Eastern Market Management and Oversight
Needs Substantial Improvement
July 16, 2002
EXECUTIVE SUMMARY

PURPOSE

OBJECTIVES, SCOPE, AND METHODOLOGY

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   Eastern Market Corporation
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Eastern Market Enterprise Fund Balance Did Not Include at Least $19,400 That Should Have Been Credited to the Fund

$4,167 Received from Eastern Market Corporation for Fiscal Year 1999, After April 1999, Were Not Deposited into the Enterprise Fund or Lapsed to the General Fund

$2,029 Collected from the Farmers’ Line Were Not Deposited into the Enterprise Fund

During the Audit Period, Market Five Gallery Remitted Only $350 of Approximately $9,600 Owed to the District for Space Used at Eastern Market

Inadequate Internal Controls Existed over Collection of Revenue

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Disbursements Were Made Directly from Cash Receipts Without a Proper Accounting

CONCLUSION
EXECUTIVE SUMMARY

PURPOSE

Pursuant to D.C. Law 12-228, Section 4(c), the District of Columbia Auditor conducted an audit of Eastern Market Enterprise Fund (Fund) receipts, disbursements, and compliance with applicable laws, regulations, and standards.

CONCLUSION

The Eastern Market Enterprise Fund, established for the deposit of monies received on behalf of Eastern Market and to pay expenses related to the management and maintenance of the Market, was not in substantial compliance with the provisions of D.C. Law 12-228, which required the Fund to be created and operated as an Enterprise Fund outside of the District's General Fund. Instead, it was established as a component of the District's General Fund and monies collected on behalf of Eastern Market were commingled, in violation of the law, with money in the District’s General Fund. Also, the Eastern Market Enterprise Fund was not established as an interest-bearing account as required by law. Although interest was generated by investing Eastern Market Enterprise Fund money with the District’s pooled cash, interest earned from the investment of these monies had not been credited to the Fund.

The Auditor found that at least $19,400 that should have been received by the Chief Property Management Officer (CPMO) and deposited into the Eastern Market Enterprise Fund either was not received or, if received, was not deposited into the Enterprise Fund. While the Auditor did not find that any disbursements were made from the Eastern Market Enterprise Fund, the Auditor did find that disbursements were made directly from cash collected from vendors at the Market prior to depositing the collections in the Enterprise Fund. As a result of disbursing funds prior to depositing them, the expenditures were not properly authorized, documented, reported and recorded in the District’s System of Accounting and Reporting (SOAR). Handling public funds in this manner is an unsound financial management practice that invites fraud, waste, and abuse. Also, Office of Property Management (OPM) officials could not verify the accuracy of amounts collected because OPM officials failed to establish how much should have been collected from vendors and no records were maintained by OPM from which this information could be discerned.
The Auditor found that District government officials were lax in their monitoring and oversight of Farmers’ Line collections. They relied on an honor system for these collections and did not ensure that the Eastern Market Farmers’ Line interim collection procedures were followed.

Further, adequate procedures for the collection of fees from vendors and organizations using space at the Market and for disbursements from the Enterprise Fund were not enforced during the audit period. Without adequate procedures and adherence therewith, the District could not be assured of the accuracy of monies collected and deposited into the Fund.

Based on the lack of adequate policies and procedures, and OPM’s lack of verification of amounts received from vendors and farmers, the Auditor determined that internal controls over the collection and deposit of revenue and the disbursement of funds were inadequate to safeguard the assets of the Eastern Market Enterprise Fund.

**MAJOR FINDINGS**

1. During the audit period, Eastern Market Corporation and Market Five Gallery occupied space at Eastern Market without a current agreement.

2. The Eastern Market Enterprise Fund was not established or operated in full compliance with D.C. Law 12-228.

3. Monies collected on behalf of the Eastern Market Enterprise Fund were commingled with the District’s General Fund.

4. The Eastern Market Enterprise Fund was not credited with interest income.

5. For each fiscal year covered by the audit, the Eastern Market Enterprise Fund was reported as a component of the District’s General Fund in Comprehensive Annual Financial Reports (CAFRs) rather than a separate enterprise fund.

6. The Eastern Market Enterprise Fund balance was misclassified as deferred revenue.
7. Eastern Market Enterprise Fund balance did not include at least $19,400 that should have been credited to the Fund.

8. $4,167 received from Eastern Market Corporation for fiscal year 1999, after April 1999, were not deposited into the Enterprise Fund or lapsed to the General Fund.

9. $2,029 collected from the Farmers’ Line during fiscal year 1999 was not deposited into the Enterprise Fund.

10. During the audit period, Market Five Gallery remitted only $350 of approximately $9,600 owed to the District for space used at Eastern Market.

11. Inadequate internal controls existed over the collection of revenue.

12. Disbursements were made directly from cash receipts without a proper accounting.

**MAJOR RECOMMENDATIONS**


2. The Office of Finance and Resource Management must take the appropriate action to ensure that at least $3,953.36 in interest income earned for fiscal years 1999, 2000, 2001, and 2002 as of December 31, 2001 is credited to the Eastern Market Enterprise Fund. Future deposits must also earn interest. Failure of any official or employee under the personnel jurisdiction of the Chief Financial Officer of the District of Columbia to promptly credit the Eastern Market Enterprise Fund with interest earned should be held accountable to the fullest extent permitted under the Comprehensive Merit Personnel Act or personnel rules established by the Chief Financial Officer of the District of Columbia.
3. The CPMO should enforce written policies and procedures thus providing effective accountability for the collection of fees and rent from occupants and others who use Eastern Market space.

4. The CPMO must verify that the interim collection procedures established for the Farmers' Line are adhered to and that all required documentation is maintained.

5. The CPMO must ensure that space made available to the Farmers' Line is used only by vendors who meet the definition of “farmer” as set forth in D.C. Law 12-228.

6. Failure of any accountable OPM official or employee to ensure the collection of all receipts and compliance with established procedures should be held accountable to the fullest extent permitted under the Comprehensive Merit Personnel Act and District personnel rules.

7. The CPMO establish written policies and procedures governing disbursements from the Eastern Market Enterprise Fund. Further, all amounts received must be reported and recorded before making disbursements. Any disbursements must be properly supported, recorded and reported in the District’s financial system.
PURPOSE

Pursuant to D.C. Law 12-228, Section 4(c), the District of Columbia Auditor conducted an audit of Eastern Market Enterprise Fund (Fund) receipts, disbursements, and compliance with applicable laws, regulations, and standards.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of the audit were to determine whether:

1. an Eastern Market Enterprise Fund had been established as required by D. C. Law 12-228;

2. all revenues collected or received by the District’s Chief Property Management Officer (CPMO), on behalf of Eastern Market, were deposited into the Fund;

3. expenses paid from monies collected for the Eastern Market Enterprise Fund were properly recorded and handled in compliance with D. C. Law 12-228;

4. policies, procedures, rules, and regulations had been established to govern financial operations related to the Fund, the collection and deposit of revenue, and payment of expenses from the Fund; and

5. internal controls over the Eastern Market Enterprise Fund’s financial operations were sufficient to safeguard the Fund’s resources.

The audit covered the period April 1999 through March 2002.

