

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Charles C. Maddox, Esq.
Inspector General



FOR IMMEDIATE RELEASE
Thursday, March 28, 2002

Contact: Gloria Johnson
at (202) 727-2540

Inspector General Releases Report on Fundraising Activities of the Mayor's Office

D.C. Inspector General Charles C. Maddox released a report today, entitled "Report of Investigation of the Fundraising Activities of the Executive Office of the Mayor (EOM)." Issuance of the report concludes a thirteen-month investigation of the EOM's relationship with non-profit organizations in a joint effort to solicit approximately \$1.5 million from donors who were mostly District government contractors or businesses regulated by the District government. The OIG investigated fundraising activities that occurred over a two and a half year period to finance seven civic events. It required detailed financial analysis of the activities of numerous non-profit corporations and interviews with hundreds of individuals, many of whom were donors solicited by or on behalf of the EOM and its public-private partnership activities.

The Report states: "Because of the large number of individuals and numerous corporations implicated by the EOM's fundraising practices, it was necessary to dedicate the requisite time and resources used in this investigation to ensure fairness, accuracy, and a thorough analysis of all disclosed facts and findings. This investigation offers to the Mayor, the City Council, and the public an understanding of the fundraising activities subject to this investigation. As a result, appropriate authorities can determine the extent to which regulatory and/or legislative reforms are necessary; the Mayor can consider our recommended changes to his Mayor's Order regarding government fundraising; agencies can decide whether to take administrative action against current employees for misconduct; and the U.S. Attorney's Office for the District of Columbia can decide whether this report contains information that has prosecutorial merit. We trust that this report and the actions taken by responsible District leaders will assure residents that their government is accountable and responsive to public concerns."

In order to respond fully to several specific requests made by the Mayor and Councilmembers Vincent Orange and David Catania, all of whom requested the inquiry, the investigation involved 19 investigators and several executive staff members, required almost 300 interviews and 115 subpoenas, and access to more than 13,000 emails and 280,000 documents for review.

Today the OIG website will provide access to the public portions of the report at www.d cig.org; Alternatively, requests for mailed copies can be made by calling (202) 727-2540.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE INSPECTOR GENERAL**



Inspector General

March 28, 2002

The Honorable Anthony A. Williams
Mayor
District of Columbia
1350 Pennsylvania Avenue, N.W., 6th Floor
Washington, D.C. 20004

The Honorable Linda W. Cropp
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, D.C. 20004

The Honorable Vincent B. Orange, Sr.
Chairman
Committee on Government Operations
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 108
Washington, D.C. 20004

The Honorable David A. Catania
Councilmember
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 110
Washington, D.C. 20004

Dear Mayor Williams and Council members Cropp, Orange, and Catania:

I am pleased to transmit to you the "Report of Investigation of the Fundraising Activities of the Executive Office of the Mayor (EOM)." (OIG Control Number 2001-0188 (S))

Issuance of the report concludes a thirteen-month investigation of the EOM's relationship with non-profit organizations in a joint effort to solicit approximately \$1.5 million from donors who were mostly District government contractors or businesses regulated by the District government. The OIG investigated fundraising activities that occurred over a two and a half year period to finance seven civic events. The investigation required a detailed financial analysis of the activities of numerous non-profit corporations and

interviews with hundreds of individuals, many of whom were donors solicited by or on behalf of the EOM and its public-private partnership activities.

In order to respond fully to several specific requests made by Mayor Williams and Council members Vincent B. Orange, Sr., and David A. Catania (all of whom requested the inquiry), the investigation involved the efforts of 19 investigators and several executive staff members, required almost 300 interviews and 115 subpoenas, and access to more than 13,000 emails and 280,000 documents for review. The large number of individuals and numerous corporations implicated by the EOM's fundraising practices required us to dedicate the requisite time and resources used in this investigation to ensure fairness, accuracy, and a thorough analysis of all facts and findings.

This investigation offers to the Mayor, the D.C. Council, and the public an understanding of the fundraising activities subject to this investigation. As a result, the following actions can be achieved:

- appropriate authorities can determine the extent to which regulatory and/or legislative reforms are necessary;
- the Mayor can consider our recommended changes to his Mayor's Order 2002-2, regarding government fundraising;
- agencies can decide whether to take administrative action against current employees for misconduct; and
- the United States Attorney for the District of Columbia can determine whether this report contains information that has prosecutorial merit.

The full report includes materials concerning potential criminal and administrative violations. Specifically, we believe that certain District government employees engaged in activities that violated the Standards of Conduct and other District and federal laws. None of the EOM employees who were most responsible for participating in inappropriate partnership activities currently works in the EOM; most are no longer employed by the District government; some have been reassigned to other agencies. However, we will make referrals to the appropriate District and federal agencies for final determination (notwithstanding the status of individuals as former employees), since we do not have jurisdiction to determine the outcome in these matters. Those referrals are as follows:

- United States Attorney for the District of Columbia - (see General Finding 1, General Recommendation 1; General Referral 3; and Specific Findings and Recommendations 24-26).
- U.S. Internal Revenue Service - (see General Referral 2 and Specific Findings and Recommendations 27-28).

- U.S. Office of Special Counsel - (see General Referral 1 and Specific Findings and Recommendations 22-23).
- Executive Office of the Mayor - (see General Recommendations 1 and 3, Specific Findings and Recommendations 32-33, and Observations and Recommendations 1-6).
- Council of the District of Columbia - (see General Recommendation 1 and Specific Findings and Recommendations 32-33).
- Chief of Staff, Executive Office of the Mayor - (see General Recommendations 2, and 5-6, and Specific Findings and Recommendations 7-9, 12, 15, 19, 21, and 30-31).
- Office of the Corporation Counsel - (see General Recommendation 4 and Specific Finding and Recommendation 29).
- Office of Campaign Finance - (see General Recommendation 5 and Specific Findings and Recommendations 1-21).
- Office of the Chief Financial Officer - (see General Recommendation 4 and Specific Finding and Recommendation 29).
- Office of Tax and Revenue, Office of the Chief Financial Officer (See General Referral 2 and Specific Findings and Recommendations 27-28).

District agencies that have received referrals are requested to advise this Office in writing by April 26, 2002, of the status of their plans for addressing our recommendations and referrals. When responding, please refer to OIG Control Number 2001-0188(S).

It should be noted that we are **not** providing the public with the full text of this report. In order to preserve the integrity of future inquiries and to protect the privacy of individuals involved, we have redacted information concerning potential criminal and administrative violations.

Specifically, the public version will not contain the following:

- facts or references to matters that have been referred to the U.S. Attorney;
- information regarding potential criminal and administrative proceedings that, if disclosed, could compromise the integrity of future investigations and adjudications of other enforcement agencies, both federal and District;
- information that could create an unwarranted invasion of privacy to individuals subject to these inquiries;

- information that might impair the business reputations of private entities; and
- confidential information pertaining to law enforcement sources and procedures.

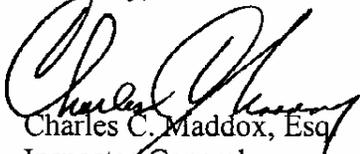
Beginning March 29, 2002, the OIG website will provide access to the public portions of the report at www.dci.org. Alternatively, requests for mailed copies can be made by calling my Office at (202) 727-2540.

The public portions of the report will include the following:

- Executive Summary;
- Predication;
- Scope of the Investigation;
- Perspective of the Mayor and His Staff;
- Legal Framework for Analyzing Fundraising Activities;
- General Findings, Recommendations and Referrals for Action.

We trust that this report and the actions taken by responsible District leaders will assure residents that their government is accountable and responsive to public concerns. If you have questions, please feel free to call me directly at (202) 727-2540.

Sincerely,



Charles C. Maddox, Esq.
Inspector General

CCM/gj

cc: See Distribution List

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**DISTRICT OF COLUMBIA
OFFICE OF THE INSPECTOR GENERAL**

**SUMMARY
REPORT OF INVESTIGATION OF FUNDRAISING
ACTIVITIES OF THE EXECUTIVE OFFICE OF
THE MAYOR
OIG NO. 2001-0188 (S)**

READER'S NOTE:

This Summary Report of Investigation describes the Office of the Inspector General's (OIG) review of the fundraising activities of the Office of the Mayor. The OIG is providing this Summary in lieu of the full Report of Investigation in accordance with the exemptions provided in the District of Columbia Freedom of Information Act (D.C. Code §§ 2-531 - 539 (2001). We have indicated these redactions by inserting brackets at the appropriate locations and we have inserted alternative designations, where necessary.

We have redacted information to preserve the privacy interests of individuals and the business reputations of private entities referenced in the full report. We also have redacted confidential information pertaining to law enforcement sources and procedures. Finally, we have redacted information regarding potential criminal and administrative proceedings that, if disclosed, could compromise the integrity of these matters and unnecessarily infringe upon the privacy interests of individuals who may be involved in these enforcement proceedings.

March 28, 2002

ACRONYMS

[]	[]
CBC	Congressional Black Caucus
DCLB	District of Columbia Lottery and Charitable Games Control Board
DNC	Democratic National Convention
DPM	District Personnel Manual
[]	[]
EOM	Executive Office of the Mayor
FTK	For the Kids Foundation
HOOP	Hope and Opportunity for Outstanding Performance
HUD	U.S. Department of Housing and Urban Development
IRS	Internal Revenue Service, U.S. Department of Treasury
LSDBE	Local, Small, and Disadvantaged Business Enterprises
MHC	Mayor's HOOP Corner Program
MW	Millennium Washington
MWCB	Millennium Washington-Capital Bicentennial
OCC	Office of the Corporation Counsel
OCF	Office of Campaign Finance
OCFO	Office of the Chief Financial Officer
OIG	Office of the Inspector General for the District of Columbia
OPGD	Office of Partnerships and Grants Development

ACRONYMS (Cont.)

OSC	U.S. Office of Special Counsel
OTR	Office of Tax and Revenue
OVR	Overview
RNC	Republican National Convention
[]	[]
USAO	United States Attorney's Office for the District of Columbia
[]	[]

EXECUTIVE SUMMARY

BACKGROUND

In January of 2001, print and broadcast reports questioned the propriety of certain fundraising activities involving the Executive Office of the Mayor (EOM). Thereafter, Mayor Anthony A. WILLIAMS and D.C. Council members Vincent B. ORANGE, Sr., and David A. CATANIA requested the Office of Inspector General to conduct a thorough review of these allegations. Taken together, these requests required a thirteen-month investigation that encompassed two and a half years of fundraising activities and involved numerous District government employees. It also required a detailed financial analysis of the activities of numerous non-profit corporations and interviews with hundreds of individuals, many of whom were donors solicited by or on behalf of the EOM and its public-private partnership activities.

We reviewed the methodology of the EOM with respect to nine fundraising activities, or civic events, beginning with the Mayor's HOOP Corner program in November 1999 and ending with the Mayor's January 20, 2001, Inaugural Parade Reception. Approximately \$1.5 million was raised under the auspices of the EOM to fund these civic events, with most of the fundraising (\$1.2 million) conducted on behalf of Millennium Washington – Capital Bicentennial, the non-profit organization established to promote the two-day Main Street Millennium gala and the year-long District Bicentennial celebration. Some of these events were the result of public-private partnerships designed to promote the Mayor's revitalization initiatives; however, most were in the nature of limited invitation parties and receptions that did not appear to provide any direct benefit to the citizens of the District.

From the onset, and throughout this investigation, we solicited the advice and counsel of the United States Attorney's Office for the District of Columbia. This Report of Investigation, in its entirety, has been referred to the United States Attorney and other enforcement agencies for further consideration.

PURPOSE

This Report of Investigation has the following objectives:

- (1) to provide facts about the nature of the fundraising activities of the EOM so that the Mayor and the City Council can determine the extent to which regulatory and/or legislative reforms are necessary;
- (2) to make observations and recommend changes with regard to Mayor's Order 2002-2 and Memorandum 2002-1, which were issued prior to this report and provided a corrective for government fundraising by District government employees;
- (3) to recommend that appropriate agencies take administrative action against current employees for violations of Standards of Conduct in the D.C. Personnel Manual (DPM); and

- (4) to refer the full text of this report to the United States Attorney and other law enforcement agencies with jurisdiction to determine if this report contains information that has prosecutorial merit.

FINDINGS

Our investigation has resulted in numerous findings. Some findings are general in nature and do not necessitate corrective action, while others are more specific and call for corresponding recommendations. Listed below are our findings and recommendations:*

General Finding #1: We did not uncover evidence that the EOM's fundraising was a campaign of institutional corruption with its purpose or effect being the personal enrichment of the Mayor or EOM employees. We found facts suggesting the possibility of criminal violations in only a few instances, and these matters have been referred to the United States Attorney's Office for evaluation.

General Finding #2: With one exception noted in the Specific Findings Section, we did not identify evidence suggesting that an illegal benefit (*quid pro quo*) or direct competitive advantage was conferred on any D.C. government contractor or regulated business as a result of its support for, or participation in, EOM fundraising or partnership activities. We referred information regarding one questionable exception to the United States Attorney's Office for evaluation.

