." *District of Columbia v. Brookstowne Cmty. Dev. Co.*, 987 A.2d 442, 449 (D.C. 2010). In any particular situation, whether a statute impliedly authorizes an agency to take an action is a question of law, and the answer depends on "the intent of the statute and its enacting legislative body." *Brookstowne*, 987 A.2d at 448.

ODCA's audit *did not* determine that agencies or OCFO exceeded their statutory authority by liquidating obligations during the closeout period. (Neither is this an antideficiency problem.[3])

[3] Under principles of appropriations law, an expired appropriation "is no longer available to incur new obligations, although it may still be available for the recording and/or payment (liquidation) of obligations properly incurred before the period of availability expired." Government Accountability Office, Principles of

Instead, the audit determined that OCFO exceeded its statutory authority by allocating funds from the Contingency Reserve to supplement the budgets of District agencies, whether during or after the end of the fiscal year.

The Home Rule Act (D.C. Official Code § 1-204.42) clearly assigns to the Mayor the authority to propose an annual or supplemental budget. Just as clearly, the authority to approve an annual or supplemental budget belongs to the Council. The CFO's relevant duties are to implement internal controls "to ensure that appropriations are not exceeded" and to maintain custody of all District funds. (D.C. Official Code § 1-204.24d(4), (11))

When establishing the Contingency Reserve (D.C. Official Code § 1-204.50a), Congress did not expressly or impliedly empower the Chief Financial Officer to use the reserve to increase agency budgets.

Instead, at this same time in D.C. Official Code § 1-204.50b, Congress required the CFO to develop a comprehensive financial management policy (addressing the reserves and other issues) with input from the Mayor and Council. Congress further required the District to manage its fiscal affairs in accordance with the comprehensive policy. (The portion of the comprehensive policy that governs the reserves is the Reserve Management Policy.)

This Congressional action is a limited delegation of *legislative* authority, which could be used to establish procedures for allocating funds from the Contingency Reserve. But without articulating any procedures in the Reserve Management Policy, there is not authority for the CFO to remove money from the Contingency Reserve.

3. Hypothetical: On September 28, the District is struck by a hurricane, causing tremendous damage. The District must take immediate action on Sept. 29 and 30 to protect safety: clearing and repairing roads, overtime police/fire/first responder costs, etc. (the Immediate Response). DDOT, DPW, FEMS, and MPD incur obligations during the Immediate Response that, when added to the amounts they have already spent during the fiscal year, total amounts higher than the amounts identified for each agency in the appropriation for the fiscal year.

> Is it the Auditor's position that beginning on October 1, amounts in the Funds cannot be used to pay for the Immediate Response?

Federal Appropriations Law, 4th ed., 2016 rev., ch. 2, GAO-16-464SP, at 2-10 (classifying appropriations as "current or unexpired," "expired," and "canceled" according to their availability to support new obligations).

> If this is the case, is there any other way that the District could, without a legislative change, pay for the Immediate Response on or after October 1?

Mr. Singer: The Auditor did not form a position on this hypothetical, so in that sense the answer to the first question is “no.” But in the course of our audit we made some relevant observations.

Within our audit period, the District allocated Contingency Reserve funds for hurricane response during the last month of FY 2018. Specifically, on September 12, 2018, the Mayor requested the allocation of $5 million “to provide funding to the Office of Contracting and Procurement to address FY 2018 expenditures for emergency purchases related to the Declaration of Public Emergency, issued on September 11, 2018, associated with Hurricane Florance.” This allocation was executed in the financial system on the day of the request. Florence made landfall in North Carolina on September 14 and dropped record amounts of rain there, causing widespread catastrophic flooding. But the District was relatively unharmed, and on September 20, 2018, the entire $5 million allocation was replenished to the Contingency Reserve.

There was no possible antideficiency problem here because no funds were obligated or expended. But what if, as in the hypothetical, there is emergency response spending on both sides of the fiscal year end?

It is important to recognize that Contingency Reserve funds are allocated to and spent by District agencies, all of which receive annual appropriations for a fiscal year ending September 30. This timing has two implications: 1) just before the end of a fiscal year, agencies are running low on budget authority; and 2) as soon as the next fiscal year begins, agencies have access to an entire year’s worth of budget authority (subject to their monthly spending plans, which are revised as needed).

