Corporation for
NATIONAL & COMMUNITY SERVICE

TO: Elana J. Tyrangiel

FROM: Frank R. Trinity

DATE: May 21, 2009

SUBJECT: Materials regarding CNCS Inspector General

Following our discussion today, I have compiled materials relevant to Gerald Walpin's performance and conduct as Inspector General for the Corporation for National and Community Service.

Please let me know if you have any questions. You may reach me at [redacted], or [redacted]

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May 21, 2009
MEMORANDUM FOR THE RECORD

FROM: Frank R. Trinity Frank R. Trinity
General Counsel

SUBJECT: **GERALD WALPIN'S PERFORMANCE AND CONDUCT AS INSPECTOR GENERAL**

In my position as General Counsel I have observed the following issues with Gerald Walpin's performance and conduct as Inspector General.

A. **St. HOPE Academy**. Tab 1.

- The Inspector General engaged in inappropriate public commentary on pending matters, failed to provide relevant material to agency and U.S. Attorney decision-makers, and submitted a "Seven Day" Special Report to Congress contrary to the applicable provisions of the Inspector General Act.

B. **Equal Opportunity Issues**. Tab 2.

- The Inspector General approved a parody with ethnic, gender, and other stereotypes; when management informed him that it had caused offense to at least one employee in the Office of Inspector General, he declined to take corrective action.

- In rendering a decision removing an OIG employee, the Inspector General commented at length on the employee's protected EO activity.

- The Inspector General complained to the CEO about an inter-generational awareness program conducted by the Corporation's EO office, calling it a "wasteful use of Corporation assets for an insufficient, if any, Corporation purpose."

- In meetings with the Board of Directors and the Chief Executive Officer, the Inspector General repeatedly disparaged the Corporation's EO office's ability to conduct investigations -- while the EO office was conducting an investigation involving the Office of Inspector General.

C. **CUNY AmeriCorps program**. Tab 3.

- The Inspector General substituted his personal views for policy judgments made by Congress, recommending that the Corporation recoup up to $75 million from CUNY.

D. **Disregard of Miscellaneous Receipts Act**. Tab 4.

- The Inspector General, over the General Counsel's objections, recommended that the CEO deposit recovered funds in violation of the Miscellaneous Receipts Act (a statute with potentially criminal sanctions).

E. **Disclosure of confidential White House communications**. Tab 5.

- Over OMB's objections and contrary to OMB Circular A-11, the Inspector General disclosed confidential OMB budget deliberations in his personal introduction to a Semi-Annual Report to Congress.

Tab 1

Department of Justice

Acting United States Attorney Lawrence G. Brown
Eastern District of California

FOR IMMEDIATE RELEASE
Thursday, April 9, 2009
www.usdoj.gov/usao/cae

CONTACT: Lauren Horwood
PHONE: 916-554-2706
usacae.edcapress@usdoj.gov

UNITED STATES SETTLES CLAIMS ARISING OUT OF ST. HOPE ACADEMY'S SPENDING OF AMERICORPS GRANTS AND EDUCATION AWARDS

Federal Suspension of St. HOPE Academy, Kevin Johnson & Dana Gonzalez Will Be Terminated

SACRAMENTO, Calif. – Acting United States Attorney Lawrence G. Brown announced today that St. HOPE Academy has agreed to pay $423,836.50 to settle allegations that St. HOPE did not appropriately spend AmeriCorps grant awards and education awards in accordance with the terms of grant requirements and did not adequately document its expenditures of grant awards. The amount of the civil settlement represents one-half of the $847,673 in AmeriCorps grant funds received by St. HOPE Academy. During the relevant time period, Sacramento Mayor Kevin Johnson was Chief Executive Officer of St. HOPE and Dana Gonzalez was the Executive Director of St. HOPE. Under the terms of the agreement, which includes mandatory grant administration training for Mayor Johnson and Ms. Gonzalez, suspension from federal programs will be terminated.

"The agreement reached strikes a proper balance between accountability and finality. St. HOPE Academy must pay a significant amount for its improper handling of AmeriCorps funds. The lifting of the suspension against all parties, including Mayor Johnson, removes any cloud whether the City of Sacramento will be prevented from receiving much-needed federal stimulus funds," said Acting U.S. Attorney Brown.

According to Assistant United States Attorney Kendall J. Newman, the lead government attorney in the case against St. HOPE, AmeriCorps grant funds were awarded by the State of California to St. HOPE and administered by St. HOPE during 2004 through 2007. Additionally, AmeriCorps members were entitled to Education Awards if they fulfilled their service requirements for St. HOPE according to the terms of the grant requirements. The United States contends that St. HOPE did not appropriately spend the grant awards according to the terms of the grant requirements and did not adequately document its expenditures of the grant funds.

On September 28, 2008, the Debarment and Suspension Official for the Corporation for National and Community Service (the "Corporation"), notified St. HOPE, Johnson, and Gonzalez that they were suspended from participation in federal procurement and non-procurement programs for a temporary period of time pending completion of an investigation by the United States Attorney's Office, or conclusion of any legal or debarment proceedings resulting from the investigation of the alleged misuse of federal funds provided in support of the AmeriCorps grants.

In settlement, St. HOPE acknowledged that it did not adequately document a portion of its

expenditures of the grant awards. The settlement terms are:

- St. HOPE will make an initial payment of $73,836.50 by electronic transfer within five business days from today;
- Kevin Johnson will pay $72,836.50 of the initial payment by St. HOPE, with possible repayment to Johnson by St. HOPE when it is financially able to do so; and
- Dana Gonzalez will pay $1,000.00 of the initial payment by St. HOPE.
- St. HOPE has entered into a stipulated judgment for $350,000.00, plus five percent annual interest, payable at $35,000 annually for 10 years, the final payment of which will include interest.

Within five business days from today:

- Johnson and Gonzalez shall each register to take an online course offered by Management Concepts titled "Cost Principles";
- Johnson and Gonzalez will provide written proof to the Corporation of having registered for the course.

Within 120 days from today:

- Johnson and Gonzalez will complete the course; and
- Johnson and Gonzalez will provide written verification under oath of having completed the course.

As part of the settlement, the Corporation will terminate the suspension of St. HOPE, Johnson, and Gonzalez from participation in federal procurement and non-procurement programs upon all of the following occurring:

- The settlement agreement having been signed by all parties;
- St. HOPE having made the Initial Payment of $73,836.50;
- St. HOPE having signed the Stipulated Judgment;
- Johnson and Gonzalez having made payments to St. HOPE; and
- Johnson and Gonzalez having provided verification of having registered for the "Cost Principles" course.

Additionally, the Corporation will not institute debarment proceedings against St. HOPE with respect to the AmeriCorps grants so long as it complies with the terms of the settlement agreement. The Corporation also will not institute debarment proceedings against Johnson and Gonzalez with respect to the AmeriCorps grants so long as they comply with their obligations under the settlement agreement, including certification of the course completion.

# # # #

KJN

Corporation for
NATIONAL & COMMUNITY SERVICE

OFFICE OF INSPECTOR GENERAL

August 7, 2008

Lawrence G. Brown, Esq.
First Assistant United States Attorney

John Vincent, Esq.
Chief of the Criminal Division

Kendall J. Newman, Esq.
Chief of the Civil Affirmative Section

Office of the United States Attorney
for the Eastern District of California
501 I Street
Suite 10-100
Sacramento, CA 95814

Re: Kevin Johnson and Dana Gonzalez — Via Federal Express

Dear Messrs. Brown, Vincent, and Newman:

I am forwarding to each of you herewith our referral to your office for criminal and civil prosecution of Kevin Johnson and Dana Gonzalez, respectively President/CEO and Executive Director of the St. HOPE Academy ("SHA"), for false and fraudulent conduct in connection with $845,018.75 in Federal funds, disbursed to and for SHA under a grant to SHA covering grant years 2004-05, 2005-06, and 2006-07. Accompanying the 30 page referral are two binders of supporting documents referenced in the referral providing evidentiary support for the statements in the referral. (I have not burdened Mr. Brown with the evidentiary binders, but, if I am incorrect in my assumption that he would prefer not to receive them, I will forward another set to him on his request.)

As detailed in the accompanying referral, Mr. Johnson converted for his personal use and for the use of St.HOPE Academy (Mr. Johnson's controlled entity) the portion ($677,310.77) paid directly to SHA, and fraudulently caused the Government to disburse the balance ($167,707.94) to persons not entitled to benefit. Violations of various Federal penal statutes, including obtaining by fraud Federal funds under a grant (18 U.S.C. § 666), filing of false and fraudulent claims (18 U.S.C. § 287), and the making of false and fraudulent statements (18 U.S.C. § 1001) are detailed.

U.S. DEPARTMENT OF JUSTICE

United States Attorney
Eastern District of California

Lawrence G. Brown
Acting United States Attorney

Robert T. Matsui
United States Courthouse
501 I Street, Suite 10-100
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April 29, 2009

Kenneth W. Kaiser, Esq.
Chair, Integrity Committee
Counsel of the Inspectors General on Integrity and Efficiency
c/o Criminal Investigative Division
Federal Bureau of Investigation, Department of Justice
935 Pennsylvania Avenue, NW
Washington, DC 20535-0000

Re: United States v. St. HOPE Academy, Kevin Johnson & Dana Gonzalez

Dear Mr. Kaiser:

I am the Acting United States Attorney for the Eastern District of California. I am writing to express my Office's concerns about the conduct of the Corporation for National and Community Service (CNCS) Inspector General, Gerald Walpin, and his staff in the handling of United States v. St. HOPE Academy, Kevin Johnson & Dana Gonzalez.

In our experience, the role of an Inspector General is to conduct an unbiased investigation, and then forward that investigation to my Office for a determination as to whether the facts warrant a criminal prosecution, civil suit or declination. Similarly, I understand that after conducting such an unbiased investigation, the Inspector General is not intended to act as an advocate for suspension or debarment. However, in this case Mr. Walpin viewed his role very differently. He sought to act as the investigator, advocate, judge, jury and town crier.

Very briefly, this matter resulted from the alleged misuse of AmeriCorps grant funds by St. HOPE Academy, and the involvement in the alleged misuse by St. HOPE's then Chief Executive Officer Kevin Johnson, and Executive Director Dana Gonzalez. Kevin Johnson is a former NBA basketball player, and was a Sacramento mayoral candidate, subsequently elected Mayor, when this matter first came to light during fall 2008. Thus, this matter received significant local press coverage.

This matter was referred to our Office on August 7, 2008. However, even before our Office officially received this matter, we learned about it in April and June 2008 though articles in the Sacramento Bee newspaper, including comments from an IG spokesperson. Moreover, we considered the IG referral somewhat unusual in that it was accompanied by a letter from Mr. Walpin (enclosed) explaining that he viewed the conduct in this case as egregious and warranted our pursuing the matter criminally and civilly.

Within a few weeks thereafter, on August 25th, we met with Mr. Walpin and 2 investigators from his office. We expressed our concerns that the conclusions in their report seemed overstated and did not accurately reflect all of the information gathered in their investigation. We also highlighted numerous questions and further investigation they needed to conduct, including the fact that they had not done an audit to establish how much AmeriCorps money was actually misspent.

Despite our expressed concerns and the need for further analysis, the next we learned of this matter was again through the Sacramento Bee newspaper. First, on September 5, 2008, an IG spokesperson informed the newspaper that the matter had been referred to our Office, but also added that a "referral means that it's our opinion that there is some truth to the initial allegations..." Second, Mr. Walpin apparently advocated to have St. HOPE, Johnson and Gonzalez immediately placed on a list of parties suspended from receiving federal funds. We learned of that determination through Sacramento Bee articles quoting extensively from a *press release* issued by Mr. Walpin's office on September 25, 2008. Not only was it extremely questionable for Mr. Walpin to issue a press release, it contained statements such as: "[i]f we find really egregious stuff and we want to stop the bleeding, we seek immediate suspension..." Moreover, the IG publically released the findings of his investigation.

On September 26, 2008, I participated in a conference call in which then U.S. Attorney McGregor Scott emphatically informed Mr. Walpin that under no circumstance was he to communicate with the media about a matter under investigation. We also informed Mr. Walpin that his actions were hindering our investigation and handling of this matter. In fact, as a result of Mr. Walpin's public pronouncements on the eve of the mayoral election, McGregor Scott felt compelled to inform the media that our Office did not intend to file any criminal charges.

During the following months our Office was involved in actively pursuing a potential civil case in this matter, working with investigators in the IG's office, obtaining additional discovery, and negotiating a possible resolution. On March 24, 2009, the Sacramento Bee published an editorial (enclosed) that this matter needed prompt resolution. On that same day, an attorney in my Office telephoned Mr. Walpin concerning the ongoing efforts to attempt to resolve the matter. First, although Mr. Walpin stated that he did not make debarment determinations, he made it clear that he would advocate and seek to control the outcome so that St. HOPE and Mayor Johnson were debarred for 3 years. Second, he stated that he had sent a *letter to the editor* to the Sacramento Bee. I promptly called Mr. Walpin and asked him to retract the letter, and reminded him about our previous admonition that he should not be communicating with the press. I advised Mr. Walpin that Kevin Johnson's status as Mayor did not entitle him to a "free pass", but the matter merited a certain level of sensitivity. Needless to say, my comments fell on deaf ears, and the Sacramento Bee gladly ran Mr. Walpin's letter as a special editorial (enclosed).

Negotiations continued between my Office and counsel for St. HOPE and Mayor Johnson. As part of that process, St. HOPE's counsel provided evidence that they asserted helped establish that a significant portion of the AmeriCorps grant funds were appropriately expended. For example, the referral from the IG expressly concluded that St. HOPE "AmeriCorps Members Performed No Tutoring." However, the evidence St. HOPE provided included a statement from Herinder Pegany, the Principal of an elementary school, stating that St. HOPE AmeriCorps members had performed after-school tutoring at his school. When asked to review this material, members of Mr. Walpin's office revealed that CNCS investigators had interviewed Mr. Pegany and had obtained a similar statement from him, *but did not include it in their report or disclose it to my Office*.

When confronted by the non-disclosure, Mr. Walpin sought to defend why his office had not included all of the relevant material in their referral. Moreover, Mr. Walpin advised an attorney in my office that once again he was writing to the Sacramento Bee (enclosed). Only by calling upon General Counsel for CNCS were we able to convince Mr. Walpin not to send his letter to the newspaper.

Ultimately, despite the hindrance of Mr. Walpin, due to the extraordinary assistance of CNCS General Counsel Frank Trinity and Associate General Counsel Irshad Abdal-Haqq, we were able to negotiate a resolution of this matter very favorable to the interests of the United States. Although I have stated repeatedly in this letter that our Office does not believe in trying a matter in the media, it is worth noting that in a column in the Sacramento Bee newspaper the day after the settlement was announced, the columnist concluded: "Johnson and his nonprofit will repay half of the $847,673 in grants. Johnson will take an online course on federal grants. And Sacramento is clear to tap millions in federal dollars....The conclusion wasn't a slap on the wrist or fraud. It was the system rising above those who cheapened it."

In summary, the IG should be a fact-finding impartial investigative arm of the CNCS agency. Although I recognize that a strong IG is necessary to ensure that allegations of wrongdoing are investigated, I believe that Mr. Walpin overstepped his authority by electing to provide my Office with selective information and withholding other potentially significant information at the expense of determining the truth. I believe that rather than ensuring protection of a respected federal agency, he tarnished its reputation. Please contact me if you need additional information.