General Finding #3: Mayor WILLIAMS and [the] then EOM Chief of Staff [] did not properly supervise and manage EOM employees to ensure that fundraising was conducted in accordance with legal standards. Because critical witnesses provided contradictory statements, it is difficult to determine the extent of the Mayor's knowledge of the fundraising activities of his staff. Nevertheless, Mayor WILLIAMS is accountable and responsible for the conduct of EOM employees under his immediate supervision. In interviews, the Mayor and [a former EOM Chief of Staff] conceded responsibility for misconduct and mistakes made by EOM employees involved in the fundraising activities examined during the course of this investigation.

General Finding #4: We did not find evidence that government employees endorsed a candidate or engaged in campaign fundraising at any of the events described in this report. However, many of the events appear to be little more than social functions hosted by the Mayor for prominent political, business, and community leaders as well as government officials. As such, these events may be interpreted as being beneficial to the Mayor's candidacy for re-election. In addition, an adverse appearance was created because solicitation by District officials of the magnitude and frequency seen here did not result in the expenditure of government funds to directly benefit District of Columbia citizens in the form of government services and programs. Finally, the appearance that the events had a political purpose could weaken the public's confidence in the integrity of the government in violation of the Standards of Conduct.

General Finding #5: The EOM offered several theories to justify their fundraising efforts, including the use of independent non-profit entities and partnerships. However, we have concluded that the only legal authority available to solicit funds for official purposes in the amounts and by the methods used by the EOM staff is the Mayor's gift acceptance authority set forth in the annual Appropriations Acts for the District of Columbia. *See* Charts entitled "Acceptable Official Fundraising Methods" and "EOM Fundraising Patterns." These charts illustrate fundraising methods that meet legal requirements as opposed to those utilized by the EOM.

General Finding #6: Because donors were solicited directly by EOM staff, the staff should have utilized the Mayor's delegated gift acceptance authority under the District's annual Appropriations Act to augment the level of District government appropriations to finance ceremonial events. However, the EOM did not adhere to the accounting and disclosure requirements of the Appropriations Act, which are preconditions to the acceptance of gifts to the District government. These requirements provide essential safeguards which accomplish the following: (1) prevent misuse of donations; and (2) inform Congress of the manner and the extent by which the budget was augmented. In none of the events were official records kept documenting the receipt and use of these donations. In none of the events were records made of these funds to allow for audit and public inspection.

General Finding #7: The failure to comply with the conditions set forth by Congress to augment the District's annual budget may constitute a violation of the federal Anti-Deficiency Act. We referred this issue to the Chief Financial Officer and the Corporation Counsel to make a determination whether an Anti-Deficiency Act violation occurred.

General Finding #8: None of the \$1.5 million raised for the District government was ever placed into the District Treasury where it would accrue interest and be properly accounted for. Instead, the EOM either: (1) instructed donors to pay event vendors directly; or 2) used the accounts of non-profit organizations to deposit donors' checks and pay event vendors. These practices bypassed donor disclosure requirements and avoided the safeguards inherent in the procurement process, such as competitive bidding and preferences for small, local and disadvantaged businesses.

General Finding #9: Mayor WILLIAMS and Council member BRAZIL failed to comply with the conditions for gift acceptance in the Appropriations Act because they solicited substantial monetary contributions for the Republican National Convention/Democratic National Convention Mayoral Events without ensuring that mandatory accounting and public accounting procedures were followed. We are referring this matter to the Office of Campaign Finance to determine whether Mayor WILLIAMS and Council member BRAZIL violated the Standards of Conduct. This finding is discussed in the Specific Findings Section of this report.

General Finding #10: There is an appearance of impropriety in violation of the Standards of Conduct based on the EOM's practice of soliciting large sums of money and other items of value from donors that had business relationships with the District government and/or that were contributors to the Mayor's re-election campaign where accounting and public disclosure safeguards were not addressed.

General Finding #11: Government employees involved in the subject fundraising activities stated that they were motivated by a desire to engage the private sector in supporting the WILLIAMS administration's efforts to revitalize the city. The government employees who engaged in fundraising for these events stated that they believed that they were doing so in their official capacities and for purely government interests.

General Finding #12: Irrespective of the stated intentions of the involved government employees, our investigation revealed that EOM employees solicited and accepted donations on behalf of private non-profit organizations from their government offices, during government working hours, and utilizing government resources. This practice violated a Standards of Conduct provision prohibiting the entanglement of private interests with government activities.

General Finding #13: Not only did government employees fundraise on behalf of existing private non-profit organizations (non-profits), we found that employees of the EOM's Office of External Affairs created their own non-profits, and appointed themselves officers and members of the boards of directors of these entities. Thereafter, they proceeded to raise funds and control the income of the non-profit as well as its expenditures. Funds were moved improperly from one non-profit to another without the knowledge or approval of the responsible officials of the non-profit. This activity violated the Standards of Conduct in that it created the appearance of using public office for private gain.

General Finding #14: EOM employees who controlled non-profit fundraising and event finances demonstrated ill-regard for prudent business management. The EOM's failure to resolve financial obligations with vendors, who provided services and/or supplies for the events, impacted negatively on the public's confidence in the District government.

General Finding #15: The nature and variety of the various fundraising methods described in this report occurred during a period of time when the EOM did not have an Ethics Officer and EOM employees did not receive ethics training or guidance on government fundraising. The Mayor informally delegated his solicitation and gift acceptance authority to EOM staff, rather than setting forth the parameters and limitations of this authority in writing in the form of a Mayor's Order. EOM staff, then, were left to their own devices to raise funds from the private sector to finance civic activities. They seldom solicited advice from the Office of the Corporation Counsel or the Office of Campaign Finance. The Standards of Conduct did not provide adequate guidance to District government employees involved in fundraising, and the EOM maintained no other written policy or instructions on fundraising for employees to reference for guidance.

General Finding #16: The weight of the evidence suggests that government employees did not, in most cases, exert undue pressure upon donors who were solicited for monetary contributions. However, two donors did report to us that they felt pressured by the tactics employed by two government employees. These two exceptions are addressed in the Specific Findings Section.

RECOMMENDATIONS AND REFERRALS

Our recommendations and referrals may be summarized as follows:

General Recommendation #1: We recommend that the Mayor work with the D.C. Council to revise the Standards of Conduct in the interest of establishing clear and definitive regulations regarding the parameters of official gift acceptance for District government personnel.

General Recommendation #2: To ensure accountability and disclosure of government donations, we recommend that the Director of the Office of Partnerships and Grants Development, EOM, closely scrutinize all applications for gift approval and make certain that all monetary donations are promptly deposited into the District Treasury.

General Recommendation #3: With regard to Mayor's Order 2002-2 and Mayor's Memorandum 2002-1, we recommend that the Mayor consider several revisions to the policy set forth in each document pertaining to his gift acceptance authority.

General Recommendation #4: We recommend that the Office of the Corporation Counsel and the Office of the Chief Financial Officer consider our findings regarding possible violations of the Anti-Deficiency Act. If a violation of the Act occurred, the Mayor must submit to the President and Congress the report required by 31 U.S.C.A. § 1351 (1994) in accordance with guidance contained in OMB Circular A-34 (revised October 19, 1999).

General Recommendation #5: We recommend that Office of Campaign Finance and District agency heads take disciplinary action, as appropriate, against current District government employees for violations of ethics standards.

General Recommendation #6: Regarding outstanding financial obligations owed to event vendors, we recommend that the Office of Partnerships and Grants Development, EOM, endeavor to address any outstanding accounting matters.

General Referral #1: We refer this report to the U.S. Office of Special Counsel for its review regarding potential violations of the Hatch Act and to determine whether administrative action is warranted against current District government employees.

General Referral #2: We refer our report to the U.S. Internal Revenue Service and the District of Columbia Office of Tax and Revenue to review our findings relating to the fundraising activities conducted on behalf of non-profit organizations.

General Referral #3: In addition to specific instances of misconduct that may establish violations of a criminal nature, we refer this report in its entirety to the United States Attorney's Office so that it may continue its review to determine whether this investigation has revealed information that has prosecutorial merit.

***NOTE:** This Executive Summary, as well as a more detailed overview, can be found on our website, www.d cig.org. Information concerning potential criminal or administrative violations referred to enforcement agencies has been redacted in order to preserve the integrity of future inquiries and to protect the privacy of individuals involved.

I. PREDICATION

By letter dated February 6, 2001, from Mayor Anthony A. WILLIAMS as well as upon separate letters from D.C. Council members Vincent B. ORANGE, Sr., and David A. CATANIA (Exs. OVR 1 - 3), the Office of the Inspector General (OIG) was asked to investigate certain fundraising activities involving the Executive Office of the Mayor (EOM).¹ These requests were prompted by print and broadcast reports questioning the propriety of certain fundraising activities by EOM employees on behalf of non-profit organizations. The reports also questioned the business relationships between the District government and particular donors who were solicited for contributions to civic events. In his letter, the Mayor stated, "I am eager to determine whether mistakes occurred in connection with these activities." He further noted his commitment to ensure that employees of the EOM adhere to high ethical standards. The three activities identified were: 1) a Christmas Party hosted by For the Children Foundation;² 2) an inaugural reception hosted by [a non-profit];³ and 3) a golf tournament promoting the Second Chance Foundation.⁴

D.C. Council member ORANGE's letter noted that the issues identified by the media raised serious questions about the integrity of government employees working for the EOM. He requested that the OIG conduct an investigation to determine whether the relationship between the EOM and non-profit organizations resulted in any violation of law or District government personnel regulations. In particular, he expressed his interest in whether District government employees evaded financial disclosure laws and whether their actions created the appearance of using public office for private gain. He listed ten private organizations and asked the OIG to determine whether any political favors were granted or undue pressure exerted in securing donations. The organizations are as follows: 1) [a private entity];⁵ 2) A Second Chance Community Foundation; 3) [a non-profit]; 4) [a non-profit]; 5) Millennium Washington – Capital Bicentennial (MWCB); 6) [a non-profit]; and 7) A Better Washington Political Action Committee, Inc.⁶

D.C. Council member CATANIA's letter identified the same organizations and asked the OIG to respond to a series of questions concerning their organizational structure, finances, and relationship to the District government.

¹ A separate written request for investigation from Council member Kathleen PATTERSON was received by the OIG at this time; however, it concerned non-fundraising issues associated with the D.C. School Board Referendum. Consequently, it was not incorporated into this investigation of fundraising conducted by the EOM.

² The investigation identified this activity as the Mayor's December 10, 2000, Foster Children's Holiday Reception and the fundraising organization as For the Kids Foundation, Inc. (FTK).

³ The investigation identified this activity to be the Mayor's January 20, 2001, Inaugural Parade Reception.

⁴ The investigation determined that A Second Chance Foundation, also known as A Second Chance Community Foundation, was only a proposed concept for fundraising. No such organization was ever created or incorporated in the District of Columbia, and no fundraising was conducted or golf tournament held on its behalf.

⁵ [This private entity] only participated in fundraising activities in the capacity of donor.

⁶ Our investigation determined that A Better Washington Political Action Committee, Inc., was the proposed name for a political action committee that was suggested to [a former Chief of Staff] when [he/she] was Chief of Staff, EOM, by a friend and political supporter of Mayor WILLIAMS. It was never more than a concept and did not engage in fundraising.

EOM fundraising activities were first questioned in the print and broadcast media beginning in late January 2001.⁷ These public disclosures alleged that the Mayor used non-profit groups to collect more than a half-million dollars over a two-year period for community programs, and, in doing so, used a fundraising tool that skirted financial disclosure laws and violated the District's personnel regulations. The articles identified [a] former Deputy Chief of Operations, D.C. Lottery and Charitable Games Control Board (DCLB) and former Deputy Chief of Staff for External Affairs, EOM, as the Mayor's point of contact in the development of public-private partnerships. The articles further expressed a concern that [this individual] may have been using non-profit organizations to engage in political fundraising for the Mayor without the public disclosure and accounting required by campaign finance laws. The articles also stated that [this individual] had acknowledged that [he/she] made a mistake by raising funds from local businesses that had financial dealings with the District government.

[This individual] was also identified in these articles as the campaign manager of the August 2000 District School Board referendum (Special Election on the Proposed School Governance Charter Amendment Act of 2000) that the Mayor supported and that came under scrutiny when District government employees were tasked by the Mayor to work on the referendum campaign. The newspaper articles identified two additional fundraising activities not presented to us in the written requests for investigation: a reception at the MCI Center for [] a District resident and Olympic boxer, and a Christmas party hosted by the Mayor for his business, political and community supporters.

