



CITY OF ATLANTA
OFFICE OF THE INSPECTOR GENERAL

OIG INVESTIGATION INTO FORMER MAYOR KASIM REED'S
SALARY DISTRIBUTION ACCOUNT

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EXECUTIVE SUMMARY

In February 2021, the Compliance Division of the City of Atlanta (COA) Office of the Inspector General (OIG) received a referral from the COA City Auditor's Office (Audit) regarding Consolidated Omnibus Budget Reconciliation Act (COBRA) health insurance payments COA made in 2018 on behalf of former Mayor Mohammed Kasim Reed. These payments were allegedly disbursed through a COA fund that was created in 2016 solely for charitable disbursements and was purportedly financed using forgone earnings Reed declined to accept as part of a 2014 salary increase (Reed's distribution account).

OIG conducted an investigation and determined that members of Reed's administration misled the Atlanta City Council (the Council) and the public about the existence and use of funds allegedly set aside from Reed.

OIG found that members of Reed's administration arranged for an improper transfer of \$24,465 to the COA COBRA insurance account to pay for Reed's health insurance after Reed left office. Reed's administration initially requested that the Council authorize the \$24,465 transfer; however, after receiving pushback in the Council, the request was withdrawn. Nevertheless, without Council approval or legislation authorizing the transfer, Reed's administration unilaterally transferred the funds.

In 2019, the COBRA payments were discovered and reported by the media. In defense of these disbursements, representatives for Reed stated that the payments were funded by Reed's declined salary from Reed's distribution account. OIG review of COA accounts revealed that the transfer did not come from Reed's distribution account; OIG review of COA accounts revealed that Reed's distribution account did not exist.

The \$24,465 transferred to the COA COBRA account on Reed's behalf were disbursed from an unrelated account within the Office of the Mayor's general fund. OIG discovered that the \$24,465 transfer was just one in a series of disbursements purportedly derived from Reed's distribution account that were disbursed from unrelated accounts. OIG found at least two additional donations totaling \$58,514.24 made by the COA that ostensibly came from Reed's distribution account that were paid using funds from COA Department of Human Resources (DHR) general fund accounts. One \$40,000 disbursement, donated by COA for charitable purposes, was used to "reimburse" the COA for airfare expended by Reed's administration during a 2017 trip to South Africa.

This disbursement, like the COBRA payments, was discovered and reported by several media outlets. As with the discovered COBRA payments, Reed's representatives justified the usage of these funds on the basis that they were from Reed's declined salary. Despite these assertions, none of Reed's salary was used to fund these disbursements. The disbursements were made with unrelated COA funds.

OIG notes that many of the facts and circumstances this report discusses occurred nearly five years ago and were the subject of public reports in 2019. OIG issues this report in order to address the previously undisclosed misrepresentations to the Council and the public at the heart of

the discussions regarding the nature and use of public funds. In the public discourse surrounding Reed's "forgone salary," the Reed administration repeatedly asserted that funds being directed according to Reed's wishes were not public funds. They were. Reed's administration was aware that Reed's distribution account was unfunded even as it made representations to the Council that the requested donations would be funded by declined salary within Reed's distribution account. After securing approval from the Council for several disbursements, despite having no accrued declined salary available, Reed's administration used unrelated COA accounts to fund these disbursements. When it was subsequently discovered that several of these disbursements were made without Council approval or for purposes other than those intended by the COA, Reed's representatives misinformed the public about the funds used for the disbursements. The funds that were to have belonged to Mayor Reed were never awarded, never segregated into a disbursement account, and never spent for the public's benefit.

COA may be entitled to reimbursement for \$58,514.24 in donations made on Reed's behalf and \$24,464.52 for the COA COBRA health insurance payments that were supposed to have been funded by Reed's declined salary.

BACKGROUND

Audit Review

Audit began reviewing the issue of Reed's COBRA insurance after an October 2019 Atlanta Journal Constitution article detailed that funds from Reed's distribution account were used to cover Reed's COBRA payments. Audit's decision to review the matter was made at the behest of members the Council and the Ethics Office, however, there was no official request to Audit.