Sincerely,

LAWRENCE G. BROWN
Acting United States Attorney

Enclosure

cc: Alan Solomont, Chairman CNCS
Stephen Goldsmith, Vice Chairman CNCS
Nicola Goren, Acting CEO CNCS

I would hazard a guess that most U.S. Attorney's offices have had experience in prosecuting those violations in the context of a for-profit Government contractor, but not in the context of a not-for-profit Government grantee. No one hesitates for a moment in prosecuting a for-profit Government contractor who executes a contract with the Government to produce a specified product, but instead uses the Government funds for other purposes, such as financing other non-contract activities, and, to obtain the Government funds, misrepresents to the Government that the funds had been used for the contract specified activities. This type of criminal conduct has occurred, for example, in the cost-plus contract context, when the contractor uses its labor and material for a non-contract activity but charges those costs to the Government contract.

That is essentially what our accompanying referral shows occurred here, except that the recipient was not a for-profit entity but a not-for-profit entity, obtaining Government funding by proclaiming its purpose was to do a specific and identified type of activity to benefit the community, and instead used the funds and labor financed by the Government for other purposes.

Prosecution here would be in furtherance of the formation late in 2006, by the Criminal Division of the Justice Department of the National Procurement Fraud Task Force, of which I am now a member. As the Deputy Attorney General then stated, in announcing this new endeavor, because" [w]e simply cannot tolerate fraud and abuse in government contracting, it is necessary" to increase criminal enforcement in areas of procurement fraud" – which he specifically defined as including "grant fraud" -- to make clear to the "public" that "anyone who is cheating the system will be held accountable." To that end, the DOJ "encourage[s] agencies to refer more cases for civil and criminal prosecution." And DOJ, in the announcement of this initiative, stated that "the key to a renewed and sustained effort against procurement fraud is an energized and empowered IG community working in tandem with .... Federal prosecutors." That is exactly what this IG office is endeavoring to do here.

In some ways, this type of crime is worse in the not-for-profit context than in the for-profit context. While I certainly do not minimize the importance of preventing fraud and improper conversion of Government funds in the for-profit context, the primary damage to the Government is usually money. In contrast, in the not-for-profit context about which I write, the damage to the Government has two important aspects: certainly improper taking of Government funds is one; but the second is the serious adverse effect it has to this important Government program to incentivize Americans to volunteer for the benefit of the community and those in need of assistance. At the heart of this referral is AmeriCorps, a Congressionally-mandated program, involved here, to obtain mainly young-adult Americans who contribute a block of their time to revitalize a community and tutor young disadvantaged in order to raise their educational prowess. When those who sign up to do this work (for a *de minimis* living allowance and, on completion of the required number of hours, an Education Award up to a maximum of $4725 which can be used for tuition or payment of college loans), are not used to do the specified tutoring and community improvements, but instead for menial tasks, these volunteers become discouraged and, when the reality of their AmeriCorps time becomes known to prospective volunteers, it turns them off and disparages the reputation of the AmeriCorps program as a whole.

In addition, because the grant world seems to have its own means of communication, the fact that principals of a grantee engaged in this type of conduct without any significant penalty weakens any deterrence against similar conduct by others.

Because of the importance that I and my office put on this referral, I, together with my two Special Agents, Jeffrey Morales and Wendy Wingers, who have pursued this investigation, would like to meet with the three of you in your office to discuss this matter, at the earliest time after you have had an opportunity to review it. I will call you to discuss a date that meets your schedule.

When we fix on a date, I would appreciate the opportunity of greeting Scott McGregor, the U.S. Attorney, or, at his decision, having him join in our discussion. For that reason, I am forwarding to him a copy of this letter (without the accompanying material) with a cover note.

Very truly yours,

Gerald Walpin
Inspector General

Corporation For National And Community Service

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St. HOPE, Principals Suspended

Meet Inspector General Gerald Walpin

Created by the National and Community Service Trust Act of 1993, the Corporation for National and Community Service provides opportunities for Americans of all ages and backgrounds to serve their communities and country through three programs: Senior Corps, AmeriCorps, Vista, and Learn and Serve America. For more information on the Corporation's programs, please visit

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The 1993 Act also established the Office of Inspector General. The OIG conducts and supervises independent and objective audits and investigations of Corporation programs and operations to weed out wrongdoing, waste and inefficiency. Also, based on the results of these audits and investigations, the OIG recommends policies to Corporation management to promote economy and efficiency and prevent and detect, waste, fraud and abuse.

Click here to view our Fraud brochure, or right click to get a printable download

Click here to view our All About Audits brochure, or right click to get a printable download

Video: "The Inspectors General Story" Featuring John Glenn

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Corporation for National and Community Service

FOR IMMEDIATE RELEASE
Contact:
William Hillburg, Director of Communications
(202) 606-9368

WASHINGTON, DC (September 25, 2008) - The Federal agency in charge of the AmeriCorps volunteer program on Wednesday (September 24) suspended St. HOPE Academy, Kevin Johnson, its founder and former president, and Dana Gonzalez, executive director of St. HOPE's Neighborhood Corps, from all access to Federal grants and contracts for up to one year.

The decision of the Corporation for National and Community Service ("Corporation") resulted from a recommendation made by the Office Inspector General ("OIG"), which was based on information developed in an investigation of St. HOPE and its principals, which is ongoing. The suspension, which immediately went into effect September 24, bars St. HOPE Academy, Johnson and Gonzalez from receiving or using funds from any Federal agency for up to one year, or pending completion of the OIG investigation.

The OIG, in its recommendation for suspension, cited numerous potential criminal and grant violations, including diversion of Federal grant funds, misuse of AmeriCorps members, and false claims made against a taxpayer-supported Federal agency.

"I appreciate the Corporation's action in implementing our recommendation and in supporting our ongoing investigation," said Inspector General Gerald Walpin. "Given that there exists evidence to suspect improper and fraudulent misuse of grant funds and AmeriCorps members, it is important that immediate action be taken. Between now and the completion of the OIG's investigation, we must protect the public interest from the potential repetition of this conduct by this grantee and its principals." .

In its written suspension decision, the Corporation cited numerous AmeriCorps grant violation and diversions of Federal funds. It stressed that "the diversion of grant funds is so serious a violation of the terms of the grant agreement that immediate action via suspension is required to protect the public interest and restrict the offending parties' involvement with other Federal programs and activities."

Under the terms of its Corporation grant, St. HOPE officials agreed to deploy their Neighborhood Corps AmeriCorps members to tutor students at its charter schools, redevelop one building per year in Sacramento's Oak Park neighborhood and coordinate marketing and logistics for St. HOPE's Guild Theater and Art Gallery.

The cited violations of St. HOPE's grant agreement included:

- Misusing AmeriCorps members, financed by Federal grant funds, to personally benefit Kevin Johnson, including driving him to personal appointments, washing his car and running personal errands.
- Unlawfully supplementing St. HOPE staff salaries with Federal grant funds by enrolling two employees in the AmeriCorps program and giving them Federally funded Corporation living allowances and education awards.
- Improperly using members to engage in banned political activities, namely supporting the election of Sacramento School Board candidates.
- Improperly taking members assigned to serve in Sacramento to New York City to promote St. HOPE's establishment of a Harlem charter school.
- Misusing AmeriCorps members, who, under the grant, were supposed to be tutoring elementary and high school students, to instead serve in clerical and janitorial positions at St. HOPE's charter schools.
- Misusing AmeriCorps members to recruit students for St. HOPE's charter schools.

St. HOPE Academy, Johnson and Gonzalez each has the opportunity to challenge the suspensions, and has 30 days to respond to the Corporation.

During the suspension period, St. HOPE Academy, Johnson and Gonzalez will be included in the Excluded Parties List System, a database maintained by the U.S. General Services Administration (www.epls.gov). The list is used by all Federal agencies to determine the eligibility of individuals and organizations to receive Federal grants and contracts.

Feds investigating St. HOPE find 'numerous' potential violations

By Terri Hardy - thardy@sacbee.com

Published 11:52 am PDT Thursday, September 25, 2008

Federal agents investigating Kevin Johnson's St. HOPE nonprofit volunteer program found "numerous potential criminal and grant violations," according to a press release issued today by a federal inspector general.

For the first time, the inspector general's office revealed details of its months-long probe. On Wednesday, the findings of that investigation triggered a halt of federal funding to Johnson, a former top St. HOPE executive Dana Gonzalez and at least a portion of the St. HOPE organization.

The suspension of funding will last up to 12 months or until the completion of the federal probe, according to federal officials. In a contract with the federal volunteer program AmeriCorps, St. HOPE's service group received $807,000 between 2004 and 2007.

"Given that there exists evidence to suspect improper and fraudulent misuse of grant funds and AmeriCorps members, it is important that immediate action be taken," said Gerald Walpin, Inspector General for the Corporation for National and Community Service, in the press release. The corporation oversees AmeriCorps.

Added Walpin: "Between now and the completion of the investigation, we must protect the public interest from the potential repetition of this conduct by this grantee and its principals."

Johnson is challenging Mayor Heather Fargo in the Nov. 4 election for Sacramento's top elected post. Johnson and St. HOPE officials have said they are cooperating in the investigation. They maintained in earlier interviews that any problems with the Hood Corps grant were limited to minor administrative errors.

Hood Corps no longer receives federal funding, and Gonzalez left the organization in August.

Federal agents in April launched an investigation into St HOPE's Hood Corps operation after The Bee raised questions about the program. Agents recently turned over findings from their investigation to the U.S. Attorney's office in Sacramento, where prosecutors will decide whether to file charges.

Among the potential violations federal investigators identified in the inspector general's statement:

- Misusing AmeriCorps members, financed by federal grant funds, to personally benefit Johnson, including driving him to personal appointments, washing his car and running personal errands.

- Unlawfully supplementing St. HOPE staff salaries with federal grant funds by enrolling two employees in the AmeriCorps program and giving them federally funded corporation living allowances and education awards.

- Improperly using members to engage in banned political activities, namely supporting the election of Sacramento school board candidates.

- Improperly taking members assigned to serve in Sacramento to New York City to promote St. HOPE's establishment of a Harlem charter school.

- Misusing AmeriCorps members, who, under the grant, were supposed to be tutoring elementary and high school students, to instead serve in clerical and janitorial positions at St. HOPE's charter schools.

- Misusing AmeriCorps members to recruit students for St. HOPE's charter schools.

In its contract with AmeriCorps, St. HOPE agreed to tutor students at its charter schools, redevelop a building a year in Sacramento's Oak Park neighborhood and to coordinate marketing and logistics for St. HOPE's Guild Theater and Art Gallery, according to federal officials.

St. HOPE Academy, Johnson and Gonzalez each has the opportunity to challenge the suspensions and 30 days to respond to the corporation, the statement said.

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THE SACRAMENTO BEE sacbee.com

This story is taken from Sacbee / Opinion

Editorial: AmeriCorps case needs resolution

Published Tuesday, Mar. 24, 2009

Since AmeriCorps began in September 1994, about 2,600 nonprofit and community groups a year have worked with volunteers to improve communities. For their service, volunteers get a $4,725 education award for college or graduate school and a living allowance.

Unfortunately, but not surprisingly, some nonprofit organizations working with AmeriCorps volunteers have run into problems that range from human error and ignorance of regulations to outright fraud.

In Sacramento, St. HOPE Academy's Neighborhood Corps ("Hood Corps" for short), received federal grants from 2004 to 2007. Under these grants, AmeriCorps volunteers were supposed to tutor students at St. HOPE's charter schools, redevelop one building a year in Oak Park and coordinate marketing and logistics for the Guild Theater and 40 Acres Art Gallery.

The AmeriCorps' office of the inspector general began looking at Hood Corps in April 2008; in preliminary findings last September, it found that two St. HOPE employees received AmeriCorps living allowances and education awards – duplicating their salaries.

The inspector general also found that AmeriCorps volunteers were engaged in activities beyond the scope of the grant – such as recruiting students for Sac High and for a new charter opening in Harlem and doing clerical tasks at Sac High. The IG found that AmeriCorps volunteers were driving St. HOPE founder Kevin Johnson around, washing his car and picking up his dry cleaning. They also handed out fliers recommending a slate of Sac City school board candidates.

Johnson has admitted "administrative errors." The usual remedy in these cases is repayment.

In some cases, there is also a fine. (That's what happened when the YMCA of New York was found to be padding AmeriCorps volunteer hours in a tutoring program).

In Sacramento, the IG's findings have not led to criminal charges. In November, the U.S. attorney said the material submitted by the IG fell short of proving criminal conduct and sent the case back for more information. The matter is dragging on.

Normally, such slowness wouldn't matter. But in this case, the IG took the unusual step of suspending St. HOPE Academy, Johnson (now Sacramento's mayor) and former Hood Corps

director Dana Gonzalez (now a mayoral volunteer) from receiving federal funds for up to a year pending completion of the investigation.

Now, the city of Sacramento has received an opinion that Johnson's suspension may preclude the city from getting federal funds if he influences their use. And the IG's office has "declined to say when the review would be finished."

Given the potential consequences of a suspension, the IG's office should either expedite the case – getting repayment and/or fines under way – or lift the suspension if the case is expected to drag on indefinitely. The original reason for suspension was to protect the public from "potential repetition of this conduct" while the investigation was ongoing. Johnson and Gonzalez have stepped down from their positions at St. HOPE and Hood Corps, so that should no longer be a concern.

This situation cries out for resolution. This is a case where everybody would be better off if the nonprofit and the IG reach a repayment settlement for the errors and move on.

THE SACRAMENTO BEE sacbee.com

This story is taken from Sacbee / Opinion

My View: The federal aid ball is in Johnson's court

Special to The Bee

Published Tuesday, Mar. 31, 2009

Your March 24 editorial, without basis, attacks my Inspector General office for "dragging on" with our investigation of St. HOPE Academy and its principals so that the city of Sacramento may be precluded "from getting federal funds" due to the fact that on Sept. 24, 2008, Mr. Kevin Johnson was suspended "from receiving federal funds."

The relevant law – which I would have thought that you would have researched before writing your editorial – demonstrates that you are targeting the wrong entity for any delay of the determination of whether Johnson's suspension was appropriate.

Some background: As inspector general, I am duty-bound to take action to uncover and to prevent fraud and waste in the almost $1 billion of taxpayers' money that is disbursed by the Corporation for National and Community Service.

Under controlling regulations, suspension from receiving or controlling federal funds is one of the tools available, where there "exists ... adequate evidence to suspect ... commission of fraud ... making false claims ... or commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects (the person's) present responsibility ... or violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as willful failure to perform in accordance with the terms of one or more public agreements or transactions."

For a suspension to occur, my office must recommend the suspension to the deciding official (who is not in my office) and provide adequate evidence to support the suspension to the deciding official. That was done here. The suspending official there- after notified Johnson of the suspension.

Most important is that the regulations give any person or entity suspended – including Johnson – the right "to contest a suspension" by "provid(ing) the suspending official with information in opposition to the suspension ... within 30 days after (receipt of) the Notice of Suspension." The opposition submission cannot rely on "a general denial"; instead, it must include "specific facts that contradict the statements made in the Notice of Suspension."