Three additional fundraising activities of the EOM came to our attention during the course of the investigation and are included in this report. One activity was for the purpose of financing a reception, hosted by the Mayor, honoring the Congressional Black Caucus (CBC). A second activity was for the purpose of financing certain expenses of the EOM at the 2000 Republican and Democratic National Conventions (RNC and DNC), respectively. A third activity was for the purpose of obtaining complimentary tickets and refreshments for the Mayor's HOOP Corner program.⁸

These requests and the associated news media accounts raised questions about the integrity of the EOM and the public's confidence in the District government. Accordingly, the OIG initiated an in-depth review of the relationship between the EOM and certain private organizations that worked together in furtherance of civic events.

⁷ See, e.g., *The Washington Post*, "Williams Aides' Fundraising Questioned," January 30, 2001, at B01; *The City Paper*, Volume 5, Number 4, "Good For The Gander, Not The Goose," January 26 -February 1, 2001, Volume 5, Number 4.

⁸ The acronym "HOOP" stands for "Hope and Opportunity for Outstanding Performance."

II. SCOPE OF INVESTIGATION

A. Investigative Process

The EOM activities subject to this investigation occurred over a two-year period, from the summer of 1999 to January 2001. They involved over a dozen EOM employees, as well as a number of employees from other District government agencies, and they implicated nearly everyone involved in actions that did not adhere to the District's Standards of Conduct. Some of the private organizations developed a relationship with the EOM that was generally described as a "public-private partnership." Most of the private partners were, or attempted to become, 501(c)(3)⁹ non-profit organizations that were sought out by the EOM for two reasons: (1) their ability to encourage tax-deductible donations for partnership activities; and (2) their ability to avoid the delay and inconvenience of complying with the District's procurement regulations. The investigation also identified the donors who contributed to EOM partnership activities, many of whom have significant business relationships with the District government.

The investigation, which lasted approximately 13 months, involved 19 investigators and several executive staff members. It required almost 300 interviews, with many significant witnesses participating in multiple interviews into the final months of the investigation. We served 115 subpoenas, accessed more than 13,000 e-mails, and reviewed almost 280,000 documents, many of which were financial records that required detailed analysis.

While other investigations of similar complexity might require more than a year to complete, there were several factors that unnecessarily impeded our progress. Twenty-nine individuals refused to be interviewed (none are current District government employees), 23 individuals obtained the assistance of legal counsel before they would submit to an interview (to include Mayor WILLIAMS), and eight individuals sought certain assurances from the United States Attorney's Office for the District of Columbia (USAO) prior to their interviews. Donors and former and current District employees who participated in solicitation activities were particularly reluctant to be fully cooperative and forthright, despite protestations that they believed they had done nothing wrong. Taken together, all of these factors made it extremely difficult to ascertain the facts and obtain vital information that could be used for our analysis in a timely manner.

Because of the large number of individuals and numerous corporations implicated by the EOM's fundraising practices, it was necessary to dedicate the requisite time and resources used in this investigation to ensure fairness, accuracy, and a thorough analysis of all disclosed facts and findings. This investigation offers to the Mayor, the City Council, and the public an understanding of the fundraising activities subject to this investigation. As a result, appropriate authorities can determine the extent to which regulatory and/or legislative reforms are necessary; the Mayor can consider our recommended changes to his Mayor's Order regarding government fundraising; agencies can decide whether to take administrative action against current employees for misconduct; and the U.S. Attorney's Office for the District of Columbia can decide whether this report contains information that has prosecutorial merit. We trust that this report and the

⁹ Section 501(c)(3) of the U.S. Internal Revenue Code of 1986 (I.R.C.) provides tax-exempt status for non-profit organizations with charitable missions. Donations in furtherance of the charitable purposes are tax-deductible. *See* 26 U.S.C.A. § 501(c)(3) (West 1988 and Supp. 1999).

actions taken by responsible District leaders will assure residents that their government is accountable and responsive to public concerns.

From the onset, and throughout this investigation, we solicited the advice and counsel of the USAO. This Report of Investigation has been referred to the United States Attorney and other enforcement agencies for further consideration.

B. Fundraising Options

1. Fundraising Methods – Legally Required Safeguards in Place

For several reasons, further explored in the Background Section, the EOM avoided using public, or appropriated money, to finance the events that are the subject of this report. Instead, they turned to the private sector for funding. In the Legal Framework Section that follows, we provide a detailed analysis of the legally acceptable methods by which the District government might have sought assistance from the private sector to fund the events. Of those methods, three are significant: 1) the Mayor may use his statutory solicitation and gift acceptance authority, which has been granted by Congress in the District's annual appropriations acts since 1992; 2) a private entity, usually a non-profit corporation, may independently raise and spend the funds needed to produce an event that would fulfill the Mayor's ceremonial needs; and 3) both the District government and a private entity may fund an event, each using its own fundraising procedure.

These three methods have very different legal requirements that act as safeguards against official misconduct. The first acceptable method entails the Mayor's exercise of his gift solicitation and acceptance authority, whereby he is required by federal and District law to approve the donation, apply it to an official use, deposit the funds in a government account, and provide appropriate accounting and public disclosure. All of the preceding should receive legal review and approval. The funds must then be disbursed in accordance with procurement and Local, Small, and Disadvantaged Business Enterprises (LSDBE) regulations.

The second acceptable method entails a private non-profit entity independently conducting the solicitation, accepting the donations, managing and financing an event, and making payment directly to vendors. To avoid conflicts of interest between the District government and the private sector, it is important that the non-profit conducts fundraising on its own without transferring money to government control.

The third acceptable method involves joint public-private funding. While it is possible for the District government and a private entity to fund the same event, extreme care is required to ensure that a "firewall" separates their operations such that District government employees are not involved in private fundraising activities.

2. Fundraising Methods – Legally Required Safeguards Bypassed

We identified nine instances in which the EOM intended to or in fact did engage the private sector in fundraising and the development of civic or ceremonial events. The EOM did not follow any of the legally sufficient methods described above. Instead, they used two different patterns of fundraising, each of which bypassed procedural safeguards required by federal and District law.

In Pattern 1, EOM personnel solicited funds from private donors, but instructed them to pay event vendors directly rather than place the funds in the custody of the District government. In Pattern 2, EOM personnel either solicited funds on behalf of a private entity or took control of funds in the custody of the private entity and paid vendors directly. Both patterns bypassed accounting and disclosure requirements as well as the procurement process.

Finally, neither of these patterns qualifies as a legally sufficient joint effort between public and private partners because of the lack of a firewall separating the solicitation activities and management of the funds by the partners. In effect, the patterns used by the EOM were a hybrid of the two acceptable methods, but they incorporated the vital safeguards of neither.

For a graphic representation of each of these methods and patterns, see the two charts entitled “Acceptable Official Fundraising Methods” and “EOM Fundraising Patterns,” which are located in the Executive Summary Section.

C. The Events

We identified nine instances in which the EOM intended to or in fact did engage the private sector in fundraising and the development of civic events, in accordance with the two patterns of unacceptable gift acceptance. Summarized below are the fundraising practices of the nine events we investigated:

- *The December 31, 1999 – January 1, 2000, Main Street Millennium Event and the June 26, 2000, Jazz Blues Festival* – (Pattern 2) To produce events to celebrate the Millennium Year, the EOM entered into a partnership with a private non-profit corporation that EOM employees created and that functioned, for the most part, out of 441 Fourth St., N.W. To finance this event, EOM employees engaged in fundraising activities on behalf of the non-profit entity. While the EOM intended to produce a yearlong series of events and raised approximately \$1.2 million, the partnership produced only two significant events and overspent its budget.
- *The April 14, 2000, Economic Conference and Prayer Breakfast* - (Pattern 2) This event marked the first activity of the EOM’s partnership with [a non-profit] to spearhead the Mayor’s faith-based initiatives. [The non-profit] enlisted the assistance of a District bank to raise funds to pay for the costs of the event, which totaled approximately \$79,000. Members of the EOM were involved with planning the event, and after the event was held, [a former Deputy Chief of Staff]

continued to use the [non-profit's] Conference Account to solicit funds for other purposes.

- *The July 2000 Republican National Convention (RNC) and the August 2000 Democratic National Convention (DNC)* – (Patterns 1 and 2) To host Mayoral events at these two political conventions, Mayor WILLIAMS solicited the assistance of a major District contractor, which (for the most part) paid all vendors directly. At the Mayor's request, a director of a non-profit corporation solicited additional funds for the events, and handled all aspects of planning the events, in coordination with the District contractor. In addition, Council member BRAZIL solicited a monetary donation from a District regulated corporation to finance an evening reception at the DNC. In total, costs for these events approximated \$40,000.
- *The September 13, 2000, Mayoral Reception for the Congressional Black Caucus (CBC)* – (Pattern 1) This event was produced by the EOM to honor members of the CBC. EOM members solicited financial assistance from various private businesses to pay the costs associated with the event (almost \$30,000). The EOM did not partner with a private entity to produce the Reception, and donors made direct payments to vendors.
- *The November 29, 2000, [] Reception* – (Pattern 1) Similar to the CBC, the EOM did not coordinate with a non-profit entity to produce this event. The Mayor held this reception to honor the achievement of an Olympic medal winner from the District. The EOM handled all of the fundraising and planning for the event, and directed donors to pay the vendor bills (\$12,000).
- *The December 1999 – 2000, Mayor's HOOP Corner Program* – (Pattern 1 except that donors were solicited directly for personal property donations rather than for money.) This program was created by two District government employees to reward the academic success of select District youth. Government employees solicited Washington Wizards basketball tickets and food from the private corporation that manages the MCI Center, which donated tickets for 4-5 games at 100 tickets per game.¹⁰ The EOM distributed the donations to District youth and chaperoned the students at the games. The HOOP Corner also provided transportation for the students to the games through the Department of Parks and Recreation (DPR).
- *The December 10, 2000, Children's Christmas Party* – (Pattern 2) To raise funds for this party for District foster children, the EOM created a non-profit entity – the For the Kids Foundation (FTK) - to attract donations. The non-profit, however, was not incorporated until a few weeks before the event, and funds were solicited

¹⁰ According to information obtained during the investigation, the value of each ticket was minimal given that they were part of an allotment of tickets set aside for community needs.

on behalf of the non-profit prior to its incorporation. The total cost for the event approximated \$14,000.

- *The December 21, 2000, Mayoral Holiday Reception* – (Pattern 2) EOM employees solicited donations for this holiday social event for District government officials and other influential social and political members of the District community. The EOM solicited donations through [] a non-profit organization. However, [a former Deputy Chief of Staff] transferred all funds raised for the event into FTK’s bank account and directed all vendor payments (approximately \$33,000) through FTK.
- *The January 20, 2001, Mayor’s Inaugural Parade Reception* – (Pattern 2) [A former Deputy Chief of Staff] again used [a non-profit] to solicit \$83,000 in donations to pay for this reception. The purpose of the event was to celebrate the inauguration of the newly elected President and Vice-President of the United States and was held at the John A. Wilson Building in the District. All donations were deposited in the non-profit’s account and event vendors were then paid using checks written on this account by [a former Deputy Chief of Staff] and others.

Details concerning each of these events are contained in seven narratives at the end of this report as follows: 1) Millennium Washington – Capital Bicentennial; 2) [a non-profit that was used for the April 2000 Economic Conference and Prayer Breakfast]; 3) Republican and Democratic National Conventions; 4) Mayoral Reception for the Congressional Black Caucus; 5) [] Reception [for an Olympic medal winner]; 6) Mayor’s HOOP Corner Program; and 7) For the Kids Foundation and [a non-profit] (which together supported the Mayoral holiday parties for foster children and adults, as well as the Mayoral Inaugural Reception).

These seven narratives are not intended to capture all EOM fundraising activities during the period of time under investigation. However, we believe they are sufficiently representative for purposes of understanding the issues associated with fundraising, partnerships, and the District government.

III. THE PERSPECTIVE OF THE MAYOR AND HIS STAFF

A. The Mayor's Perspective

The EOM explored the possibility of securing appropriated dollars to fund the events. However, the Mayor was impressed by the partnering concept of other jurisdictions, and instructed his staff to use private funds to finance the events. The Mayor acknowledged that his understanding of the legal and ethical implications of his strategy for partnerships was not fully developed, but he was aware that oversight and safeguards were necessary.

1. An Early Attempt to Secure Appropriated Funds

It is important to note that the Mayor and his staff explored the possibility of financing some of the events covered in this report by using appropriated funds. In fact, an effort was made to pay for the Millennium event, at least in part, by requesting that Congress appropriate funds specifically for this purpose. The failure to obtain this appropriation put the Millennium event in jeopardy and forced the Mayor's staff to scramble for alternative sources of money, such as donations from the private sector. There were, however, possibilities other than event-specific appropriations. Funds otherwise appropriated for purposes compatible with the events themselves could have been sought but, to our knowledge, were not. For example, economic development or housing revitalization funds might have been used for the Mayor's Economic Conference if the purpose of the event was determined to be compatible with District government operations, or the Ceremonial Fund may have been used for the reception for Olympic bronze medal winner [] if the event fell within the purposes of this fund.