OIG Investigation

In February 2021, Audit referred the matter to OIG for investigation. Some of the facts outlined in this report were released to the public prior to OIG's investigation and some of the information presented arose from Audit's initial review. OIG reviewed the previously collected information and gathered new details regarding the COBRA payments and other disbursements in connection with Reed's distribution account. In the course of its investigation, among other actions, OIG reviewed emails, Council hearing footage, personnel and financial records, and draft and approved ordinances.

FINDINGS

Reed's Distribution Account

In February 2012, the COA Officials Compensation Committee (EOCC) suggested several salary changes for the Mayor, President of City Council, City Council Members, and other COA elected officials. The EOCC recommended increasing the salary for the Office of the Mayor from \$147,500 to \$184,300. This change would begin in the then-upcoming 2014 through 2018 Mayoral term. On December 3, 2012, the Council approved Ordinance 12-O-1536, which established new salaries for the mayor's office effective January 2014. Reed publicly disavowed receiving the salary increase. On January 26, 2016, the Council approved Ordinance 15-O-1592 which stated that, as Reed "has declined to receive the salary increase per Ordinance 12-O-1536," the "creation of a distribution account within the budget of the Mayor from which charitable donations may be disbursed would allow the declined portion of the Mayor's salary to be utilized for the benefit of the citizens and the general public in the City of Atlanta." Accordingly, the ordinance authorized the Chief Financial Officer (CFO) to establish "an account within the budget of the mayor to which any portion of his or her City of Atlanta salary which the mayor declines to receive may be transferred and from which disbursements may be made to any 501(c)(3) corporation duly registered as a charitable organization with the State of Georgia whose activities promote the public good within the City of Atlanta." On January 28, 2016, the Council approved Ordinance 15-O-1591, which authorized the CFO to transfer funds "currently set aside for the increased salary and associated benefits which the Mayor would have received from January 1, 2014 to present...but has declined to receive" to a distribution account "within the budget of the Mayor that was established by [15-O-1592]."

The ordinances did not require that any subsequent funds be transferred into Reed's distribution account. The only funding set forth in 15-O-1591 was Reed's salary that was "currently set aside" from January 2014 through January 2016. Moreover, while 15-O-1592 created a distribution account for the mayor, it included no mandate or instruction on how that account was to be funded; 15-O-1592 only provided a distribution account that the mayor could transfer any portion of the mayor's salary into (not just the increase in salary per 12-O-1536) with a caveat that any money transferred into said distribution account be used for donations to 501(c)(3) organizations meeting the criteria set forth in the ordinance. For there to have been funds in Reed's distribution account in excess of those Reed had set aside from January 2014 through January 2016, Reed would have needed to transfer funds into the account. Itemized portions of Reed's earning statements provide no indication that any earnings were transferred or otherwise deferred. In addition, records obtained by OIG confirm that Reed's salary remained unchanged at \$147,500 annually from 2010 through 2018. As such, the maximum salary Reed could transfer into the distribution account was \$147,500 annually (Reed's then-current salary). There was no provision for the forgone salary increase in either ordinance as both 15-O-1591 and 15-O-1592 asserted that Reed had declined his salary increase.

Request to City Council

On November 20, 2017, proposed Ordinance 17-O-1783 was presented to the Council. The proposed ordinance authorized the CFO to make donations using the “forgone salary” within the distribution account established by Ordinance 15-O-1592. While 17-O-1783 moved through the legislative process, several members of Reed’s administration began to develop details of the proposed ordinance. On November 27, 2017, then-COA Comptroller Madhavi Rajdev sent an email to then-Department of Human Resources (DHR) Commissioner Yvonne Yancy, then-Deputy CFO John Gaffney, then-CFO Jim Beard, and then-Director of Employee Benefits Louis Amis stating that “the calculation of donation amount for Ordinance 17-O-1783” and “the forgone salary for four years net of taxes and deductions” was \$74,271. Attached with the email was the following calculation table:

17-O-1783 - Donation from declined portion of Mayor's Salary

Current annual salary	Salary Per Ordinance # 12-O-1536	Salary Increase Term	Salary Increase amount Gross	Taxes and Pension	Salary Net of Taxes and Pension (for donation)
\$ 147,500	\$ 184,300	1/1/14 - 1/1/18	\$ 147,200	\$ 72,929	\$ 74,271

Federal Income Tax	\$ 52,998
Medicare	\$ 2,817
State Income Tax	\$ 8,283
Pension DC	\$ 8,832
	\$ 72,929

Yancy replied to this email to thank Rajdev and stated that she would update the amount in “the substitute.” On the morning of November 29, 2017, Rajdev emailed Yancy and Gaffney to inform them that “we had to revise the calculation by applying the current tax rate” and that “based on the revised calculations, the net salary declined is \$101,493.” Rajdev instructed Yancy to use the \$104,493 amount in the substitute. Attached to the email was the following calculation table:

17-O-1783 - Donation from declined portion of Mayor's Salary

Current annual salary	Salary Per Ordinance # 12 O-1536	Salary Increase Term	Salary Increase amount Gross	Taxes and Pension	Salary Net of Taxes and Pension (for donation)
\$ 147,500	\$ 184,300	1/1/14 - 1/1/18	\$ 147,200	\$ 45,707	\$ 101,493

Federal Income Tax and other taxes	\$ 36,875
Pension DC	\$ 8,832
	<u>\$ 45,707</u>

The tables above calculate the “declined portion” of Reed’s salary. Reed’s administration used these tables to retroactively determine the amount of funds available from Reed’s distribution account, so that that information could be included in 17-O-1783. Had the CFO transferred Reed’s declined salary into a distribution account, there would be no need to retroactively calculate the funds available for donation on 17-O-1783.

The email indicates that Rajdev used the following equation:

$$\text{Mayor's increased salary} - \text{Mayor's actual salary} - (\text{taxes} + \text{pension}) = \text{balance}$$

These calculations assume no changes in Reed’s tax status or taxable income from 2014 to 2018. There is no factoring for interest, opportunity costs, and or other items that might have impacted the balance that the COA would have available to donate. The \$147,200 salary gross calculated is the maximum amount of declined salary Reed would have available using Rajdev’s formula and has no allowance for any prior disbursements by Reed.

On November 29, 2017, Yancy presented a revised draft of Ordinance 17-0-1783 to the Council Finance Executive Committee (FEC). The proposed ordinance was not entirely updated to reflect Rajdev’s most recent instructions; the proposed ordinance’s header requested that the CFO donate \$74,271.00 (the first total Rajdev submitted) but the ordinance stated that “the total amount of the mayor’s forgone salary is \$101,493.00” (Rajdev’s more recent calculation) and requested that amount be donated. The ordinance requested that the CFO disburse the funds as follows:

- \$40,000.00 to the Atlanta Development Authority (D.B.A. Invest Atlanta)
- \$18,514.24 to the Mayor's Youth Scholarship Fund
- \$18,514.24 to Howard University
- \$24,464.52 to the Group Insurance Fund

During the presentation to FEC, then-Councilmember Yolanda Adrean questioned the disbursements. Adrean specifically noted that the Atlanta Development Authority and the “Group Insurance” funds were not 501(c)(3) entities as required under 15-O-1592. In response, Yancy told Adrean that the inclusion of the Atlanta Development Authority was a “typo.” Yancy also explained that the Group Insurance Fund was for Reed’s COBRA payments and that the transference to Group Insurance Fund required legislation. Adrean pointed out that COBRA payments would also not meet the 501(c)(3) requirement. Yancy requested an opportunity to correct the legislation. Later in the same FEC meeting, Yancy re-presented 17-O-1783 with several changes. The new ordinance stated that the “the total amount of the mayor’s forgone salary is \$77,028.48” and requested that that amount be disbursed as follows:

- \$40,000.00 to “Partners for Prosperity, a Georgia 501(c)(3)”
- \$18,514.24 to the Mayor’s Youth Scholarship fund
- \$18,514.24 to Howard University

The provision for \$24,464.52 to the Group Insurance Fund was removed in the updated ordinance. The FEC voted to approve the updated version of 17-O-1783.