Obligations that are incurred on or after October 1 are chargeable to the budget of the new fiscal year, and by October 1 it is too late to incur new obligations that are chargeable to the old fiscal year. The portion of the Immediate Response obligations that is incurred on or before September 30 should be charged to the agency budgets (as supplemented by the Contingency Reserve allocation) for the old year, and the later portion should be charged to the agency budgets for the new year. An additional Contingency Reserve allocation may be needed for the new year. Notably, in the Hurricane Florence example, the Mayor requested an allocation to fund “*FY 2018* expenditures for emergency purchases,” implying that the request was not intended to support FY 2019 expenditures.

Finally, the District Anti-Deficiency Act seems to qualify the prohibition on spending in anticipation of an appropriation by allowing agencies to incur personal services expenses during an emergency. In full, D.C. Official Code § 47-355.02(2) is clear that a District employee is not allowed to:

> (2) Obligate the District for the payment of money before an appropriation is made or before a certification of the availability of funds is made, unless authorized by law; provided, that *this paragraph shall not prohibit* the acceptance of voluntary services or *employment of personal services exceeding that authorized by law during emergencies involving the safety of human life or the protection of property*.

So this provision seems intended to avoid a harsh or restrictive application under emergency circumstances.

4. Your report mentions that in September 2020, the Unemployment Compensation Fund "had made expenditures exceeding its appropriations by $2,714,476."
   - Do you believe this was a violation of the Anti-Deficiency Act? If so, which portion of the ADA do you believe was violated?
   - What evidence did you find that the fund spent more than it was appropriated?
   - The July 2020 summary FRP for the fund (attached) indicated that the agency (DOES) was expecting a deficiency in the fund, unless actions were taken to correct it. Did you find any evidence that any corrective actions were taken by the agency or the OCFO between the July report and the end of the fiscal year?
   - The FRP was sent by the agency director, Unique Morris-Hughes, for the Associate Chief Financial Officer, Angelique Rice, and was sent to Gordon McDonald, the Deputy Chief Financial Officer. Do you have any evidence that anyone else was aware the fund was in danger of spending more than it had appropriated?
   - Do you have any evidence of how OCFO controls allowed the fund to spend more than it had been appropriated?

Mr. Singer: This question appears to transpose digits of the number that appears in the report: $2,174,476.

And yes, this budget deficiency demonstrates a violation of D.C. Official Code § 47-355.02(1), which forbids District employees to "[m]ake or authorize an expenditure or obligation exceeding an amount available in an appropriation for an agency, fund, or capital project."

In our fieldwork, we obtained a SOAR screenshot showing that Local fund expenditures exceeded appropriations by $2,174,476 at the agency and fund level, as of the end of Month 12 (September) of FY 2020. The screenshot also showed that, to this point in the fiscal year, net adjustments had increased the agency's budget by $291,933; however, this increase was not sufficient to avoid the budget deficiency.

We did not find evidence of any action taken to control spending after the FRP was issued.

As for the awareness of other people, the FRP says it was signed "for" Angelique Rice by "CMukolwe." In addition and importantly, the spending trajectory set forth in the Report of Variances between Actual Agency Expenditures and Obligations and Approved Spending Plans through the Third Quarter of FY 2020 could have prompted critical questions from this Board about the sufficiency of resources budgeted for the Unemployment Compensation Fund; however, this report was dated October 16, 2020, so it appears that the Board was not provided the information in a timely manner.

OCFO budget controls are "soft" controls, meaning that they are intended to detect rather than prevent overspending. ODCA recommended that OCFO consider adopting "hard" budget controls that would not permit financial system users to overspend. OCFO did not address this recommendation, and there may be a better way to achieve the recommendation's intent.

5. Your report mentions several instances of the OCFO initiating draws from the reserve fund, without a request from the executive. For instance, the OCFO in November 2022 allocated $1,244,246 to the Department of General Services from the Contingency Reserve, without a request from the Mayor, to fill a negative budget entry that came about from a previous OCFO correction.
   - How many times did you find the OCFO had initiated a reserve allocation without a request from the Mayor?
   - What evidence do you have of these allocations?
   - Do you believe these allocations were violations of the Anti-Deficiency Act? If so, which portion of the ADA do you believe was violated?
   - Who initiated and approved these allocations?
   - Do you have any response to the OCFO's March 25, 2026 letter, responding to your audit's finding on the DGS reserve allocation?

Mr. Singer: ODCA determined that two allocations, out of 301, were initiated and approved by OBP management without a request from the Mayor.