According to [a former Deputy Chief of Staff], however, the Mayor intended for these events to be funded privately: "his main goal was not to use public funds, which we didn't." ([] Tr. at 20) When interviewed by the OIG, Mayor WILLIAMS confirmed [this individual's] understanding: "[m]y people were generally expected in certain situations to seek dollars from non-profits, seek dollars from businesses to help further these public purpose objectives." (WILLIAMS Tr. at 27)

2. The Mayor's Concept of Partnering

Although Mayor WILLIAMS, at the outset of his administration, intended to harness the financial resources of the District's private sector to work in concert with the District government for public benefit purposes, he conceded during an interview with OIG agents that his understanding of the ethical and legal implications of this strategy was very general:

The guidance that I received was not in any particular form. I just received illustrative and I thought instructive help from other mayors that I visited before I was inaugurated. And I was impressed by the strong public-private partnerships that existed in these communities--communities like Indianapolis; or Detroit; or Portland, Oregon; or Phoenix, Arizona. Subsequent to that time I traveled to Cleveland, Ohio, with Senator [George] Voinovich. And I was impressed by the

civic leadership, the major non-profit entities in that city, business entities in that city, certainly some of them regulated, who were joined in a very strong partnership with the city. And I was simply trying to build that same kind of unity and teamwork here in our city.

(WILLIAMS Tr. at 20) The Mayor conceptualized his authority to raise funds as broad and deeply rooted:

My understanding as it related to fundraising in general and the relationship of 501[(c)(3)s] and the government in particular was that I had the general authority -- almost organic in my office to accept funds on behalf of the District.

* * *

My understanding was that fundraising was permissible . . . and based on my understanding, my strategy was that -- we're the nation's capital, and that the potential targets of opportunity -- if you want to call them that, people who were lucky enough to be asked to contribute to the District, were any companies or non-profit organizations in the entire United States -- entire world for that matter -- but certainly the United States of America and that could include, but was not limited to, nor would it necessarily preclude regulated entities as long as there was full disclosure and a firewall between that fundraising and partnership and the activities of the government. And that is how I proceeded.

Id. at 13 and 19.

3. The Need for Oversight and Safeguards

The Mayor said that he understood the need to avoid political or governmental favoritism for the private sector institutions that supported the partnerships or for any donors who contributed funds to the non-profit partner. He delegated his fundraising authority to his senior staff in the EOM with the understanding that they would ensure that all legal safeguards were met:

[I]n selected areas . . . this authority could be delegated to people like [a former Chief of Staff], who had a financial management background as deputy CFO, who had an administrative background as a doctor of public administration, who was a high official in my administration that I could delegate to [him/her] these responsibilities. And [he/she] would ensure that, one, they were executed; and, two, that there was a proper oversight.

Id. at 13-14.

Although the recollections of Mayor WILLIAMS, [a former Chief of Staff], and [a former Deputy Chief of Staff] differ in many respects, they are all in concert on one point: there was no

quid pro quo or any advantage tendered to a non-profit partner or donor in any of the events. [A former Chief of Staff] and [a former Deputy Chief of Staff] were particularly emphatic on this point, asserting that Mayor WILLIAMS does not do business this way. Rather, as the Mayor stated:

There was going to be transparency and full disclosure so that any monies raised for any activities, those individuals providing those funds would be publicly documented and disclosed at the event, in public announcements . . . [a]nd that finally, in any event that there would be necessarily a firewall between matters of discretion on my part or people acting on my behalf, whether it's regulation, or administrative action, policy promulgation, or procurement or personnel action, that all those actions would be separate and apart from and would be in no way influenced by what was happening in this public-private area.

(WILLIAMS Tr. at 16-17)

B. The Understanding of EOM Staff

Senior EOM staff attempted to further the Mayor's public-private partnership concept without a full understanding of the legal requirements associated with the Mayor's gift acceptance authority or the Standards of Conduct.

1. Failure to Obtain Legal and Ethics Advice

Despite the Mayor's intention to ensure proper oversight and safeguards, interviews with senior EOM officials who were in office from 1999 through 2001 confirm that they did not understand the labyrinth of laws that govern public and private sector fundraising or the applicability of the District government's Standards of Conduct to this hybrid public-private partnership concept. They were insensitive to the appearances of impropriety that often befell District government employees involved in partnership activities. The ability of the EOM to implement the Mayor's objectives became further complicated because some of the private sector partners were, or attempted to become, 501(c)(3) tax-exempt non-profit organizations. In addition, District employees believed, erroneously, that they were allowed to solicit funds in their official capacities on behalf of private organizations.

Neither the Mayor, [a former Chief of Staff], nor anyone else working in the EOM was attuned to the necessity of obtaining appropriate legal and ethics advice as they developed the public-private partnerships. The Mayor expected [this individual] to obtain the appropriate legal or ethics counseling that he needed to carry out the duties of the EOM. Likewise, [this individual] expected [a former Deputy Chief of Staff] to do the same with respect to [his/her] duties as Deputy Chief of Staff for External Affairs. There is no indication that [a former Chief of Staff] solicited such advice, and [a former Deputy Chief of Staff] sought advice only occasionally.

Both [a former Chief of Staff] and [a former Deputy Chief of Staff] stated that the partnerships did not use District funds and they maintained that the EOM did not seek favorable treatment for any of the private sector partners or their donors. [The latter individual] in particular believed it to be part of [his/her] official duties to develop and coordinate partnership activities – to include fundraising, which [he/she] insisted the Mayor and [a former Chief of Staff] were aware of – because these partnerships were generally understood to be activities that were approved and sponsored by the District government. Consequently, they did not perceive a need to obtain legal or ethical advice.

2. The Role of the District’s Ethics Counselor

[The] Ethics Counselor for the District government,¹¹ advised the OIG that annually, from 1999 through 2001, she reminded all agency heads, to include the EOM Chief of Staff, in writing of the requirement that every District government agency appoint an Ethics Counselor.¹² During the course of this investigation, we sought to determine the identity of the EOM’s Ethics Officer for the time period covered by the events addressed in this report. When asked, EOM staff stated that they did not know.¹³

Throughout the period of time that the public-private partnerships operated, EOM employees infrequently sought advice from the OCC or the Office of Campaign Finance (OCF), and they received no ethics training. In addition, we determined that key employees within the EOM did not file a Confidential Statement of Employment and Financial Interests (D.C. Form 35). D.C. Form 35 is designed to disclose financial and employment interests that may create a conflict of interest for District government employees by virtue of the nature of their government employment responsibilities, and would disclose employees’ involvement with non-profit organizations.¹⁴ We note, however, that the agency head must designate those individuals who are required to file D.C. Form 35 pursuant to criteria listed in the DPM, and that employees have no affirmative duty to submit a filing unless so designated.¹⁵ Based on the delineated criteria, presumably all EOM employees involved in fundraising should have been designated and required to submit D.C. Form 35.

C. Guiding Principals for the Appropriate Development of Public-Private Partnerships

Basic legal guidance was available to EOM staff that clearly set forth the need for a “firewall” between government employees and the fundraising activities of private entities.

Ironically, Mayor’s Memorandum 91-11, dated March 5, 1991, to all Deputy Mayors, Department, Agency and Office Heads, from John PAYTON, Acting Corporation Counsel, D.C., entitled, *Restrictions on Accepting Donations From Private Sources and Using Them for*

¹¹ See D.C. Code § 1- 619.3(a); Mayor’s Order 82-136 (July 7, 1982); and DPM § 1811.1.

¹² See DPM § 1811.2.

¹³ It is our understanding that the Acting General Counsel to the Mayor now serves as Ethics Counselor for the EOM.

¹⁴ See DPM § 1813.

¹⁵ See §§ 1813.2 and 1813.5.

Government Activities, provided the kind of advice that was directly applicable to the EOM's relationship with the non-profit partners:

Private entities (such as nonprofit corporations) may, *on their own*, raise and spend funds to support or complement government activities or activities jointly sponsored by government and the private entity, if such funds are not at any point in the possession or control of a District officer, employee or agency.

Id. at 2 (emphasis added).

Unfortunately, no one in the EOM appeared to be aware of this dated, yet valuable, opinion. Aside from a memorandum to [a former Deputy Chief of Staff] from [the Ethics Counselor] dated April 13, 2000, we are aware of only one other occasion where [a former Deputy Chief of Staff] requested legal guidance regarding fundraising. On January 29, 2001, after the first media disclosures of partnership activities, [a former Deputy Chief of Staff] solicited an opinion from Cecily E. COLLIER-MONTGOMERY, Director, Office of Campaign Finance, District of Columbia Board of Elections and Ethics. COLLIER-MONTGOMERY responded with Interpretative Opinion 01-02, dated February 2, 2001, and provided important advice that supplemented the 1991 OCC advice.

The D.C. Campaign Finance Act does not preclude a group of citizens from forming a committee, foundation or corporation, and inviting the support of the Mayor, where *the activity is not coordinated* out of the Office of the Mayor, and the Mayor *does not control the fundraising* operations or the funds contributed.

Id. at 3 (emphasis added).

Together, these opinions provide the two basic principles that should have been followed by all the District government employees charged with the responsibility of implementing the Mayor's vision of the public and private sectors working in concert for civic purpose: 1) that the private partner must raise and spend its own funds to complement government activities; and 2) that District employees cannot coordinate or control the private partner's fundraising or expenditure of funds.

D. The Millennium Event Template for the Executive Office of the Mayor's Use of Non-Profits for Fundraising

The failure to understand or heed legal and ethics advice, coupled with the appeal of non-profits as a fundraising vehicle, resulted in a fundraising pattern by which EOM employees either created private non-profit organizations or exerted inappropriate control over existing non-profit entities. The aggressive operations of the Office of External Affairs resulted in inappropriate practices that involved spending funds for dubious charitable purposes which, in turn, may have created tax problems for donors.

1. The Millennium Event

Without knowledge of or heeding legal or ethics advice, [a former Deputy Chief of Staff] and other EOM employees established “partnerships” in which they either created or commandeered non-profit organizations as fundraising mechanisms in most of the events addressed in this report. Some of these organizations were unincorporated and others lacked tax-exempt status. In early 1999, [a prior] Deputy Chief of Staff [] recognized the value to the WILLIAMS administration of using non-profit organizations as fundraising vehicles – donations were tax-exempt, and many expenses of the events could be paid without the delay occasioned by the District’s procurement process. [He/she] was able to raise approximately \$1.2 million for the District government’s sponsorship of the Millennium celebration by joining forces with private sector corporate entities willing to make tax-exempt donations to a 501(c)(3) non-profit organization.

The Millennium celebration was a large and important undertaking for the new administration and for the Mayor. Consequently, [the prior Deputy Chief of Staff] involved [himself/herself] and EOM staff in raising funds, coordinating the development of events, and controlling such day-to-day functions as approving invoices and paying bills. By the summer of 1999, [the prior Deputy Chief of Staff’s] job title was changed and his responsibilities redirected so that [he/she] could work full-time on the development of the Millennium celebration. [The prior Deputy Chief of Staff] thereafter conveyed to [his/her] successor [] the framework (or template) upon which [the successor] continued to create and use non-profit organizations in supporting civic initiatives of the administration, identifying donors, soliciting funds, hosting events, and controlling expenditures. District government employees performed these functions in their official capacities, from District government facilities, and with District government resources. [The successor] believed [he/she] needed to take an increasingly active role in the non-profit partners’ activities to make the Mayor’s public-private partnership initiative work effectively and expeditiously. As a result, [he/she] fell into an ethical quagmire that [he/she] may have never fully understood.

2. The Benefits of Using Non-Profits to Receive Funds

Section 501(c)(3) of the U.S. Internal Revenue Code exempts from taxation organizations operated for religious, charitable, educational and similar purposes. Donors to 501(c)(3) tax-exempt organizations are allowed to deduct a portion of their donations from their federal income tax.¹⁶ Moreover, tax-exempt non-profit organizations are not required to disclose the identities of their donors or the value of their contributions. Although 501(c)(3) organizations are provided favorable tax benefits, these entities are prohibited from engaging in any political campaign activity on behalf or opposed to any candidate for public office. In addition, the statute prohibits the charitable organizations from operating for the benefit of any private interest, including a political party.¹⁷ Conferring such a private benefit violates the organization’s tax-exempt status and provides grounds for denying or terminating its exemption.

¹⁶ 26 U.S.C. § 170(a)(1) (West 1988 & Supp. 1999).

¹⁷ Contributions for political campaigns are not tax-deductible to the donor.

[Former Deputy Chiefs of Staff] understood that wealthy corporations doing business in the city have an interest in a healthy, viable District government. They correctly believed that these corporate citizens would be inclined to donate to a non-profit entity because of the tax-deductible nature of their donation, because such businesses set aside funds for charitable purposes, and because the partnerships were supporting worthwhile public activities. It also appeared to make good business sense to support the WILLIAMS administration, particularly so for corporations that had business relationships with the District government.