To accomplish the audit objectives, the Auditor reviewed D.C. Law 12-228, entitled the “Eastern Market Real Property Asset Management and Outdoor Vending Act of 1998,” D. C. Code, Sections 37-101 through 37-113. The Auditor also reviewed relevant documents and records obtained from the Office of Property Management (OPM), the Office of Finance and Resource Management (OFRM), the Department of Consumer and Regulatory Affairs (DCRA), Office of Financial Operations and Systems (OFOS), and the Office of Finance and Treasury (OFT) relevant to the audit.
to the objectives of the audit. Officials from these agencies were interviewed regarding the establishment of the Fund, and deposits to and expenditures from the Fund. The Auditor also interviewed officials from the Department of Consumer and Regulatory Affairs and the D. C. Commission on the Arts and Humanities (Commission) concerning their activities with regard to Eastern Market prior to and subsequent to the enactment of D.C. Law 12-228. The audit team also interviewed a representative of the Eastern Market Farmers’ Line regarding the operation of the Farmers’ Line and the collection and payment of fees to the District government.

BACKGROUND

The Eastern Market Enterprise Fund was established pursuant to D. C. Law 12-228, the “Eastern Market Real Property Asset Management and Outdoor Vending Act of 1998,” which became effective April 16, 1999. The Fund was established for the deposit of all monies collected or received by the District’s Chief Property Management Officer (CPMO) on behalf of Eastern Market (Market) and to pay expenses related to the management and maintenance of the Market.

Eastern Market is a designated historic building within the Capitol Hill Historic District of Washington, D.C. and is owned by the District of Columbia Government. The Market is operated primarily as a fresh food and farmers market, and also serves as a venue for community and arts-related activities.

The District of Columbia Government is responsible for the overall management and maintenance of the Market. Prior to April 1999, three District agencies were responsible for managing various aspects of Eastern Market. These agencies included the Department of Consumer and Regulatory Affairs, the former Department of Administrative Services (DAS), and the D. C. Commission on the Arts and Humanities. Effective April 16, 1999, D.C. Law 12-228 consolidated management responsibilities by designating the “newly created Office of Property Management as the controlling agency for Eastern Market.” According to the law, OPM is responsible for supervising and providing coordinated management over all operations in the Eastern Market Square. The law also requires the selection of a market manager to manage and operate the Eastern Market Square. Eastern Market Venture, Inc. was selected as the market manager and currently manages a portion\(^1\) of the Market pursuant to an agreement executed on December 21, 2001.

\(^1\)According to the agreement, the premises included in the agreement consists of the South Hall and the second floor pottery area of the building, the rear drive alley behind the building, and on Mondays through Saturdays, that part of the exterior plaza of Eastern Market occupied by the Farmers’ Shed; and on Sundays all of the plaza occupied by authorized farm vendors.
between the District government and Eastern Market Venture, Inc. The term of the agreement began on January 2, 2002, and terminates on December 31, 2002, but may be extended for up to two additional one-year terms by written agreement of the parties.

This report does not include a review of the selection process for the market manager, current operations of the Market under the new market manager, or a review of the District’s agreement with Eastern Market Venture, Inc. The Auditor will review these areas in subsequent audits.

Revenue Received from Eastern Market Operations

During the audit period, the Eastern Market Enterprise Fund received income from three primary entities: Eastern Market Corporation (EMC), Market Five Gallery and Kuumba Center, Inc., and the Farmers’ Line.

As of March 31, 2002, the total amount of money collected and deposited into the Eastern Market Enterprise Fund since April 1999, as reported in SOAR, was $54,681.59. Of this amount:

$52,181.60 was recorded as deferred revenue and, if not expended by the end of fiscal year 2002, will be available for use in future fiscal years;

$2,499.99 was not recorded as deferred revenue in SOAR. As a consequence, these funds lapsed to the General Fund and are no longer available for use in managing and maintaining Eastern Market.
FINDINGS

EASTERN MARKET OCCUPANTS CONTROLLED SPACE WITHOUT CURRENT AGREEMENTS

Both Eastern Market Corporation (EMC) and Market Five Gallery continued to control space at Eastern Market after the expiration of their original agreements in 1976 and 1988, respectively. At the expiration of the original agreements, new agreements should have been executed to ensure that the occupants and the District were aware of the terms and conditions of their continued use of space at Eastern Market. Following is a summary of the District’s agreements with Eastern Market Corporation and Market Five Gallery.

Eastern Market Corporation

The District of Columbia government entered into an agreement with Eastern Market Corporation on August 23, 1966, for approximately 9,500 square feet of space referred to as the South Hall. The agreement was for a term of 10 years, beginning September 1, 1966, ending August 31, 1976. Rent was established at $100,000 for the entire 10-year term of the agreement, approximately $10,000 per year or, based on the audit team’s calculation, approximately $1.05 per square foot, which represents approximately 4% of current market rent for commercial properties in this area of the City.

EMC subleased space to vendors for an amount determined by EMC, and retained control over all rents and fees collected from these vendors. OPM officials indicated that they did not know how much in monthly fees EMC collected from each vendor. However, it was believed that EMC collected $750 to $1,900 per month per vendor for a total of approximately $9,750 to $15,000 per month or $117,000 to $180,000 per year. Even though the original agreement stipulated that EMC would permit the District government or its agents to have access to its books, records and accounts, the Auditor found that during the audit period OPM did not examine EMC’s books, records, or accounts to determine compliance with applicable rules and regulations.

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2 The audit team obtained information regarding rental rates for other properties in the Eastern Market area from a local commercial real estate firm.
At the end of the 10-year term in 1976, the District did not execute a new agreement with EMC. However, EMC continued to control space in Eastern Market and continued to pay the District $833.33 per month between 1976 and January 2, 2002, when EMC, pursuant to court order, surrendered possession to the District.

By letter dated December 8, 1999 to the Office of Property Management, the president of EMC confirmed that effective March 30, 2000, EMC’s occupancy of space at Eastern Market would be on a month-to-month term and subject to termination upon receipt of a 30-day notice. However, EMC did not vacate the premises when requested by the District. Therefore, the District sued EMC in Landlord/Tenant Court to evict them from the premises. In turn, EMC sued the District government in the Superior Court of the District of Columbia to prevent the eviction. The cases were consolidated in Superior Court and a decision was rendered in December 2001. The decision required EMC to surrender possession of space it occupied in Eastern Market. Possession was surrendered in January 2002. Pursuant to the Superior Court’s distribution order, the District received $4,166.65 in rent from EMC which had been held in escrow by the Court during litigation. The $4,166.65 was deposited into the Eastern Market Enterprise Fund in March 2002.

**Market Five Gallery**

In a memorandum entitled, “Space Assignment No. 2”, dated January 29, 1975, from the then-Director of the former Department of General Services to the then-Chairman of the D.C. Commission on the Arts and Humanities, “4,500 square feet of space on the ground floor and adjacent grounds, North End of the Eastern Market” was assigned to the D.C. Commission on the Arts and Humanities. On April 16, 1987, the Commission on the Arts and Humanities signed an agreement with Market Five Gallery and the Kuumba Center, Inc.\(^3\), sub-assigning the 4,500 square feet of space to these entities. The agreement did not contain any provision regarding fees that Market Five Gallery and Kuumba Center, Inc. were to pay the District for using this space.