While presenting the ordinance to FEC, Yancy made several representations about the account and its funding that appear to be false based on the email correspondence described above. Yancy informed the FEC that she believed that there had been a resolution in 2016 to release some of Reed’s declined salary and that the mayor would like to donate the “remainder.” As Rajdev had only just determined a declined salary total for Yancy to present the FEC on the morning of the FEC meeting, Yancy should have been aware that no declined salary had been set aside or disbursed in 2016. As noted above, the \$101,493 would be the maximum balance available, provided that no prior donations were made for Reed’s declined salary. Additionally, when comparing the two ordinances presented to FEC, the declined salary balance decreased from \$101,493 (Rajdev’s calculation) to \$77,028.48. No explanation was provided for the reduction; however, considering the combined total of the donations, it appears that Reed’s distribution account’s balance was reduced to provide an exact match to the amount of money to be donated. The \$77,028.48 is exactly \$24,464.52 less than \$101,493. The balance available in Reed’s distribution account should not have been affected by changes to the donation recipients or donation totals. This decision to adjust the reported forgone salary balance (the third such adjustment within a 24-hour period) to match a preestablished donation total suggests an attempt to mislead FEC into believing that Reed had previously donated his salary into the distribution account, and that the distribution account was adequately funded for the requested disbursements.

With respect to Reed’s distribution account, although Ordinance 17-O-1783 stated that the mayor desired to make donations from the distribution account within the budget of the mayor created pursuant to 15-O-1592, the ordinance commanded that the funds be charged and paid from account 1001.040101.5239004.1310000.GENERAL FUND.EXE MAYORS OFFICE.SERVICE GRANTS.MAYOR/COMMISSION CHAIRPER. (the 40101 Account). A query revealed that that account is not a distribution account within the general fund and predates Ordinance 15-O-1592. OIG also confirmed that the 40101 Account is not a distribution account as distribution accounts have different numeric coding prefixes.

Improper Disbursements

On December 4, 2017, the Council approved Ordinance 17-O-1783. On December 27, 2017, Beard forwarded Rajdev's November 27, 2017 email—the email that stated the “calculation of donation for ordinance #170901783” is \$74,271 net—to then-COA Director of Shared Service Valencia Burwell. On that same day, Beard approved a check for \$18,514.24 payable to “Howard University.” In the “justification of purchase/service” section of the accompanying COA Disbursement Request form, it is indicated that the check is a “Donation per Ordinance 17-O-1783.” The donation's requestor is listed as “Maria Dominguez *for Mayor's Office*” (emphasis in original). Although 17-O-1783 instructed that the donations were to be withdrawn from the 40101 Account, on the disbursement form submitted by Dominguez, the withdrawing account was identified as 1001.220101.5212001.1320000 (the 220101 Account). The following day, on December 28, 2017, Beard authorized a payment for \$40,000 payable to “Partners for Prosperity” (PFP). The payment was again identified as “donation per Ordinance 17-O-1783” and requested by “Maria Dominguez *for Mayor's Office*.” This disbursement request form also directed payment from the 220101 Account as opposed to the 40101 Account. Records reveal that the 220101 Account was associated with DHR, not the Mayor's Office. Despite the legislation's requirement that the funds come from the 40101 Account (which itself is not a distribution account), both donations were processed under the 220101 Account. Regarding a third payment to the Mayor's Youth Scholarship fund (the Scholarship Fund), OIG discovered a credit to the Scholarship Fund in the amount of \$18,514.24. However, OIG could not identify from which account the donation originated.