[Former Deputy Chiefs of Staff] further understood that private non-profit organizations would not have to publicly disclose their donor lists or the value of each donation, nor would there be a ceiling on the amount of the contribution as there would be for funds raised for political campaigns or under the Mayor's Constituent Services Fund. For example, donations ranging from \$5,000 to \$25,000 were routinely solicited and willingly provided by District corporations.

An additional benefit to utilizing a private entity to pay for events is the elimination of the cumbersome and slow procurement process required to expend District government funds. This process requires obtaining competitive bids, encumbering funds, and entering into a legal contract. In addition, the procurement process incorporates a procedure to ensure preference rights for LSDBEs.

3. The Contrasting Fundraising Efforts of Two EOM Offices

To understand the difficulties inherent in public-private partnerships, it is helpful to contrast the operations of two components within the EOM – the Office of Partnerships and Resource Development (OPRD) and the Office of External Affairs. Whereas the OPRD related to the non-profit organizations strictly in an official capacity without exerting any undue influence or control over the non-profit, the Office of External Affairs engaged in convoluted relationships with the non-profit partners that made a variety of ethical improprieties all but unavoidable.

The OPRD sought out pre-existing federal and other grant opportunities and applied for funding where appropriate to District government functions. It also pursued funding opportunities for the District government from foundations and other non-profit entities that relied on the non-profit's own organizational structure to provide funding for governmental purposes. In so doing, employees of the OPRD operated solely in their official capacities performing a legitimate governmental function.

The Office of External Affairs operated far more aggressively. In some instances it utilized a non-profit organization for the purpose of augmenting the Mayor's Ceremonial Fund or the Constituent Services Fund in order to sponsor the Mayor's special events. In other instances it attempted to create tax-exempt non-profits but was not successful in meeting all of the necessary legal requirements, creating corporate tax problems in the process. As a result, the actions of the Office of External Affairs created tax problems for donors who responded to solicitations from institutions that were not legally recognized as 501(c)(3) entities. In other instances it used existing non-profit organizations to raise money specifically for partnership events. Although the solicitations identified the specific partnership event for which funds were requested, funds

were frequently used for other partnership events, some with dubious charitable purposes, such as the Mayor's Holiday Reception.

In several instances District government officials became officers of non-profit organizations and gained signatory authority for the organization's bank account, and staff from the EOM - while acting in their official capacities, on official time, and using District government resources - engaged in donor solicitation on behalf of the private non-profit organization. They then coordinated the development of the "private" events, albeit with a perceived public purpose, and performed accounting functions to include depositing donations and paying expenditures from event accounts. Serving as a District government official as well as an officer of a private entity with business dealings with the District government can lead to the violations of criminal conflict of interest statutes as well as the District's Standards of Conduct. In each instance where we found conduct that might constitute a conflict of interest by District government employees, a referral is being made to the enforcement agency with appropriate jurisdiction.

IV. THE LEGAL FRAMEWORK

A. Methods of Funding Events

The purpose of this section is two-fold: 1) to summarize the legal findings concerning the methods used by the Mayor and his staff to fund each of the events described in the narratives that follow; and 2) to suggest ways in which government fundraising can be accomplished according to law.

1. Appropriated vs. Donated Funds

Financing official events may be achieved either by the use of appropriated funds or through donations that the Mayor is legally authorized to solicit and accept. The former method – appropriated funding - is permissible pursuant to the Mayor’s statutory authority to expend appropriated funds related to his official capacity within specific amounts and for purposes that are consistent with the expenditure of appropriated funds. D.C. Code § 1-356(a) (1999 Repl.). The Mayor may use funds appropriated specifically for the activity/event within a Congressional appropriations act, or funds generally appropriated for another purpose that is compatible with the event, or funds allotted to an existing statutory fund (such as the Ceremonial Fund).

The latter financing method – donations - is permissible only through: 1) the Mayor’s Constituent Services Fund;¹⁸ 2) the Mayor’s gift acceptance authority as provided in annual appropriations acts; 3) private entities (e.g., non-profit corporations), which may raise and spend funds (independently of the government) to support government activities and programs; and 4) campaign funds, which may be raised and used only for financing political campaign.¹⁹

It should be noted that EOM employees interviewed indicated that they believed that the events they produced were the official business of the District government, i.e., the purpose of the event was to support the ceremonial functions of the Mayor, to further economic revitalization of the city, to honor or bolster morale of members of the city government, etc. Despite what they may have believed, EOM employees did not comply with the requirements of any of the above fundraising methods to support the events that are the subject of this report. In fact, it is often difficult to determine whether there ever was a consensus or clear understanding among the Mayor [, his former Chief of Staff, former Deputy Chiefs of Staff,] and other subordinate employees as to whether they relied on the Mayor’s authority to accept gifts as provided by Congress, or on “partnering” - the use of an independent entity such as a non-profit organization. The narratives suggest that [former Deputy Chiefs of Staff] used a legally impermissible system that combined aspects of both - the appearance of partnering justified by the Mayor’s gift acceptance authority.

¹⁸ The Constituent Services Fund is unique in that the Mayor may use un-expended campaign funds, funds donated by himself or others to fund “citizen-service” events/programs, or funds solicited by government employees outside of their normal duty hours. See discussion, *infra*, for further information regarding this fund.

¹⁹ We did not find that campaign funds were raised or used to fund any of the events described in this report.

In failing to follow the appropriate lines of authority, many of the EOM employees ventured so far beyond the boundaries of legitimate government business that their actions were often outside the scope of employment, violated District laws and ethical standards, created the risk of civil liability for themselves and the District, and created the appearance of impropriety by engaging in activities that aroused suspicions of malfeasance and corruption.

2. Appropriated Funds

a. The Annual Congressional Appropriations Act for the District of Columbia

Because of the historic federal influence on the District of Columbia, its laws with respect to donations to the government are unlike the laws of any other city or state. The drafters of the Constitution prohibited government officials from accepting “any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State” without the consent of Congress. U.S. Const. art. I. § 9. cl. 8. Ever since this language was created, the United States Congress has exhibited a fundamental and abiding concern regarding the acceptance of gifts by public officials. This concern has engendered numerous laws to prevent public officials from using their office capriciously or for private gain. Much of this legislation was created with a special focus on officials of both the federal and District of Columbia governments:

- The Anti-Deficiency Act, 31 U.S.C.A. § 1341 (West 1983 & Supp. 1999), is a general prohibition against the acceptance, obligation, or expenditure of funds in a manner that is not specified by Congress in the annual appropriations acts for the federal government and the District of Columbia. One purpose of this legislation is to ensure that federal agencies and the District government do not override the intent of Congress to limit the size or emphasis of specific government functions by augmenting the funding limits. Until 1991, when Congress granted gift acceptance authority to many federal agencies and the District of Columbia, this act effectively banned the acceptance of gifts to the government for official purposes. The District’s gift acceptance authority is set forth in its appropriations acts. It permits the Mayor to augment the District’s budget “to carry out its authorized functions or duties,” with the proviso that “[e]ach entity of the District of Columbia government shall keep accurate and detailed records of the acceptance and use of any gift or donation . . . and shall make such records available for audit and public inspection.” The disclosure requirement serves two purposes: (1) Congress is kept informed of the nature and amount of any budget augmentation; and (2) the identity of the donor is made a matter of public record.
- The federal bribery statute, 18 U.S.C.A. § 201 (West 2000), makes the acceptance of a gift in return for an official act (*quid pro quo*) as well as some gratuities a criminal violation.
- Applicable to federal and District employees, 18 U.S.C.A. § 209 (West 2000), prohibits the acceptance of any supplement or contribution from a third party to the salary paid for services rendered to and paid for by the government.

b. The Ceremonial Fund

The Ceremonial Fund is one way in which the Mayor might have supported some of the events described in this report by using appropriated funds. However, available funds are not only limited, but also must be expended in accordance with procurement rules. D.C. Code § 1-355 authorizes an amount not to exceed \$25,000 in any fiscal year for expenses the Mayor deems necessary for the reception and entertainment of federal, state, local, and foreign government officials visiting the District of Columbia or when the Mayor visits another government jurisdiction in his official capacity. *Id.* § 1-355(a) (1999 Repl.). The statute further allows the Mayor to use the fund for “dignitaries” or “eminent persons” visiting or returning to the District. *Id.* A “dignitary” or “eminent person” is broadly defined as a nongovernmental official “who is of high rank or attainment in his or her occupation or who has performed extraordinary service to, or has significantly contributed to the welfare of, the citizens of the District of Columbia.” *Id.* § 1-355(c).

Any amount appropriated and expended from this fund shall be accounted for and subject to audit. *Id.* § 1-355(d). Additionally, the Secretary of the District of Columbia is charged with issuing an annual report, documenting each disbursement made by the Ceremonial Fund. *Id.* § 1-355(e). The Secretary’s report is a public document. *Id.*

The D.C. Council is also allotted a Ceremonial Fund, which is subject to the same restrictions as that of the Mayor. *Id.* at § 1-355(b).

3. Donated Funds

a. The Constituent Services Fund

The Mayor is authorized to expend funds from a “citizen-service” program, so long as he does not expend more than \$40,000 from the fund in a calendar year. D.C. Code § 1-1443(a) (1999 Repl.). The Constituent Services Fund is a unique funding source in that its enabling statute specifically authorizes District government employees to engage in fundraising activities for the fund outside of their normal duty hours. *Id.* § 1-1443(e).

The Mayor may fund the citizen-service program with unexpended campaign funds, monetary contributions, or personalty. 3 DCMR § 3014.5. A person may not contribute more than \$400 to the fund within a calendar year, except that the Mayor may contribute more than this amount to his/her own citizen-service program. D.C. Code § 1-1443(a) (1999 Repl.). All contributions to and expenditures from the fund must be reported quarterly to the Director of Campaign Finance. *Id.* § 1-1443(d).

The citizen-service program “encompass[es] any activity or program which provides services to the residents of the District of Columbia; and promotes their general welfare, including, but not limited to, charitable, scientific, educational, medical or recreational purposes.” 3 DCMR § 3014.1. Because this fund appears to be a plausible vehicle for funding, in whole or in conjunction with a public-private venture, some EOM employees recommended its use to the Mayor and [a former Chief of Staff].

However, there were several drawbacks to the use of this fund. [The Mayor's wife] who serves as the Treasurer of the Mayor's Constituent Services Fund, advised that she does not construe the statute so broadly as to extend to the receptions and other social/ceremonial functions that were the subject of this investigation. In her interview with OIG investigators, [the Mayor's wife] advised that she narrowly limited the purpose of the Mayor's Constituent Service Fund to providing necessary services to District citizens in financial need (e.g. assistance with utility bills), and she specifically ruled out the use of the fund for social functions such as "Christmas parties."²⁰ ([] Tr. at 33) Another limitation on the fund is that it may not be used in connection with campaign activities. D.C. Code § 1-1443(a). Finally, the fund may only be used to benefit residents of the District. 3 DCMR § 3014.1.

The statute authorizes members of the D.C. Council to establish citizen-service programs as well. D.C. Code § 1-1443(a). Similar to the Ceremonial Fund, the statute subjects Council members to the same restrictions on use of the Constituent Services Fund as those placed upon the Mayor.

b. Appropriations Act Gift Acceptance Authority

(1) Statutory Limitations on Mayoral Authority

As noted above, the expenditure or obligation by a District government official or employee of funds exceeding the amount available in a congressional appropriation can constitute a violation of the federal Anti-Deficiency Act. 31 U.S.C.A. § 1341. Accordingly, the District government was unable to use donations of money to augment the funds appropriated for its budget by Congress prior to the creation of the Mayor's gift acceptance authority.

Since 1992, however, Congressional appropriations acts for the District have expressly authorized the Mayor to approve the acceptance and use of gifts or donations for "authorized functions or duties." *See, e.g.*, District of Columbia Appropriations Act, 2001, Pub. L. No. 106-522, § 118, 114 Stat. 2440, 2460 (2000). The requirement that gifts be used only for an official purpose, i.e., for purchases of items like library books or recreational equipment normally paid for by using appropriated funds, is one of the most important conditions that Congress placed on the gift acceptance authority. The category of appropriated funds that most closely approximates "authorized functions or duties" represented by the events covered in this report is the Ceremonial Fund, which is limited by Congress to \$25,000. Because the reception and entertainment of government officials and eminent persons is authorized by statute, under appropriate circumstances it may be considered to be an "authorized function or duty" of the EOM.²¹ Therefore, this fund could have been augmented by donations through the Mayor's gift acceptance authority.

In addition to the Mayor's formal approval for the acceptance of a donation, the Appropriations Act requires that "the District of Columbia government shall keep accurate and detailed records of the acceptance and use of any gift or donation . . . and shall make such records available for

²⁰ This interpretation is very conservative. As long as other conditions have been met, the Constituent Services Fund has been used for events such as Ward picnics and parties for needy children.