A termination date of December 31, 1988, was stipulated in the agreement. OPM officials did not provide the Auditor with any documentation which extended the agreement from December 31, 1988 to December 31, 1995. However, in a December 27, 1995 memorandum to the Executive Director of Market Five Gallery, the then Executive Director of the D.C. Commission on the Arts and Humanities extended the space sub-assignment for use of the North Hall at Eastern Market for

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\(^3\) The Auditor found that in most of the District’s correspondence regarding the space occupied by Market Five Gallery, there was no reference to Kuumba Center Inc. It appears that at some point Kuumba Center Inc. ceased its involvement. OPM officials were not aware of Kuumba Center’s role or when it ceased its involvement.
three months beginning December 31, 1995. Again, no documentation was provided indicating a further extension of the agreement at the expiration of the three-month extension. However, Market Five Gallery continued to occupy and control the North Hall and adjacent grounds at Eastern Market through the audit period.

According to an OPM representative, Market Five Gallery assigned space to organizations for community activities and arts-related events, and to non-food vendors for use on Saturdays and Sundays. The agreement between the occupants and the Commission specified that the premises should be used only by enterprises sponsored by the occupants or by other non-profit arts, education or community organizations. OPM representatives could not provide the audit team with any reports or other documentation indicating that, during the audit period, they reviewed or confirmed that Market Five Gallery used the premises as stipulated in the agreement. Also, OPM representatives could not provide documentation of fees, if any, that Market Five Gallery charged vendors for using space in the North Hall and adjacent grounds.

The agreement further specified that the occupants were to “keep a single, separate and clear set of books of account for the recording of all receipts from admission charges and exhibition fees, . . . and of all expenses paid from or charged against such exhibition fees and admission charges.” The books were to be kept at a location satisfactory to the Commission and be available for inspection upon request by the Commission. Upon termination of the sub-assignment, the unexpended net balance of all exhibition fees and admission charges were to be promptly paid to the D. C. Treasurer. The occupants were also required to keep a single, separate record of the activities of arts and crafts vendors which documented the specific space(s) assigned to a vendor, the name of each vendor, and the amount of revenue collected. The April 16, 1987, agreement also contained a requirement that the occupants were to provide the D.C. Commission on the Arts and Humanities an annual report on the operation of the Gallery by January 15th of each year. The Auditor found that no such annual reports were submitted to the Commission during the audit period. Further, the audit team did not find any evidence that, during the audit period, the District inspected Market Five Gallery’s books and records to determine the amount of revenue collected.

By letter dated October 20, 1999, the Executive Director of the Commission on the Arts and Humanities informed the Executive Director of Market Five Gallery that OPM had assumed oversight of the North Hall as of October 12, 1999, and that OPM would be its new point of contact. Further, by letter dated November 8, 1999, the Chief Property Management Officer informed the Executive Director of Market Five Gallery that its April 16, 1987, agreement would be terminated effective December 31, 1999.
It appears that Market Five Gallery and the District attempted to negotiate a continuation of occupancy through the use of a license agreement. A March 7, 2000 letter from the CPMO to the Market Five Gallery Executive Director established March 8, 2000 as the deadline for Market Five Gallery and OPM to come to terms on a “license” agreement for the North Hall and the exterior space of the Market. The letter further stated that failure to reach terms by March 8, 2000 would result in the District opening negotiations with other interested parties to manage the North Hall operations. No terms were reached by the March 8, 2000 deadline, and records were not available indicating what, if anything, occurred between March 8, 2000 and June 2000. The Auditor noted that for the weekends of June 3rd through July 9, 2000, the District or a vendor representative collected fees from vendors using space controlled by Market Five Gallery. However, as a result of litigation initiated by Market Five Gallery in July 2000, the District and the vendor representative ceased to collect the fees. As of March 31, 2002, the matter regarding Market Five Gallery’s continued control of Eastern Market space was being litigated in the Superior Court of the District of Columbia.

The Auditor found that, until the recent establishment and efforts of OPM, the District failed to exercise adequate oversight and control of the use of Eastern Market. The District’s failure to renegotiate and sign agreements with Eastern Market Corporation and Market Five Gallery after the expiration of the original agreements reflected mismanagement of this asset in a manner that resulted in the District losing effective control over the property and receiving far less than reasonable rent per square foot for space controlled by these two entities. Periodic review and renegotiation of both agreements by accountable District officials may have resulted in modifications to the terms and conditions of occupancy, resulting in an increase in the amount of money paid to the District for the occupancy and use of Eastern Market space that more accurately reflected its economic value and resources necessary to properly maintain the Market.

**EASTERN MARKET ENTERPRISE FUND NOT ESTABLISHED OR OPERATED IN FULL COMPLIANCE WITH D.C. LAW 12-228**

The Auditor found that accountable District officials did not establish an Eastern Market Enterprise Fund consistent with the requirements of D.C. Code, Section 37-103, which states in relevant part the following:

(a) There is established the Eastern Market Enterprise Fund ("Fund"), an interest-bearing account, pursuant to § 47-373(4)(2)(D). The Fund shall be operated by the CPMO in accordance with general [sic] accepted accounting principles.
(b) The CPMO shall deposit into the Fund all revenues, proceeds, and moneys from whatever source derived which are collected or received by the CPMO on behalf of Eastern Market. These revenues, proceeds, and moneys shall be credited to the Fund and shall not, at anytime, be transferred to, lapse into, or be commingled with the General Fund of the District of Columbia, the Cash Management Pool, or any other funds or accounts of the District of Columbia. [Auditor's Emphasis] except for funds transferred to the District of Columbia Treasurer to pay all expenses related to the management and maintenance of the Eastern Market Square.

Monies Collected on Behalf of the Eastern Market Enterprise Fund Were Commingled with the District’s General Fund

In violation of D. C. Law 12-228, approximately $54,682 collected on behalf of Eastern Market between fiscal years 1999 and 2002, through March 31, 2002, were commingled with money in the District’s General Fund. Section 4(b) of D. C. Law 12-228, D.C. Code, Section 37-103(b), prohibits the commingling of revenues, proceeds and moneys collected on behalf of Eastern Market with money in the General Fund.

After the effective date of D.C. Law 12-228 but prior to the establishment of the Eastern Market Enterprise Fund, monies collected by the CPMO on behalf of Eastern Market were deposited by the Office of Finance and Resource Management (OFRM) in the General Fund, and were commingled with revenue collected by OFRM for unrelated activities.

Amounts received from Eastern Market Corporation, in addition to a portion of fees collected by North Hall vendors in July 2000 when Market Five Gallery did not collect fees, were sent to a District lockbox at Bank of America. These funds were commingled with income collected from other District activities unrelated to Eastern Market operations.

Eastern Market Enterprise Fund Was Not Credited with Interest Income

The Auditor found that the Eastern Market Enterprise Fund was not established as an interest-bearing account as required by D. C. Code, Section 37-103(a), which states: “There is established the Eastern Market Enterprise Fund ("Fund"), an interest-bearing account...” For the period reviewed by the Auditor, OFOS did not establish the Fund as a separate interest bearing account, and OFRM - the financial manager for the Fund- failed to ensure that OFOS established the Fund as a separate interest-bearing account. In violation of D.C. Code, Section 37-103(b), these funds were commingled and invested with money in the District’s cash management pool, which

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earned interest. Notwithstanding the investment of Eastern Market funds with pooled cash, no interest was credited to the Fund for that portion of pooled cash that consisted of Eastern Market receipts. Eastern Market monies invested with the District’s pooled cash should have been allocated interest income based on the rate earned by pooled cash. OPM representatives notified OFRM officials of the fact that no interest income had been credited to the Eastern Market Fund. As a result, OFRM representatives determined that interest totaling $3,953.36 should have been earned and deposited into the Eastern Market Fund as of December 31, 2001. However, the Auditor found that as of March 31, 2002, OFRM officials had not requested the Office of Finance and Treasury to credit the $3,953.36 in interest income to the Fund. Further, as of March 31, 2002, the Fund still had not been established as an interest-bearing account.