On December 28, 2017, Yancy sent an email to Beard stating, “as per our conversation the mayor has elected to [use] his remaining salary that he did not accept to pay for COBRA for him and his family.” Yancy stated that the “total remaining amount” of the mayor's declined salary was \$24,465, which was also “the exact cost of the 12 months of COBRA” for Reed and his family. Yancy requested that the funds be transferred from the mayor's “salary accrual account” to the Group Insurance COBRA account. On December 29, 2017, there was a manual withdrawal from the 40101 Account in the amount of \$24,465. The payment was entered by “O.Akaose,” who is believed to be then-Finance Senior Accounting Manager Nwagu Akaose. The payment is described in Oracle as “Cobra Ins. Coverage for Mayor Reed in Lieu of Salary Increase.” On that same day, Amis emailed several COA employees instructing them to make sure that there was a process in place to prevent “any issues or terminations of benefits for Mayor Reed and his family for the next 12 months.” On January 4, 2018, Rajdev emailed Beard, Amis, and others to confirm that accounting had completed Yancy's request.

Partners for Prosperity

In April 2018, several media outlets reported that, on March 5, 2018, PFP drafted a check for \$40,000 check to the COA. The purpose of the check, reportedly, was to reimburse the COA for airfare from the Reed administration's 2017 trip to South Africa.¹ In response to this news,

¹ In August 2017, several media reports emerged that the COA spent approximately \$90,000 on an April 2017 trip to South Africa attended by Reed and his staff. According to reports, Reed and Reed's staff spent a considerable portion of that total on business class airfare to South Africa. In response to these reports, Jenna Garland, the Mayor's press secretary stated that “a non-governmental entity” would reimburse the City of Atlanta for the

Jeff Dickerson, spokesman for Reed, stated that the donations fulfilled Reed's earlier promise to use non-government funds to cover airfare costs from that trip and that such use was within Reed's rights. Dickerson also stated that "these were not city tax dollars, but income the mayor earned but deferred for the purpose of advancing economic development and helping Atlanta students attend college."

On August 13, 2018, Mayor Keisha Lance Bottoms released to the public an executive summary from an investigation conducted by McFadden Davis LLC (McFadden). In the summary, McFadden concluded that the "PFP received a \$40,000 charitable donation from former Mayor Kasim Reed's distribution account that held salary amounts he previously declined." McFadden also reported that PFP did not solicit the donation and that Mayor Reed made the donation so PFP could donate the funds to reimburse the City for the South Africa trip. According to McFadden, Reed told McFadden that he "had received legal and accounting advice regarding the contemplated transactions." McFadden stated that the \$40,000 disbursement to the COA was ratified by the PFP board after the funds were already disbursed and that the PFP board determined, upon review, that the disbursement could "be used to defray the cost of the South Africa trip, concluding that the trip satisfied PFP's charitable economic development purposes."

As noted above, the \$40,000 disbursement to PFP derived from a COA DHR general fund and not Reed's salary. Since OIG found that the donation to PFP was paid using a COA DHR general fund and not Reed's distribution account (and, also, that no distribution account had ever been created), OIG attempted to obtain McFadden's data to review the facts which formed the basis of McFadden's conclusion that the donations originated from Reed's distribution account. In the McFadden executive summary, McFadden stated that it conducted:

a total of 24 interviews with Invest Atlanta employees, employees of the current and past mayoral administrations, and current and former members of the PFP Board of Directors. In addition, [McFadden] reviewed and relied upon material that included, but was not limited to, PFP governing documents; PFP board meeting agendas, minutes, and audio recordings of meetings; PFP financial/accounting documents; City of Atlanta Finance Committee and City Council meeting agendas, minutes and video recordings of meetings; employment contracts; non-profit board governance guidelines; and various state and local laws.