Thus, contrary to your editorial, the ball on the suspension has been in Johnson's court since

the order of suspension was issued.

Apparently, he made the decision not to appeal the suspension by providing specific facts that would show to the neutral suspension official that the suspension was not warranted. If, as you charge (without basis), that suspension in these circumstances was an "unusual step," the procedures allowed Johnson to seek to lift the suspension. He decided not to do so.

Your editorial also refers to a criminal investigation or civil monetary recovery or settlement. I do not comment on such matters unless they are public.

But, in any event, those legal avenues are irrelevant here as they are in no way connected with the ability of the city of Sacramento to obtain federal funds -- only the suspension order has that effect.

Gerald P. Walpin is the inspector general of the Corporation for National and Community Service.

Ken Johnson
916-554-2839

4/1/09

Draft from G. Walpin

Mr. Johnson was entirely within his legal right to continue litigating the issue of his suspension in the press by disseminating his lawyer's letter to the Deciding Official, rather than using the legal procedures available to him to apply to lift the suspension by submitting "specific facts" to show that he did not commit the specific wrongdoing of which he was advised in the Notice of Suspension.

The Office of Inspector General will not, however, join in this litigation in the media by commenting on the facts which are to be decided by the independent Deciding Official.

In response to the repeated questions by your newspaper seeking information as to the number of suspensions in the past, the Office of Inspector General is not the Deciding Official and does not have such records. But we will note the obvious irrelevancy of those questions. Is the newspaper suggesting because, in this office's experience, most grantees do not commit criminal acts, and therefore only a very small percentage of grantees are referred for criminal prosecution, that a grantee who does commit a criminal act should not be prosecuted? Likewise, the suspension sanction is utilized only where warranted to protect Federal funds. Given the current atmosphere, in which all elements of our country – government, media, and citizens in general – are properly asking for greater protections against misuse of taxpayers' money, all Inspectors General cannot be asked to do less.

Trinity, Frank

From: Trinity, Frank
Sent: Friday, May 08, 2009 4:43 PM
To: Walpin, Gerald
Cc: Park, John
Subject: RE: Your Special Report on St. Hope Academy matter

This is not, as you have put it, a matter of hostility toward your office. Nor is it a matter of "bickering." These are, in fact, matters of substance under the Inspector General Act.

You have now variously asserted that the Special Report is issued under

- Sections 3, and 4(a)(5) of the Inspector General Act (as stated in the Special Report)
- Sections 4(a), 5(d) and 6(a) of the IG Act (as stated in Jack Park's email of 5:18 pm on May 7, 2009)

After we reviewed your report, we faced discrepancies between the report's written citations of sections 3 and 4(a)(5) as the reporting authority and your orally-expressed expectation that we provide comments within 7 days. My asking for clarification was necessary and not a "procedural detour."

Jack's initial response to this understandable inquiry itself presented discrepancies. It stated that we had been advised that we had seven days to respond, raising the specter of the report actually being issued under section 5(d). However, it stated as well, that the OIG intended to distribute the report to whom it saw fit, when it saw fit, and with whatever response to the Corporation's accompanying report that it saw fit. None of those assertions is in fact consistent with section 5(d). Thus, we were again faced with a patent ambiguity – created by OIG -- of whether the OIG in fact intended this to be a seven-day letter under section 5(d). At 4:41 pm, I asked simply for an unambiguous clarification of this point. At 5:18 pm, Jack Park replied, for the first time in any recorded context, that the report was issued under the authority of section 5(d).

Whether the Special Report is issued under section 5(d) is not a matter of "petty bickering". Section 5(d) is not merely a part of the OIG's general authority to keep Congress informed of the Inspector General's views. Section 5(d) is to be invoked upon a determination that there is a matter that is "particularly serious or flagrant." In light of this, section 8F(d) of the IG Act requires the agency head to report the matter to the Board of Directors "[n]o later than the date on which the Inspector General ... reports a problem, abuse, or deficiency under section 5(d)." In short, we needed to be clear on the status of the Special Report in order to know whether the Acting CEO had to transmit your report to the full Board of Directors. Once we had Jack Park's answer to that question at 5:18 pm on May 7, 2009, your report was transmitted to all members of the Board.

With the Acting CEO's immediate responsibility fulfilled, we moved on to preparing to distribute your report, and the CEO's response. However, in so doing we still faced inconsistencies in your Office's stated positions. In our view, it is clear that the invocation of section 5(d)'s criteria of "particularly serious or flagrant" (as inherent in Jack Park's 5:18 pm email on May 7, 2009) also carries with it the assurance that the reporting mechanism therein provided would be complied with. However, Jack Park's statements in his 3:59 pm email on May 7, 2009 recited a set of expectations that was inconsistent with the section 5(d) reporting mechanism. We also believe that the specific reporting

mechanism set out by the Congress in section 5(d) is not to be ignored. As part of that mechanism we believe it is implicit that the agency be given the opportunity to prepare its response before any congressional offices are notified, and that the agency be further given the opportunity to provide its response to congressional offices directly (without further "reply" from the OIG). This is simply the state of the law.

Because your office stated a different expectation, we needed to clarify our position. This is what my email of 10:39 this morning did. Because of Jack Park's statement at 5:18 last night that this was a report under section 5(d), the full Board of Directors is now aware of this matter. I advised the members of the MAG committee (and in partial preparation for its upcoming meeting) of what we understood to be the applicable reporting requirements, including my view that communication of the report outside the regime set forth in section 5(d) is contrary to the provisions of section 5(d).

Frank R. Trinity
General Counsel
Corporation for National and Community Service
202-606-6677 (direct)

From: Walpin, Gerald
Sent: Friday, May 08, 2009 12:34 PM
To: Trinity, Frank; Park, John
Cc: Tanenblatt, Eric; Alan D. Solomont; SGoldsmith; Goren, Nicola
Subject: RE: Your Special Report on St. Hope Academy matter

I write in response to your email sent today at 10:39 a.m.in order to set out OIG's position clearly and unambiguously for you and for the MAG Committee members. I would not have even bothered to respond, except that, after a series of many emails, including three from you, on this subject, you now decided to send a copy to members of the MAG Committee.

You are correct that the Special Report cited, as OIG's authority to issue it and deliver it to Congress, sections 4(a) and 6(a) of the Inspector General Act. There can be no dispute that these sections provide that authority to OIG.

As we were preparing to meet with Ms. Goren and you on Wednesday, I wanted to provide you with a copy of the Special Report and give Ms. Goren the option of providing a response to it. I then, for the first time realized that the right of agency response is contained in section 5(d), which is another section authorizing this report by OIG, and, in order to give Ms. Goren that response opportunity, orally informed you that OIG considers that the Special Report was authorized by all three sections.

Although you knew that we had so informed you at our meeting, on Thursday, you, by email, asked for written confirmation that "this report is made under section 5(d) of the Inspector General Act." My Special Assistant Jack Park responded that it "was authorized and made pursuant to sections 4(a), 5(d) and 6(a)," confirming also that we "specifically included section 5 (d)" because it was the only section which "authorizes an agency response ... even though other sections, by themselves authorize the Report."

You then promptly advised that you understood "that the Special Report is issued and subject to the provisions of section 5 (d) ..., and we shall act accordingly." One would have thought that this procedural detour was concluded.

But now, a day later, you are replying again, objecting to OIG's performance of its duties under sections 4(a) and 6(a), because they do not have the same terms as section 5(d), and suddenly included the MAG Committee members in the distribution.

I have no objection to full disclosure to the MAG Committee members, and, indeed asked previously for, and still welcome, their participation in the merits of the underlying issue – although I did not, and would not, have initiated their involvement in what appears to be petty bickering.

The fact remains that OIG was authorized to issue the Special Report to Congress, without an opportunity for the Corporation to respond, under sections 4(a) and 6(a). We added section 5(d) to benefit the Corporation with a right of response. That you

are criticizing OIG for doing that unfortunately is another demonstration of the hostility you have repeatedly expressed, since David's departure, toward OIG.

-----Original Message-----
From: Trinity, Frank [mailto:FTRINITY@cns.gov]
Sent: Fri 5/8/2009 10:39 AM
To: John J. Park
Cc: Gerald Walpin; Tanenblatt, Eric; Alan D. Solomont; SGoldsmith; Goren, Nicola
Subject: Your Special Report on St. Hope Academy matter

Your email below to me dated May 7, and sent at 5:18 p.m. says as follows:

"The Special Report was authorized by and made pursuant to §§ 4(a), 5(d), and 6(a) of the Inspector General Act. Of those provisions, only § 5(d) authorizes an agency response, within seven calendar days, and we wanted to give the Corporation the opportunity to respond. We therefore specifically included § 5(d) for that reason even though the other sections, by themselves, authorized the Report" (emphasis added).

I wish to note for the record that, contrary to your statement that you "specifically included § 5(d)" the report itself specifically references other sections of the IG Act but does not reference section 5(d). Your email to me dated May 7, sent at 5:18 p.m. was the first time your office had specifically referenced section 5(d).

I'm writing to provide notice that, in accordance with section 5(d) of the Inspector General Act, the Corporation's Acting CEO will distribute your report to the committees or subcommittees of the Congress on or before May 14th,, seven calendar days from the date you disclosed that the report was issued pursuant to section 5(d).

The Corporation's distribution of the report on or before May 14th shall include any comments that the agency head deems appropriate.

Section 5(d) makes no provision for the agency head to provide comments to the IG in advance of distribution. Your assertion that OIG plans to distribute the report, the Corporation's comments, as well as any subsequent IG "reply" is not in accordance with section 5(d).

Regarding your disclosure yesterday that your office has already distributed the report directly to Congressional staff members, we believe that such distribution is contrary to the provisions of section 5(d).

Frank R. Trinity

General Counsel

Corporation for National and Community Service

202-606-6677 (direct)

From: Trinity, Frank
Sent: Thursday, May 07, 2009 5:45 PM
To: Park, John
Cc: Walpin, Gerald
Subject: RE: Your Special Report on St. Hope Academy matter

Given your response below, notwithstanding the fact that the Special Report references only sections 3 and 4 of the Inspector General Act, we now understand that the Special Report is issued under and subject to the provisions of section 5(d) of the Inspector General Act, and we shall act accordingly.

Frank R. Trinity

General Counsel

Corporation for National and Community Service

202-606-6677 (direct)

From: Park, John
Sent: Thursday, May 07, 2009 5:18 PM
To: Trinity, Frank
Cc: Walpin, Gerald
Subject: RE: Your Special Report on St. Hope Academy matter

The Special Report was authorized by and made pursuant to §§ 4(a), 5(d), and 6(a) of the Inspector General Act. Of those provisions, only § 5(d) authorizes an agency response, within seven calendar days, and we wanted to give the Corporation the opportunity to respond. We therefore specifically included § 5(d) for that reason even though the other sections, by themselves, authorized the Report.

From: Trinity, Frank [mailto:FTRINITY@cns.gov]
Sent: Thursday, May 07, 2009 4:41 PM
To: John J. Park
Cc: Gerald Walpin
Subject: RE: Your Special Report on St. Hope Academy matter

I need to know specifically whether this report is made under section 5(d) of the Inspector General Act. Please advise immediately, given the seven-day deadline that you reference.

Frank R. Trinity

General Counsel

Second, we note that your Semiannual Report, which we are due to transmit to the Congress by the end of the month, makes reference to this matter and states that you will be separately reporting on it. Does that mean that you will transmit your Special Report following the transmission of the SAR? If not, when do you expect to transmit the Special Report (if you have not already done so)?

Finally, can you make available to us an electronic version of the report?

Frank R. Trinity

General Counsel

Corporation for National and Community Service

202-606-6677 (direct)

Corporation for National and Community Service

202-606-6677 (direct)

From: Park, John
Sent: Thursday, May 07, 2009 3:59 PM
To: Trinity, Frank
Cc: Walpin, Gerald
Subject: RE: Your Special Report on St. Hope Academy matter

In response to your questions, I note:

1. When we gave the report to Nicky yesterday, we advised both of you that the Corporation's response was due in seven days.

2. In response to a request from the Ranking Member of the House Oversight and Government Reform Committee, we delivered a copy to the Chair and to minority Committee staff on Tuesday, May 5. Similarly, we also delivered a copy to staff for Senator Grassley and counsel for Senator Hatch. As to those distributees, we have advised them that, when we receive the Corporation's response, we will give them a copy.

Those distributions are independent of the Semiannual report.

If any other member or staff requests a copy, we will furnish it to them. On May 13, 2009, seven days from yesterday, when we receive the Corporation's response, we will disseminate as we see fit both the Special Report and the Corporation response, as well as any reply we deem appropriate.

3. We will send you an electronic copy of the text of the Special Report. Unfortunately, we do not have the exhibits available by that means.

From: Trinity, Frank [mailto:FTRINITY@cns.gov]
Sent: Thursday, May 07, 2009 12:23 PM
To: Gerald Walpin
Cc: John J. Park
Subject: Your Special Report on St. Hope Academy matter

To follow up on your providing Nicky with a copy of your Special Report to Congress, I wanted to ask for clarification of several points.

First, you provided a copy to Nicky without a cover letter on the status of this matter. I want to be sure as to whether you are expecting or awaiting a response from Corporation management and, if so, the time frame.

Office of Inspector General
Corporation for National and Community Service

Special Report to Congress
From
The Office of Inspector
General
Of
The Corporation for
National and Community

Corporation for
NATIONAL & COMMUNITY SERVICE

1201 New York Avenue, NW, Suite 830
Washington, DC 20525
Telephone (202) 606-9390
Facsimile (202) 606-9397
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Special Report to Congress
From
The Office of Inspector General
Of
The Corporation for National and Community Service

This special report is issued to Congress in performance of the Congressional mandate to this Office of Inspector General for the Corporation for National and Community Service ("Corporation"), that we keep Congress "fully and currently informed . . . concerning . . . serious problems, abuses and deficiencies relating to the administration of programs and operations administered or financed by" the Corporation. 5 U.S.C. ¶ App. §§ 3, 4(a)(5).

Summary

Following a thorough investigation by Special Agents of this Office of Inspector General ("OIG"), on August 7, 2008, we sent a referral for criminal and/or civil prosecution to the United States Attorney for the Eastern District of California, concerning St. HOPE Academy ("St. HOPE"), a grantee from the Corporation, and its two principals, Kevin Johnson and Dana Gonzalez. Earlier, on May 21, 2008, OIG sent to the Corporation's Debarment and Suspension Official a referral requesting prompt suspension of St. HOPE, Johnson and Gonzalez from being able to receive or participate in future grants of Federal funds. Based on the detailed facts establishing misuse of the grant funds provided to St. HOPE, the Debarment and Suspension Official, on September 24, 2008, specified six acts of diverting grant funds to non-grant purposes, found that "immediate action is necessary to protect the public interest," and suspended all three respondents "from participating in Federal procurement and nonprocurement programs and activities." Although the notice of suspension afforded each respondent the opportunity to lift the suspension by submitting "specific facts that contradict" the findings contained in the Suspension notice, none of the respondents exercised that right.

Even so, on April 9, 2009, the Corporation, by the Debarment and Suspension Official and the Corporation's General Counsel, joining the United States Attorney for the Eastern District of California, but excluding the OIG (which had been the sole moving force in both proceedings), executed a settlement agreement of questionable value, but which vacated the

suspensions and precluded the debarment of any of the respondents -- all without any facts to contradict the previous findings which, the Debarment and Suspension Official had found, required holding that these respondents were each not responsible, and therefore should not receive further Federal funds.