In Each Fiscal Year Covered By the Audit, the Eastern Market Enterprise Fund Was Reported as a Component of the District’s General Fund in Comprehensive Annual Financial Reports (CAFRs) Rather Than a Separate Enterprise Fund

D.C. Code, Section 47-373(2)(D), states the following regarding the use of an Enterprise Fund:

Enterprise funds are used to account for operations that are financed and operated in a manner similar to private business enterprises; or where it has been determined that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes;

Although the Fund established by OFOS for the deposit of Eastern Market revenue was entitled “Eastern Market Enterprise Fund,” the balance was included in the District’s General Fund and reported in the District’s Comprehensive Annual Financial Report (CAFR) as part of the General Fund rather than as a separate enterprise fund. In reviewing the District’s CAFR for the fiscal years ended September 30, 1999, 2000, and 2001, the Auditor found that the Eastern Market Enterprise Fund was consistently not reported separately as a District enterprise fund.

The audit team’s review of SOAR documents and reports revealed that a separate state fund, rather than an enterprise fund, was established for the Eastern Market Enterprise Fund. According to the District’s RSTARS reference manual, a State Fund Group is established for the purpose of grouping funds so they may be summarized in a manner other than as an appropriated fund or a
Generally Accepted Accounting Principles (GAAP) fund. The Eastern Market Enterprise Fund (State Fund Group 412) “rolls up” or becomes a part of the General Fund for GAAP purposes. However, it is still reported as part of the General Fund rather than a separate enterprise fund as intended by law.

According to OFOS officials, the Eastern Market Enterprise Fund was reported as part of the General Fund because of the Fund’s small size. OFOS representatives considered the Enterprise Fund’s balance of approximately $50,000 ($52,182 as of March 31, 2002) too immaterial to the District’s financial statements, as a whole, to be reported separately as an enterprise fund. Comments received from the Chief Financial Officer of the District of Columbia indicate that they are not in strict compliance with the letter of the Eastern Market law. They reason that, in this instance, it is more important to place generally accepted accounting principles above compliance with the letter of the law.

Eastern Market Enterprise Fund Balance Was Misclassified as Deferred Revenue

The Auditor found that, as of March 31, 2002, approximately $52,182 collected on behalf of Eastern Market was recorded in SOAR as deferred revenue. Deferred revenue is classified in financial statements as a liability and is defined as income received but not yet earned. The Auditor determined that the balance in the Eastern Market Enterprise Fund, as of March 31, 2002, represented income already earned and received by the District. However, according to OFOS officials, deposits in the Fund were recorded as deferred income in order to prevent the funds from lapsing at the end of the fiscal year. If not recorded as an advance, unspent “no-year” funds recorded in SOAR lapse at the end of each fiscal year to the General Fund. OFOS officials also noted that recording funds in SOAR as deferred revenue is the District’s method for dealing with no-year budget authority or funds that remain available for obligation indefinitely. In other words, the use of this methodology is necessary because SOAR is incapable of recognizing no-year budget authority or funds that are available for obligation indefinitely. This system deficiency needs to be addressed by the Office of the Chief Financial Officer and the Office of the Chief Technology Officer.

RECOMMENDATIONS

2. The Office of Finance and Resource Management must take the appropriate action to ensure that at least $3,953.36 in interest income earned for fiscal years 1999, 2000, 2001 and 2002 as of December 31, 2001 is credited to the Eastern Market Enterprise Fund. Future deposits must also earn interest. Failure of any official or employee under the personnel jurisdiction of the Chief Financial Officer of the District of Columbia to promptly credit the Eastern Market Enterprise Fund with interest earned should be held accountable to the fullest extent permitted under the Comprehensive Merit Personnel Act or personnel rules established by the Chief Financial Officer of the District of Columbia.

**EASTERN MARKET ENTERPRISE FUND BALANCE DID NOT INCLUDE AT LEAST $19,400 THAT SHOULD HAVE BEEN CREDITED TO THE FUND**

The Auditor found that at least $19,400 that should have been received by the CPMO and deposited into the Eastern Market Enterprise Fund either was not received or, if received, was not deposited into the Enterprise Fund. D.C. Law 12-228 requires all monies collected or received on behalf of Eastern Market to be deposited into an Eastern Market Enterprise Fund. However, the Auditor found that monies collected from the Eastern Market Corporation and the Farmers’ Line prior to September 1999 were not credited to or deposited into the Eastern Market Enterprise Fund. Instead, these funds were deposited into the District’s General Fund. Further, the Auditor found that Market Five Gallery paid the District only $350, or approximately 3.6%, of the $9,600 in fees that should have been paid during the audit period for space it controlled at Eastern Market. A discussion of the composition of the $19,400 follows.

**$4,167 Received From Eastern Market Corporation for Fiscal Year 1999, After April 1999, Were Not Deposited into the Enterprise Fund or Lapsed to the General Fund**

D.C. Code, Section 37-103(b), states in relevant part the following:

(b) The CPMO shall deposit into the Fund all revenues, proceeds, and moneys from whatever source derived which are collected or received by the CPMO on behalf of Eastern Market . . .
Based on a review of available documents from OFRM, in fiscal year 1999 after the effective date of D. C. Law 12-228, Eastern Market Corporation made payments totaling approximately $4,167 to the District for space at Eastern Market. Of this amount, OFRM representatives deposited $1,667 into the General Fund rather than the Enterprise Fund. These funds were not earmarked for Eastern Market. As a result of this error, $1,667 were not available for use in the management and maintenance of the Market. The remaining $2,500 collected from EMC in fiscal year 1999 were deposited in the Eastern Market Enterprise Fund but not recorded as deferred revenue. As a result of this error, the funds lapsed to the District’s General Fund at the end of fiscal year 1999 even though budget authority for the Fund is no-year and the monies deposited should have remained available for obligation indefinitely.

Thus, as a result of errors in handling $4,167 remitted by Eastern Market Corporation during fiscal year 1999, these monies were:

(1) not carried forward into fiscal year 2000;
(2) not reflected in available balances for the Eastern Market Enterprise Fund; and
(3) no longer available for use in managing and maintaining Eastern Market.

$2,029 Collected from the Farmers’ Line For Fiscal Year 1999 Were Not Deposited into the Enterprise Fund

The Auditor found that $2,029 collected from the Farmers’ Line for the period April 1999 through October 7, 1999 were not deposited into the Eastern Market Enterprise Fund. Prior to the enactment of D. C. Law 12-228, DCRA’s Office of Weights and Measures was responsible for collecting fees from farmers who used space at Eastern Market. These funds were deposited into the District’s General Fund.

After D.C. Law 12-228 became effective, the Auditor determined that the Office of Weights and Measures continued to collect fees from the Farmers’ Line. A review of DCRA records revealed that DCRA collected $2,029 between April 22, 1999 and October 7, 1999, however, the funds were not deposited into the Eastern Market Enterprise Fund. As a result, the funds ultimately were not available for the management and maintenance of Eastern Market.