McFadden informed OIG that the three-page executive summary was the only written work product that McFadden produced to the city. Accordingly, OIG was unable to review the data McFadden underlying the executive summary. OIG discovered no evidence that the \$40,000 donation to PFP originated from Reed's distribution account. OIG determined that PFP's "reimbursement" was not made using Reed's salary; rather, PFP returned funds donated to it by the COA.

difference in airfare between first class and coach seats. <https://www.fox5atlanta.com/news/mayor-kasim-reed-and-staffs-90000-trip-to-south-africa>

COBRA

Reed's administration withdrew \$24,465 from the Office of the Mayor's account to cover Reed's COBRA payments for 12 months. However, COBRA insurance plans are approved for set intervals depending on the circumstance under which the recipient becomes eligible for these benefits; 18 months is the standard interval. On January 30, 2019, Amis drafted a letter on COA letterhead to Reed, advising Reed on the status of Reed's COBRA plan. In the letter, Amis repeated the assertion that legislation "was passed in December 2017 that covered Reed and Reed's family for a 12-month period." Amis advised Reed that the 12-month pre-paid portion of COBRA coverage would terminate February 28, 2019, and that the remaining six months of the 18-month COBRA period would need to be covered by Reed. Amis stated that the premium amount was \$2,105.22.

In September 2019, then-COA DHR Senior Accountant Miranda Barney sent an email to the then-COA COBRA Administrator Aljeana Bellamy, asking if several individuals, including Reed and Yancy, were current on their payments. Barney was informed that Reed was not making over-the-counter payments. Barney later emailed Amis, informing him that Reed's COBRA payments were in arrears and that Reed's benefits should have been "termed" in February 2019. Amis replied that there was ongoing research regarding the legislation that approved Reed's COBRA payments. Despite Amis' earlier letter informing Reed that Reed's benefits would expire February 2019, Amis told COA staff that Reed was under the impression that the legislation had payments for the "full 18-month period" and that Reed's COBRA coverage would expire August 2019. In the same email, Amis requested that staff "hold off any written communication" until the information could be verified. Amis also advised staff that, due to HIPAA laws and health care privacy regulations, they should be "extremely careful" identifying Reed and Yancy as the source for any increase in COBRA medical claims costs. On September 30, 2019, Reed submitted a check to the COA for \$12,631.32, the exact amount for the remaining six months of COBRA payments at Reed's quoted rate of \$2,105.22.

On October 9, 2019, Stephen Deere of the Atlanta Journal Constitution (AJC) spoke with Reed's spokesperson, Anne Torres, about an upcoming AJC report. The conversation regarded an email Deere had sent to Reed regarding Reed's COBRA payments. Torres told Deere that the \$24,465 used to cover Reed's COBRA payments came from the mayor's "salary accrual account." Torres stated that Reed had made more than \$100,000 in donations using salary "that was owed to him." Also, Torres wrote that, because of the money transferred to pay 12 months of COBRA, COA issued Reed a W-2 form reporting this transfer of funds as income to Reed. Deere then emailed the COA press secretary, Michael Smith, to inquire if the COA had issued a supplemental W-2 to Reed. On October 16, 2019, the AJC released an article stating that "Atlanta taxpayers covered a \$24,500 annual health insurance premium for former Mayor Kasim Reed and his family for a year." In the article, Deere noted Torres' claim that the COA issued Reed a W-2. Deere stated that Torres refused to supply the AJC with Reed's W-2.

OIG reviewed COA W-2 records from 2017 through 2020. OIG discovered one W-2 issued to Reed in 2017 and one W-2 issued to Reed in 2018. Neither W-2 accounted for the \$24,465 payment. In 2018, the year the W-2 would have been issued, Reed's gross salary is listed as approximately \$7,000. OIG discovered no other W-2s issued to Reed.

The Gratuities Clause and Other Laws

Reed's COBRA payments and the COA donation to Howard University potentially run afoul of state and municipal laws, including Article III, Section VI, Paragraph VI of the Georgia Constitution, also known as "the Gratuities Clause."

The Gratuities Clause states that, except as otherwise provided in the Constitution:

1. [T]he General Assembly shall not have the power to grant any donation or gratuity or to forgive any debt or obligation owing to the public, and
2. [T]he General Assembly shall not grant or authorize extra compensation to any public officer, agent, or contractor after the service has been rendered or the contract entered.