²¹ The determination of what constitutes an "official function" should be confirmed through consultation with the OCC.

audit and public inspection.” *Id.* Finally, District law requires that “[a]ll money received by any agency, officer, or employee of the District in its or his official capacity shall belong to the District government and shall be paid promptly to the Mayor for deposit in the appropriate fund.” D.C. Code § 47-130 (Supp. 1999).

(2) Delegation of Authority to Other Government Employees to Solicit Funds

The OCC has opined that the express statutory language allowing the Mayor to accept gifts includes the implied authority to *solicit* donations for authorized governmental purposes. OCC Opinion AL-01-001, January 4, 2001, at 2. Furthermore, OCC has determined that the Mayor’s subordinates may engage in fundraising in their official capacities only through statutory authority or by delegation of the Mayor’s authority via Mayoral Order. OCC Opinion AL-01-062, January 26, 2001, at 4 (“[A]bsent a statute, generally a District government employee may not engage in fundraising as an official activity.”). Accordingly, the Mayor could have delegated his authority to solicit and accept donations to EOM members and other District government employees.²² The OCC has advised that any such delegation of authority should be in writing, except in exigent situations. OCC Opinion AL-01-062 at 3.

During the period of time covered by this investigation, neither the explicit authority to accept donations nor the implied authority to solicit donations was delegated in writing by the Mayor to anyone else in the District government. Mayor WILLIAMS advised that he informally and orally delegated his gift acceptance authority to [] his former Chief of Staff, and that [individual] informally sub-delegated the authority to [a former Deputy Chief of Staff] and others. (*See* WILLIAMS Tr. at 14) Further, most of the fundraising activities detailed in this report by District employees were conducted by [a former Deputy Chief of Staff] and [his/her] subordinates in the EOM, for whom there was no formal sub-delegation of authority other than that implicit in the Mayor’s knowledge that [a former Deputy Chief of Staff] and [his/her] staff were raising funds for partnership events.

(3) Receipt of Donations by Government Employees

Any money received by the Mayor from private donations under his gift acceptance authority belongs to the District government, must be promptly deposited into an appropriate fund, and may be spent only in amounts and for purposes specified in an appropriations act. *See* 31 U.S.C.A. § 1341(a)(1)(A) (the Anti-Deficiency Act); D.C. Code § 47-105 (1997 Repl.) (making federal Anti-Deficiency Act applicable to D.C. government); and D.C. Code § 47-130 (1997 Repl. & Supp. 1999) (requiring deposit of government funds into appropriate government account). In other words, District employees must be very careful in the receipt and expenditure of private donations – such donations may supplement or augment appropriated funds, but only for authorized District government programs, functions and duties, and only when properly accounted for and disclosed to the public.

²² *See* D.C. Code § 1-242(6) (1999 Repl.) (permitting the Mayor, subject to two exceptions not applicable here, to delegate his functions to any District employee or agency subordinate to the EOM, and further permitting these employees to sub-delegate these functions to their subordinates).

The EOM offered several theories to justify their fundraising efforts, including the use of independent non-profit entities and partnerships. However, we have concluded that the only legal authority available to solicit funds for official purposes in the amounts and by the methods used by the EOM staff is the Mayor's gift acceptance authority set forth in the annual Appropriations Acts for the District of Columbia.

In all of the events described in this report where EOM employees engaged in fundraising activities, in none of them were the donations accounted for or publicly disclosed. This failure to follow federal and District law governing donations was not a minor procedural oversight. The requirements of the appropriations acts establish necessary safeguards not only against violations of the anti-deficiency statutes, but also campaign finance law,²³ tax law, procurement regulations, D.C. Code prohibitions against misrepresentation, theft, and embezzlement, conflict of interest, and the District's Standards of Conduct as set forth in the District Personnel Manual (DPM).

District employees who accept donations of money must ensure that such donations are "true gifts" and that no special treatment or preference is expected or given in return for the gift. Mayor's Mem. 91-11, March 5, 1991, at 2. OCC has opined that if the acceptance of a donation leads to some action by the District on behalf of the private party, the transaction will not be treated as a gift but as a contract and, as such governed by the D.C. Procurement Practices Act of 1985" *Id.* (citations omitted). Finally, the Standards of Conduct prohibit District government employees from engaging in any action that gives or appears to give preferential treatment to any person and that would, as a consequence, affect adversely the confidence of the public in the integrity of government. DPM §§ 1803.1(b) and (f).

The facts of this investigation have been discussed with the USAO and this report will be forwarded to that office for its review. In addition, our investigation revealed that members of the EOM violated the procedures set in place by Congress in the Appropriations Act to limit and control fundraising by the Mayor. Whether the violation of Section 118 of the D.C. Appropriations Act, 2001 constitutes a violation of the federal Anti-Deficiency Act as well is a matter to be referred to the Office of the Chief Financial Officer (OCFO) and the OCC.

(4) Fundraising by Government Employees – Personal and Official Gifts

(a) The District's Failure to Update the Law Governing Gift Acceptance

Prior to the Fiscal Year 1992 Appropriations Act, District government employees could only solicit donations in their private capacities because they had no legal authority to engage in government fundraising to augment Congressional appropriations. At that time, the District government adopted the ethical standards for federal employees contained within federal law, the Ethics in Government Act of 1978, Pub. L. No. 95-521, 92 Stat. 1824 (codified as amended in scattered sections of Titles 2, 5, 18, 28, and 39 U.S.C.A.). Known as the "old code," the 1978 Act was in effect prior to the time that Congress permitted the acceptance of official gifts to

²³ See D.C. Law 14-16, Campaign Finance Amendment Act of 2001, effective October 13, 2001, which prohibits the use of District government resources for campaign-related activities.

either federal agencies or the District. In addition to official gifts, the old code banned most gifts to government employees, including gifts from “improper sources,” such as those having or seeking business with the employee’s agency, or regulated by the agency.²⁴

When Congress relaxed its anti-augmentation rules by permitting the District and many federal agencies to accept gifts for official purposes, a new federal ethics code was issued by the Office of Government Ethics. One purpose of the new rules was to centralize and clarify ethical standards for all government agencies by codifying the separate and often confusing “common law” ethics standards previously in place. The new code also differentiates between gifts that are “personal” to the employee and “official” gifts to a government agency. Employees are forbidden to accept gifts in their personal capacity from all “prohibited sources,” such as those who are doing business, seeking to do business with, or regulated by the agency. An employee may participate in fundraising in an official capacity “if, in accordance with a statute, Executive order, regulation or otherwise as determined by the agency, he is authorized to engage in the fundraising activity as part of his official duties, using his official title, position, and authority.” 5 CFR § 2635.808(b) (2000). In the case of official gifts, internal agency policy prescribes a review procedure to determine whether there is a conflict of interest or the appearance of impropriety.

This new ethics code, subsequently codified at 5 C.F.R. § 2635 (2000), was never made applicable to the District government. As a result, the District’s ethics rules were never updated to reflect the distinction between fundraising within an employee’s official capacity versus fundraising in the employee’s private capacity. The District’s current Standards of Employee Conduct were created in 1978 pursuant to the District of Columbia Home Rule Act (codified at D.C. Code §§ 1-242 to 1-299.7 (1999 Repl.)), which required that “[p]ersonnel legislation enacted by Congress prior to or after January 2, 1975, including . . . legislation relating to . . . discipline . . . shall continue to be applicable until such time as the Council shall, pursuant to this section, provide for coverage under a District government merit system.” *Id.* § 1-242(3).

When Congress granted gift acceptance authority to the District and many federal agencies, the federal agencies immediately promulgated internal policy that delineated the manner in which gift acceptance and solicitation would be regulated. No similar attempt was made in the District until January 2002, when Mayor WILLIAMS issued Mayor’s Order 2002-2, which acknowledges that “[t]he only method authorized by Congress to augment the District’s budget by use of contributed private resources is pursuant to section 115 of the FY 2002 Appropriations Act (and any substantially identical successor law).” *Id.* at 2. The Order creates a new office “to enforce mandatory procedures for the solicitation, receipt and use of all donations made to the District government, including subordinate and independent agencies, in order to ensure that . . . donations are properly solicited, processed, used and accounted for.” *Id.*

²⁴ Within two weeks of passing the Ethics in Government Act of 1978, the Inspector General Act was passed to establish independent investigators charged with discovering and reporting on waste, fraud, abuse, and employee misconduct.

**(b) Problems in Applying DPM § 1803.2 to the Mayor’s Gift
Acceptance Authority**

As noted above, DPM § 1803.2 embodies only what is now the federal standard for gift acceptance in an employee’s personal capacity. Because the DPM fails to state that it applies only to the acceptance of gifts in a personal capacity, it is unclear whether § 1803.2 is applicable to employees acting in their official capacities as well. [The] District’s Ethics Counselor, has recently opined that DPM § 1803.2 applies to an employee’s fundraising activities only when conducted within an employee’s private capacity. (*See D.C. City Council Comm. on Gov’t Operations Pub. Oversight Hr’g*, Dec. 3, 2001, Tr. at 62-63)

OCC and OCF opinions have addressed factual scenarios where government fundraising was conducted by government employees on behalf of non-profit entities. For example, in a January 26, 2001, opinion, OCC concluded that [a former Deputy Chief of Staff] violated the Standards of Conduct by soliciting for a non-profit corporation on government time. OCC Opinion AL-01-062 at 3. (“Because the funds used to pay for the Inaugural event were donated to [a non-profit] and not the District government, the activity of soliciting funds for the event at the Wilson building was a private fundraising by the 501(c)(3) corporation.”). OCF subsequently concurred with the OCC opinion and incorporated [the employee’s] solicitation for the Mayor’s Holiday Reception in its findings. “In the Matter of [], Deputy Chief of Staff, Office of the Mayor, PI 2001-101”, November 7, 2001, at 10 (“[N]otwithstanding [Deputy Chief of Staff’s] belief that the conduct was within [the Deputy Chief of Staff’s] authority, [he/she] violated the Standards of Conduct because soliciting funds for a private non-profit organization is not government business.”). We note that under federal ethics standards, employee solicitation on behalf of private entities places an employee in his/her private capacity. *See* 5 CFR § 2635.808(c), Examples 1-3.

For these reasons we considered the solicitation of funds *on behalf of a private entity*, such as FTK, [two non-profits,] MWCBC, or [a non-profit] as clearly private activities, and we applied DPM § 1803.2 accordingly.

In cases where solicitation was *on behalf of the District government* but did not involve an intermediary non-profit entity, we did not apply Section 1803.2 when the gift acceptance process failed to meet legal requirements because the application of law to this scenario is unclear. These EOM events and activities are the CBC Mayoral Reception, the [Olympic medal winner’s] Reception, and the Mayor’s HOOP Corner. To our knowledge, this issue has yet to be addressed federally, by OCC, or by OCF.

As explained in several of the narratives, it may be argued that a District government employee’s failure to adhere to requisite legal constraints – such as accounting for contributions received – while soliciting donations on behalf of the District Government places the employee into his/her private capacity, *even if the employee is not conducting fundraising on behalf of or in conjunction with a non-profit entity*. If so, then a number of Standards of Conduct in the District Personnel Manual apply to the employee’s actions.

For example, in the case of the [Olympic medal winner's] Reception, the EOM's activity in soliciting donations for the event was not a private fundraising by a non-profit corporation. Rather, the solicitations were done solely by District government employees, on government time, and for purposes related to the Mayor's ceremonial authority. Because one of the donors to the event was subject to District government regulations as a foreign non-profit at the time of the solicitation, a former government employee may have violated DPM § 1803.2 by soliciting a gift from a corporation that is regulated by the District government. Therefore, the determination as to whether the employee is in [his/her] private capacity when [he/she] made the solicitation is crucial.

Similarly, if this interpretation is applied, other DPM provisions may be implicated, such as DPM §1804.1(b), which prohibits the use of government time/resources for private activities, and Section 1804.1(i), which forbids government employees from “[e]ngaging in any outside employment, private business activity, or other interest which is in violation of federal or District law.”

However, it is not within our jurisdiction to render a legal opinion on this issue. Accordingly, we will forward this issue to OCF and OCC for a final determination.

4. Campaign Funds

The final method, or authority, for the Mayor to conduct fundraising is through the legal regulatory provisions governing campaign funding. The Mayor may solicit contributions in support of his candidacy for amounts not exceeding \$2,000 per contribution, to be used solely for the purpose of financing, directly or indirectly, his election campaign. Fundraising for a political campaign is carefully regulated and monitored to ensure that no individual or corporate entity can make large undisclosed donations in an effort to receive favorable treatment from an elected official. Accordingly, the identities of all contributors and amounts of donations must be reported to the OCF and made public. D.C. Code § 1-1416 (1999 Repl.); 3 DCMR §§ 3002.2 - 3011.2.