The allocations appear in reports generated from the financial system (SOAR) and provided to us by OBP. In the course of assessing the reliability of the reports' data, we identified two entries that we could not link to any of the 299 Mayor's letters that we had obtained from OBP and EOM. From a financial system perspective, the two entries were in substance the same as the 299 other allocations: they were additions to the agency's budget authority and there were no offsetting entries to show that budget authority had been merely re-allocated. That is why we determined that the two entries were allocations.

OCFO's March 25, 2026, letter did not contest ODCA's determination that OCFO had allocated Contingency Reserve funds in the amount of $989,995 without a request from the Mayor during the FY 2020 year-end closing period, in order to liquidate an unrecorded liability to Events DC. The liability was incurred in April 2020 by DGS, but the FY 2020 portion of the liability was eventually liquidated in December 2020 by OCP. ODCA inferred that the AFO for

DGS (Henry Wong) was not informed about the liability at the appropriate time because he wrote in a December 17, 2026 email to the program leadership, "Please let us know about these agreements going forward."[4] Further, on the same date Zeni Bekele of Events DC explained to Mulu Haile (accounting officer for DGS): "This transaction was not part of the typical operating transactions, and it is understandable if you and your accounting team did not know about this. Attached, please find the signed agreement and how we allocated the amount [between FY 2020 and FY 2021]." (ODCA did not seek to obtain the signed agreement because it was not necessary for our audit objectives.)

In contrast, OCFO's March 25, 2026 letter contended that a $1,244,246 transaction during the FY 2022 year-end closing period was *not* an allocation in its own right but instead signified the partial *reversal* of the *replenishment* of unspent allocations to DGS.

ODCA did not find this contention credible for several reasons.

- First, this contention contradicted OBP's otherwise-consistent descriptions of its process for allocating, reallocating, and replenishing Contingency Reserve funds.
- Further, OCFO's letter appears to assert that the reverse-replenishment resolved "an erroneous posting of $1.244M from a June 2022 transaction [that] was inadvertently posted to the wrong expense category [rent instead of occupancy]." But an error of this nature would be resolved by transferring the expense to the correct category (likely through a journal entry), with no net effect on the agency's budget—not by increasing the overall amount of budget authority at the agency level. In other words, the letter's assertion is not credible on its face.
- Moreover, contemporaneous emails sent by the AFO and OBP showed a more plausible (but still puzzling) rationale for using Contingency Reserve funds to increase the agency's overall budget authority. On July 1, 2022, OBP had allocated approximately $20.9 million of budget authority from the Non-Departmental Account (DO0) to DGS. But for unstated reasons—an undescribed error that was not identified until the year-end closing period—this allocation to DGS had exceeded the amount of a $19.6 million supplemental appropriation to the Non-Departmental Account. During the year-end closing period in November 2022, a batch entry eliminated the excess budget authority that had been given to DGS, while also creating a $1.244 million budget deficiency that neither DGS's AFO nor OBP initially understood. By December 1, 2022, OBP had apparently reached some level of understanding, and the year-end Contingency Reserve allocation of $1.244 million provided DGS with the budget authority necessary to cover the expenditures it had already made. (Because OCFO's letter called ODCA's version of these events "factually incorrect," the Board may want to gather more information and determine whether OBP or other divisions of OCFO erroneously loaded an amount of budget authority that exceeded the amount of a supplemental appropriation—an error that would be a serious lapse in a budget control activity of fundamental importance.)

[4] The program-side DGS officials in this email correspondence are: Michelle Dee (chief administrative officer), Wanda Jones, Tim Hatton, Danielle Meadors, Xavier Beltran, and Ikeogu (IK) Imo.

- Finally, in a contemporaneous quarterly report on activities of the Contingency Reserve, OBP labeled this transaction as a "Draw" (i.e., an allocation) to DGS in the amount of $1.244 million, without adjusting the amount of unspent funds that were replenished by DGS.

Despite uncertainty about some of the motivations for these two financial system entries, ODCA determined that sufficient and appropriate evidence showed that both entries are properly understood as Contingency Reserve allocations.

6. How could the District prevent violations of the ADA such as these in the future?

   Are there any additional materials, information, or areas of investigation that you believe BRADV should consider?

Mr. Singer: In any given fiscal year, some agencies will be on a course to spend beyond their budgets for any number of reasons (not all of which are bad). To avoid violating the ADA, the District must both identify these agencies and resolve these issues before the moment when expenditures and obligations exceed appropriations. The year-end closing period is too late, by definition.