Although the statute references the State General Assembly, Georgia courts have interpreted the Gratuities Clause to apply to both municipal and county governments. Georgia courts have concluded that there is no "gratuity" involved if the [entity] receives a "substantial benefit" in return for the use of public property. Article IX, Section II, Paragraph VIII of the Georgia Constitution provides an exception to the Gratuities Clause by permitting municipalities to appropriate money for "purely charitable purposes." Section 6-306 of the COA Municipal Code provides "the governing body of the City of Atlanta shall have the authority to annually appropriate and donate money, derived from taxation, contributions, or otherwise...for purely charitable purposes."

Taken together, while COA has the authority to make donations using public funds, the donation must be for purely charitable purposes. If the donation is not for a purely charitable purpose, then the COA must receive a substantial benefit from the donation. Finally, the COA cannot grant extra compensation to any public officer after service has been rendered.

The use of public funds to cover Reed's COBRA payments may have violated the Gratuities Clause. To the extent the payments occurred after Reed's service to the COA, these payments qualify as extra compensation after service has been rendered. No exceptions permit these payments. Reed's COBRA payments cannot be considered a "purely charitable purpose;" nor does it appear that the COA received some substantial benefit from paying Reed's COBRA payments.

Regarding the payment to Howard University, before considering the Gratuities Clause and other state laws, it should be noted that that the donation to Howard appeared impermissible on its face. Although Ordinance 17-O-1783 directed the CFO to donate \$18,514.24 to Howard University from Reed's distribution account, as discussed earlier, Ordinance 15-O-1592 expressly limits disbursements from Reed's distribution account to 501(c)(3) corporations "duly registered as a charitable organization with the State of Georgia whose activities promote the public good within the City of Atlanta." Howard University, an educational institution located in Washington

D.C., does not meet these criteria. This would end the inquiry except, as mentioned, the donation did not disburse from Reed's distribution account as directed by 17-O-1783; the question, then, is whether the COA would be authorized to make such a donation otherwise. As education is one of the permissible charitable purposes defined by Georgia Law, the donation arguably fits within a permissible exception to the Gratuities Clause.

CONCLUSION AND RECOMMENDATIONS

In the public discourse surrounding Reed's COBRA payments and the PFP "reimbursement" to the COA, there has been a repeated assertion that no misconduct occurred because the disbursements were funded by "Reed's salary." For example, when asked about the COBRA payments, a Reed spokesperson stated that the payments were made using Reed's salary and that that salary "was owed to him." In 2018, another Reed spokesperson explained that "these were not city tax dollars, but income the mayor earned but deferred" and that the payments "absolutely do not go against the Gratuities Clause, because the income was earned and donated as a gift to nonprofit organizations consistent with the ordinance."

Reed did not defer his salary for later use but declined it. Three years after Reed declined a statutory salary increase, the Council passed an ordinance, with Reed's approval, that permitted Reed to transfer any portion of his salary that he declined into a COA distribution account. Reed transferred none of his salary. Even if funds had been transferred, the assertion that any funds transferred would not be "city tax dollars" is incorrect. All COA funds are public, including those used to compensate personnel. In this instance, COA permitted the creation of a distribution account in which Reed could reallocate public money, which could have been used for his salary, so that it might be used for donations to appropriate 501(c)(3) organizations. The claim that the disbursements were made using Reed's salary is incorrect. Nothing suggests that any funds, once transferred into the distribution account, belonged to Reed. The Reed Administration's request that the Council approve the disbursements suggests that, despite subsequent proprietary claims to the contrary, it was understood that the funds in the distribution account belonged to COA. Finally, the fact that none of Reed's salary had ever been set aside or transferred, nor was any distribution account established, erodes any basis for Reed's later proprietary claims to the funds.

Upon review of the comments and circumstances made by Reed and others, there seems to have been confusion about how Reed's distribution account operated and was funded. Much of this confusion could have been avoided. For example, in 2012, if Reed did not want to accept the increase in salary, Reed could have vetoed the legislation increasing his salary. Also, Reed could have accepted the salary increase and donated the increase personally into any charity of his choice. Finally, as Reed's salary did not change in COA payroll, Reed could have simply opted to decline a pay increase. Even if the COA agreed to allocate Reed's future funds into a distribution account, it could have been allocated into an account separate from Office of the Mayor, or it could have been made explicit that once donated, the mayor terminates any claim to the salary. Instead, the COA effectively established a personal savings account for Reed.