This 180-degree turnaround was based on the change of circumstances of Respondent Johnson, who had, after directing St. HOPE's misuse of the grant funds provided to it and receiving the suspension notice, become Mayor of Sacramento. The suspension was lifted because, as one Corporation official put it, the Corporation could not "stand in the way of Sacramento" -- thereby effectively stating that, while Respondent Johnson was not sufficiently responsible to receive further Federal funds in his management position as a grantee, he suddenly became sufficiently responsible when elected Mayor of a city receiving substantially more Federal funds -- akin to deciding that, while one should not put a fox in a small chicken coop, it is fine to do so in a large chicken coop!

The settlement accepted by the Corporation leaves the unmistakable impression that relief from a suspension can be bought. In addition, media pressures and political considerations both appear to have impacted the Corporation's decision here.

The Corporation -- in a departure from talking to and working with OIG on any matter in which OIG has an interest and/or involvement -- refused to discuss this "settlement" with OIG and obtain OIG's views on the terms, and merely informed OIG of the "done deal" after it had been signed. The Corporation not only improperly "sold" a suspension away as part of a monetary settlement, but, due to its rush to conclude the "settlement" without any OIG input, entered into a settlement that does not even protect the Corporation's ability to receive the amount promised by St. HOPE in it. Further, the Corporation's action represented an unnecessary insult to the OIG staff, which had worked unselfishly long and hard to uncover the facts which substantiated the charges.

A. The Grant

After submitting a proposal to the California Service Corps (the California State Commission), St. HOPE was awarded a three-year grant under which it received AmeriCorps grant funds (totaling $847,673 in direct grants and in education awards for AmeriCorps members assigned to St. HOPE) that originated with the Corporation. In its proposal, St. HOPE itself wrote the requirement that the grant funds must be used for the purpose of:

> "(1) providing one-on-one tutoring to [Sacramento] elementary and high school students;
>
> "(2) managing the redevelopment of one building a year in the Oak Park [the Sacramento neighborhood in which St. HOPE operates]; and
>
> "(3) coordinating logistics, public relations, and marketing for the Guild Theater and Art Gallery events, as well as hands-on workshops, guest artist lectures, and art exhibitions for Sacramento High School for the Arts and PS7 Elementary School [in Sacramento]."

Ex. 1.

Those specified activities were to accomplish the following purposes:

> "(1) to improve the reading and math achievement of 100 elementary and high school students . . . as part of the after school program; (2) to stimulate economic growth in Oak Park by managing the redevelopment of the Walton Pediatrics building, an investment of $1.6 million into the community; (3) to increase arts programming in Oak Park; and (4) to recruit and train 500 volunteers to complete 10,000 hours of service in Oak Park."

Ex. 2.[1]

Significantly, the grant documents restricted St. HOPE's ability to change its plan and grant obligations. The grant application that St. HOPE filed through the California State Commission (which is named "California Service Corps") provided, in part, "[sub]grantee may not revise the [described] 'Scope of Work,'" for which the grant funds were to be used, "without written approval" of the California Service Corps. Ex. 3. St. HOPE never sought or obtained that required written approval. Further, any "changes in the scope, objectives or goals of the Program" could not be made without "prior written approval of the [Corporation's] AmeriCorps

[1] The grant paperwork for the 3-year grant and for the second and third years contains the same language as in the first quotation above. The second quotation is substantially identical, with only the identity of the building to be redeveloped being changed and the numbers of volunteers recruited and trained being reduced.

Program Office." Ex. 4. Again, no such prior written approval was sought or obtained by St. HOPE.

Finally, the "Agreement Summary" portion of the grant, which the California State Commission provided to St. HOPE with the Notice of Grant Award, expressly reiterated that, when St. HOPE spent grant funds, its spending had to be in compliance "with all provisions of the grant [and] . . . in accordance with . . . [the] representations made in support of the approved Grant Application." Ex. 5.

The requirement that grant funds be used only for the community service purposes specified in the grant precluded St. HOPE from using the grant funds to pay for any of the expenses it had or would have had without the grant. Thus, unless expressly provided for in the grant, St. HOPE could not use grant funds to pay all or part of the salaries of its employees or the costs associated with its administrative or management structure. Further, the controlling statute, 42 U.S.C. § 12637, prohibits grant funds or service-providers financed with grant funds from being used to fill positions that have been or reasonably could be filled by someone in the community. See also 45 C.F.R. § 2540.100(f).

In the context of St. HOPE, these restrictions meant that, among other things, St. HOPE's AmeriCorps members, who were supposed to be tutoring, could not be put to work washing Johnson's car, running personal errands for him, helping him to land a new school contract across the country from Sacramento, or engaging in partisan political activities;[2] likewise, St. HOPE could not take its employees and, without changing their job duties, make them AmeriCorps members and pay them, in full or part, with grant funds -- all of which, as discussed below, the evidence establishes was done with AmeriCorps members.

B. OIG Becomes Involved

It is, in retrospect, ironic that it was the Corporation (through its Office of Grants Management), together with the California State Commission, which, on April 17, 2008, advised

[2] 45 C.F.R. § 2520.65(a)(5) specifically prohibits use of AmeriCorps members for "partisan political activities, or other activities designed to influence the outcome of an election to any public office."

this Office of the irregularities at St. HOPE, thereby sparking this OIG investigation. Promptly, on April 23, 2008, two OIG Special Agents, Supervisory Special Agent Jeffrey Morales and Special Agent Wendy Wingers, from this Office traveled from Washington, DC, to Sacramento to investigate that information. When those Agents deployed, neither they nor this Office had reached any conclusions whether the allegations were true, much less had any predetermined outcome in mind. Rather, they were as interested in disproving as in proving the allegations.

While those Agents were in Sacramento, on April 25, 2008, the Sacramento Bee (the local newspaper) related that, after a teacher at Sacramento High School reported that Kevin Johnson had inappropriately touched a female student who told the teacher about the incident, Johnson's personal attorney and business partner investigated the complaint for the school. The Sacramento Bee reported that the student later recanted, and that Sacramento police investigators found no merit to her complaint. It also reported that the teacher resigned and, in his resignation letter, asserted, "St. HOPE sought to intimidate the student through an illegal interrogation and even had the audacity to ask me to change my story." Ex. 6.

We immediately recognized what appeared to be improper handling of this allegation by St. HOPE **and** unethical conduct by Mr. Johnson's attorney in investigating, supposedly on behalf of St. HOPE, a serious allegation of misconduct by that attorney's business partner and client. *See, e.g.,* California Rules of Professional Conduct Rule 3-310 "Avoiding the Representation of Adverse Interests."[3]

St. HOPE said that it had handled the allegations properly, but the Sacramento Bee reported that California law required that law enforcement authorities be notified immediately when school officials learn of such an allegation, and that, despite that requirement, the female

[3] (B) "A [lawyer] shall not accept or continue representation of a client without providing written disclosure to the client where...the [lawyer] has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter,. . .
(C) A [lawyer] shall not, without the informed written consent of each client...accept representation of more than one client in a matter in which the interests of the clients potentially conflict..."

Of course, Mr. Johnson, an interested party, could not provide that consent on behalf of St. HOPE. Only the Board of Directors could do so after full written disclosure. While in these circumstances, it would have been a breach of the Board's fiduciary duty to have consented, there is no evidence of either full disclosure to the Board or its consent.

student was questioned as part of the school's investigation -- by Johnson's business partner and attorney -- before the police were called.

Between April 23 and June 28, 2008, those OIG Special Agents made five trips related to the investigation, conducted 26 interviews and reviewed a substantial quantity of documents. Significantly, when our Agents twice asked to interview Mr. Johnson, the response was, first, that Mr. Johnson did not have time for an interview, and, when the second request was made to his attorney, the Agents were told that they must first brief Mr. Johnson's attorney on the facts known to the Agents after which Mr. Johnson's attorney would decide if Mr. Johnson would be interviewed. The Agents then briefed Mr. Jacobs with the relevant facts but, despite the Agents' repeated requests for an interview with Mr. Johnson, Mr. Jacobs responded that Mr. Johnson's schedule would not permit time for that purpose -- *i.e.*, Mr. Johnson effectively declined to be interviewed.

Although this office was not the source, OIG's involvement did not pass without press notice. As early as April 26, 2008, the Politicker.com website reported that "a governor's office staff attorney confirmed that federal officials began [an] inquiry after seeing the newspaper's [*i.e.*, the Sacramento Bee's] coverage." Ex. 7. Subsequently, on June 30, 2008, the Sacramento Bee reported that OIG agents made "a second visit to Sacramento in late May, after extending their initial stay in April by several weeks."[4] Ex. 8. While "[f]ederal officials" would not comment on the investigation, some of those interviewed talked with the Bee's reporter. *Id.*

On Friday, September 5, 2008, the Sacramento Bee reported, "Federal agents investigating the use of taxpayer dollars by Kevin Johnson's St. HOPE have turned the case over to the U.S. Attorney's Office in Sacramento, officials confirmed yesterday." The Sacramento Bee quoted, among others, the spokesman for this Office and then-United States Attorney McGregor Scott. What the Sacramento Bee does not say is that the spokesman for this Office did not confirm or deny the existence of a referral.[5] The Sacramento Bee does state, "U.S.

[4] OIG Agents were in California from April 23 to May 9, 2008, and again from May 27 to May 30, 2008. In addition, an OIG Agent traveled to West Point, NY, on May 13, 2008.

[5] The spokesman for this office was called by a reporter for the Sacramento Bee and asked, among other things, whether this OIG presented a referral for prosecution to the United States Attorney; the OIG spokesperson told the

Attorney McGregor Scott confirmed Thursday evening that 'we are in receipt of the Inspector General's report and we are . . . reviewing it.'" Ex. 9.

D. The Suspension

The Federal government has created a Debarment and Suspension procedure, covering all Federal agencies, to protect all Federal agencies from giving Federal funds to a person or entity which, in prior dealings with any single agency, has shown a lack of responsibility to use in a proper manner Federal funds entrusted to that person or entity. Under the controlling regulations, a person or entity may be suspended when there "exists . . . adequate evidence to suspect . . . commission of fraud, . . . making false claims, . . . or commission of any other offense indicating a lack of business integrity or honesty that seriously and directly affects [the person's or entity's] present responsibility . . . or violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as willful failure to perform in accordance with the terms of one or more public agreements or transactions."
2 C.F.R. §§ 180.700(b), 180.800 (a)(4), (b).

On May 21, 2008, this office forwarded to the Debarment and Suspension Official a 13-page recommendation, signed by the Inspector General and the Supervisory Special Agent on this investigation, that St. HOPE, Johnson and Gonzalez be suspended, detailing the evidence substantiating their violations, and thereafter provided to that official the voluminous evidence relied upon. After studying all the evidence provided, and obtaining the legal advice and assistance of the Corporation's General Counsel, the official issued his decision: By letters dated September 24, 2008, the Corporation suspended St. HOPE, Johnson, and Gonzalez "from participation in Federal procurement and nonprocurement programs and activities." Exs. 10, 11, 12.[6]

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reporter that he could neither confirm nor deny the existence of a referral. At that point, the reporter learned that the United States Attorney had confirmed its existence, and rang off, telling our spokesman that there was no further need to talk with him.

[6] That the official issued his decision without notice to the respondents is consistent with prescribed procedure. A leading Government Contracts treatise points out, "an agency is not required to provide notice that it is contemplating the suspension of a contractor. Usually, once a contractor receives notice that it has been proposed for debarment or suspension, it is already included on the GSA's List of Parties excluded from Federal Procurement and Nonprocurement Programs." Cibinic & Nash, Formation of Government Contracts, 3d (1998), 487. The treatise states further, "No notice of contemplated proceedings is required." *Id.* at 488.

In the Notice of Suspension, the Corporation's Debarment and Suspension Official stated that the information that he received "is adequate to allow me to suspect that there has been on your part a willful failure to perform in accordance with the terms of a public agreement, and other causes of so serious or compelling a nature that it affects your present responsibility." Exs. 10, 11, 12 at 2 (internal citations omitted). And, "[t]he evidence is adequate to suspect that you have committed irregularities which seriously reflect on the propriety of further Federal Government dealings with you." *Id.* He then provided respondents with notice of the specific instances of the diversion and misuse of Corporation grant funds that, in his judgment, warranted suspension (and followed each by the textual explanation providing additional specification):

1. Using AmeriCorps members to "recruit[ ] students for St. HOPE Academy;"
2. Using AmeriCorps members for political activities in connection with the "Sacramento Board of Education election;"
3. Taking grant-funded AmeriCorps members "to New York to promote the expansion of St. HOPE operations in Harlem;"
4. Assigning grant-funded AmeriCorps members to perform services "personally benefiting . . . Johnson," such as "driving [him] to personal appointments, washing [his] car, and running personal errands;"
5. "Supplementing staff salaries by converting grant funds designated for AmeriCorps members," by enrolling two St. HOPE Academy employees "into the AmeriCorps program for the 2004/2005 grant year" without changing their duties, thereby improperly using grant funds so that one St. HOPE employee's "salary was then paid through the AmeriCorps program," plus she "received an [AmeriCorps] living allowance and an education award," and the other employee's salary, which was not paid from the grant, "was supplemented by both an AmeriCorps living allowance and an education award;" and
6. Improperly using AmeriCorps "members to perform non-AmeriCorps clerical and other services" that "were outside the scope of the grant and therefore were impermissible" for "the benefit of St. HOPE."

Id. at 2-3.

The Suspension notice then advised each respondent:

> "In accordance with 2 C.F.R. 180.720-745, within 30 calendar days of your receipt of this notice, you may submit, in person, in writing, or through your representative information and argument in opposition to this suspension, including specific facts that contradict the statements contained in this notice."

Id. at 3.

Notwithstanding the fact that their responses were due within 30 days after their receipt of the letters, we have been informed that no respondent made any submission to seek rescission of the suspension, and instead all requested multiple extensions of time, which the Corporation granted.[7]

On September 25, 2008, the suspension was reported by the media. On September 26, 2008, Mr. Johnson issued a statement (Ex. 13), calling the suspension "politically motivated," and proclaiming that he had "cooperated with the Federal government from day one," and that he "instructed attorneys to formally fight these crazy meritless allegations." There were many untruthful assertions in his statement: *E.g.*, (1) Clearly no one from OIG in Washington, DC, had any interest in the Sacramento Mayoral election, and therefore could have no political motivation for an investigation into St. HOPE, **commenced** in April 2008, **at the request of the Corporation**, but we did have our sworn obligation to investigate and pursue credible allegations of fraud and misuse of Corporation grant funds; (2) Mr. Johnson had in fact refused to cooperate with the OIG investigation -- he had, as described above, effectively declined to make himself available for an interview; and (3) He had clearly not instructed his attorneys to fight the suspension by following available procedures to seek to lift the suspension by providing facts which contradicted the findings made by the Suspension Official which warranted the suspension.