4 Although the effective date for D. C. Law 12-228 was in April 1999, the Eastern Market Enterprise Fund was not established until approximately five months after the law’s effective date. Officials of OPM had to make several requests to OFRM and other District officials before the Fund was established.
During the Audit Period, Market Five Gallery Remitted Only $350 of Approximately $9,600 Owed to the District for Space Used at Eastern Market

Based upon a review of deposits to the Eastern Market Enterprise Fund, the Auditor found that Market Five Gallery submitted only one payment of $350 to the District during the entire audit period. The agreement between the D.C. Commission on the Arts and Humanities and Market Five Gallery and Kuumba Center, Inc. did not require a monthly payment for space at Eastern Market. However, in a memorandum dated December 27, 1995, the then-Executive Director of the Commission on the Arts and Humanities indicated that Market Five Gallery was required “to submit quarterly payments to the D.C. Commission on the Arts and Humanities in the amount of $1,500 per quarter for use of space at Eastern Market.” Additionally, according to written testimony provided by the then-Executive Director of the Commission in March 1998, the Commission “instituted a payment requirement from Market Five Gallery starting on January 1, 1996.” The former Executive Director’s testimony further indicates that initially the amount charged Market Five Gallery was $1,500 per quarter, or $6,000 per year. When it appeared that Market Five Gallery could not pay that amount, on March 26, 1997, the $6,000 annual fee was re-negotiated to $300 per month for ten months for a total of $3,000 per year.

OPM could not provide the Auditor with a signed agreement between the District and Market Five Gallery requiring the $300 monthly payment. However, the Auditor found that, for several months prior to April 1999, Market Five Gallery paid varying amounts to the District for space it occupied at Eastern Market. The Auditor did not find any documentation that released Market Five Gallery from making the $300 monthly payments. Therefore, based on the agreement that $300 per month was to be paid for ten months each year, the Auditor estimates that Market Five Gallery owes the District at least $9,250 for unpaid rents due between April 1999 and March 31, 2002.

According to an OPM representative, Market Five Gallery has since paid all past due amounts to the Superior Court and makes current payments to the Court which will be held in escrow until all legal issues are resolved. Further, according to an official of the Office of the Corporation Counsel, as of March 31, 2002, $10,325 had been deposited by Market Five Gallery with the Court. Notwithstanding the $350 payment discussed earlier, no further deposits had been made to the Eastern Market Enterprise Fund for rents due from Market Five Gallery during the audit period.
Summary of Amounts Due to the Eastern Market Enterprise Fund

Based on the Auditor’s analysis of the Eastern Market Enterprise Fund for the period April 1999 through March 21, 2002, the following amounts were not deposited into the Fund or, if deposited, were unavailable for future use in the management and maintenance of the Market:
1) $1,667 collected from Eastern Market Corporation deposited into the General Fund; 2) $2,500 deposited into the Enterprise Fund that lapsed to the General Fund at the end of fiscal year 1999; 3) $2,029 collected from farmers on the Farmers’ Line deposited into the General Fund; 4) at least $9,250 which should have been paid by Market Five Gallery but was not received by the Enterprise Fund as of March 31, 2002; and 5) an estimated $3,953 in interest income which should have been earned on Eastern Market funds invested with the District’s pooled cash. Based on this analysis, as of March 31, 2002, approximately $19,400 that should be available in the Eastern Market Enterprise Fund is not available for the management and maintenance of the Market.

INADEQUATE INTERNAL CONTROLS EXISTED OVER COLLECTION OF REVENUE

The Chief Property Management Officer did not ensure that funds collected and remitted to OFRM from the Farmers’ Line and Saturday and Sunday non-food vendors at Eastern Market were accurate and represented all amounts that should have been collected. In general, the CPMO had not established an effective system of financial accountability for funds collected from Eastern Market operations. The CPMO did not verify amounts received from individuals collecting money on the District’s behalf and also did not establish and enforce adequate written procedures to ensure that the District received all of the income to which it was entitled. Without adequate procedures, supporting documentation, and verification of amounts collected, the CPMO could not be assured that all funds that should have been collected were actually collected in full and subsequently deposited into the Fund.

Farmers’ Line Fees

Beginning in October 1999, fees from farmers using space at Eastern Market were collected by a farmer selected as the Farmers’ Line representative. The representative collected fees and remitted the fees to OFRM for deposit into the Eastern Market Enterprise Fund.
In October 1999, a document entitled, "Eastern Market Farmers’ Line Interim Collection Procedures and Related Matters," was recommended by the Eastern Market Community Advisory Committee and approved by the Director of OPM. These procedures established an “honor-system” of self-regulation for the Farmers’ Line. The document outlined how and when farmers were to pay for the spaces they used. According to the document, a fee of $1 per day per space was due to the District for space used by each farmer. The procedures further stipulate that payments to the representative were to be made in advance by the first day of each month by check payable to the D.C. Treasurer. The checks were then to be submitted by the Farmer’s Line representative to the District by the 10th of each month. OFRM requested the farmers’ representative to send all payments to the District’s lockbox. Instead, during the audit period, the representative hand-delivered the payments to OFRM representatives.

The Auditor found that District officials were lax in their monitoring and oversight of Farmers’ Line collection and payment activities, and did not ensure that the interim procedures were followed. The Auditor found no evidence indicating that any accountable District official conducted verifications or made periodic visits to Eastern Market to determine whether fees submitted by the representative were accurate based on the number of farmers using the Market. In other words, District officials accepted what was offered without establishing their own objective measures to ensure appropriate accountability.

According to the farmers’ representative, there were 103 spaces assigned to 19 farmers on the Farmers’ Line. The Auditor found that OPM officials were unable to provide any independent documentation of the names of farmers, the number of spaces assigned to each farmer, or the dates the spaces were used. In fact, the Auditor had to obtain this information from the Farmers’ Line representative, when it should have been maintained by and readily available from a District government official. Instead, OPM officials appeared to blindly rely on information provided by the farmers’ representative instead of an accountable District employee.

Payments submitted by the Farmers’ Line representative were not supported by detailed information regarding spaces used by farmers during the period covered by each payment. The only documents received and maintained by the Office of Finance and Resource Management were copies of checks submitted by the representative and a one page memorandum showing the total amount submitted and the month to which the payments applied. The interim procedures stipulated that a detailed payment report was to be maintained indicating the days actually used by each vendor. The
procedures failed to stipulate that the report was to be submitted to OPM or OFRM each month. Instead, the reports were to be retained by the Farmers’ Line representative for three years. When the reports were requested by the Auditor, the farmers’ representative could not provide a single report required by the procedures.

The Auditor reviewed copies of checks remitted by farmers on the Farmers’ Line. The Auditor found that the amounts collected were not consistent. For example, farmers paying for the same number of spaces did not always pay the same amount. Additionally, it did not appear that payments were made in advance by the first day of the month as required by the interim procedures. A review of copies of checks reflected that farmers often paid after the first of the month.

The interim agreement stipulated that the Farmers’ Line representative was to submit all payments by the 10th of the month. A “Farmers’ Line Summary Payment Form” was to accompany all submissions. The Auditor found that the Farmers’ Line representative did not comply with this requirement. Payments were usually submitted to OFRM by the Farmers’ Line representative at least one month after the due date. Further, in some instances, amounts were submitted more than two months late. For example, the payments for January, February and March 2000 were submitted together in April 2000, and payments for November and December 2001 were submitted together in January 2002.