Notwithstanding any confusion about how Reed's distribution account operated, Reed's administration requested that the Council authorize donations to three charities and a transfer of

funds to cover Reed's health insurance from Reed's distribution account. While presenting this request to FEC, Reed's administration indicated that these disbursements would be funded using the declined salary that Reed had accumulated in the distribution account; however, no salary had accumulated and no distribution account had ever been created. Immediately before the November 2017 FEC meeting, Reed's administration calculated hypothetical balance figures to include in the then-proposed authorizing ordinance, 17-O-1783. In presenting these figures, Reed's administration gave the appearance that Reed's distribution account had been funded up until the FEC presentation. The balance totals Reed's administration calculated were later used in the finalized version of 17-O-1783, even though no balance existed. After the Council passed 17-O-1783, Reed's administration then transferred funds from COA accounts, accounts other than those set forth in 17-O-1783, to fund the requested disbursements. Finally, Reed's administration, without Council authorization, transferred \$24,565 from the 40101 Account to the COA COBRA account to cover Reed's then-upcoming COBRA payments.

As the COA has made disbursements in reliance on Reed's declined salary, COA merits reimbursement from Reed for:

- \$24,465.00 in COBRA payments
- \$18,514.24 donation to Howard University
- \$40,000.00 donation to PFP

As OIG could not discover the source of the \$18,514.24 payment to the Mayor's Scholarship fund, that amount has been excluded. If it should be later revealed that that disbursement was funded using COA funds, then that donation may be included as well. Although the \$40,000 to PFP was seemingly reimbursed to the COA, 17-O-1792 required that the CFO make a \$40,000 disbursement from the mayor's distribution account. Instead, the \$40,000 donation was made from an account associated with DHR; as such, the payment to PFP using Reed's salary was, arguably, unfulfilled. PFP's subsequent \$40,000 check to the COA, for purposes of reimbursing COA for airfare from the 2017 South Africa trip, does not extinguish the \$40,000 owed the COA for making the donation. Like the donation to PFP, the \$18,514.24 donation to Howard University was made from an account associated DHR, not from Reed's distribution account. As the COBRA payments were unauthorized, Reed should reimburse the COA for the entire balance used to cover his COBRA payments.

Conversely, the COA did not increase Reed's salary as required by 12-O-1536. Accordingly, Reed may be entitled to the difference between his actual salary and entitled salary for period January 2014 through 2016.² Should the COA seek reimbursement, the COA should calculate and, if deemed appropriate, issue Reed a W-2 or a check for any owed salary less any funds required to reimburse the COA for the above listed disbursements. Finally, as 15-O-1592 altered Section 2-924 of the Municipal Code to allow the CFO to establish a distribution account with declined salary, Section 2-924 should be further amended to clarify how any funds currently

² The period between February 2016 through January 2018 would be excluded because Ordinances 15-O-1591 and 15-O-1592, as well as 17-O-1783, all state that Reed declined his salary increase. It is possible that Reed is not entitled to salary *prior* to January 2016 as well. However, as OIG could find no COA documentation that provides for Reed's salary prior to the passage of 15-O-1591, for the purposes of this report, it is arguable that Reed's declination of salary did not ratify until the passage of 15-O-1591 in January 2016.

within, or later transferred into, the mayor's distribution account can be disposed of. Section 2-294 should also be amended to clarify the status of any funds transferred into the distribution account, to prevent future proprietary claims to funds donated into the account.

In sum, OIG recommends the COA take the following steps:

1. Seek reimbursement from Reed for the:
 - \$24,465.00 in COBRA payments,
 - \$18,514.24 donation to Howard University, and
 - \$40,000.00 donation to PFP
2. Issue a W-2 or payment to Reed for any income that should be credited to Reed.
3. Amend Section 2-294 of the Municipal Code to clarify the nature of any funds donated into the Office of the Mayor distribution account.