After the primary election and before the November run-off, on October 27, 2008, a weblog entry posted by a Sacramento Bee writer reported that, following referral of the OIG report to the U.S. Attorney's Office, the writer talked to the U. S. Attorney. The entry continued, "When I asked him about the report last month, U.S. Attorney McGregor Scott told me that he was 'sensitive to the bigger picture,' and promised to move 'as expeditiously as we can in a

[7] We believe that any records relating to the suspension process are held by the Corporation's Debarment and Suspension Official, its Office of General Counsel, or both.

professional manner to make the decisions required of us in a timely manner.' By timely, I hoped Scott meant before the election. That's just nine days away." Ex. 14.

In the November run-off election, Johnson defeated the incumbent mayor. Shortly after the election, on Thursday, November 6, 2008, the Sacramento Bee reported that the United States Attorney had announced a decision not to file any criminal charges (Ex. 15). As OIG had received no such notice from that office, the IG spoke to the United States Attorney who informed the IG that he had been misquoted. On the following day, the Sacramento Bee reported that the correct statement was that the United States Attorney "has asked for additional information and is awaiting an answer from Federal investigators," and made clear that "[n]o final decision has been made about whether there is any basis to proceed on either a civil or criminal front." Ex.16. The Sacramento Bee also wrote, "He [*i.e.*, McGregor Scott] also said the Inspector General's office is conducting a 'line-by-line audit' of [St. HOPE's] Hood Corps." *Id.*[8]

E. Post-Election Events

Those November elections also resulted in the election of Barack Obama as President, who was sworn in on January 20, 2009. One of President Obama's first initiatives resulted in the enactment of ARRA, the stimulus legislation. With the prospect that stimulus funds might make their way to Sacramento, Johnson and the City each began looking at the effect of the suspension on the City's ability to receive and spend new Federal money from procurement and non-procurement programs.

In early March or before, both the media and Johnson directed their attention to the potential effects of the suspension of now-Mayor Johnson and Gonzalez, who was reported by the Sacramento Bee on January 29, 2009, to be an unpaid volunteer to his administration (Ex. 17).

The Sacramento Bee reported that "[s]hortly after Johnson's election last November, City Attorney Eileen Teichart hired Frederick M. Levy [a Washington, D.C. attorney] - regarded as an

[8] The Sacramento Bee wrote, "William Hillburg, a spokesman for the inspector general, said Thursday he could not confirm his office was doing an audit and could not comment on the investigation." Ex. 16.

expert on government contracting and compliance - to determine whether Johnson's inclusion on that [suspension] list posed an issue when it sought Federal funding." The Sacramento Bee continued that Levy, in his opinion provided to the City on March 13, 2009, had concluded that the "City of Sacramento likely is barred from getting Federal money -- including tens of millions the City is expecting from the new stimulus package -- because Mayor Kevin Johnson is on a list of individuals forbidden from receiving Federal funds." Ex. 18.

At this point, Johnson still did not exercise his right to seek to have the suspension lifted by submitting to the Debarment and Suspension Official "specific facts that contradict the statements contained in" the suspension notice -- the requirement, as he had been informed, to seek lifting of the suspension.

Instead, Johnson's lawyer, Matthew G. Jacobs, wrote three letters. In the first (Ex. 19), dated March 16, 2009, to Assistant United States Attorney Kendall Newman,[9] Mr. Jacobs wrote that the purpose of his letter was "(1) to establish that at least a large portion of the moneys provided to St. HOPE Academy . . . pursuant to the Grants was utilized to perform services within the scope of work of those Grants, (2) to establish St. HOPE's poor current financial condition, and (3) to demonstrate through accounting records the specifics of how St. HOPE spent the grant monies." Ex. 19. Mr. Jacobs quickly acknowledged that "[w]e have not yet been able to fully accomplish the third objective, although we are willing to continue trying . . . ." -- despite the express requirement that St. HOPE was required to maintain such records (*e.g.*, Section V E of the AmeriCorps Grant Provisions) and thus an admission that St. HOPE had failed to perform in that regard as required by the grant provisions. While Mr. Jacobs asserted that the principal of PS7 Elementary School and several former St. HOPE AmeriCorps members could confirm that those members "did indeed spend many, many hours engaged in direct, one-on-one tutoring," he ignored the mandate, in the grant application (Narrative pp. 25-26) (Ex. 20), that all tutoring done must be documented in Tutoring Logs, which St. HOPE never was able to produce. Mr. Jacobs offered "to continue to work toward a more robust determination that grant monies were used in furtherance of the Grants" – a "more robust determination" that, of

[9] Newman sent a copy of that letter to OIG, which was received on March 26th, although not all exhibits were provided to us.

necessity, could only mean documentation as required by the Grant provisions; but, this offer was, as will be shown, ignored by the Corporation in what quickly became an express train to lift the suspension.

Significantly, Mr. Jacob's 14–page, single-spaced letter did not address any of the six specifications (quoted pp 10-11 above) which were the basis for the suspension.

Mr. Jacobs, in his second letter, also addressed to AUSA Newman, dated March 18, 2009, confirmed the settlement offer he had telephonically communicated to AUSA Newman, of a cash payment of $50,000 plus a stipulated judgment in the amount of $250,000, both to be paid by St. HOPE (Ex. 21).

Mr. Jacobs wrote a third letter, dated March 31, 2009, to the Corporation's Debarment and Suspension Official (Ex. 22). Again, Mr. Jacobs did not address any of the six specifications in the Suspension Notice. Instead, he complained about the fairness of the suspension process. He said that the suspension was not challenged because, among other reasons, none of those suspended had applied for or were applying for Federal funds. He explained, "[h]owever, now that there appears to be an issue regarding whether federal agencies will permit an entirely separate entity altogether -- the City of Sacramento -- to participate in federal programs because of the Corporation's placement of our clients (and particularly, Mayor Johnson) on the Excluded Parties List, this matter has become extremely urgent, and must be resolved immediately." He ended by claiming that the suspension violated respondents' constitutional rights and threatened that, unless the Corporation "immediately withdraw[s] or rescind[s] its suspension," he would "seek legal redress with the courts."

F. U.S. Attorney's Consultation With OIG

From the first involvement of the United States Attorney's office, when OIG sent its referral, the United States Attorney's office had dealt solely, as is customary, with the OIG as the investigatory agency which had done the investigation and made the referral. The United States Attorney's office had not contacted the Corporation.

AUSA Newman early on recognized that he needed, and requested, OIG's help to obtain critical documents, books and records from St. HOPE which, under the grants, it was required to maintain, but had never produced for examination. For example, the General Ledger, a required financial document, which essentially records all receipts and all disbursements, with source and recipient identification, was never fully produced, despite repeated requests by OIG agents. On September 11, 2008, AUSA Newman asked OIG auditors to prepare a report on St. HOPE's financial records to determine the extent of St. HOPE's liability to return any or all of the grant funds it received. OIG auditors advised that an attempt should be made to obtain substantial amounts of St. HOPE's financial records which had not been produced. With AUSA Newman's concurrence, OIG then prepared and, on October 1, 2008, served on St. HOPE (with a copy provided to AUSA Newman) a subpoena requiring production of 16 specified types of documents (Ex. 23), including "General ledger and other accounting records detailing transaction-level support for Federal and match expenditures claimed on the financial status reports" filed by St. HOPE. The grant provisions and relevant regulations required St. HOPE to maintain most of the 16 specifications of documents (and good business practices would have called for the maintenance of the remainder), but St. HOPE had not produced them in response to OIG agents' earlier requests.

After repeated requests by St. HOPE for extensions of time, partial productions, notice to St. HOPE's attorney of St. HOPE's non-compliance -- on all of which AUSA Newman was kept informed -- on November 24, 2008, Special Agent Morales forwarded to AUSA Newman a list, prepared by OIG Auditors, of the St. HOPE documents needed to perform a fiscal review, and which should have been produced in response to the subpoena. On December 2, 2008, OIG asked AUSA Newman for assistance to enforce the subpoena to obtain full compliance. Two weeks later, AUSA Newman asked OIG to draft an affidavit in support of an enforcement proceeding he would commence. OIG proposed and then provided that affidavit on January 8, 2009, and, on January 22nd, AUSA Newman asked for certain alterations, which were done with a corrected affidavit e-mailed to AUSA Newman on January 23rd. AUSA Newman and OIG agreed that St. HOPE's failure to produce documents it was required to maintain provided us no comfort that we could rely on St. HOPE for financial transparency.

On February 4th, AUSA Newman informed OIG Supervisory Special Agent Morales that St. HOPE's attorney was furnishing additional documents and that OIG auditors should provide their report based on the documents St. HOPE provided. OIG auditors did so, providing their report on March 18th (Ex. 24). The report noted that St. HOPE had failed to provide the following documentation: "Source documentation for costs charged to the grant; complete general ledger (only a partial ledger was produced); reconciliation of costs charged on the Financial Status Report to the general ledger, including match funds; explanation of the methodology for allocating costs between match and Federal share; [and] identification of the accounting system used." The report's conclusion was straight forward:

> "None of the costs charged to the grant are allowable, primarily because the AmeriCorps members' service activities were not consistent with the grant requirements.
>
> " * * *
>
> "Contrary to . . . grant requirements and prohibitions, we found that St. HOPE AmeriCorps members performed little, if any, of the service agreed to and stipulated under the grant. Instead, they were used for non-authorized and prohibited activities, including service that displaced St. HOPE employees, a violation of 42 U.S.C. § 12637 *Non duplication and Non displacement*. We also found instances where AmeriCorps living allowances and benefits were unlawfully used to supplement the salaries of St. HOPE employees.
>
> "Another grant requirement is that all allowable cost must be adequately documented . . . . We found an almost total lack of documentation to support St. HOPE's performance of the grant, despite our repeated requests to St. HOPE for grant-related documents."

As noted above, AUSA Newman forwarded to OIG Mr. Jacobs' letter of March 16, 2009, which was received by OIG on March 26th. On Friday, March 27th, when the IG first saw the letter, he asked Agents Morales and Wingers to provide him with their comments by Monday, March 30th. The IG analyzed both Mr. Jacobs' letter and the Agents' memorandum, and on March 31st requested the Agents' assistance in drafting a response which we prepared and sent to AUSA Newman on April 6, 2009.

On April 1, 2009, the United States Attorney's Office appeared to continue working with OIG, as the investigative agency with which it would work, by asking this Office for OIG's views regarding a potential settlement, conveying terms that respondents had proposed (we later learned, on March 18th), which were $50,000 immediately and $250,000 over five years. AUSA Newman asked that we provide a proposed counter-offer and the minimum amount we believed would be acceptable. Although the IG stated that it was important for the United States Attorney's office to have OIG's response to Mr. Jacobs' March 16, 2009, letter to be able to analyze OIG's settlement views, AUSA Newman stated that he would like to have our views on the dollar amount of a settlement and thereafter receive our response to Mr. Jacobs' letter. He also demurred to the IG's suggestion that he wait until we had been able to obtain the Corporation's views, which we had sought to take into account in providing our views. He insisted that we provide our views on April 2nd. (His reason for such a rushed schedule later became apparent, as discussed below.)

Therefore, on April 2, 2009, the IG provided the following to AUSA Newman in a telephone conversation: (i) an opening counter-offer of $170,000 immediately (covering the amount paid for education awards from the National Service Trust funds) and $400,000 over five years; (ii) the minimum of $100,000 immediately, an additional $70,000 in one year, and $300,000 over the following four years; (iii) sufficient guaranties of payment; (iv) any settlement being pushed on the basis of factual assertions made in Mr. Jacobs letter could not be properly evaluated by the U.S. Attorney's office without OIG's reply, to be shortly provided, to Mr. Jacobs' letter, and OIG's interviews of the witnesses on whom Mr. Jacobs relied, which, the IG said, we would expeditiously do; and (v) that it would be improper to include the suspension in any settlement because that issue must be decided on whether the respondents are responsible for future grants, not whether they have paid for prior misuse of grant funds. In one of our March conversations with Acting U.S. Attorney Larry Brown, he had referred to the suspensions as "the 800-pound gorilla" in any settlement negotiation.

OIG had kept the Corporation's General Counsel, Frank Trinity, informed of both the settlement proposal made by respondents' attorney and OIG's position, including that it would be improper to negotiate the suspension as part of any monetary settlement. Mr. Trinity stated

that he agreed that it would be improper. As to the monetary terms of the settlement, on April 1, 2009, the IG informed the Corporation's Director of Grants Management, Margaret Rosenberry, of St. HOPE's settlement proposal terms and asked her to provide OIG with the Corporation's analysis for OIG to consider. The IG left a voicemail message to the same effect for Mr. Trinity. We did not obtain that Corporation input on the monetary amount in time to meet AUSA Newman's schedule for OIG to take that into consideration.

In the afternoon of April 2, 2009, after the IG had spoken with AUSA Newman, Ms. Rosenberry, together with a member of Mr. Trinity's staff, Irshad Abdal-Haqq, met with members of OIG staff to review the facts and seek the Corporation's view on the monetary amount of any settlement. Special Agents Morales and Wingers set forth the relevant facts -- including highlights of Mr. Jacobs' March 16, 2009, letter -- provided them documents as requested, and told them that, if they wanted any other documents, they had only to ask. At no time did either request a copy of Mr. Jacobs's March 16th letter.[10]

After the IG's April 2, 2009, telephone conversation with AUSA Newman, he and his office suddenly ceased talking with OIG personnel about this case. He apparently did not like (i) our opposition to any settlement that voided the suspension without allowing the Debarment and Suspension Official to determine, based on evidence, including any contradictory evidence respondents would furnish, whether Johnson and the other respondents were sufficiently responsible to be trusted with more Federal funds, and (ii) our view that Mr. Jacobs' summary of what his witnesses said should not be the basis of triggering a settlement, without giving OIG Special Agents an opportunity to interview those witnesses (although, during their investigation, the OIG Agents asked St. HOPE's Attorney for the current addresses, the response had been that they were not known to St. HOPE). Instead, as we were informed late in the evening of April 2,

[10] The Corporation's General Counsel, who was **not** present at that meeting, subsequently accused OIG of withholding the letter and declined to reconsider when OIG pointed out to him that the letter was the subject of discussion at that meeting. Indeed, OIG agents present stated at the meeting that they thought it necessary to re-interview the Principal of PS7, who Mr. Jacobs wrote in his letter had told him that the AmeriCorps members had in fact performed tutoring -- contrary to what the Principal had previously told the Agents. In addition, they reported that, of the nine interviews on which Mr. Jacobs relied in his letter, the agents had interviewed only two (one member and the PS7 Principal) and they had provided information contradictory to Mr. Jacobs' interviews. The Agents also informed Ms. Rosenberry and Mr. Abdal-Haqq that they had told AUSA Newman that, if any weight was being given to those interviews, the Agents wanted to reinterview two of them and interview the others, but AUSA Newman had stated that he put no weight in those interviews by Mr. Jacobs.