Finally, there was no documentation that the CPMO verified that individuals on the Farmers’ Line met the definition of a “farmer” as set forth in D.C. Law 12-228. It is important that only individuals that meet the definition are allowed on the Farmers’ Line because of the modest fees charged. Other vendors may be required to pay more than the $1 per day per space fee that farmers pay for space at the Market. The Auditor’s inspection of the Eastern Market Farmers’ Line on three separate occasions revealed that the majority of Farmers’ Line spaces on the weekend were used by vendors selling clothes, jewelry, books and other non-food, non-farm products. This constitutes a fundamental misuse of the space and denial of the economic opportunity that is to be afforded farmers. Further, it raises questions of whether more than $1 is being collected from merchandise vendors that is not reaching the Enterprise Fund but instead financially benefitting others.

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RECOMMENDATIONS

1) The Chief Property Management Officer should enforce written policies and procedures thus providing effective accountability for the collection of fees and rent from occupants and others who use Eastern Market space.

2) The CPMO must verify that the interim collection procedures established for the Farmers’ Line are adhered to and that all required documentation is maintained.

3) The CPMO must ensure that space made available to the Farmers’ Line is used only by vendors who meet the definition of “farmer” as set forth in D.C. Law 12-228.

4) Failure of any accountable OPM official or employee to ensure the collection of all receipts and compliance with established procedures should be held accountable to the fullest extent permitted under the Comprehensive Merit Personnel Act and District personnel rules.

DISBURSEMENTS WERE MADE DIRECTLY FROM CASH RECEIPTS WITHOUT A PROPER ACCOUNTING

The Enterprise Fund does not reflect approximately $2,061 in expenditures made to five individuals who provided clean-up and collection services to vendors using space in the North Hall of the Market. These services were performed during the month of June 2000 when the District briefly assumed responsibility for collecting vendor fees. The payments to each individual varied even for the same type of service. OPM representatives could not provide documentation of the procurement process used to select the individuals who performed the services or how rates of pay were established. The following are examples of the types of services provided:

- bagging trash to prepare for hauling;
- management: collection of fees from vendors;
- reproduction cost- copying/supplies;
- consulting; and
- clean-up.
Further, OPM had not established rules or procedures governing the expenditure of funds from the Eastern Market Enterprise Fund. Rules and regulations must be established to ensure that all expenditures from the Fund are relevant and appropriate to the operation of the Eastern Market. The disbursements were not recorded in SOAR. Payments to the individuals were made directly from cash collected from vendor fees and the net revenue was deposited into the Eastern Market Enterprise Fund. In order to properly report, record and account for expenditures from money that should be deposited into the Eastern Market Enterprise Fund, cash received and expenses incurred should have been reported and recorded in SOAR before making disbursements. As a result of disbursing funds prior to depositing them, the expenses were not properly authorized, documented, recorded and reported. Handling public funds in this manner is an unsound financial management practice that invites fraud, waste, and abuse.

RECOMMENDATION

The Chief Property Management Officer establish written policies and procedures governing disbursements from the Eastern Market Enterprise Fund. Further, all amounts received must be properly supported, recorded and reported in the District’s financial system.

CONCLUSION

The Eastern Market Enterprise Fund, established for the deposit of monies received on behalf of Eastern Market and to pay expenses related to the management and maintenance of the Market, was not in substantial compliance with the provisions of D.C. Law 12-228, which required the Fund to be created and operated as an Enterprise Fund outside of the District’s General Fund. Instead, it was established as a component of the District’s General Fund and monies collected on behalf of Eastern Market were commingled, in violation of the law, with money in the District’s General Fund. Also, the Eastern Market Enterprise Fund was not established as an interest-bearing account as required by law. Although interest was generated by investing Eastern Market Enterprise Fund money with the District’s pooled cash, interest earned from the investment of these monies had not been credited to the Fund.

The Auditor found that at least $19,400 that should have been received by the Chief Property Management Officer and deposited into the Eastern Market Enterprise Fund either was not received or, if received, was not deposited into the Enterprise Fund. While the Auditor did not find that any disbursements were made from the Eastern Market Enterprise Fund, the Auditor did find that
disbursements were made directly from cash collected from vendors at the Market prior to depositing the collections in the Enterprise Fund. As a result of disbursing funds prior to depositing them, the expenditures were not properly authorized, documented, reported and recorded in SOAR. Handling public funds in this manner is an unsound financial management practice that invites fraud, waste, and abuse. Also, OPM officials could not verify the accuracy of amounts collected because OPM officials failed to establish how much should have been collected from vendors and no records were maintained by OPM from which this information could be discerned.

The Auditor found that District government officials were lax in their monitoring and oversight of Farmers’ Line collections. They relied on an honor system for these collections and did not ensure that the Eastern Market Farmers’ Line interim collection procedures were followed.

Further, adequate procedures for the collection of fees from vendors and organizations using space at the Market and for disbursements from the Enterprise Fund were not enforced during the audit period. Without adequate procedures and adherence therewith, the District could not be assured of the accuracy of monies collected and deposited into the Fund.

Based on the lack of adequate policies and procedures, and OPM’s lack of verification of amounts received from vendors and farmers, the Auditor determined that internal controls over the collection and deposit of revenue and the disbursement of funds were inadequate to safeguard the assets of the Eastern Market Enterprise Fund.

Respectfully submitted,

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

On May 17, 2002, the Office of the District Of Columbia Auditor submitted this report, in draft, for review and comment to the following agency officials: Director, Office of Property Management; Deputy Chief Financial Officer, Office of Finance and Resource Management; Deputy Chief Financial Officer, Office of Finance and Treasury; Deputy Chief Financial Officer, Office of Financial Operations and Systems; Director, Department of Consumer and Regulatory Affairs; Executive Director, D.C. Commission on the Arts and Humanities; and the Chief Financial Officer of the District of Columbia.

Written comments were received from the following: Director, Office of Property Management; Deputy Chief Financial Officer, Office of Finance and Resource Management, and the Chief Financial Officer of the District of Columbia. The following agency officials failed to respond in any manner to the draft report: Director, Department of Consumer and Regulatory Affairs, Executive Director, D.C. Commission on the Arts and Humanities. Where appropriate, changes were made to the final report to reflect the comments provided by responding agencies. Written comments received by the Auditor are appended, in their entirety, as part of this report.
MEMORANDUM

TO: Deborah K. Nichols, District of Columbia Auditor
   Office of the District of Columbia Auditor

FROM: Barbara Jump, Deputy
   Chief Financial Officer
   Office of Finance and Resource Management (OFRM)

DATE: May 31, 2002

SUBJECT: Response to Draft Report

The Office of Finance and Resource Management (OFRM) is in receipt of the draft report entitled, “Eastern Market Management and Oversight Needs Substantial Improvements.”

Since 1999, when responsibility of Eastern Market fund was transferred to OPM, OFRM, as OPM’s finance office, has responded to all Auditor’s requests about this fund.

In keeping with the policy of the District of Columbia Auditor to obtain written comments on draft reports from directly affected agencies, OFRM offers the following comments and suggested corrections.

1. Page 10 Para. 1 Line 1 “In violation of D. C. Law 120228, approximately $54,682 collected on behalf of Eastern Market between fiscal years 1999 and 2002 through March 31, 2002, were commingled with money in the District’s General Fund”.