This investigation focused on the funding of civic/ceremonial events and did not produce evidence that the Mayor used his authority to solicit or accept campaign funds for a purpose other than financing his election campaign, either directly or indirectly, in the context of these events. Nor did we find that the donations/solicitations examined in this investigation funded events that were primarily political in nature, i.e., used to endorse any candidate, to make donations to a candidate's campaign, or to distribute statements supporting or opposing a political candidate. That said, it must be noted that the unregulated practice of soliciting unlimited amounts of money for ceremonial events from undisclosed donors, many of which compete for business with the city, created the very appearance of impropriety that campaign finance restrictions seek to minimize by limiting donation dollar amounts, requiring disclosure of donors' identities, and making this information publicly available.

B. The Need for Rules Governing the Solicitation and Receipt of Gifts to the District Government

Without minimizing the egregious mistakes of [a former Deputy Chief of Staff] and others, we believe there was a failure on the part of the Executive and Legislative branches of the District government to create laws or regulations to accommodate the federal legislation that, for more than ten years, enabled the Mayor to augment the city's budget by accepting gifts. The issuance of clarifying rules and policy at that time might have avoided much of the confusion and misconduct noted in this report.

Federal agencies have created stringent policies outlining the type of scrutiny that is a prerequisite for obtaining the agency head's approval of a donation and its use. The federal gift review process generally includes the following issues: (1) whether the gift is appropriate for use, i.e., whether the use is for official use; (2) whether an employee solicited the gift or encouraged its solicitation and, if so, whether the solicitation had the prior approval of the agency head; and (3) whether acceptance of the gift is appropriate and advisable from the perspective of conflict of interest and government ethics guidelines, including whether acceptance of the gift would create the appearance of impropriety. In essence, this scrutiny of official gifts is the counterpart to the "prohibited source" rule that is applied to gifts solicited/accepted in a personal capacity.

We believe that the Mayor's approval must consist of a formal process designed to provide separate types of legal review of the requirements surrounding the solicitation and acceptance of gifts on behalf of the District. The acceptance of gifts given *sua sponte* and the solicitation of money by government officials are two discrete functions, with the latter raising several ethical issues, such as exerting undue pressure, promising or implying special treatment, or ignoring a conflict of interest. This risk is not lessened by the fact that most donors who are likely to contribute to the District government are those who conduct business with or are regulated by the District government. Again, the federal model is instructive. Solicitation is not common among federal agencies; indeed, some federal agencies with gift acceptance authority prohibit solicitation altogether,²⁵ some limit solicitation to charitable causes and disaster relief, and others limit the authority to a single person.²⁶ Accordingly, we believe that higher standard of scrutiny is required for solicitations conducted by District officials.

1. Standards of Conduct Implications

In March 1991, prior to the Congressional grant of gift acceptance authority to the Mayor, OCC set forth the general rule for government "partnering" with a private entity to fund a government event/activity: the private entity may raise and spend the funds for the event/activity "on its own" and "without transferring funds to government control." Mayor's Mem. 91-11, March 5,

²⁵ See, e.g., 44 CFR § 362.3 (2000) (forbidding solicitation by FEMA employees).

²⁶ See, e.g., Department of Justice Order 2400.2, September 2, 1997. The Department of Justice has never approved a solicitation.

1991, at 2. As stated in the above section, government employees may only solicit donations on behalf of private non-profits when they do so in their private capacities.

When District government employees engage in solicitation on behalf of private groups as part of their government duties, a number of Standards of Conduct may be contravened. Although the purpose and activities of the private entity/non-profit may appear to be parallel with the interests of the District government, as OCC has stated, “there is always the potential for some conflict or divergence, and the interests of such a private organization are not necessarily consistent with the public duties of those who work and serve in the District government.” OCC Opinion AL-01-062, at 4 (citation omitted).

For example, government employees are prohibited from using their public offices for private gain. DPM § 1803.1(a). They may not use government time or resources for nonofficial business. *Id.* § 1804.1(b). Finally, they may not direct their subordinates to perform “personal services” for them during government working hours. *Id.* § 1804.1(c).

Partnership relationships between the District government and any corporate entity must also be viewed in the context of their appearance of propriety. District employees must avoid any action that might result in, or create the appearance of, affecting adversely the public’s confidence in the integrity of government operations. D.C. Code § 1-619.1(a) (1999 Repl.) (requiring strict adherence to ethical conduct in the performance of official duties and avoidance of any official action that adversely affects the public’s confidence in government integrity); *see also* DPM § 1800.1 (requiring District employees to avoid taking any official action which adversely affects the public’s confidence in governmental integrity) and § 1803.1(f) (same).

In addition to this objective standard mandating government integrity, there is also a subjective component - the court of public opinion - where the relationship between District employees and the business community is further measured. Notwithstanding the Mayor’s acknowledgement of the need for a “firewall” between government and private fundraising, EOM employees generally had no understanding of this appearance problem as it affected the public-private partnership activities discussed herein and as evidenced by the many instances of solicitation of thousands of dollars from District government contractors without publicly disclosing the source of the money, its amount, or its use.

[Tax Implications Section omitted]

V. FINDINGS AND RECOMMENDATIONS

Our investigation has resulted in numerous findings. Some are general in nature and do not necessitate corrective action and others are more specific and call for corresponding recommendations. We address each finding in this section of the report, and recommend corrective action to responsible District and federal government officials where necessary. We have elected to identify in this section only senior EOM managers and executive staff who were in the highest positions of trust and responsibility.

A. General Findings

General Finding #1: We did not uncover evidence that the EOM's fundraising was a campaign of institutional corruption with its purpose or effect being the personal enrichment of the Mayor or EOM employees. We found facts suggesting the possibility of criminal violations in only a few instances, and these matters have been referred to the United States Attorney's Office for evaluation.

General Finding #2: With one exception noted in the Specific Findings Section, we did not identify evidence suggesting that an illegal benefit (*quid pro quo*) or direct competitive advantage was conferred on any D.C. government contractor or regulated business as a result of its support for, or participation in, EOM fundraising or partnership activities. We referred information regarding one questionable exception to the United States Attorney's Office for evaluation.

General Finding #3: Mayor WILLIAMS and [the] then EOM Chief of Staff [] did not properly supervise and manage EOM employees to ensure that fundraising was conducted in accordance with legal standards. Because critical witnesses provided contradictory statements, it is difficult to determine the extent of the Mayor's knowledge of the fundraising activities of his staff. Nevertheless, Mayor WILLIAMS is accountable and responsible for the conduct of EOM employees under his immediate supervision. In interviews, the Mayor and [a former Chief of Staff] conceded responsibility for misconduct and mistakes made by EOM employees involved in the fundraising activities examined during the course of this investigation.

General Finding #4: We did not find evidence that government employees endorsed a candidate or engaged in campaign fundraising at any of the events described in this report. However, many of the events appear to be little more than social functions hosted by the Mayor for prominent political, business, and community leaders as well as government officials. As such, these events may be interpreted as being beneficial to the Mayor's candidacy for re-election. In addition, an adverse appearance was created because solicitation by District officials of the magnitude and frequency seen here did not result in the expenditure of government funds to directly benefit District of Columbia citizens in the form of government services and programs. Finally, the appearance that the events had a political purpose could weaken the public's confidence in the integrity of the government in violation of the Standards of Conduct.

General Finding #5: The EOM offered several theories to justify their fundraising efforts, including the use of independent non-profit entities and partnerships. However, we have

concluded that the only legal authority available to solicit funds for official purposes in the amounts and by the methods used by the EOM staff is the Mayor's gift acceptance authority set forth in the annual Appropriations Acts for the District of Columbia. See Charts entitled "Acceptable Official Fundraising Methods" and "EOM Fundraising Patterns." These charts illustrate fundraising methods that meet legal requirements as opposed to those utilized by the EOM.

General Finding #6: Because donors were solicited directly by EOM staff, the staff should have utilized the Mayor's delegated gift acceptance authority under the District's annual Appropriations Act to augment the level of District government appropriations to finance ceremonial events. However, the EOM did not adhere to the accounting and disclosure requirements of the Appropriations Act, which are preconditions to the acceptance of gifts to the District government. These requirements provide essential safeguards which accomplish the following: (1) prevent misuse of donations; and (2) inform Congress of the manner and the extent by which the budget was augmented. In none of the events were official records kept documenting the receipt and use of these donations. In none of the events were records made of these funds to allow for audit and public inspection.

General Finding #7: The failure to comply with the conditions set forth by Congress to augment the District's annual budget may constitute a violation of the federal Anti-Deficiency Act. We referred this issue to the Chief Financial Officer and the Corporation Counsel to make a determination whether an Anti-Deficiency Act violation occurred.

General Finding #8: None of the \$1.5 million raised for the District government was ever placed into the District Treasury where it would accrue interest and be properly accounted for. Instead, the EOM either: (1) instructed donors to pay event vendors directly; or 2) used the accounts of non-profit organizations to deposit donors' checks and pay event vendors. These practices bypassed donor disclosure requirements and avoided the safeguards inherent in the procurement process, such as competitive bidding and preferences for small, local and disadvantaged businesses.

General Finding #9 Mayor WILLIAMS and Council member BRAZIL failed to comply with the conditions for gift acceptance in the Appropriations Act because they solicited substantial monetary contributions for the Republican National Convention/Democratic National Convention Mayoral Events without ensuring that mandatory accounting and public accounting procedures were followed. We are referring this matter to the Office of Campaign Finance to determine whether Mayor WILLIAMS and Council member BRAZIL violated the Standards of Conduct. This finding is discussed in the Specific Findings Section of this report.

General Finding #10: There is an appearance of impropriety in violation of the Standards of Conduct based on the EOM's practice of soliciting large sums of money and other items of value from donors that had business relationships with the District government and/or that were contributors to the Mayor's re-election campaign where accounting and public disclosure safeguards were not addressed.

General Finding #11: Government employees involved in the subject fundraising activities stated that they were motivated by a desire to engage the private sector in supporting the WILLIAMS administration's efforts to revitalize the city. The government employees who engaged in fundraising for these events stated that they believed that they were doing so in their official capacities and for purely government interests.

General Finding #12: Irrespective of the stated intentions of the involved government employees, our investigation revealed that EOM employees solicited and accepted donations on behalf of private non-profit organizations from their government offices, during government working hours, and utilizing government resources. This practice violated a Standards of Conduct provision prohibiting the entanglement of private interests with government activities.

General Finding #13: Not only did government employees fundraise on behalf of existing private non-profit organizations (non-profits), we found that employees of the EOM's Office of External Affairs created their own non-profits, and appointed themselves officers and members of the boards of directors of these entities. Thereafter, they proceeded to raise funds and control the income of the non-profit as well as its expenditures. Funds were moved improperly from one non-profit to another without the knowledge or approval of the responsible officials of the non-profit. This activity violated the Standards of Conduct in that it created the appearance of using public office for private gain.

General Finding #14: EOM employees who controlled non-profit fundraising and event finances demonstrated ill-regard for prudent business management. The EOM's failure to resolve financial obligations with vendors, who provided services and/or supplies for the events, impacted negatively on the public's confidence in the District government.

General Finding #15: The nature and variety of the various fundraising methods described in this report occurred during a period of time when the EOM did not have an Ethics Officer and EOM employees did not receive ethics training or guidance on government fundraising. The Mayor informally delegated his solicitation and gift acceptance authority to EOM staff, rather than setting forth the parameters and limitations of this authority in writing in the form of a Mayor's Order. EOM staff, then, were left to their own devices to raise funds from the private sector to finance civic activities. They seldom solicited advice from the Office of the Corporation Counsel or the Office of Campaign Finance. The Standards of Conduct did not provide adequate guidance to District government employees involved in fundraising, and the EOM maintained no other written policy or instructions on fundraising for employees to reference for guidance.

General Finding #16: The weight of the evidence suggests that government employees did not, in most cases, exert undue pressure upon donors who were solicited for monetary contributions. However, two donors did report to us that they felt pressured by the tactics employed by two government employees. These two exceptions are addressed in the Specific Findings Section.

B. General Recommendations and Referrals

Our recommendations and referrals may be summarized as follows:

General Recommendation #1: We recommend that the Mayor work with the D.C. Council to revise the Standards of Conduct in the interest of establishing clear and definitive regulations regarding the parameters of official gift acceptance for District government personnel.

General Recommendation #2: To ensure accountability and disclosure of government donations, we recommend that the Director of the Office of Partnerships and Grants Development, EOM, closely scrutinize all applications for gift approval and make certain that all monetary donations are promptly deposited into the District Treasury.

General Recommendation #3: With regard to Mayor's Order 2002-2 and Mayor's Memorandum 2002-1, we recommend that the Mayor consider several revisions to the policy set forth in each document pertaining to his gift acceptance authority.

General Recommendation #4: We recommend that the OCC and the OCFO consider our findings regarding possible violations of the Anti-Deficiency Act. If a violation of the Act occurred, the Mayor must submit to the President and Congress the report required by 31 U.S.C.A. § 1351 (1994) in accordance with guidance contained in OMB Circular A-34 (revised October 19, 1999).

General Recommendation #5: We recommend that OCF and District agency heads take disciplinary action, as appropriate, against current District government employees for violations of ethics standards.