2009, by e-mail from Mr. Trinity, AUSA Newman "reached out to [Mr. Trinity]," immediately following my advice to him of OIG's position on settlement, and AUSA Newman and Mr. Trinity agreed that AUSA Newman's "office will deal with [Mr. Trinity] as the point of contact." (Ex. 25). From that date, the United States Attorney's office started dealing solely with Mr. Trinity.[11]

On Monday, April 6, 2009, as OIG had promised AUSA Newman, OIG e-mailed him our seven page analysis of and response to Mr. Jacobs' March 16, 2009, letter (Ex. 26). We provided a copy of this letter to Corporation General Counsel, Mr. Trinity. Noting that "Mr. Jacobs concedes that St. HOPE cannot 'demonstrate through accounting records the specifics of how St. HOPE spent the grant monies'," OIG showed AUSA Newman why the explanations that Mr. Jacobs offered for that failure were without merit. First, as to AUSA Newman's assertion that it was normal for grantees not to have documentation, our letter pointed out that it was absurd to suggest that a Federal agency would overlook the absence of required financial documentation. Contrary to Mr. Jacobs' assertion that OIG, not St. HOPE, had the St. HOPE invoice documentation, OIG noted that OIG did not have the "contemporaneous invoices St. HOPE provided to" the California State Commission. Moreover, Mr. Jacobs' general assertions that St. HOPE generally did what it was supposed to do with the Federal funds failed for lack of support. Our letter pointed out that the grants did not set out general obligations, "but rather fix[ed] more specific objectives and methods to document the use" of the Federal funds.

Likewise, our letter pointed out that Mr. Jacobs failed to provide documentary support for his assertion that some tutoring had been done. The grant program required that a "Tutoring Log" be kept, but none was ever produced in response to OIG requests. OIG noted that Mr. Jacobs' reliance on "interviews" was misplaced because, while OIG obtained 26 interviews -- almost all of people in the Sacramento area -- Mr. Jacobs primarily relied on conversations with individuals from remote areas whom OIG could not interview because, as already noted, when OIG had asked for the current addresses of those individuals, St. HOPE's attorney said that that the information was not available. In addition, for all but two individuals, Mr. Jacobs did not

[11] While Mr. Trinity wrote in that e-mail that the U.S. Attorney would also continue to seek OIG's input, in fact the U.S. Attorney's office, once it had received Mr. Trinity's agreement to by-pass OIG, never again communicated with OIG and dealt solely with Mr. Trinity.

provide interviews of people OIG had talked to, and the interviews of those two individuals by OIG and by Jacobs were contradictory. Finally, Mr. Jacobs' reliance on a telephone conversation that he put into the text of an e-mail is hardly a procedure most conducive to obtaining the facts.

Later that day, Tuesday, April 6, 2009, the Corporation informed OIG of its evaluation of the claims against St. HOPE to OIG. In an e-mail to Supervisory Special Agent Morales, the Corporation's Office of Grants Management gave a value of $250,000 - $335,000, exclusive of penalties. Remarkably, the low figure is lower than the offer that St. HOPE had made.

G. The Settlement

Without informing OIG -- and without seeking OIG's input on the terms and provisions of the settlement agreement -- on April 9, 2009, the United States Attorney announced the settlement of the Government's claims against St. HOPE, Johnson and Gonzalez. Ex. 27. The Settlement Agreement was signed on behalf of the Government by AUSA Newman, William Anderson "Acting Chief Financial Officer and Debarment and Suspension Official on behalf of the Corporation for National and Community Service," and Frank R. Trinity "General Counsel on behalf of the Corporation for National and Community Service."

1. The Settlement Agreement Terms

The Settlement Agreement (Ex. 28) provided:

(i) St. HOPE would make an immediate payment of $73,836.50, and execute a stipulated judgment for an additional $350,000, to be paid $35,000 annually for ten years, plus 5% annual interest.

(ii) "to assist St. HOPE in paying" the initial $73,836.50 amount, Johnson agreed to pay St. HOPE $72,836.50 and Gonzalez agreed to pay St. HOPE $1,000.00 "in time for St. HOPE to make the Initial Payment . . . pursuant to the terms of this Settlement Agreement." Further, it provides that "Johnson and St. HOPE may enter into an agreement whereby St. HOPE agrees to repay Johnson when St. HOPE has the financial ability to do so while still meeting all of its other financial obligations."

(iii) "Johnson and Gonzalez shall register to take an on-line course offered by Management Concepts titled 'Cost Principles'" and "complete the course within 120 days . . . , and shall provide written verification under oath of having completed the course."

(iv) "The Corporation shall terminate the suspension of St. HOPE, Johnson and Gonzalez . . . " and "agrees not to institute debarment proceedings against" them "so long as they comply with their obligations under this Settlement Agreement."

(v) St. HOPE, but not Johnson and Gonzalez, "agrees that it may be considered a high-risk grantee by the Corporation for a period of two years."

(vi) "St. HOPE warrants that it has reviewed its financial situation and that it is currently solvent within the meaning of 11 U.S.C §§ 547 (b)(3) and 548 (a)(1)(B)(ii)(I), and will remain solvent following payment to the United States of the $73,836.50."[12]

2. Analysis of the Settlement Agreement

Analysis of the Settlement Agreement makes clear that it was a rush job to paper a settlement, while failing to contain provisions to protect the Government's ability to receive even what, on the surface, it was supposed to receive:

(i) Johnson and Gonzalez were, as the Settlement Agreement recites, the President and Chief Executive Officer, and Executive Director, respectively of St. HOPE. Thus, they directed and were responsible for the misuse of Grant funds which led to the Settlement Agreement. Johnson is reported to be more than financially able to pay the full judgment due the Government. On the other hand, St. HOPE is, as discussed below, in poor current financial condition, to say the least. Moreover, as a not-for-profit entity, whatever assets it has and will have in the future are from grant funds and charitable contributions. Yet, except for the advance to St. HOPE of funds for St. HOPE's initial payment -- under a provision which allows Johnson to get it back from St. HOPE -- Johnson assumes no liability for the amount the Government

[12] The cited sections do not, in fact, define solvency, but instead deal with preferences. As the $73,836.50 was essentially an exchange transaction, which could have been accomplished as well by Johnson's and Gonzalez's payment directly to the Government on St. HOPE's behalf, it is questionable that this reference has any relevance, other than further wallpapering.

should be repaid. The effect is to penalize the charitable entity, not the people who misused it. If that charitable entity were not burdened by a 10-year obligation to repay, it could put those funds to use serving a community purpose. Penalizing the CEO would have properly penalized the person responsible for the misdirection of the charitable entity, without detracting from funds being directed for community purposes.

(ii) The Government received no guaranty of, or security for, the ten annual payments of $35,000 plus interest which was the only payment promised to the Government, in addition to the initial $73,836.50 payment. As discussed below, the facts known to the Corporation, when it signed the Settlement Agreement, make obvious that St. HOPE's financial condition permits no assurance that these amounts will be paid.

(iii) While Johnson and Gonzalez provided St. HOPE with respectively $72,836.50 and $1,000.00 so that St. HOPE could make its initial payment of $73,836.50, the Settlement Agreement permits Johnson and St. HOPE to "enter into an agreement whereby St. HOPE agrees to repay Johnson when St. HOPE has the financial ability to do so while still meeting all of its other financial obligations." Significantly, no time period is specified before St. HOPE may so agree, and no standards are set forth objectively to determine that condition; thus, there is no protection against St. HOPE's immediately paying it back to Johnson. That is particularly true given that the Agreement contains St. HOPE's warranty that it is currently solvent. And if St. HOPE repays Johnson and is thereafter unable to make any or all of the ten annual payments, the Government has no recourse against Johnson even to disgorge that repayment of $72,836.50.

(iv) St. HOPE agreed "that it may be considered a high-risk grantee by the Corporation for a period of two years" -- presumably burdening St. HOPE's ability freely to obtain grant funds. But St. HOPE, as an entity, does not act by itself as a robot; for it to have acted improperly, it had to have been directed by Johnson and Gonzalez, its CEO and Executive Director. Yet, those who directed the wrongdoing are authorized to seek and receive control over new Federal grant funds without any high-risk label.

(v) Johnson's and Gonzalez's agreement to "register to take an on-line course offered by Management Concepts titled 'Cost Principles'" is pure wallpapering. One of our leading Certified Public Accountants has advised that this course is designed primarily for accountants and those performing accounting and bookkeeping functions, not to train someone in ethical issues involving the misuse of funds for a purpose other than for which it was provided. A review of the course book (Ex. 29) requires that conclusion in the listing of the following "Learning Objectives:"

"•discuss factors affecting allowability of costs;

"•classify costs as typically direct or indirect;

"•determine the allowability of selected items of cost;

"•review grant application budgets to determine cost allowability;

"•analyze spending decisions to determine whether they are allowable;

"•gain insight into grant cost disallowances by exploring agency and court decisions."

As already noted, the misuse here did not involve accounting "cost principles," but the ethical misuse of Federal grant funds for personal use and benefit of the CEO, contrary to the specified purpose for which the grant funds had been provided.

(vi) The Corporation's acceptance of St. HOPE's warranty that "it is currently solvent . . . and will remain solvent following payment to the United States of the" $73,836.50 underlines the wallpaper nature of this Settlement Agreement.

First, the warranty that the payment of the $73,836.50 will not cause St. HOPE to become insolvent is meaningless. That payment could cause St. HOPE to become insolvent only if the payment came from St. HOPE's assets or, conceivably, if St. HOPE accepted a liability to repay that amount. The Settlement Agreement was written carefully to avoid either condition, and to allow St. HOPE to agree to repay Johnson only at an unspecified time in the future, *i.e.*, after St. HOPE's payment of the $73,836.50, thus making axiomatic that the payment could not make St. HOPE insolvent, if it were solvent before that payment. The Agreement, however, allows such repayment by St. HOPE to Johnson the following day or anytime thereafter.

Second, significantly, Johnson was not required to warrant St. HOPE's solvency or guarantee St. HOPE's payment of the full amount to be given to the Government.

Third, and most significant, the information provided by St. HOPE itself, known to the Corporation, casts overwhelming doubt on St. HOPE's solvency, its ability to continue as a "going concern" (the customary audit term), and establishes that St. HOPE is in such a precarious financial condition that it is highly unlikely that St. HOPE will ever pay the remaining $350,000 to the Corporation.

As the Settlement Agreement recited, St. HOPE's cash flow and current assets did not allow it to pay the $73,836.50 initial installment. Johnson and Gonzalez had to provide those funds.

Also, Mr. Johnson's attorney, in his March 16, 2009, letter, himself described St. HOPE's financial condition as "precarious." He recited that, as of January 31, 2009, St. HOPE had net assets of $2,943,700 and total debt of $1,876.620, with $1,502,762 of the total assets being "accounts receivable, which St. HOPE will likely not realize." Excluding that amount from the realizable assets results in more debt than assets, or insolvency. Even all the assets as listed are not available to St. HOPE to pay its debts: Johnson's attorney disclosed that "'the investments' category reflects a $1,122,642 endowment from a separate 501(c)(3) organization, the St. HOPE Foundation, in an account at Merrill Lynch" which "are controlled by the Foundation, not St. HOPE."

Further, Johnson's lawyer disclosed that, for the single month of January 2009, St. HOPE sustained a net loss of $57,750 and for the eight months ending January 31, 2009, St. HOPE sustained a new loss of $725,103, and described St. HOPE as "hemorrhaging cash at an alarming rate."

Clearly, continuation of this "hemorrhaging cash at [that] alarming return" in the future would make the Corporation's collection from St. HOPE even more dubious. And Johnson's attorney disclosed that St. HOPE's "projection shows that for each month between February and

June 2009, except for April, St. HOPE will sustain a net cash loss of between $50,808 and $91,739." Johnson's attorney therefore concluded that "it is readily apparent that St. HOPE will soon be completely out of cash, with little or no revenue to supplant the loss." He concluded that "for current purposes, the 'ending cash' accessible funds total for April 2009 is $38,139; May 2009 is -$12,669; and June 2009 is -$74,477" with "next fiscal year's projections look[ing] even worse" -- which, he then represents, project "ending cash' as really -$136,285 in July 2009 and -$632,171 in June 2010."

That reality makes the Corporation's release of Johnson and Gonzalez from their joint liability in return for this worthless judgment against St. HOPE a waste of a Corporation cause of action asset and, frankly, a farce.

(vii) As discussed below, the stated motivation for both the Corporation and the U.S. Attorney to rush into this settlement was to rescind the suspension of Johnson which precluded the City of Sacramento from receiving Federal grant funds. As already noted, the suspension procedure exists to protect Federal funds so that they are not entrusted into the control of someone who has, by his previous record with Federal funds, been shown not to be trustworthy. Thus, if the Corporation and the U.S. Attorney wanted to reconcile both the protections of the suspension procedure and the desire to allow the flow of Federal funds to Sacramento, they could have insisted that an independently appointed "Federal Funds Guardian" be appointed to review and safeguard the City's use of Federal funds, in place of the Mayor, until (and if) the Debarment and Suspension Official made a determination that the factual record presented to him warranted no suspension or debarment. While such provision might have been politically distasteful to Johnson, the responsibility of both the Corporation and the U.S. Attorney's Office was to protect Federal funds without regard to any impact -- favorable or unfavorable -- on Johnson's popularity. But, no such provision was even suggested by either the Corporation or the U.S. Attorney's Office.

* * *

If OIG had been allowed to provide our analysis of the Settlement Agreement before the Corporation rushed to sign it, our office would have provided the above objections. In fact, any

attorney, interested in protecting his/her client's interests, would have seen these same objections. But the Corporation rushed to execute the Settlement, rather than taking the time needed to obtain OIG's comments and thereby protect the interests of the Corporation and Federal taxpayers.

H. Media and Political Pressure for Settlement

Shortly after the Sacramento Bee endorsed Mr. Johnson for Mayor on October 19, 2008 (Ex. 30), the Sacramento Bee's weblog first suggested, on October 27, 2008 (Ex. 14), that the "U.S. Attorney should resolve St. HOPE and Johnson questions." That did not cause any material expedition of the U.S. Attorney's progress.

Suddenly, with the enactment of stimulus legislation, a well-orchestrated push to force a settlement, which would include the lifting of the suspension -- without Johnson's need to provide facts to contradict the grounds for the suspension -- commenced. On March 16, and 18, 2009, as noted, Mr. Johnson's attorney wrote two letters to AUSA Newman requesting such settlement and lifting of the suspension. On Sunday, March 21st, the Sacramento Bee headlined an article "Mayor's status may imperil Sacramento's Federal stimulus funds, lawyer says," and reported that, in a statement, Johnson "said he is confident the issue can be resolved quickly" (Ex. 18). On Tuesday, March 24, 2009, the Sacramento Bee published an editorial "AmeriCorps case needs resolution" and opined that "[t]his is a case where everybody would be better off if the nonprofit and the IG reach a repayment settlement for the errors and move on" (Ex. 31).[13] On April 1, 2009, the Sacramento Bee reported that "Sacramento Mayor threatens to sue over his suspension from receiving U.S. funds" (Ex. 33), quoting Johnson's attorney's letter of March 31, 2009, to the Debarment and Suspension Official, a copy of which had apparently been provided to the Sacramento Bee by Johnson's attorney's simultaneously with forwarding it to the Corporation. Finally, on April 3rd, the Sacramento Bee published another editorial that a "repayment settlement" should be reached (Ex. 34).

[13] Misstatements in this editorial prompted the IG to respond to defend the OIG. Ex. 32.

I. Serious Adverse Effects of this Rushed Settlement

Between August 7, 2008, when OIG made its referral to the United States Attorney's Office, through at least February 2009, there was no communication to the OIG that the U.S. Attorney's Office sought to expedite the review and conclusion. Indeed, our Agents' requests to expedite subpoena enforcement to obtain documents from St. HOPE were, to put it mildly, not handled in an expedited manner.