FRPs and quarterly reports on variances between actual and planned spending are designed to identify the agencies at risk of overspending. To be useful as internal controls, FRPs and quarterly reports must be issued in a timely manner since the passage of time narrows the range of options to address projected overspending.

Although FRPs are due from agencies within 30 days of the quarter end, it appears that this deadline is not being met consistently. My understanding is that agencies submit FRPs as pdf documents to OBP through an online application. The typical FRP includes a cover memo with a date that is within (or almost within) the 30-day timeframe; however, there seems to be a lag of 2-4 weeks before the FRPs appear to be "created" in the online application. Thus I am not sure whether the FRP's cover memo reliably shows when the FRP was completed. The Board should have a full understanding of the process supporting FRPs and quarterly reports.

It is also unclear whether the Board receives quarterly reports on variances in a timely manner. I note that during FY 2026 (the current year), reports for the first and second quarters appeared online for the first time on June 22, 2026, apparently in response to the scheduling of this Board meeting.

Once a risk of overspending is identified, resolving it is another matter. There can be much uncertainty as to the magnitude or even the existence of a 'spending pressure.' I am also sympathetic to the fact that the Council's summer recess (roughly July 15 – September 15) prevents the Mayor and OCFO from executing interagency reprogrammings during most of the fourth quarter. Further, because OCFO has failed to issue a revised revenue estimate in June for the third year in a row, higher-than-expected revenues are not available to offset higher-than-expected spending.

In the past, the District's annual budget included an "Operating Cash Reserve" of $50 million that was available, with Council approval, during the fiscal year to cover overspending or fund policy priorities. Regrettably, the District ended this practice in FY 2010.

7. The report identifies three instances when the contingency reserve was used to address agency overspending. Are these three the only ones out of the 13 identified that involved overspending?

Mr. Singer: Establishing all of the facts that prompted each of the 13 year-end-closing allocations was beyond our audit's scope.

At least one year-end closing allocation did *not* involve overspending, because no obligations or expenditures were charged to the allocated Contingency Reserve funds—leaving us puzzled as to why the allocation had been requested and executed during the year-end closing period.

The table below includes comments on the purposes of the year-end closing allocations.

FY	Agency	Amount	Comments
2019	DPW	$700,000	"higher than anticipated hauling costs"
2019	DCPCS	$400,000	"higher than anticipated expenditure accruals in the fourth quarter"
2020	OCP	$27,094,657	Covid response; repay with federal reimbursements or reprogramming
2020	OCP	$28,434,672	Covid response; repay with federal reimbursements or Local surplus
2020	UCF	$2,316,906	Pay claims while waiting for approved federal funds
2020	WMATA	$732,624	Offset revenue shortfall in Dedicated Taxes; but funds were *not* spent
2020	OCP	$989,995	Liquidate unrecorded liability to Events DC for alternate care site
2021	WMATA	$58,095,409	Offset revenue shortfall in Dedicated Taxes; repay with Local surplus
2021	DGS	$5,970,849	Covid response; repay with federal assistance
2021	OSSE	$3,461,143	Issue grants to reopen charter schools; repay with Local surplus
2022	DGS	$3,001,741	"higher than expected energy costs"
2022	OCP	$1,448,583	Mpox response and migrant services; repay with fed. reimbursements
2022	DGS	$1,244,246	Fix over-allocation of Non-Departmental funds

8. The audit covered COVID years. Were the circumstances that led to the overspending related to the COVID emergency? Were the expenditures appropriate uses of the contingency reserve if the timing had been correct and the proper procedures followed?

Mr. Singer: Yes, most year-end closing allocations were clearly made to respond to Covid and its indirect effects. But some (four or five) allocations were not made for Covid response.

Our audit found that the documentation of Contingency Reserve allocations was much more likely to show the existence of a "nonrecurring or unforeseen need" when the allocation had a Covid-related purpose, compared to all other purposes. (A nonrecurring or unforeseen need is the basic requirement for using the Contingency Reserve.)

However, a major finding of our audit is that the District lacks proper procedures—that is, procedures grounded in a statute or the Reserve Management Policy—for allocating Contingency Reserve funds. None of the 301 allocations during the audit period were made with proper procedures. Procedures are similarly lacking for the Emergency Reserve, which has never been allocated.