General Recommendation #6: Regarding outstanding financial obligations owed to event vendors, we recommend that the OPGD, EOM, endeavor to address any outstanding accounting matters.

General Referral #1: We refer this report to the OSC for its review regarding potential violations of the Hatch Act to determine whether administrative action is warranted against current District government employees.

General Referral #2: We refer our report to the IRS and the OTR to review our findings relating to the fundraising activities conducted on behalf of non-profits.

General Referral #3: Because some of the misconduct may establish violations of a criminal nature, we refer this report to the USAO so that it may continue its review of this investigation to determine whether prosecutorial action is merited.

C. Specific Findings and Recommendations

Our investigation also yielded more specific findings where corrective action is recommended. Our findings in this regard fall into three general areas where:

- administrative action may be necessary to address Standards of Conduct, violations of Procurement Law and Regulations, and Hatch Act violations;
- responsible agencies should review our report to address potential criminal violations, tax issues, outstanding accounting matters, and the scrutiny of donations; and
- legislative changes should be considered to address vague ethical regulations. In light of the findings of our report, we additionally make several observations and recommended changes with regard to Mayor's Order 2002-2.

1. Findings and Recommendations for Consideration of Administrative Action

During our investigation, we identified certain District government employees who engaged in activities that violated the Standards of Conduct and other District and federal law. None of the EOM employees who were most responsible for or participating in inappropriate partnership activities currently works in the EOM. Most are no longer employed by the District government; some have been reassigned to other agencies.

We do not list the specific recommendations associated with our findings relating to the Standards of Conduct provisions and violations of Procurement Law and Regulations. Instead, our general recommendation is that the responsible enforcement agencies review our report and determine whether disciplinary action is warranted for current District government employees. We note that the appropriate enforcement agency depends upon the employee's government position. Pursuant to the DPM, the OCF has enforcement responsibility for the Standards of Conduct for, *inter alia*, the Mayor, members of Council, Executive Service employees, and certain employees in the excepted service who are paid at a DS-13 rate and above. DPM § 1802.1. All other employees fall under the enforcement authority of agency heads. *Id.*

a. Violations of the Standards of Conduct (Referred to OCF and Agency Heads)

[Findings and recommendations/referrals omitted]

3. Recommendations for Legislative Changes

Specific Finding #32: The District of Columbia Personnel Regulations (DPM) regarding the Standards of Conduct for District government employees have not been updated to address fundraising activities of government employees acting in their official capacities. In addition, the provisions do not indicate that failure to abide by requisite rules and regulations while engaging in government fundraising could take an employee outside of their official capacity and expose them to the risk of administrative action.

Specific Recommendation #32: We recommend that the Mayor and the D.C. Council revise the Standards of Conduct to define fundraising activity conducted in an employee’s official capacity as well as fundraising conducted in an employee’s personal capacity. We additionally recommend that consideration should be given to inserting specific examples of fundraising activities that are consistent with an employee’s official capacity as well as those that would place an employee in his/her personal capacity.

Specific Finding #33: DPM § 1803.2, which generally prohibits solicitation or receipt of gifts or other things of value from “prohibited donors” does not differentiate between an employee’s receipt and solicitation of gifts in his/her official capacity versus his/her personal capacity.

Specific Recommendation #33: We recommend that the Mayor and D.C. Council clarify this provision of the DPM to incorporate this distinction.

4. Recommendations Concerning Mayor’s Order 2002-2

During January 2002, the EOM issued an Order and a Memorandum addressing the Mayor’s gift acceptance authority:

- Mayor’s Order 2002-2, entitled “Establishment – Office of Partnerships and Grants Development; Rescission of Mayor’s Order Establishing Office of Partnerships and Resource Development,” incorporates into the new OPGD the function of enforcing mandatory procedures for the solicitation, receipt and use of all donations made to the District government. According to the Order, “[t]he only method authorized by Congress to augment the District’s budget by use of contributed private resources is pursuant to section 115 of the FY 2002 Appropriations Act (and any substantially identical successor law).
- Mayor’s Memorandum 2002-1, entitled “RULES OF CONDUCT GOVERNING DONATIONS TO THE DISTRICT GOVERNMENT,” which, *inter alia*, sets forth policy intended to ensure that donations to the District government comport with the requirements in the appropriations acts that grant gift acceptance authority to the Mayor, centralizes the approval of solicitation or acceptance of donations to the District in the Director of the OPGD, creates a written donations agreement form that contains information about the nature and purpose of the gift and which must be submitted to the Director of OPGD for approval, requires that all donations must be in the form of a check made payable to the District of Columbia Treasurer and that all checks must be forwarded to the OCFO, and requires the CFO to account for donations under the same standards of accounting used for appropriated funds. The memorandum also makes it clear that the failure to follow the rules when soliciting or accepting donations in behalf of the District government takes this action outside the scope of official activity, exposing the employee to the risk of violating D.C. Personnel Regulations that apply to official as well as personal capacity misconduct.

The day before their release, the Mayor’s legal counsel provided the OIG with copies of the Order and Memorandum and requested comments and recommendations. We were advised that

the contents were developed using input from the OCC, the Mayor's Executive Staff, and the Mayor's privately retained counsel. However, we declined to provide any comment at that time for two principal reasons. First, we did not want to discuss the subject matter of these documents because it was directly linked to our ongoing investigation of the EOM and its fundraising activities. Second, we wanted to avoid the inevitable conflict of assisting to create policy that we potentially would have to hold the Mayor and others accountable to at a later date. However, we indicated that we would review the documents and incorporate our comments into this report.

As an initial observation, we commend the Mayor for creating policy and guidance for the acceptance of official gifts to the District. Had this policy been in place earlier, the mistakes, misconduct, and appearance of impropriety that were the subject of this investigation might have been prevented. We also concur with the conclusion that the only method authorized by Congress to augment the District's budget is through the procedure set forth in the annual appropriations acts.

Other general observations follow.

Observation #1: Section IV of the Mayor's Memorandum refers to private fundraising, official fundraising, and the ethical violations that can ensue from the failure to follow District laws with respect to the acceptance of donations. We do not believe that the rules are understandable unless employees have clearly written definitions of official versus personal actions.

Recommendation #1: We recommend that the Mayor amend the order and memorandum to include language defining the terms "official capacity" and "private fundraising" as it relates to fundraising activities of District government employees. Model language for these definitions can be found in the federal Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR § 2635.808 (Fundraising Activities).

Observation #2: The statement that the appropriations act language "permits the Mayor to authorize solicitation . . . of funds" is misleading. *See* Memorandum at 2. The language in all District appropriations acts since 1992, when gift acceptance was authorized, is in fact silent with respect to solicitation. We have been advised by attorneys retained by the Mayor that "[I]t is well established under federal law that the authority to accept gifts and donations implies the authority to solicit them."²⁷ The OCC has also opined that, based on federal opinions, the express statutory authority to accept gifts includes the implied authority to solicit gifts. Because the rationale of federal opinions reaching the conclusion that official solicitation is consistent with the intent of Congress is not supported by either statutory language or legislative history,²⁸ many federal agencies have been cautious in exercising such authority.

²⁷ Letter from [the Mayor's privately retained counsel] to Charles Maddox (Jan. 7, 2002) (citing Comp. Gen. Decision B-255,474 (Apr. 3, 1995)).

²⁸ Comp. Gen. Decision B-255,474 concluded that the Department of Health and Human Services may use appropriated funds to apply for grants; the Office of Legal Counsel, U.S. Department of Justice, has opined that the failure of Congress to prohibit solicitation after public solicitation efforts by federal agencies leads to the conclusion that the statutory authority to accept and utilize gifts includes the implied authority to solicit gifts (Memorandum for Director, Office of Government Ethics (Jan. 19, 2001)).

Recommendation #2: While we do not challenge the legal finding of the Corporation Counsel, we suggest the use of restraint and discretion in conducting solicitation, especially in light of the District’s need to have its gift acceptance authority reviewed and renewed by Congress on an annual basis. The Mayor’s Order, as presently written, provides no guidance with respect to limitations on the value of donations or their frequency, problems identified in the solicitations subject to this investigative report. The Mayor’s Ceremonial and Constituent Services Funds are limited by statute to yearly ceilings of \$25,000 and \$40,000, respectively. However, the Mayor’s Orders would not necessarily preclude the kinds of activity uncovered in this investigation – large donations (hundreds of thousands of dollars) or frequent donations from District contractors in order to fund quasi-civic or quasi-political events where attendance is limited or restricted, and which do not appear to provide a benefit to the District government or to its citizens. We believe the use of funds in significant amounts solicited from organizations that have a financial interest in their relationship with the District government for such purposes does create an appearance of impropriety that could adversely affect confidence in the government – not only to taxpayers but also to members of Congressional oversight committees. Accordingly, we recommend that solicitation be limited to the matters that further the broadest public needs.

Observation #3: Section V.(g) of the Mayor’s Order lists as part of the mission and objectives of the OPGD: “Establish formal collaborative arrangements (sometimes called “partnerships”) memorialized in writing, and approved by the Director, with non-profit and private organizations for the purpose of supplementing existing resources for governmental purposes” Memorandum at 4. Neither the Order nor the Memorandum defines a “partnership” or provides guidelines for accepting supplemental resources for government purposes.

Recommendation #3: “Partnering” must be carefully defined and regulated in order to avoid the same misconduct that we found during this investigation: solicitation of funds on behalf of and in the name of non-profit organizations; transferring funds from private entity partners into government custody; taking control of the management, financial accounting and/or administration of independent entities; and solicitation of funds through a private entity for nonofficial purposes.²⁹

In each of the events covered by this investigation, EOM personnel engaged in fundraising utilized a confusing array of private-public partnership patterns intended in part to avoid the restrictions placed on official fundraising, such as accounting for the money, providing public disclosure of donors, and complying with the District’s procurement laws after the money enters the custody of the government. These temptations will persist if the Executive policy contains the “partnering” loophole. *See also* Office of Government Ethics Letter to a Designated Ethics Official (July 10, 1995) for a discussion of fundraising in official versus personal capacity with a non-profit entity.

²⁹ *See* Mayor’s Mem. 91-11 from John Payton, Acting Corporation Counsel (Mar. 5, 1991) (“Private entities (such as non-profit corporations) may, on their own, raise and spend funds to support or complement government and the private entity, if such funds are not at any point in the possession or control of a District officer, employee or agency.”).

Observation #4: Donation agreements, described in Section III of the RULES OF CONDUCT GOVERNING DONATIONS TO THE DISTRICT GOVERNMENT, require certification that the donation will be used to fulfill an authorized function and is consistent with applicable laws and policies.

Recommendation #4: In order to avoid the appearance of impropriety, we suggest that the Mayor's Orders require that the solicitation and donation forms indicate whether the donor conducts business, is seeking to do business with, or is regulated by the District, as described in DCM § 1803.2, and, if the agreed upon donation is over a certain dollar value (e.g., \$50,000), that it be reviewed and approved by the OCC. The form should also indicate whether the gift is the result of a solicitation by a District government employee. The addition of this procedure should mitigate against the appearance of impropriety and retain confidence in the integrity of District government.

Observation #5: Mayor's Order 2002-1, § II. REASONS TO DISAPPROVE SOLICITATION OR ACCEPTANCE OF DONATIONS, 1(b) states that a solicitation or acceptance of a donation shall be disapproved if, *inter alia*, the acceptance would create an appearance of a conflict of interest for the government employee to whom authority to solicit or accept donations has been delegated.

Recommendation #5: Since the Mayor's Order does not limit to whom or under what circumstances solicitation or gift acceptance authority may be sub-delegated, such sub-delegation may, over time, be granted to agency heads and many other District employees. Consequently, we believe it important for either the Mayor's Orders or the revised Standards of Conduct to provide some guidance to potential sub-delees as to when solicitation or acceptance of donations "appears" to create a conflict of interest or would "appear" to create a lack of confidence in the integrity of District government. With respect to the latter appearance, we note that Mayor's Order 2002-1, § IV. ETHICAL CONDUCT, 5., states that the failure of government employees to follow District laws with respect to donations to the District government may adversely affect the confidence of the public in the integrity of government. Nevertheless, we believe that the nature, value or frequency of solicitations, even in instances where District laws are followed, can also affect the public's confidence in District government.

Observation #6: The investigation also identified instances where the EOM used third parties to solicit funds and items of value on its behalf and for EOM purposes but through non-profits and other corporations for EOM purposes. As the OCC has opined: "The Mayor's Office may accept the services of a person funded by a private foundation to assist the District in increasing donations to the government from other foundations. The personnel detail should be accomplished by an assignment agreement."³⁰ The Mayor's Order makes no mention of such assignment agreements.

Recommendation #6: We recommend that the Mayor's Order and Memorandum address assignment agreements for these instances, and set forth appropriate procedures for their implementation and approval.

³⁰ Mem. from [] Senior Deputy Corporation Counsel for Government Operations, Legal Counsel Division, to [] Senior Policy Analyst, Office of the Mayor (Oct. 19, 1999) at 2.