The only circumstance that changed was the sudden media and political pressure to settle the matter monetarily and lift the suspension. These pressures had the desired effect. OIG, which has the responsibility to ensure the non-fraudulent and non-wasteful use of Federal grant funds, and to protect Federal funds in the future from those who have shown lack of responsibility, was not diverted from its responsibility. But the U.S. Attorney's Office and the Corporation -- both of which also are duty-bound to protect Federal funds -- were detoured from that obligation.

The first hint was when the Acting U.S. Attorney described the suspensions as the "800 pound gorilla" obstacle to reaching a conclusion of OIG's referral to his office. Then, after it was made clear that OIG would not agree to any settlement that rescinded the suspensions without an evidentiary showing that convinced the Debarment and Suspension Official that his previous findings were not correct, the U.S. Attorney's Office stopped dealing with OIG and found a more pliant and sympathetic partner in Corporation management. As Nicola Goren, the Corporation's Acting CEO, said to the IG, in the presence of Mr. Trinity -- in response to the IG's comment that no facts have been presented to alter the findings made by the Debarment and Suspension Official (with the advice of Mr. Trinity) -- Mr. Johnson's lack of responsibility, as demonstrated in the findings, had to be ignored because the Corporation could not "stand in the way of Sacramento getting stimulus money." A similar statement was made by Acting U.S. Attorney Brown; "The lifting of the suspension against all parties, including Mayor Johnson, removes any cloud whether the City of Sacramento will be prevented from receiving much-needed federal stimulus funds" (Ex. 27). Significantly, neither the Corporation's Acting CEO nor the Acting U.S. Attorney ever suggested that the suspension was lifted because the evidence did not support the suspension decision made more than six months before on the basis of

specific findings of wrongdoing. They could not make such representation because the factual record before the Debarment and Suspension Official remained unaltered.

The decision by the Corporation and the U.S. Attorney to cut out OIG and agree to this Settlement Agreement was injurious to the Federal government as a whole and specifically to the Corporation and the hard-working and dedicated staff of the Office of Inspector General.

First, the settlement sends the signal that acceptance of a grantee or its principal as "responsible" can be purchased in a monetary settlement, overriding all evidence of wrongdoing previously found to warrant a suspension, without the presentation of any contradicting evidence. Settlement Agreements are supposed to settle the liability of the grantee and its principals for past wrongdoing. The Federal government created the suspension process to insulate all parts of the Federal government from providing Federal funds to those whose past conduct, with respect to any one agency, demonstrates that they are not sufficiently responsible to be awarded Federal funds from that agency or any other in the future. Reimbursing the Federal government for past irresponsible conduct, when caught, does not by itself provide evidence of responsibility in the future to handle Federal funds in a proper manner.

Second, as discussed above, the Settlement Agreement, poorly drafted (except as it was drafted to favor Johnson), provides no protection of the Corporation's interests. While papering it to appear, as the Sacramento Bee reported (Ex. 35), on April 9, 2009, that "Johnson and his nonprofit St. HOPE Academy have agreed to give back half of the $847,673 in federal grants it received," in fact that is false. Johnson is paying nothing; while he advanced $72,836.50 to St. HOPE for St. HOPE to pay its obligation under the Settlement Agreement, Johnson has no obligation to pay one cent of the grant-half touted to be paid back to the Corporation, and he can very promptly even obtain reimbursement from St. HOPE of the amount he advanced to St. HOPE.

Moreover, as discussed above, St. HOPE's financial condition is so precarious that it is unreasonable to count on St. HOPE to be able to make the ten years of payments provided by the Settlement Agreement.

In these circumstances -- and assuming *arguendo* that repayment of one-half of the Federal funds provided to St. HOPE (but not used as required by the grant terms) is an appropriate monetary settlement -- no attorney representing the interests of the Corporation should agree to that settlement without security or guaranties. It is obvious that leverage was on the side of the Corporation's attorneys, as Johnson badly wanted the settlement. Yet, the Corporation's attorneys accepted a settlement with no security or guaranties. In these circumstances, the touting of this settlement as monetarily in the Corporation's interests in that it will receive back one-half of what it provided to St. HOPE is an attempt to pull the wool over the public's eyes.

Likewise, as discussed above, Johnson's agreement to take a course for accountants and bookkeepers -- but not an ethics course -- is more wallpapering to fool the public.

If OIG had been consulted on this Settlement Agreement instead of being excluded, OIG would have pointed out these and the other obvious deficiencies discussed above in the Settlement Agreement. All of them make a mockery of the time, energy and money that OIG expended in performing its duty -- to investigate and bring to justice anyone who engages in fraud, waste and abuse of Federal funds.

That raises the third adverse impact of this Settlement Agreement. When the IG assumed the position of Inspector General, he told Corporation management and his staff that he believed the OIG existed to help the Corporation ensure that Congressional funds provided to it are in fact used for the Corporation's specified (and good) purposes, and are not wasted or fraudulently taken. To accomplish that end, the IG believed, and has so acted since then, in having frequent direct communication with Corporation management, and, absent some unique circumstance (which has not occurred), keep Corporation management informed of OIG activities, findings and recommendations. Until this episode, Corporation management has done the same.

While OIG and the Corporation have not agreed on all issues, we have openly discussed them and neither has shut the other out in full disclosure of what is intended to be done and in seeking the other's views before finalization.

What the Corporation did here in shutting OIG out of the finalization of an investigation and our audit section's review which OIG had, as normal procedure, totally controlled, unnecessarily tore asunder the trust OIG had in Corporate management.

But even worse, it has, understandably, adversely affected the morale, and attitude towards the Corporation, of the hard-working dedicated OIG staff. These men and women -- investigators and auditors -- have spent long hours investigating, reviewing, analyzing, and acting on the voluminous evidentiary record they created, and which caused the Corporation Debarment and Suspension Official to find that it created a sufficient record warranting suspension of St. HOPE, Johnson and Gonzalez. Also, they provided an evidentiary record to support criminal charges and/or full civil recovery against them. As detailed in the IG's April 6, 2009, letter to AUSA Newman, there could be no doubt that Gonzalez, whom Johnson delegated to sign required representations to the Government to obtain grant funds, made misrepresentations to obtain those funds; indeed, in interviews conducted by OIG agents, she admitted sufficient facts to support a criminal charge. These agents also provided more than sufficient evidence to establish that the grant terms were violated as to the full amount of grant funds St. HOPE received, and evidence that Johnson personally directed all of St. HOPE's activities, including particularly the use of AmeriCorps members. Such evidence would readily support the imposition of civil penalties to be paid directly to the U.S. Treasury of two to three times the amount of established damages under the Federal False Claims Act -- an amount that neither the Corporation nor the U.S. Attorney's Office even bothered to ask for or leverage in its so-called settlement negotiations with Johnson, Gonzalez, and the St. HOPE's lawyers.

The OIG staff rightfully feel that no good reason existed to sell their time and effort for a worthless settlement that "cleanses" the respondents' wrongdoing. And even more distasteful to them is that, after all they did on this matter, the U.S. Attorney and the Corporation shut them out from any input on, or knowledge of, the settlement until it was executed and publicly announced.

This was an exercise of, at least, terribly poor judgment by the Corporation and the United States Attorney's Office which, apparently, had another agenda -- not that of protecting Corporation grant funds.

Conclusion

As we indicated at the beginning of this report, we believe it is OIG's obligation under statute to report these matters to you. In addition, it is the IG's position that he does so because, as long as he is in this position, he will stand by OIG's hard working staff whenever they are improperly treated for doing their job, and doing it well.

The IG and members of OIG staff are available to discuss this with you or your staff, at your request. Please call the IG directly at (202) 606-9390.

Respectfully submitted,

Gerald Walpin
Inspector General

Robert J. Walters
Assistant IG for Investigations

Stuart Axenfeld
Assistant IG for Audit

Corporation for
NATIONAL &
COMMUNITY
SERVICE

May 12, 2009

The Honorable Edward M. Kennedy
Chairman, Committee on Health,
Education, Labor, and Pensions
U.S. Senate
428 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Kennedy:

Enclosed is a Special Report to the Congress from the Inspector General of the Corporation for National and Community Service. The Special Report expresses the Inspector General's concerns about the negotiation and resolution of United States v. St. HOPE Academy, Kevin Johnson & Dana Gonzalez. We have been advised that the Inspector General considers this Special Report to be a communication to the Congress under section 5(d) of the Inspector General Act of 1978. Section 5(d) requires that we forward this report to appropriate committees and subcommittees of the Congress, along with comments the Corporation deems appropriate.

The Acting United States Attorney for the Eastern District of California, in announcing the terms of a Settlement Agreement on April 9, 2009, stated as follows: "The agreement reached strikes a proper balance between accountability and finality." The Acting U.S. Attorney also issued a letter of commendation, dated April 17, 2009, praising our Office of General Counsel for its outstanding work in resolving the matter to protect the interests of the United States while ensuring a just result.

We are constrained from commenting substantively on the Inspector General's Special Report because we have been advised that the Acting United States Attorney for the Eastern District of California has formally communicated concerns about the Inspector General's conduct in this matter to the Chair of the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency. Upon the completion of the Integrity Committee's consideration of this matter, we will promptly provide our comments on the Special Report.

We are available to answer whatever questions you may have regarding this matter, consistent with respecting the Integrity Committee's process.

Sincerely,

Nicola Goren
Acting Chief Executive Officer

cc: Senator Enzi

Additional Addressees for Distribution of "Special Report to the Congress From the Office of the Inspector General of the Corporation for National and Community Service"

The Honorable Michael B. Enzi
Ranking Member, Committee on Health,
Education, Labor, and Pensions
U. S. Senate
835 Hart Senate Office Building
Washington, DC 20510

The Honorable Tom Harkin
Chairman, Subcommittee on Labor, Health and
Human Services, Education and Related Agencies
Committee on Appropriations
U. S. Senate
131 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Thad Cochran
Ranking Member, Subcommittee on Labor, Health and
Human Services, Education and Related Agencies
Committee on Appropriations
U. S. Senate
156 Hart Senate Office Building
Washington, DC 20510

The Honorable Joseph I. Lieberman
Chairman, Committee on Homeland Security
and Governmental Affairs
U. S. Senate
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Susan M. Collins
Ranking Member, Committee on Homeland Security
and Governmental Affairs
U. S. Senate
350 Dirksen Senate Office Building
Washington, DC 20510

The Honorable David R. Obey
Chairman, Subcommittee on Labor, Health
and Human Services, Education and Related Agencies
Committee on Appropriations
U. S. House of Representatives
2358 Rayburn House Office Building
Washington, DC 20515

The Honorable Todd Tiahrt
Ranking Member, Subcommittee on Labor, Health
and Human Services, Education and Related Agencies
Committee on Appropriations
U. S. House of Representatives
2441 Rayburn House Office Building
Washington, DC 20515

The Honorable George Miller
Chairman, Committee on Education and Labor
U. S. House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515

The Honorable Howard P. McKeon
Ranking Member, Committee on Education and Labor
U. S. House of Representatives
2101 Rayburn House Office Building
Washington, DC 20515

The Honorable Edolphus Towns
Chairman, Committee on Oversight
and Government Reform
U. S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Darrell E. Issa
Ranking Member, Committee on Oversight
and Government Reform
U. S. House of Representatives
B350A Rayburn House Office Building
Washington, DC 20515

The Honorable Charles E. Grassley
U. S. Senate
135 Hart Senate Office Building
Washington, DC 20510

Corporation for
NATIONAL & COMMUNITY SERVICE

OFFICE OF INSPECTOR GENERAL

May 13, 2009

The Honorable Edward M. Kennedy
Chairman, Committee on Health,
Education, Labor, and Pensions
United States Senate
428 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Kennedy:

By letter dated May 12, 2009, Nicola Goren, Acting Chief Executive Officer, Corporation for National and Community Service, forwarded to you a Special Report prepared by my Office ("OIG") regarding the waste of assets in, and impropriety of, the settlement of claims by the United States against St. HOPE Academy, Kevin Johnson, and Dana Gonzalez. That Special Report was submitted to Congress pursuant to, among other provisions, section 5(d) of the Inspector General Act of 1978, as amended. Section 5(d) calls for the agency head to transmit the report to the appropriate committees or subcommittees of Congress within seven calendar days **"together with a report by the head of the establishment containing any comments such head deems appropriate."**

Instead of submitting any comments, however, the Corporation has declined to do so, on the ground that it is constrained from doing so because the Acting United States Attorney for the Eastern District of California "has formally communicated concerns about [OIG's] conduct in this matter to the Chair of the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency."

On May 12, we saw, for the first time, a copy of the April 29, 2009, letter to which Ms. Goren refers. That letter and the concerns it raises are entirely separate from the wisdom and propriety of the settlement of the claims that the United States had against St. HOPE, Johnson, and Gonzalez. It is, likewise, entirely separate from the Corporation's responsibility to provide its response to our Special Report to Congress and, for that reason, should not be used to table the Special report until it is "old news." We see no reason for Congress to wait for an uncertain period of time for the Corporation's comments.

Indeed, since April 7, 2009, before the settlement was announced, Ms. Goren and the Corporation's General Counsel knew of OIG's dissatisfaction with the contemplated settlement, which was announced on April 9. So did the United States Attorney's Office because we wrote to it about the proposed settlement on April 6, 2009. In short, all concerned knew some time ago of OIG's concerns about the proposed settlement, and also knew that we would perform our duty

to report to Congress our views of its impropriety. The Corporation should not need an open ended extension of time to submit any comments it may have regarding the Special Report.

For our part, we believe the complaint of the Acting United States Attorney to be without merit and will push for its prompt resolution by the Integrity Committee. This Office's Special Report, which you have been provided, contains many facts relevant to the merits of that complaint. While this is not the forum to respond in detail to the Acting United States Attorney's complaint, I note, as an example, that the Acting United States Attorney complains that his Office first learned of our Office's determination to seek the immediate suspension of St. HOPE, Johnson, and Gonzalez through a newspaper article on September 25, 2008. In fact, a copy of this Office's referral of those three respondents for suspension was sent to the United States Attorney's Office on July 9, 2008, after that Office was telephonically advised of it on June 30, 2008. Further, at a meeting in the United States Attorney's Office on August 25, 2008, attended by various Assistant United States Attorneys, including the now Acting United States Attorney, and three representatives of OIG, the subject of OIG's suspension request was discussed. And, on September 9, 2008, the United States Attorney's Office supplemented OIG's suspension request with its own letter to the Debarment and Suspension Official, asking that, if the suspension were ordered, the Corporation "not conduct fact-finding" as part of its consideration of the suspension referral. Thus, the Acting United States Attorney's assertion of no knowledge of the suspension referral until reading about it in the newspapers is totally false.

In conclusion, the Corporation has no good reason for withholding its response. We believe Congress is entitled to learn at this time – not a year later – if the Corporation has any defense to what this Office believes to be conduct contrary to its responsibility to protect Federal funds and the interests of the United States Government. We ask Congress to direct the Corporation to furnish its comments at this time.

Very Truly Yours,

Gerald Walpin
Inspector General

May 18, 2009

MEMORANDUM FOR NICOLA GOREN, ACTING CHIEF EXECUTIVE OFFICER

FROM: Frank R. Trinity *Frank R. Trinity*
General Counsel

SUBJECT: Settlement Agreement in St. HOPE Academy matter.