   In response, OFRM wishes to state that the Auditor’s report failed to mention that the Eastern Market Enterprise Fund was established in September 1999. Therefore, though OFRM concurs with the fact that up to that date collections on behalf of Eastern Market were commingled with money in the General Fund, collections from April to September 1999 were transferred from the General Fund to the Easter Market Enterprise Fund on September 1999. Ever since, collections have been properly recorded in the Enterprise Fund in accordance with the D. C. Law.

2. Page 10 Para. 2 line 6 “…OFRM could not provide the Auditor with financial reports identifying all monies deposited in fiscal year 1999 relating to Eastern Market activities prior to the establishment of the Eastern Market Enterprise Fund.”

   In response, OFRM wishes to state that all records requested have been made available to the Auditor. However, OFRM would like to state that, because the audit of the Eastern Market covers several fiscal years including fiscal years 1999 and 2000, the...
documentation requested has been made available for review in the past. Additional supporting documentation was submitted to the Office of the D.C. Auditor on May 3 2002.

3. Page 11 Para. 1 line 4 “...OFRM failed to establish a separate interest-bearing account for the Eastern Market Enterprise Fund”.
In response, OPM’s first notification to OFRM of the requirement to establish a separate interest-bearing account was in January 2002. Immediately upon OPM’s notification, OFRM met with OPM and OFT to request establishing the separate bank account. As of today the Eastern Market interest bearing has a balance $56,134.96 of which $3,953.36 interest earned to date.

4. Page 13 Para. 3 bullet b line 4 “Failure to promptly comply with this recommendation should result in the appropriate corrective or adverse action permitted under the Comprehensive Merit Personnel Act and personnel rules established by the Chief Financial Officer of the District of Columbia”
In response, OFRM strongly advises that this sentence be completely removed from the report.

5. Page 18 Para. 2 line 3 “The Auditor did not find any documentation that OPM or OFRM conducted any tests or made periodic visits to Eastern Market to determine whether fees submitted by the representative appeared accurate based on the number of farmers using the Market”.
In response, OFRM wishes to state that, as stated in the law, “responsibility to supervise and provide coordinate management of all operations in the Easter Market Square” rests with OPM (D. C. Code Section 37-102), not OFRM.

In closing, I wish to thank you and your staff for the courtesies extended to me and my staff and for affording OFRM the opportunity to comment on this draft report.
Dear Ms. Nichols:

Thank you for giving us the opportunity to respond and comment on the above-referenced draft report. The following are responses to the findings and the two recommendations contained in your draft report, requesting actions from the Chief Financial Officer (Office of Financial Operations and Systems (OFOS) and Office of Finance and Resource Management (OFRM)).

**Finding:** The District’s CFO must establish Eastern Market Enterprise Fund consistent with provisions of D.C. Law 12-228, to avoid commingling of funds.

**OFOS’s Response:** We disagree with the above finding that the District CFO was in violation of D.C. Law 12-228, which prohibits the commingling of revenues, proceeds and moneys collected on behalf of Eastern Market with money in the General Fund.

We believe we are in compliance with the intent of this law, if not the letter. OFOS’ accounting treatment of Eastern Market Enterprise Fund was governed by generally accepted accounting principles (GAAP), which encourages recording of transactions using substance over legal form. This suggests that the materiality of the amount vis-à-vis the legal form may dictate the manner in which transactions are recorded.

In this case, due to the immateriality of the amounts in question, the District, while including the cited amounts with funds in the General Fund as reported in the FY 2001 CAFR, continues to maintain a separate accounting for Eastern Market in the District’s general ledger. This ensures accountability for Eastern Market financial activities.

**OFRM’s Response and Comments:** In 1999, the responsibility for the Eastern Market Fund was transferred to OPM. Since then, OFRM has responded to all of the Auditor’s requests about this Fund.
OFRM offers the following responses to findings and suggested corrections to the draft report

**Finding on Page 10 Para. 1, Line 1**: "In violation of D. C. Law 12-228, approximately $54,682 collected on behalf of Eastern Market between fiscal years 1999 and 2002 through March 31, 2002, were commingled with money in the District’s General Fund”.

**Response**: We disagree. OFRM wishes to state that the Auditor’s report failed to mention that the Eastern Market Enterprise Fund was established in September 1999. Prior to September 1999, collections on behalf of Eastern Market were commingled with money in the General Fund; however, collections from April to September 1999 were transferred from the General Fund to the Eastern Market Enterprise Fund on September 1999. Ever since, collections have been properly recorded in the Enterprise Fund in accordance with the D. C. Law.

**Finding on Page 10 Para. 2, line 6**: “…OFRM could not provide the Auditor with financial reports identifying all monies deposited in fiscal year 1999 relating to Eastern Market activities prior to the establishment of the Eastern Market Enterprise Fund.”

**Response**: We disagree. OFRM believe that all records requested have been made available to the Auditor. However, OFRM would like to state that, because the audit of the Eastern Market cover several fiscal years including fiscal years 1999 and 2000, the documentation requested has been made available for similar review in the past. For your attention, additional supporting documentation was submitted to the Office of the D.C. Auditor on May 31, 2002.

3. **Finding on Page 11 Para. 1, line 4**: “…OFRM failed to establish a separate interest-bearing account for the Eastern Market Enterprise Fund.”

**Response**: We disagree. OPM’s notified OFRM of the requirement to establish a separate interest-bearing account was in January 2002. Immediately upon OPM’s notification, OFRM met with OPM and OFT to request establishing the separate bank account. As of today the Eastern Market interest bearing has a balance $56, 134.96 of which $3,953.36 is interest earned to date.

4. **Finding on Page 13 Para. 3, bullet b, line 4**: “Failure to promptly comply with this recommendation should result in the appropriate corrective or adverse action permitted under the Comprehensive Merit Personnel Act and personnel rules established by the Chief Financial Officer of the District of Columbia.”
Response: We disagree. We believe that this comment is unwarranted and suggest that it be removed.

5. Finding on Page 18 Para. 2, line 3: “The Auditor did not find any documentation that OPM or OFRM conducted any tests or made periodic visits to Eastern Market to determine whether fees submitted by the representative appeared accurate based on the number of farmers using the Market.”

Response: We concur. However, OFRM believe that, as stated in the law, “responsibility to supervise and provide coordinate management of all operations in the Easter Market Square” rests with OPM (D. C. Code Section 37-102), not OFRM.

In closing, I want to thank you and your staff for the courtesies extended to officials and staff of OFOS and OFRM during the course of this engagement. Should you have any questions, please do not hesitate to contact me at (202) 727-2476 or Anthony Pompa (OFOS) at (202) 442-8202, or Barbara Jumper (OFRM) at (202) 727-9491.

Sincerely,

M. Gandhi
Chief Financial Officer
June 13, 2002

Ms. Debra Nichols, DC Auditor
717 14th Street NW
Suite 900
Washington, D.C. 20005

Re: RESPONSE BY THE OFFICE OF PROPERTY MANAGEMENT REGARDING “EASTERN MARKET MANAGEMENT AND OVERSIGHT NEEDS SUBSTANTIAL IMPROVEMENT” REPORT

Dear Ms. Nichols:

The Office of Property Management was assigned, by statute, to supervise and provide coordinated management over all operations in the Eastern Market Square. The Law, D.C. Law 12-228, was enacted and became effective on April 16, 1999. A basic overview of the Law required the Chief Property Management Officer to prepare a RFP issued by the District government for the selection of a market manager for both halls of Eastern Market. In 1999 and until January 1, 2002, there were two separate “market managers” for the South and North Halls. Litigation ensued between the District and both “market managers” for possession of the premises. To date, the South Hall case has been decided in favor of the District and the Eastern Market Corporation (EMC) was required to vacate the premises as “market manager”. The

1 This response is based upon a draft form of the “Eastern Market Management and Oversight Needs Substantial Improvement” Report.
North Hall case is still pending, and as a result of the current litigation, North Market Gallery is required to deposit the funds that would normally go to the Eastern Market Fund or the current revolving market fund into an escrow account with the Court. Therefore, any monies currently collected by the “market manager” of the North Hall cannot be considered in this report.