With respect to the Cash Flow Reserve, there was a legal basis for OCFO to allocate funds for cash flow management, but OCFO did not have written procedures for using the reserves to manage cash flow. As a result, most allocations (17 out of 27) from the Cash Flow Reserve were not documented.

9. Did ODCA have any discussions with OCFO or the agencies about whether reprogrammings were considered?

Mr. Singer: At all times, the Mayor's budget team determined whether to address a spending pressure with a reprogramming or a Contingency Reserve allocation or supplemental budget request.

During the year-end closing period, reprogrammings are allowed until November 15. For some of the year-end Contingency Reserve allocations, OBP noted in its memos that the reprogramming deadline had passed—but OBP did not establish that Contingency Reserve allocations were allowed during the year-end closing period.

10. In the UCF case, at what point in the fiscal year did expenditures exceed appropriations? When was the overspending discovered? If there was a delay, what were the reasons for it? Were the expenditures appropriate for the contingency reserve?

Mr. Singer: By the end of Month 12 (September), UCF expenditures exceeded appropriations. (In SOAR, the year-end closing period was Month 13.)

We did not determine the reasons for the delay in addressing the overspending by increasing the agency's budget authority. But we established through the FRPs that, by the end of the third quarter, OCFO had identified a spending pressure that would result in overspending if it was not addressed.

11. In the Events DC case, was there any dispute about the proper amount of the liability? Why were there two separate amounts? When did the obligation arise – when the discrepancy was identified? When the parties agreed how much was owed? How much time elapsed between the obligation and the use of the contingency reserve? Who had the authority to request the use of the contingency reserve? Did the Mayor delegate this authority to the budget director?

Mr. Singer: The District did not dispute the amount of its liability to Events DC. Events DC had to provide a signed copy of the agreement to OCFO during the year-end closing period because OCFO had not previously been aware of the agreement.

The agreement ran from April 2020 to January 2021, so it created liabilities in different amounts in FY 2020 and FY 2021.

We assumed that the obligation arose when the agreement was made in April 2020. The FY 2020 allocation of the Contingency Reserve was executed on or after December 21, 2020 with an effective date of September 30, 2020.

In this instance, the Mayor did not request use of the Contingency Reserve. From OBP emails, it appeared that OBP had presented the Mayor's budget director with options—use the reserve or seek federal reimbursement—but there was not time to establish Federal Fund budget authority because the District's financial statements were due or past due to be finalized and submitted to the independent auditors. So the Mayor's budget director agreed to establish Local Fund budget authority from the Contingency Reserve, while also seeking federal reimbursement.

The Mayor did not delegate authority to request Contingency Reserve allocations. All 299 requests took the form of a letter signed by the Mayor and addressed to the CFO.

The Mayor also did not *have* statutory authority to make a request—that is, the Mayor's letter had no legal effect and the CFO was not required to consider it or act upon it. We viewed the Mayor's letters as a matter of free speech: anyone can ask anyone else for money, and doing so does not confer legal authority upon the recipient to allocate public funds.

12. In the final case, at what point did the alleged violation occur? Was it when DGS overspent its actual budget relying on a CFO mistake? Was DGS informed of the mistake? If so, when? Is the use of the contingency reserve justified to correct and error that would otherwise cause an ADA violation?

Mr. Singer: Ultimately, the amount of an appropriation is a matter of law that must be determined by referring to legislative enactments rather than the information contained in a financial system. So DGS overspent its appropriation at the fund and agency level when its aggregate Local Fund spending exceeded the amount that had been appropriated for DGS to spend (as this amount had been adjusted by net transfers from the Non-Departmental Account).

Although individualized culpability is for the Board to judge, a strong argument can be made that DGS was justified in relying upon financial system data as evidence of its spending authority.

The point I wish to emphasize is that the Contingency Reserve allocation, made *after* the overspending had occurred, does not cure the violation of the District Anti-Deficiency Act. At most, the allocation makes a deficiency appropriation unnecessary.

The allocation still needs to be repaid because the District is required to maintain the Contingency Reserve at its funding level (4% of the prior year's operating expenditures, excluding debt service). To the extent that the District must use its year-end surplus (excess revenues and lower-than-budgeted spending) to replenish a reserve, the surplus is not available to be put to any other use including uses that elected policymakers would choose to fund in a budget.

13. In each case, who was involved in the actions that led to the alleged violation?

Mr. Singer: ODCA did not determine who was involved in each case because it was outside the scope of our audit objectives.