This memorandum addresses the Corporation's involvement in settlement negotiations in United States v. St. HOPE Academy and responds to the Inspector General's objections to the process and substance of the Settlement Agreement in that matter as expressed in his Special Report.

A. Corporation's involvement in settlement negotiations

On April 2, 2009, the United States Attorney's Office for the Eastern District of California contacted me and asked our agency to participate in settlement discussions in this matter. At all times thereafter, the Corporation acted in support of the U.S. Attorney's negotiations. As General Counsel, I coordinated the Corporation's involvement in those negotiations and communicated the Corporation's views to the U.S. Attorney's office.

Federal funding for the City of Sacramento was at risk because Kevin Johnson -- two months before being elected Mayor -- had been placed on the Excluded Parties List based on information provided to the Corporation by the Inspector General. Other Federal agencies were actively considering whether to suspend funding to the City of Sacramento. Accordingly, we gave due consideration to a global settlement, including lifting the suspension, if the terms of the settlement were appropriate. On April 9, 2009, the matter was settled, the terms of which are a matter of public record.

While an Inspector General has no statutory entitlement to participate in an agency's deliberative process, including the settlement of a civil matter or a suspension, it has been our practice for the Inspector General's Office to serve as point of contact with the United States Attorney's Office on pending civil recovery matters until settlement is actively discussed. At that point, I am usually asked to participate on behalf of the agency to communicate the agency's approval of the terms of any settlement agreement. Because St. HOPE Academy, Kevin Johnson, and Dana Gonzalez were in serious discussions with the United States Attorney's Office about possible settlement, my communications with the U.S. Attorney's Office were not unusual.

The Inspector General objects to his not being included in the discussions between the United States Attorney's Office and Corporation management, as our

agency considered settlement terms. In normal circumstances we would have involved the Inspector General to a greater extent, as our agency considered the settlement terms under discussion. However, in this particular matter, I concluded that the Inspector General was not likely to serve as a productive participant in the agency's deliberative process. I shared the same concerns that were expressed to me by the Assistant United States Attorney about the Inspector General's public commentary on the matter and the Inspector General's failure to disclose material relevant to considering possible settlement terms.

B. The Inspector General's public commentary on a pending matter

The Inspector General repeatedly provided commentary about this matter in the media, including, among other statements:

- While the Inspector General's suspension recommendation was pending within Corporation management, the Inspector General's spokesman publicly branded those subject to suspension as "pariahs".

- For months following management's suspension decision, the Inspector General posted a press release announcing the suspension on his website, including having the words "NEWS FLASH!" in large red letters repeatedly flash on the top portion of the Inspector General's home page, just above a photograph of the Inspector General.

- While settlement discussions were underway, the Inspector General authored a detailed op-ed published in the Sacramento Bee on March 31, 2009.

See Attachment A.

In connection with the March 31, 2009, op-ed, the Special Report says that "[m]isstatements" in a Sacramento Bee editorial "prompted the IG to respond to defend the OIG." (page 24, note 13, and Exhibit 32 to the Special Report.) The Inspector could have corrected any misstatement with a factual note of correction. Instead, the Inspector General's personal op-ed, published on March 31, 2009, goes well beyond any factual corrections and makes the following comment:

> *...contrary to your editorial, the ball on the suspension has been in Johnson's court since the order of suspension was issued.*

Apparently, he made the decision not to appeal the suspension by providing specific facts that would show to the neutral suspension official that the suspension was not warranted. If, as you charge (without basis), that suspension in these circumstances was an 'unusual step,' the procedures allowed Johnson to seek to lift the suspension. He decided not to do so.

I generally defer to the Inspector General's choices on how to communicate with the public on any matter of his interest. However, I considered the Inspector General's public commentary while decisions were pending within the Corporation and the United States Attorney's office to be inappropriate. The nature of the public commentary caused me to question the Inspector General's objectivity in this matter.

C. The Inspector General's selective disclosure of information

When Corporation management became involved in settlement discussions, the Inspector General's conduct deepened my concern about his objectivity and judgment, specifically his producing documents to support his position while not producing documents to present the other side's position.

On or about Wednesday, April 1, 2009, the Inspector General requested that our Grants Management Director review certain documents to help evaluate a settlement offer made by St. HOPE Academy, Kevin Johnson, and Dana Gonzalez.

At a meeting conducted in the Office of Inspector General on Thursday, April 2, 2009, OIG staff provided two OIG documents to our Grants Management Director (and an Associate General Counsel representing my office). I was not at the meeting but I was briefed by the Grants Management Director and my OGC colleague. The OIG documents (provided to CNCS for review) stated that "no tutoring" was performed by the St. HOPE Academy program. OIG staff did not provide a document in its possession recently prepared by St. HOPE Academy's counsel. The St. HOPE Academy counsel document (not provided to CNCS for review) stated that substantial tutoring was performed, based on statements attributed to former program participants.

Whether tutoring was in fact performed by the program was a material fact in evaluating potential settlement terms. On Monday, April 6, in the presence of the Grants Management Director, Special Assistant to the IG Jack Park, and Assistant IG for Audit Stuart Axenfeld, I expressed concern to the Inspector General about OIG not having provided the St. HOPE Academy counsel letter representing that tutoring had in fact been performed. The Inspector General initially expressed uncertainty as to whether he had the St. HOPE Academy counsel letter at the time of the April 2 meeting. Assistant IG for Audit Axenfeld said to the Grants Management Director, "I gave you everything I had." Mr. Walpin, at meeting's end, stated that even if he had the letter he wouldn't have provided it.

On Tuesday morning, April 7, I visited the Inspector General in his office. I told him that I was not accusing him of withholding or concealing documents, but that I believed that he had shown a lack of candor in not producing the St. HOPE Academy counsel letter for our review in connection with the settlement discussions.

In the Special Report, the Inspector General acknowledges that OIG received the St. HOPE Academy letter on March 26, 2009, a week before the April 2 meeting with the CNCS Grants Management Director. Given these facts, the Special Report's explanation for OIG not providing the letter -- (management "had only to ask" for the document) – confirms my earlier conclusion that the Inspector General actions fall short of the fairness and candor that I believe is necessary for an Inspector General to work effectively with agency management. I lost confidence in the Inspector General's being able to provide an objective view of the matter and to be fair in participating in the agency deliberative process.

D. The Inspector General's complaints about the settlement terms are without basis.

The Inspector General calls the Settlement Agreement with St. HOPE Academy a "worthless judgment" and a "farce." The Special Report criticizes the security – not the amount -- of the payment required under the Settlement Agreement.

On the issue of security for the settlement amount, the Assistant United States Attorney, who has substantial experience in resolving civil matters on behalf of the United States, specifically negotiated the security terms. We discussed the issue prior to executing the agreement and I was fully satisfied that the terms provided an appropriately high level of security to the United States in connection with the required payment.

The Inspector General's Special Report omits a material term of the Settlement Agreement on this point. As part of the Settlement Agreement, St. HOPE Academy also entered into a Stipulation for Consent Judgment giving the United States an enforceable judgment against St. HOPE Academy in the full amount of $350,000. See Attachment B.

The Inspector General claims that the Agreement would allow St HOPE Academy to repay Kevin Johnson the amount he has paid on St. HOPE's behalf, with no recourse to the government if that repayment makes St. HOPE Academy insolvent. In fact, there is substantial recourse to the Government even under the scenario posited by the Inspector General. First, the Inspector General overlooks that a repayment to Mr. Johnson that would make St. HOPE Academy insolvent would place both St. HOPE and Mr. Johnson in violation of the Settlement Agreement. The Government would have direct recourse against Kevin Johnson

in that event. Second, any such payment by St. HOPE Academy officials would give the Government recourse against those officials in their personal capacities under section 3713 of Title 31 of the U.S. Code.

Finally, regarding the type of training course required for respondents to satisfy their obligations under the Agreement, I note that our Debarment and Suspension Official, like the authority cited by the Inspector General, is a Certified Public Accountant, and that he determined that the course included the appropriate elements for the two individual respondents.

Conclusion

The Settlement Agreement results in one-half of all awarded funds repaid to the Government, participation in the financial settlement by the two individual respondents, required coursework in grants management by the two individual respondents, and high-risk grantee designation of St. HOPE Academy. I believe that these terms, which are a matter of public record, are fair and just.

The fact that the Inspector General was not fully involved in the final negotiations of this matter was the result of (1) the Inspector General's questionable public commentary prior to settlement and (2) the Inspector General's selective disclosure of relevant material when management was considering settlement terms.

As General Counsel on behalf of the Corporation, I worked with senior agency officials to provide timely and effective input to the United States Attorney's Office in resolving a very important matter. We carefully considered the issues, worked closely with the Assistant United States Attorney handling the matter, deliberated within the agency's management and governance structure, and determined that entering into the Settlement Agreement was the right thing to do. Nothing in the Special Report causes me to change my view that we proceeded in the interest of our agency, the Government, and the public.

Attachment A

THE SACRAMENTO BEE sacbee.com

This story is taken from Sacbee / Our Region

Hood Corps probe expands

dkorber@sacbee.com

Published Monday, Jun. 30, 2008

The continuing federal investigation into St. HOPE's Hood Corps has expanded to more deeply scrutinize the volunteer program's use of public dollars, say those familiar with the probe.

Agents Jeffrey Morales and Wendy Wingers made a second visit to Sacramento in late May, after extending their initial stay in April by several weeks. They interviewed teen volunteers, parents, teachers and administrators affiliated with St. HOPE, the nonprofit that operates Hood Corps. They traveled to Humboldt County and West Point.

Initially, the agents were dispatched to Sacramento on April 24 to examine allegations of sexual misconduct, Hood Corps' mandatory church attendance and compulsory physical training – activities prohibited on the federal dime.

Federal officials would not talk about the Hood Corps investigation but said their rules are clear.

"No church on our time, and it cannot be required," said William O. Hillburg, a spokesman for the inspector general's office conducting the investigation. "No political activity at all on our time, and it can't be required. No residential requirement at all."

At issue is $807,000 in federal AmeriCorps money that Hood Corps collected from 2004 to 2007. Though funding for the program was not renewed last year, if theft of public funds is found, fines could be assessed and other federal funding withheld from every program administered by St. HOPE, according to Hillburg.

Kevin Johnson, former NBA star and current mayoral candidate, is St. HOPE's founder and served as CEO until this month. Johnson has built his political campaign on his efforts to improve Oak Park, from redevelopment to charter schools to the Hood Corps, which he has compared to an urban Peace Corps.

Neither St. HOPE nor Johnson responded to questions from The Bee about the investigation. Instead, they issued one-paragraph statements saying they were cooperating with the agents but could not comment on specifics until the probe is complete.

At a televised candidate forum in early May, Johnson was asked about the investigation. "I

feel very confident in what St. HOPE has done," he said. "If St. HOPE did not do something as well as it should have, we would certainly rectify that immediately, but we'd have to hear back from them."

The federal investigation was sparked by a report of alleged sexual misconduct last year involving Johnson and two teen volunteers. That report, filed by a teacher at Sacramento High School, was found to be without merit by police – but still became the catalyst for the investigation because it was not reported to AmeriCorps.

AmeriCorps currently has 75,000 volunteers – called "members" – serving in 4,100 nonprofits nationwide. Members are paid a small living allowance and, if they put in a specified number of hours, earn an education award for college: $4,725 for 1,700 hours over the course of a year.

About 100 programs currently are under investigation, according to Hillburg. His office is part of the federal Corporation for National and Community Service, one of AmeriCorps' umbrella organizations.

Agents are checking whether St. HOPE's Sacramento High School used Hood Corps funds to augment employee salaries, sources close to the investigation told The Bee.

Among those interviewed by the federal agents was Sheila Coleman, a dance teacher at Sac High and a Hood Corps member in 2005.

That year, Coleman received a salary of $20,225 from St. HOPE public schools plus a $13,000 living stipend for her Hood Corps work, according to documents obtained by The Bee through a public information act request.

Coleman did not return calls for comment.

Allen Young, Coleman's former principal, said the teacher worked full time in 2005 and her salary would have been approximately $35,000.

Young said he learned about St. HOPE's decision to tap into funds for Hood Corps volunteers during a budget meeting when an employee from St. HOPE Human Resources told him of the plan.

"She said we had 'X' amount of money to hire staff. She said some of Sheila Coleman's salary would be paid for from some other tab – Hood Corps," said Young, who also has been in contact with agent Morales. "I didn't give it a second thought. I thought it must be OK to do that."

Allison Alair, a former St. HOPE teacher and administrator, said she met with agent Morales in May and has exchanged e-mails with him since then.

Alair said Morales questioned her about her allegation that Johnson and Dana Gonzalez, a top St. HOPE executive, directed Hood Corps members to help her sell school uniform shirts. "From Day One, Kevin and Dana told me to use Hood Corps students if I needed anything done," she said.

Alair said Morales also asked questions about Johnson's role in Hood Corps.

"He wanted information on Kevin, on his position, on his power," Alair said. "He wanted me to tell him the chain of command and specific examples about how Kevin himself directed certain activities."

Such questions – aimed at nailing down who is responsible – are crucial in every investigation, according to Hillburg.

Hood Corps – short for "Neighborhood Corps – was founded in 1998 by Johnson as a cornerstone of his St. HOPE organization. He continued in an active role in the program during the AmeriCorps years, according to Hood Corps participants and St. HOPE documents.

In its original contract with AmeriCorps, Hood Corps said its volunteers would perform a range of community service including tutoring, public relations for the Guild Theater and art gallery, and managing "redevelopment of one building per year in Oak Park."

Some volunteers said those things were among their duties. But Jonathan Beacham, a full-time Hood Corps fellow in 2004, told The Bee that his main duty was to be assistant manager for Uncle Jed's Cut Hut, a barbershop operated by St. HOPE.

Others told investigators that their tasks differed greatly from the contract, including chauffeuring Johnson, washing a St. HOPE van and scrubbing the toilets at the nonprofit's Guild Theater, according to four former members who spoke to The Bee after talking to the agents.

Changing duties in that way is prohibited, according to Hillburg, because it can undermine the very aspects of a program that won it funding. "You must abide by the contract," he said.

In addition to conducting interviews, Morales and Wingers also are reportedly combing through documents – including timecards – gathered under federal subpoena.

Agents always look hard at volunteers' timecards, Hillburg said, considering them the only true measure of work done.

"They have to be signed by the member and by a supervisor," he said. "If you sign a wrong time sheet, that's fraud and a federal charge.

Tamara Shelton, a full-time 2005 member, said she told the agents she never filled out a time sheet.

"We never kept track – they did that for us," according to Shelton, who dropped out of the program after struggling with the physical training.

Depending on the agents' findings, AmeriCorps investigations can have heavy consequences.

If warranted, Hillburg said, the agency can place a nonprofit or individual employees under a temporary federal suspension, cutting off all federal funding until the probe is completed. After the conclusion of the case, federal officials also can yank federal funding for up to three years – a punishment known as "debarment."

Under debarment, Hood Corps and other St. HOPE programs – including Sacramento Charter High School and PS 7, which last year received $1.3 million in federal funds – could be placed

on a national list barring them from receiving any type of federal money, including student lunch funding, student loans – even federally backed mortgages.

"I call it the 'pariah list,' " Hillburg said.

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