The report states that one of the objectives of the audit was to determine whether rules, regulations, polices, procedures, and guidelines had been established to govern financial operations related to the Fund, the collection and deposit of revenue, and payment of expenses from the Fund. However, the statute clearly states what type of account is to be set up, an Enterprise Fund, and it shall be an interest-bearing account, and shall not, at anytime, be transferred to, lapse into, or be commingled with the General Fund of the District of Columbia. However, it has not been established in a separate interest-bearing account. The Office of Property Management has continuously requested that the responsible parties create the Eastern Market Enterprise Fund in accordance with the statute. The Office of Property Management has done all that it can do to ensure that this account has been properly set up.

The Office of Property Management does not deny that in 1976, the Agency that was in control of Eastern Market should have executed or renegotiated a new lease with Eastern Market Corporation. However, under the statute, Eastern Market was not set up as a “money making” enterprise for the District. The intent was for the Eastern Market Corporation to utilize the net income received from vendors in the market for the purposes of repairs and renovations.

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2 However, the Office of Property Management did not exist at that time. It was created in FY 1999.
It is important to note that the Auditor's Report states that Eastern Market Corporation was paying $1.05 per square foot. We believe from the findings as stated that there has been a misapplication of the stated lease value in its relationship to the performance and leasehold obligations of the lessee EMC. It appears to blend those obligations and not take into consideration fair market rentals for the vendors that are inside of the South Hall who paid rent to Eastern Market Corporation. Eastern Market Corporation performed as the "market manager" of the South Hall, in addition to being a tenant. Therefore, the Report incorrectly discusses fair market rates for Eastern Market Corporation. Eastern Market Corporation required all the vendors to pay EMC approximately the same amount. Eastern Market currently has a Market Manager, as required by statute, which oversees the day-to-day operations, repairs and renovations of Eastern Market. They are paid out of a self-sustaining market fund that is made up of all of the vendor's rent. This rent is $25.20 per sq. foot, which actually is current fair market rates for like properties in the vicinity of Eastern Market that are similar to Eastern Market vendors who received no concessions, they have no air conditioning in the building, there is not adequate parking for a retail facility, and there is not good physical plant. The Auditor's Report states that they obtained information regarding rental rates from a real estate firm for properties in the Eastern Market area and the rate ranged from $27.50 to $36.50 per square foot. There is no delineation as to the rate findings and their relationship to the market rate in effect at the time of lease commencement, nor any of the aforementioned qualifiers/conditions that would have an impact as to any fair market rental paid.

Once the Office of Property Management was created, the Agency recognized many of the issues that are being, and have been, addressed. One step that the Agency initiated to cure was to
request that EMC be on a month-to-month term and subject to termination upon receipt of a 30-day notice. EMC did not vacate the premises upon a request by the Office of Property Management, and this Agency sued EMC for possession. Therefore, since the creation of this Agency, we have been trying to comply with the statute and we are making progress to that end.

Another such cure is apparent in the contract that the District has with Eastern Market Venture. The agreement requires them to produce very specific financial and operational reports and to provide them to the Office of Property Management on a monthly basis and we have been receiving them. These reports include detailed income and expense reports as exhibited by the attachment.

The Auditor's Report states that the Chief Property Management Officer should have, and must, negotiate a new agreement with Market Five Gallery if Market Five Gallery continues to occupy space at Eastern Market. Since we are in litigation, renegotiation, or thoughts thereof, should not be discussed, to any extent.

The Report states that the Chief Property Management Officer did not ensure that amounts collected and remitted to OFRM from the Farmer's Line were accurate and represented all amounts that should have been collected. This is not true in that the Office of Property Management has designated a person who has been on the farmer's line for years and has a stall inside the South Hall to collect and maintain record of who pays for space on Saturdays and Sundays. The Farmer's have been paying $1.00 for their space per day and the current Market Manager has just increased the fee to $3.00 per day. Therefore, the Office of Property
Management has been managing the Farmer’s Line and the new Market Manager is now responsible for this task. The Farmer’s Line will be closely monitored by the Market Manager, and the Office of Property Management will receive the books and records of all financials relating to the Farmer’s Line.

The Report states that the Chief Property Management Officer must ensure that space made available to the Farmer’s Line is utilized only by vendors who meet the definition of “farmer” as set forth in D.C. Law 12-228. First, the statute states that any farmer or other market vendor of agricultural products who has operated one or more stalls on the sidewalk at any time within the last 2 years shall be offered a right of first refusal to continue such operations under substantially similar terms. Second, the definition of “farmer” is extremely broad. The statute goes as far as saying that a “farmer” means a market vendor who sells agricultural products, of which at least 70%, during the April-November harvest season was: (C) obtained directly from others who have grown the product on land which is owned or leased by the producer; Therefore, a “farmer” may include several different people. Third, an “agricultural product” means vegetables, fruits, grains, mushrooms, honey, plants, plant cuttings, flowers, herbs, nuts, seeds, bulbs, and rootstock and includes baked or process foods that are: (A) Processed in some way by the market vendor; and (B) Approved by the regulatory authorities. Therefore, it is clear to the Office of Property Management and the current Market Manager that the vendors on the Farmer’s Line are considered a farmer or a vendor of agricultural products as required by the statute. And, they have a right of first refusal to continue such operations under substantially similar terms.

3 Please see attached financial report.
4 This is as broad as the statute goes, however there are several other definitions of “farmer”

441 Fourth Street, N.W., Washington, D.C. 20001 (202) 724-4400
The Office of Property Management has been heavily involved in applying the law to what is transpiring in the current management of Eastern Market. Since January 2002, because of the Court’s determination, we have contracted with a new Market Manager, Eastern Market Venture, to manage and oversee Eastern Market and its repairs, renovations, the current day-to-day operations, and improvements of the property. By contract, they are required to regularly submit financials, including the budget, and to create a business plan to be carried out during their existing contract. Several improvements are apparent and professional management is occurring. Constant contact exists between the Office of Property Management, Eastern Market Venture, and the community. It is the first time in years that stability is prevalent at Eastern Market, such as fair price per square foot rentals, financials analyzed and inspected, parking is being monitored, handicap accessibility created, updated security system established, and many other improvements to the property. The Office of Property Management has been involved with everything that is occurring at Eastern Market. Once the North Hall litigation is settled or determined, the Office of Property Management will have one Market Manager for the entire property and will be able to fully comply with the statute. Until that time, movement on Eastern Market, its repairs, renovations, improvements, and financials is only positively progressing.

If you have any further questions regarding this response, please do not hesitate to contact me or Aimee Occhetti from my staff at 724-4400.

Sincerely,

Timothy F. Dimond
Director

441 Fourth Street, N.W., Washington, D.C. 20001 (202) 724-4400